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IN THE SUPREME COURT
OF NEW SOUTH WALES
CRIMINAL DIVISION

No. 70372 of 1990
No. 70375 of 1990
No. 70373 of 1990
No. 70377 of 1990



BADGERY-PARKER, J.

MONDAY 15 APRIL 1991

REGINA v. NP41
NP21
NP19
NP15

SENTENCE

HIS HONOUR: Four young men are for sentence today following their conviction by the jury. They are NP41, NP21, NP21, NP19 and NP15. NP15 was found guilty of manslaughter, the other three of murder.

Counsel for the prisoner NP21 has today asked for an adjournment to place some additional material before the court, and I propose, having dealt finally with the other three, to remand NP21 further for sentence on [REDACTED] 1991. As the additional material does not, obviously, bear on the objective circumstances which were fully examined in the evidence at the trial and as I am told I think involves no departure from but only additions to the subjective material previously provided, it appears to me that I can deliver those parts of my judgment which attach particularly to the accused NP21, notwithstanding the intended adjournment and that is the case I will adopt.

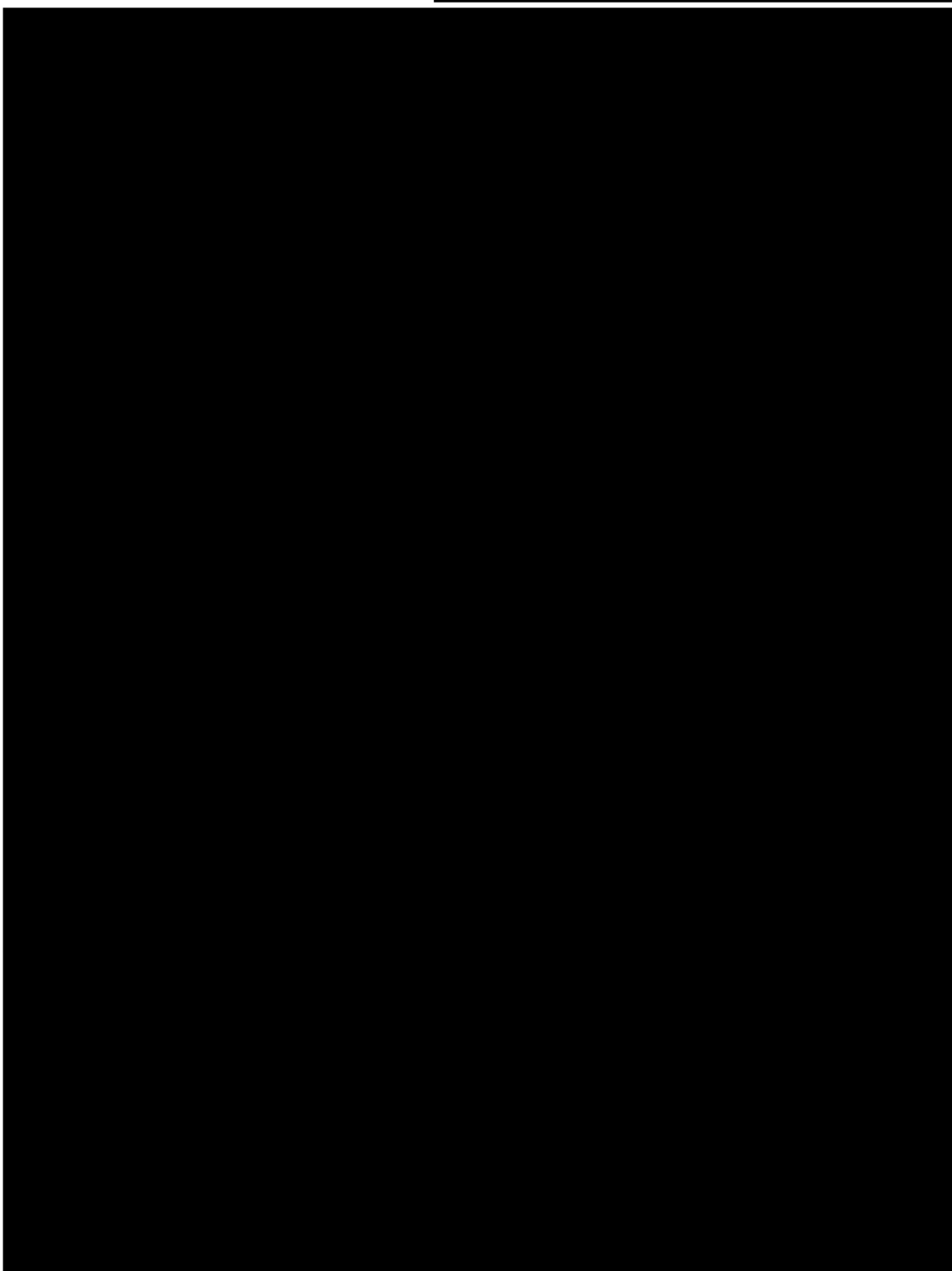
On the evening of 24 January 1990, Richard Norman Johnson

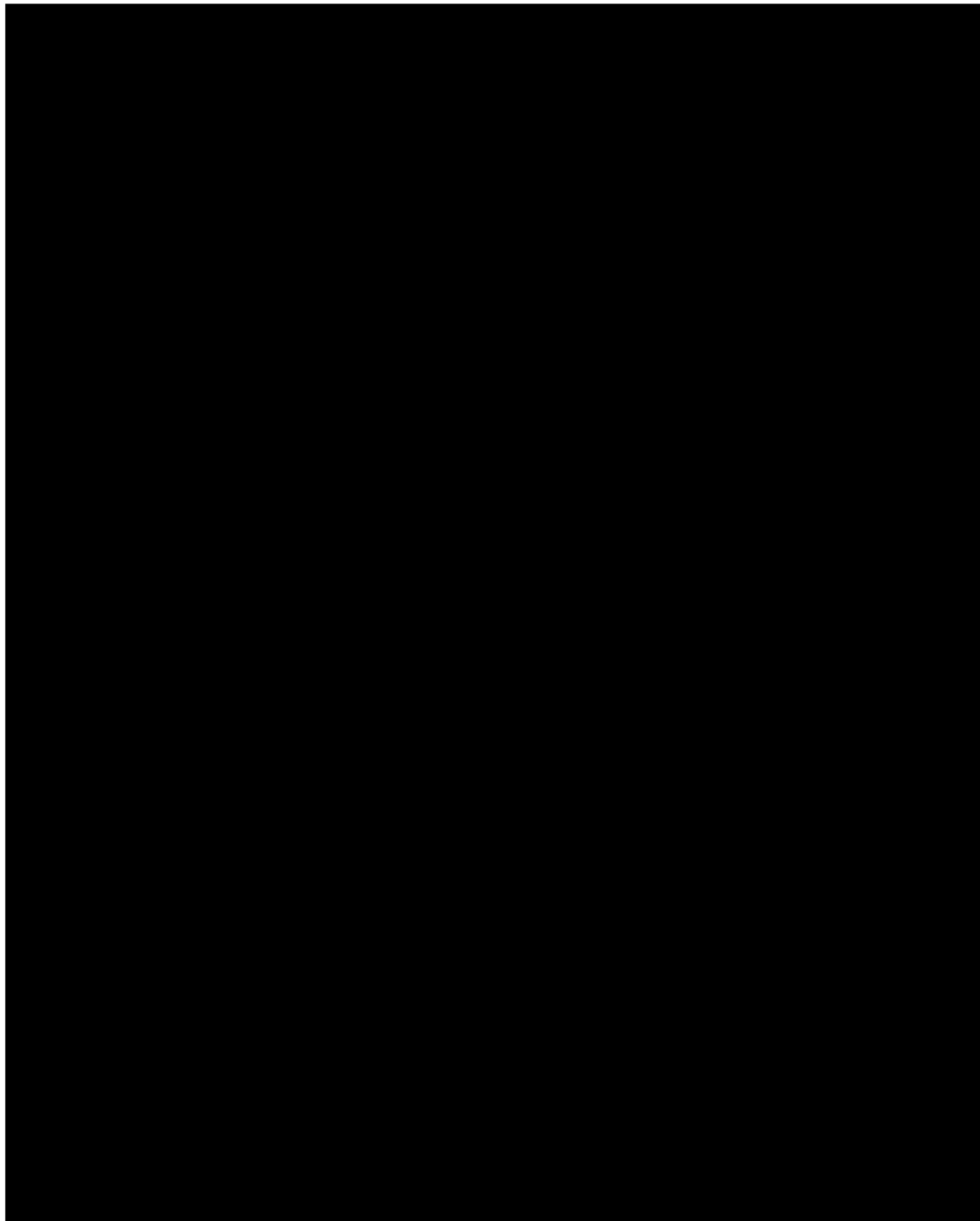
was savagely beaten by a gang of eight young men, and sustained multiple injuries, including a ruptured liver which caused his death later the same evening. His assailants had played basketball together at the nearby Cleveland Street High School, which some at least attended or had recently attended; those who had not knew the others because they all lived in nearby streets. After the game, they set out to walk in the direction of their homes. Their route took them past the toilet block adjacent to Alexandria Park, and one or more went into the toilets where they obtained a telephone number. That number was written on a wall in association with a sexually explicit invitation. The purpose of their obtaining the number was not in fact to engage in any of the activities proposed in the message but to lure a male homosexual to the area in order to assault him. Having obtained the telephone number, they walked through the park to a telephone box at Botany Road where one of the group rang that number, and a conversation took place the upshot of which was that an arrangement was made to meet at or near the toilets at 10.00 pm. The telephone number was in fact that of the deceased, and he arrived at the location at about the appointed time. The eight young men, who had been waiting in the school grounds at a point where they could observe the toilets without themselves being seen, ran towards the toilets whilst their intended victim was inside the building, and when he emerged seven of them (but not NP15) set upon him without mercy. One punched him heavily and without warning to the jaw and he fell to the ground. He was still conscious as most of

the group assaulted him in various ways. At least two of them stomped with one heel on the right side of the victim's head above and behind the ear, causing a subarachnoid haemorrhage and almost certainly unconsciousness. Many of them kicked him in the head and trunk. One at least jumped on the victim's right chest as he lay on his back, landing with his full weight on both knees. One or more such impacts caused multiple rib fractures and the liver injury which was the actual cause of death.

In due course a charge of murder was laid against each of eight young men. In the result, the magistrate came to the conclusion that it was not likely that a jury would convict any of them of murder and indicated his intention to commit them for trial on a charge of manslaughter. One, [NP17], had at the commencement of the committal hearing pleaded guilty to manslaughter; the magistrate accepted that plea and he was committed for sentence upon that charge. He appeared for sentence before Sharpe, J. on [REDACTED] 1990. [NP17], born on [REDACTED] 1973, was aged 16 years, 5 months at the date of the offence. In sentencing, his Honour noted the contents of the prisoner's record of interview and in particular that the prisoner's "admitted intent was to bash and rob the deceased. You admitted to having been one of the last to leave, searching for his ring.". His Honour made no express finding as to that prisoner's particular physical participation. Two of the co-offenders [NP20] and [NP16] eventually gave evidence in the trial of the prisoners who are now for sentence. [NP20] gave evidence that he saw [NP17] stomp on the

victim's head. [NP16] said that he saw [NP17] kick the victim
in the chest and back. [REDACTED]

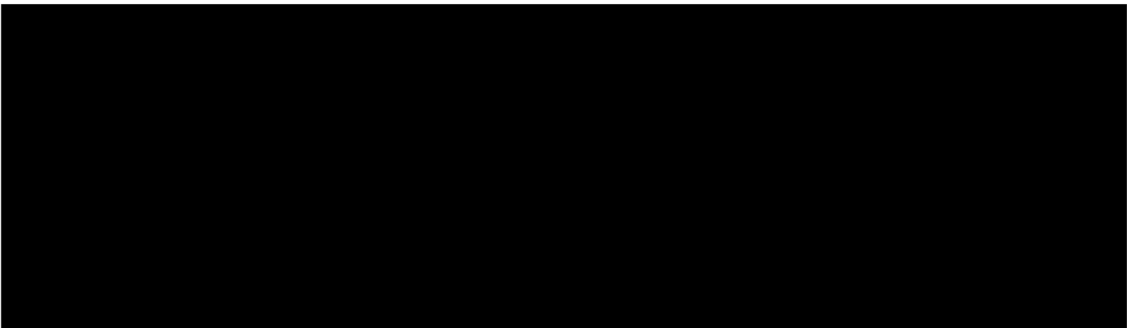


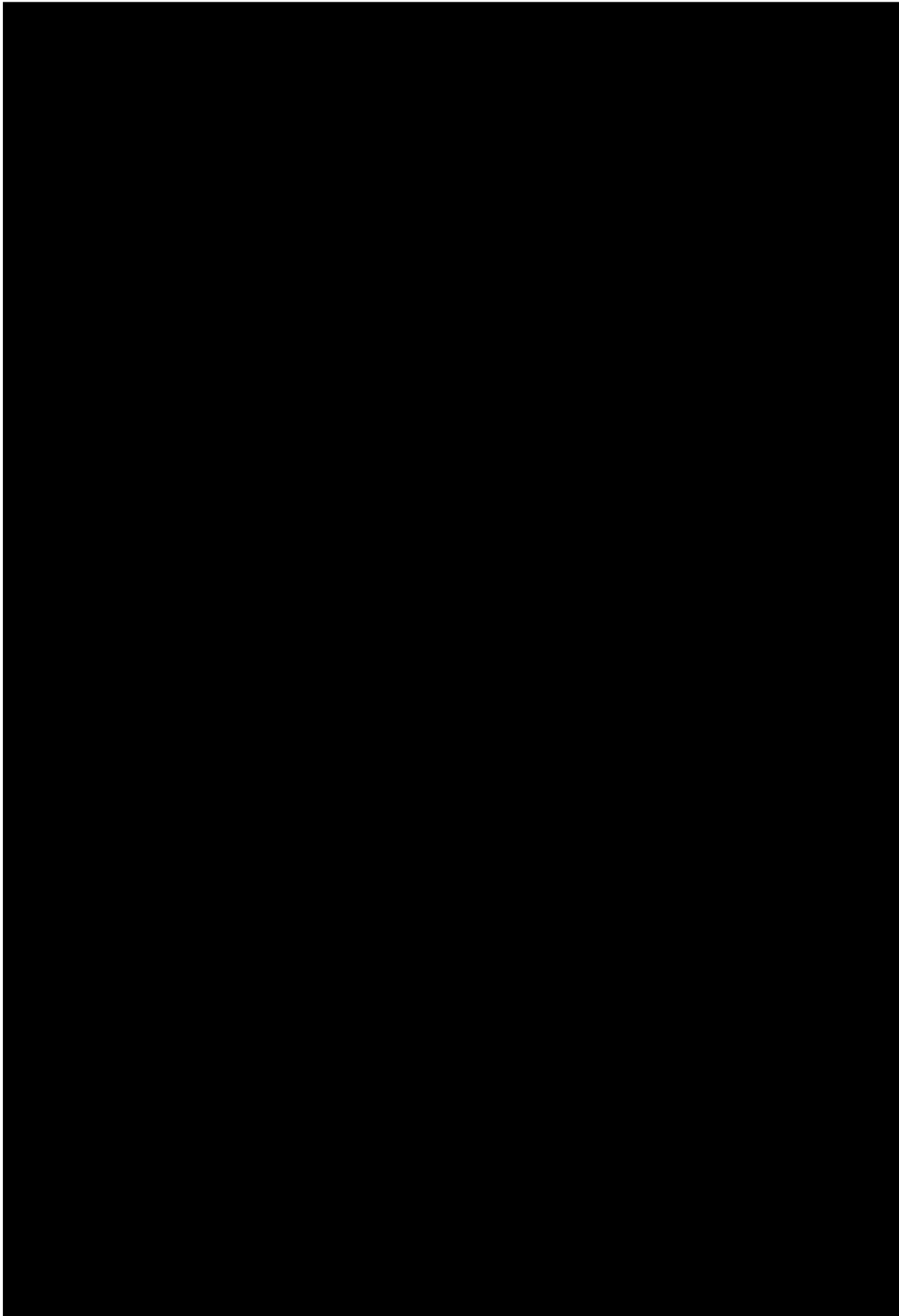


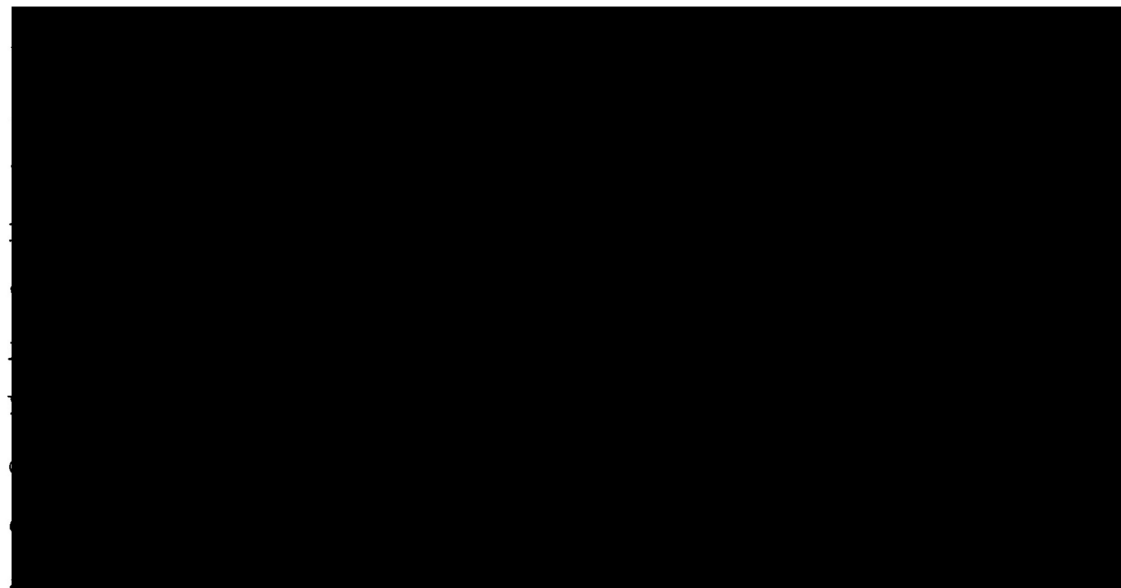
The other seven were committed for trial on a charge of manslaughter only, and initially a bill was found for that charge, and a draft indictment for manslaughter notified to all of the accused. Four of them then indicated their

willingness to plead guilty and the matter as it concerned them was listed before Wood, J. on [REDACTED] 1990 so that their pleas might be taken. Of those four, one, [NP19] [NP19], changed his mind at the last moment, and pleaded not guilty. He was remanded for trial, ie. on a charge of manslaughter. [NP16] pleaded guilty to manslaughter and was sentenced the same day. [NP18] and [NP20] pleaded guilty to manslaughter and were remanded for sentence to [REDACTED] 1990.

