

day?—A. I thought that being as he was sure, I thought he would come and take us where he wanted us to go.

Q. But you were trying to get away from him, were you not—that is, after the first day?—A. We were coming on the road home.

Q. But you were trying to get away from the sheriff and his company?—A. No.

Q. Was there any shooting at you after you left the second day and took the light wagon to start home? Did anyone shoot at you then?—A. Yes; they did that.

Q. Where was that?—A. Hat Creek.

Q. How many shots did they fire at you there?—A. I should guess about fifty.

Q. Did they hit anybody?—A. They hit one of the horses in the hoof.

Q. That was in the night?—A. Yes.

Q. Were you driving?—A. Yes.

Q. Was that in South Dakota?—A. Yes.

Q. Do you know who shot at you that time?—A. No.

Q. Were there many in the party?—A. It was in the night, and I could not tell how many were in the party.

Q. The laws of Wyoming make it a misdemeanor to shoot any deer, antelope, or other wild animals of this kind unless you have a license. It is also against the law to buy any green hides of these animals to take out of the State. You understand that, Mr. Brown, and you will tell your friends and acquaintances, so that when they go through Wyoming again they will be careful not to get into any more trouble.—A. Yes, sir.

WILLIAM BROWN (his x mark).

Witnesses:

A. M. LANDMAN.

F. C. GOINGS.

Subscribed and sworn to before me this 30th day of November, 1903.

[SEAL]

F. E. MCINTYRE,

Notary Public, Shannon County, S. Dak.

My term expires November 8, 1905.

Statement of Hope Clear.

HOPE CLEAR, being first duly sworn, deposes and says:

(Questions by Timothy F. Burke, United States attorney for the district of Wyoming.)

Q. Give your name and age.—A. My name is Hope Clear; 18 years old.

Q. You are the daughter of Gray Bear?—A. Yes.

Q. Were you a member of the Charles Smith party that went to Wyoming in October?—A. Yes.

Q. What did that party go to Wyoming for?—A. They got the party to go up there to get some herbs and leaves and different kinds of roots—that is in that country.

Q. Did they do any hunting on the way?—A. They shot some prairie chickens and prairie dogs and rabbits, as they went along.

Q. Did they shoot any deer or antelope?—A. No.

Q. Where did they get their antelope hides and antelope meat?—A. They got their deer hides and deer meat from the sheep men.

Q. How many hides and how much meat did you get?—A. You mean the whole party?

Q. Yes.—A. I can not say how much each bought; but they each bought some.

Q. Did Charlie Smith shoot any deer while in Wyoming?—A. What do you mean?

Q. Any deer or antelope?—A. No.

Q. Where did you meet Mr. Brown and his party?—A. I don't know the country up there and I don't remember just where it was.

Q. But it was in Wyoming?—A. Yes.

Q. Was it after you started home?—A. Yes.

Q. Do you remember the day when Sheriff Miller and his party came to your camp?—A. Do you mean those white men?

Q. Yes.—A. Yes.

Q. Were you present?—A. Yes.

Q. Did you hear them talk?—A. No.

Q. Did Mr. Smith tell you what they wanted?—A. No.

Q. Did you hear what they wanted?—A. No.

Q. Did they try to get you or any of the men to go to Newcastle with them?—A. I didn't hear anything of that kind at all.

- Q. Did they eat their supper with you?—A. Yes.
- Q. Who did they eat with?—A. With the mixed-bloods.
- Q. Did you see these men the next day?—A. No.
- Q. Were you present when the shooting took place on the next day?—A. They came to our camp and on the next day they commenced to shoot at us.
- Q. Did you recognize them to be the same men as those who had come to your camp the day before?—A. Yes, they were the same men; after I got where they were I recognized them as the same men.
- Q. Did you recognize them as the same men before the shooting commenced?—A. I saw those men before anyone else saw them.
- Q. Where were you when you saw them?—A. I was ahead of the wagons and there were two little boys with me and we were driving some loose ponies. I got off my horse to open the gate and then I saw the white men aiming their guns at me, so I started back to the wagons as fast as I could go.
- Q. Where were you on first hearing the shooting?—A. It was the white men that started to shoot.
- Q. Where was the first shot fired from?—A. What do you mean by that?
- Q. Where was the first shot fired from? Who was the first person who fired and where was he?—A. It was a white man.
- Q. Were they on horseback when the shooting commenced?—A. No; they were afoot.
- Q. Were they on horseback when you first saw them?—A. The minute I saw them they began to get off their horses and some of them were already aiming their guns at me.
- Q. Did you go back through the gate when the first shot was fired?—A. That was after I got through the gate.
- Q. Where was Charlie Smith?—A. Charlie Smith was in the rear on horseback, but he came up.
- Q. How many wagons got through the gate before the firing commenced?—A. Two.
- Q. How many Indians did any shooting?—A. I noticed that the first shot shot the horse from under the boy that was with me. He got up and started to run and then he got shot. After this boy was shot I got to the wagons. Just as I got up to the wagons I saw my father and Black Kettle getting down ready to open fire.
- Q. Did the Indians do any firing previous to that?—A. There was no shooting from the Indians until after a bullet went through my shawl and another through my dress and my horse shot from under me. Then my father fired.
- Q. Is that the shawl you have on now?—A. No. I gave the shawl away.
- Q. Where was your father when the firing commenced?—A. I could not say. I know he fired a shot and after that I didn't see him any more.
- Q. Who was at the gate when you came through?—A. Do you mean Indians?
- Q. Yes.—A. Some of the Indians had got through the gate and some of them were standing just inside of the gate.
- Q. Who were some of the Indians just inside of the gate?—A. Just as soon as the shooting began the Indians ran back.
- Q. What did the white men say, or did they say anything before the shooting commenced, when you first saw them?—A. They didn't say a word or call to me. They just went to shooting.
- Q. Didn't one or two of them come up on the bank before the rest?—A. I don't know of any.
- Q. Did you see one of them put up his hands and say, "Halt?"—A. No.
- Q. Did they do any shooting before they got through the wire fence to which they hitched their horses?—A. I did not see where they had their horses, but they must have left their horses on the outside of the fence. The fellows I saw came on the run, shooting.
- Q. They left their horses before shooting?—A. Yes.
- Q. They didn't do any shooting from the road?—A. They were all in the creek bottom.
- Q. How many shots did the white men fire?—A. I could not count. They were shooting too fast.
- Q. They fired a good many shots?—A. Yes.
- Q. Did the Indians fire a good many?—A. There were only two Indians that did any shooting, Black Kettle and my father. The rest fled.
- Q. Charlie didn't do any shooting?—A. I didn't see him.
- Q. Where did you go?—A. My mother and Charlie Smith's wife were in the wagon, and we started down the fence as tight as we could go.
- Q. What became of your father?—A. We started to go up the side of a hill, and

just as we were going over the top of the hill, Mrs. Smith was shot. When she was shot, the blood began to flow pretty freely, and we started for a bank. We just got to the bank and that was all. My mother and Charlie Smith's wife were in the wagon, and I got another horse, and I was on horseback.

Q. Did you stay there and bury your father?—A. When we got Mrs. Smith down under this bank, I started back up the fence again and I met my father coming up on his horse. I led him off to the creek. They were still shooting at him. I got my father down into the creek bed and took him to where Mrs. Smith and my mother was, and we started to follow up the creek bottom.

Q. Did your father die?—A. We kept on going up this creek until it must have been along in the middle of the night, then my father got out and went and sat with his back up against the bank, and he sat there till he died. My father and Mrs. Smith were both in the wagon, and when my father got out and on the bank we built a fire.

Q. When did your father die?—A. About midnight.

Q. Did you bury your father there?—A. I buried my father there, and we went back next morning to where the shooting took place. My mother says to us, "Maybe there is a war broken out between the white men and the Indians, and we might just as well go back and get killed where the other Indians were killed, because we can't get home anyway."

Q. Whom did you find killed and wounded?—A. We found Charlie Smith, and we found that boy and Black Kettle there. We got to where Charlie Smith was. He wasn't dead yet, so we built a fire to warm him up. By that time these same people were coming back again.

Q. The white people?—A. Yes.

Q. They didn't do any shooting that morning, did they?—A. After we saw those people coming, they started to take aim at us. I walked up toward them and they pointed their guns at me. I got pretty close to them. I told them that there were only women there and if they wanted to kill us they could do it. They said, "If that's so, you come over here." So I walked over to where they were, and there was an old man in the lead, and he shook hands with me, and they all shook hands with me. Then we all went down to where Charlie Smith was lying.

