

CR 02194-02196, CR 02198-02201, CR 02176, CR 02296

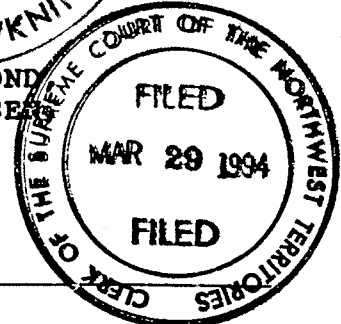
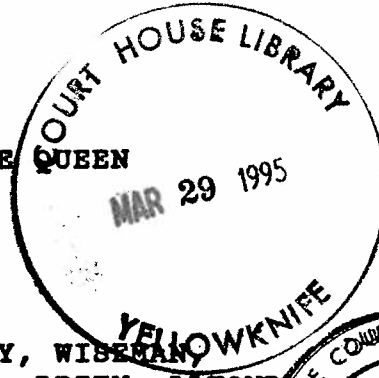
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

MORAFF, LISOWAY, WISEMAN,
McAVOY, WHALEN, BRIEN, LAFOND,
PYKE, DENIS, IMBEAULT, MADSEN,
McPHEE, LACHOWSKI, LEGGE



Transcript of the Jury Charge delivered by The Honourable
Mr. Justice M.M. de Weerd, sitting at Yellowknife, in the
Northwest Territories, on February 17th, A.D., 1994.

APPEARANCES:

MR. J.A. MacDONALD:	Counsel for the Crown
MS. B. SCHMALTZ:	Counsel for the Crown
MR. A. MARSHALL:	Counsel for MORAFF, LISOWAY, WISEMAN, McAVOY, WHALEN, BRIEN, LAFOND, PYKE
MR. A. PRINGLE, Q.C.:	Counsel for DENIS, IMBEAULT, MADSEN, McPHEE, LACHOWSKI, LEGE

(CHARGE UNDER s. 65 OF THE CRIMINAL CODE)

1 THE COURT: Please bring in the jury.

2 (AT WHICH TIME THE JURY RETURNED)

3 THE COURT: We are a little later starting than I
4 hoped, but we have cleared away some obstacles in the
5 meantime.

6 Members of the jury, now that you have heard all
7 the evidence and what counsel have had to say to you,
8 it is my task to give you my instructions on so much
9 of the law as I think you will need to come to your
10 verdict or verdicts in this case, and I will review
11 some of the evidence with you in the course of doing
12 that.

13 I am going to divide my remarks up into six
14 parts. First I will have a few words to say about how
15 you might best use what I am going to say to you and I
16 will remind you of your function as the jury, mine as
17 the judge.

18 Second, I will speak to you again about those two
19 very important principles; the presumption of
20 innocence, and proof beyond a reasonable doubt.

21 That brings me then to my third heading, which
22 deals with evidence and the rules of evidence.

23 I will have a few words to say to you about
24 credibility of witnesses which is always important in
25 a criminal trial.

26 I will have a few words to say to you about
27 circumstantial and direct evidence.

1 I will tell you what you can do with the
2 admissions of fact and I will have a few words about
3 experts and opinions, since there were expert
4 witnesses in this case.

5 I will come then to a central issue in this case;
6 the identification of persons by witnesses.

7 I will have some words to say about collateral
8 matters arising in the course of cross-examination and
9 tape recordings. By then you will be ready for a
10 break.

11 After the break, I will outline for you, I hope
12 clearly and succinctly, the law relating to the charge
13 before us in the indictment; a charge of taking part
14 in a riot. At that time I will briefly explain how
15 the word "riot" is understood in law, and some of the
16 other points that were mentioned by counsel.

17 I will then go on to my fifth part in which I
18 will outline very briefly for you my understanding of
19 the Crown's position and of the defence position in
20 this case.

21 I will then give you the verdicts that are open
22 to you to return.

23 Finally in my sixth part I will have some words
24 to offer to you by way of advice, which I hope will be
25 useful to you in the jury room during your
26 deliberations.

27 So coming then to my first part. I ask that you

1 not take anything I repeat as being more important
2 than anything else. You will see I am working from
3 one of these large binders which are provided to
4 judges to help us to avoid forgetting any important
5 point that should be put to the jury. Using this book
6 is very helpful, but it is sometimes repetitious, so
7 if I repeat anything, please do not give it undue
8 emphasis, just take it as a whole without giving any
9 undue emphasis to any part of it.

10 As to your functions and mine, you will remember
11 I mentioned at the beginning that you have been chosen
12 as the judges of the facts, and I also told you, I
13 think, that you and I are working together as a team,
14 that it is your duty to make decisions about the
15 evidence and the facts, mine to govern the trial to
16 try and make sure it is a fair trial and then to
17 instruct you on the law at the end.

18 So you, the jury, must accept the law as I shall
19 explain it to you without question. If anyone has
20 said anything different about the law from what I say
21 to you, then you must disregard that and accept my
22 version of it. This means when you decide what the
23 facts of this case are, you will apply the rules of
24 law which I am going to give to you. It also means
25 that you must apply the law as I explain it to you
26 when you decide whether the Crown has proved the
27 elements or ingredients of the offence charged beyond

1 a reasonable doubt.

2 You are not allowed to decide this case on the
3 basis of what you think the law is or ought to be, if
4 that conflicts with what I tell you about the law. As
5 I am sure you can see, if I am wrong there is a higher
6 Court, and a higher Court above that, to correct me.
7 Because everything that I say is being recorded by
8 this professional Court reporter at my elbow, but
9 anything that any of you might say about the law
10 different from me won't be recorded, and so it cannot
11 be corrected in that way. Besides, I think we can all
12 see how unfair it would be if something was said in
13 the jury room about the law which differs from what I
14 have told you, because neither the Crown nor the
15 defence would have an opportunity to know about that
16 and have it corrected. So it is therefore very
17 important that you accept what I have to say to you
18 about the law without question. We in Canada are all
19 governed under one criminal law.

20 At the same time, as jurors, you are the only
21 judges of the facts, and while I will try to assist
22 you by reviewing some of the evidence with you, at the
23 end of the day it is for you, you ten citizens, to
24 decide what the facts of this case are. As I told you
25 at the beginning, you must do so only on the basis of
26 evidence submitted here during this trial. You must
27 ignore whatever you may have heard or read outside

1 this courtroom. As judges, your duty then is to
2 consider the evidence carefully and dispassionately
3 and to weigh it without any trace of sympathy or
4 prejudice for or against any person in these
5 proceedings. You will reflect on the evidence which
6 you heard. You will weigh it and you will make your
7 decision as to whether you accept it entirely or
8 partially or not at all.

9 In what I have to say to you I shall speak about
10 what we call "evidence" and what we call "fact" or
11 "facts". When I use the word "evidence" I mean what
12 the witnesses said or what you can see and hear in the
13 exhibits. When I use the words "fact" or "facts", I
14 mean what you, the jury, accept as being true on the
15 basis of the evidence.

