STATE OF MAINE
KNOX, SS.

MAINE SUPREME COURT
SITTING AS THE LAW COURT

STATE OF MAINE,

Appellee

v.

LAW DOCKET NO. KNO-89-126

DENNIS JOHN DECHAINE,

Appellant

BRIEF OF DEFENDANT/APPELLANT DENNIS JOHN DECHAINE

October 16, 1989

THOMAS J. CONNOLLY
P.O. BOx 7563, DTS
Portland, ME 04112
(207) 773-6460
Attorney for
Defendant/Appellan

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PROCEDURAL HISTORY

On July 8, 1988 the defendant, Dennis Dechaine was arrested on a warrant for the crime of Murder. On August 1, 1988 the defendant was indicted by the Sagadahoc County Grand Jury in a seven count indictment. Counts I and II charged alternative theories of the crime of murder for the decedent, Sarah Cherry. Count I alleged a violation of 17-A M.R.S.A. §201 (1) (A) (1983) Knowing and Intentional Murder and Count II 17-A M.R.S.A. §201 (1) (B) (1983 & SUP. 1987), charged Depraved Indifference Murder. Count III alleged a kidnapping violation, M.R.S.A. §251 (1) (A) and (C) (3) and 253 (1) (B) (1983 and SUP. 1987). Count IV alleged a violation of 17-A M.R.S.A. §251 (1) (B) and 252 (1) (A) (1983 and SUP. 1987) the crime of Rape. Counts V and VI alleged alternative sexual acts pursuant to 17-A M.R.S.A. §251 (1) (A) and (C) (3) and 253 (1) (B) (1983 and SUP. 1987) which is the crime of Gross Sexual Misconduct.

The defendant was arraigned on August 2, 1988 and plead not guilty.

At the time of arraignment a trial date was set for March 6, 1989.

Only one pretrial motion was filed by the defense in the case. On January 25, 1989 the attorney for the defendant filed a consolidated motion to Compel Discovery and to Continue. An evidentiary hearing was held on January 27, 1989 before the Trial Justice Carl O. Bradford. The Motion to Continue and to Compel Discovery was denied in part and granted in part. The Motion to Compel Discovery as to testing samples was denied and a continuance was denied but an Order requiring the State to reduce to writing all expert opinions was granted.

On February 16, 1989 venue in the case was transferred from Sagadahoc County Superior to the Knox County Superior Court pursuant to M.R. Crim. P. 21 (d).

Th"•nas J. Connolly
torney at Law
2'2 Fore Street
Box 7563 D TS.
Portland, Maine 04112
1207) 773-6460

Jury selection and trial commenced on March 6, 1989. On March 6, 1989 the attorney for State filed a dismissal as to Count IV pursuant to M.R. Crim. P.48 (a); eleven days of trial ensued. Approximately 45 witnesses testified during the course of the trial and more than 128 exhibits were introduced.

Prior to the case being sent to the jury counsel for the defendant requested an election be made by the prosecution as to the alternative counts of murder enunciated in I and II of the indictment. The motion was denied.

On March 18, 1989 after more than nine and one-half hours of deliberation the jury returned verdicts of guilty as to all counts.

On April 4, 1989 the defendant was adjudicated as to all counts and was sentenced to concurrent life terms as to Counts I and II and concurrent 20 year sentences as to the remaining counts.

On April 4, 1989 Notice of Appeal to the Law Court was filed y the defendant.

On April 11, 1989 a Notice of Appeal to the Appellate Division was filed by the defendant.

STATEMENT OF THE CASE

This is an appeal from a guilty verdict entered against the defendant, Dennis Dechaine, for the death of Sarah Cherry. The defendant was convicted as to all counts of the indictment which included two charges of Gross Sexual Misconduct, one charge of Kidnapping and two alternative theories of Murder. There is only one victim alleged in the indictment. The defendant received concurrent life sentences as to Counts I and II.

The essence of the defense in the case was that the defendant did not commit the homicide. To that end the lack of significant evidence linking the defendant's person to the homicide, the lack of character traits in the defendant which

Tb na8 J. Connolly
torney at Law
,aox s63DTs
Portland. Maine 04112
(207)773-6460

would make it likely for him to commit such a homicide and the presence of exculpatory forensic evidence were used by the defendant to establish his innocence. The defendant had attempted to introduce evidence of a particular individual who would establish a reasonable doubt in the minds of the jury as t an alternative perpetrator of the homicide. In addition, the defendant had attempted to have some forensic testing performed but was denied access to the evidence.

The trial lasted eleven days, with approximately 45 witnesses being called and encompasses 1549 pages of transcript.

The gravaman of the argument on appeal is that the defendant through a series of court rulings was denied an effective opportunity to present a defense in the case. In order to understand the arguments proposed by the defendant, the contextual background of the trial must be understood. Given the complexity of the trial and the large number of issues involved, this task is extremely difficult. In an effort to aid the Court in understanding the trial context, the Appellant has attempted to delineate all the salient facts relating to a particular argument within the context of the argument itself. Citations to the trial transcript and to other transcripts are made where appropriate. As much detail was provided to the Court as appeared necessary. Nonetheless, many of the nuances of the trial would be difficult to ascertain from the factual statements contained in the background information beneath each individual argument. Therefore, Appellant has attached copies of the prosecution's summation in the case as well as defense counsels. These summations are attached to the Appendix and marked Appendix A and B respectively. Although, the closing arguments do contain arguments of law not applicable to this appeal, the factual summations and arguments contained in those closing statements would key the Court into the evidentiary context in which issues in this Appeal arise very quickly. While each argument of Appellant's brief may be read independantly of the closing statement and contain enough factual information for the Court to understand the issue,

Th ^•nas J. Connolly
ttorney at Law
2¹ ForeStreet
Box 7563 DTS
Portland. Maine 04112
(207)773-6460

Appellant is attaching the closing argument to help clarify the context in which the complained of rulings were made.

ISSUES ON APPEAL

I. WAS THE TRIAL COURTS DENIAL OF APPELLANTS ACCESS TO BLOOD SAMPLES AN ABUSE OF DISCRETION OR A VIOLATION OF DUE PROCESS?

II. DID THE EXCLUSION OF PROFFERED EVIDENCE OF AN ALTERNATIVE KILLER DENY THE APPELLANT A FAIR TRIAL?

III. WAS THE DENIAL OF APPELLANT TO DHS FILES A VIOLATION OF DUE PROCESS:

IV. WAS THE ADMISSION OF UNDISCLOSED EXPERT TESTIMONY IN VIOLATION OF A DISCOVERY ORDER AN ABUSE OF DISCRETION?

I. ARE SEPARATE CONCURRENT MURDER CONVICTIONS FOR ONE HOMICIDE A VIOLATION OF APPELLANTS DOUBLE JEOPARDY RIGHTS REQUIRING A PROSECUTORIAL ELECTION?

Thomas J. Connolly
ttorney at Law
2'2 Fore Street
Box 7563 D TS.
Portland. Maine 04112
(207) 773-6460

I. DENIAL OF DEFENDANT'S ACCESS FOR TESTING OF BLOOD SAMPLES TAKEN FROM SCRAPING BENEATH THE DECENDENT'S FINGERNAILS WHEN THE STATE CONDUCTED ITS OWN TESTS, POSSESSED THE EVIDENCE AND USED ITS OWN TEST RESULTS AT TRIAL DENIED THE DEFENDANT A FAIR TRIAL

In a Motion to Compel Discovery, dated January 5, 1989, Defendant sought access to fingernail scrapings of the decedent in adequate time before trial to perform compartive blood tests. HState Forensic reports had concluded that the blood found under ;; the decedent's fingernails was of Type "A" with "H" antigens, Viand that defendant's blood was of Type "0". Defendant moved to +obtain the samples for more comprehensive and specific blood tests:

> In seeking access to the blood samples, the Defendant intended to commission a test involving DNA structures as well as other protein and antigen tests within the blood sample. This DNA test is known as polymerase chain reaction, or PCR. It is also referred to as a method of "DNA fingerprint analysis". Defendant's purpose in pursuing the PCR test was to determine 'whether the blood samples originated from someone other than the !victim. Such evidence would be completely exculpatory to the 'Defendant. The prosecution's case was based in large part on circumstantial evidence, and a major element of the defense was the existance of an alternative perpetrator. If Defendant's motion had been granted and the test results had demonstrated the presence of a blood sample from a third individual, the effect would have been to prove someone else committed the murder.

The Trial Court, however, denied Defendant's motion for access to the samples and time to perform testing.

A. THE MOTION AND THE RULING

1. THE CONTEXT OF THE REQUEST

On January 25, 1989 the Defendant filed a Motion to Compel

Tr -nas J. Connolly
ttorney at law
2' z Fore Street
0 Box 7563 DT S.
Portland. Maine 04112
(207) 773-6460

Discovery and to Continue. The body of the motion lays out the procedural history up to the time of the hearing of the case.

The Defendant was indicted on August 1, 1988 for the murder of Sara Cherry. He was arraigned on August 2, 1988 and at that time the Trial Justice set a trial date for March 6, 1989.

Discovery had proceeded from the beginning of the case and continued pursuant to written request by the Defendant under Maine Rule of Criminal Procedure 16(a) and 16(b).

On November 21, 1988 pursuant to the written discovery request the Attorney for the State provided discovery to Defense Counsel which included, inter alia, that the forensic analysis on scrapings which had been taken from the decedent's fingernails had yielded positive results.

According to the report the blood samples taken from beneath the decedent's fingernails was Type "A" which also possessed "H" antigens. The report also indicated further that the Defendant was Type "O" and that the decedent was Type "A". No additional Resting was done on the scrapings and no reports in the discovery indicated additional testing was to be done.

From November 21, 1988 until on or about January 5, 1989 Counsel for the Defense and for the State had been involved in discussions and negotiations in an effort to further conduct tests upon the scrapings. Defense Counsel to that end provided the Attorney for the State the name of a forensic laboratory with the ability to perform particularized tests which the Defendant wished to have done. In response to that information the Attorney for State contacted the F.B.I. Laboratory as well as the State Forensic Laboratory to determine if additional testing could be done by them. The Attorney for the State either directly or through an agent contacted the forensic laboratory which the Defendant suggested would perform the test the Defendantf wanted. The Attorney for the State chose not to proceed with any proposed testing.

In the body of the motion, Counsel for the Defense informed the Court that the Forensic Services Laboratory in California was able to perform the tests necessary for the preparation of the

Thomas J. Connolly
ttorney at Law
2'2 Fore Street
Box 7563 DT.S.
Portland. Maine 04112
(207) 773-6460

Defendant's case but informed the Court that there was a three to four month time lag in processing the sample once received by the laboratory.

At all times the scrapings were under the control of the Attorney for the State and the Defendant did not have access to them.

2. THE MOTION AND THE HEARING

In Defendant's motion it was demonstrated through attachments, the procedure in which DNA sampling and testing was to be done. The efficacy and admissability of those tests was discussed in the attached article as well as an opinion from the Court of Appeals from Florida.

In the context of the Defendant's Motion, a request was made to continue the case as well as to make the samples directly available to the Defendant for testing.

In addition in sub 3 of Defendant's Motion a particularized request was made to require the Attorney for the State to provide written reports of all expert testimony intended to be used by the State either in its case or in rebuttal and to specify the facts, opinions and conclusions relied upon by the expert.

On January 27, 1989 a hearing was held in the Sagadahoc County Superior Court on the Motion. The Trial Justice was the Honorable Carl O. Bradford and a evidentiary hearing was conducted.

The factual and procedural history as outlined in the Defendant's Motion to Compel Discovery and to Continue was accepted by the Court and by the Attorney for the State. It should be noted for purposes of the Law Court Appeal that this is the only motion that was filed by Defense Counsel prior to trial. It should also be underscored that the motion was filed shortly after receipt of the information received from the Attorney for the State. In addition, no continuances of the trial had been requested or were granted either prior to or subsequent to the hearing of this continuance motion. Trial was scheduled for March 6, 1989 and that date had been set at the time of arraignment.

Tr--•iasJ. Connolly
'torney at Law
2'a Fore Street .
j Box7563 D T S
Portland Maine 04112
(207)773-6460

Following argument and a discussion with the Court on the procedural background of the motion, discussion of the journal article and the Florida Court of Appeals case was had. The Court was made aware that negotiations between the Attorney for the State and the Defense Counsel had occurred as to the process which Defendant wished to employ. To that end the State chemist primarily responsible for the case, Judith Brinkman, had conducted a series of inquiries as to the efficacy of the test as well as its availability. To that end Counsel for the State called Ms. Brinkman as the sole witness in the evidentiary hearing to continue.

Chemist Brinkman established that she worked for the Maine State Police Crime Laboratory in Augusta and had worked on blood and body fluids in this case.

A generalized discussion of the DNA process as it relates to blood testing was given to the Court by Ms. Brinkman. (Motion to Continue Transcript at 10-11)** The testimony established that DNA fingerprinting would make identification of blood sampling more specific than existing technology. (M C T at 11). Further testimony involved the available techniques of testing DNA. (Motion to Compel Transcript at 12).

The technique requested by the Defendant was PCR which was done by a forensic laboratory in California. (M C T at 13). Discussion of the scientific credibility of PCR testing was given in context of the F.B.I.'s own efforts at DNA analysis. (M C T at 13-14). Ms. Brinkman established that PCR technique was being introduced at symposiums and seminars and had been accepted by the Forensic Science Association. (M C T at 14). The witness further indicated that given her limited understanding of the issue, since she was not involved in DNA study, she was uncertain as to the nature of the procedure as well as its use in other jurisdictions. (M C T at 15).

** A Transcript was made of the hearing on the Motion to Continue and Compel Discovery of January 27, 1989 and will be henceforth designated as Motion to Continue Transcript (M C T), with specific page references.

T as J. Connolly
torney at Law
22 Fore Street
PO Box 7563 D TS.
Portland, Maine 04112
(207) 773-6460

Chemist Brinkman testified that the discrimination factor of DNA testing at current levels was approximately one in five million.' (M C T at 15). However, she was uncertain as to the exact numbers but was dealing more in generalizations. (M C T at 15). The Chemist indicated that PCR technique was less discriminatory than other tests yielding a rate of one in five thousand as opposed to one in five million. (M C T at 15). These ratios were of roughly comparable value to traditional serology testing performed, by the State. (M C T at 16).

The advantage to the PCR test was described in its ability toy use very small quantities of available testing material. (M C T at 17). The difficulty presented here was the lack of adequate testing material having been used and consumed by the State in conducting its tests. Of the ten scrapings obtained from, the decedent in this case, one under each nail, eight had been consumed in the process of testing by the State Laboratory. (M C T at 17-19). Only two additional samples were left providing' very limited quantity of blood which could be used for analysis. !Due to the fact that only two of the scrapings remained, the only viable DNA test possible was the PCR technique. (M C T at 17-19).

The chemist for the State informed the Court that in her testing of whole blood sample taken from the defendant and the tdecedent she concluded that the decedent had Blood Type "A" and the defendant had blood Type "0". (M C T at 18).

In reference to the fingernail clippings which were obtained 'from the autopsy the chemist indicated to the Court that blood antigens were found and that testing was done upon them. (M C T at 19).

The chemist testified further that it was her opinion that the Type "A" blood found under the decedent's fingernails was her own. (M C T at 19). She had no belief that the blood obtained from the scrapings from under the fingernails had been deposited due to scratching as no skin tissue was found mixed with the blood. (M C T at 19). It was her opinion that she would expect to find some skin or broken nails had the blood been deposited as a result of scratching. (M C T at 20).

Thomas J. Connolly
4ttorney at Law
??' ; Fore Street
Box 7563 D T S,
Nortiand. Maine 04112
(207) 773-6460

The Attorney for the State through questioning established that there was a theoretical possibility that the blood found beneath the decedant's fingernails could have been deposited by the defendant. (M C T at 20). This was based upon the presence of the "H" antigen which would be consistant with a person with Type "O" blood as well as consistant with a person of Type "A". Based upon testing it could be established that a person with Type "B" was excluded from the donor pool as well as those with Type "AB". (M C T at 21).

The chemist further continued her testimony by informing the Court that she had spoken to the person in California who was to conduct the actual test on the specimens. (M C T at 22). In discussion she informed the California chemist as to the condition of the testing sample. (M C T at 22). In reference to quantity the witness informed that testing would be difficult due to its small size. (M C T at 22). However, she did inform the Court that based upon her discussion with the California chemist, the test results were certainly possible and that no determination could be made at the present time as to the liklihood of results. (M C T at 22).

Chemist Brinkman further concurred with the defendant's claim that the delay involved in the testing would involve approximately four months and up to six months before test results could be obtained. (M C T at 23).

The chemist further maintained that the weather conditions on the day of the homicide contributed to a breakdown in the blood and biological fluids. This degradation would decrease the chance of a successful PCR test. (M C T at 24). No indication of the effect of humidity or temperature as to the ultimate reliability of the test could be provided. (M C T at 25).

The witness concluded that the blood scrapings coming from beneath the fingernails were consistant with the decedent herself and due to the presence of the "H" factor potentially consistant with a mixture of the defendant's and the decedent's blood. The only exclusion that could be made is that no "B" blood or "AB" blood mixture was present. (M C T at 27).

T3' --nas J. Connolly
ttorney at Law
2'2 Fore Street
J Box 7563 DTS.
Portland. Maine 04112
(207) 773-6460

The witness indicated that there was a possibility, although of an undetermined degree , that the contribution of the H factor to the blood obtained from the decedent's fingernail came from the defendant. (M C T at 28). However, she informed the Court that such a conclusion was unlikely and concluded that the most likely result was that the blood under the decedent's fingernails was her own. (M C T at 28).

The witness further testified that other blood samples in the case not involving the fingernails were of insignifigance or were only of the decedent's own blood type. (M C T at 31-32).

The witness testified further that the DNA process in question could determine whether or not a mixture of blood did occur under the decedent's fingernails. (M C T at 34). This is important in that the ABO system used by the State could not produce such a breakdown. (M C T at 34-35).

Upon cross-examination the Attorney for the Defendant established that there were 12 forensically significant proteins and antigens commonly tested for in blood specimens. (M C T at 37). The witness informed the Court that these tests were often done by the F.B.I. and that the procedure was widely recognized. (M C T at 38). She indicated further that in this particular case, those tests were not done. (M C T at 28). The witness further indicated that the California laboratory, in additition to doing the DNA testing, could also do the 12 significant forensic tests which were not done by the State. (M C T at 39).

The witness indicated that additional testing would be of consequence and would be forensically significant to the determination of who deposited the blood sample underneath the decedent's fingernails. (M C T at 39). She informed the Court that any disimilarities between the defendant in any of the tested antigens or proteins would be exclusive of the defendant as the contributor of those markers. (M C T at 39). The same could be true of the victim. (M C T at 39).

In reference to the degradation caused by the heat and humidity the witness informed the Court that there was no way to tell the effect of degradation upon the sample without performing the test. (M C T at 40).

TT^mas J. Connolly
ttorney at Law
-22 Fore Street
J Box 7563 T
Portland, Mane 04112
(207) 773-6460

The witness further indicated that based upon her discussions with Forensic Services in California positive results were obtained in samplesfar more decomposed than those in the instant case. (M C T at 42).

The witness further testified that if the DNA or other testing was successful it would provide substantial information about the blood under the fingernails. To that end she concluded that the test results could exonerate the defendant. (M C T at 44) She concluded that even partial test results could exculpate the defendant or to decrease the liklihood that either he or the decedent were the contributor of the questioned blood sample. (M C T at 45).

On re-direct examination Chemist Brinkman discussed additional facts which she believed made it probable that the depositor of the blood samples under the decedent's fingernails was the decedent herself. She noted that the hands were bound and found in proximity to the neck area proxmiate to bleeding from stab wounds.

She indicated further that the blood under the fingernails was consistant with the decedent and that in her opinion most likely was contributed by the decedent. (M C T at 47).

Upon re-cross examination the chemist admitted that the blood under the nails could be explained by many other theoriesnot1 consistant with the decedent contributing the blood herself. (M C T at 48)® She concluded that given her understanding of the status of the facts of the case that one theory was as probable as another. (M C T at 48).

Following argumentation by the Defense Counsel in favor of the motion and the State in opposition the Justice made his ruling.

3, THE RULING

Justice Bradford in review of the motion and following the evidentiary portion of the testimony denied the continuance and denied Defendant access to the blood sample.

Tr --**nas J. Connolly**
ttornev at Law
2'2 Fore Street
J Box 7563 D TS
Portland, Maine 04112
(207) 773-6460

In explaining his rationale the Court indicated that it was struck by the forensic chemist's analysis of proximate bleeding by the decedent as contributing the samples under the nails. (M C T at 59). The Court, however, did admit that a trial strategy could be had which would explain the location of the hands in proximity to the bleeding to explain the contribution of different party of the samples. (M C T at 59).

The Court also felt significant that no skin tissue was found underneath the nails as it related to the liklihood that the victim herself contributed the sample. (M C T at 59).

The Court found that the blood sample under the decedent's fingernails was not consistant with the defendant, Dennis Dechaine, but was consistant with the decedent, Sara Cherry. (M C T at 60). The Court concluded that the PCR test would possibly indicate that the blood underneath the decedent's fingernails came from a different person than the decedent or the defendant. (M C T at 60). He did express reservations as to the ability of the test to succeed due to the samll quantity of the blood available and due to atmospheric conditions. (M C T at 60).,

The Court "weighing everything in the balance" (M C T at 60) concluded "the most that we have and under the best of conditions in the light most favorable to the defendant is the possibility that the blood under the two remaining thumbnails was the blood of someone other than Sara Cherry and other than Mr. Dechaine and the possibility of that happening is so remote that I cannot grant the Motion to Continue this case for purposes of performing the PCR test. And, so, for those reasons the motion must be denied, the Motion to Continue must be denied." (M C T at 61).

4. THE TRIAL TESTIMONY

During the trial of the case in March of 1989 the issue of the blood deposited under the decedent's fingernails was testified directly to by the forensic chemist, Judith Brinkman. The witness testified that she received a blood sample from the defendant, Dennis Dechiane, and conducted tests on that blood concluding that the defendant had Type "0". (Transcript of Trial at 7/09-710). **

T' -nas J. Connolly
ttorney at Law
22'2 Fore Street
O BOx 7563 D T.S.
Portland Maine 04112
(207) 773-6460

** The Transcript of the Trial proceeding of March 1989 will be henceforth designated as T T with specific page references.

The witness further testified that she conducted blood tests of the decedent and concluded that her blood type was Type "A". (T T at 711). The witness testified that a number of items received from the decedent's person contained her own blood type. (T T at 712-713).

Upon direct direct questioning by the Attorney for the State the witness further discussed the fingernail clippings which had been the subject of the Motion to Continue. (T T at 719). The witness indicated that she received the fingernail clippings and that analysis was done on the scrapings and that human blood was discerned with "A" type antigens which was consistant with "A" type blood. (T T at 720). She testified that the blood typing was consistant with the decedent. (T T at 720).

On cross-examination the Attorney for the Defendant inquired of the fingernail scraping analysis done by the forensic chemist. (T T at 774). The witness indicated that only some of the available tests were done in concluding that the blood deposited under the fingernails was contributed by the decedent herself. (T T at 775). The witness testified that the reason that additional testing was not done was "first of all, it was not necessary; and, second of all, the Maine State Police crime lab does not do it." (T T at 776). She indicated further that additional testscould have been done but "on the fingernail scrapings, as all of you can see, there is just not enough here to warrant doing any of these. In fact there is probably we are lucky we were able to take this far (sic)." (T T at 777).

In reference to the "DNA system" the chemist testified that in her opinion there were not enough scrapings available to perform tests. (T T at 778). She further testified "and I can say that it would not be necessary. You'll waste somebody elses time trying to do more." (T T at 778).

The chemist was questioned during trial as to the conclusions based upon the fingernail evidence and she informed the jury that

T' -.asa.connony
ttorney at Law
22'z Fore Street
O Box 7563DT S
Portland Maine 04112
(207)773-6460

the defendant was excluded from contributing Type "A" blood from under the decedent's fingernails. (T T at 779). She did state that she was unable to state with certainty that the blood under the fingernails was the decedent's but concluded that it was most probable. (T T at 779). Upon further questioning she concluded that the fingernail scrapings were consistant with coming from either the decedent or 41% of the population who possess Type "A" blood themselves. (T T at 779). In addition, she stated that the only additional information that could have been provided in reference to the issue was if additional testing had been done. (T T at 779). She also concluded that had any of the testing been done and if favorable to the defendant it would be an exclusion of the defendant. (T T at 779). The State objected to the line of questioning and the objection was sustained. (T T at 780).

B. THE STANDARD

1. RULE 16 MAINE RULE OF CRIMINAL PROCEDURE

The Court's failure to provide the defendant the opportunity to perform testing on the sample violated the defendant's rights pursuant to Maine Rule 16 of Criminal Procedure and represented an abuse of discretion. M.R.Crim.P. 16 states:

(a) Automatic Discovery.

(1) Duty of the Attorney for the State. The attorney for the State shall furnish to the defendant within a reasonable time:

(A) A statement describing any testimony or other evidence intended to be used against the defendant which:

(i) Was obtained as a result of a search and seizaure or the hearing or recording of a wire or oral communication;

(ii) Resulted from any confession, admission, or statement made by the defendant; or

(iii) Relates to a lineup, showup,picture,or voice identification of the defendant;

Tr -minas J. Connolly
ttorney at Law
.2 2 Fore Street
J Box 7563 0 TS.
Portland, Maine 041 t2
12071773-6460

(B) Any written or recorded statements and the substance; of any oral statements made by the defendant.

(C) A statement describing any matter or information known to the attorney for the State which may not be know to the defendant and which tends to create a reasonable doubt of the defendant's guilty as to the offense charged.

(D) A statement describing the contents of any disclosure order issued pursuant to Rule 6(h) which pertains to the case against the defendant.

(2) Continuing Duty to Disclose. The attorney for the State shall have a continuing duty to disclose the matters specified in this subdivision.

(b) Discovery Upon Request.

(1) Duty of the Attorney for the State. Upon the defendant's; written request, the attorney for the State, except as provided in subdivision (3), shall allow access at any reascnable time to those matters specified in subdivision (2) which are within the attorney for the State's possession or control. The attorney for the State's obligation extends to matters within the possession or control of any member of his staff and of any official or employee of this State or any political subdivision thereof who regularly reports or with reference to the particular case has reported to his office. In affording this access, the attorney for the State shall allow the defendant at any reasonable time and in any reasonable manner to inspect, photograph, copy, or have reasonable test made.

(2) Scope of Discovery. The following matters are discoverable:

(A) Any books, papers, documents, photographs(including motion pictures and video tapes), tangible objects,buildings, or places, or copies or portions thereof, which are material to the preparation of the defense or which the attorney for the State intends to use as evidence in any proceeding or which were obtained from or belong to the defendant;

T' -tas J. Connolly
ttorney at Law
22'2 Fore Street
r'O Box 7563 D T S
Portland, Mane 041 t2
(207) 773-6460

(B) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examination and of scientific tests, experiments, or comparisons.

(C) Expert Witnesses. The names and addresses of the expert witnesses whom the state intends to call in any proceeding.

(3) Exception: Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the mental impressions, conclusions, opinions, or legal theories of the attorney for the State or members of his legal staff.

(4) Continuing Duty to Disclose. If matter which would have been furnished to the defendant under this subdivision comes within the attorney for the State's possession or control after the defendant has had access to similar matter, the attorney for the State shall promptly so inform the defendant.

(c) Discovery Pursuant to Court Order.

(1) Witnesses. Upon timely motion of a defendant and upon a showing that the specific matter sought may be material to the preparation of his defense, that the informal discovery procedures of subdivisions (a) and (b) of this rule have been' exhausted and that the request is reasonable, the court shall order the attorney for the State to permit the defendant access to any of the following matters:

(A) Names and addresses of witnesses;

(B) Written or recorded statements of witnesses and summaries of statements of witnesses contained in police reports or similar matter;

(C) Any record of prior criminal convictions of witnesses.

Access shall be according to the terms and conditions set forth in the court's order. A witness includes any person known to the State who has some knowledge of the circurrstances of the alleged offense. The fact that a witness's name is on a list furnished under this subdivision and that he is not

T} nas J. Connolly
ttorney at Law
22½ Fore Street
. 0 Box 7563 0 T.S.
Portland. Maine 041 t2
(207) 773-6460

called shall not be commented upon at trial. The attorney for the State shall have a continuing duty to disclose matters specified in this subdivision which come within his possession or control after the defendant has had access under this subdivision.

(2) Bill of Particulars. The court for cause may direct the' filing of a bill of particulars if it is satisfied that counsel has exhausted his discovery remedies under this rule or it is satisfied that discovery would be ineffective to protect the rights of the defendant. The bill of particulars may be amended at any time subject to such conditions as justice requires.

(3) Grand Jury Transcripts. Discovery of transcripts of testimony of witnesses before a grand jury is governed by Rule 6.

(4) Reports of Expert Witnesses. If the expert witness whom the state intends to call in any proceeding has not prepared a report of examination or tests, the court may order that the expert prepare and the attorney for the state serve a report stating the subject matter on which the expert is expected to testify, the substance of the facts to which the expert is expected to testify and a summary of the expert's opinions and the grounds for each opinion.

(d) Sanctions for Noncompliance. If the attorney for the State fails to comply with this rule, the court on motion of the defendant or on its own motion may take appropriate action, which may include, but is not limited to, one or more' of the following: requiring the attorney for the State to comply, granting the defendant additional time or a continuance, relieving the defendant from making a disclosure required by Rulel6A,prohibiting the attorney for the State from introducing specified evidence and dismissing charges with prejudice.

Under Rule 16(b) of the Maine Rules of Criminal Procedure a defendant may file a written request for material described in Rule 16(b)(2). The scope of discovery under Rule 16(b)(2)

T -~a8a.connouy
ttorney at Law
22[1] 2ForeStreet
PO Box 7563 D TS.
Portland. Maine 04112
1207)773-6460

extends to "any...tangible objects... which are material to the preparation of the defense..." M.R.Crim.P.16(b)(2)(A) (emphasis added). The rules also requires that "in affording the access, the attorney for the State shall allow the defendant at any reasonable time and any reasonable manner to inspect, photograph, copy, or have reasonable tests made." M.R.Crim.P.16(b)(1) (emphasis added).

Under the Maine Rule disclosure of tangible evidence is required upon request if any of three preconditions are met; the evidence is material to the preparation of the defense, or the attorney for the State intends to use it in any proceeding in the defendant's case, or it was obtained from or belongs to the defendant. Cluchey & Seitzinger, Maine Criminal Practice, §16.3; 16-17 (1987).

In addition to the right to inspect, photograph and copy evidence, a defendant has the right to have reasonable tests made on evidence in the possession of the State. State v Cloutier, 302 A.2d 84, 89 (Me.1973); State v Simpson, 366 A.2d 854 (Me.1976) State v Shaw, 343 A.2d 210 (Me.1975).

In State v Cloutier, 302 A.2d 84 (Me.1973) the Law Court established the duty under Rule 16 to permit a defendant access toI physical evidence for purposes of conducting reasonable tests. id at 89. The difficulties of preserving the evidence and safe-guarding the sample was of prime concern to the Court in assessing; the reasonableness of the request. id at 88-89. Those concerns are not of consequence here.

Although it is true that a small sample of blood was available and that the sample would be consumed by the PCR and other tests, the feasibility of the test was established. In addition the logistical concerns of Cloutier could certainly have been overcome. The State had control of the evidentiary items and Counsel for the Defense provided details as to the procedure to be employed. The State Chemist was put in direct contact with the testing facility requested to be used by the Defendant. The State itself could have sent the sample and monitored its arrival in California. Although the testing would have consumed the

Tb^ma".ConnonY !
ttorney at Law
2' 2 Fore Street
J Box 7563 D T S
Portland. Maine 04112
(207) 773-6460

sample, the State had reduced the tests available to the defendant by its own testing. Moreover, the State had furnished its own testing and did no more.

Defendant fulfilled his obligation under Rule 16. Defendant filed timely requests to the State in accordance with Rule 16(a) and 16(b). This request was made upon arraignment and well before trial was to commence. The State, however, did not provide the defendant with both access to any of the blood samples and an opportunity to have reasonable tests made on those samples. Instead the State submitted the materials to its own expert and provided a report detailing its conclusions. The Court, in turn, took no action to require the State to comply with the defendant's; request, due to the fact that the granting of the motion would require the delay of the trial for a period of several months. It should be underscored that no additional requests for continuances were had nor were any additional pretrial motions filed.

Pursuant to the Rules of Criminal Procedure the State is obliged to provide the defendant access to any and all "discoverable" matters. In this instance, the primary criterion for discoverability under the rule is whether the item requested by the defendant is "material to the underlying preparation of its defense." M.R.Crim.P. 16(b)(2)(A)(emphasis added). Legal relevancy, as that term is understood under the Maine Rules of Evidence for purposes of admissability, is not a consideration under Rule 16 requests at this early stage in the proceedings. Moreover, the defendant need not be required to demonstrate that the item sought to be tested is exculpatory. The rule simply requires that the items requested be material to the underlying preparation of the defense.

In the trial of Dennis Dechaine, the State's case was based principally on circumstantial evidence. The Defense was based upon the defendant's denials of criminal liability, the absence of forensically significant materials linking the defendant to the homicide and the existance of an alternative suspect. Defendant's Rule 16 request for the blood samples, which did not originate from the defendant and which may have originated from a

TI'--nas'T. Connolly
ttorney at Law
2'2 Fore Street
J Box 7563 DT S.
Portland. Maine 04112
(207) 773-6460

third individual, was material to the preparation of the defense. The Trial Court was presented with the testimony of the State's own witness, which establish that if the tests came out favorable they would exclude the defendant from criminal liability.

The Trial Court was also told during the course of the Motioni to Continue that if the blood found under the fingernails proved after DNA testing to not be a mixture of two persons blood and also not to be the decedent's blood, then the defendant would have been eliminated as the source, excluding him from liability. (M C T at 46). Nevertheless, the Trial Court denied defendant access to blood samples and adequate time to have DNA and other testing performed. Basing its decision on the size of the remaining sample and on the possibility that the sample may have been degraded by weather conditions the Trial Court denied access by the defendant. (M C T at 60-61).

The Trial Court's basic conclusion does not flow logically from its stated basis, and works in the extreme to have injured the defendant in preparation of his defense. The Court acknowledged that had the test been successful, it would have revealed the blood sample originating from a third person. That is precisely the reason the defendant sought, at his own financial expense, to have the DNA testing performed. The Court labeled the possibility of a successful test remote and denied the motion barring the defendant from pursuing one avenue that would have scientifically proven his contention that another person committed the homicide.

The Trial Court does have discretion in ruling upon Rule 16 motions. That discretion, however, is not without its limits.

> "Discretion" means legal discretion in the exercise of what the Court must take account of the law applicable to the particular circumstances of the given case and be governed accordingly. Implicit is conscientious judgment directed by law and reason in looking to a just result...consequently, if the Trial Judge misconceives the applicable law, or misapplies it to the factual complex, in total effect the exercise of legal discretion lacks a foundation and becomes an arbitrary act. However conscientious may have been the Judge in the performance of it.

State v Mason, 408 A.2d 1269, 1272 (Me.1979)(emphasis added).

T** mas J. Connolly
22 3E set
O Box 7563 DTS
Portland. Maine 04112
(207)773-6460

The Trial Court indicated that the PCR test was problematic. By conceding, however, that the test if performed might also show the presence of an alternative suspect the Court misapplied the law to the "factual complex" at hand and therefore acted arbitrarily.

The Law Court in State v Mason vacated a judgment when the Trial Court failed to address the Rule 16 concerns raised by the defendant who was not furnished with his oral statements to police officers prior to trial. When the Trial Court based its ruling on the applicable rules of evidence, the Law Court stated:

> He (the Trial Judge) did not purport to evaluate whether defendant was prejudiced by the State's failure to provide the defendant, within a reasonable time, the substance of his oral statements...
>
> The inquiry concerned the impermissable effect such information might have on a jury. The Justice did not in anyway evaluate whether defendant was prejudiced by the State's failure to timely provide him with the substance of the oral statements.

State v Mason, 408 A.2d 1269, 1271 (Me.1979)

Similarly in the matter of Dennis Dechaine, the Trial Court acted arbitrarily and without discretion when it based its Rule 16 ruling on something that amounted to an evidentiary finding of relevancy, namely the purported "remote" possibility that the blood sample could have originated from someone other than the victim or the defendant, rather than the Rule 16 criterion of whether the item might assist the defendant in preparing his case.

Rule 16 grants the defendant access to, and the opportunity to perform tests upon, matters material to the underlying preparation of his defense. It does not, and should not, force defendants to bear a burden at the early stage in the process of demonstrating that items such as blood samples within the State's exclusive control necessarily support the defense, particularly when the State elects not to perform comprehensive tests on those samples.

Especially as it applies to a defendant, the "spirit underlying Rule 16 is one of disclosure, not one of line drawing or other technical nicety." State v Eldridge, 412 A.2d , 69(n) (Me.19). In his commentary to Rule 16 Justice Glassman stated the intent behind the rule:

T7^ -tas J. Connolly
torney at Law
2' 2 Fore Street
J Box 7563 DT.S.
Portland. Maine 04112
(207) 773-6460

> The basic premise behind Rule 16 is that discovery can have the same beneficial effects in criminal cases that it has in civil actions and should, therefore, be permitted...It can eliminate an inbalance which exists between the parties as to the means and ability to secure evidence. Finally, it can assure a fuller presentation of the evidence to the trier of fact. (Page 16-10)

The exact inbalance which Justice Glassman indicates was addressed by the adoption of the Maine Rules of Criminal Procedures was violated by the Court's action. The defendant at no time had access to the blood samples and could not conduct any tests whatsoever. On the other hand, the State conducted the tests as it saw fit and chose not to go further with additional testing although they had the ability to do so. An absolute inbalance between the parties existed which the rule was designed to rectify.) The Trial Court's ruling on defendant's motion, therefore, lacked legal and factual foundation and became an arbitrary act. Therefore, a direct violation of Rule 16 occurred as a result of the Court's action and violated the standard of discovery as promulgated by the Law Court.

2. DUE PROCESS REQUIREMENTS

Defendant's pretrial motion seeking access to the blood samples in order to perform tests should be analyzed under the line of U.S. Supreme Court cases "Loosely...called the area of constitutionally guaranteed access to evidence..." U.S. v Valenzuea-Bernal, 408. U.S. 858, 867, 102 S.Ct. 3440, 3446 (1982). Beginning with the wiuely cited Brady decision, this area of Supreme Court jurisprudence has established the due process requirements for the State's control of items of evidence. Brady v Maryland, 373 U.S. 83, 104, 83 S.Ct. 1194, 1196-1197 (1963) "The suppression by the prosecution of evidence favorable to an accused upon requests violates due process where the evidence is material th either guilt or to punishment, irrespective of good faith or bad faith of the prosecution." The Advisory Committee Note to 1975 amendments F.R.Crim.P. 16 confirms that the Brady rationale applies to situations such as the case at hand:

T' nas J. Connolly
ttorneyatLaw
22'2 Fore Street
PO Box 7563 DT S
Portland. Maine 04112
(207) 773-6460

> Disclosure of documents and tangible objects which are "material" to the preparation of the defense may be required under the rule of Brady v Maryland..., without an additional showing that the request is "reasonable." In Brady the Court held that "due process required that the prosecution disclose evidence favorable to the accused." Although the Advisory Committee decided not to codify the Brady rule, the requirement that the government disclose documents and tangible objects "material to the preparation of his defense" underscores the importance of disclosure of evidence favorable to the defendant.
>
> F.R.Crim.P. 16 Advisory Committee Notes, 1975, quoted in Wright, Federal Practices and Procedure: Criminal 2d §254 at 62 n. 20.

In U.S. v Agurs, 427 U.S. 97, 49 L.Ed.2d 342, 351 (1976), thej United States Supreme Court ruled that while a prosecutor had no particularized duty to provide a defendant with "unlimited discovery of everything known by the prosecutor", he did have an obligation "if the subject matter of such a request is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable to require the prosecutor to respond..." In Arizona v Youngblood, U.S. 109 S.Ct. 333, 337 (1988) the Court found that no due process violation occurred when the State failed to preserve evidentiary material which potentially might have exonerated the defendant absent a strong showing of bad faith on the part of police. However, Youngblood,particularly discussed the fact that the State had provided the defendant's expert with the laboratory reports and notes prepared by the police criminologist and the defendant's expert had access to the swabing and the clothing involved. This access to the material was critical to the finding of no due process violation.

The Court discussed in several spots in Youngblood the fact that access was made available to the defendant of the material i question. In dissent in Youngblood Justice Blackman, Brennan and Marshall indicated that the good faith standard was irrelevant in that the failure to preserve a specimen the defendant was denied the opportunity to present a full defense. This opportunity was considered a violation of due process of law. In dissent the Justices maintained that the loss of the possibility of complete

Th nmas J. Connolly
\tto2 Foore aw
2' re Street
J Box 7563 D TS.
Portland. Mama 041 t2
(207) 773-6460

exoneration was sufficient by itself to render a due process violation. This type of evidence was considered "clearly relevant" and foot note #7 of the dissent indicated that due process does require availability of testing by the defendant's experts. See also California v Trombetta, 467 U.S. 479, 104 S.Ct. 2528, 2535 (1984).

As is clear form the "preservation of evidence" cases such as Youngblood, and Trombetta, an underlying assumption exists that, the defendant would have been given access to perform tests if the samples in question had not been destroyed. The Court in Youngblood, explicitly states that the State had complied with Brady and Agurs by, among other things, giving defendant's own expert access to a cotton swab and clothing containing semen samples prior to the trial. Arizona v Youngblood, 109 S.Ct. at 336. Self-evident from the Youngblood rationale is that a defendant is entitled to access such material to perform testing, whatever its condition of preservation might be.

In the "disclosure cases", the Supreme Court has imposed a requirement of demonstrating "materiality." Defendant's requests for access to the samples in this instance poses a dilemma on that issue, since neither the State nor the defendant could have stated with any authority whether or not the sample might prove exculpatory, since no comprehensive DNA testing had been performed The Court in Valenzuea-Bernal, 458 U.S. 858, 867, 102 S.Ct. 3440, 3446, (1982) acknowledged that a defendant who is unaware of the specific contents of evidence he is requesting may be unfairly hampered in his ability to demonstrate the requisite materiality. The Court cited U.S. v Burr, 25 Fed. Cas. 187 191 (No.14694) (C.C.D.Va. 1807), in which Justice Marshall found it unreasonable to require Burr to explain the relevancy of General Wilkinson's letter to President Jefferson upon which the President's allegation of treason had been based, since Burr had never read or seen the letter he requested. Said Justice Marshall "now, if a paper be in possession of the opposite party, what statement of its contents or applicability can be expected from the person who claim its production, he not precisely knowing its content."

T' ,tg8s.connouy
ttorney at Law
2212 Fore Street
OBoz7563 DT S
Portland Marne 04112
(207;773-6460

U.S. v Burr, cited United States v Velenzuea-Bernal, 102 S.Ct. ;3448. See also Traynor, Ground Lost and Found in Criminal Discovery, 1964, 39 NYUL Rev. 228, 230 ("One can imagine the baffling problems particularizing a need or interest when the party has no access to the evidence he seeks to discover. How does Tantalous particularize that which is out of his sight as well as his reach?"), quoted in C. Wright, Federal Practice and procedure: Criminal 2, §254 at 63 n. 23.

The Court in Agurs set forth a standard of "materiality" applicable to the case at hand:

> The proper standard of materiality must reflect our overriding concern with the justice of the finding of guilt ...If there is not reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial. On the other hand, if the verdict already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt.
>
> U.S. v Agurs, 427 U.S. at , 49 L.Ed. 2d at 354-355.

C. THE RESULTS

1. RULE 16 MAINE RULE OF CRIMINAL PROCEDURE

This Court has specifically upheld reversal of a conviction and the ordering of a new trial based upon a discovery violation. State v Mason, 408 A.2d 1269, 1272 (Me.1979).

The Trial Court in this instance abused its discretion by not permitting the defendant access to the fingernail scrapings. Pursuant to the requirements of M.R.Crim.P. 16(b) such information was material to the preparation of the defense. The fact that the evidence was of such consequence rendered the decision not to allow access by the defendant to the scrapings a denial of a fair trial. The very purpose of Rule 16°s testing provisions are to guarantee the fair opportunity of a defendant to proceed in evidentiary proofs that may result in acquittal. In those instances where the State conducts its tests and where the defendant has particularly requested access to existing forensic

Tr-'mas J. Connolly
\ttorney at Law
22'2 Fore Street
J Box 7563 D T S
Portland. Maine 04112
(207) 773-6460

samples, the failure to permit the defendant to conduct reasonable' tests is reversible error.

2. DUE PROCESS REQUIREMENTS

Fundamental fairness and due process requires that evidence which is in the possession and control of the State and which the State uses to conduct tests and when those tests are to be used as evidence against the defendant the defendant have similar access''. Basic notions of fair play dictate that where the government has control over physical evidence and the defendant does not, the defendant must be given reasonable opportunity to have access. To permit the State to conduct its own tests and to deny the defendant the same is to allow virtually exclusive control of physical evidence in the hands of the government. Such a situation is antithetical to the basic premise of an advisary system with its truth seeking function. To only permit the government the ability to perform tests when and if it pleases is to deny the defendant a critical and essential means to prove his innocence at trial. Such a system is an essential denial of a defendant's due process rights and any conviction flowing therefrom should be reversed.

In this particular case, where the evidence against the defendant was nearly entirely circumstantial, and the defendant had been blocked from pursuing the primary defense, namely the calling to the stand of an alternative suspect, the denial to alll access of the blood samples resulted in a denial of due process. The due process clause requires that a defendant be "afforded a meaningful oppourtunity to present a complete defense." California v Trombetta, 104 S.Ct. at 2532. Absent an opportunity to confront the other suspect directly, the defendant must have been at least provided an opportunity to examine the blood samples' within the States possession and control. Given the nature of the request, the timely manner in which it was made, and the closing off of other avenues of defense strategy by the Trial Judge, it is a matter of fundamental fairness under due process that the

T" -nits J. Connolly
Ittorney at Law
22' 2 Fore Street
PO Box 7563 DT.S
Portland. Maine 04112
(207) 773-6460

defendant be granted access to the samples. See Lisenba v California, 314 U.S. 219, 236, 62 S.Ct. 280, 289 (1949). The failure to grant access was an error of constitutional magnitude warranting a new trial.

T~ -nas J. Connolly
ttorney at Law
22' 2 Fore Street
O Box 7563 DTS
Portland Maine 04112
(207) 773-6460

II. EXCLUSION OF DEFENDANT'S ALTERNATIVE SUSPECT EVIDENCE DENIED A FAIR TRIAL

A. THE OFFER AND THE RULING

1. BACKGROUND

On July 6, 1988 Jennifer Henckel had made arrangements for Sarah Cherry to babysit at her home in Bowdoin, Maine. (T T 166). The arrangements for Sarah Cherry to babysit had been made approximately a week previous to July 6, 1988 and it was the first time that Sarah Cherry was to babysit at this household. (T T 167-68). Jennifer Henckel left Sarah Cherry babysitting at their home at approximately 9:00 in the morning and went to work in Augusta. (T T 169). At approximately noon that day, Jennifer Henckel called Sarah Cherry at her home to make sure that everything was proceeding normally. (T T 170). Sarah Cherry was preparing lunch and had just fed the baby. (T T 171). Jennifer Henckel returned home at approximately 3:20 p.m. (T T 171). Upon pulling in to the driveway, Jennifer Henckel noticed a notebook and another paper lying near the house which she felt was unusual. (T T 172). The paper she picked up was a notebook and a car repair bill. (T T 172).

Upon approaching the house, Jennifer Henckel noticed that the door was ajar about an inch and a half which struck her as odd. (T T 175). As she proceeded into the house, the upstairs door was open as well, which also was unusual. (T T 175). Ms. Henckel entered her house and noticed that the television was on and saw Sarah Cherry's glasses folded neatly on the rocking chair next to the door in the entranceway. (T T 176). Sarah Cherry's clothes were piled neatly next to the couch and Jennifer Henckel called her name. (T T 176). Sarah Cherry was not in the house and Ms. Henckel became concerned. (T T 177). Following several phone conversations with the neighbors and her husband, John Henckel, Jennifer Henckel called the police to report the disappearance of Sarah Cherry. (T T 179).

Thomas J. Connolly
Attorney at Law
22½ Fore Street
P.O. Box 7563 D.T.S.
Portland, Maine 04112
(207) 773-6460

Nothing in the house appeared unusual and there was no indication of forced entry or a sign of struggle of any nature or description. (T T 180).

The police arrived at approximately 4:30 p.m. and Jennifer Henckel turned over the notebook and the receipt to them. (T T 179)..

The notebook and the receipt for the auto repair were later determined to belong to the defendant Dennis Deschaine. (T T 182)

Sagadahoc County Deputy Sheriff Daniel Reed arrived at the Henckel residence in response to the complaint of a missing girl. (T T 266). Deputy Reed received the auto body receipt and the notebook from Ms. Henckel and handled it without taking precautions to preserve any fingerprint evidence which may have been available. (T T 267-68). The auto body receipt indicated that a 1981 Toyota pickup truck had been repaired at some time in the not too distant past. A search was then had of the immediate surrounding neighborhood for the Toyota pickup. (T T 269). In addition, the Deputy Sheriff had ascertained from the notebook the name of Dennis Deschaine as the owner of the ickup truck and the notebook. (T T 270). A search was then made for Deschaine, including telephone calls to the Deschaine residence and a visit to the Deschaine residence by the officer. (T T 271). Information was obtained that the color of the Toyota was red. (T T 272).

A search continued for the red Toyota pickup, Dennis Dechainel and Sarah Cherry for the remaining hours in the late afternoon of July 6, 1988.

At sometime between 8:00 and 8:30 in the evening, a person in the neighborhood named Arthur Spaulding observed a man in his 20's walking through the back of his yard on the Dead River Road which was not very far from the location of the Henckel residence. (T T 193-94).

At approximately 8:45, Harry and Helen Buttrick, returning to their home on the Dead River Road, observed a man walking accross Mrs. Buttrick's mother's lawn towards her house. (T T 202).

Tr **nas J. Connolly**
tlorney at Law
2'2 Fore Street
J Box **7563** DTS
Portland. Maine 04112
(207) 773-6460

The Buttricks inquired of the man as to what he was doing and a conversation between Mr. Buttrick and the man occurred. (T T 203).

According to the person walking accross the lawn, who was subsequently identified as Dennis Deschaine, he had become lost in the woods while out fishing earlier in the day. (T T 203).

Mr. Buttrick informed Dennis Deschaine to get into his car so that they could look for Dennis Deschaine's Toyota pickup truck which Deschaine could not locate. (T T 203-204).

Dennis Deschaine was not acting unusual in any sense and appeared oriented to time and place. (T T 206). Dennis Deschaine at all times acted like a gentleman and his actions were consistent with a person who had been lost in the woods. (T T 210-11).

During the course of the trial Harry Buttrick was unavailable and a videotape was played for the jury as to his testimony. In the context of the video deposition Mr. Buttrick indicated that he accompanied Dennis Deschaine in his search for his red Toyota pickup truck which Deschaine had misplaced during the course of the afternoon. Mr. Buttrick testified that Deschaine acted at all times like a gentleman and was concerned about locating his pickup truck. During the hour long search of the area for the pickup truck, Mr. Buttrick indicated that they passed a Sagadahoc County sheriff and flagged him down. Mr. Buttrick informed the sheriff that he was searching for a red Toyota pickup truck belonging to Dennis Deschaine and that they had been unable to locate it. At that time, the defendant was transferred from Mr. Buttrick's automobile to the Sagadahoc County sheriff. It should be noted that the search for Dennis Deschaine had been continuing to the time of the transferrence at approximately 9:00.

The defendant was transferred by the Sagadahoc sheriff to the search command post which had been established at the corner of the Lewis Hill Road and the Dead River Road for the purpose of: conducting the investigation into the disappearance of Sarah Cherry. (T T 272).

T' m as J. Connolly
\tlorney at Law
22 ⁝ Fore Street
rO Box 7563 D TS.
Portland Maine 04112
(207) 773-6460

The defendant was then informed that the police officers were looking for a missing girl and was questioned about whether he had any knowledge of the disappearance. (T T 273). Miranda warnings were read. (T T 273). The defendant cooperated with the questioning. (T T 275). The officer noted that the defendant's eyes were wide open and appeared dilated. (T T 276). Conversation lasted approximately 15 minutes inside the police vehicle. (T T 276).

During the course of the questioning, the officer became agitated and raised his voice in response to the answers he was receiving to his questions. (T T 277). The defendant informed the officer that he had parked his truck into the woods so as to go fishing and while fishing had lost his truck. (T T 279). The officer then asked the defendant whether or not he had been on the Lewis Hill Road earlier in the day or on the Dead River Road earlier in the day. The defendant indicated that he did not believe he had been. (T T 280)

The officer then showed the defendant the notebook and the auto body receipt found in the driveway of the Henckel residence and asked if the items were his. (T T 280). Initially the defendant replied no, but then upon examining them more closely admitted that they were his in fact. (T T 280). The officer asked for an explanation as to the items' appearance in the driveway and the defendant stated that he did not know. (T T 282). Upon further questioning the defendant said that he may have driven down the Lewis Hill Road earlier in the day but due to the fact that he was unfamiliar with the area he was uncertain about the names of the roads. (T T 282). The defendant indicated that he remembered turning around in a driveway earlier that day when looking for a fishing hole. (T T 282).

Upon further questioning by the officer as to how the noteboo and receipt may have gotten in the driveway, the defendant stated that they must have fallen out when he exited the vehicle to urinate. (T T 283). A heated exchange then occurred in which the officer angrily challenged the defendant's story as to his stopping in the Henckel driveway. (T T 283).

T}+'mas J. Connolly
Ittorney at Law
2'3 Fore Street
J Box 7563 D.TS.
Portland. Maine 04112
(207) 773-6460

In a further explanation as to how the items may have been placed in the driveway, the defendant told the deputy that somebody must have removed them from his vehicle and put them at the Henckle residence. (T T 283).

The defendant was held by police authorities from 9:00 until approximately 4:00 in the morning. During that period of time, the defendant was questioned by Sagadahoc County police officers as well as Alfred Hensbee of the Maine State Police. The defendant had previously been patted down and a search for weapons made and none were found. (T T 224). A large bruise on the defendant's left bicep was noted by the police officers at the time. (T T 224). The defendant was held and questioned by Detective Hensbee as well as photographed for physical evidence. The defendant was finally returned to his home at 4:20 in the morning.

The defendant's red Toyota truck was discovered at approximately 12:05 a.m. on the morning of July 7, 1988.

Prior to the discovery of the red Toyota pickup truck, witness Robert West who lived on the Lewis Hill Road had informed the police that he had seen a red pickup truck driving in the area of the Henckel residence earlier in the day. (T T 68). In addition, witness Holly Johnson had also provided information that a small red pickup truck had been seen in the area of the Henckel residence earlier in the afternoon. (T T 346-49).

Following the discovery of the truck on the evening of the 7th, the search continued for the body of Sarah Cherry. The body was located the following day July 8th, by searchers from the Brunswick Naval Air Station. (T T 527).

In a search of the scene and the area between where the defendant's truck was found and where the decedent was located a rope was discovered. (State's exhibit #35, T T 531).

An examination of the scene located a small red fiber in the branch of a tree at approximately shoulder height near the area where the body was found. (T T 542).

T} as J. Connolly
\ttorney at Law
22' ; Fore Street
O Box 7563 DTS
Portland. Maine 04112
(207) 773-6460

It was determined from an autopsy that Sarah Cherry had been partially buried in the woods, her hands were bound with a rope and a bandana gag was placed in her mouth. Stab wounds were evident on the neck and throat area. (T T 550°-555). In addition, two sticks were placed into the vagina and anus of the decedent. (T T 563). Stab wounds were of note in that they were made by an extremely small knife. (T T 566-67). The cause of death was determined to be asphyxiation due to strangulation and multiple stab wounds in the neck and chest. (T T 587).

Fingerprint analysis was done for both the red Toyota pickup truck and the entrance door to the Henckel residence. A large number of items were processed from the Toyota.pickup truck and latent fingerprint examination was done. Some of the defendant's fingerprints were found in the inside of his vehicle as well on some of the items contained in his vehicle. (TT 424). This was consistent with what would be expected of a vehicle owned by a particular person. (T T 626). More than 30 items were evaluated for determining fingerprints from the interior of the vehicle. Of the prints that were sufficient quality for comparison purposes, none were of the decedent Sarah Cherry. (T T 640).

During the period of his being questioned on the evening of July 6, 1988 and the morning of July 7, 1988 the defendant had been asked about the notebook and receipt by Detective Al Hensbee. (T T 441). The defendant indicated to Detective Hensbee that he didn't believe that the notebook was in his truck on the day in question. (T T 441). The defendant indicated to Detective Hensbee that he believed that the notebook was in his business at Paul's Produce. The defendant further indicated that someone may have taken his notebook paper and receipt and placed them in the Henckel's dooryard. (T T 441).

Testimony during the course of the trial by Detective Hensbee established that during the initial period of defendant's involvement with the police he had been extremely cooperative and consented to a search of his truck. (T T 456--57). Defendant

T* ^mas J. Connolly
Ittorney at Law
22'¡ Fore Street
0 Box 7563 D T.S.
Portland. Maine 04112
1207) 773-6460

also voluntarily consented to having his picture taken, to answer questions, to have his body parts examined and that no unusual hair or fibers were seen on the clothing. (T T 457). In addition no blood stains were seen on the clothing whatsover or on his body. (T T 457).

It was also established by testimony of Detective Hensbee that the defendant's Toyota tires were a snow tread in origin which is a distinctive pattern. (T T 462).

Upon discovery of the Toyota pickup, it was locked at the time. (T T 463). The Toyota was of the design that required the holding of the handle while closing the door to lock it. (T T 464),

A substantial period of the trial was involved with an examination of the forensic chemist in the case, Judith Brinkman. The chemist performed a variety of evidentiary functions and testified to the conclusions based upon her testing. (T T 702).

As it related to the defendant and his Toyota truck chemist Brinkman testified that located behind the driver's side was a rope. (T T 707).

The Toyota was also examined to determine whether any blood was in the truck. No blood was found. (T T 709).

Further blood testing was done on some of the items taken from the decedent's body including articles of clothing. (T T 711). Much of the clothing contained blood which was consistant with the decedent's own blood which was type "A". (T T 712-13).

Some hairs were found on the decedent's clothing which were inconsistent with her own known hair samples. (T T 714).

In addition, fiber evidence was examined by the chemist. Certain fibers obtained from the decedent's person were examined and the chemist concluded that they were similar to the scarf which was located on the decedent. (T T 718).

The forensic chemist indicated that the red appearing fiber that was located in the tree by Detective Otis was a pink synthetic fiber. (T T 724).

T* -'nas J. Connolly
ttorney at Law
22'2 Fore Street
J Box 7563 DT.S.
Portland. Maine 04112
12071773-6460

The chemist discussed a variety of ropes which were taken from the wrists of the decedent, the pickup truck and one found between the pickup truck and the body of the decedent. (T T 728-30)® An analysis was done of the particular rope which was found behind the defendant's drivers side seat and the rope found between the defendant's vehicle and the body. An examination revealed that the rope from the back of the defendant's vehicle and the rope found between the body and the vehicle were consistant with having once been joined. (T T 736-38

Chemist Brinkman testified that seized from the Toyota pickup were more than 155 separate items which were inventoried and examined. (T T 743). Highlighted for particular attention during the course of her testimony were items of paper, cloth and1 a large variety of debris removed from the Toyota. (T T 744). A number of ropes were also found in the cab section of the Toyota. (T T 749).

Chemist Brinkman indicated that she examined more than 150 items from the truck and that only one had positive blood tests on it and that appeared to be very old and unrelated to the case. (T T 750-51)®

Chemist Brinkman also testified that of the large number of hairs located inside the truck none were consistant with the victim, Sarah Cherry. (T T 752). Two cigarette butts were also of consequence in the case and testified to by chemist Brinkman. (T T 753-54). The defendant had numerous packages of Vantage cigarettes crumpled and crushed in the Toyota. Two cigarette butts were found outside of the Toyota at the location in which it was discovered on the morning of July 7, 1988. (T T 754). A testing was done for analysis. (T T 752). The cigarette butts found outside the vehicle were a Winston Light cigarette and a Merit cigarette. (T T 756-57). No amylase were discovered on the cigarette butt and it could not be identified to the defendant. (T T 757-58). These cigarettes were inconsistant with what the defendant normally smoked and it appeared at least that the Winston Light cigarette was fresh. (T T 761-62).

T'- -mas J. Connolly
\ttorney at law
22'2 Fore Street
, 0 Box 7563 D.T.S
Portland, Maine 04112
(207) 773-6460

The chemist testified further that an item was discovered in the debris located upon the body of Sarah Cherry which consisted of a small shiny piece of metal which could not be identified by the chemist. (T T 763). This was inconsistant with the items obtained from the defendant. (T T 765).

Also located upon Sarah Cherry was a hair which was dissimilar to her own and which was not matched to the defendant.; (T T 765-66).

Other fibers and hairs were also located on the body of the decedent which were not matched either with the defendant or her. (T T 768).

The chemist testified further that she undertook forensic analysis of the clothing worn by Dennis Deschaine on July 6,1988. Specifically his work pants and tee shirt were tested for the presence of blood. No blood was located on them. (T T 768). No hairs which were not identified to him were found on his clothing. (T T 768). No fibers were located on any of the items, tested which were inconsistant with him. (T T 768).

Scrapings were taken from the defendant's fingernails for purposes of analysis. Nothing contained underneath the nails matched anything relating to the victim Sarah Cherry. (T T 769).

In reference to either the defendant or his truck no blood of Type A similar to that of Sarah Cherry was found, no hairs of comparable value to Sarah Cherry were found, no fingerprints were found, and no fibers were found. (T T 771-72).

In reference to a search of the truck a pocket knife was seized from the passenger seat. This was tested by chemist Brinkman and it was determined that there was no blood, hair or fibers of consequence on it. (T T 780).

In reference to the pink synthetic fiber found near the tree where the victim was buried a microscopic analysis was done and determined that it was inconsistant with anything that either the victim or Dennis Deschaine was wearing on July 6, 1988. (T T 784).

T~ -mas J. Connolly
\ttorney at Law
22 ↕ Fore Street
. 0 Box 7563 D TS.
Portland. Marne 04112
1207) 773-6460

The defendant's Niki sneakers were tested for the presence of blood and none sufficient for comparison purposes was discovered. (T T 785).

An additional knife was tested having been seized from the decedent's home pursuant to a search warrant. The testing results revealed no evidence of blood upon the knife. (T T 786).

Chemist Brinkman testified that of the eleven ropes seized from either the defendant's truck or his home,forensic tests were done upon them all. (T T 786-87). She indicated that she could not determine when the ropes were cut as far as date or location of the cutting. (T T 787). There were no rope fragments found in the truck and no indication the rope was cut elsewhere. (T T 787). No indication of the type of tool used to cut the rope could be testified to. (T T 787). The fraying pattern of the rope which was discovered between the truck and the decedent's body indicated that either a dull object had been used to cut it or that it had been cut a substantial time previous to the date question. (T T 788). A large number of knots were found upon the ropes which had been seized. (T T 788).

During the course of State's case a series of so-called admissions were presented to the jury which were of consequence. There were essentially three, although one admission involved two different testifying witnesses.

Two corrections officers, Daryl Maxey and Brenda Dermoody, of the Lincoln County Sheriff's office testified in reference to the statements. (T T 850-869). Both officers essentially testified that on July 8, 1988 at approximately 7:17 p.m. Dennis Deschaine was brought into the Lincoln County jail by Sagadahoc County deputies. (T T 854). The defendant then underwent processing and booking and admission at the county jail. (T T 854). A medical screening test and interview was conducted. (T T 854). The defendant was then brought into the shower area. (T T 854).

T~ -nas J. Connolly
ttorney at Law
22' 2 Fore Street
rO Box 7563 DTS.
Portland. Maine 04112
1207) 773-6460

Both jail guards testified that they understood the reason for the defendant's being brought to the county jail and that he was cooperative and quiet when he came in. (T T 855). According to both witnesses the defendant said to the effect ""you people need to know that I'm the one that murdered that girl, and you may want to put me in isolation". (T T 855). The defendant was then housed in an isolated cell. (T T 855).

The next admission of consequence was the testimony of Sagadahoc deputy Mark Westrum® While at the Lincoln County holding facility the defendant underwent a booking procedure. (T T 828). His attorney at the time George Carlton was at the facility but was not allowed to see the defendant. (T T 828). Conversations insued between the deputy Westrum and the defendant. According to the testimony the defendant became emotional and started to cry. (T T 829). According to the testimony of deputy Westrum the defendant then stated:

> Oh my god, oh my god, it should have never happened. He said: why did I do this? At this time he again started to sob and he cried again. And then he said to me: I'm sorry, I forgot your name. I reminded him that my name was Mark. And then he was silent. He said: Mark, I went home and told my wife that I did something bad and she just laughed at me....
>
> At that time when he was finished smoking his cigarette he said to me: Mark, please believe me, something inside must have made me do that. Please believe me. He repeated that, please believe me....
>
> He was silent for a moment and then he said to me: I knew they were coming after me, I was waiting. He said: It was something inside that must have made me do that. Again he said: I can only look forward; that's all I have left. Then he was saying: Why would I do this? At that point I said I can't answer that question. I don't know. He's emotional at this point. He walked around the room and kept saying why? why? I let him walk around the room

T" - ·nas J. Connolly
Ittorney at Law
22¹ ₂ Fore Street
rO Box 7563 D T.S.
Portland. Maine 04112
(207) 773-6460

again without saying anything. He went back and sat down in his chair or the chair he was sitting in. At that point he looked up at me and said: I didn't think it actually happened until I saw her face in the news; and it all came back to me. I remembered it. He started to cry again, and he said: Why did I kill her? At that point he cried and he was shaking his head back and forth. He was clasping his hands together very tightly. He said What punishment could they ever give me that would equal what I've done. At that point he started to cry very loudly. He was trashing about on his chair. He made a sort of shreaking noise. I got up and walked over towards him. At that point he reached out and grabbed me around the waist and he's crying as he was saying: Why? Why? He hugged me very tightly for about two minutes crying. (T T 830-32).

According to the deputy's testimony the defendant did not have any close contact with him as far as previous affiliation or affinity, and was uncertain as to the deputy's name. (T T 834) The fact that attorney Carlton was not allowed to see the defendant was also discussed by the deputy. (T T 835). He also indicated that the defendant was in a very emotional condition at the time of these statements and that the statement was never written until later and the defendant never signed it. (T T 835)' In addition, the deputy indicated that in the room next door there were Maine State Police detectives who had a tape recorder and that they were not privi to the conversation testified to. (T T 835). The defendant declined to give any statements to the police officers with the tape recorded. (T T 836). The defendant was preoccupied with the condition of his wife following his arrest and that was a prime concern of his at the time. (T T 836)

According to the deputy the defendant repeatedly stated during the course of this conversation that " I can't believe I did this". (T T 839-40).

T' nas J. Connolly
ttorney at Law
22[1] Fore Street
r'O Box 7563 D TS.
Portland. Maine 04112
1207) 773-6460

No details were provided by the defendant as to how the offense occurred. (T T 840). No other witnesses heard the defendant make any such statements. (T T 841). The statement obtained by deputy Westrum followed an investigation of the previous two days as well as several interviews with the defendant on the night of July 6, 1988 and the morning of July 7, 1988. In addition, questioning had occurred on the 8th as well in which no statements were obtained. (T T 842).

Following the testimony of the jail guards the State rested.

Counsel for the defendant at that point requested an election as to alternative murder counts. (T T 880). The request for a required election by the prosecution was denied by the Court. (T T 880). In addition, the motion to acquit as to the separate counts of murder and the remaining charges in the indictment was made for counsel by the defendant. (T T 879). This motion was also denied. (T T 880).

A series of fourteen witnesses were called by the defense in the case. In addition, the defendant, Dennis Dechaine , testified at length.

The first witness called by the defense was Susan Norris. She indicated that she lived in Bowdoinham and had never met the defendant before. (T T 883-84). The witness had previously given a statement to the investigating police officers in the case in reference to observing a red truck with a young girl in it on the day of July 6, 1988. (T T 885-86). The witness testified she recalled the day particularly well and was certain of the date. (T T 886). According to the witness, at approximately 8 o'clock a red pickup truck pulled in and came into her driveway. (T T 887). The truck did not have a cab on the back of it. (T T 888). Inside the vehicle was a male who was described as about average size and wearing glasses without facial hair. (T T 888). In the passenger seat was a small girl with curly hair which was light brown. (T T 889).

T' was J. Connolly
ttorney at Law
22'2 Fore Street
rO Box 7563 D TS
Portland. Maine 04112
1207) 773-6460

The girl was pulled close to the man in the drivers seat and upon the witnesses coming out of her house to see the truck it left. (T T 889). She was able to indicate that the truck was full sized and had a damaged tailgate. (T T 890).

