

John D. Lee, First Trial

Discussion on Instructions  
and  
Judge Jacob S. Boreman  
Charge to the Jury

**RT**

**RS**

**BT**

**PS**

	<p><i>[Bk 9 30 cont.]</i></p> <p>COURT <i>TO/BY</i>[?] PROSECUTION HAVE YOU ANY FURTHER WITNESSES NO SIR BELIEVE NOT BY COURT HAVE YOU ANY INSTRUCTIONS FOR JURY DO YOU WANT TO ARGUE ANY INSTRUCTIONS BY COURT TO PROSECUTION HAVE YOU GOT YOURS READY CAREY YES SIR BASKIN IN OUR INSTRUCTIONS WE ONLY DREW UP INSTRUCTIONS <i>[[31]]</i> ON SPECIAL POINTS NOT KNOWING WHAT YOUR PRACTICE WAS DOWN HERE. BEING  PRACTICED IN  DISTRICT COURT INSTRUCTS</p>	<p><i>[Bk 5 330 cont.]</i> THE COURT: (TO PROSECUTION) HAVE YOU ANY FURTHER WITNESSES? BASKIN: NO, SIR, I BELIEVE NOT. THE COURT: HAVE YOU ANY INSTRUCTIONS FOR THE JURY? DO YOU WANT TO ARGUE ANY INSTRUCTION S. .? COURT: (TO CAREY) HAVE YOU GOT YOURS READY? CAREY: YES, SIR. <i>[[331]]</i> BASKIN: IN OUR INSTRUCTIONS WE ONLY DREW UP INSTRUCTIONS ON SPECIAL POINTS , NOT KNOWING WHAT YOUR PRACTICE WAS DOWN HERE. THAT HAS BEEN OUT PRACTICE IN THE THIRD DISTRICT COURT.</p>	<p><i>[[Bk 11 7]]401</i></p> <p>BASKIN IN OUR INSTRUCTIONS WE ONLY DREW UP INSTRUCTIONS ON SPECIAL POINTS NOT KNOWING WHAT YOUR PRACTICE WAS DOWN HERE BEING  PRACTICED THAT COURT <i>OF/AFTER</i>[?] ITS OWN MOTION INSTRUCTS</p>
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401. Verso of page 7 contains drawn profiles of men; one is identified as Josephus Wade.

**RT**

**RS**

**BT**

**PS**

	<p>FULLY&gt;. WE ONLY DREW UP SPECIAL INSTRUCTIONS [space]</p> <p>OUR OUR INSTRUCTIONS DO NOT COVER WHOLE GROUND OF THE CASE. IT HAS BEEN OUR PRACTICE UP THERE, &lt;THAT THE&gt; JUDGE INSTRUCTS ON GENERAL PRINCIPLES AND SUCH MATTERS ON GENERAL PRINCIPLES AS TO WHAT IS MURDER ETC. [space] BY HOGE TO JUDGE WE HAVE NOT ALL OUR INSTRUCTIONS HERE WITH US BY US BY COURT YOU HAD BETTER</p>	<p>WE ONLY DREW UP SPECIAL INSTRUCTIONS,</p> <p>AND WE DON'T KNOW WHETHER THE INSTRUCTION S WILL COVER THE WHOLE GROUND OR NOT, BUT THAT HAS BEEN OUR PRACTICE UP THERE, THAT THE COURT UINSTRUCTS ON GENERAL PRINCIPLES ON SUCH MATTERS. ON GENERAL PRINCIPLES AND WHAT IS NECESSARY. HOGE: WE HAVE NOT ALL OUR INSTRUCTIONS HERE.</p> <p>COURT: YOU HAD BETTER</p>	<p>FULLY WE ONLY DREW UP INSTRUCTION AS TO SPECIAL POINTS COURT AS A RULE I CONFINE MYSELF AS CLOSELY AS POSSIBLE TO THE WRITTEN INSTRUCTION [space]</p>
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**RT**

**RS**

**BT**

**PS**

	<p>SEND FOR THEM.</p> <p>10 11 AM BOTH PARTIES EXCHANGED THEIR WRITTEN INSTRUCTIONS AND PROCEEDED TO READ CAREY AND BASKIN EXAMINED THOSE OF THE DEFENSE AND HOGE MACFARLANE SUTHERLAND THOSE OF THE PROSECUTION. [space] BY BISHOP ≤IF YOU OBJECT TO THE≥</p> <p>PARTY’S INSTRUCTIONS AS WRITTEN</p> <p>TO BE PRESENTED TO JURY THE SIMPLE WORD OF OBJECTED IS ALL THAT IS NECESSARY</p>	<p>SEND FOR THEM THEN AT ONCE..</p> <p>BIDSHOP : IF YOU OBJECT I UNDERSTAND THE RULE TO BE THAT <del>ONE</del> <del>ONE</del> ONE OR THE OTHER PARTY OBJECTE TO A WRITTEN INSTRUCTION</p> <p>REQUESTED TO BE PRESENTED TO THE JURY, THE SIMPLE WORD “OBJECT ” IS ALL THAT IS NECESSARY TO BE WRITTEN</p>	<p>BISHOP I UNDERSTAND RULE TO BE THAT WHEN EITHER PARTY OBJECTS TO A SIMPLY WRITE OBJECT WITHOUT ANY REASON?</p>
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**RT**

**RS**

**BT**

**PS**

	<p>BY COURT YES SIR [<i>space</i>] WHEADON COURT PLEASE IT MAY AS WELL BE ANNOUNCED WITNESSES WILL NOT BE</p> <p>WANTED ANY LONGER IN THIS CASE SOME IN TOWN WISH TO LEAVE AND GO HOME. BY COURT [<i>space</i>] SUTHERLAND WE DESIRE TO RETAIN NEARLY ALL OF OUR WITNESSES FOR THE NEXT CASE. I UNDERSTAND DAME'S CASE IS SET FOR NEXT MONDAY WHILE THEY ARE ALL AT LIBERTY NOW TO GO INTO THE ROOM WE DESIRE THEY SHOULD REMAIN WITH INJUNCTION TO RETURN NEXT MONDAY. WHEADON IT IS INCURRING</p>	<p>ON IT? COURT: YES, SIR.</p>	<p>&lt;COURT&gt; YES SIR [<i>space</i>] WHEADON</p> <p>WITNESSES IN THIS CASE WILL NOT BE FURTHER WANTED. [<i>space</i>]</p>
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**RT**

**RS**

**BT**

**PS**

	<p>LARGE BILL OF EXPENSES WHEN THERE IS NO JURY FOR THEM. MANY OF THEM WISH TO LEAVE AND GO HOME. BY COURT WITNESSES FOR PROSECUTION CAN GO HOME AS FAR AS THIS CASE IS CONCERNED. IF THEY ARE NOT NEEDED ON ANOTHER CASE; IF THEY ARE NEEDED ON ANOTHER CASE THEY MUST REMAIN. 10:30 COUNSEL OF BOTH SIDES STILL CONTINUED TO PURSUE INSTRUCTIONS IN WRITING OFFERED TO BE READ TO JURY. FIRST PAPER OF INSTRUCTIONS ≪ON THE PART OF PROSECUTION≫ HE HANDED TO JUDGE BOREMAN 1045 AM. [space] BY COURT WILL THERE BE ANY</p>	<p>COURT: WILL THERE BE ANY</p>	<p>COURT WILL THERE BE ANY</p>
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**RT**

**RS**

**BT**

**PS**

	<p>ARGUMENTS?</p> <p>CAREY WE ARE WILLING TO SUBMIT THEM WITHOUT ARGUMENT. BY COURT &lt;TO BISHOP&gt; DO YOU DESIRE TO INSTRUCT ON YOUR OWN INSTRUCTIONS BISHOP I THINK IT WOULD BE BEST FOR US <i>PERHAPS</i>[?] SETTLE THEM FULLY. MR. MARSHAL HAVE YOU GOT ROOM YOU CAN TAKE JURY TO</p> <p>YES SIR</p> <p>BY COURT</p> <p>TAKE THE JURY</p> <p>UNTIL THEY GET THROUGH WITH THIS DISCUSSION ON LEGAL POINTS.</p> <p>THE JURY WERE</p>	<p>ARGUEMENTS ON THESE INSTRUCTIONS ? CAREY: WE ARE WILLING TO SUBMIT THEM WITHOUT ARGUEMENT? COURT: DO YOU DESIRE TO INSTRUCT ON YOUR OWN INSTRUCTIONS ? BISHOP: I THINK IT WOULD <b>BE</b> BEST FOR US, TO SETTLE THEM FULLY. COURT: MR. MARSHAL HAVE YOU A ROOM THAT YOU CAN TAKE THIS JURY TO? € MARSHALL: YES, YOUR HONOR. THE COURT: THEN YOU HAD BETTER TAKE THE JURY TO THEIR ROOM TILL COUNSEL GËT THROUGH THIS DISCUËSSION OF LEGAL POINTS. (MARSHAL TAKES THE JURY</p>	<p>ARGUMENTS ON THESE INSTRUCTIONS ? CAREY WE ARE WILLING TO SUBMIT THEM [<i>space</i>]</p> <p>BISHOP [<i>space</i>]</p>
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	<p>TAKEN OUT TO ROOM UNTIL THE DISCUSSION.</p> <p>1050 AM. CAREY ASKED IF HE COULD READ HIS INSTRUCTIONS COURT ANSWERED AFFIRMATIVE CAREY IT WILL</p>	<p>TO THEIR ROOM IN ACCORDANCE WITH THE COURT'S DIRECTIONS.) OBJECTIONS TO INSTRUCTIONS ARGUED BY COUNSEL ON BOTH SIDES.</p>	
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**RS**

PROBABLY SAVE TIME MR. HAWLEY HAS GONE AFTER COUPLE OF AUTHORITIES. [space] CAREY I THINK WOULD READ THEM IN CONNECTION WITH THE AUTHORITIES THAT WOULD SAVE ME GOING OVER THEM TWICE. ALSO[?] THERE ARE TWO OR 3 OF THOSE WE HAVE NO AUTHORITIES UPON I WILL READ THOSE COMMENTS AT THE LAST. IT IS NOT NECESSARY TO PROVE THERE WAS PERSON BY NAME OF JOHN SMITH AT THE TIME OF MASSACRE IN ORDER TO CONVICT JOHN D. LEE IF THE JURY BELIEVE THERE WAS ONE OR MORE BE KILLED AND THAT HE AIDED AND ABETTED IN KILLING ONE OR MORE OF SAID INDIVIDUALS IN EVIDENCE BEFORE THEM I BELIEVE THAT LAST ONE I HAVE READ IS NOT OBJECTED TO THE OTHER IS <sup>[[32]]</sup> PROCEEDED TO READ FURTHER IT IS NOT NECESSARY TO ACTUALLY PROVE HE KILLED ANY ONE OF SAID PARTIES BY HIS OWN HAND. OTHERS ARE IN REGARD DEFINITION OF REASONABLE DOUBT. [space] PROCEEDED READ ANOTHER CLAUSE. AND THAT DONE HE READ FROM BISHOP ON CRIMINAL LAW IN ORDER TO SUSTAIN THAT DEFINITION OF REASONABLE DOUBT READ FROM DECISION MADE CASE DANIEL VS. PEOPLE [space] IS NOTE 4 OF SECTION 1053 BISHOP'S CRIMINAL PROCEDURE IT IS A LONG NOTE THIS IS NOTE OF THE DEFINITION GIVEN BY SUPREME COURT OF NEW JERSEY. WE HAVE KEPT THAT PRECISELY AFTER STATING THEY MUST BE CONVICTED BEYOND REASONABLE DOUBT. WE HAVE ALSO A FURTHER DEFINITION GIVEN BY CHIEF JUSTICE SHAW OF MASSACHUSETTS PROCEEDED TO READ IT IS THAT IS A CASE



WHICH AFTER ALL EVIDENCE THEY CAN'T SAY THEY FEEL ABIDING CONVICTION OF MORAL CERTAINTY OF THE GUILT OF PRISONER. <sup>////</sup> READ FROM AMERICAN CRIMINAL LAW THAT CHANGED ONLY READ NOTE AT THE CLOSE PAGE 707 THIS IS NOT THE SAME DEFINITION I HAVE HERE. ~~MR. BISHOP~~ <700> 1ST WHARTONS CRIMINAL LAW 1847 FIFTH CUSHING <AGAINST> COMMONWEALTH ~~AGAINST~~ CHIEF JUSTICE SHAW'S DEFINITION IT IS NOT MERE POSSIBLE DOUBT BECAUSE SAYS CHIEF JUSTICE EVERYTHING RELATING HUMAN AFFAIRS DEPENDING ON MORAL EVIDENCE IS ETC., CAN/CAN'T[?] FEEL MORAL CERTAINTY OF CHARGE. WE HAVE CHANGED TO READ THIS WAY ABOUT THE MORAL CERTAINTY OF THE GUILT OF THE PRISONER ONLY DEFINED BY OURSELVES SUTHERLAND I HAD THEIRS AND YOUR HONOR'S PLEAS TO REPLY TO SO MUCH OF COUNSEL REQUEST HAS REFERENCE TO NECESSITY IT IS NOT BEING NECESSARY TO PROVE THAT THE MEN KILLED AT MOUNTAIN MEADOWS WERE UNKNOWN AND JOHN SMITH WE HAVE A REQUEST UPON SAME SUBJECT OUR VIEWS MAY BE PUT IN CONTRAST WITH THE REQUEST OF MR. CAREY BY REFERENCE TO REQUEST WHICH I NOW PROCEED TO READ [space] THE DEFENDANT CAN NOT BE CONVICTED UNLESS PROOF ESTABLISHES A FELONIOUS KILLING OF ONE OR MORE OF THE PARTY OR COMPANY CONSISTING JOHN SMITH SEVERAL MEN WOMEN AND CHILDREN AS ONE TRANSACTION. THAT ONE OF THE PARTY WAS IN FACT NAMED JOHN SMITH THAT THE NAMES OF ALL OTHERS WERE UNKNOWN TO GRAND JURY THAT FOUND THE INDICTMENT THIS REQUEST PROCEEDED AND IS BASED UPON THE ASSUMPTION THAT PROSECUTION HAVE ONLY ATTEMPTED TO CHARGE ONE OF THE OFFENSES IN THIS COUNT OF INDICTMENT THEY HAVE FURTHER ALLEGED THE KILLING OF 50 OR 51 PERSONS. UNLESS THIS KILLING WAS ALL ONE TRANSACTION AND JUST THE TRANSACTION MENTIONED IN THE INDICTMENT THE KILLING OF EACH PERSON WOULD BE A SEPARATE OFFENSE OF MURDER. THEY HAVE ATTEMPTED IDENTIFY THAT TRANSACTION BY REFERRING TO THE NAMES OF THE PERSONS KILLED IN A PARTICULAR WAY. RULE IS AND THE AUTHORITIES ALL AGREE UPON IT THE NAME OF THE DECEASED MUST BE STATED IF THERE IS SINGLE PERSON IF THERE IS PARTY KILLED AND THEY GO FOR THE MURDER OF THE WHOLE PARTY THEY MUST DO SO AS ONE TRANSACTION <sup>[[33]]</sup> DO NOT THINK THAT PARTY AS IN CASE OF MURDER OF ONE PERSON BY MENTIONING HIS NAME IF UNKNOWN STATED IT IS KNOWN AND PROVING IT IS UNKNOWN [space] THEY HAVE ALLEGED IN THIS INDICTMENT THERE WAS <sup>///</sup>PARTY [space] OF JOHN SMITH AND 50 UNKNOWN PERSONS OF BOTH SEXES INCLUDING CHILDREN WHILE I DO NOT INSIST THE NUMBER IS ANY ESSENTIAL PART OF DESCRIPTION NOTE THAT THAT IT WAS A PARTY CONSISTING OF ONE OR MANY PERSONS AND THAT IT CONSISTED OF MEN WOMEN CHILDREN AND THAT ONE OF THE PARTIES WAS JOHN SMITH RULE IS EVIDENT FROM BETTER READING OF THE INDICTMENT SINCE THEY CAN ONLY CONVICT DEFENDANT OF THE VERY CRIME MENTIONED IN COMPLAINT SINCE THEY WOULD BE UNABLE FOR THE CHARGED KILLING OF JOHN SMITH *AND/TO*[?]

CONVICT HIM OR PROVE THAT HE DID KILL JOHN DOE THEY MUST PROVE THE IDENTITY OF THE PERSONS AS THEY HAVE ALLEGED 'EM THE PARTY CONSISTING OF BOTH SEXES OF MORE THAN ONE PERSON THAT ONE OF PERSONS WAS JOHN SMITH. THEY REQUEST AS I UNDERSTAND IT THAT IT IS NOT NECESSARY TO SHOW THERE WAS A JOHN SMITH THERE. SINCE THEY HAVE OBJECTED TO THIS REQUEST THEY INSIST ALSO THAT NEED NOT BE PROVED THAT THE OTHER PERSONS WERE UNKNOWN. CAREY I DID NOT STATE THAT [space] I SAY AS YOU HAVE OBJECTED TO THIS REQUEST *YOU HAVE*[?]<sup>402</sup> BECAUSE COURT HAVE AFFIRMED <THIS> IT NECESSARILY MUST BE IMPLIED THEY DON'T THEY ARE NOT BOUND BY THE PROOF AND TO IDENTIFY SUCH A TRANSACTION AS IS STATED IN THE INDICTMENT IN OTHER WORDS THEY ARE ARE NOT BOUND TO PROVE THERE WAS A JOHN SMITH THEY ARE NOT BOUND TO PROVE OTHER PERSONS WERE NOT KNOWN. WE ACKNOWLEDGE THERE WAS A PERSON PROVED BY NAME OF JOHN SMITH THIS KNOWLEDGE *TEND*[?] TO THE NECESSITY THEIR PROVING ~~WAS~~ ONE OF PERSONS THERE KILLED WAS JOHN SMITH THERE WAS ~~≡SUCH A≡~~ PARTY [space] THEY SAID THEY ARE BOUND TO SHOW THAT EITHER ALL ALL BUT ONE ARE UNKNOWN. IF THEY ARE BOUND TO PROVE ANY PART ARE UNKNOWN PARTIES BECAUSE THEY HAVE ALLEGED THEM TO BE UNKNOWN THEY MUST UNDER THE RULE OF COURT PLEAD MUST EITHER CONSIDER ALL THE PERSONS ALLEGED TO BE KILLED WERE UNKNOWN OR ELSE THEY MUST STATE THE NAMES [space] AND IF THEY STATE THE NAMES THEY MUST PROVE THE ALLEGATION AS THEY MAKE IT. ALLEGATION IS ALL WERE UNKNOWN BUT ONE FOR THEY ARE BOUND TO PROVE ALLEGATION IN RESPECT TO THOSE UNKNOWN BY ESTABLISHED PROCESS OF REASONING *RL/REALLY/RULE*[?] *RELATIVE/RELIEVED*[?] FROM PROOF ONE ALLEGED TO BE KNOWN WAS SUCH A PERSON BEARING SUCH A NAME AS IS STATED IN INDICTMENT [space] <sup>[134]</sup> SUTHERLAND [space] FIRST BISHOP'S CRIMINAL PROCEDURE SECTION 552 WHERE IN THIS CASE IT IS RULED NECESSARY TO MENTION NAME OF *THIRD*[?] PERSON ETC. IN ANOTHER PART OF SAME SECTION AFTER HAVING REFERRED TO CASE WHERE CHIEF JUSTICE SHAW'S REMARKS ARE QUOTED HE SAYS WE PROBABLY ERR FURTHER IF WE WERE TO ASSUME *TURN/ATTORNEY*[?] OF THIS CASE *ORDER*[?] CIRCUMSTANCES OF THE TRIAL WITH REFERENCE TO SPECIAL FACTS JURY WOULD BE JUSTIFIED IN FINDING WHENEVER WAS MERE ABSENCE RESPECTING SAME THAT THE JURY WOULD JUSTIFIED IN FINDING VERDICT UPON THE COUNT ALLEGING NAME TO BE UNKNOWN WHENEVER WAS MERE ABSENCE RESPECTING NAME THIS *FRMND/FRMNT/—*[?] MUST BE *UNDERSTOOD TO HAVE*[?] PROVED THE SAME AS ~~≡SUTHERLAND≡~~ THE OTHER GROUNDS. THAT TAKEN IN CONNECTION WITH WHAT WILL BE SAID WHAT I MAY ASSUME IF YOUR HONOR WOULD ALLOW IT IS IF WE WILL LEARN WHERE NAME IS NOT ALLEGED TO BE UNKNOWN BUT THE NAME IS ~~NAME~~ GIVEN NAME OF PERSON KILLED THEY MUST PROVE THAT A PERSON OF THAT NAME WAS KILLED AND

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402. The word is written over an illegible symbol.

THERE CAN BE NO VERDICT OF GUILTY WITHOUT THAT PROOF TAKE ALL TOGETHER WE SAY REQUEST WE HAVE MADE MUST BE GIVEN IN WHOLE THEY MUST IDENTIFY THIS TRANSACTION KILLING OF PARTY CONSISTING OF UNKNOWN PERSONS AND JOHN SMITH THEY SAID THAT ACCOSTED[?] HAS A NAME OF JOHN SMITH ON THAT ACCOUNT WE OBJECT AND THERE IS A NECESSITY UPON OURSELVES[?] MR. BISHOP WILL REPLY TO IT SO FAR AS THEY SHOULD ALLEGE THAT SUBJECT OF QUANTITY AND QUESTION OF EVIDENCE AUTHORIZING IT. 11 12 AM BISHOP WE OBJECT TO {THE}<sup>i</sup> FIRST INSTRUCTION ARGUED BY DEFENSE BECAUSE YOU <WE> SAY IT DOES NOT STATE FULL RULE AS FAR AS IT GOES PERHAPS IT IS THE LAW BUT IT MAKES AN EFFORT TO STATE THE RULE WITHOUT GIVING ENTIRETY OF IT THE SECOND IS IN THE SAME WAY GENTLEMAN ARGUING INSTRUCTION AND IN PROVING POINT BECAUSE AS THEY LAY DOWN RULE AS STATED BY CHIEF JUSTICE SHAW WITH THEM ARGUING INSTRUCTION COVERING AND SETTING FORTH COVERING WHOLE QUESTION SET FORTH THE LETTER OF THE RULE. AND WE OBJECT TO THIRD INSTRUCTION THAT THEY ASK BECAUSE IT FAILS TO STAND AND IS NOT LAW. LAST INSTRUCTION IT IS NOT NECESSARY TO PROVE THERE WAS PERSON NAMED JOHN SMITH KILLED AT MOUNTAIN MEADOWS WE OBJECT TO THAT BECAUSE IT IS ABSOLUTELY NECESSARY TO STATE THE NAME AND PROVE IT IS NAME IN INDICTMENT [space] WE CALL YOUR HONOR'S ATTENTION IN THIS THERE HAS BEEN NO TESTIMONY THAT THE NAMES OF THESE PARTIES WERE NOT KNOWN TO GRAND JURY AS FOUND IN INDICTMENT IT IS GRAND JURY THAT FOUND INDICTMENT [space] EVIDENCE MUST SUSTAIN THAT ALLEGATION THAT THE NAME OF THAT PARTY CLAIMED TO BE KILLED WAS UNKNOWN PROSECUTION MUST SO SHOW JURY MUST FIND THAT TRYING THE CASE. <sup>[[35]]</sup> WE CLAIM INSTRUCTIONS ASKED BY PRISONER IN THIS CASE FALL SHORT OF THE RULE. WE ARE CONSISTENT IN OUR OBJECTIONS <BASED ON> 32 CALIFORNIA <COMMENCING> PAGE 433. PEOPLE AGAINST LAGANS/LGNS[?]. IN THIS CASE DEFENDANT WAS INDICTED FOR MURDER OF BABBLE[?] MRN/MARIN[?] LOS ANGELES COUNTY 22 SEPTEMBER 1856 COURT OF APPEAL INSTRUCTED JURY AS FOLLOWS DEFENDANT MAY BE CONVICTED ON CIRCUMSTANTIAL EVIDENCE. DOUBTS MUST BE REASONABLE. PROSECUTION CLAIMING THAT WAS SUFFICIENT INSTRUCTION ATTORNEYS FOR DEFENDANT ASK FULL INSTRUCTION WHICH WAS REFUSED AND READ FURTHER. [space] THIS DEFENSE[?] CHANGED TWO WORDS OF MORAL CERTAINTY IN THEIR CHARGE TO GUILT OF PRISONER [space] THEY WILL HAVE THE FIRST PORTION OF THIS INSTRUCTION AND WILL HAVE THE LATTER PREROGATIVE AS WELL IN THIS INSTRUCTION THEY ASK YOUR HONOR TO GIVE AS SETTING FORTH THE LAW AND WE OBJECT BECAUSE WE SAY IT IS ONLY {A}<sup>i</sup> PARTIAL STATEMENT AND CALCULATED TO MISLEAD THE JURY. ONE IS BY SANDERSON JUSTICE. REFERRING PEOPLE AGAINST STRONG CALIFORNIA 1854 CASE SAW JUDGMENT REVERSED NEW TRIAL ORDERED. THEREFORE WE HAVE RIGHT TO HAVE FULL AND PERFECT INSTRUCTION IN THE CASE WE HAVE AS A