16 In your deliberations together and in the jury
17 room you will take the facts which you find from the
18 evidence and you will consider those facts in the
19 light of all the evidence when you reach your verdict.
20 Using those facts you may reach still further
21 conclusions of fact as to other facts and you may rely
22 on these further conclusions as to other facts in
23 deciding if an accused person is guilty or not guilty.

24 Once again, you will examine any such further
25 conclusions in the light of all of the evidence when
26 you decide whether an accused person is guilty or not
27 guilty.

1 As counsel have said, your memory of the evidence
2 is what is going to count. The evidence which you
3 heard in this trial and which you saw has not been
4 reduced to a typed-up record, except for small
5 portions of the evidence which I have. I am going to
6 be reviewing the evidence, for the most part, from my
7 notes and I am not a shorthand reporter. My notes are
8 incomplete. I hope they are accurate, but they are
9 not by any way complete. So you therefore, members of
10 the jury, will have to rely on your memory of the
11 evidence, rather than anything that I may say to you
12 (or indeed counsel may have said) about the evidence
13 in this case. At the same time, it will be your
14 opinion about the evidence that is going to count.

15 As I review the evidence for you, I may say
16 something that suggests whether or not I think you
17 should believe some or all of a witness's testimony or
18 not believe it. If I do that, you are not bound in
19 any way by my opinion about that. The evidence may
20 have left an entirely different impression with you
21 than it did with me. It is your duty then to place
22 your own interpretation on the evidence, because you
23 are the judges of the facts arising from that
24 evidence. And at the same time, I am sure you will
25 give careful consideration to what counsel have said
26 or indeed what I might say about that.

27 If in my remarks I consciously, or more likely

1 unconsciously, express any opinion as to whether any
2 of the accused persons is guilty or not guilty, you
3 must ignore any such opinion coming from me. You are
4 the judges -- the only judges -- of that.

5 It is your responsibility then to apply the law
6 which I shall give to you to the facts as you find
7 them in order to reach proper verdicts in respect of
8 each of the accused persons of guilty or not guilty.

9 That brings me then to the second part of my
10 remarks. First, I will speak to you about the
11 presumption of innocence once again, and then the
12 requirement for proof beyond a reasonable doubt. The
13 presumption of innocence is perhaps the most
14 fundamental principle in our criminal law, and it goes
15 back for a very long way; it is not something invented
16 recently. It is not something that some judge has
17 thought up yesterday afternoon. It has now been
18 inshrined in our constitution, ladies and gentlemen,
19 as Canada's supreme law. Every person charged with a
20 criminal offence is, under our law, presumed to be
21 innocent, is to be looked upon as innocent or not
22 guilty, until the Crown has proved his or her guilt
23 beyond a reasonable doubt. That applies to you and me
24 and everybody in this country. Every person charged
25 with a criminal offence is presumed to be innocent
26 until the Crown proves his or her guilt beyond a
27 reasonable doubt.

1 So, each of the accused here -- I shall not name
2 them individually now, but you will see their names in
3 the indictment of which you will have a copy in the
4 jury room -- each of those persons does not have to
5 prove his innocence. You are to presume that
6 innocence throughout your deliberations and you may
7 only find them or any one or more of them guilty, if
8 after you consider all of the evidence, you are
9 satisfied that the Crown has proved its case beyond a
10 reasonable doubt.

11 I will put that another way. In a criminal
12 trial, the accused person or persons does not or do
13 not have to prove anything. It is up to the Crown to
14 prove its case on each element or ingredient of the
15 offence charged -- and I will outline those for you
16 after the break -- beyond a reasonable doubt.

17 The standard of proof beyond a reasonable doubt
18 does not apply to each little bit of evidence that we
19 heard, but it does apply to the total of the evidence
20 making up the Crown's case, making up the evidence on
21 which the Crown relies to prove the guilt of the
22 accused persons. So, we say that the burden or onus
23 of proving the guilt of an accused person beyond a
24 reasonable doubt rests on the Crown; and it never
25 shifts throughout the trial.

26 You the jury must find any of the accused here
27 today not guilty if you have a reasonable doubt about

1 that accused person's guilt after you consider all of
2 the evidence. In case you are asking what do I mean
3 by proof beyond a reasonable doubt, let me just say
4 that a reasonable doubt can arise on the evidence or
5 on a conflict in the evidence, or where there is a
6 lack of evidence. A reasonable doubt can arise also
7 from any doubts which you may have about whether you
8 believe a witness, but a reasonable doubt is not
9 merely something imaginary having no basis in the
10 evidence. It is not a frivolous doubt or something one
11 might think up in order to escape doing an unpleasant
12 duty.

13 You will consider the evidence as it relates to
14 each of the accused individuals and as it appears to
15 you in relation to all of the evidence, and you will
16 ask yourselves with respect to each individual accused
17 person, "am I morally certain, am I sure that he
18 committed the offence charged?" If your answer is
19 "yes" then you do not have a reasonable doubt. But if
20 your answer is "no", or if you merely believe that the
21 accused person is only probably guilty or as likely as
22 not guilty, so that you have a reasonable doubt about
23 that, then you must give the benefit of that doubt to
24 the accused person in question and return a verdict of
25 "not guilty" in respect of that accused person.

26 You will appreciate that this is a criminal trial
27 and not a scientific exercise, so that absolute

1 certainty on the scientific level is impossible in a
2 criminal trial. The Crown must, nevertheless, satisfy
3 you beyond a reasonable doubt as to the guilt of an
4 accused person before you can bring back a verdict of
5 guilty. This requirement of proof beyond a reasonable
6 doubt applies to each element or essential ingredient
7 of the offence charged. So the Crown must prove in
8 the case of each of these accused persons that he did,
9 or that the element applies to him, that he did what
10 is charged as to each element that makes up the
11 offence. And so as I talk to you, if I use words such
12 as "the Crown must prove" or "the Crown must
13 establish" or "the Crown must show" or "you must be
14 satisfied", then please understand that by these words
15 I mean proof by the Crown beyond a reasonable doubt.

16 That brings me then to the third part of my
17 instructions to you this morning. I am going to talk
18 to you now about rules of evidence. These are rules
19 which all judges and juries in criminal cases in
20 Canada must apply, and I have selected only those
21 which I think will be of assistance to you and which
22 must govern you in this case. As I mentioned, I am
23 going to speak to you about the credibility of
24 witnesses.

