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May 13, 1998

To: The Honourable Mr. Charles Harnick, Q.C.
Attorney General for Ontario
11 th Floor
720 Bay Street
Toronto, Ontario

From: James Lockyer

Dear Sir:

RE: REQUEST FOR REVIEW OF PROSECUTION
Regina V. Richard Mallory and Robert Stewart
Charges - First Degree Murder (x2)
East Region - Ottawa General Division
Trail ate - June 2, 1998

We are writing to request that, in light of the recommendations of *the Commission on Proceedings Involving Guy Paul Morin* and your endorsement of those recommendations, an independent Crown(s) and/or committee be assigned immediately to review the prosecution of our client, Robert Stewart.

We are particularly concerned about the misuse of jailhouse informants, the tunnel vision of the prosecuting team, and the loss, destruction and failure to preserve forensic evidence in this case.

I. OVERVIEW

The prosecution of Robert Stewart began almost eight years ago with the discovery of the bodies of a low level drug dealer, Michel Giroux, and his common law spouse, Manon Bourdeau, in their home in Cumberland, Ontario on or about January, 16 1990.

Originally, four men were charged with two counts of First Degree Murder. Two of them -- James Sauve and Richard Trudel -- have been tried and convicted by a jury after a 16 month trial. Mallory and Stewart (our client) were severed from that prosecution in 1995. Sauve and Trudel have filed appeals against their convictions and it is our strongly held position that they were wrongly convicted. The Assistant Crown Attorneys involved in that case, and who remain in charge of the prosecution of Robert Stewart, are Vikki Bair, Terry Cooper and Bernhard Dandyk. In addition to the prosecutors, the trial Judge at the first trial, Mr. Justice McWilliam, is also the trial Judge at this trial despite two recusal applications brought by us on behalf of Mr. Stewart.

With respect to the trial of the remaining two accused men, Mallory and Stewart, we have just completed the pre-trial motions and a jury is to be selected on June 2, 1998. Much of the evidence called during the pre-trial proceedings relates to the abuse of process being alleged by the defence arising from investigative and prosecutorial mishandling of this case. Mr. Justice McWilliam has ruled, upon the urging of the prosecutors, that this application not be completed or argued until some time after the Crown's case is completed and possibly only after a verdict has been reached by the jury. That could be more than 18 months away.

Mr. Berzins, the Crown Attorney of Ottawa has offer Mr. Mallory time served if he would plead guilty to manslaughter of the male victim only. Mr. Mallory has been detained in custody, on these charges only, at a detention centre since December 20, 1990. He has been refused bail. He has refused the Crown's offer -- his position is that he will not plead guilty to an offense he did not commit. Mr. Stewart was offered a plea to second degree murder of the male victim only, with a parole ineligibility of 10 years. Mr. Stewart is also in custody and would have approximately 2 1/2 years left to serve, either in a penitentiary or perhaps a half-way house (based on the Crown's offer), before reaching eligibility for full parole. he has turned down this offer indicating that he, like his co-accused, will not plead guilty to an offence he did not commit.

II. JAIL HOUSE INFORMANTS AND DECEITFUL WITNESSES

The Crown's Case Consists Largely of Unsavoury Witnesses and Jailhouse Informants.

Most of the Crown's witnesses have been paid substantial sums of money through the Ontario Provincial Police special fund and/or the Ministry of the Attorney General's Witness Assistance and Protection Plan. Many of the Crown's witnesses have received other benefits as well --such as the removal of outstanding charges and/or warrants from the system, residency at police officers' homes, and assistance from police investigator to avoid being charged with new offences.

a. Denis Gaudreault

"All my life, I've been a crook and a thief and a liar and a dope dealer and all that. Do you think I'm gonna trust the cops the first time around?"

Denis Gaudreault, October 8, 1991.
Preliminary Inquiry.

The Crown's central witness, Denis Gaudreault, has received the benefit of approximately \$400,000 over a 7 1/2 year period, the removal of a number of outstanding charges and warrants from the CPIC system, and several relocations and name changes at public expense. He was removed from the Ministry of the Attorney General's Witness Protection Program in August, 1997 because, after continuously committing criminal offences and breaching the terms of his contract, he was finally deemed unmanageable and a danger to this community.

Mr. Gaudreault, in response to being terminated from the program, was interviewed on national television where he threatened that he would not testify at Mr. Stewart's trial unless he received \$100,000, another new name, another relocation, and the deletion of his criminal record in its entirety. During the interview with a reporter from CTV National News, Mr. Gaudreault admitted that he had committed criminal offences while in the Witness Protection Program and alleged that his police handlers condoned his illegal activities. Mr. Gaudreault maintained that he should not be charged for breaking the law, but rather that his police handler should be charged for permitting him to do so.

In March, 1998, Mr. Gaudreault brought an application to the Ontario Court (General Division) for reinstatement of his monthly payments. The Ministry of the Attorney General was represented by Dana Venner of the Crown Law Office (Criminal) in Toronto. Ms. Venner opposed the application and has conducted herself at all times in a professional and objective fashion in relation to this case. By contrast, the local prosecutors in the case (Ms. Bair, Mr. Cooper, and Mr. and Mr. Dandyk) and police investigators (Detectives Rick Riddell and Heather Lamarche) acted behind the scenes to defeat the Ministry's position on the application.

The Crowns and police provided legal advice to Mr. Gaudreault's counsel, supplied disclosure and transcripts of evidence to his counsel at the expense of the Ministry, and prepared an affidavit for use by his counsel on the application. Leaving aside issues of conflict of interest that therefore arise with respect to the trial Crowns, the result is that Mr. Gaudreault is once again receiving \$2000 per month until at least the end of the trial.

Turning to Mr. Gaudreault's evidence, he has repeatedly lied to the police and the prosecutors and has committed perjury while testifying in these proceedings.

In response to the defence position on the abuse of process application, that the failure to prosecute Mr. Gaudreault for any of these offences is tantamount to official condonation of obstruction of justice and perjury by Crown witnesses, the trial Crowns wrote in the factum:

'An alternative conclusion, and one of far greater validity, is that the attitude of the prosecution is characterized by the desire to promote the revelation of truth under oath rather than to punish and discourage respect for the oath by prosecuting in the manner suggested by the Applicant.'

Given the recommendations of Mr. Justice Kaufman we fully expect the Ministry of the Attorney General will want to disassociate itself with statements suggesting that the truth can only be found if Crown witness are not charged with perjury when they lie:

Recommendation 51: Prosecution of informer for false statements

Where an in-custody informer has lied either to the authorities or to the Court, Crown counsel should support the prosecution of that informer, where there is a reasonable prospect of conviction, to the appropriate extent of the law, even if his or her false claims were not to be tendered in a criminal proceeding. The prosecution of informers who attempt (even unsuccessfully) to falsely implicate an accused is, of course, intended, amongst other things, to deter like-minded members of the prison population. This policy should be reflected in the Crown Policy manual.

Recommendation 52: Extension of Crown policy to analogous persons

The current crown policy defines "in-custody informer" to address one type of in-custody witness whose evidence is particularly problematic. However, the policy does not address similar categories of witness who raise similar, but not identical, concerns. For example, a person facing charges, or a person in custody who claims to have observed relevant events of heard an accused confess while both were out of custody, may be no less motivated than an in-custody informer to falsely implicate an accused in return for benefits. The Crown Policy Manual should,

therefore, be amended to reflect that Crown counsel should be mindful of the concerns which motivate the policy respecting in-custody informers, to the extent applicable to other categories of witnesses, in the exercise of prosecutorial discretion generally.

An example of one of Mr. Gaudreault's many serious lies can be found in a statement he provided to the police implicating Mr. Stewart in another murder in the Bayshore area of Ottawa. Mr. Stewart's counsel (Michael Edelson) cross-examined Gaudreault about this statement at the preliminary inquiry on January 6, 1994:

Q. Just a second. When you made the statement to the police back then about Stewart killing other people, for example, which you now admit was a lie, that he didn't do it.

A. It was all hearsay, yes.

Q. It wasn't hearsay, you said it.

A. Correct.

Q. You said he did it. That's not hearsay,...

A. Correct.

Q. ...right? My question to you, sir, is when you made those statements to the police, you knew you were lying, right?

A. Correct.

Q. Did you expect those lies to be exposed?

A. Yeah, they were lies, yeah.

Q. Why - see, what I'm troubled by is this. You said you never trusted Fitzgibbons, the Pie man,...

A. Correct.

Q. ...right? And if you didn't trust him - no one forced you to talk to him, did they?

A. No.

Q. No one was holding a gun to your head and saying, "You've got to make a statement about the Bayshore murder", right?

A. Well, it was just at the time that....

Q. No one forced you to make that statement.

A. The time that he asked me the question is - that's the time me and Jamie went up to that bar up on Bank Street. We went downstairs and I guess Big - whatever his name was, I can't remember right now - was having a discussion and they were all - about something about a girl and all sorts of stuff, and me and Jamie went and picked up the .223.

Q. Forget about that. When you spoke to Fitzgibbons, okay - I think it was in March of '91 -...

A. Yeah.

Q. ...and he interviewed you about the Bayshore murder,...

A. Correct.

Q. ...you could have told him to take a hike, correct?

A. Yeah.

Q. I mean, no one was forcing you at that time to say a word to Fitzgibbons, right?

A. Correct.

Q. And at that point in time you could have just as easily said, "I have nothing to say."

A. Correct.

Q. Right. But instead you deliberately chose to lie about the accused being involved in another murder, right?

A. Correct.

Q. Okay. Why?

A. Don't know.

Q. You don't know. You see what I'm getting at, Mr. Gaudreault? Given the choice of saying nothing or lying, you always choose the option of lying, right?

A. Correct.

On the subject of lying to the police generally in relation to this investigation, Mr. Gaudreault gave the following evidence on December 9, 1991:

MR. EDELSON:

Q. Now, Mr. Gaudreault, looking at your version, I take it what you're saying is: I've been a thief, I've been a robber, I've been a drug dealer, I've been a liar, I've lied about a lot of things, and I've done a lot of bad things, but I'm not lying about the events that surround the homicides. Is that a fair summary of what you're saying here?

A. Correct.

Q. I see. So what you're saying is that in none of the times you've spoken to the police did you ever lie to the police.

A. Sure did!

Q. You did.

A. I lied to them all the time.

Q. "All the time."

A. I've already told you that...

Q. Yes.

A. ...awhile back and you're still going back on the same thing that you've been askin' me question for the last....

Q. Except we're talking about the same subject. We're talking about the subject of the murders. And you're saying even on the subject of the murders, you lied to them throughout, right? Time and again, you lied to the police, correct?

A. Correct.

Mr. Gaudreault's first version of events on the night he claims these murders took place contains the same mistakes as the newspapers accounts did. Mr Gaudreault's next attempt involves only two men going to the scene in a pick up truck. When it appeared to Mr. Gaudreault that his contract with the Ontario Provincial Police (whereby he was to be paid \$3000 per month) might be in jeopardy, and Det. Lamarche suggested to him that in fact James Sauve had been the shooter and that a white Cadillac had been used to drive to the scene, Mr. Gaudreault was quick to adopt these suggestions as the truth.

To lend an air of credibility to his new version, through, Mr. Gaudreault claimed he had not told them the whole truth earlier because he was in fact the driver of the white Cadillac. He had long since been assured by the investigators that as long as he didn't pull the trigger he would not be charged. If placing himself at the scene in the car seems an odd thing for Mr. Gaudreault to lie about, one has to be aware that Mr. Gaudreault has demonstrated repeatedly that in order to try to convince the police he was telling them the truth he would often alter a story he had heard by inserting himself into the story as a participant.

For example, he alleged to the police that Michael Neville, a prominent and respected Ottawa defence attorney, had taken a pay off to the police on behalf of Mr. Stewart. His testimony regarding this on October 17, 1991 at the preliminary inquiry provides just one illustration of Mr. Gaudreault's propensity to lie about being involved in events that he may (or may not have) only heard about.

Q. You told the court the other day when I dealt with the issue of Mr. Neville, you said that he was laundering money for Stewart. He was buying real estate for Stewart....

A. Okay, I'll tell - I'll tell you exactly what I was told. This is - I was told, like you say, hearsay again. Mr. Stewart came over to my place....

Q. No, I don't have to hear it again.

A. No, no....

Q. I'm just - I want to ask you a totally different question, okay?

A. Okay, but there's another thing too...

Q. I know what you told....

A. ...what I could answer you furthermore, because in one of the statesment, you'll probably end up asking - which I lied in that statement because I wanted the police to know that this was serious - that I just didn't wanna be left dry. When the Denis Roy - when Denis Roy got killed or kill himself - took his life - Randy came over tryin' to pick up all the product and all the dope from everybody, 'cause they wanted everything off the street. Because before that, there was - there was an argument which Rob Stewart told me - it's something to do with Vanasse and it was with the contact in Montreal. Rick Mallory, Denis Roy and Rob Stewart had a hit on him for somethin' that was said - like, Denis was stepping on feet doing things. Then Denis died. Then Randy came over during that day 'cause he had to go over to Jamie to pick up some money at Jamie, which Jamie later on - I guess you'll be asking him the same question - and he came over and he wanted me to give him some money. And I said, "Well, how much do you want?" He says, "Everything, I want. I'm supposed to be picking up everythin'." I said, "Well,

I don't have everything." He says, "How much you got?" And I exaggerated in some of the statement because I was scared and I didn't know what to think - so I've given him over \$5,000 to Randy, his number one runner. Then I said, "Well, what's that for?" He told me that he had to meet Michael Neville - like, that's like you say, hearsay. I didn't wanna say it, but now you're putting me in a corner, I don't have any choice, basically. He told me he was meeting Mike Neville off the Cumming (sic) Street by Donald Street - Cummings and Donald in a townhouse - 'cause I been there with Stewart once. I think it's one of the Martin's place that lives there.