Q. Did they take care of you then? Help you to get water and help to bury Black Kettle?—A. Charlie Smith asked for some water, and one of the men got some water and gave him a drink. They took us to a log house that was there.

Q. You can talk some English? Enough so as to make yourself understood?—A. I can understand more than I can talk. Charlie died in that little log house that evening. I was there when Charlie Smith was buried, but not when the other two were buried.

Q. You are sure, Miss Hope, that the first shot was not fired by some Indian up along the line of wagons?—A. Yes; I am sure.

Q. Were the men riding horseback or in the wagons when you first saw Mr. Miller and his party before the shooting?—A. They were all in the wagons.

Q. Where was Mr. Smith when he was shot?—A. Smith was in the rear. He was coming up to where the shooting was going on when he was shot.

Q. Did he have his gun?—A. No; he didn't have it; it was in the wagon. We were not expecting these people to do any shooting and we were trying to get away the best we could.

Q. Now, Miss Hope, you have been to school at the reservation schools?—A. I went to a day school. I didn't go very regular. I had some sickness and kept getting excuses, so I didn't go very regular.

Q. Did you see any other Indians, with the exception of your father and Black Kettle, do any shooting?—A. No; those are the only two that did any shooting; that is the reason there are so many left alive. If they had all done some shooting they would have all been killed. The horse I was on was shot four times.

Q. Everything you have stated here is just what you saw, not anything anybody else has been telling you, but just what you saw?—A. I have been sworn in. I have told it just as I saw it myself.

HOPE CLEAR (her x mark).

Witnesses:

A. M. LANDMAN.

F. C. GOINGS.

Subscribed and sworn to before me this 30th of November, 1903.

[SEAL.]

F. E. MCINTYRE,

Notary Public, Shannon County, S. Dak.

(My term expires November 8, 1905.)

Statement of Mrs. Gray Bear.

Mrs. GRAY BEAR, being first duly sworn, deposes and says:

(Questions by Timothy F. Burke, United States attorney for the district of Wyoming.)

Q. State your name and your age.—A. Forty-five years old; my Indian name is Takes The Rope.

Q. You are the wife of Gray Bear?—A. Yes.

Q. You went with Charlie Smith's party to Wyoming with your husband last October?—A. Yes.

Q. What did you go to Wyoming for, Mrs. Gray Bear?—A. They told us that they were going to shoot different things while up there.

Q. What did they say they were going to shoot?—A. Rabbit, prairie dogs, and prairie chickens.

Q. Did they say anything about shooting deer or antelope?—A. There were some of the men who took shots at some of those deer.

Q. Did they get any deer or antelope while there?—A. They got some in the foothills of the Black Hills. They didn't get many because they were scarce.

Q. Did they get any in Wyoming?—A. No one got any in Wyoming.

Q. Did they buy any while in Wyoming?—A. We got all our skins and meat from the sheep and cattle men. We traded moccasins, blankets, and bead work for it.

Q. Did you get many in that way?—A. All the men and all the women had done some trading for deerskins and deer meat.

Q. Do you remember when Sheriff Miller and his party came to your camp?—A. Yes.

Q. Did you know at the time what he wanted?—A. They had some talk with these white people but I didn't understand, because I don't understand a word of English.

Q. Who had the talk with them?—A. They had the talk with Charlie Smith.

Q. Did Charlie Smith tell you what they wanted?—A. He didn't tell us anything.

Q. Didn't your husband tell you what they were talking about?—A. No. He didn't say a word to me.

Q. Where were you when the shooting took place next day?—A. There were two wagons ahead. There was a man and his wife in the lead, then came Black Kettle and his wagon, and third came myself and wagon, and the fourth was Mrs. Smith and wagon.

Q. Was your husband in the wagon when the shooting commenced?—A. I was in the wagon with two daughters and he was in the rear on horseback.

Q. Did you see who fired the first shot?—A. Yes; I saw it.

Q. Who was the one that fired the first shot?—A. My daughter was in the lead, driving some loose horses. She came back and said, "Mamma, there are some white people raising their guns, and they are going to shoot us." The white men were the ones who started the shooting. Then we started back. Just then the boy was shot. He fell right in front of me. After I went around to turn my team around, I saw this boy was shot, so I turned around in another direction.

Q. Who of the Indians did any shooting?—A. The rest of the Indians were in the wagons driving the teams. Those who were on horses all rushed up and got killed. My husband and another fellow did some shooting and they both got killed.

Q. Did Charlie Smith do any shooting?—A. After I saw the boy fall I started out. I saw Charlie Smith coming up with his gun in his scabbard on his saddle, so I don't think Charlie did any shooting. The next morning they found it lying on the ground, and I don't think he had done any shooting.

Q. Did the gun drop out of the scabbard?—A. The gun must have dropped out of the scabbard some way or other, because when I saw him on the horse it was in his scabbard.

Q. How far was it from where Charlie Smith was lying to where they found the gun?—A. I was so badly scared I didn't think to measure it.

Q. Your husband died that night?—A. Yes.

Q. And you buried him next day?—A. Yes; we buried him next morning just as the sun was rising.

Q. You found Charlie Smith next day? He was not dead when you found him, was he?—A. The next morning we went down to see how many were killed and wounded, and the first one we run across was Charlie Smith. He was all covered with frost. He was still alive, so we built a fire for him.

Q. He died that day?—A. They took him back to the log house, and some time during the night he died.

Q. You went to Lusk with Mrs. Smith that night, did you not?—A. Yes.

Q. And they sent you from Lusk back home to the agency, did they not?—A. Yes. They left us at Edgemont.

Q. Did you get your wagon and your horse and harness afterwards?—A. I had my wagon all the way through. But Charlie Smith's wagon was taken to Newcastle because there was no one to take my sister's wagon home.

Q. Was Mrs. Smith your sister?—A. Yes; she was my sister.

Q. You say Mrs. Smith is your sister. She was wounded, was she not?—A. Yes.

Q. What is her condition now? Would she be able to make a statement if you went to her house?—A. No.

Q. Where was Mrs. Smith wounded—in her shoulder?—A. She was shot in the back, in the right shoulder, and the bullet came out down below on the breast in front. When I first heard the shots I thought there must be a war broken out between the white men and the Indians. I told my daughter that the white men would kill us off before we could get home, so we might as well go back where the rest of the Indians were killed and die there. That is how we came to go back to where the shooting took place.

Mrs. GRAY BEAR (her x mark).

Witnesses:

A. M. LANDMAN.

F. C. GOINGS.

Subscribed and sworn to before me this 30th day of November, 1903.

[SEAL.]

F. E. MCINTYRE,

Notary Public, Shannon County, S. Dak.

(My term expires November 8, 1905.)

MISSION FLAT, PINE RIDGE AGENCY, S. DAK.,

December 1, 1903.

Statement of Last Bear.

The statement of Last Bear was taken at his house, as he was unable to come to the agency on account of his wound. No proper official being present, his statement was taken without oath.

(Questions by Timothy F. Burke, United States attorney for the district of Wyoming.)

Q. State your name and age.—A. My name is Last Bear, and I am about 65 years of age.

Q. Are you a full-blood Oglala Sioux?—A. Yes.

Q. You have lived on the reserve here for a good many years?—A. I have never been off the reservation.

Q. Did you go with the Smith party to Wyoming last month?—A. No; I went with William Brown.

Q. What did you go for?—A. All I went for was because I am an old man, and if those young fellows should run across any game then they would give me some, and I would have something to eat and some soup.

Q. Did you go for roots and herbs?—A. I went for paint, too.

Q. Did you do any hunting while over there?—A. We killed some prairie dogs and prairie chickens and rabbits. Those fellows that you killed, those are the ones that did the hunting.

Q. Did they shoot any antelope or deer?—A. Maybe. I was not with that party.

Q. Did you buy or trade for antelope hides or meat?—A. Yes; I traded for some deer meat and hides with mocassins.

Q. Did you get them of the sheep men and the cowboys?—A. It was the sheep men that sold us the meat and the hides. Maybe those cowboys got some deer, too, because they always packed their Winchester.

Q. Were you present when Sheriff Miller and his party came to camp on the first day, the day before the shooting?—A. Yes. There were seven. Three of them had stars.

Q. What did those stars mean?—A. I thought they were some kind of officers or policemen.

Q. What did they want?—A. I was away from camp that day. An Indian told me that there were white men at the camp, and when I got there I found the white men there. I did not talk with them.

Q. Did Smith or Brown talk to them?—A. I understood from another Indian that Smith talked to them. I only know what I have been told.

Q. Did the other Indian tell you what was wanted?—A. I understood from the other Indian that he wanted us to go with him.