25 Firstly, I have already mentioned that you, the
26 jury, must decide what of the evidence you believe.
27 You must also decide how much weight or importance you

1 will give to the testimony of each witness. What I
2 have to say is intended to help you in that task.
3 Generally, as judges generally do, I suggest that you
4 use your good common sense and your experience of life
5 in this part of Canada when you are assessing the
6 credibility of each witness. In doing that, you will
7 want to keep in mind that as as you consider the
8 evidence of a witness, you will remember you don't
9 have to accept or reject everything a particular
10 witness said. You can accept part, reject part, or
11 accept it all or reject it all; it is entirely up to
12 you. As we all know, different people often see and
13 hear things differently -- apparently the same things,
14 but they don't always come out the same. They can
15 depend on a number of factors; where they were
16 standing or watching what they are describing to us,
17 what else may have happened so one will see this part
18 of something and another will see a different part and
19 so on. We should therefore not be too surprised to
20 find various differences or discrepancies between the
21 testimony of one witness and that of another. It will
22 be for you to decide if any of these differences or
23 discrepancies are important or unimportant and whether
24 they effect your assessment of the credibility, the
25 truthfulness, and trustworthiness of the witness. You
26 will, I am sure, appreciate that such differences and
27 discrepancies may, after many months -- in this case

1 well over a year -- be influenced by loss of accurate
2 or detailed memory. You will also no doubt examine
3 such differences and discrepancies to see if they
4 suggest that witnesses may have been comparing notes
5 about their testimony. Where there are obvious
6 differences and discrepancies, you may well decide
7 that the witnesses can't have been comparing notes
8 before they testified at this trial.

9 There is no fixed set of legal rules for you to
10 use in your assessment of the credibility of
11 witnesses, so what I have to offer to you, are perhaps
12 just good common sense or practical rules which may be
13 useful to you. I suggest you will ask yourselves a
14 number of questions. First, was there something
15 specific or special that helped the witness to
16 remember what he or she described to us? In other
17 words, was there something unusual or memorable about
18 the events so that you would expect the witness to
19 remember the details? Or, was the event relatively
20 unimportant at the time so the witness might easily be
21 mistaken about some detail?

22 Secondly, you will probably ask yourselves if the
23 witness had a good opportunity to observe what the
24 witness described to us. How long was the witness
25 watching or listening? Was there anything else
26 happening at the same time which might have distracted
27 the witness?

1 Thirdly, does the witness seem to have a good
2 memory for what the witness told us about?

3 Fourthly, how did the witness appear to you when
4 giving evidence? Was the witness forthright,
5 responsive to questions, or did he seem evasive or
6 perhaps argumentative with counsel?

7 Fifthly, was the testimony of the witness
8 reasonable and consistent or did the witness
9 contradict himself? Was the witness's testimony
10 consistent with that of other witnesses?

11 And, I am sure you will ask yourselves: Was the
12 witness impartial or did the witness seem to have some
13 interest in the outcome of this case?

14 Was there some reason why the witness might tend
15 to favour the Crown or the accused or any of the
16 accused?

17 So, ladies and gentlemen, you will apply your
18 good common sense and you will decide what of the
19 evidence you accept and how much weight and importance
20 you wish to give to it.

21 I should tell you, as I am sure will be obvious
22 to you but I will tell you anyway, a trial is not a
23 numbers game. It is not a question of how many
24 witnesses are called on one side or the other. What
25 is important is your assessment of the quality of what
26 the witnesses had to offer us.

27 In addition to the testimony of the witnesses, we

1 have a number of exhibits. There was an exhibit
2 marked in your absence as Exhibit P-1 as an Agreed
3 Statement of Facts. I'm told by counsel that
4 everything in that exhibit is included in Exhibit P-8,
5 which is the Agreed Statement of Facts, which was
6 entered before you on the 3rd of February. I will
7 have a few words to say about that in a moment, but
8 you will be given a list of the exhibits by the clerk,
9 together with those exhibits which have been marked
10 for you in this trial, and you will have those with
11 you in the jury room. At that time, the videotapes
12 will be available to you to be played on equipment
13 which will be provided to you, together with the last
14 exhibit which consists of a page of typed instructions
15 as to how you might best use the equipment. If you
16 are like me, you may not read the instructions first,
17 but I suggest perhaps that one of you should do so
18 just in case.

19 Neither the Crown nor the defence is required to
20 produce all of the evidence which might have been
21 produced, in a criminal trial. There are reasons
22 sometimes why evidence is not readily available or
23 some other reason why it has not been introduced. So,
24 ladies and gentlemen, you, like all judges, will
25 simply have to work with the evidence that is before
26 us without speculating as to what other evidence there
27 might have been.

1 I promised to speak to you about circumstantial
2 evidence. Perhaps you have heard that expression
3 before. In case not, I will explain it for you.
4 Generally speaking, we lawyers separate evidence into
5 two kinds; direct evidence and circumstantial
6 evidence. Sometimes circumstantial evidence is more
7 persuasive than direct evidence. The evidence of one
8 witness may contradict that of another but the
9 circumstances of an event may often not be themselves
10 in dispute. I will explain the difference between
11 direct and circumstantial evidence by way of examples.

12 Here is my first example. Let us suppose a woman
13 is on trial for murder. It is said that she killed a
14 man by stabbing him to death. A witness testifies
15 that he saw the accused stab the victim with a knife.
16 This is direct evidence that the accused stabbed the
17 victim. Direct evidence has two possible sources of
18 error:

19 First, the witness might be lying for one reason
20 or another.

21 Second, the witness might be mistaken when
22 identifying the accused as the person who did the
23 stabbing.

24 On the other hand, if the witness is not lying,
25 and is not mistaken, then the proper conclusion from
26 that evidence would be that the accused did stab the
27 victim.

1 Let me give you a second example. First we'll
2 take the same woman on trial for murder. It is said
3 that she killed a man by stabbing him to death. A
4 witness testifies that he heard a noise and went into
5 the room where he found the accused standing over the
6 body of the victim with a knife in her hand. That is
7 circumstantial evidence that the accused stabbed the
8 victim, since there is no direct evidence from the
9 witness that he saw the actual stabbing.

10 In this example, there are three possible sources
11 of error:

12 First, the witness may be lying.

13 Second, again the witness may have mistakenly
14 identified the accused.

15 Third, there is the possibility of drawing the
16 wrong conclusion or inference from the circumstances.

17 For instance, let us assume the witness is
18 truthful and not mistaken about the identity of the
19 accused person as the person with the knife in her
20 hand. It is still possible that the accused did not
21 stab the victim.

22 The accused may have been outside the room when
23 the victim was stabbed. She may have heard the same
24 noise, entered the room before the witness, and
25 innocently picked up the knife. After doing that, the
26 witness came into the room and saw the accused with
27 the knife in her hand. If that actually happened, it

1 would, of course, be wrong to infer or conclude that
2 the accused stabbed the victim, even though the
3 witness was not lying or mistaken.

4 So as you can see, ladies and gentlemen, you must
5 be careful when dealing with circumstantial evidence
6 because of the possibilities of error.

7 Before basing your verdict of guilt on
8 circumstantial evidence, you must be satisfied beyond
9 a reasonable doubt that the guilt of the accused is
10 the only reasonable inference or conclusion to be
11 drawn from the proven facts.