Two witnesses were than called by the defense who had extensive experience and a longstanding relationship with the defendant. Justine and Brian Dennison both testified in essense that they were aware that the defendant had run Paul's Produce Stand and had come to know him during the course of his running that operation. (T T 896). Both witnesses testified that the defendant had a reputation in the community for peacefulness and nonviolence and for truthfulness and voracity. (T T 904).

In addition, Justine Dennison testified that on July 6, 1988 she had seen the defendant driving his red Toyota pickup just before noon on the day in question on Route 24 close to Topsham, Maine. (T T 910-11).

Brian Dennison testified on behalf of the defendant as to his reputation for truthfulness and voracity as well as his peacefulness and nonviolence. (T T 924°29).

In addition, Mr. Dennison indicated that in July of 1988 he and the defendant had several discussions about fishing holes in the area of the Lewis Hill Road. (T T 921). To that end the defendant had informed Mr. Dennison that he would at some point go out and hike there, looking for a good spot to go fishing. (T T 921). Mr. Dennison identified the area and location on a topigraphical map as to where the defendant had said he was going to go searching for fishing holes. (T T 921). Mr. Dennison indicated that this was a common practice for Mr. Dechaine and himself to do, both being fishing enthusiasts. (T T 922).

The next witness called by the defense was Gary Jasper who lived on the Lewis Hill Road in Bowdoin, Maine. (T T 940). Jasper was totally unfamiliar with the defendant having never meti him before. (T T 940).

T~ -nas J. Connolly
ttorney at Law
12[illegible] Fore Street
;-O Box 7563 DTS
Portland Maine 04112
(207) 773-6460

On JUly 6, 1988 he was living on the Lewis Hill Road and was in his yard. (T T 942). The witness lived approximately one mile from the Henckel residence. (T T 942). The witness was questioned about the report he gave to the police on July 7, 1988 in reference to his seeing a red Toyota pickup truck on July 6, 1988. (T T 942). The witness was certain he had seen a Toyota on the Lewis Hill Road at approximately 3 o°clock in the afternoon. (T T 944). The pickup was traveling at a high rate of speed. (T T 944). The driver of the vehicle was alone. (T T 945). The witness testified that the driver had long dark sandy colored hair and was wearing a dark shirt, testimony that was inconsistant with the description of the defendant. (T T 947). Later on, at approximately 7:30 in the evening, the witness saw the same vehicle in the Lewis Hill Road area. (T T 947). The witness saw a person entering the vehicle on the Dead River Road. (T T 948). No one else was with him at the time. (T T 948). The person entering the Toyota had nothing in his hands at that time. (T T 948). The witness testified that he had later in the evening been listening to the police scanner and determined that a red pickup truck had been stopped which matched his description. (T T 949). The vehicle which was stopped on the Meadow Road in Bowdoin had the same license number as the vehicle which he had seen earlier in the day. (T T 949).

The next witness called by the defendant was Lois Getchell who also lived on the Dead River Road in Bowdoin, Maine. (T T 956 The witness testified that during the course of July of 1988 a topic of conversation came up between herself and her husband as to a red pickup truck that had been in the area and driving at a very high rate of speed in the timeframe prior to the homicide. (T T 960). Her husband who had died prior to the trial and herself had become quite concerned about the operation of the red; pickup truck and about its continuance appearance in the neighborhood. (T T 960). The witness could not identify the make of the red pickup truck but indicated that it was small in size and red in color. (T T 961).

T~ -nas J. Connolly
ttorney at Law
'2'2 Fore Street
. 0 Box 7563 DTS
Portland. Marne 04112
(207) 773-6460

The vehicle had been seen on the road on the 5th of July, when the defendant had been in Madawaska.

The witness herself had seen the vehicle two or three times prior to the homicide and her husband had seen it more than once. (T T 959).

A series of four witnesses were then called who testified that the defendant had a reputation in the community for truthfulness and voracity and a reputation in the community for peacefulness and nonviolence. The witness then testified as to particular instances of peaceful conduct of the defendant as well as his general abhorrance of violence and gore. To that end it was established that the defendant was unable to slaughter his own chickens or to perform blood letting functions on animals due to his squimish nature.

The next witness called by the defense was Nancy Dechaine, the defendant's wife. Nancy testified that she met the defendant in her sophomore year at Western Washington University in Bellingham, Washington. (T T 1044). They were subsequently married in September of 1983 in Colorado Springs, Colorado. (T T 1045). They worked together at the Christopher Sheep Farm for a period of a year. (T T 1045). Dennis left the farm due to his being uncomfortable with blood letting duties. (T T 1046). Nancy Dechaine also indicated that on their own farm they raised chickens and rabbits for food. (T T 1047). She testified that Dennis was unable to slaughter the birds or the rabbits. (T T 1047).

Nancy Dechaine indicated that their farm business of raising animals and selling vegetables was doing very well. In addition, a mail order Christmas Tree business had developed which was booming. (T T 1049). Financial conditions of the Dechaine family were in very good shape in July of 1988. (T T 1049). A particular project of establishing a commercial greenhouse and the building of the same was underway in July of 1988. (T T 1052). Nancy Dechaine testified that they had

T' tuts J. Connolly
ttorney at Law
22'2 Fore Street
rO Box 7563 D TS.
Portland, Maine 04112
(207) 773-6460

operated Paul's Produce and Greenhouse stand but had given it up about a week prior to July 6, 1988. (T T 1056). The name of the produce stand remained the same and there was no publicity regarding the leasing. (T T 1056).

In the first few days of July 1988 the defendant and his wife took a vacation to celebrate the Fourth of July in Madawaska, Maine where the defendant had grown up. (T T 1056). The couple returned from Madawaska in the late evening of July 5, 1988. (T T 1058).

The next morning, July 6, 1988, Nancy Dechaine arose at 5:30! in the morning and prepared herself to go to work. She was employed as a surveyor at the time in Bath, Maine. (T T 1058). Following the feeding of the animals and preparing breakfast she left at approximately 7 o'clock in the morning. (T T 1059). Dennis was home at the time and she last saw him that day at quarter of seven in the morning. (T T 1059). Nothing unusual was occuring in the household at the time as far as emotional upset or as far as any business problems. (T T 1060). Nancy Dechaine returned from work to the farm at 3 o'clock in the afternoon. (T T 1060). She had no conversation with her husband from the period when she first left for work until she returned. (T T 1060).

Two police officers came to the farm at approximately 4:30 in the afternoon looking for Dennis. (T T 1061). She informed the police officers that he owned a red Toyota pickup truck and was driving it at the time. (T T 1061). She had previously noted that the chickens which had been delivered to the slaughter house prior to the trip to Madawaska had been returned and were in the freezer. (T T 1061).

The next contact Nancy Dechaine had was at approximately 8:30 in the evening when officer Daniel Reed called her to find out whether Dennis had yet returned. (T T 1062). In addition, another local police officer came by to check on the defendant's location. (T T 1062).

T" nas J. Connolly
Mornay at Law
22'2 Fore Street
PO Box 7563 D TS
Portland. Maine 04112
(207) 773-6460

Finally, she received a phone call from the defendant at 4:30 in the morning and he returned home at about 4:45 in the morning. (T T 1063). The defendant had been taken home by Detective Hensbee who did not enter the house or question Nancy. (T T 1063)]

The defendant at this time was dressed wearing a t-shirt andl work pants. (T T 1063). The defendant was extremely distraught and was shaking. (T T 1064). Nancy indicated that the defendant1 was very confused about the questioning and why he was being held. (T T 1064). A conversation ensued in which the defendant explained what happened during the night. (T T 1065-65). Due to the lateness of the hour the defendant was persuaded to try and get some rest. To that end he took off his clothing and his wife observed his physical person. (T T 1065-66). A few small scratches were noted but nothing unusual to alarm was visible. (T T 1066). Nancy did not observe any blood upon the clothing or upon the body of Dennis Dechaine. (T T 1066). Nancy did observe a large bruise mark on the defendant's left bicept. (T T 1066). In addition she noted that his eyes were dialated. (T T 1067). The clothing that was removed from the defendant contained no blood stains or anything unusual and they were dry. (T T 1068). The clothes were not unusually dirty. (T T 1068).

On the morning of July 7, 1988 Nancy and Dennis went to Bath for the purpose of contacting an attorney. Following the meeting with the attorney the defendant's attitude and demeanor stabilized and he calmed down substantially. (T T 1077). He appeared to be relieved. (T T 1071). The couple then went back to their Bowdoin farm and did some chores. (T T 1071). Dennis seemed to still be shaken by the whole experience but seemed to have calmed considerably compared to the evening before. Nancy Dechaine proceeded to do laundry which had not been done prior to the trip to Madawaska. (T T 1073). The clothing which the defendant had worn the night before was also washed. (T T 1074). This was part of the normal routine. (T T 1074). No attempt to hide or cover up any of the evidence was made by Nancy Dechaine. (T T 1074).

T` -nas J. Connolly
ttorney at law
22'2 Fore Street
PO Box 7563 0 TS
Portland. Mama 04112
(207) 773-6460

At the end of the day of July 7, 1988 the couple was watching a television news program which highlighted the search for the missing Sarah Cherry. (T T 1074). A photograph of Sarah Cherry appeared on the television screen and Dennis reacted to that. (T T 1075). Nancy testified that the defendant's reaction was one of nonrecognition of the face of Sarah Cherry. (T T 1075). At that time the defendant stated: "My god, I've never seen that girl before". (T T 1076). In addition, the defendant denied any involvement with Sarah Cherry and stated that he had never kidnapped her and did not know anything about her. (T T 1076). The defendant continued to be excited at this time, as he understood that he was still the suspect in the disappearance. (T T1077).

The next day July 8, 1988 the couple arose at approximately 7 o'clock in the morning. (T T 1077). Dennis expressed anxiety due to the trauma he had been through for the past two days. (T T 1077). Nancy left for work early that day and returned home at approximately noon time. At the time she appeared home she found the defendant sitting on the porch. (T T 1078). The defendant was very upset at this time and anticipated that he was about to be arrested. (T T 1078). The reason that he was so upset was that he had been informed that Sarah Cherry's body had been found. (T T 1078). Thereupon detective Hensbee and another police officer came to the house at approximately 1 o' clock. (T T 1079). The defendant rose off the porch and greeted the officers walking towards their vehicle. (T T 1079). The officers then conducted a search of their house. (TT 1980). Nancy and the defendant cooperated fully with the search. (T T 1081). Nancy Dechaine identified a number of ropes which were taken from her barn. (T T 1083). Of particular note was the fact that a number of knots contained on those ropes had been tied in her presence by Dennis. (T T 1083). These knots were identified. (T T 1083-84).

Following the search of the house and the barn the defendant was arrested. (T T 1089).

T` -nas J. Connolly
ttorney at Law
22'2 Fore Street
r0 Box 7563 D T.S
Portland Maine 04112
(207) 773-6460

The arrest was extremely emotional for him in which he expressed sorrow and fear but did not lose self control. (T T 1089). Nancy Dechaine visited the defendant on July 8th, in the evening and determined that he was extremely upset and shaking. (T T 1090:

Nancy indicated that she had experience driving the Toyota pickup. (T T 1096). It was a standard shift and had a diesel engine. (T T 1096). The Toyota made a different sound than a normal regular gasoline powered engine which was described as noiser. (T T 1097). In addition the vehicle had no shocks in it so that to ride on bumpy roads was a torturous experience. (T T 1097). Mrs. Dechaine then testified that based upon her examination of photographs taken of the Toyota upon its seizure on July 7, 1988, the interior of the vehicle was in a dramatically! different condition than when she had last seen it. (T T 1097-98). Specifically, there were items which had been contained in the glovebox which were now scattered all over the vehicle including the drivers seat. (T T 1098). She recalled particularized items that had been in the glovebox that now were in a different location. (T T 1098).

As to the notebook which had been found at the Henckel residence Nancy testified that this notebook had been kept at the greenhouse located at Paul's Produce. (T T 10991. She had a particularized recollection of the notebook being kept there. (T T 1099). In addition she indicated that a stamp which was used by the business for deposits had been kept at the greenhouse. (T T 1100). She testified of no recollection of seeing the notation of the check cashing stamp in the notebook prior to the time of trial. (T T 1101).

A discussion then was had with the witness as to her experience with her husband's drug use. (T T 1101). She indicated that she was aware that the defendant had experience with drug use and that it became a serious issue in the household. (T T 1102). Specifically, she described an incident in which she discovered the defendant using cocaine intravenously. (T T 1103).

T' **mas J. Connolly**
\ttorney at Law
22' e Fore Street
·0 Box 7563 D T S.
Portland. Maine 04112
(207) 773-6460

Her reaction was to give the defendant an ultimatum that if he ever used intravenous drugs again she would leave him. (T T 11031-04). This became an understanding in the household and the defendant could not be found in the possession of hard drugs or hypodermics without a serious disruption in his home life occurring. (T T 1104)

The witness testified that a number of syringes were located at the farm for the purpose of injecting animals with antibiotics. (T T 1105). The hypodermics were purchased at Knight's Feed Store in Richmond and were kept in the barn. (T T 1105).

The witness further testified that in reference to the sexual relations between herself and her husband that the relationship was normal and healthy. (T T 1109). No violence or bondage of any kind or any kind of force. was ever used in their relationship. (T T 1109). The sexual relationship was characterized as "very loving and very sensitive." (T T 1110). The sexual relations were regular and there was no disfunction. (T T 1111).

Nancy Dechaine then testified upon the defendant's reputation in the community for peacefulness and nonviolence. (T T 1112-13).

The next witness to be called in the case was Dr. Roger Ginn who was voir dired outside the presence of the jury. (T T 1134).

Dr. Ginn was a psychologist who had conducted an evaluation of Dennis Deschaine for the purpose of determining his mental state at the time in question. (T T 1134). In preparation for evaluation Dr. Ginn conducted a series of psychological tests and established a psychological profile of Dennis Dechaine and also conducted an interview and reviewed State Forensic Service evaluations for the purpose of accessing the defendant's mental state on July 6, 1988. Copies of police reports and other scientific tests were given to the psychologist for the purpose

T'- --nas J. Connolly
Mornay at Law
2213 Fore Street
. 0 Box 7563 0 T.S.
Portland. Mama 04112
1207) 773-6460

of his conducting the evaluation and he reviewed them accordingly. (T T 1135). Educational records and medical records were also examined by the psychologist. (T T 1135).

Based upon his evaluation and testing, Dr. Ginn was able to form an opinion on the issues for which the evaluation was done. (T T 1136). The defendant was determined to be significantly above average in intelligent capacity and had no specific cognitive or intellectual weaknesses. (T T 1137). His overall functioning was in the 96 percentile when placed against other adults. (T T 1137). His personality profile showed no significant emotional or psychological problems, no mental illness. (T T 1137).

In forming conclusions Dr. Ginn established that the personality profile and personality style were important in reaching ultimate conclusions. To that end the assessment of the defendant's personality profile established that he was a person who tended to look at life in an optimistic fashion and was individualistic and independent in their approach to life. In addition, he determined that the defendant was somewhat compulsive and compliant at times but showed no significant anxiety or depression. The defendant tended to avoid unpleasant things in an optimistic fashion. (T T 1138). In addition,the doctor testified that there was nothing in the defendant's profile that showed any problems with impulse control, hostility or underlying aggression or antisocial behavior. (T T 1138). Of consequence was the defendants drug history but he was not considered drug dependent. (T T 1138). The defendant was characterized as a drug user but not chemically dependant. (T T 1138). Drug use had never hampered his interrelationship with friends or acquaintances. (T T 1139). The doctor also testified that the defendant did not appear to be sexually disfunctional. (T T 1139).

As it related to the mental state on July 6, 1988 Dr. Ginn was able to determine that the defendant was under the influence of speed at the time of his being lost in the woods.

-nas J. Connolly
kttorney at Law
.22'2 Fore Street
PO Box 7563 DT.S
Portland. Maine 04112
12071773-6460

(T T 1139). There was no indication that he suffered from any mental disease or defect or that he could not differentiate between right and wrong at the time in question. (T T 1139). The defendant was not delusional but his memory was spotty. (T T 1139).

The doctor then discussed the relationship of the defendant's personality profile with his statements to police officers. (T T 1140). Dr. Ginn was able to state that the defendant's reaction to questioning by the police was consistant with his personality style and was consistant with his concepts of self esteem and concern for his family. (T T 1141). His profile was consistant with an adverse reaction to police questioning on a serious criminal charge. (T T 1141). The doctor further testified that the profile established the nervous reaction that manifested at the time of arrest was consistant with the defendant's explanation of events overall. (T T 1141).

The doctor stated the spotty memory of Dechaine would be consistant with amphetamine use but that paranoia or psychopathic reactions were inconsistant with the drugs use at the time. (T T 1142-43). There was no indication that the drug had caused the defendant any kind of disassociative reaction. (T T 1143).

The possibility of a drug induced psychosis was discussed with the doctor. (T T 1143). According to Dr. Ginn, the literature on drug indiced psychosis established that in order for such a reaction to occur there need be a predispositon or an aggravating fact which contributed with the amphetamine used to cause a psychotic reaction.(T T 1143).

Dr. Ginn indicated that a torture-murder was completely inconsistant with the defendant's personality profile, that the only explanation would be a drug indiced psychosis, and that the possibility of a drug induced psychosis was unrealistice given the fact that the defendant did not have the underlying psychological profile nor the presence of any aggravating factor. (T T 1144).

Following voir dire the Court disallowed Dr. Ginn's proffered testimony. (T T 1155-57)

Two additional witnesses were called by the defendant who established his reputation in the community for peacefulness and

T[1] -mas J. Connolly
attorney at Law
22'2 Fore Street
. O Box 7563 D TS
Portland. Mane 04112
(207)773-6460

nonviolence as well as his reputation for truthfulness and voracity. In addition, a variety of particularized incidents were described to the jury which showed the defendant had an abhorrence for blood, and gore and as to general squeamish nature.

The final witness called by the defense was the defendant. The defendant testified that he was not involved in any way whatsoever with the kidnap and murder of Sara Cherry. (T T 1176).

The defendant provided his background and his family history. (T T 1176-79). The defendant explained his schooling and his establishing the farm business. (T T 1179-81); he described his relationship with his wife and their marriage together. (T T 1182-84) .

The defendant testified that his business was doing very well; in July of 1988 but that in July 1988 it was quite period. (T T 1188-89).

The defendant discussed his trip to Madawaska in which he indicated it was the first vacation he'd had in a while and it was a very calm and peaceful time. (T T 1191-92). He indicated that he arrived in Madawaska on the Fourth of July weekend and returned to his home on the late evening of July 5, 1988. (T T 1190-94).

The defendant testified further as to his background of drug use, commencing with smoking marijuana as a youth and leading to occasional cocaine use as he became older. (T T 1198-99). The defendant described his first intravenous drug use and how he became involved with it. (T T 1200). The defendant then described his initial encounter with amphetamine use during college. (T T 1203).

The defendant explained how he purchased the drugs that were used by him on July 6, 1988. He and his wife had gone to Boston to see some friends off for a trip to Bangladesh. A visit to the Science Museum in Boston occurred at which point the defendant made a purchase in the lavatory of what he was informed was speed. (T T 1208). The defendant purchased the drugs on impulse and kept them hidden from his wife for the fear that the exposure of his purchase would cause marital discord. (T T 1209)

T'- -mas J. Connolly
4ttorney at Law
22[1] 2 Fore Street
,/ O Box 7563 DTS.
Portland. Maine 041 t2
1207) 773-6460

On July 6, 1988, the defendant testified that he woke up early in the morning in a normal frame of mind. (T T 1210). The greenhouse project that he had been working on needed attention but there was no deadline approaching. (T T 1211).

After his wife left for work, the defendant drove his pickup truck to West Gardiner Beef Company in Gardiner, Maine to pick up some birds that had been slaughtered before the trip to Madawaska. (T T 1211). The defendant left from the West Gardiner Beef Company between 9 and 10 o'clock in the morning. (T T 1212). The defendant testified that it took about half an hour to get there and he arrived between 9:30 and 10 o'clock in the morning. (T T 1213). Previous testimony from Sharon Gilley in that State's case established that the defendant had arrived at the West Gardiner Beef Company between 10:30 and 11 o'clock in the morning. (T T 1213). The defendant felt that her time frame was roughly consistant with his recollection. (T T 1213). The defendant had conversation with the Gilley's and picked up his birds. (T T 1213-14). The defendant stated he left West Gardiner Beef Company around 11 o'clock. (T T 1214).

The defendant took a circuitious route home and drove aroundi for a period of time. (T T 1215). The defendant did recall seeing Justine Dennison on the way back from Gardiner Beef Company to his house, (T T 1215-16).

The defendant arrived at home and put the birds in the freezer and prepared himself some lunch. (T T 1216). The defendant then went out to the barn to begin work on the project. The defendant did not feel like working, hoping to continue his vacation following his trip to Madawaska. (T T 1216-17).

The defendant, while in the barn, thought it would be a perfect opportunity to use the drug which he had purchased a month or so earlier at the Boston Museum of Science. (T T 1217). The defendant had not planned to use the drug but basically found an opportunity when his wife was away and when work was at a nondemanding level. (T T 1217). The defendant obtained some syringes and the drug as well as a mixing device and got back

T' mas J. Connolly
\ttorney at Law
22'2 Fore Street
,-O Box 7563 DTS
Portland. Maine 04112
(207) 773-6460

into his pickup and drove from the farm. (T T 1218).

The defendant went to Wild°s Point which is a wildlife refuge on Merrymeeting Bay. (T T 1219). The defendant went there because it was a peaceful place to view water fowl and scenery and it was a good opportunity for him to take the drug in private. (T T 1219). While there the defendant did use some of the drug. (T T 1219). He was concerned about the drug in that he had no experience with it and therefore used a small quantity while at Merrymeeting Bay. (T T 1219). The defendant testified that he had a disappointingly small reaction to the drug and went out walking for a period of 15°20 minutes. (T T 1220). Because the tide was out there were no waterfowl around for him to see and the mud flats made walking difficult. (T T 1220). The defendant returned to his truck and drove around again. (T T 1221). The defendant drove to the Litchfield Corners area and onto the Hollowell Road. (T T 1222). At the time the defendant did not know the names of the roads but had since learned the locations based upon his study of the map. (T T 1222) The defendant parked his truck on a woods road in order to explore new territory and look for fishing holes. (T T 1222). The defendant consumed more of the drug. (T T 1223). This time the drug did have a noticeable effect. (T T 1223).

The defendant described the drugs effect as a sense of heightened awareness and increased lucidity. The defendant indicated that he did not feel remarkably different just more energetic and aware. (T T 1223). He did not hallucinate nor did he have feelings of grandeur nor violence or anger. (T T 1224)

Following his exploration of the area, the defendant got back into his truck and went down the Hollowell Road. (T T 1224). Time references were somewhat vague in that he was under the influence of the drug at the time. (T T 1224). The defendant did stop frequently and explored side areas of the roadways in the area. (T T 1224). The defendant could not recall what particular area he was in due because of his intoxication as well as his unfamiliarity with the area. (T T 1124).

T[1] - nas J. Connolly
\ttorney at Law
22[i] 3 Fore Street
. 0 Box 7563 D TS.
Portland. Maine 04112
(207) 773-6460

Following one of his sorties into the woods the defendant attempted to locate his truck but he could not find it. (T T 1225) Even at the time of trial the defendant could not be sure where the truck had been parked. (T T 1225). The defendant had been walking in the woods for some time when he tried to locate his truck. (T T 1225). He kept looking during the course of the late afternoon. (T T 1225).

As darkness approached the defendant increased his efforts to locate his truck. At no time did he loose consciousness nor was there a space or void in his memory, only a fuzziness of recollection. (T T 1226). The defendant indicated that he had been lost in the woods previously and found the experience disquieting but he was no where near panic or in a frenzy on July 6, 1988. (T T 1227). The defendant walked around for a couple of hours until he heard the noise of a generator which attracted his attention. (T T 1228).

Upon reaching the noise of the generator the defendant came upon a clearing in the roadway. (T T 1229). He walked down the roadway until he came upon Mr. & Mrs. Buttrick. A conversation ensued between them in which the defendant explained that he could not find the location of his truck. (T T 1230). Mr. Buttrick drove the defendant around until they made police contact.

The defendant had been embarassed by his drug use and was concerned that it would be discovered by Mr. Buttrick. (T T 1231) To that end he gave a fictitous story as to his background and what he was doing in the woods. (T T 1231-32). The defendant indicated that he had a large bruise on his bicept which he was very concerned would be seen as a injection mark. (T T 1232).

Upon the flagging down of the sheriff's vehicle the defendant informed them that his truck was missing and that he was unable to find it. (T T 1235).

Upon being transferred from the sheriff's vehicle to the command post where the search had been coordinated, the defendant was placed in another vehicles back seat.

7 **nas J. Connolly**
tttorney at Law
22'2 Fore Street
PO Box 7563 D T.S.
Portland. Maine 041 t2
(207) 773-6460

The defendant was questioned by Deputy Reed. (T T 1237). The defendant testified that he had. been confronted by deputy Reed with the notebook and auto receipt. The defendant indicated that he believed that the receipt had been in his truck but was confused about the notebook in that the last time he recalled seeing it it was at Paul's Produce. (T T 1238). The defendant told deputy Reed that the notebook may have come from the truck but more likely it came from his business. The deputy continued questioning the defendant asking him where he had been during the day. (T T 1239). The defendant informed him that he had been wandering the area looking for his truck and that he made several stops on logging roads earlier. (T T 123). Deputy Reed wanted to know if the defendant had been in a driveway. The defendant indicated that the question was very pointed and difficult, the deputy's voice rising. (T T 1239). The defendant testified he was intimidated. (T T 123). The defendant said that he did not recall turning into a driveway, that to the best of his knowledge he had only been on woods road during the course of the day. (T T 1239). The defendant did indicate that he did stop at one particular time to urinate. (T T 1240). Questioning became increasingly heated and the defendant "really started getting scared of that man because everytime I opened my mouth he twisted everything I said around and threw it back at me in a form I had never uttered". (T T 1240). The deputy then informed the defendant that his notebook and paper had been found in the driveway where a girl was missing. (T T 1240). The defendant indicated that he had no idea what the questioning was about and that he wasn't involved with the disappearance of the girl. (T T 1240).

The defendant testified further that as the questioning continued, the level of intensity increased. He felt that the officer wasn't listening to his answers and was deliberately trying to misconstrue what he said. (T T 1241). He did not recall Miranda Rights being read at any time to this point. (T T 1242).

7 **nas J. Connolly**
tttorney at Law
.22¹ ₃ Fore Street
PO Box 7563 DTS.
Portland Maine 04112
(207) 773-6460

Due to the heatedness of the questioning the defendant requested that he not answer more questions. (T T 1241). The officer came back and read the defendant Miranda Warnings at this time. (T T1242). The defendant again requested not to answer any questions. (T T 1242®42).

In reference to the keys which were ultimately found in the backseat of the sheriff ® S vehicle, the defendant testified that during the course of questioning by officer Reed he had believed he°d left his keys in the Toyota. (T T 1243). This was his habit or practice. (T T 1243). Upon realizing that he had not left his keys in the Toyota and realizing he was being accused of the abduction he panicked and tried to hide his keys. (T T 1244). The reason he did that was so as not to have another "go around" with officer Reed. (T T 1244). The defendant felt that the hiding of his keys would avoid another hostile confrontation by the officer. (T T 1245).

The defendant was then driven by the police officers around the local area looking for his truck. (T T 1246). In earnest he attempted to locate his truck but could not. (T T 1246). Following the search he was returned to the command post at which' point he was confronted by Sheriff Haggart with his own truck keys. (T T 1247). Questioning then occurred in which the defendant explained why he put the truck keys there, which was his fear of deputy Reed. (T T 1247). The defendant told sheriff Haggart that he felt that deputy Reed was "out of control'. (T T 1247). He told sheriff Haggart that he was afraid of deputy Reed and requested not to be left in the car alone with him. (T T 1247).

The defendant testified that this was his first questioning by police officers at any time, that he was trying to be cooperative and was frightened. (T T 1248). The defendant was in the police vehicle for several hours and subjectively felt he could not leave. (T T 1248). Subsequently, Detective Hensbee appeared. This was several hours after having been in the police car. (T T 1249.)

-nas J. Connolly
1ttorney at Law
22 Fore Street
.- O Box **7563** DT.S.
Portland. Maine 041 t2
1207) 773-6460

Detective Hensbee reassured the defendant by inquiring as to his well being. (T T 1250). The detective then asked questions about the defendant s background although no Miranda Warnings were read. (T T 1250). The detective then asked if he was willing to talk about the events of the evening. (T T 1250).' The defendant then requested to go home. The defendant answered questions in exchange for assurances of being driven home following his statement. (T T 1251).

The detective then discussed the issue of forensics with the defendant. (T T 1251). The defendant had known that his truck had been discovered. The detective told the defendant that if someone had been in his truck with him, through various processes, the police would be able to determine that. The detective then requested that the defendant provide to him a written consent to search the truck. (T T 1252). This he was willing to do because he believed that it would "free me from this ordeal . (T T 1252). The defendant did not disclose his illegal drug use to the police officer. (T T 1253). The officer did inquire as to the bruise on his left arm. (T T 1253). While still in the police car the defendant discussed his activities oft the day. He answered the questions in the same manner as with deputy Reed prior to the confrontation. (T T 1253).

After approximately an hour, the defendant was transported to the Bowdoinham Town Hall. (T T 1254). The defendant explained to detective Hensbee that the reason he had hidden the keys was that he was afraid of a confrontation with deputy Reed. (T T 1254). He told detective Hensbee after a discussion of the notebook and the receipt that someone was trying to "set him up". (T T 1255). He indicated that he was quite worried at this time about being accused of the abduction of the young girl. (T T 1255

On direct questioning by detective Hensbee the defendant indicated that he had no knowledge of the disappearance of the girl. (T T 1256). He was very nervous and scared during this time and had become confused particularly after the confrontation with deputy Reed. (T T 1256). While at the Bowdoin Town Hall he permitted his photograph to be taken

? "as J. Connolly
ttorney at Law
.22'3 Fore Street
PO Box 7563 DT S
Portland, Maine 04112
(207) 773-6460

in which he lifted up his shirt and exposed his front and back. (T T 1257). He testified that his clothing had been dry during this period of time. (T T 1258).

The defendant was then taken home by detective Hensbee after the processing at the Bowdoinham Police Department. (T T 1263). Upon his arrival home the defendant went straight upstairs and greeted his wife. (T T 1264). He was extremely worried at this point and had no indication whatsoever that the young girl was not alive. (T T 1264). His wife was very upset at the news that he was being questioned for the abduction of a girl. In addition the defendant disclosed his drug use which further upset her. (T T 1264). The defendant did not take a shower at this time. (T T 1264). The defendant removed his clothes and attempted to rest, but was unable to sleep. (T T 1265).

The next morning on July 7, 1988 the defendant continued to worry about the events of the previous evening but hoped that the missing girl would be found and that he would no longer be involved. (T T 1256). The defendant that morning went and contacted attorney George Carlton. (T T 1256).

The defendant returned home in the afternoon when detective Hensbee and another police officer arrived. (T T 1267). The detective came into his house with a tape recorder and stayed for a short period of time. The defendant indicated that he had hired counsel and chose not to speak to the detective. (T T 1267),

The next day on Friday the 8th the defendant arose early in the morning and went through his normal routine. (T T 1270). He subsequently met with his attorney in the late morning and when driving back from Bath he heard on the radio that the missing, girl had been found dead. (T T 1270). The defendant reacted very strongly to the news in that he had been hoping all along that Sarah Cherry would be found or that she would return by herself and that everything would be taken care of. Once he determined that she had been found in the woods he was very upset and concerned. (T T 1270). The defendant had been informed that he was a suspect in the case and resigned himself to the fact that he was to be arrested. (T T 1271). Shortly thereafter detective Hensbee arrived and the defendant asked if he was being implicated

T· -nas J. Connolly
Ittorney at Law
,22' z Fore Street
PO Box 7563 D TS
Portland, Maine 04112
(207) 773-6460

in Sarah Cherry's murder. (T T 1272). Detective Hensbee presented a search warrant. The defendant then procured his sneakers for the detective as well as the other articles of clothes worn on July 6, 1988. (T T 1273).

During the course of his testimony the defendant was asked about a penknife that had been said to have been on his keychain. (T T 1274). He indicated that in July of 1988 no such penknife was attached to the keys. (T T 1274). In the winter of 1988 such a penknife was on the keychain but not during the summer months. (T T 1274). The defendant had removed it from the keychain and used it during the spring cutting season to open bags of pro-mix for seedlings grown in the greenhouse. (T T 1274)1 The defendant indicated that he routinely carried around knives to work in the harvesting of vegetables and crops. (T T 1275). The defendant indicated that he had a variety of knives and had a habit of loosing them. (T T 1275). The defendant then was asked about a particular knife taken from the interior of the Toyota pickup truck. The attorney for the State objected.

The basis of the objection was lack of an adequate foundation in that Dechaine had testified just previously that the particular knife being offered he had lost. Since he did not know where the knife was located there was no foundation. Counsel for the defendant indicated that Judith Brinkman had established the foundation by identifying it as having come from the truck. In addition, the Court inquired of the relevancy of the object. The Court was told that an inference could be drawn from the knife; given the testimony of the medical examiner in which the stab wounds to Sarah Cherry were of a very small nature,' the availability of a large knife to the defendant was of consequence. This was so because as a person who routinely used knives in his work it was more probable that he would use a larger knife than a small penknife located on a keyring. (T T 1276-77). The Court denied the introduction of the exhibit.

Th nmas J. Connolly
ttorney at Law
22'2 Fore Street
J Box 7563 DTS
Portland. Maine 04112
(207) 773-6460

The defendant was then questioned as to the rope which he used in his work. (T T 1278). He was able to identify a large number of ropes seized from his property and vehicle. (T T 1278-79). He testified that he used rope constantly in his farm work and kept rope in his truck as well. (T T 1279). He testified that he kept different lengths of ropes in the back of his truck for securing different size loads as part of his work. (T T 1279), The defendant was then questioned as to the types of knots that he would tie as a matter of routine. (T T 1280). He testified that the used primarily half hitches and full hitches in tying his cargo loads. (T T 1281). A variety of pieces of rope with those types of knots were then presented to the defendant and he identified them as being his knots. (T T 1280-82), The knot used to tie Sara Cherry's hands was an entirely different kind.

Following this testimony the defendant described his arrest. This was horrifying to him. (T T 1283). He was transported to the police station in Bath and booked. (T T 1283). In the late afternoon the defendant was transported again and his emotional condition was tenuous. (T T 1284). He was extremely distraught at being arrested and being charged with the murder when he had no police contact in his life. (T T 1284).

While at the jail deputy Westrum came to where the defendant was being held. (T T 1284). The defendant recognized him as some-one who had been at the command post the night of July 6th. (T T 1285). Deputy Westrum asked him if he needed anything or if he could be of help. He inquired how the defendant was doing. The defendant informed deputy Westrum that he was doing terribly and that he could not believe what was happening. (T T 1285). Deputy Westrum then asked him if was going to be OK. The defendants said he didn't know and was really worried. A conversation ensued, in which the defendant became emotional, expressing worry about his family and the nature of the charge. (T T 1285). The defendant testified that he never was told that his attorney was present and! wished to see him. (T T 1286). He indicated that had he known his attorney was present he would have wanted to see him. (T T 1286. The defendant informed deputy Westrum he was shcoked and horrified

T`-nas J. Connolly
(ttorney at Law
22! 2 Fore Street
(-O Box 7563 D.TS.
Portland. Maine 04112
(207) 773-6460

by the whole incident and that a mistake must have been made. The defendant kept repeating that he didn't know why this was happening. The defendant denied ever saying "I don't know what ever made me do that." (T T 1286). The defendant denied at any point making an admission indicating guilty knowledge or amazement at his participation in such a crime. (T T 1286). The defendant testified that he informed deputy Westrum he had not committed the offense. (T T 1286). The defendant denied saying that something inside of him must have made him do the crime. (T T 1287). In addition, the defendant denied every having made an admission in reference to recalling Sara Cherry's face when it was seen on the news. (T T 1287). In fact, the defendant testified that he never had any recollection of Sara Cherry's face and never had met her in his life. (T T 1287-88). The only time the defendant had ever seen Sara Cherry, according to his testimony, was in the context of they case. (T T 1288).

At no time during the course of the questioning did the defendant have a subjective belief that he committed the offense. T 1288). In addition, at no time during the course of the questioning did he admit his responsibility for the offense. (T T 1288).

Immediately thereafter the defendant was brought in for questioning by the State Police Detective at which point the defendant requested his counsel. (T T 1289).

While being transported to the Lincoln County Jail the defendant was made aware that the publicity of the case was going to be causing significant trouble while in jail. (T T 1290). The defendant became concerned about his physical wellbeing, the clear' inference from the police officers was that his safety was in 'question. (T T 1290). Upon entering the jail the defendant was interviewed by officers Maxey and Dermody about his medical history and background. (T T 1291). He was then taken to the 'shower. (T T 1291). He then told the officers that he should be protected. (T T 1292). The reason that he requested that was his fear caused by the officers statements. (T T 1291). The defendant denied the admissions that were testified to by the correctional officers. The defendant indicated that "I told them that I'm the

T ~asJ.Connolly
ttorney at Law
22'2 Fore Street
POBox7563DTS
Portland. Maine 04112
(207) 773-6460

!man accused of the murder of Sara Cherry." (T T 1292)(emphasis ;added). The defendant testified that he never intended to make :admissions as to the murder of Sara Cherry as he was not involved. He stated that at the time of his processing he did not know the word "isolation" applied to such a sitution. He indicated that the officers were most probably mistaken in that the sentence which he actually used was analogous to the phrase which they quoted. In addition, he indicated that had he said those words they were clearly an error of symmetrics. (T T 1292). It was not Huntil the next morning that the defendant understood that these police officers felt that he had mad an admission. (T T 1292). Hel indicated that at no point did he intend to make admissions or confessions and that anything testified to was simply either dmistaken or taken out of context. (T T 1293).

Dechaine was then questioned as it related to the red Toyota. He discussed the accident and damage to the right front which resulted in him obtaining an estimate to repair the damage. It was this estimate that was discovered in the Henkel driveway. (T T 1294). The accident took place in May or June and the receipt was in fact kept in his truck.

The defendant was then questioned about the notebook found ion the Henkel driveway. He indicated that to the best of his belief the notebook was kept at Paul's produce. (T T 1295).

The defendant was then shown a series of photographs of the ired Toyota pickup. He examined the photographs which were taken by the State Police at the time the vehicle was impounded. (T T 1296). He testified that the interior of the vehicle was radically different then when he had left it. (T T 1296). He indicated in particular that items which had been contained in the glovebox and in other sections of the vehcile had been moved to the driver's side. (T T 1296).

The defendant further testified that at the time he left his vehicle he did not lock the doors. (T T 1296). He testified that in order to lock his door he would have had to press the lock down and hold the handle and slam it closed. (T T 1296). He then testified that he had a habit in practice of not locking the truck. (T T 1296). He also indicated he he had a habit of leaving the

as J. **Connolly**
Ittorney at Law
22 ₂ Fore Street
PO Box 7563 D T.S.
Portland. Marne 04112
(207) 773-6460

keys in the truck. (T T 1297). He testified that the tires on the Toyota were snow tires and they were fairly new. (T T 1297).

A photograph was then shown to him of the location of his Toyota when it was impounded by the police. (T T 1298). He could not recollect whether or not he had parked the vehicle there. (T T 1298). He testified that the last recollection he had of parking the vehicle was in the late afternoon of July 6, 1988 when he got lost in the woods. (T T 1298).

Decahine then testified upon reviewing photographs of the Henkel residence that he had never been to thehouse. (T T 1298). He testified that he had not driven up the Henkel driveway and stopped to urinate. (T T 1298).

Dechaine then was questioned as to the testimony of Dr. Roy He indicated that the testimony Dr. Roy provided did not strike any cord of memory within him in that he had not committed the offense. (T T 1299). It had also horrified him.

The defendant then indicated that following his arrest his fingernails were scraped, his clothing was taken and he was examined thoroughly. (T T 1300). He testified that no blood was on his clothes. (T T 1300).

Finally he testified that he had never been to the Henkel residence and had not murdered Sara Cherry. (T T 1300).

Following the defendant's testimony the defendant made an offer of proof which will be discussed at length in the section below. Thereupon the defense rested and two rebuttal witnesses were called by the State. The only testimony of consequence in rebuttal was that of Dr. Ronald Roy. That testimony is the subject of argument number IV in Appellant's Brief.

T` -,nas J. Connolly
\ttorney at Law
22'2 Fore Street
rO Box **7563** D **TS**
Portland. Maine 04112
(207) 773-6460

2. THE OFFER OF PROOF

Following the testimony of the defendant Dennis Dechaine in which he denied making admissions as to the commission of the offense and also vehemently denied his involvement in the murder of Sara Cherry, a chambers conference was conducted in reference to the final phase of the defendant's case. That phase of the case involved an attempt by defense counsel toestablish reasonable doubt in the minds of the jury as to the defendant's guilt by establishing that an alternative suspect had motive, opportunity and means to commit the homicide. To that end, defense counsel had served a number of subpoenas upon witnesses in the case in an effort to establish the defendant's innocence.

Following the issueance of the subpoenas, but prior to the taking of testimony, counsel for one of the witnesses contacted the Court in an effort to object to his client's having to testify at the trial. According to the statement provided by the Court to counsel (C C T 3/16/89 at 1-3), Attorney Joseph Field who represented subpoenaed witness Douglas SEnecal contacted the Court about the subpoena. In addition, Attorney David Marchese, who represented the Department of Human Services as well as a witness subpoenaed from the Department of Human Services, Jennifer Dox, also objected to the attempt by the defendant to introduce alternative suspectevidence. The prosecuting attorney also objected to the calling of any of the witnesses that the defendant attempted to present.

On the previous evening, March 15, 1989, the Court had requested that the defendant, through counsel, disclose the trial strategy in reference to the named witnesses (C C T 1-3). Counsel for the defendant demurred, requesting that he not be required to disclose the theory of the defense at that time in the proceeding. (C C T 3/15/89 at 2). Following argument, the Court on March 15, 1989 declined to force counsel to disclose the theory of the case until the following morning. (C C T 3/15/89 at 5-6).

On March 16, 1989 the attorney for the defendant was required to disclose the trial strategy and the purpose for which

T1·-**mas J. Connolly**
ttorney at Law
2[1] Fore Street
J Box 7563 D TS
Portland, Maine 04112
(207) 773-6460

Douglas Senecal and Jennifer Dox amongst others had been subpoenaed. It should be noted that this was done sua sponte by the Trial Court following telephone contact by counsel for the witness and not based upon an objection by counsel for the State at the time of trial.

At the hearing in chambers on March 16, 1989 an offer of proof was made as to what would be testified to if defense counsel were to be allowed to proceed with the defense as planned. To that end, the attorney for the defendant provided the court with a detailed offer of proof as to the anticipated testimony of the witnesses subpoenaed.

The offer of proof is located in a separate transcript marked as Chambers Conference of March 16, 1989 and subject of an impoundment order by the Law Court. The transcript itself is 30 pages in length and will be summarized for the purpose of this appeal with a delineation of the factual relations which counsel for the defendant presented to the Court pursuant to the offer of proof.

The attorney for the defendant indicated that Douglas Senecal and Jennifer Dox of the Department of Human Services were to be called as witnesses as well as others listed on the witness list filed with the Court. If their testimony was to be allowed, the attorney for the defendant would be able to prove certain facts. Those facts are outlined below in the offer of proof. However, it should be underscored that in addition to the facts that were known to the defendant's counsel at the time of the offer of proof, certain additional facts were likely to be developed during the course of the trial. One of the prime vehicles for truth seeking in our system of law is cross examination. The right to confront and compel favorable witnesses also generates facts which otherwise would not come to light. It is important, upon reviewing the offer of proof, to understand that the very dynamics of the trial were likely to lead to additional information being developed. This is so because in the fulcrum of testimony and cross examination, facts which were not necessarily known to the defendant would be revealed. One of the essential rights as stake in this

T*^mas'o'o"ouY
ttorney at Law
2'2 Fore Street
J Box 7563 DTS.
Portland. Maine 04112
(207) 773-6460

case is the ability of a defendant to present a defense and to generate evidence through testimony in the cruciable of a trial. The rights to confront and present witnesses inherently is designed to facilitate the truth-seeking process during the course of a trial. By permitting the confrontation and compelling of witnesse lcounsel for the defendant anticipated that additional material facts would develop. Therefore, a reading of the offer of proof should not be limited solely to the particularized facts that the defendant wished to introduce, although those facts would warrant admissibility of the testimony. It was anticipated that the confrontation and cross examination would yield both heat and light in an effort to prove that a reasonable doubt existed as to the defendant's guilt .

In its offer of proof, the defense established that in 1983, the decedent, Sara Cherry, was living with a 13 year old step-sister at the Crosman residence located in Bowdoinham, Maine. (C C T 3/16/89 at 3). At the time of the abduction and murder of Sara Cherry on July 6, 1988, the decedent still resided in that household which was located in Bowdoinham, Maine. (C C T 3/16/89 at 3). Jackie Crosman is the daughter of Sara Cherry's ex-step-father whose name is Douglas Senecal. (C C T at 4).

The defense in the case was that the defendant did not commit the homicide. (C C T at 4). Counsel explained to the Court that in order to fully and fairly develop that defense, it was necessary for the defendant to state a reasonable alternative perpetrator. (C C T at 4). The offer established that during July 1988, Douglas Senecal, who at the time of trial was married to Maureen Senecal, formerly Maureen Crosman, was under indictment in Sagadahoc County Superior Corut, docket number 88-119. (C C T at 4). That Sagadahoc County docket was a two count indictment alleging in Count I, that on August 1, 1983 in Sagadahoc County, Douglas Senecal had engaged in unlawful sexual contact with Jackie Crosman who at the time had not attained her fourteenth birthday. Count II was an identical count with a different date of sexual contact of June 1, 1983. (C C T at 4). These were ClassCviolation for which Senecal faced a maximum period of incarceration of five years

T' -mas J. Connolly
attorney at Law
22[illegible] Fore Street
-O Box 7563 DTS
Portland. Maine 04112
(207) 773-6460

per count.

The indictment in the Sagadahoc County case was returned by the Grand Jury on April 5, 1988. On April 22, 1988 Douglas Senecal was arraigned on the unlawful sexual contact charges and represented by attorney Joseph Field. (C C T at 5). Senecal entered a plea of not guilty at that time and bail conditions were set. (C C T at 5). Included amongst the bail conditions was the fact that Douglas Senecal was to have no contact, direct or indirect, with Jackie Crosman. (C C T at 5). Jackie Crosman was at that time living at the Crosman residence with Sara Cherry. (C C T at 5).

The offer of proof further established that on June 20, 1988, Douglas Senecal was notified that his case was on the first page of the Sagadahoc County jury trial list which was to commence with the calling of the list on July 14 (jury selection was to commence on the 18th and the 22nd). (C C T at 5). All motions for continuance had to have been filed according to the docket entries by July 8, 1988. (C C T at 5). It should be remembered that the date of the homicide involving Sara Cherry was July 6, 1988, approximately one week before the unlawful sexual contact charge was to be tried. (C C T at 5).

On July 5, 1988, Jennifer Dox of the Department of Human Services was sent to the Senecal residence for the purpose of conducting interviews with Douglas Senecal, his wife and his children. (C C T at 5). The purpose of Jennifer Dox' visit on July 5, 1988 to the Senecal residence was to locate Jackie Crosman who at that point, and at the time of trial, was missing. (C C T at 5). During the course of her investigation, Jennifer Dox obtained statements and admissions from Douglas Senecal, from the children and from Maureen Senecal. (C C T at 5-6). These statements were reduced to writing in affidavit form and filed in the Sagadahoc County docket as part of a motion to continue the criminal case. (C C T at 6).

According to the offer of proof, Jennifer Dox,in an affidavit, stated that admissions were made by Maureen Senecal and Douglas Senecal to the effect that they assisted, facilited, and helped

T} --nas J. Connolly
ttorney at Law
22¹ ₂ Fore Street
J Box 7563 D T.S.
Portland. Maine 04112
1207) 773-6460

in the removal of Jackie Crosman from the State of Maine so that she would be unable to testify in the upcoming unlawful sexual contact charge. (C C T at 6). A separate statement was obtained from one of the children, nine year old Aaron, that Jackie Crosman. had to leave the Senecal house and to "go where it was safer." (C C T at 6).

On July 6, 1988, Sheriff Haggett, who was also subpoenaed by the defense in the case, and who had also previously testified in the case, was investigating the disappearance of Sara Cherry. (C C T at 6). Sheriff Haggett filed a report which was used by Assistant District Attorney for Sagadahoc, Jeffrey Rushlau, in a motion to continue the Senecal case in reference to the disappearance of Jackie Crosman. The offer of proof established that Sheriff Haggett filed an affidavit which stated that on July 6, 1988 at 2300 hours, he was on the Lewis Hill Road in Bowdoinham investigating the disappearance of Sara Cherry. The sheriff met with the decedent's step-father, Christopher Crosman, who was the natural father of Jackie Crosman. (C C T at 6). Chris Crosman informed Sheriff Haggett that he had received a telephone call from Jackie Crosman about a week earlier indicating that she had been in San Diego, California and was staying in a Y.M.C.A. close to the bus station. According to Sheriff Haggett, Jackie Crosman told Christopher Crossman that her mother, Maureen Senecal, had paid her way to California. (C C T at 6).

The offer of proof continued by establishing that on July 13, 1988, following the homicide, the primary investigating officer in the Decahine case, Detective Al Hendsbee, received a telephone call from a subpoenaed witness, Bonnie Holiday from the Department of Human Services. (C C T at 6-7). Bonnie Holiday advised Detective Hendsbee that on the 12th of July she received phone call from an "anonymous" informer. (C C T at 7). The informer was not anonymous in that she had been known to the Department of Human Services worker previously, but the worker chose not to disclose her name. (C C T at 7). The anonymous caller was determined by the offer of proof to be Pamela Babine. (C C T at 7). According to Bonnie Holiday, this witness provided

T' nas J. Connolly
,ttorney at Law
22'2 Fore Street
PO Box 7563 0 T.S.
Portland. Maine 04112
(207) 773-6460

information and an opinion that Douglas Senecal was involved in the Sara Cherry homicide. (C C T at 7).

Bonnie Holiday advised Detective Hendsbee that Senecal had several allegation of sexual abuse against his daugher. (C C T at 7). Hendsbee was told in reference to the Sara Cherry case that Senecal had accusation of sexual abuse against family members. (C C T at 7). Bonnie Holiday indicated that the family structure of the Senecals was violent in nature. (C C T at 7). Bonnie Holiday further indicated that Senecal "has been behaving real strange since the death; no sad, but strange. The whole family went to the funeral except for Doug Senecal." (C C T at 7). The relationship between Douglas Senecal and Sara Cherry was then established by Bonnie Holidya which related to the family ties between the two. (C C T at 7).

According to the information provided by Detective Hendsbee which he received form Bonnie Holiday of DHS, the witness, Pamela Babine, provided statements as to aberrant behavior by Senecal on the day of the homicide. (C C T at 7). To that end, Pamela Babine, who would also have been called at trial, stated that she took a bicycle to Senecal's residence to give it to one of Senecal's daughters and that Senecal was sahking so badly that he couldn't hold the bicycle. (C C T at 7). That incident occurred either the day of the homicide or immediately following the homicide but before the body was located. (C C T at 7). In addition, witness Babine would have testified that Sara Cherry's body was found in Bowdoin on the property of a person who used to work for Douglas Senecal. (C C T at 7).

According to the information provided by Bonnie Holiday, the information provided by Pamela Babine had been accurate in the past and was generally reliable. (C C T at 8). Pamela Babine it was established had been the tenant of Douglas Senecal at the time, of the observations of Senecal's behavior. (C C T at 8).

The offer of proof continued by counsel for the defendant providing the docket sheet for the Senecal case in Sagadahoc County Superior court. The essential information on the docket sheet established that on July 15, 1988, a motion for continuance

AasJ.ConnollY
ttorney at Law
22 1/2 Fore Street
PO Box 7563 D .T S
Portland Mane 04112
(207) 773-6460

'was filed by JeffreyRushlau, the Assistant District Attorney for Sagadahoc County,who alleged in justification for his request for a continuance, "an essential witness is absent from this area and unavailable for hearing. On information and belief, this witness s outside the state at least in part due to the activities by the defendant and his family, and the State is unable to locate the ,witness." (C C T at 8).

According to the offer of proof the motion to continue was 'granted based on the affidavit of Jennifer Dox and by the information provided by Sheriff Haggett. (C C T at 9). Both Jennifer Dox and Sheriff Haggett had filed affidavits in support of the emotion to continue in the Sagadahoc case. (C C T at 9). On July 26, 1988, the case was reset for jury trial for the August list and a motion for continuance was again requested by the Assistant District Attorney Jeffrey Rushlau due to the unavailability of the witness. (C C T at 9). The case had been scheduled for the October trial list but had not been reached. (C C T at 9).

The case against Senecal was ultimately dismissed over State objection due to the absence of the witness.

Counsel for the defendant further established that two weeks rior to the Dechaine trial, Senecal had been served with a subpoena. (C C T at 9)® Senecal at that time claimed a Fifth HAmendment privilege and requested the presence of counsel and refused to answer any questions. (C C T at 9).

After consultation with the attorney for witness Senecal, a ,,meeting was had between Senecal, counsel for the defendant, counsel for Senecal, and the attorney for the State prosecuting Dennis 'Dechaine. (C C T at 9).

During the meeting between Senecal and counsel on March 2, ,1989, restrictions were placed upon the attorney for Dennis Dechaine in asking questionsof Senecal. (C C T at 10). No discussion of any issues relating to Jackie Crosman were allowed during that interview and other ground rules limited the scope and focus of defense counsel's inquiry. (C C T at 10).

During the course of the March 2nd meeting between Senecal and counsel, certain admission were made by Senecal. (C C T at 10)-

T -aa$a. connouy
orney at Law
2212 Fore Street
,O Box 7563 D TS
Portland. Maine 04112
(207) 773-6460

Of consequence was the fact that Senecal drove a small red pickup truck. (C C T at 10). (This was important in that a small red pickup truck of unidentified origin has been seen in the vicinity of the abduction of Sara Cherry on July 6, 1988.)

The offer of proof further established that Senecal made other statements of relevance to the case involving his general background, relationship to Sara Cherry, physical information such as size, height, weight, and a statement as to alibi on the day of July 6, 1988. (C C T at 10). In addition, Senecal provided two receipts which he claimed facilitated his establishing an alibi. (C C T at 10).

Counsel for the dqfendant in his offer of proof established that the private investigator for the defendant attempted to confirm the alibi information provided by Senecal and that those statements could not be confirmed. (C C T at 10). The only person who could confirm Senecal's whereabouts on the day of July 6, 1988 was his wife, Maureen Senecal. (C C T at 10). Maureen Senecal could only provide an alibi, if believed, between 12:00 p.m. and 11:30 p.m. (C C T at 11).

Senecal, according to the offer of proof, made admissions as driving his small red Ford pickup truck to the Bath area on the date of July 6, 1988. (C C T at 11).

The offer of proof further provided an explanation as to the interrelationship between to facts known to the defense counsel at the time. According to the offer of proof, Senecal was prohibited from contacting Jackie Crosman at the Crosman residence. Sara Cherry's closest friend, Jennifer, was residing at the Senecas residence during the period of July 6, 1988. Sara Cherry knew in advance that she was to babysit at the Henkel residence and was excited about her first babysitting job. (C C T at 11). Sara Cherry and Jennifer visited together on July 2 ad July 3, three days prior to the homicide, and at a time when Sara Cherry was aware of her babysitting duties on the 6th of July. (C C T at 11).

According to the offer of proof, counsel for the defendant maintained that a reasonable inference could be made that Douglas Senecal knew of the whereabouts of Sara Cherry and of her baby-sitting duties of July 6, 1988. (C C T at 11). Although a denial of this was provided by Jennifer the offer established the likelihood of such knowledge. Because of the bail conditions Senecal

T)' alas J. Connolly
ttorney at Law
:2[1] Fore Street
J Box 7563 D TS.
Portland. Marne 04112
1207) 773-6460

could only see Sara Cherry away fran the Craenan residen e and therefore at the Henkel residence on July 6, 1988. (C C T at 14). According to the offer of proof, Senecal knew he was not supposed to be at the Crosman residence and he was aware of the Henkel residence due to conversation with family members and which provide a specific motive for him going to the Henkel residence. (C C T at 14).

A dispute occurred at this point in the offer of proof as to what information was known to Senecal at the time. According to the light most favorable to the defense, Senecal knew that Sara Cherry was at the Henkel residence on July 6, 1988. (C C T at 14-15)

In the offer of proof, the defendant also established that Senecal was operating a small red pickup truck on July 6, 1988 which was consistant with that identified by the witnesses which Jhad testified in the case in chief. (C C T at 15).

In continuing the argument to establish Senecals' involvement in the homicide, counsel for the defendant informed the court that the testimony provided in the case established that the reason that there was no struggle at the Henkel residence was due to the fact that Sara Cherry knew her abductor. (C C T at 16). Counsel for the defendant maintained in the offer that it was reasonable for a jury to conclude that since Sara Cherry knew her abductor that she voluntarily entered the vehicle which took her from the Henkel residence. (C C T at 16). According to the offer of proof, Senecal had gone to the Henkel residence either to find out the location of Jackie or to encourage Sara not to come forward with allegations of sexual abuse and that somehow things got out of hand and Douglas Senecal was involved in the homicide. (C C C at 16) Counsel for the defendant maintained that Senecal used instrumentalities from the defendant's pickup truck to set the defendant up and to prevent his being associated with the homicide. (C C T at 16)

The Court at this point inquired of Attorney Joseph Field as to whether or not in the Sagadahoc County docket, which Field represented Senecal on, a lsit of witnesses had been provided. (C C T at 16). Attorney Field answered that in "the original case" the decedent, Sara Cherry, was not a witness. (C C T at 17). However, the discussion with the Court did not indicate Sara Cherry's involvement with the DHS file nor any additional investigations which the offer of proof indicated were underway at the

T' -nas J. Connolly
Mornay at Law
2212 Fore Street
,'O Boa 7563 0 T.S.
Portland. Maine 041 t2
(207) 773-6460

time of the homicide in July of 1988. In addition, Attorney Field indicated that the State had never filed a list of witnesses: in the case because the case had not been reached for trial and therefore did not know if she was to be listed. (C C T at 17). By inference, if the attorney did not know the witnesses, Senecal did not either.

The Court then inquired further of Mr. Field whether or not in any subsequent reports dealing with the unlawful sexual contact docket the name of Sara Cherry appeared. (C C T at 18)® Mr. Field indicated that in reference to "the unlawful sexual contact indictment," Sara Cherry's name had not been listed in any of the reports filed by the police department. (C C T at 18).

The attorney for the State then objected to the defendant's offer of proof informing the Court that in his opinion, the offer of proof was purely speculation. (C C T at 18). In addition, the attorney for the State established that if Douglas Senecal was called to the witness stand he would take the Fifth Amendment on the issue of whether he committed the homicide. (C C T at 18).(By arguing that Senecal could take the Fifth Amendment the attorney for the State established materiality.)

An objection as to hearsay was then provided by the attorney for the State. (C C T at 18)® In addition, the attorney for the State argued that no nexus was made between Sara Cherry's death and Douglas Senecal. (C C T at 18).

Counsel for the defendant responded to the accusations by the attorney for the State. Counsel established that he could make his offer of proof in an admissiable fashion without eliciting any claim of Fifth Amendment privilege by Douglas Senecal. (C C T at 19)

Counsel for the defendnat then established that there were other investigation other than the Sagadahoc County charge. (C C T at 20). Counsel for the defendant established that Attorney Field's response to the court's inquiry dealt only with the Sagadahoc County docket and not as to any other pending investigations. (C C T at 20). Counsel established in the offer of proof that it was not unreasonable to conclude that Sara Cherry may have, had direct information as to those other allegations and investigations or that Senecal himself may have believed that to be so. (C C T at 20).

T' -nas J. Connolly
ttorney at Law
22 1/2 Fore Street
nO Box 7563 D TS
Portland. Maine 04112
1207) 773-6460

The Court, in an effort to understand the offer of proof, indicated that he believed it was a reasonable inference for a jury to conclude "that Douglas Senecal is a person who has a preference for femalechild sexual partners, there would be a tendency on his part of perform a sexual act on Sara Cherry or on any other female child." (C C T at 21). The Court also established in explaining inferences which the Court concluded from thel offer of proof that Jackie Crosman was secreted and absented from the State of Maine "either as a result of bribery of the victim or! by intimidation and installation of fear on the part of the alleged victim." (C C T at 21).

The Court did notethat there was no established animosity on Jthe part of Senecal toward Sara Cherry nor any animosity by HSenecal towards the defendant Dennis Dechaine. (C C T at 21).

The Court felt it significant that according to the offer of proof, Jessica would deny telling Douglas Senecal that Sara Cherry was babysitting at the Henkels on July 6, 1988. (C C T at 22). The Court did note that defense was arguing that a reasonable J!inference could be drawn that Senecal had known about the location of Sara Cherry on July 6, 1988. (C C T at 22).

As to the pickup truck, the Court concluded that Senecal's locations were unaccounted for duirng the period of the homicide except for a partial alibi provided by his wife Maureen if she was believed. (C C T at 23).

This was in essence the offer of proof provided by the defendant as to the alternative perpetrator Douglas Senecal.

In addition to the March 16, 1989 chambers conference, two H)ther pieces of evidence were offered during the course of the trial in the nature of an offer of proof but were excluded from "hearing form the jury. These pieces of evidence related directly to the alternative killer theory and to an incident occurring virtually contemporaneously with the Sara Cherry homicide. The information involved a burglary and theft from a farm stand operated by Dennis Dechaine just prior to the homicide. Counsel for the defendant was not allowed to present the evidence about the break-in to the farm stand nor was evidence of violence at the stand of a bizarre and odd nature allowed to go before the

-,nas J. Connolly
\ttorney at Law
22' 2 Fore Street
O Box 7563 D TS.
Portland. Maine 04112
(207) 773-6460

,jury. In two separate locations, an offer of proof was made by the Hdefendant in reference to the burglary, theft and bizarre violence.

In the first instance, counsel for the defendant intended to provide evidence from witness Joan Economeau. Joan Economeau testified in direct examination that she had taken over a business in Bath, Maine which was a produce stand. (T T at 10-11). Joan Economeau established that she was well acquainted with Dennis Dechaine and had rented the stand from Dechaine in order to sell produce during the summer months. (T T at 10-12). The stand, which was operated under the name of Paul's Produce, was widely associated with Dennis Dechaine during the period in question as it had only recently been taken over by Joan Economeau that summer. (T T at 10-2).

According to the offer of proof by the defendant, Joan Economeau would testify that on or about the evening of July 6,1984 or in the early morning hours of July 7, 1988, but certainly not dater than July 8, 1988, the farm stand was broken into. (T T at N10-19). Taken from the farm stand were items of personal property [belonging to Dennis Dechaine. (T T at 10-20). The items taken from the farm stand were exclusively items with identifying labels on them linking the items with Dennis Dechaine. (T T at 10-20). ',In addition, counsel offered the fact that upon returning to the farm stand it was observed by Joan Economeau that a cat which !resided in the area of the farm stand was found killed and placed inside the farm stand. (T T at 10-20). The cat was killed in a violent and gory manner and placed in a position where it could not be failed to be found. (T T at 10-20). The offer of proof estab- 'lished that this incident involving the break-in at the farm stand' and the killing of the cat occurred prior to the disclosure of the defendant's involvement with the Sara Cherry homicide and his arrest. (T T at 10-20).

Counsel for the defendnat established the relevance of the break-in in that the seizing of the items from the farm stand as well as the killing of the cat show a level of violence and a level of criminality for which the defendnat could not have been involved. (T T at 10-20). Counsel for the defendant established that if a

-nas J. Connolly
\ttorney at Law
22'2 Fore Street
O Box 7563 DT S
Portland, Maine 04112
(207) 773-6460

person was involved in setting the defendant up, that evidence of the break-in and the stealing of items of personalty was probative; to the jury's understanding of the likelihood of an alternative suspect. (T T at 10-20). According to the offer of proof, at the time of the break-in of Paul's Produce and the killing of the cat, Dennis Dechaine was under police custody and completely accounted for; therefore he could not have had an opportunity to perform those acts. (T T at 10-20). In addition, the attorney for the defendant established that no similar bizarre activity had ever happened at the farm stand and it had not been broken into prior to the period in question. (T T at 10-20).

Joan Economeau knew specific items were taken but could not articulate which one they were. (T T at 10-21). Counsel for the defendant established that the notebook found in the driveway at the Henkel residence was the notebook for receipts for cash transactions from Paul's Produce stand. (T T at 10-21). According to the offer of proof, inside of the notebook was a stamp with the defendant's name and chekcing account number that was taken from the break-in at Paul's Produce stand. (T T at 10-21). Counsel for the defendant upon inquiry could not establish with certainty what items were taken in the break-in, but that the evidence was probative as to an alternative suspect. (T T at 10-21).

The Court then inquired of counsel for the defendant whether or not counsel for the defendant could establish that any individual had a particular degree of animostiy towards the defendant. (T T at 10-21). Counsel for the defendant established that he could not show who in particular had such animosity, but that a reasonable conclusion could be drawn that the actual killer was attempting to bolster the set-up of Dennis Dechaine by the break-in. (T T at 10-22). This evidence would be probative if the break-in happened prior to the killing; it would also be probative if it happened shortly thereafter.

Counsel for the defendant established that the notebook and stamp contained inside the notebook helped to show the likelihood of an alternative person to have committed the offense by their being stolen. (T T at 10-22).

T- -iasJ. Connolly
Mornay at Law
22 Fore Street
r'0 Box 7563 D TS
Portland. Maine 04112
(207) 773-6460

The second component of the offer of proof as it related to thebreak-in of Paul's Produce stand occurred later in the trial following the exclusion of the Douglas Senecal evidence.

Counsel for the defendant continued his offer of proof as to the Paul's break-in prior to resting the case. (T T at 13-74). Counsel for the defendant indicated that a witness by the name of Lisa Ford Christie would be called to testify that she was a workder at the Paul's Produce stand and had worked at the time in question. (T T at 13-74). Based on Lisa Ford Christie's testimony, and to the best of her recollection, she worked on the day of July 8, 1988. Upon her arrival at work, she determined that the farm stand had been broken into. (T T at 13-74). When the witness determined that the farm stand had been gone through she noticed that the only items taken pertained to Dennis Dechaine (T T at 13-74). The witness particularly noticed that the check cashing stampt which had Paul's Produce's name printed on it as well as the bank account number was missing. (T T at 13-74). In addition, the witness would have testified that as she investigated further as to the items stolen from the farm stand, all of them were of a personal nature relating to Dennis Dechaine and all of them possessed identifying characteristices such as his name. (T T at 13-74).

The witness would testify, had she been allowed to, that she found a catwhich had been killed by strangulation. (TT at 13-74). The cat was bloody and placed in a position where a cat would not normally be. (T T at 13-74). Her testimony would establish that the positioning of the body of the cat was in such a placement that only a human actor could have placed it as it was found. (T T at 13-74).

Counsel for the defendant established that he was offering the evidence in order to show that somebody was setting up the defendant to implicate him in the homicide and that the conduct of that actor was continuous and of an odd an unusual nature. (T T at 13-75).

TI•-·nas J. Connolly
ttorney at Law
.2'x Fore Street
J Box 7563 D T.S.
Portland, Marne 04112
(207) 773-6460

3. THE EXCLUSION OF THE OFFERS OF PROOF

As it relates to the two separate offers of proof, the Trial Justice denied the defendant the opportunity to present any evidence as it related to the alternative perpetrator theory.

In the March 16, 1989 chambers conference, the Court explaine its finding and conclusions in denying the defendant's use of the proffered Senecal evidence. (C C T at 20-23). In concluding that the evidence to be offered by the defendant could not be admitted, the Court stated its rationale as follows:

> In light most favorable to the defense in this case, there is nothing that would indicate other than speculation that Douglas Senecal, assuming that we were even to get in to evidence in this case his sexual conviction, if any, let alone the pending charges against him but there is nothing that would indicate that he had any knowledge of Sara's babysitting, the palce of her babysitting, and that he would have had any reason for going there, other than the fact that he is under indictment. And if he took the stand and he was asked if he had anything to do with the abduction, gross sexual misconduct and murder of Sara Cherry, that would invoke the Fifth Amendment.
>
> And with all due respect, Mr. Connolly, I admire your tenacity, I admire your ingenuity, but this inviting the jury to engage in nothing but speculation.