[NP16], born on [REDACTED] 1974 was aged 16 at the date of the offence. Sentencing him, Wood, J. noted that that prisoner had "made frank admissions of his own involvement, in the course of which he acknowledged kicking the man in the back and in the stomach. In one respect the account was not complete since it now appears from comparison of marks on the head of the deceased and the Asics basketball shoes which the prisoner was wearing, that he kicked him at least once in the head." As I have mentioned, [NP16] gave evidence in the trial of the young men now before me and admitted his participation in the assault. He said, "I kicked him in the stomach and back", (p.123) but he denied any intention to inflict grievous bodily harm. [REDACTED]

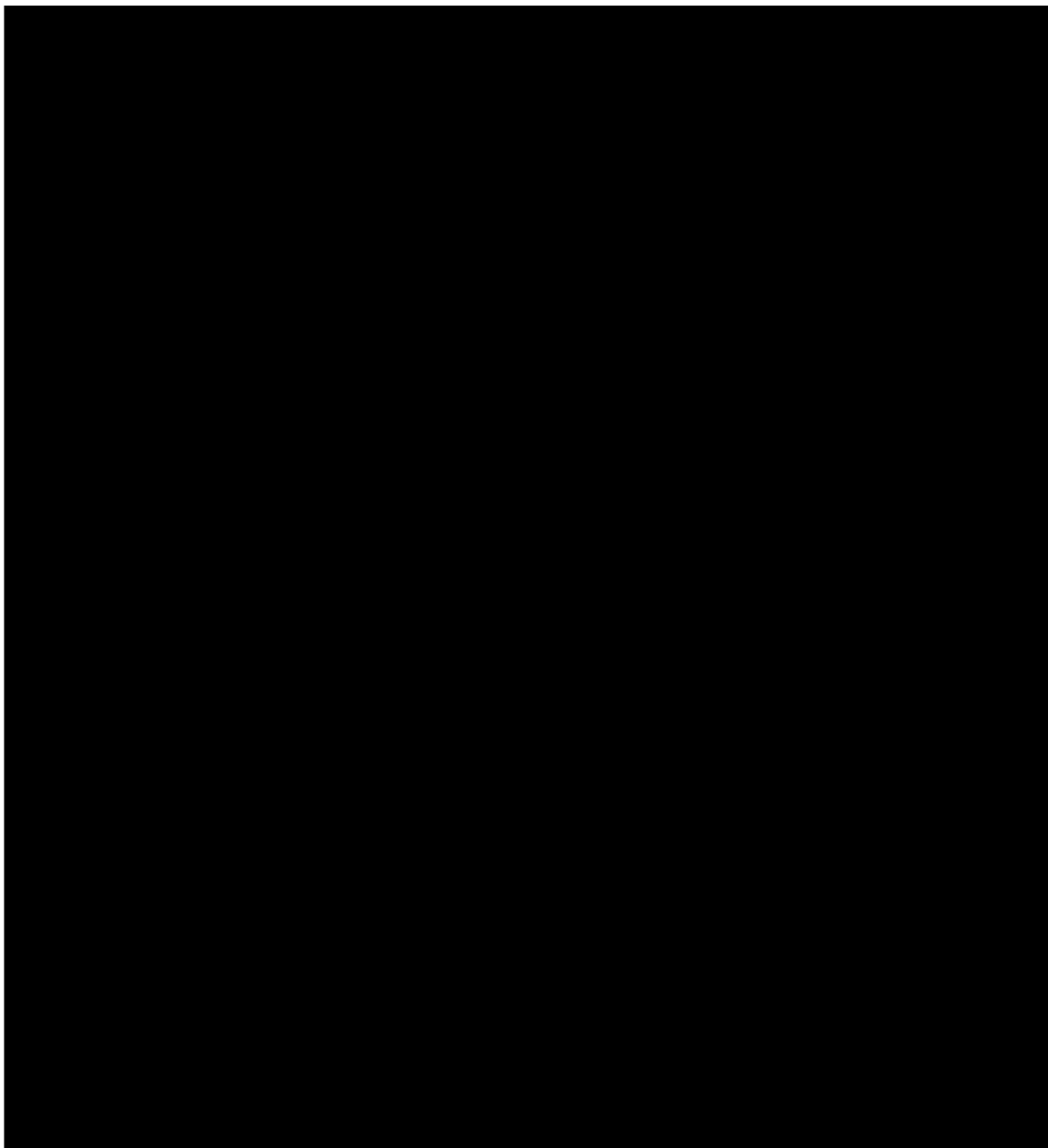






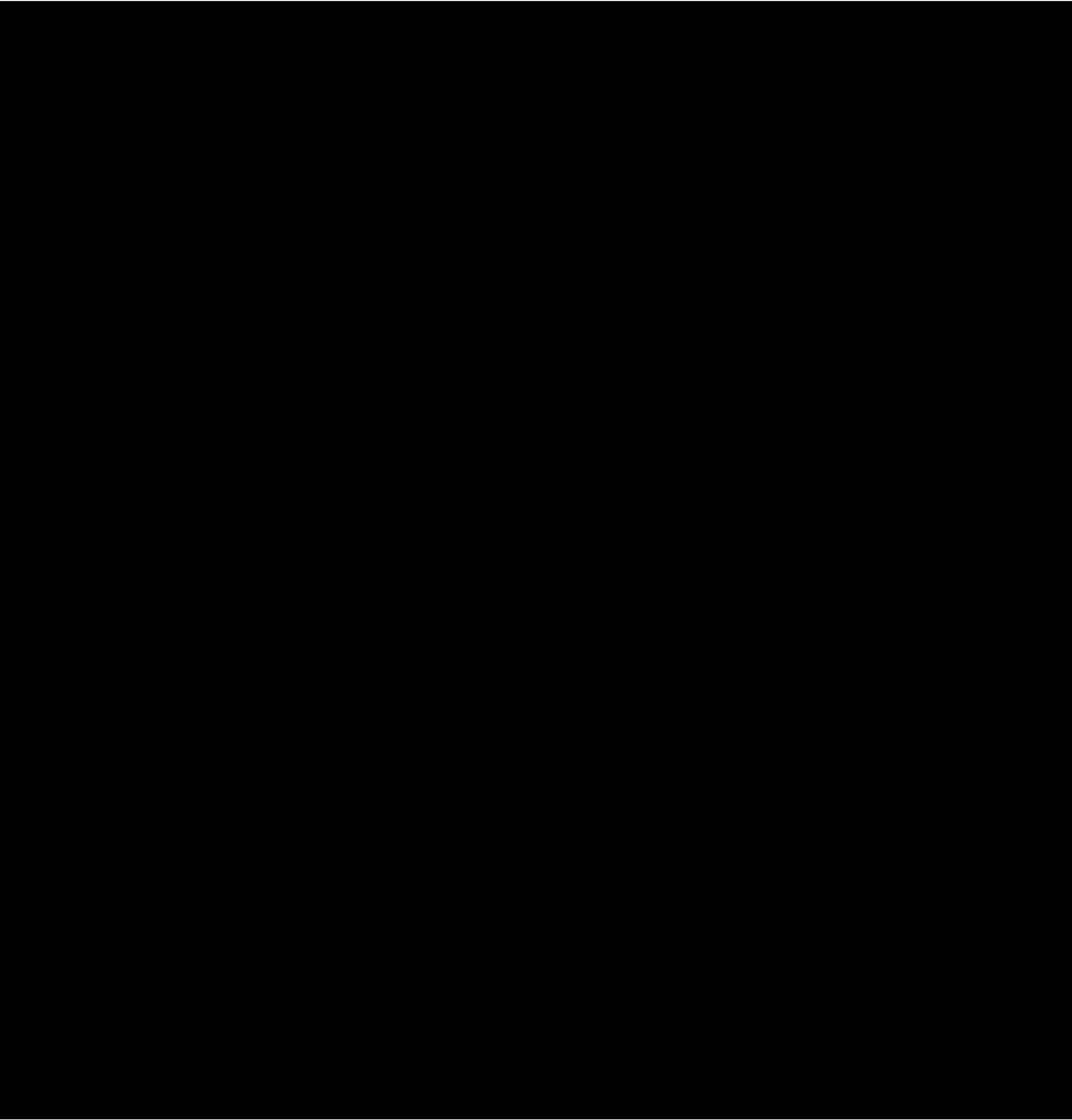
[NP18] and [NP20] came before Wood, J. for sentence on []
[] 1990. [NP18], born on [] 1973, was aged
16 years, 9 months at the date of the offence. Wood, J. noted
that [NP18] admitted in his record of interview to kicking the
deceased twice in the region of the right ribcage. His Honour
made no finding of any further physical participation. The
evidence of [NP16] and [NP20] attributed to him a more
substantial role. According to [NP20], [NP18] participated in
the making of the telephone call - it was he who dialled the
number. [NP20] said that he saw [NP18] kick the deceased in the
manner to which [NP18] himself admitted, but [NP16] described
[NP18] as having "jumped with his knees on the stomach and
kicked him", at a time when the victim was lying on his side.
In cross-examination he said of that conduct that it stuck in
his mind because it shocked him. It had not been like
anything else that had gone before. []

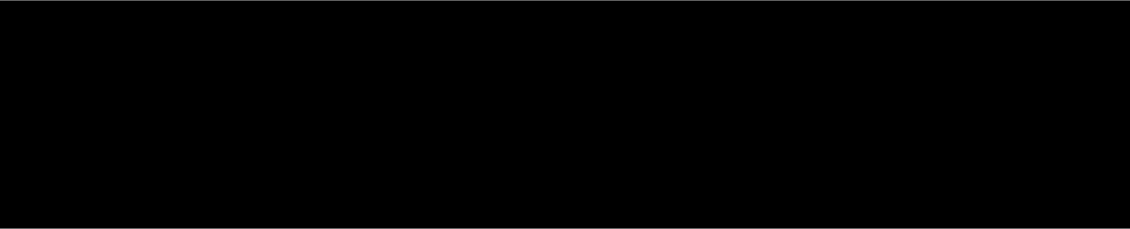




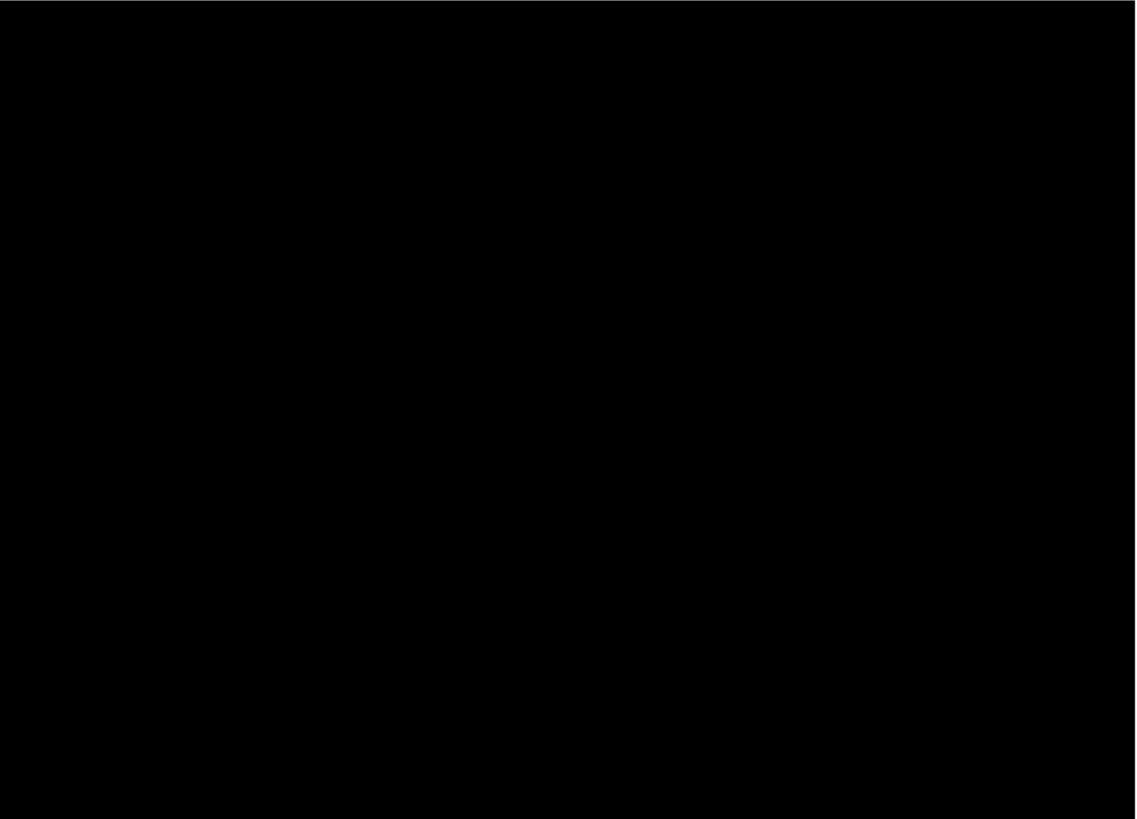

[NP20], born on [REDACTED] 1973, was aged 16 years and 4 months at the date of the offence. Sentencing [NP20], Wood, J. noted that that prisoner "admitted to punching the deceased two or three times on the body and also kicking him twice". He made no other finding as to [NP20]'s physical participation. Giving evidence in this trial, [NP20] admitted that he was the first person to strike the deceased - it was

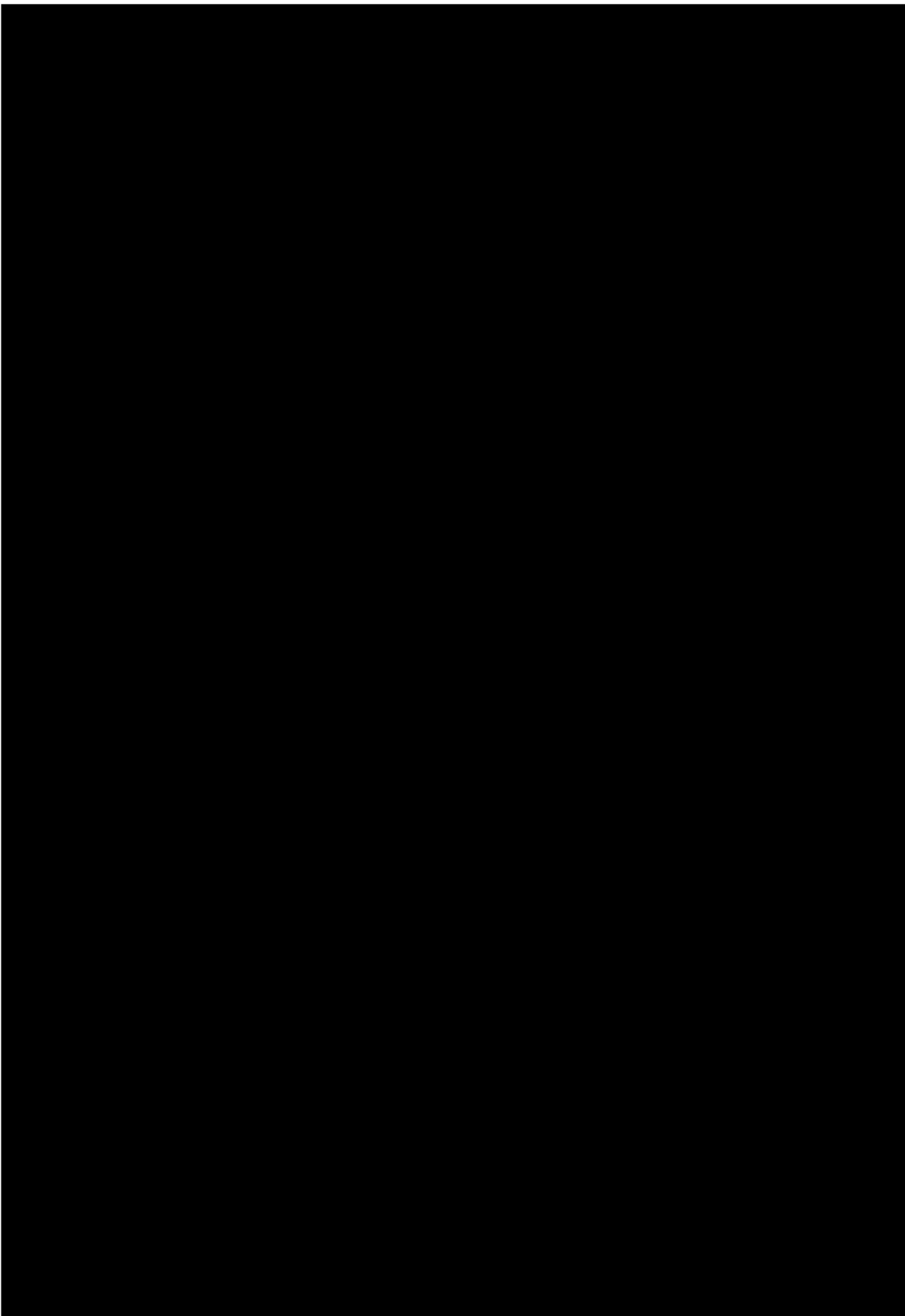
he who "king hit" him, knocking him to the ground. Then he said "everyone just kicked him" and he said that he himself kicked the deceased in the right chest area. In cross-examination he agreed that in one record of interview he had admitted kicking the deceased in the stomach. He said that in all he kicked him twice but could not clearly remember upon what part of the body. The witness [NP16] said that he saw [NP20] kick the deceased a few times. [REDACTED]