NATURAL CONSEQUENCE FLOWING FROM THAT RIGHT THE PRIVILEGE OF OBJECTING TO ANY SPECIAL INSTRUCTIONS UPON THAT QUESTION AND THAT WE ARE ENTITLED TO PROTECT OURSELVES AGAINST INSTRUCTIONS THAT ARE PRESENTED TO JURY AS THOSE COMING FROM THE PROSECUTION AND AT THEIR REQUEST AND WHICH DO NOT STATE THE LAW AS SET WE CLAIM INSTRUCTION OF THAT CHARACTER IS CALCULATED MISLEAD MISDIRECT JURY CALCULATED ADJUST RIGHTS OF THE DEFENDANT ALTHOUGH IT STATES PART OF LAW CORRECTLY IT NOT STATING IT ALL MAKES IT AS OBJECTIONABLE AS IF IT SET AS LAW THAT WHICH WAS NOT THE LAW. BECAUSE AN IMPARTIAL STATEMENT OR IMPERFECT STATEMENT AS IS FAR FROM BEING THE LAW AS THEY PRETEND TO GIVE A *KPR/GPR*[?] AND STATES IT NOT ONLY ENTIRELY DIFFERENT FROM WHAT BOOKS LAY IT DOWN. SHALL WE GO ON BY COURT I HAVE GENERALLY READ THEM TOGETHER VERY WELL THEN. FIRST INSTRUCTION WHAT WE ASK IS NOT OBJECTED TO [space] PROCEEDED TO READ. WHICH I CAN CONNECT TO **2ND** IN ORDER TO JUSTIFY INFERENCE OF LEGAL GUILT FROM CIRCUMSTANTIAL EVIDENCE EXISTENCE OF THE INCULPATORY FACTS MUST BE ABSOLUTELY COMPATIBLE WITH THE GUILT IN SUPPORT OF THAT INSTRUCTION I REFER TO PAGE 407171 RULE 4 **WHALES** ON CIRCUMSTANTIAL EVIDENCE. [space] IN ORDER TO JUSTIFY INFERENCE OF LEGAL GUILT FROM CIRCUMSTANTIAL EVIDENCE. *STTION/STV*[?] RULE IS READ IN **WHALES** ON CIRCUMSTANTIAL EVIDENCE THIS IS A FUNDAMENTAL RULE LAW GOES FURTHER IN SUPPORT OF IT WE TAKE THAT AS GOOD LAW. [space] <sup>[[36]]</sup> **3RD** INSTRUCTION IS NOT OBJECTED TO THAT IS ALSO COPIED FROM **WHALES** ON CIRCUMSTANTIAL EVIDENCE FOUND ON PAGE 141 READ IT. [space] **4TH** IS OBJECTED IT IS AS FOLLOWS IN ORDER TO CONVICT DEFENDANT FROM CIRCUMSTANTIAL TESTIMONY CIRCUMSTANCES PROVED MUST ALL CONCUR TO PROVE HE HAS COMMITTED CRIME AS CHARGED IN INDICTMENT WE REFER TO 32 CALIFORNIA PAGE 213 THE PEOPLE AGAINST PHILIP DICK. DEFENDANT WAS INDICTED FOR MURDER ALLEGED TO HAVE BEEN COMMITTED 31 OF MAY 1856 SENTENCED TO BE EXECUTED. TRANSCRIPT OF RECORD CONTAINS ONE PORTION OF EVIDENCE OF TRIAL. PROCEEDED TO READ. [space] BISHOP I WILL CALL YOUR HONOR'S ATTENTION ALSO BEFORE I SIT DOWN 32 CALIFORNIA WHERE IT IS LAID DOWN AS A RULE THE DEFENSE HAS A RIGHT TO HAVE HIS INSTRUCTIONS GIVEN TO JURY ALTHOUGH SUBSTANCE OF THEM MAY HAVE BEEN GIVEN BY COURT IN FORMER INSTRUCTION. SAME AUTHORITY I HAVE READ APPLIES TO 5TH INSTRUCTION I HAVE REFERRED TO PAGE 151 READ FROM IS ON PAGE ≤1≥54 ATTORNEYS DEFENSE COUNSEL COURT CHARGED THE JURY PREPONDERANCE OF EVIDENCE IS NOT SUFFICIENT TO CONVICT DEFENDANT. *BORREL/B-RL*[?] CIRCUMSTANTIAL PAGE 189 482 483 & 510. I WILL READ PAGE 181 *BORREL/B-RL*[?] ON CIRCUMSTANTIAL EVIDENCE IN SUPPORT OF DOCTRINE LAID DOWN 30TH CALIFORNIA. BISHOP [space] **6TH** INSTRUCTION ASKED IS NOT OBJECTED TO READS AS FOLLOWS ACCUSED IS ENTITLED TO BENEFIT OF ALL ≤REASONABLE DOUBT≥ WHICH AFTER

CAREFUL CONSIDERATION MAY BE FOUND IN YOUR MINDS *SEEMS*[?] TO *SUFFICIENCY*[?] OF PROOF FOR IT IS NECESSARY TO PROVE ALLEGED CRIME ETC. PROCEEDED TO READ. *≪BISHOP≫* THIS IS THE INSTRUCTION WE ASK AS FULL SET FORTH *FOURTH*[?] RULE THAT PROSECUTION ASK *NOT WANT*[?] FURTHER WHICH WE SAY IT HAS NOT FULL CONSIDERATION REMAINING PREROGATIVE *7TH* IS OBJECTED TO I STAND UPON THE GROUND THAT RULE STATING IN DUPLICATING SOME PART WE CLAIM WE ARE NOT IN COURT BECAUSE PARTY ACCUSED IS ALWAYS ENTITLED TO LEGAL PRESUMPTION ETC. BURDEN OF PROOF IS UPON PROSECUTION EVERY PERSON ACCUSED OF CRIME IS PRESUMED TO BE INNOCENT UNTIL PROVEN GUILTY. READ FURTHER IN *7TH* INSTRUCTION IT IS ALWAYS BETTER TO ERR IN ACQUITTING THAN PUNISH ON THE SIDE OF MERCY THAN ON THE SIDE OF JUSTICE\*\*\*\*<sup>403</sup>. NO OTHER INSTRUCTION SETS FORTH AS FULLY AS THIS ONE DOES. IN SUPPORT OF THIS INSTRUCTION I WILL REFER YOUR HONOR TO 32 CALIFORNIA. BY COURT MR. BISHOP WILL YOUR ARGUMENT TAKE SOME TIME YET YES SIR OUR ARGUMENT WILL TAKE SOME TIME YET I THINK IT WOULD BE BETTER TO ADJOURN THEN. CAREY [space] BISHOP ON OUR INSTRUCTIONS I WOULD ASK THESE QUESTIONS IN SUPPORT OF INSTRUCTIONS WE SUPPOSE WE WILL HAVE RIGHT TO ANSWER GENTLEMAN'S OBJECTIONS AFTER THEY HAVE MADE THEIR ARGUMENT BY COURT YES SIR IT WOULD HAVE BEEN BETTER IF THEY HAD MADE THEIR OBJECTIONS FIRST I WILL CLOSE MY ARGUMENT THEN BEFORE RECESS. BISHOP I REFER 32 CALIFORNIA CASE PEOPLE AGAINST WILLIAMS COMMENCING ON 281 <sup>[[37]]</sup><sup>404</sup> CALL YOUR HONOR'S ATTENTION TO THAT CASE AS CONSTITUTING RULE BETTER TO GIVE INSTRUCTIONS THAN WITHHOLD THOUGH THEY MAY APPEAR TO BE. REMAINING PORTION OF DECISION IN CASE OF *PNS/PAYNES*[?]. DEFENSE IF SO DESIRE SO ENTITLED. REFER PEOPLE AGAINST *GST*[?] 27 CALIFORNIA PAGE [space] PEOPLE AGAINST WILLIAMS SAME BOOK. [space] BISHOP WE CLAIM PRINCIPLES OF LAW SUSTAIN INSTRUCTIONS AS READ AS BEING PERFECT IN ITS INSTRUCTION AND TRUE LAW AND THAT BECAUSE THE SAME PRINCIPLE CONSIDERATION IN SOME OTHER INSTRUCTION THAT IS NO VALID REASON WHY THIS INSTRUCTION SHOULD NOT BE GIVEN IN THE LANGUAGE WE ASK IT. *8TH* INSTRUCTION IS ALSO OBJECTED. I WILL READ AS FOLLOWS. THAT IS 30 CALIFORNIA PAGE 154 I BELIEVE I CALLED YOUR HONOR'S ATTENTION TO IT ONCE BEFORE CASE PEOPLE AGAINST STRONG THAT I REFERRED YOUR HONOR TO. THAT IS *≪THAT IT IS THE≫* LAW NO PERSON CAN DISPUTE. *9TH* INSTRUCTION WHICH IS NOT OBJECTED TO READS AS FOLLOWS IN CRIMINAL CASES PROSECUTION IS REQUIRED TO PROVE BEYOND ALL REASONABLE DOUBT THE FACTS WHICH CONSTITUTE DEFENSE.<sup>405</sup> [space] *10TH* INSTRUCTION IS OBJECTED COURT INSTRUCTS JURY THAT IT IS INCUMBENT ON PROSECUTION NOT

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403. Vertical column of asterisks.

404. "KILLING KILLING KILLING KILLING KILLING KILLING WAS DONE."  
written in shorthand across the top of page 37.

405. Original instruction reads "OFFENSE"; possible intent is "EVIDENCE".

ONLY TO PROVE KILLING IT MUST ALSO ESTABLISH BE PROVED BEYOND REASONABLE DOUBT KILLING WAS DONE BY MALICE AFORETHOUGHT ETC. YOUR HONOR PLEASE WE ARE WHOLLY AWARE IN ASKING THIS INSTRUCTION WE ARE ASKING INSTRUCTION THAT IS AT VARIANCE WITH TEXT BOOKS AND MUCH THAT HAS BEEN CONSIDERED AS LAW BY PEOPLE OF THE UNITED STATES SEEN AS DEVIATION OF THE COMMON LAW STILL WE CLAIM THAT WE CAN SHOW TO YOUR HONOR THAT THE RULE HAS ALWAYS BEEN IMPROPERLY LAID DOWN IN THE EVIDENCE AND THAT THE PROPER RULE GOVERNING IN SUCH CASES HAS NEVER BEEN ADOPTED EITHER IN ENGLAND OR UNITED STATES UNTIL THESE LAST FEW YEARS. SUPREME COURT OF MICHIGAN HAS ADOPTED THIS RULE AND WHARTON WHO IS APPEALED TO WITH CONFIDENCE BY PROSECUTION BEEN NOTED ALL OCCASIONS WHEN *WILL*[?] TO CONVICT IS NEEDED BUT THE COURT OF APPEALS IN NEW YORK IN A LATE CASE HAVE ALSO ADOPTED THE RULE WE ASK TO HAVE GIVEN IN THIS INSTRUCTION IS WRITTEN AFTER HAS BEEN *LVDM/LTHDM*[?] IN WRITING BEEN ACCORDINGLY BUT THE PREVIOUS CASE AND CONCLUSION TELLS HE IS MISTAKEN THE RULE IS LAID DOWN *BE ACQUAINTED*[?] IS *TAKEN*[?] *BE KEPT*[?] FROM THE JURORS IS IN THAT TOME RULE OF ROMAN LAW WAS FACT OF KILLING BEING PROVED JURY MUST HAVE EVIDENCE PRESENTED TO THEM BY PROSECUTION SUFFICIENT TO SHOW MALICE OR THAT THEY SHOULD ACQUIT I WILL CALL YOUR HONOR'S ATTENTION TO THE ARTICLE WRITTEN BY WHARTON AS PUBLISHED IN *APRIL*[?] *PAPER*[?] OF THE FORUM JUDGE HOGE WILL MORE FULLY REFER TO THIS MATTER AFTER I HAVE FINISHED. HOGE I WILL READ THIS IN REFERENCE TO «MR. BISHOP'S REMARKS» TO *HD-T*[?] RECENT REFERENCES IN CRIMINAL LAW WRITTEN BY <sup>[138]</sup> *FRSZ*[?] BUT WHARTON STATED HE HELD RULE ETC. I PASS ON NOW TO FURTHER PREROGATIVE WITHOUT GIVING ILLUSTRATIONS ETC. THE AUTHOR THEN CALL YOUR HONOR'S ATTENTION CASE REFER TO IN NEW YORK BY *M—*[?] THIS WAS CASE DECIDED IN NEW YORK PAGE 164, READ OPINIONS OF *FORUM*[?] APPOINTED. IS OF THIS JUDGE *RAPELOW*[?] IN COURT OF APPEALS SAYS READ. PEOPLE VS. MICHIGAN PAGE 212. ACCOUNT OF THIS AUTHOR HERE. *JUDGE SUTHERLAND*[?] READ CONSIDERABLE LENGTH OF IT. HOGE CALL YOUR HONOR'S ATTENTION **2<sup>D</sup>** BISHOP CRIMINAL PROCEDURE WHICH HAS THE SAME EFFECT EXACTLY SECTION 617 SECOND BISHOP CRIMINAL PROCEDURE **2ND EDITION** THE PRESUMPTION THAT KILLING IS MURDER SIR MICHAEL *FOST/FOSS*[?] I AM GOING TO READ HERE AND SHOW BOTH OLD RULE OF THE *TRIAL/CONTRARY*[?] ONE. THIS *ATTORNEY*[?] IS EXPLAINED BY MR. GREENLEAF; I NOW READ 618, LATTER PART OF SECTION STATED AS BEING PROVING *ATTORNEY*[?] AT THIS TIME THE PROVING *ATTORNEY*[?], NOW TO 619 REFER NOW BACK TO MR. GREENLEAF WHOSE VERY ACQUAINTANCE OF *RULE*[?] VASTLY «MORE» PEOPLE REGARD LAWFUL THAN UNLAWFUL; COMMONWEALTH VS. YORK CONNECTICUT; CALL YOUR HONOR'S ATTENTION NOW TO SECOND GREENLEAF ONE OTHER AUTHORITY ON THE SAME POINT 12TH EDITION

SECTION 81 PAGE 21 NOTE 81 V; ~ MISJUSTICE CASE[?] FIRST GREY. MR. BISHOP WILL COMMENT ON THESE AUTHORITIES AND WILL FINISH ARGUING AFTER DINNER IT IS TWELVE O’CLOCK NOW. <sup>[39]</sup>406 [space]<sup>407</sup>

**RT**

**RS**

**BT**

**PS**

	<p>ADJOURN UNTIL HALF PAST TWO O’CLOCK. [space]</p>	<p>COURT ADJOURNED TILL 2:30 P.M. — ——OO—— — MONDAY AUGUST 2ND, 2:30 P .M.</p> <p>COURT MET PURSUANT TO ADJOURNMENT . (THE WHOLE OF THE AFTERNOON WAS CONSUMED IN THE ARGUEMENTS ON THE OFFERS.</p>	<p>RECESS UNTIL HALF PAST TWO [space]</p>
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406. On the last page of book 9, Rogerson notes George A. Smith’s deposition: **COPY OF DEPOSITION OF GER A SMITH** [space] TERRITORY OF UTAH BEAVER COUNTY **SS/—**[?] IN THE SECOND JUDICIAL DISTRICT TERRITORY OF UTAH. **PEOPLE &C VS J D LEE WILLIAM H DAME ISAAC C HAIGHT AND OTHERS AND ET AL ~ INDICTMENT FOR MURDER SEPTEMBER 16 1857.** See *MMMCLP*, chapter 36, “Documents Introduced into Evidence for John D. Lee’s Second Trial,” for the official criminal case file copy of Smith’s affidavit.

407. The last four pages of the notebook are blank. The versos of those pages have drawing apparently done by a very young child.

**RS**

[Bk 10 1]408 BY BISHOP COURT PLEASE PREVIOUS RECESS WERE CONSIDERING INSTRUCTIONS ≡ON BEHALF OF THE DEFENSE≡ WHICH I WILL READ AGAIN [space] COURT INSTRUCTS JURY THAT IT IS INCUMBENT UPON PROSECUTION NOT ONLY PROVE KILLING BUT PROVE KILLING WAS DONE BY MALICE AFORETHOUGHT ETC. THAT THE DEFENSE OF PROSECUTION WILL BE TO OPEN THE *COURSE*[?] AND NATURALLY PRESUME THAT THE TEXT OF THE EVIDENCE BOOKS AND SOME OF THE AUTHORITIES DECISIONS OF THE SUPREME COURT RELATED TO THAT QUESTION SAY THAT THE MALICE SHALL ≡BE≡ PRESUMED WHEN THE KILLING IS ONCE PROVEN TO HAVE TAKEN PLACE. WE ASK THIS OF COURT AT THIS TIME TO GIVE INSTRUCTIONS WE HAVE PRESENTED BECAUSE WE CONSIDER THAT THE LAW WHERE IS HERETOFORE ADOPTED DOES NOT EXPRESS THE WHOLE CHARACTER OF ITS RULE INTENT AND MISSION. IN OTHER WORDS THE RULE AS LAID DOWN AND DICTATED BY COURTS HERETOFORE IS NOT THE LAW. WE CONSIDER IT UPON THIS POINT THE LAW HAS GROWN VERY MUCH IN THE LAST 3 HUNDRED CENTURIES. IN FACT THE SCIENCE OF LAW IS GROWING WHOLE TIME WE ARE NOT HELD BY THE BARBAROUS RULE THAT PREVAILED SOME CENTURIES AGO TRUE IT IS LAID DOWN IN WHARTON AND IN THE MAJORITY OF TEXT BOOKS THAT *IS NOT*[?] THE *PROSECUTION*[?] THAT THE KILLING TOOK PLACE THEY MIGHT THERE REST THAT THE *PEOPLE*[?] OF THE PROSECUTION SHOULD NOT BE ASKED TO GO FURTHER THIS IS TO SHOW SOME PARTY HAD BEEN KILLED THEN LEAVING IT FOR DEFENSE TO COME BEFORE THE COURT AND INTRODUCE EVIDENCE TO SHOW A JUSTIFICATION AT THIS TIME WE CLAIM THE LAW IS THAT IT HAS BEEN SETTLED BY COMPETENT TRIBUNE THAT THE PROSECUTION MUST GO FURTHER THAN TO PROVE SIMPLE FACT OF KILLING THEY MUST CONNECT WITH THAT ACT PROOF TO SATISFY JURORS THERE WAS MALICE IN THE HEART OF THE PARTY COMMITTING DEED *UTTERLY*[?] THE *FST*[?] BLOOD WAS *GIVEN/GONE*[?] AND THE HOMICIDE WAS COMMITTED. IN THIS CASE IF YOUR HONOR PLEASE IT IS DOUBLY NECESSARY WE SHOULD INSIST UPON THESE INSTRUCTIONS FROM THE FACT PROSECUTION HAS ELECTED TO GIVE UNTO THE JUDGE CIRCUMSTANCES SELECTED FROM THAT BODY THOSE THAT WOULD ENABLE PROSECUTION TO GO BEFORE JURY ASK FOR CONVICTION AND THAT IN OUR JUDGMENT KEPT ABSOLUTE FACTS IN THE CASE FROM THE MINDS OF JURY [space] WE CLAIM IN CONCURRENCE WITH PRINCIPLES OF LAW PROSECUTION HAVE NOT MADE OUT THE CASE THAT THEY HAVE NOT GONE INTO THE FULL FACTS THAT THEY HAVE NOT ASKED WITNESSES THAT WERE PRESENT TO DETAIL FACTS AND EXPLAIN THEY SAW THEY HAVE NOT PERMITTED *MOTION*[?] TO GO UPON THAT WITNESS STAND AND DETAIL ENTIRE FACTS CONNECTED WITH THIS

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408. Page is torn, dirty, and very difficult to read. In longhand: **PAGE 1 BOREMAN CHARGE TO JURY BOOK NO. 10 = [space] MONDAY AFTERNOON 230 PM AUGUST 2ND 1875 {INSTRUCTIONS FOR DEFENSE TO JURY}<sup>1</sup> CAREY'S ARGUMENT PAGE 20.**



TRAGEDY BUT THAT THEY HAVE CONFINED THEMSELVES TO SIMPLE RECITAL OF THE ACTS COMMITTED BEFORE THEN THAT THE PROSECUTION THEMSELVES *FOLLOW/FULLY*[?] WITH BUT THAT EVERY ACT EVERY WORD *EVERY*[?] CIRCUMSTANCE THAT TENDED TO SHOW A WANT OF MALICE ON PART OF DEFENDANT THAT TENDED TO SHOW JUSTIFYING THAT TENDED IN THE LEAST RESPECT TO TO LIFT THE LOAD OFF SHOULDERS OF THIS DEFENDANT <sup>[2]</sup> *PRETENSE*[?] OF GUILTY AS CHARGED IN THAT INDICTMENT PROSECUTORS HAVE *TTSLY/TOTALLY*[?] SET FROM THE COMMENCEMENT *DOWN*[?] FROM THE CLOSE TO KEEP THAT AWAY FROM THE JURY IN OTHER WORDS THEY ASK IN THIS CASE A PART OF THE TRANSACTION BE CONSIDERED ~~BY~~ BEFORE THE JURY. THEY SAY ACCORDING RULES LAID BY JUDGE *CHRISTIANS*[?] ACCORDING TO RULES ADOPTED LAID DOWN BY COURT OF APPEALS IN STATE OF NEW YORK ACCORDING TO RULE LAID DOWN BY WRITTEN LETTER READING THEM THAT SAID COURTS THAT SET RULE UPON THAT SUBJECT WE ARE ENTITLED TO HAVE THIS COURT INSTRUCT JURY AT THIS TIME UPON THIS QUESTION SO THAT THEIR MINDS MAY BE DISPOSED THEY MAY BE PERMITTED TO TAKE IN ALL FACTS CIRCUMSTANCES AS FAR AS THEY CAN AND GIVE THEIR THOUGHT FULL RANGE CONCERNING THIS CASE AND THAT WE SHALL NOT BE COMPELLED IN OUR ARGUMENTS TO JURY TO STAY WITHIN NARROW LIMIT AS MARKED OUT BY PROSECUTION I KNOW IT IS SOUGHT *BY*[?] MANY CONTENTED FOR ~~BY~~ MANY ALL THE PROSECUTION HAS GOT TO DO IS TO INTRODUCE WITNESSES THAT WILL PROVE A SHOW **B** WITHIN A CERTAIN DISTRICT UPON A CERTAIN DAY [space] AND THERE STOP [space] THAT THEN THE DEFENSE MUST COME UPON THE STAND SHOW ALL THE FACTS THAT EXCUSED ACT WE CLAIM THAT IS NOT THE LAW WE ASSERT REASON WHY WE ARE VERY ENTITLED TO THIS INSTRUCTION HERE IS BECAUSE WITNESSES WILLIAM YOUNG POLLOCK OTHER WITNESS WHO HAVE COME UPON THIS STAND PROVE FACT JOHN D. LEE WAS UPON THIS GROUND THEY HAVE NOT BEEN PERMITTED TESTIFY WHAT JOHN D. LEE SAID AT THE TIME THEY SAW HIM [space] NOT PERMITTED TO TESTIFY OF ANY ACT THEY DID THAT WOULD EXCUSE HIM FROM A FELONIOUS INTENT. LEAVING THIS IS TRUE LAW WE SERIOUSLY URGE SINCERELY URGE COURT WILL GIVE THIS INSTRUCTION GIVES POINT OF VIEW OF LAW AS IT REALLY EXISTS. THEY MAY SAY IN THEIR ARGUMENT IT IS THE DUTY OF YOUR HONOR TO PASS UPON THIS QUESTION AND DECIDE WHETHER THIS IS A CASE OF CIRCUMSTANTIAL EVIDENCE OR NOT [space] THEY MAY SAY A QUESTION FOR YOUR HONOR TO DECIDE WHETHER MALICE HAS BEEN PROVEN OR NOT [space] THAT WE MUST RESPECTFULLY DENY WE SAY THAT THESE QUESTIONS ARE MATTERS OF FACT TO BE PASSED UPON BY THE JURY AND NOT BY THE COURT [space] WE SAY WE HAVE A RIGHT TO ASK THE JURY TO PASS UPON QUESTION OF MALICE JUST THE SAME AS UPON QUESTION OF HOMICIDE KILLING FACT THAT WHETHER EVIDENCE HAS BEEN PROVEN OR NOT PROVEN IS A QUESTION OF FACT TO GO TO THAT JURY AND THAT THE JURY ARE ENTITLED TO TAKE INTO CONSIDERATION EVERY FACT AND