12 I will caution you that an inference is a much
13 stronger kind of a belief than a mere guess or
14 conjecture or speculation. If there are no proved
15 facts from which an inference can be logically drawn,
16 then you can't properly draw that inference. At best,
17 you would be guessing or speculating, and that's not
18 good enough in a criminal trial. An accused is not to
19 be convicted on a guess. No matter how certain that
20 guess may be.

21 I promised to say a few words about admissions of
22 fact. I mentioned a few moments ago Exhibit P-8 and
23 Exhibit P-1. I told you that you only need to look at
24 Exhibit P-8 because it incorporates what was said in
25 P-1. You should consider the facts set out in Exhibit
26 P-8 as having been conclusively proved; proved in
27 other words beyond a reasonable doubt, even though we

1 heard no testimony about those facts, because under
2 the Criminal Code, an accused person is allowed to
3 admit facts so we don't have to listen to witnesses
4 come and tell us what they know about that. It saves
5 a great deal of time and counsel are to be commended
6 for having made those admissions.

7 I also promised to say a few words about experts
8 and opinions. In this trial, Mr. Bogacz and Mr.
9 McLean testified -- and my recollection is that there
10 was no question raised about their qualifications to
11 say what they did with regard to the audio-visual
12 equipment in the courtroom, the cameras that had been
13 used to take the videotapes, and the videotapes
14 themselves. They were qualified by the Court to give
15 us their opinions on that particular area of the
16 evidence.

17 Normally a witness is not allowed to give an
18 opinion. Witnesses generally can testify only about
19 what they saw and heard; however, our law makes an
20 exception in the case of experts. Expert witnesses
21 are allowed to give their opinions, but only in the
22 area of their expertise for which the Court has
23 qualified them. It is up to you to decide how much
24 weight you will give to an expert opinion. You do not
25 have to accept the testimony or the opinion of an
26 expert witness. The only reason an expert is allowed
27 to give an opinion is to help you decide on an issue

1 on which he testified. You should consider carefully
2 what the witnesses have said, just as you consider any
3 other evidence of any witness. Since the
4 qualifications of those witnesses were not questioned,
5 I am not going to go through the usual steps. I will
6 just say to you, it is open to you to accept or reject
7 that evidence. You should carefully consider the
8 effect of what the witnesses said, what their opinions
9 were, and take that into consideration with the rest
10 of the evidence in this case.

11 That brings me then to a contentious issue. I
12 will call it identification by witnesses. As I think
13 you realize by now, that is one of the most
14 contentious points in this case. I must give you a
15 special warning about the evidence of eyewitnesses.
16 Every once in a while in our Courts -- we have all
17 heard of this through the media -- a person is
18 convicted of an offence even though he or she is
19 innocent. When this has happened it has often been
20 because of a mistake made by one or more eyewitnesses.
21 It is easy to see how this can happen. An eyewitness
22 can be a very convincing witness, when that witness
23 honestly believes that the accused person is the one
24 he or she saw committing the offence.

25 When you consider the evidence of the
26 eyewitnesses in this case, I am going to suggest that
27 you consider the following questions, paying

1 particular attention to the eyewitness's opportunity
2 at the time to see and hear what the witness has told
3 us about.

4 How long was the eyewitness looking at the person
5 that he or she saw?

6 How far away was the eyewitness?

7 Was there anything which might have obstructed
8 the view of the eyewitness?

9 Was there anything else happening at the same
10 time which might have distracted the eyewitness?

11 What were the lighting conditions at the time?

12 Did the eyewitness appear to have good eyesight?

13 Did the eyewitness appear to have a good memory?

14 How long was it between the time when the
15 eyewitness saw the event and the time when he
16 identified the accused in question -- was it a matter
17 of hours or was it several days or even months?

18 Was the eyewitness able to give a good
19 description of the person he or she saw?

20 Has the eyewitness made any significant changes
21 to that description?

22 Did other eyewitnesses give a different
23 description?

24 Did the eyewitness explain how he or she was able
25 to identify the accused person in question as the
26 person the witness saw?

27 Did the witness mention specific features about

1 the person which helped make the identification?

2 Were other eyewitnesses unable to identify the
3 accused person in question as the person they saw?

4 Was there other evidence which appeared to
5 support the identification? You will want to keep in
6 mind that although identification by one witness can
7 support that of another, even a number of honest
8 witnesses have been mistaken.

9 Was the accused person in question someone who
10 was known to the eyewitness before all this took place
11 or was he a stranger? If the eyewitness knew that
12 person before, you will probably attach more weight to
13 the identification, bearing in mind that we sometimes
14 make mistakes when we try to recognize people we know
15 quite well. Some of you may even have had the
16 experience where someone came up to you, perhaps in an
17 airport, and said "I know you, didn't you use to live
18 at such and such a place?", or something like that,
19 only to find out that it was a mistake.

20 And lastly, you may ask yourself did the
21 eyewitness see a photograph of the accused person
22 before he or she made the identification? If the
23 eyewitness did see a photograph beforehand, you should
24 consider the possibility that the witness identified
25 the accused in question from the witness's memory of
26 the photograph, rather than of the person.

27 There are several eyewitnesses in this case. In

1 order to convict, you do not have to be satisfied
2 beyond a reasonable doubt that each of them correctly
3 identified an accused, if there was more than one. It
4 is the totality of the evidence that must prove to you
5 beyond a reasonable doubt that the accused person in
6 question is guilty of the offence charged if you are
7 going to bring back a "guilty" verdict.

8 We heard evidence from Mr. Tettenborn and other
9 witnesses from which you, the jury, may conclude that
10 a number of the persons who viewed the videotape after
11 the events on June 14th may have been in a room
12 together, may have been viewing the videotapes
13 together, may have influenced each other in
14 recognition of individual persons as shown on the
15 videotape. Many of the witness may have said
16 perhaps: "Oh, I wasn't influenced". That is the
17 problem with influence. We are not always conscious
18 of it. That is why, as I think we heard from the
19 police officers, when they are conducting
20 identifications with photographs (or otherwise) they
21 do not have people come in collectively, sit together,
22 and view these things together. They take people
23 individually, one at a time.

24 Now, some of the witnesses told us they did view
25 the videotape one at a time. I suggest to you that
26 you weigh that very carefully. Those who were in a
27 room with others may or may not have been influenced.

1 It will be for you to weigh that. Those who were in a
2 room by themselves presumably were not influenced and
3 you will weigh that also. Then there were witnesses
4 who were not eyewitnesses of the event at the time,
5 but witnesses who came and looked at the videotapes
6 and the photographs and said "Yes, I recognize so and
7 so.". Now that, as I think you can see, is a
8 different type of identification. Where the witness
9 is relying on his or her memory and points out someone
10 on the photograph, then that is not quite the same
11 thing as "I remember seeing that person there at the
12 time and this photograph helps me to remember that.",
13 which is what the eyewitness would have told you.

14 So, this second kind of identification based on a
15 person's familiarity depends, as I'm sure you can see,
16 very heavily on the degree of familiarity with that
17 person.