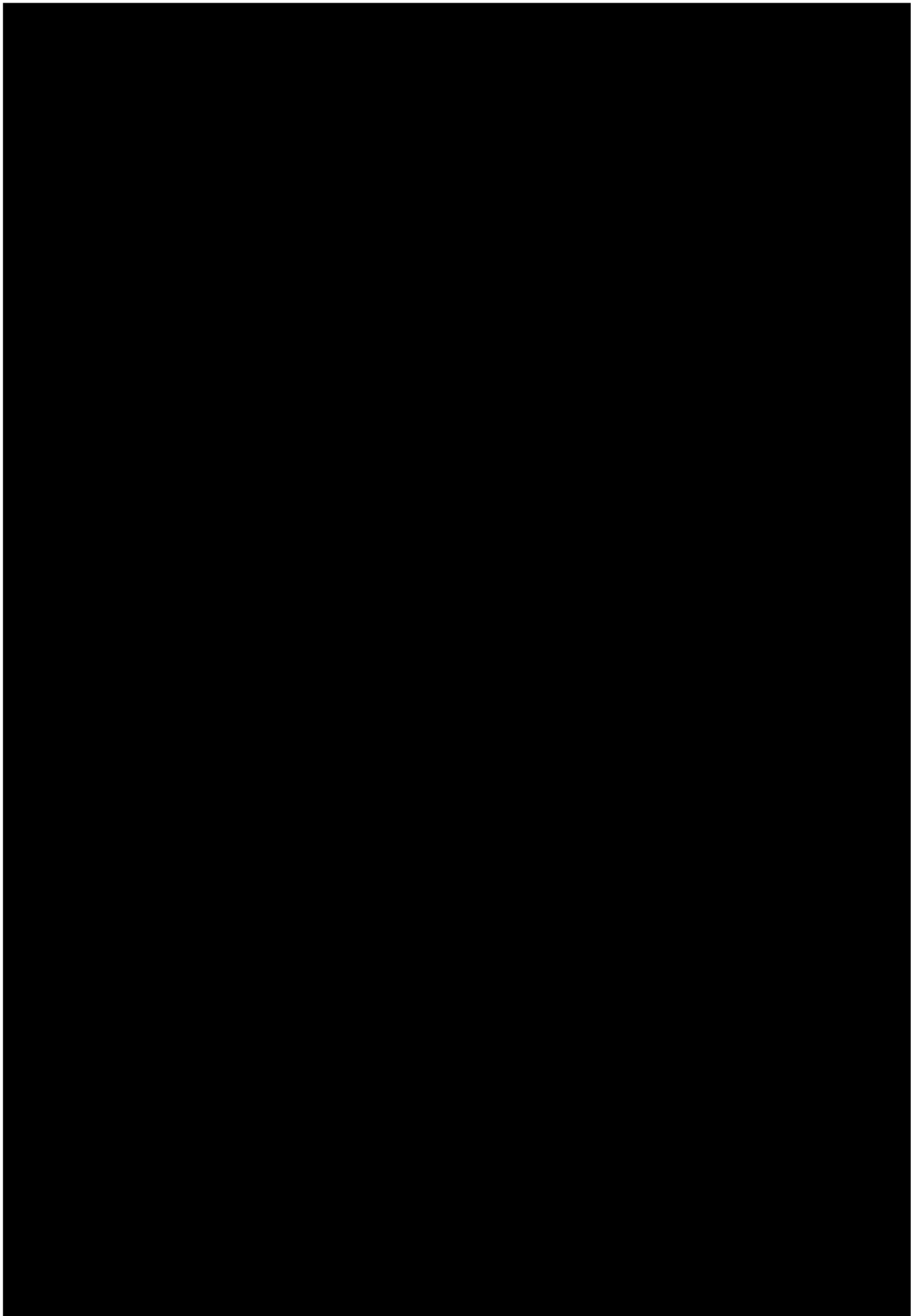


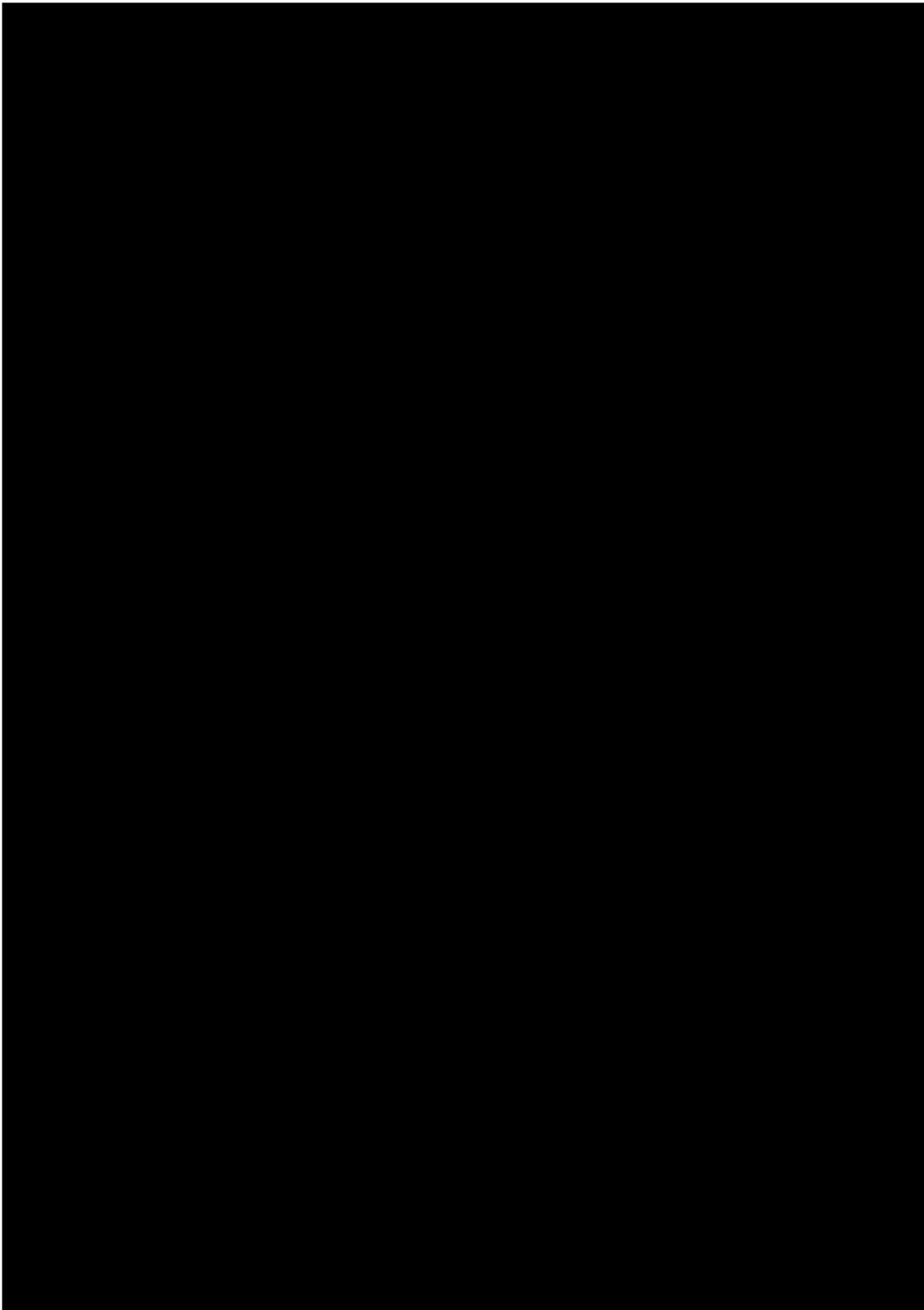


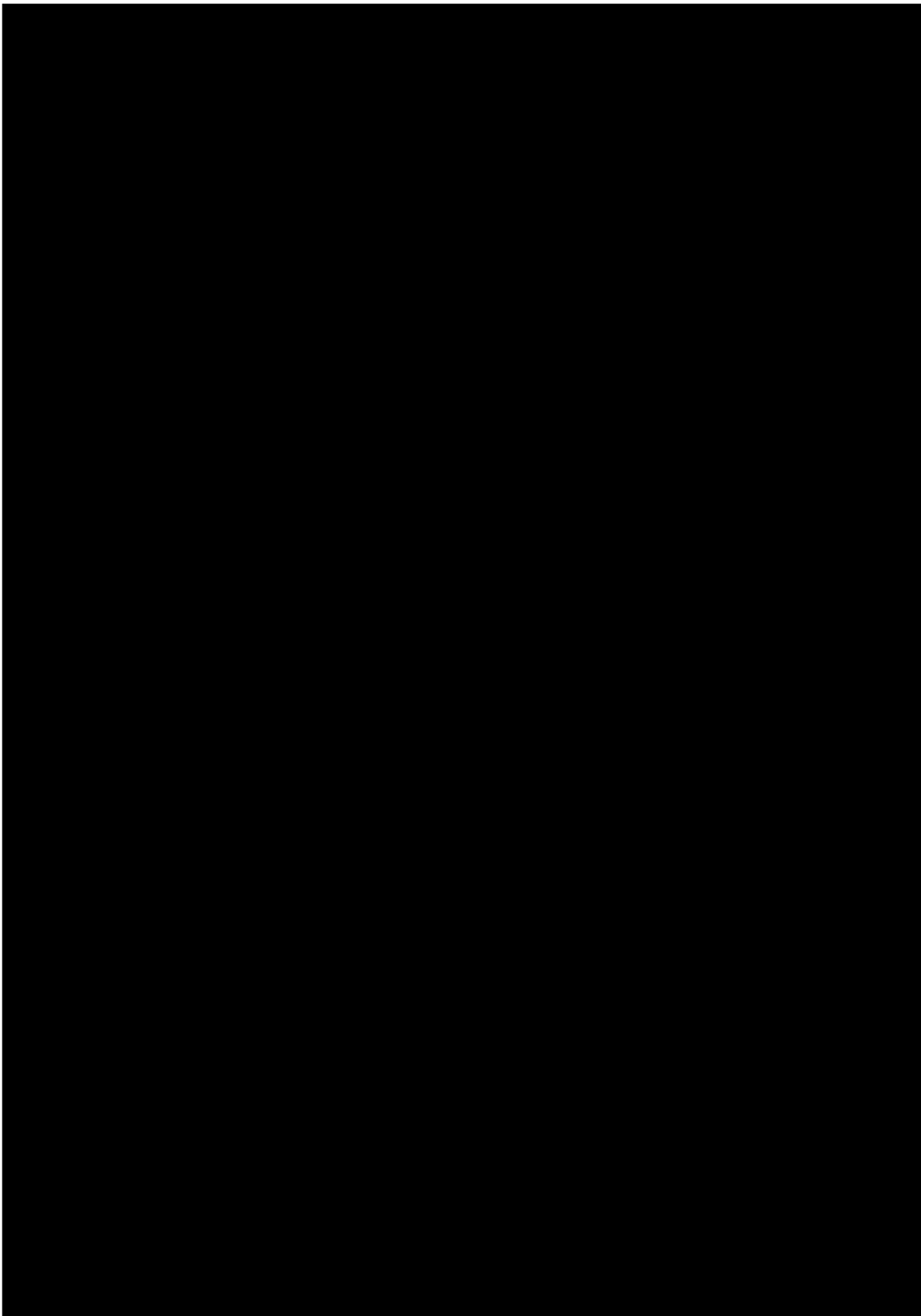
The trial of the other four, upon a charge of manslaughter, was fixed for 29 January 1991. Early in December 1990, the Crown advised the court (the accused had been notified already) that it was intended to present an indictment for murder. The trial which commenced on 29 January 1991 but was aborted on 6 February; a new trial began the same day and concluded on Saturday 23 February 1991 when the accused , and were found guilty of murder and the accused was convicted of manslaughter.