Q. Did you refuse to go with him?—A. Smith was the one that refused to go. The white men had their Winchesters right with them.

Q. Did William Brown refuse to go?—A. William was willing to go along with the white men.

Q. What did the white men claim, that they should want you to go with them?—A. This Charlie Smith told all the Indians to hitch up and break camp, we wanted to go home. So the Indians hitched up and broke camp and those white men went along with us. And they said, "We will be back in the morning." That is what I was told. There were some wagons ahead and they wanted them to go to Newcastle. Then the white men left on the road to Newcastle. We traveled all the night and then we made camp in the morning. We made that camp there and in the morning we started again. We traveled until the sun was pretty low, trying to find water. I was the fifth wagon in the road. I had my little boy ahead, driving horses for me. We didn't expect any trouble on the way home. This young boy [pointing to his son] and another boy were ahead driving horses, and there was a girl with them. When she got off her horse to open the gate she saw the white men. She came trotting back and said "There are some white men there going to shoot us." I heard her say that.

Q. Who fired the first shot?—A. I hold up my hand to the Great Spirit and say that it is the truth that we never expected any trouble. We had just crossed a dry creek and were making for the creek to get to water. We saw those men on horseback, and they were all strung up the creek. I heard the white men say something in English. I didn't understand what they said, but it sounded to me as though they were cursing us. Then the white men fired into us and there was a general stampede.

Q. Did the Indians do any firing; and if so, who were they?—A. I was shot at the first volley and I tried to get out the best I could. I didn't even look back.

Q. Where were you shot?—A. I was shot in the back, the bullet coming out in front, just in front of the hip bone.

Q. Did the shot pass through the entrails?—A. No. I was leaning over, and that threw my entrails to one side and the shot did not go through them. If it had, I would not be lying here to talk to you to-day.

Q. Did you recognize the party at the shooting to be the same as the party you met the day before?—A. The first day we met the men I did not notice what kind of men they were. That is, what kind of noses or faces they had. What made me think they were the same men is because they said they would be back the next day, so I suppose they were the same party, only there were more of them.

Q. Did you bring your wagon back with you, or did you leave it in Wyoming?—A. I brought my wagon back; it is standing outside there [pointing through the window]. My wife drove me home.

Q. Are you going to get well?—A. Yes; the wound in back is healing up, but the wound in front makes discharges.

Q. Do you understand that it is against the laws of the State of Wyoming to hunt for big game, such as elk, antelope, deer, etc., without a license from the justice of the peace; also, it is against the law to buy or trade for raw hides of those animals? I want you to explain that to your friends so that when they go through Wyoming again they will not get into trouble over hunting game. How many Indians did you see shooting?—A. I didn't see any of the Indians do any shooting.

Q. Your statement will not be used against you in any way, and I hope you will get well.

Witnesses:

A. M. LANDMAN,
F. O. GOINGS.

Iron-White Man being present stated that he want to say this:

In these treaties with the Great Father it said that if a white man killed an Indian he would be punished and if an Indian killed a white man he would be punished. We are going to have a big council and we would like to test this law and see whether there is anything in it.

Mr. BURKE. When a white man or an Indian goes into another State, he is bound by the laws of that State. Now, in the State of Wyoming it is against the law for outsiders, whether white man or Indian, to come into the State and shoot game without a license. Of course if you are shooting game without a license it is the duty of the officers to arrest you. While the officer has no right to shoot you for a little

crime, if you resist arrest and try to shoot him, he has a right to shoot. Probably these officers will claim that the Indians shot first and that they resisted arrest, that is why they shot. This Sheriff Miller, who was shot, had a warrant for the arrest of two Indians, for having shot antelope in Wyoming without a license, so he had the right to arrest them. Probably this whole trouble grew out of a misunderstanding, and not out of any willful intention to shoot or murder the Indians.

I am here to get the Indians' story and account of this affair so the Government at Washington may know who is in the wrong, so that the Government may know whether it is the Indians or the white men that have done wrong; and the Government will see that the right thing is done, and will protect the Indians under the treaties, and see that they get their rights as men.

Talk with Chief Blue Horse.

I had a talk with Chief Blue Horse, who claims that he was one of the signers of the treaty of 1868, and the way he understood the treaty was that the Indian would be allowed to hunt anywhere game could be found as long as he existed as a race. The talk was that in a hundred years the Indians would become as the white men, tillers of the soil, and would no longer care to hunt, and that the buffalo would surely remain as long as that time. He did not understand that the Indian was to relinquish anything, in that treaty or any other treaty, in the way of rights to hunt.

DEPARTMENT OF JUSTICE,
Washington, D. C., December 22, 1903.

SIR: As requested, I have caused a full report to be made by United States attorney for Wyoming, concerning the trouble in that State with certain Indians and the killing of Sheriff Miller, of Weston County.

Under separate cover I send you the report in question, with its inclosure.

Respectfully,

W. A. DAY,
Acting Attorney-General.

THE SECRETARY OF THE INTERIOR.

OFFICE OF UNITED STATES ATTORNEY,
DISTRICT OF WYOMING,
Cheyenne, Wyo., December 17, 1903.

SIR: As reported in my letter of November 17, and as per your instructions heretofore given, I attended the preliminary hearing of nine Indians, arrested and charged with the murder of Sheriff Miller, of Weston County, this State, which hearing resulted in the discharge of the nine Indians and their return to the agency. The discharge was procured by a demurrer to the evidence offered by the State, the evidence failing to sufficiently identify the Indians under arrest as being present at the scene of the shooting in Converse County at the time the sheriff of Weston County was killed. I transmit herewith a copy of the evidence as taken at that hearing.

Further following out your instructions to "investigate thoroughly the whole trouble with Indians and report," and your further instructions of November 21, directing me to go to Pine Ridge Agency for the purpose of interviewing the Indians and taking their statements of the occurrence, on November 25 I left home for the Pine Ridge Agency and there took the statements of J. R. Brennan, the agent, and fourteen Indians, all of which, with the exception of two, were under oath. I herewith send you these statements:

I also attach to this report a copy of the Wyoming game and fish laws. Sections 2107 to 2120 were involved in the consideration of this matter. It should be observed that section 2118 makes a violation of the game laws of this State a misdemeanor; likewise a violation of section 2120 is made a misdemeanor.

It is to be observed:

1. That the Indians in question had left the Pine Ridge Agency in two parties at different times and under regularly issued permits from the agent, Mr. J. R. Brennan, and for purposes that were lawful.

2. That the warrant issued out of the justice of the peace's court of Weston County, charging the violation of the game laws, was against John Doe and Richard Doe, but two persons.

3. That the attempts, if such they were, to make an arrest under that warrant was made by the sheriff of Weston County in Converse County on some twenty or twenty-five men, besides women and children.

4. That at neither attempt at arrest, if such they were, does it appear that the Indians, or any of them, were engaged at the time in the violation of any law of the State of Wyoming, unless the testimony is to be accepted that the Indian Smith had upon his horse, when he returned to his party at the time the sheriff first visited them, an antelope, which fact is denied by a number of the Indians in their evidence.

5. That while the Indians deny having killed any game such as would be a violation of our game laws in the State of Wyoming, they admit having traded innocuous and articles of their own manufacture for untanned hides of deer and antelope.

6. That there is an absolute disagreement between the testimony of those composing the sheriff's party and that of the Indians as to who commenced the shooting upon the second day on the occasion when the sheriff of Weston County and a deputy sheriff of Converse County were killed; also four Indians—Charles Smith, Black Kettle, Gray Bear, and Peter White Elk, a boy—and two were wounded, Mrs. Smith and Lost Bear.

7. That at the time of the shooting on the second day the Indians were strung out, the procession covering from one-fourth to one-half of a mile, some riding in their wagons, others on their horses, the procession being headed by a bunch of ponies driven by a girl of 17 or 18 years of age and two small boys. Their attitude, at least at that time, was not threatening or menacing. The approach of the sheriff and his posse, after they left the road and took up a dry gulch under the creek bank, was threatening and menacing, but the result of the entire occurrence was not unnatural, for seldom do two bodies of armed men with cross purposes meet that shooting does not occur. The snapping from stepping upon a dry twig or like occurrences under such circumstances may be the mistaken fact that leads to the fatal act.

8. That while there is some dispute in the evidence as to how many Indians participated in the shooting, the weight of the evidence is to the effect that not more than four or five actually took part in the shooting, the greater number of the Indians, both men, women, and children promiscuously fleeing from the scene.

I would suggest as conclusions of law in the matter:

1. That it is very questionable, even in view our of statute, section 5213 and section 5217, as to whether the sheriff of Weston County was not acting without authority of law and beyond his jurisdiction (a) in attempting to arrest under a warrant for two persons some forty or fifty individuals, and especially as an arrest thereunder of one party of more than two had already been made.