18 As we heard, Mr. Whalen was only seen by one of
19 the witnesses in oilers and a helmet and so forth, and
20 then that witness said "That's Mr. Whalen.", when he's
21 looking at a person in a t-shirt and blue jeans. You
22 may ask yourself how well that person could identify
23 the man in jeans and t-shirt when he was only familiar
24 with seeing that person in a great deal of clothing
25 and equipment. That sort of question I am sure will
26 have occurred to you.

27 So ladies and gentlemen, although there is more

1 that I could and perhaps should say on this, because I
2 have not taken you through the individual witnesses on
3 this, it would take a long time to do that, I am going
4 to leave you with that general instruction, saying to
5 you that I am sure you realize that the recognition or
6 identification of another person may well be more
7 complicated than we ordinarily think, partly because
8 when in ordinary life we make an identification, it is
9 not as important as it may be in a criminal trial, so
10 we have to be especially careful in a criminal trial.
11 We cannot afford to be casual about the identification
12 of one person by another in a criminal trial.

13 So I urge you to consider carefully what I have
14 said about the evidence of eyewitnesses and
15 identification from photographs or any other visual
16 medium, because you, the jury, cannot properly return
17 a verdict of guilty based on the eyewitnesses'
18 evidence alone, unless you are first satisfied beyond
19 a reasonable doubt that the eyewitness correctly
20 identified the accused in question as the person who
21 committed the offence charged.

22 If, on the other hand, you are satisfied beyond a
23 reasonable doubt of the guilt of that individual
24 accused on the basis of visual identification,
25 considered together with all the other evidence in
26 this case, then you are bound to act upon it.

27 During the cross-examination of a witness, that

1 witness may be asked about certain things not
2 connected with the offence here. We saw this in the
3 cross-examination of Inspector Massey. You should
4 understand that the whole purpose of this part of the
5 cross-examination was to obtain answers which would
6 reflect adversely on Inspector Massey's credibility.
7 You will recall that after first having told us he had
8 no memory for something said on the 13th and there was
9 a break and you went out and you came back and he then
10 told us yes he did acknowledge that he had said
11 certain words in the heat of anger while chasing a
12 truck down the road, you will want to take that into
13 consideration, remembering that he did not deny having
14 said those words, but simply said he had no recall of
15 them when he was asked the first time.

16 Secondly, he was asked if he had not said to a
17 woman on the 14th in the vicinity of the gate words to
18 the effect that "there might be heads knocked", or
19 words to that effect, as if it were a threat. You
20 will want to weigh very carefully the question that
21 was put to Inspector Massey, because he denied ever
22 having said those words, and there is no evidence
23 before you to the contrary. At the same time, you
24 will weigh his credibility in having seen him answer
25 that question, remembering that it is not a fact in
26 this case that any such words were said.

27 I am going to add a few words about tape

1 recordings. The book I have is not up-to-date. It
2 does not tell me what to say about videotapes, so I am
3 going to adapt what it says about audio tapes. It
4 will be up to you, ladies and gentlemen, to decide
5 whether or not the tapes are accurate and authentic --
6 that means genuine records of what they purport to
7 show. You heard evidence to the effect that they have
8 not been tampered with or edited or modified. You
9 also heard some evidence in which witnesses were asked
10 about whether there was any glare or lighting
11 distortion -- suggestions that the tapes may not be as
12 good as they could be in that respect in some parts.

13 You will consider the evidence of how the tape
14 recordings were made.

15 You will consider the evidence of the experts who
16 were mentioned earlier, and you will bear in mind the
17 admissions of fact as to how the tape recordings have
18 been dealt with since they were made until they
19 reached us here.

20 You must be satisfied that these tape recordings
21 are accurate and authentic before you, the jury,
22 accept what you see on them as evidence. If you are
23 not satisfied that the tape recordings are accurate
24 and authentic or genuine, then you must not use them
25 as evidence when you are deciding on the guilt of any
26 of the accused persons.

27 You must also consider whether or not the Crown's

1 witnesses correctly identified the individuals they
2 say are shown on the tapes, and you must be satisfied
3 that the Crown witnesses correctly identified those
4 individuals before you can use the tape recording as
5 evidence against them.

6 If you are not satisfied that the Crown witnesses
7 correctly identified an individual on the tapes, then
8 you must not use the tape recording as evidence in
9 respect of that individual when you are deciding if he
10 is guilty or not guilty.

11 I remind you therefore that it is up to the Crown
12 to prove its case beyond a reasonable doubt.

13 You want to keep that in mind when you consider
14 whether or not the tape recordings are accurate and
15 authentic or genuine and also when you consider
16 whether or not the Crown witnesses correctly
17 identified the persons they say they saw and heard on
18 the tapes.

19 I'm going to take a break now ladies and
20 gentlemen and when you come back I will be taking up
21 with you the fourth, fifth and sixth parts of my
22 instructions to you.

23 (BRIEF ADJOURNMENT)

24 THE COURT: Please bring in the jury.

25 (AT WHICH TIME THE JURY RETURNED)

26 Members of the jury, you will have a copy of the
27 indictment in the jury room with you. You will see

1 that two names have been taken out and there will be
2 white spaces where those names were. Those persons
3 were removed from the case for good reason earlier
4 before the trial and so their names have not been
5 included. I don't think I need to say anything more
6 than that.

7 We are here on a trial involving the other
8 persons who are named. You will notice that parts of
9 this document are in the French language as well as in
10 the English language. I sometimes ask myself if this
11 is because someone is afraid we don't understand the
12 English so we might have to have it written in French.
13 I believe in fact it stems from legislation which
14 requires preprinted forms to be in both official
15 languages. This doesn't look like a preprinted form,
16 but someone's enthusiasm has carried them to the point
17 where all but the vital words are written in both
18 languages. The vital words are in the middle and they
19 allege that Yvan Brien, John Mark Danis, Robby
20 Imbeault, Leo Lachowski, John Lafond, Terry Legge,
21 Conrad Lisoway, John McPhee, David Madsen, Dennis
22 Morauff, Clarence Pyke, Derek Wiseman, Lewis Whalen,
23 James McAvoy stand charged that on the 14th day of
24 June, 1992, at or near the City of Yellowknife, in the
25 Northwest Territories, they did take part in a riot at
26 or near the Giant Mine contrary to Section 65 of the
27 Criminal Code. So you will have that with you to

1 refer to if you need it.

2 I am now going to read to you from the Criminal
3 Code beginning with Section 65. I will read a part of
4 that to you only since it is only this part that you
5 will require. So in part, Section 65 says, "every one
6 who takes part in a riot is guilty of an indictable
7 offence."

8 I will explain to you that an indictment, which
9 is this document here, is just a formal charge of an
10 offence which can be tried with a jury. An indictable
11 offence then is an offence which in most cases can be
12 tried with a jury. So, everyone who takes part in a
13 riot is guilty of an indictable offence; in other
14 words, an offence that can be tried before a jury.