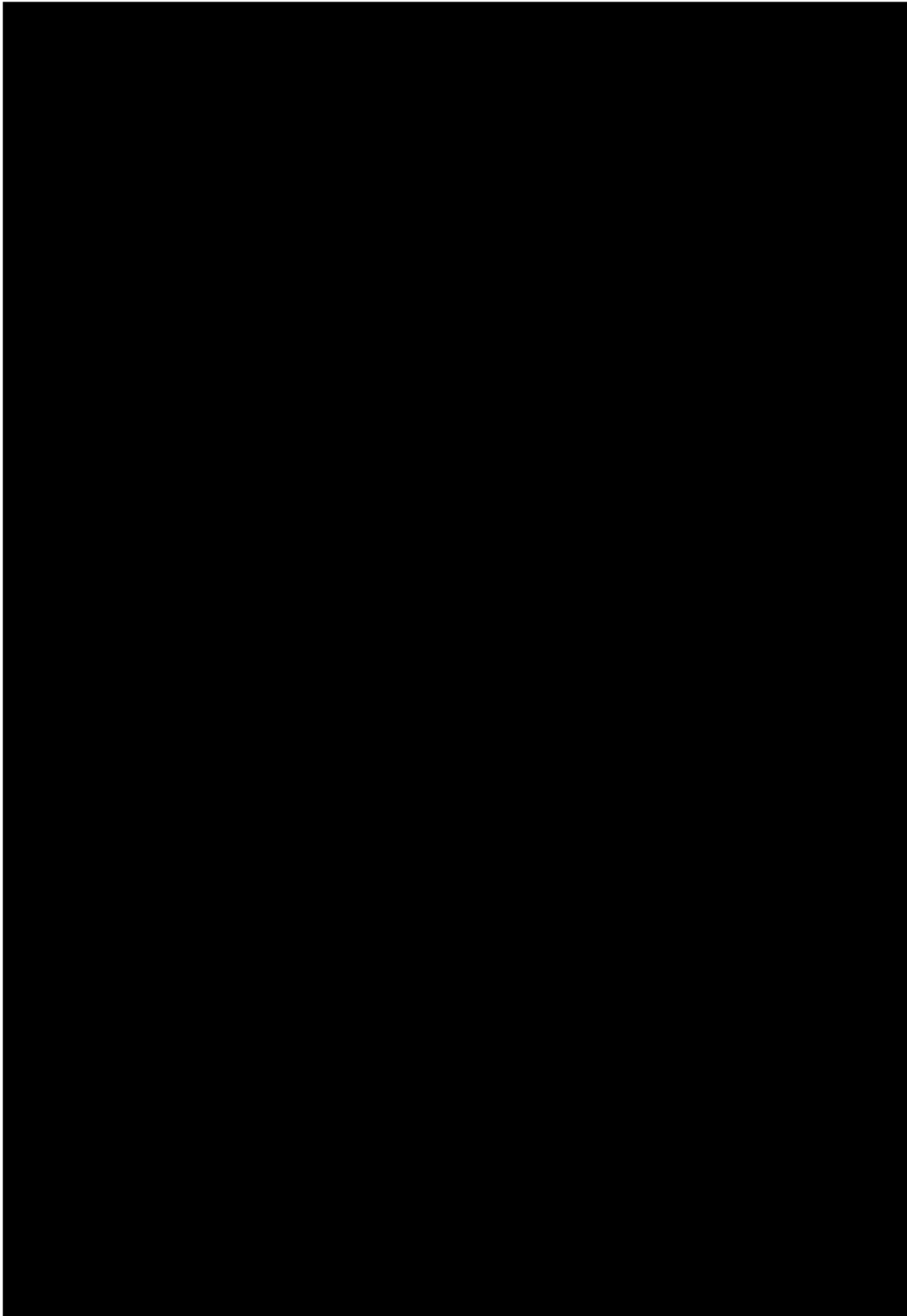




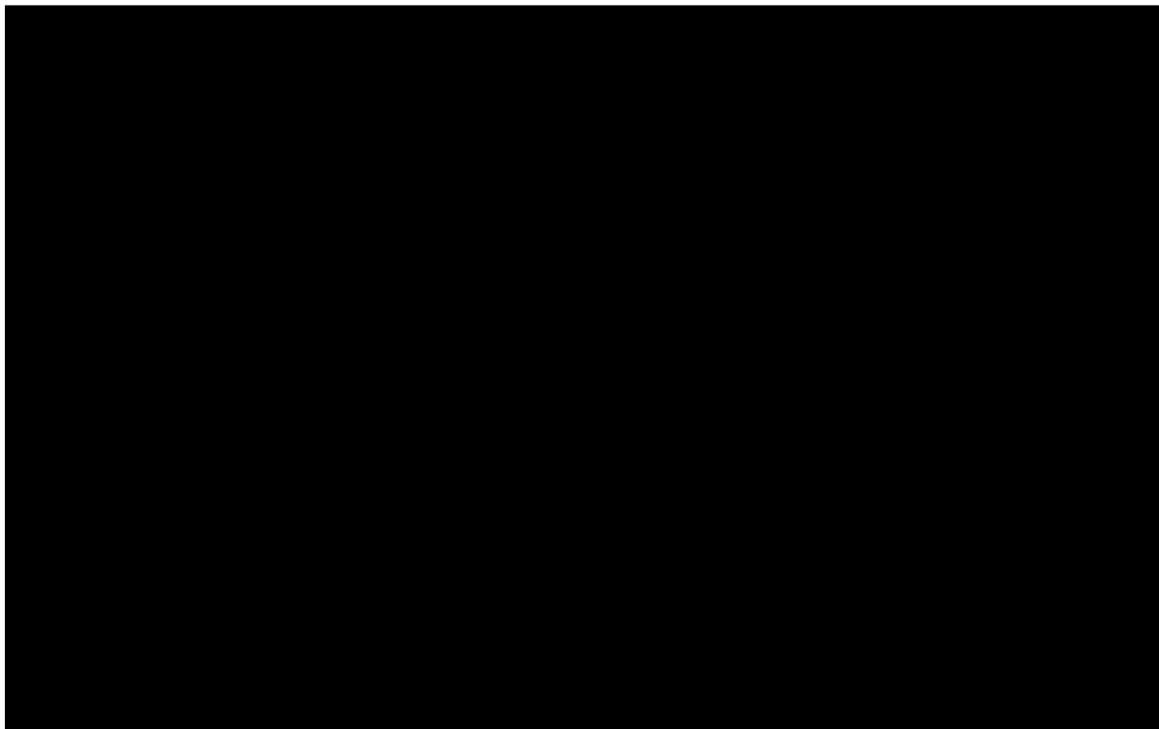






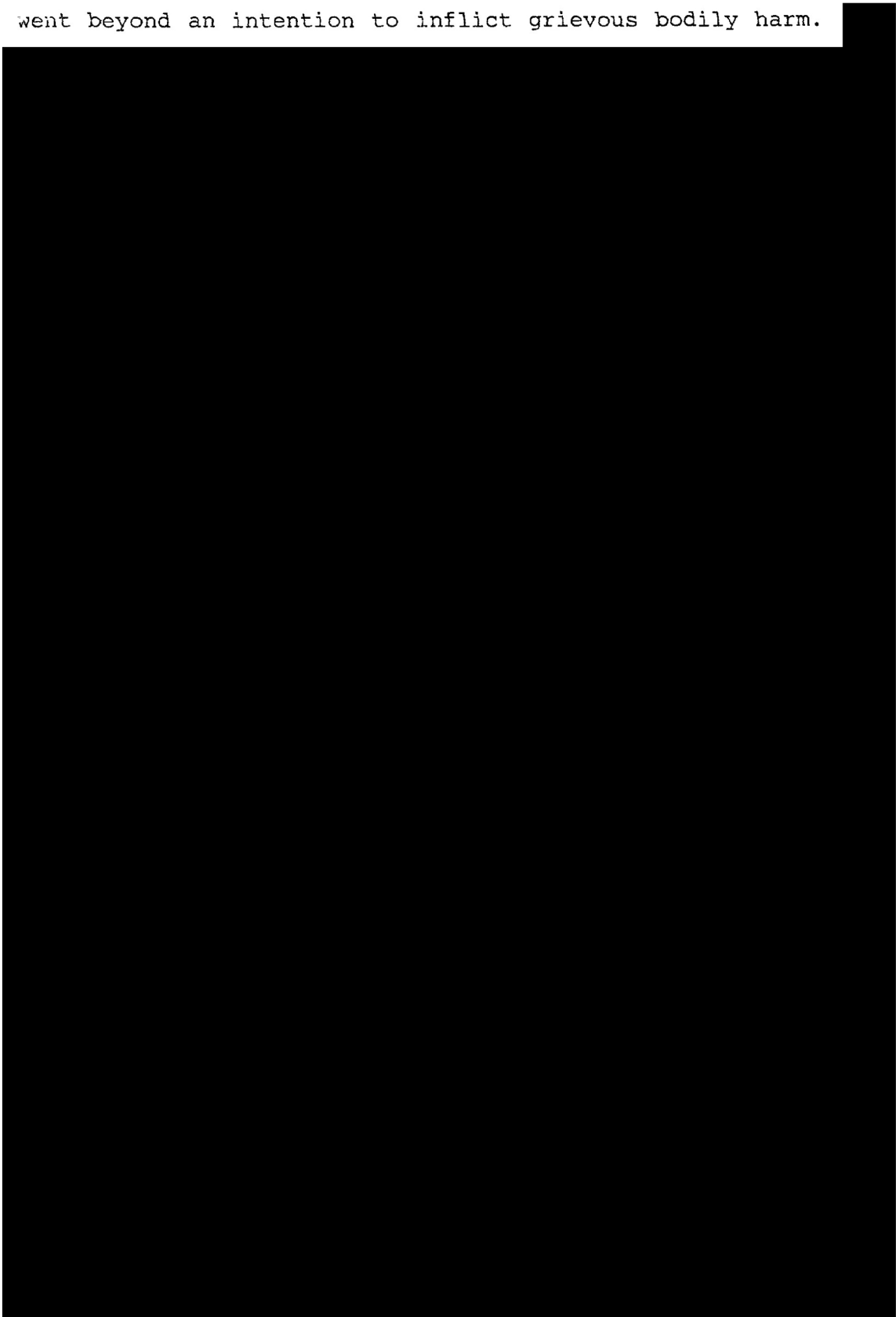


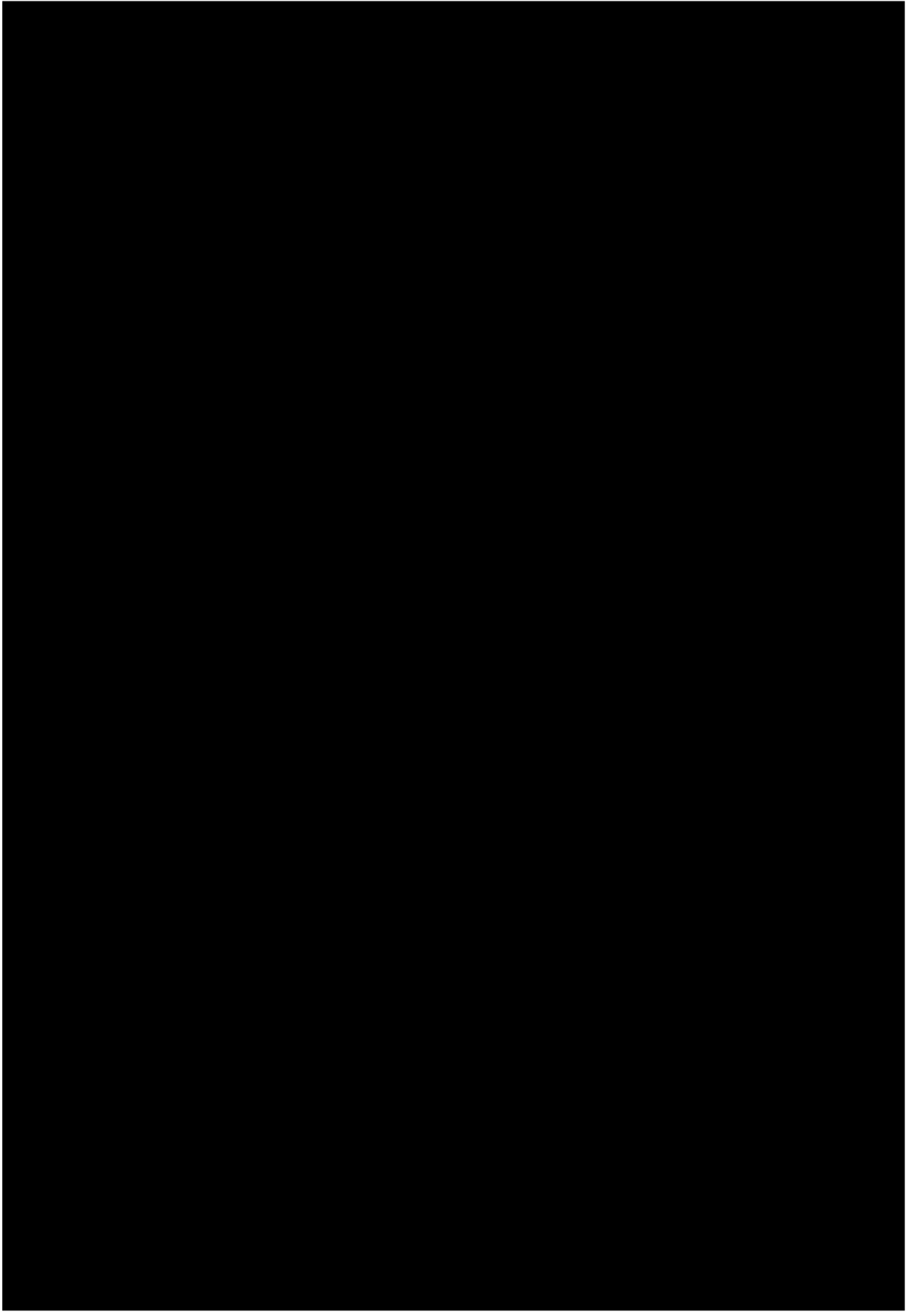


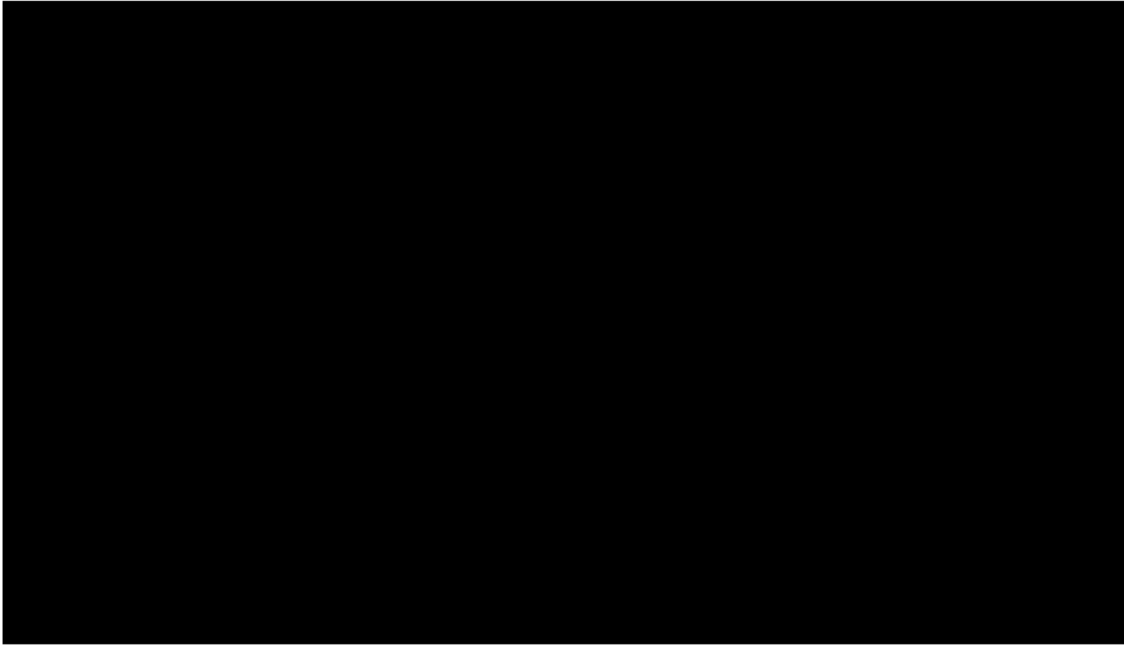


Undoubtedly, the crime now under consideration has some features which drive one towards a conclusion that the crime falls into the most serious category. Pre-eminent among those considerations is the cowardly nature of the gang attack, eight men against one; the degree of premeditation involved in the obtaining of the telephone number with the intention of luring the victim to the scene; and the sheer savagery with which the attack was pressed home, evidenced not by the obviously incomplete admissions of the participants but by the total picture of the injuries done irrespective of by whom. On the other hand, the case was not presented to the jury as one where the evidence established an intention to kill and although it would have been open to the jury to find that that intention existed, their verdict does not establish such a finding. For my part, I would not be satisfied beyond reasonable doubt that the intention of any of the offenders

went beyond an intention to inflict grievous bodily harm.







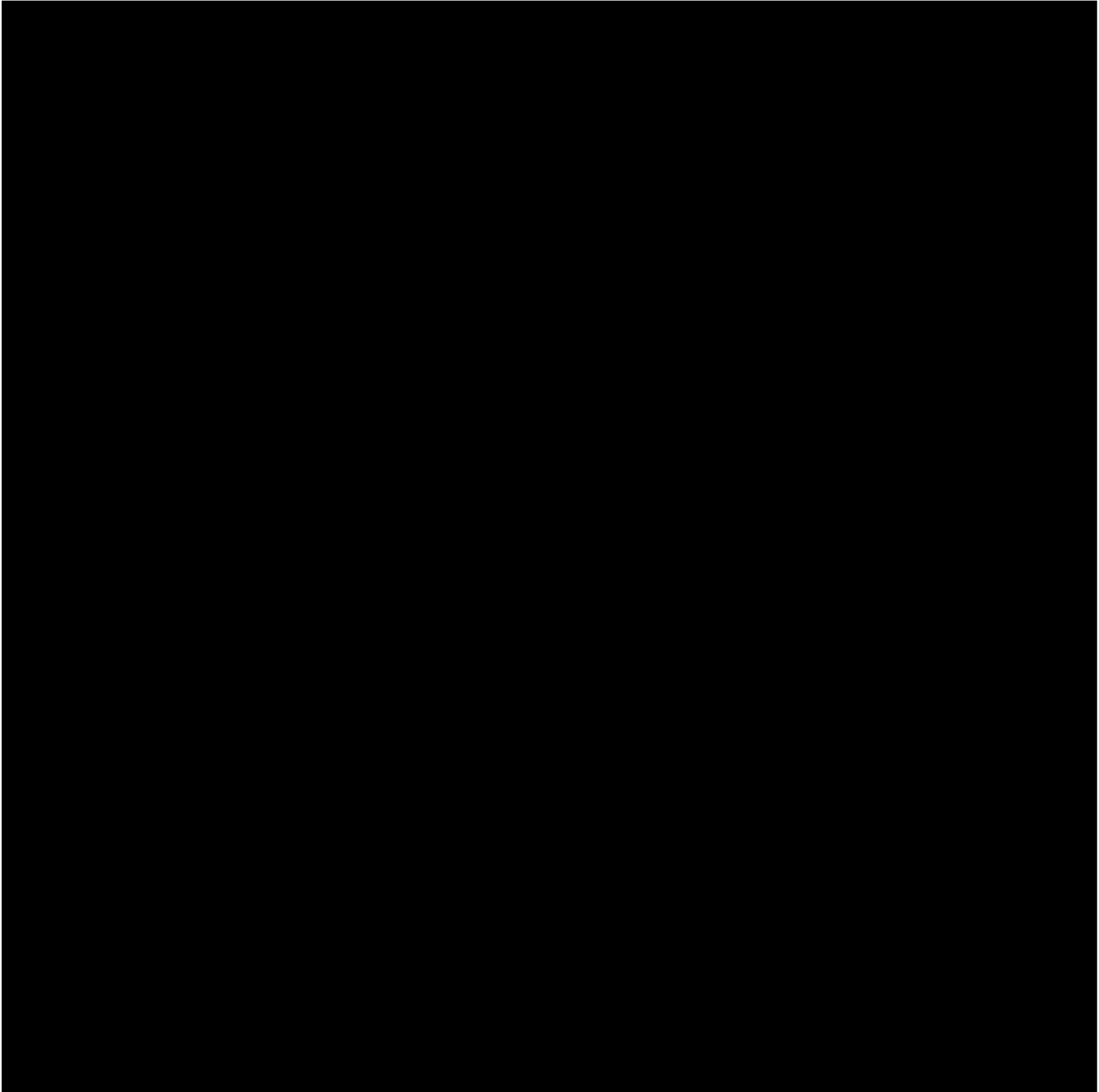
7. The sentences imposed must be such as will demonstrate with the utmost clarity that the community will not tolerate violence of this kind. Wood, J. was prepared to accept that [NP20] and [NP18] had been outraged by the conduct of homosexuals in that public toilet - his Honour commented:-

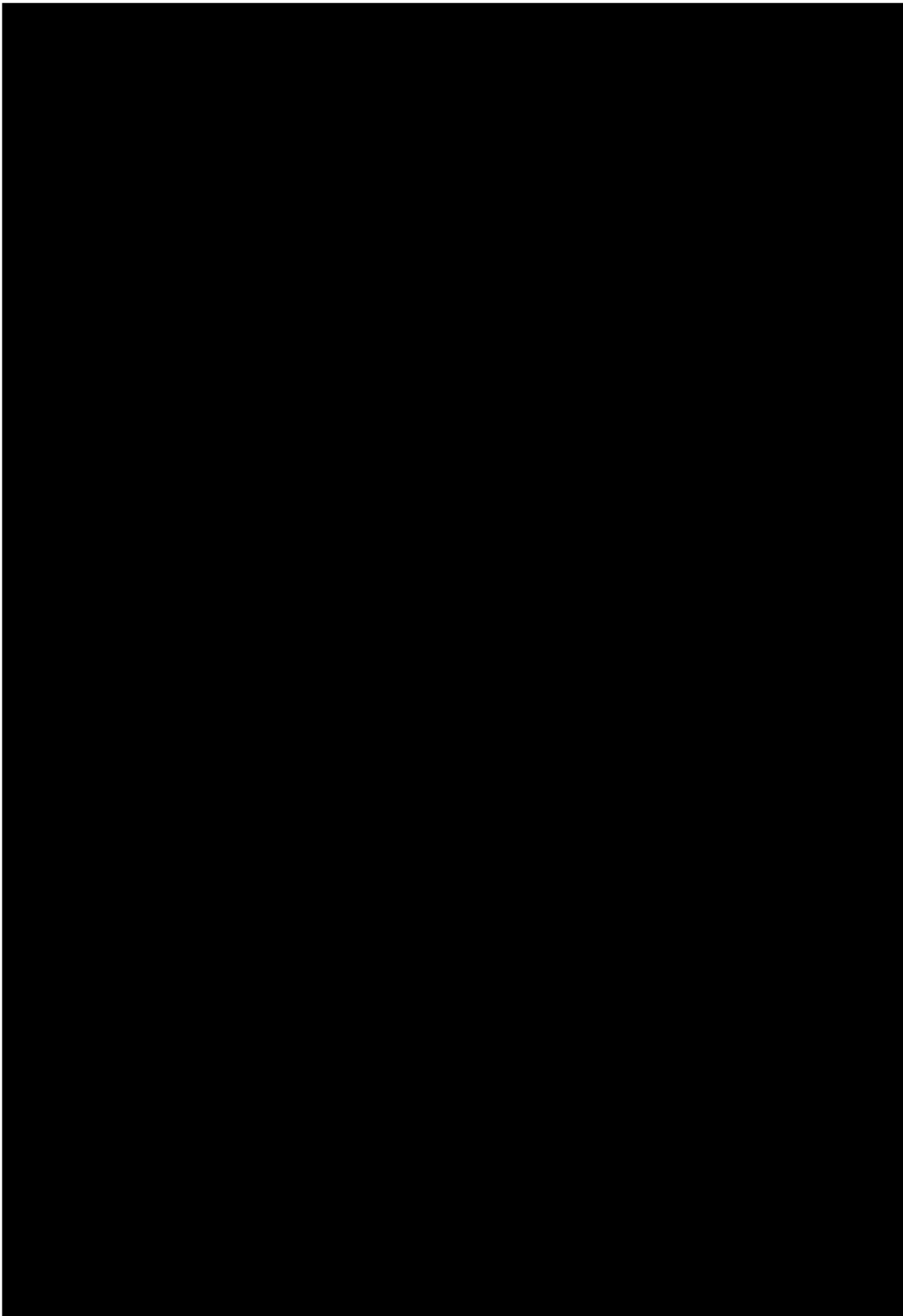
"But that provided no excuse for them seeking their revenge or dealing out punishment of their own volition. If homosexuals or others are engaged in unacceptable and unlawful conduct in public then it is for the law enforcement authorities to take action. It is not for young persons to respond in any fashion to it."

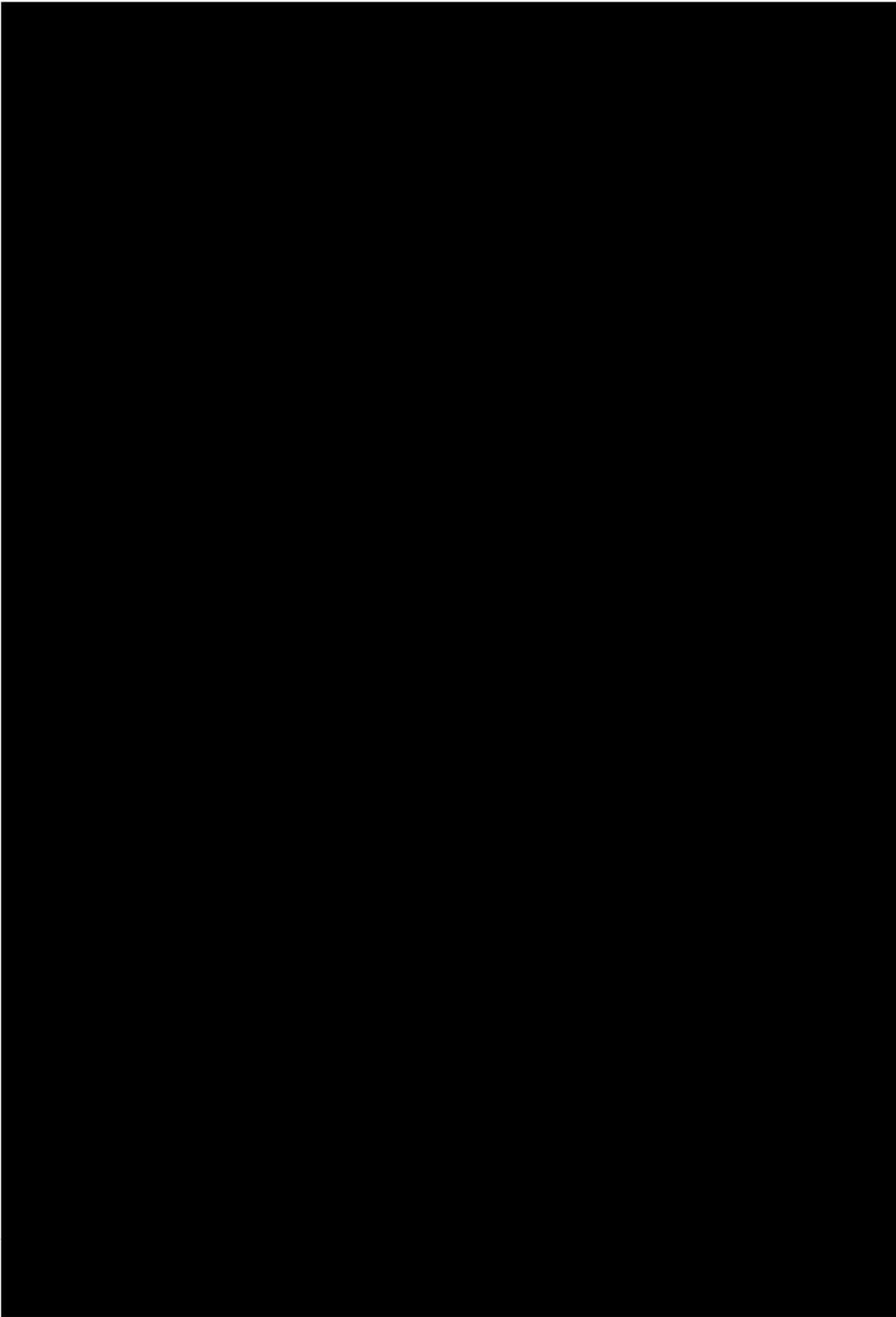
If it be accepted, as I would be prepared to accept, that the motivation for the original plan to lure Mr. Johnson to the scene and assault him was not a desire for violence for its own sake but related to anger at the conduct of homosexuals in the toilet, that nevertheless does not mitigate the seriousness of the savage attack that followed. It is important that the court should by its sentences make clear