C C T at 23)

As it relates to the offer of proof in reference to the burglary and theft at Paul's Produce stand, the Court disallowed any testimony from either Joan Economeau or Lisa Ford Christie. As to Joan Economeau, the Court rules as follows:

> It seem to me that, again, no pun intended, we are getting the ox before the cart. We dont' have any evidence at this point to show that anyone had any axe to grind with Dennis Dechaine... that no one not only had no axe to grind with him but who had an axe to grind against him that would cause them to commit an act of violence to set him up as a fall guy.
>
> There is nothing based upon what you told me amont the items taken from the break-in of the farm stand that would in any way be tied in with any of the items of evidence that were found near or about the scene of the crime or to relate this within the path that the defendant may have followed over the day to day and a half before he was arrested.

T' zaa J. Connolly
ttorney at Law
22[1] Fore Street
rO Box **7563** D T.S
Portland. Maine 04112
(207) 773-6460

> Furthermore, the killing of the cat we have no idea whether or not this act of violence against the Econome aus, whether the items were taken from the break at Paul's Produce stand clearly were marked the property of Dennis Dechaine, and whether or not the killing of the cat was just as consistant with people that were trying to get back at the Econome aus. So until we can lay some sort of a foundation here, we would be getting so remotely away from the issue that we would be inviting the jury to engage in speculation. It would be pure speculation that someone was trying to set Dennis Dechaine as a fall guy for a crime and would go beyond that to the point of killing Sara Cherry and to lay the blame on him. Everything is so remote at this time that I can't let this kind of evidence in.

s(T T at 10-23).

As it related to the Lisa Ford Christie, Trial Justice ruled Has follows:

> Well, in the first place, my previous ruling on the testimony concerning the dead cat will remain the same regardless of my ruling on the other items. But there is nothing to indicate that on the date of Sara Cherry's abduction from the Henkel residence that these items had been taken before her abduction and murder. Therefore, any items that were taken in a break after July 6 would have no probative value. Therefore, not relevant to this case at issue and therefore the proffered testimony of Miss Christie is excluded.

T T at 13-75)

B. THE STANDARD

1. RULES OF EVIDENCE

a. Relevancy And Its Limits

Maine Rule of Evidence 401 defines relevant evidence for the purpose of admissibility. Under the rule, relevant evidence is ldefined as follows:

> "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The advisors' note to Rule 401 read as follows:

T] n nas J. Connolly
\ttorney at Law
12 ¹2 Fore Street
J Box 7563 D.TS.
Portland, Maine 04112
(207) 773-6460

This rule states traditional Maine law. See, e.g. Perlin v Rosen, ME. 481, 483, 164 A. 625, 626 (1933)). The rule does not define televancy in terms of materiality. Relevant evidence is defined as evidence or any fact of consequence to the determination of the action. Materiality looks to the relation between the proposition from which the evidence is offered and the issue in the case. If the proposition is not probative of a matter in issue it is immaterial. If the proposition is material, evidence which makes it more probable than it would be without the evidence is relevant evidence.

A Trial Justice has wide discretion in rulings on relevancy and the standard of review is abuse of discretion. State v Kelley, 357, A.2d 890, 895 (Me. 1976).

b. Rule 403

Rule 403 of the Maine Rules of Evidence establishes that relevant evidence may be excluded on grounds of prejudice, confusion, or waste of time. Rule 403 states as follows:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

In the context of ruling on 403 issues, a Trial Justice has broad discretion in determining whether the probative value of the evidence is outweighed by the risk of unfair prejudice or confusion of issues or waste of time. State v Berube, 297 A.2d 884 (Me.1972); State v Linnell,408 A.2d 693, 695 (Me.1979).

According to Field and Murry, Maine Evidence, p.85 n. 1 (1987)1, "the unfair prejudice of which Rule 403 speaks is apparently prejudice to a criminal defendant or a party to the action, not to a non-party witness."

The interrelationship between 401 and 403 may be seen in the following:

> The practice is to start form the premise that relevant evidence should be admitted even though it has prejudicial aspects and to exclude it only when it is clear that the prejudice outweights the probative worth. Factors appropriate to consider include the

Thomas J. **Connolly**
Ittorney at Law
??!'z Fore Street
J Box **7563** O.TS
Portland, Maine 041 t2
(207) 773-6460

significance of the issue the proffered testimony is intended to prove, the availability of other and less prejudicial means of proof, the probable effectiveness of limiting or cautionary instructions, and of course the extent of the likely prejudice. If the issue is not important or if the probative value is slight, the degree of prejudice in order of exclude the testimony is correspondingly reduced.

When the ground for exclusion is confusion of the issues or misleading of the jury, the judge should be less hesitant to act than in the case of prejudice. IT is his duty to make sure that the trial is conducted in an orderly manner so as to see that the jury is not distracted by collateral matters or testimony too remote or speculative to aid in determining where the truth lies. However, in considering whether testimony is likely to be so confusing as to require exclusion under the rule, the court may also consider the context of the testimony and the other evidence.

Field and Murray, Maine Evidence, p. 86(1987)(Citations omitted)

2. CONSTITUTIONAL RIGHTS TO A FAIR TRIAL

Many of the protections for criminal defendants enumerated inf the Fifth and Sixth Amendments to the United States Constitution are addressed to the defendant's rights atTrial. The Sixth Amendment give the defendant the right to "have the assistance of Counsel for his defense" and the availability of "compulsory process for obtaining witness in his favor." Thus the Federal Constitution presupposes the right of a defendant to present a defense and to compel witnesses in his favor.

Under the Maine Constitution analogous provisions to the Federal Constituion guarantee a defendant the right to "present a defense and to have compulsory process for obtaining witnesses in his favor." (Article I, Section 6).

Loosely called the right to defend, these trial rights requira a constitutional analysis of any problem involving the application' of procedural or evidentiary rules in such a manner as to hinder, obstruct, or prevent the accused from presenting defense evidence relating to the issues of guilt or affirmative defenses. The constitutional level of analysis provided by the right to defend

Thomas J. Connolly
attorney at Law
12' Fore Street
J Box 7563 D T.S
Portland Maine 04112
(207) 773-6460

requires courts in analyzing such problems to consider the fairness to the accused of applying the procedural rule in question while still permitting an accomodation of the procedural and evidentiary history furthered by the rule at issue. In short, the right to present a defense seeks to guarantee, consistent with the adversary system, the accused opportunity to fully participate in the search for truth at their criminal trial. Robert N. Clinton, "The Right to Present a Defense: An Emergent Constitutional Guarantee in Criminal Trials, 9 Indiana Law Review, (April 1976) at 857

The right of an accused in a criminal trial to due process is in essence, the right to a fair opportunity to defend against the state's accusations. Chambers v Mississippi, 410 U.S. 284, 294 (1973). The rights to confront and cross examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process. In Re: Oliver, 333 U.S. 257, 273 (1948). See also Morrissey v Brewer, 408 U.S. 471, 488-(1972); Jenkins v McKeithen, 375 U.S. 411, 428-429 (1969).

As the Supreme Court's decision in Chambers v Mississippi and Washington v Texas, 388 U.S. 14 (1967), amply demonstrate, evidentiary rules and their application in specific cases can raise significant issues of the constitutional rights of the accused.

The vast bulk of American evidentiary law is designed to ensure the reliability of the fact finding process. McCormick's Handbook of the Law of Evidence, Section 38, Sections 254-324 (2d.Ed.E.Cleary, 1972). Many rules of evidence have been developed to ensure that only reliable evidence is heard by the trier of fact. Similarly, the materiality and relevancy rules, by keeping the jury's attention focused soley on the issues posed in the case, help assure the reliability of the fact finding process. In addition to assuring reliability, the relevancy rules are also, as Justice Holmes noted, "a concession to the shortness of life.". Reeve v Dennent, 145 Mass. 23, 28, 11 N.E. 938, 943-44 (1887). The assure that the trial will not be inordinately drawn out by the presentation of evidence of only limited

Thomas J. Connouy
Attorney at Law
2'2 Fore Street
Box 7563 O.T.S.
rortland Marne 04112
(207) 773-6460

probative value. While these rules and the basic objectives they protect are generally salutory features in the criminal trial process, they can, when applied, significantly interfere with the ability of the accused to present a defense. Chambers and Washington are both exampels of unconstitutional excesses resulting from the applicaiton of the rules of evidence. In each of those cases, evidence was excluded on the basis of existing state rules ostensibly designed to protect the reliabil-I ity of the fact finding process. Yet, in both Chambers and Washington the court held that the interest protected by the accuseds' right to defend outweighed the state's interest in assuring relaibility. Significantly, neither Chambers nor Washington held the evidentiary rules in question facially unconstitutional. Rather, in both cases, the application of the evidentiary rules to the accused was held unconstitutional in light of the facts of the case. Clinton, Op.Cit, 9 Indiana Law Review at 807.

An essential element to the due process analysis reflected in Washington and Chambers is a requirement to examine the importance of the excluded evidence as it relates to the particular defense case. This due to the mixture of the substantive rights involved. The right of compulsory process, cross examination and the right to present evidence favorable to the accused all requrie a contextual analysis in order to determine the constitutionality not of an evidentiary rule but of its application in a particular case. This due process analysis is founded in Chief Justice Warren's opinion in Washington. The opinion stresses that the due process clause protects the accused's right to present a defense. Citing In Re: Olvier, 333 U.S. 257 (1948), the Chief Justice stressed that the due process clause protected that right:

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecutions's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.
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> 388 U.S. at 19

Thomas J. Connolly
Mtorney at Law
2', Fore Street
Box 7563 D.T.S.
rortiand. Maine 04112
(207) 773-6460

The recognition of this constitutional dimension to evidentiary issues affecting the accused's case requires this Court to consider the fairness to the defendant of the evidentiary rulings excluding the defense evidence. The Court must carefully weigh the importance of the challenge to evidence of the accused against the interest in reliability and judicial economy. To effectuate that balancing of interest, the Court should consider not only the interest in economy, but also the importance the evidence to the accused.

ThisCourt has previously recognized the right of a criminal defendant "in appropriate circumstances...to introduce to evidence to show that another person committed the crime or ahd the motive, intent, and opportunity to commit it." State v LeClair, 425 A.2d 182, 187 (ME1981) (citations omitted); State v Conlogue, 472 A.2d 167, 172 (Me.1984). Especially where the State's case is based on circumstantial evidence, the Court should allow the defendant "wide latitude" to present all the evidence relevant to the defense, unhampered by piecemeal rulings on admissibility. State v LeClair, 425 A.2d 182,186 (Me.1981), citing State v Clark, 392 A.2d 779, 782 (ME. 1978).

In State vConlogue, the Law Court stressed that the Trial Court does have discretion to exclude evidence which shows another person committed the crime if that evidence it too speculative or conjectural or to disconnected from the facts of the case against the defendant. Id.at 172, citing LeClair, 425 A.2d at 187. However,, "in appropriate circumstances, a defendant should be allowed to introduce evidence to show that another person committed the crime, or had the motive, intent, or opportunity to commit." Id. at 187.

In determining the appropriate circumstances in which this type of evidence may be used, an evaluation of the importance of the excluded testimony to the accused can only be made by evaluating its role in the total context of both the accused's defense and the case as a whole. Thus, the right to present a defense analysis almost necessarily compels the adoption of the same type of "totality of the circumstances" approach which the Supreme Court has adopted in a variety of other contexts. See

Thomas J. Connolly
ttorney at Law
2 Fore Street
.) Box 7563 D.T.S.
Portland Marne 04112
(207) 773-6460

for example Schneckloth v Bustamonte, 412 U.S. 218 (1973); Neil v Biggers, 409 U.S. 188 (1972). The importance of the excluded evidence must be analyzed in light of its importance to the total defense picture and in light of the full facts of the case. Assuming that the defense has found to be significantly obstruced by evidentiary procedural rulings, further inquiry must still be made to determine whether some compelling governmental interest outweighs the significant unfairness resulting from partially denying the accused his day in Court. Such a compelling governmental interest would necessarily have to be of a gret magnitude. In addition, alternatives to the limitations would need be explored to determine whether less drastic alternatives are available to protect the government interest than to infringe upon the right of the defense to present its case. See Chambers, 410 U.S. at 302 and Washington, 388 U.S. at 16. Without such a balancing an abuse of discretion occurs.

C. THE RESULT

1. THE EXCLUSION OF THE PROFFERED EVIDENCE VIOLATED THE DEFENDANT'S RIGHT TO A FAIR TRIAL

a. Relevancy

A determination of the relevancy of the proffered evidence in the case provided by the defense is clear. The gravamen of the defense was that the defendant did not commit the homicide. Inso far as the defendnat was not the perpetrator, it was logically consistent to delineate an alternative. Within the contex of the offer of proof are elements essential to a prima facia case of murder. Motive, opportunity and means were attempted to be established by the defendant in the offer of proof. The evidence offered by the defendant needs to be examined by the standard of whether it may have raised a reasonable doubt as to the defendant's guilt . The importance of establishing an alternative perpetrator can be seen as relevant in the context of the entire case. Largely relying upon circumstantial evidence, the State built its case in part upon the absence of an alternative killer.

Thomas J. Connolly
ittorney at Law
2'2 Fore Street
Box **7563** DTS.
Nortland. Mame 04112
(207) 773-6460

To the end of precluding alternative suspects, the State in its case in chief established an alibi for John Henkel, the owner of the home where the decedent was abducted. Mr. Henkel was questioned closely as to his whereabouts on the day in question in an effort to establish that he could not have been the perpetrator. (T T at 125-27). In addition, a specific alibi witness was called to confirm Mr. Henkel's testimony as to his location on the day in question. Rosemay Knodt was called by the State soley to verify John Henkel's alibi. (T T at 160-62).

By thus establishing an alibi for John Henkel by direct implication the State's case was in part to be proved by the exclusion of alternative suspects. In addition, the fact that the, State chose to establish an alibi for a potential suspect establishes the relevancy of inquiry into alternative suspects. In this case, the State is in the particular position of elimina- ting alternative suspects when it is appropriate for them to do so but to prohibit defense inquiry into its alternative theories.

The importance of this State use of the lack of alternative perpetrator evidence is that it establishes a relevant nexus to the proof against the defendant. In his closing argument, the attorney for the State carefully and forcefully explained to the jury that the lack of evidence pointing to another suspect which by necessity implicated the defendant. (T T at 1424-25). The attorney for the State in close stated, inter alia, as it referred. to the alternative suspect:

> ...Although assuredly the evidence does not show you any realistic alternative killer, the defense seems to suggest in the evidence that all this is only an unfortunate set of coincidences. To put it plainly, that the defendant was set up. You have a stark choice: either the defendant is guilty or you believe the defendant's claim that he was set up and you find him not guilty.
>
> Let's examine this. Keeping in mind that the rope was in the truck, assuming there is another killer out there, that killer had to have gotten ahold of Sara Cherry, and it just happens come upon the defendant's truck. That person would have to have left his own vehicle by the defendant's truck, he had no idea where that person was or whether that person who came back to the truck would come back in a minute or an hour. That person found, out of apparent view and hidden behind the set in the truck, the yellow rope.

T7• --nas J. Connolly
ttorney at Law
.2 2 Fore Street
J Box 7563 D TS
Portland. Maine 04112
1207) 773-6460

> He somehow got into the locked vehicle. Of course he could have done it through the sliding glass window. All the while Sara Cherry was waiting for him to take her into the woods. It makes no sense. Then the mythical killer would have had to make his way back to his own vehicle and then he would have had to, from a locked truck, stolen the receipt and the notebook and returned to the Henkels and left it in the driveway. A pretty risky thing to do considering the killer would have had no way of knowing if anyone then would have been at home at the Henkels. If its a set up, why not do that then? Why take simply one piece of paper with the defendant's name and a notebook which does not have the defendant's name on it? You know from the evidence there were other auto body receipts there because of the damage to the defendant's truck. He had gotten estimates. There were other pieces of paper including his wallet with his name on it. Why not take those other pieces of paper to better set up the defendant? Why not leave those papers at the Henkels? Why not leave the rope that was found deep in the woods next to the truck, the rope which the searchers on their pass through even had missed. It makes not sense.
>
> Ladies and gentlemen of the jury, do not allow yourselves to gorget the unspeakable savagery of the death of Sara Cherry suffered. The gag in her mouth and the scarf tied around her face, that her t-shirt was pulled down at the neck and she was stabbed in the chest, that her brassiere was then pulled up after having been stabbed in the chest thus revealing this defendant's sexual motivations at work, as she was tortured by a sharp blade being scraped across her neck slightly, that she was stabbed repeatedly in the neck, that she was strangled with a scarf drawn so tightly that the diameter of the small loop around her neck was no more than three inches. And still struggled causing petechia hemmorage in the eye area and blood on her finger-nails to fight against death. But slowly, slowly the life was drawn out of Sara Cherry. And in final viciousness, in one final act of depravity, while Sara was still just barely alive and still conscious, defendant assulted her vaginally and anally and then buried her body under forest debris.

T T at 1425-27).

By examining the attitude of the State in reference to the alternative perpetrator the issue of relevance is plain. The State exploited to as great an extent as possible the absence of alternative suspects and when the absence of a credible alternative was not before the jury to use that fact to its advantage.

The issue for the defense was therefore profound in having the alternative suspect evidence excluded.

Tb ^mas J. Connolly
ttorney at Law
2'2 Fore Street
Box 7563 DT.S
Portland. Maine 04112
(207) 773-6460

The underlying concern in review by the Court should be whether or not the evidence was relevant.

Wigmore in his treatise on evidence approaches the relevance question as it relates to alternative perpetrators by establishing the logical and relevant connection of such evidence to a case. In addition, Wigmore explains the weighing process which a Court should use in examining the admissibility of such evidence. This section of Wigmore has been cited by approval by the Court in State v Conlogue, 474, A.2d at 172 and State v LeClair, 425 A.2d a 187. Wigmore states and explains the relevancy of alternative perpetrator evidence as follows:

> If X is charged with homicide, committed by himself alone, and it is shown in disproof that Y did the killing, X is clearly exonerated, for the fact that Y has done it isinconsistent with and exclusive of X guilty. There are, of course, cases in which X is by hypothesis in some way an accomplice of Y, either at a distance or as a personal sharer; and there is even in the rare case of independant and double felonious acts upon the same object. To such cases the argument cannot apply. Apart from them, it is as cogent as an alibi. If the Man with the Iron Mask was the Duc De Vermandois he could not have been the General De Bulonde; and if the Tichborne claimant was Arthur Orton he could not have Roger Tichborne.
>
> The question that arises from the point of view of the rule of evidence, is whether in evidencing the doing of an act by a third person as a fact of disproof, any unusual requirements should be made concerning the strength of the evidence before it can be admitted. Thus, to prove A guilty of murder, evidence of his threats (i.e., a design) to commit it are always admissible; now,if the fact to be proved is that B committed the murder (as inconsistent with A's guilt), why should not B;s threats be admitted without further restriction as A's are? It is true that evidence of B's threats alone would not go far towards proving B's commission; but it is not a question of absolute proof, nor even of strong probability, but only of raising a reasonable doubt about A's commission, and for this purpose the slightest likelihood of B's commission may suffice or at least assist. The evidence of B's threats, to be sure, may, in a given instance, be too slight to be worth considering, but it seems unsound as a general rule to hold that the mere threat, or mere evidentiary facts of any one sort, are to be rejected if unaccompanied by additional facts point to B as to doer.
>
> Nevertheless, most Courts have shown an inclination to make some such restriction and to insist that two or more kinds of evidentiary facts pointing towards B must be

Thomas J. Connolly
Attorney at Law
22 Fore Street
PO Box 7563 DTS
Portland, Maine 04112
(207) 773-6460

offered and that one kind alone will notbereceived. It is difficult to see the object of this restriction because if the evidence is really of no appreciable value, no harm is done in admittingit; but if the evidence is in truth calculated to cause the juryt to doubt, the Court should not attempt to decide for the jury this doubt is purely speculative and fantastic but should afford the accused every opportunity to creat that doubt. A contrary rule is unfair to a really innocent accused. (Citing Chambers v Mississippi, 410 U.S. 284 (1973).

1(Wigmore, Op.Cit. Section 139).

Wigmore further argues that motive evidence used to show the commission of crime by a third person has a similar probative and logical quality as threats. (Wigmore Op.Cit.Section 141 citing Griffin v United States, 248, F.2d 6 (1st Cir. 1918). Wigmore maintains that there is no reason for requiring motive evidence to be coupled with other types of evidence in order to meet the relevancy requirement. (Wigmore Op.Cit.Section 141).

Finally, Wigmore maintains that many other types of evidence which indicate a third party was the doer of the act should always be admitted "unless totally without probatite suggestion." (Wigmore,Op.Cit.Section 142, citing Hale v United States, 225 F.2d 430 (8th Cir.1928)(murder; various circumstances pointing to another person held improperly excluded).

The theory of using motive to prove a perpetrator's identity is routinely used in American courts. In homicide cases, Courts of all jurisdictions frequently admit uncharged misconduct evidence to establish a defendant's motive. The following examples establish the point: The defendant, a pimp, killed a police officer to prevent the police officer from taking away the defendant's prostitute. Coates v People, 106 Colo. 483, 106 P.2d 354 (1940); Melville, Evidence as to Similar Offenses, Acts or Transactions in Criminal Cases, Dicta. 243 (July 1952); The defendant killed the victim because the victim knew of a prior homicide by the defendant, United States v Benton, 437 F.2d 1052 (C.A. 5, 1981); The defendant was involved in a stolen car ring and killed the victim to prevent discovery of the defendant's complicity in the ring, Edgemon v State, 275 Ark. 313, 630 S.W. 2d 26 (1982); There was an outstanding arrest warrant for the

T~ --nas J. Connolly
Mornay at Law
22' : Fore Street
0 Box 7563 0 T.S
Portland Maine 04112
(207) 773-6460

defendant for murder when the defendant murdered an FBI agent who might have arrested the defendant, United Statesv Pelpier, 585 F.2d 314 (C.A. 1978); The defendant killed an investigative police officer to avoid facing charges for criminal sexual penetration of a minor, Barefoot v State, 596 S.W.2d 875 (Tex.Cr. App. 1980); the defendant had a homosexual relationship with the victim's son and the defendant killed the victim when the victim threatened to take the son away from the defendant, People v Foster, 76 I11.2d 365, 392 N.E.2d 6 (1979); the defendant had a drug addiction, and the defendant killed the victim who attempted to prevent the defendant from invading a house where drugs were kept, Bails v State, 18 Crim.L.Rep.(BNA) 2532(Nev.1976); the Hdefendnat had an adulterous relationship with the decedent's wife, and the defendant killed the decedent to continue that relationship, People v Laures, 289 Ill. 490, 124 N.E. 585 (1919); the defendant killed the decedent because in the past, the decedent Hhad interfered with the defendant's illegal still, State v Pittman, 137 S.#. 75, 134 S.E. 137 S.C. 75, 134 SE 512 (1925); the defendant killed the decedent because they had a lesbian relationship but the decedent had rejected the defendant, Perez v State, 491 S.W. 2d 672 (Tex.Cr.App.1973); the defendant killed the victim', because the victim had witnessed a liquor law violation by the defendant, Cole v State, 50 Okla.Cr.399, 298 P.892 (1931); the defendant, a married man, got another woman pregnant and killed the woman to cover up his adultery, United States v Fisher, 7 USCMA 270, 22 CMR 60 (1956); and the defendant killed his wife to continue his incestuous relationship with their daughter, Fricke, California Criminal Evidence, 340 (9th Ed.1978).

These are only a sampling of the cases in which this type of relevant evidence is admitted by American Courts to establish motive for homicide. In the context of the case at hand the proffered evidence would equally be as relevant to the issue of establishing reasonable doubt as the evidence admitted in cases against defendants. In addition, the uncharged act need not be similar or prior to the charged crime. Dissimilar crimes may furnish the motive to the charged crime. Underhill, Criminal Evidence, SEction 335 (4th Ed.). For example, an uncharged

T[illegible]nits J. Connolly
attorney at Law
22'2 Fore Street
O Box 7563 D TS.
Portland. Maine 04112
(207) 773-6460

theft may supply the motive to murder any eyewitness to the theft or an uncharged burglary may be the motive for the defendant's violent resistance to an attempted arrest. Furthermore, the uncharged act need not antedate the charged crime. In one classic case, the defendant was charged with murder. The evidence indicated that the defendnat confronted the decedent and his girl-friend, killed the decedent and then raped the decedent's girl-friend. The defendant evidently killed the decedent to prevent the decedent from interfering with the defendant's attempt to rape the decedent's girlfriend. The subsequent rape was the motive fort the prior murder. See Imwinkelried, Uncharged Misconduct Evidence) "Proving Identity as Criminal", Section 3:16 p.38-39 (1988).

On this theory of logical relevance, the defendant was attempting to show through motive that Senecal was the perpetrator' of the homicide. Using a common sense standard, the Trial Judge must be able to conclude that the uncharged act could have induced'' the crime charged. People v Durham, 70 Cal.2d 171, 449 P.2d 198 (1969). The defendant does not have to present direct evidence of the alternative suspect's state of mind, but it must be plausible to believe that the two acts could be causally connected. The uncharged act as a cause and the charge accused of as the effect. United States v Potter, 616 F.2d 384 (CA 9,1980).

Criminals often murder to eliminate witnesses to their prior crimes. In this situation, Senecal's prior crime furnishes the motive for subsequent murder. See United States v Hopkinson, 492 F.2d 1041 (CA 1, 1974). The logical relevance here can be established as to the specific motive for Senecal acting as to Sara Cherry. Therefore, the evidence in the proffer was relevant to the motive for Douglas Senecal to commit the homicide.

The proffer also established the oppourtunity for Douglas Senecal to commit the homicide by establishing that his alibi was not verifiable. In addition, the fact that he drove a red pickup truck of small size which was similar to those testified to by other witnesses and by the inference that Senecal knew the location of Sara Cherry at the Henkel residence and could not visit her at her own home provided the opportunity.

Connolly
Ittorney at Law w
2212 Fore **Street**
O Box **7563** D **TS.**
Portland. Maine 04112
(207) 773-6460

The means by which Senecal committed the homicide was also provided in the offer of proof and the explanation of the defense case by establishing the defendant's abandoning of his truck while, in the woods. By establishing the availability of Dechaine's pickup truck to Senecal, the means by which the homicide was corn-mitted could also inferentially be linked to him.

Under the proffer, motive opportunity and means were established as to Douglas Senecal which could not but help to have raised a reasonable doubt as to the innocence of Dennis Dechaine.

b. Due Process Violation

In California v Trombetta, 467, U.S. 479, 485 (1984), the U.S. Supreme Court noted that due process requires "that criminal defendants be afforded a meaningful oppourtunity to present a complete defense." The exclusion of the proffer testimony as to the alternative suspect as well as the burglary at Paul's Produce effectively did deny the defendant the opportunity to present a complete defense. As explained in the relevancy section above, the use of the alternative evidence would have substantially con-tributed to the defense in the case. The lack of alternative perpetrator evidence was exploited skillfully by the prosecution to establish that by default Dennis Dechaine was the perpetrator of the homicide. It should be underscored that the testimony in the case was circumstantial which according to State v LeClair, 425 A.2d at 186 is of substantial concern to a reviewing Court in determining the harm of the exclusion of alternative suspect evidence. As stated in State v Conlogue, 474 A.2d at 172, "evidence tending to implicate another person, and deflect guilt from the defendant, must be admitted if it is of sufficient probative value to raise a reasonable doubt as to the defendant's culpability." (emphasis added)

The harmless error doctrine has limited application to the right pursuant to a due process analysis to present a defense. C.f. Chapman v California, 386 U.S. 18 (1967). The considerations protected by the harmless error doctrine are built into the balancing test of the due process analysis in determining whether

T} -mas J. Connolly
\ttorney at law
22'2 Fore Street
0 Box 7563 DTS
Portland. Maine 04112
(207) 773-6460

the right to defend has been violated. Chambers, 410 U.S. at 302; Washington, 388 U.S.at 16. In evaluating the importance to the accused of the excluded evidence for the purpose of the due process balancing analysis, the harmlessness of the exclusion must be judged. Thus, to engage in a harmless error analysis in addition to making a determination of whether the right to defend has been violated is to engage in redundant analysis, particularly since the applicable test for harmless error is whether the Court can "declare a belief that it was harmless error beyond a reasonable doubt." Chapman v California, 386 U.S. at 24.

In this instance, the evidence of an alternative suspect and the break-in at Paul's Produce materially and substantially damaged the defense. By precluding the defendant from presenting the alternative hypothesis with anything but argumentation from the lack of evidence linking the defendant to the offense, is to preclude a fair trial. Deliberations in this case by the jury spanned a two day period and more than 9½ hours.

The defendant in the case vehemently denied on the witness stand his involvement in the homicide and the circumstantial nature of the case made the issue extremely close. By cutting the legs out from the defense through the exclusion of the proffered testimony, the impact upon the jury could not but have been of constitutional significance. The difference between presenting a flesh and blood alternative killer with the name, address and phone number, compared to the prosecutorial "mythical killer" precluded the jury from fully and fairly judging the defendant's criminal responsibility. This is especially so since the defendant had been estopped from scientically testing critical forensic evidence in the case which may have led directly to an acquittal. The combination of the exclusion of the proffer testimony and the refusal of the Court to allow the defendant independant testing of forensic evidence used in the case was to absolutely prevent a complete defense from being provided by the defendant.

In addition, the exclusion of the proffered testimony denied to the defendant the ability to confront and cross examine witnessess which can lead to startling revelations during the course of the criminal trial. Due process requires that the dynamics of

-uas J. Connolly
Mornay at Law
22'2 Fore Street
-O Box 7563 D T.S.
Portland. Maine 04112
(207)773-6460

as well as his involvement in her disappearance on July 5, 1988. (C C T 3/16/89 at 1).

The Trial Justice had been contacted during the course of trial by attorney Joseph Field who represented the subpoened witness, Douglas Senecal. The Court had also been contacted by Assistant Attorney General David Marchese in reference to subpoenas which had been served on the Department of Human Services workers. (C C T 3/16/89 at 2).

Based upon the contact by the attorneys the Court sua sponte requested that the defendant provide an offer of proof as to the luse of the DHS records. (C C T 3/15/89 at 1-2). Counsel for defendant objected to the sua sponte request for an offer of proof on the basis of unfair disclosure of the defendant's case which would require a premature explanation of strategies because of a telephone call from another attorney to the Court. (C C T 3/15/89 at 2-3). The Court at that time did not require the defendant to disclose the theory of the case but withheld the requirement of an offer of proof until the following day on March 16, 1989.

On March 16, 1989 the defendant was required to make an offer of proof as to the information sought to be obtained from the DHS files as well as an offer of proof as to the defendant's theory of an alternative suspect. (C C T 3/16/89 at 3).

The attorney for Senecal was allowed to object to Senecal's testimony based upon a Rule 403 type objection. (C C T 3/16/89 at 25-28). In addition the prosecuting assistant attorney also objected to the disclosure of the evidence and turning over the DHS file. (C C T 3/16/89 at 18-19). Finally, the Assistant Attorney General representing the Department of Human Services objected to disclosure of DHS records pursuant to 22 M.R.S.A. 54008.

22 M.R.S.A. §4008 reads as follows:

54008. Records; confidentiality; disclosure

1. Confidentiality of records. All department records which contain personally identifying information and are created or obtained in connection with the department's child protective

-Las J. Connolly
at Law
22'2 Fore Street
PO Box 7563 D.TS.
Portland, Maine 04112
(207) 773-6460

activities and activities related to a child while in the care or custody of the department are confidential and subject to release only under the conditions of subsections 2 and 3. Within the department, the records shall be available only to and used by appropriate departmental personnel and legal counsel for the department in carrying out their functions.

2. Optional disclosure of records. The department may disclose relevant information in the records to the following persons:

A. An agency or person investigating or participating on a team investigating a report of child abuse or neglect when the investigation or participation is authorized by law or by an agreement with the department;

B. Repealed;

C. A physician treating a child whom he reasonably suspects may be abused or neglected;

D. A child named in a record who is reported to be abused or neglected, or the child's parent or custodian, or the subject of the report, with protection for identity of reporters and other persons when appropriate;

E. A person having the legal responsibility or authorization to educate, care for, evaluate, treat or supervise a child, parent or custodian who is the subject of a record. This shall include al member of a treatment team or group convened to plan for or treat a child or family which is the subject of a record;

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or the commissioners designee give prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact;

G. Any agency involved in approving home for the placement of children, with protection for identity of reporters and other persons when appropriate; and

G. Any agency or department involved in licensing or approving homes for, or the placement of, children or dependent adults, with protection for identity of reports and other persons

T' ~toa Connolly
2' z Fore Street
r0 Box 7563 DT.S.
PortandMar,eo41t2
(207) 773-6460

when appropriate; and

H. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857.

H. The representative designated to provide child welfare services by the tribe of an Indian child as defined by the Indian Child Welfare Act, [2] United States Code, Title 25, Section 1903.

3. Mandatory disclosure of records. The department shall disclose relevant information in the records to the following persons

A. The guardian ad litem of a child named in a record who is reported to be abused or neglected;

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court Hor a court requesting a report from the department pursuant to (Title 19,section 533 or 751. Access to such a report or record !shall be limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records shall be limited in to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of L an issue pending before it;

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business;

D. An appropriate state executive or legislative official ;with responsibility for child protection services or the Child 'Welfare Services Ombudsman in carrying out his official functions, provided that no personally identifying information may be made available unless necessary to his functions;

E. The Protection and Advocacy Agency for the Developmentally, Disabled in Maine in connection with investigations conducted in 'accordance with chapter 961. [1] The determination of what informajtion and records are relevant to the investigation shall be made by agreement between the department and the agency; and

F. Where the information concerns teachers and other professional personnel issued certificates under Title 20-A [3], persons, employed by schools approved pursuant to Title 20-A or any employees of schools operated by the Department of Educational and

T' -nits J. Connolly
ttorney at Law
22 2 Fore Street
r0 Box 7563 D TS.
Portland. Maine 04112
(207) 773-6460

a criminal trial be allowed to be used by a defendant to generate information and facts which could exculpatory. See generally Westen, The Compulsory PRocess Clause, 74 Mich.L.Rev. 71, 97-98 (1974).

2. THE APPROPRIATE REMEDY IS TO OVERTURN DECHAINE'S CONVICTION AND ORDER A NEW TRIAL

Given a violation of the defendant's constitutional due process rights and his right to present a defense, by the exclusion of the proffered testimony the defendant was denied an inherently fair trial. A new trial is appropriate in circumstances where the exclusion of material evidence substantially effected the outcome of the case. The standard to be examined is whether or not a likely result would be different under all the facts. The standard is beyond a reasonable doubt. Under such a analysis the introduction of the evidence of the alternative perpetrator requires Dennis Dechaine to receive a new trial. See Davis v Alaska, 415 U.S. 308, 316-318 (1974).

T" ias J. Connolly
ttorney at Law
22) : Fore Street
PO Box 7563 D TS.
Portland. Maine 041 t2
(207) 773-6460

III. DENIAL OF ACCESS TO DHS RECORDS VIOLATED DEFENDANT'S DUE PROCESS RIGHTS TO A FAIR TRIAL

A. THE RECORDS AND THE RULING

1. CONTEXT OF DHS FILES

The essence of the defense in the case was that Dennis Dechaine did not murder Sara Cherry, was not involved in the homicide and that another individual was the perpetrator. The defendant testified during the course of the trial that he did not commit the murder. (T T at 1176). To that end of establishing the defendant's noninvolvement in the homicide the entire thrust of the defense case was to explain the defendant's behavior on the day in question, to establish that there was no direct linkage between his person and the homicide, to establish the liklihood that another individual committed the offense, and to establish reasonable doubt by showing that another person had motive, opportunity and means to commit the murder.

During the course of discovery the defendant had come upon certain facts involving the family background of Sara Cherry which gave cause for reasonable inquiry into an alternative suspect to the defendant in the case. The offer of proof which was delineated in Section II of this Brief lays out much of factual predicate for the information which was available to the defendant relating to an alternative perpetrator at the time of trial.

During the course of the investigation discovery materials were turned over to the defendant by the attorneyfor the State which indicated a Department of Human Services investigation into the Senecal family (Chambers Conference, March 16, 1989 Transcript, at 5-7)** A Department of Human Services worker by the name of Jennifer Dox had reported to the primary investigating officer in the Dechaine case information which she had received in reference to Doug Senecal's involvement in the homicide. (C C T 3/16/89 at 6).

** The transcript of the Chambers Conference of March 16, 1989 will be henceforth designated as C C T 3/16/89 with specific page references.

T. -aaas J. Connolly
ttorney at Law
22': Fore Street
0 Box 7563 D TS
Portland, Maine 04112
(207) 773-6460

In addition Jennifer Dox of DHS had filed affidavits in a Sagadahoc County criminal case which was then pending against Douglas Senecal. The Indictment charged Unlawful Sexual Contact as to Jackie Crosman who was the decedent's step-sister and who had lived with Sara Cherry at the time of the Unlawful Sexual Contact allegation as well as at the time of Sara Cherry's abduction and murder. (C C T 3/16/89 at 4-5). The Human Services worker, according to the affidavit filed in the Unlawful Sexual Contact case, had been in the home of Douglas Senecal on July 5, 1988, the day before Sara Cherry's abduction and murder. According to the affidavit by Jennifer Dox, statements were taken from members .of Douglas Senecal's family as it related to the then current criminal and DHS investigation as to the whereabouts of Jackie Crosman. (C C T 3/16/89 at 5). According to the statements provided by Jennifer Dox,Douglas Senecal had "assisted, facilitated the removal of Jackie from the State so she could not testify." (C C T 3/16/89 at 6). In addition Jennifer Dox averred that Douglas Senecal's nine year old son Aaron had informed the worker that "Jackie had to leave the house to go where it was safer." (C C T 3/16/89 at 6).

Based upon the information which was directly placed in Douglas Senecal's pending file in the Sagadahoc County Superior Court an interrelation between Senecal and the Department of Human Services file was made. (C C T 3/16/89 at 5). In addition the DHS file became involved in the defendant's case through the July 6, 1988 police report of Sagadahoc County Sheriff David Haggart, who, during the course of the Dechaine investigation obtained information in relation to Jackie Crosman's whereabouts and Senecals involvement in her disappearance. That information wasprovided as part of the Dechaine discovery by the attorney for the State.

As was stated in Argument II of Appellant's Brief the theory of the defense as it related to Douglas Senecal involved his being currently prosecuted for the crimeof Unlawful Sexual Contact as to Jackie Crosman. Douglas Senecal was first on the trial list for the upcoming week and at the time of Sara Cherry's disappearance

T' aas J. Connolly
ttorney at Law
22'2 Fore Street
PO Box 7563 D T.S.
Portland. Maine 04112
(207) 773-6460

was under both DHS investigation and police investigation for his involvement in the disappearance of the essential witness in that case. Because a condition of Douglas Senecal's bail was that he was not allowed to visit Jackie Crosman at the home of Sara Cherry, where she was living at the time, and because a reasonable inference could be drawn that he knew the whereabouts of Sara Cherry on the date in question, he had motive, opportunity and means to commit the homicide. A critical part of the testimony in the case evolved around the fact that at the scene of Sara Cherry's abduction no visible evidence of struggle existed and that she had instructed to keep the doors locked and not opened to strangers. The lack of signs of struggle was consistant with the fact that Sara Cherry knew her abductor. It was further established that the defendant had no relation to Sara Cherry but that Douglas Senecal knew her well.

One of the prime reasons articulated by the Court for preventing use of evidence as it related to Douglas Senecal was the lack of a strong link between himself and Sara Cherry. Although a strong interrelationship existed between the families and Sara Cherry had visited with Senecal's youngest daughter on the days just previous to her abduction and murder, the Court excluded evidence as to the alternative perpetrator because of an insufficient link to show motive for the abduction of Sara Cherry. (C C T 3/16/89 at 22-23).

2. THE SUBPOENAS AND THE OBJECTION

In addition the file would further establish Senecal's mental state at the time in question by showing the amount and nature of DHS involvement in his life at the time of the murder. The file would therefore help fill in issues of motive and opportunity for Senecal to have committed the murder. These issues would have materially altered the weight of the offer of proof.

To prove the alternative perpetrator theory and in an effort to fill in evidentiary gaps in the theory, counsel for defense served subpoenas upon Department of Human Services workers compeling them to testify and to produce the DHS file on the investigation of Douglas Senecal's sexual abuse of Jackie Crosman

T' las J. Connolly
ttorney at Law
22(2 Fore Street
PO Box 7563 DTS
Portland. Maine 04112
(207) 773-6460

Cultural Services, the information shall be disclosed to the Commissioner of Educational and Cultural Services. This paragraph is repealed on June 30, 1989, pending review by the joint standing committee having jurisdiction over audit and program review and unless continued by Legislative Act.

4. Unlawful dissemination; penalty. A person is guilty of unlawful dissemination if he knowingly disseminates records which are determined confidential by the section, in violation of the mandatory or optional disclosure provisions of this section. Unlawful dissemination is a Class E crime, which, notwithstanding Title 17-A, section 4-A, subsection4, is punishable by a fine of not more than $500 or by imprisonment for not more than 30 days.

5. Retention of unsubstantiated child protection services records The department shall retian unsubstantiated child protective services case record for no more than 18 months following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archieves unless a new referral has been received within the 18-month retention period.

The Court in holding discussions with counsel for the State, the Department, witness Senecal and the defendant inquired as to the contents of DHS records. The Court's sole inquiry to the records was whether the decedent was directly referenced in those documents. (C C T 3/16/89 at 25). The Court originally accepted the representation from the attorney for the Department that no reference of Sara Cherry was in the DHS file and therefore the Court concluded that the DHS file was not discoverable to the defendant. (C C T 3/16/89 at 24). The Court after discussion with the attorney for the Department of Human Services concluded to review the DHS records in camera. (C C T 3/16/89 at 24 & 28).

3. THE RULING AND THE EXCLUSION

Upon an in camera review of the DHS file the Court declined giving access to the defendant of the material. The Court ruled as follows:

T* as J. Connolly
ttorney at Law
.2', Fore Street
J Box **7563** D T.S
Portland Maine 04112
(207) 773-6460

The Court: I've just concluded review in camera of the DHS file involving the CHILD PROTECTIVE SERVICES incident on JACKIE CROSMAN. There is nothing in there that would indicate anything that would be anymore than what we've already had known by way of your offer of proof. Specifically, I will only say this much. That the date of Sara Cherry's murder is recorded in there under the chronological order of events by the DHS case-worker. And on the very last portion of that report are the items that Mr. Connolly has just made specific reference to as the anonymous call,; the taking of the bicycle, the nervousness, and there is nothing more in the file. I am now returning the file to Mr. Marchese.

Therefore after having reviewed the file in camera I will not order its release for review. I will order that its confidentiality be maintained under the provisions of Title 22 §4008.

C C T 3/16/89 at 29)

B. THE STANDARD

1. 22 M.R.S.A. §4008

22 M.R.S.A. §4008(1) establishes that all DHS records which contain personally identifying information and which are created or obtained in connection with the Department's Child Protective activities are confidential and subject to release only under limited conditions.

The exceptions to §4008(1) which are of relevance in the case; are found in §4008(3)(B). Under that section disclosure by DHS is mandatory to a Court upon a finding that access to those records may be necessary for the determination of any issue before the Court. The rule further requires that access to such a report or record shall be limited to counsel of record unless otherwise ordered by the Court. Access to actual reports or records is limited to in camera inspection, unless the Court determines that

T1' **ias J. Connolly**
ttorney at Law
2'2 Fore Street
.~ Box 7563 D T.S
Portland. Maine 04112
(207) 773-6460

public disclosure of the information is necessary for the resolution of an issue pending before it.

Pursuant to the statutory standard the Court would be given discretion in determining whether the DHS file "may be necessary for the determination of any issue before the Court."

The inquiry pursuant to 54008(3) is whether the access to the records was necessary to the determination of the issue before the Court. Insofar as the Court excluded the testimony as to Douglas Senecal for lack of adequate linkage between motive, opportunity and means, the DHS file does directly bear upon the alternative suspect's mental state at the time in question. In addition, causal linkage between the alternative suspect and the decedent could be inferred from the complicated relationship between the Senecal and Crosman-Cherry families. The investigation involving the Department of Human Services spilled over into the criminal sphere both in the prosecution of Douglas Senecal and in the investigation of Dennis Dechaine. The DHS record in this case involved allegations of Unlawful Sexual Contact by Douglas Senecal at a time when the prosecutrix in his case was living with the decedent Sara Cherry. In addition, at the time of the disappearance of Jackie Crosman coincided with the abduction of Sara Cherry and with Senecal's being first on the trial list in Sagadahoc County for the Unlawful Sexual Contact offense. It was the disappearance of Jackie Crosman that motivated the Department to facilitate the locating of her so that she could testify in the Sagadahoc County trial. By directly filing affidavits in the criminal investigation of Senecal the Department injected its investigation into the disappearance of Jackie Crosman. The disappearance of Jackie Crosman was intricately linked to the defendant's theory of the alternative perpetrator, Douglas Senecal. Insofar as Senecal pressured or forced Jackie Crosman to be unavailable to testify at trial and due to the fact of his not being able to visit Sara Cherry at her own home because of his bail conditions, as well as a reasonable inference that the abduction of Sara Cherry was done by a person who knew the decedent, the DHS file would direct relevancy to the strengthening of the theory of the defendant's case.

T' tuts **J. Connolly**
ttorney at Law
22' ‡ Fore Street
-0 Box 7563 D T.S.
Portland Maine 04112
1207) 773-6460

In this context the Trial Court in the Dechaine case abused its discretion by precluding the defendant from having access of the the DHS file when such access to the DHS file might be necessary to the determination of the issue of the admissability of the Senecal evidence which was before the Court. Under terms of §4008(3)(B) the Department shall disclose relevant information if the Court found that access to those records may be necessary for the determination of any issue. The DHS records by establishing a causal connection between the investigation of the disappearance of Jackie Crosman and Sara Cherry, were necessary for the determination of the issue. The language of §4008 is mandatory requiring disclosure in those instances when the information is necessary to resolve evidentiary issues. Therefore, the Court's failure to provide the information contained in the DHS file was an abuse of discretion.

2. DUE PROCESS ANALYSIS

The Due Process Clause of the Maine Constitution, the confrontation and compulsory process of both the Sixth Amendment to the United States Constitution and Article 156 of the Maine Constitution establishes certain trial rights which a reviewing court is to examine to determine if a violation of a fundamentally fair trial occurred. The analysis used in the nature of a due process approach. State v Perry, 552 A.2d 545, 547 (Me.1989). This approach is consistant with the standards enunciated by the United States Supreme Court in Pennsylvania v Ritchie, 480 U.S. 39, 107 S.Ct. 989, (1987). In analyzing the Maine Constitution the Law Court has declared that identical concepts of due process to the United States Constitution and the Maine Constitution should be used. Penobscot Area Housing Development Corp. v City of Brewer, 534 A.2d 14, 24 n. 9 (Me.1981).

In Pennsylvania v Ritchie, 480 U.S. 39, 107 S.Ct. 989 (1987) the United States Supreme Court dealt with the confidentiality statute for child protection records in Pennsylvania. In Ritchie the trial judge did not examine the file, but merely accepted departmental assurances concerning what was in the file and

aa8 J. Connolly
ttorney at Law
2½ Fore Street
J Box 7563 DTS
Portland Maine 04112
(207) 773-6460

refused to order disclosure of files to the defendant. A majority of the United States Supreme Court agreed that the trial court must conduct an in camera review of the records but that the defense counsel need not have access to the files except as the trial court concluded was necessary after its in camera review. Specifically, the court held that under the due process clause the trial court must review the file to determine whether it contains information that probably would have changed the outcome of his trial." 480 U.S. at 48. Accord State v Perry, 552 A.2d 545, 547 (Me.1989). The standard to be imposed under Pennsylvania v Ritchie, is that the defendant in this case was entitled to have the DHS file reviewed by the trial court to determine whether it contained information that probably would have changed the outcome of the trial. Although the trial court is given discretion in the matter as to whether or not the information should be disclosed to defense counsel and to be permitted to be used during the course of a trial the discretion is not unbounded. Pennsylvania v Ritchie at

C. THE RESULT

1. LAW COURT DE NOVO REVIEW

Pennsylvania v Ritchie requires that the Appellate Court examine the in camera inspection by the trial justice to independatly determine whether or not divulgance of the information sought "probably would have changed the outcome of the trial." State v Perry, 552 A.2d at 547. The Law Court in this action has received a copy of the Department of Human Services file which became attached as part of the record in this case. The Law Court should examine the unedited materials to make a determination whether disclosure of the information "probably would have changed the outcome of the trial." State v Perry, 552 A.2d at 547. However, even without review of the questioned file, the defendant's offer of proof adequately establishes the materiality of the worker's testimony and file.

T~ nas J. Connolly
ttorney at Law
2[1] Fore Street
(-O Box 7563 D TS.
Portland. Maine 04112
(207) 773-6460

2. A NEW TRIAL IS REQUIRED UNDER THE CIRCUMSTANCES OF THIS CASE

Upon a de novo review the Law Court must determine it the information contained in the impounded file probably would have changed the outcome of the trial. If the review of the DHS file contains no material information in reference to the involvement of Douglas Senecal in the Crosman-Cherry family, or if the non-disclosure was harmless beyond a reasonable doubt, the Lower Court conviction would be upheld. Pennsylvania v Ritchie, 480 U.S. at

In this particular action there is a reasonable probability i that had the evidence been disclosed to the defense the result of , the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome: United States v Bagley, 473 U.S. 667, 682 (1985)(Opinion of Blackman,J.); see id, at 685 (Opinion of White,J.). The Reviewing Court should understand that the exclusion of the alternative perpetrator evidence was primarily premised upon the fact of a weak nexis between the pending sexual abuse charges against Senecal and the murder of Sara Cherry. The DHS file involves direct allegations of witnesses that Senecal was acting in an abberrant manner on the day of Sara Cherry's homicide. The identity of those witnesses was not disclosed to the defense but is contained in the DHS file. That information itself is material, in that independant of any protected information, the DHS worker was the repository of a material fact involving Senecal's activities on the day of the homicide. The fact that a State agent was able to obtain such information in the course of business and to keep potentially exculpatory evidence protected byl including it in the DHS file renders the outcome of the trial at issue. The Trial Court would not allow testimony involving Douglas Senecal whatsoever. The DHS file contains many inquiries' by DHS workers to the Senecal family at the time of the homicide. Those issues would have fleshed out the defendant's offer of proof! and it cannot be said beyond a reasonable doubt not to have affected the trial outcome. In addition, names of the identifying

TT -mas J. Connolly
ttorney at Law
22 z Fore Street
Box 7563 DTS
Portland. Marne 04112
(207) 773-6460

complaining witnesses who observed abberrant behavior by Senecal is included in the DHS file. Also of consequence is the information as it relates to the disappearance of Jackie Crosman in the period of July 5, 1988. The disappearance of a key witness in the, Unlawful Sexual Contact case just prior to trial would have a direct spillover effect in elucidating the motivation that the alternative perpetrator may well have had in committing the jabduction and murder of Sara Cherry. By establishing the behavorial and attitudinal circumstances involved with the lalternative perpetrator in the time frame of Sara Cherry's abduction, the DHS file would be directly beneficial in the defense of the homicide. In addition, the DHS record would establish that the complained of Unlawful Sexual Contact, which occurred in 1983, took place at a time and in a place where Sara Cherry was a likely witness to the behavior. Moreover, the DHS file by establishing those kinds of time and date details could lestablish that Sara Cherry herself was a potential victim of unlawful sexual contact. (see for example statements of Justice Bradford in C C T 3/16/89 at 21).

By permitting the defendant access to the DHS file the defendant would have been provided with a wealth of opportunity t understand and prove the nature of the involvement between the Senecal and Crosman-Cherry families. It is this relationship which establishes materiality to the allegations made by the defendant as to an alternative perpetrator. The logical nexis between the alternative suspect and the decedent can be established through the DHS records by showing times, dates and places as well as establishing motive in that increasing pressure was placed upon the alternative suspect in the period of July 5, 1988 just prior to the murder of Sara Cherry.

A review of the DHS file by the Law Court should establish that the in camera review by the Trial Justice without turning over the documents was an abuse of discretion and justifies a new trial under due process requirements.

T'- -mas J. Connolly
attorney at Law
22½ Fore Street
0 Box 7563 DT.S.
Portland. Maine 04112
(207) 773-6460

IV. THE ADMISSION OF EXPERT TESTIMONY IN REBUTTAL IS AN ABUSE OF DISCRETION WHERE A M.R.CRIM.P. 16(c) ORDER REQUIRED DISCLOSURE OF ALL EXPERT TESTIMONY AND THE EXPERT TESTIMONY WAS DELIBERATELY WITHHELD

A. THE ORDER AND THE ADMISSION

1. M.R.CRIM.P. 16(c) DISCOVERY MOTION

On January 25, 1989 the defendant filed a motion before the Trial Court to Compel Discovery pursuant to M.R.Crim.P.16(c) and that the State be required to reduced to writing all expert testimony.

Specifically the defendant's motion stated, inter alia, as follows:

> 3. That the State be required to provide written reports of all experts intended to be called by the State either in the case in chief or rebuttal and to specify the facts, opinions and conclusions as relied upon the same

In the body of the motion an averment was made by counsel for the defendant that all other discovery procedures pursuant to M.R.Crim.P.16(a) and (b) were exhausted.

2. DISCOVERY ORDER

A hearing was held before the Honorable Justice Carl O. Bradford on January 27, 1989 in reference to the Motion for Discovery.

The hearing on the Motion to Compel was primarily focused on the DNA issue and only a cursory discussion as to the Motion to require the State to reduce to writing all expert opinion. (M C T at 61-62).

Justice Bradford granted the Motion to Compel Discovery on January 27, 1989 and affixed his signature to an order requiring that the provision as requested by the defendant be complied with.

3. THE TRIAL STATUS

Essential to the defendant's case was his explanation as to

Thnmas J. Connolly
\ttorney at Law
'2' 2 Fore Street
Box 7563 D TS
Portland. Maine 04112
(207) 773-6460

why he was found walking in the woods near where the decedent was located. The defendant maintained in the course of his testimony that the reasons that he was in the location where he was located was due to the fact that he had gone into the woods to use drugs intravenously. (T T at 1218-19; 1223-24). The defendant's explanation as to his action on the day in question and of his failure of recollection was largely explained by his use of the intravenous drug. (T T at 1223-24). The defendant explained that he got lost in the woods due to his intoxication and that was essential to his explanation of his location and demeanor at the time he was located by police officer on the night in question. (T T at 1226-28).

To that point of the trial the defendant had maintained his innocence and had testified to the same. In addition it had been repeatedly pointed out by counsel for the defendant the lack of forensic evidence linking the defendant to the crime charged. The absence of any hair, blood or fiber evidence linking the defendant to the crime was pressed upon the jury. It was in this context that the drug issue and intravenous use became important.

Whether or not the defendant had used drugs was critical to his credibility as well as to his alibi and denial of commission of the offense. Discovery had beenprovided during the course of the case which showed photographs which revealed a bruise on the defendant's arm in the area of his left bicept. In this stage of the proceeding the issue of intravenous drug use involved both the defendant's alibi as well as his credibility and it could not help but be of serious concern to the finder of fact. It should be underscored that the defendant was denying any liability in the commission of the homicide and his entire explanation involved intravenous drug use.

4. THE OFFER OF EVIDENCE

Following the defendant's testimony the defense rested in the case. The Trial Justice called counsel into chambers for the purpose of examining how much time the remaining witnesses would take. (T T at 1376). The Court indicated that in rebuttal the

T' -Las J. Connolly
ttorney at Law
22 2 Fore Street
r0 Box 7563 D TS
Portland. Maine 04112
(207) 773-6460

State intended to call Dr. Ronald Roy who had testified previously in the case. According to the Court the State intends to recall him to testify as to exhibit 70, which is a blow-up of the arm of Dennis Dechaine, for the purpose of showing or having Dr. Roy testify that that would not be from an intravenous injection of his drug." (T T at 1376). The prosecutor indicated further in the offer that he anticipated Dr. Roy would testify that the bruise mark could be from a small needle mark, "but given its appearance to him and the time period which he's aware of between the taking of the drug in the photograph that if it had been an injection it would leave a different indication or a different mark." (T T at 1376).

Counsel for the defendant objected to the admissability of Dr. Roy's testimony "on the grounds that there was a discovery order in this case that the State was to furnish the names, addresses, and conclusions of any expert witnesses as part of the State's case in chief or for purposes of rebuttal." (T T at 1377)+ The Court then inquired of the prosecutor whether or not the prosecution was aware of the witnesses opinion in regard to the needle mark prior to the testimony of the defendant in the case. (T T at 1377). At this point the attorney for State indicated as follows:

> Mr. Wright: I suspected right along that Mr. Dechaine would make out the smaller mark in that photograph to be a needle mark, and as part of the suspicion asked the crime lab to blow up the smaller photograph which is in evidence. That was done. When prior to trial I did show the blow-up photograph to Dr. Roy in anticipation of if the defendant were to testify to this, which he has now done. So it's certainly - I sensed it would be coming but couldn't be put into the State's case by any means. (T T at 1377).

The attorney for the State went on to indicate that Dr. Roy' autopsy report was not objected to during the course of the case in chief despite the fact that certain details were not included in that report. (T T at 1377). The prosecutor argued that many kinds of expert reports do not include full statements of underlying issues or conclusions and "these kinds of issues arise and

T' Zas J. Connolly
22'2 Fosteel
. O Box 7063 DTS.
Portland. Maine 04112
1207)773-6460

are testified to with common knowledge and that they are coming." (T T at 1378).

The attorney for the State also indicated that counsel for the defendant had been given opportunity to discuss the matter with Dr. Roy and had in fact done so. Counsel for the State indicated that the defendant was free to ask any question of Dr. Roy but did not ask questions as to the needle marks. (T T at 1378).

The attorney for the defendant objected to the statement provided by the attorney for the State and argued that there was "sandbagging going on." (T T at 1378). Counsel for the defendant argued that the prosecution clearly had talked to Dr. Roy ahead of time and had the photograph blown up and had discussed what the consequences of needle mark testimony would be. (T T at 1378). Counsel for the State it was further noted knew about the defendant's intoxication with intravenous drug use. The defendants had been evaluated at the State Forensic Services pursuant to Court order and the prosecutor had reviewed a video tape indicating that the defendant maintained his intravenous intoxication at that time in question. (T T at 1378). Counsel for the defendant further maintained that the Order for Discovery indicated explicitly that any testimony that was anticipated to be offered of an expert nature including rebuttal testimony was to be provided in writing. (T T at 1378).

Trial counsel also indicated that during the course of meetings with Dr. Roy no explanation was given whatsoever as to the opinion of the needle marks. (T T at 1379).

Counsel for the defendant indicated "had I known this rebuttal evidence would have come in I would have my own expert or had the opportunity to get my own expert who would say that they are consistant with track marks." (T T at 1379).

5. THE COURT'S RULING

The Trial Justice allowed the prosecution to introduce the evidence into its rebuttal. The Court concluded "I think that this is something that was merely finalized as a result of the testimony of Mr. Dechaine." (T T at 1379). No discussion as to

was J. Connolly
attorney at Law
22'3 Fore Street
PO Box 7563 DTS
Portland. Maine 04112
(207) 773-6460

the appropriate standard under Rule 16(c) was given nor to the underlying Court Order. The Court merely concluded that since the defendant himself brought up the issue of the needle mark the State was entitled to bring in rebuttal testimony denying that it was a needle mark. (T T at 1379). No discussion whatsoever of the Order was placed on the record by the Court.

6. THE TESTIMONY

In its rebuttal case the State called Dr. Ronald Roy in reference to the questioned bruise on the defendant's left bicept. (T T at 1387). Dr. Roy discussed the photograph, defendant's exhibit #5, which is a smaller version of State's exhibit #70. (T T at 1387). Both of the photographs depicted the area in question which may be described as a bruise mark on the defendant's left bicept at the time of the defendant's arrest. (T T at 1387).

Dr. Roy concluded that the photograph was in his opinion not consistant with a typical intravenous injection site. (T T at 1388). Dr. Roy testified in detail about the basis of his opinion as it related to the subdermal hemorrhaging and the lack of scabbing as well as the color of the center of the leison in question. (T T at 1388). Dr. Roy testified further that had the bruising been caused by an injection it would have lasted only a short period of time and would have dissipated by the photograph was taken some 14 hours later. (T T at 1389).

Upon cross-examination the Doctor indicated that he normally would not make judgments or diagnosis based upon photographic evidence. (T T at 1389). He further indicated that he had never examined the defendant. (T T at 1390). The Doctor did admit that certain fluids if injected into the muscle as opposed to the veinous structure would remain for a longer period of time and would be consistant with the bruising seen in the photographs. T T at 1390).

B. THE STANDARD 1. M.R.Crim.P.16(c)(4)

Maine Rule of Criminal Procedure 16(c)(4), which was added in 1986, provided to the Court the authority to order an expert to

T ,a8s.Connolly
ttorney at Law w
22' z Fore Street
HO Box 7563 D TS.
Portland. Maine 04112
(207) 773-6460

prepare and the attorney for the State to serve a report summarizing the subject matter, the fact, the opinions, and the grounds for each opinion to which the expert is expected to testify. This provision is an effort to deal with a situation in Hwhich discovery would otherwise be frustrated because an expert has not prepared and submitted a report discoverable under Rule d16(b)(2)(B). The sanctions of Rule 16(d) are available for failure to comply with an order issued pursuant to Rule 16(c)(4). Cluchey and Seitzinger, Maine Criminal Practice, 16-21 (1987).

2. M.R.CRIM.P. 16(d)

In the event of noncompliance with the discovery requirement i by the State, the Trial court is given the discretion to apply an appropriate sanction. State v Dionne, 505 A.2d 1321, 1324 (Me.1986). While the Court may determine that, under the circumstances, no sanction is appropriate, see State v Dube, 478 A.2d: 1138, 1142 (Me.1984), it must at least consider the application of a sanction when noncomplaince has occurred. State v Mason, 408 A.2d 1269, 1272 (Me.1979).

According to Cluchey and Seitzinger, id at 16-23, sanctions should eliminate prejudice suffered by the defendant as a result 'of the States noncompliance with the discovery rule, citing as an ,example State v Ledger, 444 A.2d 404, 412 (Me.1982). The basic test articulated for the appropriateness of a sanction is whether it is in the furtherance of justice. So long as the Trial Justice has not abused his discretion his choice of sanctions will not be set aside on appeal. State v Reeves, 499 A.2d 130, 133 (Me.1985).

In general, in order to establish an abuse of discretion, a defendant will be required to show that he was prejudiced by the discovery violation despite the Court's efforts to remedy it. State v Reeves, 499 A.2d at 133. Cluchey and Seitzinger at 16-23. When a defendant can show that a violation was prejudicial that he was deprived of a fair trial, the Trial Judges actions on the violation would amount to an abuse of discretion. Cluchey and Seitzinger at 16-24 citing State v Sapiel, 432 A.2d 1262, 1268 (Me.1981); State v LeClair, 382 A.2d at 33.

T' -Las J. Connolly
ttorney at Law
22' z Fore Street
''O Box 7563 D TS
Portland. Maine 04112
12071773-6460

The Law Court has repeatedly indicated the requirement of the State to comply strictly with discovery requirements ordered by the Court. State v Ledger, 444 A.2d 404, 411 (Me.1982). The Court has made clear that the issue of prosecutorial bad faith is not relevant to a determination of whether Rule 16 has been violated. The gravamen should be whether or not harm to the defendant has occurred "whether it be by inadvertence or design..." State v Ledger, 444 A.2d at 411.

C. THE RESULT

Maine Rule of Criminal Procedure 16(d) does permit the Trial Court to impose sanction on a violating party to an outstanding discovery order. The requirement under Rule 16(c) and 16(d) is toy at least examine the appropriateness of some sanctions. In the instant action, the Trial Justice made no determination of any sanctions to be imposed upon the State for its willful non-compliance with the discovery order.

It should be underscored that the attorney for the State did not bumble into the issue of the needle marks in the defendant's arm. Rather it was clearly a calculated design to sandbag the defendant. The trial strategy while effective, is in direct contradiction to the purpose of the rule. Surprising testimony at the very end of the case on a critical issue has an enormous impact upon the dynamics of a criminal jury trial. It is exactly in this context that the testimony of Dr. Roy was offered. The issue of whether or not the needle marks in the defendant's arm were legitimate only became a serious issue at the very end of the case, with the final witness called, as a result of a deliberate prosecutorial design. According to his own statement the prosecution admitted that he had been aware of the possibility of the defendant testifying as he did and was prepared to rebut that with the expert testimony. The attorney for the State had witnessed the defendant's statement as to the use of intravenous drugs in a State Forensic Services evaluation which was video-taped. Knowing that the defendant was to make this claim the

T'- -mas J. Connolly
\ttorney at Law
22' z Fore Street
3 Box 7563 0 T S
Portland Maine 04112
(207) 773-6460

prosecution then contacted their expert witness and had photographic evidence blown up for purposes of denying the defendant's alibi and explanation as to his drug use on the day in question.

All these activities occurred by the prosecution knowing full well that a Rule 16(c) discovery order was in effect. The prosecution deliberately disregarded the Rule 16 Discovery Order in order to sandbag the defendant at the time of trial.

Rule 16(d) establishes that discovery sanctions are to be taken seriously and that the discovery orders are to have teeth. Failure to provide any sanction whatsoever for the willfull discovery violation or even for a negligent discovery violation would render the very purpose of the rule moot. By being able to disregard discovery orders and by being allowed to introduce evidence, particularly at the late stage of a proceeding, the prosecution gains an enormous advantage. This Court has on at least two occasions ordered new trial because of discovery violations which were not remedied at trial. State v Thurlow, 414 A.2d at 244-45; State v Mason, 408 A.2d at 1273.

In this instant case this Court should order a new trial for the violation of the discovery order and which caused substantial prejudice to the defendant.

T` -nits J. Connolly
ttorney at Law
22'2 Fore Street
OBox7563DTS
Portland, Maine 04112
(207) 773-6460

V. SEPARATE CONCURRENT MURDER CONVICTIONS UNDER ALTERNATIVE THEORIES FOR ONE HOMICIDE VIOLATES THE DEFENDANT'S DOUBLE JEOPARDY RIGHTS WHICH REQUIRES THE PROSECUTION TO ELECT AT JUDGEMENT UPON WHICH THEORY IT WILL PROCEED

A. THE SENTENCES

1. BACKGROUND

The defendant, Dennis Dechaine, was indicted by the Sagadahoc County Grand Jury on August 1, 1988 for the events which occurred on July 6, 1988. There was a six count indictment which alleged as follows:

Count I

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did intentionally or knowingly cause the death of Sara Cherry, all in violation of 17-A M.R.S.A. 2201(1)(A)(1983);

Count II

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did engage in conduct which manifested a depraved indifference to the value of human life and which did in fact cause the death of Sara Cherry, all in violaiion' of 17-A M.R.S.A. §201(l)(B)(1983 & SUP.1987);

Count III

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did knowingly restrain Sara Cherry with the intent to inflict bodily injury on Sara Cherry or to subject Sara Cherry to conduct constituting the crime of Gross Sexual Misconduct as defined by 17-A M.R.S.A. §5251(l)(A) & (C)(& 253 (1)(E)(1983 & SUP.1987), all in violation of 17 M.R.S.A. §301(l)(A)(3)(1983);

Count IV

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did engage in sexual intercourse with Sara Cherry who is not his spouse and who had not in fact obtained her fourteenth birthday, all in violation of 17-A M.R.S.A. 5§251(l)(B) & 252 (1)(A)(1983 & SUP.1987);

Thomas J. Connolly
Attorney at Law
22 Fore Street
Box 7563 DTS
Portland. Maine 04112
(207) 773-6460

Count V

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did engage in a sexual act with Sara Cherry who is not his spouse and who had not in fact obtained her fourteenth birthday, in that Dennis John Dechaine did manipulate an instrument or device in direct physical contact with the genitals of Sara Cherry for the purpose of arousing or gratifying the sexual desire of Dennis John Dechaine or for the purpose of causing bodily injury or offensive physical contact to Sara Cherry, all in violation of 17-A M.R.S.A. §§251(l)(A) & C)(3) & 253 (1)(B)(1987 & SUP.1987);

Count VI

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did engage in a sexual act with Sara Cherry, who is not his spouse and who had not in fact obtained her foruteenth birthday, and that Dennis John Dechaine did manipulate an instrument or device in direct physical contact; with the anus of Sara Cherry for the purpose of arousing or gratifying the sexual desire of Dennis John Dechaine or for the purpose of causing bodily injury or physical contact to Sara Cherry, all in violation of 17-A M.R.S.A. §§251(l)(A) & (C)(3) & 253 (1)(B)(1983 & SUP.1987).

All of the acts in question in the Indictment dealt with a single victim and a single course of conduct. Prior to trial Count IV was dismissed by the prosecution and the remaining counts renumbered.