In making this finding, however, I desire to say that I think a mistaken action on the part of the sheriff of Weston county should not be attributed to any wrongful motive or purpose on his part, for Mr. Miller was known to me to be a good officer, a brave man, and one who intended to be right in all his actions. What I say of Sheriff Miller of Weston County I can also say of several of his posse, with whom I am personally acquainted and whose general reputations I know; others I am not acquainted with and do not know their reputations.

2. That the Indians, as matter of fact, were guilty of violating the game laws of the State of Wyoming, of a certainty of section 2120, probably ignorantly, in that they had obtained by barter green and untanned hides of animals mentioned in section 2107, and they could have been made to answer for a misdemeanor in this regard, properly charged in the county where such offense had been committed; but it is very doubtful if they were subject to arrest under the warrant held by Sheriff Miller, in Converse County, at the time of the occurrence complained of.

3. That I do not find from a reading of the various treaties made with the Oglala Sioux that they had reserved any right to hunt off their reservation after the buffalo should cease to exist in "numbers as to justify the chase;" their treaty of 1868 being merely that they should have the right to "hunt so long as the buffalo may range thereon in such numbers as to justify the chase," being an entirely different provision from that made by the Crow and the Shoshone and other Indians, which are to the effect that they should have the right to hunt upon the unoccupied lands of the United States Government so long as the game should exist in sufficient quantities to authorize the chase. The latter provision as it appears in a number of treaties, however, has been construed against the Indians' right, in violation of State law subsequently enacted, in the case of *Ward, Sheriff, v. Race Horse* (103 U. S. Rep., 504).

The conclusion is forced upon me that the Indians were legally justified in resisting arrest under the conditions shown, but not to the extent of using deadly weapons, unless the sheriff's posse first used their guns, and as that fact is in such hopeless

uncertainty I can not believe that anything is to be gained by further prosecution, for were proceedings to be had against either party the proper application of the rule of reasonable doubt would acquit the accused. A decision resulting from either race prejudice, supercilious generosity, or from a guess would but make a bad matter worse.

The statement of the agent, Mr. Brennan, is not signed, as he left the agency shortly after making the statement before the same could be extended, and had not returned at the time of forwarding this testimony.

I inclose the bills of the two stenographers employed in taking the testimony.
Respectfully submitted.

TIMOTHY F. BURKE,
United States Attorney, District of Wyoming.

THE ATTORNEY-GENERAL,
Washington, D. C.

THE STATE OF WYOMING, *County of Converse, ss:*

The State of Wyoming *v.* He Crow, Fool Heart, Jesse Little War Bonnet, Charging Wolf, Broken Nose, James White Elk, Red Paint, Jack High Dog, Iron Shield.

DOUGLAS, WYO., *November 14, 1903.*

D. O. JOHNSTON, a witness called on behalf of the State, who, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by W. F. Mecum, prosecuting attorney:

Q. Please state your name, age, residence, and occupation.—A. D. O. Johnston, Newcastle, Weston County, Wyo.; age, 34.

Q. What is your occupation?—A. At the time this occurred I had charge of a saloon in Newcastle.

Q. State whether or not you were acquainted with one William H. Miller.—A. Yes, sir.

Q. What official position, if any, did he occupy?—A. Sheriff of Weston County.

Q. Where did he reside?—A. Newcastle, Weston County, Wyo.

Q. State whether or not you are acquainted with any of these defendants.—A. The first time I met them was on Friday, October 30.

Q. Where was that?—A. On what they call the Dry Cheyenne River, in Converse County.

Q. Do you recognize any of these men, or all of them—identify them as men you saw at that time on the Cheyenne River?—A. Two of them, for sure.

Q. Which two was it?—A. Red Paint and Jesse Little War Bonnet, the second one from this end.

Q. Do you identify any of the others as those you saw this first day?—A. I wouldn't want to swear positive to the others.

Q. How did you come to be there at the Indian camp on this day?—A. I was deputized by Sheriff Miller to go out and arrest Indians for killing antelope.

Q. Who, if anyone, was with you and Sheriff Miller?—A. Frank Zerst, Fred Howell, Ralph Hackney, Jim Davis, Jack Miller. There were seven of them.

Q. How many Indians did you see at this time and place?—A. Twenty-three male Indians; that is, grown men.

Q. What else did you see there?—A. Tents, wagons, squaws, children, and ponies. They were in camp.

Q. Go on and tell about how many you saw there?—A. I never counted any but the men; but, if you want me to start and tell just what occurred, we rode in the camp at 10.30. I looked at my watch. Some of the Indians seen us coming, and four, I believe, met us on the top of a little hill, I should judge about a hundred yards, maybe seventy-five, from the camp. The sheriff rode up and asked who the chief was. They said it was Charlie Smith. This Jesse Little War Bonnet was riding off by himself toward the hills. He came in ahead of us and then started before we got to the camp. He didn't wait. Then one of the other Indians hallooed at him, and he stopped, and Sheriff Miller went over and brought him back. He stated what he was there for. They wanted to wait until Smith came. Mrs. William Brown, I believe, if I remember right, got our dinner. About 1 o'clock Smith came in with an antelope on his saddle, all alone. Then Sheriff Miller read the warrant. Smith wanted to wait until Brown came in. Brown was a chief also.

Q. Did Miller have a warrant for these Indians?—A. Yes, sir.

Q. Did you state he read it to them?—A. He read it to Smith.

Q. Who else was present when he read this warrant?—A. Smith's wife, I think probably, was the only one.

Q. How many Indians were present at that time?—A. I think Smith's wife was the only one of the Indians outside himself. They were in camp, but not in the tent.

Q. How many of these Indians were there there that could talk English, or did talk English?—A. Mrs. Brown talked English; the daughter of Gray Bear, I believe—I don't know what her name was—talked English; Smith talked English; Jesse Little War Bonnet talked some.

Q. This Little Jesse War Bonnet?—A. Yes, sir.

Q. Go on and state what occurred, just what was done after that.—A. They told us there were two more bucks out, and about 3 o'clock, I should judge, Brown came in with the rest of the Indians. They came over the hill riding on the lope and holloing as they came. At that time we were in front of Charlie Smith's tent; had a fire built there. When they came in the sheriff gave them time to talk it over, and asked them what they were going to do. Smith said: "We haven't killed any antelope; we traded moccasins to the sheep herders for them." The sheriff said then, "If that is the case, I don't suppose they can do anything with you after you get to town. I have a warrant put in my hands for your arrest to bring you to Newcastle. Of course I will have to take you." Smith said: "I am no damn fool and know more of law than you do. I know the sheriff's duties, but if you want trouble you can have it." The sheriff said: "We don't want no trouble, I came here to do my duty as an officer."

Q. Was that all that was said that you remember?—A. That is about all that was said that time; then they began to hitch up.

Q. When this conversation occurred, who, if anyone, was present beside the sheriff?—A. All these seven, the names I mentioned.

Q. The seven white men that were there?—A. That's what I mean.

Q. How many Indians?—A. All the male Indians; all the bucks that was in camp there.

Q. State to the court, if you know, whether these other Indians that could not talk English understood what was wanted by the white men.—A. They were talking in Indian by themselves. Mr. Brown and Smith talked in English; then they talked in Indian. That's all I know whether they understood. Of course I could not understand what they were saying.

Q. Did the Indians understand what the sheriff was there for, what his official position was; did he make that known to them at that time?

Mr. BURKE. We object to this as being incompetent and calling for an opinion.

Q. Did you examine the Indian wagons or their camp at this time?—A. No, sir; not just at that time.

Q. What was next said and done?—A. The Indians hitched up and began to string out. This Red Paint took the lead; drove up out of the creek bottom and started across. I think they were going a little bit southeast when they first started; drove about between a fourth and a half a mile, and then came to the road that would take us to Newcastle, going past the Fiddleback ranch. I said, "they are crossing our road; they are not going with us." He rode up and told Smith, "that is not the way to go; I want you to turn these Indians and go down this road to Newcastle. Smith said: "By God, I don't live in Newcastle; I am not going there."

The sheriff turned back to me—I happened to be closer to him than the other boys—and said, "He won't go; what will we do?" I suggested he go and see Brown, the other chief, and talk to him. Brown told the sheriff he would go if Smith would. He came back and talked to Smith again. Smith refused to go. He turned back and wanted a little advice. I suggested to him to go and stop the guide. Red Paint was probably 150 yards ahead of the foremost wagon of Indians; they were all along in a string; Indian bucks were distributed along after the wagons; they were all on horseback with guns. He rode to Smith and looked back at me. I rode up, and the boys all came, one by one; also all the Indians. The sheriff stood there, talked to them; tried to get them to turn the guide. Smith gave the guide orders to go straight ahead; all the Indians, including Brown, said something we could not understand, and motioned him to go straight ahead—that is, from the direction we wanted them to go.