CIRCUMSTANCE RELATED BY WITNESS AND THAT YOUR HONOR CAN'T REFUSE AN INSTRUCTION AND DO IT <sup>[3]</sup> RIGHTLY BECAUSE YOU THINK IN YOUR OWN MIND THAT A CERTAIN HAS BEEN PROVEN BY SINGLE TESTIMONY. PROSECUTION IN THIS CASE HAVE NOT PRESENTED FULL FACTS THEY HAVE NOT AS WE CONSIDER OPENED THEIR CASE FULLY. [space] 11TH INSTRUCTION IS ALSO OBJECTED TO [space] COURT INSTRUCTS JURY THAT THE CHARGE IN THE INDICTMENT WHETHER DEFENDANT HAD COMBINED WITH OTHER PERSONS NAMED IN THE INDICTMENT OR WITH SOME OF THEM FOR PURPOSE OF COMMITTING HOMICIDE CHARGED TO HAVE BEEN COMMITTED [space] ≤A≥ QUESTION OF FACT TO BE FOUND BY THE JURY THE SAME AS ANY OTHER FACT AND IF THE JURY BELIEVE NO SUCH COMBINATION WAS ENTERED INTO AND ETC. AND IN YOUR JUDGMENT THAT IS CORRECT LAW. THEY HAVE CHARGED DEFENDANT WITH 8 OTHERS INDICTMENT JOINTLY MADE THE ASSERTION JOHN D. LEE AND 8 OTHERS JOINTLY COMBINED TO COMMIT A CERTAIN ACT [space] WE SAY THAT THAT IS NOW A QUESTION OF FACT TO BE PASSED UPON BY JURY [space] AND THAT THEY CAN'T INDICT AND TRY A MAN IF HE COMBINED ANY OTHER MAN IF HE ACCOMPLISH AND THROUGH SAID CHARGE OF COMBINATION AND PROCEED AGAINST HIM FOR SOMETHING OTHER PARTIES DID [space] WHOLE CHARGE AS STANDS IN INDICTMENT MUST BE TAKEN IN CONSIDERATION BY THE JURY COURT [space] IF THERE IS NO COMBINATION AS CHARGED INDICTMENT THEN THE PARTICULAR COUNT MUST FALL TO THE GROUND IF THERE WAS NO COMBINATION THAT HE CERTAINLY CAN'T BE HELD AS LIABLE FOR THE ACT OF ONE OF OTHER PARTIES [space] IF THE JURY FAIL TO FIND THAT JOHN D. LEE ENTERED IN COMBINATION WITH OTHER PARTIES NAMED IN INDICTMENT AT A TIME PRIOR TO COMMISSION OF OFFENSE CHARGED IN INDICTMENT THEY CERTAINLY CAN'T CONVICT HIM UNLESS THEY FIND HIM ACTIVELY PARTICIPATING IN THE TRANSACTION SO *IF THINK*[?] OUR INSTRUCTION IS GOOD IF THE JURY BELIEVE FROM EVIDENCE THERE WAS NO SUCH COMBINATION WITH OTHERS FOR PURPOSE OF COMMITTING ALLEGED OFFENSE READ FROM WRITTEN INSTRUCTIONS. IN OUR JUDGMENT THAT IS A CLEAR CORRECT INSTRUCTION ONE WE ARE ENTITLED TO GIVE TO THIS JURY. [space] THAT IS CONTRARY ALL PRINCIPLES OF LAW WE UNDERSTAND *WHY SAY LAW*[?] STATE NO PERSON CAN CONTRADICT THEM. PROSECUTION IS COMPELLED IF MALICE ALLEGATION IN THE INDICTMENT THEY MUST FIRST PROVE THAT OR DEFENDANT MUST BE ACQUITTED. [space] 12 THAT IS NOT OBJECTED [space] 13<sup>TH</sup> IS OBJECTED TO PROCEEDED TO READ IT. JUDGE SUTHERLAND READ LAW UPON THAT I SHALL IN CONNECTION WITH THAT INSTRUCTION CALL YOUR HONOR'S ATTENTION TO FIRST COUNT IN THE INDICTMENT ONLY ONE NOW IN FORCE I CLAIM ACCORDING *TO*[?] RULES AND <sup>[4]</sup> CRIME AND LEGAL CONSIDERATION OF ENGLISH LANGUAGE IN NO PLACE IN THIS COUNT DID PROSECUTION CHARGE JOHN SMITH IS A PARTY UNKNOWN IN THE SECOND COUNT HE WAS [space] PROCEEDED TO READ FROM INDICTMENT. JUDGE BOREMAN SEEMED VERY THOUGHTFUL WHILE BISHOP WAS

READING THIS NAME OF JOHN SMITH IS NAMED *IN/NOT*[?] THE INDICTMENT. AFORESAID UNKNOWN PERSONS AS THOSE WHO WAS REFERRED TO MEN WOMEN CHILDREN WHOSE NAMES ARE *◀WHOLLY▶* UNKNOWN *THAT*[?] OTHER REFERENCE CERTAINLY NOT TO JOHN SMITH BECAUSE IT SAYS THE BODIES OF JOHN SMITH FIFTY OTHER MEN WOMEN AND CHILDREN WHOSE NAMES ARE TO THE JURORS AFORESAID WHOLLY UNKNOWN UPON THE SAID JOHN SMITH AND EACH OF AFORESAID UNKNOWN PERSONS. ALL OF UNKNOWN PERSONS AND INCLUDING THE SAID JOHN SMITH IN NO PLACE INCLUDED BE NO CHANCE SMITH'S NAME WAS UNKNOWN TO PARTIES WHO FOUND INDICTMENT. [space] ONLY WAY PROSECUTION CAN CLAIM IN THIS CASE THAT THEY ARE ENTITLED TO INSTRUCTION OR OBJECT TO INSTRUCTIONS SO FAR AS COURT SHALL INFER THAT *OUT*[?] OF ENGLISH LANGUAGE THAT JOHN SMITH WAS A PARTY WHOSE NAME WAS UNKNOWN THEY MUST ASK THIS COURT TO INFER THAT THIS PARTY WHO IS DESCRIBED BY A FICTITIOUS NAME BUT THE COURT WILL CERTAINLY NOT [space] IN A CASE OF THIS MAGNITUDE GUESS AT A QUESTION OF THAT KIND THE COURT CAN'T LEGALLY DIRECT INFERENCE OF THAT CHARACTER NOTHING IS PRESUMED IN FAVOR OF PROSECUTION COURT OF LAW THEY HAVE NO RIGHT TO ASK YOUR HONOR TO PRESUME THAT THEY MEAN ANYTHING IN THEIR INDICTMENT EXCEPT WHAT THE LANGUAGE IN THAT INDICTMENT CLEARLY EXPRESSES [space] IF THERE IS ANY DOUBT UPON THIS QUESTION HE THEN IS ENTITLED TO THAT DOUBT AS MUCH AS HE IS ENTITLED TO REASONABLE DOUBT AS TO EVIDENCE INTRODUCED IN THE CASE. THEREFORE WE SAY THIS INSTRUCTION WE ASK NUMBER 13 IS THE LAW PERTAINING TO THIS CASE WE ARE ENTITLED TO HAVE YOUR HONOR INSTRUCT AS WE HAVE ASKED; AND NOT ~~ASK JURY ASK~~ *◀INSTRUCT▶* AS PROSECUTION HAVE ASKED. READ FROM INSTRUCTIONS PROSECUTION REQUESTED BE READ. \* THAT IS IF THE JURY FIND THAT THAT WAS DONE WILLFULLY DELIBERATELY AND PREMEDITATEDLY AT THE PLACE *◀CHARGED▶* IN THE INDICTMENT THEN THE JURY SHOULD FIND A VERDICT OF GUILT AS CHARGED IN THE INDICTMENT I SAY TO YOUR HONOR THAT IS NOT THE LAW [space] AND NO COURT NO SUPREME COURT WILL RULE THAT IT IS TO ASK YOUR HONOR TO CHARGE THAT A KILLING DONE WITHOUT MALICE AFORETHOUGHT WOULD ENTITLE PROSECUTION TO PROSECUTE FOR MURDER IN THE FIRST DEGREE IS MONSTROUS IN ITSELF [space] THEY DO NOT ASK IT [space] BUT THE SIMPLE FACT IS PROVED THEY SAY ENTITLES THEM TO A VERDICT OF GUILTY OF MURDER IN FIRST DEGREE *INSTRUCT*[?] TO ALL CHARGE OF MALICE AFORETHOUGHT WHERE A MAN PREMEDITATEDLY WILLFULLY DELIBERATELY KILL <sup>[S]</sup> ANOTHER AND YET DO IT IN SUCH A WAY THAT THE LAW EXCUSES AND NOT ONLY EXCUSES BUT JUSTIFIES THE ACT [space] CERTAINLY A MAN MAY WILLFULLY DELIBERATELY KILL ANOTHER IN SELF DEFENSE [space] CERTAINLY HE MAY KILL ANOTHER IN DEFENSE OF HIS FAMILY YET THE PROSECUTION ASK THAT YOU WILL INSTRUCT JURY IN THIS CASE THAT IF HE WERE PRESENT AIDING AND

ABETTING IN THE ACT THEREFORE IF JURY ARE SATISFIED BEYOND REASONABLE DOUBT THAT EITHER OF THE PRISONER JOHN D. LEE OR EITHER OF PARTIES INDICTED JOINTLY WITH HIM OR ANY OTHER PERSON ACTING IN CONCERT WITH OR IN ABETMENT OF JOHN D. LEE WILLFULLY — [?] ETC. AT THE PLACE CHARGED IN THE INDICTMENT KILLED ANY ONE OR ALL OF PERSON DESCRIBED IN SAID INDICTMENT JURY MUST FIND VERDICT AGAINST PRISONER JOHN D. LEE OF GUILTY IN FIRST DEGREE. BECAUSE IT IS IN KEEPING WITH THE MODE THAT THEY HAVE PROSECUTED AND CONDUCTED THIS CASE I THINK I HAVE A RIGHT TO FIND FAULT WITH A PROSECUTION THAT ASKS A COURT TO INSTRUCT A JURY TO FIND A VERDICT GUILTY OF MURDER IN THE FIRST DEGREE WITHOUT INSERTING THE WORDS MALICE AFORETHOUGHT IN THEIR INSTRUCTIONS. BEFORE I FORGET IT I WILL WRITE OBJECTED ON THE MARGIN OF THIS INSTRUCTION. THEN WE CLAIM IT IS NECESSARY FOR THEM TO PROVE A MAN BY NAME OF JOHN SMITH AT MOUNTAIN MEADOWS HAD MENTIONED IN INDICTMENT AS IT IS FOR THEM TO PROVE THE VENUE BECAUSE THEY HAVE NOT RIGHT TO PRESUME THE PARTIES WERE ALL UNKNOWN NO WORD OF TESTIMONY HAS BEEN INTRODUCED UPON THIS TRIAL TO PROVE OR TENDING TO PROVE THAT THE NAMES OF THOSE PARTIES THAT WERE KILLED AT MOUNTAIN MEADOWS IF ANY WERE KILLED WERE UNKNOWN TO GRAND JURY THAT FOUND THIS INDICTMENT. THEY HAVE PROVEN BY THEIR OTHER EVIDENCE THE MAN OF THE NAME OF ADEN KILLED BY STEWART IN A DIFFERENT PLACE. WITNESS THEY PLACED UPON THE STAND WHICH WERE AFTERWARD RECALLED SPEAKS OF A MAN BY NAME OF FANCHER. 13<sup>TH</sup> IS NOT OBJECTED TO. 14<sup>TH</sup> NOT OBJECTED [space] 15<sup>TH</sup> IS NOT OBJECTED TO. READ 15 CLAUSE OF PROFFERED INSTRUCTIONS. 16<sup>TH</sup> NOT OBJECTED READ IT. 17<sup>TH</sup> NOT OBJECTED, READ IT. 18<sup>TH</sup> NOT OBJECTED. 19 ALSO WITHOUT OBJECTIONS READ IT. 20<sup>TH</sup> IS OBJECTED TO READ IT. IT SEEMS TO ME GENERAL PRINCIPLES OF LAW THAT THE ETERNAL *FITNESS*[?] OF THINGS WOULD FORCE PROSECUTION TO ACCEPT SUCH AN INSTRUCTION AS THIS AND PERMIT IT TO GO TO JURY WITHOUT OBJECTION. PARTY WHO TURNS STATE'S EVIDENCE COMES BEFORE COURT AS FAR AS —[?] CRIME THAT IS A KIND OF FACT TO GET TO JURY THEY HAVE A RIGHT CONSIDER HOW MUCH RELIANCE IN THE WORD OF A MAN WHO HAS BEEN SO LOST TO ALL SENSE OF HONESTY AND JUSTICE <sup>[6]</sup> AS TO COMMIT THE HEINOUS ACTS HE HAS TESTIFIED TO. 21 IS ALSO OBJECTED TO. ≤READ IT≥. I CERTAINLY CONSIDER PRINCIPLE AS STATED. IN SUPPORT OF THIS LINE I WILL REFER GENTLEMAN TO 2<sup>ND</sup> RUSSELL ON CRIME PAGE [space] 966 & 967 IS A MATTER OF COURSE IN A CASE OF THIS MAGNITUDE AND CHARACTER DUE LAW *BESTOWED/BE SET*[?] BY PROSECUTION DEFENSE SHOULD NOT OBJECT TO REFUSAL OF PROPER INSTRUCTION BUT WHEN WE COULD TAKE INTO CONSIDERATION ADVANTAGE IT IS TO DEFENDANT WHEN HE APPEALS HIS CASE TO HIGHER COURT THIS CHARACTER [space] BECAUSE AN ERROR OF THE COURT IN REFUSING PROPER INSTRUCTION IS ALWAYS TAKEN NOTICE OF BY THE SUPREME COURT BUT YET WE HAVE LEGAL

RIGHT TO ASK COURT SHALL INSTRUCT JURY UPON LAW WE HAVE A RIGHT TO ASK YOUR HONOR TO INSTRUCT AS WE CONSIDER THE LAW TO BE. I KNOW COUNSEL DISAGREE UPON THIS IT IS A PROVISION FOR YOUR HONOR TO DECIDE WHAT THE LAW IS [space] HAVING SENSE TO DECIDE AND GIVE JURY LAW AS YOU CONSIDER IT TO BE RIGHT FOR THE PRINCIPLES IS WE CAN SAY NOTHING EXCEPT AS IT IS ADOPTED. ONLY CONSIDER OUR VIEWS FULLY AT THIS TIME SO THAT NO MISUNDERSTANDING CAN OCCUR BETWEEN COURT AND COUNSEL I BELIEVE I HAVE CALLED YOUR ATTENTION TO ALL AUTHORITIES WE WISH TO INTRODUCE IN SUPPORT OF 21 INSTRUCTIONS WE ASK YOUR HONOR TO GIVE AND ALSO IN OPPOSITION TO INSTRUCTIONS ASKED BY THE GENTLEMEN FOR THE PROSECUTION. 330 PM. MY ATTENTION IS CALLED TO FACT ≤OUR≥ 3<sup>D</sup> INSTRUCTION OBJECTED TO WHICH HE READ; [space] CALL YOUR HONOR'S ATTENTION TO PAGE 131 WHALES ON CIRCUMSTANTIAL EVIDENCE; BY BASKIN WE DO NOT OBJECT TO THAT YOU —[?] ≤READ≥ CRIMINAL EVIDENCE WHERE I THOUGHT YOU SAID CIRCUMSTANTIAL EVIDENCE IT IS NOT OBJECTED TO BUT I WILL READ FROM PAGE IN WHALES AS I STATED [space] BASKIN MAY IT PLEASE YOUR HONOR IN ANSWERING GENTLEMAN'S ARGUMENT ON THE 54<sup>TH</sup> AND 5<sup>TH</sup> INSTRUCTIONS I HAVE A VERY FEW WORDS TO SAY [space] I[?] WILL BE PARTICULAR IN READING THESE TWO [space] THE 4<sup>TH</sup> AND 5<sup>TH</sup> RELATED TO CIRCUMSTANTIAL EVIDENCE NOW THEN WHAT IS CIRCUMSTANTIAL EVIDENCE I PROPOSE TO SHOW BY REFERRING YOUR HONOR TO 1069 SECTION ON FIRST BISHOP'S CRIMINAL PROCEDURE FOR REASONS WHICH ALREADY APPEARED IN THOSE RULES OF CHAPTERS IT WILL NOT BE WISE IN OUR NT[?] MINUTE CONSIDERATION OF DOCTRINE OF CIRCUMSTANTIAL EVIDENCE. THAT AIN'T THE CASE IT APPEARED GENTLEMEN HAS READ GOOD NUMBER OF DECISIONS HERE FROM CALIFORNIA IN WHICH THE PROSECUTION RESTED ENTIRELY UPON CIRCUMSTANTIAL EVIDENCE THAT AIN'T THIS CASE IT WOULD NOT BE CONTENDED HERE THIS CASE REST ON CIRCUMSTANTIAL EVIDENCE BUT UPON DIRECT AND POSITIVE PROOF IF THE JURY BELIEVE WHAT WITNESS SAYS I CAN'T REMEMBER NOW SINGLE INSTANCE IN THE WHOLE OF THIS TESTIMONY PROVES IT WITHIN RULE OF CIRCUMSTANTIAL EVIDENCE. IT FOLLOWS IF THE EVIDENCE FOR THE CASE DON'T REST ON CIRCUMSTANTIAL POSITIVE AND THERE IS POSITIVE EVIDENCE THIS INSTRUCTION IS A SIMPLE OBSTRUCTION WISH TO CALL YOUR HONOR'S ATTENTION TO RULES OF LAW ON THIS OBSTRUCTION. SOME OF THEIR INSTRUCTIONS ASKED HERE PROBABLY COME WITHIN RULE <sup>[?]</sup> OF RULE. ~ ≤I READ≥ NOW FROM BISHOP ON CRIMINAL PROCEDURE FIRST VOLUME 879 AND SEQUEL SECTIONS FOLLOWED. [space] THE OBJECTION TO THIS AS IS IT IS ON THE OBSTRUCTION IT ASSUMES A GIVEN FACT PRESUMPTIVE EVIDENCE EXISTS IN THIS CASE AND IS VITAL IN THE CASE. 5<sup>TH</sup> INSTRUCTION IS THE SAME AS TO THE 6<sup>TH</sup> INSTRUCTION I BELIEVE WE ADMIT THAT I THINK THAT LIST DONE WELL CORRECT ON SUBJECT ON WHAT PROBABLE CAUSE IS [space] WE HAVE AN INSTRUCTION THAT NEARLY COVERS THE

SAME GROUND SUTHERLAND BEYOND REASONABLE DOUBT. *MORAL CONFIDENCE AND MND-S[?]* CAN'T ALWAYS BE PROVED TO MATHEMATICAL CERTAINTY. THIS DOES NOT CONTRADICT THEREFORE IT IS MERE REPETITION OF *A/AND[?]* FORM REPEATS IT IN SUCH A FORM AS IS CALCULATED TO MISLEAD JURY. THEREFORE THIS IS CALCULATED TO CREATE CONFUSION IN THE MINDS OF JURORS AND CAPRICIOUS DOUBTS THROUGH INSTRUCTIONS CERTAINLY WILL PRESENT WHATEVER CALL TO MINDS OF JURORS THEY MUST BE CONVINCED OF THE GUILT OF THIS PARTY BEYOND REASONABLE DOUBT BOTH OUR INSTRUCTIONS AND 6<sup>TH</sup> INSTRUCTION DEFINES CLEARLY WHAT A REASONABLE DOUBT IS. THAT BRINGS ME TO OTHER PRINCIPLES OF MALICE. THIS IS THE SAME OBJECTION. HYPOTHESIS CONTENDED FOR BY PROSECUTION MUST BE ESTABLISHED TO AN ABSOLUTE MORAL CERTAINTY TO THE ENTIRE~~LY~~ EXCLUSION OF ANY OTHER RATIONAL PROBABILITY OF ANY OTHER HYPOTHESIS BEING TRUE OR THE JURY MUST FIND DEFENDANT NOT GUILTY THESE CALIFORNIA DECISIONS AIN'T LAW THE QUESTION WAS NOT MADE IT WAS AN INSTRUCTION THE COURT SUGGESTED WAS PROPER AND RUNS COUNTER TO THESE AUTHORITIES IT WAS CALCULATED TO MISLEAD THE JURY BESIDES IF IT WAS LAW THAT SIXTH INSTRUCTION COVERS THE WHOLE GROUND. [space] ON THAT INSTRUCTION I HAVE FEW REMARKS TO MAKE I WILL ASK YOUR HONOR IF YOU HAVE THE UTAH STATUTES. I WILL READ FROM THE REVISED STATUTES PAGE 51. THIS STATUTE WAS PASSED IN 1852 APPROVED MARCH SIXTH 1852 THOUGHT THE *WORLD/RULE[?]* BY AUTHORITIES AT THAT TIME RULE WAS UNIVERSAL THAT A KILLING HAVING BEEN SHOWN MALICE WAS PRESUMED. SO WE HAVE A SECTION OF THAT INSTRUCTION IN THIS STATUTE. AND THE CASES GENTLEMAN READ SHOW THAT THE CASES UNDER WHICH THEY AROSE WERE CASES IN WHICH THE PROSECUTION HAVING PROVED SIMPLE KILLING WITHOUT SURROUNDING CIRCUMSTANCES RESTED AND NOW THAT AIN'T THIS CASE EVIDENCE IN THIS CASE NOT ONLY SHOWS MASSACRE DOWN THERE IT ALSO SHOWS ATTENDING AND SURROUNDING CIRCUMSTANCES THEREFORE THIS IS AN ABSTRACT QUESTION IT AIN'T IMPORTANT IT DON'T APPLY TO EVIDENCE PRODUCED HERE AND CALCULATED TO MISLEAD JURY IN THIS [space] THAT RULE ON PROOF OF MALICE IN THE FACT OF KILLING. ~~THAT RULE WERE/WITH[?]~~. DECLARATION OF THE PARTY ACTS OF THE PARTIES IN CONNECTION WITH THE KILLING AND THE MANNER IN WHICH WAS DONE. [space] IN ~~THE~~ FIRST VOLUME THERE IS GENERAL DISCUSSION OF DOCTRINE WHICH GOVERNS<sup>409</sup> CRIME CAUSES SAYS *SIR MICHAEL FAST/VOST[?]* IN EVERY CHARGE OF MURDER ETC. [space] THEY ASK YOU AN INSTRUCTION THAT THE JURY HAS NOT A RIGHT TO PRESUME MALICE FROM THE KILLING ALONE WHEN WE HAVE NOT SOUGHT TO PROVE KILLING ALONE BUT SEEK TO ESTABLISH <sup>[8]</sup> IT FROM CIRCUMSTANCES WHICH HAVE BEEN INTRODUCED IN THIS CASE. CAREY READ HIS INSTRUCTIONS TO MAKE ONE THE PRINCIPLE IN MURDER IT IS NOT

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409. "GOVERNS" is written three times on top of each other.