He says he had to meet Mike Neville to give him \$25,000 so they could get off this rap - or this charge - because there was a gun found and all that. All what I'm tellin' ya is what one guy told me. And after Rob came - after - awhile after, Rob came - I don't know if it was a day or a couple days - and he came in to verified (sic) everything. He just said it cost him \$25,000 for this stupid fuckin' thing. That's exactly what was said, it just cost him 25 grand. And I'm not making anything up, I'm just telling you exactly what I was told.

Q. Well!

A. You take it any way you want to take it. Like, even at one point, he used to come to my place. He did lotta white, so he mighta been so far going through all this - I know he - he must've exaggerated at some point. But....

Q. Who's "he"?

A. Rob Stewart. But as far as I'm concerned, he didn't exaggerated to me at the time. And I still believe 'til today that most of his thing is true. Because these people there, they were making, like, lots of money - like, it's - it's not a thing that basically you just do a little bit and get away with somethin'. I'm talkin' millions of dollars they could make in a year if they want to. Look at Vanasse, it's - you know, it's got nothin' to do with this, but look at him. He's bein' extradited right now and look at the amount - over - close to a ton and a half. And you tell me that these people - like, my life is not in danger and all that? I know what I've seen; I know what I did. I know that I shoulda never lie. I shoulda came up forward with the statement - all my statement were the truth - but I didn't trust anybody, from what I've heard. That's why I'm scared today and I've been scared all along. And that's why I don't know what to do. Because I know what I did that one night wasn't fair, and I'm not proud of it, but you're people keep pushing me, and I just don't know how much more I could take of this stuff.

Q. Well, we have some way to go, so just be patient. Because you lied to the police when you told them that Mr. Neville had been paid \$25,000....

A. By myself.

Q. Yes.

A. Yes, I did.

Q. So what you said to the police was that you personally met with Mr. Neville. You personally handed over to him \$25,000 in cash, true?

A. Because that would be the only way that the police might believe that I'm saying the truth about this, and I was afraid that they wouldn't believe me if I say, "Well, this guy said that, that guy said that." I know what I did.

Q. So what you say, Mr. Gaudreault, is that by lying, you tried to demonstrate to the police you were telling the truth.

A. No, I was getting things worse.

Q. Just a second. By lying, and in this case by lying about Michael Neville, a prominent lawyer in Ottawa, about your involvement with Mr. Neville, you were trying to demonstrate to the police that you were telling the truth.

A. Correct.

Q. Exactly.

A. But I wasn't lying. I was lying....

Q. You were lying.

A. Yeah, I was lying to the police to say that I'm the one that went out and give him the money, but I thought that might be the only way that they would believe me that I had nothing to do with this.

Q. In other words, by lying to them, you were going to get them to believe you. Pretty strange thought process, don't you think?

A. Yeah, but I'm - I'm a thief; I'm a crook...

Q. We've been through that.

A. ...I'm a liar.

Q. We know all that.

A. Yeah.

Q. This is the statement you're talking about, June 20th, 1990, where you say that you go out - it's the fourth page along, if Mr. Stewart wants to examine that.

MR. STEWART: Yes, I've got it, thank you.

MR. EDELSON:

Q. You say that:

"That was the night of the killing up - the Cumberland - but I didn't know any of this - like, he owed him a favour and he was cashing in on the favour which I - he even deducted \$2,000 off my bill and I had to pay Sauvé 10,000. Just before that, I paid a bill for Stewart to Mike - uh, Mike Neville. I pay Mike Neville \$25,000 up on Cummings Avenue at the townhouses off Cummings and Donald - the back of the townhouses." You told the police that?

A. Yes, I did.

Q. It was a lie?

A. Yes, it was.

Q. In fact, you were capable, Mr. Gaudreault, not only of lying, but you fabricate things with great detail, don't you?

A. No, I didn't, sir.

Q. Great descriptive detail.

A. Because the only thing I did, instead of putting Randy, I put my name.

Q. Just a second. Not only did you do that, but you described the events with great detail, right?

A. Because that's the event that was described to me.

Q. Yes, here's what you say:

"I pay Mike Neville \$25,000 up on Cummings Avenue at the townhouses off Cummings and Donald - the back townhouses. He drove in and I was told there to wait for him. He was going to come

down. Then I found out that late in the afternoon, a couple of hours after that, Neville took the \$25,000 because he had to meet Stewart over at the Ottawa Police to get Stewart off on something and Denis Roy's suicide mission", right?

A. Correct.

Q. So what you were telling the police in that statement, sir - and you were already under contract to tell the truth to the police - what you told them was not true.

A. Correct.

Q. And you described to the police an event in which you were personally involved with a prominent Ottawa lawyer, paying him \$25,000 which was going to be used to get Stewart off on the Roy suicide.

A. Correct.

Q. Yes. Never happened with you. Never happened.

A. No, it happened with Randy.

Q. You say Randy related to you that he met Mr. Neville behind the Cummings townhouses. Not in his office...

A. Correct.

Q. ...but behind the Cummings townhouses where a pay - a payment was made of \$25,000, right?

A. Correct. But Stewart came over and - and verified everything a few days later.

Q. I suggest to you, sir, that you're again not telling the truth.

A. Yes, I am.

Q. Because you told quite a different story to the police in an earlier statement...

A. But I've lie....

Q. ...about the same events.

A. See, I've lied through all my statesment.

Q. We know that.

A. I didn't know where I've lied, so I tried to make it as good as I could, like, but with the lies. But I'm not lying today, I'm just telling you'se and I've - and I've told 'em yesterday the same thing.

Q. Hold on a minute, because I think you are lying today.

A. No, I'm not.

Q. Page 25 of the March 20th, 1990 interview. You talk about the lawyer, Mike Neville.

MR. STEWART: I'm sorry, I missed that page. 20...?

MR. EDELSON: Five.

MR. STEWART: Of March - of the typed....

MR. EDELSON: Of the typed March 20th interview.

MR. EDELSON:

Q. In the lower third of the page it says - this is Jim Fitzgibbons - he's the fellow from Nepean, remember? - who interviewed you?

A. Yeah, I've never trusted that guy. I just....

Q. You didn't trust him either, okay.

A. Pie salesman makes a cop.

Q. Pardon?

A. Eh?

Q. What did you say?

A. Well, when I first got introduced to him when he first came and picked me up to - like, to sort of like talk...

Q. Right.

A. ...his - well, from what I've heard, he used to sell pies before, like.

Q. He's a pie salesman?

A. Yeah. So then they....

Q. Like pies you eat?

A. Eh?

Q. Pies you eat?

A. Yeah, pies to eat.

Q. Okay, yes.

A. Then he just - then he makes it from a pie salesman to something else. I - I've never had any arrangements with him. I never had any deal - he just ask me basically about the .223, when I got it. I tried to remember the best I could because of the - about the rough time when we went and got the .223 off Bruce Shield - me and Jamie exactly what happened.

Q. Okay, so you didn't trust him either.

A. No.

Q. No.

A. He's one guy I didn't trust and I still don't trust.

Q. And you said you had no deal with him. I take it you meant you had no contract.

A. I'm not talking about contracts. I had no....

Q. What kind of deal would you be talking about?

A. Any deals. I didn't....

Q. What kind of deal?

A. All what I was told is just somebody wanted to talk to me about the .223 and he was asking me a lotta questions and I was just giving him a lotta bogus answers. Like, I....

Q. A lot of bogus answers?

A. Yeah.

Q. I see. Well, let's deal with this bogus answer. It says, "The lawyer, Mike Neville, yeah, he does quite well too by Rob, yeah." That's Fitzgibbons talking. You say, "Because the day that - that was the day of the Denis Roy killing. He came over to my place and picked up \$14,000."

A. That was Randy,

Q. Let's stop there for a moment.

A. That's....

Q. You're talking about Neville.

A. That's Randy.

Q. Randy is never even talked about there. Well, let's go on, because I think you're lying to me, under oath.

A. No, not under oath.

Q. Listen - well, you are under oath.

A. Yeah, that's right.

Q. It says, "And went up to the next door neighbour and picked up 11,000 because the runner Randy said that there was too - for somebody - that Rob had to see right now with a lawyer and had to take care of, so it cost him \$25,000 for Mike Neville that day to walk in wherever they go." All right. Now, you're talking about the lawyer Mike Neville. You raised the subject here and that was the day of Denis Roy's killing, so you're talking about the same subject, right? The \$25,000 payment to Neville.

A. Yeah.

Q. Right. And you're saying, "He came over to my place and picked up \$14,000" - you're talking about Mike Neville.

A. I don't remember about telling 'em he came over to my place.

Q. Well, I'm not surprised.

A. No, I know, if it's written there, it's written there...

Q. Yes.

A. ...but I don't remember. Like I told ya...

Q. Okay.

A. ...I'd given him lotta bogus - bogus answers. I just didn't like him, I just didn't trust him, and he was too pushy, and he wanted to know too many things.

Q. I see. So on March 20th, 1990, when it appears you....

A. That was a month - basically about a month - 35 days after I left, I was still - like, had the shakes still little bit. I was still doin' the dope. I was in an hotel room - I didn't know what to expect - lot of statesment. This other guy comes outta nowhere - wanted information about a .223 which was used somewhere. I didn't know what to suspect. Are they gonna charge me because I had the .223 at home? Are they gonna do this? Are they gonna do that? I didn't know what to tell him so I just give him a whole bunch of bogus answers.

Q. All right, so it was all bull.

A. Yeah, basically it was all bull. And I've already told Heather Lamarche yesterday when she brought me those papers - I said, "You're not gonna like what I'm gonna tell ya, but this stuff here about Fitz...there's some in it that's true, but lotta bogus stuff" - basically, lots of bogus.

Q. So the stuff about Neville being at your house and collecting \$14,000,...

A. Bogus.

Q. ...having to go next door to the neighbour and pick up an additional \$11,000....

A. That was Randy.

Q. Okay, so we're talking about the same \$25,000?

A. Correct.

Q. Because in June, a few months later, you tell the police that you meet him behind the Cummings townhouses.

A. Correct.

Q. And in March, you had already told the police that Neville came to your house and picked up 14.

A. Correct.

Q. So not only was it all bogus, but you were changing the story back and forth.

A. Because I didn't know what to do, where to turn, if they'd protect me, what they'd do. You

give 'em too much - I've seen people give information to police and bein' left there, just for the kill - just for no reason at all - just once they got everything they want, they just forget ya and drop you there, and I - that wasn't gonna happen to me - not with - with what happened.

Q. So what you did....

A. I made some of it up, yes.

Q. Yes, you fabricated evidence....

A. No, I didn't fabricate, it's just things that I've heard - well, you call it fabricate....

Q. Sorry, fabrication means you make it up.

A. Yeah.

Q. It didn't happen?

A. I made it up because I was told from it from Randy, and there's some other things too that I've heard in those statesment a little further - well, you'll go into - that I've also pre-fab.

Q. Yes.

A. Not pre-fab, uh....

Q. You made it up?

A. No, I've heard it and I just made it up - like, make it sound like I was there.

Q. Like you were there?

A. Yeah.

Q. So you heard things and then you put yourself there.

A. Yeah.

Q. All right. Now, this was a way you did things - you would often hear things and then you would put yourself in the shoes of someone else and say you were there, right?

A. Depends.

Q. Well, the Neville incident, that's exactly what you did.

A. Yes.

Q. And I suggest, sir, the reason you did that was you knew Mr. Neville was a defence lawyer, right?

A. Of course.

Q. And you knew he worked for Mr. Stewart from time-to-time when he was retained to defend Mr. Stewart for charges, right?

A. All what I know is what I've heard from Mr. Stewart which is correct.

Q. And pretty hot information to give to the police - that you got a prominent attorney meeting with a guy in a secret meeting - you - behind some townhouses. You're not going to his office. I mean, his office isn't on Cummings Avenue behind a townhouse, right?

A. Correct.

Q. So you're making it look like there's something wrong going on here, right? There's a secret meeting - big amount of cash being handed over to Neville, right?

A. Mr. Edelson, I'll tell you the same thing too, I was scared at the time. I didn't know who to trust. I didn't know if the police believe that these people were connected that highly up. But I'm gonna tell you something right now, and it's not that I'm lying - but if you ask me my personal opinion? Yeah, it did happen with Michael Neville.

Q. Okay, so what you're saying is you're maintaining that it probably happened, even though you weren't there.

A. I'm telling you from my understanding, from what I've heard, and I believe it.

Q. Okay, that's fine. I'm just interested in what you personally saw with your own eyes. You weren't there.

A. I wasn't there, no.

Q. Okay. Well, what I'm suggesting to you, sir, is that this was something that you mastered - this ability to describe with great detail events at which you never attended, right?

A. You call it mastering. I don't call it mastering. I call it no trust in the police, no trust in the police, no trust with the lawyers, I'm all alone, something might happen to me, I have to say something that if I say something, they gonna listen.

Q. Well, here you're giving them some information about a prominent lawyer and you're making it look like he's involved in some dirty activity, aren't you?

A. Listen, I'm not saying he's into - don't miss - you might say....

Q. Interpret?

A. Don't interpret that I'm saying that he's in any dirty activities. All what I'm saying is from Stewart, to - when he verified - when I've heard it from Randy, I just heard that he needed \$25,000...

Q. Um-hmm.

A. ...for this case with the Denis Roy. They didn't get in no details - no nothing. Rob came over and told me it just finished costing him 25,000. After that, he - he came over to my place another occasion and said that they were making investment, buying property here, land here, things like that, and he was like a secret investor and Neville was making the investment. Now, any lawyers, you go up and see him, if you pay him, doesn't mean he's a crook, it just mean that he's investing money.