The defendant was convicted of all counts of the indictment including the alternative theories of Murder found in Count I & Count II. The defendant was convicted in Count I of a violation of 17-A M.R.S.A. §201(1)(A), Intentional or Knowing Murder and i Count II of a violation of 17-A M.R.S.A. §201(1)(B), Depraved Indifference Murder.

2. THE MOTION AND THE RULING

Prior to the imposition of judgment and sentence on April 4, 1989 counsel for the defendant made a judgment of acquittal as to

T- was J. Connolly
ttorney at Law
22'2 Fore Street
PO Box 7563 D T S.
Portland. Maine 04112
(207) 773-6460

either Count I or Count II or in the alternative to require that the prosecution elect as to which Count to proceed with for purposes of judgment and sentencing. Counsel for the defendant maintained that the imposition of sentences as to both counts would be double punishment and violative of the defendant's right to due process and right against cruel and unusual punishment as guaranteed in Maine Constitution as well as the Constitution of the United States. (Sentencing Transcript at 2-3)®**

The prosecutor in the case requested that the Court sentence only as to one murder count leaving the other count without a sentence attached to it but with a find of guilty consistant with the jury verdict. (S T at 5).

The Court ruled that the State need not make an election as to which sentence or judgment to proceed upon but allowed conviction and sentencing as to Count I and Count II, the alternative forms of murder. (S T at 6). The Court indicated that it would run the sentences concurrent but would impose judgment and sentencing as to each count. (S T at 6). The defense motion as to election was denied, (S T at 6)

3. THE JUDGMENTS AND THE SENTENCES

On April 4, 1989 Justice Carl O. Bradford sentenced the defendant on the alternative forms of murder after having imposed a judgment and conviction as to each count. The defendant was sentenced as follows:

Count I (Intentional or Knowing Murder)
The Department of Corrections for a term of Life Imprisonment

Count II (Depraved Indifference Murder)
The Department of Corrections for a term of Life Imprisonment'

B. THE STANDARD

More than one conviction for a single homicide prosecuted under alternative theories is prohibited as a violation of Dennis Dechaine's double jeopardy rights under the Maine Constitution Article 1 58 and the United States Constitution

T°- -•nas J. Connolly
\ttorney at Law
22¹₂ Fore Street
0 Box 7563 D TS
Portland. Maine 04112
(207) 773-6460

Amendment Five. State v Allard, 557 A.2d 960, 962-63 (Me.1989). Quoting Ball v United States, 470 U.S. 856, 861 (1985); O`Clair v United States, 470 F.2d 1199, 1203-04 (1st Cir.1972), Cert®denied® 412 U.S. 921 (1973); State v Thornton, 540 A.2d 773, 777 (Me.1988); State v Poulin, 538 A.2d 278, 279 (Me.1988).

In addition the imposition of two concurrent sentences for each murder count is not authorized by statue and is unlawful. State v Allard, 557 A.2d at 962-63.

C. THE RESULT

The issue before this Court is whether the State should be required at the time of entry of judgment and sentencing to elect on alternative theories of a single homicide. The issue involves the fundamental rights of the defendant against double jeopardy and double punishment. The harm to the defendant occurs at the time of the judgment and the imposition of the sentence. Insofar as prosecutors are to be allowed to proceed with alternative theories for a single act they should be held to make an election if they are able to obtain convictions as to both theories. It is at the time of the judgment being entered and the sentence being imposed that the harm to the defendant occurs. In order to avoid the double jeopardy harm the Court should requires prosecutorial election and dismissal of one of the counts with prejudice. This would permit the defendant to proceed with an appeal in a manner consistant with double jeopardy provisions. Being able to overturn a conviction and to proceed to a new trialL with only one theory of the case available to the State is of constitutionally important dimensions to the defendant. Thus for example, if the State were required to elect between the alternative forms of murder, and if a new trial were granted, the double jeopardy rights of the defendant would be best served by requiring the State to proceed with one theory of murder. The same basic right would be involved in a situation involving the sufficiency of the evidence as to one particular form of murder.

T' -'nas J. Connolly
\ttorney at Law
22' z Fore Street
-O Box 7563 0 TS
Portland. Maine 04112
(207) 773-6460

In that instance a new trial would not be required and the defendant would be freed by a prosecutorial choice where the evidence was insufficient to sustain the underlying conviction. This hypothetical dramatizes the important and fundamental nature of the right involved.

The Court has discussed recently in State v Walsh, 558 A.2d 1184-1185-87 (Me.1989), the issue of a prosecutorial election at the time of sentencing.

In State v Walsh the defendant had been convicted of both Rape and Class A Gross Sexual Misconduct based on evidence of only one single act of sexual intercourse. The Law Court concluded that if the Trial Court itself concluded that the evidence in the case was adequate to support either of the alternative verdicts it appropriately should give the State an election of which count to take judgment. State v Walsh, 558 A.2d 1184, 1187 (Me.1989).

In foot note 2 in State v Walsh, id at 1186, State v Allard was distinguished from the fact pattern in Walsh. The Court seemed to be indicating that the merger provisions which were approved in Allard were inappropriate in Walsh due to the separate elements of Rape and Gross Sexual Misconduct counts whereas Allard involved double guilty verdicts for the single crime of Manslaughter. This Court in State v Joy, 452 A.2d 408, 411 (Me.1982) in foot note #4 indicated a preference, if not a requirement, that alternative theories of murder be included in separate counts. This requirement would seem logical in that different facts are required to prove the elements of the different forms of murder. As has been discussed repeatedly by this Court Knowing and Intentional Murder is profoundly different in nature and proof from Depraved Indifference Murder. See for example State v Joy, 452 A.2d at 410.

In State v Poulin, 538 A.2d 278 (Me.1988), this Court made it clear that the double jeopardy provisions of United States (Amendment V) and Maine (Article 1'58) Constitutions prohibit conviction of more than one criminal offense arising out of the act or transaction when the facts prove to support the conviction of one offense or the same facts support the conviction fo the other. Poulin, 538 A.2d at 278-79.

T-mas J. Connolly
1ttorney Lae
atSt t
O Box 7563 DT S
Porttand Maine 04112
(207) 773-6460

The same acts may constitute a violation of several criminal statutes and each offense may be punished separately when each offense requires proof of a fact that the other does not. Newell vi State, 371 A.2d 118, 119 (Me.1977). The particular variant of the offense specifically charged and the facts adduced to prove those specific charges must be looked to in determining whether convictions of two or more separate offenses arising out of a single transaction results in double jeopardy. Poulin, 538 A.2d at 278-79.

In this case conviction for alternative theories of murder should not be merged into one Count. While the State apparently is to be allowed to use alternative theories at trial in order to obtain a conviction, consistant with double jeopardy concerns they should not be allowed at the conviction stage to use a legal fiction to merge counts I & II into a single conviction. Just as redundant convictions are not made constitutional merely by running sentences concurrently, State v Allen, 292 A.2d 167, 172 (Me.1972), State v Walsh, 558 A.2d 1184, 1185 (ME.1989) a merger of murder convictions at the time of judgment and sentence does not prevent the constitution malady. It should be underscored that the jeopardy concerns in the Constitutions of Maine and the United States are designed to protect a defendant from repeated prosecution. To the extent that a conviction would be overturned has to the count required to be elected by the prosecutor a direct harm occurs to a defendant upon merger. This harm is not merely academic but of tangible consequence to a defendant who is successful upon appeal. If merger is allowed the defendant is placed in a situation where the new trial would proceed on both alternative theories of homicide rather than restricting the State to a single theory the conviction on which could not survive an appeal.

Accordingly, this Court should remand this action to the Superior Court to require a prosecutorial election as to either count of murder. If a new trial is ordered due to an infirmaty of the conviction, the prosecutorial election should be applied retroactively so as to permit the prosecution only one theory of murder upon retrial.

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212Fore Street
J Box 7563 DTS.
Portland, Maine 04112
(207) 773-6460

APPENDIX A

THE COURT: We've now reached the final stage of this trial. And I've indicated to you at the end of the day yesterday, the way our procedure will work is you will hear from Mr. Wright first and then Mr. Connolly and then tor.

Wright will have the opportunity for a rebuttal; limiting his rebuttal marks to comments made by Mr. Connolly. That is because the State has the burden burden of proof. I will get into more detail in my instructions to you.

Ordinarily the time frame for final argument is usual a maximum of one hour on each side. Because of the length of this trial and because of the multiple charges that are involved, counsel and I have agreed that each side will have up to an hour and a half. Mr, *Wright* will *have to* gauge his time between how much of his direct argument and the time that he saves for rebuttal. Then I will have a brief recess for you before I give you my instructions on the law.

So now that you know the time frame here, I'm going to sit down and *turn it over* to counsel. Mr. Wright.

MR. WRIGHT: May it please the Court, Mr. Connolly, Mr. Carlton, Mr. Foreman and Ladies and Gentlemen of the Jury. Although she did not know it when she went to the Henkels on Lewis Hill Road in Bowdoin on July 6th, 1988 to baby-sit, Sarah Cherry, that day, had a rendezvous with death. That she was kidnapped, sexually assaulted and murdered is obvious. The only question is who did it.

To answer that question, to prove this defendant's guilt, we have bombarded you, I know, with a very great many details. And although this was a lengthy trial in a compressed part of time, it was necessary to give you all the

information however because the tapestry of the guilt woven by threads are many and often very fine. Now, perhaps better than *ever,* you can appreciate the sense in which I sought to say to you over a week ago in opening statements that we asked a lot of you. We ask you to sit quitely hour after hour simply listening to testimony and watching the witnesses. The testimony at times is fascinating and at times very tedious. It can be obviously compelling and at other times more methodical and of a more subtle importance. But the time we've taken was required, because a murder trial is an attempt to bring to life events in which a life was taken. Your duty now is simply to return a verdict consistent and compelled by that evidence. The evidence cannot be explained away by innuendo or by, as the evidence tells you the defendant's all contrived testimony or otherwise.

Before discussing that evidence there are a few preliminary points I would like to talk with you. First, the State, as you know, is required to prove beyond a reasonable doubt what lawyers call the elements of the offenses in the indictment. Justice Bradford will instruct and define those elements later this morning, You may, however, honestly and forever in your deliberations disagree among yourselves with respect to some or many of the things that you have heard and the importance you want to attach to those things. It's not

uncommon or unexpected that a group such as yourselves will find themselves in some disagreement and will never be unanimous as to certain matters. That doesn't matter. There is no requirement that you all agree let alone beyond a reasonable doubt as to what all the facts are on which you base an ultimate judgment leading up to the the commission of these crimes. Only when all is said and done that you all agree that it is your unanimous judgment as to the elements of the offenses on guilt or innocence.

Second, the Court will later instruct you on the elements of count one of murder. I wish to point out to you that as you hear those terms of a knowing or an intentional killing you will not hear any aspect of premeditation or planning. That is not required under Maine law to be guilty of murder. Murder in this state does not require any planning, any forethought or any deliberation prior to its occurrence. It requires the one act of intentionally or knowingly, and the Court will define those terms to you, at the time of the death.

Third, it is the State's obligation to prove, as you know, the defendant's guilt beyond a reasonable doubt, and the defendant as you have been told has no legal burden whatsoever. But by testifying in his own behalf the defendant assuredly tried to convince you that the State has not proven this case. You are therefore perfectly free to

judge his credibility as you would any other witness and to consider whether his testimony has convinced you of anything other than his guilt. In doing so I ask you always to remember what interest or stakes in the outcome does he have in telling the truth or not telling you the truth? It must be self-evident to all of you that his interest is greater than anybody elses. Did any of you say to yourselves after you heard him testify the day before yesterday and concluding yesterday with regarding his denial of guilt, now there was testimony that I feel comfortable with. Now there was testimony that I can accept. Now there was testimony that I can believe as being true. Or did you, as you should, lay it down against all the other evidence in the case and conclude of his denials this just cannot be so.

The defendant, the evidence tells you, is an admitted liar and finds it useful to portray himself differently to his friends and family. To his claims, for his claims of innocence to be true you must reject the testimony of every law enforcement officer who testified in this case who contradicted his denials, who told you what he had done, what he had said. You must conclude at best that those officers were mistaken in what they heard and observed or they were lying. If not lying why not lie better. Why not if these police officers wished to make up confessions would they not make up more direct confessions with fuller details. Police

officers knew what had happened. And yet you have instead very interesting, very interesting statements from the defendant, which I suggest to you no police officer would dare to create.

Fourth, to say that Sarah Cherry's death was unnecessary is not to say it was senseless. Death always makes sense to the murderer. So however much he hides them, the defendant had his reasons for killing Sarah. It may be that another part of him that he wishes to portray to the public killed her but it's still a part of him. Whatever his reasons were, apart from the sexual overtones which must make up the other side of the defendant, the State is not required to prove his reasons or his motives.

Next, similarily, as I told you in opening statement there are in this case, to be sure, as there are in virtually every criminal case, unanswered questions. But you must decide this case on what the evidence is and not on what it is not. I gave you the example in this regard of fingerprint evidence. You may wonder why in the world did we bother to give you have evidence of the fingerprint of the defendant in his own truck. Think it through a little bit more than that that. The claim will surely be, among others, that the defendant's fingerprints were not at the Henkel's residence, therefore he couldn't have been there. But you know for a fact that Sarah Cherry was there and her fingerprints were

not recovered either. The claim may be, among others, that Sarah Cherry could not have been abducted in the defendant's truck because her prints were not found in the truck. But you know for a fact that the defendant was in that truck yet piy of all of the mess of papers and items found in that truck and on the truck itself only a very few handfuls could be found to have the defendant's fingerprints. The point as we tried to make to you with regard to this kind of evidence, whether it be fingerprints or fibers or hairs or what have you, sometimes you have it and sometimes you don't. I can give you no better *answer than to say that's the way* God made it.

For all that appears from the evidence, Sarah Cherry's selection of a victim on July 6th, 1988 was random. That may also give you a moments concern; but it should only be a moments concern. For although Mr. Connolly suggested in opening statement isn't it more likely that somebody who knew Sarah Cherry killed her. The evidence is that only her folks, the Henkels, and a friend of Sarah's by the name of Julie Wagg knew she was baby-sitting that day. You know from the evidence that none of them committed this murder. And, more ever, if somebody she knew had come to the house, somebody with whom she was comfortable, she would not have left behind her in leaving the house her glasses *and* her shoes. She would not have left personal belongs of that sort

behind upon voluntarily leaving, nor would this responsible young lady have left voluntarily leaving behind the infant child with whom she was caring for that day. Like it or not her selection was random. Although the evidence leaves you with is that she did not know her killer. She did not know Dennis Dechaine. Obviously someone abducted and tortured and sexually abused and murdered Sarah Cherry. The only question is who.

It has been suggested during the trial of this case that the police had tunnel vision and focused only upon the defendant as a suspect. Ladies and Gentlemen of the Jury, police can have tunnel vision only if there exists obvious clues which would suggest that someone else was the real guilty person. But the police focused on the defendant for one very good reason. That is precisely to whom the evidence led them. It never led anywhere else nor would it ever have done so. What clues led elsewhere? None at all. It is sometimes said, perhaps flippantly, about some court cases it's only a circumstantial case. That is remarkably often true, particularly in murder cases where after all a murderer is not going to invite you to watch him commit his atrocities. Don't get misled because the evidence such as this is largely circumstantial or inferential that it is somehow marginal, which it is not in this case.

You have in the evidence quite astounding evidence of

the defendant's guilt. His papers and his alone were found at the Henkels® They were in his truck on July 6th. There was a tire impression left at the Henkel resident consistent with the truck tire of his truck. The tire impression was precisely approximate to where the papers in the driveway were found. Holly Johnson, a neighbor across the road, heard a vehicle slow down at the Henkels and not go by. She heard the dogs barking as they will when people turn into the driveway. And then she saw 15 or so minutes later a dirty or old Toyota pickup truck heading northbound exactly in the direction in which later Sarah Cherry's body was found. All this between one and 1:15 in the after of July 6th, perfectly consistent with, as you now know, Sarah Cherry had to have been aabducted.

This defendant was absent from everybody, every one during precisely the time when Sarah Cherry was killed. This defendant and this defendant alone later emerged from the very woods where Sarah Cherry's body in the meantime had been killed and later was to be found.

No one knew where the defendant was that day but he alone. So nobody else could have gotten to his truck. He himself said he saw no one else in the woods. The defendant's truck and no one elses in this entire world was found within just a few hundred yards of Sarah's body. The truck was locked. You know there was no spare Toyota key in

it. So the truck had not been moved after the defendant had left. Indeed the defendant himself acknowledged to Detective Hendsbee early on the morning of the 7th, and to you in testimony, that no one else would have driven the truck as far as he could tell. It was this defendant and no one else who was trying to hide the keys to his truck. And despite this defendant's slick denials of why he was trying to do that, you know why he was. He had to distance himself from that truck and it was *worth the risk* of the keys being found in the police car to avoid the other possibility of having been taken into custody that night and the keys would have been found on him; then he would have had no answer.

There is an addition as you know the rope in the defendant's truck, which this defendant has testified he knew was there and which Judy Brinkman physical matched to the rope with a noose at one end in the woods in a location between the truck and Sarah's body. It was a perfect match. And there is no doubt those two pieces of rope had been cut from the same rope. The other piece of rope in the woods appeared to match the rope on Sarah's wrists, but Ms. Brinkman is conservative and wouldn't call it a match unless it was a match because this rope frayed apart she could not make the match at that end of the rope. Still another another piece of the same kind of rope was found in the defendant's barn.

Although the defendant has predictably said he did not have his penknife on him on July 6th, the fact remains after her husband's arrest Nancy Dechaine told Detective Hendsbee when he inquiried if Mr. Dechaine owned any penknives, well, you know there is a penknife on his key ring because you've got the key ring. Detective Hendsbee said no. Its not there. And her reaction was to be surprised. Now you know what the murder weapon is. Where is it you know as well as we do:somewhere in those woods. What else did Nancy say at that point? She said I better not say anything more or else I will be getting my husband into trouble. She knew and now you do too. But there is more.

When this defendant emerged from the woods and ran into the Buttricks, the evidence tells you he lied about where he was from and what he had been doing to cover his identification. He says to prevent them from knowing what he had been using drugs. Is this plausible? Does this make any sense? There is no evidence that the Buttricks could have or would have spotted anybody that was high or was able to discern such a thing. To the contrary. They said he acted perfectly normal. So why did the defendant lie if that's what the evidence tells you he did.

He's a bright young man. He told you how smart he was. Graduated at the top of his class. He's able to think his way through problems. And he well knew that night he had a

big problem. He had to explain his presence in those woods. Yet with Mrs. Buttrick he let his inner guilt slip when he asked where he was from and he told them and he said softly, I should have stayed there.

Unfortunately for Mr. Dechaine and fortunately for the cause of justice Mr. Buttrick was unable to locate the truck for the defendant that night and the defendant did not make his escape. And so then began his contact with law enforcement and his interview with Officer Reed, The defendant says that Reed was intimidating. But isn't the truth of it that he must, himself, must have died a thousand deaths when he realized that the sheriff now had the papers. Reed was intimidating because he was effective in eliciting the truth from somebody who didn't want to give it up. Even the defendant's mind could not race fast enough to figure out how he could absolve himself. Even he is not that good a liar. How intimidated was this defendant? Not so much so that he was unable to complain to Sheriff Haggett about Deputy Reed. Not so much he was able to invoke his Miranda rights which he previously waived or given uP; had agreed to talk to the sheriff. Of course by the time he was read his Miranda rights he wanted to say no more. However, bright as he is, he then realized he could not play these trained officers for fools, just as I hope you would not let him play you. He was not so intimidated that he was unwilling to go

with Reed and Westrum to look for his truck. Leaving along the way a footprint which you may compare with the print in the brook near the body such as it was after the rainstorm that had occurred and which you may, I trust you will compare with his shoes, which are in evidence.

But then he was relieved when Detective Hendsbee arrived. So what reason is there to feel intimidated by Detective Hendsbee? Detective Hendsbee expressed concern for him. He was relieved. He at that point I suggested to you needed to show to Detective Hendsbee cooperation or else this detective would have been even more suspicious. But still the big question remained. What was he doing in those woods? Why had he been there? The defendant still had to have a story. And so even feeling relieved with Detective Hendsbee he maintained the same lie with regard to fishing. Another story you have now from his own lips was not true.

Friday, after the defendant had been taken home then we move through Thursday and on to Friday, the defendant was, according to the roommate, Richard Bruno, nervous. When did that change? Upon learning upon the discovery of Sarah Cherry's body. What did he do? He dropped his head. That folks is not an act consistent with innocence. The body he had tried so hard to hide had been discovered. He knew the game would be up soon. Then, with no place to run, he waited. Detective Hendsbee arrived and upon his arrival the

defendant said: "Do what you have to do." d: "It must be something else inside me that is doing it."

Those, Ladies and Gentlemen of the Jury, are not the words of an innocent person but words of a troubled man ridden with guilt and who has experienced with drugs for virtually half his life, not street-wise, who is now beginning to unburden himself. So later that evening he continued with Detective Westrum. "I don't know," he said, "whatever made me have do it. I can't believe," he said, "that it happened. Oh my God; it never should have happened® Mark, I went home and told my wife that I had done something bad and she laughed at me." In referring to what he had done bad he could hardly have meant drugs. That is not what he told her and certainly not because she would not have laughed about that, given her aversion to drug use. It had to be something else, and you know as well as I what it was. He said further to Detective Westrum: "But I don't believe my wife believes me." If it were drugs he was talking about of course she would believe him. He had such a longstanding use that she knew about drugs. "Mark," he said, "please believe me. Something inside of me have must have made me do it." Virtually the same statement made to Detective Hendsbee earlier.

He sought comfort throwing himself around Mark Westrum, please believe me. Why, *Mark? Why?* Then he said! "I didn't

think it actually happened until I saw her face on the news. And it call came back. I remembered. Why did I kill her? What punishment could they ever give me that would equal what I have done?" And finally much as he said to Detective Hendsbee, "it was something inside that must have made me do it." One more time he said it.

Now, it may be said to you by Mr. Connolly shortly that the defendant's emotional state undermines the unreliability of these statements. That would be fine to say except it's unsupported by the defendant's own testimony in which he only denied some of the statements or put a convenient spin on others of them. I suggest to you that his emotional state is exactly what prompted him to say what he said, which tells you the accuracy of what Detective Westrum reported. It was at a time when, for a change, the defendant had not carefully planned every response that he would make.

So finally onto the Lincoln County Jail where the defendant said: "You people need to know that I'm the one that murdered that girl. You may want to put me in isolation." Quite predictly the defendant claims what he said he was the one accused. And he said what he said just to protect himself at the jail. But remember the jailers already *knew* he was *coming* and had no plans to put him in with the general population. Deputy Maxcy and Deputy Dermody said to you that the defendant did not say I'm the one

accused but he said I'm the one who murdered that girl. You saw them testify. It takes no argument from me, Ladies and Gentlemen of the Jury, to persuade you that those two straight arrows heard exactly what, they reported to you what they had heard. They told you what that was without ambiguity, without equivocation. Just as they wrote it down that very night, as they knew the significance of it.

Perhaps recognizing the creditability of those witnesses, as I'm sure you will find them to be, the defendant retreated in his testimony to saying, well, maybe I did say what they said I said. But if I did it was only - get this - a regrettable error of semantics. That's almost laughable to maintain if somebody is making a regrettable error in semantics when one is charged with murder. Does that at all have the ring of truth to you? Certainly not. Is that also how this defendant would pass off his testimony in which he very unintentionally revealed his guilt when he said "we were losing the light in the woods." You saw him when he said that yesterday rock back on the witness stand as if somebody cuffed him on the side of the head and didn't know what had happened. That tells you his guilt. And yet this defendant, though he himself maintains he's not a very good liar, turned right around and came up with the quickest response that one could ever imagine and talked about snowstorms. It didn't ring true, did it? But instead

revealed just how quick and fast and accomplished a mind he has to talk himself out of anything.

Keep in mind that Mr. Dechaine told you that the police had not talked him into believing that he had committed these crimes. Well, if they hadn't, and he told you they hadn't, the only explanation for why he would repeatedly admit to the murder is because he had to, the death of Sarah Cherry, is because he had done it. Yet through out all of those statements is there a word about drug usage? Not a word. Only later does that come up. And why not? It fits perfectly with his entire adult life, and given what he's facing he's got to come up with something.

So, finally, he said as you learned yesterday at the conclusion of all of the testimony, he said to Detective Reed: "I know what I've done is wrong: but I don't consider myself a murderer, I consider myself a drug addict." That statement, Ladies and Gentlemen of the Jury, reveals this defendant's true arrogance. What he is saying to you **is, in** plain and simple terms, I know I killed her, but please excuse me from taking a human life because I'm a bit of a drug guy. Yet in that very assertion, in that very claim are the seeds of his own destruction. For he has said that he's not a drug addict. He can't bear that thought; that must have been obvious to you as he testified. Still, it's one thing for someone who has never done drugs not to know what

his reaction to drugs will be on any given occasion how he would react to drugs. It is quite another from somebody like this defendant, plausibly to maintain as he tried to do with you, that he would have had no idea what to expect from this so-called amphetamine that he so-called bought in Boston from a so-called drug dealer.

The defendant, apart from his assertions of a spotty memory and some confusion, was, he told you, well within his senses on the afternoon of July 6th in the woods. This is crucially important for you to know because it means that he acted purposefully and with awareness of his surroundings and awareness of the consequences of his actions, and that makes him guilty of murder under count one and not the lesser included offense, which you would be instructed on of reckless and criminallyly negligent manslaughter. You will want to listen with care to the Court's instructions, as I know you will. Principally the only way to reduce murder to manslaughter is through intoxication, and the defendant himself, although he says he was high, maintains he was well within his senses. That the effect on him was nothing like it had been on the one time he took LSD when he hallucinated, You may reduce this crime to manslaughter only if in good conscience you accept that the defendant was so intoxicated that he was unable to act with intention or knowledge with what was going on. And he himself has not given you that

option. He himself does not make out such a loss of his facilities. And moreover the sequence of events involved in this case shows purposeful goal directed conduct at every step. Why would the defendant bind a 12-year-old girl except to restrain her and make her submissive. Why would the defendant gag her twice over except to prevent her from screaming. Why would the defendant stab her over and over exempt to harm her. Why would the defendant torture her by using a sharp instruct lightly across the neck except to scare her and terrorize her further and for his own perverse pleasures. Why would the defendant strangle her except to cause her death. Why would the defendant jam two sticks into Sarah Cherry's vagina and anus except for his own perverse pleasure. Why would he bury her except to hide her body from discovery.

In the face of all of this evidence what is the defense? First the defendant denies the claims. Its not surprising. You expect him to take the stand and admit it? Only this defendant has an interest in hiding the truth from you. Only this defendant stands to gain if you were diverted from the truth. Only this defendant can accomplish a diversion either by his denials or his unlikely story of drug usage. Here is a defense born of desperation and necessity, and necessity, as you know, is the mother of invention.

Second, it seems, although assuredly the evidence does

not show you any realistic alternative killer, the defense seems to suggest in the evidence that all this is only an unfortunate set of coincidences. To put it plainly, that the defendant was set up. You have a stark choice: either the defendant is guilty or you believe the defendant's claims that he was set up and you find him not guilty.

Let's examine this. Keeping in mind that the rope was in the truck, assuming there is another killer out there, that killer had to have gotten a hold of Sarah Cherry, and it just so happens come upon the defendant's truck. That person would have had to have left his own vehicle by the defendant's truck, he had no idea where that person was or whether the person who came back to the truck would come back in a minute or an hour. That person found, out of apparent view and hidden behind the seat in the truck, the yellow rope. He somehow got into the locked vehicle. Of course he could have done it through the sliding glass window$ all the while Sarah Cherry was waiting for him to take her into the woods. It makes no sense. Then the mythical killer would have had to make his way back to *his own* vehicle and then he would have had to, from a locked truck, stolen the receipt and the notebook and returned to the Henkels and left it in the driveway. A pretty risky thing to do considering the killer would have no way of knowing if anyone then would have been home at the Henkels. If it's a set up why not do that

then? Why take simply one piece of paper with the defendant's name and a notebook which does not have the defendant's name in it? You know from the evidence there were other autobody receipts there, because of the damage to the defendant's truck. He had gotten estimates. There were other pieces of paper including his wallet with his name on it. Why not take those other pieces of paper to better set up the defendant? Why not leave those papers at the Henkels? Why not leave the rope that was found deep in the woods next to the truck, the rope which the searchers on their pass through even had missed. It makes no sense.

Ladies and Gentlemen of the Jury, do not allow yourselves to forget the unspeakable savagery of the death of Sarah Cherry suffered. The gag in her mouth and the scarf tied around her face, that her T-shirt was pulled down at the neck and she was stabbed in the chest, that her brassiere was then pulled up after being stabbed in the chest, thus revealing the defendant's sexual motivations at work, that she was tortured by sharp blade being scraped across her neck slightly, that she was stabbed repeatedly in the neck, that she was strangled with a scarf drawn so tightly that the diameter of the small loop around her neck was no more than three inches. And still struggled causing petechiae hemorrhage in her eye area and blood on her fingernails to fight against death. But slowly, slowly the life was drawn

out of Sarah Cherry. And in final viciousness, in one final act of deprivity while Sarah was still just barely alive and still conscious the defendant then assaulted her vaginally and anally. Then buried her body, under forest debris.

You must not forget what happened because these acts show that the defendant acted with purpose; he could have stopped at any time except that his perversions overtook him. He acted with knowledge of what he was doing. And he is thus guilty of murder in count one of this indictment.

At the same time if these acts do not qualify as deprived, as the Court later will instruct you as to count two, by their very nature revealing an absence of any concern for the value of human life, then I don't know whatever will. So the defendant is guilty of count two. The defendant cannot defend his acts as to count two by drugs because the state of mind is not controlled. You focus on the nature of the acts themselves, Obviously Sarah Cherry was taken and restrained for purposes of inflicting harm to her so the defendant is guilty on count three, kidnapping.

Finally, the two acts of gross sexual misconduct speak, for themselves. It remains only for you ladies and gentlemen of the jury to return your verdict consistent with and indeed compelled by the evidence of a verdict of guilty. Thank you very much.

THE COURT: Thank you, ter. Wright. Mr. Connolly.

MR. CONUOLLYs Members of the Jury, good morning, Justice Bradford, Mr. Wright, Mr. Carlton, members of the press, family members on both sides. As you can well tell by the long weeks of trial that we've had I'm not exactly completely organized. There is a lot of information that is in front of you right now, and it's my job in the closing argument to try to put it together for you as best I know how. I will invariably miss arguments that you will see. I will invariably not touch upon all of the evidence, and that is not only because I'm a little disorganized its also because there is a lot here, and your 12 collective minds are what will determine what the evidence is.

You folks have watched us carefully, both the prosecution and the defense during this trial and studied us, We are aware of that; we've studied you as well. You have worked very hard. And the hardest part of your job has get to begin. Before eleven o'clock I will be done. We'll sit down. It will be a short break. And the judge will instruct you as to what the law is. Then the hardest thing you people have ever done in your lives will come to you. That is the price of citizenship in this country. It's the price of a democracy. It's the price of our system of justice. We are many times called upon to do various sacrifices for our country. We sometimes are asked as to go to war, We are asked to pay taxes always. We are asked to vote on occasion,

and sometimes you are asked to do jury duty. That is your obligation now. It is not easy. You have seen during the course of this trial a very difficult, sometimes incredibly complicated, procedure of asking questions and eliciting testimony.

Many things that one side or the other wanted to bring forward have not been brought forward, but that is not your problem. Your exclusive and total attention must be focused, as the judge has told from you the beginning, on what was admitted into evidence; what the evidence before you as it came in through the various witnesses and as it exists in its physical form in case. And inferences and conclusions and a reasonable understanding of that evidence is what a jury system is all about. You 12 good people and true are obligated to take your common life experiences, to take what you know as human beings, what you have done during the course of your life and lives collectively, and analyze what is in front of you.

Unlike Mr. Wright in his opening statement as to what he says the question **is,** the question is not who did it. The question is has the State proven its case beyond a reasonable doubt. That is ultimately the issue before you. That is the only issue before you. That is what you must decide ultimately as to all 5 counts. During the course of my argument, my explanation of where I believe the evidence will

lead I will attempt to show you what the reasonable doubt is in the case.

There is a lot of evidence in front of you that is favorable to the State of course., The State has brought forward a large number of witnesses, a large number of exhibits. They have done a very thorough job of bringing forward much evidence. If you were to look only at their side of the issue, then the decision would be easy in this case for you. But as the judge has instructed you from that very first time that you walked in *the* courtroom here and we started that tedious process of jury selection, as you recall, as the judge has reminded you there is a presumption of innocence in this case, as there is in all criminal cases. That presumption of innocence is not mere words. Its not a game that people play. It's the cornerstone of liberty and the foundation of what makes our system separate and distinct and protects you jurors, protects the lawyers, protects this defendant at all times. That presumption of innocence has not dissipated, it's not gone away. It's in existence as we speak. It will continue to be in existence as you are given the charge by the judge and *Mr. Wright gives his* rebuttal argument and you go back to deliberate, and while you are in that jury room deliberating the presumption of innocence operates at all time up until the time where you decide that the evidence is sufficient to prove the defendant beyond a

reasonable doubt. If you do not reach that point the presumption of innocence alone mandates that you find that this defendant not guilty as to all charges. That presumption of innocence is extremely important because if you start from the presumption that the defendant is innocent, and you look at the evidence that the defendant is innocent, the evidence can make sense to you. It can be reasonable. It can be understood. That is what I will attempt to show you during the course of my argument. If you start from the assumption that he did it the evidence can show that he did do it. But that is not what the judge will tell you what the law is, and that's not your duty. You presume innocence unless and until the State has proven its case beyond a reasonable doubt.

The State asks you ultimately to believe a scenario with extraordinarily unlikely possibilities. You know, based upon your common experience and real life values and real life work that real life events sometimes do have - forces possibility. The act of circumstances, acts of individuals do come into play which are extraordinarily unlikely. If you give that benefit to the State the presumption that under some circumstances an individual who is otherwise normal will commit an atrocious act like this upon a person that he never knew in an area where he had never been before, if you give the State that presumption you have must give the defendant

the same presumption if not a greater presumption that the possibility, the probability, the likelihood of an alternative hypothesis is equal to or greater than the likelihood of what the State has told you. I would attempt to articulate that as best I know how during the course of this argument.

During the course of my opening statement I gave you a couple of equations that were in my mind that are very important. The first one, as you recall, was from Einstein: Every problem has a solution that is simple and easy and wrong. If you look only at the strict analysis, as the State has put forward to you, the conclusion is easy' that the defendant must be guilty. If you look a little bit closer at the facts as I will try to to articulate them to you that simple solution is easy. But it is wrong as well.

I also quoted in my opening statement from George Orwell which is: Freedom is the freedom to say two plus two is four. If that is granted all else follows. That will be the thrust of my argument during the course of my explanation of the evidence.

Now, the judge will tell you that proof beyond a reasonable doubt, as required by the State, is not a mathematical certainty. It may be argued that two plus two equals four is irrelevant because the State need not prove to a mathematical certainty that this defendant is guilty, but

they must only prove beyond a reasonable doubt. Which is not an exact science we are dealing with in this law business that we are dealing with. But if the facts do not add up, if the scenario, the hypothesis that the State puts before you is not for this defendant, this defendant must be found not guilty.

The evidence in front of you consists of a large number of items. I want to walk your way through some of the items which I think are particularly important during the course of my argument. But you should understand that at all times the evidence that is in front of you has a certain value. The physical evidence has a certain weight to be given to it. The testimony from various civilian witnesses has a certain weight to be given to it. The evidence from police officers has a weight to be given to it. The defense witnesses, And the defendant himself all have conflicting weight. It is your very difficult job during the course of your deliberations to determine what weight to be given to specific facts. You may not agree amongst yourselves how things fit together. Hr. Wright explained to you that you need *not be* consistent on all the facts in order to reach a unanimous verdict, which you must do. That is correct. But at the same time if there are facts that make it absolutely impossible for the State's hypothesis to be true, then you must return a verdict of not guilty under those

circumstances. If you find a series of physical facts which make it inconsistent that this defendant did it, you must return a verdict of not guilty as well. If you find a series of physical facts that make it unlikely that the defendant committed the offense the same conclusion is there.

So I want to talk about some of the physical evidence. I think now is as good as time as any. You've heard through the course of discussion and you've heard through the course of the presentation that was provided by all of the State's witnesses as to how the physical evidence developed. I will discuss three basic reasonable doubts in this case that I believe will result in a verdict of not guilty; that this defendant did not commit the acts in question; that he did not do the deed. Not that he was suffering from something at the times some drug induced aberration. Mr. Wright argues very forcefully that there is not good evidence in the case to indicate that this defendant was under some kind of delusions or some such thing as that. The evidence seems to show pretty clear that he was aware of what he was doing.

So reasonable doubt number one that I want to articulate to you is the defendant himself. The defendant himself is a reason in and of itself to find him not guilty. What are the components of that reasonable doubt? You have heard a large amount of character evidence, so-called. It was very difficult on the Court and on me and on the jury to get that

evidence in. You have may not have understood the importance of it. The witnesses that were called you had an opportunity to judge them, to view them, to analyze them. They knew Dennis Dechaine. They know Dennis Dechaine. They have worked with him. They have socialized with him. They have seen him under various circumstances. The character evidence as to his reputation for peacefulness and non-violence is not an insignificant factor in this case, especially when you juxtapose it with the enormous gravity of this crime. We have an individual here, according to the testimony, that has no proclivity, no tendency, no indication, no history, no desire for violence, no indication that he has within himself the ability to torture a little girl to death. That in and of itself should make you stop and think and wonder as to what was happening in the area of the Hallowell Road on July 6th, 1988.

The witnesses that came forward have described to you how he could not kill his chickens; how he could not under various circumstances do violent acts; how he was repulsed by violence. He has lived his whole life in this manner and not a blip has come in. Not a single instance has deviated from that by the prosecution. They have not brought forward a single fact that would cause you to think that this defendant was capable of this crime. His character in and of itself is sufficient to make you stop and think and ponder. By itself

it may not be enough, but in conjunction with other things I think you will find that is important evidence.

During the course of that discussion of character evidence you could see how stilted it was, how difficult, how limited it was. You did not have an opportunity to sit down and have coffee with any of those witnesses. All you were able to do was hear how they testified, what they were trying to say and the very limited context in which the rules allowed. That's the way the rules are. As the judge indicated at the beginning of the trial that is the way that evidence, is whether you like it or not.

You can infer from that, you can conclude from that enormous things. One of those things is that this defendant has not in him to do this crime. Reasonable doubt number one is that the defendant's character. In conjunction with that we have the defendant's denial of the allegation. We have him coming before you and under oath denying that he committed the offense. You had an opportunity to observe him. You had an opportunity to look at him. To understand him. To see him. To judge his creditability. Not in a police car where no other witnesses were. Not in a jail where no one else was around. Not in a situation that was beyond any kind of understanding as far as a courtroom goes. What you saw was Dennis Dechaine taking the stand and testifying that he did not do this crime.

Mr. Wright responds to his denials strongly by saying what is his interest in the outcome of the case. This is a catch that is involved any time a person is accused. I want you to stop and think about this argument very importantly. What Mr. Wright would have you believe is that every time an individual is accuse of an offense, when he gets on the witness stand and says I did not do it, whether it is this crime or any other crime whatsoever, because that person has a stake in the outcome you should not believe them. I submit *to you that the system that we have of presuming a person* innocent is exactly for that argument there. That that is why the presumption of innocence is so important because it directly negates that argument. It says that we presume that the defendant is not guilty and unless and until the State proves otherwise. The mere fact that a finger is being pointed at him, the fact that he is being accused of a crime does not in and of itself mean that he is not telling the truth. That is the presumption of innocence, *and that is* profoundly important in our system of justice.

Mr. Wright talks about the defendant being an admitted *liar and giving a false portrayal* of himself. And to that end discussion with the Buttrick's testimony, and I will come back to the Buttrick's testimony. But I should have you know one important fact. If this defendant had emerged from the woods after killing Sarah Cherry would he have given his

name? He told the Buttricks who he was. He did not tell them where he was from. He gave them false information as to that but he gave his name to them and to the police officers. He asked them to help him find his truck. A person, I submit *to you, who was in* a homicidal state, as the State would have you believe, would not have behaved like a gentlemen.

Mr. Buttrick's testimony during the course of the trial that you saw in State's Exhibit slumber 12 is extremely important for the defense in this case. If you recall the testimony of Mr. Buttrick the defendant behaved like a gentlemen. Helen Buttrick invited him in to have a glass of water. This is immediately upon leaving the woods. They noticed no wetness on his clothing. They noticed no blood. They noticed no abhorrent behavior. They said he was a *gentlemen. That is profoundly* significant because the first contact that he has with people that you can observe yourself and judge their creditability is one which is highly favorable to the defendant. It is one where it is consistent with the defendant's explanation as to his behavior on the day of July 6th. The fact that he gave them false information as to some minor points is consistent with his argument and explanation as to the drug use.

That is extremely important. Mr. Wright also indicates that the defendant gives a false portrayal to police officers. I will talk at length about the police officer

type of evidence. But I should have you understand that, again, the defendant did not try to give a false name to the police. He indicated that his truck was missing at the time. He at no point indicated or expressed any understanding that there was a murder involved here. What they were talking about for the first days until July 8th was an abduction. If the defendant was involved in a homicide where is the evidence of his knowledge prior to the press telling the public that a homicide was involved? It is not in this case. That should cause you to stop and think and be concerned. His cooperation, the defendant's cooperation with the police officer bespeaks volumes as to his involvement in this crime. He voluntarily answered questions in the police cars. He was held for six and a *half hours* under conflicting circumstancest police officers say he was under our hospitality; he says he was terrified. I submit if you have ever been in a police car late at night being questioned by an officer what is likely to be true? He's answers questions until he says he's terrified. Then he answers more questions later on, then more questions later on, then more questions later on. He gives the police permission to search his truck. He goes with them to try to *find* it. He voluntarily let's the police officers take photographs of his entire person; of his arm, of his back, of his clothes, of his person. He wasn't trying to hide at that point. He was

trying to be cooperative in the hope that would set him free.

He cooperated in the search of his home. The detective in the case during the course of the search says he had never seen - he said it was unusual to see a person cooperate in the search of his home. Would a person who cooperates in that kind of manner be hiding guilty knowledge at the time?

I submit to you that reasonable doubt number one is that the defendant himself. If you believe his testimony that in and of itself is enough to find him not guilty. Of course you would be troubled by the physical evidence and that's why where I'm going next.

Reasonable doubt number two is the physical evidence. The only way we can analyze this physical evidence is by looking at and discussing it. The first point I want to bring out under the physical evidence and its contradictory nature is the lack of physical evidence. It's somewhat a negative evidence saying the lack of forensic evidence shows that the defendant was probably not involved. I will later show you specific types of evidence that exist in the case that will show that he could not have been involved. But the first argument is is that the lack of physical evidence indicates that the defendant was not involved.

First of all we look to his person. On his physical person. When the defendant was taken to the Bowdoinham police station he was photographed. I want you to look at

that evidence carefully during the course of your deliberations. The photographs themselves show enormous things. What does it show us? It shows the defendant in the clothing he was taken in on. The clothes he was walking around in the woods. Look at it. It shows no blood, no significant amounts of dirt that would be consistent with a person that had buried a little girl. That is extremely important.

The detective during the course of his entire period of time with the defendant on that day took photographs of those things that he thought were significant. To that end he takes pictures of the defendant's arm, which I will discuss, he takes pictures of the defendant's clothing and he takes pictures of the defendant's back; the so-called scratches there. He doesn't take a photograph of that mark on the back of his arm. He doesn't show you the so-called scratch between the knuckles, not on the knuckles, between the knuckles was the testimony. They show nothing else. They don't show the wet pants. They don't show the mark on the back. I submit to you that the purpose of taking the photographs was to document *things,* to document physical evidence. And the physical evidence that can be concluded from these photographs is favorable to the defendant. When you examine that shirt and his clothing it does not appear that this person was involved in a significant amount of

digging and burying.

In addition, as to the defendant's person, there is no blood on his person that can in any way be linked in this case. I've talked about that at length. I think you understand that. I will talk about Dr. Roy's testimony when I get to Dr. Roy.

But the fact remains that no blood is upon this defendant. No hairs were taken from this defendant which match. No fibers were taken from the defendant's person that match. No fingernails scrapings were taken from this defendant that match. No fingerprints off of this defendant were found anywhere that match on either of the sticks or at the Henkel residence or anywhere else whatsoever. If you look at the blood and the hair and the fiber evidence it does *not in any way* link *this* defendant to this crime.

Lack of physical evidence argument number two is the truck itself. The truck, which is noted in Defendant's Exhibit Number 13 and Defendant's Exhibit Number 14 shows you something very significant. It shoes the police did a very careful job of exhuming evidence from the truck itself. The number of items that were in that truck is enormous. Approximately 150 to 180. **A** very large number of items. They vacuumed the truck. They fingerprinted the truck. They photographed the truck. They examined the truck. They checked for blood. They checked for hairs. They checked for

fibers and seminal fluid. The truck is empty and devoid of any indication whatsoever that that girl was in the truck. Since it's extremely important for you to understand that if the truck was not used in the abduction of the girl, then the defendant is not guilty of murder because if only instrumentalities, items, were taken from the truck and used in the murder but the truck itself was not used in the abduction then this defendant is not guilty.

The weakest link in the State's case is the abduction. If defendant did not abduct, if there is a reasonable doubt as to the abduction, if he can't be shown to have done that abduction he's not guilty of the murder and all the other crimes by that analysis. Only if the abduction was done by this defendant was the murder done by the defendant.

What proof ultimately do they have as to that? One of the items taken from the truck is important, the rope, and I will discuss the rope. But other than the rope being involved in the homicide, there is nothing inside the truck itself which indicates that Sarah Cherry was ever in that truck. That is important. Because you should, despite what the State officers have told you, find something. Now maybe you will grant that there was no blood, because it's possible that there was no blood. Maybe you will grant that there were no fingerprints because it's possible there were no fingerprints. And maybe you will grant that there are no

fibers because its possible that there were no fibers. And maybe you will grant that there are no hairs because its possible that there were no hairs. But it must scream at you that there is not one of any of the above, and the probability of not having one of any of the above is enormously small.

To that end we recall the testimony from Judy Brinkman, who indicated that on Sarah Cherry's person as she was recovered were a large number of her own hairs. That her own hairs were bound to the rope that bound her up; that her own hairs were found on her person. That her own hair was available to be transferred. So there is nothing in the truck at all that would link the truck to Sarah Cherry, except the notebook and except for the receipt. Which I will get to.

Thirdly, on the lack of physical evidence linking this defendant to the crime is the lack of evidence as to struggle at the house. That is of consequence. The testimony in this case establishes that as you go into the driveway of the Henkel residence the dogs bark, that as you look out the window in at least the living room, I believe there are two of those subject to what you remember the facts being, there are windows that you look out from where she was watching TV, to the driveway. The television is down below and the baby is upstairs. That would indicate, I think, a reasonable

inference is that the baby had been put down after lunch, that the was down low so as not to awaken the child. The location of the glasses I think would indicate that they were on the rocking chair and that they were folded neatly. It would seem to indicate that as a vehicle of unknown kind proceeded into the driveway, the dogs would respond as they always do, that Sarah Cherry would get up and look out to see what was coming up the driveway, that she would take off her glasses and place them down, and if she recognized the person that she had specific instructions not to answer the door, not to answer the phone if a stranger approached, and there is very strong testimony as to that - - that she proceeded from the living room through the first door and left it open about an inch and a half. That's what the testimony was from cars. Henkel that when she entered the house the top door was open an inch and a half and the downstairs door, not wide-open. That indicates a deliberative process, a specific leaving of the door open behind so that it would not lock behind you so that the bugs would not come in and perhaps you could hear the child if she was disturbed. It indicates that she voluntarily left the living room and opened that first door. As to the second door, the evidence would indicate that the second door was open an inch and a quarter left behind deliberately for the same particular purpose.

Would she have unlocked the door and gone out to a person she did not know when she had instructions on her second baby-sitting job not to let any strangers in the house? I submit to you that is not probable. There is no indication inside the house of any abduction or any struggle. There is no evidence outside of the house indicating any abduction or any struggle except for the notebook, which I will get to.

I submit to you that the testimony you heard from one of the officers, I believe it was Reed in reference to the dogs being close to the area where they parked and the dogs barking gives you an idea of what a reasonable hypothesis could be, and that is that the dogs were barking that we have 190 pounds of dogs screaming at you. If Sarah Cherry knew her abducter and the abducter was intimidated by the dogs he would beckon her to come to the vehicle. Or if she voluntarily went in there for discussion that would leave behind no evidence of a struggle whatsoever. So the fact, number three, that there is no struggle in the house is of consequence.

Fact number four is important in the absence of evidence pointing to the defendant. There are no witnesses that observed Dennis Dechaine in that driveway, that observed Dennis Dechaine with that girl, that observed Dennis Dechaine whatsoever on that date in question. There are a number of

witnesses that talk about red pickup trucks. I *submit to you* that the number of red pickup trucks in that area is large based upon the testimony that you've heard. That red pickup trucks for the most part are indistinguishable from another, and that nobody paid great attention on the day in question. That Holly Johnson in her own testimony indicated she did not know whether it was a Toyota or another pickup truck. We have some testimony that talks about a person in a red pickup truck with a green shirt on. If that evidence is credible that is not the defendant. Although that tells you more about the reliability of eye-witness identification than anything else, I think. So there are no witnesses, *and that* is fact number four indicating the absence of physical evidence linking this defendant to the crime.

Number five is the lack of dirt on the defendant, and I've already discussed that.

Number six is the knife evidence. No knife has been recovered linking this defendant to the stabbing of Sarah Cherry. That is of real consequence in this case. The only testimony that you have in the case in reference to a knife is from a statement elicited from Nancy Dechaine during the course of the search at the house in which she indicated she thought that the defendant had on this key chain a knife. There is no knife on this key chain. Nancy indicated in her testimony and that was fully explored by cross examination

that the last time she saw the knife was many months before in April or thereabouts. Is she lying about that? The defendant says he had no knife on the key chain. Mike Hite, who borrowed the Toyota and borrowed the Chevrolet indicated there was no knife on the key chain. It's very important. The key chain has no blood on it. If a knife was on the key chain and used in the commission of the homicide when we are talking about an eighth of an *inch* wound, unless the knife was deliberately taken off of the key *chain and* used the fact that there is no blood bespeaks to the fact that the key chain did not have a knife on it. The State has not proven the existence of that knife.

More importantly is the fact that no knife was recovered on the defendant. And he was searched on the night of the 6th when he was taken into custody. The evidence has indicated during testimony that they searched the area where the defendant had been where he emerged from behind Arthur Spauling's house, That they checked that area behind Arthur Spaulding's house with a metal detector, that they checked the roadway with a metal detector, that they had a group of trained game wardens looking for instrumentalities left behind from the defendant, and they did not have such instrumentalities. So number 6 is the fact that there is no knife. The absence of physical evidence.

Number 7. No items from Sarah Cherry were found. To

this I refer specifically to her panties. They don't exist. They aren't in the defendant's dominion or control when he's arrested. They don't exist inside his truck. They looked in the woods for items that were left behind, and they found them not whatsoever. That should be a reason for you to stop and pause and think.

Number eight. The defendant has no connection whatsoever with either the victim in this case, Sarah Cherry, or with the Henkel residence. The fact that there was an absence of a connection makes the possibility, the probability, the likelihood that the defendant did this deed remote. Again remote things happen in the real world, but the fact that it doesn't is of consequence. The fact that there is no connection is a significant fact. It is of significant consequence in the case. There may be other absences of physical evidence that you will observe yourself. This is a list of items I consider to be important, and I may have missed one.

But there is an absence of physical evidence linking this defendant to the commission of the offense, of linking the person to the offense. I will concede that the truck, instrumentalities from the truck, items from the truck were used in the offense. That is I believe proven by the State, that items taken from the truck were used in the offense. But there is no indication that the truck itself was used to

do transport, in which case you have no abduction. If you have no abduction the defendant is not guilty of the crimes charged. You have nothing on his person. You have nothing of consequence whatsoever linking him to the offense other than items taken from his truck.

The second major argument under the second reasonable doubt as to the physical evidence is the contradictory physical evidence which has been produced in the case, which will exculptate or prove this defendant not guilty. Number one, is two hairs found on the victim herself. There were two brown hairs - you will recall the testimony by Judy Brinkman that were taken off the victim's person. They were not her own as you will recall that testimony. There is no link between those and this defendant whatsoever. No testing was done. The presumption of innocence I would indicate to you and the way that police do their other business would indicate to you that a reasonable inference, a reasonable conclusion to be drawn from that is the reason that they weren't testified to, the reason that they weren't explored was because they don't match. So we have inconsistent hair evidence on her person.

Number two. Defendant's Exhibit Number - it did not get introduced do evidence. But it was discussed. Number two is a fiber found between the struggle site and the victim's body. If you will recall the testimony it is a red or pink

polyester fiber that was found on a tree by Detective Gallant that I asked Detective Gallant about. That Detective Gallant testified about ® that Judy Brinkman testified that it matched nothing, that it matched nothing on the defendant's person and it matched nothing on the victim. He marks this, to the best of my recollection, with either this red other dot, which I believe it is, or perhaps that one. One of those two red dots indicates the location of where that pink fiber was found." This green marking indicates where a site of a struggle took place. The fact that there is a fiber of synthetic quality between the struggle site and where the body was found - Dr. Roy testified that the body may well have been moved is profoundly significant. Because it is in in direct contradiction of what this defendant had in his possession, what the victim had on her person, and it must have come from whoever had done the deed. And it could not have come from the defendant.

Mr. Wright may argue or you may conclude it was just a random polyester found on a tree near the body and it has no more weight than that. I submit to you that in the woods, the deep woods that we have here, it would be unbelievable to find a random polyester fiber of red or pink color that is not connected to this case. Contradictory physical evidence is fiber on the tree.

Contradictory piece of evidence number three is

Defendant's Exhibit Number 23. You will recall the testimony from Judy Brinkman, the forensic chemist. She indicated she received a pile of debris, a large pile of debris that buried Sarah Cherry's body. That in that pile of debris there is a little tiny piece of metal, marked Defendant's Exhibit Number 23. I want you to very carefully look at this when you go back and deliberate in the jury room. It is a little speck of metal about a centimeter by a centimeter. And that little piece of metal is inconsistent with anything that the defendant had on his person. That it is apparent from Defendant's Exhibit Number 23 that that piece of metal was left behind by the perpetrator; that the perpetrator left it behind during the course of his burying the body; that that little piece of metal, number 23, establishes that an item was left behind. You look at the little piece of metal and determine what it is. There is no testimony as to what it is, but it's a reasonable assumption it's a piece from a set of glasses. If you look at the swing part on a metal piece of glasses, the piece can move back and forth. *If that piece* was broken off it would be consistent with 23. Whatever you conclude about 23 it doesn't matter. It is absolutely certain that it is then inconsistent with anything that the defendant was wearing at the time or anything that the victim had on her person. Since it's a metal piece found on top of the body it's clearly left by whoever did the deed. If it's

inconsistent with the defendant he did not do the deed, and he's not guilty of any of it.

That is physical evidence that you can look at and understand and examine yourself.

Number four, physical evidence that contradicts the defendant. Number 22. A cigarette. Now you've heard testimony about a cigarette butt not having amylase on it, therefore it was therefore old. You heard other evidence indicating *it was not wet. That* the cigarette butt was found in the proximity to the truck before the scene was contaminated. That that is a cigarette butt; that's number 22. What type of butt is that? I tried to establish another kind for a variety of reasons that are no longer relevant. But it is clear that the defendant smokes Vantage cigarettes, that he had Vantage in his truck. That's all there was and that's all he had access to. Now, the officer indicates that he finds that cigarette butt, number 22 where the red dot is, although he wasn't sure if it was on the driver's side or passenger side. I submit to you that if it was found on the passenger side it will be very good for an argument that I better get to. Nonetheless, a cigarette butt inconsistent with the defendant is found at the scene. That means that it was left by the perpetrator. He didn't do it. The defendant could not have left behind a Winston Light; he was smoking Vantage. Unless he has a mixed package, which there is no

indication of it, is a reasonable conclusion that based upon the hair evidence, which is contradictory fiber evidence, the metal piece, which is contradictory, number four is the cigarette butt.

Number five of contradictory evidence are *fingerprints.* I have discussed before the lack of fingerprints. Now I want to bring your attention to the conflicting fingerprint evidence. It's two-fold. First, at the Henkel residence, These could be anybody's. They could be John and Jennifer Henkel. There is no doubt about that, They can be the perpetrator's. We do know they are not the defendant's and they are not Sarah Cherry's. They are contradictory fingerprint evidence.

Secondly. You heard testimony from John Otis that the prints on the paper that were found on the passenger seat, I believe two of them, subject to check, two of them found on the passenger seat were not the defendant's fingerprints. That is found on Defendant's Exhibit Number 48. That there were fingerprints that did not match the finger defendant's on 48 and 58.

So the contradictory fingerprint evidence indicates that this defendant is not guilty of the offense.

The truck being locked. I will discuss that at length later on when I get to my ultimate conclusion. The fact that the truck is locked is of consequence. The State would have

you believe that the truck being locked indicates that only Dennis Dechaine could have done the crime. I submit to you that the truck being locked proves that he did not do it. We know that Dennis Dechaine does not have a habit of locking his truck. Fine. We know that he's found with the keys on *him at the* time. Fine. We know that at the time when he's first questioned he says he doesn't have the keys on him. That he hides them in the police car. Fine. What we do know factually is that in order to lock the Toyota pickup truck you must do one of two things. One, you use the key or, two, you push down the lock and you hold it in. It's a Japanese truck; they are designed so you can't lock your keys in.

In order for the state's theory to be true the defendant would have had to do the following. In order for this guy to be guilty he would have had to abduct the girl from the house, he would have have to drive down to Hallowell Road, go down here, jumped outside of his vehicle, go around to either the front of the truck or the back - he'll go around the truck - he'll have to take out the girl either bound or not bound at that time, and he'll have to carry her across the roadway because her feet are clean, as you recall. He'll have to carry her across the roadway with the rope that was dropped behind right here. He would have to have been carrying this, had to be carrying the scarf and bandana, and 135 pound Dennis Dechaine has to be carrying 92 pound Sarah

Cherry across the road.

What he would have had to have done if he locked his vehicle is when he got out of his side he did a non-habitual act; he got out and locked it went around taking her out of the vehicle, not dropping any debris because only the cigarette butt was found. He'll have to pick her up or drag her. Even if you dragger her he'll do the same thing; that is go to the truck and lock the door, physically making a conscious decision to lock the door at the time.

That does not make sense. That is inconsistent. The only other way that that could have happened is for him to have done the deed, go back to the truck, lock it, and go back to the woods and get lost. And I submit that is inconsistent with what the probabilities are in the real world. So inconsistent evidence that the defendant did the deed number five is the locked truck.

Number six is the dog evidence. Inconsistent. The dog evidence, as you heard explained, was from Thomas Bureau. Thomas Bureau indicates, as you recall, at the end of my cross examination, that he cannot state whose tracks were followed. He does testify as to what he did find. What he finds - basically his marks are drawn on State's Exhibit Number two. He indicates that he gets the dog over to the truck. That the dog happens down to a circular motion and comes back to the truck. That the dog at that point goes

around to the front of the truck. And his testimony at that point was I circle around the truck with the dog and he indicated here, noting the marker next to the drives side. But I brought him around the truck again and there was no indication across the front. His testimony is there is no dog track across the front of the vehicle. The dog did not sniff any tracks in front of the vehicle. So I brought him back to the passenger's door because he gets no other scent from the driver's door going to the passenger door, where he indicated and he picked up a track at that location which came in this direction right here where the blue line is being drawn. Of course that night there were cruisers lined up across the road and people walking all over the place, which is important for this reason. I submit to you that the dog trail is accurate, that he did sniff this way but this is broken because there are police cruisers here, that there are all sorts of other activity that is going on there so he can't sniff across the road. But he does pick up a trail. He follows it in, as you recall, across the blue line here; ultimately leading the next day to the discovery of the rope. He gets to the stream and stops the first day because, as the officer explained, the dog was not familiar with body scents. On 7-7 that's what he finds. On 7-8, with the scene being contaminated with people walking across the plastic strip in and out and out and in, we don't know. It's very important,

and I will get to that later.

I want you to understand that the dog track evidence is two-fold. It's *either in and out or out-and-out or in and* in. It's inconsistent with one person. Unless *that person* went in from the truck and then out to another vehicle. I'll get to that. But it's inconsistent with Dennis Dechaine going from the truck into the woods doing the deed and then getting lost in the woods. The State, in order for their theory to be true, would have you understand that the defendant went into the woods following that blue line on 7-7, did the deed, went back to the roadway, which is a scant 150 feet from where his truck is parked, not be able to find his truck, then goes back into the woods and get lost. I submit to you that the dog evidence is inconsistent with the defendant's guilt based upon that theory there. Reasonable doubt conflicting evidence number* six is the dog evidence.

Number 7 is the knots. During the course of the trial you've seen a lot of rope testimony. You've seen testimony that the rope taken from the back of the defendant's vehicle is consistent *with and in* fact came exclusively from, was matched to the rope that was found in the woods. We have no dispute with that. That evidence seems fair and accurate. It's probably true. You have seen a number of items which have been brought before you, which are in the nature of physical knots that were tied by the defendant. Half hitches

and double hatch half hitches all over the place. They were taken from his barn. There is a photograph during the course of the search that shows these ropes to indicate to you that the evidence is reliable.

I would turn your attention to that, Number 34. It's the knot right there. This knot right *there indicates this* defendant did not commit the offense. I'll show you how. The defendant has a habit of tying half hitching or double half hitches, which is a pretty good knot. It's a quick knot and a strong knot. It's not going anywhere. The rope that the defendant has in the back of his truck is consistent with the rope that is found between the truck and the body.

This is the rope in the goat pen that they seized. Mr. Reed describes it as a noose in part. The rope I submit to you that was found between the truck and the body are half hitches. The defendant indicated in the direct case when I asked him about it says that he keeps them tied up for putting down cargo. If any of you folks have pickup trucks or have friends that do, it's *not unusual* that you use them to hold down cargo on a regular basis. I submit to you that the knots found on the rope between the truck and the body are the defendant's knots. Entirely consistent with the defendant's knots. It's consistent that that was a precise pre-existing rope in the truck. The rope in between the truck and the body has the knots similar to the defendant's'

indicating a pattern and habit of tying the same knot. The ones that bound the very little girl's hands. I would ask to look at it carefully. That is junk. It's not a real knot. It's not a lark's head. It's not anything. It's a messed up granny knot that was tied to the little girl's hands. I submit to you that a person who is in a panic situation tying down a girl's hands in order to gain control over her so he could do abominable acts to her would do the knot you are most familiar with. You would tie a good knot on a regular basis that you are used to. Then at a time of extreme crisis and extreme importance tie something that is entirely unfamiliar to you.

I submit to you that the knot evidence will set this defendant free because it establishes, and it is an indication that this defendant did not commit the act of murder; that instrumentalities taken from his truck were used to commit the act of murder, and that means that he did not do the crime charged. Conflicting evidence number 7 are the knots.

Conflicting evidence is Exhibit Number eight. The tire tracks. You heard testimony from Detective Otis saying 52 and 51 are similar to what was found on the defendant's truck. You heard him talk about fingerprint evidence saying where there is an insufficient match that the evidence has very little probative value. That the indication is that

when you can't make a match on a fingerprint you can't talk about the evidence. These items taken from the defendant's truck are matched to a plastic plaster cast, and his conclusion is that it appears to be similar to what was found on the defendant's truck - the Henkel track was similar to what was found at the defendant's truck. What he doesn't tell you is of consequence. That is is that the defendant's two back snow tires, which there are photographs in evidence and I ask ask you to look at those tires, would not likely leave behind tracks which would be distinguishable which would be observable and which at that time would prove that the defendant's truck was in the driveway. The fact that those tracks are not there from snow tires is inconsistent with that truck being in the driveway. The fact that we have *a partial comparison between* the tracks on the left front and the defendant's vehicle has very little probative weight. It could be any truck according to him. But the fact that the other three tires *don't match* anything that maybe seen in the photograph, State's nine, should scream at that you that truck was not used in the commission of this homicide. It's a doubt which is rational. It's not made-up. It's not whole cloth. It's real. It's tangible. If there were snow tire tracks here they would have told you about it. There are not. That's exculpitory evidence which leads to a reasonable doubt.

The physical evidence to that extent shows that the defendant, one, was not involved because he had nothing on his person or nothing in her truck. There is contradictory physical evidence consisting of hair fibers, a cigarette butt, fingerprints, a locked truck, dog evidence, and that shows this defendant is not guilty.

What did happen then? It's not the defendant's burden to solve a crime. It is not the defendant's burden to establish for you who did the deed. As good evidence as it would be if we were able to do that that is not our responsibility. It is not our ability.

What does the evidence show on an alternative hypothesis? What is reasonable? What is logical? What is consistent with the physical evidence as we know it? That is that the defendant was dragged into the commission of the offense by instrumentalities taken from his truck at the scene being used in the commission of the homicide, and then the notebook and the receipt being left behind. What possible proof do I have for that? It's an examination of the evidence. First things first. The truck itself. The truck is found at midnight. The time of death of Sarah Cherry is unknown. So during the period in - yes, we are talking between noon when he received the phone call from Mrs. Henkel to the discovery of the notebook at about 3135. There is a three and a half hour time span. The defendant's

truck is available for being used in the commission of the offense for a limited purpose. Because of the defendant's drug use he's not entirely sure where he parked it, which means his truck was available to be ransacked and to be used.

Turning your attention to Defendant's Bxhibit Number 7 and 8, which are the photographs of the inside of the truck. These indicate, according to the testimony, that the tampon box which was in the glove box was taken out and that it was placed on the driver's side' that it was empty; that a tampon from that box was underneath. I submit to you that that evidence indicates that someone else was in that truck; that somebody else ransacked the truck looking for items, looking for a rope, looking for a scarf and looking for instrumentalities to use in the commission of the homicide. The fact that the truck is in this condition is an indication that somebody else has been in the truck.

Now, if you say that other person is Sarah Cherry I submit to you that there would be other evidence of her being in the trucks hairs, fibers, something that would be in the truck. The fact that there are two fingerprints of an unknown person on the passenger side on those paper is an indication that the person went through the glove box, went through the paper box in order to find instrumentalities from the truck.

I submit to you that the location of the notebook is an

indication that somebody else put the notebook and put the receipt at the Henkel driveway. The reason that I'm arguing that is this. If you look at the testimony in the case, the left front tire of the car, the tire mark which has been identified by the State as the perpetrator's vehicle went that far. The left front tire is their theory. The notebook is out in front of the left front tire mark on the driver's side, not on the passenger side. I submit to you that it is illogical in the extreme that the notebook and the receipt would have come out of the driver's side if the girl was abducted at the house. It most likely would have come out of the passenger side, not out of the driver's side. And it is extremely unlikely it would be in the left front part of the truck. It's more likely it would be located on the right-hand side near the passenger side where the alleged struggle would take place.

Something else is profoundly troubling about the notebook and about the receipt. That is this. Out of the 180 items that were found inside of that truck, how is it that only two items are found at the Henkel residence, both of which are linked directly to the defendant. The first one with his name on it and the second one a notebook of some significance with a stamp on it that links the defendant to his checking account number. The physical world does not work in that probability.

It's more likely that what would have happen during the course of a struggle is some of that junk would have been dropped out, with no association to the defendant. The fact that it it is located in the wrong' place and the fact that it is two items out of hundreds of items without his name on it. Both of these items have his name on it bespeaks to the fact that it was put there by a human force.

The dog evidence seems to indicate, as I tried to elude before, that another person was involved. As I say, I don't know how you read these, whether this is in in or in out. In either case it indicates that the defendant was not involved.

The alternative perpetrator, perhaps somebody who knew Sarah Cherry, went to her house. She sees them comes down leaves the door open a crack. She either voluntarily gets into the truck or to that other vehicle or she does not. She is forced in there. She is in the truck now. She is brought down to the Hallowell Road. I insist to you again that this line across the road is not accurate because as the officer testified himself there was so much confusion on that road with police vehicles going back and forth that the dog scent had to be picked up here. I submit to you that a person could have parked either here at the black line or here at the blue line with Sarah Cherry in the truck or in the vehicle. That the person, for whatever reason, has taken Sarah Cherry. That at that time she is intimidated, she may

be already stabbed at that point because Dr. Roy has testified that the scarf is not placed upon her until after the stab wounds are administered. That is very important evidence because if you recall he said if there are no holes through the scarf indicating she is scabbed"then tied up which could very well indicate she was stabbed prior to access to the *truck, which means that* the defendant is not guilty. All cases, according to this argument, the defendant is not involved.