NECESSARY TO MAKE ONE INFLICT WOUND BY HIS OWN HAND  
GENTLEMAN SEEMS TO BECOME VERY INDIGNANT IN IMPUGNING  
MOTIVES OF PROSECUTION IN MOVING THAT AMENDMENT ETC. READ  
FROM RESPECTING PREMEDITATED KILLING MURDER IN FIRST DEGREE  
MURDER IS KILLING OF MAN WITH MALICE AFORETHOUGHT  
ESTABLISHED OR IMPLIED [space] SECOND SECTION DEFINES SPECIFIC  
ELEMENTS WHICH IS WILLFUL PREMEDITATED ETC. [space] THEREFORE  
THEIR INSTRUCTION IS BAD BECAUSE MALICE DID NOT ENTER INTO  
CRIME OF MURDER. IF IT IS WILLFUL DELIBERATELY AND  
PREMEDITATEDLY DONE THEN THE LAW CONCLUSIVELY PRESUMES IT  
WAS DONE MALICIOUSLY. ELEMENTS IN FIRST DEGREE IS WILLFUL  
DELIBERATE PREMEDITATED KILLING. BECAUSE WE MIXED TWO  
ELEMENTS OF THIS CRIME FROM THE CLAUSES OF THIS STATEMENT ≤OF  
THE> CASE COMMONWEALTH AGAINST *HAWKIN*[?] 3<sup>RD</sup> DEGREE, BISHOP ON  
CRIMINAL LAW. \* \* [space] WE HAVE DRAWN UP INSTRUCTION EMBRACES  
ALL EVIDENCE *BUT*[?] THE ONLY EVIDENCE EMBRACED IN STATUTE OF  
MURDER IN THE FIRST DEGREE. WHEN YOU ALLEGE INDICTMENT IT WAS  
DONE WILLFULLY DELIBERATELY PREMEDITATEDLY YOU DO NOT HAVE  
TO GO AND PROVE MALICE. THERE IS ONE OTHER INSTRUCTION THAT I  
WISH CALL YOUR ATTENTION TO THAT IS WE SUBMIT WE HAVE TO PROVE  
MAN BY NAME OF JOHN SMITH WAS THERE KILLED SHOWS REASONING  
HAVE STARTED FROM WRONG PREMISE OF COURSE ALL OTHER  
REASONING PREDICATED UPON IT MUST LEAD TO WRONG CONCLUSIONS  
[space] WHAT IS IT WE ARE CALLED TO PROVE IT IS THE CRIME AS  
CHARGED IN INDICTMENT IT IS THE KILLING OF HUMAN BEING  
WILLFULLY DELIBERATELY PREMEDITATEDLY. ONLY THING WE HAVE TO  
DO IS TO PROVE ELEMENTS WHICH MADE UP THAT CRIME THAT IS THE  
CRIME WE CHARGE WE HAVE CHARGED OF KILLING JOHN SMITH  
ALTHOUGH WE HAVE HAD SOME DOUBTS INDICTMENT IS AMBIGUOUS IN  
THAT REGARD CHARGE HIM WITH HAVING KILLED JOHN SMITH AND  
FIFTY OTHERS. KILLING OF ONE MAN CONSTITUTES CRIME OF MURDER  
JUST AS MUCH AS THOUGH HE HAD KILLED FIFTY. ALL ELEMENTS OF  
CRIME IS MADE UP WHETHER HE KILLED FIFTY OR ONE WE ARE ONLY  
CALLED UPON TO MAKE OUT CRIME OF WHICH HE IS CHARGED. IF WE  
PROVE BY THAT COMBINATION IN WHICH JOHN D. LEE PARTICIPATING  
≤THAT ONE MAN> WAS KILLED WE SUSTAIN OUR INDICTMENT TO WIT WE  
PROVE HIM TO BE GUILTY OF MURDER IN FIRST DEGREE IF IT BE DONE  
WILLFULLY DELIBERATELY AND PREMEDITATEDLY. WE HAVE IN THIS  
INDICTMENT ALLEGED HE KILLED JOHN SMITH AND 50 OTHER UNKNOWN  
PERSONS TO PROVE HE KILLED ANY ONE OF THEM MAKES IT A CRIME.  
ANY PROOF WHICH SHOWS HE KILLED ANY ONE OF THOSE UNKNOWN  
SUSTAINS THE INDICTMENT. THE QUESTION NOW OF PRESUMPTION THAT  
THOSE MEN WERE UNKNOWN TO GRAND JURY WHEN THEY READ THEIR  
AUTHORITIES IT SHOWED IMMEDIATELY THE RULE UPON THAT WHARTON  
IS SILENT BEFORE PUT THERE THE WHOLE PRESUMPTION GRAND JURY  
DID NOT KNOW THE PERSONS YOU HAVE SOLEMNLY DECLARED THEY DID

NOT KNOW IT IN THE INDICTMENT 542 SECTION <sup>[9]</sup> LAYS IT DOWN [space] BY SUTHERLAND IT IS *MERELY* 2[?] [space] BASKIN **OH** THE GENTLEMAN READS WITH ACCURATE EYES, 552 [space] BASKIN WHEREIN THESE CASES IT IS USUALLY NECESSARY ETC. GENTLEMAN'S EYES GOOD CORRECT AT THAT POINT AND HE STOPPED [space] HE PROCEEDED TO READ. HE *DID NOT*[?] [space] *IF/FOR*[?] THE NAME IS UNKNOWN TO THE GRAND JURY [space] WITNESSES TESTIFIED THEY DID NOT KNOW NAMES OF THOSE PARTIES. THAT WOULD STILL LEAVE 50 WHOSE NAMES WERE UNKNOWN BY COURT ONE OF MATTHEWS AS WELL AS SMITH SPOKE OF ONE MAN HE NAMED IT. CAREY HE ONLY NAMED IT BY HEARSAY AND REPORT BY HOGE SMITH SAID THE MAN HIMSELF SAID HIS NAME WAS SO AND SO. IT APPEARED FROM THE WITNESS WE PLACED UPON THE STAND [space] BY COURT WHAT IS IT THAT REFERENCE 5532 FIRST BISHOP [space] THAT WOULD BE CALLED UPON *SAY/S*[?] [space] HOW DID HE PROVE THAT HE DID KNOW [space] EXCEPT BY PROVING AFFIRMATIVE FACTS IT AIN'T REQUIRED THE WITNESS THAT WE HERE WERE BEFORE THE GRAND JURY THERE IS NOTHING ON THAT POINT [space] GRAND JURY ACTED UNDER OATH MADE SOLEMN DECLARATION HAVE IT IN THEIR INDICTMENTS. I REFER YOUR HONOR TO FIRST BISHOP CRIMINAL ~~LAW~~ *PROCEDURE* 437. IF A MAN SHOOTS AT TWO PERSONS OR ONLY REGARDLESS OF WHICH HE CAN BE CHARGED WITH THE MURDER OF BOTH. GENTLEMAN PRESUMES THAT THIS CRIME WE HAVE CHARGED THIS PARTY WITH CONSISTS IN ALL OF THIS ANYTHING LESS THAN KILLING OF PARTIES WE CHARGE HIM WITH FAILS TO MAKE IT A CRIME. THE CRIME IS PROVED COMPLETELY IN THE KILLING A SINGLE ONE AND WHEN WE PROVED KILLING OF A SINGLE ONE WE HAVE MADE OUT THE EVIDENCE. [space] ~~SUTHERLAND~~ YOUR HONOR PLEASE. ON THE SUBJECT OF THE REQUEST WHICH COUNSEL BRINGS IN THIS AFTERNOON, COUNSEL HAVE INDULGED IN SOME VERY NOVEL REMARKS AS TO WHAT CONSTITUTES MURDER IN THIS TERRITORY. INSTRUCTIONS WHICH HE BROUGHT NOT ONLY OMITS THE ELEMENT OF MALICE AND NOW COUNSEL DELIBERATELY INFERS YOUR HONOR MALICE IS NO PART OF MURDER IN THIS TERRITORY BASKIN NO SIR I DID NOT DO ANYTHING OF THE SORT [space] WITH THE STATUTE DEFINITION IT IS NOT INCLUDED IN ANY LAW THOUGH WHAT MALICE NECESSARY TO CONSTITUTE CRIME IS ONLY TO BE INFERRED FROM THE MERE KILLING. THE REFERENCE TO SECTION WHICH DIVIDES MURDER IN FIRST AND SECOND DEGREE COUNSEL RATHER REFERRED TO BUT AS THOUGH IT READ ALL WILLFUL DELIBERATE PREMEDITATED KILLING IS MURDER MURDER IN THE FIRST DEGREE [space] QUALIFICATION HE REFER TO STATUTORY MURDER HE PURPOSELY OMITTED ANY STATEMENT OF MALICE [space] HE SAYS THAT THE ALLEGATION IN ANY INDICTMENT OF A DELIBERATE WILLFUL PREMEDITATED KILLING WOULD BE A SUFFICIENT CHARGE OF MURDER IN THE FIRST DEGREE <sup>[10]</sup> THAT ANY WILLFULLY WOULD THAT IF A DEFENDANT WILLFULLY DELIBERATELY PREMEDITATEDLY KILL ANOTHER THAT IS CHARGE OF MURDER IN THE FIRST DEGREE. COUNSEL WAS NEVER MORE MISTAKEN IN HIS LIFE.



SUPPOSE MAN SHOULD BE CONVICTED OF MURDER PROCEEDINGS ARE ALL PROVED TO BE *REGULAR*[?] YOUR HONOR AFTER SENTENCING PERSON WOULD FIX THE DAY AHEAD ISSUE WARRANT AND TAKE HIS LIFE [space] THREE OF THE ELEMENTS THAT CONSTITUTE MURDER WILLFULLY AGAINST SOMEONE INTENTIONALLY WHEN THE MARSHALL PROCEEDS TO TAKE LIFE HE DOES SO INTENTIONALLY THEREFORE WILLFULLY HE DOES IT DELIBERATELY BECAUSE TIME IS FIXED OF AHEAD HE HAS TO MAKE PREPARATIONS AHEAD HE DOES IT PREMEDITATEDLY HAS ABUNDANCE TIME TO CONSIDER BEFOREHAND HOW IT HAS BEEN [space] WOULD THAT BE MURDER IT FOLLOWS HIS DEFINITION HE FIRST SAYS A WILLFUL DELIBERATE AND PREMEDITATED KILLING IS MURDER IN THE FIRST DEGREE [space] I THINK IF THIS JURY WERE TO BE INFORMED THAT CONSTITUTED MURDER THEY MIGHT SHRINK FROM A VERDICT OF BEING ACCESSORY TO THE FACT. I REFER TO AUTHORITIES YOUR HONOR TO SHOW [space] COUNSEL READ IS ERRONEOUS SECTION 4 WHOEVER KILLS ANY HUMAN BEING WITH MALICE AFORETHOUGHT EITHER EXPRESSLY OR IMPLIED IS MALICE AFORETHOUGHT [space]. I WILL VENTURE TO SAY THAT NO KILLING AT ALL WHICH DOESN'T TAKE PLACE WITH ALL THESE CONSIDERATIONS IS MURDER EITHER IN THE FIRST OR SECOND DEGREE IT MUST BE A HUMAN BEING THAT IS KILLED [space] THE KILLING MUST BE WITH MALICE AFORETHOUGHT EITHER EXPRESSED OR IMPLIED. NOW WHAT IS MALICE EXPRESSED AND WHAT IS MALICE IMPLIED AS WE ALL UNDERSTAND IT APPLIES TO THE *LEARNING*[?] OF THE PROFESSION. WHEREFORE IF ONE KILLS EXPRESSLY AGAINST WHOM WHERE HE PLEASE FOR REVENGE THE KILLING OF PARTICULAR INDIVIDUAL THAT IS MALICE EXPRESSED [space] IF A MAN WERE ATTEMPTING TO COMMIT SOME OTHER FELONY FOR INSTANCE ARSON OR BURGLARY WHILE ATTEMPTING TO COMMIT THAT OFFENSE WITHOUT INTENTION WITHOUT ANY VOLITION TO TAKE LIFE THAT WOULD BE MURDER OF THE SECOND DEGREE BECAUSE HE WAS ATTEMPTING TO COMMIT FELONY IN THE ATTEMPT TO COMMIT THAT HE TOOK HUMAN LIFE WHETHER HE INTENDED OR WAS PARTIALLY ACCIDENTAL IT WOULD BE IMMATERIAL BUT THE MALICE WOULD BE IMPLIED [space] THAT IS THE LEGAL DISTINCTION WHAT IS THE SECTION COUNSEL REFERRED TO [space] HE AFFIRMS MY REPETITION OF HIS CRIMINAL THAT ALL WILLFUL DELIBERATE AND PREMEDITATED KILLING IS MURDER DOES THIS SECTION SAY SO [space] SECTION TO WHICH HE REFERRED DOES NOT READ AS HE ASSUMED THAT IT DID. ALL MURDER <sup>[11]</sup> WHICH IS PERPETUATED BY HUMANS MURDER OR LYING IN WAIT OR ANY OTHER KIND OF WILLFUL OR DELIBERATE KILLING WHICH IS COMMITTED IN PERPETRATING AN ARSON IS MURDER IN FIRST DEGREE REFERRING TO MURDER AS DEFINED IN THE PREVIOUS SECTION WHENEVER IT IS COMMITTED UNDER THESE CIRCUMSTANCES WHEN THE KILLING WHICH IS EITHER THERE *DONE*[?] *MURDERED*[?] [space] MURDER IS DONE UNDER CIRCUMSTANCES AS THERE SPECIFIED THEN IT IS MURDER IN THE FIRST DEGREE. THIS IS THE SAME PROVISION CONTAINED IN THE MICHIGAN STATUTE JUDGE *KRSTSS*[?] REFERS TO IN THOSE DECISIONS.

AND THEREFORE THE COURT HAS SETTLED THE LAW THERE MUST BE PROOF *WHO*[?] SATISFIES THE JURY THERE ~~≠~~*WAS*[?]≧ ANY CIRCUMSTANCE ATTENDING THE KILLING TO REMOVE ALL REASONABLE DOUBT AS MATTER OF FACT THAT THERE WAS MALICE AFORETHOUGHT. IT IS NOT TO BE INFERRED FROM THE MERE KILLING UNLESS THAT KILLING AFFORDS IN ITS CIRCUMSTANCES SUFFICIENT EVIDENCE. ONE OTHER POINT IN REMARKS OF COUNSEL I DEEM IT NECESSARY TO REFER TO IS HIS POSITION WITH REFERENCE TO CIRCUMSTANTIAL EVIDENCE AS OPPOSED TO DIRECT EVIDENCE [space] I UNDERSTAND COUNSEL WHILE HE ASSENTS TO THE GENERAL RULE THAT WHERE CIRCUMSTANTIAL EVIDENCE IS INTRODUCED AND IS DEPENDED UPON BY PROSECUTION IT MUST BE SO CONCLUSIVELY IN ITS CHARACTER AS TO EXCLUDE EVERY OTHER REASONABLE HYPOTHESIS OF PERSON'S GUILT HE SAYS THIS IS NOT A CASE DEPENDENT UPON CIRCUMSTANTIAL EVIDENCE AND THEREFORE WHERE RELATED TO THIS CASE THE PROPOSITION IS ABSTRACT OUGHT NOT TO BE GIVEN TO JURY BECAUSE IT WOULD MISLEAD THEM. YOUR HONOR I COULD AGREE WITH HIM IF THIS CASE DOESN'T TEND EITHER WHOLLY OR IN PART UPON CIRCUMSTANTIAL EVIDENCE. THEN THE RULE WHICH IS *PECULIARLY*[?] APPLICABLE TO CIRCUMSTANTIAL EVIDENCE OUGHT NOT TO BE GIVEN TO JURY TO GUIDE THEIR INVESTIGATION. COUNSEL DID NOT ATTEMPT TO DRAW THE LINE OF DISTINCTION BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE I WILL ENDEAVOR TO DO SO PERHAPS NOT NECESSARY TO YOUR HONOR. DIRECT EVIDENCE IS EVIDENCE OF WITNESS TO A PARTICULAR FACT UNDER INVESTIGATION WHO CAN SPEAK FROM HEARING OR SEEING THAT FACT TRANSPIRE IN THIS CASE THE CHARGE IS THE KILLING OF CERTAIN PERSONS IF PROSECUTION DEPENDED FOR CONVICTION ON WITNESS WHO WILL COME IN HERE AND SAY THEY SAW LEE TAKE LIFE OF PERSONS THAT WOULD BE DIRECT EVIDENCE. BUT IF THEY DEPEND UPON OTHER FACTS OTHER WITNESS FROM WHICH FACT THE KILLING WAS INFERRED THE LATTER WOULD BE CIRCUMSTANTIAL EVIDENCE [space] I REFER TO WHALES ON CIRCUMSTANTIAL EVIDENCE RECOMMENCED READING DOWN WITH THAT DISTINCTION PAGE 30 <sup>[12]</sup> READ THE CLAUSES MENTIONED. ~~CIRCUMSTANTIAL EVIDENCE IS NOT EQUAL WITH DIRECT EVIDENCE. CIRCUMSTANTIAL EVIDENCE IS EQUALLY DIRECT IN ITS NATURE BUT AS ITS NAME IMPARTS IT IS DIRECT EVIDENCE OF MINOR FACTS INCIDENTAL TO THE ISSUE CONNECTED WITH ITS INCIDENT.~~ [space] NO PERSON HAS TESTIFIED DIRECTLY THEY SAW JOHN D. LEE COMMIT MURDER AS CHARGED. OTHER PERSONS MAY CLAIM COMMITTED THE ACT JOHN D. LEE WAS NOT THEN PRESENT WHERE HE COULD BE SEEN. NOW SOME OTHER FACTS MUST BE INSISTED UPON IN ORDER TO CONNECT HIM IN A RESPONSIBLE SENSE WITH THE ACT AND VOLITION OF THE PARTIES WHO DID THE ACT IMMEDIATELY. THESE ARE CIRCUMSTANCES WITNESSES TESTIFIED DIRECTLY TO THESE CIRCUMSTANCES *BUT/AND*[?] WHETHER THESE CIRCUMSTANCES. ONLY PROVED *THER WAS*[?] AND WARRANT THE INFERENCE OF HIS CONNECTION

WITH THE MURDER THEY DO NOT SWEAR TO. THAT IS THE LEGAL [space] THEREFORE IF THEY HAVE NO IT NOT HAVING BEEN DONE BY HIM OR IN HIS PRESENCE IT IS IN INFERENCE FROM SOME OTHER FACT TO BE PROVED BEFORE THE JURY THEREFORE THEY ARE NOT REALIZED AS COMPETENT CIRCUMSTANTIAL EVIDENCE. PROPOSITION REFERRED TO ARE NOT TO BE STRUCK THEY ARE A PROPOSITION THAT THE JURY MUST BE CHARGED UPON EITHER AS THE REQUEST ARE DRAWN OR IN SOME OTHER FORM YOUR HONOR MAY ADOPT [space] IT MUST BE WHILE GIVING *OTHER/THEIR*[?] DELIBERATIONS [space] WITH REFERENCE TO INDIRECT PROOF [space] THEY MUST BE INSTRUCTIONS TO ASSIST JURY IN DETERMINING WHETHER LEE IN DOING WHAT HE DID DO HIS ACTS NOT BEING THE ACT OF TAKING LIFE DIRECTLY MADE HIM RESPONSIBLE FOR ACTS DONE BY OTHER PARTIES IN TAKING THE LIFE DIRECTLY. OUR PROPOSITION IS UNLESS THOSE FACTS TO WHICH WITNESSES SWEAR DIRECTLY AS AFFECTED LEE ARE SUCH FACTS AS COULD NOT BE TRUE [space] WITHOUT INVOLVING ALSO THE TRIVIAL AND THE CHARGE HE IS RESPONSIBLE FOR THE KILLING IT DON'T PROVE HIM TO BE GUILTY. FULL FACTS TO WHICH WITNESSES DIRECTLY TESTIFY CONNECTED WITH LEE COULD BE TRUE ACT AT THE TIME SAME TIME AND HE NOT BE GUILTY THE JURY ARE BOUND *TO*[?] ACQUIT HIM IT IS ONLY WHEN THE FACTS ARE PROVED TO WHICH HE IS A PARTY AND THE PARTY CAN'T BE *TRIED/TRUE*[?] AND HE BE INNOCENT THAT A MAN BE FOUND GUILTY. THEREFORE THE FORMULA WHICH CHARGES THEM UNIFORMLY ADOPTED AS STATING CONCLUSIVE CHARACTER OF THIS TESTIMONY. PAGE 171 OF THIS WORK RULE IS LAID DOWN SUBSTANTIVELY. IF THAT IS GOOD LAW I BELIEVE IN THESE PRECISE WORDS THEY DO NOT OBJECT TO IT THE REQUEST IN QUESTION IS A REQUEST WHICH THE SAME RECENTLY ASKED <YOUR HONOR> TO COMPLY WITH. AND OBJECTIONS THAT THERE IS ONE PART OF ANOTHER REQUEST <sup>[13]</sup> OUGHT TO BE OMITTED NOT GIVEN IT IS PRECISELY REQUEST ADMIT SUGGESTION OF DOUBT IN MINDS OF THE JURY WHERE NONE OTHERWISE WOULD EXIST THE REMARKS WHICH IS ATTRIBUTED TO *LORD*[?] —*L*[?] [space] IT IS BETTER TO ERR ON THE SIDE OF MERCY OR ERR ON THE SIDE OF THE PRISONER BY GIVING GREATER WEIGHT TO POSSIBILITY OF HIS INNOCENCE THAN TO ERR ON THE OTHER SIDE AND AS THE MOUNTAIN MEADOW MASSACRE IS RENDERED IT IS BETTER TEN GUILTY PERSONS SHOULD ESCAPE THAN ONE INNOCENT MAN SHOULD SUFFER. THIS PARTICULAR CASE THIS PARTICULAR JURY CAN'T SAFELY BE TRUSTED. IF THE LAW IS GOOD THINK MAXIM IS GOOD IN ANY CASE WITH ANY JURY JURY HERE IS NOT GOOD IN THIS CASE COUNSEL'S REMARKS WOULD SEEM TO IMPORT THAT THE PRISONER'S GUILT IS A FOREGONE CONCLUSION ANOTHER INSTRUCTION OUGHT TO BE GIVEN TO THIS JURY IF HE MISTAKENLY INTIMATES TO THEM THEY HAVE ANOTHER DUTY TO PERFORM THAT IS RENDER VERDICT OF GUILTY. JURY THEMSELVES ARE TO RECEIVE TESTIMONY IN THIS CASE AND CONSIDER *PRINCIPALLY/PERFECTLY*[?]. THAT IT WILL BE A PART OF THEIR DUTY TO GIVE THE DEFENDANT THE BENEFIT OF EVERY DOUBT UNLESS

THEY ARE FULLY CONVINCED TO A MORAL CERTAINTY THAT HE IS GUILTY. THEY ARE TO ACQUIT HIM. [space] BASKIN MAY IT PLEASE YOUR HONOR AFTER PRESENTATION OF OUR NEW SUSPICIONS INSTRUCTIONS WE WOULD BE ENTITLED TO THE CLOSING GENTLEMAN SUGGESTED SOME OTHER IDEAS I HAVE NOT HAD OPPORTUNITY TO ANSWER. BY THE INDULGENCES {OF}<sup>1</sup> COURT IF THERE IS NO OBJECTIONS I WOULD LIKE TO SAY ONE WORD ON PROPOSITION ON NEW INSTRUCTION WHICH WE ASKED ABOUT. GENTLEMAN ATTEMPTS TO READ THIS STATUTE SO AS TO MAKE MALICE ONE OF THE ELEMENTS OF MURDER IN THE FIRST DEGREE. LET'S READ THAT. AND ALL MURDER WHICH IS PERPETUATED BY MEANS OF POISON OR LAYING IN WAIT OR ANY OTHER KIND OF WILLFUL DELIBERATE AND PREMEDITATED KILLING OR WHICH IS COMMITTED IN THE PERPETRATION OR ATTEMPT TO PERPETRATE ANY ARSON ROBBERY IS MURDER IN THE FIRST DEGREE SHALL BE PUNISHED WITH DEATH [space] AS FAR AS WITH A PERSON AND THE PERPETRATION OF BURGLARY MALICE MAY NOT BE IN INDICTMENT NOR ANY MOTIVE BUT ALLEGED AS WELL IN ACT OF COMMITTING BURGLARY HE KILLED HUMAN BEING YOU DO NOT HAVE TO ALLEGE HE KILLED PERSON WITH MALICE FOR SIMPLE REASON MALICE IS INCLUDED. WHEN YOU SHOW PARTY HAS KILLED WILLFULLY AND DELIBERATELY ~~PROVE~~ YOU MUST HE HAS SHOW HE HAS COMMITTED MURDER IN FIRST DEGREE YOU TAKE OUT WILLFUL IT MAKES IT MURDER SECOND DEGREE TAKE OUT DELIBERATE AND IT MAKES IT STILL MORE DIFFERENT. <sup>[14]</sup> BISHOP IF IT IS CORRECTLY ADVANCED —[?] CASE THUS ETC. MALICE IS THE CONCLUSION OF LAW IF KILLING BE DONE IN THAT WAY [space] 432 PM ALL INSTRUCTIONS WERE HANDED TO THE JUDGE. . . BISHOP IF PROSECUTION SHALL ENTER ANY FURTHER INSTRUCTIONS WE WOULD LIKE TO HAVE THEM REDUCED TO WRITING. BY BISHOP; WE WISH THE STATUTE READ TO THE JURY ON MURDER, AND THE DIFFERENT DEGREES OF IT.

**Tribune**

**RT**

**RS**

**BT**

**PS**

<p><sup>[161]</sup> CHAPTER SIX INSTRUCTIONS, FINAL ARGUMENTS, VERDICT. JUDGE BOREMAN'S CHARGE TO THE JURY. "THE LEE TRIAL." "JUDGE BOREMAN'S CHARGE TO THE JURY. ARGUMENTS OF</p>				
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**Tribune**

**RT**

**RS**

**BT**

**PS**

THE  
PROSECUTION  
AND DEFENSE  
COMMENCED.”  
WEDNESDAY  
MORNING,  
AUGUST 4, 1875.  
*THE SALT LAKE  
DAILY TRIBUNE.*  
[SPECIAL TO THE  
*TRIBUNE.*]

BY JUDGE <BP>  
I DO NOT  
KNOW  
WHETHER  
I WILL BE  
READY  
TOMORROW  
MORNING AT

ARGUED BY  
BISHOP.  
REPLIED TO BY  
~~CAREY~~ BASKIN.  
[space] <COURT>  
THERE IS NO  
INSTRUCTION  
AS TO THE  
POINT. COURT  
[space] BASKIN  
[space] IT HAS  
BEEN OUR  
CUSTOM IN THE  
DISTRICTS  
BEFORE THAT  
THE COURT ON  
THESE GENERAL  
PRINCIPLES ON  
WHICH THERE  
CAN BE NO  
DISPUTE  
AMONG  
COUNSEL AS TO  
MURDER AND  
MANSLAUGHTER.  
[space] COURT  
I DO NOT  
KNOW  
WHETHER  
I WILL BE  
READY  
TOMORROW

**Tribune**

**RT**

**RS**

**BT**

**PS**

	<p>[Bk 1 22] AUGUST 3RD, 1875. TWO O’CLOCK P.M.</p>	<p>NINE O’CLOCK OR NOT BY CAREY. SUPPOSE YOU SAY TEN [space] BY COURT SAY 11 O’CLOCK THEN. BY COURT PERHAPS IT WOULD BE WELL ENOUGH TO HAVE INSTRUCTIONS GIVEN BEFORE DINNER. I HAVE BEEN ACTING UNWELL TODAY ADJOURNED COURT UNTIL TOMORROW MORNING 11 O’CLOCK = [space] <b>TUESDAY, AUGUST 3RD 1875 - 11:15 AM</b> [space] <b>≪COURT≫</b> I WAS NOT WELL YESTERDAY DID NOT GET TO EXAMINE LAWS  UNTIL LAST NIGHT, I WAS NOT WELL ENOUGH TO READ WAS HARDLY WELL ENOUGH TO GET ABOUT.</p>	<p><b>COURT ADJOURNED ‘TILL 11 OCLOCK TOMORROW</b>  [332] TUESDAY, AUGUST 3RD, <del>818:75</del> 1875 II A. M. COURT: I WAS NOT WELL YESTERDAY AND DIDN’T GET TO EXAMINE THE AUTHORITIES TILL LAST NIGHT. I WASN’T WELL ENOUGH TO- DAY TO DO SO. AM HARDLY WELL ENOUGH TO GET ABOUT. I</p>	<p>9 O’CLOCK  SO WE HAD BETTER MEET AT 11 O’CLOCK. [space]  <b>COURT ADJOURNED UNTIL 11 O’CLOCK [space]</b>  I WAS NOT WELL ENOUGH  TO EXAMINE THE LAW</p>
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Tribune	RT	RS	BT	PS
<p>“BEAVER, UTAH, AUGUST 3. — IN THE LEE CASE, JUDGE BOREMAN CHARGED THE JURY AT HALF PAST TWO O’CLOCK. THE COURT ROOM WAS CROWDED, AND ALL THE INTEREST MANIFESTED IN THE CASE WAS</p>	<p>JUDGE BOREMAN CHARGED THE JURY AT HALF PAST TWO O’CLOCK.<sup>410</sup> THE COURT ROOM WAS CROWDED AND ALL THE INTERESTS MANIFESTED IN THE CASE WAS</p>	<p>I HAVE NOT EXAMINED LAW SUFFICIENTLY</p> <p>AND WILL TAKE RECESS UNTIL HALF AFTER TWO O’CLOCK. [space]</p> <p>2:30, PM. [space] 245 PM</p> <p>JUDGE BOREMAN ENTERED THE COURT ROOM. NAMES OF JURORS CALLED ALL WERE PRESENT.</p> <p>{BOREMANS SPEECH &lt;WITH&gt; INSTRUCTIONS TO JURY}P ≅3 PM→</p>	<p>HAVN’T YET EXAMINED THE LAWS SUFFICIAENTLY AS IWANTED TO, AND WE WILL TAKE A RECESS TILL THIS</p> <p>AFTERNOON AT 3:3 0 O C’COLCK THIS AFTERNOON. RECESS TILL 3:30. ———— OO———— 3:30 P.M. COURT MET PU RSUANT TO ADJOURNMENT..</p> <p>JURY CALLED . ALL PERESENT.</p> <p>(THE COURT AT THIS POINT GAVE HIS CHARGE TO THE JURY)</p>	<p>I AM NOT YET EXAMINED THE LAW SUFFICIENTLY</p> <p>AND TAKE RECESS TILL HALF AFTER TWO O’CLOCK [space] AFTERNOON RECESS <sup>[[8]]</sup> 230 PM AUG 3RD/,75 - ¶</p> <p>{BOREMANS CHARGE WITH INSTRUCTIONS} <sup>i411</sup></p>

410. The RT of Boreman’s instructions to the jury is an almost verbatim copy of the *Salt Lake Tribune*’s report published August 4, 1875. RT contains all of the *Tribune* article, including summary statements, sections of which were not recorded in RS. Some sections of the *Tribune* article are based on RS, with additions from PS and from unknown sources.