Q. Did he start to go ahead?—A. He went ahead and the wagons followed. We were pretty much surrounded by Indians, part of them on the ground at that time and part on horses. The sheriff said to all the white men—we were all in a bunch—he said, "What will we do—ride to the nearest hill?" There was a hill, not exactly

to the left but a little ahead of us, probably 200 yards to the top of it. He said, "We will ride up there and try to stop them." No sooner had he said that than Jesse Little War Bonnet and another one ran their ponies to the top of the hill before we even started there, and stood on top of the hill, sitting on their horses.

Q. How were the buck Indians traveling—in the wagons, on horses, or on foot?—A. All on horseback.

Q. Who were in charge of the wagons?—A. Squaws were driving the teams.

Q. Did you have any trouble with any of them at the time you were talking with Smith and Brown, at the time when you stopped the guide?—A. Smith insisted he wouldn't go to Newcastle; told the guide to go straight ahead, very nearly opposite from the way we wanted them to go.

Q. How did all these other Indians you say spoke Indian, act?—A. They rode up in a bunch, all talking in Indian, and motioned to him to go straight ahead, the way Smith said he should go.

Q. State whether or not the Indians at this time made any demonstrations or did anything to indicate that they would resist the officer by use of force if necessary?—A. The largest part of them surrounded us on the outside. We were in a body in the center. Part of them were just in the rear of us and dismounted. I think four of them had their guns in their hands, and the rest were standing by their ponies on the side the guns were on. Part of them had guns on their horses and part in their hands.

Q. Was there anything else you remember at this time the Indians did?—A. Not that I saw; that was one of the other witnesses.

Q. State if there were any songs sung.—A. One old squaw sang a song, we took it to be a war song; she made a peculiar noise.

Q. What did you do next—you and the sheriff's posse?—A. After that the sheriff says, "We will go to the Fiddleback ranch and get more help and head them off down below." We rode to the Fiddleback that night and we staid there all night and got Steve Franklin and Charley Harvey, and on Saturday morning, the 31st, about 7.30 o'clock the sheriff sent Jack Moore and Frank Zerst south from the Fiddleback, in the direction we left the Indians the night before about sundown, with instructions to find the direction they went and meet the rest at Jake Mills's old cow camp on Lightning Creek. The sheriff and the rest of us went on down the Cheyenne River. Falkenberg came from Olson's ranch. We met John Irvin building fences and he came with us toward Lightning Creek. We met up with two strangers. The sheriff stopped and asked them where they came from—asked them if they had seen any Indians over there. They said they had not. The sheriff told them we were looking for Indians that had gotten away from us the day before, and suggested he deputize them and take them along. They finally agreed to it. We all then started on to the ranch. The names of the strangers were George Fountain and H. Coon, of Wessington, S. Dak. I think we all got to Mills's ranch, as near as I recollect, about half past 2 or 3 o'clock. Charley Harvey turned in and got dinner. Half of us had eaten dinner and the other part were eating, and Jack Moore and Frank Zerst came in riding very fast. The sheriff asked them what was the matter. They said the Indians were back about a mile and one-half coming right on us. Those were the words he used to the sheriff. Miller gave orders to have our horses brought in—they were turned out on grass—and we saddled them up and started down the creek—down the road, rather—to meet the Indians for the purpose of arresting them. Miller told the boys he wanted nobody under any consideration to fire a shot unless it was absolutely necessary. We had those instructions from the time we left Newcastle every day.

Q. Where did you go?—A. We rode around the road from the ranch house; I should judge following the road it is very near a half a mile. Between a fourth and a half a mile we immediately got sight of the Indians. Part of them were through the wire fence, a bunch of ponies and some wagons. The Indians began to dismount, some off of wagons and some off of ponies. When we saw them dismount we left the road and ran right down to the creek bottom.

Q. I will ask if this [indicating a diagram] is a very general representation of the place you call Mills's camp and Lightning Creek, and the road you speak of and the place where you met the Indians?—A. Yes, sir. I should judge that is as good a map as a man could draw without surveying.

Q. I will ask you to state what this represents, referring to that mark "creek."—A. The creek.

Q. Which way does it flow?—A. To the right. To the northeast the way the map is drawn.

Q. What do you say this represents?—A. I should say sheep pens.

Q. What does this represent?—A. A line of rough hills, very rocky.

Q. And what does this represent?—A. The wire fence.

Q. What does this represent?—A. The road.

Q. Upon which you were travelling and the Indians were traveling?—A. Yes, sir. We were going around the other way.

Q. Which way were you travelling?—A. Right upon that road.

Q. Which way were the Indians traveling?—A. Toward us.

Q. Stand by the map, if you will, and point out just the movements of yourself and the sheriff's posse and the Indians you saw.—A. We saddled our horses and started from the ranch house and followed the road right around until we came right to there [indicating on the map]. We followed the road from Mills's ranch around the bend of the creek until we came in sight of the Indians coming toward us. The Indians were going north and we were going in a southwesterly direction when we saw them right here [indicating on the map]. Part of the Indians were through the wire fence coming toward us, and the first we saw of the Indians some of them were dismounting from their horses, some from the wagons. Instead of following the road on to meet them we turned off the road and started south, right down the creek.

Mr. BURKE. I take it you mean up the creek, not down the creek?

A. In the road.

Q. You turned off from the road at the point marked on the map "No. 2"—A. And went up the creek, south, until we got to this wire fence marked "3." We dismounted and left our horses by the wire fence, got through the fence, and went on up the creek. Part of us was right by this cross, that will be "No. 4," that was the extreme right of us. We were strung out down the creek at that time probably 75 yards, the 13 of us. John Owens was farthest up the creek, that would be the extreme left of us; Sheriff Miller was next. They both started up on the bank at the same time toward the Indians. Johnnie Owens and Sheriff Miller threw up their hands and used words to this effect—I could not state the exact words, I heard part of them: "Hold on; surrender; you are prisoners." Those were the words I heard used distinctly. There was an Indian right over toward these pens, about 40 yards, or 65, in that direction, raised his gun and fired at John Owens.

Q. How far do you say it was from this creek to the road?—A. Just about 50 yards.

Q. How far would you say it was from where you first crawled through the fence to this sheep pen?—A. About 200 yards.

Q. Where were the Indians that you saw, and about how many of them? Describe the Indians.—A. There were at least two wagons—I wouldn't say positive there was three—through this fence, and a bunch of loose ponies, and the rest of the wagons were strung along from there pretty much down. I think the line of them were along about the sheep pens.

Q. Go on.—A. When this Indian at No. 5 fired at Johnnie Owens every man of the thirteen except one ran up on the bank and was right along on the top of the bank. One man stayed right here behind the bank, Frank Zerst. He had nothing but a six-shooter.

Q. Did you hear the sheriff say anything else, or Mr. Owens state anything else?—

A. I heard the shot fired, and then the firing became general.

Q. Which way was that shot you speak of fired from?—A. Cornerly direction from the sheep pens; it was right in there. I saw the man that fired it.

Q. Was he between the road and the creek; or where would you say he was?—A. Between the road and the creek.

Q. Will you locate it as near as you can on the map?—A. "No. 5." I have marked it right there.

Q. What followed?—A. I was right here between this first tree and the wire fence. I heard Louis Falkenberg let a yell out of him. He turned and I saw blood spouting from his neck. He rolled over on his side. The shooting kept up. Some of the Indians down by the sheep pens turned and ran, some stood their ground and fought, and some of them rode on, started here right near the gate marked "6" and went west on top of this range of hills and rocks, and by that time the Indians who were still mounted had all left the road and gone back the road or gone over the hills. I turned around and said to Mr. Owens, "Here's Louis Falkenberg, he is dead."

Q. Where was Louis Falkenberg shot?—A. Right near No. 4, between the first tree and the fence. Then Mr. Owens was on up the creek from him about 20 or 30 yards. He said, "Sheriff Miller is here, shot all to hell." I walked up to where Sheriff Miller was. I said, "Johnnie, he is not dead; we will have to get him to the house." Owens said, "You boys get Miller to the house," and said, "I will watch the Indians." I unbuckled Miller's belt of cartridges and six-shooter and buckled them on Johnnie Owens. He stayed on the bank and watched the Indians. Sheriff Miller died about twenty minutes after we got him in the house.