That whoever did the deed pulls to the opposite side of the Hallowell Road, sees the defendant's truck and realizes he needs something at that point in order to facilitate his crime or her crime. That they go to the passenger side. And note that there is only a trail from the passenger side. We don't know whether that is in and out or not. We know there is a direct line that did not go around the front of the truck, that did not go around the behind of the truck, that leads from the passenger side back to the roadway. I submit to you that instrumentalities from the truck were taken at that time, not earlier. That she was not bound earlier because of the location of the rope. If she is already bound when she is at the Henkel residence there is no need for a second rope because she is already under control. The only way there would be a second rope is if she wasn't under control. So you grab another rope. So it's probable that

she is is not bound until the area down there in the woods. So a perpetrator, a second perpetrator or the perpetrator, the guy who did it or the woman who did it is somewhere on this side of the Hallowell Road, goes in and ransacks the truck, takes the scarf and rope and other instrumentalities. What does Sarah Cherry do when she was in the truck? We don't know. Did she run? Is that the second line? I don't know. Was she carried into the wood? Doctor Roy said he made no notations on the bottom of her feet, which would indicate that she was probably carried. That there were no significant bruises or lesions on the bottom of her feet, so we don't know. For whatever reason, either because she voluntarily entered the truck and finds herself two miles away it's the only way back to the Henkel house. She knows she shouldn't have left the child. She was terrified with a smack to her face because the evidence indicates she was hit at that point. We don't know. Whether she was stabbed at that point or merely terrorized at that points we don't know,. She may have been in voluntary company at that times we don't know. In any event, the dog track evidence indicates a second person was involved; that there is an in in or in and out, to that extent it's not Dennis Dechaine that committed this offense.

The truck is ransacked. The notebook and receipt are in the wrong place, and the dog evidence is conformity. The

doors are locked. It makes sense if there is a person involved in this that it's not the defendant; that they would ransack the truck; that they would go and commit the deed; that they would return via the blank line; that they would look around and realize there was nobody else there; that they would go to the the truck to find an item to set somebody else up., Because it is entirely possible that the police could go directly to another person who is associated with the stamp, who is associated somehow with the possibility of being involved in the case, and that there would be a motive at that point to cast blame on another person. That would be an explanation for grabbing the *notebook* and an explanation for grabbing the receipt, which has some other person's name in it. That they go back to the Henkel residence and they leave the notebook at that time. Why would they risk going back to the Henkel residence to leave the notebook? One reason is because Sarah could have told them that Mrs. Henkel is not due back until three o'clock. We know she was told at three o'clock. A second reason is that they could have driven by a couple of times. As the testimony indicated, there was a lot of red truck activity around there. That at that time that they could have driven by once and looked in the driveway and realized nobody was there, driven up the driveway quickly, thrown the notebook and the receipt and gotten out of there. That is

consistent with the theory that the defendant did not do this offense.

Reasonable doubt is the defendant after character the evidence. And why would the defendant be set-up like that? That is because if a person has a motive to do a deed like this, because they want to sexually abuse Sarah, because they wanted to speak to her, because they were there to burglarize the Henkel house. If she knew the person involved, as the evidence indicates she does because of lack of struggle, that person would be entirely motivating in casting blame on somebody else. Because if that person knew Sarah Cherry and if Dennis Dechaine did not, and he happens to be in the area, then there is a perfect and logical reason for setting him up. To that extent the evidence fits.

Drugs. A very difficult aspect of the case. It cuts both ways. It is a two-edge sword for the the defense. On the one side we are desperately concerned that you the jury will say it drugs. That explains everything. It's drugs, It must have been drugs. Drugs made him do it. Drugs are in*,olved. We don't have to think too deeply it's drugs. If that is the case, you use a shorthand of drugs for explaining everything that happened, then I submitted to you that the whole two weeks here has been a waste of time. And I don't think they have been. The drugs do allow you to conclude that this mild-mannered gentle and peaceful person went on a

wild homicidal spree because of drugs. It's inconsistent with his entire life to be on homicidal spree. it's inconsistent with his nature and character, and it's inconsistent with common sense in the sense that there are no pressures on Dennis Dechaine's life during this period of time.

If you recall his testimony, the testimony was how wonderful the weekend had been. How he was at a relaxed point in his life. How he wanted to extend his time, extend his vacation by using drugs. That is not consistent with a homicidal act which involves some kind of major trauma in a person's life leading up to some homicidal act. But if you use the shorthand of drugs there is nothing else that can be said. But it is inconsistent and not logical and consistent with the evidence.

Mr. Buttrick on the tape says he's was behaving normally; he was not in some kind of drug-induced rage at that time. He knew where he was. All witnesses have testified that he was oriented as to time, as to place, as to manner, as to location. He was a gentlemen. A person who is in a drug-induced murderous state does not come out of the woods and offer to help you with your groceries. A very kind person like Mr. Buttrick and his wife, Helen, do not let drug-induced crazed murderers come into our house and have a drink of water. It's inconsistent. His response to the

police officers, however, is consistent with a person who is high. Not crazy high but high from the use of drugs in *which* you would be more alert, you would be more frightened, and that screaming at you would be more profound at that time.

I submit to you that the drugs are an explanation for **everything** that happened to Dennis Deohaine on the day in question, That is another complete explanation for why he reacted as he did and why he went into the woods,

We know from testimony that his wife Nancy would not **tolerate** him using needles in the house, We **know from** his *background and* experience that he's a nature oriented person' *that he* likes the woods, that he likes nature, *that he likes raising animals, We know from his* background, we know from his personality, we know from his prior history that it makes sense that he would not do drugs at his house. That if he's extending his vacation he would go the route he traveled, that he would go to look for water fowl, Since the tide is out he doesn't see any. Ite had discussed previously, as you recall, with Mr. Dennison, the location in that area of *fishing* holes. He would go into the woods to walk around. I submit that some of you have probably gone to the woods and walked around.

Now, none of you have probably gone to *the woods and* used amphetamines. Some of.you have probably gone on nature walks, Some of you in college may have used marijuana in

the woods. Maybe others of you at Other times have walked in the woods in order to experience what the environment is like. People do that. It not an uncommon phenomena, particularly a person like Dennis Dechaine who is associated deeply with the natural environment. It makes sense. It's logical why he's in that area,

So I submit to you that the drug evidence cuts both ways. All the evidence indicates that he was wide-eyed. All testified that he was **nervous.** **None of the** evidence indicates he was in a psychopathic or homicidal state. Defendant's Exhibit Number five is a photograph of his arm.

There is a blowup of it. You heard the testimony of Dr, Roy saying those aren't needle marks. I ask you to look at them yourself. Some of you have experience with these kinds of issues. Look at that, Is that consist or inconsistent with a tract mark? If it is inconsistent what is the explanation for that? Is it a bruise take he got walking around the wood or is that from Sarah Cherry somehow? I submit those are tract marks? **You** look at them, You'll know them when you see them.

Dr. Roy himself indicated and used the word amphetamine repeatedly how that could come about. His conclusion was less than favorable, but he did say it could be consistent. **Look at** it. What else could **it** be?

So the drug evidence hurt, of course. It's a character

flaw in Dennis Dechaine. It is one thing that the State has pounded and pounded and pounded and pounded at again and again. He does have a character flaw. He did use drugs. He did use drugs during the period in question, It's over the line. Intravenous use is over the line. It's not something that people normally have experience with. But I would submit to you that if your first exposure to a substance such as coke in Madawaska, Maine occurs amongst friends with intravenous drug use, that is your first exposure, that once you have crossed that line, once you have gone over and made the decision to use drugs, cocaine, that the decision as to use a needle as an instrumentality is the same baggage, the same technique. There was no free-basing cocaine back at the time that Dennis Dechaine is doing intravenous drug use, The number of times that he's done this is very small, But if you know anybody who has ever used intravenous drugs you will know, based upon your own experience, that there is a certain a lure about it. There is a certain fascination with it. There is a certain physical reaction. It has w the high is very different than other kinds of highs. That if you knew anybody who has ever had an experience with a needle just showing them a needle will make the hair on their neck stand up. It's something very different from anything else. So it makes sense he would have a lure for it or an itch for it.

That does not mean he killed and murdered and tortured a

little girl. This fellow that you heard testimony about that has fainted at the sight of blood. You heard testimony about his reaction to violence. You've heard testimony to his peacefulness. The conclusion you can draw from his reputation being a peaceful and gentle person is totally inconsistent with the crime charged here.

The evidence *in this case in regard to sex is* that he was having a good sexual relationship with his wife at the time of his incident. He and his wife had **very** tender relationships. *That if Mr. Wright* tells *that* ***you*** *the* motivation for this crime is sexual with sticks, it is extraordinary abhorent for this individual who at this time in his life has everything going well. There is no logical rational explanation as to why he would go into homicidal rage and *abuse that little girl with sticks.* There is no logical explanation for it. It's absolutely inconsistent with his personality, and there does appear to be no reason for it. His experience with drugs was one of heightened awareness, not one of loss of consciousness. Recall when he was interviewed at the jail he said he has never experienced a memory loss. He has no exact recollection of the roads he was **traveling on or** the exact times he was **traveling** on because nothing of consequence happened on his day. He has no recollection he says of.seeing Sarah Cherry's face, There is contradiction with those admission statements. I will get

to the admissions, But he has testified to you, and his wife has testified, that when the picture was flashed he had no conscious memory of it. Not because his memory was impaired, but because he had no experience in doing the deed. You cannot remember something that you never experienced. Saying that he does not remember implies that he did it. He's presumed to be innocent. The reason he cannot have a recollection of it is because he had no experience of it not because he's blacking it out, not because he's trying to hide it but because he didn't do it. That is what the evidence shows in this case.

The admissions. You either believe him or you don't. The defendant says those are not true. That is not how he said things. That's not how it came out. flow do you weigh it? How do you balance it? You look at each one individually. You've got a series of admissions from the time he walks out of the woods until the time he testifies in the Court, The first series of a admissions or statements he makes is to the Buttricks. Some of those are not true. He says he's not from the right place. He says that he was fishing. That's not true. But does say his name. **He's** asking to find his truck.

The **second** set of admissions come from his experience being held in questioning by police officers. That testimony is contradictory. The testimony, particularly of Deputy Reed

is important here, I submit to you it makes no sense that Mark Westrum, a 4-year experienced detective, *who at 930 in* the evening knows that there has been abduction at that point would leave the sole suspect at that time in a vehicle for questioning purposes with Daniel Reed,.a one-year officer at that point for any other reason than to play Mutt and Jeff, *There is no other logical explanation as to why he* left the vehicle, He left him with Reed so Reed could go to work on him. It's common, It's not unusual whatsoever, Dennis Dechaine coming out of the woods is led like a lamb into the police vehicle where he is alone, *where he is isolated, where you have Reed, who is a big man you saw him* turning around and saying where is the girl, Dennis? What did you do with her? Questioning him back and forth, It doesn't *make any sense that* experienced police officer like Westrum would leave the vehicle for any other reason than to *let* Reed *go to work. That's exactly* what happened. The defendant is being racked with waves of accusations of kidnapping and abduction of *a girl for which he has no idea* what is going on at that point.

So after he gets terrorized by Deputy Reed he asks not to answer anymore questions. He asks for a lawyer. And this should be something that goes to the weight that you accord to all of these statement., He's not given one. They say he would have been allowed to leave at any time, You heard his

testimony, Do you find that believe that he would be allowed to walk out and go home? He's in the woods in a police car at 9130 to 4 in the morning with a break to have his pictures taken. *He asks for a lawyer* once. He was requested after that. He doesn't admit that he did it that.night. He didn't say, yes, I murdered and killed Sarah Cherry. He doesn't say what is inside of me that made no do that? He's questioned by a number of people, including the experienced homicide detective that finally comes down later in the evening. He's not out of his mind because they take him to look for his truck and they follow his directions, go here and there. And they can't find it.

Then he's asked by Detective Hendabee whether or not he wants to answer questions, He says yes, You seem like a nice guy, You aren't screaming at me. I'm not worried about you. I'm not intimidated by you, He answers the questions to the best of his ability, That is not consist at any time with a person who is *hiding the fact that they* did an abominable act.

He's trying to cooperate, He gives them permission to go into his truck. He gives them permission to look at his body and asks him questions and he answers *the* questions.

They let him go home that night. When he goes home he is a wreck. He's in the police car from 9230 until 4 or 4:10. He goes home and he's a wreck. They had *at that point*

half convinced him what is up and what is down. You have saw the cross examination by experienced professional lawyers. We are not talking about those kind of questions. There is no judge in a police car saying Officer Reed, no, that is hearsay. No, that is objectionable. That is not what *happened under police control. And you know* better than that. He was terrified. They had him get to believe *through* technical procedures that he was in the woods, that he wasn't sure what road, that he didn't know where the notebook came from. It makes perfect sense that his reaction of discombobulation at the time.

He goes home and talks to his to his wife. He doesn't take a shower because he's not thinking like that. He's thinking they are thinking I did something terrible, which is a kidnapping. He's not thinking they think I did the murder. *He's not* saying that. There is nothing of that at the time. He's thinking I did a kidnapping. They are telling me I did a kidnaping.

He goes next morning and he puts his clothes in a laundry bag. And there is nothing that he asked his wife about washing his clothes. He was under police custody all night. If there was anything on there they would have observed it. They would have written it down. They had photographs. They would have talked to you about it. He had been in Madawaska and the laundry hadn't been done. He had been **cooperative**

throughout. He was cooperative after the time of the search. He's not hiding anything whatsoever.

So the next day he goes and sees a lawyer. He feels better. But he's still upset by the whole thing because he knows he's a suspect. Be knows that a search was underway. The girl has not been found. But he hopes that she is found and comes home and everything is okay. Then I'll be fine.

Then duly 8th comes, On July **8th** his **roommate** goes **out and** gets the paper. **The** girl is **not** kidnapped **alone.** **She** is murdered. **She** is killed. It blows him away because he knows that the heat is going to come down on him. He's the sole suspect is what he's told. But he cooperates with the search. He doesn't make any statements that are *incriminating at that* time, but the State would have you believe that he goes into the jail and gets booked and talks to a doctor and then gets questioned. Has a discussion with Mark Westrum, a person that was there the night before that *he knows is his accuser, that he knows only from the night* before, that he doesn't even know his name, and makes statements and admissions **alone** with **nobody else** present. The State would have you believe that that evidence is sufficient to convict him of the crime, for which no better proof exists than one officer's statement?

The fact that *Mr. Carlton, the lawyer, shows up at the* jail and wants access to his client is sloughed off. What

does that tell you about the weight to be accorded that evidence? That type of system are we living under where you *people allow that kind of* evidence to be used. If you people give that evidence weight, then we. are all in trouble, people, because you are the ultimate defense of our liberty. If you let the police do that kind of bidding and make those kinds of statements when there is no other proof, then you are going to hear it in every case.

MR. WRIGHT: I would object.

THE COURT* Sustained. You have five minutes.

BY MR. CONNOLLY s

The other admissions at the jail I would object to. The defendant testified to - the problem with putting a defendant on the witness stand is this. If you believe him, no problem. If you don't believe him though then he must be lying. If he must be lying he must have done it. Every accused in every case at every time in this country has lived with that choice. He has come before you and he has looked at ***you*** *and he's talked to to you and you have the opportunity* to take the measure of the man. You've seen witnesses that come forward and they are inarticulate. He's a good person. he's of strong character. He can't kill his chickens. I submit to you that the horrifying nature of this crime explains to you that he could not have done it. The physical

evidence *in this case* indicates that he could not have done it. explanation as to how it may have been done, although I cannot tell you by who, explains that there is reasonable doubt.

You are going to go back and deliberate. And I have things I wish I told you that I forgot to, but it doesn't matter. You will do your job and you will do your duty, then you will be done. At some point you will look back and say I don't remember who those lawyers were, but it was an interesting case. I *don't remember* the case and I don't remember the details. That doesn't matter either. The duty that you do for the next hours or days or however it long it takes **you** to reach a decision is what is important.

In this country we have a series of laws that the judge will give you. He again will discuss the presumption of innocence, which still applies from the beginning of the case right through your deliberations. Sir William Blackstone in his commentaries on the laws in his fourth book had discussed the importance of some of these issues that I've ungracefully discussed with you. And he indicates that in balancing on how we make decisions in the criminal process and what is important and what is not important he tries to put it in balance. Iie tries to reach a conclusion as to weighing things on shifting evidence, of sifting through it and deciding the value to be accorded and what presumption and

what weight to be given to it. Sir William Blackstone states its better that ten guilty persons escape than one innocent shall suffer. The balances in this case are close, people. You see that the evidence could be interpreted in favor of the State. You see that there are arguments against it. The balancing process that ultimately leads you to a conclusion, it is not insignificant to understand, that that weighing process tilts strongly in favor of the defendant. That the inherent nature of our system requires that. It's not something like in baseball where a tie goes to the runner. It's far nor significant than that. It's far more important *than that.* I think you understand it. I'm not trying to talk down to you. It's just my obligation to do the best I can with the evidence that is in front of you. I think you know what is in front of you. That you understand that this man has not been proven guilty beyond a reasonable doubt. During the course of your deliberations I ask you to hold to *that thought. That two plus two makes four. And* I thank you *for putting up with it all.*

THE COURT: Thank you Mr. Connolly.

CERTIFICATE OF SERVICE

I, Thomas J. Connolly, ATtorney for the Defendant/Appellant certify that I have this day caused a copy of the foregoing Appeal Brief to be served upon the Assistant Attorney General, Eric Wright.

By having the same deposited in the U.S. Mail postage pre-paid.

Eric E. Wright, Assistant Attorney General
Attorney General's Office
Criminal Division
State House Station 6
Augusta, ME 04333

Dated at Portland, Maine this 16th day of October, 1989

Thomas J. Connolly

ias J. Connolly
Attorney at Law
422'2 Fore Street
PO Box 7563 DTS.
Portland, Maine 04112
(207) **773-6460**

CLERK'S CERTIFICATE

I, Susan E. Simmons, Clerk of the Knox County Superior Court, certify that the papers and documents attached hereto constitute the Record on Appeal to the Maine Supreme Judicial Court in the case entitled:

State of Maine

vs

Dennis John Dechaine

Criminal Action Docket number CR-89-71

Law Court number KNO-89-126

Knox County Superior Court

Susan E. Simmons

Clerk, Knox County Sup rior Court

STATE OF MAINE SUPERIOR COURT

KNOX, 3S.

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Law Court Docket No. KNO-89-126

Date Filed 2/21/89 Knox County Docket No. CR-89-71

Action INDICTMENT

State of Maine vs. DENNIS JOHN DECHAINE

Offense		Attorney
CT I & II:	T 17-A M.R.S.A. §201(1)(A) &(B) Murder	George Carlton, Jr., Esq. 15 Centre Street Bath, ME 04530
CT III:	T 17-A M.R.S.A. §301(1)(A)(3) Kidnapping	
CT IV:	T 17-A M.R.S.A. §251(1)(B) & §252(1)(B) Rape	Thomas J. Connolly, Esq. (CA) P. O. Box 7563 DTS Portland, ME 04112
CT V & VI:	T 17-A M.R.S.A. §251(1)(A) &(C)(3) §253(1)(B) Gross Sexual Misconduct	FOR THE STATE: Eric Wright, Esq. State House Station 46 Augusta, ME 011333

Date of Entry	
2/21/89	Attested copy of Order changing Venue filed: This case is ORDERED VENUED to KNOX COUNTY SUPERIOR COURT, effective this date from Sagadahoc County Superior Court, Pursuant to M.R. Crim. 21(d). Dated: 2/16/89 /s/Justice Carl O. Bradford
2/21/89	Entire file with attested copies of docket entries received from Sagadahoc County Superior Court.
2/21/89	Order filed: It is therefore now ORDERED that the parties shall orally depose Harry Bruce Buttrick, K.F.D. 2, Box 4394, Bowdoin, Maine, at the Maine State Police Crime Laboratory on Hospital Street, Augusta, Maine at 1:00 p.m. on Tuesday, February 21, 1989; and it is further ORDERED that the deposition shall be by video camera recording and any other method agreed to by the parties; and it is further ORDERED that the oath shall be administered by a notary public, to be agreed upon by the parties; and it is further ORDERED that due to the suddenness with which the State learned of Mr. Buttrick's illness, any requirement of written notice at least 10 days before the time of the taking of the deposition is hereby waived; provided, however, that it shall be the responsibility of the State to inform Mr. Buttrick of the time and place of the deposition; and it is further ORDERED that the Sheriff for Knox County or his designee shall transport the defendant from and to the Maine State Prison for purposes of the deposition and shall retain custody of him during the deposition in the presence of the witness; and it is further ORDERED that the contents of this Order shall be transmitted immediately by the clerk of the court to the Sheriff of Knox County or his designee and to Department of Corrections so that the Sheriff can arrange transportation of the Defendant, and a copy of this Order shall be delivered to the Sheriff and to the Department of Corrections as soon as possible, but the failure of the Sheriff or the Department of Corrections to have

- over -

Date of Entry

Docket No. CR-89-71

2/21/89 con't

a copy of this Order in hand before the time for deposition shall not relieve the Sheriff of his obligations to transport and retain custody of the defendant or of the Department of Corrections to make the defendant available to fulfill the purposes of this Order.

ORDERED that Knox County shall pay to defense counsel, upon his submission of expenses, for expenses of travel and subsistence for attendance at the deposition; and it is further

ORDERED that the State shall provide a copy of the video recording to defense counsel as soon as practicable after the deposition and shall itself retain the original video recording for use at trial without further need for authentication.

Dated: 2/17/89
/s/Justice Carl O. Bradford
Two attested copies given to Knox County Jail.

2/22/89

Copy of Letter filed by Assistant Attorney General Wright to Attorney Connolly regarding further discovery material.

2/27/89

On 2/24/89, Notice of Alibi filed by Attorney Connolly.

3/2/89

Transcript of Hearing on Motion to Continue filed.

3/6/89

Dismissal - COUNT IV filed for the following reasons:
The State now believes the medical evidence as to Count IV is sufficient' ambiguous that the allegation cannot be proved beyond a reasonable doubt.
Dated: 3/6/89
/s/Eric Wright, Assistant Attorney General
Copy given to Attorney General's office and to Attorney Connolly.

3/6/89

Defendant and Attorneys Carlton and Connolly present in Court.
Assistant Attorney General Eric Wright appears for the State.
Hon. Carl O. Bradford, presiding
Phil Galucki - Court Reporter
Jury Trial.
Voir Dire oath administered.
Recess to 9:00 a.m. on 3/7/89.

3/7/89

Copy of letter filed by Assistant Attorney General Eric Wright to Attorney Connolly regarding discovery material.

3/7/89

On 3/6/89 In Chamber, general voir dire requests and witness lists filed with the Court.
Hon. Carl O. Bradford, presiding
Phil Galucki - Court Reporter
Motion in Limine (Gruesome Photographs); Motion in Limine or Motion for Discovery (Footwear Impressions); and Motion in Limine or for Discovery filed with the Court by Attorney Connolly.
No order entered by the Court at this time.

3/7/89

Second day of trial.
Defendant and Attorneys Connolly and Carlton present in Court.
Assistant Attorney General Eric Wright appears for the State.
Hon. Carl O. Bradford, presiding
Philip Galucki - Court Reporter
Jury drawn. B. Hunter appointed Foreman; L. Doherty, first Alternate; K. Milton, second Alternate.

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Date of Entry	Docket No. CR-89-71
3/7/89 con't	(In Chambers, Attorneys Connolly and Carlton appear for Defendant; Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Phil Galucki - Court Reporter The State orally moves for a Sequestration of Witnesses; GRANTED only as it applies to the testimony of witnesses. Juror #3 as seated, Clark, excused and Juror #7 as called, Gamage, seated.) State's Exhibits #1A, 1B, and 2 admitted. Recess to 9:00 a.m. on 3/8/89.
3/8/89	Third day of Trial. Defendant and Attorneys Connolly and Carlton present in Court. Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter State's Exhibit #3 admitted. State's Exhibit #4, 5, and 6 admitted. Defendant's Exhibit #1 admitted. State's Exhibit #7, 8, and 9 admitted. Defendant's Exhibit #2 admitted. State's Exhibit #12 admitted. Defendant's Exhibit #3 and 4 admitted. State's Exhibit #10 and 11 admitted. Defendant's Exhibit #5 admitted. Recess to 9:00 a.m. on 3/9/89.
3/9/89	Fourth day of Trial. Defendant and Attorneys Connolly and Carlton present in Court. Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter State's Exhibit #13 admitted. Defendant's Exhibit #6 admitted. State's Exhibit #14, 15, 16, 17, 18, 20, 21, and 19 admitted. Recess to 9:30 a.m. on 3/10/89.
3/10/89	Return of Service on Subpoena to Testify filed: Edward Kitfield served on 3/9/89.
3/10/89	Fifth Day of Trial. Defendant and Attorneys Connolly and Carlton present in Court. Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter State's Exhibit #23, 24, 25, 26, 27, 28, 30, 31, 32, 33, and 34 admitted. Defendant's Exhibit #9, 10, 11 admitted. State's Exhibit #44 admitted. Defendant's Exhibit #7, 12, 13, 15, 16, 17, and 14 admitted. Recess to 3/13/89 at 9:30 a.m.
3/13/89	Sixth day of trial. Defendant and Attorneys Connolly and Carlton present in Court. Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter State's Exhibit #40, 41, 48, 49, 50, 51, 52, 53, 54, 55, 56, and 57 admitted.

- over -

Date of Entry	Docket No. CR-89-71
3/13/89 con't	Defendant's Exhibit ##8, 18, and 19 admitted. (In chambers, Attorney Connolly moves in Limine regarding footwear. The Court allows the testimony by Judith Brinkman re: footprints. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter) State's Exhibit #58, 59, 37, 36, 39, 38, 42, 43, and 63 admitted. Defendant's Ekhibit #22, 23, 24, and 27 admitted. Defendant's Exhibit #28 offered; not admitted at this time. Defendant's Exhibit #26, and 26A admitted. State's Exhibit #64, 65, 66, 67, 68, 60, 61, 62, and 69 admitted. Defendant's Exhibit #29, 30, 33, and 34 admitted. Recess to 9:00 a.m. on 3/14/89.
3/14/89	Seventh day of trial. Defendant and Attorneys Connolly and Carlton present in Court. Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter State's Exhibit #29 and 35 admitted. State rests. (At side-bar, Defendant orally moves for a Judgment of Acquittal; Motion DENIED). Recess to 9:00 a.m. on 3/15/89.
3/15/89	Eighth day of trial. Defendant and Attorneys Connolly and Carlton present in Court. Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter Defendant's Exhibit #37, 38, 39, 41, 42, 43, 44, 32, 45, and 40 admitted. Recess to 9:00 a.m. on 3/16/89.
3/16/89	Ninth day of trial. Defendant and Attorneys Connolly and Carlton present in Court. Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter Defendant's Exhibit #28 re-offered; not admitted at this time. State's Exhibit #70 admitted. (At side bar, Defendant orally moves for a mistrial; motion DENIED). Defendant rests. Defendant's Exhibit #46 admitted. State rests finally. Defense rests finally. Defendant's Exhibit #35 admitted. Recess to 9:00 a.m. on 3/17/89.
3/17/89	Tenth day of trial. Defendant and Attorneys Connolly and Carlton present in Court. Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter Recess to 8:30 a.m. on 3/18/89.

Date of Entry	Docket No. CR-R9-71
3/18/89	Order filed: Upon Motion of the State, Count IV is Dismissed and Counts V and VI are renumbered IV and V. Dated: 3/6/89 Bradford, J. Copy of Order given to Assistant Attorney General Wright and to Attorney Connolly.
3/18/89	Eleventh day of trial. Defendant and Attorney Connolly present in Court. Assistant Attorney General Eric Wright appears for the State. Hon. Carl O. Bradford, presiding Philip Galucki - Court Reporter {In Chambers, Attorney Connolly renews the motion for Judgment of Acquittal as to all counts; motion is denied. Hon. Carl O. Bradford, presiding (No Record Taken)] Jury Verdict: Guilty as to Counts I, II, II, IV, and V. Sentencing scheduled for Tuesday, April 4, 1989 at 10:00 a.m. Defendant remanded to Maine State Prison.
3/31/89	List of persons sentenced to life imprisonment for Murder; copies of Decisions and Orders; copies of letter from Lloyd and Margaret Cherry; copy of letter sent to Justice Bradford regarding letters from Lloyd and Margaret Cherry; and copy of letter to Justice Bradford regarding list of persons sentenced to life imprisonment for Murder and copies of Decisions and Orders filed by the State.
4/3/89	Copy of letter to Justice Bradford, copy of Decision and Order, and copy of letters from the public to Justice Bradford filed by Attorney Connolly.
4/4/89	Envelope containing letters filed by Attorney Connolly.
4/4/89	Letter from the victim°s mother filed by Assistant Attorney General Wright.
4/4/89	In Chambers, AttorneysConnolly and Carlton appear on behalf of the Defendant. Assistant Attorneys General Eric Wright and Kenneth Lehman appear for State. Hon. Carl O. Bradford, presiding Kim McCulloch - Court Reporter Attorney Connolly orally moves for a judgment of acquittal on Count I or II or, in the alternative, for the prosecutor to elect which count (I or II) on which to proceed. The Court declines to require the State to make an election at this time and denies the motion for judgment of acquittal on Count I or II. Motion for Appointment of Counsel and Financial Affidavit filed with the Court; motion GRANTED; Attorney Thomas Connolly appointed as counsel.
4/4/89	Defendant and Attorneys Connolly and Carlton present in Court. Assistant Attorneys General Eric Wright and Kenneth Lehman appear for State. Hon. Carl O. Bradford, presiding Kim McCulloch - Court Reporter Sentencing hearing held. IT IS ADJUDGED that the Defendant is GUILTY of COUNT I: Murder; COUNT II: Murder; COUNT III: Kidnapping; COUNT IV: Gross Sexual Misconduct and COUNT V: Gross Sexual Misconduct as charged and convicted. Sentenced as follows: Count I: to Department of Corrections for a term of

- over -

Date of Entry	Docket No. OR-R9-71
4/4/89	life imprisonment; COUNT II: to Department of Corrections for a term of life imprisonment; COUNT III: to Department of Corrections for a term of 20 years; COUNT IV: to Department of Corrections for a term of 20 years; and COUNT V: to Department of Corrections for a term of 20 years. C Notice of Right to Appeal to the Law Court and Notice of Right to Appellate Review of Sentence handed to the Defendant. Judgment and Commitment signed in open Court by the Defendant.
4/4/89	Copy of Judgment and Commitment handed to the Defendant.
4/4/89	Attested copies of Judgment and Commitment given to Knox County Jail.
4/4/89	Notice of Appeal to the Law Court filed.
4/5/89	Attested copy of Notice of Appeal and attested copies of docket entries mailed to Clerk of the Law Court. Attested copy of Docket Entries and plain copy of Notice of Appeal maile to Court Reporter, Philip Galucki. Copy of Notice of Appeal mailed to Justice Bradford.
	L A W
4/5/89	Abstract mailed to State Bureau of Identification.
4/5/89	Attested copy of Docket Entries and Indictment mailed to Maine State Prison.
4/5/89	Initial Placement Form filed: Defendant placed at Maine State Prison.
4/11/89	Notice of Appeal to Appellate Division filed by Attorney Connolly. Attested copies of Notice of Appeal to Appellate Division, attested copies of docket entries, attested copy of Judgment and Commitment forms, and attested copy of Indictment mailed to Jim Chute, Clerk of the Appellate Division. Attested copies of docket Entries and plain copy of Notice of Appeal to Appellate Division mailed to Court Reporter Kim McCulloch. Copy of Notice of Appeal mailed to Justice Bradford. Copy of Notice of Appeal mailed to Assistant Attorney General Eric Wright.
4/12/89	Copy of letter filed from the Clerk of Law Court to Counsel: The Law Docket Number assigned in KNO-89-126. The Clerk s record must be transmitted on or before 4/25/89, and the reporter's transcript must be filed in the Law Court on or before 5/15/89.
4/12/89	Copy of Indigency Status of Appellant filed: Appellant has not been found to be indigent by the trial court. Appellant must make arrangements for payment of transcript costs and so inform the Law Court and appellee within 5 days. Failure to do so will subject the appeal to dismissal for want of prosecution.
4/19/89	Notice of Appeal to Appellate Division filed by Attorney Connolly. Attested copies of Notice of Appeal to Appellate Division, attested copies of docket entries, attested copy of Judgment and Commitment forms, and attested copy of Indictment mailed to Jim Chute, Clerk of the Appellate Division.

GO TO NEXT PAGE

Date of Entry	Docket No. ru-9-71
4/19/89 con't	Attested copies of docket entries and plain copy of Notice of Appeal to Appellate Division mailed to Court Reporter Kim McCulloch. Copy of Notice of Appeal mailed to Justice Bradford. Copy of Notice of Appeal mailed to Assistant Attorney General Eric Wright.
4/20/89	Letter of Support ordered to be filed in the case by Justice Bradford.
4/25/89	Copies of Record on Appeal compiled: one mailed to Assistant Attorney General Wright and one mailed to Attorney Connolly.
4/25/89	Record on Appeal with Attested copy of Docket Entries given to Court Report Arlene Edes for delivery to Clerk of the Law Court.

Deborah J. Pol
Asst.

STATE OF MAINE

Knox

SUPERIOR COURT
CR- 89-71
Law Court #KNO°89-126

STATE OF MAINE

us.

Dennis John Dechaine

STATEMENT OF TRANSMISSION OF EXHIBITS TO LAW COURT

EXHIBITS in the above Case consist of the following: (If none, so state)

STATE'S EXHIBITS:	IA	Blow-up Map	42	Bag containing stick
	1B	Plastic Attachment to IA	43	Bag containing stick
	2	Chart	45	Bag containing wallet
	11A	Page from Notebook	46	Bag containing ice cream wrappE
	22	Topographical Map	47	Bag containing magazine
	29	Bag containing rope	50	Cast of Tire track
	35	Bag containing rope	51	Inked Tire Impression
	36	Bag containing Shirt	52	Inked Tire impression
	37	Bag containing Bra	59	Bag containing rope
	38	Bag containing Bandana gag	60	Sneaker
	39	Bag containing scarf	61	Sneaker
	40	Chart	62	Bag containing rope
	41	Chart	63	Chart

DEFENDANT'S EXHIBITS:	2	Chart with photos		
	13	Chart		
	14	Chart		
	20	Pack of Winston Lite Cigarettes		
	21	Page of Merit Cigarettes		
	24	Chart		
	25	Tissue with Bloodstain		
	27	Chart		
	28	Pocketknife		
	31	Photo		
	35	Chart		
	36	G. Jasper's Statement		
	41	Rope	43	Rope
	42	Rope	44	Rope

Above Exhibits Retained in This Office a

Above Exhibits Transmitted to Law Court ❑

Dated: April 25 , 1 989

Assistant

/CI@rk of Courts

Knox

County

CR-43

STATE OF MAINE

KNOX

as.

SUPERIOR COURT
CR 89°71
Law Court #KNO-89-126

STATE OF MAINE

vs.

Dennis John Dechaine

STATEMENT OF TRANSMISSION OF EXHIBITS TO LAW COURT

EXHIBITS in the above Case consist of the following: (If none, so state)

DEFENDANT'S EXHIBITS:

1	**Bill** from Slaughterhouse	38	photo
3	sketch	39	photo
4	sketch	40	copy of miranda statement
5	photo	45	Set of keys
6	sketch of handprint	46	cancelled check
7	photo		
8	photo		
9	photo		
10	photo		
11	photo		
12	photo		
15	Latent print		
16	Latent print		
17	Latent print		
18	Latent lifts		
19	Latent lifts		
22	Cigarette Butt		
23	metal fragment		
26	Nail clipping		
26A	Nail clipping		
29	photo		
30	photo		
32	photo		
33	photo		
34	photo		
37	photo		

Above Exhibits Retained in This Office ❑

Above Exhibits Transmitted to Law Court Eyz]

Dated: April 95, 1989

A.S/. Istant *clfrkjor* courts

KNOX
County

170

STATE OF MAINE

Knox ss.

SUPERIOR COURT
CR-—RO-71
Law Court #KNO-89-126

STATE OF MAINE

vs.

Dennis John Dechaine

STATEMENT OF TRANSMISSION OF EXHIBITS TO LAW COURT

EXHIBITS in the above Case consist of the following: (If none, so state)

STATE'S EXHIBITS:

3	photo	32	videotape of area
4	photo	33	photo
5	photo	34	photo
6	copy of truck registration	44	fingerprint card
7	photo	48	photo
8	photo	49	photo
9	photo	53	fingerprints
10	Auto body shop statement	54	fingerprints
11	Notebook	55	fingerprints
12	videotape of Buttrick testimony	56	Page from Magazine
13	radio log dated 7/6/88	57	fingerprint lift
14	Set of keys	58	photo
15	photo	64	photo
16	photo	65	photo
17	photo	66	photo
18	handwritten consent to search truck	67	photo
19	photo	68	photo
20	photo	69	photo
21	photo	70	photo
23	Geological survey map		
24	photo		
25	photo		
26	photo		
27	photo		
28	photo		
30	Photo		
31	photo		

Above Exhibits Retained in This Office 0

Above Exhibits Transmitted to Law Court x®

Dated: April 25. 1989

Assistant Okra of Courts

KNOX
County

CR-43

Mar. 30, 1989

Dear Justice Bradford,

Re. Dennis Dechaine's Guilty Verdict.

There is reasonable doubt to his Guilt. Where Could anyone find a jury that was not influenced by the incriminating unfair press Coverage.

I'm 70 years old & my husband is 80. We've known this young man & his family for many years. We believe you have the wrong person. There are too many loose ends pointing to someone else's involvement.

We hope his unfortunate use of drugs did not sway the jury. He is a victim of being at the wrong place at the wrong time. We pray that justice will be done.

Sincerely,

STATE OF MAINE
Knox, S.S., Clerks Office
SUPERIOR COURT

APR 2 0 1989

FILED

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STATE OF MAINE
KNOX, SS

/.PR 9 1989

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. 89-71

STATE OF MAINE

V

NOTICE OF APPEAL
TO APPELLATE DIVISION
(M.R.Crim.P.40(b))

DENNIS JOHN DECHAINE)

TO THE APPELLATE DIVISION
OF THE SUPREME JUDICIAL COURT:

On April 4, 1989 I was in this proceeding adjudged guilty of Cout I Murder (Intentional or Knowing); Count II Murder (Depraved Indifference); Count III Kidnapping; Count IV Gross Sexual Misconduct; Count V Gross Sexual Misconduct and sentenced by Justice Bradford to the following terms of imprisonment:

Ct.	I	Life
Ct.	II	Life
Ct.	III	20 years
Ct.	IV	20 years
Ct.	V	20 years

All sentences to run concurrent to each other.

My attorney was Thomas J. Connolly
P.O. Box 7563 DTS
Portland, ME 04112
(207) 773-6460

I have pending an appeal to the Law Court pursuant to M.R.Crim.P. 37.

I am currently in custody at the Maine State Prison, Box A, Thomaston, Maine.

Dated: _____

Dennis Jchn Dechaine,
Appellant

Dated: _____

Witness

Thomas J. Connolly
Attorney at Law
'22' Fore Street
Box 7563 D TS
and. Maine 04112
1207) 773.6460

ACKNOWLEDGMENT OF POSSIBLE SENTENCE INCREASE
OVER THAT IMPOSED AT TRIAL

I acknowledge that unless all of the sentences imposed upon me in this proceeding on April 4, 1989 are maximum sentences, I take the risk in seeking review of one or more of such sentences that the Appellate Divison, after giving me an opportunity to be heard, might increase any of the senteces, even those I have not asked to be reviewed.

Dated: _____

_____

Dennis -John Dechaine,
Appellant

Witness: eAtaI.4. ,LLD

/.? R 1 9 1989

Thomas J. Connolly
Attorney at Lay.
2)2 Fore Street
Box 7563 D T.S
,rtlanct Marre 04112
(207) 773-6460

S; ATE OF

STATE OF MAINE
SUPREME JUDICIAL COURT
P. 0. BOX 368
PORTLAND. MAINE 04112

APP ; 2 1989

JAMES C.CHUTE
CLERK OF THE LAW COURT
REPORTER OF DECISIONS
EXECUTIVE CLERR OF THE
S1PF EME JUDICIAL COURT

GKR'Ee, 0o 02 207
TELEPHONE
879-4765

April 10, 1989

Eric Wright, Esq.
Assistant Attorney General
State House Station 6
Augusta, Maine 04333

Thomas Connolly, Esq.
P.O. Box 7563 DTS
Portland, Maine 04112
George Carlton, Jr., Esq.
15 Centre St.
Bath, Maine 04530

RE: State of Maine vs. Dennis J. Dechaine
Law Docket No. KN0-89-126

Dear Counsel:

The referenced appeal was docketed in the Law Court on April 10, 1989

The Law docket number assigned is KN0-89-126 which should appear on all further documents and correspondence pertaining to this case.

The Clerk's record (M. I?. Crim,P . 39 (c)) must be transmitted on or before April25,1989' and the reporter's transcript (M.R.Crim.P. 39 (d)) must be filed in the Law Court on or before May 15, 1989

Very truly yours,

;lames C. Chute
Clerk of the Law Court

JCC/gp

C:Clerk Sagadahoc
Court reporter Philip Galucki, Kim McCulloch

Notice pursuant to M.R.Crim.P. 37(d)

INDI GENCY STATUS OF APPELLANT

NAME OF CASE: State of Maine vs. Dennis J. Dechanine DATE: 4/10/89
Law Docket No.KNO-89-126

Appellant has been found to be indigent by the trial court. The judicial department will bear the costs of producing the standard trial transcript, and work on it should begin immediately.

xxxxx Appellant has not been found to be indigent by the trial court. **Appellant** must *make* arrangements for payment of transcript costs **and so inform** the **Law** Court and appellee within 5 days. Failure to do so will subject the appeal to dismissal for want of prosecution.

Indigency status of appellant cannot be determined by inspection of the trial court docket sheet. Counsel must inform **the** Law Court and appellee of appellant's status, or file a petition for declaration of indigency in the Superior Court within 5 days.

See M.R.Crim.P. 39.

NOTE: *Ibis form does not* constitute an independent rcvic' of the Eppcllent's *!talus* by the Law Court. It is based upon the action taken by *the* trial court as *that action is* rci]cctcd on ;he trial court docket sheets.

cc: Clcxk of Superior Court
Counsel
Cool % kcporter

FILED
Knox, ss.
SUPERIOR

APR 1 1 969

RECEIVED AND FILED
Susan Simons, Clerk

STATE OF MAINE
KNOX, SS

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. 89®71

STATE OF MAINE)

V) NOTICE OF APPEAL
TO APPELLATE DIVISION
(M.R.Crim.P.40(b))

DENNIS JOHN DECHAINE)

TO THE APPELLATE DIVISION
OF THE SUPREME JUDICIAL COURT:

On April 4, 1989 I was in this proceeding adjudged guilty of Count I Murder (Intentional or Knowing); Count II Murder (Depraved Indifference); Count III Kidnapping; Count IV Gross Sexual Misconduct; Count V Gross Sexual Misconduct and sentenced by Justice Bradford to the following terms of imprisonment:

Ct.	I	Life
Ct.	II	Life
Ct.	III	20 years
Ct.	IV	20 years
Ct.	V	20 years

All sentences to run concurrent to each other.

My attorney was Thomas J. Connolly
P.O. Box 7563 DTS
Portland, ME 04112
(207) 773®6460

I have pending an appeal to the Law Court pursuant to M.R. Crim.P. 37.

I am currently in custody at the Maine State Prison, Box A, Thomaston, Maine.

DATED: April 10, 1989

THOMAS J. CONNOLLY
Attorney for
Dennis Dechaine

Thomas J. Connolly
Attorney at law
'2'2 Fore Street
Sox 7563 D T S
and Maine 04112
(207) 773-6460

DEPARTMENT OF CORRECTIONS
INITIAL PLACEMENT FORM

; initial placement will be viewed by the receiving institution Classification Committee /thin 6 weeks for assignment of security level/program/work assignment/location.

.a;,e: DENNIS DECHAINE Sex = MALE Date of Birth: 10-29-57
(Sentenced Person)

'fense: MURDER; MURDER; KIDNAPPING; GSM; GSM

Sentence: LIFE; LIFE; 20 YEARS; 20 YEARS; 20 YEARS;
ALL SENTENCES ARE TO BE SERVED CONCURRENTLY

All adult females sentenced to the Department of Corrections will be sent to the Maine Correctional Center.

All adult males will be sent to Maine Correctional Center unless one or more of the following criteria are known:

A through H should be made out with an SBI sheet available to the officer. If the SBI sheet is not available, then the officer should check with the Central Office of P&P, MSP, or MCC to see if any known criminal record is available for verbal verification. If no criminal record is obtained, then an interview with the prisoner to obtain his version of his criminal history should be done to complete this form.

/7 A through H completed solely on interview with prisoner.

Maine State Prison Placement Criteria
(relevant items checked)

A. (X) Sentence over five years excluding suspended portion and good time.
B. ( ) Any felony detainers.
C. ( ) Prior commitment(s) to an adult maximum security prison (state or federal excluding county jails). Information concerning security levels of correctional facilities maybe found in the ACA Juvenile and Adult Correctional Departments, Institutions, Agencies, and Paroling Authorities Directory.
D. ( ) Escape conviction(s) or known escape attempt(s) within the last three (3) years unless the conviction or attempt was committed as a juvenile or the prisoner escaped as a juvenile and was bound over.
E. ( ) Three (3) or more previous sentences/placements at Maine Correctional Center.
F. ( ) Two or more previous felony convictions for crimes resulting in risk of injury or injury to persons excluding motor vehicle convictions.
G. (®) Substantiated reports indicating endangerment to self or others within the last **six** (6) months.
H. ( ) Prisoners with special needs will be referred to the Director of Programs, the ® Associate Commissioner, or Commissioner (in that order), for determination of initial placement. Prisoners with special needs include subjects with severe mental, emotional, or physical disabilities.

Justification for out-of-category placement:

Placement: Maine Correctional Center ( ) Maine State Prison (XX)

XX Telephone call made to receiving institution of assignment.

Signature of Officer Making Placement

04-04-89
Date

XX One copy sent to receiving institution.

Copy of SBI sheet is attached.

PROBATION-PAROLE OFFICER II
Title

PP-51 Rev. 3/30/87 Effective Date: 4/30/87

PP-51Rev. 3/30/87 Effective Date: L/1n/Rs

STATE OF MAINE

OF MAINE

KNOX, SS

APR 4 1989

RECEIVED AND FILED
Susan Simmons, Clock

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-89-71

STATE OF MAINE)

V)

DENNIS J. DECHAINE)

NOTICE OF APPEAL TO THE LAW COURT
(M.R. Crim.P. 37)

Notice is hereby given that Dennis J. Dechaine, who is the Defendant in this proceeding, hereby appeals to the Supreme Judicial Court of Maine, sitting as the Law Court, from the judgment entered in this proceeding on the 4th day of April, 1989.

The Defendant:

(X) Is presently in custody confined at the Maine State Prison in Thomaston.

DATED: April 4, 1989

THOMAS J. CONNOLLY
P.O. Box 7563 DTS
Portland, ME 04112

SUPPLEMENTAL TRANSCRIPT ORDER
(M.R.Crim.P. 39(b))

To the Court Reporter:

Please include the following to the standard reporters transcript:

All in chambers conferences
Opening & Closing Statements
All testimony
All proffered testimony

THOMAS J. CONNOLLY

Thomas J. Connolly
Attorney at Law
'2'7 Fore Street
Sox 7563 D T S
and Mama 04112
12071773-6460

STATE OF MAINE
SUPERIOR COURT

JUDGMEN" AND COMMITMENT

D

Docket No.	Co	
CR-89-71	Knox	1 0129/57

State of Maine v. Defendant's Name

Dennis John Dechaine Bowdoinham, Maine

Ofi s)charged:

COUNT I:
T 17-A M.R.S.A. §201(1)(A)
Murder

Charged by:

indictment
information
complaint

Plea: /VU1- @l•&/

Otfense(s) convicted:

COUNT I:
T 17-A M.R.S.A. §201(1)(A)
Murder

Convicted on:

plea of guilty
plea of nolo
jury verdict
court finding

IT IS ADJUDGED THAT THE DEFENDANT IS GUILTY OF THE OFFENSES AS SHOWN ABOVE AND CONVICTED.

IT IS ADJUDGED THAT THE DEFENDANT BE **HEREBY COMMITTED** TO THE SHERIFF OF THE **WITHIN** ,NAMED *COUNTY* ***OR HIS*** **AUTHORIZED** REPRESENTATTYE ' **SHALL WITHOUT** NEEDLES$ *DELAY*t *REMOVE* THE DEFENDANT TO:

The custody of the Commissioner of the Department **of Co lions, at a** facility designated by the **Commissioner, to be punished by imprisonment for a term of** /i`P, imc) r/0 o r1)I71· ipt=

O The County jail to be punished by imprisonment for a term of

O **This sentence to be served consecutive to**

❑ **Execution stayed to**

O **IT 1S ORDERED THAT ALL (BUT) OF THE FOREGOING SENTENCE BE SUSPENDED AND THE DEFENDANT BE COMMITTED TO THE CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND PAROLE FOR A TERM OF UPON CONDITIONS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN. SAID PROBATION TO COMMENCE ( ) (UPON COMPLETION OF THE UNSUSPENDED TERM OF IMPRISONMEN1). THE DEFENDANT SHALL SERVE THE INITIAL PORTION OF THE FOREGOING SENTENCE AT**

❑ The final month(s) of the unsuspcnded portion of the term of imprisonment is to be served with intensive supervision under conditions parately specified and incorporated herein.

O IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE SUM OF **DOLLARS,**
AS A EWE, TO THE CLERK OF THE COURTS IN THE ABOVE NAMED COUNTY.

O All but suspended.
D Execution stayed to _____

IT IS ORDERED THAT EXECUTION OF THE FOREGOING SENTENCE *AS* IT RELATES TO FINE BE SUSPENDED AND THE DEFENDANT *BE* comivaTIED TO THE CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND PAROLE FOR A TERM OF _____
UPON CONDITIONS ATTACHED HERETO AND INCORPORATED **BY** REFERENCE HEREIN.

❑ IT IS FURTHER ORDERED THAT THE DEFENDANTS MOTOR VEHICLE OPERATOR'S LICENSE OR PERMTI TO OPERATE, RIGHT TO OPERATE A MOTOR VEHICLE AND RIGHT TO APPLY FOR AND OBTAIN A LICENSE IS SUSPENDED FOR A PERIOD OF _____
O Execution stayed to _____ (a.m.) (P·m)

❑ IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE SUM OF _____ DOLLARS AS RESTITUTION, THROUGH THE (DIVISION OF PROBATION AND PAROLE) (DISTRICT ATTORNEY'S OFFICE) FOR THE BENEFIT OF _____
O Execution stayed to _____

CDT IS ORDERED PURSUANT TO I7-A MA-S.A. § 1341 THAT THE DEFENDANT PAY _____ DOLLARS FOR EACH DAY SERVED IN THE COUNTY JAIL, TO THE TREASURER OF THE *ABOVE* NAMED COUNTY.
Execution stayed to _____

• IT IS ORDERED THAT PURSUANT TO 29 M.R.S.A. § 1312-B (2)(D-I) THE DEFENDANT SHALL PARTICIPATE IN ALCOHOL AND OTHER DRUG EDUCATION, EVALUATION AND TREATMENT PROGRAMS FOR MULTIPLE OFFENDERS ADMINISTERED BY THE DEPARTMENT OF HUMAN SERVICES.

❑ IT IS ORDERED THAT PURSUANT TO 17-A M.R.S.A. § 1201 THE DEFENDANT BE UNCONDITIONALLY DISCHARGED.

IT IS FURTHER ORDERED THAT THE (CLERK DELIVER. A CERTIFIED COPY OE THIS JUDGMENT AND COMMITMENT TO THE SHERIFF OF TI-IE ABOVE NAMED COUNTY OR HIS AUTHORIZED **REPRESENTATIVE** AND THAT **THE COPY** SERVE AS THE COMM TCMENT OF THE DEFENDANT. FOR REASONS FOR B,IPOSLNG CONSECUTIVE SENTENCES SEE COURT RECORD OR ATTACEMENT.

A TRUE COPY, A I EST:

_____
Clerk, Superior Court

_____
Justice, Superior Court

I understand the sentence imposed herein and acknowledge **receipt of a copy of this JUDGMENT AND COMMITMENT.**

Dated: 5)

_____
Defendant

RETURN

By virtue of the within JUDGMENT AND COMMITMENT I have this **day** delivered the **within-named** Defendant to the

_____

Dated: _____ _____
Deputy Sheriff

By virttta of tins warrant, the walnut-named Defendant has been removed to and received at the

.. .. _____ **on this day.**

Dated:

Deputy Sheriff / Supt., M.C.C. / *Warden* M.S.P.

STATE OF MAINE
SUPERIOR COURT

JUDGMEIV' AND COMMITMENT

Docket No. CR-89-71 | Knox | **Date** 7L

Stale **of J alne v.** Defendant's Name: Dennis John Dechaine | Residence: Bowdoinhan, Maine

Offense4) ***charged:***

COUNT II:
T 17-A M.R.S.A. §201(1)(A)
Murder

Plea: Aki-

Charged by:

- indictment
- • information
- ❑ complaint

Of ense(s) convicted:

COUNT I:
T 17-A M.R.S.A. §201(1)(A)
Murder

Convicted on:

- ❑ **plea** of **guilty**
- ® **plea** of nolo
- ❑ jury **verdict**
- ❑ court finding

IT IS ADJUDGED THAT THE DEFENDANT 1S GUILTY OF THE OFFENSES AS SHOWN ABOVE AND CONVICTED.

TT IS ADJUDGED THAT THE DEFENDANT BE HEREBY COMMITTED TO THE SHERIFF OF THE WITHIN NAMED COUNTY OR HIS *AUTHORIZED* **REPRESENTATIVE WNO SHALL WI I1lOUT HEEDLESS DELAY r , REMOVE THE DEFENDANT TO:**

The custody of the Commission2 of the Department of Corrections, at a facility designated by the Commissioner, to be punished by imprisonment for a term of /r> e thi)) t-N Oillte/Z

❑ The County jail to be punished by imprisonment for a term of

❑ This sentence to be served **consecutive** to

❑ **Execution stayed** to ,

® IT IS ORDERED THAT ALL (BUT) OF THE FOREGOING SENTENCE BE SUSPENDED AND THE DEFENDANT BE COMMUTED TO THE CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND PAROLE FOR A TERM OF **UPON CONDITIONS ATTACHED HERETO AND INCORPORATED** BY REFERENCE **HEREIN. SAID PROBATION** TO COMMENCE ((UPON COMPLETION OF THE UNSUSPENDED 'TERM OF IMPRISONMENT). THE DEFENDANT SHALL SERVE THE INITIAL PORTION OF THE FOREGOING SENTENCE AT

❑ The final month(s) of the unsuspcnded portion of the term of imprisonment is to be served with intensive supervision under conditions separately specified and incorporated herein.

10 IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE SUM OF _____ **DOLLARS,** AS A FM. TO THE CLERK OF THE COURTS IN THE ABOVE NAMED COUNTY.

O All but _____ suspended.

O Execution stayed to _____

O IT IS ORDERED THAT EXECUTION OF THE FOREGOING SENTENCE AS IT RELATES TO FINE BE SUSPENDED AND THE DEFENDANT BE COMMITTED TO THE CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND PAROLE FOR A TERM OF _____ UPON CONDITIONS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

❑ IT IS FURTHER ORDERED THAT THE DEFENDANTS MOTOR VEHICLE OPERATOR'S LICENSE OR. PERMIT TO OPERATE, RIGHT TO *OPERATE A MOTOR* VEHICLE AND RIGHT TO APPLY FOR AND OBTAIN A LICENSE IS SUSPENDED FOR A PERIOD OF _____

O Execution stayed to _____(a.m.) (p.m.)

❑ IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE SUM OF _____DOLLARS AS RESTITUTION, THROUGH THE (DIVISION OF PROBATION AND PAROLE) (DISTRICT ATTORNEY'S OFFICE) FOR THE BENEFIT OF _____

O Execution stayed to _____

EDT IS ORDERED PURSUANT TO 17-A § 1341 THAT THE DEFENDANT PAY _____ DOLLARS FOR EACH DAY SERVED IN THE COUNTY JAIL, TO THE TREASURE?. OF THE ABOVE NAMED COUNTY.

O Execution stayed to _____

❑ IT IS ORDERED THAT PURSUANT TO 29 M.R.S.A. § 1312-B (2)(D-I) THE DEFENDANT SHALL PARTICIPATE IN ALCOHOL AND OTHER DRUG EDUCATION. EVALUATION AND TREATMENT PROGRAMS FOR MULTIPLE OFFENDERS ADMINISTERED BY THE DEPARTMENT OF HUMAN *SERVICES*.

❑ IT IS ORDERED THAT PURSUANT TO 17-A M.R.S.A. § 1201 THE DEFENDANT BE UNCONDITIONALLY **DISCHARGED.**

IT IS FURTHER ORDERED THAT THE CLERK DELIVER A CERTIFIED COPY OF THIS JUDGMENT AND 00IVLMITM ENT TO THE SHERIFF *OF* THE ABOVE NAMED OOUNTY OR HIS AUTHORTZED REPRESENTATIVE AND THAT THE **COPY** SERVE AS THE COMMITMENT OF THE DEFENDANT. FOR REASONS FOR IIIIPOS NG CONSECUTIVE SENTENCES SEE muRT -R RECORD OR ATTACHMENT.

A TRUE COPY, Al EST:

_____
Clerk, Superior Court

Justice, Superior Court

I understand the sentence imposed herein and acknowledge receipt of a copy of this JUDGMENT AND COMMITMENT.

Dated: _____L51,n

Defendant

RETURN

By virtue of the within JUDGMENT AND COMMITMENT I *have this day* **delivered the within-named Defendant to the**

_____

Dated: _____

Deputy Sheriff

By virtue of this warrant. dinwithin-named Defendant has been removed **to as received at the**

_____ **on this day**

Dated: _____

Deputy Sheriff Supt.. M.C.C. / War S.P.

STATE OF MAINE
SUPERIOR COURT

JUDGMEN' AND COMMITMENT

Docket No.	Cc	Date	DOB
CR-89-71	Knox	4/., 89	10/29/57

Stale of Maine v. Defendant's Name	Residence
Dennis John Dechaine	Bowdoinham, Maine

Offense(s) charge&

COUNT III:
T 17-A M.R.S.A. §301 (1)(A)(3)
Kidnapping

Charged by:
- [XX] indictment
- [ ] information
- [ ] complaint

Plea: Of C/.11fL9

Offense(s) convicted:

COUNT III:
T 17-A M.R.S.A. §301 (1)(A)(3)
Kidnapping

Convicted **on:**
- ® **plea** of **guilty**
- ® **plea of nolo**
- [X] **jury verdict**
- [ ] **court finding**

IT IS ADJUDGED THAT THE DEFENDANT IS GUILTY OF THE OFFENSES AS SHOWN ABOVE AND CONVICTED.

[X] **IT IS ADJUDGED THAT THE DEFENDANT BE HERE BY COMMITTED TO THE SHERIFF OF THE WITHIN ,NAMED COUNTY OR HIS AUTHORIZED REPRESENT ATIVE WHO SHALL WITHOUT NEEDLESS DELAY REMOVE THE DEFENDANT TO:**

[X] The custody of the Commissiona of the De-par= **ent of Corrections, at a facility designated by the Commissioner,** to be **punished by** imprisonment for **a tarn of** twenty (20) years

O The County jail to be punished by imprisonmen t for a term of

® This sentence to be served consecutive to

Execution stayed to

O IT IS ORDERED THAT ALL (BUI) OF THE FOREGOING SENTENCE BE SUSPENDED AND THE DEFENDANT BE COMMITTED TO THE CUSTODY AND CONTROL OF THE DIVISION OF **PROBATION** AND PAROLE FOR **A TERM OF** UPON CONDITIONS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN. SAID PROBATION TO COMMENCE ( ) (UPON COMPLETION OF THE UNSUSPENDED TERM OF IMPRISONMENT). THE DEFENDANT SHALL SERVE THE INITIAL PORTION OF THE FOREGO ING SENTENCE AT

O The final month(s) of the unsuspended portion of the term of imprisonment is to be served with intensive supervision under conditi ons separately specified and incorporated herein.

O IS ORDERED THAT THE DEFENDANT *FORFEIT* AND PAY THE *SUM* OF _____ DOLLARS, AS A FINE. TO THE CLERK OF THE COURTS IN THE ABOVE NAMED COUNTY.

O All but _____ **suspended.**
Execution stayed to _____

O IT IS ORDERED THAT EXECUTION OF THE *FOREGOING* SENTENCE AS IT RELATES TO FINE BE SUSPENDED AND THE DEFENDANT BE COMMITTED TO THE CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND *PAROLE* FOR A TERM OF _____ UPON CONDITIONS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN,

O IT IS FURTHER ORDERED THAT THE DEFENDANTS MOTOR VEHICLE OPERATOR'S LICENSE OR PERMIT TO OPERATE, RIGHT TO OPERATE A MOTOR VEHICLE AND RIGHT TO APPLY FOR AND OBTAIN A LICENSE IS SUSPENDED FOR A PERIOD OF _____

O **Execution stayed to** **(a.m.) (p.m.)**

O IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE *SUM OF* _____ DOLLARS AS RESTITUTION, THROUGH THE (DIVISION OF PROBATION AND PAROLE) (DISTRICT ATTORNEY'S OFFICE) FOR THE BENEFIT OF _____

O Execution stayed to _____

0-IT IS ORDERED PURSUANT TO 17-A M.R.S.A- § 1341 THAT THE DEFENDANT PAY ____ DOLLARS FOR EACH DAY **SERVED** IN THE **COUNTY** JAIL, TO THE TREASURER OF THE **ABOVE** NAMED COUNTY.

O Execution stayed to _____

'IT IS ORDERED THAT PURSUANT TO 29 M.R.S.A. § 1312-B (2)(D-I) THE DEFENDANT SHALL PARTICIPATE N ALCOHOL AND OTHER DRUG EDUCATION, EVALUATION AND TREATMENT PROGRAMS *FOR* MULTIPLE OFFENDERS ADMINISTERED BY THE DEPARTMENT OF HUMAN SERVICES.

O TT IS ORDERED THAT PURSUANT TO 17-A M.R.S.A. § 1201 THE DEFENDANT BE UNCONDITIONALLY DISCHARGED.

IT *IS* FURTHER ORDERED THAT THE CLERIC DELIVER A CERTIFIED COPT OF THIS JUDGMENT AND COMMITMENT TO THE SHERIFF OF THE ABOVE NAMED COWRY *OR* HIS AUTHOREZED **REPRESENTATIVE** AND THAT THE COPY SERVE **AS THE CONEMITMENT OF THE DEFENDANT. FOR REASONS FOR IMPOSING CONSECUTIVE SENTENCES SEE COURT RECORD OR A71'RO-WENT.**

ERE-

A TRUE COPY, A ETEST:

_____
Clerk. Superior Court

_____
Justice, Superior Court

I understand the sentence imposed herein and acknowledge receipt of a copy of this JUDGMENT AND COMMITNIENT.

Dated: *H/5"o.*

_____
Defendant

RETURN

By virtue of the within JUDGMENT AND COMMITMENT I have this day delivered the within-named Defendant to the

_____

Dated: _____

_____
Deputy Sheriff

By virtue of this warrant, the within-named Defendant has been removed to and received at the _____

_____ **on this day.**

Dated: _____

_____
Deputy Sheriff / Supt., M.C.C. / Warden M.S.P.

STATE OF MAINE
SUPERIOR COURT

JUDGMEN'' AND COMMITMENT

Docket No.	Co.	Date	DOB
CR-89-71	Knox	44 /t, d' 7	10/29/57

Slate of Mahn v. Defendant's Name Rcsidenct
Dennis John Dechai — Bowdoinham, Maine

Offense(s) charged:

COUNT IV:
T 17-A M.R.S.A. §251(1)(A) & (C)(3) & 253(1)(B)
Gross Sexual Misconduct

Plea: /107 gal

Charged by;

indictment

information

O complaint

OfTemse(s) convicted:

COUNT IV:
T 17-A M.R.S.A. §251(1)(A) & (C)(3) & 253(1)(B)
Gross Sexual Misconduct

Convicted **on:**

❑ **plea** of **guilty**

❑ **plea of Polo**

129 jury verdict

❑ court finding

IT IS ADJUDGED THAT THE DEFENDANT 1S GUILTY OF THE OFFENSES AS SHOWN ABOVE AND CONVICTED.

IT IS ADJUDGED THAT THE DEFENDANT BE HEREBY COMMITTED TO THE SHERIFF OF THE WITHIN ,NAMED COUNTY *OR HIS* **AUTHORIZED REPRESENTATIVE NVHO,$HALL WITHOUT** *NEEDLESS DELAY* **HTHE** DEFENDANTTO:

The custody of the Commissions of the Department of Corrections, at a facility designated **by** the Commissioner, **to be punished by** imprisonment fora term of enty (20) years

❑ The **County** jail to be punished **by imprisonment for a term of** _____

❑ **This sentence to be served consecutive to** _____

❑ **Execution stayed to**

❑ IT IS ORDERED THAT ALL (BUT) _____ OF *THE* FOREGOING SENTENCE *BE* SUSPENDED AND THE DEFENDANT BE COMMITTED TO THE CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND PAROLE FOR A TERM OF _____ UPON CONDITIONS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN. SAID PROBATION TO COMMENCE (_____) (UPON COMPLETION OF THE UNSUSPENDED TERM OF IMPRISONMENT). THE DEFENDANT SHALL **SERVE *THE* INITIAL PORTION OF THE FOREGOING SENTENCE AT** _____

The final _____ month(s) of the unsuspcnded portion of the term of imprisonment is to be served with intensive supervision under conditions separately specified and incorporated herein.

O IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE SUM OF _____ LLARS, AS A FINE, TO THE CLERK OF THE COURTS IN THE ABOVE NAMED COUNTY.

B All but _____ suspended.
D Execution stayed to _____

® IT IS ORDERED THAT EXECUTION OF THE FOREGOING SENTENCE AS IT RELATES TO FINE BE SUSPENDED AND THE DEFENDANT BE CO 1-I ED TO THE CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND PAROLE FOR A TERM OF _____ UPON CONDITIONS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

O IT IS FURTHER ORDERED THAT THE DEFENDANTS MOTOR VEHICLE OPERATOR'S LICENSE OR PERMIT TO OPERATE, RIGHT TO OPERATE A MOTOR VEHICLE AND RIGHT TO APPLY FOR AND OBTAIN A LICENSE IS SUSPENDED FOR A PERIOD OF _____

O Execution stayed to _____(a.m.) (p.m.)

O IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE SUM OF _____DOLLARS AS RESTITUTION, THROUGH THE (DIVISION OF PROBATION AND PAROLE) (DISTRICT ATTORNEY'S OFFICE) FOR THE BENEFIT OF _____

® Execution stayed to _____

Q **IT IS ORDERED PURSUANT TO I7-A M.R.S.A. 4 1341 THAT DEFENDANT PAY _____ DOLLARS FOR EACH DAY SERVED IN THE COUNTY JAIL, TO THE TREASURER OF THE ABOVE NAMED COUNTY.**

Execution stayed to _____

®:- IT IS ORDERED THAT PURSUANT TO 29 M.R.S.A. § 1312-B (2)(D-1) THE *DEFENDANT* SHALL PARTICIPATE N ALCOHOL AND OTHER DRUG EDUCATION, EVALUATION AND TREATMENT PROGRAMS FOR MULTIPLE OFFENDERS ADMENISTERED BY THE DEPARTMENT OF HUMAN SERVICES.

O IT IS ORDERED THAT PURSUANT TO 17-A M.R.S.A. § 1201 THE DEFENDANT **BE** UNCONDITIONALLY DISCHARGED.

IT IS FURTHER ORDERED THAT THE CLERK DELIVER A CERTIFIED COPY OF THIS JUDGMENT AND COMMII'M Eta TO THE SHERIFF OF THE ABOVE NAMED COUNTY OR HIS A O D **REPRESENTATIVE** AND THAT THE **COPY SERVE** AS THE COMMITMENT OF THE DEFENDANT. FOR REASONS FOR IMPOSING CONSECUTIVE SENTENCES SEE COURT RECORD OR TTACIY .

-- or—

A TRUE COPY, ATTEST:

_____
Clerk, Superior Court

_____
Justice, Superior Court

I understand the sentence imposed herein and acknowledge receipt of a copy of this MENT AND COid .

Dated: ~ S M

Defendant

RETURN

By virtue of the within JUDGMENT AND COMMITMENT I have this day delivered the within-named Defendant to the

_____

Dated: _____

_____
Deputy Sheriff

y virtue of this warrant, the within-named Defendant has been removed to and received at the _____

_____ **on this day.**

Dated:

Deputy Sheriff / Supt.. M.C.C. / Warden M.S.P.

