

Trial of Lizzie Andrew Borden

Volume 2

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**TRIAL OF
LIZZIE ANDREW BORDEN**

1893

VOLUME TWO

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EDWARD S. WOOD, Sworn.

Q. (By Mr. Knowlton.) Edward S. Wood is your name?

A. Edward S. Wood.

Q. You live in Boston?

A. Yes, sir.

Q. At present time what is your occupation?

A. I am a physician and chemist,---professor of chemistry in the Harvard Medical School.

Q. How long have you held that position?

A. As assistant professor of chemistry from 1871 to 1876 and professor of chemistry since 1876.

Q. What was your medical education as far as schools are concerned?

A. Physician and surgeon.

Q. Where?

A. At the Harvard Medical School, Massachusetts General Hospital.

Q. How long were you connected with the Hospital?

A. One year, and one year with the Chelsea Marine Hospital.

Q. You graduated also at the Harvard Medical School?

A. Yes, sir.

Q. Did you engage in general practice for a time?

A. I did not, except in the Hospital.

Q. Have you given special attention to any particular branch of science?

A. To medical chemistry.

Q. Does that also include what is also called physiological chemistry?

A. Yes, sir.

Q. Inclusive of that term?

A. Yes, sir.

Q. For how long time did you give attention to medicine or physiological chemistry as a specialty?

A. Since I graduated and before I graduated, as a student.

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Q. Have you had experience in that sort of work, in medical or physiological chemistry?

A. Yes, sir.

Q. To what extent?

A. To a very great extent in medico-legal cases, poison and blood stain cases.

Q. Have you been called upon as to that branch of science in the trial of cases?

A. Yes, sir.

Q. To what extent?

A. I don't know, sir,---several hundred, I should think.

Q. Several hundred cases?

A. Yes, sir.

Q. Including capital cases?

A. Yes, sir.

Q. Large number of capital cases?

A. Yes, sir.

Q. You are a member of the Massachusetts Medical Society?

A. I am.

Q. When was your attention, professor, called to this matter?

A. On the 5th of August.

Q. Where was that?

A. At the Medical School. I received by express a box which was unopened.

MR. KNOWLTON. (Addressing counsel on the other side) Of course you understand by the offer we are relieved of calling the expressmen to testify that they did not interfere with the seals of the packages?

MR. ROBINSON. Yes, we have no doubt of it.

Q. Have you the seals and tags on the packages here?

A. Yes, sir. I opened the box and found in it four preserve jars, one of which was labeled, "milk of August 3rd, 1892;"; the other, the second, was labelled "milk of August 4th, 1892;"; the third tag was labelled "stomach of Andrew J. Borden;"; the

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fourth was labeled "stomach of Mrs. Andrew J. Borden;" and these tags were tied closely about the neck of the bottle, with strings, the strings being sealed. The seal is unbroken there on one of them at any rate, and I opened the jars simply by cutting the strings, leaving the seals intact.

Q. When you got them were the seals intact?

A. They were.

Q. Those that were labelled "stomachs" contained stomachs?

A. Yes, sir.

Q. And those that were labelled "milk" contained milk?

A. Yes, sir. I first examined the jar marked "stomach",---first the stomach of Mrs. Andrew J. Borden. The jar was opened and the stomach removed. I found what was apparently a stomach so far as the external appearance was concerned, of perfectly normal appearance, and it was unopened, a ligature or string, a cord being tied about the upper and lower end of the stomach.

Q. Surgically unopened you mean?

A. Yes, sir. I cut the ligatures and opened the stomach myself while it was fresh, shortly after I received it, and removed the contents into a separate vessel and thoroughly examined the inner surface of the stomach which I found to be, so far as I could determine, perfectly healthy in appearance. There was no evidence of the action of any irritant whatever. The contents of the stomach were then examined and their quantity noted to be about eleven ounces. It was of semi solid consistency, consisting of at least four fifths solid food and not more than one fifth---and I should say probably not more than one tenth---of liquid, or water.

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And upon examination of these contents of the stomach, I found them to consist of partially digested starch, like wheat starch such as would be found in bread or cake or any other food in the making of which wheat flour is used. There was also a large quantity of partially digested meat, muscular fibre, with the food, and a considerable quantity of oil and some pieces of bread or cake. Some of the pieces of meat were quite sizable pieces, as large for instance a whole pea, and one or two pieces were larger than that,---as large as the end of my forefinger, so that their nature was very readily determined. In addition to this there were a large number of vegetable pulp cells which resembled those of some

fruit, or a pulpy vegetable such as boiled potato, or an apple or pear, and there was also an undigested skin of a vegetable or of a fruit, one piece of which I have removed and have there. (Indicating something held in the hand). It looks like the red skin of an apple or pear.

Q. That came from the stomach?

A. Yes, sir, of Mrs. Borden. I have another preparation of that which shows the color more distinctly and which readily shows that it is a vegetable fibre. That is sealed between two pieces of glass, so that it may be seen more readily. That is a piece the same as in the bottle,---the little chip that I removed. So far as anything could be determined from the appearance of the food, it was undergoing the normal stomach digestion, and from the quantity of the food in the stomach it would---if the digestion

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had progressed normally in the individual before death, indicate a period of approximately somewhere from two to three hours of digestion from the last meal taken, possibly a little longer than that.

Q. That was the stomach of Mrs. Borden?

A. That was the stomach of Mrs. Borden, and of course that time is an estimation with the proviso that the digestion went on normally. The stomach of Mr. Borden I removed and examined in precisely the same way, and so far as the appearance of the external surface of the stomach and the internal surface of the stomach was concerned, with the same result,---that is, there was no evidence whatever of any diseased condition or of the action of any irritant so far as could be determined by inspection and ocular examination. The character of the food found in the stomach of Mr. Borden differed from that in the stomach of Mrs. Borden in that there was very much less of it, and that it consisted mostly of water and contained only a very small quantity of solid food. The quantity in the stomach was about six fluid ounces, consisting of about nine-tenths water and one-tenth solid food, which contained the same constituents in kind as was found in the stomach of Mrs. Borden,---that is some few wheat starch granules, a few voluntary muscular fibres, a little oil; and a great deal compared with the whole bulk of solid food consisted of vegetable pulp cells and of some vegetable tissue cells such as might have come from the skin of an apple or pear. I think I mentioned the total quantity was about six ounces.

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This would indicate that the digestion, had it gone on normally, at the normal rate, in the stomach of Mr. Borden, was much further advanced than in the case of Mrs. Borden, since nearly all of the solid food had been expelled from the stomach into the intestine, and that the stomach digestion was almost completed, and it would make it therefore somewhere in the neighborhood of four hours, say from three, anywhere from three and a half to four hours, the digestion, providing it took place with the ordinary rapidity.

Q. That stomach had not been opened?

A. That stomach had not been opened. It was in the same external condition as the stomach of Mrs. Borden. Both of those contents of the stomachs were immediately tested for prussic acid, because prussic acid, being a volatile acid, it is necessary to make an immediate test for it, as it would very shortly after its exposure to the air escape, and escape detection therefore. Therefore those were both tested for prussic acid, with a negative result. Afterwards they were analyzed in the regular way for the irritant poisons, with also a negative result.

Q. In other words you found no evidence ---

A. I found no evidence of poison of any kind.

Q. Of any kind whatever?

A. In either case. Both jars of milk were also tested in the same way, and without obtaining any evidence of any poison in either the milk of August 3 or the milk of August 4.

Q. In neither?

A. The milk apparently, I should say, so far as

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I could determine from seeing it in the bottle, was apparently in good condition, but no regular sanitary analysis of it could be made; it was so old at the time I received it.

Q. In neither the stomach of Mrs. Borden nor Mr. Borden, in neither of them, you found nothing that indicated anything abnormal or irregular in the process of digestion?

A. No, sir.

Q. Assuming, Professor, that the two persons whose stomachs you had under examination ate breakfast at the same table and time and partook of the same breakfast substantially, what difference in the time of their deaths should you say, from the examination of the stomachs now alone, would be indicated with reasonable certainty, assuming the digestion to have gone on normally?

A. Assuming the digestion to have gone on naturally in both cases the difference would be somewhere in the neighborhood of an hour and a half more or less.

Q. Does digestion stop at death?

A. Well, it stops; yes, sir. It stops so far as the expulsion of food from the stomach is concerned. There is a sort of digestion goes on after death in which the stomach wall itself is partly digested.

Q. Was there anything of the kind here?

A. The membrane was a little bit softened, but not to any extent.

Q. Is there anything in that circumstance to conflict with the opinion you have given?
A. No, sir; and it was included in my answer, that they had a perfectly normal appearance; that being a post mortem change.

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Q. And I understood your answer of an hour and a half as an answer to my question, assuming the breakfast to be at the same time and the process of digestion not interrupted, to have been the difference to a reasonable certainty?

A. I didn't quite catch the whole of the question.

Q. Is that the difference that you fix to a reasonable certainty?

A. Not within narrow limits, but only approximately.

Q. Within what limits?

A. I should say within a half an hour one way or the other.

Q. But that is the probable difference?

A. Yes, sir.

Q. Your medical education has given you, of course, a general medical knowledge in addition to your chemical specialty?

A. That is included in the action of poisons, etc.

Q. And have you been present and heard the evidence in the case?

A. Yes, sir.

Q. So far as relates to the condition of the bodies?

A. Yes, sir.

Q. And the condition of the intestines?

A. Yes, sir.

Q. And the various witnesses who have testified to the appearance of the bodies after they were discovered, and to the description of the intestines?

A. Yes, sir.

Q. Taking all those facts as you have heard them, and also the examinations that you made yourself, what of them do you deem to be important in determining the time, the relative time, of the death of those two people?

A. The difference in the period of digestion, both stomach and intestinal, the drying of the blood, and the temperature of the body.

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Q. And also the intestines?

A. I mentioned that.

Q. Yes, I guess you did. And taking all those circumstances that you say you regard as important, as a whole, all together, considering them together, do you desire to modify in any way what you have already said as to the difference in time of death of the two people?

A. I should think that one corroborated the other, that they all tended to the same conclusion.

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Q. And that conclusion---will you state that, Professor, so that there may be no misunderstanding?

A. And hour and a half, more or less, it might be half an hour more or half an hour less.

Q. Well, what was the next thing that you had to do with that matter?

A. On August 10th, in Fall River.

Q. Did you receive anything then, or did you make some examination yourself?

A. Well, on the 10th of August, in the morning, I did go to the Borden house, and made a very superficial examination, which was of no practical importance.

Q. You afterwards went again?

A. No, sir, I never went after that. On the morning of the 10th of August I received at the police station in Fall River from Dr. Dolan, that trunk, containing a large number of substances.

Q. Won't you state what they were that you received?

A. I received from Dr. Dolan in that trunk the claw hammer hatchet,---that large hatchet which has been known as the claw hammer hatchet: those two axes which have been already seen: the blue dress skirt ---

Q. Those two hatchets, you mean?

A. No, sir, the claw hammer hatchet and the two axes.

Q. Oh, yes, I beg your pardon: and those two axes?

A. Those two axes, yes, sir: the blue dress skirt and the blue dress waist, the white skirt which is there (garments referred to being exhibited by counsel as the witness named them): the carpet, the sitting room carpet, which is this (holding it up): the bedroom carpet, which is done up in the paper, and

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which had enclosed in it a piece of false braid, as it has now---a false switch: a lounge cover (opening parcel and producing lounge cover), which is this: a large envelope containing three small envelopes, one labelled" "The hair of Mrs. A. J. Borden, 8/7/92,

12:10 P.M.", the other labelled: "Hair from A. J. Borden, 8/7/92, 12:14 P.M. " and the third labelled: "Hair taken from hatchet." Those were all of the substances which I received at that time from Dr. Dolan.

Q. Those you received directly from Medical Examiner Dolan?

A. Yes, sir, in the police station, he handing me the key to the trunk.

Q. That was on Monday?

A. That was on the 10th of August,---not Monday: it was Thursday, I believe, but I am not quite sure.

Q. No, it was a Wednesday.

A. I am not sure of the day of the week.

Q. Yes, but you are sure of the day of the month?

A. Yes, sir. The claw hammer hatchet had several stains upon it which appeared like blood stains, both upon the handle and upon the side and upon the cutting edge. For instance, there is one long streak of a dark brown stain, and there are two or three roundish or oval stains on the hatchet, which may have been, so far as any external appearance is concerned, so far as I could determine by simple inspection---there is a long one there, there is an oval one near by, which can be easily seen, and then near that edge is an accumulation of dirt, which

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is very much diminished in size now, which I subjected to examination: and upon the handle of the hatchet there were several dark discolorations, which might or might not, so far as I could determine from appearance, contain blood. I observed also that the handle of the hatchet did not set firmly or tightly into the hole of the head of the hatchet: that there was quite a large space, which can be seen now---as I have not disturbed the handle of this hatchet at all,---can be seen at this part of the head: quite a cavity between the handle and the iron of the head, both in front and at the back part. Now all of the stains on the head of the hatchet were carefully tested. There is one stain here which has been gotten on since, I see: it looks like an ink stain.

Q. Tested by you?

A. Tested by me. That was not on. That has gotten on in Court here, some way.

Q. That is an ink stain, you think?

A. It looks like it; I don't know what it is; it was not on before. All of those stains I subjected to chemical tests and microscopic tests for the presence of blood, with absolute negative results. I was unable to detect any blood upon that hatchet.

Q. Either on the handle or the blade?

A. Either on the handle or the blade. The two axes I designated as axe A and axe B in order to distinguish them from each other, and marked these letters upon the end of the

handle, so that I would know on referring to my notes which was which. The axe A had a good many stains, which might, so far as appearance was concerned, or might not, have contained blood. This axe A has a large

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knot hole in the front of the handle, which on examination with a glass contained some suspicious looking spots, and it is easy to see a considerable amount of brownish colored material staining the axe handle near the head. Now that might or might not, so far as I could see or determine by inspection alone, have contained blood. But the testing of the stains, both upon the head of the axe and upon the handle, showed them to be absolutely free from blood. And it will be noticed, too, that the handles of both of these axes are exceedingly rough and do not fit into the iron head closely or accurately. Precisely the same remarks may apply to axe B. There was no blood upon either axe and no blood on the claw hammer hatchet. The blue dress skirt ---

Q. I would like to finish up a little with this hatchet. Did you make an examination to be able to determine whether it was reasonably possible that that hatchet could have been used in inflicting the wounds that you have described, and then have been washed soon afterwards, so that traces of blood might or might not be found upon it?

A. It could not have been washed quickly on account of those cavities in between the head and the handle.

Q. Point them out if you please?

A. I have already pointed them out, sir,---the one in front and behind. Also the handle is quite rough and torn, ragged.

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Q. I think perhaps it will be more convenient, unless it interrupts you, to leave that.

A. It makes no difference.

Q. Then we will dispose of the hair, if you please.

A. The envelope marked "Hair taken from the hatchet" contained when I opened it two pieces of paper, this one, which was sealed and which contained a short hair,---it does not now; it is empty now, but that is the paper in which the hair was enclosed, contained a short hair one inch long, and containing both root and the point of the hair, and when they had been examined under the microscope, it was seen to consist of almost entirely of the central medullary cavity, which is unlike human hair, and it had a red brown pigment, and is more similar to a cow's hair than any other animal whose hair I have ever examined. It was sealed between those two glasses, and can be readily seen if the glass is placed upon a piece of paper. It is animal hair, there is no question of that, and probably cow hair. The envelope also contained a piece of paper which I examined very carefully without removing it from the envelope, and then I have examined with a lens every part of the inside of the envelope without finding any hair. It is marked "Hair placed here 1.57 P.M., 8/7/92," and it contains only a mucilage spot in the centre; that is, I was unable to

find any hair on it at all, and that hair (pointing to the cow hair) is the only hair which I have had as coming from the hatchet. I would state that on the examination of that stain upon the edge of the hatchet, the cutting edge, a part of which remains there, but a large portion of which has been removed,

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I found a good deal of wooden fibre and cotton fibre, that is, in this rough stain right near the back part of the cutting edge, the bevelled edge. It contained quite a number of fibres of cotton. Whether that was upon the other hair or not, I don't know.

Q. You never saw but one hair?

A. I never saw but one hair, and that is the one sealed in the glass.

Q. Whether the hair was put in or not with that piece of paper, it never came to you?

A. I never could find it.

Q. I think then that is all. I won't interrupt you. You were then going on the dress.

A. The blue dress skirt next.

Q. Well, go on with that, please.

A. The blue dress skirt has near the pocket, if I can get it ---

Q. You told me you had stuck a pin in it?

A. Yes, I have it here. That inner pocket here, a brownish smooch with a part of it I have cut out, and underneath which I have placed a pin in order to note the position of it. It is situated about three inches from the corner of the top of the pocket. That in color simply resembled or might have been blood, but upon holding the cloth up to the light, it could easily be seen that it did not, clog (?) the meshes of the cloth in any way, and probably therefore was not a blood stain, but to be sure the portion was removed and thoroughly tested and soaked out in order to remove any blood pigment, and found not to be blood. There was another spot similar to that lower down in the skirt. That was also tested and no blood was detected on it whatever. Those were the only possible suspicious

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stains on the whole skirt.

Q. Did you determine what those were?

A. I did not. I simply tested them for blood and found that they were not blood, and went no further. The dress waist was thoroughly examined, and there is not even a suspicion of blood stain on it.

Q. Where is the other stain on the dress?

A. I don't think I can find it now, but it was between the pocket and the bottom of the dress.

Q. Inside?

A. On the same side of the dress.

Q. Nearer the front or nearer the back?

A. It was about in the same place.

Q. The same line up and down?

A. The same line, I think. I had a pin under that, but that has gotten lost out, the dress has been handled so much. The white skirt, this one, contains a small blood spot on a line---it is 16 inches to the left of this line from the placket hole to the bottom of the skirt, and six inches from the bottom of the skirt. It is this stain here, a portion of which I have cut out, but I have left there about one-quarter or one-third of the complete stain, and it can only be seen by careful inspection. I had to make a larger hole in the cloth in order to avoid removing the whole of the blood spot, it was so small. This blood spot was about one-sixteenth of an inch in diameter, about the size of the diameter of the head of a small pin, not a large pin nor a medium size pin, but a small pin, and it appeared to me to be a little bit more extensive and plainer on the outside of the skirt than on the inside. I don't

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know as that could be detected now because it has been rubbed so much, but at that time it was perceptible when the stain was whole. That I examined and found it to be a blood stain, and the blood corpuscles when examined with a high power of the microscope averaged in measurement 1-3243 of an inch. That is the average measurement within the limits of human blood, and it is therefore consistent with its being a human blood stain.

Q. With the blood of what other animal would it be consistent?

A. There are some other animals, mostly of the---not domestic animals, which have the same diameter within the human limits, like seal and opossum, and one variety of guinea pig. The rabbit comes pretty near and the dog comes pretty near.

Q. What inference do you draw, if any, from the fact that the blood was, as you stated, I think, thicker upon the outside of the skirt than upon the inside?

A. A little larger in diameter, a little more upon the outside. It shows that it probably came on to the skirt from the outside of the skirt and not from the inside.

Q. What is the next step, Professor, that you had to do with the case?

A. Next the carpets. First, the sitting-room carpet. This corner piece was a rectangular piece, that is, this corner piece was on the carpet when I received it. That I have cut out myself, and it contained these two large dried pools of blood, this one here being almost six inches in length by about two inches in width, and with a projection of

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small blood spots to one side. This carpet was somewhere near the head of the sofa, as I

remember seeing it. This one is more of a triangular pool of blood, which is about three inches in each leg of the triangle. That was, of course, determined to be blood, and the average diameter of the blood globules removed from one of those stains ---

Q. Perhaps it will be just as well to say, was it consistent with human blood?

A. Consistent with human blood,---1-3243 of an inch. Next this carpet, which is of a similar texture, contained rolled up in it, and I received it, a piece of switch of false hair which was matted with blood thoroughly. We noticed that this carpet was stained upon the under side as well as the upper side with blood, a mass of dried blood. I omitted to mention that the heavy carpet was also stained through.