411. In Rogerson’s hand.

**Tribune****RT****RS****BT****PS**

<p>AS VARIED AND DEEP AS AT ANY PREVIOUS TIME.</p> <p>THE CHARGE (1) “GENTLEMEN OF THE JURY:— THE INTRODUCTION OF TESTIMONY FOR THE</p> <p>PROSECUTION AND DEFENSE BEING NOW AT AN END, THE DUTY DOES LAY UPON ME, IN ORDER TO AID YOU IN ARRIVING AT A CORRECT CONCLUSION IN YOUR VERDICT, TO INSTRUCT YOU UPON THE LAW APPLICABLE TO THE CASE, AND TO GIVE YOU SUCH SUGGESTIONS AND ADVICE AS THE NECESSITIES OF THE CASE SEEM TO REQUIRE. “WHAT I</p>	<p>AS VARIED AND DEEP AS AT ANY PREVIOUS TIME DURING THE TRIAL <u>THE CHARGE.</u> GENTLEMEN OF THE JURY: THE INTRODUCTION OF TESTIMONY FOR THE</p> <p>PROSECUTION AND THE DEFENSE, BEING NOW AT AN END, THE DUTY DOES LAY UPON ME, IN ORDER TO AID YOU IN ARRIVING AT A CORRECT CONCLUSION IN YOUR VERDICT TO INSTRUCT YOU UPON THE LAW APPLICABLE TO THE CAUSE AND TO GIVE YOU SUCH SUGGESTIONS AND ADVICE AS THE NECESSITIES OF THE CASE SEEM TO REQUIRE. WHAT? I</p>	<p>GENTLEMEN OF THE JURY THE INTRODUCTION OF TESTIMONY ≤FOR THE&gt; <del>FOR THEM</del> ≤JUDGMENT&gt; PROSECUTION AND THE DEFENSE BEING NOW AT AN END, THE DUTY DEVOLVES UPON ME IN ORDER TO AID YOU ARRIVE ≤IN&gt; ARRIVING ≤AT A&gt; CORRECT CONCLUSION IN YOUR VERDICT, TO INSTRUCT YOU UPON LAW APPLICABLE CASE ≤AND TO GIVE YOU SUCH SUGGESTIONS AND ADVICE AS THE NECESSITIES OF THE CASE&gt; SEEM TO REQUIRE. WHATEVER I</p>		<p>GENTLEMEN OF THE JURY [<i>space</i>]</p> <p>INTRODUCTION OF THE TESTIMONY FOR BOTH</p> <p>PROSECUTION AND DEFENSE BEING NOW AT AN END DUTY DEVOLVES UPON ME IN ORDER TO AID YOU TO ARRIVE [<i>space</i>]</p> <p>INSTRUCT YOU ON THE LAW APPLICABLE TO THE CASE AND GIVE YOU SUCH SUGGESTIONS AS NECESSITIES OF THE CASE SEEM TO REQUIRE WHATEVER I</p>
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**Tribune****RT****RS****BT****PS**

<p>SAY UPON QUESTIONS OF LAW IS OBLIGATORY UPON YOU, BUT WHAT I STATE RESPECTING FACT, IS NOT OBLIGATORY UPON YOU. THE COURT IS THE SOLE JUDGE OF THE LAW OF THE CASE, BUT YOU ARE THE SOLE JUDGES OF THE FACTS, AND ALSO THE CREDIBILITY OF THE WITNESSES “THE MOUNTAIN MEADOWS MASSACRE, WHICH THIS CASE HAS CAUSED FOR THE FIRST TIME TO BE INVESTIGATED, WAS A CRIME OF APPALLING MAGNITUDE, PLANNED AND CARRIED OUT WITH A DEMON-LIKE FEROCITY, UNPARALLELLED IN MODERN</p>	<p>SAY UPON QUESTIONS OF LAW IS OBLIGATORY UPON YOU, BUT WHAT I STATE RESPECTING FACTS IS NOT OBLIGATORY UPON YOU. THE COURT IS THE SOLE JUDGE OF THE LAW OF THE CASE, BUT YOU ARE THE SOLE JUDGES OF THE FACTS AND ALSO THE CREDIBILITY OF THE WITNESSES. THE MOUNTAIN MEADOWS MASSACRE WHICH THIS CASE HAS CAUSED FOR THE FIRST TIME TO BE INVESTIGATED, WAS A CRIME OF APPALLING MAGNITUDE, PLANNED AND CARRIED OUT WITH A DEMON-LIKE FEROCITY, UNPARALLELLED IN MODERN</p>	<p>SAY YOU TO YOU UPON QUESTIONS OF LAW IS OBLIGATORY UPON YOU THAT WHICH I STATE RESPECTING FACTS IS NOT OBLIGATORY UPON YOU COURT IS SOLE JUDGE OF LAW UPON CASE <i>COURT/YOU</i>[?] ARE THE SOLE JUDGES OF FACTS AND ALSO CREDIBILITY OF WITNESSES THE MOUNTAIN MEADOWS MASSACRE WHICH THIS CASE HAS CAUSED FOR THE FIRST TIME TO BE INVESTIGATED WAS A CRIME OF VILEST MAGNITUDE  CARRIED OUT  FEROCITY</p>		<p>SAY TO YOU UPON QUESTIONS OF LAW IS OBLIGATORY TO YOU BUT THAT WHICH I STATE RESPECTING <del>TO</del> <del>THE</del> THE FACTS IS NOT OBLIGATORY UPON YOU <i>[space]</i>  YOU ARE THE SOLE JUDGES OF THE FACTS AND ALSO OF THE CREDIBILITY OF THE WITNESSES THE MOUNTAIN MEADOWS MASSACRE WHICH THIS CASE HAS CAUSED FOR THE FIRST TIME TO BE INVESTIGATED <i>AND IS A</i>—[?] CRIME OF APPALLING MAGNITUDE AND PLANNED AND CARRIED OUT A DEMON-LIKE FEROCITY AND <i>[space]</i></p>
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<p>DAYS, OR AMONG CIVILIZED PEOPLE, AND IT IS OF WIDE-SPREAD INTEREST, BY REASON OF ITS ENORMITY AND ITS LONG CONCEALMENT. “THERE IS NO DISPUTE AS TO THE FACT OF THE MASSACRE AT THE TIME AND PLACE SPECIFIED. IT IS CHARGED, HOWEVER, THAT THIS DEFENDANT WAS A PARTICIPANT AND LEADER IN THIS BLOODY WORK, AND UPON THIS CHARGE HE IS NOW UPON HIS TRIAL BEFORE YOU. “THE PRISONER AT THE BAR, JOHN D. LEE, IS CHARGED WITH THIS CRIME, GUILTY WITH W. H. DAME, ISAAC C. HAIGHT, JOHN M. HIGBEE, GEORGE</p>	<p>DAYS, OR AMONG CIVILIZED PEOPLE, AND IT IS OF WIDESPREAD INTEREST <sup>[23]</sup> BY REASON OF ITS ENORMITY AND ITS LONG CONCEALMENT. THERE IS NO DISPUTE AS TO THE FACT OF THE MASSACRE AT THE TIME AND PLACE SPECIFIED. IT IS CHARGED, HOWEVER, THAT THIS DEFENDANT WAS A PARTICIPANT AND LEADER IN THIS BLOODY WORK, AND UPON THIS CHARGE HE IS NOW UPON HIS TRIAL BEFORE YOU. THE PRISONER AT THE BAR, JOHN D. LEE, IS CHARGED WITH THIS CRIME, GUILTY WITH WILLIAM H. DAME, ISAAC C. HAIGHT, JOHN M. HIGBEE, GEORGE</p>	<p>IN CIVILIZATION —[?] <del>IT WAS</del>. IT IS OF WIDESPREAD INTEREST BY REASON OF ITS ENORMITY</p> <p>THERE IS NO DISPUTE AS TO THAT AND MASSACRE AS TO TIME AND PLACE SPECIFIED IT IS CHARGED</p> <p>THIS DEFENDANT WAS A PARTICIPANT LEADER IN THIS BLOODY WORK UPON THIS CHARGE HE IS NOW ON HIS TRIAL BEFORE YOU PRISONERS BAR JOHN D. LEE IS CHARGED WITH THIS CRIME JOINTLY WITH OTHERS TOGETHER AND <i>THEN ALL</i>[?] [space]</p>		<p>IT IS OF WIDESPREAD INTEREST BY REASON OF ITS ENORMITY <i>AND LONG</i>[?] CONCEALMENT THERE IS NO DISPUTE ABOUT THE MASSACRE [space]</p> <p>IT IS CHARGED</p> <p>THAT THIS DEFENDANT IS A LEADER <math>\Leftarrow</math>PARTICIPANT <math>\Rightarrow</math><sup>412</sup> IN THIS BLOODY WORK [space]</p> <p>PRISONER AT THE BAR JOHN D. LEE IS CHARGED WITH THIS CRIME JOINTLY WITH [space]</p> <p>HIGBEE HAIGHT &amp;C AND</p>
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412. Apparently in Rogerson’s shorthand.

**Tribune**

**RT**

**RS**

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<p>ADAIR, JR., ELLIOTT WILDEN,  SAMUEL JUKES, PHILIP K. SMITH, AND W. C. STEWART, BUT ONLY THE DEFENDANT LEE IS NOW UPON TRIAL, AND IT IS NO CONCERN OF THIS JURY WHETHER ANY OR ALL OF THE OTHER DEFENDANTS BE ARRESTED AND TRIED OR NOT. BUT IT IS ONLY REASONABLE TO SUPPOSE THAT OTHERS WILL BE ARRESTED AND TRIED AS SPEEDILY AS IT IS POSSIBLE TO BE DONE. YOU HAVE ONLY TO DO WITH THE INNOCENCE OR GUILT OF THIS DEFENDANT. WAS THERE A COMBINATION OF PARTIES? "IN ORDER TO REACH THE</p>	<p>ADAIR JR., ELLOTT WILDEN, SAMUEL JUKES, PHILIP K. SMITH AND WILIAM C. STEWART, BUT ONLY THE DEFENDANT LEE IS NOW UPON TRIAL, AND IT IS NO CONCERN OF THIS JURY WHETHER ANY OR ALL OF THE DEFENDANTS BE ARRESTED OR NOT, BUT IT IS ONLY REASONABLE TO SUPPOSE THAT OTHER WILL BE ARRESTED AND TRIED AS SPEEDILY AS IT IS POSSIBLE TO BE DONE. YOU HAVE ONLY TO DO WITH THE INNOCENCE OR GUILT OF THIS DEFENDANT;  IN ORDER TO REACH THE</p>	<p>[15]413 SAMUEL JUKES PHILIP K SMITH AND WILLIAM C STEWART, BUT ONLY THIS DEFENDANT LEE IS NOW UPON TRIAL IT IS [space]  IT IS REASONABLE TO SUPPOSE OTHERS WILL BE ARRESTED TRIED AS SPEEDILY AS POSSIBLE TO BE DONE. YOU HAVE ONLY TO DO WITH GUILT AND INNOCENCE OF THIS DEFENDANT [space]  IN ORDER TO REACH</p>		<p>[space]    BUT ONLY THIS DEFENDANT LEE IS NOW UPON TRIAL AND IT IS NO CONCERN TO THIS JURY WHETHER ANY OR ALL OF THE OTHERS   WILL BE TRIED BUT [space]   SPEEDILY AS POSSIBLY BE DONE YOU HAVE ONLY TO DO WITH THE GUILT OR INNOCENCE OF THIS DEFENDANT [space]  IN ORDER TO REACH THE</p>
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413. At top of the page in purple pencil longhand: **BOREMAN'S REMARKS - OFFERING INSTRUCTIONS TO JURY.**

**Tribune****RT****RS****BT****PS**

<p>TRUTH IN REGARD TO THE PRISONER'S GUILT OR INNOCENCE, IT IS PERHAPS THE MOST NATURAL, THE MASSACRE ITSELF NOT BEING DISPUTED, TO INQUIRE FIRST AS TO WHETHER THERE WAS ANY COMBINATION OF PARTIES IN PLANNING AND EXECUTING THIS HORRIBLE DEED, AND IF THERE <sup>[162]</sup> WAS SUCH COMBINATION AND JOINT ACTION, THEN WHETHER THE PARTIES OR ANY OF THEM INDICTED WITH THE PRISONER WERE IN THIS COMBINATION. WAS THIS DEFENDANT A PARTY? "IF SO, THEN WAS DEFENDANT PARTY TO SUCH COMBINATION. IF FROM THE EVIDENCE YOU FIND</p>	<p>TRUTH IN REGARD TO THE PRISONERS GUILT OR INNOCENCE IT IS PERHAPS THE MOST NATURAL. THE MASSACRE ITSELF NOT BEING DISPUTED TO ENQUIRE FIRST AS TO WHETHER THERE WAS ANY COMBINATION OF PARTIES IN PLANNING AND EXECUTING THIS HORRIBLE DEED, AND IF THERE WAS SUCH COMBINATION AND JOINT ACTION, THEN WHETHER THE PARTIES OR ANY OF THEM INDICTED WITH THE PRISONER WERE IN THIS COMBINATION;</p> <p>IF SO THEN WAS DEFENDANT PARTY TO SUCH COMBINATION;</p> <p>IF FROM THE EVIDENCE YOU FIND</p>	<p>TRUTH REGARD TO THE PRISONERS GUILT OR INNOCENCE IT IS PERHAPS MOST NATURAL THE MASSACRE ITSELF NOT BEING DISPUTED TO INQUIRE FIRST WHETHER THERE WAS A SUSPICION OF COMBINATION OF PARTIES IN PLANNING EXECUTING THIS TERRIBLE DEED [space] IF THERE WAS SUCH COMBINATION</p> <p>WHETHER PARTIES OR ANY OF THEM INDICTED WITH PRISONER WERE IN THIS COMBINATION</p> <p>IF SO THEN WAS THE DEFENDANT A PARTY TO SUCH A COMBINATION. IF FROM THE EVIDENCE YOU FIND</p>		<p>TRUTH IN REGARD TO THE PRISONERS DR/TR/[?] OR INNOCENCE IT IS PERHAPS MOST NATURAL</p> <p>TO INQUIRE FIRST WHETHER WAS</p> <p>COMBINATION OF PARTIES IN PLANNING EXECUTING THIS TERRIBLE DEED [space] AND IF SO [space] THEN</p> <p>WHETHER ANY OF THE PARTIES</p> <p>WERE IN THIS COMBINATION</p> <p>AND IF SO THEN WAS THE DEFENDANT A PARTY OF SUCH COMBINATION AND IF FROM THE EVIDENCE YOU FIND</p>
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**Tribune****RT****RS****BT****PS**

<p>SUCH CONCERT OF ACTION AND CO-OPERATION AMONG THE PARTIES CHARGED OR A NUMBER OF THEM, AND THAT THE PRISONER WAS JOINTLY ACTING WITH THEM HE IS GUILTY, EVEN THOUGH IT MIGHT NOT APPEAR THAT HE, WITH HIS OWN HANDS, DID ANY OF THE KILLING. "IF ONLY THOSE WERE GUILTY WHO DID THE SHOOTING, AND KILLING WITH THEIR OWN HANDS, THEN IN BUT FEW CASES OF THIS KIND COULD THE LEADERS BE REACHED. THE RANK AND FILE ALONE WOULD SUFFER. WHO DID THE KILLING? "IT IS NOT NECESSARY TO BE SHOWN</p>	<p>SUCH CONCERT OF ACTION AND CO-OPERATION AMONG THE PARTIES CHARGED OR A NUMBER OF THEM, AND THAT THE PRISONER WAS JOINTLY ACTING WITH THEM HE IS GUILTY EVEN THOUGH IT MIGHT NOT APPEAR THAT HE WITH HIS OWN <del>HDS</del> HANDS DID ANY OF THE KILLING, IF ONLY THOSE WERE GUILTY WHO DID THE SHOOTING AND KILLING WITH THEIR OWN <del>H</del> HANDS, THEN IN <del>F</del> BUT FEW CASES OF THIS KIND COULD THE LEADERS BE REACHED, THE RANK AND FILE ALONE WOULD SUFFER.</p> <p>IT IS NOT <sup>[24]</sup> NECESSARY TO BE SHOWN</p>	<p>THERE WAS SUCH CONCERT OF ACTION</p> <p>PRISONER WAS JOINTLY ACTING WITH THEM HE IS GUILTY EVEN THOUGH IT MIGHT APPEAR HE WITH HIS OWN HANDS DID ANY OF THE KILLING IF ONLY THOSE WERE <i>GUILTY</i>[?] WHO DID THE SHOOTING</p> <p>FEW CASES OF THIS KIND GET THE LEADERS <i>OFF</i>[?] WHERE THE RANK AND FILE ALONE WOULD SUFFER AND IT IS NOT NECESSARY</p>		<p>THERE WAS SUCH CONCERT OF ACTION AND COOPERATION</p> <p>PRISONER JOINTLY ACTING WITH THEM EVEN THOUGH IT MIGHT NOT APPEAR THAT HE WITH HIS OWN HANDS DID ANY KILLING IF ANY <del>OF THOSE</del> ONLY THOSE WERE GUILTY WHO DID THE KILLING [<i>space</i>]</p> <p>THEN IN BUT FEW [<i>space</i>] <i>BUT</i>/—[?]</p> <p>THE LEADERS IN SUCH CRIMES [<i>space</i>]</p> <p>IT IS NOT NECESSARY TO BE SHOWN</p>
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**Tribune****RT****RS****BT****PS**

<p>THAT THE DEFENDANT DID WITH HIS OWN HANDS ANY OF THE KILLING; BUT IF THE KILLING WERE DONE BY THOSE WITH WHOM HE WAS CO-OPERATING, THOUGH HIS PART WAS NOT TO DO ANY OF THE KILLING, HE IS GUILTY; AND IF IT HAS BEEN IN YOUR OPINION SHOWN BY THE EVIDENCE, AND THAT HE ACTUALLY DID ANY OF THE KILLING, THAT FACT WILL BE TAKEN INTO CONSIDERATION. AGREEMENT TO JOINT ACTION “IF, HOWEVER, YOU FIND FROM THE EVIDENCE THAT</p> <p>THERE WAS NO COMBINATION OR AGREEMENT TO JOIN ACTION, THEN NO ACT OF ANY OF THE OTHER PARTIES</p>	<p>THAT THE DEFENDANT DID WITH HIS OWN HANDS ANY OF THE KILLING, BUT IF THE KILLING WERE DONE BY THOSE WITH WHOM HE WAS CO-OPERATING, THOUGH HIS PART WAS NOT TO DO ANY OF THE KILLING HE IS GUILTY, AND IF IT HAS BEEN IN YOUR OPINION SHOWN BY THE EVIDENCE AND THAT HE ACTUALLY DID ANY OF THE KILLING THAT FACT <del>WOULD</del> WILL BE TAKEN INTO CONSIDERATION.</p> <p>IF, HOWEVER, YOU FIND FROM THE EVIDENCE, THAT</p> <p>THERE WAS NO COMBINATION OR AGREEMENT TO JOIN ACTION, THEN NO ACT OF ANY OF THE OTHER PARTIES</p>	<p>DEFENDANT DID</p> <p>ANY OF THE KILLING IF KILLING WERE DONE WITH THOSE WITH WHOM HE WAS CO-OPERATING THOUGH HIS PART WAS NOT TO DO ANY OF IT [space] HE IS GUILTY AND IF IT HAS BEEN IN YOUR OPINION SHOWN IN THE EVIDENCE THAT HE ACTUALLY DOING KILLING THAT FACT WILL BE TAKEN INTO CONSIDERATION BY YOU [space]</p> <p>IF HOWEVER YOU FIND BY</p> <p><i>EVIDENCE</i>[?] YOU FIND</p> <p>THERE WAS NO COMBINATION NO [space]</p>		<p>THAT THE DEFENDANT WITH HIS OWN HANDS [space] ANY OF THE KILLING [space]</p> <p>BUT IF HE COOPERATED</p> <p>THEN HE IS GUILTY AND IF IT HAS BEEN IN YOUR OPINION SHOWN <del>BY</del> <sup>[19]</sup> UNDER THE EVIDENCE THAT HE</p> <p>DID ANY OF THE KILLING THAT FACT WILL BE TAKEN INTO CONSIDERATION BY YOU</p> <p>IF HOWEVER YOU FIND</p> <p>THERE WAS NO AGREEMENT NO JOINT ACTION THEN NO ACT OF THE OTHER PARTIES</p>
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**Tribune****RT****RS****BT****PS**

<p>WOULD CONDEMN THIS DEFENDANT</p> <p>UNLESS IT WAS DONE BY HIS OWN DIRECTION OR CONSENT. IN ASCERTAINING</p> <p>WHETHER SUCH COMBINATION EXISTED, IT IS NOT NECESSARY THAT THE EVIDENCE SHOULD SHOW ANY EXPRESS AGREEMENT; IT IS SUFFICIENT THE ACTS, CAUSE AND CONDUCT OF THE PARTIES CHARGED SHOWED THAT AN UNDERSTANDING EXISTED, AND THAT THEY WERE OPERATING JOINTLY FOR THE ACCOMPLISHMENT OF THE SAME END; RESPONSIBILITY FOR JOINT ACTION "IF THE EVIDENCE, IN YOUR JUDGEMENT,</p>	<p>DEFENDANT WOULD BE</p> <p>UNLESS IT WAS DONE BY HIS OWN DIRECTION OR CONSENT. IN ASCERTAINING</p> <p>WHETHER SUCH COMBINATION EXISTED IT IS NOT NECESSARY THAT THE EVIDENCE SHOULD SHOW ANY EXPRESS AGREEMENT. IT IS SUFFICIENT THE ACTS, CAUSE AND CONDUCT OF THE PARTIES CHARGED, SHOWED THAT AN UNDERSTANDING EXISTED, AND THAT THEY WERE OPERATING JOINTLY FOR THE ACCOMPLISHMENT OF THE SAME END,</p> <p>AND IF THE EVIDENCE IN YOUR JUDGEMENT</p>	<p>UNLESS IT WAS DONE BY HIS DIRECTION OR CONSENT [space] ANY QUESTIONS</p> <p>WHETHER SUCH COMBINATION EXISTED IT IS NOT NECESSARY[?].</p> <p>IT IS SUFFICIENT IF THE ACTS AND COURSE AND CONDUCT OF THE PARTIES</p> <p>SHOWED THAT AN UNDERSTANDING EXISTED AND THAT THEY WERE OPERATING JOINTLY IF HE</p> <p>COMPLIED WITH THE SAME END</p> <p>IF THE EVIDENCE</p>		<p>WOULD UPON THE DEFENDANT IN ASCERTAINING</p> <p>WHETHER SUCH COMBINATION EXISTED IT IS NOT NECESSARY THAT THE EVIDENCE SHOULD SHOW ANY EXPRESS AGREEMENT IT IS SUFFICIENT IF <del>THE</del> [space]</p> <p>SHOW THAT</p> <p>THE ACCOMPLISHMENT[?] OF THE SAME END</p> <p>AND IF THE EVIDENCE IN YOUR JUDGMENT</p>
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**Tribune****RT****RS****BT****PS**