Q. How long after the first fire was it the Indians remained there?—A. It could not have been over four minutes at the outside.

Q. When you rode up to that position and climbed through the fence and the sheriff went out toward the Indians, was there any of the Indians, that is, these men that were in sight then?—A. Yes, sir.

Q. What were they doing?—A. Some of them were in the wagons; some were dismounted, on foot, with their guns, and some on horseback.

Q. What were they doing with their guns? Did they have them in their hands ready for use, or was it the way they were just carrying them all the time?—A. The ones near us had them in their hands.

Q. You say they remained about four minutes after this. You tell about the sheriff and Mr. Falkenberg being shot and you were watching the Indians. Had the Indians at this time, you say you were watching, all left?—A. Part of them went west up toward the ridge of rocks and hills; some were on foot; some were sitting on their horses right up on this ridge of rocks about 250 yards.

Q. Where were the wagons?—A. Most of them—twelve, I think—had went down this road; three of them had started up and went over this rocky ridge and disappeared.

Q. How far away was it from the creek to this rocky ridge?—A. Two hundred and fifty yards to the top of it, I judge.

Q. Were the Indians at this time shooting at the white men?—A. There were two or three shots came from the top of that ridge; that was all.

Q. You say Sheriff Miller was shot near the corner where you climbed up the bank?—A. Sheriff Miller was shot near this tree.

Q. How was he shot, with two bullets or three?—A. One [indicating left thigh].

Q. In his thigh?—A. Right in through there.

Q. Bullet came out again?—A. It came out directly in the rear, more up in his hip.

Q. Do you know from where that bullet came?—A. No, sir; didn't see that part of it myself.

Q. I will ask if you recognize any of these Indians as being present or being present and taking part in this shooting on the 31st day of October, 1903?—A. I am sure I saw Jesse Little War Bonnet on foot up the creek with his gun.

Q. Will you please locate on the map where you saw him?—A. Right along about there (No. 7). There are a number of live trees standing and some snags.

Q. What was he doing?—A. At the time I saw him he had started down the creek carrying his gun in his left hand like this [indicating].

Q. Was he going from you or toward you?—A. Going from me.

Q. Had his gun in his hand?—A. Yes, sir.

Q. Had you seen him before on this day?—A. I had not.

Q. Which way did he seem to be going; from where was this starting point?—A. He was out in a northwesterly direction from No. 7, between the road and the creek; starting from out here, came right across that way, right to the creek bed.

Q. Can you identify any of these other men as being present?—A. Not on the 31st.

Q. About how far were these Indians from you when you say they were shooting?—A. Different distances. Part of them were 50 yards from the creek bed, right at this road.

Q. How many of the white men were shooting toward the Indians?—A. I could not say as to that, because I did not see all of them during all this time.

Q. Were they all shooting, you think—taking part?—A. Yes; I am satisfied they were all taking part.

Q. About how many Indians were shooting?

Mr. BURKE. Just what you know.

A. Of course, outside of the reports of the guns I could not swear there were over two taking part, as far as I could see. Part of the time these trees were between me and the main bunch of Indians farther down. I was on the extreme right, nearest the wire fence.

Q. Will you point out on this map where the trees appear, as you remember it?—A. There was one a little ways from the wire fence up the creek, near No. 4. There was another very large cottonwood tree farther up the creek, about 20 yards from the first one, and on down farther 75 yards were a number of trees. From that on as far as we could see up the creek bed were trees.

Q. Were the Indians and yourselves using black powder or smokeless?—A. Ten of us had what we call the modern 30-30, 30-40 using smokeless powder. One man, Coon, had a 32-40 using a lead bullet. I don't know whether that was black powder or not; that was a Marlin rifle. Two of them had six-shooters.

Q. When the Indians were shooting could you see the flash of their guns?—A. Could see the smoke as it rolled up from the black powder.

Q. How many did you see that were taking part in this fight?—A. From where I was I could see only two; the smoke coming out of two. I am only speaking for myself.

Q. Where were these other Indians you speak of seeing in the first place; about how many Indians were there in this camp—male Indians?—A. There were 15 wagons; of course, we didn't count them, we had the day before; but there were 24 bucks.

Q. Did you recognize these as being the same band of Indians you met the day before?—A. Yes, sir.

Q. Can you locate where you saw this flash or heard the reports from?—A. One of them was over at this corner of the corral; that would be the northwest corner of these sheep pens. It was a very large report; seemed to be a larger bore gun than any of the rest; seemed to be a large amount of smoke come out of it.

Q. Where was the other one?—A. That was Smith himself behind his wagon; that would be No. 8, as near as I remember, about 20 yards from the wagon road and to this range of rocks.

Q. After the battle how many Indians lay on the ground killed or wounded?—A. I wasn't out there that same night.

Q. Did you go around and see where the wounded did lay?—A. Not me; two others, John Owens and Frank Zerst, went around.

Q. Were they there the next day, the Indians?—A. There was one, a boy, laid out near where you have got that picture drawn.

Q. What does it represent?—A. That represents a dead horse.

Q. When was he left there; was that horse killed in the battle?—A. Yes, sir.

Q. Whose horse was it?—A. One of the Indian's horses. A boy was riding it. The boy was shot right in the top of the head and the horse was shot, and the boy and the horse lay very nearly touching.

Q. Where that other cross is near figure 8, who did you find laying there?—A. It was the other man found him. He was not there when I was there the next morning.

Q. Was there any other man you saw on the ground there?—A. Yes, one laid near where this cross is. An Indian squaw said he was Black Kettle. (Location marked "No. 9" on the map.)

Q. Did you find any others the next day?—A. No sir, the squaws had went up and buried their father; one showed us where they put him; I didn't see him after the fight. They had wrapped him up in canvas.

Q. Was there any trees on the west side of the road other than those marked on this map?—A. I think not.

Q. State the character of the country there.—A. On the west side it was very rough, high sage brush, a range of hills, as I said before, and very rocky.

Q. After this first fire which way did all the Indians retreat from the road?—A. Part straight down the road; part west to that range of hills.

Q. Was it possible for anyone to hide there in that sage brush, in these rough places, so as to be out of sight and you not see them?—A. Yes; the sage brush between the road at this point where the dead horse is and the range of hills over here, the sage brush was possibly 4 feet high.

Q. Did you see any Indians go that way when they left you?—A. No, sir, I didn't; the ones I saw went straight west from where Smith's wagon was, No. 8.

Q. What did you next do then?—A. After we took Miller to the house we got things in shape for the night; we didn't know but what they might come back. We put the horses around the haystack, inside the corral, and left the saddles on part; part of them we took off. Stephen Franklin started to Lusk for a doctor. Charlie Harvy said he was going to Lance Creek. Next morning, about 9.30, Jim Davis and Ralph Hackney took the bodies of Sheriff Miller and Falkenberg in a wagon and started to Newcastle. Monday morning, about 9 o'clock, I, John Owens, George Fountain, H. Coon, Jack Mills, and Frank Zerst started to town with some of the ponies we got off from the bunch, and Smith's wagon we found over in these hills with no team to it. One of the wagons we found Sunday afternoon behind the sheep pen, in the creek; it had a mule and brown mare hitched to it. The mule was down and could not get up. We unhitched them and took the horse off and hauled the wagon to the house with a saddle rope and examined the wagon. Smith's wagon we unloaded and took to town and put the dried antelope meat in a storage house of Jake Mill's. The antelope hides in these three wagons we took to Newcastle, where they are now.

Q. I will ask you to state, if you know, whether any of these other men were present at the time of the firing at Sheriff Miller and the posse.—A. I would not want to identify them. I don't think I could.

Q. You simply identified Jesse Little War Bonnet?—A. Smith I saw before he was shot; he was right opposite me.

Q. Did you recognize any of these other Indians that were shooting after they were killed?—A. I recognized Smith and Black Kettle.

Q. Who was the nearest one to you?—A. Smith. He wasn't killed outright, but died next evening at 8.20.

Q. About how far from you was Smith that you recognized him?—A. He was about 60 or 75 yards.

Q. About how far was Black Kettle from you?—A. The way I recognized Black Kettle was after he was dead.

Q. You didn't recognize him when he was shooting?—A. I saw what I took to be him fire the first shot. I wouldn't swear it was him, but it was an Indian who looked like him.

Q. These Indians, you say, got behind trees; how far was that from where you were located?—A. The one I speak of down here, Jesse Little War Bonnet, was about 125 yards.

Cross-examination by Mr. T. F. BURKE:

Q. You reside at New Castle, I understand you?—A. Yes, sir.

Q. Will you state again how you came to go out with the sheriff?—A. I was deputized by the sheriff to assist him to arrest a band of Indians that were reported to be hunting in the western part of the county.