Q. As it is now?

A. As it is now.

Q. Did you take the spots from this carpet also?

A. I did. I cut out that piece of the corner which is gone.

Q. Did you make any experiments upon those pieces of carpet with reference to blood?

A. Simply in order to see whether blood would dry with equal rapidity upon one carpet as upon the other, I opened an artery in the leg of a dog, and let about an ounce or two of blood flow upon both pieces of carpet, and I found that they absorbed with equal rapidity.

Q. The blood dried with equal rapidity?

A. Yes, sir.

Q. So there is nothing in the fibre of those carpets which would cause any difference in the coagulation of the blood?

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A. So far as I could determine in that experiment.

Q. What was the next matter that came to your attention?

A. The lounge cover. That had a stain which looked very much like a blood stain, but it proved not to be blood stain. Here is the stain right here, a portion of it. It looks very much indeed like a blood stain, but it is not. I don't know what it is. It is easily seen.

Q. At any rate, there is no blood on it?

A. No blood on it, no, sir; probably iron rust. That is the envelope with the hair of Andrew J. Borden; simply contained a lock of hair which was matted with blood partly, and the blood examined was of course, consistent with its being human blood, measuring 1-3243 of an inch. The hair from Mrs. Borden was a lock of dark iron gray hair matted with blood, the blood also measuring 1-3243 of an inch. That is all I received from Dr. Dolan at that time.

Q. Let me ask right here, did you examine the floor of the sitting-room at any time for blood spots?

A. On the morning of August 10th I was there and made a very superficial examination.

Q. Of the carpet in front of the sofa?

A. Yes, sir.

Q. And how was the surface of the carpet, did you examine?

A. I examined the carpet of the whole room in front of the sofa so far as I could, and there was very good light in the room.

Q. What did you find?

A. I couldn't find anything.

Q. You found no blood spots?

A. I found no blood spots in front of the sofa beyond those that are there.

Q. Who was with you in that examination?

A. Dr. Dolan.

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Q. When did you next receive anything?

A. On the 16th of August.

Q. What did you take at that time?

A. I received in Boston from city marshal Hilliard a box which I have here. (Produces box.)

MR. KNOWLTON. I would say, if your Honor please, that some connection may have to be made hereafter. Everything we put in will eventually be connected. Mr. Hilliard has not yet been called. I am advised that evidence will be produced after Prof. Wood which will identify them as the ones received either from Mr. Jennings or Miss Borden.

MR. ROBINSON. We understand these were delivered to Prof. Wood by Marshal Hilliard?

MR. KNOWLTON. Yes, sir.

MR. ROBINSON. We assume that for the present; you say Marshal Hilliard will be called later.

THE WITNESS. This pair of low shoes or ties, and this pair of black stockings. The bottom of the shoe has certain stains which, so far as you could see from inspection, might have been blood stains, but they proved not to be.

Q. You found no blood upon the shoe or stockings?
A. No, sir; and the stockings had no suspicious stains.

Q. That was on the 16th of August?
A. That was the 16th of August, in Boston.

Q. What next?
A. The next was the 30th of August in the court room, at the time of the preliminary hearing in Fall River.

Q. On the day that you testified?
A. On the day and at the

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time I testified, while I was testifying or as soon as I got through I received in the court room, by your order, that other hatchet with a handle.

Q. This one?
A. Yes, sir; and that piece of the dining room door frame, and the piece of the guest room mop board. That. The small hatchet I should have mentioned in connection with the claw hammer hatchet, that the edge measures four and a half inches. I omitted that in speaking of it. This hatchet has a cutting edge of three and one eighth inches, and the cutting edge is seen to have a number of reddish brown stains, which, so far as you could tell by looking at that, either with the naked eye or the lens, with a simple magnifying glass, might have been a blood stain. When I received this hatchet the handle was driven into the head to the distance which you see marked here by this line. I have driven the handle out from the hatchet about an eighth of an inch.

Q. That is shown?
A. That is shown by the stains here; in order to examine that rough portion of the handle, to see whether there was any blood on it or not; and every stain which looked suspicious on either the head or handle of that hatchet I examined, and it is simply only partially rusted over. And the handle will be noticed to be very rough on the interior surface close to the head of the hatchet.

Q. I will ask you the same question I did with reference to the other hatchet, whether in your opinion that hatchet could have been used and then cleaned in any manner so as to

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remove any trace of blood beyond the power of your discovery, as you examined it?
A. It couldn't have been done by a quick washing.

Q. Why not?

A. It would cling in those angles there and couldn't be thoroughly removed. The coagula would cling. It would have to be very thoroughly washed in order to remove it. It could be done by cold water, no question about that. But it couldn't be done by a careless washing.

Q. And is that the same reason why you gave the answer as to that hatchet?

A. Yes, sir.

Q. On account of the fibers of wood?

A. And the holes between the head and the handle.

Q. In there?

A. No, on the other side.

Q. Oh, in there?

A. Yes, sir. Next that dining room door frame. I noticed this in Fall River myself, while it was standing in this shape; and the room was fairly dark, so that I thought from an inspection of that, as I saw it, in the door frame itself---I thought it looked like a blood stain.

Q. Was it removed at your suggestion?

A. I made the suggestion to Dr. Dolan. But upon examination of that it is seen to be a distinctly yellow stain, which, on being tested, is not a blood stain. It looks more like a stain containing some colored material, like tobacco juice or something of that sort; not necessarily that, it might be soup.

Q. Not blood?

A. Not blood; no, sir.

Q. This was the next?

A. That is the piece of the mop board

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from the guest chamber, which occupied a position near the bureau or the dressing case, and it has two very small spots of blood which have peculiar appearance or shape. They are pear-shaped, with the stem end or pointed end down. And this one has an inclination in that direction. Showing that this stain came from above downward, and at that angle with the mop board. And this one is at an angle directly down, so. From above, downward. This being the top of the mop board, the blood stains having---this is a double one, and the smaller body being lower down. But both stains came from above downward, undoubtedly.

Q. I have marked those ends 1 and 2, so as to make the inclination of that upper blood stain---the direction from which it came would be---

A. From 1 towards 2.

Q. And that is in that direction?

A. Yes, sir; a slight angle in that direction.

Q. Do you recall which was the end nearer the dressing case, the end 1 or the end 2?

A. I know nothing about it, sir.

Q. Was that all at that time? I forget.

A. After court---

Q. That is all you had during court?

A. That is all while I was in the court room.

Q. You determined them to be blood in some way?

A. Yes, sir.

Q. They are blood?

A. They are blood. I didn't try to find out whether they were human or not.

Q. But both spots are blood?

A. Yes, sir. After leaving the court room, in the city marshal's office, I received from

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City Marshal Hilliard the hatchet head.

Q. What day was that sir?

A. On the 30th of August.

Q. That was the day you were testifying in court?

A. Yes, sir; after I left the court room, when I went down stairs to the marshal's office.

Q. And who handed it to you, Professor?

A. City Marshal Hilliard.

Q. Where?

A. In his office.

Q. Is that the hatchet head?

A. Yes, sir. It has been in my possession almost all the time since. When I received this hatchet this piece of handle was in the head in its proper position, this fractured end of the handle being close up to the iron, that is, it was in that relative position so far as the upper and the lower end of the eye of the hatchet was concerned, this fractured end being just underneath or flush with the lower edge of the hole in the hatchet, or the eye of the hatchet as I have heard it called here. Both sides of the hatchet were uniformly rusty, as they are now; and it will be noticed that on the cutting edge here there are a few smooth

places in the rust, which I made myself by scraping the rust from the bevelled edge.

Q. You mean there?

A. Yes. Those smooth spots were done by me in scraping the material with my knife for chemical testing in order to determine whether there was any blood mixed with the iron rust or not. There were also several suspicious spots upon the side of the hatchet, one of which is plainly perceptible here, three-fourths of an inch from this little notch in the lower edge of the head. That is a shiny spot which can be easily seen now, and which is not a blood stain. It is a stain of some varnish of some kind.

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There were several other reddish spots upon the side of the hatchet which might or might not contain blood, so far as I could determine by inspection, and which I proved not to be blood stains. The fractured ends of this bit of handle, the rough end, had a perfectly white, fresh look, and it was not stained as it is now, and these chips here, these two large chips from the side of this piece, and a little chip from this side also, had not been removed when I had it; and when I drove the handle out from the eye---I placed the hatchet in a vise and drove this wood out, and upon examination with a magnifying glass, that fractured end of the handle was perfectly clean. There was no dust and no dirt, no fragments of dirt which could be seen in the angles in this fractured end by means of a magnifying glass, and they cannot be seen there today. It is as clean, so far as coarse dirt is concerned, now, as it was then. In soaking---in order to determine where there had been any blood upon this handle between the hatchet head and the handle, I placed this to soak in water containing a little bit of iodide of potassium, which removes blood pigment in my experience better than plain water itself, and allowed it to soak there for several days; then I tested that solution, after taking this piece of wood out of it---tested that solution for blood pigment by chemical tests which I need not detail, and found that there was no blood removed from the handle, but that soaking that bit of wood in the solution darkened the fractured end

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some what so that it came out a darker color than it had when I placed it in the solution, and that is probably due to some of the discoloring matter being soaked off from the outside and absorbed by the wood.

When I received this hatchet it contained more of a white film upon both sides than it does now, but it still contains, adherent tightly in little cavities here in the rusty surface, which can easily be seen with a small magnifying glass, white dirt, like ashes which is tightly adherent and which have resisted all of the rubbing which this hatchet has had since it came into the Court room, and it is still visible there and gives the side of the hatchet, as you can see, a very slight grayish appearance here in this round part. That was far more marked on the hatchet on both sides when I first received it than it is at the present time, and that coating there looks as if it might be ashes. I do not know: I have not tested it to see whether it is ashes or not: I could not do that. It might be any white

dirt, so far as I could see, so far as I know. I think I have already mentioned that this hatchet is uniformly rusty on the bevelled edge as well as on the sides---both sides of the head.

On November 15, the day that I testified before the Grand Jury in Taunton, on the evening of that day, in Cambridge, at my home in Cambridge, I delivered to Officer Seaver by order of Mr. Knowlton, this hatchet head, with the claw hammer

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hatchet and the other hatchet. And when he returned them to me, on December 3---he returned all the hatchets to me on December 3---when he returned them to me these two chips from the side of the bit of handle, and a little bit of a---a very small chip from this side, I found had been removed while this piece of wood was out of my possession.

Q. You were before the Grand Jury yourself that same day?

A. I was before the Grand Jury myself that day.

Q. So that was when the Grand Jury were in session?

A. Yes, sir. And the difference in the color of this unsoaked wood and that soaked wood can be very readily seen now, although these fresh chips have darkened somewhat since they were freshly made, owing to so frequent handling. I may as well say now, in connection with the blue dress skirt and dress waist, I delivered those on May 30 to Officer Mahoney and received them back from him on June 2, by order of Mr. Knowlton.

Q. Officer Mahoney of the Fall River police?

A. Yes, sir; he has already testified to it.

Q. To finish up that subject, now we are about it, with the exception of those two occasions when you gave them up to Seaver and Mahoney under my directions, they have been in your custody ever since?

A. They have been in my possession ever since under lock and key, except when they have been delivered here in the Court room from time to time.

Q. Did I understand you to say that that white substance was adherent that you find there now?

A. It is very tightly adherent there now. I suppose it might be scraped off with a

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pin or something of that sort, but it resisted the rubbing.

Q. How was it as to the part that has come off: what was the nature of that?

A. The same as that that is left.

Q. Adherent?

A. Yes, sir.

Q. What would cause it to be adherent?

A. It is in the crevices there, and if the hatchet had been when wet placed in that material, it would stick more tightly and permeate those angles there more closely.

Q. How much of the hatchet was marked with rust?

A. All of it.

Q. How much of it when you first saw it had the appearance of being marked by this adherent film of white matter which looked like ashes?

A. Both sides. One side you can hardly see now, and the other side you can see: more in the middle of the hatchet, not near the edge.

Q. Did it appear to you to be the sort of covering that would result from being exposed to ordinary dust flying in the air?

MR. ADAMS. We object to that question.

MR. ROBINSON. It is very leading, at any rate.

MR. KNOWLTON. I see no reason why I should not put the question, unless your Honors decide that I should not.

MASON, C. J. Excluded.

Q. Professor, what is your opinion, as the result of the examination which you made, as to the question whether this hatchet could have been used to inflict the wounds which you have heard described and then subjected to any cleaning process to remove the traces of blood, as to the question of whether or not you would be able to find them upon the hatchet?

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MR. ADAMS. Well, we pray your Honors' judgment.

MR. KNOWLTON. I do not think that question is very happy.

Q. Assuming this hatchet to have been used for inflicting the wounds which you have heard described and then subjected to some sort of a cleaning process, whether or not that could be reasonably possible to have occurred without your having discovered traces of blood upon the hatchet or the handle that you found?

MR. ADAMS. We object to that question.

MASON, C. J. He may answer.

MR. ADAMS. We would like to have our rights saved, may it please your Honor.

(Question read).

A. Before the handle was broken, not after.

MR. ADAMS. I think the question must be answered as put, if it can be answered.

THE WITNESS. If by the question is meant the hatchet head as it is---

MR. KNOWLTON. I beg pardon, Professor Wood. I don't think my brother has a right to catechise the witness yet.

MR. ADAMS. I have not catechised him.

MR. KNOWLTON. Yes, but you were getting into a colloquy with him, which I do not think is proper. Mr. Stenographer, will you read the answer?

(Answer read)

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Q. That is to say, the conditions I named could have existed before the handle was broken off. Why do you make that difference, Professor?

MR. ADAMS. All this goes in under our objection, may it please your Honors.

A. Because it would be very hard to wash blood off that broken end.

Q. A little louder.

A. It would be almost impossible to quickly wash blood out of that broken end. It might have been done by thorough cleansing, but that would also stain the fracture.

Q. Any why practicable before?

MR. ADAMS. Your Honor understands that we object to this portion of the inquiry and ask to have an exception saved?

MASON, C. J. If you ask an exception you should do it clearly.

MR. ADAMS. I mean to do it, sir; I mean to rise in my place and object.

MASON, C. J . Counsel for the government are not bound to understand an objection to mean an exception. The two things are very distinct.

Q. Going back to the answer that you gave,---before the handle was broken, and not after,---you have told why it could not be after the handle was broken. Why do you give the other answer, "before the hatchet was broken"? Give your reasons.

MR. ADAMS. We object to this, may it please your Honor, and ask that an exception may be saved.

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MASON, C. J . It may be answered.

A. That hatchet handle fitted very tightly into the head, and was a smooth handle---the part remaining,---so far as I could see from the part remaining. I cannot answer for the part which I have never seen.

Q. Was there any difference---of course it is now removed---in the way in which that handle occupied the head of that hatchet, from the claw hammer hatchet, for example?

A. Yes, sir.

MR. ADAMS. What is the question?

Q. Was there any difference between the way that handle fitted into the hatchet, and the claw hammer hatchet?

A. It fitted very tightly.

Q. And what was the difference between that and the claw-hammer hatchet?

A. The claw hammer hatchet does not.

Q. What is the nature of prussic acid?

A. It is a poison acid; gaseous. It consists of gas, and that gas is soluble in water.

Q. In reference, I mean now, to its poisonous effects?

A. It is one of the most deadly poisons we know.

Q. And how instantaneous or otherwise is it?

A. Death is caused anywhere from a few seconds to a couple of minutes.

Q. And what quantity of prussic acid is sufficient to cause the death of a human being?

A. Any solution of prussic acid which contains one grain of acid---any solution which contains one grain of acid is a fatal dose. That is, it is less than

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a teaspoonful of the solution which is ordinarily used in the drugstores, which is a two per cent solution.

Q. And what is that solution that is used in the drug stores used for, if you know?

A. For medicine.

Q. Alone, or in prescriptions?

A. Prescriptions.

Q. Are there any other subjects that you have investigated, Professor, that I have not inquired about of you?

A. No, sir; none that I think of now.

MR. KNOWLTON. That is all that occurs to me now, if your Honors please.

CROSS-EXAMINATION.

Q. (By Mr. Adams.) The white skirt to which your attention was called had upon it, you have stated, I believe, a spot of blood appearing as large as the size of the head of a small pin?

A. Yes sir,---the diameter, not the size.

Q. Yes, in diameter. And you located that how with reference to the placket hole, as it is called, of the skirt?

A. 16 inches to the left of the line drawn from the placket hole to the bottom of the skirt, which brings it a little behind on the left hand side.

Q. Will you be good enough to locate it again.

A. (Pointing to position on the skirt). Here it is, here. That is 16 inches from here, if the line is drawn straight to here, and this skirt at the bottom is 85 inches around,---7 feet and one inch---and that stain is 6 inches from the bottom.

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Q. Assuming that the placket hole of the skirt had been worn behind, where would that bring the spot of blood?

A. A little to the left of the back.

Q. A little to the left of the back?

A. Yes, sir.

Q. When you saw it, it was dried blood?

A. Yes, sir.

Q. And is the examination of the corpuscles of dried blood satisfactory in determining

whether it is human blood or the blood of some other animal?

A. If it is satisfactory at all, it is.

Q. Yes, if it is satisfactory at all. I have two pins here. Do either of those furnish an illustration of the diameter of that spot?

A. (Examining pins). No larger than that, certainly---that is the smaller one. If anything a trifle smaller than that.

Q. A trifle smaller than the head of that pin.

(The pin referred to by the witness was inserted in a piece of paper, which was marked Ex. 44, and shown to the jury.)

Q. You gave the diameter of the corpuscles of the blood that you found in this blood stain as about $\frac{1}{3243}$ of an inch, I believe?

A. That is what they average.

Q. That is what it averaged?

A. Yes, sir.

Q. Are you able to say that that was not a spot of blood which might have gotten on from the menstrual flow of the woman?

A. No, sir, I am not.

Q. It would be entirely consistent with that, would it?

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A. Yes, sir, it may have been menstrual blood, or may not, so far as I can determine.

Q. But it may be consistent with that?

A. Yes, sir.

Q. Could you determine from the appearance of the stomachs, assuming that the two persons had eaten their meal at the same time, who had eaten the larger meal?

A. I could not.

Q. In all the opinions that you have given, have they been based upon the digestion being normal?

A. Yes, sir.

Q. And if digestion had been disturbed in the case of either of these persons, that would interfere somewhat with your opinion, would it not?

A. Yes, sir, if I knew that.

Q. And it would interfere to what extent as to time? Within what bounds?

A. Some things might tend to empty the stomach more rapidly and others less rapidly; some disturbances more rapidly and others less rapidly.

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The action of an irritant, for instance, would perhaps hasten the stomach movements so that the food would be expelled into the upper intestine more rapidly than it would under normal circumstances. Other conditions might delay that motion so that it would go on more slowly.

Q. I understand you are not willing, then, to fix the limit absolutely in your opinion beyond an hour as the difference of time in the death of these two persons?

A. No, sir.

Q. So that if one died at eleven o'clock the other, taking everything fairly into account might have died at ten o'clock?

A. I should think so,---might have died at ten or at nine.

Q. If one died at eleven and there were facts in the case showing that the other was alive at nine, you would not care to have an opinion based on the examination of the stomachs, control that?

A. That is within the limits. It may be wrong and it may be right.

Q. In other words, nothing definitely can be determined within half an hour or an hour from such examinations as you have been able to give to the stomachs?

A. I should not want to give an opinion closer than that.

Q. This handleless hatchet, I understand you say you first saw after the trial at Fall River?

A. Yes, sir.

Q. It was not produced in court then so far as you know?

A. It was not. I did not know anything about it.

Q. After you left the witness stand and went down stairs into the Marshal's office you saw it for the first time?

A. Yes, sir, it

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was shown me there.