<p>SHOWS OTHERS THAN THOSE CHARGED, ACTED AND CO-OPERATED WITH THOSE, THEN THE PRISONER WOULD BE HELD RESPONSIBLE FOR THEIR ACTS, AS THEY WOULD BE FOR HIS ACTS IN PURSUANCE OF THEIR COMMON PURPOSE—THE WORK OF ANY WAS THE WORK OF ALL— AND IF THE PARTIES ENGAGED BE ALLOTTED TO DIFFERENT PARTS IN THE ACCOMPLISHMENT OF THE JOINT PURPOSE, SOME TO DO ONE THING AND SOME TO STAND GUARD, SOME TO DRIVE WAGONS, SOME TO KILL AND SOME TO DO OTHER PARTS OF THE COMMON WORK, ALL ARE</p>	<p>SHOWS OTHERS THAN THOSE CHARGED ACTED AND CO-OPERATED WITH THOSE THEN THE PRISONER WOULD BE HELD RESPONSIBLE FOR THEIR ACTS AS THEY WOULD BE FOR HIS ACTS IN PURSUANCE OF THEIR COMMON PURPOSE. THE WORK OF ANY WAS THE WORK OF ALL, AND IF THE PARTIES ENGAGED BE ALLOTTED TO DIFFERENT PARTS IN THE ACCOMPLISHMENT OF THE JOINT PURPOSE SOME TO DO ONE THING, AND SOME TO STAND GUARD, SOME TO DRIVE WAGONS, SOME TO KILL AND SOME TO DO OTHER PARTS OF THE COMMON WORK, ALL ARE</p>	<p>OTHERS THAN CHARGED ACTED AND CO-OPERATED WITH THOSE THEN THE PRISONER WOULD BE HELD RESPONSIBLE FOR THEIR ACTS AS THEY WOULD BE FOR HIS ACTS [<i>space</i>]</p> <p>WORK OF ANY WAS THE WORK OF ALL IF THE PARTIES ENGAGED WERE ALLOTTED TO DIFFERENT OFFICES[?] IN THE ACCOMPLISHMENT OF THEIR JOINT PURPOSE SOME TO DO ONE THING SOME TO DO ANOTHER SOME TO DRIVE WAGONS SOME TO KILL</p> <p>ALL ARE</p>		<p>SHOWS THAT OTHERS THAN THOSE CHARGED ACTED AND CO-OPERATED WITH THIS DEFENDANT THE PRISONER WOULD BE HELD RESPONSIBLE FOR THEIR ACTS AND THEY WOULD BE FOR HIS ACTS IN PURSUANCE OF THEIR COMMON PURPOSE THE WORK OF ANY WAS THE WORK OF ALL AND IF THE PARTIES ENGAGED WERE ALLOTTED DIFFERENT PARTS IN THE JOINT PURPOSE</p> <p>SOME TO STAND GUARD AND</p> <p>SOME TO KILL AND DO OTHER PARTS OF THE COMMON WORK</p>
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<p>GUILTY. THEY ALL OPERATED TO SECURE ON END—THE SLAUGHTER OF A NUMBER OF HUMAN BEINGS, MEN, WOMEN AND CHILDREN. INNOCENT PURPOSE “IF YOU BELIEVE FROM THE EVIDENCE THAT THE PRISONER WAS AT THE MASSACRE, THEN THE QUESTION ARISES, WAS HE THERE FOR INNOCENT PURPOSE, AND WHY DID HE GO THERE? AND IF YOU BELIEVE FROM THE EVIDENCE THAT HE PARTICIPATED TO ANY EXTENT IN THE ACCOMPLISHMENT OF THE COMMON OBJECT, IT IS FOR YOU TO SAY FROM THE EVIDENCE WHY HE SO PARTICIPATED. CAUSE FOR</p>	<p>GUILTY. THEY ALL OPERATED TO SECURE ONE END, THE SLAUGHTER OF A NUMBER OF HUMAN BEINGS, MEN, WOMEN AND CHILDREN. IF YOU BELIEVE FROM THE EVIDENCE THAT THE <del>PRISONER</del> PRISONER WAS AT THE MASSACRE, THEN THE QUESTION ARISES WAS HE THERE FOR INNOCENT PURPOSES AND WHY DID HE GO THERE, AND IF YOU BELIEVE FROM THE EVIDENCE THAT HE PARTICIPATED TO ANY EXTENT IN THE <sup>[25]</sup> ACCOMPLISHMENT OF THE COMMON OBJECT IT IS FOR YOU TO SAY FROM THE EVIDENCE WHY HE SO PARTICIPATED.</p>	<p>GUILTY ALL CO-OPERATED TO SECURE ONE ENDS SLAUGHTER OF WOMEN AND[?] CHILDREN [space] IF YOU BELIEVE FROM EVIDENCE PRISONER WAS AT THE MASSACRE THEN QUESTION ARISES WAS HE THERE WITH INNOCENT PURPOSE[?] AND WHY DID HE GO THERE IF YOU BELIEVE FROM THE EVIDENCE HE PARTICIPATED IN ANY EXTENT IN ACCOMPLISHMENT OF THE COMMON OBJECT IT IS FOR YOU TO SAY FROM THE EVIDENCE WHETHER HE SO PARTICIPATED</p>		<p>THEY ALL OPERATED TO SECURE ONE END [space] THE SLAUGHTER OF HUMAN BEINGS [space] AND IF YOU BELIEVE FROM THE EVIDENCE THAT THE PRISONER WAS AT THE MASSACRE THEN THE QUESTION ARISES WAS HE THERE FOR AN INNOCENT PURPOSE [space] AND IF YOU BELIEVE FROM THE EVIDENCE THAT HE PARTICIPATED TO ANY EXTENT IN —[?] ACCOMPLISHMENT OF THE COMMON OBJECT IT IS FOR YOU TO SAY WHETHER HE DID IT [space]</p>
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<p>PARTICIPATION          “IT IS CLAIMED FOR THE DEFENDANT THAT THE INDIANS WERE VERY MUCH INCENSED AT THOSE EMIGRANTS WHO WERE KILLED AT MOUNTAIN MEADOWS. IF THIS IS TRUE, AND THAT GREAT NUMBER <sup>[163]</sup> OF INDIANS WERE ENGAGED WITH THE WHITES IN THE MASSACRE, AND THERE IS NO DOUBT THAT VERY MANY INDIANS DID PARTICIPATE, IT IS NO DEFENSE TO THE WHITES FOR THEIR PARTICIPATION. NO WHITE MAN WAS COMPELLED “THERE IS NO EVIDENCE THAT ANY FORCE WAS USED TO COMPEL ANY WHITE MAN TO JOIN IN THE MURDER;</p>	<p>IT IS CLAIMED FOR THE DEFENDANT THAT THE INDIANS WERE VERY MUCH INCENSED AT THOSE EMIGRANTS WHO WERE KILLED AT THE MOUNTAIN MEADOWS. IF THIS BE TRUE AND THAT GREAT NUMBER OF INDIANS WERE ENGAGED WITH THE WHITES IN THE MASSACRE, AND THERE IS NO DOUBT THAT VERY MANY INDIANS DID PARTICIPATE IN IT, IT IS: NO DEFENSE TO THE WHITES FOR PARTICIPATION.</p> <p>THERE IS NO EVIDENCE THAT ANY FORCE WAS USED TO COMPEL ANY WHITE MAN TO JOIN IN THE MURDER,</p>	<p><sup>[16]</sup> IT IS CLAIMED FOR THE DEFENDANT INDIANS WERE VERY MUCH INCENSED AT THOSE <i>RESULT</i>[?]</p> <p>KILLED ON MOUNTAIN MEADOWS <i>[space]</i> IF THIS BE TRUE <i>AND/A</i>[?] GREAT MANY INDIANS WERE ENGAGED</p> <p>THERE IS NO DOUBT VERY MANY INDIANS WERE ENGAGED IT IS NO DEFENSE TO THE WHITES FOR THEIR PARTICIPATION</p> <p>THERE IS NO EVIDENCE ANY FORCE WAS <i>ACTUALLY</i>[?] TO COMPEL WHITE MEN TO JOIN THE MURDER <i>[space]</i></p>		<p>IT IS CLAIMED BY THE DEFENSE THAT THE INDIANS <i>[space]</i></p> <p>IF THIS BE TRUE AND THAT GREAT NUMBER OF WHITES WERE ENGAGED</p> <p>IT IS NO DEFENSE TO THE WHITES FOR THEIR PARTICIPATION</p> <p>THERE IS NO EVIDENCE THAT ANY FORCE WAS USED TO JOIN IN THE MURDER</p>
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<p>NOR IS IT SHOWN THAT ANY WHITE MAN HAD ANY JUST CAUSE FOR ENGAGING IN THESE MURDERS, AND THE ONLY PRETENDED REASON IS, THAT THE INDIANS WERE GREATLY INCENSED AT THE EMIGRANTS; BUT THAT IS NOT A VALID REASON FOR THE WHITES ENGAGING IN THE MASSACRE, NOR DOES THE EVIDENCE SHOW ANY GOOD GROUND FOR THE INDIANS ENGAGING IN THE MASSACRE, BUT AS TO THAT QUESTION, YOU ARE NOT CALLED UPON TO DECIDE. IF FROM THE EVIDENCE YOU BELIEVE THE INDIANS WERE CO-OPERATING AND ACTING IN CONCERT</p>	<p>NOR IS IT SHOWN THAT ANY WHITE MAN HAD ANY JUST CAUSE FOR ENGAGING IN THESE MURDERS, AND THE ONLY PRETENDED REASON IS THAT THE INDIANS WERE GREATLY INCENSED AT THE EMIGRANTS. BUT THAT IS NOT A VALID REASON FOR THE WHITES ENGAGING IN THE MASSACRE NOR DOES THE EVIDENCE SHOW ANY GOOD GROUND FOR THE INDIANS ENGAGING IN THE MASSACRE, BUT AS TO THAT QUESTION YOU ARE NOT CALLED UPON TO DECIDE. IF FROM THE EVIDENCE YOU BELIEVE THE INDIANS WERE CO-OPERATING AND ACTING IN CONCERT</p>	<p>NOR IS IT SHOWN THAT ANY WHITE MAN HAD ANY PRETENSE FOR CAUSING THIS [space]</p> <p>THAT IS NOT VALID REASON FOR WHITES ENGAGING IN THE MURDERS NOR DOES THE EVIDENCE SHOW ANY GOOD REASON FOR INDIANS ENGAGING IN THE MASSACRE AS TO THAT QUESTION YOU ARE NOT CALLED UPON TO DECIDE AND IF YOU BELIEVE INDIANS WERE CO-OPERATING AND ACTING IN CONCERT</p>		<p>NOR IS IT SHOWN THAT ANY WHITE MAN HAD ANY JUST CAUSE FOR ENGAGING IN THESE MURDERS AND ONLY PRETENDED</p> <p>BUT THAT IS NO VALID REASON FOR THE WHITES ENGAGING IN THE NOR DOES THE EVIDENCE SHOW ANY GOOD REASON FOR THE INDIANS ENGAGING IN THE MASSACRE</p> <p>IF FROM THE EVIDENCE YOU BELIEVE THAT THE INDIANS WERE CO-OPERATING</p>
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<p>WITH THE WHITES IN THE ACCOMPLISHMENT OF THE DESTRUCTION OF THE EMIGRANTS, IT BUT MAKES A MORE VIVID PICTURE OF THE ENORMITY AND BRUTALITY OF THE INHUMAN WORK. DEGREES OF MURDER “THE CHARGE IN THIS CASE IS MURDER, BUT IT IS NOT ONLY THE KILLING OF A HUMAN BEING THAT IS MURDER; BESIDES THE TWO DEGREES OF MURDER, THERE IS MANSLAUGHTER</p> <p>AND ALSO JUSTIFIABLE OR EXCUSABLE HOMICIDE. MURDER IS THE KILLING OF ANY HUMAN BEING WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED. MALICE IS A REVENGEFUL</p>	<p>WITH THE WHITES IN THE ACCOMPLISHMENT OF THE DESTRUCTION OF THE EMIGRANTS IT BUT MAKES A MORE VIVID PICTURE OF THE ENORMITY AND BRUTALITY OF THE INHUMAN WORK.</p> <p>THE CHARGE IN THIS CASE IS MURDER, BUT IT IS NOT ONLY THE KILLING OF A HUMAN BEING THAT IS MURDER; BESIDES THE TWO DEGREES OF MURDER THERE IS MAN SLAUGHTER AND &lt;ALSO&gt; JUSTIFIABLE OR EXCUSABLE HOMICIDE. MURDER IS THE KILLING OF ANY HUMAN BEING WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED. MALICE IS A REVENGEFUL</p>	<p>WITH THE WHITES IT</p> <p>BUT MAKES TOO VIVID PICTURE OF</p> <p>WORK [space]</p> <p>CHARGE IN THIS CASE IS MURDER BUT IT IS NOT EVERY KILLING OF A HUMAN BEING THAT IS MURDER BESIDES THE FEW DEGREES OF MURDER THERE IS MAN SLAUGHTER</p> <p>JUSTIFIED OR EXCUSABLE HOMICIDE MURDER IS THE KILLING OF ANY HUMAN BEING WITH MALICE AFORETHOUGHT EITHER EXPRESS OR IMPLIED MALICE IS A REVENGEFUL</p>		<p>WITH THE WHITES IN</p> <p>THE DESTRUCTION OF THE EMIGRANTS <sup>[[10]]</sup> BUT IT MAKES</p> <p>THE CHARGE IN THIS CASE IS MURDER BUT IT IS NOT EVERY KILLING OF A HUMAN BEING THAT IS MURDER BESIDES THE TWO DEGREES OF MURDER THERE IS MANSLAUGHTER AND JUSTIFIABLE AND/OR[?] HOMICIDE MURDER AND [space]</p> <p>EXPRESSED OR IMPLIED [space] MALICE IS REVENGEFUL</p>
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<p>ACT DONE INTENTIONALLY AND WITHOUT GOOD CAUSE OR EXCUSE. IF THEREFORE, YOU BELIEVE FROM THE EVIDENCE, THAT THE KILLING IN THIS INSTANCE WAS WILFUL, DELIBERATE AND PREMEDITATED, AND WITH MALICE AFORETHOUGHT, AND THAT SUCH KILLING WAS IN PURSUANCE OF A COMMON DESIGN OR PURPOSE TO WHICH COMMON PURPOSE THE DEFENDANT WAS A PARTY, HE IS GUILTY OF MURDER IN THE FIRST DEGREE, AND YOU WILL SO FIND. MALICE “MALICE IS AN ESSENTIAL INGREDIENT IN THE KILLING TO CONSTITUTE THE CRIME OF MURDER, BUT IT</p>	<p>ACT DONE INTENTIONALLY AND WITHOUT GOOD CAUSE OR EXCUSE. IF THEREFORE YOU BELIEVE FROM THE EVIDENCE THAT THE KILLING IN THIS INSTANCE WAS WILFUL, DELIBERATE <sup>[26]</sup> AND PREMEDITATED AND WITH MALICE AFORETHOUGHT AND THAT SUCH KILLING WAS IN PURSUANCE OF A COMMON DESIGN OR PURPOSE, TO WHICH COMMON DESIGN THE DEFENDANT WAS A PARTY, HE IS GUILTY OF MURDER? IN THE FIRST DEGREE AND YOU WILL SO FIND. MALICE IS AN ESSENTIAL INGREDIENT IN THE KILLING TO CONSTITUTE THE CRIME OF MURDER, BUT IT</p>	<p>ACT DONE INTENTIONALLY WITHOUT GOOD CAUSE OR EXCUSE IF THEREFORE YOU BELIEVE FROM THE EVIDENCE THAT THE KILLING <i>SEEN THAT IS</i>[?] DELIBERATE WITH MALICE AFORETHOUGH T THAT SUCH KILLING WAS IN PURSUANCE OF COMMON DESIGN OR PURPOSE TO WHICH COMMON PURPOSE DEFENDANT DID THE MURDER HE IS GUILTY OF MURDER IN THE FIRST DEGREE AND YOU WILL SO FIND MALICE IS AN ESSENTIAL INGREDIENT TO CONSTITUTE CRIME OF MURDER IT</p>		<p>ACT DONE INTENTIONALLY AND WITHOUT GOOD CAUSE OR EXCUSE <del>K</del> IF THEREFORE YOU BELIEVE FROM THE EVIDENCE THAT THE KILLING IN THIS CASE WAS <i>WILLFUL</i>[?] PREMEDITATED [<i>space</i>] AND MALICE —[?] AFORETHOUGH T [<i>space</i>] GUILTY OF MURDER IN THE FIRST DEGREE AND YOU WILL SO FIND [<i>space</i>] MALICE IS AN <i>ESSENTIAL</i>[?] <math>\text{\textcircled{D}}</math> IN THE KILLING [<i>space</i>]</p>