15 Coming then to what the Criminal Code defines as
16 a riot that is contained in Section 64. It reads as
17 follows, "A riot is an unlawful assembly that has
18 begun to disturb the peace tumultuously." I will
19 read it again, "A riot is an unlawful assembly that
20 has begun to disturb the peace tumultuously." I will
21 tell you that "to disturb the peace tumultuously"
22 means with force and violence, either actual or
23 threatened, in addition to any public disorder or
24 confusion or uproar that might be connected with it.
25 So where it says "disturbed the peace tumultuously",
26 that means disturb the peace with force and violence
27 actual or threatened, in addition to any public

1 disorder, confusion, or uproar.

2 That brings me to what is meant by "an unlawful
3 assembly". That is covered by Section 63. There are
4 two subsections which I shall read to you and I think
5 you will see how they are connected. Taking then (1)
6 "an unlawful assembly is an assembly of three or more
7 persons who, with intent to carry out any common
8 purpose, assemble in such a manner or so conduct
9 themselves when they were assembled as to cause
10 persons in the neighbourhood of the assembly to fear
11 on reasonable grounds that they will disturb the peace
12 tumultuously..." There is a little more but it does
13 not apply in this case.

14 And (2) "Persons who are lawfully assembled may
15 become an unlawful assembly if they conduct themselves
16 with a common purpose in a manner that would have made
17 the assembly unlawful if they had assembled in that
18 manner for that purpose."

19 In addition to those three sections of the
20 Criminal Code, I am going to refer to a section of the
21 Canadian Charter of Rights and Freedoms which is part
22 of our constitution. I am going to read to you from a
23 part of Section 2. It says, "every one who has the
24 following fundamental freedoms" and then in paragraph
25 (c): "freedom of peaceful assembly".

26 As lawyers know, sections like Section 2 of the
27 Charter must be read in connection with Section 1

1 which reads, "The Canadian Charter of Rights and
2 Freedoms guarantees the rights and freedoms set out in
3 it, subject only to such reasonable limits prescribed
4 by law as can be demonstrable in a free and democratic
5 society."

6 I think then as background to the Criminal Code
7 you will see these two sections of the Canadian
8 Charter of Rights and Freedoms guarantee all of us
9 freedom of peaceful assembly, subject to reasonable
10 limits prescribed by law which can be demonstrably
11 justified in a free and democratic society.

12 It is clear, I am sure to all of us, that the
13 offence of taking part in a riot, and the definition
14 of riot and of unlawful assembly constitutes limits on
15 the privilege or right of assembly, but they do
16 reaffirm peaceful assembly, and so I will return to
17 the sections of the Code and just leave you with what
18 I have said on the Charter to indicate that the Code,
19 in my understanding of it, affirms the Charter.

20 There are a number of elements or ingredients of
21 the offence charged. I am going to deal with them in
22 sequence. There will be eight of them.

23 Firstly, the Crown must prove beyond a reasonable
24 doubt that whatever occurred to constitute the offence
25 charged took place on June 14th, 1992, at or near the
26 City of Yellowknife, in the Northwest Territories.

27 From what we have heard from counsel and in the

1 evidence, I say to you that there is no contention
2 about that. Whatever happened happened at that time
3 and in that place. You can take that to have been
4 proved beyond a reasonable doubt.

5 Would that juror like a glass of water? She has
6 one? Thank you.

7 Then you will have to ask yourselves: "Was there
8 an unlawful assembly at the gate at Giant Mine
9 somewhere between 7:00 and 7:30 p.m. on June 14th,
10 1992?" Let us look at the definition then. Was there
11 an assembly of three or more persons? There is
12 evidence before you on which you can find that has
13 been proved beyond a reasonable doubt. And so far as
14 I am aware, it is not a point in contention in this
15 case.

16 Thirdly, has the Crown proved that the persons in
17 this assembly were assembled there with intent to
18 carry out a common purpose? Has the Crown proved that
19 they assembled there with intent to carry out a common
20 purpose? Viewing the videotapes, listening to the
21 witnesses, you can conclude that a meeting had been
22 called by someone. We really do not know who, but it
23 seems to be a meeting of persons involved in this
24 labour dispute at the main gate for seven o'clock that
25 night. Mr. Fournier told us he had come from the
26 union hall for that purpose and there is some other
27 evidence in that connection. Those persons meeting

1 there -- there is some evidence that there were a
2 hundred or more, including women and children, many
3 who appear to have met there to carry out the common
4 purpose of a rally or meeting or demonstration or
5 something of that sort. But as I understand what the
6 Crown seeks to prove in this case goes beyond that,
7 and that after the five persons are said to have gone
8 up to the gate and had some words with those inside, a
9 larger crowd came along, of men, some carrying sticks,
10 leading to stone throwing.

11 Now Mr. Fournier's evidence is that a stone
12 landed beside him and he felt he had to retaliate by
13 throwing a stone back towards the Pinkerton guards.
14 You will judge for yourself from the evidence what the
15 other persons did at or near the gate and fence with
16 Mr. Fournier, I gather, amongst them.

17 So you will ask yourselves whether the Crown has
18 proved beyond a reasonable doubt whether those
19 persons -- the smaller group, not the larger -- had an
20 intent to carry out a common purpose. If you should
21 find from the evidence that they or a number of them
22 then began to pull down the fence as well as throwing
23 rocks and then began to enter the mine property, you
24 will appreciate what I said earlier about
25 circumstantial evidence, because apart from anything
26 Mr. Fournier said, what you saw and heard about that
27 may lead you to come to a decision based on the

1 circumstances of events at that time. And you will
2 ask yourselves then whether the Crown has proved that
3 those persons who did those things did so with intent
4 to carry out a common purpose; namely to enter the
5 property and proceed as they did.

6 If you reach that far, you will then have to ask
7 yourselves whether the Crown has proved the fourth
8 ingredient, did those persons assemble in such a
9 manner or so conduct themselves when they were
10 assembled as to cause persons in the neighborhood of
11 the assembly to fear on reasonable grounds -- and I
12 will repeat that -- on reasonable grounds that they,
13 that is to say the crowd, would disturb the peace
14 tumultuously?

15 There is the evidence you heard of Inspector
16 Massey. You heard Karl Tettenborn. You heard
17 Ghislain Larivee and Christian Lambert tell us what
18 they believed; but in addition to that, you have the
19 evidence of the circumstances and from all that
20 evidence you will ask yourself whether the Crown has
21 proved that those assembled did so in such a manner or
22 so conducted themselves when they were assembled as to
23 cause persons in the neighborhood of the assembly to
24 fear on reasonable grounds that the crowd would
25 disturb the peace tumultuously. If you get that far
26 we will then go on to the next point. Perhaps I
27 should say before you do that, if you are not entirely

1 satisfied on that particular point, you should
2 consider the alternative, that the group being
3 lawfully assembled did conduct themselves in a manner
4 that would have made the assembly unlawful if they had
5 assembled in that manner for that purpose, which is
6 the second part of the unlawful assembly definition.