Q. Was it shown you or did you see it?

A. It must have been shown me.

Q. Where did you see it?

A. I think the City Marshal handed it to me and said "here is the other thing".

Q. How was it done up, or was it open when he handed it to you?

A. I don't remember.

Q. Don't know where he took it from?

A. No, sir, I did not observe that.

Q. Did you have some talk with him?

A. I did not ask him what it was. There seems to have been a conversation at the time.

Q. There was a conversation at the time?

A. Yes, sir, there must have been.

Q. This slot on the inner edge of the head furnishes a good refuge for any blood to gather?

A. Yes, sir, on its face.

Q. And it would be quite a place to clean, assuming any blood got on it?

A. It would, and there is white dirt in there, and there is dirt there now.

Q. When rust gathers on any iron or steel like this, is it first somewhat moist?

A. Iron rust requires moisture for its formation.

Q. When it first begins to gather, is it moist to the touch?

A. Not necessarily.

Q. Have you ever seen the experiment of a scythe left out over night and the next morning some moisture gathered on the back of it and the hand being rubbed over it to find if it was

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rusty?

A. Yes, sir, moisture is required for it.

Q. I want to know if when rust first appears, it is not a trifle damp?

A. I do not think it is if you should first feel it.

Q. Would it not more readily rub off when it first begins to form than after it had formed some time?

A. Yes, sir.

Q. When it first attaches would not dust get into it more readily?

A. It does naturally when it is moist as in any rusting.

Q. Assume that a hatchet like this handleless one fell into a pile of ashes that were lying upon the floor of a cellar where it was somewhat damp. Would that appearance that you would see afterwards be consistent with what you saw upon the face of this hatchet, namely as dust adherent to its surface?

A. The question is not stated clearly enough in regard to the dampness of the hatchet head for me to answer.

Q. My question is this: If it fell into ashes which of themselves were damp and lying on a damp cellar, would the appearance of this hatchet which you see be consistent with such a fall?

A. Yes, sir, if the ashes were damp.

Q. Assuming that that the head of a hatchet like this lies upon a shelf or bricks in a cellar where it is somewhat damp and dust from the ashes of a furnace gathers upon it, would not the appearance that you saw on this be consistent with the gradual accumulation of rust and dust upon the face of the hatchet under those circumstances?

A. I hardly feel competent to answer that really, that is so tightly adherent in the corners.

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Q. When you say corners, you refer to what?

A. I will show you in those little gray places. In this gray portion on the side of the hatchet, in the little semi-circular notches where it is tightly adherent.

Q. Below on the eye of the blade?

A. Yes, sir, right there.

Q. Where there is an apparent roughness in the casting?

A. Yes, sir, in those rough patches, I cannot say whether the dust would do that or not.

Q. Did you form any opinion as to the kind of wood this hatchet was made of?

A. I think it was oak.

Q. You have never seen the piece of the handle corresponding to the other part of the handle of that hatchet?

A. No, sir.

Q. And therefore you are not able to form an opinion as to that?

A. I know it must have been a handle of the same wood.

Q. You don't know whether rough or smooth or had knots on it. You don't know whether it was rough or worn or whether it was smooth?

A. No, sir, nor whether there was a blade to it.

Q. I understand you to have already said that the appearances of the fibres of the wood where the break is at the time when you received it is as light as the place where it is

chipped off on the side?

A. Even lighter, more clean.

Q. Do you desire to express any opinion as to the freshness of that break?

A. No, sir, not into any limited time.

Q. Within two or three months or six months?

A. Yes, I should say it could not have been broken any number of months, certainly because the fractured end there would be dirtier.

Q. You mean by that darker?

A. Darker and dirtier in a dusty place.

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Q. There is a piece of wood (showing piece) that appears to be broken?

A. Not in the same way, it appears to be chipped. That is split. It is chipped.

Q. There is a break on it so that there is a different appearance between the outside and inside?

A. Yes, sir, it is fresher.

Q. Can you form any opinion on seeing that as to when the break was made?

A. No, sir.

Q. Would you dare to say that was within one year, two years, or six even?

A. I should want to know where it was,---in a place having a clean floor or a dirty one.

Q. Assuming it was kept in a clean place?

A. I would not dare to form an opinion.

Q. Even within years?

A. No, sir.

Q. And if it was broken transversely, across the grain instead of with it, how would it be?

A. It would be the same.

Q. With reference to your opinion?

A. Yes, sir.

Q. Isn't that oak?

A. I do not know oaks very well.

Q. But you said it was oak?

A. I said I thought it was.

Q. What do you think?

A. It looks to me like an ash piece. I do not know whether it is not, though.

Q. Well, upon reflection, do you think you will stick to your opinion of the time of the breaking of this handle, it being within a few months of when you saw it?

A. If kept in a dirty cellar?

Q. If kept in a fairly clean place?

A. If done up?

Q. Oh, not done up,---exposed to the ordinary wear and tear of time?

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A. I should say it would be darker than after the lapse of several months on account of moisture and other things,---atmospheric conditions generally.

RE-DIRECT EXAMINATION.

Q. (By Mr. Knowlton.) If that had fallen into an ash heap and got what came on it, could that have been so after the handle was broken?

A. No, sir.

Q. The cutting blade? Anybody can show it. Have you measured it?

A. I have.

Q. What is its measurement?

A. Exactly three and a half inches, and I think I mentioned the other, three and one-eighth inches.

Q. What I wanted to ask about was this: Have you had occasion to consider the subject of the spattering of blood when blows are struck in the manner, in which you have heard these blows described?

A. Yes, sir.

Q. What can you say as to that generally?

A. It might spatter in any direction and might not spatter in every direction.

Q. That is, there is no rule at all?

A. No, sir.

Q. What happens? Does it spatter or spurt?

A. Spatters; when any blunt surface strikes a pool of blood, of course it will spatter in that direction, varying according to accidental circumstances.

Q. Would there be any way in which you could determine whether any given surface

near the wounds would receive the spattering

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or not, or how much?

A. No, sir.

RE-CROSS EXAMINATION.

Q. (By Mr. Adams) Assuming that the assailant stood behind Mr. Borden when these injuries were given and received, have you formed an opinion whether he would be spattered by blood to any extent?

A. I have thought that he must be spattered with blood, but I don't think it is absolutely necessary that he should.

Q. You have expressed that opinion, have you not?

A. I have.

Q. And you give that opinion taking into mind the bloody spots you saw on the wall and parlor door?

A. I beg your pardon: I will correct what I just said. Your question was if the assailant stood behind him, at his head. I don't see how he could avoid being spattered.

Q. What part of the body would receive these spatters?

A. Above the position of the head, or from the level up. (indicating with the hand)

Q. From the waist up?

A. Yes, sir.

Q. Assuming that the assailant of Mrs. Borden stood over her when she was lying down on the floor, face downward, and taking into account the spatters of blood which you saw there, have you formed an opinion as to whether her assailant would be spattered with blood?

A. I don't see how the assailant could avoid being spattered in that place.

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Q. What portion of the body would receive the spatters in your opinion?

A. From below---

Q. Below the---

A. From the lower portion of the body and upward.

Q. (By Mr. Knowlton.) Is there any way of determining---you say the assailant of Mr. Borden could not avoid being spattered---could you make any opinion or in any way form any opinion as to the number of spatters?

A. No, sir.

Q. Whether few or many?

A. No, sir.

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FRANK W. DRAPER, Sworn.

Q. (By Mr. Knowlton.) Your name is Francis W. Draper?

A. Frank W. Draper.

Q. You are by profession a physician?

A. Yes, sir.

Q. And where were you educated, doctor?

A. My medical education was in the Harvard Medical School in Boston.

Q. How long have you been in practice as a physician?

A. Since 1869, now 24 years.

Q. And have you given any department of medicine or practice of medicine special attention, other than the duties of your office?

A. No, sir; I have been in general practice.

Q. And you also are medical examiner for the city of Boston?

A. I am one of those for Suffolk County.

Q. How long have you held that office, doctor?

A. Since the office was created by the Legislature in 1877.

Q. And have, of course, been called upon in a great many cases?

A. Nearly 3500.

Q. In that time?

A. Yes, sir.

Q. Including cases of homicide? They are all that?

A. All cases or suspicion.

Q. All cases of death, cases where a homicide was suspected or charged?

A. Yes, sir.

Q. Have you also been called upon to examine into cases and give evidence in court in relation thereto?

A. Yes, sir.

Q. How extensively in that department?

A. Perhaps in the course of each year, since 1877, six or eight times, in cases of

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homicide.

Q. And I suppose, of course, your business has led you to a consideration of the causes of death and a consideration of wounds?

A. Yes, sir.

Q. As a specialty. And you also, I think are a lecturer or professor in one of the institutions?

A. I am a Professor in the Harvard Medical School.

Q. Professor of what?

A. The title is Legal Medicine. The older title was Professor of Medical Jurisprudence.

Q. How long have you held that office?

A. Since 1890. I have been lecturing since 1888 in that department.

Q. You were a lecturer before you were a professor?

A. Yes, sir.

Q. What was the first knowledge you had of this matter?

A. The receipt of my house in Boston, at my home, of a dispatch which purported to be a telephone message from Dr. Dolan.

Q. And in consequence of that dispatch did you go to Fall River?

A. I did.

Q. What day was that?

A. The dispatch was received on the morning of August 10th, 1892. I came down to Fall River the same day.

Q. And at that time did you go with him to see the bodies?

A. I did not.

Q. And did you afterwards?

A. I arranged with him, and the next day went to Oak Grove cemetery and saw the bodies with him.

Q. And at that time did you assist at an autopsy of those bodies?

A. I did, sir.

Q. Did you make an examination of the wounds upon the head of Mr. Borden?

A. I did.

Q. Did you draw these marks upon the plaster cast as it is here?

A. I did, sir.

Q. Do those purport to be exact as to the position or length?

A. They are intended to be an accurate approximation of position and length.

Q. Will it be convenient for you to hold that?

A. I will try to, sir.

Q. Will you want your notes too?

A. I should like to refer to my notes.

Q. Well, I can put it over here so as to assist you, I think. Now you can take your notes and point out, if you please, the several wounds that you found and all the particulars as to them; their direction, depth and the direction of the blow as far as you can, or had you rather do that afterwards as a separate matter?

A. I can do it now, sir.

Q. Yes, very good.

A. The first wound that was studied was the wound through the nose, through the upper lip.

Q. Would it be more convenient for you to turn it around, or will you have it just so?

A. I think that is about as we studied them.

Q. All right, sir.

A. Through the left nostril, through the upper lip and lower lip, nearly to the tip of the chin. It measured four inches. It was vertical in direction, and went through the left nostril and through the lips, and didn't injure the bone beneath. The next wound studied was

the one which follows around in a groove between the cheek and the nose. Its length was four and a half inches. It began in the corner of the left eye, extended down along the cheek nearly to the edge of the lower jaw. Studying it in connection with the skull, it was found to have crushed in the bone at this portion of the face, just below the eye. Its direction was very nearly vertical. If there was any change from the vertical it was from the left toward the right.

Q. Will you let me interrupt you here? When you say vertical what do you mean?

A. I mean at right angles to the plane of the face, as near as may be.

Q. Not vertical in the position in which it is now, but vertical in that way?

A. Yes, sir. The third wound was a wound above the left eyebrow.

Q. Let me interrupt you again, sir. It will be much more convenient for you to say first, second, and third. But by that designation do you or do you not mean to indicate the order of the wounds as they were inflicted?

A. Not at all. The order in which they were studied and recorded.

MR. KNOWLTON. The jury will understand that has no reference to any opinion of yours as to the order in which the wounds were inflicted. With that understanding you may proceed.

The WITNESS. The next wound studied was above the left eyebrow, which was an open wound, not long and narrow as the others were, but a more open wound, which was lost in the eyebrow near its outer end. Studying that wound on the skull

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it was represented in the bone as a gouged out portion of the external table of the skull, with a breaking into the skull itself, through the external table of that bone, into what is called the frontal sinus, or a cavity just at the bridge of the nose or above it. The next one studied began in this wound just described, passed downward through the eyebrow, cut through the eye at its outer portion, deeply, and crushed into the cheek bone on the left side. This wound was four and half inches long and had a direction from the left toward the right, in this way. Studied on the skull, it was found to have penetrated the cavity of the skull at and above the orbit of the eye, where the eye rests in the head. The next wound studied was above the left eyebrow and was nearly parallel with that just described, a flesh wound only, entering into the outer table of the bone of the skull. This was bevelled. This had a direction from the left toward the right, in this way. It didn't penetrate deeply. The next wound was a short cut in the scalp, represented in the bone by a mere nick, which had to be looked for with a glass to discover it. It didn't penetrate at all deeply into the bone. The next wound was parallel with the two just preceding, and was two inches in length, and was also a scalp wound which did not penetrate beneath the outer table of the skull. It was directed from the front backward, rather than in the other directions described, which was from the back frontward. But this went from before backward.

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Q. Won't you hold your hand in the direction?

A. That is to say, the posterior, the back portion of that cut in the bone, was tipped up. The anterior or front portion was clean. There was here a group of three wounds in front of and above the left ear, all of them crushing into the brain itself. The one in front was four inches long, and was found, in the examination of the skull, to have broken away the skull bone, to have passed down, and to have cut into the lower jaw just where it joins

into the skull; a very little nick there, which indicates approximately the length of a blade which entered in that portion. The last wound but one examined in Mr. Borden's case was immediately in front of the ear, the left ear, its lower end being in front of the ear opening, and it extended upward parallel with the one just described. It was also a crushing wound into the cavity of the skull, and at its lower end was found in the skull to have passed through where the largest artery on that side comes into the cavity of the skull and supplies the brain. Its upper edge was also seen in the skull as a cut through the bone. This also measures with approximate accuracy the length of a blade which would enter there. The last wound ---

Q. (By Mr. Jennings.) You didn't give the measure of that.

A. Three and half inches.

Q. The other one was what?

A. Three and a half. The last wound studied in Mr. Borden's case was a little higher up above the left ear and was two inches long. It penetrated

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the cavity of the skull and it was nearly vertical in direction, coming down upon the skull in this way. That describes all the wounds that were found at the autopsy in Mr. Borden's case.

Q. Before you leave your position now, while upon this subject, how many of those wounds, and which of them, penetrate the bone of the skull?

A. Four of them. The one which cut through the eye, and the three in this vicinity above and in front of the left ear.

Q. How deep was the wound that went through the eye?

A. I don't know, sir, because it went through the bone behind the eye, and how deep it went into the brain I don't know.

Q. How many of the others went into the bone of the skull, without going through?

A. Three of them, sir.

Q. And which three of them?

A. These in the left temple.

Q. The short one, and the two on each side there?

A. Yes, sir.

Q. And the three that went through are the three there, and the one in the eye?

A. Yes, sir.

MR. JENNINGS. Wouldn't it be a good plan to number those?

MR. KNOWLTON. Yes, you might number them during the recess.

(At 1.00 P.M. a recess was taken until 2.15 P.M.)

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Afternoon Session.

The Court came in at 2.15.

DIRECT EXAMINATION OF DR. FRANK W. DRAPER RESUMED.

Q. (By Mr. Knowlton.) Have you said all you care to say or all that occurs to you about the wounds on the head of Mr. Borden?

A. I remember a single point only, I might add.

Q. State that now.

A. That the depth of the wound as shown in the bone, in the last wound but one on the head, this wound in front of the left ear was one inch and seven-sixteenths of an inch from the outside of the skull to its deepest part.

Q. Which did you examine first, the body of Mrs. Borden or Mr. Borden?

A. Mr. Borden was examined first.

Q. Then you proceeded to make an examination of the body of Mrs. Borden?

A. Yes, sir.

Q. Had any change occurred in the condition of the flesh?

A. Yes, sir, both bodies were decomposed.

Q. In what respect, if any, did that interfere with the accurate observation of the wounds?

A. I think with reference to the external appearance. The edges of the wounds were parted more at their centre.

Q. You drew these marks?

A. I did, sir.

Q. Of course, those don't pretend to be its size?

A. Not at all. They are a chalk.

Q. Are they the relative size or don't they pretend to be relative?

A. I think not even relative---more to designate

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the position than size.

Q. Do you want your instruments?

A. I will go as far as I can without them.

Q. State what you found in the nature of the wounds upon the body or head of Mrs. Borden?

A. The first wound that was studied was one in the back at the right of the neck where the neck joins the shoulders. It was just to the left of the middle line indicated on this statuette, just to the left of the middle line of the neck, and had a direction outward and upward to the left. Its surface length was two and one half inches. It was a flesh wound, did not strike upon any bone.

Q. Will you say before leaving that as to the condition of the flesh affecting the accuracy of observation of that wound in any respect?

A. As to its depth, I think decomposition had changed the fat under the skin so that accurate measurement of its depth I did not regard as probable.

Q. Its position and length were still a matter of accurate measurement?

A. Yes, sir.

Q. And what was the position of it?

A. It was just to the left of the middle line of the neck behind, and where the neck joins the shoulders at about the level of the shoulder blade at the top.

Q. What was the direction of the blow that inflicted it?

A. Assuming that the person inflicting the blow stood behind or over the body, it was from the right toward the left.

Q. What next did you observe, doctor?

A. The next wound

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studied was a scalp wound above the left ear indicated on the statuette.

Q. You mean that one?

A. Yes, sir. It was two inches long from the front back, an inch and half in its longest width from below up. It was a flesh wound and didn't reach to the bone. It was a flap with its attachment at the back, and was cut from the front backwards.

Q. What next?

A. The next was a group of two wounds on top of the head a little back of the crown line from ear to ear, and those two wounds went through the scalp and through the skull. The one behind was the shorter wound, and was five-eighths of an inch in length.

Q. Which is that one on the cast?

A. This one, posterior of the wounds on top. It had direction from the right toward the left, and the cutting edge of the blade was shown in the bone as at the front end of the wound in the bone. The next wound examined ---

Q. Excuse me a minute. Was that cutting edge the deepest place there?

A. No, sir. The deepest place was behind, was at the back end of the cut.

Q. And the other one?

A. The cut going through the bony part of the skull, it was chipped off on the right side, the other side being left clean cut. The next wound was in front and nearly parallel with the one just described.

Q. This one?

A. Yes, sir. This went through the scalp and through the skull, chipping out a fragment of bone that was

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irregularly square, and measured three-fourths of an inch at its back part and an inch and an eighth along the long course of the cut externally, and one inch at the other side. That was taken but cleanly and exposed the cavity of the skull through it.

Q. Now then, I will interrupt you there, and go back to that small wound you saw partly in the skull.

A. Yes, sir.

MR. ADAMS. Let him indicate.

MR. KNOWLTON. Yes, I would just as like if he would indicate.

Q. What do you mean by that?

A. It could have been cut [by] this corner of that hatchet entering that ear with the cutting edge of the blade toward the forehead.

Q. The depth of it gradually diminishing to nothing toward the front?

A. Yes, sir, and the same applies to the wound in front of it.

Q. What was the length of that wound in front?

A. The length of the scalp wound?

Q. Yes.

A. An inch and a half long.

Q. The next.

A. The next wounds examined were a group of three immediately at the back of the head and its most prominent portion.

Q. Those indicated by those three marks?

A. Those three in a group together. The lower one was an inch and a quarter long, went through the scalp, and entered the outer table of the bone of the skull beneath. It did not penetrate the cavity of the skull. It was bevelled on the right toward the

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left in this way.

Q. Would that indicate the direction of the blow?

A. Yes, sir. The left of its edge was chipped off. The right was left a clean cut. The next cut was to the left of the one just described, and was an inch and a half long.

Q. That was there (Indicating)?

A. Yes, the length of the cut in the bone---

Q. (By Mr. Adams.) That is the third one?

A. The second. The length of the cut in the bone was $13/16$ of an inch. That, like the one last described, was bevelled from the right toward the left, and the description applies to this as to that as to direction of the cutting edge. The third of this group of three was above the other two, and was just where---

Q. (By Mr. Knowlton.) That one?

A. Yes, sir,---just where the back bone of the skull called the occiput by anatomists, which is the two side bones of the skull, and was in line of union between those three bones. Its length was an inch and a quarter in the scalp and an inch in the skull. It did not penetrate below the outer table of the bone.

Q. Before you go to any other wounds, did either one of those three go through the skull?

A. No, sir. They were all superficial as regards the bone.

Q. That is, the cut went into the skull but not through it?

A. Yes, sir.

Q. I will go back, if you please, and call attention to the two that you described just before, that is, nearer the top of

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the head. Did either of them go through the skull?