STATE OF MAINE
SUPERIOR COURT

JUDGMENT kND **COMMITMENT**

Docket No.	Cot	Dare	DOB
CR-89-71	Knox	2(9	10

State of Marne v. Defendant's Name Residence

Dennis John Dechaine — Bowdoinham, Maine

Offense(s) charged:

COUNT V:
T 17-A M.R.S.A. §251(1)(A) & (C)(3) & 253(1)(B)
Gross Sexual Misconduct

Charged by:

X indictment

❑ information

❑ **complaint**

Plea: /VOi&l ftc/

Offense(s) convicted:

COUNT V:
T 17-A M.R.S.A. §251(1)(A) & (C)(3) & 253(1)(B)
Gross Sexual Misconduct

Convicted on:

® **plea of guilty**

® **plea of nolo**

■ **jury verdict**

❑ court finding

IT IS ADJUDGED THAT THE DEFENDANT 1S GUILTY OF THE OFFENSES AS SHOWN ABOVE AND CONVICTED.

IT IS ADJUDGED THAT THE DEFENDANT BE HEREBY COMMITTED TO THE SHERIFF OF THE WITHIN ,NAMED COUNTY OR HIS AUTHORIZED REPRESENTATIVE WHO SHALL WITHOUT NEEDLESS **.DELAY REMOVE THE DEFENDANT TO:**

The custody of the Commissioner of the Department of Corrections, at a facility designated by the Commissioner, to be punished by imprisonment for a term of ~. 71

O **The County jail** to be punished by imprisonment ***for a term of***

This sentence to be served consecutive to

O Execution stayed to

® **IT IS ORDERED THAT ALL (BUT)** ***OF THE*** **FOREGOING SENTENCE BE SUSPENDED AND THE DEFENDANT BE COMMITTED TO THE CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND PAROLE FOR A TERM OF UPON CONDITIONS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN. SAID PROBATION TO COMMENCE ( ) (UPON COMPLETION OF *THE UN* SUSPENDED TERM *OF IMPRISONMENT). THE* DEFENDANT SHALL SERVE TM INITIAL PORTION OF THE FOREGOING SENTENCE AT**

® The final month(s) of the unsuspcnded portion of the term of imprisonment is to be served with intensive supervision under conditions separately specified and incorporated herein.

O IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE SUM OF _____ *DOLLARS,* AS A ENE, TO THE CLERK OF THE COURTS N THE ABOVE NAMED COUNTY,

O All but _____ suspended.

O *Execution stayed to* _____

O IT IS ORDERED THAT EXECUTION OF THE, FOREGOING SENTENCE AS IT RELATES TO FINE BE SUSPENDED AND THE DEFENDANT BE COMMITTED TO THE CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND PAROLE FOR A TERM OF _____ UPON CONDITIONS ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

O IT IS FURTHER ORDERED THAT THE DEFENDANTS *MOTOR* VEHICLE *OPERATOR'S LICENSE OR PERMIT* TO OPERATE, RIGHT TO OPERATE A MOTOR *VEHICLE AND* RIGHT TO APPLY FOR AND OBTAIN A LICENSE IS SUSPENDED FOR A PERIOD OF _____

O Execution stayed to _____ (a.m.) (p.m.)

ED IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE SUM OF _____ DOLLARS AS RESTITUTION, THROUGH THE (DIVISION OF PROBATION AND PAROLE) (DISTRICT ATTORNEY'S OFFICE) FOR THE BENEFIT OF _____

0 Execution stayed to _____

IS ORDERED PURSUANT TO 17-A M.R.S.A. § 1341 THAT THE DEFENDANT PAY ____ **DOLLARS** -FOR EACH DAY SERVED IN THE COUNTY JAIL, TO THE TREASURER OF THE ABOVE *NAMED* COUNTY.

0 Execution stayed to _____

IT IS ORDERED THAT PURSUANT TO 29 M.R.S.A. § 1312-B (2)(D-1) THE DEFENDANT SHALL PARTICIPATE IN ALCOHOL AND OTHER DRUG EDUCATION, EVALUATION AND TREATMENT PROGRAMS FOR MULTIPLE OFFENDERS ADMINISTERED BY THE DEPARTMENT OF HUMAN SERVICES.

O IT IS ORDERED THAT PURSUANT TO 17-A M.R.S.A. § 1201 TEE DEFENDANT BE UNCONDITIONALLY DISCHARGED.

IT IS FURTHER ORDERED THAT THE CLERK DELIVER A CERTIFIED COPY OF THIS JUDGMENT AND COMMITMENT TO THE SHERIFF OF THE ABOVE NAMED COUNTY OR HIS AUTHORZZED REPRESENTAME AND THAT THE COPY SERVE AS THE COMMITMENT OF THE DEFENDANT. FOR REASONS FOR EMPOSLNG CONSECUTTRE SENTENCES SEE COURT RECORD *OR ATTAOFLMEN'1'.*

A TRUE COPY, ATTEST:

_____
Clerk, Superior Court

Justice, Superior Court

* I understand the sentence imposed herein and acknowledge receipt of a copy of this JTJDGMENT AND COMMITMENT.

Dated: _____

Defendant

RETURN

By virtue of the within JUDGMENT AND COMMITMENT I **have** this day delivered the within-named Defendant to the _____

Dated: _____

Deputy Sheriff

By virtue of this warrant, the within-named Defendant has been removed to sod received at the _____ **on this day.**

" "

Dated:" " _____

Deputy Sheriff / Supt., M.C.C. / Warden M

STATE OF MAINE

Knox ,ss

SUPERIOR COURT
CRIMINAL AC1ION
DOCKETNO.CR- 89-71

STATE OF MAINE

MOTION
FOR APPOINTMENT OF
TRIAL COUNSEL
(M.R.CRIM.P. 44)

v.

Dennis J. Dechaine
Defendant

MOTION

I am the person charged in this criminal proceeding and desire to be represented by an attorney. I am without an attorney and have insufficient means with which to employ one. I would be satisfied to have Thomas J. Connolly Esq. represent me and desire to nominate him/her as my attorney in this matter. I respectfully request that this court make due inquiry into my status as an indigent defendant, and if satisfied of my indigency, appoint the said attorney as my attorney in this criminal proceeding, if he/she is available and willing to serve, or otherwise, appoint some suitable attorney to represent me, and in either case, said attorney to serve at public expense.

Dated: April 4, 1989

Defendant

ORDER ON MOTION

After hearing upon the above motion, I find that the defendant (is indigent) (has sufficient means with which to bear a portion of the expense of his/her defense) and it appearing that the above-named attorney is agreeable to the defendant, is available and willing to serve, I hereby appoint [redacted] Esq. to act as counsel for defendant in this criminal proceeding and to serve at public expense. (Based upon the findings set forth below, this order is conditioned upon the following responsibilities of the defendant:)

Dated: th /847

Justice, Superior Court

CR-28 Rev. 2/87

155

STATE OF MAINE
FINANCIAL AFFIDAVIT

SUPERIOR COURT
County Knox
Docket No. CR-89-71

DISTRICT COURT
District
Division of
Docket No.

PLEASE FILL OUT THIS FORM AS COMPLETELY AS POSSIBLE.

Name Dennis J. Dechaine Date of Birth 10/29/57 Age 31 Phone No.

Address Maine State Prison Social Security Number 006 60 8712

What crime(s) are you charged with committing? frt
Marital Status: ❑ single XX married ❑ divorced ❑ separated ❑ widowed
I live: D alone ❑ with spouse ❑ with parent D with children D with friend(s) ❑ other
List the names, ages and relationships of any dependents you support:

---

1. AVAILABLE MONEY (List all money currently available; include joint as well as individual accounts.)

a. Cash on hand $ C80 in MSP account J

b. Checking Account(s) $
name of bank/credit union

c. Savings Account(s) $
name of bank/credit union

d. Stocks, bonds, trusts, certificates of deposit, etc.
description OTC (valve)

e. Cash posted as bail

f. Other (life insurance, Christmas Club, etc.)
description

TOTAL $ e (0

2. Have you, or has anyone in your household, received benefits, tax refunds, pay raises, law suit settlements, etc.? You expect to receive, any payments such as retroactive government A:'/A

3. Does anyone owe you money? ❑ yes ❑ no If yes, how much? A¹/A

4. EMPLOYMENT
a. Where do you work? N/A
(employer name, address, phone)

b. Length of time employed: ❑ Full-Time ❑ Part-Time ❑ Seasonal

c. If not currently employed, where and when were you last employed?

---

d. Do you anticipate other employment or other income within the next 30 days ? ❑yes ❑ no
If yes, please explain:

5. MONTHLY INCOME

a. Salary and wages (take-home pay)	$	f. Any income received and not reported	
b. Unemployment check	$	above (veteran's benefits, worker's comp.,	
c. Social Security	$	pensions/retirement, nat'l guard, income	
d. Welfare payments	$	from room rental, etc.)	
e. Alimony/child support	$		$

TOTAL (a. through f.) $

6. Do you receive any pay for any other work you do that is not included above? If so, please explain: A

---

7. PROPERTY (owned, individually or with others)

a. Do you own a house or other real estate ryes ❑ no If yes, what is the estimated market value of the property? $_____ What is the amount of any mortgage on the property? $_____ Who holds the mortgage?_____

4'Nc)7e : act), lnec,U-0- c.cbtc-€ 70 ot, G c ct --

b. List make, model, year and alue of all motor vehicles you h y e (automobiles, trucks, RV's, motorcycles, ATV's, snowmobiles, etc.) La-i:7=2

Who holds the title to these vehicles?_____ Who are the vehicles registered to?

c. List any other personal property (such as televisions, stereo, VCR, etc.) having a value of $50 or more.

d. Have you transferred any real estate, personal property, or other assets within the last six months?

❑ yes ❑ no If yes, please describe: _____ ?rte

8. ASSETS OF HUSBAND, Wlr'E (include roommate with whom you share expenses; if you are under 18 yrs. old, include your parent)

a. Name of Person y11 A106A-)~'~Gi1AA b. Relationship to you 1.~iP °~' 11"-C

c. Address (?fwd rr~,t~. d. Number of this person's dependents C7 i

e..Is this person employed? ayes ❑ no If yes, where?

f. Estimated monthly income $ 50

9. HOUSING COSTS

a. How much do you pay each MONTH in rent or mortgage payments on your home? P/A
(include taxes and house insurance) $_____

b. How much do you pay each MONTH for utilities?
(include electricity, heat, sewer, water) $_____

TOTAL $

10. Describe any loan payments or any other payments you make on a regular basis which are not normal living expenses. (Do not include rent/mortgage payment listed in question #9 above.) Include lending institution, purpose, total amount owed and monthly payment.

Lending Institution	Purpose	Total Amount Owed	Monthly Payment

TOTAL $_____

11. Describe any regular payments you make for medical care, alimony/child support, child care, etc. _____

TOTAL $_____

12. Is there any other statement you ish to make about your financial condition that may be helpful in evaluating if you qualify for court appointed legal assistance? hi/4.-C. A,,.0al,) ? 77 ~{~fc fr r t e

I furnish the above information to s pport my request for appointment of counsel to represent me with regard to the pending charges. I have read the above form, I understand it, and the answers to the **questions are true. I understand that any false answers on this form may subject me to criminal prosecution, and that a court investigator may seek to verify my statements. I also understand that I have a continuing obligation, personally and through counsel, to report to the court any changes in my employment or other financial circumstances.**

Dated: DJ /5(Applicant's signature: vgi I. :

Subscribed d sworn to before me,

(Attorney, erk of Court, Notary Public)

RECOMMENDATION
- ❑ ELIGIBLE
- ❑ NOT ELIGIBLE
- ❑ PARTIALLY ELIGIBLE $

7. PROPERTY (owned, individually or with others)

a. Do you own a house or other real estate ryes ❑ no If yes, what is the estimated market value of the property? $_____
What is the amount of any mortgage on the property? $ Who holds the mortgage?_____

4-N07-e CLt,Z (Incc,~-~ | P c ;bfcu, <:L ce-c t`~

b. List make, model, year and alue of all motor vehicles you h ve (automobiles, trucks, RV's, motorcycles, ATV's, 1.2-a ,t,L7-f2 snowmobiles, etc.)

_____

Who holds the title to these vehicles? (~ -- Who are the vehicles registered to?_____

c. List any other personal property (such as televisions, stereo, VCR, etc.) having a value of $50 or more.

_____

d. Have you transferred any real estate, personal property, or other assets within the last six months?
❑ yes ❑ no If yes, please describe: A h~

8. ASSETS OF HUSBAND, W11 h. (include roommate with whom you share expenses; if you are under 18 yrs. old, include your parent)

a. Name of Person y1!A A) V'eG{i Rt,t b. Relationship to you 1 ;Q 0) V'Y't r-e ~''t
c. Address (3wd rn.l.,t_.ftil , rte/ d. Number of this person's dependents C7
e..Is this person employed? ayes ❑ no If yes, where? _____
f. Estimated monthly income $ (. 50

9. HOUSING COSTS

a. How much do you pay each MONTH in rent or mortgage payments on your home? P/A
(include taxes and house insurance) $_____

b. How much do you pay each MONTH for utilities?
(include electricity, heat, sewer, water) $_____

TOTAL $

a0. Describe any loan payments or any other payments you make on a regular basis which are not normal living expenses. (Do not include rent/mortgage payment listed in question #9 above.) Include lending institution, purpose, total amount owed and monthly payment.

Lending Institution	Purpose	Total Amount Owed	Monthly Payment
-	cam(Sud'S	= c~ k	5-O

_____

_____

TOTAL $_____

11. Describe any regular payments you make for medical care, alimony/child support, child care, etc. _____
TOTAL $_____

12. Is there any other statement you ish to make about your financial condition that may be helpful in evaluating if ou qualify for court appointed legal assistance? JL.)1/i,v-e.,V pal, j) LOf the _____

_____

I furnish the above information to s pport my request for appointment of counsel to represent me with regard to the pending charges. I have read the above form, I understand it, and the answers to the questions are true. I understand that any false answers on this form may subject me to criminal prosecution, and that a court investigator may seek to verify my statements. I also understand that I have a continuing obligation, personally and through counsel, to report to the court any changes in my employment or other financial circumstances.

Dated: 9/15(

Applicant's signature: _____

Subscribed d sworn to before me,

_ __ 46- '~ =/ _____

(Attor , k of Court, Notary Public)

RECOMMENDATION
❑ ELIGIBLE
❑ NOT ELIGIBLE
❑ PARTIALLY ELIGIBLE $_

STATE OF MAINE
FINANCIAL AFFIDAVIT

SUPERIOR COURT
County Knox
Docket No. C R- 8 9 - 71

DISTRICT COURT
District
Division of
Docket No.

PLEASE FILL OUT THIS FORM AS COMPLETELY AS POSSIBLE.

Name Dennis J. Dechaine Dace of Birth 10129/ 57 Age 31 Phone No.

Address Maine State Prison Social Security A Number 006 60 8712

What crime(s) are you charged with committing? 4 1QL -\
Marital Status: ❑ single **XX** married ❑ divorced ❑ separated ❑ widowed
I live: ❑ alone ❑ with spouse ❑ with parent ❑ with children ❑ with friend(s) ❑ other
List the names, ages and relationships of any dependents you support:

1. AVAILABLE MONEY (List all money currently available; include joint as well as individual accounts.)

a. Cash on hand $ C (OM MSP account)

b. Checking Account(s) $
name of bank/credit union

c. Savings Account(s) $ 0
name of bank/credit union

d. Stocks, bonds, trusts, certificates of deposit, etc. $ d
description frtr9 . :13 (valve)

e. Cash posted as bail (~

f. Other (life insurance, Christmas Club, etc.)
description

TOTAL $ fu (0

2. Have you, or has anyone in your household, received or do you expect to receive, any payments such as retroactive government benefits, tax refunds, pay raises, law suit settlements, etc.? A' A

3. Does anyone owe you money? ❑ yes ❑ no If yes, how much? /J/

4. EMPLOYMENT
a. Where do you work? N/A
(employer name, address, phone)
b. Length of time employed: ❑ Full-Time ❑ Part-Time ❑ Seasonal

c. If not currently employed, where and when were you last employed?

d. Do you anticipate other employment or other income within the next 30 days ? ❑ yes ❑ no
If yes, please explain:

5. MONTHLY INCOME / A

a. Salary and wages (take-home pay)	$	f. Any income received and not reported above (veteran's benefits, worker's comp., pensions/retirement, nat'l guard, income from room rental, etc.)	
b. Unemployment check	$		
c. Social Security	$		
d. Welfare payments	$		
e. Alimony/child support	$		$
TOTAL (a. through f.) $			

6. Do you receive any pay for any other work you do that is not included above? If so, please explain: 1 ~~

7. PROPERTY (owned, individually or with others)

a. Do you own a house or other real estate Ayes ❑ no If yes, what is the estimated market value of the property? $ _____
What is the amount of any mortgage on the property? $ _____ Who holds the mortgage? _____

b. List make, model, year and alue of all motor vehicles you h ve (automobiles, trucks, RV's, motorcycles, ATV's, snowmobiles, etc.) ...

Who holds the title to these vehicles? _____ Who are the vehicles registered to? _____

c. List any other personal property (such as televisions, stereo, VCR, etc.) having a value of $50 or more.

d. Have you transferred any real estate, personal property, or other assets within the last six months?
❑ yes ❑ no If yes, please describe:

8. ASSETS OF HUSBAND, WII~b (include roommate with whom you share expenses; if you are under 18 yrs. old, include your parent)

a. Name of Person _____ b. Relationship to you _____
c. Address _____ d. Number of this person's dependents _____
e. Is this person employed? ayes ❑ no If yes, where?
f. Estimated monthly income $ _____

9. HOUSING COSTS

a. How much do you pay each MONTH in rent or mortgage payments on your home? PEA
(include taxes and house insurance) $ _____

b. How much do you pay each MONTH for utilities?
(include electricity, heat, sewer, water) $ _____

TOTAL $

tO. Describe any loan payments or any other payments you make on a regular basis which are not normal living expenses. (Do not include rent/mortgage payment listed in question #9 above.) Include lending institution, purpose, total amount owed and monthly payment.

Lending Institution	Purpose	Total Amount Owed	Monthly Payment

TOTAL $ _____

11. Describe any regular payments you make for medical care, alimony/child support, child care, etc.

TOTAL $ _____

12. Is there any other statement you ish to make about your financial condition that may be helpful in evaluating if you qualify for court appointed legal assistance?

I furnish the above information to s pport my request for appointment of counsel to represent me with regard to the pending charges. I have read the above form, I understand it, and the answers to the questions are true. I understand that any false answers on this form may subject me to criminal prosecution, and that a court investigator may seek to verify my statements. I also understand that I have a continuing obligation, personally and through counsel, to report to the court any changes in my employment or other financial circumstances.

Dated: _____ Applicant's signature: _____

Subscribed and sworn to before me,

_____
(Attorney, Clerk of Court, Notary Public)

RECOMMENDATION
❑ ELIGIBLE
❑ NOT ELIGIBLE
❑ PARTIALLY ELIGIBLE $

STATE OF tvIAINE
Ki-K-A, SS_ Office
C[r])!

JPR 4 1989 i.. March 31, 1989

RECEIVED AND FILED
Susan Simmons, Clerk

Dear Judge Bradford,

I have tried several times to write what the past nine months have been like and what I have been through. I realized my thoughts and feelings are personal and I can't share them just yet with anybody. But I do want to say a few things.

He has made my worst nightmare come true. As a mother of girls the worst fear I have for them is their disappearance, getting lost or being kidnapped. And of course the not knowing what is happening to them while they are missing. I imagined the worst - them being raped, tortured, sexually abused and being killed. But I also thought God wouldn't let it happen to my girls. But my worst nightmare has come true.

Sarah and I were more than just mother and daughter. We were friends, companions and we did a lot together. Especially the few months up until she died. She shared with me her plans for the near and the far future and I shared with her what I planned for her. We both looked forward to the future and our plans. I have a hard time thinking about my life without Sarah.

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You can't imagine what my life has [redacted] like without Sarah. And I can't even begin to tell you, it would take forever. My life has changed for the worst, since July 6, 1988. When I found out Sarah was dead and how she had died, a part of me died. I don't feel right wishing a person to suffer, but I want him to die a slow death, for the rest of his life. He has caused a lot of people to suffer, especially me, my daughter, Hilary and my family.

I believe he should get the maximum sentence, spending the rest of his life in prison. I'd feel a little better, knowing he'll never torture or kill another little girl again. Maybe someday he'll realize there is one reason why he can't say why he did what he did to Sarah, I need to know. Besides, why does he deserve to get a second chance in life. Sarah never had a second chance.

Debra Cherry

o as J. Co oily
Attorney at Law
422½ Fore Street, P.O. Box 7563, DTS
Portland, Maine 04112
(207) 773-6460

March 31, 1989 I,Nf J 089

The Honorable Carl O. Bardford
Justice of the Superior Court
Sagadahoc County Courthouse
752 high St.
Bath, ME 04530

Re: State of Maine v Dennis Dechaine, Knox County CR-89-71
Sentencing

Dear Justice Bradford:

Please find enclosed items which the defense wishes to offer on behalf of the defendant in the sentencing proceeding.

The first document is a copy of the Opinion and Order issued in the State of Maine v Stephen Haberski, AD-85-54. This enunciates some of the criterion to be used in making a decision in imposition of a substantial sentence in a case similar to the one before this Court.

The second series of items consist of letters received by this office, unsolicited, in reference to the defendant. I've included them so the Court can get a flavor for the sentiment of persons who have known the defendant.

The letters, which have been provided to the Court, were forwarded to this office, and have been forwarded to the Court for its review. It should be noted that the defendant will primarily rely at sentencing upon the character evidence which was educed at trial. Nonetheless, in that a large number of documents have been received by this office in reference to the sentencing proceeding, it is appropriate to forward them to the Court.

Given the fact that these documents in reference to the sentencing proceeding are arriving daily, the defense will keep the Court informed of their arrival as soon as possible. However, it is apparent that a number of them will probably be received just prior to the sentencing proceeding itself, and those will be brought along and attached in a manner appropriate for filing at the time in question.

I wish to thank you very much in advance for your anticipated cooperation.

Sincerely,

Thomas J. Connolly

TJC/ib
Enclosures
cc: Eric Wright, AAG
Clerk, Knox County
Dennis Dechaine

NOT TO § IL? ?... III T1~.T I_it~T.NI REPORTER

SUPREME JUDICIAL COURT

APPELLATE DIVISION
DOCKET NO. AD°85°54

STATE OF MAINE

v.

OPINION and ORDER

STEPHEN TIAMEPSKI

The defendant, GL Ol[e]n Haberski, was convicted of the crime of murder (I7-A M.R.f:.A. $ 201(1) (A)), and was sentenced to **life** imprisenment by the Seperior Court (Penobcot County). The facts upon which lie conviction wes based are **described in** the Law Court'r opinion **in LItElt.py,Nilteki, 449 A.2d 373** (Me. 1932). Defendant filed a ti'.l?iy appeal to the Appellate Divisicn from the sentence Imposed.

On November 13, I9R6, defendant was afforded a hearing before the Appellate Division at whi[r]l) defendant was represented by counse3 and i he 7te[f] ‰ *as represented by an assistant attorney* general. The Appel■ate Division has reviewed the opinion of the Lew Court, the deelet [e]ntanles in the Seperior. Court, the transcript of defendant's trill, he pre-sentence report, and the transcript of the sentencing proceeding. At the hearing, both counsel made oral T[n](esentation that have beer' considered and, in addition, the State presented a summary of all sentences imposed in murder cases sinc[e] *the adoption of the Maine* Criminal Code.

The Appellate Divtsion has previously considered the circumstances in which it is appropriate for the **Superior Court** to impose a life sentence. *m* te v, _LmIrtrson anA_Eahatinp, Nos.

150

AD-78-37, 78-40 (Me. App. Div. June 30, 7980), the Appellate Division reviewed the developments in the law of murder that led to the current state of our law. Under Lea esent law, a sentencing justice has wide discretion in imposin a sentence for murder. The range of authorized sentences *extends* from a mininum of twenty-five years to a maximum of life imprisonment. Barring executive clemency, a seacene:e te life imprisonment results in imprisonment with no nos ib i l i.t: y o; nc i ee J.. In Anderson, these factors led us to adout the foliotai;acs for the imposition of a life sentence:

> [T]he imposition of a life sentence lies tinci, a serious impact on the offender so different flora the impact of a sentence for a term of years that a 1 1 1 o sentence is never justified un] ess the mu our is accompanied by aggravating circumstances. t;uch a(Arfravating c:i.rcumastances include:
>
> 1. Premeditation--in-fact. r=y this we mean a planned deliberate killing in.:h ding a killing for hire. By the use of the word`; °'in-fact," we mean to differentiate the premeditation to which we refer from the I i .;t fiction of premeditation recogn i2 ed i u :: ome states in which the preiaed i t.r t i un ex i ±.s for only an instant of time before :h e aeinit killing.
>
> 2. Multiple deaths, inc i nd.< n) ;it-nations in which the offender in conimiti:i.ng the murder knowingly created a subst AnLia1 risk of death to several individuals.
>
> 3. Murder committed by a person who has previously been convicted of homicide or any other crime involving the use of dead y force against a person. We nee the word-1 "deadly force" as defined by our t_timinai Code in 17-A M.R.S.A. § 2(8).
>
> 4. Murder accompanied by tewtite, sexual abuse or other ext.i. ne crueli:v Inflicted upon the victim.

> 5. Murder committed in a penal institution by an inmate of that institution. This would include the murder of another inmate as well as prison personnel.
>
> 6. Murder of a law enforcement officer while in the performance of his duties.
>
> 7. *Murder of a hostage.*

la. at s. (Footnote omitted). We added that although the' presence of one or more of the aggravating circumstances does not compel a life sentence, such a sentence is ***not*** justified in the absence of one of the aggravating circuutances. Lc,.

The sentencing justice in the case before us stated the following reasons for Imposing a life sentence:

> 1. The record of the teial amply svpports the finding *by the jury of murdeL. 2. There was* no sufficient evidence to mitigete tee. tuagic event. 3. The **evidence** discloses a Lruiel hillIng which climaxed a long (15-30 minute) confroetetion during which time **the victim was** pleading with the defendan.

Only the third reason Get foith relates in any way to the Anderson guidelines. Although the sentencing justice did not use the language set forth in part:graph 4 An *And_ersol,* the State now *argues that the justice found that the* murder in this case was accompanied by 'ceetreme cruelty inflicted upon the victim.' We assume that the terms "cruelty" and "brutality"are virtually synonomous. We are left with the question, however, did the sentencing justice make a finding of ***extreme*** cruelty. We conclude that he did not, and further we conclude that the record does not support such a finding.

Since the Criminal Code became effective on May 1, 1976, there have been thirteen defendants sentenced to life imprisonment

out of a total of seventy-nine defendants convicted of the crime of murder. [1] The State candidly concedes that the instant case *presents facts less* egregious than most, if not all, of the other life sentence cases. Admittedly, many of those cases involve an aggravating circumstance other than extreme cruelty and, in any event, direct comparison is difficult. Nevertheless, review of the facts of those cases demonstrate substantial conformity with the Anderson guidelines and supports the distinction drawn between cruelty and extreme cruelty. [2] By definition, any murder involves a significant element of cruelty. It is difficult to conceive of a situation in which one could "intentionally or knowingly cause the death of another human being", I 7-A M. R.S.A. § 201)1)(A), without being cruel and unfeeling. In the absence of any other aggravating circumstance, the most drastic form of punishment is reserved for those murders accompanied by cruelty different in substantial degree from that which inheres in the crime of murder. If acts of murderous cruelty could be arranged on a continuum, the phrase "extreme cruelty" would delineate the outermost portion

[1] The number includes the defendant in this case but excludes the Anderson and Sabatino sentences that were reduced to a term of years. In one of the cases there is an appeal of the conviction pending before the Law Court. In two other cases there is an appeal of sentence pending before the Appellate Division.

[2] A brief summary of the facts of the nine cases in which there is a final judgment may be found in the following Law Court opinions: State v. Willoughby, 507 A.2d 1060 (Me. 1986); State v. Condon, 468 A.2d 1348 (Me. 1983); State v. Crocker, 435 A.2d 58 (Me. 1981); State v. Johnson, 434 A.2d 532 (Me. 1981); State v. McEachern, 431 A.2d 39 (Me. 1981); Sta .e N: Estes, 418 A.2d 1108 (Ma. 1980); State v. Page, 415 A.2d 574 (Me. 1980); State v. Smith, 415 A.2d 553 (Me. 1980); State v. Snow, 383 A.2d 1385 (Me. 1978).

of the range. The facts of the present case, although involving brutality, do not rise to the degree Chet could be **fairly classified as** evidencing extreme cruelty and the sentencing justice made nr: such finding.

It now becomes our responsibility to determine the appropriate sentence to be imposed in this . cad:. 15 At, R . S . A.. 5 2142. The sentencing justice found that there Iner :: .o mitigating circumstances at the time of the original sentencing and indeed there are none. Defendant was *28 years old at time of c,entsncing. lie had a 1975 conviction in the State of Oregon for possession of a controlled* substance for delivery or sale and served a partially suspended county jail sentence.. Defendant had a substantial history of drug abuse and was an habitue]. user of co:seine at the time of the *offense. In short, we* agree with the sentencing justice that defendant committed an unmitigated act of murder that was aggravated by the method and manner of its commission. Egg, Staff fir.llaberski, **449** A.2d 373, 375 (%ie. 1982), for as more complete summary of the facts. Giving consideration to the aggravating factors, we conclude that a tern of fifty years is an appropriate sentence for the defendant in this case. Such a sentence does not diminish the gravity of *the offense committed but* it does eliminate *unjustified* **inequalities** between this- *sentence and others. Egg,* 17°A M.R.S.A. § 1151(5). [3]

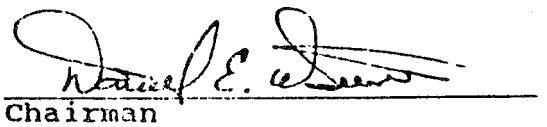
[3] The summary of sentences presented by the State in this case reveals that sixty-six persons have been sentenced to a term of years for the crime of murder since the adoption of *the* Criminal Code. The mean average sentence is 34.09 years. The median sentence is 30 year and the node is 25. The longest sentence is

146

IT IS HEREBY ORDERED that the judgment imposing a life sentence is amended by substituting therefor a sentence of fifty years in the Maine State Prison.

Dated: February 6, 1987.

FOR THE APPELLATE DIVISION



Chairman

SCOLNIK and GLASSMAN, JJ., participating.

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70 years and only four sentences are in excess of 50 years.

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horrible thing! This crime is not something Dennis could do! It is not in his character for him to be so malicious. He gentle very feelings

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thing!

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wrong place at the right time.
Dennis is, I believe not guilty.
As I know Dennis + Nancy personally
and the Dechaine family in
Madawaska. Being a resident
of Madawaska and being sure
he is being victimized, I would
please with you to be lenient
~~(with)~~, when you decide on
the sentence. I am praying
for you and especialy for
Dennis. you do the right thing
now and that is be lenient in
your judgement on the sentence.
Pleasing with you.
Sincerely,
Georgette Cyr.

142

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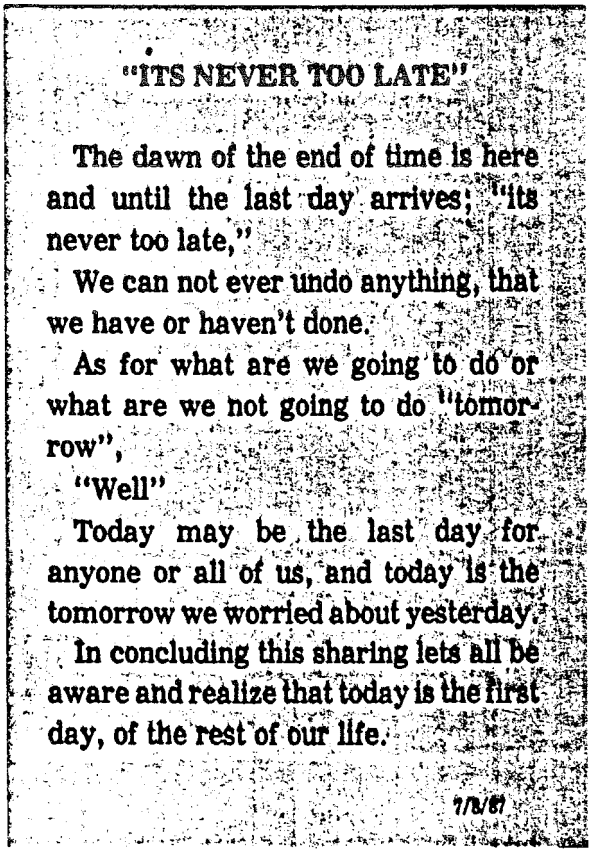
Tuellyn D. Cyl

One Day at a Time

Live one day at a time:
Enjoy one moment at a time:
Accept hardships as a pathway to peace:
Take, as Jesus did, this sinful
world, *as it is, not as* I *would have it;*
trusting that He will make
all things right, if I surrender
to His will:
So that I may be reasonably
happy in this life
and in turn make my loved ones
happy also.



"ITS NEVER TOO LATE"

The dawn of the end of time is here and until the last day arrives; "its never too late,"

We can not ever undo anything, that we have or haven't done.

As for what are we going to do or what are we not going to do "tomorrow",

"Well"

Today may be the last day for anyone or all of us, and today is the tomorrow we worried about yesterday.

In concluding this sharing lets all be aware and realize that today is the first day, of the rest of our life.

7/3/87

The Honerable Carlo Bradford
c/o Mr. Thomas Connelly
422½ Fore St.
Portland, ME 04101

March 28, 1989

Dear Judge Bradford,

I am writing this letter to you on behalf of my friend, Dennis Dechaine. I have known Dennis and his wife Nancy, for five years. During that time Dennis was always a considerate, reliable, and true friend.

Understandably, it comes as a complete shock to me that Dennis could have been convicted of such a heinous crime. This is so completely out of character for the man I know.

A couple of years ago my husband and I were having a housewarming party after the purchase of our first home. Dennis and Nancy arrived at our new home with their pick-up truck full of perennial plants, and proceeded to do a beautiful landscaping job around our house.

This is just one example of the Dennis I knew- a truely kind, thoughtful and caring man. I have been very proud to know Dennis and be his friend.

Mcst Sincerely Yours,

Eliza P. Stark

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73 Waterville Street, #2
Portland, ME 04101
27 March, 1989

The Honorable Carl O. Bradford
Knox County Superior Court
Rockland, ME

Dear Judge Bradford:

I am writing to you as a concerned citizen in reference to Dennis Debhaine. I have known Dennis for almost three years. He has always struck me as a very kind and gentle person, with a strong concern for others, and a love of hard work and the land. I firmly believe that he is innocent of the crime he has been convicted of. I would feel perfectly comfortable spending time alone with Dennis or leaving children in his care.

While I know that you cannot overturn the jury's conviction; I hope that you will give Dennis the minimum sentence allowable by law. Dennis has a lot of energy and talents to contribute to society, and a stong wish to do so. Please don't let another innocent life be wasted.

Thank you for your consideration.

Respectfully,

Robin L. Sherman

Nar.ch 27, 1989

Peter and Irene Brandt
Pox 423 Capitol Island Road
West Southport, Maine 04576

Honorable Carl O. Bradford
Knox County Superior Court
Rockland, Paine

Dear Judge Bradford;

Next week you will be sentencing Dennis Dechaine and we are writing to ask you for the minimum sentence. Since you could not know Dennis, you would only have the information from the trial to influence your decision; however, those who know him well can assure you he is a fine, hard working farmer, and is incapable of committing such a crime.

We feel that no justice will be served by sentencing him to the maximum penalty. We ask that you consider both mercy and justice in your deliberation.

Thank you very much for your consideration.

Sincerely,

Irene Brandt

R. Peter Brandt

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GOOD EARTH FARM

Everlastings grown in Maine

March 27, 1989

The Honorable Carl O. Bradford
Knox County Superior Court
Rockland, Maine

Dear Judge Bradford:

I'm writing in reference to the sentencing of Dennis Dechaine® I request that you give him the minimum sentence possible. He is a good, kind man. I believe him to be innocent of these crimes, and that the jury's decision was wrong. However, since he must be sentenced, please sentence him to the least possible term.

Thank you for considering my request.

Sincerely

Eric Brandt-Meyer

Eric Brandt-Meyer

Pleasant Hill Road, RR ##1 Box 210, Freeport, Maine 04032 207-865-9544

133

RR 1 Box 210
Freeport, Maine 04032
March 28, 1989

The Honorable Carl O. Bradford
Knox County Superior Court
Rockland, Maine

Dear Judge Bradford:

I am writing to you as a concerned citizen and as a member of the Maine Bar in reference to Dennis Dechaine. I have known Dennis well since 1984. He is a sensitive, kind and gentle man. Obviously, I believe he is innocent of the crimes of which he has been convicted. I have two little girls, and I would not hesitate to have Dennis babysit for them. That's how sure of his character I am.

I realize that you cannot change the jury's verdict. But I am asking you to give Dennis the minimum sentence allowable by law. He is a good man, and he has a lot to contribute to society. Please don't take him away from us permanently.

Thank you for considering my petition.

Sincerely,

)[912]1-0

Ann Brandt-Meyer

The Honerable Carlo Bradford
C/0 Mr. Thomas Connelly
422½ Fore St.
Portland, ME 04101

March 28, 1989

Dear Judge Bradford,

I am writing to you on behalf of my friend Dennis Dechaine. I feel I must say something about the man I have known and cared about, having known him through work and sharing a friendship with him over the past five years.

During the time I have known Dennis and Nancy, I have admired them both for their hard work, honesty, and contribution to helping their community. I found them to be like many families in Maine, having the hopes and desires of being a succesful family, and striving for the integrity for leading a good, wholesome, decent and honest life. I found these truths to be very real qualities in the Dechaine family.

During the times I have spent with Dennis I never saw any strange or unusual behavior. I really felt as though I had found someone I could trust and call friend. His arrest came t Mas a complete shock. I have asked myself many times if there was something in Dennis I overlooked or ignored, and each time I ended up with the friendly, caring person who inspired good converstion and faith in who they were.

I am deeply saddened by the events that have occured, for both the Cherry family, and for the Dechaine family. I pray that someday it will be more clear to all who have been affected.

Sincerely yours,

Jamie J. Stark

March 30, 1989

Judge Carl Bradford
Maine Superior Court

Ref: Dennis Dechaine

Dear Sir,

I have know Dennis Dechaine for 26 years. We attended High School together and were very close friends for most of our school years. In all of those years I have never seen any violent behavior in Dennis. He is one of the most kind and gentle man I know. We have remained close even when Dennis was attending school in Washington State.

I have been with Dennis on several occasions when he was using drugs . Even on those occea 5 as-G-0144;41s he was a very peaceful and non-violent person.

I have a five year old daughter who means everything to me. On several occasions when we were still living in the Portland area we would visit Dennis on the farm. He would take my daughter for walks to show her the animals and the farm. I trust Dennis completely with my daughter.

I sincerely believe that Dennis Dechaine could no-I have com p ited lhe eT3me for which he has been convicted. I urge you to look at all of the evidence very closely. You will see that Dennis Dechaine was in fact set up and was simply in the wrong place at the wrong time. I pray to God that you do this not only for Dennis's sake but also for Sarah Cherry's sake so that the true murderer will be caught and prosecuted.

Sincerely,

Gisele

Cc~.1,rnneencea-t.)

Gisele Martin Carbonneau
26 Rickard Court
Lawrenceville NJ 08648
(609)588-4839

Dear Judge Bradford

I am appealing to you in regard of Dennis Declaire who will be sentenced April 4. Please use clemancy in sentencing Dennis.

I work for him and we live there for three years, he is to kind and caring person to commit such a crime.

Dan they did not look for any other ... after they picked him up. 7 new prints, not prints, anything A-1.

Sincerely

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Something you

SINCLAIR, MAINE
MARCH 30, 1989

JUDGE CARL BRADFORD
C/O ATTORNEY THOMAS CONHALLY JR.
P. O. BOX 7563 D.T.S.
PORTLAND, MAINE 04112

DEAR JUDGE BRADFORD:

I WAS SADDEN WHEN I HEARD THE NEWS THAT DENlS DECHAlNE WAS FOUND GUILTY AS CHARGED, AND THAT DENlS WOULD BE SENTENCED IN EARLY APRIL.

HAVING KNOWN THE DECHAINE FAMILY FOR THE LAST TEN YEARS. I FOUND THE FAMILY INDUSTRIOUS, HARD WORKING, INTELLIGENT, CARING AND GENTLE, ESPECIALLY DENIS.

MY HEART TELLS ME THAT DENlS IS THE VICTIM AND NOT THE MONSTER DEPICTED BY THE MEDIA. REST ASSURED THAT DENlS, BEING HUMAN, HAS HIS STRENGTH AS WELL AS HIS WEAKNESS AND THAT HIS STRONG MORAL VALUES SUPERSEDE ANY IMPERFECTION HE HAS.

IN MY SHORT SPAN OF 62 YEARS, I HAVE WITNESSED, MISTAKES AND INJUSTICES PERFOMRED BY INDIVIDUALS TOWARD INDIVIDUALS, ALSO MISTAKES AND INJUSTICES INFLICTED BY GROUPS TOWARD GROUPS. THESE COLLECTIVE MISTAKES AND INJUSTICES ARE SOMETIME THE HARDEST TO RECTIFY, BECAUSE THEY ARE DONE IN THE NAME OF RlGHTOUSNESS.

I PRAY AND TRUST THAT YOU WILL FIND IT APPROPRIATE TO PASS A SENTENCE WHICH WILL HAVE A TOUCH OF CLEMENCY UNTIL THE DUE PROCESS OF APPEAL IS COMPLETED AND A REVERSE OF THE INDICTMENT IS ACCOMPLISHED.

SINCERELY YOURS,

WALTER E. FOURNIER

P.O. Box 61
New Sweden, ME 04762
March 30, 1989

Honorable Judge Carl Bradford,

I know Dennis Dechaine and he couldn't possibly hurt anyone. I believe he is innocent and unfortunately the killer is still free among society.

It appears that the law enforcement officers really messed up the investigation. If it was in my power to do anything about this I would recommend a minimum of 40 hrs of re-training (assuming they have already received some training) in proper investigating procedures for these officers.

News reports state that evidence such as a part of glasses, a piece of fabric found at the scene did not belong either to Sarah Cherry or Dennis Dechaine were dismissed as evidence. It appears that no follow up work is being done to find out who these items belong to. It was also reported that the little girl was very dependable and told not to open the door to strangers. Dennis did not know her. My theory is she opened the door for someone she knew very well. WHY aren't people she knew investigated thoroughly ???

At this point in time you do not have have a victim and a criminal. What you have are two victims. The scales of justice are unbalanced.

I am a mother and grandmother, my 12 year old ever baby sat my children nor did my children baby sit at 12 yrs of age. Many years ago an 11 year old was left to baby sit at home while her parents went out. While trying to fix a meal her clothes caught on fire, she died from the burns. When I couldn't have a mature person to baby sit I stayed home.

My family and I are praying for Dennis and that someone somehow will find the real killer.

would I trust Dennis to baby sit my little granddaughters? I sure would.

May God grant you wisdom.

Respectfully Yours,
Patricia Roy

JOEL DUFOUR AGENCY
P.O. BOX 298
MADAWASKA, MAINE 04756

Dear Judge Bradford:

I hope you can take the time to read this as soon as you qet it. 1'm from Madawaska, Me. and have lived here all my life. Madawaska is a small community where everyone knows everyone. I personally knew Dennis Deobeine since he was very yonnq and was very surprised to here on T.V. of his accusation of such a crime. I didn't beleive at the time and still do not believe he did such a thinq. And in talking with many other peonte of our community, most of them feel the same wav. I'd like you to know he has not been forgotten nor abandoned bv his community even in the adversities of his accusations. We think Dennis is a fine young man and was at the wrong place at the wrong time doing a wrong thjnn. (droqs} That doesn't make him guilty of other serious crimes. From what we could aather from the media, the evidence was all clrromstanciel. We all hoped up here that this was not enouqh to convict him. But sometimes people fail to see beyond the fact that if a man has been arrested, he must be guilty. The fact remains, that due process has taken it's course, and he could not prove his innocence. It must have been a hard choice for the jurors and with all the media publicity this case had. How could they let him qo. How could they face the many critiism they would probably have to endure from the people of the community where the crime took place. How would the media have interpreted this messanp and that there might be reasnna1ble doubt. Someone did this crime. Maybe it was someone else. lt could he. I'm convinced it was. All I can do now is support Dennis and apneal to vou now that you have the difficult task oi hassinq judaement and sentencing for him. If vnu have the sliahtest doubt that he is 100% guilty, vnn should he leant-ant on him. This will take alot of courane on your part because of the publicity of this case, but that should stand in the war of leeneaocy for a man that probably did not do this crime. Yes, he did druqs. Dennis lost his narpnts at a yonnq age and probably did not get the attention and security he deserved. That's not his fault. Let's not blame him for more serious crimes because of it. I do not envey voor task at hand, but I think you should nive him some benefit of the doobt.

Sincerely,

Joel Dufour

Joel Dufour
General Ins. Agent
P. 0. Box 298
Madawaska, Maine
04756

PERSONS SENTENCED TO LIFE IMPRISONMENT FOR MURDER UNDER THE MAINE CRIMINAL CODE

Paul Addington	518 A.2d 449 (Me. 1986) AD-86-7(Me.App.Div.Apr.14,1987)
Philip Willoughby	507 A.2d 1060 (Me. 1986)
Scott Waterhouse	513 A.2d 862 (Me. 1986); AD-85-8(Me.App.Div.Apr.1,1987)
Richard Steeves	direct appeal pending appeal of sentence pending
Scott Snow[1]	383 A.2d 1385 (Me. 1978)
Joel Smith	415 A.2d 553 (Me. 1980)
Edward G. Sabatino[2]	409 A.2d 1290 (Me. 1979)
Charles Page	415 A.2d 574 (Me. 1980)
Richard McEachern	431 A.2d 39 (Me. 1981); AD-80-11(Me. App. Div. undated)
Ronald Johnson	**434** A.2d 532 (Me. 1981)
Steven Haberski[3]	**449** A.2d 373 (Me. 1982)
Harold Estes	418 A.2d 1108 (Me. 1980)
Vinal Crocker	435 A.2d 58 (Me. 1981)
John Condon	468 A.2d 1348 (Me. 1983)
Timothy L. Anderson[4]	409 A.2d 1290 (Me. 1979)
John A. Lane	532 A.2d 144 (Me. 1987)
Joel B. Caulk	543 A.2d 1366 (Me. 1988) AD-87-34(Me.App.Div.Jun.24,1988

[1] recipient of a conditional commutation by the Governor. See attached warrant.

[2] recipient of a sentence reduction to 40 years by Appellate Division. No. AD-78-37 (Me. App. Div. June 30, 1980)

[3] recipient of a sentence reduction to 50 years by Appellate Div. No. Ad-85-54 (Me. App. Div. Feb. 6, 1987)

[4] recipient of a sentence reduction to 40 years by Appellate Division. No. AD-78-40 (Me. App. Div. June 30, 1980)

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tialE	pOB	PATE OF OFFENSE	DATE OF CONVICTION	SENTENCE	pIRECT APPEAL
ACKERMAN, ANDY	10/15/63	8/28/85	8/29/86	35 yrs.	526 A.2d 952 (1987) AD-86-44(Me.App.Div.Aug.10,87)
ADDINGTON, PAUL	3/4/54	3/23/85	1/30/86	LIFE	518 A.2d 449 (1986) AD-86-7(Me.App.Div.Apr.14,1987)
ALBERT, JOSEPH	8/28/43	3/21/83	4/30/84	70 yrs.	No/plea
ANDERSON, TIMOTHY	2/4/57	1/25/78		40 yrs. *	409 A.2d 1290 (1979)
ANDREWS, JOHN	12/8/40	12/1/84	9/6/85	25 yrs.	No/plea
ANTWORTH, SCOTT A.	7/6/65	12/1/87	6/27/88	25 yrs.	No/plea
ASKEBORN, GLEN (a/.k/a SAMANTHA GLENNER)	7/25/43	10/4/84	9/21/85	40 yrs.	513 A.2d 1361 (1986)
AYERS, DONALD	9/2/43	4/7/79		25 yrs. 25 yrs.	433 A.2d 346 (1981) reversed no appeal from retrial
BAIRD, MICHAEL	4/15/48	3/21/87	2/24/88	36 yrs	Direct Appeal Pending
BARCZAK, JOHH	12/26/58	6/11/87	3/21/88	60 yrs. each cts.	Direct Appeal Pending
BIBRO, MICHAEL	4/2/53	11/15/80	6/26/81	40 yrs.	No
BIRMINGHAM, KENNETH	11/11/64	12/9/85	12/23/86	25 years	527 A.2d 759 (1987)
BISHOP, KING EARL	1/2/62	1/31/77		Juv. (Indef.Sen. to MYC)	No
BOUTON, BRADLEY	1/11/40	12/1/83	10/4/85	50 yrs.	518 A.2d 459 (1986)
BRADLEY, RAPHAEL	6/10/66	10/15/85	6/13/86	50 yrs.	521 A.2d 289 (1987)
BRAGDON, DELMAR	5/9/41	8/17/87	6/21/88	45 yrs	Judgment aff°d 3/17/89
BRIDGES, DALTON	9/5/41	12/27/78		25 yrs.	413 A.2d 937 (1980)
BRODERSEN,STEPHEN	8/27/69	10/1/87	6/8/88 plea	40 yrs	Pending
BROWN, JAMES	1/15/63	3/20/86	2/9/87	40 yrs.	552 A.2d 12 (Me. 1988)
BROWN, JOHN	12/6/32	8/15/83	3/30/84	25 yrs.	No/plea
BROWN, LESLIE	8/29/58	6/2/77		30 yrs.	No
BRYSON, LARRY	7/15/61	12/14/80	8/14/81	30 yrs.	No
CANDAGE, STEPHEN	5/28/60	11/4/86	10/16/87	50 yrs.	549 A.2d 355 (Me. 1988)
CAOUETTE, ROBERT	3/22/61	3/13/81	10/1/82	25 yrs.	446 A.2d 1120 (1982)

*Reduced from life by Appellate Division. No. AD-78-37 (Me. App. Div. June 30, 1980)

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SUPERIOR COURT

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NAME	DOB	DATE OF OFFENSE	DATE OF CONVICTION	SENTENCE	pIRECT APPEAL,
CARTER, EUGENE	11/20/56	7/24/77		50 yrs.	412 A.2d 937 (1980)
CAULK, JOEL aka WILLIAM JOHN MESKIS	8/2/47	7/13/81	7/6/87	Life	543 A.2d 1366 (1988) AD-87-34(Me.App.Div.June 24,1988)
CONDON, JOHN	11/19/47	9/28/81	7/23/82	LIFE	468 A.2d 1348 (1983)
CONNER, MARK	6/11/60	4/18/79		40 yrs.	434 A.2d 509 (1981)
CROCKER, VINAL	7/2/33	12/5/78		LIFE	435 A.2d 58 (1981)
CURTIS, DEAN	10/17/62	6/9/87	2/23/88	40 yrs.	552 A.2d 530 (1988)
DOODY, CONSTANCE	5/17/51	10/7/80		25 yrs.	434 A.2d 523 (1981)
DOODY, MICHAEL	9/19/46	10/7/80		25 yrs.	432 A.2d 399 (1981)
ELLINGWOOD, SONNY	12/27/40	9/17/77		20 yrs.	409 A.2d 641 (1979)
ESTES, HAROLD	6/7/54	1/27/78		LIFE	418 A.2d 1108 (1980)
FLICK, ALBERT	10/7/41	1/31/79		30 yrs.	425 A.2d 167 (1981)
FOURNIER, FRANK	1/15/46	3/22/87	12/21/87	50 yrs.	Judgment aff'd 3/6/89
FRANKLIN, LINFIELD	1/31/44	11/20/81	10/28/83 (retrial/resent.)	25 yrs.	463 A.2d 740 (1983) 478 A.2d 1107 (1984)
FREDETTE, NANCY	3/31/45	5/26/78	retrial-not guilty	35 yrs.	462 A.2d 17 (1983) reversed
FULLER, JOEL	8/3/55	12/12/84	4/15/86	50 yrs.	518 A.2d 122 (1986)
GILLCASH, STEVEN	7/19/49	3/27/79		35 yrs.	No
GLIDDEN, HAROLD	6/15/47	3/21/83	6/11/84	70 yrs.	**489 A.2d 1108 (1985)**
GRINDLE, RICHARD	3/9/54	2/17/79		30 yrs.	413 A.2d 945 (1980)
HABERSKI, STEPHEN	2/8/53	5/20/80	7/28/81	50 yrs."	449 A.2d 373 (1982)
HARNISH, RONALD	5/25/55	3/22/86	8/17/87	45 yrs.	appeal pending
HENRY, CHARLES	11/1/50	1/3/79		30 yrs.	No
HILTON, LAWRENCE	7/10/26	8/20/79	7/25/80	25 yrs.	431 A.2d 1296 (1981)

"Reduced from life by Appellate Div. No. AD-85-54 (Me. App. Div. Feb. 6, 1987)

		PATE OF OFFENSE	PATE OF CONVICTION.	5ENTENCC	DIRECT APPEAL
HOWARD, LARRY	4/18/56	11/10/77		32 yrs.	405 A.2d 206 (1979)
JOHNSON. JERALD	5/28/61	6/5/82	1/31/82	25 yrs.	472 A.2d 1367 (1984)
JOHNSON, RONALD	11/13/32	3/17/79		LIFE	434 A.2d 532 (1981)
JOY, STEPHEN	12/11/56	12/25/80	7/24/81	30 yrs.	452 A.2d 408 (1982)
KANE, DORIS	5/30/26	2/20/79		25 yrs.	432 A.2d 442 (1981)
KIMBALL, RICHARD	11/2/54	6/21/79		45 yrs.	424 A.2d 684 (1981)
LANDRY, FREDERICK	7/25/44	2/5/83	2/7/84	28 yrs.	485 A.2d 218 (1984)
LANE, JOHN	10/14/48	10/27/84	11/22/85	LIFE	532 A.2d 144 (1987)
LEADY, RONALD	8/23/57	12/20/85	11/2/87	25 yrs.	No
LEDGER, HAROLD	10/23/30	5/11/80	2/18/81	25 yrs.	444 A.2d 404 (1982)
LIBBY, JEFFREY	2/20/63	7/8/86	6/14/87	60 yrs.	546 A.2d 444 (Me. 1988)
LINSCOTT, WILLIAM	3/19/58	12/12/84	1/8/86	25 yrs.	520 A.2d 1067 (1987)
LORD, RANDOLPH	11/18/52	6/21/79		45 yrs.	424 A.2d 684 (1981)
MARSHALL, MICHAEL	2/11/85	9/21/83	7/27/84	35 yrs.	491 A.2d 554 (1985)
MARSHALL, ROBERT	5/7/79	9/21/83	7/27/84	30 yrs.	491 A.2d 554 (1985)
MARTIN, CHARLES	12/18/65	3/26/88	3/9/89		Conditional Plea Appeal to Law Ct.
MATTA, GEORGE	6/8/48	12/12/85.	9/15/86	40 yrs.	No/plea
McEACHERN,RICHARD	2/2/58	11/2/78		LIFE	431 A.2d 39 (1981);No. Ad-80-11 (Me. Div. undated)
MICHAUD, EDWARD	2/7/47	12/10/83	3/26/85	30 yrs.	513 A.2d 842 (1986)
MITCHELL, GARY	4/19/57	11/15/76		25 yrs.	390 A.2d 495 (1978)
MURPHY, MAURICE	12/23/2	6/11/82	5/9/86 (resent.)	25 yrs.	496 A.2d 623 (1985) reversed plea
O'NEAL, PAUL	5/6/53	6/13/79	re-trial not guilty	25 yrs.	432 A.2d 1278 (1981) reversed (found not guilty)
PAGE, CHARLES	9/3/47	4/11/78		LIFE	415 A.2d 574 (1980)
PALLITTO, RICHARD	2/15/57	11/14/81	5/16/83	50 yrs.	No/plea;Ad-83-37 (Me. App. Div. Dec. 30, 1983)
PHILBRICK, LELAND	8/16/55	7/12/77		40 yrs 40 yrs.	402 A.2d 59 (1979) *reversed* 436 A.2d 844 (1981) reversed 481 A.2d 488 (1984)

NAME	D B	DATE OF OFFENSE	DATE OF CONVICTION	SENTENCE	PIRECT APPEAL
PRESTON, DALE	12/20/48	12/29/82	3/3/83	25 yrs.	No/plea
RICH, LEON	6/30/47	10/5/76		50 yrs.	395 A.2d 1123 (1978)
ROBBINS, MALCOLM	12/29/59	1/30/80	2/6/87	25 yrs.	No
ROWE, HAROLD	6/22/57	11/29/82	5/6/83	35 yrs.	479 A.2d 1296 (1984)
SABATINO, EDWARD	4/3/56	1/25/78		40 yrs."	409 A.2d 1290 (1979)
SALO, ROBERT	6/2/55	6/26/78		50 yrs.	No/plea
SAMSON, ALAN	1/21/62	11/2/81	12/16/82	40 yrs.	No
SAUNDERS, ALFRED	11/4/45	2/23/81	11/4/88	50 yrs	direct appeal pending; sentence appeal pending
SAVAGE, JAMES H.	9/11/35	11/7/87	8/15/88	30 yrs	Yes
SCHUELER, THOMAS	2/20/64	12/22/82	1/27/84	60 yrs.	488 A.2d 481 (1985)
SEELEY, JOHN	10/31/55	7/8/77		30 yrs.	No/plea
SEYMORE,CHESTER	6/17/61	10/11/77		70 yrs.	No
SIMONEAU, ALBERT	3/6/29	4/1/78		30 yrs.	402 A.2d 870 (1979)
SMITH, JOEL	8/11/53	9/15/78		LIFE	415 A.2d 553 (1980)
SNOW, SCOTT	10/22/56	11/6/76		split sent., initial unsuspended portion 30 yrs. MSP; susp. portion 10 yrs. MSP, probation for 10 yrs.""	383 A.2d 1385 (1978)
SPRAGUE, HENRY	8/28/51	5/7/77		20 yrs.	394 A.2d 253 (1978)
STEEVES, RICHARD	2/1/42	4/19/85	3/6/87	LIFE	direct appeal pending;sentence appeal pending
STONE, WILLIAM S.	12/8/58	11/2/81	6/7/82	40 yrs.	397 A.2d 989 (1979)
SUMABAT, RAYMOND	4/11/64	12/1/87	11/28/88	60 yrs.	appeal pending
THERIAULT,DONALD	3/23/53	6/15/79		25 yrs.	425 A.2d 986 (1981)
THIBODEAU,BARBARA	1/11/43	4/7/79		25 yrs.	433 A.2d 356 (1981) reversed
THIBODEAU, JAY	9/26/65	10/27/83	5/24/86 (retrial resent.)	25 yrs. 25 yrs.	496 A.2d 635 (1985) 524 A.2d 770 (1987)
TRIBOU, MICHAEL	7/18/63	9/28/83	6/29/84	33 yrs.	488 A.2d 472 (1985)

"Reduced from life by Appellate Division. No. AD-78-40 (Me. App. Div. June 30, 1980)
""Reduced from life by conditional commutation.

Nom€	Q48	DATE OF OFFENSE	DATE OF CONVICTION	SENTENCE	DIRECT APPEAL
VOTER, DENNIS	1/1/45	5/25/76		32 yrs.	388 A.2d 923 (1978)
WATERHOUSE, SCOTT	2/27/66	4/29/84	12/20/84	LIFE	513 A.2d 862 (1986);AD-85-8 (Me.App.Div.Apr. 1, 1987)
WINSLOW, EDMUND	7/19/60	11/5/87	10/12/88	60 yrs	appeal pending
WENTWORTH,WILLIAM	10/11/54	7/11/87	1/13/88	25 yrs.	No
WHITE. FRANCIS	3/12/58	6/11/80	10/5/81	25 yrs.	460 A.2d 1017 (1983)
WILLOUGHBY, PHILIP	10/14/62	12/3/83	5/8/85	LIFE	507 A.2d 1060 (1986)
WINSLOW, EDMUND	7/19/60	11/5/87	1/23/89	60 yrs	Yes
WOODBURY, EARL	10/14/44	2/25/78		40 yrs.	403 A.2d 1166 (1979)
WOODSOME,RANDOLPH	3/15/48	3/27/81	11/23/81	30 yrs.	dismissed by Mr. Woodsome voluntarily
YOUNK, BRENDA	2/12/58	9/15/78		25 yrs.	415 A.2d 562 (1980)

STATE OF MAINE

SUPREME JUDICI COURT

APPELLATE DIVISION
DOCKET NO. AD 80-11

STATE OF MAINE)
)
v.) Opinion and Order
)
RICHARD A. McEACHERN)

Richard A. McEachern has filed a timely appeal to the Appellate Division from a life sentence imposed in Superior Court, Penobscot County, on March 21, 1980, upon a charge of murder. 19-A M.R.S.A. S 201(1)(A). The facts upon which the conviction was based are set forth *in* State v. McEachern, Me., 431 A.2d 39 (1981). On October 28, 1981, McEachern was afforded a hearing before the Appellate Division at which he was present and represented by counsel. The State was represented by an Assistant Attorney General.

The Appellate Division has reviewed the Law Court opinion, the presentence report, psychiatric evaluations of the defendant, a transcript of the sentencing proceeding, and summaries of sentences imposed in murder cases prepared by the Assistant *Attorney* General. No further evidence was presented at hearing, but counsel made oral presentations which we also considered.

We find no necessity here to expand upon our opinion in the cases of State v. Anderson, AD 78-37 and State v. Sabatino, AD 78-40, dated June 30, 1980. The presiding justice in the present case clearly addressed the question of aggravating circumstances as delineated in Anderson and Sabatino when he

said at the sentencing:

> What you did here, the factual situation, controls the situation. You knew who you had in mind all day long and you finally got there and you got there with a loaded rifle. You'd said you wanted to confront him but you didn't want to confront him at all, you wanted to ambush him. So you snuck around behind the place where he was residing, you looked in one room, the wrong room, you got the right room and you put a bullet through his head and you killed him because that's what you wanted to do.

McEachern's counsel suggests that the sentencing judge did not consider mitigating circumstances, specifically that the defendant is a young person without prior criminal record whose actions were influenced by alcohol and drugs and by an ongoing feud with the victim. Regardless of whether these factors could be considered mitigating circumstances, we find ample evidence in the record that all of these and other circumstances were presented to and considered by the judge. We *find that* the judge's announced purpose in selecting a life sentence was to protect society from a person whom he rationally found would constitute a danger.

The Legislature has recognized that restraint is appropriate "when required in the interest of public safety." 17-A M.R.S.A. § 1151(1). Responsibility for the protection of the public from persons convicted of crime rests, in the first instance, with the sentencing court. We review only for abuse of discretion.

STATE OF MAINE

SUPREME JUDICIAL COURT
°i

APPELLATE DIVISION
DOCKET NO. AD 82®43

STATE OF MAINE)
)
v.) Opinion and Order

WILLIS SANDERS)

Willis Sanders has filed a timely appeal to the Appellate Division from a sentence of five years in the Maine State Prison **imposed** in Superior Court, *Knox County, on August 27,* 1982 *upon* a charge of unlawful sexual contact. 17®A M.R.S.A. § 255(1)(C) (1983). Appellate review of the sentence was deferred until the decision°of the Law Court was rendered on the direct appeal of the underlying conviction. State v. Sanders, 460 A.2d 591 (Me.° 1983).[1] On September 14, 1983, Sanders was afforded a hearing before the Appellate Division at which he was present and represented by counsel. The State was represented by an Assistant District Attorney.

' The facts upon which the conviction was based are set forth in the Law Court opinion, and, in addition the Appellate Division has reviewed the presentence report, and a transcript of the sentencing proceeding. No further evidence was presented at hearing, but counsel made oral presentations which have been considered.

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1 Sanders was originally convicted of two counts of unlawful sexual contact and received a five year sentence on each to run consecutively. On appeal, the conviction on Count 1 was reversed. The remaining conviction was affirmed and it is the sentence resulting from that conviction which is now presented for review.

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we cannot say that the sentence imposed herein, although the maximum permissible under our law, was inappropriate,

It is HEREBY ORDERED that the appeal be DENIED

FOR THE APPELLATE DIVISION:

Chairman

Justices participating: Nichols, Roberts, and Violette, JJ.

The record reflects that at the time of his sentencing, Sanders was 44 years old, unemployed, and disabled as the result of obesity. His prior criminal record consisted of a 1961 misdemeanor conviction for intent to commit larceny resulting in a $50.00 fine and county jail commitment in default of payment of the fine. The conduct for which Sanders was sentenced in this case involved touching the penis of an eleven year old boy. The sentencing justice imposed the maximum five year sentence [2] allowed by law and stated as his reason:

> It is not my intention in imposing sentence in this matter to punish se much as it is to hopefully deter *others. I don't know if it's possible for reform to* come about as a result of this sentence but I think the most important aspect of this sentence is that of segregation.

Sander's counsel argues that the justice imposed a protective or incapacitating sentence under *circumstances which are* devoid of any suggestion that the defendant is incorrigible *and* unlikely *to respond to* any lesser term of punishment.

We find that the justice's announced purpose in selecting the maximum sentence was to effect general deterrence: and protect society by "segregating" the defendant for the maximum allowable term of imprisonment. We conclude *that in doing so* he abused his discretion by focusing strictly and exclusively upon general

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2 We note that the justice did not afford the defendant the right of allocution secured to him by M.R.Crim.P. 32(a).

410 deterrence and the need for protection in the total absence of any significant prior criminal record or any evidence to suggest that the defendant was incapable of benefitting from anything less than the maximum sentence. We recognize that the Legislature has specifically identified deterrence and the protection of the public as two of approximately ten general purposes of criminal sentencing. 17-A M.R.S.A. § 1151 (1983). We are not unmindful of the complex and difficult task of the sentencing justice in selecting a sentence which reflects a balanced and appropriate consideration of specific and general deterrence, rehabilitation, protection, minimization of correctional experience, sentence equality, individual differentiation, the nature of the offense, and the background and character of the offender. Although a prior criminal record and previous correctional experience are not necessary prerequisites of the imposition of a maximum sentence, the absence of those factors argues strongly against the single minded focus upon general deterrence and protection as justification for such a sentence. Exclusive reliance upon those two general purposes of sentencing will always lead inexorably to the maximum sentence and would negate the other purposes identified by the Legislature.

We conclude that the sentencing justice failed to consider as a mitigating factor that defendant had no significant prior criminal record. In the absence of other aggravating factors, the maximum sentence is not justified. We are unanimous in our conclusion that the length of the sentence is inappropriate in isolation and when compared to other sentences for similar offenses. We are of the opinion that a sentence of two and one half years would have been appropriate.

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It **is,** therefore, ORDERED that:

The judgment of conviction be amended, substituting for the original sentence of five years in the Maine State Prison a sentence of two and one half years in the Maine State Prison. It *is further* ORDERED that the defendant be brought before any justice of the Superior Court sitting in *the County of Knox for* resentence in accordance with 15 M.R.S.A. § 2143, at such time hereafter as such justice may determine.

Dated: October 16, 1983

FOR THE APPELLATE **DIVISION**

Chairman

Justices concurring: **Violette,** Wathen and **Scolnik,** JJ.

STATE OF MAINE

SUPREME JUDICIAL COURT

APPELLATE DIVISION
DOCKET NOS. 78-37, 78-40

STATE OF MAINE)
V.)
TIMOTHY L. ANDERSON .)

OPINION AND ORDER

STATE OF MAINE)
V.)
EDWARD G. SABATINO)

In a joint trial in the Superior Court, Cumberland County, the defendants were each convicted of the crime of murder in violation of 17-A M.R.S.A. s 201(1)(A). Each defendant was sentenced to life imprisonment. The facts upon which these convictions were based are described in the Law Court's opinion in State v. Anderson, Me., 409 A.2d 1290 (1979). Anderson's conviction was based on evidence that he fired the shot which caused the death of the victim. Sabatino was convicted as an accomplice. See 17-A M.R.S.A. s 57.

The Appellate Division has reviewed the opinion of the Law Court, the docket entries in the Superior Court, the presentence report prepared by the Divisicn of Probation and Parole for each defendant and a transcript of the sentencing proceedings. In addition, each defendant was afforded a hearing before the 7.pcellate Division at which each defendant was present and represented by counsel and the State was represented by an assistant attorney general. C'ther t:.::-: State's exhibits A and B,

which were summaries of sentences imposed in murder cases since the adoption of our *new Criminal Code,* prepared by the Office of the Attorney General, no evidence was received at the hearings. Counsel for each defendant did make an oral presentation which this tribunal has carefully considered.

We deal with both defendants in a single opinion since we discern no reason for distinguishing between the two defendants for sentencing purposes. Under our law, the accomplice is equally guilty as the principal. At the time of *the commission of* the offense, the defendants.were of approximately the same age and had comparable criminal records and backgrounds. The decision as to which of the two defendants would carry the gun during their planned armed robbery was determined by a flip of a coin. For all of these reasons, we conclude that the two defendants must be treated identically.