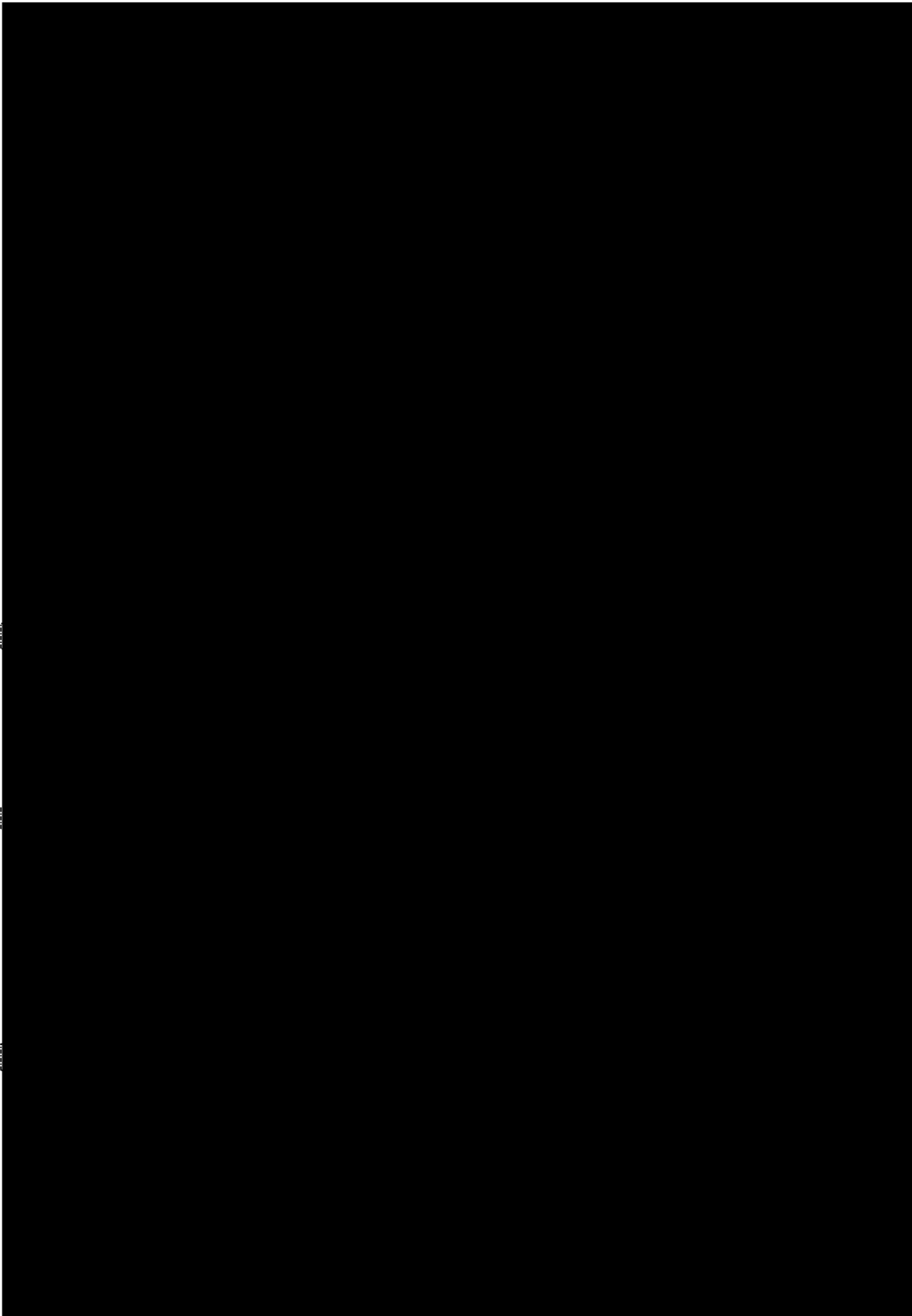
that every group in the community, whether defined by age, gender, race, religion, political viewpoint, sexual preference or otherwise is entitled to and will receive the full protection of the law. Our society can never be permitted to develop into one where any member of it is regarded as fair game by reason of his departure in whatever fashion from some norm. Hence, the factor of general deterrence must in this case be given a great deal of weight.

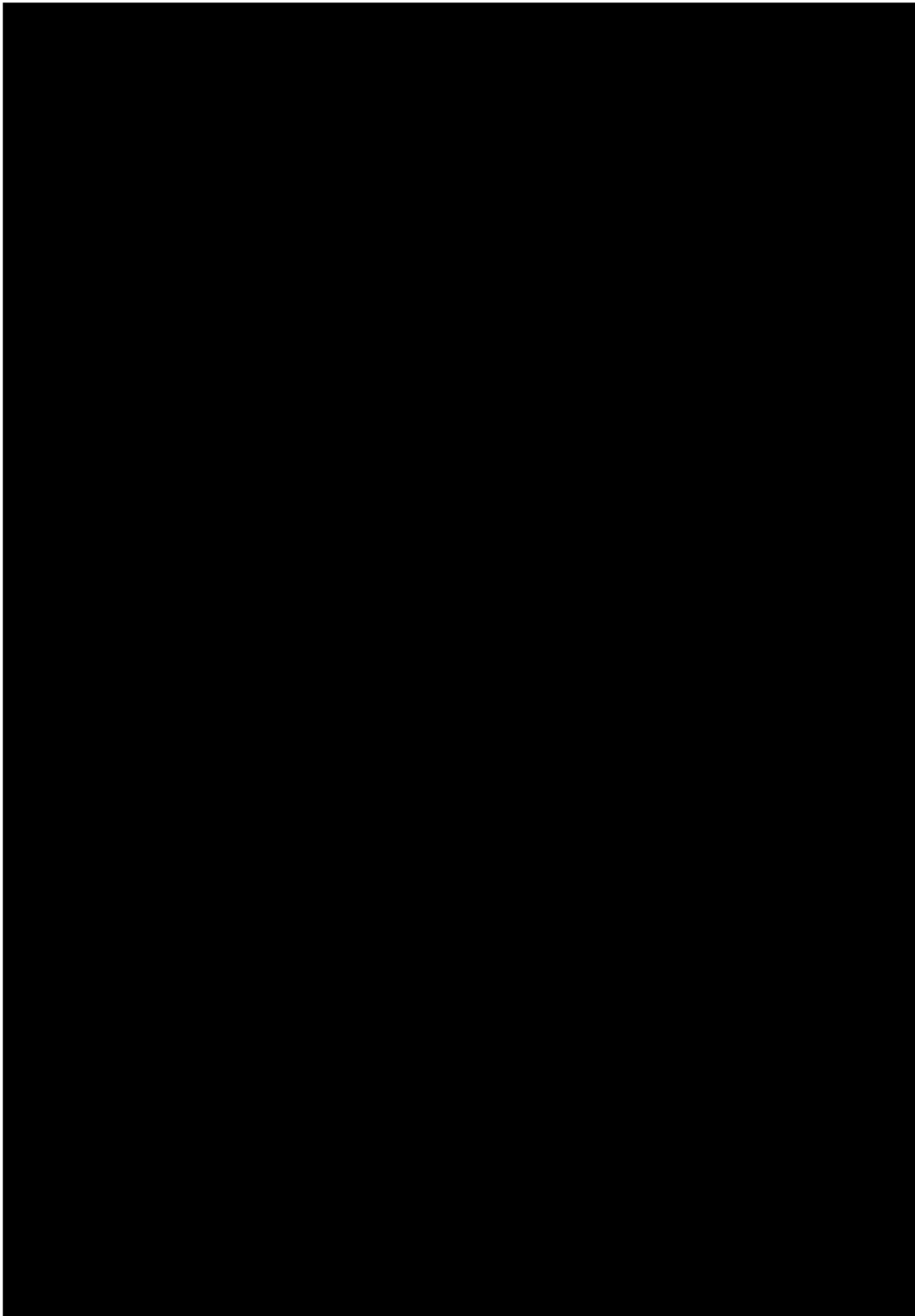
I turn now to the evidence in order to ascertain in