A. Both went through.

Q. Now then, the next.

A. The next was a group of twelve cuts above the right ear which had a distribution as shown in the cast---

Q. Those there?

A. Yes,---like the ribs of a fan or like the fingers on the hand. They were above a crushing of the bone which laid open the brain on that side, and left a large crater in the skull, the dimensions of that break being four and a half from below upwards and five and a quarter, the longer way from before backward.

Q. That crater, as you call it, comprised the entire amount of those cuts?

A. Yes, sir.

Q. Did those cut through the skull, all of them?

A. They were above a complete smashing of the bones in that location.

Q. What was the shortest and longest of them, if you have any measurement of them?

A. Of the fragments?

Q. No, of the cuts, if you can tell?

A. They varied all the way from half an inch, the shortest, which I think was this part, to five in that series, five inches, which was the longer one beginning down here and passing up under toward the crown.

Q. Is there any other fact with reference to those wounds that I have not called your attention to that you deem of importance?

A. I recall none, sir.

Q. Did you examine any of the other parts of the body of Mr. and Mrs.

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Borden?

A. I did, sir.

Q. I won't trouble you with anything except the intestines. Were the stomachs there?

A. They were not.

Q. Were the intestines?

A. They were.

Q. What did you observe with regard to the intestines?

A. In the case of Mr. Borden digestion had gone forward in the small intestines so that they were relatively empty. The large intestines, the large bowel was filled with residue of the last digestion. In the case of Mrs. Borden the small intestine showed food in the process of digestion, and I saw two small fragments of fruit skin, either pear or apple. The large intestine was empty.

Q. That aids what I had in mind before. Is the process of digestion completed in the

stomach?

A. No, sir.

Q. That continues how far?

A. Until it is finally delivered as residue in the large intestines from the small intestines.

Q. There is no digestion practically in the large intestines?

A. No, sir.

Q. But there is a continuous process of digestion in the small intestines?

A. Yes, sir.

Q. Was there anything in the appearance of those intestines or the contents of them which would indicate anything abnormal or irregular in the process of digestion?

A. Nothing that I observed, sir.

Q. You have heard the testimony of Prof. Wood in regard to the contents of the stomach?

A. I have.

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Q. Without repeating it, was the condition of the intestines that you have observed consistent with the appearance of the contents of the stomach as you heard them testified to?

A. It was.

Q. Have you heard the other testimony in the case with relation to the appearance of the bodies as they were found and after they were found?

A. I have.

Q. And the testimony with regard to the color and the consistency of the blood?

A. I have sir.

Q. And the heat of the bodies?

A. Yes, sir.

Q. Taking all those facts together, or taking those facts or any facts that you have listened to with regard to the condition of the bodies, including what you observed yourself at the time of the autopsy, are there any of them that you deem important in determining the question in priority of death?

A. There are.

Q. If so, state what they are?

A. I place first in the series the differences observed in digestion in the two bodies.

Q. By Prof. Wood?

A. By Prof. Wood, and by Dr. Dolan and myself.

Q. Give all those that seem to you material or important or significant?

A. The differences in the condition as regards the color and consistency of the blood in the two cases; and differences in the temperature, are all factors which lead me to a conclusion.

Q. Perhaps in your first fact that you have stated you included the condition of the intestines?

A. I did, sir.

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Q. Taking those facts together and assuming that the two people ate breakfast at the same time and from the same table, or from the same supply of food, and that nothing abnormal occurred in the process of digestion, are you able from those facts to determine the question of priority of death and the time of such priority?

A. As to the priority of death I am sure. As to the time, it will be approximate, if I make a conclusion.

Q. You can state both conclusions approximately or how accurately you can give either one of them?

A. I am sure from the evidence of digestion, of the color and its condition and consistency of the blood, and of the temperature of the two bodies, that Mrs. Borden died before Mr. Borden. As to the interval, I think, taking all the facts together, they lead me to the conclusion that an interval of at least an hour passed between the two deaths.

Q. Is there anything in the character or nature of the wounds upon the head of Mrs. Borden that assist you in determining the size of the instrument or of the cutting edge of the instrument used to inflict the wounds?

A. No, sir.

Q. Is there anything in the nature or character of the wounds upon the head of Mr. Borden which would so assist you?

A. There is.

Q. Would the skull itself be of assistance in pointing out such things as occur to you to be important?

A. It would.

MR. KNOWLTON. Then in that case, although I regret very much the necessity of doing it, I shall have to ask Dr.

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Dolan to produce it.

(Dr. Dolan retired from the court room and returned with the skull of Mr. Borden.)

MR. KNOWLTON. I understand it to be agreed without recalling Dr. Dolan that this is the skull of Mr. Borden?

(Mr. Adams nodded assent.)

Q. Now, Dr. Draper, I will ask you one or two preliminary questions. The crater that you have spoken of is where?

A. In the man's skull.

Q. That is where the skull is crushed in in his case?

A. Yes, sir.

Q. I will ask you now the question whether from an examination of that skull coupled with the observations of your autopsy, you are able to determine the length of the edge of the instrument which inflicted the wounds?

A. I believe I am, sir.

Q. What do you say it is?

A. Three inches and one half.

Q. Will you tell us what it is that leads you to that conclusion?

A. Because by taking a metallic plate of stiff tin--- (the witness then placed the tin plate in position on the skull.) This plate is three inches and a half on its longer edge. Adjusting it in that way it fits in the wound in the base of the skull, which I have described as cutting across the large arteries supplying the brain. It also rests against and cuts the surface of the upper portion, but takes in this edge and no more.

Q. How do you determine that the cut portion which you refer to in the upper end of where you have put your tin plate is the

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other cutting edge of the wound which you have fitted down at the lower end?

A. I found none other to correspond.

Q. Did the observations you made at the autopsy help you to determine that?

A. Yes, sir.

Q. That is, you determined the position exteriorly ---

MR. ADAMS. Well, let him tell what he did.

MR. KNOWLTON. I will finish the question first.

MASON, C. J.. We will hear the question.

Q. Did you determine the position exteriorly by means of your observations?

MR. ADAMS. I won't object to that.

A. I did, yes, sir.

Q. So that you say where that fits there is the other edge of that wound down there?

A. Yes, sir. I also found another wound in the skull which fits, but not so well. (The witness adjusted the tine plate.) That shows, but not so well as the posterior wound, the same fact.

Q. Now right here, doctor, will you take the plaster cast and tell me which wounds you now refer to in those two? I will afterwards make it plainer to the jury.

A. This one in front of the left ear is one; the one in front of that is the other.

Q. Those two being the two, I will say this for the record, parallel to each other and directly in front of the left ear?

A. Yes, sir.

Q. Are you able to say whether that hatchet head (showing witness handleless hatchet head) is capable of making those wounds?

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A. I believe it is.

Q. Have you attempted to fit that in the wounds?

A. I have seen the attempt made.

Q. Will you do it yourself?

A. I will try. (The witness did so.)

Q. Now with the other one.

A. The other one I cannot do without assistance.

Q. You mean professional assistance?

A. Yes, sir, to hold the skull in position.

Q. Well, I am not a professional so I cannot help you in that way. May I ask that Dr. Cheever, who is in attendance as a witness, may be allowed to hold the skull?

(The Court permitted, and Dr. Cheever came forward and held the skull in

position, while the witness placed the tin plate.)

Q. Before going any farther I will ask you, have you said you could not determine so accurately in the case of the second illustration you gave what interference with the accuracy of that?

A. Possibly the lower jaw may have been either depressed or tightly closed.

Q. If it was three and one-half inches from the jaw, what was the position of the jaw?

A. The teeth were together as they were shown in the photograph.

Q. Do you refer to the photograph which is in the case which represents Mr. Borden lying dead upon the sofa?

A. Yes, sir.

Q. Do you mean by that photograph Exhibit No. 17?

A. Yes, sir.

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Q. I shall have to ask you now, sir, to point out to the jury so that they can see it the cutting edges to which you refer, and then after you have done that to show what you mean by the insertion of the three and one-half inch piece of tin and then by the insertion of the hatchet?

A. If I may go one step further in the demonstration, I will say a four inch plate does not go into either of these places.

Q. Now won't you take the skull and turn to the foreman with your illustration. I may not go so far as to trouble you to fit one where you have to have professional assistance, because that will be too involved.

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A. The upper large cut through the skull is here. I cannot indicate it in any other way to the stenographer. The lower edge is here just in front of the ear, and its depth is indicated by a cut which passes in across the base of the skull---through the cut, as the Jury will see and in and through which the large artery passes there back to the front.

Q. Now where is the other cut you refer to?

A. The other cut begins here (explaining on skull) and goes down in front of the ear again, cutting through this bone which comes out in front of the cheek and as well as under there, the lower half.

Q. Will you illustrate the position of the instrument making that out by means of your diagrams that you have here, and put them in the place where the cut is?

A. (Showing the position.)

Q. Now where is the upper edge of the cut?

A. About here (showing) where the point would come out like that.

Q. What shows it there?

A. That. (Indicating)

Q. That is the edge of the cut, there, is it?

A. Yes, sir.

Q. And the lower edge would be here? (Indicating)

A. Across the base of the skull, right in there where that pencil is.

Q. That rests on the upper edge of the cut?

A. Yes, sir.

Q. Where is the other one?

A. That rests against a little niche or notch in the lower jawbone.

Q. What indicates that out here?

A. There is the notch,---that is the lower end of the cut.

Q. Will you show us as you did before, so that the jury can see it, how that hatchet went in there?

A. (Shows it to the jury)

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Q. Can you show [it] without the hatchet? You cannot show how the other cuts were made there, without it?

A. No, sir, not as well.

Q. You say you experimented with a four inch piece of tin?

A. A four inch piece of tin comes up above all the wounds here.

Q. How are you able to determine that, what is there to determine that that is the edge of that wound?

A. It can be seen with the naked eye, better seen with a glass as a smooth, shining glancing surface that must have been cut.

Q. Where is the edge of the other wound you spoke of?

A. At this point, (showing) begins there and has the same character.

Q. And those you have already spoken of, are those wounds here?

A. Yes, sir.

Q. Take this down to the other end so that the Government counsel can see and first

point out where the channels of those wounds are?

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(Witness indicates to the jury, fitting in the different pieces of tin.)

Q. And won't you do that same thing by the hatchet itself?

(The witness complies.)

Q. Of course at this time that is narrower on the lower part, I suppose?

A. Yes, sir; it has gone in beyond the three and a half inch dimension.

Q. That is the reason you use the tin?

A. Yes, sir.

Q. Now the other one?

A. The front one about like that.

Q. Now won't you try the four inch piece of tin?

A. I attempt to get this four inch in and I cannot get it in in any way, into that wound in the base. The same applied to the front, but not to the same degree.

Q. Now having shown what you desire to call attention to to the jury, what do you say the cutting edge was of the instrument that caused the wounds that you have described the borders of?

A. Three and half inches.

Q. Are there any other wounds besides those on which you can make any accurate determination as to the size of the cutting edge?

A. Not so far as I have studied the materials.

Q. Was that eyebrow wound on this skull or the other one?

A. On this one.

Q. Won't you point that out? Point out the wound you are talking about.

A. That is the one, above the left eyebrow. It shows on the skull by this gouging on the outer table of the forehead bone, just above the eyebrow.

Q. While I am on this subject, were there any chips, if I may

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use that expression, any chippings, on the skull of the woman?

A. There was one on the right side of the head, in front of the general smashing of the skull, which can be indicated here.

Q. Where was that, on the manakin?

A. Just in front of the broken edge. Shall I indicate it?

Q. Yes, if you please.

A. It was half-moon shaped, just in front of the last cut in the skull that was seen, above the right ear.

Q. How was that caused, doctor?

A. By a blow with an edged instrument of considerable weight directed from behind forward.

Q. That answers my question; but you have not enumerated it in your account of the wounds, or have you?

A. No, sir; I don't remember any wound that corresponded with it. It must have been into the general crushing or cutting behind it.

Q. Is that skull, comparatively speaking, a thin skull or a thick skull?

A. It is a thin skull.

Q. Is there any general characterization of the thickest and thinnest points of skulls?

A. Yes, sir.

Q. Won't you point out by that skull where the thickest points of skulls are and where the thinnest are?

A. The thickest point is at the back; the next thickest point is over the top. The thinnest point is in the temple region, and in this skull it is so thin that light passes through it.

Q. How did the thickness of the skull of Mrs. Borden compare with the thickness of that skull?

A. It was thicker.

Q. How much, if you can give any idea---intelligible idea?

A. I cannot give it in dimensions of a sixteenth of an inch.

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Q. Can you express it so we can understand it, in common language?

A. I should think that where this skull in its thinnest part is a mere shell, in the same part of Mrs. Borden's skull it would measure a sixteenth part of an inch. In the thicker portions I think there was not a material difference.

Q. What in your opinion, doctor, was the cause of these wounds?

A. Blows upon the head with an edged instrument or weapon of considerable weight, supplied with a handle.

Q. Whether a hatchet would be consistent with the description that you have given?

A. Yes, sir.

Q. In your opinion could the results you found have been produced by the use of an ordinary hatchet in the hands of a woman of ordinary strength?

A. In my opinion they could, sir.

Q. Doctor, taking the results of your observations, what should you say as to the time of death after the wounds were inflicted?

A. I am able to form an accurate judgment in the case of the man. I can only approximate in the case of the woman.

Q. You may give your opinion or judgment.

A. In regard to Mr. Borden, the cutting across of the internal carotid artery within the skull meant immediate death. In the case of the woman, there was stunning from the first blow, unconsciousness, and the length of survival might be five minutes, might be ten. Death might have come in one minute.

Q. You put the extreme limit at ten minutes?

A. Yes, sir.

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Q. After all the blows were inflicted?

A. Yes, sir.

Q. Ten minutes after all the blows were inflicted?

A. Yes, sir.

Q. Won't you point out where that carotid artery is that was severed in the case of Mr. Borden?

A. There is a round canal which is seen in the back face of the cut in the base of the skull.

Q. You have heard the testimony, as to the position in which the body of Mrs. Borden was found?

A. I have, sir.

Q. And taking that testimony, without rehearsing it now, and the wounds as you observed them, did you form any opinion as to the position of the woman when she was assaulted?

A. I did, sir.

Q. Won't you tell what your opinion about it is, and how certain you feel about it?

A. I believe that the assailant in the case stood astride the prostrate body of Mrs. Borden, as she was lying face downward on the floor.

Q. As to all of the wounds?

A. As to all except the flat wound in the scalp on the left side of the head.

Q. You mean that one?

A. Yes, sir.

Q. And what do you say as to that one?

A. I think that that was given while Mrs. Borden was standing and facing her assailant.

Q. Why?

A. Because it is directed from the front backward, and is attached to the scalp by a bridge at the back portion of it.

Q. Could that have been given in the position in which she was found?

A. It could have been, but not readily. It would

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be a very awkward way of inflicting it.

Q. Are you able to form any opinion as to whether any of the wounds on the top of the head were given in any particular position of Mrs. Borden or position of the assailant?

A. I have an opinion but it is open to controversy. It is an open question.

Q. Perhaps you may give it.

A. My opinion is that they were inflicted while the body was prostrate, and the assailant astride the body.

Q. As I understand you, of that you do not feel at all confident?

A. No, sir.

Q. From what you have heard of the testimony of how Mr. Borden's body was found, and looking also at the photograph exhibit 17, are you able to state what his position was when assaulted?

A. I have an opinion on it, sir.

Q. What is that?

A. That the assailant stood about the head of the sofa, above the head of Mr. Borden, and struck downward upon his head and face.

Q. In your opinion was the position of the body changed after any of the blows were struck?

A. I don't know, sir; I haven't any opinion on that.

Q. Is it consistent with your observation to express the theory that all the blows were

given in that position?

A. Yes, sir.

Q. Did you form an opinion as to where the assailant of Mr. Borden stood?

A. I have already stated it, sir; at the head of the sofa, standing over the head of Mr. Borden.

Q. Now then, the further question, which was the one I intended

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to put---although I intended to put that one too---whether you formed an opinion as to the position of Mr. Borden when he was assaulted, when he received those blows?

A. I think he was lying on the sofa on his right side, with the face turned well toward the right, and the right cheek concealed in the pillow.

Q. Have you any opinion as to whether the position of the body was substantially changed after any part of the blows were struck?

A. I think all the blows could have been received with the body lying as it is shown in the photograph.

Q. Does it go any further than that? Does that appear to you to be a more natural position than any other to have received the blows, or is it entirely consistent with that?

A. It is entirely consistent with that. If the body was shown in the photograph with the head lying higher upon the arm of the sofa it would help matters. But it is not inconsistent as it is now.

Q. Can you tell what the probable effect would be as to the diffusion or scattering of blood from the wounds upon Mr. Borden?

A. Mere guess work, sir, in my mind.

Q. Why so?

A. Because of the nature of the wounds. Essentially that is the answer.

Q. And is there any way of determining the direction of the spattering or scattering of the blood which comes from that body?

A. I don't think there is, sir.

Q. Is there any way of determining as to whether any particular portion of the circumference of any given radius around the

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body will or will not receive blood spatters?

A. Not in my mind, sir.

Q. Is there any way of determining? I am speaking scientifically now, of course, or as the result of your experience in that matter. Is there any way of determining whether, for example, the person inflicting the wounds would receive spatters, and if so how many?

A. I have no opinion on that; I don't know.

Q. Is there any rule of direction as to which spattering goes?

A. No, sir.

Q. Is there any rule of universality as to spattering?

A. Not that I know of, sir.

Q. Have you at any time had those skulls in your possession?

A. Yes, sir.

Q. How long have you had them in your possession?

A. They were with me from the 26th of May to the 2nd of June, just a week.

Q. Under instruction from the district attorney?

A. Yes, sir.

Q. Acting under those instructions, have you exhibited the skulls to any person sent there or purporting to be sent there by the counsel for the defendant?

A. I have, sir.

Q. To whom?

A. Dr. Thomas Dwight, and to Dr. Maurice H. Richardson, both of Boston.

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CROSS-EXAMINATION.

Q. (By Mr. Adams.) You have not given us any measurement of the breaking of the skull of Mr. Borden. Did you make such a measurement of this hole that is in the skull?

A. I have not.

Q. Will you do it now?

A. I will try to. (Measures) The long or vertical diameter is four and one-sixteenth inches; the horizontal diameter is three inches.

Q. Injury No. 2, as you described them in your direct examination, crushed through the bones of the skull into the brain, did it not?

A. In Mr. Borden's case?

Q. Yes.

A. No, sir.

Q. It crushed through some of the bone?

A. It crushed the bones of the face just below the eye.

Q. Did it disturb the bone over the eye?

A. It did not.

Q. What is the comparative strength of the bone over the eye?

A. Immediately over the eye, in the eyebrow, it is strong. It is well thickened and buttressed.

Q. Did any of these blows upon Mr. Borden affect that?

A. Yes, sir.

Q. Which one?

A. Shall I show it?

Q. Yes, you may show it, if you like, again.

A. The one which is described as the fourth in the series, and which went down through the eyebrow, through the eye, into the cheek bone.

Q. That was a wound about four and half inches long?

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A. Yes, sir.

Q. Was that a heavy or light blow?

A. That is relative. It was heavy enough to go through.

Q. Well, you don't mean to answer me in that way, do you?

A. I cannot describe it any better.

Q. Well, was it a light blow?

A. It was not a light blow, relatively.

Q. Was it a blow that required considerable force?

A. Yes, sir; as compared with most of the others.

Q. But speaking of blows, as you speak of them in general conversation, and as lay people speak of them, in your opinion wasn't that blow a fairly heavy blow?

A. It was a fairly heavy blow.

Q. Was there any other blow upon the head of Mr. Borden that, in your opinion, was as heavy or practically as heavy as that blow?

A. No, sir; I think that is the heaviest one; that represents the heaviest blow.

Q. Will you describe the construction and anatomy of the eye, if anatomy is the correct word?

A. The eye is a globe, resting in what is called anatomically the orbit, in the skull, and it consists of three coats, of which the outer one is dense and resistant, and two inner coats which are delicate structures, simply linings of the outer one. Within the cavity there are two semi fluid materials, called humors, one the vitreous, the other the aqueous.