In order to place the life sentences imposed in these cases in context, it is necessary to review the recent history of changes in the penalty for criminal homicide in the law of the State of Maine. Prior to May 1, 1976, the effective date of our new Criminal Code, murder was punishable in this state by life imprisonment. 17 M.R.S.A. § 2651 (1964) (repealed, P.L. 1975, ch. 499, § 15). An individual sentenced to life imprisonment under that section was eligible for parole after serving fifteen years less good time. 34 M.R.S.A. § 1672 (Supp. 1973) (repealed, P.L. 1975, ch. **499**, § 71). The parole decision was made by the Parole Board without the guidance of any legislatively mandated criteria. See Zarr, Sentencine, 28 Me. L. Rev. 117, 135-43 (1976).

With the adoption of the *new* Criminal Code (P.L. *1975, ch.* 499, § 1), criminal homicide was divided into six degrees. See 17-A M.R.S.A. §§ 201-06 (Supp. 1976) (repealed and replaced, P.L. 1977, ch. 510, §§ 38-43). Under this classification, second-degree criminal homicide, which is comparable to our existing murder statute, carried a sentence of any term of years not less than twenty. 17-A M.R.S.A. § 1251(3) (Supp. **1976)** (repealed and replaced, P.L. 1977, ch. 510, 5 74). First-degree murder, which was the same as second-decree murder with certain aggravating circumstances, carried a mandatory sentence of life imprisonment.♦ 17-A M.R.S.A. § 1251(4) (Supp. 1976) (repealed and replaced, P.L. 1977, ch. 510, § 74). After serving twenty-five years, a person sentenced to life imprisonment could pe®ition the Superior Court for re-sentencing to a term of years, *17-A M.R.S.A. § 1254(2)* (Supp. 1976) (repealed, P.L. 1977, ch. 510, § 82), and if the sentence was reduced to a term of years he was entitled to have good time deducted from this sentence. Id. In no event could a person sentenced to life imprisonment be discharged prior to serving twenty-five years. Id.

In 1977, the six degrees of criminal homicide were eliminated by P.L. 1977, ch. 510, §§ 38-43, and the legislature adopted the existing framework of dividin g criminal homicide into four categories: murder **(17-A M.R.S.A. § 201)**, felony murder (17-A M.R.S.A. § 202), manslaughter (17-A M.P.:S.A. § 20:) and aiding or soliciting suicide (17-A M.R.S.A. § 204). Under this categorization, "[a] person convicted of murder sham be sentenced to the State Prison for life or for any term of years that is not less than 25." 17-A M.R.S.A. § 1251 (as amen.' by P.L. 1977, ch. 510, 5 74).

As part of this revision, the provision authorizing a person who has been sentenced to life imprisonment to seek re-sentencing and a reduction of his sentence bas repealed. See P.L. 1977, ch. 510, § 82. Thus, under the =resent formulation of our Criminal Code, a sentence to life imprisonment is truly a sentence for life.

This brief summary of the recent developments in the law of murder in this state demonstrates two things. First, with each revision the penalty for murder has become more severe; and second, when sentencing for murder a :ustice has a wide discretion now ranging from a minimum of twenty-five years to life imprisonment.

Although the legislature has vested broad discretion in a sentencing Justice, it has enacted certain criteria to guide the exercise of that discretion. These criteria are:

1. To prevent crime threegh the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety;

2. To encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served;

3. To minimize correctional experiences which serve to promote further criminality;

4. To give fair warning cf the nature of the sentences that may be imposed c- the conviction of a crime;

5. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;

6. To encourage differen=iation among offenders with a view to a just individualization of sentences;

7. To promote the develo--ent of correctional programs which elicit the cooperation of convicted persons; and

8. To permit sentences which do not diminish the gravity of offenses. 17-A M.R.S.A. 5 1151.

Purposes 1 and 8 state the usual philosophic justifications for the position of punishment-restraint, deterrence,[1] rehabilitation and retribution.[2] It is obvious that when dealing with a sentence for murder, in which the minimum term is twenty-five years, purposes 2, 3 and 7 have minimal, if any, significance in the sentencing process.

Despite these legislatively mandated criteria for sentencing, in the *instant cases* we have little guidance as to which, if any, of these criteria influenced the presiding Justice in imposing the life sentences here involved. The transcript of the sentencing proceedings contains no statement of reasons by the presiding Justice as to why he was imposing life sentences on these defendants. A statement of reasons by a sentencing Justice serves many

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1. By deterrence we understand the legislature to mean both special prevention and general prevention. See A.denaes, The General Preventive Effects of Punishment, 114 U. Pa. L. Rev. 949 (1966 .

2. Although the legislature did not expressly refer to retribution, we construe the reference to "sentences which do not diminish the gravity of offenses," 17-A N.R.S.A. § 1151(8), as incorporating the concept of retribution.

> It is easy, far too easy, to dismiss this theory with the remark that it is a remnant of the barbaric conception of vengeance as an absolute duty. The sentiment of just vengeance or retribution is too deeply grounded in human nature, and embodied in too many moral and religious codes, to be thus lightly dismissed. It is profoundly foolish to suppose that anyone can by the free use of ugly epithets eradicate the desire to return a blow or to give active expressicn to the resentment against injury.
>
> If the natural desire fez vengeance is not met and satisfied by the orderly procedure of the cri inal law we shall revert to the core bloody private vengeance of the feud and of the~vendetta. Cohen, Moral ;seects of the Criminal Law, 49 Yell L.'. 987, 1010-i1 •.1J40) .

worthwhile functions. First, it assists the appellate tribunal in its review of the sentence. Second, the articulation by the sentencing Justice of reasons for his sentence compels him to think more carefully about the sentence he imposes and to formulate in his mind a justification for the sentence. Third, the rationale behind a particular sentence when stated at the time of sentencing assists the offender to *understand why* the State, acting through the presiding Justice, restricts the offender's liberty in the way and to the extent that it does. [3] Finally, an explanation of the reasons behind a particular sentence is more likely to satisfy the public and to renew its faith in the justice and rationality of the administration of the criminal law. Thus, when imposing a criminal sentence, every presiding Justice should articulate the reasons for that sentence with particular reference to the legislatively mandated criteria in Section 1151.

We must note one other defect in the sentencing proceedings in these cases. The presiding Justice made reference to release pursuant to the terms of 17-A M.R.S.A. § 1154. That section authorizes the Department of Mental Health and Corrections under certain limited circumstances to petition the court for re-sentencing of the offender. From the statement of the presiding Justice at sentencing, it appears that he believed that Section

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3. "The question 'Why?' states a primitive and insistent human *need.* The small child, punished or deprived, demands an explanation. The existence of a rationale may not make the hurt pleasant, or even just. But the absence, or refusal, of reasons is a hallmark of injustice. So it requires no learning in law or political philosophy to apprehend that the swift ukase, without explanation, is the tyrant's way. The despot is not bound by rules. He need.not justify or account for what he does." M. Frankel, Criminal Sentences 39 (1973).

1154 provided some potential amelioration of the sentence which he im sed. [4] Whether or not that be true to a great extent rests within the control of another agency of government. A presiding Justice by an application of the statutory criteria should impose propriate sentence without reliance upon any potential amelioration through the exercise of discretion by the executive branch either through a petition pursuant to Section 1154 or through the exercise of the governor's power of pardon and commutatir'. The judiciary fulfills its responsibility when it applies the legislatively mandated criteria and imposes an appropriate sentence in accordance with those criteria. What the executive branch of government may or may not do thereafter should have no influence upon the sentencing Justice.

Under our present Criminal Code, the imposition of a life sentence has such a serious impact on the offender so different from the impact of a sentence for a term of years that a life sentence is never justified unless the murder is accompanied by aggravating circumstances. Such aggravating circumstances include:

1. Premeditation-in-fact. By this we mean a planned, deliberate killing including a killing for hire. By the use of the words "*in-fact,*" we mean to differentiate the premeditation to which we refer from the legal fiction of premeditation recognized in some states in which the premeditation exists for only an instant of time before the actual killing. [5]

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4. We do not consider the possible unconstitutionality of 17-A M.R.S.A. § 1154 if it purports to confer authority on a court to modify a valid sentence after it is imposed on the ground of changes in the attitude or behavior of an offender. See State v. Abbott, Super. Ct., York Co., Crim. Docket Nos. CR-76-73 5, 564, 565, 566, 567, 573 and 574 (Jan. 30, 1978).

a. See, e.g., State v. Speyer, 207 Mo. 540, , 106 S.W. 505, 509 (1907); State v. Leu-.r~ au, (. ::c:•. 36, , 214 P.2d 135, 143 (1950'; *State v. Ccilvic', 180 Cr.* 365, , 175 P.2d 454, 458 (1946).

2. Multiple deaths, including situations in which the offender in committing the murder knowingly created a substantial risk of death to several individuals.

3. Murder committed by a person who has previously been convicted of homicide or any other crime involving the use of deadly force against a person. We use the words "deadly force" as defined by our Criminal Code in 17®A M.R.S.A. **S 2(8).**

4. Murder accompanied by torture, sexual abuse or other extreme cruelty inflicted upon the victim.

5. Murder committed in a penal institution by an inmate of that institution. This would include the murder of another inmate as well as prison personnel.

6. Murder of a law enforcement officer while in the performance of' -his duties.

7. Murder of a hostage.

It *is not our intention to suggest* that life imprisonment must always be imposed in cases of the types enumerated above. Such an approach was abandoned by our legislature when it repealed the mandatory sentence of life *imprisonment* for first-degree murder. Even in these circumstances there may be mitigating factors which in the exercise of a sound judicial discretion may cause a presiding Justice to impose a sentence for a term of years rather than life *imprisonment.*

It is our intention to suggest that under the present formulation of our Criminal Code life imprisonment is not justified in the absence of one of these enumerated circumstances. This conclusion is bolstered by the limited experience we have had under the existing sentencing structure for murder. State's exhibit A submitted by the Office of the Attorney General at the hearing on this matter reveals that since our most recent amendment to the Criminal Code in 1977 there have been five life imprisonment sentences imposed in addition to the two imposed in these cases.

In each cf the other five instances, one or more of the circumstances enumerated above were present.

None cf these aggravatinc circumstances exist in the two eases presently nreer review. Althetgh the evidence that the defendants pie n nee a rebbery and took with then a weapon knowing ea., . . ". -en: .ea ere tnat we-e- ose cfensive or ee.nensive purpcses micht be equated with rereditation-inefact, we consider distinction between a killing uder su:h cireumseances and a .. rsd. fe :Ihereee as ieeng ei:-nifieant for criminological erposes. Thus, we cone.uée the imposition of life sentences in these cases was not fustified.

7t now bees:7s cur re spon ... i . :e y to deeermine what are err _ate sent-nees be intezed epan these defendants. 15 F.F f 2:42. We eppreesh :his task with a recognition that we are enra ,. in a roeess of line drawing and that the lines wieh we -ust draw do net emerge with startlin clarity hut, on :he =en . rary. are shrouded ir. the mist and fog created by the ef e**n7irieal data** a= se thc :rpaet of articular sentences -h'ne th r ecegn: e ed -L- ,, **s of** the **criminal law**. ve 'seer' with 7!-en, the 2e7:e2atic'ely mandated minicum sentence twenty-five years. Ws mcst then erraluate mitigating and e-27earitinc factors in light ef the legislatively stated objectives of sentencing in criminal cases.

We arc directed **by** the legislature **to individualize sentences. Fee** 27'-A **M.R.E.A. 5 1151(6) . When considering a sentence of** in7rieenment for an extended period cf tine, a significant factor individualization is the age cf the cffender. The younger the offender, the greeter is the he e, if not the expectation, of

rehabilitation. The impact of the mandatory minimum twenty-five year sentence or of any longer sentence is significantly different upon an offender aged twenty than upon an offender aged forty. This difference relates not only to the period of time the offender has already lived but also relates to his life expectancy. At the time of the offense here involved, Anderson was twenty years of age and Sabatino was twenty-one. At the time of sentencing, August 18, 1978, Anderson was twenty-one and Sabatino was twenty-two. The life expectancy of the average white male age twenty-one was 50.7 years, and the life expectancy of the average white male age twenty-two was 49.8 years.[6] The minimum mandatory sentence of twenty-five years if imposed on these defendants would mean they would be confined and deprived of their liberty during the major portion of their adult lives. For these reasons, we consider the relative youth of these two defendants as a mitigating factor.

Each of the defendants had prior adult and juvenile criminal records including a prior conviction for robbery. This must be considered an aggravating factor. The prior convictions demonstrate that the rehabilitative processes of the law have in the past failed with these defendants. The prior records also indicate a need for restraint in the interest of public safety. See 17-A M. R. S.A. § 1151(1).

We consider as another aggravating factor that the murder was committed during the commission of another crime. This fact requires the imposition of a sentence in excess of the minimum in

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6. Am.Jur.2d Desk Rock, Item No. 159 (1979).

order to enhance the general preventive effect of the sentence--to influence others not to engage in such conduct by giving fair warning of the magnitude of the sentences that may be imposed for such conduct. See 17-A M.R.S.A. § 1151(1) and (4).

Giving consideration to these mitigating and aggravating factors, we conclude that a term of forty years is an appropriate sentence for each of the defendants in this case. In addition to the factors already mentioned, such a sentence is sufficiently long so as not to diminish the gravity of the offense which the defendants have committed. See 17-A M.R.S.A. § 1151(E).

A sentence of forty years is also consistent with the general run of sentences that have been imposed for the crime of murder under the existing formulation of our Criminal Code. State's exhibit B, received at the hearing on this matter, contains a listing of all murder sentences for a term of years since the adoption of our Criminal Code. Of the thirteen sentences imposed under the existing statutory arrangement, the average sentence is 33.6 years, the longest is 50 years and only three are in excess of 40 years. Although we have not reviewed the facts in all of these thirteen cases, we are satisfied from our analysis of the bare numbers that the reduction of these life sentences to terms of forty years complies with the statutory mandate that we "eliminate inequalities in sentences that are unrelated to legitimate criminological goals." 17-A M.R.S.A. § 1151(5).

IT IS HEREBY ORDERED that as to each defendant the judgment imposing a life sentence is amended by substituting therefor a sentence of forty years in the Maine State Prison.

Dated at Portland, Maine, this thirtieth day of June, 1980.

For the Appellate Division

Harry P. Glassman

NICHOLS and ROBERTS, JJ., concurrin .,.

NOT TO BE PUBLISHED IN THE MAINE REPORTER

STATE OF MAINE

SUPREME JUDICIAL COURT

APPELLATE DIVISION
DOCKET NO. AD-83-33

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STATE OF MAINE)
)
V.) OPINION AND ORDER
)
BRUCE MERRILL)

MAR 31 1989

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The defendant, Bruce Merrill was indicted in the Superior Court, Cumberland County, on one count of vehicular manslaughter (Class C), 17-A M.R.S.A. §203(1) (A) (3) and one count of operating a motor vehicle while *under* the influence of intoxicating liquor or while having 0.10% or more by weight of alcohol in his blood, 29 M.R.S.A. §1312-B(1)(A)(B). On May 10, 1983, Merrill entered an open plea of guilty to both counts of the indictment. Sentencing was continued to June 3, 1983, and a pre-sentence investigation was ordered. On June 3, 1983, the presiding justice imposed concurrent sentences to Maine Correctional Center of 5 years on the manslaughter count and 6 months on the operating under the influence of intoxicating liquor count.

The defendant filed a timely appeal to the appellate division from the 5 year sentence on the manslaughter conviction. On September 15, 1983, pursuant to 15 M.R.S.A. §2142 and M.R. Crim. P. 40(d)(2), the defendant was accorded a hearing before the appellate division at which he was represented by counsel and the state was represented by an assistant district attorney.

The appellate division has reviewed the presentence report and a transcript of the sentencing proceeding. In its oral presentation at hearing the state conceded that the maximum sentence was inappropriate and in support of its concession presented a list of vehicular manslaughter sentences imposed in Cumberland County over the previous four years. No other evidence was presented.

At the time of sentencing, Merrill was 22 years of age, had been consistently employed, and had no prior criminal record. During the eight month period from the date of the collision to the time of sentencing, Merrill has totally abstained from the use of intoxicating liquor. He has been very remorseful *concerning this tragic* experience. The factual basis for acceptance 'of the plea of guilty included operation of **a** motor vehicle in the southbound lane on Route 100/26 in Falmouth at an excessive speed;[1] loss of control of *the vehicle* when it was allowed by the defendant to travel into the gravel shoulder on the right side of the road which ultimately caused it to collide head-on with the vehicle operated by decedent who was traveling in the opposite direction in the southbound lane; defendant had consumed a six *pack of beer* between 6:00 p.m. and *12:00 p.m. and chemical test results showed 0.17% alcohol by* **weight of *blood.***

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[1] **In** the opinion of the accident reconstruction expert the speed was 75.07 miles per hour.

Before imposing sentence the justice invited members of the decedent's family to address the court. After commenting on the emotional and financial impact on the family of the decedent, he imposed the maximum five year sentence and stated as his reason:

> But I for one, Mr. Merrill am fed up with this carnage on the highway and because of what happened in this particular case and the seriousness I hope this serves as an example to others...

In review of sentences, it is not the function of the appellate division to substitute its judgment for that of the sentencing justice. The standard of review is whether the sentencing justice committed an abuse of discretion in imposing a particular sentence.

We find an abuse of discretion in the sentencing justice's reliance on general deterrence and victim impact to the exclusion of a consideration of other applicable purposes of sentencing set forth in 17-A M.R.S.A. § 1151.

In the imposition of a sentence, a judge's personal indignation about a particular type of criminal conduct cannot justify the avoidance of considering the purposes of sentencing in section 1151, a consideration of which requires the assessment of the aggravating and mitigating circumstances presented in the particular case.

Although the financial and emotional impact upon the family of the decedent is an aggravating circumstance which is appropriate to consider, the justice did not balance his sentencing decision with an evaluation of the mitigating factors in the case. No consideration was given to Merrill's potential for rehabilita-

tion. His youth, employment record, family relationships, his change in drinking habits, and lack of prior criminal record strongly suggest that the defendant was capable of correction without the imposition of the maximum sentence.

As we stated in State v. Sanders, No. AD 82-43 (Me. App. Div. October 20, 1983).

> Although a prior criminal record and previous correctional experience are not necessary prerequisites to the imposition of a maximum sentence, the absence of those factors argues strongly against the single minded focus upon general deterrence and protection as justification for such a sentence. Exclusive reliance upon these two general purposes of sentencing will always lead inexorably to the maximum sentence and would negate the other purposes identified by the Legislature.

The appellate division agrees with the concession by the state that the maximum sentence is inappropriate in this case. On the basis of other vehicular manslaughter sentences called to our attention by the state, our own familiarity with sentencing practices throughout the State, and other factors discussed in this opinion, we are satisfied that a sentence of two and one half years would appropriately balance the sentencing purposes of 17--A M.R.S.A. § 1151. Not only will it serve the purpose of general deterrence but it will also accomplish the objectives of rehabilitation, minimization of correctional experience, and the just individualization of sentences. A sentence of two and one half years for a first offender will not diminish the gravity of this offense.

It is hereby ORDERED that: The judgment of conviction be amended substituting for the original sentence of five years in the Maine Correctional Center a sentence of two and one half years

in the Maine Correctional Center. It is further ORDERED: that the defendant be brought before any justice of the Superior Court sitting in the County of Cumberland for resentence in accordance with 15 M.R.6.A. § 2143, at such time hereafter as such **justice may determine.**

Dated: December 16, 1983

FOR THE APPELLATE DIVISION

Chairman

Justices participating; Violette, Wathen and Scolnik, J.J

NOT TO BE PUBLISHED IN THE MAINE REPORTER

SUPREME DICI COURT APPELLATE DIVISION.

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STATE OF INE

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v.

OPIION and ORDER

CIIRK

STEPHEN HABERSKI

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The defendant, Stephen Haberski, was convicted of the crime of murder (17-A M.R.S.A. § 201(1)(A)), and was sentenced to life *imprisonment* ***by*** **the Superior** Court **(Penobscot County).** **The** facts upon which his conviction was based are described in the Law Court's opinion in State v. Haberski, 449 A.2d 373 (Me. 1982). Defendant filed a timely appeal to the Appellate Division from the sentence imposed.

On November 13, 1986, defendant was afforded a hearing before the Appellate Division at which defendant was represented by counsel *and* the State was represented by an assistant attorney general. The Appellate Division has reviewed the opinion of the Law Court, the docket entries in the Superior Court, the transcript of defendant's trial, the pre-sentence report, and the transcript of the sentencing proceeding. At the hearing, both counsel made **oral presentations** that **have** been considered **and**, in **addition**, the State presented a summary of all sentences imposed in murder cases since the adoption of the Maine Criminal Code.

The Appellate Division has previously considered the circumstances in which it is appropriate for the Superior Court to impose a life sentence. In State v. Anderson and Sabatino, Nos.

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AD-78-37, 78-40 (Me. App. Div. June 30, 1980), the Appellate Division reviewed the developments in the law of murder that led to the current state of our law. Under present law, a sentencing justice has wide discretion in imposing. a sentence for murder. The *range of authorized* sentences extends from a minimum of twenty-five years to a maximum of life imprisonment.. Barring executive clemency, a sentence to life imprisonment results in imprisonment with no possibility of release. In Anderson, these factors led us to adopt the following guidelines for the imposition **of a life sentence:**

> (T)he imposition of a life sentence *has* such a serious **impact on** the **offender** so different from the impact of a sentence for a term of years that a life sentence is never justified unless the murder is accompanied by aggravating circumstances. Such aggravating circumstances include:
>
> **1. Premeditation-in-fact.** By this we mean a **planned** deliberate killing including a killing for hire. By the use of the words 'in-fact,' we mean to differentiate the premeditation to which we refer from the legal fiction of premeditation recognized in some states in which the premeditation exists for only an instant of time before the actual killing.
>
> 2. Multiple deaths, including *situations in* which **the** offender in committing the murder *knowingly* **created** a substantial risk of **death** to several *individuals.*
>
> **3. Murder committed by a person who has previously been convicted of homicide or any other-crime involving** the use of deadly force **against a person. We use the words 'deadly force' as defined by our Criminal Code in 17-A M.R.S.A. § 2(8).**
>
> **4. Murder accompanied by torture, sexual abuse or other extreme cruelty inflicted upon the victim.**

> 5. Murder committed in a penal institution *by an inmate of* that institution. This would include the murder of another inmate as well as prison personnel.
>
> 6. Murder of a law enforcement officer while in the performance of his duties.
>
> 7. Murder of a hostage.

Id. at S. (Footnote omitted). We added that although the presence *of one or more of* the aggravating circumstances does *not compel a* life sentence, such a sentence is not justified in the absence of one of the aggravating circumstances.

The sentencing justice in the case before us stated the following reasons for imposing a life sentence:

> 1. The record of the trial amply supports the finding by the jury of murder. 2. There was no sufficient evidence to mitigate the tragic event. 3. The evidence discloses a brutal killing which climaxed a long (15-30 minute) confrontation during which.time the victim was pleading with the defendant.

Only the third reason set forth relates *in any* way to the Andersen guidelines. Although the sentencing justice did not use the language set forth in paragraph 4 in Anderson, the State now argues that the justice found that the murder in this case vas accompanied by °extreme cruelty inflicted upon the victim.° We assume that the terms °cruelty° and °brutality° are virtually synonomous. We are left with the question, however, did the sentencing justice make a finding of extreme cruelty. We conclude that he did not, and further we conclude that the record does net support such a finding.

Since the Criminal Code became effective on May 1, 1976, there have been thirteen defendants sentenced to life imprisonment

out of a total ...of seventy-nine defendants convicted of the crime of murder.[1] The State candidly concedes that the instant 'case presents facts less egregious than most, if not all, of the other life sentence cases. Admittedly, many of those cases involve an aggravating circumstance other than extreme cruelty and, in any event, direct comparison is difficult. Nevertheless, review of **the** facts of those cases demonstrate substantial conformity with the Anderson guidelines and supports the distinction drawn between **cruelty and** extreme cruelty.[2] ***By definition;*** **any** murder involves a significant element of cruelty. It is difficult to conceive of a situation in which one could *"intentionally or* knowingly cause the death of another human being", 17-A M.R.S.A.§ 201)1)(A), without being cruel and unfeeling. In the absence of any other aggravating' circumstance, the most drastic form of punishment is reserved for those murders accompanied by cruelty different in substantial degree from *that which inheres in* the crime of murder.° If acts of murderous cruelty could be arranged on a continuum, the phrase °extreme cruelty° would delineate the outermost portion

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[1]The number includes the defendant in this case but excludes the ?Anderson and Sabatino sentences that were reduced to a term of years. In one of the cases there is an appeal of the conviction pending before the Law Court. In two other cases there is an appeal of sentence pending before the Appellate Division.

[2]A brief summary of the facts of the nine cases in which there is a final judgment may be found in the following Law Court opinions: State v. Willouahbv, 507 **A.2d 1060** (Me. **1986);** State **v.** Condon, **468 A.2d 1348** (Me. 1983); State v. Crocker, **435** A.2d **58** (Me. **1981);** State **v.** Johnson, **434 A.2d 532** (Me. 1981); State **v.** McEachern, **431 A.2d 39** (Me. 1981) ; State **v.** Estes, **418** A.2d **1108** (Me. 1980);. tate v. Paae, **415 A.2d 574** (Me. 1980); State v. Smith, **415 A.2d 553** (Me. 1980); **State** v. Snow, **383** A.2d 1385 (Me. **1978).**

of the range. The facts of the present case, although involving brutality, do not rise to the degree that could be fairly classified as evidencing extreme cruelty and the sentencing justice made no such finding.

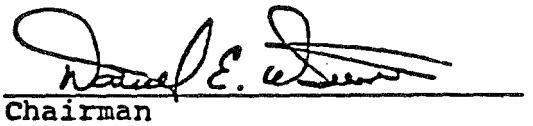
It now becomes our responsibility to determine the appropriate sentence to be imposed in this case. 15 M.R.S.A. § 2142. The sentencing justice found that there were no mitigating circumstances at the time of the original sentencing and indeed there are none. Defendant was **28 years old** at time of sentencing. He **had** a **1975** conviction in the State of Oregon for possession of a controlled substance for delivery or sale and served a partially suspended county jail sentence. Defendant had a substantial history of drug abuse and was an habitual user of cocaine at the time of the offense. In short, we agree with the sentencing justice that defendant committed an unmitigated act of murder that was aggravated by the method and manner of its commission. See, State v. Habers)ci, **449 A.2d 373, 375** (Me. 1982), for a more complete summary of the facts. Giving consideration to the aggravating factors, we conclude that a term of fifty years is an appropriate sentence for the defendant in this case. Such a sentence does not diminish the gravity of the offense committed but it does eliminate unjustified inequalities between this sentence and others. pee, 17-A M.R.S.A. § **1151 (5)** .[3]

[3] The summary of sentences presented by the State in this case reveals that sixty-six persons have been sentenced to a term of years for the crime of murder since the adoption of the Criminal Code. The mean average sentence is **34.09** years. The median sentence is 30 years and the mode is 25. The longest sentence is

IT **IS** HEREBY ORDERED that the judgment imposing a life sentence is amended by substituting therefor a sentence of fifty years in the Maine State Prison.

Dated: February 6, 1957.

FOR THE APPELLATE DIVISION



Chairman

SCOLNIK and GLASSMAN, JJ., participating.

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70 *years and* ***only*** **four sentences are in excess of** 50 years.

State v. Waterhouse

your Honor.

THE COURT: Thank you. I appreciate that.

Mr. Waterhouse, is there anything you want to say?

MR. WATERHOUSE: No, sir.

MR. CARON: He doesn't wish to address the Court.

THE COURT: All.'.right.

Well, in reaching my decision I have reviewed the evidence that I heard during the trial; furthermore, I am considering the evidence that was presented, today, that evidence was offered at trial and I excluded it on the grounde'that the probative value that it had -- that it clearly had as to the intent of M. Waterhouse was outweighed by the inflammatory and prejudicial nature of those three letters. However, we no longer have a jury inv®lved in this case and I think that the testimony -- that the evidence that I did exclude at the trial is admissible and should be considered for sentenceing purposes. I have also considered the pre-sentence report prepared by the Division of Probation and Parole and I have considered Doctor Daly's report *and,.of coursa,* I have considered the arguments of *counsel.*

The starting point in determining thee proper sentence for any crime is the degree of seriousness placed *on* the crime by the legislature, and the legislature tells us that murder is the most serious of all crimes,

carrying with it a minimum sentence of 25 years and a maximum sentence of life imprisonment. And since 1977 when the legislature last revised our sentencing statutes life imprisonment in this State means exactly what it says.

The broad *legislative class is* normally *not enough* to determine the true starting point for the first offense on any given crime and from there we usually decide whether the crime in question is one of the more serious or less serious crimes within its own class and then decide whether the true starting point for the first offenders is 3 years, 5 years, 10 years, whatever.

Murder is the exception to that rule. Murder has a mandated starting point and the Appellate Division of the Supreme Judicial Court told us in the Anderson-Sabatino decision published in 1980 and authored by Justice Glassman that the starting point in analyzing the proper sentence for murder is the statutory minimum of 25 years. From that base we then evaluate mitigating and aggravating circumstances in light of the legislative stated objectives for criminal sentences, that mitigating and aggravating analysis is necessary because all sentencing -judges are directed by the legislature to individualize sentences.

A significant mitigating factor in M. Waterhouse's

case, and in my mind the only mitigating factor in his case, is his a e

Because you are 18, Mr. Waterhouse, the law assumes or at the very least hopes that you have a better chance for rehabilitation. That hope is underscored in your case by the State psychiatrist, Dr. Daly, who has formed a, quote,'impression,' end quote.- and'I quote him carefully -- that you can mature and rehabilitate in prison -- rehabilitate yourself in prison.

After a careful consideration I have decided that you do not deserve the leniency that is normally granted to a young first offender. In the first place, Dr. Daly is apparently unaware that you must serve at the very least a 25-year sentence. His hope for rehabilitation *is placed on a concomitant hope that you will not be* exposed to hardened criminals for a prolonged period of time, that he feels that because of your psychologica makeup you could easily convert into a hardened criminal yourself, assuming you aren't one now. If you do receive that kind of prolonged exposure, given the fact that you must necessarily receive a long sentence that almost certainly will be served *at Thomaston* surrounded by hardened criminals, the goal of rehabilitating you in my mind is unrealistic and must give way to the more realistic sentencing goals of retribution, restraint and

deterrence

The second fact that leads me to deny you the leniency normally shown to a first offender or young first offenders, as pointed out by Mr. Westcott, is your complete absence of any remorse for this crime. In the face of what Mr. Westcott accurately says is overwhelming evidence that you are guilty you claim that you are innocent. Furthermore, you claim your innocence with a detarhment that is scary, considering the details of this crime. The tapes of your conversations with the police shortly after the crime reveal a calculating young man who lied repeatedly. When confronted with new evidence that revealed your story for the lie it was, you would coolly change your story to accomodate th evidence. When more *new* evidence turned up, you would calmly change your *story again. That* kind of conduct and attitude does not hold out hope for rehabilitation.

Retribution, restraint and deterrence are the sentencing goals that are important in this case, and because of the aggravating factors in this case it is pecessary that the retribution be great and that the restraint be prolonged.

The first aggravating factor is the age of your victim, Gycelle Cote was only 12. By all accounts, she was a well-behaved and trusting child. For an adult to

choose such a vulnerable and defenseless victim is a particularly reprehensible act and that act, alone, demands a prolonged imprisonment.

The next aggravating factor is your motivation for killing this young girl. Although the evidence concerning your motivation is not as clear as I would wish, and although I am not satisfied beyond a reasonable doubt as to what your motive was, the weight of the evidence, the most likely view of the evidence, leads to the conclusion that this murder was planned. I do not mean by that that you planned to kill Gycelle Cote over a long period of time or to kill anyone over a long period of time; I do mean that you were planning to harm some young girl and when your original target didn't work out, Gycelle Cote was unfortunate enough to take her place. Secondly, the letters that r=1 i'cled at trial but am admitting for sentencing purposes reveal **Gycelle** was not the first young girl you had designs on in the weeks and days preceding this murder, sections of those letters and the stollen cloggs recover„d at your house revealed that the threats contained in those letters were based or fact. Sections of those letters are truly chosen. The state of your mind as revealed in those letters leads me to the conclusions that you decided to terrorize and, perhaps, kill a young girl

well before you actually strangled Gycelle. Your proud belief in Satanism at the time of this murder lends further support to the conclusion that this killing was planned. I recognize as we all heard at trial that Satanism does not advocate killing young girls, per It does, however, advocate doing whatever pleases you, and that kind of amoral philosophy, when absorbed into the mind of a young sociopath like yourself, who has no conscience, can produce appalling results. Even the type of killing lends support to the conclusion that this murder was planned. The fact is that you killed this young girl slowly: Strangulation by cord or rope is a slow death according to the medical examiner; up to five minutes just to lose consciousness and with her wrists tied so she couldn't fight back. This suggests to me that you not only wanted to kill her, but .you wanted to prolong the experience of killing her so that you could prolong the new sensation that you were seeking.

Finally, the presence of your semen on Gycelle's chest leads to the conclusion that you found the act of killing to be sexually fulfilling. The most likely conclusion to be drawn from all of this evidence is that you enjoyed killing and there is every reason to believe you would do it again if given a chance.

. The **most-likely** *explanation* for this crime, as the Attorney General has suggested, is that it was a thrill killing, and a thrill killing, in my view, deserves the maximum punishment possible. Only in that way can Gycelle's family and the community receive just vengence and retribution that they are entitled to receive, and only if I impose the maximum punishment possible can society be assured that you will not have another opportunity to murder another young girl.

For those reasons, Mr. Waterhouse, I am sentencing you to the Department of Corrections for life with a recommendation that you serve your sentence at the State Prison in Thomaston.

You have a right to appeal that sentence, Mr. Waterhouse, and I am sure you will want to, and I have to give you written notice of that right to appeal; and this is it. Your attorneys will explain that to you in more detail.

Is there anything else?

MR. WESTCOTT: Nothing else, your Honor.

MR. CARON: No, your Honor.

THE COURT: All right, we are in recess.

(Whereupon, at 10:20 a.m. the Court recessed.)

an happy family but now we 'Trief, a great sadness, but the one that has lost *the most is* Sharon. She was only 15. She was a very good and wonderful young girl *and* ***a good*** daughter and she had a tremendous **love** and understanding of human nature, of the environment, wildlife, birds. She was an honor student through her life. She had great potential for a beautiful and happy life. **So she** lost-she lost her life in **a brutal** needless **way. Paul Addington did** not show *Sharon any* ***mercy and*** **I** think **he** should **be** locked up **so** that **he will** never **cause** this **pain to anybody else.** Thank you.

THE COURT: Thank you. Mr. **Taylor did** you **have** anything **you** wished **to say?**

) ,. TAYLOR: My wife said everything. Thank you.

THE *COURT: Mr.* Addington, anything you wish **to** say?

MB® DINGTON: If took me 11 years **to have people turn their backs** against me--because in 1974--because of **the** charge *that brought me* ***to*** *AMHI. And I was just beginning* **to poke** my head through the clouds, **to** be someone, **and to** Until this happened. It hurts. I don't **have** anything else.

THE COURT: Do you have anything else more **you** want **to say?**

M. ADDINGTON: No, sir.

THE COURT: **You** may **be seated.** The record **may** indi-

sate aat I have had a complete sentence investigation and report and I have also had an opportunity to review all of the psychiatrists and psychological reports, and I have also, as I presided over this trial, had an opportunity to hear all of the evidence, both the evidence that was admitted and the evidence that was excluded. And I am considering, of course, only the admitted evidence in this ease. I also am aware of the record of the Defendant and all the personal data that was--that's been presented and collected by the Department of Probation.

There are *sentences that* require the Court to reach back and find strength and courage to impose. Some of those sentences are for significantly long terms and some *of those' sentences are for significantly short terms.* In analyzing the *sentencing* requirement and the duty imposed upon this Court by the law in imposing sentences, I am aware of the different criteria that have to be taken into *consideration.* The law indicates to me that I have to have some concern for the Defendant and those that are concerned about him, and I do. And the law also requires that I take into consideration the impact that the act that the subject matter of this suit had on the victim and her family and I certainly do that. There are requirements under our lew that sentences have to have some deterrent effect, not *only on* the Defendant, but on

other ®.eople who are eomtemplatin_ the same kind of activity, and I am concerned about the fact that this *sentence has* to have some sort of deterrent effect on the Defendant as well as on other people who are contemplati the same kind of activity. I guess primarily the sentenc in this case cannot in any way diminish **the severity or** the gravity of the offense. In this **offenae.the** Defendant is charged with taking *human life, the life of another person.* There is no more serious offense under the law and I take that into consideration. I also have to take under consideration the aspect of punishment. **Frankly, *punishing*** *Mr.* Addington for **the act that he per** formed here is not one of the most prevailing factors in the Court's sentence. I am **aware of the prior record of** the Defendant. I am also satisfied that the sentence tha *this Court is going to impose in just a few minutes is an* appropriate sentence regardless of the **previous record of *the*** *Defendant. So I* ***am not taking into consideration the*** Defendant's prior record to the extent that the sentence that I am going to be imposing was enhanced by it. Anothe *very important* factor that the Court is taking into consideration in this case is the Sreat to .ublic**safety** that might result from a lesser sentence than the Court ***plans on imposing.*** I am very concerned about that, and **I think the facts of this case and the facts surrounding**

this sass require the Court to be aware of that aspect and that criteria has to be taken into consideration.

The statute also provides that one of the purposes of sentence is to give fair warning of the nature of the sentence that may be imposed for the conviction of that type of crime. I think that's an important factor in the Court's determination as to what the sentence will be. Counsel for the Defendant has and the..Defendant has asked that the Court show mercy. And I think, perhaps, Mrs. Taylor spoke far more eloquently than I can in terms of how this Court is going to find it within itself to show mercy to the Defendant when the mercy that was shown to the victim by the Defendant was clearly nonexistent.

What Mr. Addington says to the Court today cannot be heard because I still hear what Sharon Taylor said to Mr. Addington on the day of the crime. The Court has to be objective and that's probably 'the most difficult feat for this Court to perform during the facts of this case. And I have reviewed the facts objectively, and I have thought about the sentence objectively. This crime is the most heinous crime the [illegible] perpetrated upon a human being or upon society. There is no greater crime than taking another human being's life. In the last two days, we have seen through the space shuttle disaster human life taken, and the empathy people feel with the

victims of th.r disaster, and yet, we can somehow find ways to comfort ourselves because of what they did and *how they did it, but its very difficult for aone to* fathom how one person knowingly can take the life of another human being,.and that's why it is the most seriou crime on our books and that's why the most serious penalt is allowed to be imposed.

The Court does have a great deal of latitude in a crime such as this because there are different *gradations* of crime and there are different factors that can uence the perpetration *ofcrime, but there are* no extenuating circumstances at all that this Court can find in this case. The *punishment must* fit the crime. And there is, in this Court's mind, only one appropriate sentence in this case. Stand please, Mr. Addington. The sentence of this Court is that you the Defendant are hereby sentenced to the Department of Corrections for life.

I point out to you, Mr. Addington, that you have certain rights of appeal, and the clerk will hand to your *counsel written* statements of those rights and if you have any questions you can go over them with Mr. Peterson or Mr. Marks. Anything further *gentlemen?*

MR. WESTCOTT: No, Your Honor.

THE COURT: Court will be in recess.

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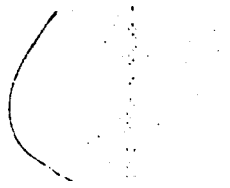

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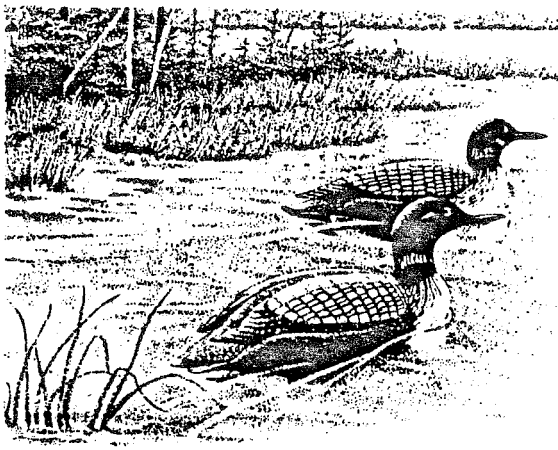

STATE OF MAINE
Knox, S.S. Clerks Office
SUPERIOR COURT
MAR 31 1989
RECEIVED AND FILED
Susan Simmons, Clerk

CRIMINAL DIVISION
RECEIVED
MAR 30 1989
DEPT. OF ATTORNEY GENERAL

March 23rd '8

Dear Judge Bradford,

My name is Margaret Cherry. Sarah Margaret Cherry was my first born granddaughter. Debra Crosman, her Mother, is my first born child. Even after eight and a half months, Sarah's death and manner of dying still cause me deep pain. I've tried to return to my normal life, but there have been changes. Except for two months of every summer, which I took off to babysit all my grandchildren, I worked as a dental assistant. This fall I was unable to continue working after trying for a few weeks. Grief spasms would overwhelm me at inopportune times. This made it impossible for me to do my job in a professional manner.

My God and my church are very important to me. It's the faith and belief I have that Sarah is whole and safe in His loving care, that enables me to continue on

...LI

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1 J⁰p

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

March 30, 1989

The Honorable Carl O. Bradford
Justice of the Superior Court
Sagadahoc County Courthouse
752 High Street
Bath, ME **04530**

Re. State of Maine v. Dennis John Dechaine
Knox County, CR-89-71

Dear Justice Bradford:

Pursuant to 17-A M.R.S.A. S 1257(2), I am sending for filing in the Superior Court the two enclosed letters, from Lloyd and Margaret Cherry, Sarah's maternal grandparents. I wanted to send copies to you so you would have them available before the sentencing hearing. I expect to receive other letters from Sarah's family, such as from her mother, and will forward those promptly. If time does not allow me to get them to you before next Tuesday, I trust I may present them to you (and the clerk *for* filing) *first thing that* morning. I have sent copies to Tom Connolly also.

Sincerely,

't(ML b6N7 rh\

ERIC E. WRIGHT
Assistant Attorney General

EEW/jej

cc: Susan Simmons, Clerk
Thomas J. Connolly, Esq.

JAMES E. TIERNEY
ATTORNEY **GENERAL**

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA. MAINE 04333

March 30, 1989

The Honorable Carl O. Bradford
Justice of the Superior Court
Sagadahoc County Courthouse
752 High Street
Bath, ME **04530**

Re: State of Maine **v.** Dennis John Dechaine
Knox County, CR-89-71

Dear Justice Bradford:

In conjunction with sentencing next Tuesday in this case, I have thought it might be helpful for you to have the following items (which I enclose with this letter).

1. List of persons sentenced to life imprisonment for murder under the criminal code.

2. List of defendants convicted of murder under the criminal code.

3. Opinions of the Appellate Division in the following cases:

   (a) State v. Anderson and State v. Sabatino, AD-78-37 and AD-78-40

   (b) State v. McEachern, AD-80-11

   (c) State v. Sanders, AD-87-43

   (d) State v, Merrill, AD-83-33

(e) State v. Haberski, AD-85-54

4. Transcripts of the sentencing court's comments in the following cases in which life sentences were later affirmed without opinion by the Appellate Division:

(a) State v. Waterhouse, 513 A.2d 862

(b) State v. Addington, 518 A.2d 449

I thought it appropriate to send this material because it may not be as readily accessible as are opinions in the Atlantic Reporter, and because my comments at sentencing in part may draw upon principles established by these cases.

I have sent all this material to Thomas J. Connolly, the attorney for the defendant, and to the Clerk in Knox County for filing as a part of the record.

Sincerely,

Eric E. Wright

ERIC E. WRIGHT
Assistant Attorney General

EEW/jej

cc: -Themas-Z-Ceatte
Clerk, Knox County Superior Court

STATE OF MAINE

KNOX, SS.

SUPERIOR COURT
CRIMINAL ACTION
Docket No. CR-89-71

PAR 1 8 T89

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STATE OF MAINE

VS.

DENNIS JOHN DECHAINE

ORDER

Upon motion of the State, Count IV is Dismissed and Counts V and VI are renumbered IV and V.

Dated: March (; , 1989.

Carl O. Bradford
Justice, Superior Court

STATE OF MAINE
OX, SS.

MAR 1 8 1989

SUPERIOR COURT
CRIMINAL, ACTION
DOCKET NO. CR-89-71

Derk

STATE OF MAINE)
)
v.) STATE'S REQUESTED
) VOIR DIRE QUESTIONS
DENNIS JOHN DECHAINE)

1. Is there any member of the jury panel whg has-heard or read anything concerning this cam- ore coming to court today ° or who otherwise knpwss-eannything about it, and who as a result would n e fair or impartial?

2. The defendant in this case is charged with murder, kidnapping, and gross sexual misconduct. Is there any member of the jury panel who could not a verdi t of guilty,/if the State proves its case beyond a reasonable doubt, solely because of the seriousness of the charge?

3. The evidence in this case may indicate to you that the person alleged to have been killed, a 12-year old girl, was sexually assaulted before her death. Is there any member of the jury panel who, becaus e of this £. act alone, could not impartially listen to the evidence and return a verdict based on it, according to the law on which the court will intruct you?

4. Has anyone already armed or ex •r d an opinion as to the guilt or innocence of the defendant in this case or as to

any material to be tried?

5. It is likely that this case will not be concluded by the end of this week, but will extend into early next week. Is there any member of the jury panel who would be unable to sit as a juror due to the projected length of the trial?

6. Is there any member of the jury panel who may have a physical difficulty which would make it difficult or uncomfortable for you to hear, see the testimony, observe the witnesses, or otherwise sit as a juror in this case.

7. Is there any member of the jury panel who would allow pity, anger, sympathy, or other bias or emotion to influence your verdict in any way?

8. Does any member of the jury panel have any political, social, or philosophical beliefs or opinions about our system of criminal justice which would make it difficult or impossible for you to render a fair and impartial verdict in this case, based solely on the evidence and the law as presented to you during the course of the trial?

9. Is there any member of the jury panel who holds any religious or philosophical beliefs or opinions which would prohibit you from rendering a judgment of another person?

10. Is there any member of the jury panel or any member of your immediate family who has ever been involved with the criminal justice system as a defendant, witness, victim of a crime, or juror, other than with regard to a minor traffic

charge?

11. As jurors you are entitled to give whatever weight you choose to the testimony'of any witness, according to the witness' ability or training to observe, perceive and relate what he or has observed, and considering any bias or interest the witness have. You may expect to hear testimony from several law enfor t officers. Is there any member of the jury panel who, without rega o these usual rules and simply because they are in law enforcement, ld give more or less credence to their testimony?

12. Is there any member of the jury panel who would be swayed towards or against a verdic uilty solely because of the defendant's appearance?

13. There may be evidence from mental health profess als. Is there any member of the jury panel who has any feelings about-or attitude toward psychiatry, psychology, and the like that would make ifficult or impossible for you to listen impartially to the evidence and follows the court's instructions on the law?

14. these any member of the jury panel who believes that one who commits murder ssarily must have suffered from some mental problem at the time of the k and so cannot be held accountable for his conduct?

15. If there any member of the jury panel who believes that the use of drugs necessarily prevents a person from being

STATE OF INE
KNOX, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-89-71

STATE OF MAINE)
)
v.) STATE'S LIST OF PROSPECTIVE WITNESSES
)
DENNIS JOHN DECHAINE)

The State may call the following witnesses at trial:

Debra Crossman, Bowdoin
John Henkel, Bowdoin
Jennifer Henkel, Bowdoin
Robert West, Bowdoin
Holly Johnson, Bowdoin
Harry Bruce Buttrick, Bowdoin
Helen Buttrick, Bowdoin
Arthur Spaulding, Bowdoin
Gary Jasper, Bowdoin
Gilbert Austin, Lisbon
Scott Anderson, Lisbon Falls
---Dr. Ronald Roy, Freeport
Rose Knodt, Freeport
Sharon Gilley, West Gardiner
Raymond Knight, Richmond
Richard Knight, Richmond
Nancy Emmons Dechaine, Bowdoinham
Dwayne Tobey, Augusta
Arthur Albin, Augusta
Dr. Ulrich Jacobsohn, Augusta
Dr. Neil MacLean, Augusta
-.).- James McGee, Brunswick
Wendy Briggs,
Douglas Senecal, Phippsburg
Maureen Senecal, Phippsburg
Jessica Crossman, Phippsburg
Vinrie Edwards, Thomaston
Richard Leet, Thomaston
Kelly Small, Thomaston
Dr. Edward Kitfield, Wiscasset

Maine State Police

Alfred Hendsbee
John Cormier
Ron Jack
Roy Brooks
Steven Drake
Peter McCarthy
Barry DeLong
Richard Phippen
Patrick Lehan
Tom Bureau

Maine State Police - Crime Laboratory

Judy Brinkman
Roy Gallant
Ronald Richards
John Otis

Maine Warden's Service

William Allen
Barry Woodward

Sagadahoc County Sheriff's Office

David Haggett
Mark Westrum
Daniel Reed
James Clancy
Leo Scopino
John Ackley

Lincoln County Sheriff's Office

Brenda Dermody
Darryl Maxcy

Respectfully submitted,

ERIC E. WRIGHT
Assistant Attorney General

EEW/j ej

STATE OF MAINE
KNOX, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. 89-71

LIST OF DEFENDANT'S PROSPOSED WITNESSES

1. Donald Almy, Hallowell, ME
2. James Boudin, Bowdoinham, ME
3. Ann Brandtmeyer, Freeport, ME
4. Eric Brandtmeyer, Freeport, ME
5. Richard Bruno, Bowdoinham, ME
6. George Carlton, Esq., Bath, ME
7. Lisa Ford Christie, Lisbon Falls, ME
8. George Christopher, Bowdoinham, ME
9. Jessica Crossman, Phippsburg, ME
10. Donald Dechaine, Madawaska, ME
11. Frank Dechaine, Mount Vernon, NH
12. Nancy Emmons-Dechaine, Bowdoinham, ME
13. Phillip Dechiane, Sinclair, ME
14. Brian Dennison, Bowdoinham, ME
15. Justine Dennison, Bowdoinham, ME
16. J er Dox, Dept. of Human Services, Augusta, ME
17. S on[e] conomeau, Bowdoin, ME
18. Joseph Field, Esq., Brunswick, ME
19. Lois Getchell, Bowdoin
20. Louis Getchell, Bowdoin
21. Steven Giles, Thomaston
22. Dr. Roger Ginn, Portland, ME
23. Betty Hite, Brunswick, ME
24. Mike Hite, Brunswick
25. Bonnie Holiday, Dept. Human Services, Augusta, ME
26. Gary Jasper, Bowdoin, ME
27. Ralph Jones, Bowdoin, ME
28. Scott Jones, Thomaston, ME
29. Stephen Mazwell, Thomaston, ME
30. Zina Maxwell, Bowdoinham, ME

Thomas J. Connolly
Attorney at Lew
422' 2 Fore Street
'O Bo. 7563D1S
.tortlant Marne 04112
12071 773.6460

31. David Milhau, Thomaston, ME
32. Robert Montgomery, Esq.
33. Susan Norris, Bowdoinham, ME
34. David Prout, Bowdoinham, ME
35. Harry Prout, Bowdoinha, ME
36. Albert Reid, Bowdoinha, ME
37. Steven Sandau, Brunswick, ME
38. Catherine Schwenk, Brunswick, ME
39. Doug Senecal, Phippsberg, ME
40. Erin Senecal, Phippsberg, ME
41. Isaac Senecal, Phillsberg, ME
42. Maureen Senecal, Phippsberg, ME
43. Arthur Spaulding, Bowdoin, ME
44. Richard Steeves, Thomaston, ME
45. Charles Watson, Bucks Harbor, ME
46. Kent WQmack, South Harpswell, ME

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Attorney at LAw
422' ↑ Fore Street
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Portland Maine 04112
1207) 773-6460

A

JAMES E. TIERNEY
ATTORNEY GENERAL

MAR 7 1989

RECEIVED AND FILED
Susan Simmons, Clerk

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA. MAINE 04333

March 2, 1989

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, ME

Re: State of Maine v. Dennis Dechaine
CR-89-71

Dear Tom:

Enclosed as further discovery are the following:

334-342 Transcript of interview with Kelly Small

343 Continuation report of Det. Hendsbee

344 Summary of interview with Gerry Herlily

Sincerely,

ERIC E. WRIGHT
Assistant Attorney General

EEW/jej
enclosures
cc: Clerk, Knox County

STATE CF MAINE
KNOX, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. 8971

STATE OF MAINE)

v) MOTION IN LIMINE
(Gruesome Photographs)

DENNIS DECHAINE)

NOW COMES the Defendant, Dennis Dechaine, by and through his counsel, Thomas J. Connolly, pursuant to M.R.Ev. 403 and moves In Limine as follows:

1) The State has in its possession a number of photographs which depict the deceased following her discovery on July 8,1988;

2) The photos have limited probative effect and are highly prejudicial;

3) The Defendant requests their exclusion pursuant to M.R.Ev. 403, State v Conner, 434 A.2d 509 (Me.1982).

WHEREFORE the Defendnat requests any photographs of the deceased be excluded.

71

DATED: March 4, 1989

THOMAS J. CONNOLLY

Thomas J. Connolly
Attorney at Law
422 c Foe Street
PO Box 7563 T
Portland Mane 04112
(20'1'73 6460

STATE OF MAINE
KNOX, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. 89®71

STATE OF MAINE)

V)

DENNIS DECHAINE)

MOTION IN LIMINI
OR
MOTION FOR DISCOVERY
(Footwear Impressions)

NOW COMES the Defendant, Dennis Dechaine, by and through his counsel, Thomas J. Connolly, and moves In Limine or to compel Discovery as follows:

1) Defendant had filed a Request for Discovery Pursuant t M.R.Cr.P. 16(c) on January 25, 1989;

2) This motion was granted, in part, by this Court on January 27, 1989;

3) The order required that the State provide written reports of all experts which the State intended to call during any point in the trial;

4) On or about February 10, 1989 counsel met with the evidence technician in the case as well as with other State Police officers who possessed physical evidence to be offered in the case;

5) Counsel inquired about any footwear impressions which they possessed and which were to be used in the case;

6) Counsel was informed that no such tests had been done and that no such evidence was in existence;

7) On or about February 22, 1989 counsel received a phone call from the evidence technician indicating that such tests were then being conducted;

8) On or about February 23, 1989 the results on the tests were orally provided to counsel:

9) No written reports on the test results have been provided to counsel as of March 4, 1989;

m*omaa J. Connolly
Attorney at **Law**
422'> Fore Street
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10) These test results are ambiguous and not conclusive as to the Defendant's footwear;

11) No opportunity to have the test results verified by any experts for the defense has occurred;

WHEREFORE, the Defendant requests this Court to exclude In Limine the test results, or pursuant to M.R.Cr.P.16(d) or the; Due Process Clause of the 14th Amendment to the U.S. Constitution or to continue this action for 3 weeks so that experts for the defense may examine the report and/or the footwear impressions theirselves.

DATED: March 4, 1989

THOMAS J. CONNOLLY

Thornaa J. **Connolly**
Attorney al Law
122 2 Fore Street
'O Box **7563** O T S
Porttancl Mane 04112
(2071773-6460

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STATE OF MAINE
KNOX, SS

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. 89-71

STATE OF MAINE)
)
V)
)
DENNIS DECHAINE)
)

MOTION IN LIMINE
OR FOR DISCOVERY
(Prisoners Testimony)

NOW COMES the Defendant, Dennis Dechaine, by and through his counsel, Thomas J. Connolly, and moves In Limine or for required discovery as follows:

1) The defendant has filed written requests for discovery pursuant to M.R.Cr.P.16(A)&(B) on August 5, 1988;

2) Counsel has been made aware of the existence of alleged statements made by the Defendant to prisoners at the State Prison as follows;

A. Vinnie Edwards:

On or about November 1988, counsel received a synopsis of a statement allegedly made by the Defendant to a Maine State Prison prisoner. The report is not is not a statement from Mr. Edwards but merely a summary of some alleged statements;

B. Richard Leet:

On or about February 17, 1989 a statement was sent by the Attorney for the State from a Maine State Prison prisoner named Richard Leet which was taken on 1/18/89 and which alleges admissions made by the Defendant sometime on an unknown date, presumably August 1988;

C. Kelly Small:

On or about February 23, 1989 counsel for the Defendant was informed orally of another Maine State Prison inmate who alleged the Defendant made admissions No report has been received on this statement as of March 4, 1989;

Thomas J. Connolly
Attorney at law
422 2 Fore Street
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3) Pursuant to M.R.Cr.P.16(C) counsel request the Attorney for the State provide the following, prior to the offering of or use of the statements;

A. The conviction records of each prisoner, both for Maine and other jurisdictions (note two of these prisoners are transferees);

B. The Maine State Prison folder on each of the witnesses including all psychiatric evaluations and commitments;

C. A detail listing of all previous information provided by each of the witnesses, including but not limited to those statements reduced to writing and all testimony provided by the witnesses;

D. All log sheets at Thomaston indicating the housing arraignments of prisoners on the dates any alleged admissions were made;

E. All correspondence by the witnesses to the police,) Attorney General's Office or any other source as it relates to the so called admissions;

F. A detailed listing of all investigations continuing against the witnesses, all charges pending and all attempted favors elicited by the witnesses when the statements were provided;

G. A listing of all promises and inducements of any nature or description which were given in exchange or even considered to be given for the statements.

DATED: March 4, 1989

THOAAS J. CONNO'LLY

Thomas J. Connolly
Attorney at law
422 t Fore Street
O Box 7563 O T S
ortlano Mama 04112
1207) 773-6460

STATE OF MAINE
KNOX , SS

MAR 6 1989

RECEIVED AND FILED
Susan Simmons, Cler

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-89-71

STATE OF MAINE

V.

DENNIS JOHN DECHAINE

DISMISSAL - COUNT IV
(M.R.CRIM.P. RULE 48(a))

Now comes the State by and through Assistant Attorney General Eric E. Wright and dismisses the above captioned (Indictment, Count IV iRt% Ra#itnxxemmplai st) for the following reasons:

The State now believes the medical evidence as to Count IV is sufficiently ambiguous that the allegation cannot be proved beyond a reasonable doubt.

Dated: March 6, 1989

Eric E. Wright

Assistant Attorney General

STATE OF MAINE
KNOX, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-89-71

STATE OF MAINE

V

NOTICE OF ALIBI

DENNIS JOHN DECHAINE)

The Defendant responds to the Notic of Alibi filed by the State by indicating that the Defendant was in the wooded area of Bowdoin, Maine during the period in question. The Defendant does not know his precise location during this time but emerged from the wood onto what is believed to be the Dead River Road at approximately 8:45 p.m. on July 6, 1988. He had previously been in the area of the Lewis Hill Road sometime in the early afternoon hours of the date in question.

As of this date there are no corroborating witnesses for the time period requested except for police officers and Mr. and Mrs. Buttrick who have given statements to the State heretofore.

DATED: February 22, 1989

THOMAS J. CONNOLLY

Thomas J. Connolly
Attorney at law
422 Fore Street
P O Box 7563
Portland Maine 04112
207 773-6460

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

February 17, 1989

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, ME

Re: State of Maine v. Dennis Dechaine
CR-88-244

Dear Tom:

Enclosed as further discovery are the following:

310-311 Notes of Dr. MacLean
312-315 Report of inquiry and examination by medical examiner

I understand Dr. Roy gave you copies of his facial and torso drawings, so I will not send those again.

316-323 Transcript of Interviews with Richard Leet

The statement Mrs. Buttrick reports to me is that when they asked your client where he was from, he explained where (see previous discovery) and said, "I should have stayed there."

Sincerely,

Gt) J
EJ

ERIC E. WRIGHT
Assistant Attorney General

EEW/jej

cc: Clerk, Sagadahoc Superior Court

STATE OF MAINE
Knox, S.S., Clerks Office
SUPERIOR COURT

FEB 21 1989

RECEIVED AND FILED
Susan Simmons, Clerk

STATE OF MAINE
KNOX, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR®89®71

STATE OF MAINE)
)
v.) ORDER
)
DENNIS JOHN DECHAINE)

It has been represented to the court by the State that it has just learned that a prospective State's witness, Harry Bruce Buttrick, who has material testimony to offer, will soon be entering the hospital for surgery for cancer and, as it now appears, will not be available for trial. The court finds that the testimony of Mr. Buttrick is necessary to prevent a failure of justice. The court further understands that counsel for the defense does not object to the State's proposal to depose Mr. Buttrick and that the parties have agreed upon the time and place for the taking of his deposition. It is therefore now

ORDERED that the parties shall orally depose Harry Bruce Buttrick, R.F.D. 2, Box 4394, Bowdoin, Maine, at the Maine State Police Crime Laboratory on Hospital Street, Augusta, Maine at 1:00 p.m. on Tuesday, February 21, 1989; and it is further

ORDERED that the deposition shall be by video camera recording and any other method agreed to by the parties; and it is further

ORDERED that the oath shall be administered by a notary public, to be agreed upon by the parties; and it is further

ORDERED that due to the suddenness with which the State learned of Mr. Buttrick's illness, any requirement of written notice at least 10

days before the time of the taking of the deposition is hereby *waived;* provided, however, that it shall be the responsibility of the State to inform Mr. Buttrick of the time and place of the deposition; and it is further

ORDERED that the Sheriff for Knox County or his designee shall transport the defendant from and to the Maine State Prison for purposes of the deposition and shall retain custody of him during the deposition in the presence of the witness; and it is further

ORDERED that the contents of this Order shall be transmitted immediately ty the clerk of the court to the Sheriff of Knox County or his designee and to Department of Corrections so that the Sheriff can arrange transportation of the defendant, and a copy of this Order shall be delivered to the Sheriff and to the Department of Corrections as soon as possible, but the failure of the Sheriff or the Department of Corrections to have a copy of this Order in hand before the time for deposition shall not relieve the Sheriff of his obligations to transport and retain custody of the defendant or of the Department of Corrections to make the defendant available to fulfill the purposes of this Order.

ORDERED that Knox County shall pay to defense counsel, upon his submission of expenses, for expenses of travel and subsistence for attendance at the deposition; and it is further

ORDERED that the State shall provide a copy of the video recording to defense counsel as soon as practicable after the deposition and shall itself retain the original video recording for use at trial without further need for authentication.

Dam *~`~ 17, 17'e?*

CARL O. BRADFORD
Justice, Superior Court

STATE OF MAINE
SAGADAHOC, ss.

ERIOR COURT
CR-88-244

STATE OF MAINE

Vs.

DENNIS JOHN DECHAINE

ORDER

This case is ORDERED VENUED to KNOX COUNTY SUPERIOR COURT, Effective this date from Sagadahoc County Superior Court, Pursuant to M. R. Crim. 21(d).

The Docket Number shall be CR-89-71.

Upon effective date of Order, all future pleadings must be sent to KNOX COUNTY SUPEtIOR COURT, KNOX COUNTY COURTHOUSE, P.O. BOX 1024, ROCKLAND, MAINE 04841.

Dated: February 16, 1989

Carl O. Bradford

Justice, Superior Court

A TRUE COPY

ATTEST: 14

Associate Clerk, Superior Court

Date Piled 08-01-88 Sa adahoc **County** **Docket** No. CR-88-244

Action Indictment

DENNIS J. DECHAINE

State of Maine **vs.**

Offenses	**Attorney**
17-A §201(1)(A) Count I and (B) Count II MURDER 17-A §301(1)(A)(3)-Count III-KIDNAPPING 17-A §251(1)(B) and 252(1)(B) Count IV-RAPE 17-A §251(1)(A)&(C)(3) and 253(1)(B) Counts V & VI GROSS SEXUAL MISCONDUCT	George Carlton, Jr., Esq. 443-5596 15 Centre Street Bath, Maine 04530 Thomas J. Connolly, Esq. 773-6460 P. O. Box 7563 DTS Portland, Maine 04112

289-3661
Eric E. Wright, Asst.Att.Gen.
Criminal Division
4tata Th-m Station 46 Augusta, Me. 04333

Date of Entry	
07-13-88	Received 07-13-88: Motion for Special Grand Jury Session, filed.
07-28-88	Received 07-28-88: State's Motion in Opposition to Defendant's Request for Court Reporter at Grand Jury, filed.
07-29-88	Received 07-29-88: Order (Proposed), filed.
	On 08-01-88: Order signed by Bradford, J., dated August 1, 1988, filed. Upon consideration of the defendant's motion for a court reporter to be present at the grand jury proceedings, the State's opposition thereto, and argument heard by the court on July 29, 1988, and upon the State's representation that the language of this Order has been read to and approved by defense counsel, it is Ordered, pursuant to M.R. Crim. P. 6(f), that a court reporter shall be present in the grand jury only during the testimony of any witness who the State knows or anticipates shall be testifying about statements or admissions of the defendant made to any person during the course of the investigation of the death of Sarah Cherry on or about July 6, 1988; and it is further Ordered that the State shall excuse the court reporter from attendance in the grand jury during the taking of evidence of any witness who the State knows or anticipates will not be testifying about statements or admissions of the defendant. Copies issued all Counsel.
	Transcript tape of Cindy Packard, Court Reporter IMPOUNDED. (With Grand Jury Exhibit 1-State's Exhibit 1)
	Writ of Habeas Corpus Ad Prosequendum issued by Bradford, J. returnable on August 2, 1988 at 11:00 A.M. at the Lincoln County Superior Court. Attested copies issued Sagadahoc County Sherriff Department.
08-01-88	Indictment returned by the Grand Jury, filed. Copies issued all Counsel.
08-02-88	On 08-02-88 at Lincoln County Superior Court. Hon. Carl O. Bradford, Justice Presiding. Janice Hugo, Court Reporter. Sharon Simpson, Courtroom Clerk. Defendant returned into Court on

Date of Entry	Den. John Dechaine **Docket No.** CR-88-244
08-02-88	continued -
	Writ of Habeas Corpus Ad Prosequendum for Arraignment. Eric Wright, Assistant Attorney General for the State. George Carlton, Jr., Esq. and Thomas Connolly, Esq. for the Defendant. Defendant furnished attested copy of Indictment through Counsel. Arraigned. Reading Waived. Plea Not Guilty to All Counts. Motions to be filed in 90 days. Defendant to be held WITHOUT BAIL.
	Defendant's Oral Motion for Independent Evaluation - GRANTED. Evaluation to be performed within SIXTY DAYS.
	State's Oral Motion for State I Evaluation-GRANTED. Evaluation to be performed within THIRTY DAYS after Defendant's Independant Evaluation.
	Ordered that Venue to remain in Sagadahoc County and Preliminary Motions to be heard in Sagadahoc County - Case to be transferred to Knox County for Jury Trial and Pre-Trial Motions - Jury trial scheduled for March 1989 at Knox County (Bradford, J.-)
	Remanding Order to Maine State Prison signed by Bradford, J., filed.
	Attested copies to Sagadahoc County Sheriff Department.
	Order for Psychiatric/Psychological Examination signed by Bradford, J. filed. Attested copy to Forensic Evaluation Service, Augusta, Maine. Copies of Order to all Counsel.
08-03-88	Received 08-03-88: Returns made on Warrant of Arrest and Remand Order, dated August 2, 1988, filed.
09-01-88	Received 09-01-88: State's Motion for Discovery Pursuant to Rule 16A, Certificate of Service, Demand For Notice of Alibi Pursuant to Rule 16A(b) Certificate of Service, State's letter to Counsel re letter from Thomas Dwyer, Chief Chemist, filed. On State's Motion for Discovery-Motion Granted by Bradford, J.- On Demand For Notice of Alibi-Motion Granted by Bradford, J.- Copies issued all Counsel.
09-06-88	Received 09-06-88: Defendant's Answer to Motion for Discovery Pursuant to Rule 16A, filed.
10-03-88	On 10-03-88: Writ of Habeas Corpus Ad Prosequendum issued by Brodrick, J.- returnable on October 3, 1988 at 8:30 A.M. at Augusta Mental Health Institute for Psychiatric/Psychological Examination. Attested copies issued Sagadahoc County Sheriff Department.
10-06-88	Return on Writ of Habeas Corpus, filed.
11-08-88	Received 11-08-88: Original Report and two copies of Report from State Forensic Service, filed. Original to Justice Bradford, Copy to Eric Wright, Asst. Atty. Gen. and Thomas Connolly, Esq.
01-26-89	Received 01-26-89: Defendant's Motion to Compel Discovery and to Continue with Attachment A. Attachment B, filed.

Date Filed 08-01-88 Sagadahoc County Dock No. CR-88-244

d/o/b:

Action Indictment

DENNIS J. DECHAINE

State of Maine vs.