Q. But you made, I suggest to you, sir, a far far worse statement about Mr. Neville. You suggested to the police - you didn't suggest it, you told them....

A. That he coulda been giving information also.

Q. That when Mr. Stewart wanted to recruit a new drug dealer....

A. He'd get a check done on him, and that's exactly what Mr. Stewart told me. I'm just telling you what he told me. He says - and there's even another place too - when I've turn on an agent, he even told the agent himself, which was Glen - I'm not gonna reveal his last name - but these guys - the Crown will tell ya - he even revealed to him that he'd make a check on him before he even makes any kinds of transaction. And this guy was there and you could call him, whatever, and ask him questions. And I'm not the only one he told that to. He told it to him, and he told me before, when he meets new faces, it's easy - he'll make a check with them through his sister or through Mike Neville. If somebody missed something, the other one won't. That's all what I've been told through him. I've never seen it.

Q. Yes, except you told the police that you'd seen his sister with police files from the R.C.M.P.

A. That was miss - mis-written or whatever you call it because we went through that. I've told you - I've - Mr. Stewart came - he had a file with R.C.M.P. file, and I put it together that he just got it off his sister. I've never seen his sister with any file. I've never seen his sister - and I've already said, all what I was told, sister had his - his cottage under his (sic) name and I've seen him with R.C.M.P. file. I just believe what he said..

Q. But what you did, sir, was you then - you took information that you say you got from Stewart and you transformed it into things you say you saw with your own eyes, right?

A. No, some things, sir, but not all.

Q. Exactly, some things. Again, Mr. Gaudreault, one of the methods you used in your interviews with the police was you would tell the police that you had seen things with your own eyes that, in fact, had simply been told to you by other people, right?

A. To protect myself for the police to....

Q. Whatever the motive...

A. Yeah.

Q. ...it happened, true?

A. Some of it, but not this - what I'm here for today, no, I did not pre-fab this one.

In addition to making up detailed stories where he would insert himself as a participant to try to convince the police of his honesty, Mr. Gaudreault also created and provided false physical evidence to investigators in this case. Whenever it appeared that the investigators might be losing patience with Mr. Gaudreault and his changing versions of events and/or his contracts were about to expire, Mr. Gaudreault would suggest to the police that he had some really good evidence for them but he would not surrender the evidence immediately because he needed to hang on to it long enough to ensure that the promises made to him by the police were kept.

First he claimed to have a drug debt book that our client, Mr. Stewart had initialled in relation to payments made by Stewart to the alleged participants in the murders. Mr. Gaudreault led the police on a merry chase regarding this debt book for many months, but when he finally turned it over, it was clear to Detective Riddell that the book was a forgery. It was all written at one time and in the same ink. Mr. Gaudreault has since explained that he didn't trust the police and he wanted them to believe him so he created the phoney book. Unfortunately the original book has never turned up. However, in evidence now are a few pieces of paper which he claims are really the original documents. They appear dirty and are written in different coloured inks.

After the debt book fiasco, Mr. Gaudreault claimed he could provide a computer disk (for a small electronic organizer) to the police that had belonged to Mr. Stewart. The disk would contain all of Mr. Stewart's drug contacts and financial information. All the police would have to do is figure out the password to get to the information stored on the disk. Mr. Gaudreault again hesitated to turn over the disk and told many stories to the police about precisely where it was and when he would turn it over to them. When he finally did turn over the disk the police went to work trying to access the information stored on the disk. In the meantime Mr. Gaudreault testified that he had given the disk to the police and that the disk was the real thing.

After much time and effort was expended by the police to try to access the information on the disk, it was learned that the disk was brand new and had never contained any information at all. When Mr. Gaudreault returned to the preliminary inquiry to complete his evidence, he was forced to admit that he had committed perjury over about a four day period in relation to the disk. The evolution of his evidence about the disk provides but one example of the elaborate lies and false evidence Mr. Gaudreault is willing to provide both to the police and while under oath in Court.

October 16, 1991

Q. You didn't only tell them that you had the black book - and we have your copy of the black book here...

A. Correct.

Q. ...you went on to tell them that you had a computer disk of some sort...

A. Yeah.

Q. ...which related to Mr. Stewart.

A. That's a computer disk that I got off Mr. Stewart one time.

Q. Did you steal it?

A. Yes, I did.

Q. And could you just advise me when you got that item for the first time in your life?

A. I can't - uh, it's the time he came over - I guess it was over to Jamie's or at my house.

Q. Just a second. Jamie's not living with you.

A. No, no, Jamie or at my house.

Q. Okay.

A. He dropped the calculator, got "pissed off", then on his way, just - think the next day....

Q. Just so I understand what we're talking about, sir, are we talking about a calculator or a computer disk? It's referred to...

A. It's....

Q. ...throughout as a disk.

A. Yeah, but there was nothing - it was a blank disk.

Q. Okay, we're going to come to that. We're talking about a standard computer disk.

A. Yeah.

Q. Like a floppy disk or a hard disk?

A. Correct.

Q. Okay, which was it? Was it like a C-D? You know, like hard metal?

A. Uh....

Q. Like a compact disk? You know, you play music on it.

A. No, I don't - square thing that you....

Q. It was like a square disk that you put in a computer.

A. Yeah.

Q. All right. And just so I understand, sir, you say you stole this from Mr. Stewart. Where was it when you took it?

A. In the car.

Q. Which car?

A. His car. I think it was the - I'm not sure if it was the Oldsmobile or the Camaro.

Q. And when did you - when did you steal it?

A. I don't remember. Exactly, I just don't.

Q. We know when you left, around February. Relative to the time you left town, when did you steal the disk? How long before?

A. I don't know. I can't recall.

Q. Okay. Why did you steal it?

A. 'Cause I thought there might be something in there later on that might be important for something I might need.

Q. Well, something you might need - what were you thinking when you stole it?

A. To protect myself.

Q. To protect yourself. How were you going to accomplish protection for yourself by stealing the disk?

A. Well, if it was Rob, it had things of importance to him, but I didn't know the disk was a new disk.

Q. All right, what you thought you were getting was something of real importance...

A. Because....

Q. ...to Rob's dealings.

A. Yeah, because he marked everything in it.

Q. You would observe him marking things on a computer?

A. Yeah, every time he came over - well, basically when he came over, he'd mark it in it or he wouldn't mark it in it.

Q. You're sort of indicating with your hand. Was this a small instrument that he used?

A. It's like a calculator - you could have telephone numbers - for all sorts of purposes. It's like a....

Q. It's an electronic device.

A. Yeah, you could take it and feed it to a big computer.

Q. Excuse-me, you're indicating with your hand something about ten or 11 inches across?

A. Yeah.

Q. And....

A. Because I think that they have one also that they show me.

Q. They showed you a similar item.

A. No, they show me one of the items that they got.

Q. So that what they showed you was one of the little computers. Let me use that phrase, one of these small things that you had seen, similar to the ones you'd seen Stewart punch things on.

A. No, I was told it was one of Rob's computer, but I think it's the one that he dropped in the toilet.

Q. All right, because I thought what you told us that he dropped in the toilet - and you used the word it "sizzled" - was a calculator.

A. It's like a computer-calculator. You could calculate on it or you could put phone numbers, addresses.

Q. I see, okay.

A. See, I don't know the purpose - like, I never used those ones.

Q. And you could plug it into a big computer.

A. Or you could feed the disk to it.

Q. Did this little calculator device that you saw him drop in the toilet have a disk in it?

A. Yes, it did.

Q. So it was driven by a disk?

A. Yeah.

Q. And it was one of those disks that you stole.

A. Yeah.

Q. All right. Now, this particular disk that you stole - I take it, you took it with you?

A. Yes, I did.

Q. Did he ever tell you or ask you about the disk? Like, "Denis, have you seen my computer disk?"

A. No, because he never did.

Q. Okay, so you took it, and he apparently never asked you any questions about it and you left.....

No audible response

Q. You're shaking your head. That's no?

A. No.

Q. And you left and went out west and you took the disk with you.

A. Yeah, I had disk and papers and a few other things, yeah.

Q. You thought it had valuable information on it that you could use some day.

A. Yeah.

Q. Do you mean use to make a patch with the police? To bribe or to blackmail Rob Stewart? What are you talking about?

A. To protect myself.

Q. How would you protect yourself?

A. I was thinking like I normally think - he might come after me, fuck, if he knows I got that. But the thing was blank so it didn't mean anythin'.

Q. Yes, but you didn't know it was blank.

A. Correct.

Q. Right. You thought it was loaded...

A. Correct.

Q. ...with information.

A. Yeah.

Q. And you thought you could use it against him.

A. Correct.

Q. Such as if he ever came after you or threatened you, you could say, "Look, Rob, I have your computer disk and I'll turn it over to the police."

A. And he would say, "Go ahead, it's blank."

Q. How would....

A. But I never came up to that - to that situation, so I never....

Q. Well, we're going to examine that right now. But he couldn't say to you it's blank because he didn't even know you'd stole it, right?

A. Correct.

Q. He didn't even know you had it.

A. Correct.

Q. Right. In fact, the only people who knew you had it were the police because you told them you had it.

A. Yeah.

Q. And you told them that you had important information on it concerning Mr. Stewart and his dealings.

A. That's at the time. That's what I thought, yeah.

Q. Yes.

A. That's exactly what I told 'em.

Q. Yes. And you kept leading the police on into believing that you had important information on this disk concerning Mr. Stewart's dealings.

A. Correct.

Q. Right. And throughout your dealings with the police in reference to the computer disk, were you truthful?

A. No.

Q. All right, are you telling us, Mr. Gaudreault, then, that on occasions when you dealt with the police concerning the disk, that you lied?

A. Because I didn't know what was on it.

Q. Not about what was on it, sir, but in your dealings with the police about it, did you lie to them?

A. I can't remember.

Q. You can't remember. When you said you weren't truthful, I take it you were telling the court....

A. I didn't know - yeah, I didn't know if there was anything on it - or if there wasn't.

Q. Okay. So you were mistaken, really.

A. Yeah.

Q. You weren't lying to them, you just didn't know if it was blank, is that what you're saying?

A. Correct.

Q. So you're not telling us, then, that you knew it was blank and you represented it to be full of information.

A. Correct.

Q. All right, you didn't lie in that way, right?

A. Right.

Q. You were just mistaken about it having information on it.

A. Yeah.

Q. All right. Because what I'm suggesting to you, sir, is that time and again, they requested the disk from you, as they did the black book...

A. Yes, they did.

Q. ...and you lied to them, didn't you?

A. Yes, I did.

Q. Why did you do that? Why did you not want them to get the disk?

A. Like, I'll keep tellin' the same over and over, I never trusted them and I still don't trust 'em today.

Q. Well, you did turn the disk over, though.

A. I had no choice.

Q. Why did you have no choice?

A. They needed it really bad.

October 17, 1991

Q. Mr. Gaudreault, when we broke last week, you told me that you had stolen a computer disk from Mr. Stewart. Do you recall that subject, sir?

A. Yes, I did.

Q. And you told the court that sometime later, after many discussions with the police, you finally turned it over to the police.

A. Yes, I did.

Q. And we went over that - the date you turned it over. And that would've been much later, obviously, after you first seized it, correct?

A. Yes, I did.

Q. Tell me this: is that the only disk you had?

A. Yes, it was.

Q. All right. You didn't have any other computer disks that you had either taken or stolen or taken in your possession in any fashion in relation to Mr. Stewart or his business.

A. What do you mean by that?

Q. Well....

A. That if I took something that....

Q. Did you take any other computer disks...

A. No, not - no....

Q. aside from the one we're talking about?

A. Not that I recall.

MR. EDELSON: Excuse-me, Your Honour.

MR. STEWART: Perhaps we can page Officer Lamarche.

MR. EDELSON: Yes, about the disk and the machine, Your Honour.

MR. EDELSON:

Q. I'm just going to show you the disk that was turned over to the police and that little computer I think they showed you.

...Clerk pages Constable Lamarche

MR. EDELSON:

Q. Remember at the hotel that day?

A. Yeah.

Q. I just want to identify that for us. So this disk that you turned over was the only one that you ever had in your possession.

A. Yes, it was.

Q. All right. And when did you first discover - because you told me last time you had been under the impression that it was loaded with information.

A. Yeah.

Q. ...right?

A. Yes, I did.

Q. About his drug dealing and all the rest of it.

A. Yeah.

Q. When did you first discover it had nothing on it?

A. They just told me.

Q. The police told you some time afterwards?

A. Yes. Yes, they did.

Q. I see. Just to fix that in time, sir, it seems that the disk was turned over - this would be on the 16th of August 1990. I take it, you wouldn't remember that date particularly.

A. No.

Q. But you have no disagreement that that was likely the date.

A. If that's what it's marked, yeah.

Q. I'm just looking at Constable Riddell's notes for that date and it says that you were with Richard...actually, Richardson was here in Ontario at the time when the disk was turned over. Do you recall that, sir?

A. I recall that he was here but I don't recall....

Q. Okay, but in any event, sir, it says that at 1:30 that day, that the disk was handed over by you to Riddell.

A. Okay.

Q. All right. You have no disagreement with that?

A. No.

Q. All right. And then in terms of the chronology, on November 6th - this is August 16th - November 6th, you turned over the black book which is our Exhibit 63.

A. Yes, it is.

Q. All right. Now, given that was the only disk that you ever had, I take it, it would be impossible for you to produce any other disk, right? Unless you made one up.