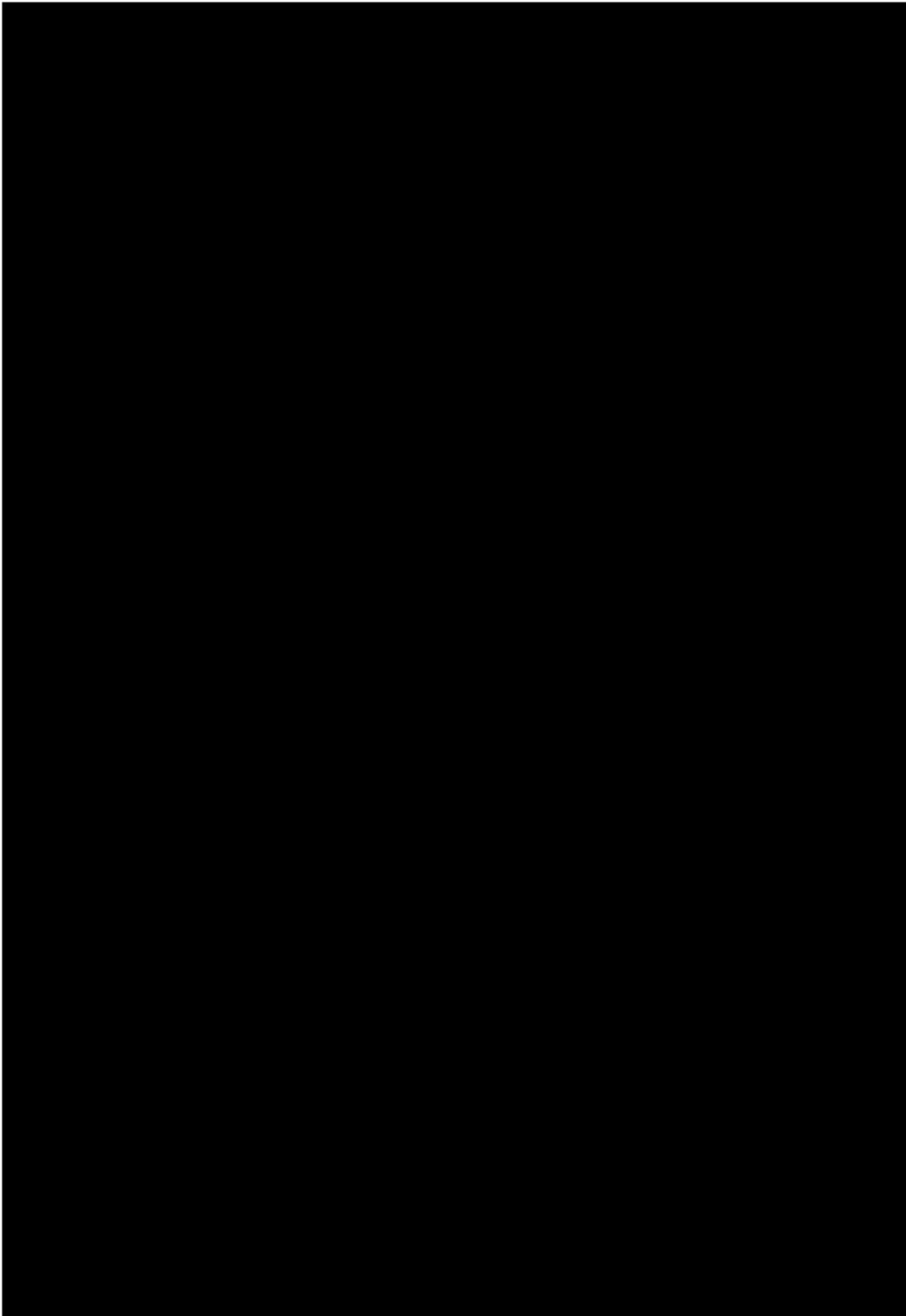


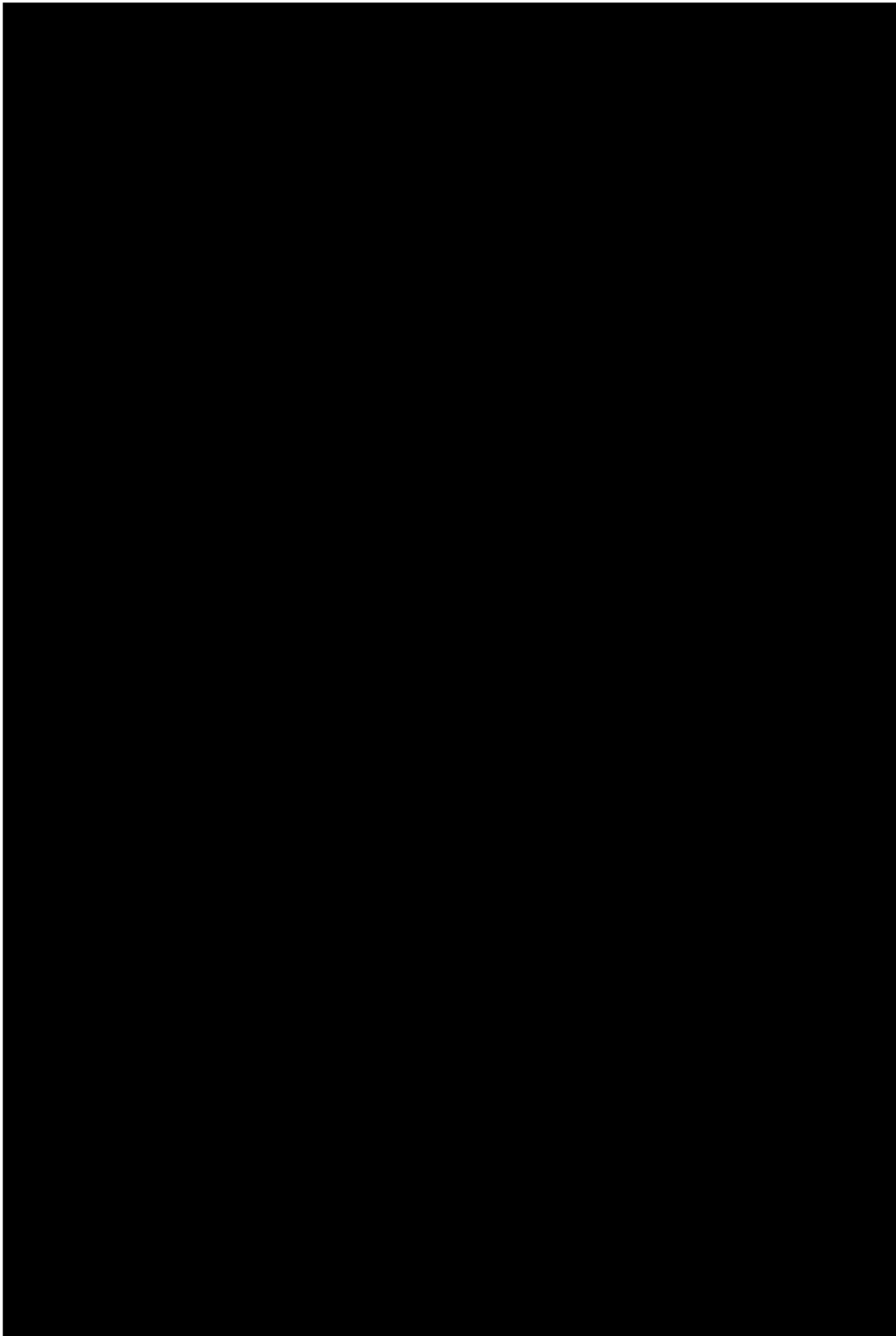


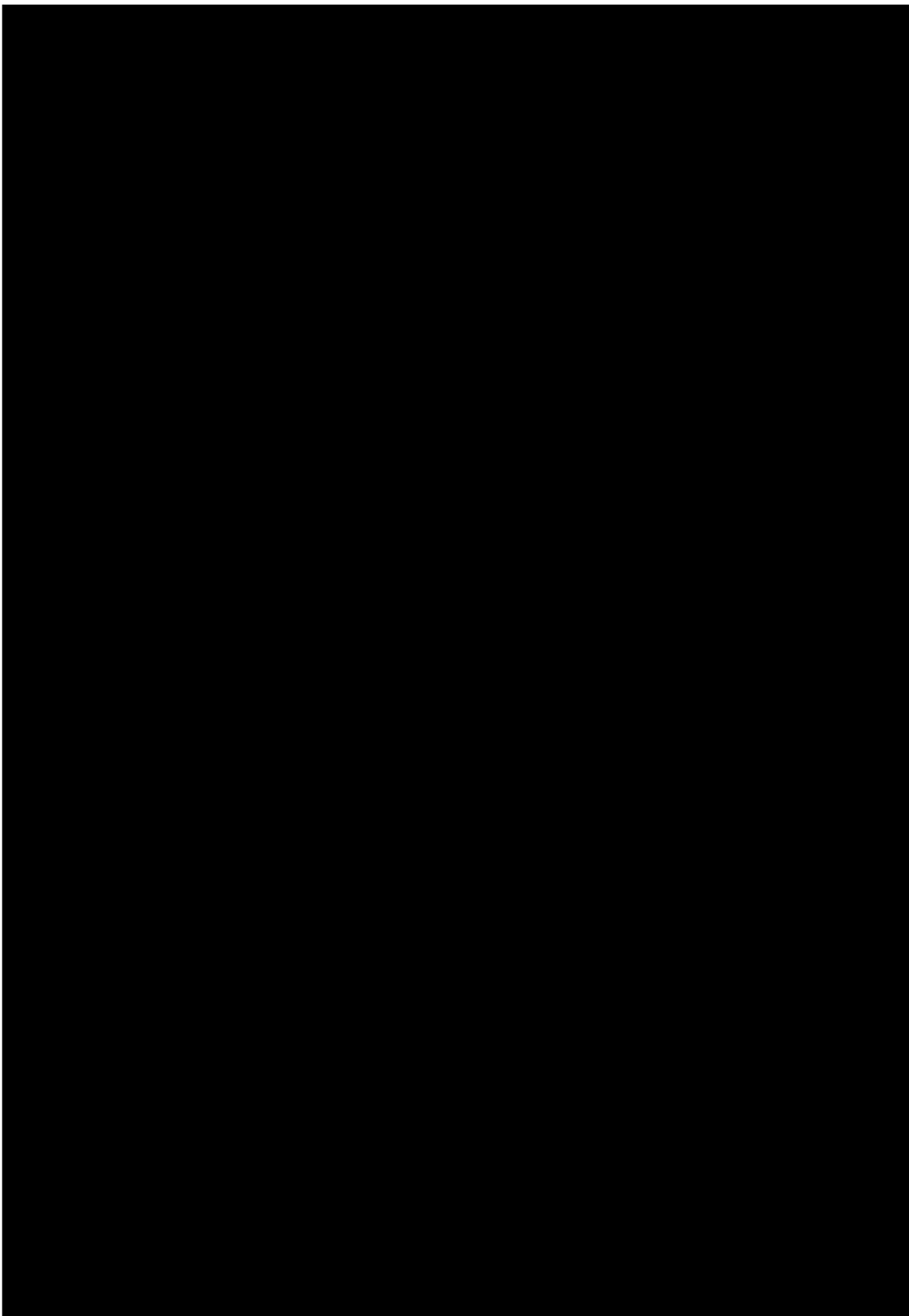


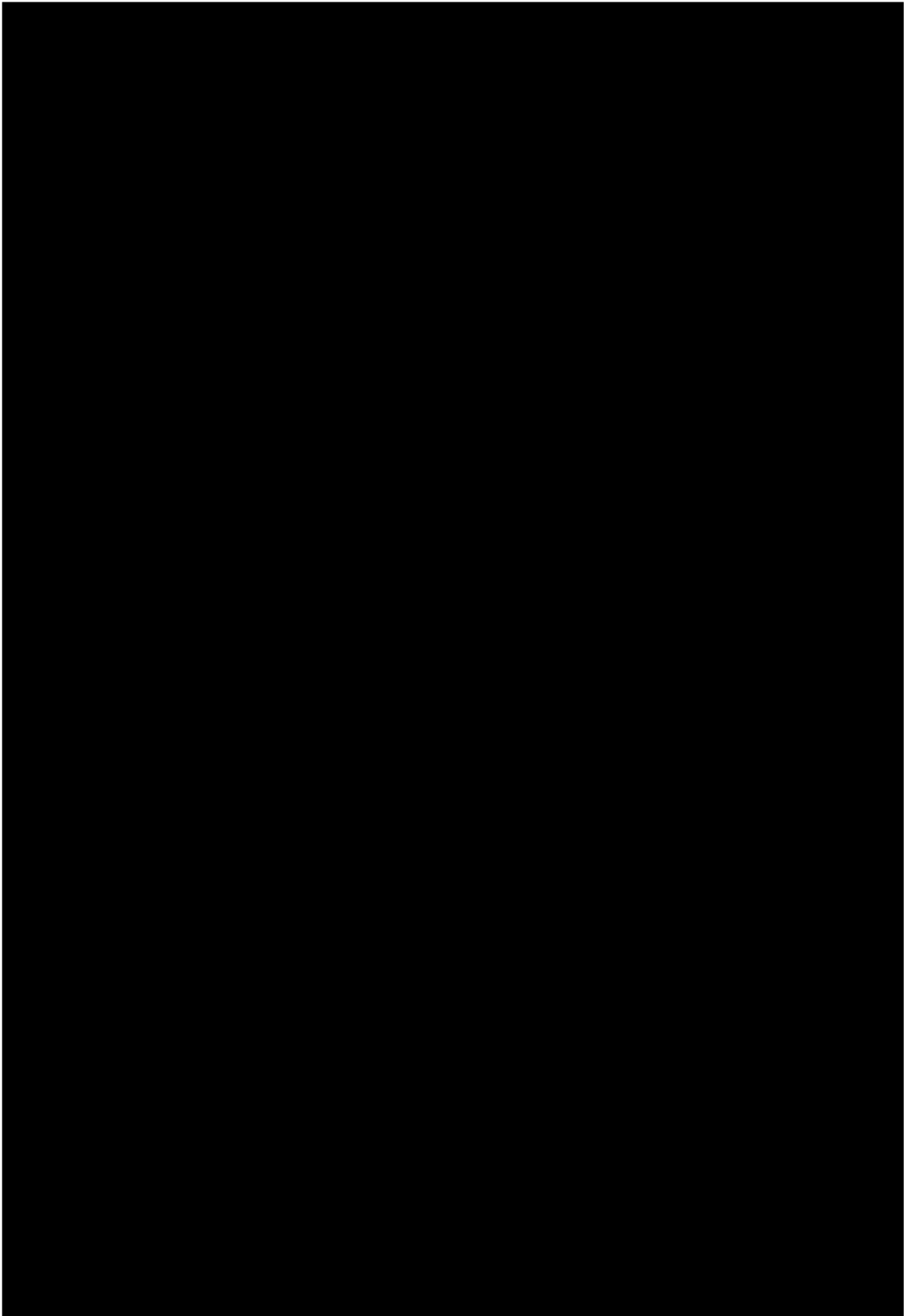


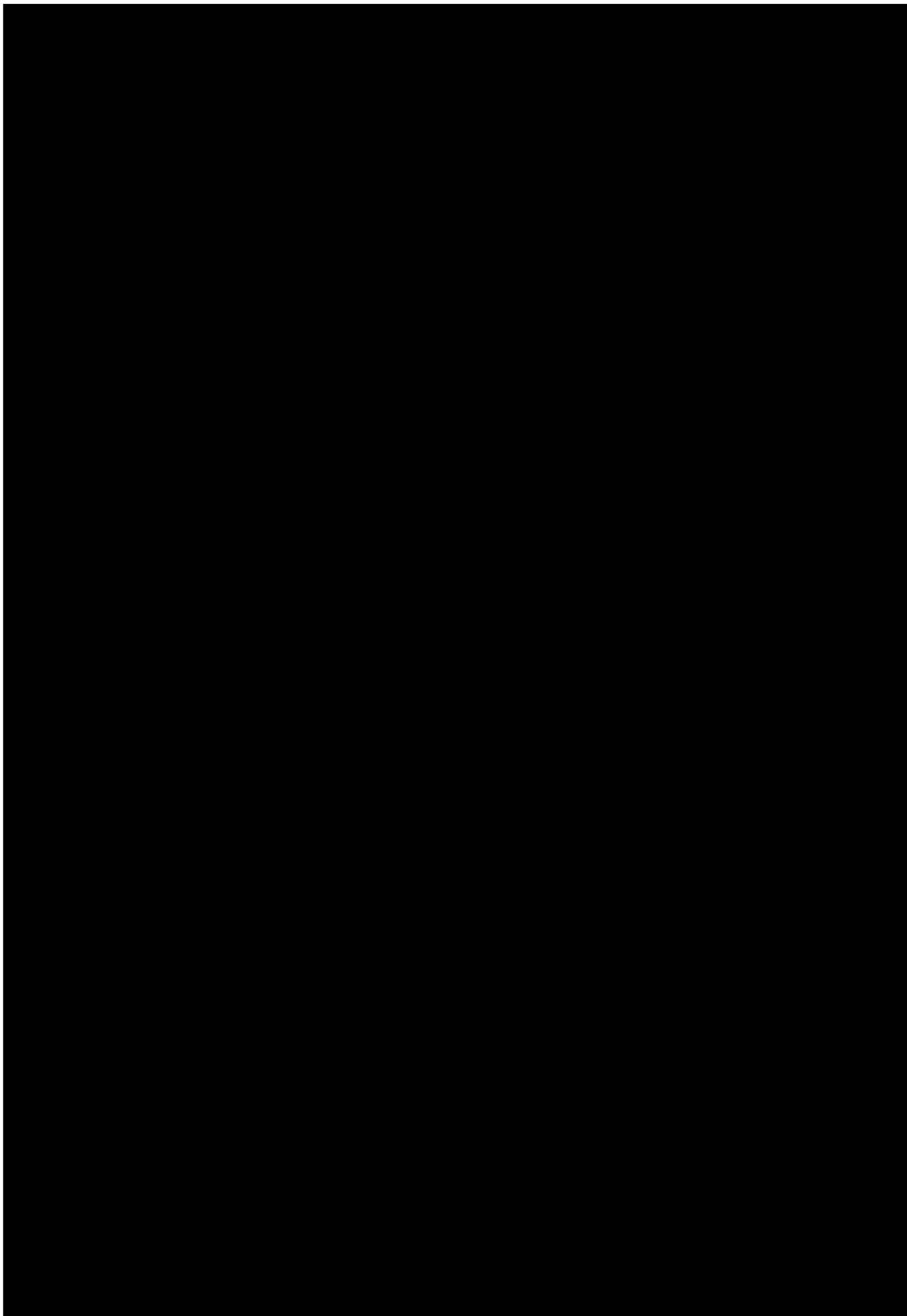


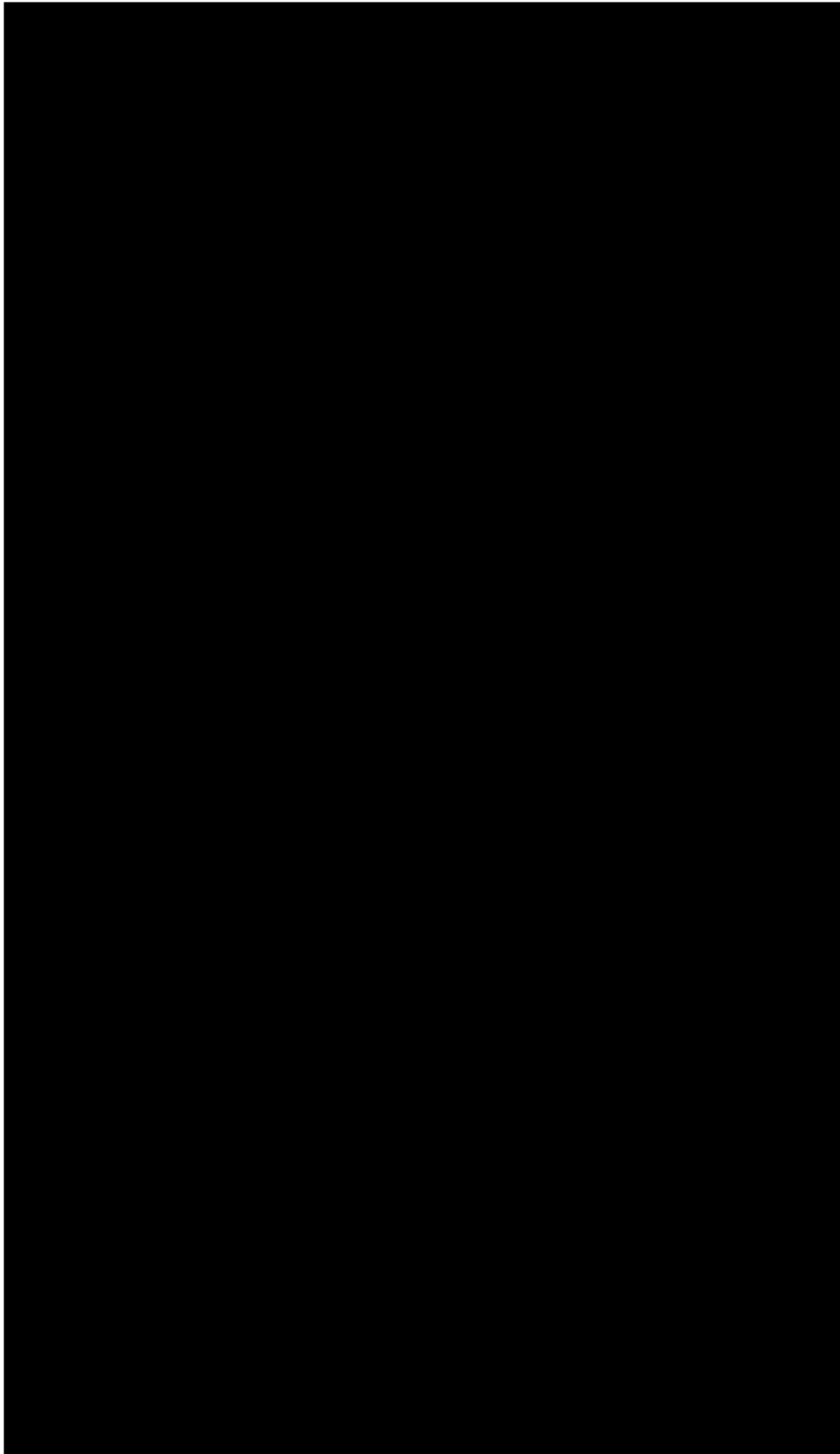


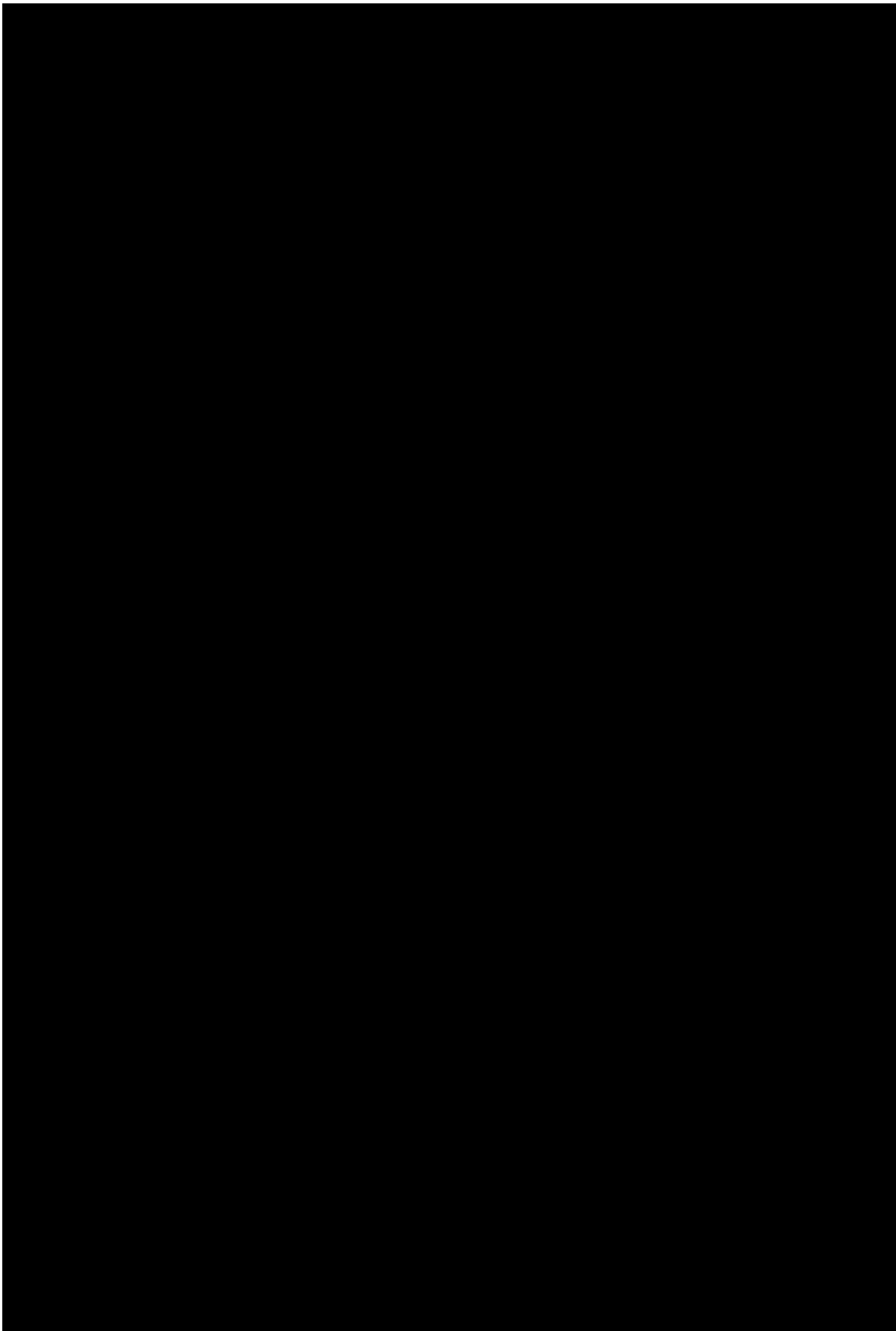


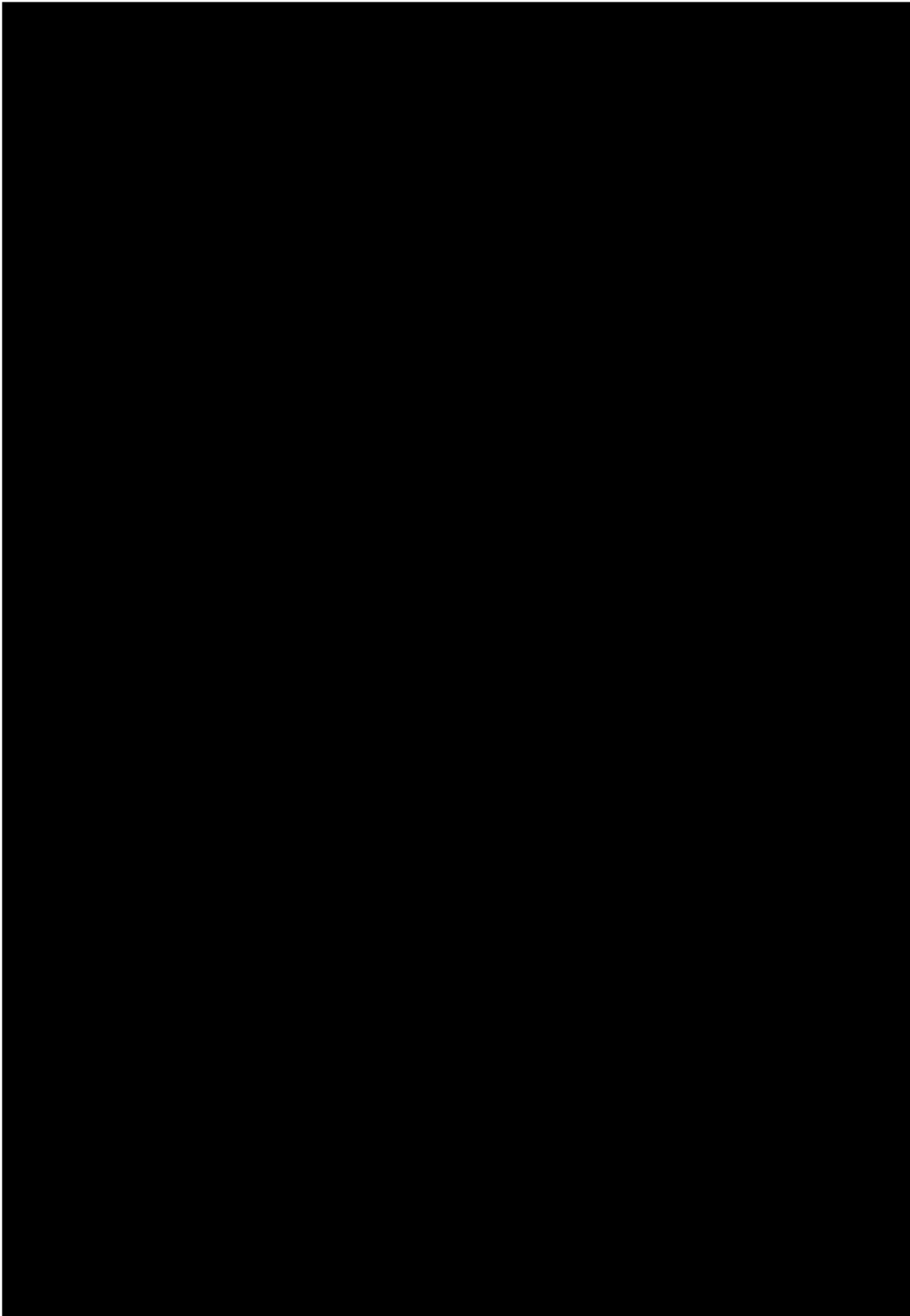