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<p>NEED NOT BE EXPRESSED BUT MAY BE IMPLIED FROM THE ACTS, COURSE AND CONDUCT OF THE PARTIES. IN MOST CASES MALICE IS NOT SUSCEPTIBLE OF DIRECT PROOF, BUT MAY BE ESTABLISHED BY INFERENCES, MORE OR LESS STRONG, TO BE DRAWN FROM THE FACTS AND CIRCUMSTANCES CONNECTED WITH THE KILLING, AND WHICH INDICATE THE DISPOSITION OR STATE OF MIND WITH WHICH THE KILLING IS DONE. WILFUL, DELIBERTATE, PREMEDITATED “IF, HOWEVER, YOU COULD FIND FROM THE EVIDENCE THAT THE KILLING WAS WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR IMPLIED, BUT WAS NOT</p>	<p>NEED NOT BE EXPRESSED, BUT MAY BE IMPLIED FROM THE ACTS, COURSE AND CONDUCT OF THE PARTIES; IN MOST CASES MALICE IS NOT SUSCEPTIBLE OF DIRECT PROOF, BUT MAY BE ESTABLISHED BY INFERENCES MORE OR LESS STRONG, TO BE DRAWN FROM THE FACTS AND CIRCUMSTANCES CONNECTED WITH THE .KILLING AND WHICH INDICATE A DISPOSITION OR STATE OF MIND WITH WHICH THE KILLING IS DONE.</p> <p>IF, HOWEVER, YOU SHOULD FIND FROM THE EVIDENCE THAT THE KILLING WAS WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR IMPLIED, BUT WAS NOT</p>	<p>NEED NOT BE EXPRESSED IT MAY BE IMPLIED BY ACTS</p> <p>OF PARTIES [<i>space</i>]</p> <p>MALICE IS NOT SUSCEPTIBLE OF DIRECT PROOF MAY BE ESTABLISHED BY INFERENCE MORE OR LESS STRONG <i>DRAWN[?] FROM FACTS TOO[?]</i></p> <p>WITH WHICH THE KILLING IS DONE</p> <p>IF HOWEVER YOU CAN FIND FROM EVIDENCE KILLING WAS WITH MALICE AFORETHOUGH T EITHER EXPRESSED OR IMPLIED BUT WAS NOT</p>		<p>AND IT MAY BE IMPLIED FROM THE ACTS COURSE AND CONDUCT OF THE PARTIES IN MOST CASES MALICE IS NOT SUSCEPTIBLE OF DIRECT PROOF BUT [<i>space</i>]</p> <p>FROM</p> <p>CIRCUMSTANCE S</p> <p>STATE OF MIND IN WHICH THE KILLING IS DONE</p> <p>IF HOWEVER YOU CAN FIND FROM THE EVIDENCE THAT THE KILLING WAS WITH MALICE AFORETHOUGH T</p> <p>BUT WAS NOT</p>
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<p>WILFUL,          DELIBERATE          AND          PREMEDITATED,          IT WOULD BE          MURDER IN THE          SECOND          DEGREE; AND IF          THE KILLING          WAS          UNLAWFUL,          BUT          YOU FIND          FROM THE          EVIDENCE THAT          THERE WAS NO          MALICE, THE          CRIME WOULD          BE          MANSLAUGHTER.          IF YOU          BELIEVE FROM          THE EVIDENCE          THAT THERE          WAS MALICE,          THE OFFENSE IS          OF A HIGHER          GRADE THAN          MANSLAUGHTER,</p> <p>AND IF THERE          WAS MALICE          AND THE ACT          WAS WILFUL,          DELIBERATE          AND          PREMEDITATED,          IT CANNOT          BE MURDER IN          THE SECOND          DEGREE, BUT IS          OF A HIGHER          GRADE STILL,          AND IS MURDER</p>	<p>WILFUL ,          DELIBERATE          AND          PREMEDITATED          IT WOULD BE          MURDER IN THE          SECOND          DEGREE, AND IF          THE KILLING          WAS          UNLAWFUL,          BUT          YOU FIND          FROM THE          EVIDENCE THAT          THERE WAS NO          MALICE THE          CRIME WOULD          BE MAN          SLAUGHTER.          IF YOU          BELIEVE FROM          THE EVIDENCE          THAT THERE          WAS MALICE          THE OFFENSE IS          OF A HIGHER          GRADE THAN          MAN          SLAUGHTER,          AND IF THERE          WAS MALICE          AND THE ACT          WAS WILFUL,          DELIBERATE          AND          PREMEDITATED          IT CANNOT          BE MURDER IN          THE SECOND          DEGREE,BUT IS          OF A HIGHER          GRADE STILL          AND IS MURDER</p>	<p>WILLFUL          DELIBERATE</p> <p>IT WOULD BE          MURDER IN THE          SECOND          DEGREE IF          THE KILLING          WAS  <i>UNWILLFUL/UNLAWFUL</i>[?] BUT          YOU CAN FIND          FROM THE          EVIDENCE          THERE WAS NO          MALICE THE          CRIME WOULD          GET          MANSLAUGHTER  <i>[space]</i> IF YOU          BELIEVE FROM          EVIDENCE          THERE          WAS MALICE          THE OFFENCE IS          HIGHER          GRADE THAN          MAN          SLAUGHTER          IF THERE          WAS MALICE          AND THE ACT          WAS WILLFUL</p> <p><i>PREMEDITATED</i>[          ?] <sup>[17]</sup> IT CANNOT          BE MURDER IN          THE SECOND          DEGREE BUT IS          OF A HIGHER          GRADE STILL          IS MURDER</p>		<p>WILLFUL <i>[space]</i></p> <p>IF          THE KILLING          WAS          UNLAWFUL          AND          YOU CAN FIND          FROM THE          EVIDENCE THAT          THERE WAS NO          MALICE THE          CRIME WOULD          BE          MANSLAUGHTER          OR <i>NS</i>[?] <i>[space]</i></p> <p>IF THERE          WAS MALICE          AND THAT ACT          WAS WILLFUL  <i>[space]</i> &amp; <i>[space]</i></p> <p><i>CAN'T</i>[?] <i>[space]</i></p> <p>MURDER</p>
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<p>IN THE FIRST DEGREE. THEN, IN THAT CASE, IT IS MURDER IN THE FIRST DEGREE OR NOTHING— THAT IS, IF IT BE NOT MURDER IN THE FIRST DEGREE, IT CAN ONLY BE JUSTIFIABLE HOMICIDE OR EXCUSABLE HOMICIDE. JUSTIFIABLE HOMICIDE “TO BE JUSTIFIABLE HOMICIDE, IT MUST HAVE FIRST ARISEN FROM UNAVIODABLE NECESSITY WITHOUT ANY WILL, INTENTION OR DESIRE, AND WITHOUT ANY INADVERTANCE IN THE PARTY KILLING, AND <sup>[164]</sup> THEREFORE WITHOUT BLAME, AS FOR EXAMPLE, THE EXECUTION ACCORDING TO LAW OF A CRIMINAL WHO HAS BEEN</p>	<p>IN THE FIRST DEGREE; THEN, IN THAT CASE, IT IS MURDER IN THE FIRST DEGREE OR NOTHING, THAT IS, IF IT BE NOT MURDER IN THE FIRST DEGREE IT CAN ONLY BE JUSTIFIABLE HOMICIDE OR EXCUSABLE HOMICIDE.</p> <p>TO BE JUSTIFIABLE HOMICIDE IT MUST HAVE FIRST ARISEN FROM UNAVIODABLE NECESSITY, WITHOUT ANY W-ILL, INTENTION OR DESIRE, AND WITHOUT ANY INADVERTANCE IN THE PARTY KILLING, AND THEREFORE WITHOUT BLAME, AS <sup>[27]</sup> FOR EXAMPLE THE EXECUTION ACCORDING TO LAW OF A CRIMINAL WHO HAS BEEN</p>	<p>IN THE FIRST DEGREE [<i>space</i>] THEN IN THAT CASE IT IS MURDER IN THE FIRST DEGREE OR <del>NO</del> NOTHING THAT IS BEING NOT MURDER IN THE FIRST DEGREE IT CAN ONLY BE JUSTIFIABLE HOMICIDE OR EXCUSABLE HOMICIDE</p> <p>TO BE JUSTIFIABLE HOMICIDE IT MUST HAS ARISEN FROM UNAVOIDABLE NECESSITY WITHOUT ANY WILL INTENTION OR DESIRE ANY INADVERTENCE TO PARTY KILLING</p> <p>AS FOR EXAMPLE EXECUTION ACCORDING TO LAW OF A CRIMINAL WHO HAS BEEN</p>		<p>TO THE FIRST DEGREE [<i>space</i>] THEN IN THAT CASE IT IS MURDER IN THE FIRST DEGREE OR NOTHING THEN IF IT BE NOT MURDER IN THE FIRST DEGREE IT IS ONLY [<i>space</i>] BE JUSTIFIABLE HOMICIDE</p> <p>IT MUST HAVE FIRST ARISEN FROM UNAVOIDABLE NECESSITY [<i>space</i>]</p> <p>WITHOUT ANY INADVERTENCE <i>OF/TO</i>[?] THE PARTY KILLING</p> <p>THEREFORE WITHOUT BLAME AS FOR INSTANCE AN EXECUTION</p> <p>OF <i>PROVEN</i>[?] CRIMINAL OR 2[?]</p>
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<p>LAWFULLY SENTENCED TO BE HANGED; OR SECOND, IT MUST HAVE BEEN COMMITTED FOR THE ADVANCEMENT OF PUBLIC JUSTICE—FOR EXAMPLE, IF AN OFFICER WAS ASSAULTED AND RESISTED, AND SHOULD KILL HIS ASSAILANT, THERE IS NO EVIDENCE WHICH COULD BE CLASSED UNDER EITHER OF THESE HEADS OF JUSTIFIABLE HOMICIDE.</p> <p>A HOMICIDE CAN BE EXCUSED ONLY IN TWO WAYS. FIRST, WHEN THE ACT WAS WHAT IS CALLED A MISADVENTURE, THAT IS, WHERE IN DOING A LAWFUL ACT, THE PARTY</p>	<p>LAWFULLY SENTENCED TO BE HANGED: OR SECOND, IT MUST HAVE BEEN COMMITTED FOR THE ADVANCEMENT OF PUBLIC JUSTICE. FOR EXAMPLE, IF AN OFFICER IS ASSAULTED AND RESISTED AND SHOULD KILL HIS ASSAILANT., THERE IS NO EVIDENCE WHICH COULD BE CLASSED UNDER EITHER OF THESE HEADS OF JUSTIFIABLE HOMICIDE.</p> <p>A HOMICIDE CAN BE EXCUSED ONLY IN TWO WAYS; FIRST, WHEN THE ACT WAS WHAT IS CALLED A MISADVENTURE, THAT IS WHERE IN DLOING A LAWFUL ACT THE PARTY</p>	<p>LAWFULLY SENTENCED TO BE HUNG IT MUST HAVE BEEN COMMITTED FOR THE <i>ADVANCEMENT</i>[?] ] OF PUBLIC JUSTICE IF AN OFFICER IN THE DISCHARGE OF HIS DUTIES SHOULD KILL HIS ASSAILANT. THERE IS NO EVIDENCE WHICH COULD BE CLASSED UNDER EITHER OF THESE HEADS OF JUSTIFIABLE HOMICIDE THEN IS EITHER EXCUSABLE HOMICIDE A HOMICIDE CAN BE <del>EXCUSABLE</del> EXCUSED ONLY IN 2 WAYS FIRST WHEN THE ACT WAS WHAT IS CALLED MISADVENTURE</p>		<p>IT MUST HAVE BEEN</p> <p>FOR THE <i>ADVANCE</i>[?] OF PUBLIC &amp; AND FOR INSTANCE</p> <p>THERE IS NO EVIDENCE WHICH COULD BE CLASSED UNDER EITHER OF THESE HEADS OF JUSTIFIABLE HOMICIDE THEN WAS IT EXCUSABLE HOMICIDE CAN ONLY <sup>[[1]]</sup> BE EXCUSED TWO WAYS [<i>space</i>] FIRST</p> <p>MISADVENTURE [<i>space</i>]</p>
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<p>WITHOUT ANY INTENT TO HURT, UNFORTUNATELY KILLS ANOTHER. WHEN A PARTY, ACTING IN SELF-DEFENSE KILLS ANOTHER, THERE IS NO EVIDENCE THAT THESE WERE KILLED WHILST THEIR ASSAILANTS WERE DOING A LAWFUL ACT, NOR IS THERE ANY EVIDENCE THAT THOSE WHO DID THE KILLING WERE ACTING IN SELF-DEFENSE, OR IN DEFENSE OF THEIR FAMILIES OR PROPERTY. GUILTY—OR NOT GUILTY “IF, THEREFORE, AS I HAVE STATED, YOU FIND FROM THE EVIDENCE THAT THE KILLING WAS DONE WILFULLY, DELIBERATELY AND</p>	<p>WITHOUT ANY INTENT TO HURT, UNFORTUNATELY KILLS ANOTHER. SECOND: WHEN A PARTY, ACTING IN SELF DEFENSE KILLS ANOTHER PERSON. THERE IS NO EVIDENCE THAT THESE WERE KILLED WHILST THEIR AS- [space] SAILANTS WERE DOING A LAWFUL ACT, NOR IS THERE ANY EVIDENCE THAT THOSE WHO DID THE KILLING WERE ACTING IN SELF DEFENSE OR IN DEFENSE OF THEIR FAMILIES OR PROPERTY; IF THEREFORE, AS I HAVE STATED, YOU FIND FROM THE EVIDENCE, THAT THE KILLING WAS DONE WILFULLY, DELIBERATELY AND</p>	<p>INADVERTENTLY KILLS ANOTHER AND SECOND WHEN A PARTY ACTING IN SELF DEFENSE KILLS ANOTHER PERSON THERE IS NO EVIDENCE THOSE PRESENT AT LEAST THE ASSAILANTS WERE DOING LAWFUL ACT NOR IS THERE EVIDENCE THOSE WHO DID THE KILLING WERE ACTING OF SELF DEFENSE IN THEIR FAMILIES OR PROPERTY IF THEREFORE AS I HAVE STATED KILLING WAS DONE WILLFULLY</p>		<p><i>INADVERTENT/UNFORTUNATE[?] ONE[?] KILLS ANOTHER 2 WHEN A PARTY ACTING IN SELF DEFENSE KILLS ANOTHER PERSON THERE IS NO EVIDENCE THAT THOSE PERSONS WERE KILLED AS THEY[?] [space]</i></p> <p>NO EVIDENCE THAT THOSE WHO DID THE KILLING [space]</p> <p>HOWEVER IF AS —[?] I HAVE STATED [space]</p>
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<p>PREMEDITATED, AND WITH MALICE AFORETHOUGHT, YOU WILL FIND DEFENDANT GUILTY, AND IF YOU FIND FROM THE EVIDENCE THAT IT WAS NOT DONE WILFULLY, DELIBERATELY AND PREMEDITATEDL Y AND WITH MALICE AFORETHOUGHT, YOU WILL ACQUIT THE PRISONER. BURDEN OF PROOF “THE BURDEN OF PROOF OF DEFENDANT’S GUILT RESTS UPON THE PROSECUTION, AND IT IS FOR YOU TO SAY WHETHER THEY HAVE MADE OUT A CASE OR NOT. IN REACHING A CONCLUSION AS TO THE PRISONER’S GUILT OR INNOCENCE, IT IS NOT NECESSARY</p>	<p>PREMEDITATEDL Y AND WITH MALICE AFORETHOUGHT, YOU WILL FIND DEFENDANT GUILTY, AND IF YOU FIND FROM THE EVIDENCE THAT IT WAS NOT DONE WILFULLY, DELIBERATELY AND PREMEDITATEDL Y AND WITH MALICE AFORETHOUGHT YOU WILL ACQUIT THE PRISONER.  THE BURDEN OF PROOF OF DEFENDANT’S GUILT RESTS UPON THE PROSECUTION AND IT IS FOR YOU TO SAY WHETHER THEY HAVE MADE OUT A CASE OR NOT. IN REACHING A CONCLUSION AS TO THE PRISONERS GUILT OR INNOCENCE IT IS NOT NECESSARY</p>	<p>AND WITH MALICE AFORETHOUGH T YOU WILL FIND DEFENDANT GUILTY [<i>space</i>] IF YOU FIND FROM THE EVIDENCE IT WAS NOT DONE  WITH MALICE AFORETHOUGH T YOU WILL ACQUIT THE PRISONER.  THE BURDEN OF PROOF OF DEFENDANT’S GUILT RESTS UPON THE PROSECUTION IT IS FOR YOU TO SAY WHETHER THEY HAVE MADE OUT CASE OR NOT IN REACHING A CONCLUSION AS TO PERSON GUILT OR INNOCENCE IT IS NOT NECESSARY</p>		<p>MALICE AFORETHOUGH T YOU WILL FIND THE DEFENDANT GUILTY IF YOU FIND FROM THE EVIDENCE THAT IT WAS NOT WILLFUL  PREMEDITATED [<i>space</i>]  THE BURDEN OF PROOF OF THE DEFENDANT’S GUILT RESTS UPON THE PROSECUTION IT IS FOR YOU TO SAY WHETHER THEY HAVE MADE OUT A CASE OR NOT [<i>space</i>]  IT IS NOT NECESSARY TO</p>
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<p>THAT IT BE SHOWN THAT ALL OR A GREAT NUMBER OF PERSONS WERE KILLED, BUT IT IS SUFFICIENT, IF FROM THE EVIDENCE YOU FIND THAT ONE HUMAN BEING WAS KILLED, PROVIDED THE KILLING SHALL HAVE BEEN DONE BY COMBINATION.</p> <p>NOR IS IT NECESSARY THAT THE NAME OR THAT THE NAMES OF THOSE KILLED SHOULD BE SHOWN; BUT IF ANY OF THEM WERE KILLED IN THE MANNER AND FORM AS CHARGED, IT IS SUFFICIENT. BEYOND A REASONABLE DOUBT “BEFORE YOU CAN FIND</p>	<p>THAT IT BE SHOWN THAT ALL OR A GREAT NUMBER OF PERSONS WERE KILLED, BUT IT IS SUFFICIENT IF FROM THE EVIDENCE THAT ONE HUMAN BEING WAS KILLED, PROVIDING THE KILLING <del>SHOULD</del> SHALL HAVE BEEN DONE BY COMBINATION,</p> <p>NOR IS IT NECESSARY THAT THE NAME <sup>[28]</sup> OR THAT THE NAMES OF THOSE KILLED SHOULD BE SHOWN, BUT IF ANY OF THEM WERE KILLED IN THE MANNER AND FORM AS CHARGED IT IS SUFFICIENT.</p> <p>BEFORE YOU CAN FIND</p>	<p>THAT IT BE SHOWN ALL OR GREAT NUMBER OF PERSON WERE KILLED <i>IT IS[?]</i> SUFFICIENT FROM THE EVIDENCE YOU FIND ONE HUMAN BEING WAS KILLED PROVIDING KILLING SHALL BE DONE A COMBINATION OF PARTIES PROVIDED PRISONER WAS A PARTY TO THE COMBINATION NOR IS IT NECESSARY THE NAME OR NAMES OF THOSE KILLED BE SHOWN <i>[space]</i></p> <p>IT IS SUFFICIENT <i>[space]</i></p> <p>BEFORE YOU CAN FIND</p>		<p>BE SHOWN THAT ALL OR GREAT NUMBER OF PERSONS WERE KILLED <i>[space]</i></p> <p>THAT ONE HUMAN BEING WAS KILLED PROVIDED THE KILLING SHALL HAVE BEEN DONE BY A COMBINATION OF THE PARTIES AND PROVIDED THE PRISONER WAS A PARTY TO COMBINATION NOR IS IT NECESSARY THAT THEM NAME OR NAMES WERE KILLED</p> <p>BUT IF ANY WERE KILLED <i>[space]</i></p> <p>BEFORE YOU CAN FIND</p>
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<p>THE PRISONER GUILTY, YOU MUST FROM THE EVIDENCE BELIEVE BEYOND A REASONABLE DOUBT THAT THE PRISONER IS GUILTY, AND TAKING THE WHOLE EVIDENCE TOGETHER, IT MUST EXCLUDE EVERY OTHER HYPOTHESIS BUT THE GUILT OF THE PRISONER. A REASONABLE DOUBT IS ONLY SUCH A ONE AS WOULD ARISE IN THE MIND OF REASONABLE MEN, SUCH AS YOU ARE, WHO ARE SELECTED BECAUSE IT IS SUPPOSED AND EXPECTED THAT YOU ARE REASONABLE MEN AND COMPETENT TO TRY SUCH QUESTION. "PROOF BEYOND THE POSSIBILITY OF A</p>	<p>THE PRISONER GUILTY YOU MUST FROM THE EVIDENCE BELIEVE BEYOND A REASONABLE DOUBT THAT THE PRISONER IS GUILTY, AND TAKING THE WHOLE EVIDENCE TOGETHER IT MUST EXCLUDE EVERY OTHER HYPOTHESIS BUT THE GUILT OF THE PRISONER. A REASONABLE DOUBT IS ONLY SUCH AN ONE AS WOULD ARISE IN THE MINDS OF REASONABLE MEN, SUCH AS YOU ARE, WHO ARE SELECTED, BECAUSE IT IS SUPPOSED AND EXPECTED THAT YOU ARE REASONABLE MEN AND COMPETENT TO TRY SUCH AUQUESTION. PROOF BEYOND THE POSSIBILITY OF</p>	<p>PRISONER GUILTY YOU MUST FROM EVIDENCE BELIEVE BEYOND REASONABLE DOUBT</p> <p>PRISONER IS GUILTY TAKING ALL EVIDENCE TOGETHER IT MUST EXCLUDE EVERY OTHER HYPOTHESIS</p> <p>A REASONABLE DOUBT IS ONLY AN ONE AS WOULD ARISE IN THE MINDS OF REASONABLE <sup>[18]</sup> MEN SUCH AS YOU ARE</p> <p>BECAUSE IT IS SUPPOSED YOU ARE SELECTING NUMBER OF REASONABLE MEN COMPETENT TO [space] SUCH EXPRESSION NEVER CAN BE —[?]</p>		<p>THE PRISONER GUILTY [space]</p> <p>IT MUST EXCLUDE EVERY OTHER HYPOTHESIS TO THE GUILT OF THE PRISONER A REASONABLE DOUBT IS ONLY SUCH A ONE AS WOULD ARISE [space]</p> <p>SUCH AS YOU ARE [space] WHO ARE SELECTED [space]</p> <p>PROOF BEYOND A POSSIBILITY OF</p>
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<p>DOUBT IS NOT REQUIRED, BECAUSE SUCH PROOF NEVER CAN BE MADE. IT IS NOT NECESSARY TO SHOW YOU THAT IT IS NOT POSSIBLE THAT THE PRISONER IS INNOCENT TO SHOW BEYOND THE POSSIBILITY OF A DOUBT THAT HE IS GUILTY. BUT IT IS REQUIRED THAT THE PROSECUTION PRODUCE SUCH EVIDENCE THAT WHEN YOU LOOK IT OVER</p> <p>REASONABLY THEN YOU DO NOT DOUBT THE PRISONER'S GUILT; THAT THE EVIDENCE PRODUCES IN YOUR MINDS AN ABIDING CONVICTION TO A MORAL CERTAINTY OF THE GUILT OF THE DEFENDANT. PROOF BEYOND A</p>	<p>A DOUBT IS NOT REQUIRED, BECAUSE SUCH PROOF NEVER CAN BE MADE. IT IS NOT NECESSARY TO SHOW YOU THAT IT IS NOT POSSIBLE THAT THE PRISONER IS INNOCENT. TO SHOW BEYOND THE POSSIBILITY OF A DOUBT THAT HE IS GUILTY, BUT IT IS REQUIRED THAT THE PROSECUTION PRODUCE SUCH EVIDENCE THAT WHEN YOU LOOK IT OVER</p> <p>REASONABLY THEN YOU DO NOT DOUBT THE PRISONER'S GUILT. THAT THE EVIDENCE PRODUCES IN YOUR MIND AN ABIDING CONVICTION TO A MORAL CERTAINTY OF THE GUILT OF THE DEFENDANT. PROOF BEYOND A</p>	<p>IT IS NOT NECESSARY TO SHOW TO YOU IT IS NOT POSSIBLE <i>NOT CONVICTED</i>[?] TO SHOW BEYOND ALL POSSIBILITY OF DOUBT HE IS GUILTY BUT IT IS REQUIRED</p> <p>PROSECUTION PRODUCE SUCH EVIDENCE WHEN YOU LOOK IT OVER AS REASONABLE MEN YOU DO NOT DOUBT PRISONER'S GUILT EVIDENCE PRODUCES IN YOUR MIND ABIDING CONVICTION TO A MORAL CERTAINTY OF GUILT OF DEFENDANT [space] PROOF BEYOND</p>		<p>DOUBT IS NOT REQUIRED BECAUSE SUCH PROOF NEVER CAN BE MADE IT IS NOT NECESSARY FOR YOU TO SHOW THAT IT IS [space]</p> <p><del>IT IS</del> BUT IT IS REQUIRED THAT THE PROSECUTION PRODUCE SUCH EVIDENCE THAT WHEN YOU LOOK IT OVER AS REASONABLE MEN [space]</p> <p>ABIDING CONVICTION TO A MORAL CERTAINTY OF THE GUILT OF THE DEFENDANT PROOF BEYOND A</p>
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<p>REASONABLE DOUBT IS SOMETHING MORE THAN THE PREPONDERANCE OF EVIDENCE. A PREPONDERANCE OF EVIDENCE</p> <p>WILL DO TO SUPPORT A VERDICT IN A CIVIL CASE, BUT NOT IN A CRIMINAL CASE.</p> <p>“YOU MUST BE SATISFIED FROM THE EVIDENCE, BEYOND ANY FAIR REASONABLE DOUBT OF THE DEFENDANT’S GUILT. YOU MUST HAVE AN ABIDING CONVICTION TO A MORAL CERTAINTY OF HIS GUILT, OR YOU SHOULD ACQUIT HIM. BUT ABSOLUTE CERTAINTY OF GUILT IS NOT NECESSARY; MORAL CERTAINTY IS</p>	<p>REASONABLE DOUBT IS SOMETHING MORE THAN THE PREPONDERANCE OF EVIDENCE. A PREPONDERANCE OF EVIDENCE</p> <p>WILL DO TO SUPPORT A VERDICT IN A CIVIL CASE BUT NOT IN A CRIMINAL CASE.</p> <p>YOU MUST BE SATISFIED FROM THE EVIDENCE, BEYOND ANY FAIR REASONABLE DOUBT OF THE DEFENDANTS GUILT. YOU MUST HAVE AN ABIDING CONVICTION TO A MORAL; CERTAINTY OF HIS GUILT OR YOU SHOULD ACQUIT HIM, BUT ABSOLUTE CERTAINTY OF GUILT IS NOT NECESSARY, MORAL CERTAINTY IS</p>	<p>REASONABLE DOUBT IS SOMETHING MORE THAN A PREPONDERANCE OF EVIDENCE<sup>414</sup> A PREPONDERANCE OF EVIDENCE A PROBABILITY OF EVIDENCE DO A TRIAL VERDICT IN CIVIL CASE BUT NOT SO IN CRIMINAL CASE [space] YOU MUST BE SATISFIED BEYOND ANY FAIR REASONABLE DOUBT OF THE DEFENDANT’S GUILT YOU MUST HAVE FROM[?] WITNESSES OR YOU WILL ACQUIT ABSOLUTE CERTAINTY[?] OF KILLING[?] MORAL CERTAINTY IS</p>		<p>REASONABLE DOUBT IS [space]</p> <p>PREPONDERANCE OF [space]</p> <p>WILL DO</p> <p>IN A CIVIL CASE BUT NOT CRIMINAL CASE [space] NOT AND YOU MUST BE SATISFIED [space]</p> <p>YOU MUST HAVE AN ABIDING CONVICTION TO A MORAL CERTAINTY</p> <p>MORAL CERTAINTY IS</p>
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414. Written over illegible shorthand.

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SUFFICIENT. <sup>[165]</sup> CREDIBILITY OF WITNESSES “JURORS ARE, AS I HAVE BEFORE STATED, SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES, AND IT IS FOR YOU TO SAY UPON YOUR OATHS WHAT DEGREE OF CREDIT IS DUE THE TESTIMONY OF EACH WITNESS; AND IT IS FOR YOU TO SAY UPON YOUR OATHS WHETHER YOU DEEM THE TESTIMONY OF ANY WITNESS UNWORTHY OF BELIEF. IN ORDER THE MORE SPECIALLY TO GIVE THE LAW TO YOU, I WILL READ THE INSTRUCTIONS GIVEN. SUMMARY OF INSTRUCTION ON CREDIBILITY OF WITNESSES “FIRST, SUCH	SUFFICIENT.  JURORS ARE, AS I HAVE BEFORE STATED, SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES, AND IT IS FOR YOU TO SAY UPON YOUR OATHS WHAT <del>GUILT</del> <b>◀CREDIT▶</b> IS DUE THE TESTIMONY <sup>[29]</sup> OF EACH WITNESS, AND IT IS FOR YOU TO SAY UPON YOUR OATHS WHETHER YOU DEEM THE TESTIMONY OF ANY WITNESS UNWORTHY OF BELIEF. IN ORDER THE MORE SPECIFICALLY TO GIVE THE LAW TO YOU I WILL READ THE INSTRUCTIONS GIVEN.  FIRST: SUCH	SUFFICIENT  THE JURORS ARE AS I HAVE BEFORE STATED SOLE JUDGES OF THE CREDIBILITY OF WITNESSES IT IS FOR YOU TO SAY <sup>[space]</sup> WHAT DEGREE OF CREDIT IS DUE TESTIMONY OF EACH WITNESS IT IS FOR YOU TO SAY  WHETHER YOU DEEM THE TESTIMONY OF ANY WITNESS UNWORTHY OF BELIEF AND[?] IN ORDER MORE SPECIFICALLY  I WILL READ INSTRUCTIONS GIVEN.  1 <sup>ST</sup>		SUFFICIENT <sup>[space]</sup>  JURORS ARE  SOLE JUDGES UPON <del>GUILT</del> CREDIBILITY OF THE WITNESSES IT IS FOR YOU TO SAY        WHETHER YOU DEEM THE TESTIMONY OF ANY WITNESS UNWORTHY OF BELIEF IN ORDER TO MORE    I WILL READ THE <sup>[[12]]</sup> INSTRUCTIONS GIVING <sup>[space]</sup>  FIRST THE