A. Yeah.

Q. Did you make one up?

A. No.

Q. All right, so you never fabricated a disk or made a disk such as the black book.

A. No, I just brought the disk that I took away from Rob.

Q. Okay. Did you - after the police told you - which would have to have been after the 16th of August, 1990, because that was the time at which you turned over the one disk you had....

A. Correct.

Q. After the police told you that there was nothing on the disk, did you tell the police anything else about any disk after that?

A. I don't remember.

MR. STEWART: Tell? Is the word tell?

MR. EDELSON:

Q. Did you tell the police anything after that about the disk?

A. I don't remember.

Q. Okay.

MR. EDELSON: A moment, Your Honour. Now....

MR. STEWART: Just once Mr. Edelson shows it to Mr. Gaudreault, perhaps we can have the

disk entered and then returned back to Officer Lamarche.

MR. EDELSON: That's fine, Your Honour.

MR. EDELSON:

Q. Opened already, sir, is an envelope. Let me show you this. It says, "16th of August '90", which is the date I've just talked to you about. It says "Sharp Disk, The Expense Manager, seized at room 143, Relax Inn in Gloucester", and it's signed by Constable Rick Riddell of the Ontario Provincial Police. Now, opening this white envelope, inside, there appears to be something. I'm just going to move this in the bag so you get a better look at it. There's a hard small disk. It says "Sharp" at the top - ten - excuse-me, 1-Q-701-A - called the "Expense Manager". Can you identify that for us, sir?

A. Yeah, that's the disk I've turned to - from what I see, that's the disk I've turned to Mr. Riddell.

Q. Okay, this appears, sir, to you, to be the identical disk you turned over to Constable Riddell.

A. Yes.

Q. All right.

MR. EDELSON: Next numbered exhibit, please.

CLERK OF THE COURT: Number 70.

THE COURT: Exhibit 70.

EXHIBIT NUMBER 70: Envelope with Sharp Disk -Produced and marked.

January 5, 1994

Q. Just let's finish this confrontation you had with Detective Riddell. And at this point, they had also discovered that the famous disk that you had presented - could I find out the exhibit number of that, please.

CLERK OF THE COURT: Yes.

MR. EDELSON: The computer disk.

MR. EDELSON:

Q. The disk you presented was also a total fraud.

A. Yeah.

Q. In fact, there was nothing on it, was there?

A. Yeah.

CLERK OF THE COURT: It's number 70.

MR. EDELSON: 7-0?

CLERK OF THE COURT: 7-0. It's not there. It's marked on this exhibit list that it was returned to Constable Lamarche on October 18th, 1991.

MR. EDELSON: Oh.

MR. EDELSON:

Q. Well, as I recollect the envelope - the plastic envelope that was in, Mr. Gaudreault, they sent that disk - first of all, they went to an accounting firm, P.M.G. - Peat Marwick. They spoke to a forensic accountant. He says, "I can't help you." They went to Sharp and they wrote Sharp, the

maker of the computer - the pocket computer - and they asked them to break the code so that they could get the information on your disk, right?

A. Um-hmm.

Q. Sharp's lawyers wrote the police and said, "No can do, write to Japan." So presumably they wrote to Japan. They then gave the material to the R-C-M-P, I think they gave it to the F-B-I, and the Secret Service in the United States. Can you imagine the expense and the trouble you put the police to in the course of this investigation about the disk?

A. No.

Q. Huge expense! Huge use of manpower! You wasted their time completely...

A. Correct.

Q. ...with this fraud. You were confronted by Riddell and he said, "You're making us all look like a bunch of dummies! We had the disk tested. There's nothing on it." Right?

A. Correct.

Q. "You made us all look like fools!" And you knew - he said, "You knew the disk had nothing on it when you handed it to us", right?

A. Correct.

Q. You sent them off on this huge wild goose chase where public funds were spent on the police, the F-B-I, the Secret Service, the R-C-M-P - all these people were sent off trying to figure out what was on this disk when you knew from day one it was blank, right?

A. Correct.

Q. Why would you send them off on a wild goose chase like that, Mr. Gaudreault? Lie and defraud the police on this piece of evidence.

A. Didn't trust 'em.

Q. I didn't trust them. Is that going to be your answer - your pat answer for every time you've lied to the police...

A. I never trusted the police.

Q. ...hundreds of times, "I didn't trust them"?

A. That's right, at the time, I didn't trust 'em.

Q. I take it, you still don't trust them.

A. No.

Q. How do we know you're not lying now? If you don't trust them now, how do we know you're not lying today?

A. I'm not.

Q. How do we know?

A. I'm not.

January 6, 1994

Q. Uh-huh. Now, just one last area about the disk because I now move to Okmanas' notes, which we never had before, in terms of this area. You had a discussion, it appears, with Okmanas in July of 1990, on the 11th, where you were telling them about the disk. Do you remember the Stewart computer disk that you said you had...

A. Yeah.

Q. ...in your possession? And you not only told them that it had all of his drug dealing

information on it, right? That's what you told them about the disk, that's why it was important, right?

A. That was a lie, yeah.

Q. But, as I told you yesterday, they went through enormous effort and expense to try and decode the disk, right?

A. Correct.

Q. Do you remember telling them the secret password?

A. No.

Q. You did. Do you remember what it was?

A. No.

Q. You don't remember. This is at page 136 of Okmanas' notes, Box 1, Volume 6. You said that the password was 1937 "(obviously Stewart's year of birth)". Remember saying that?

A. No.

Q. Well, this is a direct quote out of your mouth recorded in Okmanas' notes.

A. I don't recall that.

Q. Well, there was a couple of reasons, obviously, but it doesn't make sense because he'd be 56 years of age.

A. Like I said, I don't recall that.

Q. Well, just a second. Undoubtedly, we'll hear from Okmanas at some point, that he recorded this direct quote from your mouth.

A. Correct.

Q. You have to agree with me that you told them Stewart's date of birth was 1937. I mean, he'd be - today he'd be 57.

A. Yeah.

Q. If you said that,...

A. I was lying.

Q. ...that was a - it was a lie.

A. Correct.

Q. It was utter nonsense,...

A. Correct.

January 7, 1994

Q. Sir, I just want to go over another area with you, and that's the area of this disk. And you'll remember Mr. Edelson spoke to you and then told you exactly what the police had gone through and what they were going through - the expense, etcetera, over this disk.

A. Like I said, I lied about the disk.

Q. No, I realize that, sir. I realize that. I'm just showing you - I believed that's Exhibit Number 70, if I'm not mistaken. This is the disk. I think you've seen that before. We showed it to you last time you were here.

A. Could be, yeah.

Q. Do you recall?

A. Yeah.

Q. This is the one you gave to the police.

A. Yeah.

Q. Did you give it to them scratched up like that, do you recall?

A. I don't know.

Q. You don't know, okay. And were you not concerned, sir, about all the work you were putting them through when you knew the thing was bogus to begin with?

A. I didn't trust 'em. Like I told Mr. Ellison, and I'm gonna tell you the same thing, I just didn't trust 'em.

Q. What I don't understand, sir, is you give them something, you know it's got nothing on it, you know that they're going to check into it, and they're going to come back to you and say, "Denis, this is another lie!"

A. That's right. That's exactly what happened.

Q. And you knew ahead of time that that was going to happen.

A. Yeah.

MR. SCULLION: If I could just have a moment, please, Your Honour.

MR. SCULLION:

Q. I take it, sir, when you testified, that was back on October 17th, 1991, and you told Mr. Edelson that the first time that you realized there was nothing on the disk was when the police advised you of that, that would've had to have been a lie.

A. Correct.

Q. And that was under oath.

A. I don't believe so, but whatever you say.

Q. Well, do you want me to read it?

A. Go ahead.

Q. Do you recall Mr. Edelson asking that question?

A. I recall asking me a lotta questions.

Q. Well, I'm reading from page 19, and this is in the October 17th transcript:

"When did you first discover that it had nothing on it?"

Answer: They just told me.

Question: The police told you some time afterwards?

Answer: Yes, yes, they did."

So your evidence today is that you knew before you gave it to them that it was bogus.

Your answer to Mr. Edelson back on the 17th of October was that you didn't find out until after they gave it back to you.

A. Correct.

Q. So which one is the lie, the one on the 17th? Which one is the perjury, the 17th of October or today's answer?

A. I don't know what to say to that. I knew that there was nothing on it. Like I'm telling you, there was nothing on the - on the disk, so....

Q. So your answer to Mr. Edelson back on the 17th of October would've had to have been the perjured testimony if you're saying now that you knew there was nothing on it.

A. Correct.

Q. That doesn't bother you, Mr. Gaudreault, just to lie at the drop of

a hat on a murder trial - a murder preliminary hearing?

A. I'm not lying today.

Q. No, but you lied back then! You sat in that chair - do you remember you told us you don't lie when you sit in that chair?

A. See, when I sat in that chair, I had a lot to worry about. Lotta people were getting me off. It was the first time that I ever did this. I was nervous. You're asking me a question and I'm answering you the answer.

Q. Okay, so back in October, then, when you sat in that chair, you were quite prepared to commit perjury...

A. No.

Q. ...and did.

A. It wasn't no perjury.

Q. Mr. Gaudreault, I just showed you perjury.

A. He asked me if I knew there something on it. Coulda been something on it!

Q. Mr. Gaudreault, we just went through this

A. Yeah, so there was not....

Q. You just admitted to me...

A. Yeah, there was nothin' on it.

Q. ...that you committed perjury back in October. Are you trying to get around that now and saying now you didn't?

A. No. No.

Q. And you just went through a speech telling me back in October you were nervous.

A. Yeah.

Q. You didn't know what to say.

A. Yeah.

Q. My question to you, sir, is you testified in October for about 20 days. Give or take a few.

A. Yeah.

Q. How much of that, sir, was perjury? Because you told us just this week when you sit in that chair you don't lie!

A. Not here, no.

Q. But you did back in October?

A. Like I said, I was nervous back then.

Q. Well, how much of it, sir?

A. Lotta questions was ask (sic) and that's all I'm gonna tell ya, I was nervous back then.

Q. Well, do we have to go through everything you did in October to find out where you lied to us?

A. No.

Q. So that's your explanation.

A. Correct.

Q. When you were nervous back in October, that's when you committed the perjury.

A. Correct.

Q. And there could be other areas back there as well.

A. Don't believe so.

Q. We just haven't found them yet.

A. Keep lookin'!

Q. Well, we'd be here for the next six months, Mr. Gaudreault!

A. You already got us here for two - nearly two and a half years!

Mr. Gaudreault has continued to tell lies and make up elaborate stories. His story about the actual events surrounding these murders, like almost everything else he told the police, ever-evolving and changing. His relationships with the Witness Protection police have been defined by lies he has told to them and frauds he has perpetrated against them. Mr. Gaudreault's motivation for lying during this, and related, investigations has always been self-interest. A good example of his reasoning can be found in his evidence given at the last trial on November 3, 1995, concerning lies he told in simultaneous drug investigation concerning Mr. Stewart and his associates.

Q. Why did you tell.... This would be - what-in the fall of 1990 that you were lying to the police ---

A. Yes.

Q. --- about going to Halifax with Vanasse; right?

A. Yes.

Q. Well this was, I take it, something like a little bit of a white lie, something the same as saying that you paid Neville when you didn't pay him; right?

A. That's right.

Q. Now what was your reason for saying that you'd gone---

A. Because I overheard some conversation about with Stewart. And anyhow we went down, there was a container that they found, which was registered to Michael Vanasse's wife. And there was also a shipment, 44 million dollars worth of cocaine on its way, which they seized in the states, which Michael Vanasse is waiting extradition back to the states on that one.

Q. Why did you say---

A. So obviously I was pretty good.

Q. Why would you say you went with Vanasse? You personally? Why did you lie about that?

A. I went down.

Q. Why did you tell them that you were with Vanasse when you weren't?

A. I lied about it.

Q. Why?

A. I just lied about it.

Q. But, what, you were scared? You thought... You were scared of something if you told the truth?

A. To believe that what I was talking about is the same thing with the drugs when I was working the drugs with the OPP when I asked them for 25 and the officer says, no way, there's that, like you said there is about drugs. We'll have to see what happens. Meanwhile, they get a big bust, just over, with seized and all that, from what I heard it was over a million dollars. And I still got \$15,000. They never cough up the extra ten thousand dollars, that he told me he'd give me if there was more.

Q. So you ---

A. So obviously these guys are not small time dealers. These guys are trying to make these

guys pass for saints. Meanwhile, you got a guy getting busted for 44 million dollars worth of cocaine, which is 850 kilos in a DC-9. You have over a million dollars seized there during December, during the arrest. And these guys, oh they're just nickel and dime dealers on the corner streets. Yeah, okay. So I lied a little bit to them to prove that I was serious about this.

Q. You were hoping to get more from lying? I mean, get paid more than your 15 thousand, or what?

A. I never got more than 15 thousand.

Q. But was that the reason you lied?

A. I wanted them to believe me, that when I was.... Like they always said that, when I told them they'd get a lot more than what they could think of, these are not small players, they didn't believe me. He says, well we'll give you 15 thousand. And like Miller says, if it happens to be more than what you said it is, around what you says, we'll give you the extra. They got a lot more. When they brought me here to go testify against them, I had an argument with the Federal Crown. I said, I'm not taking the stand. They promised me 25, they only gave me 15. Then Miller comes in and says, we don't need you, they already plead.

Q. You just said a few minutes ago, sir---

A. So---

Q. Sorry to interrupt your dialogue there, but, sorry to interrupt, this really isn't a dialogue, but I'm sorry to interrupt you, but you just said, you wanted them to believe you about this thing in Halifax. But what was it to you this thing in Halifax? Were you working for the RCMP at this point as a drug officer or what?