Q. Who brought that report to the sheriff, do you know?—A. No, I don't.

Q. Did the sheriff come to you and ask you to go, or did you go to him and offer to go?—A. The way I come to go: Two years before this he went on a similar trip and asked me to go with him and I could not get away. We were standing there talking over the situation of these Indians being out there and the sheriff said, "If I go to arrest these Indians I will have to have some men." I spoke up for one and said I would go with him.

Q. The sheriff was really opposed to going out after these Indians, was he not?—A. Not that I know of.

Q. Who was it urged him to go, if anybody?

Mr. MECUM. That is not material; he had a warrant; he had to go.

The COURT. It is immaterial. If he had a warrant, it was his duty to go.

Q. Do you know whether he had a warrant at the time?—A. He didn't show me any warrant at that time.

Q. Did he deputize you by any paper?—A. No, sir.

Q. You said you would be one to go?—A. He had some stars for deputy sheriffs, and he gave me one of the stars; handed it to me and said: "Pin that on your vest, I deputize you as a special deputy sheriff to arrest Indians for hunting game."

Q. Were you present when others were deputized?—A. Only one.

Q. Which one was that?—A. I think it was Jack Moore.

Q. Now, you went out there, that was on Friday, was it?—A. This was on Thursday that he deputized me, and the next day was the 23d, we started out.

Q. Where did you say it was you came across the band of Indians, or came across Mr. Smith?—A. We came across an Indian trail in Little Thunder Basin, and there were three men sent down Porcupine Creek to meet us on what they called H. A. Creek that night at a man's house by the name of Wright.

Q. Where did you first meet any Indians?—A. We first met the Indians on Cheyenne River. We struck the trail and we were told by settlers that there were Indians killing antelope. This was in Little Thunder Basin in Weston County.

Q. Where did you first find any Indians or come across any Indians?—A. On what they call Dry Cheyenne River, in Converse County.

Q. Who was it you say you met there?—A. The other boys, the men we sent out.

Q. On Dry Cheyenne River?—A. We met a bunch of what we took to be Sioux Indians, they said they were. We asked them who their chief was, and they said Charlie Smith.

Q. I understand you Smith was not there at the time you first met the Indians?—A. No, sir; he came in afterwards, bringing an antelope on his saddle, tied behind his saddle on his horse.

Q. Which he said he had traded for?—A. He didn't say that particular one. It was later on he made this statement. This antelope was fresh killed, it was bleeding yet where its head was cut off.

Q. That was in Converse County?—A. Yes, sir.

Q. You had not talked with the Indians in English until Smith got there. Smith was the first one you could talk with?—A. Jesse Little War Bonnet came back. Miller told him who he was, and what he was there for, told him he had a warrant for their arrest.

Q. What did he say in English?—A. Said he would go out and get Smith; go out and hunt him and bring him in. One other Indian, I could not identify him in this bunch, was standing there, seemed an old like man, said something in Indian and

pointed to Miller, the sheriff. The sheriff said, "You know me," and he said, "Yes; know you at New Castle."

Q. Who was it said he knew him at New Castle?—A. One of the Indians; I don't know his name; he is not in this bunch.

Q. Was that Smith's party you first met there, or was it Brown's party?—A. Smith's.

Q. Then after Smith came up you had then a talk with him in English?—A. Yes, sir.

Q. Who was present when you were talking to Smith and explaining the nature of your visit there?—A. In the first place we wasn't present when the sheriff read the warrant to him, but we were present later on when they were talking over it.

Q. Who were talking over it?—A. Smith and our sheriff and Brown. They were talking in the presence of the Indians and all of Miller's men—the posse.

Q. You didn't see any of these Indians there, with the exception of Jesse Little War Bonnet, at the time the warrant was read or produced, or it was stated you had one?—A. This man Red Paint stood directly at my right when they were talking over this warrant.

Q. Then Jesse Little War Bonnet and Red Paint were there when they were talking over this warrant?—A. They were there.

Q. Did Red Paint talk English?—A. No, sir; I didn't talk to him. I didn't hear him talk any English. He was in camp all day when we were there at the time they pulled out.

Q. And the Indians were there with their wives and families and children?—A. Yes, sir.

Q. And you had eaten with them?—A. We had dinner with Mrs. Brown.

Q. She got dinner for you?—A. Yes, sir.

Q. Did Mrs. Brown speak English?—A. Yes; very well.

Q. You say these are the only two, Jesse Little War Bonnet and Red Paint, you saw there at the time you got dinner that you can identify?—A. There were 23 Indians there, but I wouldn't try to identify them separately, because they looked too much alike to me.

Q. After talking to Smith, you went away—you made no arrests?—A. We stayed there; and the sheriff said he had read the warrant to them, and the sheriff talked to them in our presence about his duty in taking them to town. Smith told the sheriff that "we haven't killed any antelope; we traded moccasins to the sheepherders for the antelope we got." The sheriff said, "If that is the case, perhaps they can't do anything with you after you get to Newcastle, but I have got a warrant, and I have orders to bring you to Newcastle, and I will have to do it, and you can settle with them after you get there."

Q. That was said to Smith?—A. Talked to Smith in presence of the Indian bucks and all of our white men. Brown was there at the time. He talks just as good English as you or I, probably better.

Q. They were on their way then out of the State, going east in a general direction?—A. When they started they went over northeast.

Q. That would be on their road toward their home out of the State?—A. I think so; but they didn't follow no road. They simply cut across the country where there was no road.

Q. That was the general direction?—A. Yes, sir.

Q. Passing, then, to the next day, when you met a band of Indians again, you say you were down behind a bank at the time you heard the first shot?—A. When the first shot was fired I was back about very near the center of the creek. I had not quite got up as far as some of the rest. We were scattered out.

Q. And to the west there was a bank. Was it of the creek, running in a general direction?—A. Yes, sir.

Q. How high was that bank?—A. I should judge between 5 and 6 feet.

Q. How far was it, you say, to the top of the bank, as you would term it, there?—

A. I should say about 5 or 6 feet.

Q. From the bottom of the creek you could not see out on top of the bank if it was 5 or 6 feet high?—A. I was back far enough; I could see up on top.

Q. You say the first shot came from the south?—A. Southwest—direction of that sheep pen.

Q. Did you see the shot—the smoke?—A. Yes, sir.

Q. You say it was in the position where Black Kettle was afterwards found?—A. Not exactly; it was a little in that direction, but was more toward the road than where Black Kettle was found later on.

Q. In the general direction of where Black Kettle was found?—A. Yes, it was.

Q. And Black Kettle was killed?—A. Yes, sir.

Q. What is the other man's name that was killed?—A. Falkenberg.

Q. Had he gone up over the edge of the bank?—A. I don't know; I could not place Falkenberg at that time. After the first shot was fired when we all ran up on the bank, then Louis Falkenberg was right up the creek about ten feet from me.

Q. Immediately after that first shot you all ran up?—A. Yes, sir.

Q. And the shooting was general?—A. Yes, sir. When the first shot was fired we had not all got through the wire fence. Some of the boys were back of us. I was through the wire fence about a hundred yards up the creek—very near in the center of the creek—the creek bed was very wide.

Q. You say some of the Indians had gotten through the fence that runs east and west through the gate. Where was Smith—was he there among them?—A. He had not got through the gate yet; that is, when I first noticed him. When I recognized it was Smith he was not through the gate.

Q. There were two or three wagons through that gate, you say?—A. Two, I know of.

Q. And a bunch of horses?—A. Yes.

Q. Was the boy driving the horses?—A. No, sir; the boy was not within a hundred yards.

Q. The bunch of horses was in the lead?—A. Yes, sir.

Q. Some of them were in wagons with their families at the time; some were on horseback and some were on foot?—A. Yes, sir; we saw them dismounting when we came in sight of them—some out of wagons, some off of horses, some were on foot and had guns in their hands.

Q. From the road you could see in a general way across the creek east?—A. Across the creek east from where we were is very heavy timber.

Q. They could see across the creek so as to see you over on the road?—A. From where we turned in the road at No. 2, that was an open place; there was no timber there; the timber was in that little bend where these marks are; that is where the heavy timber was.

Q. How many wagons did you say there were?—A. Fifteen the day before. I didn't count them at all this time.

Q. But a number of wagons you say turned and fled up the road; some you say fled over the hill?—A. Yes; three went straight over.

Q. Where did you say it was Smith was found? Where was he at the time the shooting was going on?—A. No, 8, I marked it there. His wife turned the wagon around. He was out on the ground with a rifle in his hand. His wife turned the wagon around with the team facing south, right near where No. 8 is. He was shooting from behind his wagon.