Q. What does the eye rest upon?

A. A cushion of fat about it.

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Q. So that to the touch it is elastic?

A. Yes, sir.

Q. And the eye itself, removed from its cushion and its socket, would be elastic to a certain extent, would it not?

A. It would; yes, sir.

Q. Like a ball. This artery that you spoke of as being out is the carotid artery?

A. The internal carotid artery.

Q. That is, it comes up in two branches?

A. It comes up in the neck in one common carotid artery, and then divides into two.

Q. About where?

A. Just below the ear.

Q. Near the angle of the jaw?

A. Yes, sir.

Q. And this one that was covered was the interior one?

A. The internal, terminal branch of the common carotid artery.

Q. And you say if that were out, in your opinion death would ensue almost at once?

A. Immediately; yes, sir.

Q. Would the flow of blood from such an injury as that be larger?

A. It would.

Q. And from what you have heard in this case you are satisfied that there was a large flow of blood from Mr. Borden?

A. I should think there was.

Q. There are how many gallons of blood in the average human body?

A. How many gallons?

Q. Quarts, then.

A. I should rather reduce it to pints, than quarts.

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In the average human body of what weight, Mr. Adams?

Q. Well, of the weight of Mr. Borden.

A. May I do a little figuring?

Q. Oh, yes, provided you do your figuring based on arithmetic.

A. Assume that Mr. Borden weighed 160 pounds, I think there would be 11 pints of blood in his body.

Q. Would a good deal of blood be liberated at once after the cutting of the carotid artery?

A. Yes, sir.

Q. That is, with the body lying in the position you found it?

A. Yes, sir.

Q. Would a good deal of blood be freed as the result of the other injuries?

A. There would be, yes, sir.

Q. That is, there are other arteries in the temple region?

A. Yes, sir.

Q. And the other arteries branch in that region?

A. Yes, sir.

Q. And these blows that you have described would cut many of the arteries?

A. Yes, sir.

Q. So that they would be a large flow of blood from the temple injuries?

A. Yes, sir.

Q. How many blows in all did you find in Mr. Borden's case?

A. 10.

Q. Assuming that the blow cutting the carotid artery was the first one, the instrument, whatever it was that made the other injuries, would strike the head filled with and overflowing with blood, would it not?

A. Yes, sir.

Q. And the instrument would be naturally covered, or at all

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events would have a good deal of blood upon it?

A. Naturally, yes, sir.

Q. Have you heard the situation and the number of spots described in the sitting room where Mr. Borden lay?

A. I have.

Q. Have you formed an opinion as to how those spots were caused?

A. No, sir, I have not.

Q. Have you an opinion by reflection now that you would be willing to give?

A. It would be a hasty opinion. I think they were caused, according to the description of them, by the spattering chiefly, and not by the spurting of the arteries.

Q. That is, by the instrument striking, or by it when in there?

A. Both by the swinging of the weapon and by the impact of the weapon on the wound.

Q. Taking the head of the handleless hatchet, would you say that the handle of the other hatchet would be a fair length for the handle of that hatchet?

A. I think so.

Q. To inflict an injury like this on Mr. Borden with an instrument with a handle of that length, would not the assailant of necessity have to be pretty near the assailed?

A. Again "pretty near" is relative.

Q. Whether the assailant would have had to be standing almost at the head of the assaulted?

A. I think he would. If he were striking at arm's length, he would strike at disadvantage.

Q. Assuming that spots were seen upon the wall immediately over the head and a little to the front of Mr. Borden, in large

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number, 80 to 100, that spots were seen upon a picture upon the wall midway over the body to the extent of 40 or 50, that spots were seen upon the door which was in the general direction beyond his feet, and that other spots were seen upon the door which was in a general direction behind his head, and between him and beyond the space where the assailant stood, in your opinion would the assailant of necessity receive some spatters of blood upon his clothes or person?

A. I should think so.

Q. What part of the person would have been spattered?

A. The part that was exposed, that was not covered either by furniture or by other

protecting substances.

Q. Assuming that the assailant stood behind Mr. Borden using an instrument like the handleless hatchet, having a handle in it like the one of the smallest hatchet here, and remembering the height of the sofa in a general way, what portion of his body would have received these spatters?

A. Assuming that he used the right hand, I should think the upper portion of his body, the clothing and his right side.

Q. Assuming that he used his left hand?

A. Is this a general question, or applied to the situation in this affair?

Q. Meant to apply to the situation.

A. Then his left side would be more or less spattered.

Q. Does the fact that the spatters are on the wall to the left of Mr. Borden and that some of the blows have a trend from left to right, indicate to you anything as to the direction in which the blows were given?

A. Yes, sir.

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Q. And does it indicate to you that they were from left to right?

A. Those blows would.

Q. From left to right?

MR. KNOWLTON. Those blows what?

MR. ADAMS. The bevelled blow and one other blow.

A. I think your question involved also the appearance of the blood spots on the wall?

Q. Yes, sir. If there were no spots on the carpet in front of the sofa, and if there was a table standing within a short distance of the front of the sofa with articles upon it readily spotted with blood, and if upon that carpet and upon that table were objects upon which no spots of blood were found, would that help you still further in your opinion as to the direction in which the blows were given?

A. In a measure. It would not be incredible, though it would be extraordinary, I think, that the table and the articles on it should escape some spots of blood under those conditions.

Q. If the blow was given from right to left would not you naturally expect that the carpet and the table in view of the fact that these spots were found in such large numbers on the wall, would have been spattered?

A. I should think it would.

Q. All the appearances in that room, indicate, do they not, that those blows created spatters?

A. That all the blows made spatters?

Q. Many of them made spatters?

A. I should think so, yes, sir.

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Q. The handleless hatchet is not an uncommon instrument, is it?

A. No, sir.

Q. It has a very general circulation?

A. I think so.

Q. Like some other things. (Producing a new hatchet). Is there anything about that which is out of the ordinary?

A. Nothing that I perceive at present, sir.

Q. Won't you see if you can cut that into the injury or the scar in the skull?

A. (After trying experiment). It does not fit the wound.

Q. Why not?

A. Because it is too blunt at this lower corner and does not go into this passage right here.

Q. That is on account of the grinding?

A. It is on account of the thickness and the grinding.

Q. That is to say, it is not ground enough, in your opinion?

A. It is not.

Q. Won't you show me exactly what you attempted to do? (witness stepped before the jury with the skull and hatchet and began the experiment). Will you begin farther out?

A. It does not go through as the other one did. It does not show through on the inside of the wound, as the other did.

Q. Will you now compare that with the head of the handleless hatchet? No, I won't trouble you to do that; I can do that myself. (Placing the two hatchet heads one upon the other). Will you be good enough to measure the handle of that for me?

MR. KNOWLTON. Have you more than one hatchet, Mr. Adams?

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MR. ADAMS. Of my own?

MR. KNOWLTON. That you are going to produce?

MR. ADAMS. I have not disclosed but one yet.

MR. KNOWLTON. If you are, I want to have them distinguished. If you produce another one will you be kind enough to have them distinguished in some way.

THE WITNESS. (Measuring cutting edge of the hatchet). This one is 3 inches and 5 eighths.

Q. I meant to have asked the length of the handle from the outer edge to the end.

A. I beg your pardon, sir.

Q. Practically a foot, isn't it?

A. (Measuring). Twelve and a half inches.

Q. I observe upon that when you put the handleless hatchet into this mark in the skull, off at its upper edge and above it there is a continuation of a smooth and polished surface, indicating that there was a longer injury. Am I right about that?

A. I think not, sir.

Q. Well, is there a smoother and polished surface beyond?

A. There appears a smoother polished surface when the weapon is in situation, presumably buried inside of the skull, because the hatchet blade narrows as you recede from the edge.

Q. When the skull was received by you, was it received substantially in the situation that it is now, or the condition that it is now?

A. There has been one modification.

Q. What is that?

A. A screw has been put in at the crown to keep the two fragments of that side in position.

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Q. Was the lower jaw removed? I mean was it loose, was it apart from the rest of the skull?

A. It was loose, yes, sir.

Q. In preparing a skull as this has been prepared, is there anything lost in the way of tissue or cartilage?

A. Yes, sir.

Q. And what proportion of it?

A. There is a very thin layer of cartilage where the lower jaw joins the skull, altogether, I suppose, on both sides, of a sixteenth of an inch.

Q. In other words, in life the distance would be longer?

A. By so much.

Q. Is there any other cartilage or tissue that is removed in preparing the skull?

A. All the soft parts are removed, leaving nothing but the bone.

Q. In the head of Mrs. Borden that you have spoken of, or upon it, you found in all how many marks of injury?

A. 22.

Q. 22?

A. Yes, sir.

Q. And all made by some instrument with a cutting edge?

A. No, sir.

Q. What do you expect from that number as not being made with the cutting edge?

A. Three bruises on the forehead.

Q. Then the cutting injuries were 19 in all?

A. 19.

Q. And upon the head itself, 18?

A. 18.

Q. You have included in the number 19 the one on the back?

A. Yes, sir.

Q. You have already given us the position of that wound on the back. I understood you to say---I will ask you to describe it again.

A. It was a clean-cut wound in the neck, where the neck joins the shoulders, just to the left of the middle

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line from above downwards, and with a direction from below upward from the right toward the left.

Q. In your opinion, was that blow received when Mrs. Borden was lying prone on the floor?

A. It may have been, or while she was standing.

Q. Are you willing to make a representation on my back? I seem to have to bear this.
A. I will.

Q. If you will as nearly as you can portray the length, location and direction, and not bear on quite so hard as was done before. (Witness drew a chalk line on the back of Mr. Adams' coat.) Now you have given the location, the length and the direction?
A. I have tried to.

Q. Now you say that proceeded, in your opinion, how? From below upward?
A. From below upward and from the right toward the left. I mean that it proceeded from the left toward the right from below upward.

Q. Have you any opinion as to the kind of blow that was given when that injury was made, whether from left to right or from right to left?
A. I think it was given from left toward the right, downward.

Q. From the left, to the right, downward?
A. Yes, sir.

Q. I understand you to say that your opinion as to its depth and extent is not of value because of the appearance of things at Oak Grove Cemetery when this autopsy was made?
A. Yes, sir: I do not rely upon the depth.

Q. The head of Mrs. Borden had hair?
A. Yes, sir.

Q. To what extent?
A. There was a moderate growth of hair;

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it did not represent an extreme either way, it was neither very thin nor very thick, but moderate.

Q. How was it at the back of the head, where there were many injuries?
A. The hair had been arranged for the burial when I saw it. I should say there was, as I observed it, no material difference between that and the other side.

Q. Would or would not that form a cushion of resistance to blows given by an assailant if she were lying down?
A. It would form a cushion, according to the depth and thickness of its growth.

Q. So in estimating the force by the appearance of the skull, you would have to take into account this intervening cushion, would you not?
A. Certainly.

Q. Have you done that in expressing any opinion you have as to the blows?

A. I am willing to do so now. I cannot say that I have done so before.

Q. Would that also make a difference regarding the blows that were upon the right side of the head and made this crater that you have so aptly described?

A. As regards what; sir?

Q. As to the blows, the character of the blows, their force?

A. It would not materially alter my opinion about them.

Q. Did the appearances that the hair disclosed indicate to you the kind of cutting edge this instrument had?

A. Nothing that I saw about the hair was significant.

Q. Nothing that indicated a razor, or shears, or anything of that sort?

A. No, sir.

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Q. The construction of the skull is, Doctor, how with reference to showing the marks of injuries by a cutting instrument? I mean, if I can make myself clear, when blows are given upon the skull, do they scarf up the substance of the skull somewhat as wood would scarf up in striking a blow from right to left?

A. I should describe it more as chipping up and leaving a bevelled edge, than scarfing.

Q. Let me use as a chalk a piece of soft wood. You can readily determine, I judge, from looking at that, the direction in which blows came upon it?

A. Yes, sir.

Q. Now this chipping up upon this is also represented in a less degree on the human skull, is it not?

A. It is seen very well on that skull.

Q. On this skull?

A. Yes, sir.

Q. Let me show this to the jury (Showing piece of wood to the jury). That is to say, upon this piece of wood the blow was from left to right there, in your opinion, chipping up in that direction?

A. Yes, sir.

Q. And these are blows indicating to you what?

A. Nearly vertical direction, with the point of the blade.

Q. Assuming that this piece of gutter, wooden gutter, lay as it does now when the blows

were given, that would indicate to you---the first one---that it was given by which edge of a hatchet?

A. By the further corner of the edge.

Q. And this by what?

A. By the nearer corner of the edge.

MR. KNOWLTON. If the "blower" stood where you did?

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If he stood on this side everything would be reversed.

MR. ADAMS. Oh, yes, if the blower,---or the fellow that gave the blow.

Q. Did you observe those same indications upon the skull of Mrs. Borden?

A. I did, sir.

Q. Now were there not upon her head blows which appeared to be bevelled in both directions?

A. There were.

Q. And if there was a blow this way and a blow that way? (Indicating).

A. Precisely. Rather with the right hand than with the left, I think.

Q. Rather with the right hand than with the left, in her case?

A. Yes.

Q. Assuming that a person was left-handed---in other words, used the left hand as easily as persons ordinarily do the right hand,---there would be nothing in those appearances there inconsistent with its use, would there?

A. So far as those appearances there, the bevelling and the chipping, nothing.

Q. Did you find on the back of the head where you described,---did you find any bevelling there?

A. I think I did. May I look at my notes?

Q. Oh, yes, of course.

A. (Referring to notes). Two of them showed the bevelling.

Q. And bevelling in which direction?

A. The left edge was chipped and the right edge was clean. That would indicate a bevelling with a blow from the right towards the left.

Q. Now take some of the injuries on the top of the head: I am going to ask you about their bevelling, if you will be able to remember without your notes: otherwise you had

better keep them.

A. This is Mrs. Borden?

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Q. Yes, there were no injuries on top of the head of Mr. Borden, I believe?

A. No, sir.

Q. Will you indicate upon that statuette the two injuries I have just asked you about, in which you spoke of the bevelling?

A. (Leaving stand and pointing out to the jury). These two lower in the group of three.

Q. Now if you will remain where you are and point out the injuries on top of the head where they cut through into the skull with the edge? Was there any bevelling there?

A. Yes, sir.

Q. If you desire to refer to your notes you may, but I want to know in what direction this bevelling was?

A. I remember that. Both these wounds had bevelling from the right towards the left.

Q. From the right towards the left?

A. Yes, sir.

Q. Now take the injuries on the other side of the head, namely, the right hand side of the head: did those all bevel in one way or in different ways?

A. I cannot tell you, sir, because they were left simply as an edge, along which numerous marks could be seen, but I could not tell you how they were bevelled.

Q. Well, taking the injuries all together, or the marks or appearances upon the skull of Mrs. Borden, did they not show, either some or all of them, that a portion of them were given by a blow from left to right, and another portion from right to left?

A. My study of them indicated that they were all given from right to left.

Q. Are you prepared to say that upon further examination you would not change that opinion?

A. Speaking now of the head?

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Q. Yes.

A. No, sir, I am not. I found none that would be an exception to that rule.

Q. You have concurred, I believe, in the opinion expressed that the assailant of Mrs. Borden stood astride of her when she was lying down, and over her?

A. That is to my mind the most natural position in which these blows were given.

Q. And you have heard the testimony about the blood spots, that is to say, that there were many blood spots upon the drawers and the edges of the bureau to her left, that there were a few spots on the sham to her right and upon the upper part of the spread, and that there were some spots upon the mirror of the bureau and the marble of the bureau to her left, quite large numbers: you have heard that?

A. I have heard it, yes, sir.

Q. Taking into account those spots and the number of injuries that she received, and the appearances of the flowing of blood there, from these injuries, would not of necessity the assailant have been spattered with blood?

A. I should think so.

Q. What portion of the body of the assailant, in your opinion, would have received those spatters?

A. I should think the front of the dress; possibly the face, possibly the hair.

Q. When you say dress, you speak of the clothing worn by all sexes?

A. Yes.

Q. And any other portion of the body?

A. Well, it is not incredible,---it is not inconceivable that some may have gone

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into the air and come down upon the back.

Q. If the injuries had been made with a hatchet similar to the handleless hatchet, have a handle substantially a foot long, would not the assailant, standing in that position, of necessity, in giving the blows, been very near with the head in bending over to the head of the assaulted?

A. That would be the natural position.

Q. And in that situation, giving repeated blows, would not you expect it would follow that the upper portion,---the head, the face, the hair, assuming that it was not covered --- of the assailant, would be spattered with blood?

A. That is reasonable.

Q. When blood leaves the body, for instance, in August, in our climate, a hot day, how readily does it dry, how quickly, provided that it is not in a pool?

A. If it is a mere smear or film, it will dry very quickly. If it is a smooch upon a blade, for example, it will dry in two minutes. If it is a drop of considerable size, it will take over an hour.

Q. If blood, fresh blood, were put on metal similar to the head of a hatchet in August in our climate in a hot day, would it dry quickly?

A. If it is a thin smear, answering as I did before, it will dry quickly. If it is in any

considerable quantity, it will take very much longer time.

Q. Does blood readily and quickly intermingle with the meshes of clothing and coarse substances like dirt or rust or anything of that sort?

A. Certain kinds of clothing will absorb blood readily; clothing of wool and felt will not.

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Q. Cotton clothing?

A. Cotton clothing will absorb the blood readily.

Q. What do you say in respect to an instrument having rust upon it and blood striking it and drying on---whether or not the blood would intermingle with the rust readily?

A. I suppose it would.

Q. And if it intermingled with the rust, would it easily wash off?

A. It would wash off less easily than if it were on a keen, dry blade.

Q. Assuming that a metallic instrument, like the head of one of those hatchets, in August, in our climate and in a hot day in August, was smeared with blood at ten o'clock, and that that instrument had upon it at that time rust, and that it remained in that condition exposed to the air for an hour: would you expect that the blood would be well dried in with the rust upon that instrument?

A. I should think it likely in a dry day, in a day that was not as moist as today is.

Q. A hot day, I put into my question.

A. A hot day, yes, sir.

Q. And under those circumstances it could not have been readily washed off, could it?

A. Answering as I did before, not so readily as with a bright surface of metallic, polished surface.

Q. I suppose your opinion on that, perhaps, is no more extensive than that of the rest of us?

A. Not at all, sir.

Q. But I will ask you whether, under these circumstances, you would expect to get the blood off unless you got the rust off?

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A. If the rust were there before?

Q. Yes.

A. And the blood mingles with the rust in drying?

Q. Yes.

A. I think the blood would come off before the rust.

Q. Before the rust?

A. Yes, sir.

Q. Do you think it could be effectively removed so that there would be no trace that could be exposed by a subsequent chemical test?

A. I think so.

Q. But it would not be easily done, would it?

A. No, sir.

Q. Your opinion given upon the appearance of the intestines and the testimony here in reference to the appearance of the stomach is based on the normal digestion, isn't it?

A. On the digestion as I saw the effects in these intestines, indicating the process going forward in a healthy way.

Q. And you fix the interval of time between the deaths of these two people at about an hour?

A. At least an hour.

Q. Is there anything in the coagulation of blood after fifteen minutes that helps you at all in determining priority of death?

A. Nothing in coagulation alone as studied on a single individual or in connection with a single individual. The drying of blood is of more consequence than the clotting.

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RE-DIRECT EXAMINATION.

Q. (By Mr. Knowlton.) One question that I intended to ask in reference to that matter about which inquiry has been made as to digestion going on. Taking the results of the observations of Professor Wood as you heard them and what you saw of the intestines, did it appear whether digestion in both cases had begun?

A. Oh, yes, sir, it appeared in both cases that digestion had begun.

Q. You were asked in reference to the difficulty or ease of removing blood after a hatchet had been used at five o'clock and then used an hour afterwards, I think. I will now ask you, supposing the hatchet had been used at ten o'clock, or before,---half past nine, or at any time before that, and had been immediately subjected to cleansing process with water, and then used again at eleven o'clock, whether there would be any difficulty in removing the blood so that it would not be discovered by a chemical analysis?