A. I was working with the drugs officer, on the Ontario. But, like I said the shipment of drugs was confiscated in Pittsburgh in the States. Like I said, 44 million dollars, it's like 44 dollars.

Q. But what was there in it for you, whether they believed you or not about that?

A. Could have been some extra for me.

Q. Oh I see.

A. My ten thousand dollars

Mr. Gaudreault also continues to commit criminal offences, telling one recent informant against him, "I am untouchable" due to his relationship with the police and his involvement in this prosecution. The same informant told the police that Mr. Gaudreault had discussed robbing a Brink's truck and had for some time been growing marijuana on the property rented for him with funds provided by the Ministry of the Attorney General. Once the marijuana was harvested, Mr. Gaudreault sold it through a series of dealers he had working for him. During his most recent testimony at Mr. Stewart's trial (about one month ago) Mr. Gaudreault admitted that the informant had told the truth about Gaudreault's drug plantation and drug trafficking activities, but denied any serious intention to rob a Brink's truck.

There are many more lies and examples of conduct engaged in by Mr Gaudreault that we believed should give the Ministry grave concerns about calling this witness in any proceeding, let alone call him in circumstances where the Crown's case really depends upon his credibility for a conviction.

There is also much more information available about benefits, both past and present, to this witness that we believe should be considered by the Ministry. For example, when Mr. Gaudreault appeared at the Courthouse in January, 1997 to threaten that he would not testify unless certain of his demands were met, Mr. Cooper (one of the prosecutors on the case) reassured Gaudreault by telling him that when he brought his law suit against the Ministry of the Attorney General and the Ontario Provincial Polices, Mr. Cooper would testify on Mr. Gaudreault behalf. There is not question that Mr Gaudreault has been led to believe by the Crown prosecutors and the investigating police officers that he has a very good law suit and he can expect to recover a very substantial sum of money from the Ministry of the Attorney General and or the Ontario Provincial Police.

As to independent, non-informant type, corroboration of Gaudreault's evidence, there is very little that would support the Crown's position that this witness should be called at trial. Corroboration of bits and pieces of Gaudreault's version of events, imperfect through it may be, comes from Gaudreault's friends and relatives. Two of the most important witnesses corroborating portions of Gaudreault's story are his ex-common law spouse, Rhonda Nelson, and her brother, Garrett Nelson. Mr. Gaudreault, however, had occasion during the preliminary inquiry, on January 5, 1994 to comment directly on their credibility.

Q. Well, it's all a cock and bull story, isn't it, Mr. Gaudreault?

A. No.

Q. This whole black book thing is all garbage, isn't it?

A. No. When you ask Rhonda, she'll tell ya, she stripped the house looking for it. Rhonda's seen it, Garrett's seen it. Lou Ok....

Q. Two credible witnesses.

MR. CAMPBELL: Is that a question, Your Honour?

MR. EDELSON:

Q. You're putting them forward as two credible witnesses?

A. Yeah.

Q. Um-hmm. Did you ever coach Garrett Nelson what to say when he met with the police?

A. No.

Q. Can you explain why he told the police that you had coached him on what to say?

A. I never told him what to say. I wasn't even with him when - when he talked to the police.

Q. Can you explain why he would say that you coached him on what to say to the police?

A. Maybe he doesn't wanna show up to court

Q. No, no.

A. You could only ask him. Don't ask me for a question, like I told ya.

Q. You knew, because you told Detective Riddell that Garrett Nelson forgot to tell him about the white car.

A. Well, he was there!

Q. You knew Garrett Nelson had failed to tell the police about the white car, right?

A. You'll have to talk to Garrett.

Q. No, you knew it, you said it to Riddell, did you not?

A. I don't recall.

Q. Do you know Garrett Nelson to be a liar?

A. Yes.

Q. Do you know Rhonda to be a liar?

...Pause

A. Well, Rhonda - it's hard to say.

Q. You had to think about that one? Do you know Rhonda to be a liar or not?

A. I couldn't answer that.

Q. Well, look, you had a long relationship with her. You've known her for many years. Is she a liar?

A. She could....

Q. Does she tend to tell lies?

A. She could.

Q. She could?

A. Yeah. Doesn't mean she will.

Q. I'm not saying about this case.

A. Yeah, I'm not - I can't....

Q. I'm saying generally in your relationship with Rhonda Nelson, is she a liar?

A. I'd have to say sometimes, sometimes not.

Q. Does she lie more than you or less?

A. A lot less.

When one considers **Recommendation 41: matters to be considered in assessing informer reliability**, (in combination with Recommendations 39 and 52, as well as others) we urge you to find that it would be unsafe to call Mr. Gaudreault as a witness for the crown at Mr. Stewart's trial.

We have only just provided an outline of our concerns with respect to the Crown's intention to call Mr. Gaudreault as a witness. We would, of course, be pleased to assist you in the review process with respect to Mr. Gaudreault in any way possible.

b. Jacques Trudel

"I was untruthful, yes, I admit that and I'll admit that a hundred times if you want me to"

Jacques Trudel, January 29, 1996
Trial of Sauve and Trudel

Another of the central witnesses for the Crown at the first trial was Jacques Trudel. He received the benefit of a 14 years reduction in sentence on conspiracy charges (from life down to 7 years), a lump sum of \$19,000 was returned to him from proceeds of crime seized upon his arrest, promises were made to assist him to obtain early parole and a he was told that he would receive a Witness Protection contract and monthly stipends just like his life-long friend, Denis Gaudreault. He not only provided a statement in this case upon receiving promises of these benefits but also in other cases, but only after the deal appeared to be in place. The first two times he spoke with police on this case he gave false statements, claiming wouldn't give them the real goods until he had what he wanted. As a result, a new deal was arranged whereby he would received a sentence of 10 years, but if he co-operated with police on this case it would be reduced to 7 years on appeal and it eventually was reduced to 7 years.

Once he received these benefits and was assisted by the police to get out of custody on parole, he was taken in to the Witness Protection Program where he received further monetary benefits until he slit another man man's throat with a knife and re-incarcerated. Upon being released from serving his sentence on those charges, the Ontario Provincial Police provided funds to him of approximately \$3500 per month until the Witness Protection Program finally rejected Mr. Trudel's re-application and instructed the O.P.P. to stop paying him money.

Interestingly, not long after his re-application was rejected by the Ministry, Mr. Trudel advised police investigators that he made up the testimony that incriminated his brother, Rick Trudel and his co-accused James Sauve, at the first trial. His testimony was crucial to the convictions register against these men. The impact on a jury of Trudel testifying that he received a confession from his brother and Mr. Sauve was devastating to the defence.

Mr. Trudel has recently offered to take a polygraph test to try to prove to the police and the Crowns that he lied about the whole thing, but the prosecution team has thus far refused to provide him any such opportunity. (They take this position despite the fact that they continue to claim reliance on polygraph results with respect to other witnesses, such as Mr. Gaudreault.) The Crown does not anticipate calling Mr Trudel a this trial but maintain that they will do so if it becomes necessary to their case.

Mr. Trudel was recently re-incarcerated for threatening with respect to Mr. Gaudreault. However, until his arrest he had been living, rent free, at a property owned by the Inspector in charge of this case and had the benefit of an O.P.P. long distance calling card.

c. Michael Winn

"I've had a long ongoing relationship with George and he asked me if I would help..."

Michael Winn, November 23, 1993 K.G.B. Statement

(Re: Relationship with Det. George Snider, investigator in this case)

Michael Winn is a jailhouse informant with an extremely long criminal record for crimes of dishonesty. When he testified at the last trial Mr. Winn admitted to having committed many more crimes for which he had never been charged. He has been in the Witness Protection Program in relation to various cases where he has acted as an informant. His first Witness Protection contract began in May, 1992 and his last contract finally came to an end in August, 1997. Throughout that period of time he was receiving \$2500 each month from the Ministry of the Attorney General due to his involvement as witness in one prosecution or another. His contract with respect to Mr. Stewart's case began in September, 1993 and continued until his removal from the Program in August, 1997

Michael Winn was interviewed by Detectives Lamarche and Riddell in 1991. At the time, he did not claim to have received confessions from the accused men while in custody with them not long before he spoke with these offices. On September 27, 1993 Det. George Snider became part of a team of investigators assigned to re-investigate these homicides (Mr. Stewart had, of course, been sitting in custody for almost three years by this time.) Det. Snider had had a long relationship with Michael Winn as an informant and witness in various cases he had worked on prior to this case.

Having begun his new assignment on September 27, 1993, Det. Snider claims that he just happened to be speaking with Michael Winn on September 28, 1993 when Mr. Winn let it slip that he had been in custody with the accused and had spoken to them about their roles in these murders. Mr. Winn's first hand-written statement was apparently delivered by him to the Det. Snider on November 15, 1993 and on November 23, 1993 Winn provided a sworn video statement wherein he claimed to have received jailhouse confessions/admissions from both Mr. Mallory and Mr. Stewart. On February 1, 1994, Mr. Winn signed a new Witness Protection Contract with the Ministry of the Attorney General.

In August, 1997, Mr. Winn's funding from the Ministry came to an end because he had apparently been self-supporting for some time. In response to being given notice that his funding would be coming to an end soon Mr. Winn warned "Maybe I'll have a memory lapse," He is, however, scheduled to be the Crown's first witness at trial.

d. George Metrakos

"... the star witness against him he said in fact that that was the man who committed the murder... That it was over drugs. That the woman was a pregnant woman and her old man and that it was drug related in terms of they owed... Stewart twenty-five hundred dollars."

George Metrakos, May 20, 1992 statement

"... Rob Stewart said that the star witness at the time when I was with him at O.C.D.C. had actually committed the crime, but that it had been done both with Stewart's knowledge and approval. The way it come to me from Stewart was that the two victims owed the star witness at that time, his name I don't have any more, the star witness was owed twenty-five hundred dollars for drugs which had been supplied by Rick Trudel..."

George Metrakos, November 30, 1993 sworn statement

in the above quotes from the statement of Mr. Metrakos he is telling the police that Mr. Stewart told him, while they were together in custody, that the person who actually committed these murders was Denis Gaudreault. His story about who was owed the money changes between the two versions, but he is always clear that it was the star witness would committed these crimes. In his first statement he tells the police that Stewart referred to the star witness as being the witness testifying at the time -- that witness was Denis Gaudreault.

By way of background, George Metrakos initially went to the police to inform about a friend, Roger Caron who had committed several robberies and with whom Metrakos had been living. In exchange for this assistance Mr. Metrakos requested favours with respect to a pending extradition to the United States to complete a sentence, crime stoppers money, the opportunity to make further money as an agent for the police, police assistance to obtain early parole with respect to an outstanding warrant in Canada and police assistance to obtain a placement in a minimum security penitentiary in a location of his choice while serving out the remainder of his sentence in Canada.

Mr. Metrakos told the police primarily information that they already had about Mr. Caron and he did not immediately receive any of the favours he had requested of the police. Part of the difficulty was that the agency work Mr. Metrakos said he could perform -- the recovery of some stolen cheques from one of the robberies -- was not successful.

Mr. Metrakos kept in touch with the officers while in custody, however, to advise them about his attempts to assist them and to inquire as to what the police were doing for him. When the police appeared to be disinclined to fulfill much of Mr. Metrakos' wish list and he was unable of fulfill his role as agent, Mr. Metrakos began to offer up confessions from other inmates. Some of them the police were not interested in, but then Mr. Metrakos offered information about Mr. Stewart and the Cumberland homicides.

Mr. Metrakos had a bit of a false start, however, when he first advised the police that Mr. Stewart had confessed to another murder which the police suspected Stewart had been involved in but with respect to which two other men (not connected to Stewart in any way) eventually pleaded guilty. However, once he started talking about Stewart, officer began to attend at the jail and put money in his canteen and listen to his concerns about the other request he had made.

Eventually he claimed not only that Stewart had admitted involvement in the Cumberland Homicides (the present case) but also that he was planning to have two of the witness killed. Subsequent to passing on this information, Mr. Metrakos received either \$500 or \$1000 Crime Stopper's money for the case involving Mr. Caron, he was told that his extradition concerns were being looked into, and (although we cannot prove police involvement) he was transferred to a minimum security camp.

While at camp, Mr. Metrakos was interviewed for the Witness Protection program and made a number of further request of the police. Perhaps the most interesting of these requests was a request that the police assist him in transferring the credits he had earned while studying Criminology at the University of Ottawa to any new name he may be provided. When confronted with certified transcript of his record from the University, showing the dates he had dropped courses and that in the end, he failed to complete even one course, Mr. Metrakos testified (October, 1997) that the records were wrong and maintained that he had completed a full course load.

The Ontario Provincial Police involved in Mr. Stewart's case, enlisted Mr. Metrakos assistance in 1992 to meet with Mr. Stewart while wearing a body pack. The purpose of the meeting was to get Mr. Stewart to say something incriminating with respect to the contract hits Mr. Metrakos claimed Stewart told him he had put out on Mr. Trudel and Mr. Gaudreault. Although a body packed meeting eventually took place between Stewart and Metrakos, no inculpatory comments were recorded on the body pack and Mr. Metrakos never put directly to Mr. Stewart any suggestion about the alleged contract. Instead Mr. Stewart discussed his innocence with Mr. Metrakos and complains about the amount of money being offered to witnesses to commit perjury at his preliminary inquiry.