7 Proceeding then to point six, you have to ask
8 yourselves if the Crown has proved beyond a reasonable
9 doubt that the assembly had begun to disturb the peace
10 tumultuously, remembering what I told you those words
11 mean; in other words, had begun to disturb the peace
12 with force and violence, actual or threatened, in
13 addition to any public disorder, confusion, or uproar.
14 If you find that has been proved beyond a reasonable
15 doubt, you will then have to proceed and ask
16 yourselves if the identity of each of these accused
17 persons -- and I will put that a slightly different
18 way -- you will then have to ask yourselves with
19 respect to each of the accused persons if his identity
20 has been proved by the Crown as a person who took part
21 in this disturbance of the peace tumultuously.

22 In respect of any of the accused as to whom you
23 find "Yes, that identity has been proved as a person
24 who took part", you will then have to go on to ask the
25 last question, did that accused person intend to so
26 take part? This is the mental element of which Mr.
27 Pringle spoke. If the person was only there as a

1 bystander and you have a doubt, a reasonable doubt, as
2 to whether he intended to take part, then you should
3 find him not guilty, and indeed in respect of each of
4 these ingredients, time and place, whether the
5 assembly consisted of three or more persons, whether
6 those persons had the intent to carry out a common
7 purpose, whether they assembled in such manner or so
8 conducted themselves as when they were assembled to
9 cause persons in the neighbourhood of the assembly to
10 fear on reasonable grounds that they could disturb the
11 peace tumultuously or, being lawful, would have made
12 the assembly unlawful for that purpose, and if you
13 find beyond a reasonable doubt that the assembly had
14 begun to disturb the peace tumultuously you will then
15 at least have found proved beyond a reasonable doubt
16 that there was a riot, at which point you will ask
17 yourselves two further questions: "Did so and so --
18 which ever of the accused you are dealing with at the
19 time -- take part in that riot? Did he act in such a
20 way as to take part?" And lastly, if so, then: "Did
21 he intend to take part? Did he have the required
22 mental element of taking part in that riot?" That,
23 ladies and gentlemen, is a little complicated, but it
24 is as simple as I think I can make it. I hope I have
25 made it clear.

26 I am now going to outline for you in part five of
27 my remarks, what I understand the position of the

1 Crown and the accused persons is in this case.

2 As to the Crown, I understand that the Crown
3 takes the position that you should have no difficulty
4 as to the time or place of the events charged in the
5 indictment, nor in finding that a crowd of more than
6 three persons assembled outside the fence beside the
7 security post and main gate to Giant Mine at about
8 7:10 p.m. on June 14th, 1992, or that this crowd acted
9 with intent to carry out a common purpose; namely to
10 gain entry to the mine by pulling down the fence and
11 in so doing throwing rocks and carrying sticks,
12 causing persons in the neighborhood to fear on
13 reasonable grounds even before the fence came down
14 that the crowd was about to disturb the peace
15 tumultuously, that is with force and violence, whether
16 actual or threatened.

17 I understand the Crown to say that this crowd was
18 an unlawful assembly in fact and in law. That even
19 before pouring on to the property, throwing rocks,
20 running into the kitchen, causing damage to vehicles
21 and buildings, carrying and using sticks, the unlawful
22 assembly began to disturb the peace tumultuously with
23 force and violence so as to have become a riot, and I
24 understand the Crown to say that each of the accused
25 persons has been identified as having entered on the
26 mine property during the riot, and along with others
27 in the crowd, that each of the accused persons by his

1 presence and his actions, as shown in evidence, took
2 part intentionally in that riot and that the Crown
3 says that if you are satisfied beyond a reasonable
4 doubt of these facts, then you will bring in a verdict
5 of guilty against each of the accused persons.

6 I understand that the defence, though represented
7 by two counsel, take essentially the same position.
8 For all of them, first that you, the jury, must at
9 least have a reasonable doubt as to whether there was
10 a riot in fact or in law. However, if you are
11 satisfied beyond a reasonable doubt on that point,
12 then the defence says that the riot took place for a
13 much shorter time than the Crown has said. That it
14 did not occur until the fence was down, and lasted
15 only until the R.C.M.P. tactical or emergency response
16 team came along.

17 Furthermore, I understand the defence to say that
18 none of the accused has been satisfactorily identified
19 as taking part by their actions in that riot if there
20 was one. That this has not been proved beyond a
21 reasonable doubt in respect to any one of them.

22 And finally, even if you are satisfied on
23 identity having been proved beyond a reasonable doubt
24 in respect of any one of the accused or more, then the
25 Crown has not proved beyond a reasonable doubt that
26 this person or those persons had the required
27 intention to take part, the required mental element.

1 I am going to ask both counsel to offer any
2 comments on what I have said, or all three counsel
3 rather, and I will start with you Mr. MacDonald. Is
4 there anything I should change?

5 MR. MACDONALD: My Lord, in respect of Mr. Madsen and
6 Mr. Madsen only, the Crown would point out that Mr.
7 Madsen is identified by what the Crown says as being
8 one of the persons who helped pull down the fence and
9 threw rocks, but I would submit, My Lord, there is no,
10 may be no other evidence -- well certainly no other
11 evidence which I'm aware that Mr. Madsen actually
12 entered to the east side of the security fence when it
13 was torn down. However, in the theory of the Crown's
14 case, the riot started before the fence is torn down
15 and Mr. Madsen would still be included as a person
16 taking part in the riot.

17 THE COURT: All right. Mr. Pringle?

18 MR. PRINGLE: I don't think there is anything to
19 add, sir, other than the fact that our position is, of
20 course, that the Crown has to prove that these people
21 intended to participate in the riot. I think you've
22 emphasized that, sir.

23 THE COURT: Mr. Marshall?

24 MR. MARSHALL: I would agree with what Mr. Pringle
25 says, My Lord, and I would point out the one added
26 fact that Mr. Brien was not identified by any witness
27 who testified as going across the fence and on to the

1 property.

2 THE COURT: Thank you.

3 Ladies and gentlemen, there are two verdicts
4 which I'm going to leave with you; either "guilty" or
5 "not guilty". When you have completed your
6 deliberations, you will come back to this room and we
7 will expect to hear your verdict from you which will
8 be one or the other of those two verdicts.

9 MR. MacDONALD: My Lord, is that of course in respect
10 to each Defendant?

11 THE COURT: Quite right, that is with respect to
12 each Defendant. So the clerk will read the indictment
13 to whoever your foreman or chairperson is at that
14 time. I like to call that person the "Speaker" of the
15 jury because you are in a way a small parliament. So
16 the clerk will read that question out to the Speaker,
17 and in respect of each of the accused, will take your
18 verdict.