A. I think not, sir.

Q. You were also asked about the hair. What was the character of the hair of Mrs.

Borden?

A. Mrs. Borden had a moderate growth of hair upon her head, rather short. It was in a knot at the back of the head.

Q. Do you recall what it was that you said you had not considered with reference to your opinion as to the ability of an average woman to inflict the blows, but were ready to give an opinion

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considering that fact?

A. I do.

Q. What was it?

A. The degree in which the hair would serve as an obstacle to the passage of a weapon into the head.

Q. You did not give your opinion?

A. I did not.

Q. You were not asked to. I will ask you now.

A. It does not alter my opinion with regard to the answer to your question.

Q. To make it perfectly plain, what is meant by this bevel from right to left? What does that indicate as to the direction of the blow that was struck?

A. It is a clear indication of the plane at which the edge of the weapon came down upon the plane of the skull.

Q. A bevel, then, from right to left would be a clear indication that the blow came from which direction?

A. From the right toward the left.

Q. And the bevel on the left side would indicate the opposite?

A. The opposite.

Q. It would not make it any clearer or refresh your memory any to inspect the skull of Mrs. Borden on that subject?

A. I think not, sir. It shows on Mr. Borden.

Q. I do not care to introduce it if you can remember well enough without it. Did I understand you to say that the absence---assumed absence for the purpose of the question, of blood upon the carpet in front of Mr. Borden or on the stand in the vicinity of Mr. Borden had no effect in determining the direction of the blow?

A. No, sir, because, as I said in the direct examination, I know of no rule by which blood spatters will go.

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Q. So those circumstances have no significance as to the direction of the blow?

A. They do not in my mind, sir.

Q. I did omit to call to your attention---I crave my friends pardon---to the three contusions. Were they of such a nature that you could tell anything about what they were when you saw the bodies?

A. Yes, sir, they were discolorations without swelling.

MR. ADAMS. I did not understand.

THE WITNESS. They were discolorations of the skin, without swelling.

Q. How caused?

A. I think either by the forehead receiving a blow in falling, or by the forehead resting upon some resisting substance as the body lay down.

Q. Assuming that the contusions were at the point of contact of the face with the floor, would that, in your opinion, account for the existence of the contusions?

A. Yes, sir.

Q. And how?

A. Because it was in a situation corresponding with the resting of the most prominent parts upon the floor, and exposing or developing the right side of the head.

Q. And that would indicate it was caused by falling, as I understand?

A. Falling, or the resting of the head there.

Q. The mere resting would cause it?

A. Yes, sir, I think so.

Q. Would you be able to form any better opinion about that if you had seen them immediately, or wouldn't you?

A. I think I should be better able.

Q. You did not see them immediately?

A. No, sir.

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Q. (Taking up hatchet produced by Mr. Adams). You attempted to fit that hatchet into the boundaries of that wound?

A. I did.

Q. And was there any other reason why it did not fit besides the length of it?

A. Yes, sir.

MR. ADAMS. You mean the length of the edge?

MR. KNOWLTON. Yes, when I say length, I mean the length of the cutting edge.

Q. I asked if there was any other reason besides that. Perhaps you did not give that as the reason at all?

A. I did not.

Q. Now, won't you explain why that did not fit?

A. Because the thickness of the tool at this corner is too great to fit into that opening in the bone.

Q. How is it in reference to a hatchet of that shape? (Showing handleless hatchet).

A. That fits accurately.

Q. Do I understand from that that not all hatchets with a cutting edge of 3-1/2 inches would fit the wound?

A. No, sir, it must be a hatchet with an edge that will accurately apply itself to that wound in the bone.

Q. And I will ask you now whether the length did prevent its fitting, or couldn't you determine in consequence of the slope? (Referring to Mr. Adams' hatchet).

A. That blade is a little shorter than the blade of the other.

Q. I suppose, experimentally, you could not determine that fact, because it is up here where you cannot see?

A. I do not quite catch the meaning of the question.

Q. When you put that in, the upper edge has retreated from the cut, so that you could not tell by that alone?

A. Yes, sir.

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Q. While I am on the subject I will ask you to indicate by a pencil mark the upper edge of that wound that you have ---

MR. ADAMS. Is this something you forgot?

MR. KNOWLTON. Yes, sir, practically it is.

Q. Make a small pencil mark, so that we shall know where it is. Use your tin, if you like, or any way that you please.

MR. ADAMS. I prefer not to have that marked, Mr. Knowlton. I think it has been demonstrated and ought to go to the jury as it is.

MR. KNOWLTON. I do not mean a mark that will touch the cutting edge, but will indicate on the surface of the skull where it is. I submit if your Honor please ---

MR. ADAMS. I pray your Honors' judgment. I prefer that the demonstration of the witness should be left in its present condition.

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MR. KNOWLTON. I may perhaps be permitted to say that I only asked it for the convenience of the Jury in subsequent examination.

MR. ADAMS. I think the demonstration is not necessary.

MASON, C. J. We do not think it should be done.

Q. You were asked with reference to the spattering or the blood spots in connection with the carotid artery. Would the cutting of that artery, where it was cut, cause a spurt?

A. No, sir, it would not.

Q. Would or would not the cutting of that artery increase the amount of blood spots in the vicinity?

A. Immediately around the wound, it would.

Q. What do you mean by that?

A. I mean it would sputter or bubble out through the wound, but would not go beyond the immediate surface of the wound.

Q. If I understand your answer that would be all inside the skull?

A. Yes, sir, or immediately adjacent to it.

Q. I did omit one other question, and that was whether in your opinion---you have examined I suppose with some care, this hatchet?

A. I have examined it. I have not had it in my possession.

Q. Whether in your opinion these wounds that you found could have been inflicted by that hatchet?

MR. ADAMS. Wait a moment.

MR. KNOWLTON. I don't think I asked that question before. I asked no question about that. I had it on my memorandum,

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but in the numerous details, it escaped me. I did ask whether a hatchet of three and half inches would. Now I ask whether that hatchet could have done it.

MASON, C. J. What is the objection?

MR. ADAMS. I understood that precise question was asked in the direct examination.

MR. KNOWLTON. What did you understand the answer to be, Mr. Adams?

MR. ADAMS. I do not propose to tell what the answer was.

MASON, C. J. The question may be answered.

A. In my opinion they could.

Q. (By Mr. Adams.) Now referring to my hatchet. I don't understand your answer to be that the trouble with the hatchet was the length of the cutting edge in not fitting into the injury, but the thinness of the blade at the edge?

A. That is sufficient for my opinion.

Q. And when you speak of the carotid artery being cut and not making any spurt in consequence of the action of the heart and the blood's bubbling up inside, would not that action of bubbling up make in the head a pool of blood which the subsequent blows would have gone into and made a spatter as of a stone being thrown into water?

A. Something like that.

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DAVID W. CHEEVER, Sworn.

Q. (By Mr. Knowlton.) Your name is David W. Cheever?

A. Yes, sir.

Q. You reside in Boston?

A. I do.

Q. What is your profession?

A. I am physician and surgeon.

Q. What was your medical education, Doctor?

A. I was educated in the Harvard Medical School.

Q. What further?

A. I was also in Europe a little while.

Q. Where in Europe?

A. In Paris.

Q. At some medical institution there?

A. At the Medical School at Paris.

Q. (By Mr. Adams.) Where?

Q. (By Mr. Knowlton.) At the Medical School, you said?

A. Yes, of Paris.

Q. How long have you practiced your profession?

A. 35 years.

Q. In Boston?

A. Yes, sir.

Q. And have you given attention in your practice to any specialty?

A. A good deal of the time to surgery.

Q. Have you also held a position in the Harvard Medical School?

A. Yes.

Q. What position or positions?

A. I was demonstrator of anatomy; I was an assistant or adjunct professor of surgery; I am now professor of surgery.

Q. How long have you been professor of surgery?

A. Since 1882.

Q. And when did you begin to be an instructor in the Harvard Medical School?

A. In 1860.

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Q. You are also a member of the Massachusetts Medical Society?

A. Yes, sir.

Q. And have been its President?

A. Yes, sir.

Q. And have you also had to do with hospitals?

A. Yes, sir.

Q. To what extent?

A. I have been connected with the City Hospital since 1864.

Q. Of the staff?

A. As one of the surgeons.

Q. Have you been called upon to give your opinion in court in matters in your profession?

A. Yes, sir.

Q. How frequently?

A. Moderately.

Q. What was the first opportunity for observation of any feature in this case that you had?

A. About the 31st of last May.

Q. What was it you had observation of then, sir?

A. I was shown the skulls of Mr. and Mrs. Borden.

Q. And did you then or have you since, or both, made a study of them?

A. Yes, sir.

Q. With reference to the blows and the instrument that caused them?

A. I have.

Q. Have you also examined the trial of this cause?

A. Yes, sir, I have heard most of the evidence.

Q. What was the day that you got here?

A. I got here on Thursday afternoon of last week.

Q. And have heard all the evidence since that time?

A. The majority of it. I have heard all the medical evidence.

Q. That is what I mean.

A. Yes, sir, I have not heard all the other evidence.

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Q. So that you have heard the testimony with reference to the position and surroundings of the bodies as they were found?

A. Yes, sir.

Q. And the character and color of the blood and the heat of the bodies?

A. Yes, sir, I should say also that I have seen some photographs,---that I was present when the plaster casts were marked.

Q. Are these the photographs you have seen (showing exhibits 15, 16 and 17)?

A. Yes, sir.

Q. You have also heard Professor Wood's testimony and that of Dr. Draper and Dr. Dolan?

A. Yes, sir.

Q. Are there any facts that you have listened ton in your opinion important or significant in determining the question of priority of death?

A. Of Mr. and Mrs. Borden?

Q. Yes.

A. Yes, sir.

Q. And of the time of such priority?

A. Yes, sir.

Q. Will you state what what witness or witnesses that you have listened to that seemed to you to be significant of the conclusion to draw from them, and how certain you are of your conclusions?

A. The fact that Mrs. Borden's body was sensibly cooler than Mr. Borden's, the fact that the blood which was poured out on the surroundings was coagulated to a certain degree about the person of Mrs. Borden and was entirely liquid and dripping from the wounds of Mr. Borden and the fact that in Mrs. Borden's case the digestion was still going on and that in Mr. Borden it was apparently almost completed---all these things taken together convinced me that Mrs. Borden

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died first, and probably by considerable interval.

Q. What interval, Doctor, as to the minimum, in your opinion?

A. The minimum I should place at about an hour; the maximum I should not be willing to place at more than two hours.

Q. And the probabilities in view of all the circumstances?

A. Between one and two hours, probably.

Q. What in you opinion was the cause of the wounds which you have heard described, taken in connection with the descriptions which you have observed and what you observed yourself? Do you understand my question to assume that the deceased persons ate at the same time and partook from the same table?

A. I understood it so in my own mind. That is not stated.

Q. That is included in your answer?

A. I should include it in my answer.

MR. KNOWLTON. I would like to have my question put, which I meant to withdraw.

Q. What in your opinion was the cause of the wounds which you have heard described, taken in connection with the descriptions which you heard, and with what you observed yourself? How were they included?

A. From the observations I made on the skulls?

Q. Include any fact you please, sir. I should prefer you would include all you have heard testified to in regard to the wounds and also your observations on the skulls.

A. Of course as far as my own observations go, they have nothing at all to do with the plaster casts or the cuts, for I never saw the

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body. My own observation was confined to the injuries to the bones.

Q. What did those indicate to you, I will first ask?

A. These indicated that they were made by a heavy, metallic weapon with a cutting edge beveled, with a sharp angle, and with the cutting edge not exceeding three and a half inches in length, and that it was attached to a lever or handle like a hatchet or some such instrument as that.

Q. Have you also examined this hatchet head?

A. I have.

Q. Assuming that to have been provided with a handle of the ordinary length such as usually accompanies a hatchet of that size, what is your opinion as to whether that instrument could have caused the wounds you found?

A. I think it could.

Q. And taking also into view the edge of it as you find it?

A. Yes, sir.

Q. Your answer stated that it was a cutting edge not more than three and a half inches long?

A. It did.

Q. Would you put the length of the cutting edge at any less figure?

A. It might be.

Q. How much less, sir?

A. Very considerably less.

Q. That is taking into account only what you observed from the skulls themselves?

A. Yes, sir.

Q. That is in that opinion you do not take into account anything of the external appearance of the wounds as developed by the autopsy?

A. I have not in my answer so far.

Q. Have you heard the wounds described so that you understand

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their position and location sufficiently to add that factor in forming your opinion?

A. I think I understand them fairly well.

Q. Adding these facts as you understand them, what is your opinion as to the length of the cutting edge?

A. They do not require that the edge should be any longer than three and a half inches because the wounds could be made by slashing through the flesh, but most of the cuts would seem to show that the edge must have been nearly that length. A very narrow hatchet I do not think would make them.

Q. Why do you say that it was a cutting edge of not more than three and a half inches? You may take anything you please to show why.

A. Because on examining the skull of Mr. Borden I found that no wider edge than that would reach the carotid wound in the artery, or reach the later wound in the jaw, though this latter wound is not so satisfactory as the other because---these points are fixed, in the first case,---this point,---from the fact that more than three and a half inches cannot get into that hole.

Q. Turn to the Jury and show what you mean by that.

A. (Witness briefly explained in a low voice to the Jury his meaning.)

Q. Assuming that the autopsy which you did not see, would disclose scalp wounds in such a position and of such direction and length that these two boundaries which you have specified in regard to the first two wounds were the boundaries of the same wound, would that lead to any conclusion as to the minimum length of the cutting edge of the instrument?

A. You mean

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to say if the long scalp wound corresponded to the deep one?

Q. Yes, sir.

A. It would render it probable that it was as much as three and a half inches. I don't think it would make it certain.

Q. What would be any element of uncertainty in it, Doctor?

A. I cannot tell exactly what the condition of the skull was underneath when that blow was given. If the skull had been already broken, the hatchet would sink into the wound readily. If it was unbroken, the scalp wound might be a good deal longer than the wound beneath, by sliding when the hatchet penetrated.

Q. These were matters that could not be determined by the autopsy itself?

A. I don't see how they could possibly.

Q. But in either event did you exceed your maximum of three and a half inches?

A. No, sir.

Q. What is it as to the probabilities of the minimum?

A. The probabilities are that it would not be less than three inches, though I could not say accurately.

Q. Can you tell whether that shape of a hatchet accurately fits those wounds?

A. I have tried this, and I thought it did accurately. (Trying on skull) Yes, sir.

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Q. Doctor, did you form any opinion as to the position of Mrs. Borden's body, taking all the facts that you heard, or didn't you examine that subject?

A. Yes, sir; I formed an opinion.

Q. Will you state it?

A. I think that all the wounds except three were inflicted when she was flat upon her face upon the floor.

Q. Which three do you except?

A. This scalp wound, and two wounds on the top of the head.

Q. The upper wounds on the middle line, or near the middle line?

A. Yes, sir. That mark is new to me.

Q. Oh, that is a pencil mark that was accidentally made this morning by Dr. Dolan.

A. That mark I never saw. The scalp wound on the side of the head, and the two wounds on the top. With that exception I think the wounds were inflicted when she was flat upon the floor upon her face.

Q. And did you form any opinion as to the position of Mrs. Borden when any or all of those wounds were inflicted? If so, what was it? Those excepted ones, I mean.

A. The excepted wounds---shall I take the manakin?

Q. Yes, sir.

A. I think this scalp wound was inflicted when the assailant was face to face with the victim.

Q. Why?

A. Because it has cut only partially through. It seems to cut from the front, it failed to come out on the other side. My supposition is that when that blow was given the victim started back and the hatchet failed to through, and it glanced.

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Q. And do you desire to express any opinion as to the other two or three that you excepted?

A. I must express a modified opinion, that they could have been given in an awkward way with the head in this position. They would have been more easily given with the person standing up.

Q. In your opinion, doctor, could those wounds have been inflicted with a hatchet of ordinary size---I am now referring to all the wounds both of Mr. and Mrs. Borden---all the wounds could have been inflicted by a hatchet of ordinary size wielded by a woman of ordinary strength?

A. Judging by the nature of the wounds on the skull, the sharpness of the instrument, the weight of it, I think they could.

Q. I will ask whether or not those wounds could have been inflicted by a woman of ordinary strength with a hatchet of that size and cutting edge, (producing handleless hatchet), provided with an ordinary handle?

A. With a handle of sufficiently long leverage, I think they could.

Q. What do you mean by a sufficiently long leverage?

A. I should think not less than twelve or fourteen inches.

Q. Will you give your opinion, doctor, after listening to the testimony as to the nature of the wounds when they were discovered, and all the other facts in the case, as to the amount and direction of the spattering of blood during the act of the assault?

MR. ADAMS. Which assault do you refer to now?

MR. KNOWLTON. I am now referring more particularly to Mr. Borden's body. Thank you.

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A. I should think the amount of blood would be a good deal.

Q. How about the direction of it?

A. I have no means of knowing; I don't think you can tell.

Q. Is there any fixed rule as to whether any part of a circumference drawn around the point of an assault would or would not receive any number of spatters?

A. I don't know of any.

Q. Were there any of those blows upon either skull which indicate the direction of the weapon that struck them?

A. Yes, sir.

Q. Which of them indicate any direction, and what direction do they indicate? Would you like anything to illustrate by or to point out by?

A. Well, assuming that this skull of Mr. Borden's---assuming that he was lying in this position, the general direction of that, as I lay it in that crack, is of a right-handed blow, from right to left. That is shown also by some of the cuts.

Q. I was not asking you so much as to right and left hand as I was with regard to the direction of them.

A. Well, from right to left that blow is.

Q. Are there any other wounds as to which you could tell from which direction the weapon came, on either the head of Mr. Borden or of Mrs. Borden?

A. A number of the cuts on the head of Mrs. Borden, the marks on the skull, incline from right to left.

Q. Do any of the cuts incline the other way on either?

A. I think one of the chipping cuts does.

Q. On which head is that, sir?

A. I think it was on Mrs. Borden,

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and the scalp wound certainly might have been cut either way. That might be cut either way.

Q. As to the wound in the neck, which you never saw, as I understand it, but which you have had described and have seen the position illustrated by my learned friend twice---I suppose you saw it both times?

A. Yes, sir.

Q. Would the position of the assailed party make any difference in the direction of that blow? That is, whether it was square in the rear or partly curved?

A. As I remember that blow, it was inclined to the left.

Q. It still shows, if Mr. Adams will kindly become an object lesson again for a moment.

A. (Illustrating with Mr. Adams) He might stand directly behind or a little to the right.

Q. And would or would not a supposed change in the position of Mrs. Borden, either turning partly to the right or turning partly to the left, affect any conclusion about that?

A. I cannot say, sir. I cannot say whether that wound was slit up laterally or whether it was vertical. I doubt if anyone can say, at the time it was examined, because the tissues had changed very much---swollen. I don't think I can answer that question.

Q. Will you point out to me, as well as to the jury, the upper edge of that wound, so that I can carry it in my mind? Do not mark it; the Court prefers it should not be marked.

A. I take the three and a half inch piece of tin. Where that cut begins, sir, was chipped at that end.

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Q. Will you point that out to the jury?

A. (The witness did so.) It starts there at the skull, and there is the chipping, the lower part.

Q. Isn't it fixed in the lower wound?

A. It fits where it ought to, comes up here.

Q. What is there at that point, the upper point of contact, that indicates that that is the edge of a wound?

A. Only the fact that there is the cut, ends here, a little chip of the bone at that point, that is all.

Q. Have you examined that with any magnifiers?

A. I did look at it with a magnifying glass.

Q. Did you determine whether that was the point of the end of a cut?

A. I felt quite confident of it.

CROSS-EXAMINATION.

Q. (By Mr. Adams.) Continuing upon the head of Mr. Borden, I understand you express the opinion that some of the injuries given prior to the one which cuts the carotid artery might have fractured the skull?