By the time Mr. Metrakos was to be called as a witness at Stewart's preliminary inquiry, he had been missing for about one year. The Crown sought and received a material witness warrant to bring him back to Ottawa. As luck would have it, Mr Metrakos decided to offer his services as an informant to another police force who contacted the police in Ottawa and Mr. Metrakos was arrested. Once back in Ottawa, Mr. Metrakos negotiated a lump sum payment of 10,000 from the Ministry of the Attorney general, provided a sworn witness statement concerning his alleged jailhouse discussions with Mr. Stewart, and was sent on his way. He was to look after his own security concerns with the \$10,000 provided to him. It wasn't long after that that Mr. Metrakos offered up information in another high profile trial -- the MacArthur brothers trial in Durham region. The information he provided in that case was clearly false and the Crown chose not to call Mr. Metrakos because she did not believe he was telling the truth.

As to his background, his criminal records in the United States and Canada consist of mostly crimes of dishonestly and police records indicate that Mr. Metrakos used a total of 14 known aliases. In short, he is an experienced con man. As a self-aggrandizing con artist who, when he had the chance to get inculpatory statements from Mr. Stewart on tape failed to even try, Mr. Metrakos hauntingly reminds us of Robert Dean May in Mr. Morin's case.

e. Andrew Hayden

"When he was first seen at the detention center it was obvious that he was disoriented, thinking that he was in hospital rather than jail, he didn't know the date and his memory was poor. He then complained of hearing voices, a male voice saying "do something for the country" and a female voice saying "drink and you will be alright." He also claimed hearing explosions in his head. He also had auditory (sic) hallucinations in the form of seeing the little mice on the walls that go very fast... On admission to the hospital... He was still hearing the voices and still seeing the little mice on the walls. He felt frustrated that nobody has helped him. He claimed to have bad dreams of being shot at by Vietnamese. He got frustrated with his poor memory of recent events. He expressed that at times he feels stupid because of his memory and because he knows at one time he had a future... He knows he was Andrew Hayden but at times thinks he is Frank Mitchell.."

Dr. Balmaceda,
Royal Ottawa Hospital
Court ordered Psychiatric Assessment,
June 24, 1987

Andrew Hayden has a long psychiatric history, organic brain syndrome and chronic alcohol abuse problems. He ended up in a cell with Mr. Stewart and called the police to tell them that he had information to offer. Mr. Hayden wanted assistance with parole and money. The investigators offer him both without hesitation or investigation into his claims. He told the investigator that he had read Mr. Stewart's disclosure but nevertheless maintained that Mr. Stewart had also discussed his involvement in these killings. Stewart, according to Hayden, did not come right out and confess -- in fact he denied his involvement and explained to Hayden why the statements of various witnesses could not be true. Mr. Hayden reasoned that such protestations by Stewart really amounted to admissions of guilt because, in his view Stewart would only know if the witnesses were lying if he were in fact at the involved in the crime. The investigators and prosecutors feel this evidence is worthy of being called at the trial.

Mr. Hayden never did sign a statement and on several occasions told the police he had decided not to testify. He had, after all, not received assistance with early parole and only canteen money had been supplied to him, rather than the \$10,000 he had requested for relocation and \$1000 per month as a living allowance. Mr. Hayden was re-incarcerated several times over the

next few years, after impersonating a police officer and once for impersonating a homicide detective, until he dropped out of sight in 1995. The trial Courts have indicated, however that Mr. Hayden, if located, will be called to testify at this trial. Mr. Hayden's criminal record, almost entirely for crimes of dishonesty, span three decades.

f. Richard Potvin

"I came to the jail here on May 2nd this year. I was in seg, straight to segregation. I just couldn't handle it, I couldn't do time..."

Opening lines of Richard Potvin's statement
June 30, 1993

Richard Potvin has a long psychiatric and criminal history. He had been on a suicide watch at the jail when he called investigators to claim that the accused men had conveyed threats to him to have his father (a witness who found the bodies and whose evidence given at the preliminary inquiry advanced the theory of the defence) change his evidence. Richard Potvin was desperately trying to negotiate his release on bail through the provision of information to the police. When it became clear to him that he would not be immediately released, he demanded that he be moved to a jail he preferred in exchange for his evidence and sought other favours from the police including canteen money while in custody. Mr. Potvin was moved to another jail and did receive canteen money from the police while in custody.

Potvin has a long criminal history for crimes of dishonesty. He does not do jail time well and is often on suicide watches at the jail. While in custody during the course of his dealing with police on Mr. Stewart's case, he also claimed that he had received confessions from several other inmates charged with murder at various jails. As far as the defence is aware, Mr. Potvin was not called as a witness in any of these other proceedings. The investigators in Mr. Stewart's case have testified that they did not bother to follow up with the investigators in those cases to see if Mr. Potvin's evidence had turned out to be credible.

Mr. Potvin is presently incarcerated in Saskatchewan for Armed Robberies committed subsequent to his release from custody in Ontario.

g. Scott Emmerson

Q. Okay. Did you lie to the Police?

A. I didn't lie, I just hid things from them.

Evidence of Scott Emmerson at Trial,
February 24, 1995

It is unlikely that Mr. Emmerson will be called at this trial, but he may be. He claimed to have received a jail house confession from the accused, but primarily claims to have spoken with Mr. Sauve. Mr. Emmerson also has a long psychiatric history and substance abuse problems. As he was moved from institution to institution by the police, he, like Mr. Potvin, received more and more confessions from people charged with murder in other cases. Emmerson also received the benefit of police and Crown assistance with sentencing hearings.

Mr. Emmerson testified at the trial of Trudel and Sauve. He was about to be released from custody and claimed that no promises had been made to him about benefits he might receive following his testimony. However, as soon as he finished testifying he was placed on the Witness Protection Program and before being re-incarcerated a few months later for robbery, he received the benefit of approximately \$17,000. The fact of his being accepted into the program and the amount of money expended on him were not disclosed to the defence at the first trial. We, in fact, only received this disclosure about 7 months ago during the Stewart Mallory stay application.

It is of note that Mr. Emmerson is another of the Crown's witnesses who admits to having lied repeatedly to the police and to having committed perjury during the course of this investigation. A portion of his evidence, given on February 28, 1995, is reproduced below.

-
- Q. So by the time we're all done that, you know how important this statement is, don't you?
A. That's correct.
Q. You know you've got to tell the truth.
A. That's correct.
Q. The whole truth; is that right?
A. That's right.
Q. And nothing but the truth.
A. That's right.
Q. It isn't what you do, is it?
A. No. I lied.
Q. Under oath.
A. That's correct.
Q. Do you have any idea how stunning that is for all of us?
A. Pretty well stunned.

MS. BAIR: Maybe my friend could just speak for himself.

MR. BARNES: I asked him a question; he answered it.

MS. BAIR: Well, I'm still making the point that it's an inappropriate question. I don't think he can say how stunned I am.

THE COURT: He may not know how stunned we are, I suppose.

MR. BARNES: Well, with the greatest of respect, Your Honour, I disagree, I think he does know how stunned ---

THE COURT: All right. He's answered the question anyway. It's in the gray area.

MR. BARNES:

Q. When you gave the answers in that statement you knew you were telling a lie, didn't you?

A. Yes, I was.

Q. You knew you were under oath.

A. That's right.

Q. You knew you were committing perjury.

A. That's correct.

Q. Why didn't you tell them right then and there, 'I lied to you again about Mallory'?

A. I didn't want to bring up charges of perjury against myself and at the same time I still didn't want to expose Rick. Whether he knew or not, I don't know.

Q. But when you're under oath why don't you tell them before you say the lie, 'Look, I know I told you back in November and September something it isn't quite true. I'm under oath now. I can't say it now.'? Why didn't you say that to them?

A. Because I just didn't want to.

Q. You thought they'd never find out. Right?

A. That's right.

Q. It's okay to lie as long as you don't get caught; is that right?

A. No, it's not.

Q. But you did it anyway.

A. That's correct.

Q. Now, they find out you lied.

A. Yes.

Q. And they come and take another statement off you. It would be Gary Dougherty again, I take it?

A. That's correct.

Q. I guess this is another one of those occasions he's pretty upset with you, isn't he?

A. Yes.

Q. And he tells you what a mess you're making.

A. That's right.

Q. Does he mention the word "perjury"?

A. No.

Q. Anybody ever mention that word to you?

A. No.

Q. Did you ever talk to your lawyer about that?

A. No.

- Q. Yesterday you didn't seem to realize the possibility of being charged with a breach of probation.
- A. That's correct.
- Q. Are you telling me today that it has never crossed your mind that you could be charged for perjury for what you said on the 6th of December, 1993?
- A. No, it hasn't.
- Q. It's never crossed your mind?
- A. Well, it has from time to time but not until later on.
- Q. When was that?
- A. When I decided to give the statement to Dougherty.
- Q. Okay. And when you give that statement to Dougherty and you say 'I lied. I committed perjury', do you say to him, 'Are you going to charge me with it'?
- A. I don't recall.
- Q. I take it you don't have an upcoming court appearance for perjury, do you?
- A. No, I don't.
- Q. They haven't charged you at all, have they?
- A. No, they haven't.
- Q. Have they told you that they're not going to?
- A. No, they haven't.
- Q. Aren't you a little curious about that? You never asked them?
- A. No. If they do, they do; if they don't, they don't.
- Q. When you appeared here the other day to testify, you knew you'd still have this hanging over your head, don't you?
- A. That's correct.
- Q. And you know that if you had changed your story in the witness stand here, they would have charged you with that perjury, wouldn't they? You knew that.
- A. True.
- Q. So you've got to keep coming through for them, don't you?
- A. That's correct.
- Q. When you finally do tell them about it, I think you told us you don't ask about perjury and you're not told about it?
- A. That's correct.

Not only was Mr. Emmerson never charged with perjury, he was the recipient of police assistance and benefits following his testimony.

h. John Chapman

" I understand that Mr. Chapman is currently facing charges of assault and failing to appear in court. I understand that Assistant Crown Attorney Nathalie Cote has already taken a position that she would withdraw the failure to appear upon a plea of guilty to the assault. In light of the genuine danger which your client would be facing in jail due to his cooperation with the police I would be prepared to recommend a non-custodial sentence to the judge. The Court would, in an appropriate way, be fully advised of all of the circumstances of the offence and of your client's cooperation with the authorities and of his concerns."

Letter from Crown Attorney Andrejs Berzins to Mr. Chapman's lawyer, dated February 28, 1994.

As noted above, Mr. Chapman's counsel and the Crown Attorney of Ottawa reached an agreement respecting Mr. Chapman's outstanding offenses. The agreement reached was a conditional one upon Mr. Chapman cooperating with the police in this investigation. Mr. Chapman's first statement to the police was taken on March 7, 1994 from 10:30 a. m. to 2:30 p.m. He was then escorted to Court and received the deal that had been negotiated on his behalf at 4:10 p.m. the same day. Unfortunately, the tape recording of that first interview did not turn out and the interview had to be redone one week later.

It is clear that John Chapman came forward only after he was charged was assaulting his wife and failing to appear for Court, several years after the events about which he wanted to give information. At that point, he was interested in exchanging information for the withdrawal of the charges. He did not want to go to jail and knew he would very likely have to go to jail given the nature of the beating on his wife. He contacted the investigators and through his lawyer offered information and drafted a contract with the police. His initial thought was to give the information, have the charges withdrawn, be granted immunity with respect to any other criminal conduct that might be revealed, be relocated to a new area, receive a new name, and never have to testify.

Ultimately, the Crown and Mr. Chapman reached a compromise. He would have to enter a plea of guilty to his outstanding charge of assault, the charge of failing to appear for Court would be withdrawn, and the Crown would recommend that he not spend any time in jail because, assuming he gave a statement to the police regarding Mr. Stewart, his safety in custody would be in jeopardy. He was also told that he may have to testify at trial.

In return for not having to go to jail, Mr Chapman told police that he had been involved in the drug business with Mr. Stewart and had owed Mr. Stewart a substantial sum of money (between \$20,000 - \$30,000). He had not paid the money and had lied to Stewart, who had several times taken post-dated cheques from Chapman in order to try to recover the money. In the end, Mr. Chapman claims he was beaten up by Stewart and two associates over this debt. There is evidence that these events, although not exactly as told by Mr. Chapman, may well have occurred. However, Chapman adds that while being beaten up, one of the three men said

something like, "Why don't we just dump him like the two in Rockland." This is the evidence the Crown seeks to lead.

Further, Chapman claims that he saw the deceased Giroux working at an apartment owned by Stewart, doing renovations. He claims that when he saw Giroux's picture in the newspaper in January, 1990, he recalled having seen him there. However, he was interviewed in 1991 by two investigators and shown pictures of the deceased. They have no notes as to what Mr. Chapman said at the time -- ie. whether he identified him or not -- but claim they would have likely noted it down if he had identified Giroux as someone he knew.

It is not until 1994 that Chapman comes forward, having been charged himself, with this information and makes the claim that he saw Giroux at Stewart's apartment. This is one of the very, very few pieces of evidence linking Stewart in any way to Giroux. Unfortunately, it is flawed and difficult to deal with for the defence because of the failure of the police to keep notes or have any memory concerning the previous identification procedure with Chapman in January, 1991.

Mr. Chapman also offers up some "strange look "evidence. He claims that a few days after the murders, Mr. Stewart and an associate met him for coffee and that Mr. Stewart never spoke, was physically shaking, and appeared "white as a ghost." The Crown would like to lead this evidence as well.

Interestingly, days before he was scheduled to testify at the first trial (just before Stewart was severed) he claimed to have been home alone and received several intimidating phone calls. The police were never able to verify any such calls. One might be forgiven for thinking that Mr. Chapman was trying to get his original deal after all -- that he would give the information, receive the benefit, but never have to actually testify. As it turned out, Stewart was severed, and Chapman will only be called at his trial.

III FORENSICS

Forensic evidence that might otherwise have been available to refute the testimony of informants was either not collected, not preserved, intentionally destroyed or lost forever.