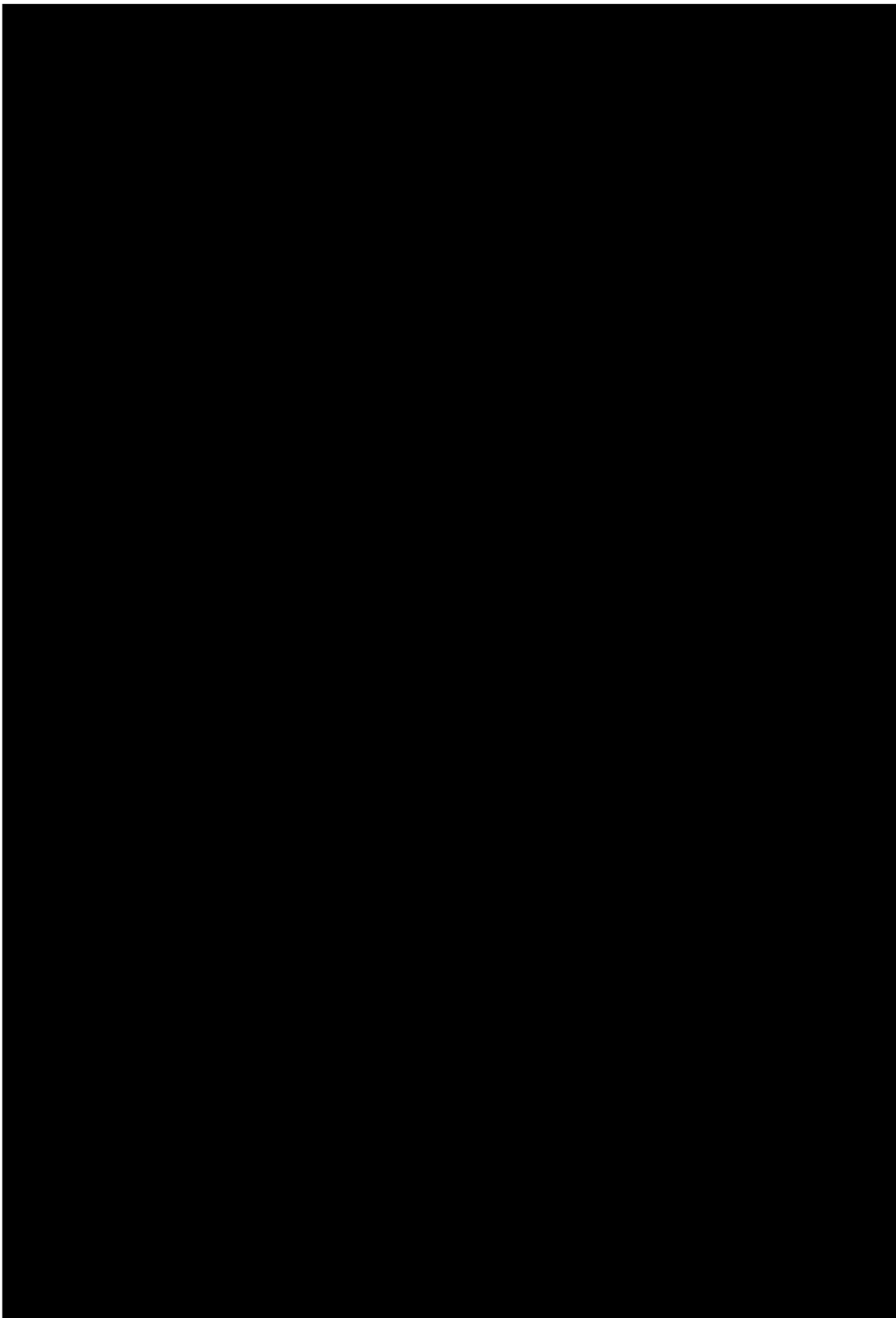


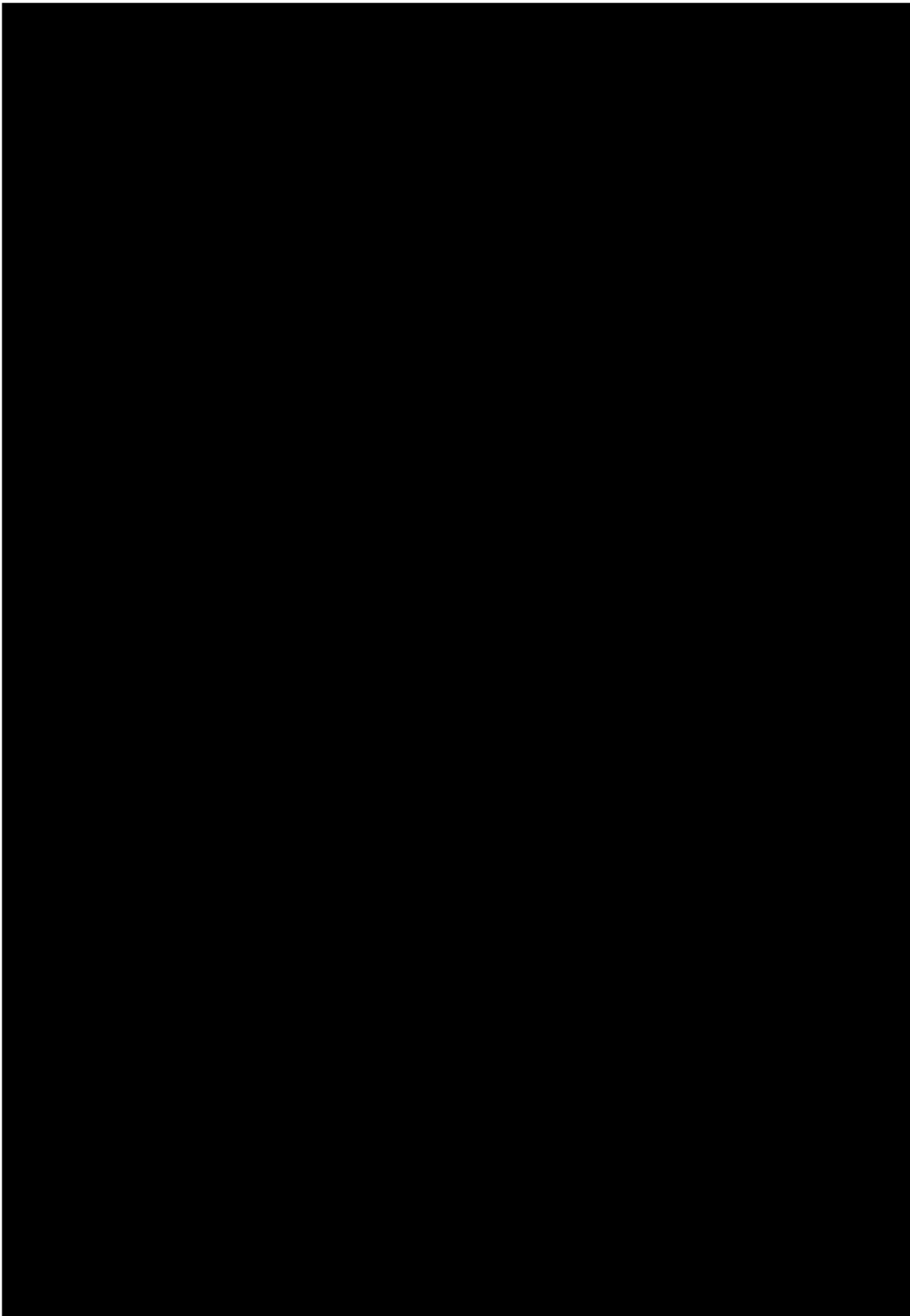


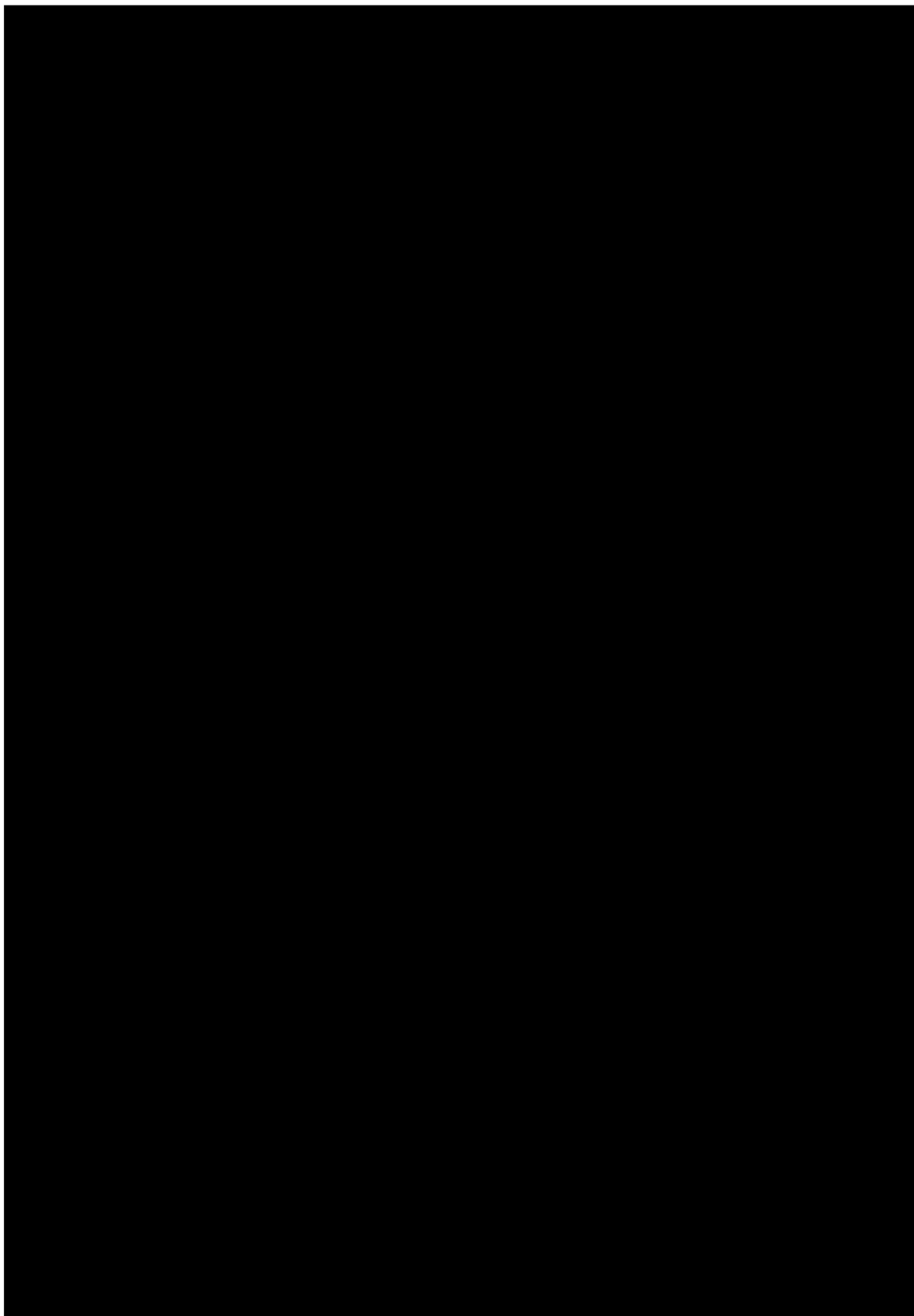


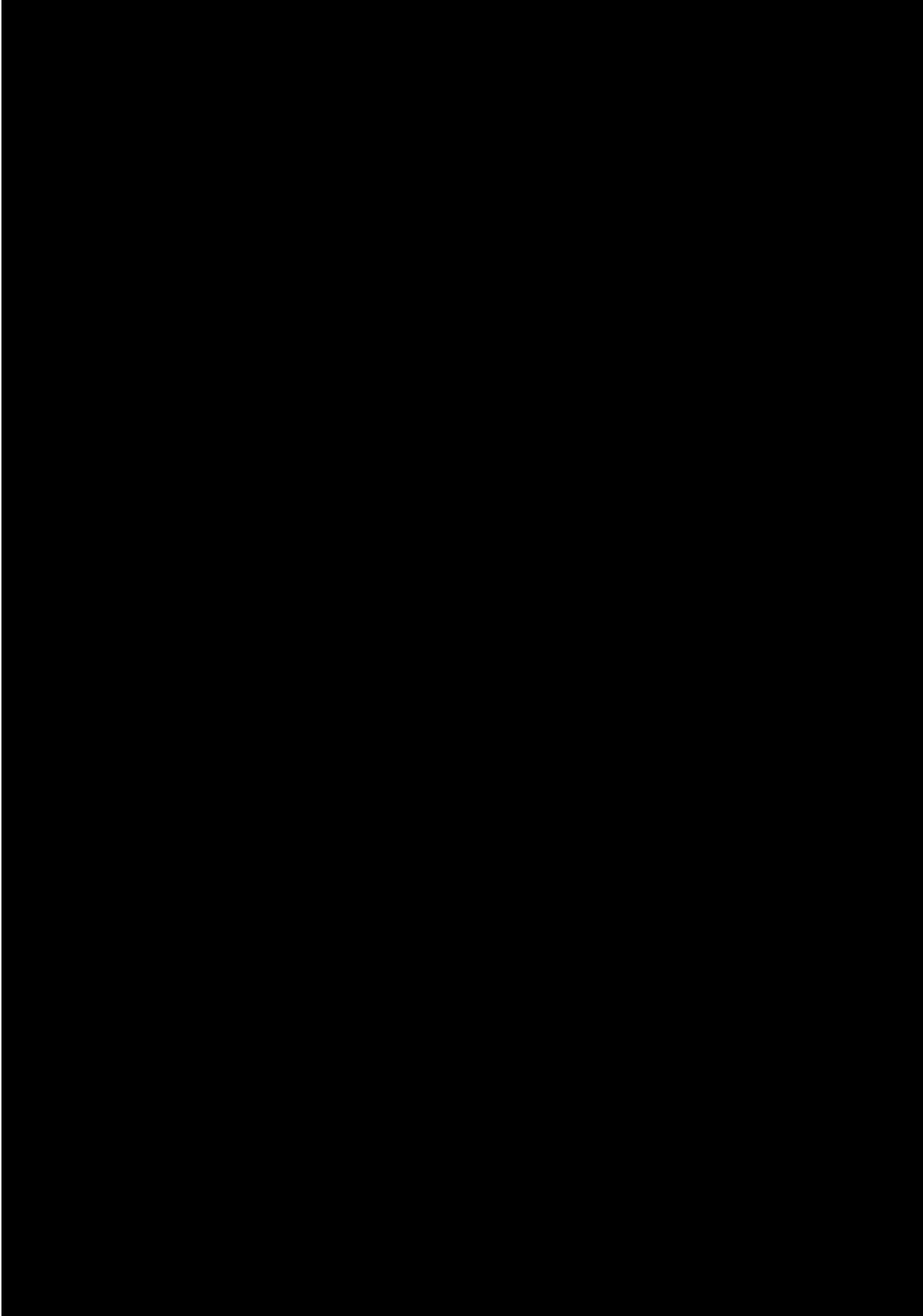


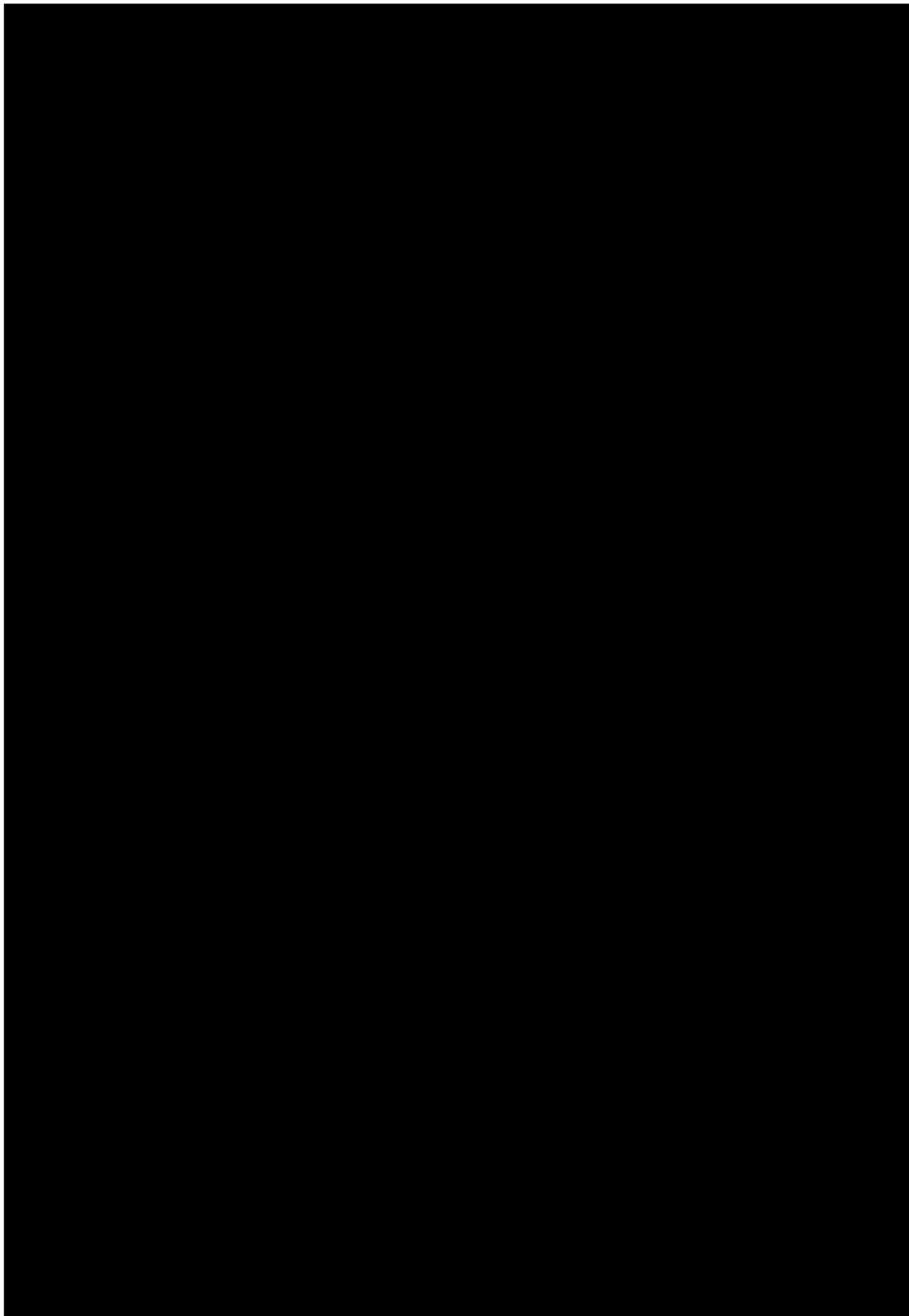


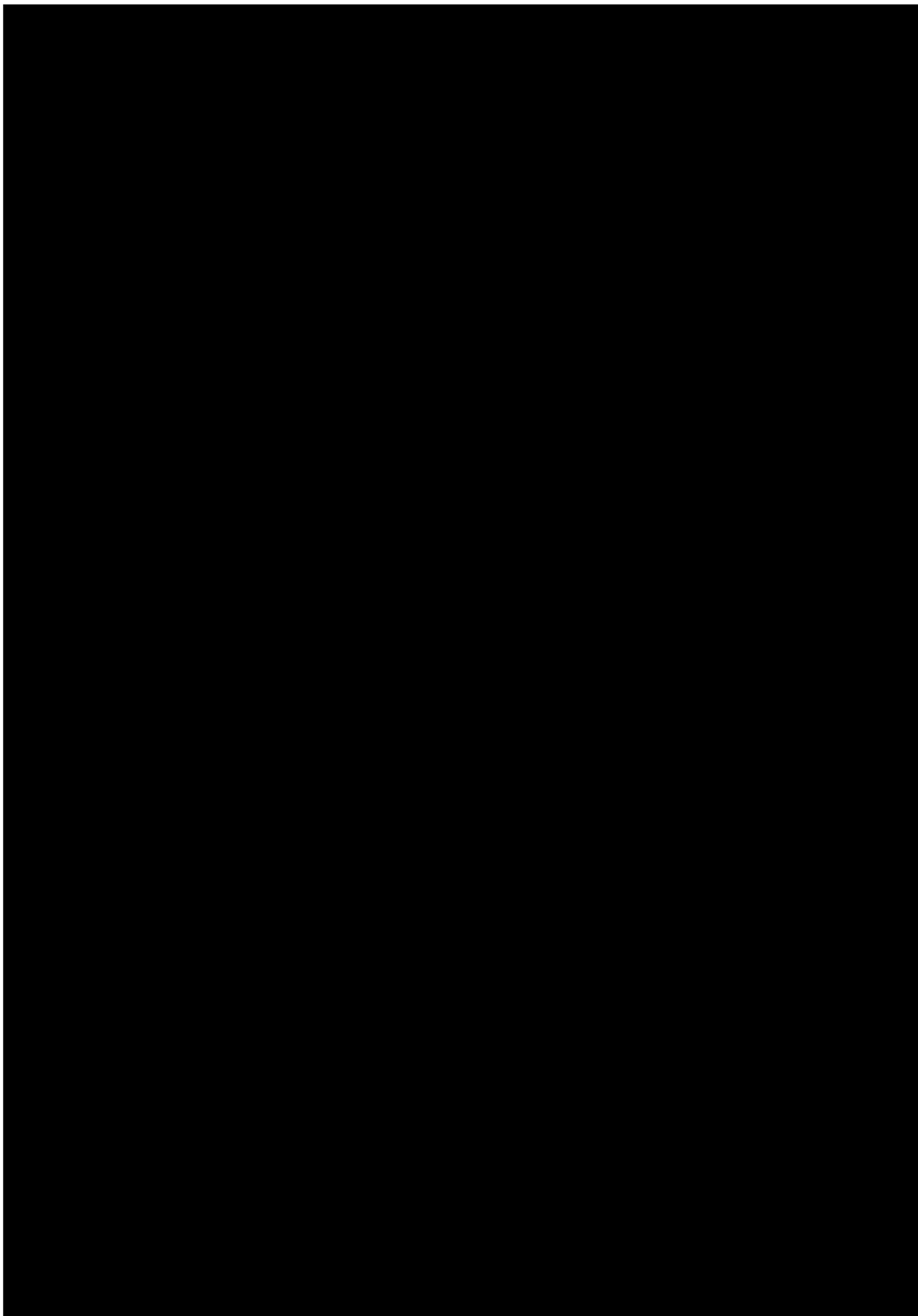


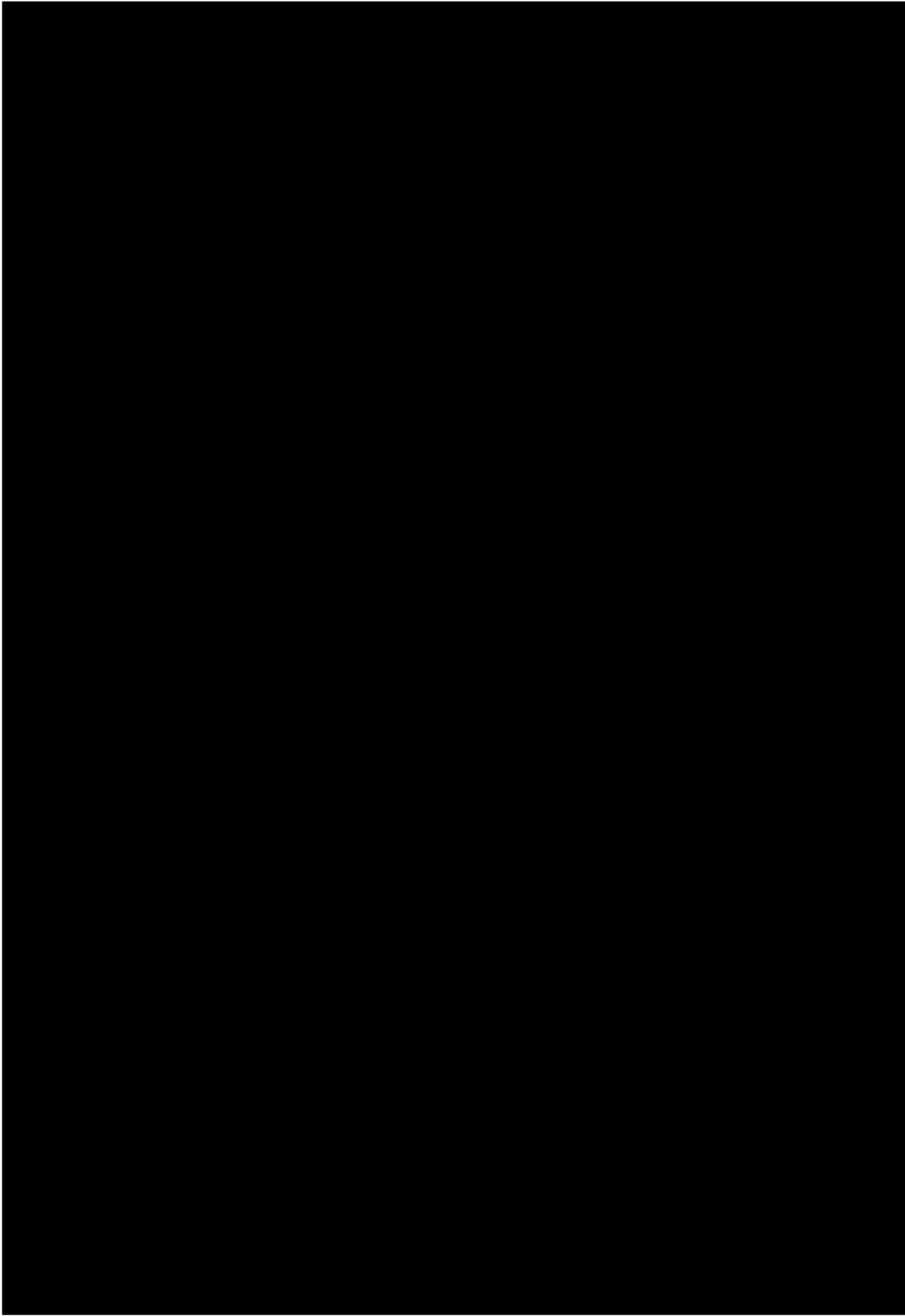


