**1A.06E TACIT ADMISSIONS**

You have heard evidence that (name of declarant) made a statement that (insert description of statement) to (name of party who remained silent) and that (name of party who remained silent) did not deny the truth of the statement. [It is for you to decide whether the statement was made. If you decide that it was,] [Y]ou must decide whether the following things are true: (the party who remained silent) heard the statement and understood it; was able to deny the statement and failed to do so; and a reasonable person in the same circumstances would have denied the statement if it was false. If you decide that these things all are true, you may treat the silence of (name of party who remained silent) as an admission of the truth of the statement.

[Insert Instruction 1A.06C or 1A.06D.]

Use Note

This instruction can be used whenever it is claimed that a party has admitted something by remaining silent in the **fact (should this be face?????)** of an accusation.

In a multi-party case, an additional limiting instruction should be added. Instructions 1A.06C and 1A.06D will work well with this instruction, but will have to be modified to state that one person's admission by silence can only be used against certain defendants.

For ambiguous statements by a party in response to an accusation, see Instruction 1A.06F.

Comment

This instruction captures the basic requirements of an admission by silence. See, United States v. Moore, 322 F.2d 1068 (9th Cir. 1975), cert. denied, 423 U.S. 1049 (1976). In order for the jury to use silence as an admission, it must find all the factors specified in the instruction to be true.