We have set out below examples of how, in various instances, this failure to collect and preserve forensic evidence has prejudiced Mr. Stewart's defence and actually enhanced the Crown's case:

i. The Missing Gold Pillow:

It is the theory of the Crown that a small gold pillow was used by the person who shot the victim, Bourdeau, to shield himself from any blood flying back towards him and his clothing. The sole basis for this theory is that Manon Bourdeau was lying face down on the floor when found by the police and the gold pillow was on her upper back. Having presented the theory that the pillow was used as a shield at the last trial, the Crown was able to lead evidence surrounding a previous conviction of James Sauve for manslaughter (despite the fact that he never testified). The Crown successfully argued that the use of the gold pillow in that fashion went (at least in part) to the issue of identity of the shooter because Mr. Sauve would have known from the previous shooting incident that he was involved in that when one shoots a person blood might end up on one's clothing.

The theory of the Crown is sheer speculation, but it was held to be a sufficient basis -- by the same trial judge as is conducting Stewart and Mallory's trial -- to lead a number of other pieces of evidence that are very prejudicial to the defence. The real problem is that the defence is not in a position to refute the speculation because the gold pillow was either never taken from the scene or was taken and subsequently lost by the police. There was never any examination of the pillow for the trace evidence before it went missing. The photographs of the pillow, which do not show the underside of it, do not assist us.

The defence theory is that it is equally likely that the victims' cat knocked the pillow off the bed long after the shooting, or that the officers in the efforts to step over and around the victim. Giroux, (who was laying in the doorway to that room) may have bumped the bed inadvertently knocking the pillow off the bed. It must be remembered as well that the officers were in the residence and in and out of the room for five hours before even locating the body of Manon Bourdeau laying on the floor beside the bed.

There may or may not have been blood on the pillow. Based on the state of the bedspread and other evidence conceding the nearness of the shooter to the victim, it stands to reason that if the pillow was in the position it was found in when the fatal shot was fired, there would be significant propellant residue on the pillow. Unfortunately, we will never know because the failure to preserve and test this evidence has opened the door to a very prejudicial Crown theory being presented to the jury.

ii. Newspapers left Unchecked, Now Destroyed

Time of death is a significant issue in this case because at the time when the defence believes the murders occurred, at least one of the accused has an airtight alibi -- his presence in a federal halfway house was documented for the entire evening. Since the main witnesses, including Gaudreault, have testified that all four men went to commit this offence, it would be an absolute defence for all of them if even one had an airtight alibi. It has been difficult for the accused men to prove where they were on the night the Crown suggests this murder happened because they were not arrested until a year later and their movements on that date are not

documented by any official source.

In photographs of the crime scene one is able to see newspapers in a box downstairs by a wood burning furnace/stove. Not one officer ever looked at these newspapers. It is the defence's position that they may well have assisted in determining the time of death. If the newspapers had been collected or if, at the very least, the dates had been noted, there is a reasonable possibility that that evidence would have supported the defence theory that these murders occurred on January 17, 1990 not the 16th as alleged by the Crown. January 17th is the date when Mr. Sauve's movements are documented by half-way house workers for the entire day and evening.

iii. Manipulation of Pathology Evidence by Crowns and Police

The evidence of the two pathologists has been an evolving work. Their original reports suggest a time of death in keeping with the defence theory, but they have moved away from that time of death -- further and further -- as the matter has proceeded through the Courts. Perhaps not surprisingly their time of death estimate has been pushed back and has become much more helpful to the Crown's case.

How this transpired is not entirely clear since no records were kept of meeting between the Crown, police and the pathologists about this issue. The Crown, Ms. Bair admits that she asked the pathologists if they would change their opinions if they knew about a witness who claimed to have seen the victims dead on January 16, 1990 and also whether it would change their opinions if the room in which the deceased were located was much colder than one would normally find in a home.

The pathologists have now testified that the best evidence of the time of death is a historical witness and temperature in the room would be significant with respect to the rate of decomposition of the bodies. In addition to bringing forward these factors in evidence, they have altered their estimates of time of death so that instead of the initial position of the pathologists that the victims had been dead approximately 24-48 hours, the ranges now run from 9 hours to 72 hours. The trend, however, is for the pathologists to now prefer the longer period of time consistent with the Crown's theory.

It is the widely held view of forensic pathologists the world over that the best way to determine time of death is taking a room temperature and a body temperature at the place where the victims were located. The coroner in this case did neither. I will have more to say about the issues arising from the failure of anyone to take a room temperature at the scene below.

Obviously this is significant forensic evidence that was capable of assisting the accused men to raise a doubt about their innocence that has been eroded both by the desire of the experts to assist the prosecution and by the failures of the police and coroner to preserve vital evidence in this regard at the scene.

iv The Garbage left Unchecked, Now Destroyed

It is routine at the scene of a homicide to inventory all items in the household, to photograph same, and to seize many more exhibits that will ever actually be used by the prosecution. One of the items normally checked is the garbage. Often the garbage is seized and taken back to the identification lab for inspection and photographing. If the garbage is in a state of decay it may assist with the time of death. If there is fresh food waste that appears to be recently deposited in the garbage that may assist the applicant in establishing the time of death (ie. some fruit cores are known to turn brown in colour within hours of being exposed to the air, some take longer; some foods that are moist will dry quickly when exposed to the air, some take longer to dry; if indeed there were coffee grounds in one of the garbage's it would have been helpful to the applicant to know whether or not they were still moist or whether they were completely dry, etc.)

The applicant is prejudiced in his defence by not having the evidence from which to attempt to establish the time of death. In this case there is the additional feature that garbage is collected on Tuesday morning and it was routine of the police living in this area to put the garbage out on Wednesday evening.

Further, the Crown Attorney has led evidence from a witness named Lois Davidson which the Crown suggested to the last jury corroborated the Crown theory that the deaths occurred on January 16, 1990. This evidence relates to a broken fingernail or splinter over which Ms. Bourdeau placed a bandage on the evening of the 16th. Of course, if there were 5 or 6 bandages (perhaps with Bourdeau's fingerprint inside them) in the garbage near the bed or in the bathroom it would not be corroborative at all of the time of death suggested by the Crown. We will, of course, never know because the garbage was not examined, noted, photographed or collected.

As to late breaking evidence, however, there is some in relation to the garbage. For the first time, in 1998, after being questioned on the issue of the kitchen garbage at the preliminary inquiry and at the last trial, and without any notes to aid his memory, one of the identification officers testified on the abuse motion that he could recall coffee grounds and a hot dog wrapper in the kitchen garbage. This is a real break for the Crown since a neighbour has said since he was first interviewed in January of 1990 that he saw Manon Bourdeau and Michel Giroux eating hotdogs on the evening of Tuesday, January 16 1990. Of course, this helps the Crown because if they were eating hotdogs that evening and were killed that evening, then it makes perfect sense that the hotdog wrapper would still be in the garbage because they never had an opportunity to take their garbage down to the road on Wednesday night.

This epiphany, eight years in the making, can not be challenged in any meaningful way by the defence since there is absolutely no record of what was in the garbage and no photographs of the garbage. None of the other officers, including a second identification officer, have any recollection of the contents of the garbage at all.

v. Failure by Police and Coroner to Note Temperatures at the Scene

As mentioned above, the failure of the police to note the temperature at the crime scene throughout their attendance there has made it possible for the Crown and their experts to speculate about time of death in a manner most favourable to the Crown theory. In addition, the Crown has suggested that they may have been a marked drop in temperature in the house in the evenings. This marked drop in temperature, if there was one, assists the Crown to explain the absence of signs of decomposition on the bodies that would otherwise have been expected if they were still in full rigour normally have been absent if the Crown's theory respecting time of death was correct.

Had a proper (or any) record been kept of the temperature in the home throughout the crime scene investigation, and in particular at least until both bodies were removed, there is a reasonable probability that the evidence would have assisted the applicant to defeat the Crown's theory as to the time of death.

The Crown suggested to the jury at the last trial that there was likely a substantial temperature drop in the evenings at the crime scene due the fact that there was a programmable thermostat in the house and a wood burning stove in the basement. There is of course no evidence to suggest that the wood burning stove was ever opened and checked for warm embers or any other evidence that may have resided inside its belly. As to the programmable thermostat, the police who were working at the scene in their shirt sleeve, didn't even bother to read the temperature on the thermostat. A blown up photograph of the scene shows the temperature was set at 71 degrees Fahrenheit. There is no evidence, one way or the other, as to whether the thermostat was programmed to turn down the heat in the house in the evenings. Given that the female was seven months pregnant at the time, one doubts that it was turned down to refrigerator temperatures, if at all. Based on the lack of proper record keeping by officers at the scene, it could just as reasonably be speculated speculation is all that the applicant is left with because the evidence was not properly preserved.

vi. Failure by the Police to preserve Footprints in the Snow

Some work was done in relation to observable footprints in the snow of the pathway leading up to the victims' home. Unfortunately no effort had been made by the officers to preserve footprint evidence on the walkway that was most likely used by those who penetrated this offence. The failure to preserve evidence that may have been available to the defence from that pathway resulted in the collected of footprints matching the officers' boots and boots of Ronald Potvin who first located the bodies, and no others.

vii. Failure of Police to Conduct a Thorough Search of the Scene

Although the identification officers claimed to have done a detailed search around the house, the time spent at the scene in total and the manpower devoted to the task suggests otherwise. The results of the "thorough" search also suggest otherwise. Drugs (100 grams of hashish and

traces of cocaine on a mirror) not located by the police, were apparently later found at the scene by members of the victims' families. The police then failed to retrieve narcotics from the family members who had located them.

Bags were not opened to inspect their contents, allowing the Crown to lead evidence that there could have been garbage in those bags. Based on the work at the scene, there could have been another body, too, but the defence has been deprived of that evidence and the results of the investigative failures have benefited the Crowns' case.

vii. Failure to Locate and Preserve the "Louis" Necklace

According to one witness, the victim's sister, a necklace was located at the scene by her near where the body of one of the victims had been laying. She claims that she found this necklace the day after the bodies were removed by the police. The police were still conducting intensification work in the house at this time and had taken Ms. Jennifer Bourdeau into the house so that she could identify places where drugs and money had been stashed and assist the police to search for any remaining drugs and money had been stashed and assist the police to search for any remaining drugs or money. It was during this foray into the crime scene that Ms. Bourdeau has testified that she spotted a necklace covered in blood on the floor near where her sister's body had been. She picked the necklace up and took it with her. The following day she told the police what she had done and turned the necklace over to them.

When the necklace was removed for the envelope during her testimony in 1997 she claimed that it had been cleaned since there was no blood on it and that she did not recall the ends of it having been broken (the clasp) when she had it. The pendant on the necklace had the written name of "Louise" on it. It is not known who the necklace belonged to and Jennifer Bourdeau in any way to any of the accused men.

The police and Crown claim that she is lying about the necklace, that it was never at the scene and she never picked it up from there. It is difficult to understand why the victim's sister would make up such a story and present this evidence to the police the day after she attended at the crime scene.

If the necklace had been located by the police and photographed in the position it was found it may have been obvious that whoever did the killing had that necklace and either dropped it there or had lost it somehow during a struggle. The necklace may have also had trace evidence attached to it at one time, according to the evidence of Jennifer Bourdeau.

ix. Failure of Police to Preserve Clothing at the Scene

There was never an inventory or even a note made of the clothing found at the scene. Again, this is routinely done by identification officers in homicide investigations. Indeed, often all of the clothing from a residential crime scene is seized so that if the clothes later turn out to be relevant either to some aspect of identification in the case or with respect to the elimination of

known fibres in the home, they are readily available for comparison.

In this case, the clothing became extremely important but the defence has been deprived of any evidence as to what clothing belonging to the victims was in the house. This evidence is crucial to the defence since Denis Gaudreault has testified that he saw a man wearing a brown parka with fur around the collar driving a truck with Mr. Stewart. Mr. Gaudreault later claimed that this man was the same man who was in the pictures shown to him by the investigators (Michel Giroux)

Once the investigators realized the significance of the clothing in the house, instead of trying to retrieve that clothing from the family, some family members were asked if Giroux ever owned a coat described by Gaudreault and those were asked did not believe he had.

Clearly, the possibility remains open that Mr. Giroux had such a coat that had simply not been seen by the particular family members who were asked. The ability of the Crown to leave this possibility with the jury would have, in all likelihood, been foreclosed had proper crime scene work been conducted. Moreover, it would have been damaging to Denis Gaudreault's credibility if the police had bothered to preserve the evidence of attempted to retrieve it. There is very little, if any evidence, connecting any of the accused men to the victims in any way, so this piece of evidence is extremely helpful to the Crown and impossible to refute entirely by the defence through no fault of the defence. Again, the failure of the investigation have benefited the Crown at the expense of the ability of the men charged.

x. The failure to preserve hair and fibres evidence

There was an absolute failure to attempt to collect hair fibre evidence other than a few strands of hair that were ultimately submitted for analysis in May, 1995. One had to be concerned with respect to the storage and preservation of those hairs in the interim. The defence is also very sceptical of the value of any hair evidence so little reliance is placed on this issue.

However, aside from the hair evidence, no taping or vacuumings were done of the areas surrounding the victims, the area surrounding the open drawer, etc. Nothing was done with respect to fibres of hairs that may have been on the victims' clothing. The car that the Crown alleges was used by the accused men was vacuumed very carefully, but nothing was ever done with the debris collected.

Obviously if fibres of unknown origin could be identified as having originated from another suspect's clothing, it may very well have eliminated the three men who the Crown alleges were in the home. For instance, if fibres originating from any one of the other viable suspects, who claimed never to have set foot in the victims' home, were located in that home that would be evidence capable of supporting the defence.