Offense	Attorney

Date of Entry	
01-27-89	On 01-27-89: Hon. Carl O. Bradford, Justice Presiding. Mary Riley, Court Reporter. Debra E. Nowak, Clerk. Eric Wright, Assistant Attorney General for the State. Thomas J. Connolly, Esq. for the Defendant. Hearing held on Defendant's Motion to Compel Discovery and To Continue - State's Witnesses: Judith Brinkman On Defendant's Motion to Compel Discovery - Motion Granted for reasons stated on the record. On Defendant's Motion to Continue - Motion Denied for reasons stated on the record. Copies issued Counsel.
02-16-89	On 02-16-89: Order, dated February 16, 1989 signed by Bradford, J.-, filed. Case Ordered Venued to Knox County Superior Court Pursuant to M.R. Crim. 21(d) effective date of this Order. Knox County Docket Number to be CR-89-71. Copies issued Eric Wright, Assistant Attorney General and Thomas J. Connolly, Esq. and George Carlton, Jr., Esq.
02-17-89	Case mailed to Susan Simmons, Clerk of Knox County Superior Court, Rockland, Maine 04841, certified mail. With certified copy of docket entries.

A TRUE COpY

ATTEST: 7(r 1 //c

Associate Clerk, Superior Court

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA. MAINE 04333

February 2, 1989

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, ME

Re: State of Maine v. Dennis Dechaine
CR-88-244

Dear Tom:

Enclosed as further discovery, although it clearly is beyond anything the State would be required to send, is the following:

308-309 Report of Det. J.P. Madore on background of Dennis Dechaine

Sincerely,

ERIC E. WRIGHT
Assistant Attorney General

EEW/jej
cc: Clerk, Sagadahoc County

STATE OF MAINE
SAGADAHOC, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. 88244

STATE OF MAINE)

v)

DENNIS J. DECHAINE)

MOTION TO COMPEL DISCOVERY
AND
TO CONTINUE

NOW COMES the Defendant, Dennis Dechaine, by and through his Counsel, Thomas J. Connolly, and requests pursuant to M.R.Cr.P16(c) an order requiring discovery and to continue this action tentively scheduled for jury trial on March 6, 1989. For good cause the Defendant states as follows:

1. The Defendant was indicted by the Sagadahoc Grand Jury on August 1, 1988 for inter alia the crime of Murder, 17A M.R.S.A.' §201;

2. The Defendant was arraigned on August 2, 1988 and entered a plea of not guilty;

3. At the time of arraignment the Honorable Carl O. Bradford, set a tenative trial date of March 6, 1989;

4. Discovery has been proceeding in this from date and has continued, the Defendant having filed requests pursuant to M.R.Cr.P.l6(a) and 16(b);

5. On November 21, 1988 the Attorney for the State sent off! Discovery to Defendant Counsel's office which contained forensic and technical reports;

6. These reports establish inter alia that under the decedent's fingernails blood was detected which was grouped as Type "A" and which also possessed "H" antigens;

7. The report also indicated that the Defendant's blood type was Type " ; '' ⊂

8. The report notes further that the Decedent was Type "A" but a "nonsecretor";

Thomas J. Connolly
Attorney at law
422', Fore Street
'O Box 7563 D
rtlana Mane 04112
1207) 773-6460

9. A further analysis of the fingernail scrapings was either not done or was not able to be done given the limitations of the State Lab;

10. From November until on or about January 5, 1989, Counsel, for State and the Defendant had been involved in discussions in an effort to have further tests done on the nail scrapings;

11. The Attorney for the State was provided by Defense Counsel with the name of a forensic lab with the ability to perform the requisite tests;

12. The Attorney for the State contacted the F.B.I. Lab as well as the State Forensic Lab to determine if additional testing could be done by them;

13. The Attorney for the State informed this office that he had contacted the proposed forensic lab in California and that the State had concluded not themselves to proceed with the supplemental tests;

14. Based on discussion with the personel at the Forensic Services Lab in California there is a three to four month delay in processing the samples once received;

15. The fingernail scrapings are under the control of the attorney for the State and the Defendant has no access to them;

16. The tests which the Defendant wishes to conduct inter alia are described in the enclosed article from Trial Magazine, September 1988 (Attachment A);

17. Although a radical and new technique, DNA sampling has recently been approved by the Florida Court of Appeals, (see decision discussed in U. S. Law Week, (Attachment B);

18. The implications to the defense of evidence which may establish that the blood under the decedents fingernails was not the Defendants and not her own is patent:

19. Manifest injustice would occur if the testing was not allowed;

20. No prejudice would occur to the State if this Motion were granted.

WHEREFORE, the Defendant requests the following relief:

Thomas J. Connolly
Attorney at Law
422'2 Fore Street
PO Box 7563 0 S
°ortlanO. Maine 04112
1207) 773-6460

1. That the case be removed from the March 6, 1989 trial list;
2. That the Attorney for the State make available or send directly to the testing lab the following:
   a. The fingernail scripings of the Decedent;
   b. The fingernails removed from the Decedent at autopsy;
   c. A container of liquid whole blood removed from the Decedent at autopsy sufficient to perform tests;
   d. The liquid whole blood obtained from the Defendant and used in the States examination.
3. That the State be required to provide written reports of all experts intended to be called by the State either in the case in chief or rebuttal and to speciify the facts, opinions and conclusions relied upon by the same.

t/ 1

ATED: January 25, 1989

THO J. CONNOLLY

As to Motion to Continue:

Date January 27, 1989

Motio en'

Justice,Superior Court

As to Motion to Compel Discovery:

Date January 27, 1989

Motion granted/~~denied~~

Justice, Superior Court

Thomas J. Connolly
Attorney at Law
422'2 Fore Street
PO Boa 7563 D T.S
orland Maine 04112
(207) 773.6460

Vv

DNA Typing

Promising Forensic Technique Needs Additional Validation

By William C. Thompson and Simon Ford

Several new scientific techniques have recently been developed that can identify distinctive patterns in the DNA found in biological specimens. These techniques for "typing" DNA have been widely heralded as a breakthrough that will revolutionize law enforcement. DNA typing allows investigators to determine with unprecedented specificity whether two specimens could have come from the same person.

DNA typing is promising for criminal identification because a suspect's DNA type potentially can be matched with that of a biological sample, such as blood, semen, human tissue, or even hair, found at the scene of a crime. Similarly, the DNA type of blood on a suspect's clothing can be matched with that of the victim.

DNA typing is also useful for establishing parentage. The tests can produce a DNA "print" composed of components inherited from the child's mother and father. By comparing DNA prints, analysts can establish family blood lines with unprecedented precision. Hence DNA typing may prove useful for resolving paternity cases and for establishing the identity of missing pet sons. Because DNA can be recovered from the human body long after death, DNA typing makes it possible to establish bloodlines and identity even where the people in question, or their parents, are dead.

DNA typing offers a number of advantages over traditional serological tests for identifying biological samples. In many cases it may be more specific than traditional tests for typing blood, such as ABO typing, III.A (human leukocyte antigen) typing, or typing of red-cell enzymes and serum proteins.

DNA typing may be possible with smaller samples than required for many serological tests. Also, it is likely to be more reliable, particularly with aged or degraded samples.

111.A testing is generally considered reliable only on fresh blood. ADO testing and serum and enzyme testing may be done on a dried sample of blood or semen, but serious concerns have been raised about the accuracy of these tests where the samples are old or have been exposed to adverse conditions, such as heat and moisture. Because I)NA is a more robust material than blood enzymes and proteins, I)NA tests are likely to be less susceptible to these adverse environmental conditions.

Moreover, DNA lasts much longer than other biological materials. Enzymes and proteins decay in days or weeks unless carefully preserved. DNA can last much longer, although it, too, is subject to degradation over time, particularly if not carefully preserved. Reports that I)NA has been recovered from Egyptian mummies are misleading because the mummy DNA was too degraded to produce a I)NA print.

Although DNA typing has tremendous potential, concerns about its accuracy and reliability still need to be addressed. This article raises a number of these concerns. While some or all of these concerns may dispelled by future validation research, until that research is done, a cloud of uncertainty will hang over DNA typing.

Three Techniques

There are a number of ways to identify people based on the characteristics of their DNA. Currently, three distinct techniques are offered by commercial laboratories. Additional techniques will undoubtedly emerge in the near future.

Perhaps the most widely known approach to DNA typing was developed three years ago by British geneticist Alec Jeffreys and was introduced in the United States last year by Cellmark Diagnostics of Germantown, Maryland. Commonly known as DNA fingerprinting, this test produces a "fingerprint" that looks something like a supermarket bar code with about 15 lines (called bands). Genetic differences among individuals are reflected in the spacing of the bands.

This test has been admitted in evidence in over 20 criminal cases in the United Kingdom. It was used to screen over 1,000 men living in Leicestershire, England, in the well-publicized and ultimately successful search that netted Colin Pitchkn k, the notorious "Leicestershire rapist."

Cellmark Diagnostics recently reported it had done DNA fingerprinting in 50 criminal cases and 50 paternity cases. According to promotional literature from Ceihnark, the probability that two unrelated individuals will have matching DNA iingerpt hits is about I in 30 billion. As we will explain below, however, claims such as this regarding the power of the test may be exaggerated.

A second approach to DNA typing, known as the "DNA-Print" test, is being offered by Lifecodes Corporation, a commercial laboratory in Elmsford, New York. This lest produces a "print " with only one or two bands. According to scientific papers published by the I.ifecodes staff, the probability that two unrelated people

William C. Thompson, a lawyer and psychologist, is currently an assistant professor in the Program in Social ***Ecology*** *at the University of California, Irvine.*

Simon ford, a molecular biologist, has had extensive laboratory experience with DNA fingerprinting. Ford holds a research position in the Program in Social Ecology at the University of California, Irvine.

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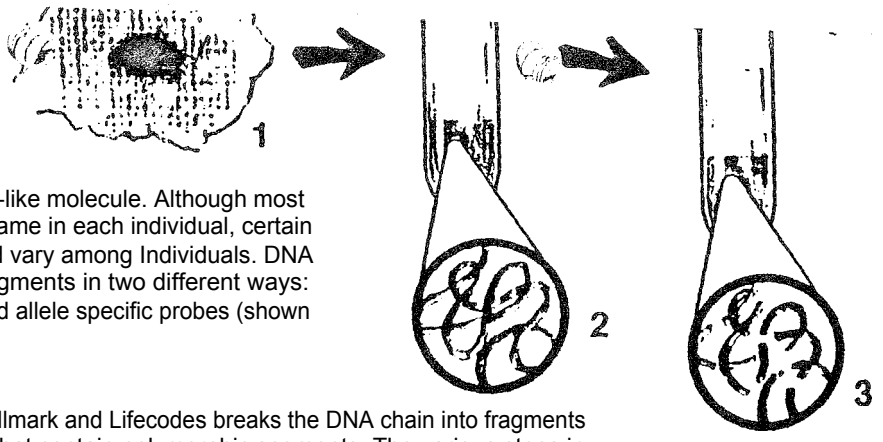


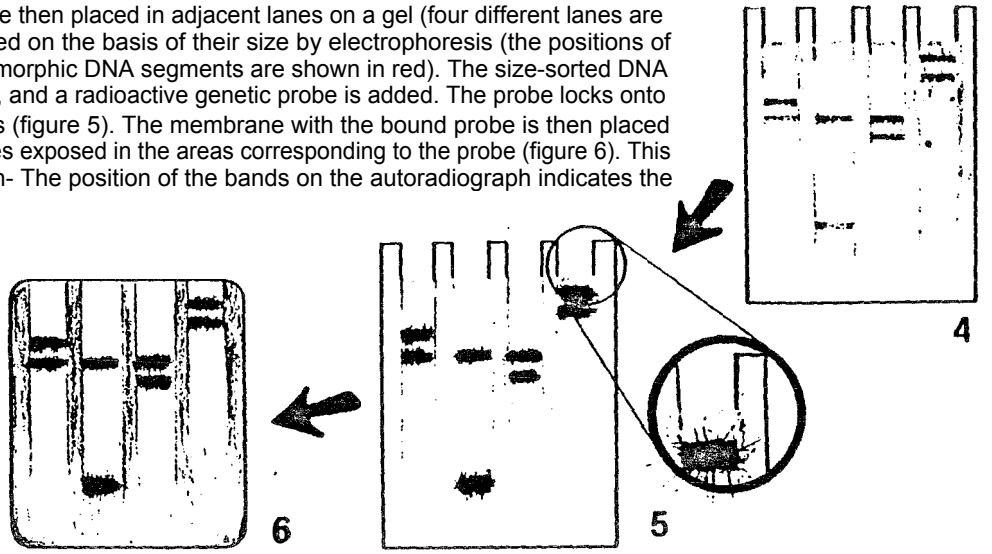
DNA Typing: How it's Done

Many bodily fluids contain DNA, a chain-like molecule. Although most parts of the human DNA chain are the same in each individual, certain segments of DNA are "polymorphic" and vary among Individuals. DNA typing examines these polymorphic segments in two different ways: length polymorphisms (shown below) and allele specific probes (shown **on page 59).**

Length Potymo hisrrts

The approach to DNA typing used by Cellmark and Lifecodes breaks the DNA chain into fragments and examines the length of fragments that contain polymorphic segments. The various steps in this process are illustrated In figures 1-6.

Biological material from an evidentiary specimen (figure 1) is chemically treated in a test tube (figure 2) to release the DNA (shown in the blow-up as a long green strand-a polymorphic segment is shown in red). The DNA chains are cut into small fragments (figure 3) by restriction enzymes. Fragments from different samples are then placed in adjacent lanes on a gel (four different lanes are shown in figure 4) and separated on the basis of their size by electrophoresis (the positions of the fragments that contain polymorphic DNA segments are shown in red). The size-sorted DNA is transferred onto a membrane, and a radioactive genetic probe is added. The probe locks onto the polymorphic DNA segments (figure 5). The membrane with the bound probe is then placed next to *X-ray* film, which becomes exposed in the areas corresponding to the probe (figure 6). This film Is called an autoradiograph- The position of the bands on the autoradiograph indicates the lengths of the polymorphic DNA segments in the genetic material of the four samples. The pattern of bands in each lane is the "DNA print" of that sample. The DNA prints can be compared to determine whether they might have a common source. The tour prints (shown in 6) do not match, which proves they came from different individuals.



will have an identical DNA-Prim ranges from less than 1 percent to over 30 percent, depending on the characteristics of the print. (Some prints are many times more common than others.)

If enough biological material is available, several DNA-Prints can be **made on** the same samples to **successively** narrow the probability of a coincidental match to a level near that claimed by the Cellmark test. The Lifecodes test was available in the United States earlier than the Cellmark test and has been used mote widely. Lifecodes has already done DNA-Prints in 400 criminal cases and about 2,000 paternity cases.

As of January 1988, results of this test had been admitted in at least four U.S. criminal cases, two of which resulted in convictions. In November 1987, Tommy Lee Andrews was convicted of rape in Orlando, Florida, after two experts testified that DNA-Prints of his blood matched those of the rapists's semen and that only I person in 5 billion would have the same combination of DNA-Prints as Andrews. In October 1987, Julio Zambrana was convicted of second-degree murder in New York City after an expert testified that the DNA-Print of blood on Zamhrana's knife matched that of the victim.

A third approach to DNA typing, which uses a novel technique known as polymerase chain reaction (sometimes also called "DNA amplification"), was developed by Cetus Corporation of Emeryville, California, and is offered commercially by Forensic Science Associates of Richmond, California. The Cetus test produces a set of dots indicating whether specific DNA characteristics are present or absent in a sample. The advantage of this test is that it requires considerably less biological material than the other two. The Cetus lest may require only one ten-thousandth the amount of DNA as the other two to produce an interpretable result. So, it may be useful on samples too small to be interpreted with the other techniques.

For example, proponents of the Cetus test claim to be able to "type" the DNA in a single hair, in a semen sample with as few as 40 sperm heads, or in tiny specks of blood. The Cellmark and I.ifecodes.tests cannot type the DNA in a single hair and require much larger blood stains or semen samples to produce interpretable results.

The disadvantage of the Cetus lest is that it is less specific than the other two approaches. The likelihood that two unrelated people will have the

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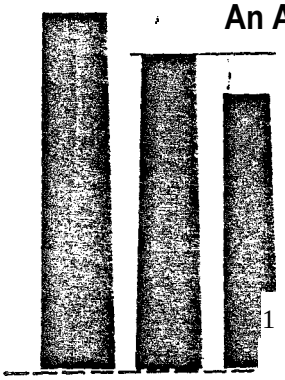

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same DNA "type" on this test may range horn 0.1 to 10 percent. Moreover, polymcrase chain reaction, on which the test relies, is a relatively new technique that may be less reliable and less widely accepted in the scientific community than the procedures nit-Jet lying the other DNA typing tests.

So far the Cetus test has been used in three criminal cases in California. In one, it appeared to exculpate a rape defendant in San Mateo County who had been positively identified by the victim, posing a dilemma for the dis-lriet attorney over whether to proceed with the case.

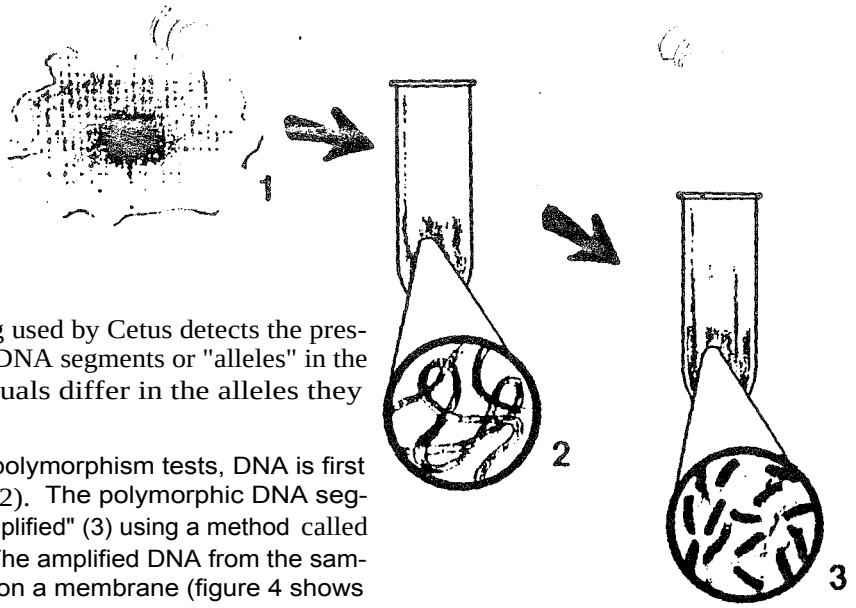
Nature of DNA Typing

To understand DNA typing, it is essential to know a bit about DNA. DNA is double-stranded chain of molecules found within the nucleus of every cell of every organism. The sequence of molecules in the DNA chain constitutes a genetic code that determines the structure and function of each part of the organism, hence DNA molecules arc often called genetic blueprints.

To the extent two organisms differ, the DNA codes will differ as well. No two human beings, with the exception of identical twins, have identical DNA. Within a given organism, however, DNA does not vary from cell to cell. The DNA found in the hair follicles of a person is identical to that in his blood, brain, semen, or big toe.

The goal of DNA typing is to detect the differences between DNA samples taken from different people-a formidable task because although no two individuals have identical 1)NA, the similarities among *members of the same species far out*-number the differences. DNA typing relies on the recent discovery of certain small segments within the human DNA chain where there are mat ked differences among individuals. These "polymorphic" DNA segments may be identified and compared in two ways.

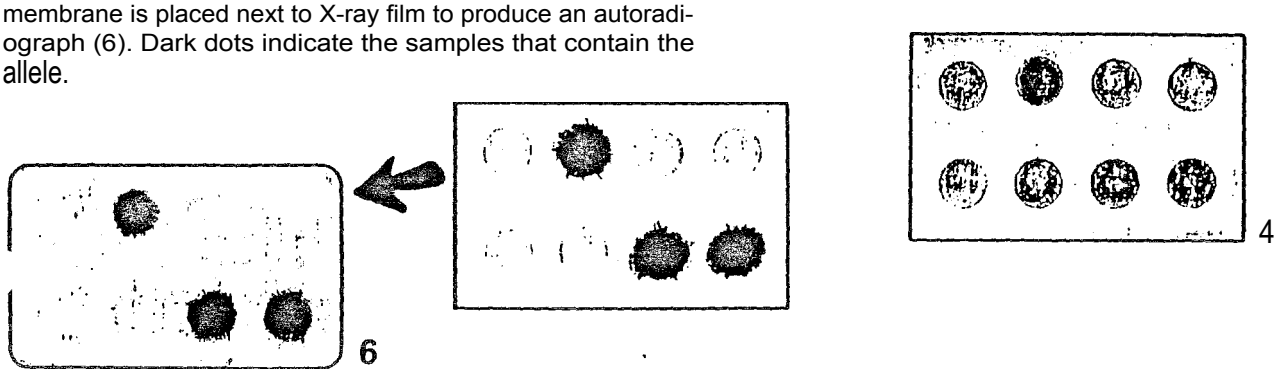
Length Polymorphisms. One approach, followed by the Cellmark and Lifecodes tests, is to break the long DNA chain into small fragments and to measure the length of cettaiu identifiable fragments that contain polymorphic DNA segments. In samples from different individuals, the length of these key DNA fragments is likely to differ, This variation is known as



Allele Specific Probes

The approach to DNA typing used by Cetus detects the presence of certain polymorphic DNA segments or "alleles" in the biological sample. individuals differ in the alleles they possess.

(1) As in the case of length polymorphism tests, DNA is first extracted from the sample (2). The polymorphic DNA segments (shown In red) are "amplified" (3) using a method called polymerase chain reaction. The amplified DNA from the samples being tested is spotted on a membrane (figure 4 shows eight samples). Next a radioactive genetic probe is added. The probe locks onto any DNA spot which contains the polymorphic allele that the probe is designed to detect (5). The membrane is placed next to X-ray film to produce an autoradiograph (6). Dark dots indicate the samples that contain the allele.



a length polymorphism and may be examined as follows.

First, a relatively pure form of DNA is extracted from the biological specimen. Second, the DNA is mixed with "restriction enzymes," which act as biological scissors and cut the DNA chains at specific sites, producing pieces of DNA (called restriction fragments) that vary in length. Some fragments contain the polymorphic DNA segments but most do not.

The fragments are next placed on a slab of gel and sorted by length, using a technique known as electrophoresis. An electrical current is applied to the gel, which causes the fragments to move toward the positive electrode. The speed with which they move depends on their length. Shorter fragments move across the gel more quickly than longer ones, so that after a time the fragments are arrayed across the gel in positions that correspond to their length. After the electrophoresis is complete, the array of DNA fragments is transferred to a nylon membrane known as a blot, using a technique known as Southern blotting.

At this stage, finding the few polymorphic segments among all the other DNA segments is like finding a needle in a haystack. One way to find the needle would be to spread (lie hay and pass a magnet over it. DNA printing uses a similar approach.

The DNA is spread out by electrophoresis. The "magnet" is a special type of DNA molecule called a "genetic probe."

A probe has an affinity for certain polymorphic DNA segments. It will lock onto the segments but will not lock onto all the other "hay" DNA in the sample.

The breakthrough that allowed DNA typing was the development of probes capable of finding the polymorphic DNA segments. The probes era___ ___ are radioactive so that their position on the blot can be detected.

After the probes locate and bind themselves to these segments, the blot is placed on X-ray film. Dark bands appear on the film in areas corresponding to the position of the radioactive probes. The pattern of bands on the X-ray film is what is known as a DNA print.

Each band on a print thus indicates the location on the blot of a polymot phic DNA segment. The location of each segment on the blot is, in turn, an indication of the length of the DNA fragment that contains that segment. Because there is variation among individuals in the length of the DNA fragments that happen to contain polymorphic DNA segments, people may differ in the position of their bands on a DNA print.

Two types of probes have been used to make DNA prints. The Lifecodes DNA-Print test uses single-

locus probes, which seek and find a polymorphic DNA segment that occurs only once on the human DNA chain. Because all chromosones are present in duplicate, the resulting DNA print generally has two bands-one inherited from the mother and one from the father (although only a single band will appear where the maternal anew paternal genes are identical). The Cellmark test uses multi-locus probes, which seek and find polymorphic DNA segments that occur at many locations in human DNA. These probes produce about 15 interpretable bands.

By comparing DNA prints side by side, analysts can determine whether they match and therefore could have come from the same individual. In most cases, DNA prints are simply eyeballed to see whether they match, but the comparison can also be done by machine.

A company in San Diego, California, Automated Microbiology Systems, Inc., is marketing a machine that will read DNA prints and convert each print into a numerical code. These codes can easily be correlated with one another by computer to determine whether two prints match. Moreover, use of numerical codes makes possible the creation of large computerized databases of DNA prints that can be searched to find a match for a specimen.

Proposals have been made to store genetic information on all convicted felons in a centralized computer database. To date over 5,000 blood and saliva samples have been collected from convicted sex offenders in California for inclusion in a computerized database of genetic information.

Allele Specific Probes. A second approach to identifying DNA polymorphisms is taken by the Cetus test. Rather than examining the length of polymorphic DNA segments, this approach determines whether certain DNA segments are present in the sample.

The segments examined by the test are polymorphic, which means that different versions of the segcnient may occur in different people. The versions are called "alleles." The test uses "allele specific probes" io determine whether a specific allele is presem a biological sample. If the let.. . polymorphism approach is like using a magnet to find a needle in a haystack, allele specific probes are like using a metal detector to see if a particular type of needle is present or not.

First, DNA is purified from the sample. Then the DNA is "amplified" by a process called polymerase chain reaction, which increases the number of copies of a polymorphic allele present in the biological sample by heating and cooling the DNA with an enzyme called DNA polymerase. Even if the biological sample contains only one or two copies of the allele, the polymerase chain reaction will increase the number to about 10 million.

The amplified DNA sample is "spotted" onto a membrane, and a probe is added. If the allele being sought by the probe is present, the probe will lock onto it, making the spot radioactive. When the membrane is placed on X-ray film, a dark dot will appear on the film if the allele being sought is present. The analyst simply determines whether a dot is present or not.

The test gives a simple yes or no answer. A single yes-no probe may not be useful for distinguishing individuals because a significant percentage of the population may have a given allele. By using a series of these probes, however, the analyst can narrow the percentage of the population that could have been the source of a sample.

Typing Accuracy

The companies marketing DNA typing tests have made impressive claims regarding their accuracy. According to Cellmark Diagnostics, for example, its DNA fingerprint test can "identify individuals without a doubt." Claims such as this are, unfortunately, exaggerations. Although a finding that two samples have the same DNA type is powerful evidence that they have a common source, the evidence is probabilistic, not conclusive.

The likelihood & a coincidental misidentification through DNA typing depends, in part, on the characteristics of the genetic probe used to locate the polymorphic DNA segments. A good probe will produce DNA prints or identify alleles unlikely to be the same for any two people. But a good probe is hard to find. To date, few genetic probes have been

..a that can reliably distinguish in-,miduals. Among those that rcpoit-edly have this property, most are patented and have been studied only by their corporate owners.

Assuming the probes perform as advertised, there are still several ways in which DNA typing may produce a misidentification. First, two people may have an identical DNA type (i.e., identical DNA prints or alleles). DNA prints are not necessarily unique to a given individual. While no two people (except for identical twins) have the same DNA, two unrelated people may have identical prints because they happen to have polymorphic DNA segments of the same length. Similarly, two unrelated people may have identical results on the Cetus test because they happen to have the same alleles.

The probability that two unrelated people will have matching DNA prints depends, in part, on the type of probe used. Such a coincidence is unlikely where a multi-locus probe is used, because each of tlie approximately 15 bands on the 2 DNA fingerprints would have to match by chance. Such a coincidence is more likely where a single-locus probe is used, however, because only two bands would need to match. Furthermore, as noted earlier, bands in certain positions are quite common. Therefore, when evaluating the weight that should be accorded a match between two DNA prints, the analyst must consider both the number of bands on which there is a match and the rarity of the matching bands. The analyst must also consider whether the occurrence of a match on one band is independent of the likelihood of finding a match on another. To evaluate the weight that should be given a match on the Cetus test, the analyst must consider the rarity of the specific alleles the two samples have in common and whether the alleles are independent.

Second, a misidentification may occur because two different DNA types are mistaken for one another. Similar but not identical DNA prints may, as a practical matter, be indistinguishable because within certain ranges electrophoresis gels have "poor resolution" (i.e., DNA fragments of widely different lengths may produce bands that are close together). Where allele-specific probes are used, the resulting dots arc sometimes difficult to distinguish from "background" shadows on the X-ray film. I hence, just as it may be difficult to distinguish between similar-looking people iii blurry photographs, it may be difficult for an expert to distinguish between different DNA types.

Further complicating the comparison of DNA prints is the possibility of random vat iat ions in the pattern of the bands. reading forensic scientists Cecilia von 13croldingen and George Sensabaugh recently noted in the forensic journal *Udine, "The* procedure itself is time-consuming and somewhat tricky. Bands may appear or disappear depending upon the hybridization conditions. The pattern of bands is complex and may be difficult to interpret."

Consequently, an expert who insists that DNA prints be identical in all respects before declaring that they match will miss a lot of matches. To the extent the expert is willing to declare a match when two DNA fin-

gerprints are similar but not precisely identical, however, the risk of a false identification increases.

Use of a machine to read and coinpate DNA prints does not resolve this dilemma. The machine indicates the degree of correlation between two DNA prints. Because two prints from the same person may not correlate perfectly, however, the cutoff point for declaring a match must be at some level short *of a pelted* correlation. This increases the likelihood that two similar-but distinct-DNA prints will mistakenly he found to match.

A final consideration is the possibility of a laboratory error. As with any complicated procedure, errors may occur at a number of points. Fortunately, most errors in DNA typing cause the procedure to produce uninterpretable results or to "miss" finding matches between samples with a common source.

One type of error, however, may potentially produce false identifications. A constant danger laboratories where DNA is analyzed is cross-contamination of DNA samples. If a specimen from the scene of a crime is contaminated by a suspect's DNA, for example, that specimen may produce an artifactual DNA type matching the suspect's.

Such an error can occur even when each specimen is analyzed separately because minute quantities of DNA from one sample occasionally will accidentally contaminate reagents and materials used in analyzing a number of samples. Contamination is particularly likely to produce base readings where the laboratory is analyzing small specimens with limited amounts of DNA because in such samples the ratio of contaminant DNA to source DNA may become significant.

Contamination is also a special problem where polymerase chain reaction is used to "amplify" DNA in a small specimen. The danger is that the procedure will amplify a contaminant rather than DNA from the specimen. Such an error, if it occurred, would be difficult to catch.

Although contamination can be controlled through the use of careful laboratory procedures, the problem has 'moved vexing to molecular biologists in research laboratories. An article coauthored by Dr. Robot Gallo, one of America's preeminent medical researchers, and published in a .-eading scientific journal, had to be retracted when it was belatedly discovered that DNA cross-contamination of experimental samples had produced spurious results. If this problem can fool a distinguished scientist like Gallo, it might trip up some forensic experts as well.

The companies marketing DNA typing tests have reported statistics concerning the likelihood of two different individuals having the same DNA print. It is important to realize, however, that the published studies that support these statistics have been conducted by those who are either employed by the companies or who have a financial stake in the technique. In computing the statistics, the researchers have made assumptions about the independence of various bands and alleles that have not been adequately verified.

More important, the studies have been conducted under ideal laboratory conditions using ample and pristine samples. The probability of two people having the same DNA print under these circumstances is not, ultimately, a meaningful statistic. The key question is the probability that DNA prints of two different people will be mistaken for one another under the conditions in which the test procedure is actually performed. Studies of the accuracy of these tests on forensic samples in crime laboratories have yet to be published and may tell a different story.

Competing Concerns

Whenever novel scientific evidence is offered in court, the legal system faces competing concerns. One one hand, there is a danger that excessive caution will prevent valuable evidence from being admitted in a timely manner. On the other hand, there is a danger that evidence accepted quickly and uncritically will later prove less reliable than promised.

DNA typing poses this dilemma in a striking manner. The stakes are high. It is an extraordinarily powerful and promising innovation, but the complexity of the techniques may hide some dangerous pitfalls and, in routine forensic use, it may fail to live up lodic high expectations of its proponents. Until additional validation studies are done, the legal profession would be well advised to approach the new techniques with caution.

expansive and flexible case-by-case approach to the valuation of shares. in fixing fair value under the amended statute, courts must examine "the nature of the transaction giving rise to the shareholder's right to receive payment for shares and its effects on the corporation and its shareholders, the concepts and methods then customary in the relevant securities *and* financial markets *for* determining fair value of shares of a corporation engaging in a similar transaction under comparable circumstances and all other relevant factors." By including the phrase "all other relevant factors" and deleting the phrase "excluding any appreciation or depreciation directly or indirectly induced by such corporate action or its proposal," the legislature evinced its intent that post-merger factors enter valuation computations.

The trial court should have addressed the tax benefits froni the transfer of ISO shares. The deduction for acquisition of the ISO shares was a corporate asset of SCM, admittedly susceptible to precise calculation before the merger, that represented value to SCM and arose from the accomplishment of the merger. The trial court should determine on remand whether the $75 figure included consideration of the tax deductibility of ISO shares.-Simons, J.

Dissent. The trial court was cognizant of the fact that the tender offers made throughout these takeover proceedings far exceeded the market value of the stock prior to the initiation of the buyout. The tax consequences of the merger were among the myriad of factors that produced a merger price of $75 per share.-Bellacosa, J.

Criminal Law and Procedure

EVIDENCE-

DNA print **identification** evidence is admissible in **Florida** courts for purpose of **linking defendant** to **body** fluids discovered **during investigation** of crime.

(Andrews v. Florida, Fla CtApp SthDist, No. 87-2166, 10/20/88)

This case concerns the admissibility of "genetic fingerprint" evidence, by which strands of coding found in the genetic molecule deoxyribonucleic acid (DNA) are compared for the purpose of identifying the perpetrator of a crime. The trial court admitted the evidence, and the defendant was convicted of various sexual offenses.

The victim was subjected to forcible vaginal intercourse by an intruder. A subsequent physical examination revealed semen in the victim's vagina. At trial, the state, over objection, presented DNA print identification evidence linking the defendant to the crime. The DNA test compared the defendant's DNA structure as found in his blood with the DNA structure of the victim finds blood and the DNA found in the vaginal swab taken from the victim shortly after the attack. The test was conducted by Lifecodes Inc., a corporation specializing in DNA identity testing. The test manager of Lifecodes testified to a match between the DNA in the defendant's blood and the DNA from the swab, stating that the percentage of the population that would have the DNA bands indicated by the samples would be 0.0000012 percent. In other words, the chance that the DNA strands found in the defendant's blood would be duplicated in some other person's cells was I in 839,914,540.

We have found no other appellate decision addressing the admissibility of DNA identification evidence in criminal cases.

We confess uncertainty as to the standard applicable in this state governing admission into evidence of a new scientific technique. Under *Frye v. U.S., 293* F 1013 (CA DC 1923), the technique must be sufficiently established to have gained general acceptance in the relevant scientific community. Other Florida district courts of appeal have followed a "relevancy approach," which was also substantially adopted by the Third Circuit in *U.S. v. Downing, 753 F2d* 1224, *53* LW 2431 (CA 3 1985). This approach recognizes relevancy as the linchpin of admissibility, while at the same time ensuring that only reliable scientific evidence will be admitted. We believe this approach should be followed in Florida.

In *Downing, the* Third *Circuit* declared that where, as here, a form of scientific expertise has no established "track record" in litigation, courts may look to a variety of factors that may bear on the reliability of the evidence. These include the novelty of the new technique, the existence of a specialized literature dealing with the technique, the qualifications and professional stature of expert witnesses, and the nonjudicial uses to which the scientific technique are put.

Several witnesses testified for the state concerning the test: a professor of molecular genetics at MIT who has published about 120 papers on the subject, a forensic scientist employed by Lifecodes who performed the DNA identification tests here, and the manager of forensic testing at Lifecodes and a teacher of DNA technology at New York Medical College.

DNA print identification is predicated on several well accepted scientific principles. DNA, a molecule that carries the body's genetic information, is contained in virtually every cell of an organism. The configuration of DNA is different in every individual with the exception of identical twins. In order to "read" the information contained in DNA, one needs to perform certain chemical procedures. A procedure known as restriction fragment length polymorphism has been in existence for about 10 years and enables scientists to cut the DNA strands at predetermined locations and compare the DNA structure of different individuals. The tests involves treatment of the DNA molecule with an enzyme or reagent that recognizes the differences in the sequences found in the molecule. One witness testified that DNA sequencing and comparison testing is considered reliable, is performed by a number of laboratories around the world, and is generally accepted in the scientific community. He stated also that information received from the test is routinely used in such areas as the diagnosis, treatment, and study of genetically inherited diseases.

The test here was performed by Lifecodes Inc., a licensed clinical laboratory in New York that performs forensic and paternity testing as well as testing in diagnosing genetic-type diseases. There was extensive testimony as to the precise methods used by Lifecodes in performing the instant test. There was also testimony that various controls were used in the testing process. Every reagent and enzyme is tested on known DNA samples. In addition, control samples containing known fragment sizes are loaded in the test to monitor the electrophoresis and assure an accurate result. The scientific testimony indicates acceptance of the testing procedures. The probative value of the evidence is for the jury.

In applying the relevancy test, it seems clear that the DNA print results would be helpful to the jury. Each of the state's witnesses was accepted by the trial court as an eminently qualified expert in the field of molecular genetics.

As noted in Downing, under the relevancy approach where a form of scientific expertise has no established "track record" in litigation, courts may look to other factors that bear on the reliability of the evidence. One of these is the novelty of the technique, i.e., its relationship to more established modes of scientific analysis. DNA testing has been utilized for approximately 10 years and is indicated by the evidence to be a reliable, well established procedure, performed in a number of laboratories around the world. Further, it has been used in the diagnosis, treatment and study of genetically inherited diseases. This extensive nonjudicial use of the test is evidence tending to show the reliability of the techniques.

Another factor is the existence of specialized literature dealing with the technique. The record reveals that a great many scientific works exist regarding DNA identification. A witness testified that Lifecodes maintains a file en all scientific journal articles and publications with regard to DNA testing, and he was unaware of any that argue against the test's reliability.

A further component of reliability is the frequency with which a technique leads to erroneous results. The testimony here was that if there was something wrong with the process, it would ordinarily lead to no result being obtained rather than an erroneous result. Further control samples are employed throughout the process which permit

errors, if any, to be discovered. These factors are further indicia of reliability.-Orfinger, J.

Election g

VOTING RIGHTS ACT-

Minority language provisions of Voting Rights Act **do not apply to** initiative petitions.

(Mmacro v. Meyer, CA 10, No. 88-2469, 11/1/88; rev'g 57 LW 2202)

The district court preliminarily enjoined Colorado from conducting an election on a proposed amendment to the state constitution initiated and circulated by members of the Official English Committee. The district court held that the Voting Rights Act, in particular 42 USC 1973b(f)(4), applies to initiative petitions. It invalidated petitions printed only in English that were circulated in counties in which printed election materials must be bilingual. The district court erred in finding the Voting Rights Act applies to initiative petitions.

Section 1973b(f)(4) states: "Whenever any state ... subject to the prohibitions (against discrimination against citizens of language minorities] provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language."

Section 1973b(f)(4) makes clear that the minority language provisions apply only to certain documents. Those documents pertain to "registration or voting" and "the electoral process." Unfortunately, no definition in the act discloses whether these terms apply to initiative petitions, or even whether the circulation of petitions is an act of "voting" or part of the "electoral process."

Hispanic voters contend that the petitions circulated in this case are governed by the Voting Rights Act because they are materials "required by law prerequisite to voting." 42 USC 19731(c)(I). Consequently, because the circulation of petitions is essential to obtaining the number of signatures necessary to place a measure on the ballot, the act of circulation is a "prerequisite to voting." Plaintiffs then conclude that because any "action prerequisite to voting" is "voting" by definition, the circulation of petitions is "voting" within the meaning of the act. This is an overly broad and misconceived construction of the statute.

The word "vote" involves actions pertinent to registering one's choice at a special, primary, or general election. Therefore, matters that are "prerequisite to voting" must be interpreted to be those that relate directly to the casting of a ballot. Implicit in both the statutory and the common definitions of the concept of voting is the presence of a choice to be made. One ordinarily votes to pick one candidate or another, or for or against the adoption of an initiated measure. Applying the concept of voting to a process that provides no choice defies the commonly accepted use of the term.

The circulation of a petition to initiate a constitutional amendment is just such a process. The Colorado initiative law does not provide an opportunity for a voter to express opposition to the measure contained in the petition. One can only agree to place the matter on the ballot, and that agreement is expressed by signing the petition. Thus, during the circulation process, those who are opposed to the adoption of the measure are limited to refusing to sign the petition or speaking out against it. We therefore conclude that the "electoral process" to which the minority language provisions of the act apply does not commence under Colorado law until the secretary or state certifies the measure as qualified for placement upon the ballot, and that signing of an initiated petition is not "voting."

The district court erred in deferring to guidelines adopted by the U.S. attorney general. 28 CFR 55.I9(a) provides: "A jurisdiction required to provide minority language materials *is* only required *to publish* in the language of the applicable language minority group materials distributed to or provided for the use of the electorate generally. Such materials include, for example, ballots, sample ballots, informational materials, and petitions."

The principle of deferring to administrative interpretations of a statute was misapplied here. First, the district court overlooked the context within which Section 55.I9(a) was adopted. As indicated by 28 CFR 55.14(a), this subpart "sets forth the views of the Attorney General" with respect to the requirements of the act concerning the provision of minority language materials. That the tenor of the applicable section is suggestive and not directory is made clear by Section 55.14(c), which states: "it is the responsibility of the jurisdiction to determine what actions by it arc required for compliance ... ." If deference should be given to the "views" of the attorney general, deference should be accorded also to his view that the "jurisdiction" is vested with discretion to determine what materials must be printed in the language of the language minority in the first instance.

Moreover, deference granted to an administrative interpretation cannot result in a construction of a statute beyond its limits. Because the Voting Rights Act applies only to voting and registration, 28 CFR 55.I9(a) cannot be construed to apply to other activities.-Moore, J.

Special **Concurrence.** When the injunction was dissolved on Oct. 12, this appeal was not ripe for adjudication and was probably moot because there may have been enough valid signatures to certify the initiative for the ballot.-Baldock, J.

VOTING RI(,ilfS ACT-

Minority language provisions of Voting Rights Act **do not apply** to Initiative petitions.

(Delgado v. Smith, CA I *I,* No. *88-6068,* 11/4/88)

Hispanic voters sought to prevent the vote on a proposed Florida constitutional amendment that would designate English as the official language of the state. Sponsors of the proposed amendment circulated a petition written only in English to obtain the requisite number of signatures to put the amendment on the ballot. The plaintiffs contend that this circulation violated the Voting Rights Act. The controlling provision of the act requires a state that distributes materials or information relating to the electoral process" to certain bilingual political subdivisions to provide them "in the language of the applicable language minority group as well as in the English language." 42 USC 1973b(f)(4).

The legislative history demonstrates that in enacting the Voting Rights Act and its amendments Congress was concerned exclusively with the ability of all citizens to exercise effectively their right to vote. The 1965 act was enacted to remedy the systematic exclusion of blacks from the polls. The 1975 amendments extended the act's coverage to four other minority groups, including Hispanics. Congress prohibited English-only elections in jurisdictions where more than 5 percent of the voting age citizen population was made up of any single language minority group, and the jurisdiction had a low voter registration or turnout in the 1972 presidential election. Significantly, Congress has never shown any intent, either in the text or in the legislative history, to expand coverage of the act to materials distributed by private citizens.

Recently, in *Aforuero v. Meyer, 57* LW 2296 (1988), the Tenth Circuit faced a situation nearly identical to this one. The court held that the circulation of an initiative petition is not a "prerequisite to voting" under 42 USC 19731(c)(1) since it does not "relate directly to the casting of a ballot" and thus cannot be included within the definition of "voting" under Section 1973b(f)(4). Second, the court held that the act does not apply to the petition process in its own right. The history of the act, the stated intention of Congress, and the relevant case law persuade us that the Voting Rights Act could not properly be applied to the case before us.

We reject the contention that the interpretive guidelines issued by the Department of Justice regarding the language minority provisions require a contrary result. While

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

January 24, 1989

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, ME 04112

Re: State of Maine v. Dennis Deschaine
CR-88-244

Dear Tom:

Enclosed as further discovery is the following:

301 Additional supplemental report, Daniel L. Reed, 1-10-89

302 Inmate Medical Screening Form, James E. Clancy

303 Sagadahoc County Sheriff's Dept Inmate's Personel Property Form

304 Inmate Health History Form, Lincoln County Jail

305 Inmate Medical Screening Form, D.B. Maxcy

306 Lincoln County Jail Admissions Medical Screening Form

307 Request for Medical Attention

Sincerely,

1AV

ERIC E. WRIGHT
Assistant Attorney General

EEW/j ej
cc: Clerk, Sagadahoc County

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

December 2, 1988

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, ME 04112

Re: State of Maine v. Dennis Dechaine
CR-88-244

Dear Tom:

Enclosed as further discovery is the following:

298-300 Continuation report of Sgt. Richard Phippen covering 7/6/88 to 7/21/88

Sincerely,

ERIC E. WRIGHT
Assistant Attorney General

EEW/j ej
enclosure

cc: Clerk, Sagaciahoc Co.

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA. MAINE: 04333

November 23, 1988

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, ME 04112

Re: State of Maine v. Dennis John Dechaine
CR-88-244

Dear Tom:

Enclosed as further discovery are the following:

278-281	Continuation report of Det. Hendsbee covering 7/11/88 to 8/26/88
	Summaries of Interviews:
283	Donald Almy
284-286	Harry Buttrick
287-289	Debra and Christopher Crossman
290-291	Jennifer and John Henkel
292	Sharon Gilley
293	Bonnie Holiday
294-295	Holly and Doug Johnson

296 Raymond Knight

297 Richard Knight

Sincerely,

ERIC E. WRIGHT
Assistant Attorney General

EEW/j ej
enclosure

cc: Debra Nowak, Clerk

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERA --- ››
STATE HOUSE STATION 6
AUGUSTA. MAINE 04333

November 21, 1988

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, ME 04112

Re: State of Maine v. Dennis John Dechaine
CR-88-244

Dear Tom:

Enclosed as further discovery are the following:

260 Continuation report of Laboratory Technician Alison M. Phelps

261-277 Continuation report of Forensic Chemist Judith M. Brinkman

Sincerely,

ERIC E. WRIGHT
Assistant Attorney General

EEW/jej
enclosure

cc: Debra Nowak, Clerk

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HousE STATION 6
AUGUSTA, MAINE 0 4333

October 13, 1988

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, ME 04112

Re: State of Maine v. Dennis John Dechaine
CR-88-244

Dear Tom:

Enclosed as further discovery are the following:

215	Autopsy report amendment: microscopic examination
216-217	Continuation report of Det. Roy Brooks
218-224	Summaries of interviews referred to and noted in pp. 216-217
225-243	Continuation report of Det. Alfred Hendsbee
244-257	Summaries of interviews referred to and noted in pp. 231, 233, 241-243

Please note the discovery pagination skips pages 209-214. This is my error.

Sincerely,

ERIC E. WRIGHT
Assistant Attorney General

EEW/jej
enclosures

cc: Debra Nowak, Clerk

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA. MAINE 04333

September 20, 1988

Thomas J. Connally, Esq.
422 1/2 Fore Street
P.O. Box **756 DTS**
Portland, ME 04112

Re: State of Maine v. Dennis John Deschaine
CR-88-244

Dear Tom:

Enclosed as further discovery are the following:

169-180 Continuation report of Det. Steven Drake

181-208 Summaries of interviews of individuals listed in pp. 169-180.

Sincerely,

ERIC E. WRIGHT C
Assistant Attorney General

EEW/Jep
enclosures

cc: Clerk of Court

STATE OF MAINE
SAGADAHOC,SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-88-244

STATE OF MAINE)
)
v.)
)
DENNIS JOHN DECHAINE)

DEFENDANT'S ANSWER TO MOTION FOR DISCOVERY PURSUANT TO M.R. CRIM P. 16A

NOW COMES the Defendant Dennis Dechaine by and through his attorney Thomas J. Connolly and indicates on the record for the Court that the Defendant has no objection to the Motion for Discovery filed by the State on August 31, 1988 as it permits the State discovery which it should be entitled to as a matter of law.

DATED: _____

THOMAS J. CONNOLLY
P.O. Box 7563 DTS
Portland, ME 04112
(207) 773-6460

Thomas J. Connolly
Attorney at Law
422' Fore Street
PO Boa756301S
Portland Maine 04112
1207) 773-6460

STATE OF MAINE
SAGADAHOC, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-88 244

A

STATE OF MAINE)

v.) STATE'S MOTION FOR
) DISCOVERY PURSUANT TO
DENNIS JOHN DECHAINE) M.R. CRIM. P. 16A

NOW COMES the State of Maine, by and through Assistant Attorney General Eric E. Wright, to move pursuant to M.R. Crim. P. 16A(c), (d) and (e):

1. To permit the State to inspect and copy or photograph any reports or results of physical or mental examinations or of scientific tests, experiments, or comparisons, or any other reports or statements of experts which are within the defendant's possession or control and which the defendant intends to introduce as evidence in any proceeding.

2. To permit the State to inspect and copy or photograph or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which the defendant intends to intoduce as evidence in any proceeding.

3. To supply the names and addresses of the expert witnesses whom the defendant intends to call in any proceeding,

and if the expert witness has not prepared a report of examination or tests to require the expert to prepare and the defendant to serve a report stating the subject matter on which the expert is expected to testify, the substance of the facts in which the expert is expected to testify, and a summary of the expert's opinion and the grounds for each opinion.

Dated: August **31, 1988**

ERIC E. WRIGHT
Assistant Attorney General
Criminal Division
State House Station #6
Augusta, ME 04333

Date 9/6/88
Motion granted/denied
Justice Superior Court

CERTIFICATE OF SERVICE

I, Eric E. Wright, Assistant Attorney General, hereby certify that I have this day caused one copy of the foregoing State's Motion for Discovery Pursuant to M.R. Crim P. 16A(b) to be served upon Defendant's Attorney of Record, Thomas J. Connolly, Esq., by having the same deposited in the United States Mail, postage prepaid, addressed as follows:

422 1/2 Fore Street
P. 0. Box 7563 DTS
Portland, Maine 04112

Dated at Augusta, Maine this 31st day of August, **1988.**

5. -7.-4CA I
ERIC E. WRIGHT
Assistant Attorney General
Criminal Division

c) \

STATE OF INE
SAGADAHOC, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-88-244

STATE OF INE	)	
	)	
V.	)	DEMAND FOR NOTICE OF
	)	ALIBI PURSUANT TO
DENNIS JOHN DECHAINE	)	M.R. CRIM. P. 16A(b)

NOW COMES the State of Maine by and through Eric E. Wright, Assistant Attorney General, and demands that the defendant in this criminal case serve notice of alibi upon the State as to the indictment, stating the place which the defendant claims to have been at the time stated in the demand and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi, if he intends to rely on such a defense or introduce any evidence which may tend to have the effect of providing the defendant with an alibi.

The State proposes to establish at the trial that Sarah Cherry was kidnapped, raped, sexually abused, and murdered in Sagadahoc County, Maine, on July 6, 1988. The State demands notice of alibi from 12 noon through 9:00 p.m., July 6, 1988.

Dated: August 31, 1988

127c 131- rii.,

ERIC E. WRIGHT
Ass'.tant Attorney General
Criminal Division
State House Station #6
Augusta, ME 04333

Date 9/1/88
Motion granted/denied
Justice, Superior Court

CERTIFICATE OF SERVICE

I, Eric E. Wright, Assistant Attorney General, hereby certify that I have this day caused one copy of the foregoing Demand for Notice of Alibi Pursuant to M.R. Crim P. 16A(b) to be served upon Defendant's Attorney of Record, Thomas J. Connolly, Esq., by having the same deposited in the United States Mail, postage prepaid, addressed as follows:

422 1/2 Fore Street
P. O. Box 7563 DTS
Portland, Maine 04112

Dated at Augusta, Maine this 31st day of August, 1988.

ERIC E. WRIGHT
Assistant Attorney General
Criminal Division

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

August 31, 1988

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P. O. Box 7563 DTS
Portland, ME 04112

Re: State of Maine v. Dennis Dechaine
CR-88°244

Dear Tom:

Enclosed as further discovery is the following:

168. Letter from Thomas Dwyer, August 29, 1988.

Sincerely,

[redacted] h 1

Eric E. Wright
Assistant Attorney General
Criminal Division

EEW:mh
Enclosure

cc:V Clerk of Courts
Sagadahoc County

John R. WIcKeman. Jr.
Governor

Rollin Ives
Commissioner

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE G4333

August,23, 1988

Eric Wright
Attorney General
Station 36
Augusta, Me. 04333

Dear Mr. Wright: **Case: DENNIS DESCHAINE #73534**

On August 17, 1988 we received from Judith Brinkman blood for analysis.

No alcohol was detected in the blood.

The analysis was made by chemist Harold W. Booth.

Please advise if the packaging and any remaining material in this case may be destroyed. If not notified within thirty days we will assume that they are released for disposal.

Sincerely,

Thomas Dwyer
Chief Chemist
Public Health Laboratory

TD/lr

Bill: A.G.

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY *GENERAL*
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

August 24, 1988

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P. O. Box 7563 DTS
Portland, ME 04112

Re: State of Maine v. Dennis Dechaine
CR-88-244

Dear Tom:

Enclosed as further discovery are the following:

76. Report of Det. John C. Otis, 7-28-88 and 8-1-88:

77. Report of Lt. Charles N. Love, 7-22-88

78-81. Report of Det. John Cormier

81-83. Evidence control sheets

84. Evidence receipt, 7-9-88, Det. Cormier

85-89. Report of Det. Patrick M. Lehan, 7-7-88 and 7-8-88

89-91. Transcript of interview with Gary Jaspar

92-167. Inventories, search warrants, and affidavits on the four search warrants issued in this case.

Sincerely,

Eric E. Wright
Assistant Attorney General
Criminal Division

EEW:mh
Enclosures

cc: !/Clerk of Courts
Sagadahoc County

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA.. MAINE 04333

July 29, 1988

Thomas J. Connolly, Esq.
422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, ME 04112

Re: State of Maine v. Dennis Dechaine

Dear Tom:

Enclosed as further discovery are the following:

26-32	Autopsy report
33	Report of Sheriff David A. Haggett
34-36	Report of Det. Mark A. Westrum
37	Report of Deputy Leo J. Scopino
38-43	Report of Det. Barry DeLong
44-51	Summaries of interviews of individuals referred to on p. 43
54-65	Report of Det. John C. Otis and Det. Ronald K. Richards, 7-17 to 7-18-88
66-67	Report of Det. J.R. Gallant
68	Report of Det. Otis and Det. Richards, covering 7-20 and 7-21-88

Rec'd
08-02-88
R.M.

69	Report of Lincoln County Deputy Sheriff Brenda Dermody
70	Report of Lincoln County Deputy Sheriff Darryl Maxcy
71	Consent to search truck, dated July 7, 1988
72-75	Report of Det. Richards, covering 7-8 and 7-9-88

Sincerely,

ERIC E. WRIGHT
Assistant Attorney General
Criminal Division

EEW/jep

JAMES E. TIERNEY
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

July 13, 1988

George M. Carlton, Jr., Esq.
15 Center Street
P.O. Box 731
Bath, ME 04530

Re: State of Maine v. Dennis Dechaine

Dear George:

Enclosed as discovery in this case are the following (numbered in the lower righthand corner), following which right now is all I have to send:

1	Sadagahoc County S.O. complaint report
2-4	Report of Dep. Leo J. Scopino, Jr.
5-6	Report of Daniel L. Reed
7	Report of Dep. James E. Clancy
8-9	Report of Det. Mark A. Westrum
10	Advise of rights by Det. Westrum
11-25	Sagadahoc County S.O. radio logs

Sincerely,

S.t. A"Ltk

ERIC E. WRIGHT
Assistant Attorney General

EEW/jep
enclosures

Rec'd
08-02-88
L.W.

STATE OF MAINE

Lgad(,.hoc ,ss SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR- 88-244

STATE OF MAINE

WARRANT OF ARREST ON (INDICTMENT)

(M.R.CRIM.P. 4(b)(1) OR 9(b)(1))

v.

Dennis Dechaine
Defendant

TO ANY AUTHORIZED LAW ENFORCEMENT OFFICER:

YOU ARE HEREBY COMMANDED: to arrest Dennis Dechaine and bring him/ Jaxrc without unnecessary delay before the above entitled court to answer (an indictment))accompizinrOarvinf(matairin4 charging **him7l1tY with** Murder

in violation of Title 17-AM.R.S.A. Section (s) 17-A §2011(A)

Amount of bail required **(if fixed by court):** $ No Bail

Dated: August 1, 1988

(Justice) (.Gerie-)-Su Court

Under theauthority of this 7* **rrant, I(have arrested the within named** r **and now have him/her before the said court as within commanded.**

Dated: (?" ,- -

Authorized Officer

CR-48 Rev. 2/87

*tats of e ainc

Sagadahoc ,ss.

SUPERIOR COURT

CR-88®244

State of Maine

vs.

Dennis John Dechaine

ORDER FOR PSYCHIATRIC/ PSYCHOLOGICAL. EXAMINATION

WHEREAS, PURSUANT TO 15 MRSA § 101, AS AMENDED,

This Court for cause shown hereby Orders the defendant to be examined to determine his mental condition with reference to the issues of Criminal responsibility and competence to stand trial. It is further Ordered that the opinion of the examiner relative to the mental condition of the Defendant be reported forthwith to the court following said examination.

If said examination is not to be conducted in the county jail the Sheriff of said County is hereby ordered to keep and transport said defendant to the location of the examination and to remove said defendant from such location after examination and return him to our jail in said county.

SAID EXAMINATION TO BE CONDUCTED AT Forensic Evaluation Service, Augusta, Maine *

DATED August 2, 1988

J ie Sup trot urt

Hon. Carl O. radford

*Defendants Independant Evaluation to be Conducted with 60 Days of this date.
State's Stage I Evaluation to be conducted within 30 Days after Defendants fidependant Evaluation

* * * * * * * *

Counsel: George Carlton, Esq.
Thanas Connolly, Esq.

I, , a

hereby certify that pursuant to the foregoing order, I have examined the above named defendant and in my opinion he/she:

is (not) suffering from a mental disease or mental defect affecting his/her competence to stand trial.

is (not) suffering from a mental disease or mental defect affecting his/her criminal responsibility.

has (not) suffered from a mental disease or mental defect affecting his/her criminal responsibility.

further observation is (not) necessary.

Examiner (Title)

STATE OF MAINE

SAGADAHOC, ss.

SUPERIOR COURT
CRIMINAL ACTTON
DOCKET NO. CR-88-244

R.M.

STATE OF MAINE)
)
vs.)
)
DENNIS JOHN DECHAINE)

INDICTMENT FOR VIOLATION OF
17-A M.R.S.A. §201(1)(A) [COUNT I]
AND (B) [COUNT II] - MURDER
17-A M.R.S.A. §301(1)(A)(3)-
[COUNT III] - KIDNAPPING
17-A M.R.S.A. §§251(1)(B) AND 252(1)(B)
[COUNT IV] - RAPE
17-A M.R.S.A. §§251(1)(A)&(C)(3)
AND 253(1)(B) [COUNTS V & VI]
GROSS SEXUAL MISCONDUCT

COUNT I

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did intentionally or knowingly cause the death of Sarah Cherry, all in violation of 17-A M.R.S.A. §201(1)(A) (1983).

COUNT II

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did engage in conduct which manifested a depraved indifference to the value of human life and which did in fact cause the death of Sarah Cherry, all in violation of 17-A M.R.S.A. §201(1)(B) (1983 & Supp. 1987).

COUNT III

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did knowingly restrain Sarah Cherry with the intent to inflict bodily injury upon Sarah Cherry or to subject Sarah Cherry to conduct constituting the crime of gross. sexual misconduct as defined by 17-A M.R.S.A. §§251(1)(A)&(C)(3) and 253(1)(E) (1983 & Supp. 1987), all in violation of 17-A M.R.S.A. §301(1)(A)(3) (1983).

COUNT IV

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did engage in sexual intercourse with Sarah Cherry, who was not his spouse and who had not in fact attained her 14th birthday, all in violation of 17-A M.R.S.A. §§251(l)(B) and 252(1)(A) (1983 & Supp. 1987).

COUNT V

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did engage in a sexual act with Sarah Cherry, who was not his spouse and who had not in fact attained her 14th birthday, in that DENNIS JOHN DECHAINE did manipulate an instrument or device in direct physical contact with the genitals of Sarah Cherry for the purpose of arousing or gratifying the sexual desire of DENNIS JOHN DECHAINE or for the purpose of causing bodily injury or offensive physical contact to Sarah Cherry, all in violation of 17-A M.R.S.A. §§251(1)(A) & (C)(3) and 253(1)(B) (1983 & Supp. 1987).

COUNT VI

On or about July 6, 1988, in the County of Sagadahoc, State of Maine, DENNIS JOHN DECHAINE did engage in a sexual act with Sarah Cherry, who was not his spouse and who had not in fact attained her 14th birthday, in that DENNIS JOHN DECHAINE did manipulate an instrument or device in direct physical contact with the anus of Sarah Cherry for the purpose of arousing or gratifying the sexual desire of DENNIS JOHN DECHAINE or for the purpose of causing bodily injury or offensive physical contact to Sarah Cherry, all in violation of 17-A M.R.S.A. §§251(1)(A) & (C)(3) and 253(1)(B) (1983 & Supp. 1987).

A TRUE BILL

Dated: _____

_____

FOREMAN

STATE OF MAINE
SAGADAHOC, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-88°

STATE OF MAINE

V.

DENNIS DECHAINE

ORDER

Upon consideration of the defendant's motion for a court reporter to be present at the grand jury proceedings, the State's opposition thereto, and argument heard by the court on July 29, 1988, and upon the State's representation that the language of this Order has been read to and approved by defense counsel, it is

ORDERED, pursuant to M.R. Crim. P. 6(f), that a court reporter shall be present in the grand jury only during the testimony of any witness who the State knows or anticipates shall be testifying about statements or admissions of the defendant made to any person during the course of the investigation of the death of Sarah Cherry on or about July 6, 1988; and it is further

ORDERED that the State shall excuse the court reporter from attendance in the grand jury during the taking of evidence of any witness who the State knows or anticipates will not be testifying about statements or admissions of the defendant.

Dated: /1s6usr 4 /?8f

CARL O. B••~FORD
Justice of the S :erior Court

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STATE OF MAINE
SAGADAHOC, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-88-

STATE OF MAINE

v.

DENNIS DECHAINE

MOTION IN OPPOSITION TO DEFENDANT'S REQUEST FOR COURT REPORTER AT GRAND JURY

NOW COMES the State of Maine, by and through Assistant Attorney General Eric E. Wright, and opposes the defendant's Request for Reporter Present at Grand Jury Proceedings on the ground that the request does not meet the requirements of the pertinent rule, M.R. Crim. P. 6(f). That rule permits the court to order a court reporter to be present during the taking of evidence in the grand jury only for "good cause shown." If a defendant has not demonstrated good cause, the court is without authority to order a court reporter to be present (and even if good cause has been shown, there is no requirement that a court reporter be present; the matter then is within the court's discretion).

As the State reads the defendant's request, the sole basis for the defense request is the claim that a record of any statements made by the defendant must be made. There is

nothing in the request which suggests why such evidence should be singled out for special attention or why a record of such must be made in the grand jury. The defense request baldly claims "a good faith belief that there are unique aspects about [such] testimony..." in this case, without even asserting the reasons for that claim. It is no answer to suggest, as the request seems to, that there may be something particular, different, or unusual about the weight, veracity, and credibility of any statements made by this defendant, or about the circumstances in which they may have been made. The same may be said in any case; every case is different. And to acknowledge this is to recognize that the defendant here has not shown good cause. See, e.g., State v. Rich, 395 A.2d 1123, 1127 (Me. 1978). See generally D. Cluchey & M. Seitzinger, 1 Maine Criminal Practice § 6.7, pp. 6-18 to 6-21 (1987).

The State further observes that the request--"for recording of the grand jury proceedings"--is broader than that permitted by Rule 6(f), which allows for a court reporter to be present only for "taking evidence."

Respectfully submitted,

Dated: 27, 1988

ERIC E. WRIGHT
Assistant Attorney General
Criminal Division

CERTIFICATE OF SERVICE

I, Eric E. Wright, Assistant Attorney General, hereby certify that I have this day caused one copy of the foregoing Motion in Opposition to Defendant's Request for Court Reporter at Grand Jury to be served upon Defendant's Attorney of Record, Thomas J. Connolly, by having the same deposited in the United States Mail, postage prepaid, addressed as follows:

422 1/2 Fore Street
P.O. Box 7563 DTS
Portland, Maine 04112

Dated at Augusta, Maine this 27th day of July, 1988.

ERIC E. WRIGHT
Assistant Attorney General

STATE OF MAINE
SAGADAHOC, SS.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. 88-

STATE OF MAINE)
)
V.) REQUEST FOR REPORTER PRESENT
) AT GRAND JURY PROCEEDINGS
DENNIS DECHAINE) (M.RaCrim.P. 6(f))

NOW COMES the Defendant, Dennis Dechaine, by and through counsel, and respectfully requests this Honorable Court to require; the presence of a court reporter during all grand jury proceedings% relating to Dennis Dechaine and for good cause states as follows:

1) The Defendant, Dennis Dechaine, was charged by was of District Court complaint on July 12, 1988 with a violation of 17-A M.R.S.A. §2011(A), Murder;

2) The Defendant has been denied bail pursuant to an order , from the Honorable Judge of the District Court;

3) Based on preliminary discussions and information provided by the office of the Attorney General, the evidence to be used against the Defendant includes extra-judicial admissions made to a third party and by the Defendant to police officers;

4) Due to the nature and seriousness of the offense as well as the extra-judicial statements and the circumstances surrounding their being given, it is essential that the grand jury) proceedings are at least preserved so as to provide for further redress if necessary;

5) Counsel for the Defendant presents a good-faith belief that there are unique aspects about the testimony of the extra-judicial statements which would go towards their weight and

Thomas J. Connolly
Attorney at Law
422'2 Fore Street
PO Box 7563 0 TS
Portland Mane 04112
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veracity as well as credibility;

6) Counsel has a good faith belief that there is a necessity to record the grand jury proceedings in that the extra-judicial statements were made to individuals who were in proximity to the Defendant at the time of the alleged admissions and which go to state of mind, culpable mental state and issues of waiver of constitutionally protected rights;

7) The recording of the grand jury proceedings will in no way impinge upon the safety or secrecy of the grand jury and would not be unduly burdensome.

WHEREFORE, the Defendant respectfully requests that this Honorable Court provide recording of the grand jury proceedings.

DATED:

THOMAS CONNOLLY
P. O. ox 7563, DTS
Portland, ME 04112
(207) 773-6460

Thomas J. Connolly
Attorney at Law
422 r Fore Street
PO Boa 7563 D T S
Portland Marne 04112
12071 773-6460

STATE OF MAINE
SAGADAHOC, SS.

n Pn

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-

STATE OF MAINE)
)
v.) MOTION FOR SPECIAL
) GRAND JURY SESSION
DENNIS DECHAINE)

NOW COMES the State of Maine, by and through Assistant Attorney General Eric E. Wright, to request that the court order a special session of the grand jury for presentation by the State of the above-entitled case, and as grounds therefor asserts:

1. The defendant was arrested for murder on July 8, 1988, was arraigned in the District Court on July 11, 1988, where an initial determination of probable cause was made, and is being held without bail pending a probable cause hearing in the District Court on August 17, 1988, or action by the grand jury before then.

2. The State wishes to have more time to prepare its case for grand jury than it could have had if it had had to present the matter to the grand jury during its regular session, which ends on July 13, 1988, although the State could have presented the case if necessary. Defense counsel, however, also wished to have some time to review any available discovery and to consider filing any appropriate motions. Upon receiving this

request, and with the understanding that the defendant would not ask for a bail review prior to grand jury action, the State was agreeable to asking the court to schedule a special grand jury session.

WHEREFORE the State moves the court to hold a special session of the grand jury for presentation of evidence in the above-entitled case.

Dated:

Respectfully submitted,

Eric E. Wright

ERIC E. WRIGHT
Assistant Attorney General
Department of Attorney General
Criminal Division
State House Station #6
Augusta, ME 04333
Tel (207) 289-3661

CERTIFICATE OF SERVICE

I, Eric E. Wright, Assistant Attorney General, hereby certify that I have this day caused one copy of the foregoing Motion for Special Grand Jury Session to be served upon Defendant°s Attorney of Record, George M. Carlton, Jr., Esq., by having the same deposited in the United States Mail, postage prepaid, addressed as follows:

15 Center Street
P.O. Box 731
Bath, ME 04530

Dated at Augusta, Maine this 12th day of July, 1988.

Date enied
Motion granted/d

Justice Superior

U.9,' Li --

ERIC E. WRIGHT
Assistant Attorney General