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<p>INSTRUCTIONS AS ARE ASKED BY THE PROSECUTION AS I HAVE ALLOWED.</p> <p>1ST. TO AUTHORIZE THE JURY TO FIND THE PRISONER GUILTY, HIS GUILT MUST BE PROVED BEYOND A REASONABLE DOUBT AND BY PROOF WHICH CONVINCES AND DIRECTS THE UNDERSTANDING AND SATISFIES THE REASON AND JUDGMENT OF THOSE WHO ARE BOUND TO ACT CONSCIENTIOUSLY UPON IT. IT IS PROOF BEYOND A REASONABLE DOUBT, IF IT LEAVES IN THE MIND AN ABIDING CONNECTION TO A MORAL CERTAINTY OF THE TRUTH OF THE CHARGE. "THE OTHER</p>	<p>INSTRUCTIONS AS ARE ASKED BY THE PROSECUTION AS I HAVE ALLOWED.</p> <p>1ST. TO AUTHORIZE THE JURY TO FIND THE PRISONER GUILTY HIS GUILT MUST BE PROVED BEYOND A REASONABLE DOUBT, AND BY PROOF WHICH CONVINCES AND DIRECTS THE UNDERSTANDING AND SATISFIES THE REASON AND JUDGMENT OF THOSE WHO ARE BOUND TO ACT CONSCIENTIOUSLY UPON IT, IS PROOF BEYOND A REASONABLE DOUBT. IF IT LEAVES IN THE MIND AN ABIDING CONVICTION TO A MORAL CERTAINTY OF THE TRUTH OF THE CHARGE. THE OTHER</p>	<p>INSTRUCTIONS ASKED BY PROSECUTION AS I HAVE ALLOWED THEM</p>		<p>FOR THE PROSECUTION AS I HAVE ALLOWED THEM. <i>[space]</i></p> <p>TO AUTHORIZE THE JURY TO FIND THE PRISONER GUILTY HIS GUILT MUST BE PROVED BEYOND A REASONABLE DOUBT <i>[space]</i></p> <p>SATISFIES REASON AND JUDGMENT OF THOSE WHO ARE BOUND TO ACT CONSCIENTIOUSLY UPON IT IS PROOF BEYOND A REASONABLE DOUBT <i>[space]</i> IF IT LEAVES IN THE MIND AN ABIDING CONVICTION TO A <i>[space]</i></p>
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<p>INSTRUCTIONS WE CONDENSE AS FOLLOWS: “2ND. THAT A MERE POSSIBLE DOUBT IS NOT A REASONABLE DOUBT. “3D. THAT IT IS NOT NECESSARY TO PROVE LEE ACTUALLY KILLED ANY ONE OF THE EMIGRANTS WITH HIS OWN HANDS; BUT IS HE WAS PRESENT AND AIDED AND ABETTED THE KILLING, IT IS SUFFICIENT. “4TH. THE JURY MUST UTTERLY DISREGARD THE RULED OUT TESTIMONY. “5TH. IT IS NOT NECESSARY TO PROVE THAT A PERSON NAME JOHN SMITH WAS KILLED AT THE MASSACRE IN ORDER TO CONNECT LEE, IF THE JURY BELIEVES THERE WAS ONE OR MORE OF THE EMIGRANTS KILLED BY LEE,</p>	<p>INSTRUCTIONS WE CONDENSE AS FOLLOWS: SECOND: THAT A MERE POSSIBLE DOUBT IS NOT A REASONABLE DOUBT. THIRD: THAT IT IS NOT NECESSARY TO PROVE LEE ACTUALLY KILLED ANY ONE OF THE EMIGRANTS WITH HIS OWN HANDS,BUT IF HE WAS PRESENT AND AIDED AND ABETTED THE KILLING IT IS SUFFICIENT. FOURTH: THE JURY MUST UTTERLY DISREGARD THE RULED OUT TESTIMONY. FIFTH: IT IS NOT NECESSARY TO PROVE THAT A PERSON NAMED JOHN SMITH WAS KILLED AT THE MASSACRE IN ORDER TO CONNECT LEE, IF THE JURY BELIEVES THERE WAS ONE OR MORE OF THE EMIGRANTS KILLED BY LEE,</p>			<p>MERE POSSIBLE DOUBT IS NOT A REASONABLE DOUBT. [space]</p>
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<p>OR THAT HE AIDED AND ABETTED IN THE KILLING OF EMIGRANTS WHOSE NAMES ARE UNKNOWN. “6TH. ONE MAY BE PRINCIPAL IN A MURDER WITHOUT DOING THE DEED WITH HIS OWN HAND. IT IS ENOUGH IF HE AIDED AND ABETTED THE ACT. SO IF THE JURY BELIEVES BEYOND A REASONABLE DOUBT THAT EITHER LEE OR ANY OF THE DEFENDANTS ACTED JOINTLY AND WITH MALICE AFORETHOUGHT, THEN THE JURY MUST FIND A VERDICT OF MURDER IN THE FIRST DEGREE. “THE BURDEN OF PROVING THAT THE KILLING WAS WILFULL, RESTS UPON THE PROSECUTION, WHICH IT MUST SHOW BEYOND</p>	<p>OR THAT HE AIDED AND ABETTED IN THE KILLING OF EMIGRANTS WHOSE NAMES ARE UNKNOWN. SIXTH: ONE MAY BE PRINCIPAL IN A MURDER WITHOUT DOING THE DEED WITH HIS OWN HAND. IT IS ENOUGH IF HE AIDED AND ABETTED THE ACT. SO IF THE JURY BELIEVES BEYOND A REASONABLE DOUBT THAT EITHER LEE OR ANY OF THE DEFENDANTS ACTED JOINTLY AND WITH MALICE AFORETHOUGHT, THEN THE JURY <sup>[30]</sup> MUST FIND A VERDICT OF MURDER IN THE FIRST DEGREE. THE BURDEN OF PROVING THAT THE KILLING WAS WILFULL RESTS UPON THE PROSECUTION, WHICH IT MUST SHOW BEYOND</p>			
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<p>A REASONABLE DOUBT. IN DETERMINING THESE FACTS THE JURY SHOULD LOOK TO THE FACT OF THE KILLING IN CONNECTION WITH THE ATTENDING FACTS, AS SHOWN BY THE EVIDENCE. INSTRUCTIONS FOR THE DEFENSE “INSTRUCTIONS FOR THE DEFENSE WERE GIVEN, WHICH WE CONDENSE AS FOLLOWS:</p> <p>“FIRST, THERE MUST BE A UNION OF, OR JOINT OPERATION OF, ACT AND INTENTION, OR CRIMINAL NEGLIGENCE.</p>	<p>A REASONABLE DOUBT. IN DETERMINING THESE FACTS THE JURY SHOULD LOOK TO THE FACT OF THE KILLING IN CONNECTION WITH THE ATTENDING FACTS AS SHOWN BY THE EVIDENCE. INSTRUCTIONS FOR THE DEFENSE WERE GIVEN WHICH WE CONDENSED AS FOLLOWS.</p> <p>FIRST: THERE MUST BE A UNION OR JOINT OPERATION OF ACT AND INTENTION OR CRIMINAL NEGLIGENCE.</p>	<p><b>310 PM</b>  CONCLUDED ≤71  <b>LINES</b>⇒  <b>{DEFENSE INSTRUCTIONS TO JURY}</b>ᵖ</p> <p>I WILL NOW GIVE THOSE FOR THE DEFENSE. COURT INSTRUCT JURY AS FOLLOWS IN EVERY CRIME OR PUBLIC OFFENSE THERE MUST UNION OF = ≤<b>OR</b> JOINT⇒ OPERATION</p> <p>FOR CRIMINAL NEGLIGENCE[?] MOST OF THESE ARE GIVEN BY CONSENT IN ORDER TO JUSTIFY INFERENCE OF LEGAL GUILT FROM CIRCUMSTANTIAL EVIDENCE</p>		
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<p>“SECOND, THE PRESUMPTIONS OF INNOCENCE PREVAILS, AND IS TO BE DESTROYED ONLY BY SUCH AN AMOUNT OF EVIDENCE OF GUILT AS IS CALCULATED TO PRODUCE THE OPPOSITE BELIEF.</p> <p>“THIRD, THE CIRCUMSTANCES</p>	<p>SECOND: THE PRESUMPTIONS OF INNOCENCE PREVAILS AND IS TO BE DESTROYED ONLY BY SUCH AN AMOUNT OF EVIDENCE OF GUILT AS IS CALCULATED TO PRODUCE THE OPPOSITE BELIEF.</p> <p>THIRD: THE CIRCUMSTANCES</p>	<p>THAT IS OBJECTED TO [space] IN THE INVESTIGATION S OR ESTIMATE OF THE CRIMINATORY THERE IS ANTECEDENT PRIMA FACIE PRESUMPTION IN FAVOR OF INNOCENCE OF THE PARTY ACCUSED GROUNDED IN REASON AND JUSTICE NOT NOT LESS IN HUMANITY UNTIL IT BE DESTROYED BY SUCH <i>WEALTH</i>[?] AMOUNT OF LEGAL EVIDENCE AS IS CALCULATED TO PRODUCE OPPOSITE BELIEF. [space] IT IS NOT SUFFICIENT THAT CIRCUMSTANCE S PROVED COINCIDE WITH THEREFORE RENDER PROBABLE HYPOTHESIS SOUGHT TO BE ESTABLISHED [space] THEY</p>		
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<p>MUST EXCLUDE TO A MORE CERTAINTY, EVERY HYPOTHESIS BUT THAT OF GUILT. “FOURTH, DEFINING AT LENGTH WHAT IS A REASONABLE DOUBT.</p> <p>“FIFTH, THE ESTABLISHMENT OF A <i>PRIMA FACIE</i> CASE MERELY, DOES NOT TAKE AWAY THE PRESUMPTION OF INNOCENCE.</p>	<p>MUST EXCLUDE, TO A MORAL CERTAINTY EVERY HYPOTHESIS BUT THAT OF GUILT. FOURTH: DEFINING AT LENGTH WHAT IS A REASONABLE DOUBT.</p> <p>FIFTH: THE ESTABLISHMENT OF A <i>PRIMA FACIE</i> CASE MERELY, DOES NOT TAKE AWAY THE PRESUMPTION OF INNOCENCE.</p>	<p>MUST <i>EXCLUDE</i>[?] MORAL CERTAINTY OR JURY MUST FIND DEFENDANT NOT GUILTY. ACCUSED IS ENTITLED TO BENEFIT OF ALL REASONABLE DOUBT WHICH AFTER CAREFUL CONSIDERATION MAY BE FOUND IN YOUR MINDS UNDER INDICTMENT IS ALSO WHETHER HE IS GUILTY OF ANY OF THEM BEFORE</p> <p>PRESUMPTION OF GUILT IT MUST AMOUNT TO ALMOST CERTAIN OR ALMOST MORAL CERTAINTY YOU MUST UNDERSTAND HOWEVER SINCE IT SHOULD BE OVERLOOKED</p>		
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<p>“SIXTH, THE CHARGE OF COMBINATION OF DEFENDANT WITH OTHER PERSONS TO COMMIT THE CRIME IS A QUESTION OF FACT TO BE FOUND BY THE JURY. IF THE JURY BELIEVE THERE WAS NO SUCH COMBINATION, AND THAT DEFENDANT TOOK NO PART AND DID NOT KILL ANY PERSON AS CHARGED, THE JURY MUST ACQUIT. <sup>cc[166]</sup> SEVENTH, THE PROOF MUST SHOW DEFENDANT GUILTY OF THE PARTICULAR CRIME CHARGED. “EIGHTH, DEFENDANT IS NOT RESPONSIBLE FOR THE ACTS</p>	<p>SIXTH: THE CHARGE OF COMBINATION OF DEFENDANT WITH OTHER PERSONS TO COMMIT THE CRIME IS A QUESTION OF FACT TO BE FOUND BY THE JURY. IF THE JURY BELIEVE THERE WAS NO SUCH COMBINATION AND THAT THE DEFENDANT TOOK NO PART AND DID NOT KILL ANY PERSON AS CHARGED THE JURY MUST ACQUIT. SEVENTH: THE PROOF MUST SHOW DEFENDANT GUILTY OF THE PARTICULAR CRIME CHARGED. EIGHTH: DEFENDANT IS NOT RESPONSIBLE FOR THE ACTS</p>	<p>EVERYTHING IS OPEN TO SOME POSSIBLE OR IMAGINARY DOUBT THAT THE</p>		
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<p>OF OTHER PERSONS, DONE WITHOUT HIS CONSENT. “NINTH, DEFENDANT IS NOT TO BE AFFECTED BY THE DECLARATIONS OF OTHERS, MADE IN HIS ABSENCE, UNLESS THE JURY BELIEVE THERE WAS AN AGREEMENT OR CONFEDERATION , AND THAT THE DECLARATIONS WERE MADE TO FURTHER THE SAME. “TENTH, LEE CANNOT BE CONVICTED IF THE JURY FINDS HE DID NOT KILL ONE OR MORE EMIGRANTS, OR DID NOT ABET THEIR KILLING, UNLESS THEY BELIEVE HE COMMITTED ACTS TO MAKE HIM AN ACCESSORY. “ELEVENTH, TO CONVICT, IT MUST BE SHOWN THAT LEE BY ACTS OR</p>	<p>OF OTHER PERSONS DONE WITHOUT HIS CONSENT. NINTH: DEFENDANT IS NOT TO BE AFFECTED BY THE DECLARATIONS OF OTHERS MADE IN HIS ABSENCE, UNLESS THE JURY BELIEVE THERE WAS AN AGREEMENT OR CONFEDERATION AND THAT THE DECLARATIONS WERE MADE TO FURTHER THE SAME. TENTH: LEE CANNOT BE CONVICTED IF THE JURY FINDS HE DID NOT KILL ONE OR MORE EMIGRANTS OR DID NOT ABET THEIR KILLING, UNLESS THEY <sup>[31]</sup> BELIEVE HE COMMITTED ACTS TO MAKE HIM AN ACCESSORY. ELEVENTH: TO CONVICT IT MUST BE SHOWN THAT; LEE BY ACTS OR</p>			
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<p>WORDS, AT OR BEFORE THE KILLING, CONSENTED TO OR ADVISED THE KILLING. “TWELFTH, IS WAS NOT UNLAWFUL FOR DEFENDANT TO GO TO THE MEADOW WHILE THE EMIGRANTS WERE CAMPED THERE, AND FURTHER, IF THEY WENT THERE TO PERSUADE THE INDIANS TO DESIST, OR TO BURY THE DEAD, AND FOR NO OTHER OBJECT, SUCH GOING WAS NOT ONLY INNOCENT, BUT LAUDABLE AND HUMANE. “THIRTEENTH, IF THE PERSONS OF INFLUENCE CAUSED THE MEN TO GO TO THE MOUNTAIN MEADOW OSTENSIBLE FOR A GOOD PURPOSE, AND NOT FOR A BAD PURPOSE, THE ACT OF GOING THERE AND</p>	<p>WORDS AT OR BEFORE THE KILLING CONSENTED TO OR ADVISED THE KILLING. TWELFTH: IT WAS NOT UNLAWFUL FOR DEFENDANT TO GO TO THE MEADOW WHILE THE EMIGRANTS WERE CAMPED THERE, AND FURTHER IF THEY WENT THERE TO PERSUADE THE INDIANS TO DESIST OR BURY THE DEAD AND FOR NO OTHER OBJECT, SUCH GOING WAS NOT ONLY INNOCENT BUT LAUDABLE AND HUMANE. THIRTEENTH: IF THE PERSONS OF INFLUENCE CAUSED THE MEN TO GO TO THE MOUNTAIN MEADOWS OSTENSIBLY FOR A GOOD PURPOSE AND NOT FOR A BAD PURPOSE THE ACT OF GOING THERE AND</p>			
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<p>BEING PRESENT AND NOT TAKING ANY PART NOR ABETTING, IS NOT EVIDENCE AGAINST DEFENDANTS OF ANY OTHER INTENTION THAN TO ACCOMPLISH SUCH GOOD PURPOSE, UNLESS THEY HAD NOTICE OF THE REAL OBJECT. IN THE ABSENCE OF SUCH PROOF OF NOTICE, THE LAW PRESUMES NO GUILTY OR INTENTION. DISREGARD ALL OUTSIDE INFLUENCE “ATTORNEYS FOR PEOPLE AND ALSO FOR DEFENSE WILL NOW ADDRESS YOU, AS IS THEIR RIGHT, AIDING YOU TO REACH A CORRECT CONCLUSION IN THE CASE. NOW, GENTLEMEN, THE DUTIES</p>	<p>BEING PRESENT AND NOT TAKING ANY PART NOR ABETTING IS NOT EVIDENCE AGAINST DEFENDANT OF ANY OTHER INTENTION THAN TO ACCOMPLISH SUCH OSTENSIBLE PURPOSE, UNLESS THEY HAD NOTICE OF THE REAL OBJECT. IN THE ABSENCE OF SUCH PROOF OF NOTICE THE LAW PRESUMES NO GUILTY KNOWLEDGE OR INTENTION.</p> <p>THE ATTORNEYS FOR THE PEOPLE AND ALSO FOR THE DEFENSE WILL NOW ADDRESS YOU, AS IS THEIR RIGHT, AIDING YOU TO REACH A CORRECT CONCLUSION IN THE CASE. NOW GENTLEMEN, THE DUTIES</p>	<p><i>[19]</i> ATTORNEYS FOR PEOPLE AND ALSO FOR DEFENSE WILL NOW ADDRESS YOU, AS IS THEIR RIGHT TO DO TO AID YOU IN REACHING CORRECT CONCLUSIONS IN THIS CASE. NOW GENTLEMEN DUTIES</p>		<p>THE ATTORNEYS FOR THE PEOPLE AND ALSO FOR THE DEFENSE WILL ADDRESS YOU AS IS <i>[space]</i></p> <p>NOW</p> <p>THE DUTIES</p>
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<p>WHICH DEVOLVE UPON YOU ARE VERY RESPONSIBLE; BUT YOU SHOULD ACT THE PART OF INDEPENDENT JURORS, DISREGARDING ANY AND ALL OUTSIDE INFLUENCE, LOOKING TO THE EVIDENCE ADDUCED, THE LAW AS GIVEN BY THE COURT, AND</p> <p>YOUR OWN OATHS AS YOUR GUIDES. “BE CAREFUL TO DO RIGHT. YOUR DUTY IS NOT ONLY TO THE PRISONER AT BAR, BUT ALSO TO THE PEOPLE AND YOUR OWN CONSCIENCE. YOUR ACTION WILL BE LOOKED TO WITH GREAT INTEREST FAR AND NEAR, AND IT BEHOOVES YOU TO ACT CANDIDLY,</p>	<p>WHICH DEVOLVE UPON YOU ARE VERY RESPONSIBLE, BUT YOU SHOULD ACT THE PART OF INDEPENDENT JURORS, DISREGARDING ANY AND ALL OUTSIDE INFLUENCE, LOOKING TO THE EVIDENCE ADDUCED AND THE LAW AS GIVEN BY THE COURT, AND</p> <p>YOUR OWN OATHS AS YOUR GUIDES. BE CAREFUL TO DO RIGHT. YOUR DUTY IS NOT ONLY TO THE PRISONER AT THE BAR BUT ALSO TO THE PEOPLE AND YOUR OWN CONSCIENCE. YOUR ACTION WILL BE LOOKED TO WITH GREAT INTEREST, FAR AND NEAR, AND IT BE- <sup>[32]</sup> HOOVES YOU TO ACT CANDIDLY,</p>	<p>WHICH DEVOLVE UPON YOU ARE RESPONSIBLE AND YOU SHOULD ACT THE PART OF INDEPENDENT JURORS DISREGARD ANY AND ALL OUTSIDE INFLUENCE, LOOKING UPON THE EVIDENCE ADDUCED LAW AS GIVEN BY COURT AND</p> <p><i>WITH</i>[?] YOUR OATH AS YOUR GUIDE BE CAREFUL TO DO RIGHT YOUR DUTY IS NOT ONLY <i>TO/BUT</i>[?] FAR AND NEAR</p> <p>YOUR ACTION WILL BE LOOKED</p> <p>THAT BEHOOVES TO ACT</p>		<p>WHICH DEVOLVE UPON YOU ARE RESPONSIBLE, AND YOU SHOULD ACT THE PART OF INDEPENDENT JURORS DISREGARDING ALL OUTSIDE INFLUENCE LOOKING EVIDENCE ADDUCED LAW AS GIVEN BY THE COURT EVIDENCE TESTIMONY</p> <p>AND YOUR DUTIES IS TO</p> <p>THE PEOPLE</p> <p>YOUR ACTION WILL BE LOOKED TO WITH GREAT INTEREST</p> <p>IT BEHOOVES TO [space]</p>
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<p>CAREFULLY AND CONSCIENTIOUSLY.</p>	<p>CAREFULLY AND CONSCIENTIOUSLY.</p>	<p>CAREFULLY AND CONSCIENTIOUSLY. I WILL STATE HERE I ALWAYS CONSIDER ALL GIVING OF ALL INSTRUCTIONS</p> <p>HERE <i>EXCEPT REFUSES[?]</i> ALL ARE <i>EXCEPTED/ACCEPTED[?]</i> AND EVERYTHING OF THAT KIND AND EVERYTHING IN CHARGE {AS EXPECTED TO}<sup>i</sup></p> <p>BY BISHOP HAVE MOTION</p> <p>YES SIR <i>A NEW THING[?]</i> 322 <b>PM</b> = BY HOGE WHAT IS THE COURSE THAT THIS ARGUMENT WILL TAKE BY</p> <p>COURT I SUPPOSED PERHAPS THE ATTORNEYS ON BOTH SIDES HAD AGREED &lt;<b>HOGE</b>&gt; WE CLAIM</p>	<p>HOGE: WHAT IS THE COURSE THAT THIS ARGUMENT WILL TAKE? THE COURT: I SUPPOSE THE PERHAPS THE ATTORNESYS ON BOTH SIDES HAD AGREED TO THAT. HGOGE: WE CLAIM THE</p>	<p>I WILL STATE HERE THAT</p> <p>GIVING OF ALL INSTRUCTIONS WHICH <i>HERE/ARE[?]</i> ACCEPT EXPECT AND REFUSING TO <del>INSTRUCTION</del> <i>ACCEPT[?]</i> AND GIVE WHAT THE JURY</p> <p>IS EXPECTED TO [space] . [space] BISHOP HAVE MOTION FOR THE COURT YES SIR [space]</p> <p>HOGE WHAT IS THE COURSE THIS ARGUMENT WILL TAKE [space] {<b>COURT</b>}<sup>i415</sup> I SUPPOSED</p> <p>ATTORNEYS ON BOTH SIDES HAD AGREED TO HOGE WE CLAIM THE</p>
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415. In Rogerson's hand.

**Tribune**

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		<p>{TO}<sup>1</sup>  CLOSE THIS  ARGUING {=}<sup>i</sup>  WE CLAIM  RIGHT TO CLOSE  THIS ARGUING.  BY CAREY WE  DO NOT  CONCEDE IT. BY  COURT.  STATE YOUR  GROUND  ON  STATUTORY  GROUNDS  YOUR HONOR  AS  STATUTE SAYS,  I WILL CALL  YOUR HONOR'S  ATTENTION  ON  INSTRUCTION  ON WHICH I  RELY CALL  YOUR HONOR'S  ATTENTION  LATTER  PART  SECTION 8  CRIMINAL  PROCEDURE  ACT;  WHICH READS  AS FOLLOWS I  WILL READ  ENTIRE  SECTION; IF  THIS STATUTE  MEANS  ANYTHING IT  GIVES RIGHT TO  CLOSE TO GIVE  IT ANY</p>	<p>RIGHT TO  CLOSE THIS  ARGUEMENT.   CAREY: WE  DON'T  DON'T  CONCEDE IT.  THE COURT:  STATE YOUR  GROUNDS.  HOGE: ON THE  STATUTORY  GROUNDS.  YOUR HONOR  HAS THE  STATUTE THERE  I WILL CALL  YOUR HONORS  ATTENTION TO  THE  INSTRUCTIONS  ON WHICH I  RELY. CALL  YOUR HONORS  ATTENTION TO  THE LATTER  PART OF  SECTION 8 , ON  CRIMINAL  PROCEDURE,  ACT ONE.  WHICH READS  AS FOLLOWS.  (READS)</p>	<p>RIGHT TO  CLOSE THIS  ARGUMENT   COURT  STATE YOUR  GROUND  YOUR  STATUTORY  GROUNDS IF  YOUR HONOR  HAS THE  STATUTES  I REFER TO THE  SECTION UPON   WHICH I  RELY CALL  YOUR HONOR'S  ATTENTION TO  LATTER  PART OF  SECTION 8 OF  THE CRIMINAL  PROCEDURE  ACT  WHICH READS  AS FOLLOWS.  [space]</p>
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**Tribune**

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MEANING AT ALL I BELIEVE IN —[?] STATEMENT IT IS NECESSARY WHERE THE MEANING IS AMBIGUOUS ETC. OF CONSIDERATION YOU MUST GIVE IT SOME MEANING WHICH IS POSSIBLE TO BE GIVEN TO IT. I THINK IT FALLS WITHIN RULE 43 CALIFORNIA CELEBRATED CASE OF LAURA D FAIR BY COURT THAT WAS UNDER A STATUTE IN CALIFORNIA HOGE DIFFERENCE BETWEEN THAT SECTION AND OURS IS THIS SECTION 364 JURY[?] MUST ARGUE CASE ALTERNATELY. LANGUAGE OF THAT STATUTE MEANS SOMETHING

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LAURA DE FAIR COURT THAT WAS UNDER A/THE[?] STATUTE

HOGE THAT EQUAL[?] WITH THIS UNDER STATUTE [*space*] ≤CALIFORNIA STATUTE≥ SECTION 364

ARGUES BY COUNSEL ON BOTH SIDES.

**Tribune**

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		<p>[space] BY COURT I DO NOT THINK THAT AUTHORIZES A CHANGE OF {THE}<sup>i</sup> RULE, THAT ONLY AUTHORIZES</p> <p>INTRODUCTION OF EVIDENCE ON BOTH SIDES; <del>EITHER</del> {NEITHER}<sup>i</sup> PARTY SHALL BE DENIED {THE}<sup>i</sup> PRIVILEGE OF INTRODUCING TESTIMONY”; I DO NOT THINK IT REFERS TO OPENING CLOSING SPEECHES {IT SAYS NOTHING ABOUT THE OPENING AND CLOSING SPEECHES THE COMMON LAW RULE WILL BE ADOPTED,</p> <p>PROSECUTION OPEN AND CLOSE.}<sup>i</sup> BY HOGE IT SAYS SO BY COURT</p>	<p>COURT: I DON’T THINK THAT AUTHORIACES THE CHANDEGE OF THE RULING. THAT ONLY AUTHORIXZES THE INTRODUCTION OF THE TESTIMONY ON BOTH SIDES</p> <p>NEITHER PARTY SHALL BE DENIED THE PRIVILEGE OF INTRODUCING TESTIMONY I DON’T THINK IT REFER S TO IOPENING AND CLOSING SPEECHES . IT SAYS NOTHING ABOUT THE OPENING AND CLOSING OF SPEECHES. THE COMMON RULE LAW <b>RULE</b> WILL BE ADOPTED AND THE PROSECUTION WILL OPEN AND CLOSE.</p>	<p>COURT I DO NOT THINK THAT THAT AUTHORIZES A CHANGE OF THE RULE I DO NOT THINK IT SAYS ANYTHING IN REGARD TO THE RULE</p> <p>NO PARTY SHALL BE DENIED THE PRIVILEGE OF INTRODUCING TESTIMONY <i>BUT/OR[?] I</i> DON’T THINK IT [space] LAW PART OF SECTION 8 <sup>[[13]]</sup> [space]</p> <p>SAYS NOTHING ABOUT THE OPENING AND CLOSING SPEECHES. [space] COMMON LAW RULE WILL BE ADOPTED</p> <p>PROSECUTION OPEN AND CLOSES.</p>
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<p>“AT THE CLOSE OF THE JUDGE’S CHARGE, DISTRICT ATTORNEY CAREY OPENED THE ARGUMENT, BRIEFLY REVIEWING THE TESTIMONY.</p> <p>SUTHERLAND FOLLOWED WITH A DIFFUSE SPEECH, MAINLY DEVOTED TO BREAKING DOWN THE TESTIMONY OF KLINGENSMITH.</p> <p>“COURT ADJOURNED AT 5 P.M., LEAVING SUTHERLAND’S ARGUMENT UNFINISHED. SYNOPSIS OF SPEECHES TOMORROW.”</p>		<p>PLEASE LET ME SEE IT. BY COURT LET ME SEE IT. BY COURT I DO NOT THINK THAT IS ANY EXCEPTION [space] BY COURT COMMON LAW RULE WILL BE ADOPTED DEFENSE EXPECTED. [space]</p>	<p><b>EXCEPTION TO RULING</b></p>	<p>DEFENSE EXCEPTIONS. [space]</p>
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