It is admittedly speculation as to whether or not any such evidence existed, but it is speculation only because the police failed to do properly examine and preserve evidence from the crime

scene and other locations. For instance, the areas of carpet that were stained with blood beneath the victims were not cut and seized by the police. Indeed at least one piece was cut out and thrown away to assist the owner of the home. Every crime scene expert knows that while hairs and fibres may become air born and float away before they can be collected, those stuck in dried blood tend to be more stable. No examination of course could be done in this regard by the defence because the carpet was discarded long before these men were ever charged.

xi Failure of the Police to preserve the Bedspread

We know that the bedspread on the bed in the room where Manon Bourdeau was found laying on the floor next to the bed was covered in trace evidence that was observable to the naked eye. It would appear, however, that it was seized and stuffed into a garbage bag. The shape, size, type, colour, and amount of the propellant residue on the bedspread may have proved very useful to the defence upon analysis in an effort to refute the evidence of Denis Gaudreault and to identify the real shooter, but is absolutely useless to the defence now because the bedspread, despite the obvious trace evidence on it, was not been properly stored and preserved for examination by experts. The defence could not have known that evidence as important as propellant residue from a firearm at the scene would not be stored properly or analysed by C.F.S. in a timely fashion. The defence, it is submitted, had every reason to believe the opposite based on a reasonable assumption of minimal competence in those responsible for this evidence.

xii. Failure of Police to Collect and Preserve Ashtrays/Cigarette Butts/Lighters

The contents of the ashtrays were not seized. This, of course allows the Crown and its witnesses to look at the photos and say that they all appear to be the same brand in each ashtray and the brand appears consistent with the type of cigarettes being smoked in that area by one or the other of the victims. All well and good, unless of course a visitor borrowed a cigarette from one of them and smoked it there or happened to smoke the same brand.

There are several possible scenarios that could find the ultimate killer or killers having sat down with the victims some time shortly before the shootings. The victims were, of course, drug dealers and sold drugs to acquaintances out of their home. Evidence properly preserved, such as cigarette butts, can provide useful D.N.A. profile which may have led to other suspects and even eliminated the three men alleged by the Crown to have entered the home to commit these offences. While the D.N.A. tests available to the police at the time may not have yielded conclusive results, the test available now certainly are capable of such results. Even blood typing may have been helpful to the defence.

The cigarette butt on the floor beside the body of Manon Bourdeau poses another problem for the defence. It was never seized and it is more than arguable on the evidence that no one ever picked it up and inspected it. Therefore, any evidentiary value arising from that cigarette butt is lost to the defence. The Crown's witnesses speculated that it was an old butt that had fallen from

an ashtray and had not been noticed by the victims because of the bedspread.

One wonders how such rank speculation could be probative of anything. The officers, after the fact, have studied the photograph of the butt. Of course, it could be a slightly burnt edge to the underside of the butt. Of course, it could be lighting, it could be a fold in the butt that due to the positioning of the butt and the camera appeared to be a dark area, it could be anything really. However, given the very clean state of the house, it seems unlikely such a butt would be missed for long, particularly in the absence of any evidence that other out of place items were found under the bed, such as socks, cat toys, dust balls, other cigarette butts, ect. Thus, it is equally as speculative and persuasive to suggest that the killer butted a cigarette there. Indeed, the brand of cigarette was not the same as that being smoked in the bedroom at the time of the offence. However, any value that butt might have had for the applicant in his defence has been lost and the absence of the butt has allowed the Crown's witness to speculate an form theories about its origin that may be entirely inconsistent with the state of the actual butt. Without the butt, the defence is at a lost to refute such theories.

xiii. Failure to Test Cocaine in a Timely Manner

The police did locate and seize decks of cocaine from a coat pocket at the scene. Unfortunately for the applicant, however, they failed to test the cocaine for several years. Had it been tested in a timely fashion, it may have led the police to the likely source or sources of the cocaine based on the quality and specific nature of the cocaine. There is a very reasonable possibility that such an investigation, if it had been pursued in a timely fashion, would have provided exculpatory evidence for the accused men who claim never to have supplied Mr. Giroux with Cocaine.

xiv. Failure to Preserve and Test Blood Splatter at the Scene

In a location away from the bodies, on the glass door of a china cabinet, the police photographed directional blood splatter. However, they failed to take a swab or scraping of the blood after it was photographed. It may very well, given its location, have been the blood of the killer(s). We will never know and never had the opportunity to pursue that evidence in defence of Mr. Stewart.

xv. Failure to Locate and Preserve Fingerprint Evidence

The failure to conduct a thorough fingerprint investigation in the house is only the beginning of the problems in this area. Perhaps more significantly, it became apparent in the evidence for the first time in 1998 that three prints had been discovered at the scene that were not identified but were capable of comparison to known print.

xvi Other Failures at the Crime Scene

There are other issues that arise from the failure to properly preserve evidence at the crime scene, such as untimely photographic work, failure to check the date on the mail and mail pick up from the post office, failure to preserve potential fingerprints in obvious and meaningful places, failure to take swabs of blood from potential blood spots of the wall, china cabinet and other locations at the scene (failure to perform even presumptive tests for blood at the scene), failure to conduct a thorough search around the outside of the house, the perimeter of the scene, the lane and roadway, the adjacent building, ect. All of the failings at the scene, and there are undoubtedly more than listed here in this brief summary, have assisted the Crown's case and impaired the applicant's ability to make full answer and defence.

IV. TUNNEL VISION

The investigation by the police and the approach by the Crown Attorneys to the prosecution of this case make the tunnel vision of police and prosecutors in the Morin case appear insignificant.

The tunnel vision of both the police and prosecutors in this case can best be illustrated by looking to the beginning of the investigation.

Michel Giroux, the deceased, was a small time drug deal who sold drugs at the Carlsbad Springs Show Bar and out of his home in Cumberland. He sold 1\4 and 1\2 grams of cocaine mostly to local patrons. After his body was found, the police quickly learned of his drug dealing and his associates at the Carlsbad Springs Hotel. All of his close friends, who would be in a position to know, claims that Michel Giroux supplier was a man named Dave Dunbar. Mr. Dunbar was an Outlaw Motorcycle gang member. It is apparent from an ongoing undercover drug operation at the hotel that he and his associated kept watch over who sold drugs there and likely gave Giroux permission to do so. According to at least one close friend Giroux had, just prior to his death, expressed concerns about owing Dunbar money. According to another, Giroux was concerned that Dunbar thought he was a police informant and Giroux, therefore, had been staying away from the Hotel. Again it is evident from he parallel drug investigation that Dunbar was very aggressive with those he suspected of being police or informants in the bar. There are several witness, as well, who dealt drugs for Dunbar in the past at the Carlsbad Springs Hotel, and who built up a small debt to Dunbar who were physically assaulted, threatened and/or run out of town by Dunbar.

The investigation continues from January 19, 1990 to Feb. 3, 1990 when Mr. Gaudreault first became involved with the police. Once the police had spoken with him, the size of the investigative team was cut and the focus shifted to Robert Stewart and his associates. That is where it has remained. When the defence raised concern and questions about Dunbar and other suspects around the Carlsbad Springs Hotel or known to associate with the deceased, the police would occasionally go back out to re-interview some of the Witnesses -- usually three or four

years after the fact and usually with a view to trying to get them to connect the four accuse with Giroux in some way.

Mr Dunbar, for instance, was interviewed once in late January, 1990. He clearly lied to the police about his involvement with Giroux at the time, but was not even asked where he was on the night of January 16th or 17th, 1990. Since the defence seemed to be focussing on Mr. Dunbar, he was interviewed for a second time in 1994. He was told by the investigator that the police were satisfied that they had the right guys in custody for these murders, but that the defence had been asking questions about him. The investigator explained to Mr. Dunbar that he didn't expect him to remember where he was that night some four years later but that he had been sent out to ask him anyways. Mr. Dunbar told the officer, not surprisingly, that he had no idea where he was when the victims were shot. The officer thanked him and noted that it confirmed for him that Dunbar was telling the truth because if he had known where he was after so much time had passed, it would be suspicious indeed!

The prosecutors and police in this case are prepared to go to any length to try to explain away lies and false evidence by their witnesses and to provide excuses for them with respect to their current conduct. There are many, many examples of tunnel vision in this case but one would need to review the case as a whole to fully appreciate the single-minded determination of the prosecuting team to convict these men no matter what the costs.

Perhaps an example from the preliminary inquiry will assist. One of the Crown Attorneys, Mr. Cooper, has been involved with this case from the beginning. At the preliminary inquiry, the Crown determined that it would call a witness named Wayne Stovka, who claimed to have confession evidence. Mr. Stovka requested and expected much in the way of benefits in exchange for his evidence. Interestingly, he had been sharing a cell with Jacques Trudel, one of the other informants on the case. When Stovka came forward the first time, his story was really quite bizarre, but became refined to come more into line with the Crown's case. However, before he was called, Jacques Trudel warned the police and Crowns that Stovka was lying because some of the things he said didn't make sense, but also because Jacques Trudel was with the accused at the time that Stovka claims he was receiving this confession elsewhere. In essence, one Crown witness provided an alibi to the accused with respect to allegations made by another Crown witness.

Furthermore, a police officer, Ron Angeli, who was very familiar with Stovka came forward and told the Crowns that Stovka was a liar and manipulator, and was in all likelihood not telling the truth. The investigator from this case made notes of that interview suggesting that the police officer may have ulterior motives for coming forward. In the end, Mr Cooper and an investigator reviewed Stovka's evidence with him and decided to call him. Mr. Cooper's thought in this regard were, "If he wants to lie on the stand, that's his problem." Then, without disclosing the information provided by Jacques Trudel, he was called. His credibility was ultimately shattered in cross-examination and he will not be called at the trial.

I cite this example only because it suggests that there has been a refusal by the Crowns and police to critically assess their witnesses with a view to determining whether or not the interests of justice are served by calling these witnesses. Rather, witnesses are called because their evidence may assist in gaining a conviction. This tunnel vision is so entrenched that there is not longer any possibility that the prosecution could objectively assess any of the witnesses they plan to call at this trial.

Indeed, the testimony of one of the main police investigators, Det. Gary Dougherty, in relation to a witness named Paul Beland, sums up the general approach to the assessment of witnesses' reliability by the prosecution. The Crown presently does not intend to call Paul Beland as a witness, but has indicated a willingness to do so if necessary to make out their case:

Q. Have you ever, sir reviewed a psychiatric report or assessment on Paul Beland to see if he has delusions, if he's a pathological liar, to find out what his diagnosis is?

A. No, and I think I said that the first when we were on Paul Beland I don't recall ever seeing a psychiatric assessment.

Q. Having never found out about any of that, it's your view that he should be called, he's credible.

A. Sure. Jack Trudel was a witness in this case and he had psychological assessments done on him and we still called him.

Q. Did you know the results of his thought?

A. Actually, yes.

Q. His most recent on for Witness Protection. The chief medical officer at Penetang said that he was worth the risk after interviewing him and reviewing his materials that Witness Protection supplied, that he was what the risk. So just because someone has a sociological disorder or something, how does that deter from being a witness in this case? That's not a criteria for me.

Q. The difference, sir, would be that you knew what Jack's was, you don't have a clue what Paul's is, you don't know.

A. No. Even if I did know, it's something for a jury to consider.

Q. It doesn't make any difference to you to assess the credibility of witnesses before they sit in that stand.

A. He satisfied me on my first interviews with him that he was a credible witness.

This excerpt of evidence is repeated, in slightly different word and in relation to various witness, by almost every officer who testified with respect to Mr. Stewart's abuse of process application. The sentiments are also echoed by the Crown Attorneys in their submissions.

V. CONCLUSIONS

There is an urgent need for an independent review of the conduct of this prosecution.

It is our position a that review of the investigation and prosecution of this case is mandated by the recommendations of Commissioner Kaufman which you have indicated will be adopted by

the Ministry of the Attorney General in Ontario. It is our very grave concern that two innocent men have been convicted and two more will very likely be if this prosecution continues unchecked with the single-minded devotion of the prosecution team to pursue convictions at any cost.

In summary, we feel the following issues arise that must be reviewed:

1. Prosecutorial and investigative tunnel vision,
2. Lost evidence and failure to preserve evidence (forensic and other evidence)
3. Failure to maintain complete records and notes respecting interactions with informants and other witness,
4. Failure to preserve institutional records, and
5. Failure to objectively and adequately investigate and assess the credibility of jailhouse informants and other like witnesses being called by the Crown.

Trial counsel defending Mr. Trudel and Mr. Sauve, Appellate counsel and all defence counsel who have been involved in this case over the years -- Michael Edelson, Patrick McCann, Michael Neville, Mark Wallace, Kerry Scullion, Gary Barnes, Ian McKechnie, Richard Morris, James Harbic to name but a few -- have all raised similar issues both in and out of Court and have strenuously expressed their belief that the accused men are all factually innocent of these offences. Any or all of these counsel would be pleased to speak with an independent Crown or committee assigned to review this case.

We must stress here that a jury is to be selected in this matter on June 2, 1998 and, therefore, time is short. We request that you advise us of your position with respect to whether or not this case will be reviewed prior to that date so that we might advise the Court and seek the Court's direction on how (and whether) to proceed.

We are confident that your office will readily recognize the need for a review of this case and trust that we will be able to work co-operatively with you in an attempt to ensure justice for all parties that have been affected by this tragedy.

Yours very truly,

PINKOFSKY, LOCKYER

James Lockyer
Barrister & Solicitor

cc: Mr. Murray Segal, Assistant Deputy Minister
Ian McKechnie, counsel for Richard Mallory
Phillip Campbell, appellate counsel for Richard Trudel
Danna Venner, Counsel, Ministry of the Attorney General