
Volume 36
Issue 3 *Dickinson Law Review* - Volume 36,
1931-1932

3-1-1932

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Recommended Citation

W.H. Hitchler, *Necessity of Instructing Jury on Meaning of "Willful, Deliberate and Premeditated"*, 36 DICK. L. REV. 167 (1932).

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Notes

NECESSITY OF INSTRUCTING JURY ON MEANING OF "WILLFUL, DELIBERATE AND PREMEDITATED"

Justice Maxey has very sensibly held that omitting to instruct a jury in a murder case as to the meaning of the words, "willful, deliberate and premeditated", as used in the statute defining murder in the first degree, is not reversible error. *Commonwealth v. Robinson*, 305 Pa. 302, 157 Atlantic 689.

For many years efforts were made by the courts to assign to each of these words a distinct meaning, though probably the inventors of the phrase did not do so. The most famous and frequently quoted effort is that of Justice Agnew in *Commonwealth v. Drum*, 58 Pa. 9.

But many of the more recent cases have followed Chief Justice Lowry in holding that "the true criterion of murder in the first degree is the intent to take life. The deliberation and premeditation required by the statute are not upon the intent, but upon the killing. It is deliberation and premeditation enough to form the intent to kill, and not upon the intent after it has been formed." *Keenan v. Commonwealth*, 44 Pa. 55.

It follows that if an intent to kill is discovered, the required deliberation and premeditation are ipso facto discovered for they always exist where the intent exists. "The fact of purpose being shown, the time necessary for deliberation and premeditation, whether long or short, must have passed just as certainly as the existence of a grain of corn demonstrates that there has been the time necessary to its growth." *Commonwealth v. Bucciari*, 153 Pa. 535.

W. H. Hitchler.