A. I think so, yes.

Q. And in that event a cutting blade less than three and one-half inches would adequately account for the one which does cut the carotid artery?

A. No, sir.

Q. It would not?

A. No, sir.

Q. Well, do you mean to say that an instrument with a cutting edge less than three and a half---

A. I beg your pardon.

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Oh, certainly. I thought you said more. My point is, one more than three and a half couldn't get in.

Q. No. I am asking with one less than three and a half?

A. Certainly.

Q. And in order that you and I may understand each other, the fractures of the skull might have been made prior to that injury by a cutting instrument considerably less than three and a half, might have been even so used as to cut the carotid artery?

A. Yes, sir.

Q. Three inches might have been adequate?

A. Yes.

Q. Possibly two and three-fourths?

A. Possibly. I haven't measured the cut at the base of the skull. It must necessarily be as long as that, but it is nearly as long as the hatchet.

Q. You would agree that there would be a good deal of effusion of blood in consequence of cutting the carotid artery?

A. It would depend upon the date of that blow with reference to the other injuries. If it was one of the last or the last blow that was given, the victim might have been already nearly dead, and the circulation may have been very feeble, and the amount of blood poured out by the heart there may have been small compared to what it would have been if it had been the first. It would depend somewhat on that. Usually the blood from the internal carotid artery is very large and instantaneous.

Q. Comes with a gush, doesn't it?

A. Yes, sir.

Q. Do you perform many surgical operations in the course of your

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practice, doctor?

A. Yes, I have a good many.

Q. And you perform many operations upon the head?

A. Yes, sir.

Q. And when you perform an operation do you ordinarily put on different outer clothing?

A. Yes, I do.

Q. What does that consist of?

A. Usually a white linen jacket or a white linen gown; something of that kind.

Q. And when you say a white linen gown, do you mean something like a linen jacket?

A. Yes, sir.

Q. Like a duster?

A. Like a long apron.

Q. Anything else?

A. Sometimes an India rubber apron also.

Q. And what are those things put on for?

A. Partly to insure absolute cleanliness and partly to protect my clothes.

Q. From what?

A. From blood.

Q. From blood?

A. Yes, sir.

Q. It is quite a usual thing for you in operations to be spattered with blood, isn't it?

A. Very.

Q. Your face and hands get it, I suppose?

A. Very often.

Q. And hair?

A. Not so much.

Q. Do you wear a cap?

A. No, sir.

Q. Beard?

A. Yes, if I get it in the beard.

Q. Is blood readily cleansed from the beard after it has been spattered and stayed there fifteen or twenty minutes?

A. It dries very quickly in the beard and has to be washed off with cold water softened.

Q. Do you also find in your operations that from time to time your shoes get spattered?

A. Yes, sir, sometimes.

Q. Not uncommon?

A. No, it is not uncommon.

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Q. And there are arteries in the head that spurt, are there not, oftentimes from operations?

A. When they are cut out in the open air, yes, sir.

Q. When they are cut on the surface?

A. When they are out into the air on the surface they spurt.

Q. And how much in distance do they spurt?

A. Four to six feet.

Q. Is there in the head a temporal artery somewhere in the region where these injuries were disclosed upon the head of Mr. Borden?

A. Yes, sir. Two of the cuts there would go through it.

Q. Would you expect a spurting from such cuts?

A. Yes, sir.

Q. And a spurting of how much distance?

A. Extending several feet.

Q. Would it throw drops?

A. A spray.

Q. A spray of drops?

A. Yes, sir.

Q. That is, many drops close together?

A. Yes, sir.

Q. The direction of those spots, I suppose, would be determined by the amount of cutting the artery received?

A. By the direction of the artery itself, the way in which the blood was flowing.

Q. Assume that Mr. Borden lay upon his right side somewhat with the left exposed upon a couch in the manner that you have seen in the picture, and one of the temporal arteries was cut, have you an opinion as to the direction of the spray or spurting from that cutting? If you have, will you give it?

A. (Illustrating with large cast.) He was lying in about this

position. That artery would be cut here.

Q. How would it spurt?

A. In that direction.

Q. Out into the room?

A. Yes, sir.

Q. Assuming that he was up to the wall on the sofa?

A. Yes, sir.

Q. How would the other one spurt?

A. Which other one?

Q. There is another branch of the same artery, isn't there?

A. There are branches all about here.

Q. Well, would any of those cuts that you see there indicated naturally have severed one of those temporal arteries?

A. Yes, sir.

Q. In what direction, if any, might there have been spurting?

A. This way or that way.

Q. That is, into the room or up toward the wall?

A. This artery would spurt parallel to the body---in the head.

Q. If a person was standing behind, and close behind, the artery would naturally spurt upon him, wouldn't it?

A. Naturally it would.

Q. And those blows that you see indicated there naturally would have cut that artery?

A. Yes, sir.

Q. From four to six feet, I understand you to say that temporal artery might spurt?

A. I think not.

Q. Excuse me. I understood you to say so.

A. You asked about arteries generally. I should have said according to the size of the vessel.

Q. The temporal artery?

A. Two or three feet.

Q. Assuming that there were spots upon the wall which you have heard described here in the room where Mr. Borden was found,

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and there were injuries as you have seen them upon the skull, and that there were spots of blood upon the kitchen door, which was in the direction from the foot, and spots of blood upon the parlor door which was in the direction from behind, and that the assailant stood immediately in the rear back of the head of Mr. Borden, and between him and the parlor door, would not of necessity almost the assailant have been spattered with blood?

A. I think he would.

Q. To what extent?

A. Very considerably.

Q. On what part of the body?

A. On the middle and upper parts of the body.

Q. Would there be anything unreasonable in supposing that a person standing up with Mr. Borden lying on the sofa, and in the rear of him, would have received blood upon his face and hair and beard?

A. If he was stooping over him to inflict those blows, there is nothing improbable in it.

Q. And if those blows were inflicted by an ordinary hatchet with the ordinary handle a foot long, would he not naturally have to stoop over?

A. He would have to reach him.

Q. He would have to reach him?

A. Yes, sir.

Q. And there being this gush of blood that you speak of naturally gushing, would he not have been spattered probably in the face and beard and about the head, assuming he had a beard?

A. He would be likely to be.

Q. Have you observed a bevelled blow upon the eye-brow here, as I call it, over the eye where the surface is polished and smooth?

A. Yes, sir.

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Q. Does that indicate one blow or were there two angles of striking?

A. Two blows there.

Q. But are they both from left to right?

A. Would you kindly give me that piece of tin? (Tin plate produced.) This one is from left to right. (Exhibited to jury.) Here is a vertical cut. There is a bevelled one from left to right.

Q. Is there any other bevelled one there on a different plane?

A. No, that is part of the same.

Q. You think those have the same plane?

A. Yes, sir.

Q. Won't you examine that carefully and see if the plane is not a trifle different between the two?

A. They are the same.

Q. In your opinion, they are the same?

A. Yes, sir, because the hatchet slipped about there and slipped down so.

MR. ADAMS. Assuming it was a hatchet.

Q. Making a gouge?

A. Yes.

Q. Will you be good enough now to put the plate in that blow that cut the artery, any one of them? (Witness did so.) Now, do I understand you to say that that blow is a right and left blow? Isn't it a left to right blow, assuming that the head lies like this, and you are standing in the rear? Rather a left to right blow, isn't it?

A. It depends altogether on how far the face is over on the cushion.

Q. Even then isn't it rather left to right?

A. It is as much left to right as vertical.

Q. Isn't it also more left to right than vertical?

A. It depends upon how far the face is over.

Q. With the face as appears on the sofa, do you call that a

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right and left blow?

A. No, sir.

Q. Well, if you said so, in your direct combination[?], you were mistaken, weren't you?

A. I alter that.

Q. You alter that by saying it is rather a left to right blow?

A. I think it is vertical.

Q. Very well, sir. It certainly isn't a right to left blow?

A. No, sir.

Q. And you alter that?

A. Yes, sir.

Q. Coming now to the injuries which you found upon the head of Mrs. Borden, I understand you to say that there are three which, in your opinion, may have been caused before she fell or was placed upon the floor?

A. Yes, sir.

Q. Namely, the one in front covered by a flap and two upon the crown of the head?

A. Yes, sir.

Q. The two upon the crown of the head, if she were standing, would they naturally have been given by a person who was taller than she, assuming that the instrument was a hatchet with a handle a foot long?

A. If she was standing upright they must have been given by a taller person.

Q. And a person quite a little taller?

A. Somewhat taller. I don't know how much.

Q. Well, as you stand upon the witness stand, you are, of course, taller than I am, sir, several inches. Now, will you indicate how you think that blow would have been given upon

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her head, the two blows on the crown, if you were the assailant and I the assaulted?

A. That way. (Mr. Adams stood with his back toward the witness, who held the hatchet over and near to the top of his head.)

Q. I do not see you, but I ask you to show the jury?

A. (The witness again illustrated how the blow could have been given.)

Q. The other injuries upon the skull, you say indicate the blows came both right and left, did you say so? I am taking them all together without asking you to separate them, and what is your answer?

A. The other injuries than those three?

Q. Yes, sir.

A. They are both ways.

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Q. Both ways?

A. Yes, sir.

Q. That is, right to left, wood chopping fashion?

A. Yes, sir.

Q. Have you formed an opinion where the assailant stood who assailed Mrs. Borden? In view of the spots on the wall, the injuries to her head? If you have, I would be glad to have you give it?

A. I have already said that I thought the blow on the scalp was given face to face; that the two blows on top of the head were uncertain whether they were given with her upright or lying down; but all the others were given with her lying upon her face. Now the position of the furniture as it has been described would render it easier for the assailant to give those blows upon the back of the head standing astride of the body, then getting in the awkward position, rather constricted, on either side; and I presume it was astride of the victim.

Q. Assuming that the instrument was a hatchet with a short handle?

A. Yes, sir.

Q. Perhaps a foot long. Would not the assailant have been obliged to bend over and get near the head of the assaulted in order to give the injuries that are seen there?

A. They would have had to stoop.

Q. Taking into account the spots seen upon the bureau and upon the mirror and upon the marble of the bureau or dressing case, and the spots upon the sham and upon the sideboard of the bed, in your opinion would the assailant have been spattered?

A. I think they would; I think he would, or she.

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Q. And what part of the body would have received these spatters?

A. From the waist up.

Q. Have you learned from the testimony here that there was a good deal of blood found about Mrs. Borden?

A. I judge there was a good deal, but not so much as around Mr. Borden. I thought from what I heard---

Q. You learned, did you not, that the carpet underneath her was saturated, that the clothing upon her back was soaked with blood?

A. Yes, sir.

Q. And that the spattering ran along the side of the bed. Well, if the assailant stood astride of the body wouldn't you naturally expect to find spots of blood upon the shoes?

A. Well, that would be quite uncertain.

Q. Would it be unreasonable to expect?

A. It wouldn't be unreasonable, but there would be no certainty about it because his shoes might be protected by the clothing of the victim, or something of that kind. You cannot tell.

Q. Can you base any opinion upon the coagulation of the blood after 15 or 20 minutes of its leaving the body, about the time of death?

A. Not, I think, until it has reached a much later stage and the coagulium has become perfect and begun to shrink. That does not occur for a good while, for an hour or more.

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RE-DIRECT.

Q. (By Mr. Knowlton.) Is there any spurting of the arteries after the action of the heart has stopped from any cause?

A. No, sir.

Q. It is the action of the heart that causes the spurting?

A. That is the pump that forces the blood.

Q. The garment that you speak of, when you put it on in your surgical operations, protects your clothing entirely?

A. Yes, sir.

Q. You don't have any trouble with spattering your clothes then?

A. No, sir.

Q. The garment is easily put on and easily taken off?

A. It is done in a very short time and changed between every operation, with rapidity.

MR. KNOWLTON. The hatchet that has been used in the examination of the witnesses we should like to have remain, to be used possibly. You do not propose to take it away?

MR. ADAMS. Yes, we do.

MR. KNOWLTON. We ask that the hatchet be allowed to remain in the case now, if your Honors' please, having been used in connection with this very skull.

MR. ADAMS. What I meant was that I am going to take it away and bring it back; I have got to keep it in my care.

MR. KNOWLTON. Oh, if you are going to have it here when I get to the end of the case, that is all right. Now

that these various things have been put in evidence by the gentleman who had them in charge they regard themselves as discharged from the custody of them, and it is agreed by my brothers and myself that they may now be put into the custody of the clerk and such assistants as he may need in the matter. Prof. Wood would like to remove the handleless hatchet for the night only, if there is no objection.

MR. ROBINSON. Will he be recalled?

MR. KNOWLTON. Probably not. It is something he wants to see about it himself. I have no occasion to recall him that I know of now.

MR. ROBINSON. I thought we were going to put these things into the hands of the clerk?

MR. KNOWLTON. He will not carry it away. I will talk with you about it later. Dr. Dolan will take the custody of the skulls. And if your Honors will pardon me another suggestion---I believe it is understood that the other skull, although we do not care to produce it now, it may be necessary to refer to it in the argument possibly, and the jury are to have it anyway, as I understand it.

MR. ADAMS. I do not understand that that is going to the jury.

MR. KNOWLTON. Well, then, we had better confer about that between now and morning, because I think I shall want it to go to the jury.

At 5.00 P.M. the Court was adjourned to Wednesday, June 14th, at 9.00 A.M.

NINTH DAY

Wednesday, June 14, 1893

The Court came in at 9.00 A. M.

RUFUS B. HILLIARD, Sworn.

Q. (By Mr. Moody.) What is your full name, sir?

A. Rufus B. Hilliard.

Q. And you are City Marshal of Fall River?

A. Yes, sir.

Q. How long have you been connected with the police force at Fall River?

A. A little over fourteen years.

Q. How long have you been city marshal?

A. A little over seven years.

Q. Prior to that time did you hold any office in the force?

A. Yes, sir.

Q. What was it?

A. Assistant city marshal.

Q. On the 4th of August of last year in what manner was your attention first called to the trouble at the Borden house?

A. By a telephone message.

Q. Could you recognize the voice of the person who telephoned?

A. Yes, sir; after he told me his name.

Q. Did the person who telephoned to you tell you his name?

A. Yes, sir.

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Q. What name did he tell you?

A. John Cunningham, news dealer.

Q. After you had received the telephone, the contents of which I do not ask you, what did you do?

A. I left the telephone and went into the guard room and sent an officer.

Q. What officer was that?

A. Officer George W. Allen.

Q. Where is the guard room situated with reference to the room in which the telephone is?

A. It adjoins, to the southward.

Q. Did you yourself at that time notice the time accurately?

A. No, sir; I did not.

Q. When did you first go to the house yourself?

A. About three o'clock in the afternoon.

Q. In the meantime had you sent other officers there?

A. Yes, sir.

Q. Can you tell me anything with reference to the order in which they were sent either by message or by oral communication?

A. Yes, sir.

Q. What order?

A. Sent officer Allen, officer Doherty, officer Mullaly, officer Medley, Gillam, Wilson, and assistant marshal Fleet.

Q. Upon the premises on Second Street, when you went there in the afternoon, what did you do? I don't ask you in detail, but tell us generally what you did then?

A. I looked at the yard, around the yard, and around the pile of lumber that is on the east end of the yard, and also searched the barn.

Q. Do you recall how the doors of the barn were and the windows of the barn in the loft when you went there?

A. Yes, sir;

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the side door as you enter from the yard to the barn was open, the door in the loft was closed, the window at the west end---I am not positive whether that was open or shut.

Q. The other window, do you recall that---the window at the east end?

A. That I think was shut.

Q. What sort of a day was it with reference to heat on the 4th of August last?

A. Very hot.

Q. How was the heat in this loft?

A. Well, it was extremely warm there, almost suffocating---the heat in the loft.

Q. Did you do anything in the house, Mr. Hilliard, on that afternoon, I mean?

A. No, sir; no more than to look at one or two of the rooms, that is, from the front door.

Q. Did you have any conversation with the prisoner?

A. No, sir; I did not.

MR. ROBINSON. On the Thursday, you are speaking of?

MR. MOODY. Yes, sir.

Q. When next did you go to the Borden house?

A. The next time that I went to go into the house was on a Saturday afternoon.

Q. Before or after the funeral services?

A. After the funeral services.

Q. Speaking generally, what did you do on the Saturday forenoon?

A. I looked into the room, Mr. and Mrs. Borden's room, so called. I also looked into the room at the westward of that, which is said to be Miss Lizzie's room. I looked into a room that was on the north side of the house from that, that was said to be Miss Emma's room.

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Q. Were there other officers there at that time?

A. Yes, sir.

Q. Speaking generally, with what duty were they engaged?

A. In looking for anything that we could find in the shape of a weapon or bloody clothing.

Q. Did you personally on that morning make any examination of dresses?

A. No, sir, I did not.

Q. How long were you at the house on the Saturday morning?

A. I should say I was there some half hour.

Q. When did you next go, Mr. Hilliard?

A. I went there Saturday afternoon about three o'clock in the afternoon.

Q. In a general way what did you do on the Saturday afternoon?

A. Searched the house from the top to the bottom, that is, partially in the cellar, not a thorough search in the cellar, but partially.

Q. Did you take personally any part in that search yourself?

A. Yes, sir.

Q. And there were a number of other officers there at that time?

A. Yes, sir.

Q. Did you yourself make any personal examination of dresses?

A. No, sir, I can't say that I did of dresses, with the exception of one.

Q. The one that you took away?

A. The one that I took away or was brought away.

Q. What did you spend your time in, Mr. Marshal, principally?

A. I was looking through the drawers of the dressing-case, looking at the bed and bed

clothing and the closets.

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Q. You referred to a dress which you took away. Will you state all that occurred with reference to that, excluding the conversations except with Mr. Jennings or with Miss Lizzie Borden?

A. Yes, sir. I asked Mr. Jennings where the dress was that she wore that day. He went, and when he came back he brought a dress.

Q. Where did he go to?

A. I was then in the room where Mrs. Borden was found up stairs. He went out in the hall-way and came back into that room. I don't know where he went after he went into the hall-way. He came back into the room with that dress---a dress.

Q. Did you see the prisoner at that time or about that time?

A. I saw her soon after that in what is called Miss Emma's room just inside the door, standing and talking with somebody else.

Q. What had you done with the dress at that time?

A. I had passed the dress to Dr. Dolan after it was handed to me.

Q. Did you have a white dress at any time when the prisoner was present?

A. No, sir, not immediately present; what I mean to say, not in the same room.

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Q. Is this the dress, skirt and waist which were presented to you by Mr. Jennings (showing the articles)?

A. I should say that that looks like it, yes, sir, I should say that was the dress by the looks of it---and general appearance.

Q. I will follow that now: What did you do with the dress?

A. The dress was rolled up and the white skirt was rolled up.

Q. You speak of the white skirt: Did you get that at the same time?

A. Yes, sir.

Q. From the same person?

A. Mr. Jennings.

Q. Did he bring it with the dress or on some other trip?

A. That I won't be sure of: I think he brought them all in together. He may possibly have gone back and got the white skirt; that I won't be positive of.

Q. What do you say as to that underskirt (showing white petticoat with lace on the

bottom)?

A. I should say that this was the skirt.

Q. Now you may go on and tell us what you did with the dress skirt, under skirt, and dress waist?

A. I rolled them up with what I call a lounge cover that was taken from the dining room.

Q. (Counsel saying nothing but holding up a green striped cover).

A. Yes, sir, I should say that is the one.

Q. This was taken from the dining room?

A. Yes, sir; I rolled them up, rolled them in a paper and tied them up, and Mr. Jennings brought them down on to Main street. I met him at the corner of the granite block, and he passed them over to me.

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Q. After Mr. Jennings had first handed them to you and you rolled them up, do I understand that they returned into his possession again?

A. Yes, sir, I turned them into his possession to bring to me. I told him I would meet him down at his office or by the granite block and take them.