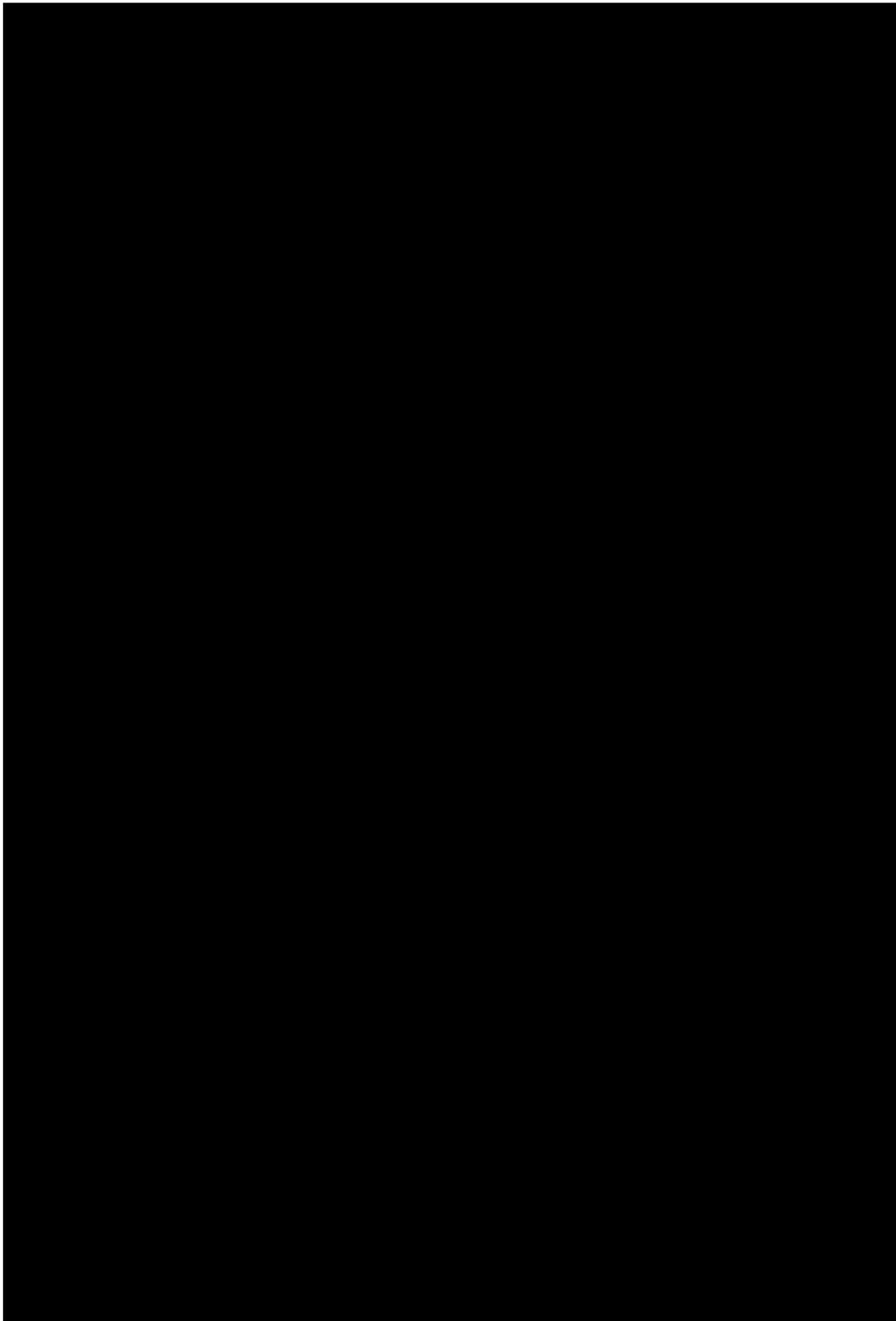


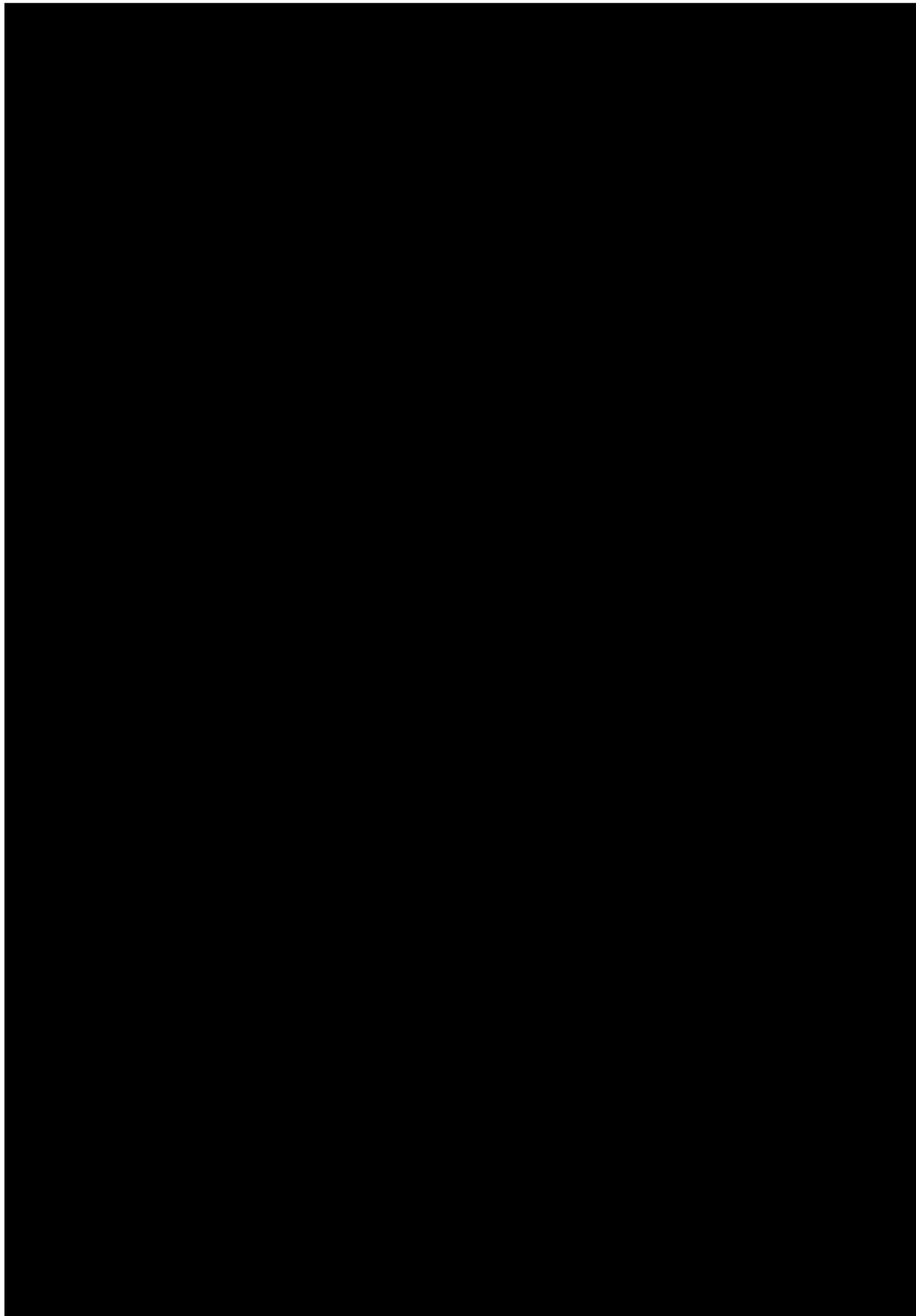


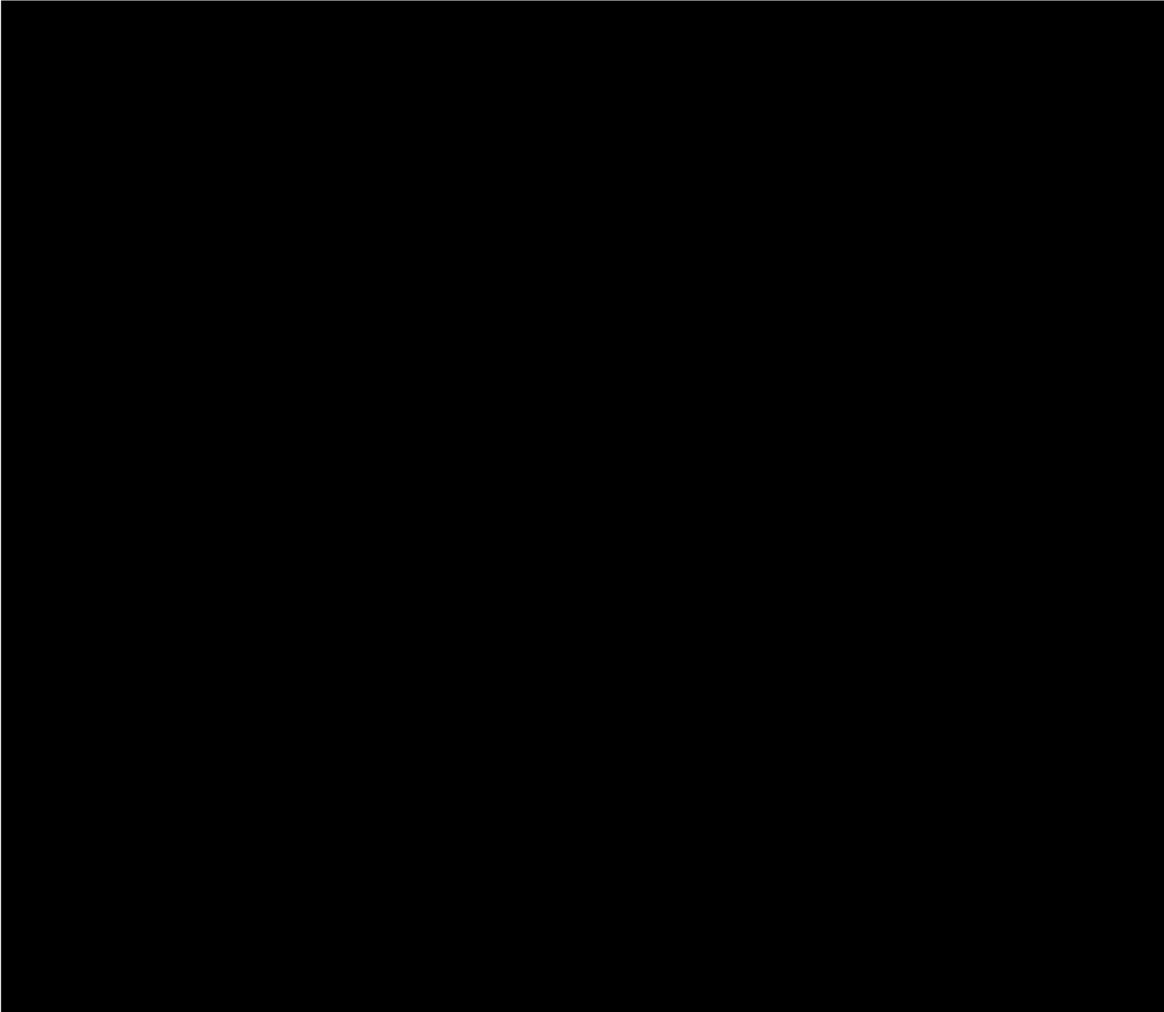












I certify that this and the 43 preceding pages are a true copy of the reasons for judgement herein of the Honourable Mr. Justice Badgery-Parker

Gabriele O'Shea
Associate

Dated 19.4.91