19 When you go to the jury room, it will be your
20 duty to consult with one another so as to reach a just
21 and true verdict according to the law and the evidence
22 with respect to each one of the accused persons. As I
23 expect most of you, if not all, realize, trial by jury
24 is something very special to us in the
25 English-speaking countries. It is not something which
26 is to be found all over the world, and it may only be
27 a coincidence, but in countries like ours where we do

1 have trial by jury we do not seem to have a lot of the
2 serious problems that one can witness in other
3 countries if one travels at all.

4 Trial by jury is perhaps not often recognized,
5 but it is one of the most successful accomplishments
6 of our democratic society. It is a system which has
7 made us perhaps in Canada more than anywhere the envy
8 of the rest of the world. But, for its strength, the
9 jury trial depends on the integrity and the honesty of
10 ordinary men and women called at random to serve. It
11 rests on the idea that ordinary men and women will be
12 true to their oath, that they will try the case upon
13 the evidence, and that they will disregard outside
14 influence.

15 The person whom you choose as your president,
16 your Speaker, your chairperson, your foreman --
17 whatever you choose to call them -- will preside in
18 the jury room. Your first task will be to choose that
19 individual, if you haven't already done so, and
20 whoever accepts that responsibility will do their best
21 to ensure that everyone has a chance to speak and that
22 there is no undue repetition, that the deliberations
23 are conducted fairly, dispassionately. You are
24 judges. You are not counsel for one side or the
25 other, so that everyone should have an opportunity to
26 express his or her point of view and to hear what
27 their fellow jurors have to say about the case and

1 about the evidence and about your verdict.

2 Under our law, the question of penalty or
3 sentence is the responsibility of the trial judge and
4 not the jury in a case of this kind. Therefore,
5 ladies and gentlemen, you must not concern yourselves
6 with any such consequence of any verdict you bring in.

7 Your only duty is to determine whether each of
8 the accused persons is guilty or not guilty, and
9 because this is a criminal trial you must be unanimous
10 in whatever verdict you see fit to return.

11 Each of you must make your own decision whether
12 the accused is guilty or not guilty. You should do
13 that only after considering the evidence with your
14 fellow jurors and you shouldn't hesitate to change
15 your mind if you are persuaded that you were wrong.
16 Unless you are unanimous in finding the accused or any
17 of the accused "not guilty", you cannot acquit that
18 accused person, nor can you return a verdict of
19 "guilty" unless you agree unanimously that the accused
20 in question is guilty.

21 If you have a reasonable doubt concerning the
22 guilt of an accused person you must give the benefit
23 of that doubt to the accused and find him not guilty.
24 You are not doing a personal favour to that individual
25 by so acting but merely the duty placed on you by the
26 law.

27 On the other hand, if you do not have a

1 reasonable doubt concerning the guilt of any accused
2 person, you must find him guilty as charged. That
3 again is simply a matter of legal duty and the law
4 requires no more from you than performance of your
5 duty.

6 It may be necessary for me to call you back after
7 you go to the jury room and to give you further
8 instructions. I have, as you have noted, deliberately
9 stayed away from dealing with details of the evidence,
10 particularly on identification in this case, and it
11 may be that counsel will want me to deal with that. If
12 so, I have a fairly large task ahead of me. I did
13 note that some of you on the jury were making notes
14 throughout the trial, and I expect you will find those
15 notes useful. I am prepared to go through my notes in
16 some detail on the evidence, but I have refrained from
17 doing that to this point in the hope that it may not
18 be necessary. I have compiled cards with the names of
19 each of the accused persons and references to various
20 witnesses with page numbers in my notes and so on, but
21 I have, so far, and I want to acknowledge this very
22 openly, stayed away from dealing with that, but I
23 shall if I am called upon to do so.

24 If you have any questions either about the law or
25 the evidence or anything that is troubling you in this
26 case, would you write the question down please and put
27 it in an envelope, seal it up in the envelope, and

1 give that to the jury guard? The jury guard will have
2 the envelope sent out to me and I will open it in the
3 presence of the public, the accused persons, of
4 course, and counsel. I will read it out and I will
5 get advice of counsel on it before I call you in, at
6 which time I will give you my best answer.

7 If I should call you back for further
8 instructions, then I ask only that you treat whatever
9 I say at that time as if I had included it in what I
10 have so far said today without placing any undue
11 emphasis on it. As you know, the Court reporter has
12 been sitting silently beside me taking down everything
13 that has been said. There have been different court
14 reporters during the trial and that is only one reason
15 why I ask that you not request the Court reporter to
16 read back to you unless you feel it is really
17 necessary. That can be done but I ask you not to
18 request that unless it is really necessary. Apart
19 from anything else, if you should ask for some
20 evidence to be read back, I may, in the interest of
21 fairness, have to have other parts of the evidence
22 read back also and that can take a good deal of time.
23 It is there should you really need it, but I hope that
24 you won't.

25 Once you retire to consider your verdict, I am
26 required by law to see that you are kept together and
27 separate from other persons until you have come back

1 to Court with your verdict unless, of course, you are
2 unable to reach a verdict. I should mention in that
3 connection the requirement of unanimity, which I don't
4 think I dealt with earlier. I call it that, but you
5 should be careful because what I say now is what will
6 govern. Because this is a criminal trial, you must be
7 unanimous in whatever verdict you see fit to return on
8 any of the accused. This means that each of you must
9 make your own decision whether that accused is guilty
10 or not guilty. But, you should do that only after you
11 have considered the evidence with your fellow jurors,
12 not hesitating to change your mind when you are
13 convinced you may have been wrong, because unless you
14 are unanimous in finding that accused person not
15 guilty, you cannot acquit him, nor can you return a
16 verdict of guilty unless you agree unanimously that he
17 is guilty. I see I did say that before. Well, I have
18 covered it.

19 After you bring back your verdicts, ladies and
20 gentlemen, you will be free to leave the courthouse
21 and go about your lawful business. So we will have
22 the jury guard sworn please.

23 (JURY GUARD GRANT ZACKOWSKI SWORN)

24 (AT WHICH TIME THE JURY RETIRED)

25 (DISCUSSION AMONGST THE COURT AND COUNSEL)

26 THE COURT: We will call the jury back in please.

27 Please bring in the jury.

1 (AT WHICH TIME THE JURY RETURNED)


2 THE COURT: Ladies and gentlemen, there is one
3 short point I have been asked to make to you just to
4 avoid any doubt or question which may arise in your
5 mind in connection with the removal of the names from
6 the copy of the indictment. The persons whose names
7 were removed were severed from this case by the Court
8 without there having at least as yet been any trial,
9 so it is not a case that those persons were dealt with
10 by the Court in any other way, and I just mention that
11 to you in case you have any doubt in your mind about
12 that. You may now retire.

13 (AT WHICH TIME THE JURY RETIRED)

14 (CONCLUSION OF THE JURY CHARGE)

15
16
17
18
19
20
21
22
23
24
25
26
27

Certified Pursuant to Practice Direction #20
dated December 28, 1987.



Karen Steer,
Court Reporter