Q. The other one you saw shooting was where?—A. I can't say where he was. I saw smoke coming out and heard the report at the northeast corner of the sheep pens. It was a very loud report.

Q. You don't know of any agreement made between these Indians to fight you, or anything of that kind?—A. No, sir; all I know is they said Smith was their chief. He said if we wanted trouble we could have it.

Q. You say Brown is a chief?—A. Brown was also a chief.

Q. Brown didn't say you could have trouble?—A. No. Brown said if Smith would go to Newcastle he would.

Q. Did you hear him say that?—A. Yes, sir. That he would if Smith would.

At this point the court adjourned till 1.30 p. m.

At 1.30 p. m. the court reconvened with the same witness on the stand.

By Mr. BURKE:

Q. I think you said that on the first occasion of meeting a band of Indians that Smith was not there, and that when your mission was in part made known, they said that Smith was their chief.—A. Yes, sir.

Q. And to see him. Now was it one of these Indians here that said Smith was chief, see him?—A. Jesse Little War Bonnet.

Q. That is the only one of these Indians that are here that said that?—A. He is the only one I know positively. If you will let me I will explain why I know it was him. One of the Indians started off. One of the Indians rode over where he was and called him back because he could talk a little.

Q. None of the other Indians here said Smith was their chief and would speak for them?—A. I would not say they did.

Redirect examination by Mr. MACUM:

Q. You say you left Newcastle on the 23d?—A. Yes, sir.

Q. Where did you first strike the trail of these Indians?—A. Between Little Thunder Basin and Porcupine Creek, in Weston County.

Q. Do you know whether or not the Indians were in Weston County hunting game at the time this warrant was issued?—All the way we know the settlers told us Smith was there with a band of Indians killing antelope. Smith's wagon axle broke down. They had supported it by a pole and it made a trail all the way from there into Converse County.

Q. That was over in Weston County?—A. Yes, sir.

Q. You say you took dinner with Mrs. Brown and the Indians at that time?—A. Yes, sir.

Q. About how long were you there at that place, and what were you talking about generally?—A. We were around the tent. I presume part of the time we were in front of the tent, and we were in the tent eating dinner, and part of the time we were away. One instance, while we were in the tent, Mrs. Brown was getting dinner and says to Sheriff Miller, "Why are you going to take the Indians to town and fine them?" And he said, "For killing antelope in Weston County."

Q. When you left the Indians this first day, I understand you to say a couple of your party followed them?—A. They left the Fiddleback and went the direction the Indians had taken the night before when we left them, and were to locate them and meet us at Jake Mills's cow camp.

Q. You went to Fiddleback that night; how far would that be?—A. About 20 miles.

Q. How far was it from Fiddleback to where this battle occurred?—A. About 40 miles the way we went.

Q. Now, you show the court where it was that you turned off to go up this creek when you were going from the cabin toward the Indians. Will you please show the court where you were when you first saw the Indians there on the road?—A. Right about No. 2.

Q. That is where you were when you first saw the Indians?—A. Yes, sir.

Q. When you first saw them, did you see them at that time dismount?—A. Yes, sir; and when we saw them dismounting, instead of following the road any further, we went up the creek.

Q. About how far is that from the gate?—A. I should judge about a hundred yards.

Q. Now around that bend below figure 2, is that a country open sufficiently so that the Indians could have seen you when you were farther around the bend?—A. Not clear around the bend, but probably they could have seen us 50 or 75 yards farther around than No. 2. It was open in there; not much timber.

Q. When the Indians broke camp the first day, was there anything said or done on the part of the Indians to give you to understand they would resist the warrant, or they would go with you?

Mr. BURKE. We object, unless it is confined to some one person.

Mr. MECUM. I will state it differently.

Q. I will ask you if Mr. Smith, or Mr. Brown, or any of the Indians at that time told the sheriff, or the posse, they would go with them?—A. No, sir; they said something in Indian, and the Indians all hitched up.

Q. Did you see Jesse Little War Bonnet after you left camp that day? If so, what was he doing?—A. He was riding with us all the time until we turned off to go to Fiddleback. He ran his horse and got in ahead of the posse, and got up with Sheriff Miller and I. We were with the guide. He was riding a dun horse, I think.

Q. I will ask you if you examined any of these Indian wagons that day, or the day following?—A. The day following.

Q. What did you find?—A. We found a lot of dried meat; we call it jerked meat; it was antelope meat; you can tell by the smell of it and the looks of it. We found in three wagons, as near as I remember, either 24 or 27 antelope hides, and one sheep hide.

Q. What was the appearance of these hides?—A. The hides, of course, had all been laid out on top of one another. They were green hides. Some of them, apparently, were what we call a green hide—had not been killed long.

Q. Did you identify this meat as being antelope meat just by looking at it?—A. Smelling it.

Q. Were there any antelope heads?—A. No, sir; I don't think there was; had one fresh sheep hide with brand on.

Q. Did these Indians tell you where they were from, who they were, or where they belonged?

Mr. BURKE. We object to the question unless it relates to some one of these Indians here.

The COURT. He may answer.

A. I heard them tell Sheriff Miller they were Oglala Sioux Indians. Heard them tell each other what creek they lived on, but I could not identify which one. I didn't pay any attention to it.

Q. Do you know where the Oglala Indians reside?—A. No; except what I understand from the other boys; I was never down there.

Q. I will ask you to state—I believe you did state—where Miller was wounded. I will ask you if Miller's death there was the direct result of the wound received at this time, on the 31st day of October, 1903?—A. Yes, sir; there is no doubt of that.

Q. In what county and State did that occur?—A. Converse County, State of Wyoming.

Q. How long did he live after the wound was inflicted?—A. I think about half an hour.

Cross-examination by Mr. BURKE:

Q. When you were at the place marked 2, you say you came in sight of the Indians. What was at the head of that trail of wagons and Indians; what was the first thing you saw?—A. The first thing that came in sight was a wagon and horses, and Indians in the wagon, and ponies—a bunch behind them on both sides.

Q. Who was driving the wagon?—A. I would not say who was driving the first wagon.

Q. You say they dismounted. Where did you see them dismount, and who did you see dismount?—A. We didn't stop to count them; we saw Indians getting off their horses, and getting out of wagons.

Q. Did you see more than two dismount?—A. Yes, sir.

Q. How many did you say you saw get off of horses and get out of wagons?—A. I wouldn't say; I didn't count them; I didn't have time.

Q. Would you say you saw more than two get off their horses?—A. Yes, sir; I wouldn't swear how many there were, because, as I said, I didn't have time to count them.

Q. That was very near the gate as they came through the fence?—A. About a hundred yards around the bend of the road toward No. 2.

Q. Did you see any of these Indians, these nine, at that point?—A. Dismount?

Q. Yes, sir.—A. I would not say there was.

Q. That was about how far off?—A. About 100 yards to the front wagon.

Q. It was daylight?—A. Yes, sir; the sun was up.

Q. Where was this shooting? From the place where you first saw them the day before—was it east or west, or north or south, in a general direction?—A. East.

Q. Then they had driven from the place where you first saw them toward their home at the reservation?—A. I presume that was the road going home. It was in an easterly direction.

Q. How much dried meat, or jerked meat, did you say; could you give any idea?—A. There were three wagons we examined; the least that could have been in any wagon was 400 pounds; they were in what we call gunny sacks.

Q. How much of that did you examine?—A. We opened two or three different sacks and looked into them; three, I am satisfied.

Q. And the hides that you saw had been tanned or were in process of being tanned?—A. No, sir; they were spread out on the bottom of the wagons and covered up with bedding and tents.

Q. Each wagon was loaded about the same?—A. The hides were all in the bottom and the camp equipage and bedding was on the top.

Q. When was it you made this examination, the first or second day?—A. The second day. After the trouble. I would like to correct that. It was not the same evening, the trouble was late in the evening. It was the next morning after that.

Redirect examination by Mr. MECUM:

Q. When you saw these Indians dismounting could you see clear along the road the whole string of Indians at that time?—A. I wouldn't want to say I could see them clear down to the rear. I wouldn't say I could.

Q. After you got up in position did you see any Indians on horses or wagons?—A. Yes, sir. There were a number of Indians down near the sheep pen on horses. I saw one Indian boy on a horse, perhaps, as near as I remember, about half way between that wire fence and the sheep pen, where that mark is put there for a dead horse.

Mr. Mecum at this point offered in evidence certified copies of the complaint and warrant issued thereon in Weston County. These papers are set out at the close of the oral evidence.