Q. And you said that he gave you the same bundle that you gave him?

A. Yes, sir.

Q. After you got possession again, what did you do with them?

A. I carried them to my office; passed them over to Dr. Dolan.

Q. Have you had possession of them since that time at all?

A. No, sir, not after they were turned over to Dr. Dolan.

Q. I don't know---I will make it clear---I understood you to say that you got this lounge cover from the dining room?

A. Yes, sir.

Q. Was it apparently the appropriate cover for the dining room sofa or lounge?

A. Well, that I don't know: it was not tried on. I found it there in the dining room and took it out.

Q. You don't know whether it belonged to that sofa or the sofa in the sitting room?

A. No, sir.

Q. How long were you there Saturday afternoon?

A. I should say about three hours and a half.

Q. Did you go to the Borden house again upon the same day?

A. Yes, sir.

Q. When and with whom?

A. I went to the Borden house about quarter to eight that night, in company with his honor Mayor Coughlin of Fall River.

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Q. When you reached the neighborhood of the Borden house, what was there about the house?

A. A large crowd of people in front.

Q. And by a large crowd, give us a little more definite description?

A. Oh, I should say there possibly might have been two and three hundred people: perhaps more than that.

Q. Did you do anything with reference to that crowd?

A. Yes, sir.

Q. What did you do?

A. I sent for officers and had them removed from the street.

Q. You then went into the house?

A. Yes, sir.

Q. Did you see after you went in, some little time after you went in, the prisoner, her sister and Mr. Morse?

Q. Yes, sir.

Q. Any one else?

A. I think there was somebody that was in the sitting room when we went in: I won't be sure about that: I think there was.

Q. Into which room did you go?

A. Well, when we entered we entered on the side door, what is called the rear door, and passed from there into the kitchen and from there into the sitting room. There we waited perhaps four or five minutes, and finally went into the parlor.

Q. Was there some conversation that occurred?

A. Yes, sir.

Q. Did you take part in it to any extent?

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A. No, sir.

Q. Who were the ones who did the talking?

A. The mayor, Mr. Morse, and Miss Lizzie and Miss Emma.

Q. Be good enough to state what the talk was.

A. Yes, sir. After we entered the parlor and sat down, the mayor said that he had a request to make of the family, and that was that they remain in the house for a few days: that there was a great deal of excitement, and he thought it would be better for all concerned if they should remain there and not go onto the street. And I think in that conversation, I am pretty sure that he told them that if they was annoyed by the people around the house, why, to send word to the city marshal or himself and he would see that they was dispersed. I think Mr. Morse it was spoke up and wanted to know how they was going to get their mail from the post office, and the mayor told them it would be better to send somebody for it on account of so much excitement as there was there at the present time around the house. I think Miss Lizzie it was that spoke up next and said "What, is there anybody suspected in this house?" The mayor said, "Well, perhaps Mr. Morse can answer that question from what occurred last night." Then with that Miss Lizzie spoke up and said, "I want to know the truth." I think that she repeated that twice. The mayor said, "Well, I regret very much to say, Miss Borden, but you are suspected." With that Miss Emma Borden spoke up and said, "We have tried to keep it from her as long as we could." I think that was about all the conversation that I can remember of.

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Q. Did you hear anything said in reference to---

MR. ROBINSON. Wouldn't it be best to ask him if anything more was said?

Q. (By Mr. Moody.) Do you recall any other subject talked of?

A. Yes, sir, I do.

MR. ROBINSON. You mean the Mayor spoke?

A. The Mayor asked Miss Lizzie where she was at the time that her father was killed. She said that she was out in the barn, and he asked her what she was out there for; she said that she went out there to get some lead to make some sinkers with. He asked her about how long she remained there and she said about twenty minutes.

Q. Do you recall anything else?

A. No, sir, I do not.

Q. Let me ask you if Miss Borden, when she was told that she was suspected, after Miss Emma had said what you tell us, said anything herself,---if you recall it?

A. Yes, sir, I think there was. When she made the remark "I want to know the truth," and after the Mayor had said "I regret Miss Borden to say you are suspected,"---I think it was there she made the remark "well, I am ready to go any time."

Q. Now, Mr. Hilliard, just stop a moment and see if there is anything else in that conversation you gave, that we may get it all?

A. That is all I can think of at that time there.

Q. How long did your visit occupy?

A. Oh, I should say ten or twelve minutes.

Q. Later did you receive any property from any one,---any clothing and shoes, stockings?

A. Yes, sir.

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Q. Do you recall when that was?

A. Yes, sir, on the 10th of August.

Q. From whom did you receive that clothing?

A. Some of it I received from Mrs. Holmes; some of it, one package, I think, from Mrs. Reagan, and some of it I took away from the house myself.

Q. Will you state what those articles of clothing or wearing apparel of any kind were?

A. Yes, sir, the first package was a pair of shoes and stockings. I asked Miss Lizzie Borden for them.

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Q. (By Mr. Robinson.) You did?

A. Yes, sir; and she went up the front stairs, and I think it was Mrs. Brigham that brought them down and handed them to me. Mrs. Holmes handed me the bedspread and the two pillow shams. They was done up.

Q. (By Mr. Moody.) Of whom did you request those?

A. Mrs. Holmes asked me if I wanted them. I told her if she pleased I would take them. And I took away a piece of moulding from the mop board in the room where Mrs. Borden was found; I also took away a piece of plastering, taken from the wall, the north wall; I also took away a marble slab from the dressing case; I also took away a piece of the door jamb between the sitting room and the dining room; I took away from the barn a basket from the loft, containing lead; I also took away a box containing lead from what I termed to be the carriage house in the barn.

Q. What did you do with the shoes and stockings?

A. I carried them to my office, and that night I turned them over to Dr. Dolan.

Q. What did you do with the piece of door jamb of the door between the dining room and sitting room?

A. I took it to the station, placed it in a trunk, and locked it up.

Q. Subsequently did you deliver it to any one?

A. Yes, sir; Dr. Dolan see them in the office after I brought them there, but I locked them into the trunk afterwards.

Q. Were they at some time delivered to Prof. Wood?

A. Yes, sir.

Q. By you?

A. Yes, sir. That is, I say by me. They was delivered in the court at the other hearing at Fall River.

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Q. I neglected to ask you---this piece with the yellow stain on it is the dining-room door piece, isn't it?

A. Yes, sir.

Q. And the shorter piece is what?

A. That is the moulding that came off the mopboard in the room where Mrs. Borden lay, on the west side of the room, between the window and the dressing-case.

Q. Can you tell which is the upper side of this piece of wood?

A. I should say that that was the upper side.

Q. What I desire to know particularly,---I don't care about that. Which is next to the window and which next to the dressing-case of the two ends?

A. This here, sir, is next to the window. (Indicating end numbered 1.)

Q. This I believe you said, you gave to Prof. Wood yourself?

A. Yes, sir; that is, it was delivered in court to him.

Q. You know the basket and box that have been in the court house during this trial?

A. Yes, sir.

Q. The basket, you say, was found in the loft?

A. Yes, sir.

Q. Whereabouts in the loft?

A. It sat on top of some boards that lay on top of the bench, wooden bench that was on the south side of the barn.

Q. How was that barn on the Thursday afternoon in its loft, in the upper part, with respect to dust?

A. Well, there was considerable dust there?

Q. Where did you find the box? Describe particularly.

A. The box, as you entered the door on the south side of the barn going to the northward, just inside of that door there was another door to the left or westward that went

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into what I termed as the carriage-house, and just at the left after passing through this door, just at the left that stood down there.

Q. Do you know whether the basket and the box were in the positions Thursday, the day of the homicide, that they were in or substantially the positions that they were in on the day that you took them away?

A. That I could not say.

Q. It was suggested to me that you said you delivered the shoes and stockings to Mr. Knowlton. I didn't so understand it.

A. To whom?

Q. To Mr. Knowlton.

A. To Dr. Dolan.

Q. Did you get them back again from Dr. Dolan?

A. Yes, sir.

Q. How long after you had delivered them to him?

A. I got them back on the 16th of August, in the morning.

Q. What did you then do with them?

A. I carried them to Boston, and turned them over to Prof. Wood.

Q. You had a bit of plastering. What did you do with that?

A. I placed that in a trunk in the station house with those two pieces of wood there, and a marble slab.

Q. How long did you retain the custody of that piece of plastering?

A. Until the trial took place, I think it was. I think it was on the day of the---30th of August.

Q. One of the preliminary trial days?

A. Yes, sir.

Q. Into whose possession was it then delivered?

A. It was then delivered into the hands of the clerk of the Second District Court of Fall River.

MR. KNOWLTON. My friends agree that Mr. Leonard need not come here. He was here last night, and did not want to stay. He has had the custody of it since, and delivered it to the clerk last evening.

MR. ROBINSON. If you say so that is so---

MR. KNOWLTON. You were not present, Governor, at the time. It will save him being her to-day.

MR. ROBINSON. Yes.

Q. (Exhibiting an article to the witness.) Is that the piece of plastering?

A. Yes, sir, it looks like it.

Q. Have you had any other property in your possession, Mr. Hilliard?

A. Yes, sir.

Q. What?

A. I had some hatchets and axes.

Q. When did you receive the two hatchets with handles on them?

A. About eight o'clock on the 5th day of August.

Q. From whom?

A. From Mr. Edson, officer Edson.

Q. What did you do with those hatchets; how long did you keep them?

A. I had those hatchets in my possession until the 9th of August.

Q. To whom were they then delivered?

A. Dr. Dolan.

Q. Did you receive them back again from Dr. Dolan at any time?

A. No, sir.

Q. By whom were they delivered to you?

A. Officer Edson.

Q. At the same time he delivered the hatchets?

A. Yes, sir.

Q. (Exhibiting axes.) Are those the axes?

A. Yes, sir, I should say they was.

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Q. How long did you retain the custody of those axes?

A. Until the 9th of August.

Q. To whom did you then deliver them?

A. Dr. Dolan.

Q. Did you receive any other metallic weapon?

A. Yes, sir. On Monday, August the 8th, I received a hatchet.

Q. Describe the hatchet.

A. The handle was broke off. There was only a small piece, a short piece in the head, and there was a white substance on it, on the iron part all over it.

Q. (Exhibiting handleless hatchet.)

A. Yes, sir, that is the hatchet.

Q. Could you tell what that white substance was?

A. No, sir, I could not. It was all over the hatchet, the iron part.

Q. How was that piece of wood when you first received the hatchet? I mean where was it?

A. It was in this head here.

Q. How close to the head was that broken off?

A. As I remember it now, it was broke close off here.

Q. Give any description of anything else about the hatchet or about the wood.

A. Yes, sir. Where the break was on the wood part it looked clean, bright.

Q. Was there anything in the fragments of this break, any of the white?

A. No, sir, I didn't see any of that substance in there. It was on the iron.

Q. Who delivered you this hatchet head?

A. Officer Medley.

Q. What did you do with it?

A. I placed it in the trunk in the store room.

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Q. It is one of there trunks which are here?

A. Yes, sir. It is out in the hall-way.

Q. Is it a trunk with lock and key?

A. Yes, sir.

Q. When you placed this hatchet head in the trunk, did you do anything with reference to the lock of the trunk?

A. The trunk was locked up.

Q. And who kept the key?

A. I had they key.

Q. Has that key passed out of your possession at all until the trial began in this court?

A. No, sir, not after the goods was put into that trunk. I had the key until the goods was taken out of the trunk. In fact, I have held that key ever since.

Q. How long did you keep possession and control of this hatchet head?

A. That was delivered to Prof. Wood on the 30th of August.

Q. Was that one of the days of the preliminary hearing?

A. Yes, sir.

Q. Is there any other property of which you had the possession?

A. I don't remember.

Q. A marble slab, have you anything to do with that?

A. I spoke about the marble slab, yes, sir. I put that in the trunk.

Q. Have you had that in your possession since?

A. Yes, sir.

Q. Up to the time it was delivered to the Court?

A. Yes, sir, and I have had in my possession a box containing some clothing which I think was on the body.

Q. That is here in the court house?

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A. It is here in the court house, yes, sir.

Q. Do you recall anything else? A handkerchief I will call your attention to.

A. That was in that box with the other goods.

Q. Mr. Hilliard, have you made any effort to find any person who sent or carried a note to the Borden house on August 4th?

A. No further than what I instructed my officers in.

Q. Have you been able to find any person who sent or carried a note?

MR. ROBINSON. Wait a moment. I object to that. It does not appear that he has done anything at all.

MASON, C. J. I do not see how it is competent.

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MR. MOODY. A single question bearing on the dress, I want to ask.

Q. On the Saturday afternoon before the search began, did the prisoner make any request of you for someone to come?

A. Saturday afternoon?

Q. Yes, the Saturday afternoon,---the afternoon that you got the dress.

A. No, not that I know of. I don't think that I spoke to her at all until probably four o'clock in the afternoon, and then I don't know as I spoke to her, but I heard her speak.

CROSS EXAMINATION.

Q. (By Mr. Robinson.) Mr. Hilliard, Mr. Allen was the first officer you sent there on Thursday, if I understand you correctly?

A. Yes, sir.

Q. Did you see him personally or did you send him by the telephone?

A. No, sir, I stepped from my office right into the guard room and spoke to him personally.

Q. Did he go from there without much delay?

A. Yes, sir.

Q. How was he that day, in uniform or citizen's clothes?

A. Citizen's clothes as near as I can remember.

Q. What time in the day was that?

A. I should say that was somewhere about fifteen minutes past eleven o'clock.

Q. What time did you first go up to the Borden house?

A. About three o'clock in the afternoon.

Q. So that you had not been up there until that time at all?

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A. No, sir,---that is not at the house.

Q. When you arrived there where did you first go?

A. I went into the yard, and I won't be sure whether I went into the barn first or to the pile of lumber that was at the other end of the yard.

Q. But it would be one of those two?

A. Yes, sir.

Q. And other officers with you?

A. Yes, sir.

Q. And did you all keep together in what you did at that first approach in the yard?

A. No, sir, I think that some of them went into the barn while I was at the pile of lumber. I think there was two or three more at the pile of lumber, as near as I can remember.

Q. And with regard to the pile of lumber, you looked it over and found nothing whatever?

A. I looked at the lumber pile,---I did not over haul it.

Q. No, I understand. You looked it over and saw nothing?

A. I did not see anything there.

Q. Well, in regard to the barn, the lower door, down on the south side was open?

A. Yes, sir.

Q. And the door directly over it in the loft you think was shut?

A. Yes, sir, it was closed.

Q. And as to the west window, you don't know?

A. I won't say as to the west window, whether it was shut or open?

Q. Cannot tell about that?

A. No, sir.

Q. How did you go in the house that afternoon?

A. I went into the house, I should say somewhere from half past four to

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quarter to five.

Q. And whom did you see there?

A. I saw the Doctors, and also the bodies of Mr. and Mrs. Borden,---and undertakers.

Q. Did you go upstairs?

A. Yes, sir.

Q. And did you see anyone up there?

A. No, sir, only the party that went up with me.

Q. Who was that?

A. Dr. Dolan.

Q. I did not hear you.

A. Dr. Dolan.

Q. Well, that Thursday afternoon, you met with no objection to your going into the house?

A. No, sir.

Q. From anybody in the house?

A. No, sir.

Q. And did you ask to have any doors unfastened for you that afternoon?

A. No, sir, I did not.

Q. Did you try any doors to see if they were fastened?

A. No, sir, I only looked at one door.

Q. Which was that?

A. The front door.

Q. What was that?

A. The front door.

Q. It had got to be three or four o'clock in the afternoon?

A. At that time I should think it must have been quarter to five.

Q. Did you go there on Friday?

A. No, sir, I did not.

Q. By your instructions was any examination of the house made on Friday?

A. Not that I am aware of.

Q. You did not give any instructions then?

A. No, sir, I did not.

Q. I did not, you say? What do you mean by that?

A. I mean to say that I did not instruct any body to go there.

Q. Did you hear the Assistant Marshal give any, or any that he

did not give?

A. No, sir, I did not.

Q. You don't know anything about that? When did you next go there?

A. The next time that I went there would be about one o'clock or half past one that night,---that is in the yard, I did not go into the house.

Q. I am speaking of the house. You went to the yard, but your officers were there all the time?

A. Yes, sir.

Q. Now I am speaking particularly of going into the house. When was the next time?

A. The next time was Saturday noon time.

Q. When you say noon time, what do you mean?

A. I should say it was quarter past twelve o'clock.

Q. Were you there in the forenoon at all?

A. Not in the house.

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Q. Well, were you in the yard?

A. Yes, sir.

Q. Then when you said that you were there Saturday forenoon, you wish now to be understood, or you meant then to be understood, that you were not in the house Saturday forenoon?

A. No, sir; I mean to say that I was in the house Saturday about quarter past twelve o'clock.

Q. Well, the jury would understand that was after the noon hour rather than before it. It was after twelve o'clock?

A. Yes, sir.

Q. So that we may understand that you were not there before twelve o'clock?

A. Not in the house.

Q. Yes, sir. That is what I meant particularly. You went in the house about quarter past twelve?

A. I should say it was somewhere about quarter past twelve.

Q. What did you do at that time?

A. I went up the back stairs and went into a room which I term as the room Mr. and Mrs. Borden occupied.

Q. Were you alone?

A. No, sir; I was not.

Q. Who were with you?

A. Assistant Marshal Fleet, and district police officer Seaver.

Q. What did you do then?

A. I looked at the bed in that room. I went from there into the room at the westward which is termed as Miss Lizzie's room.

Q. Before you go out of the room of Mr. and Mrs. Borden, let me ask you who showed you the way up there?

A. Miss Russell.

Q. Was the door opened with a key to admit you?

A. No, sir; I wouldn't say as to that. I went upstairs with her and went

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in.

Q. And the others followed along?

A. Yes, sir.

Q. Well, there was no objection to your going there?

A. None at all.

Q. You said you looked at the bed. Will you tell the jury how much you looked at it?

A. Well, the bed in Miss Lizzie's room---

Q. No, in Mr. and Mrs. Borden's room first?

A. Oh, that bed there?

Q. Yes.

A. Well, all I did there was to look under the bed and at the head of the bed where something that was handed into my possession was said to have come from.

Q. Have you that something now?

A. Yes, sir.

Q. Well, that is nothing but a stick, is it?

A. That is all, sir.

Q. You have not produced it at all?

A. No, it is here.

Q. You do not attach any importance to it, the district attorney says, at all?

A. No, sir.

Q. Well, then we will not follow that stick. And you looked under the bed and looked under the head of the bed, I think you said?

A. Yes, sir.

Q. Did you do anything else with the bed?

A. Not with that bed, sir.

Q. Now you didn't remove the bed covering or mattresses?

A. Not from that one.

Q. Was that all you did in that room?

A. Yes, sir.

Q. You made no more search than that?

A. No, sir; not in that

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room; that is, that day.

Q. I beg your pardon?

A. On that day.

Q. This was Saturday?

A. This was Saturday; yes, sir.

Q. Do you mean to say that you did not any time that day make any more search in that room?

A. Not at that day; that is, I mean at that time.

Q. Well, I want to know which you do mean, whether on that day or at that time, that is, quarter past twelve on Saturday?

A. Yes, sir; when I went there again at three o'clock I made search all over that house.

Q. Well, in that same room?

A. Yes, sir.

Q. Well, then I will not consider that now, but I am talking about the quarter past twelve visit?

A. Yes, sir.

Q. Well, did you do anything more than you said?

A. No, sir; not in that room.

Q. Very well, where did you next go?

A. I went into the room next which is called Miss Lizzie's room.

Q. How did you go in there?

A. Through the door; which went from the room here.

Q. Was it fastened?

A. Not at that time.

Q. We naturally suppose you went through the door, but I supposed you knew what I was after was whether the door was locked and you had to have a key?

A. No, sir. There are two ways of getting to that room.

Q. I understand that, but how did you go?

A. I think Miss Russell went ahead and opened that door, I believe, and we went through it.

Q. You didn't go down stairs and go around?

A. No, sir.

Q. Well, that is what I am after?

A. No, sir.

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Q. Was the door unlocked at that time?

A. I won't be sure about that, I don't know.

Q. Was that the time when the door was forced open and the hook pulled off on the other side?

A. No, sir.

Q. When was that, do you know?

A. I don't know.

Q. You don't know about that?

A. No, sir, I wasn't there.

Q. You were not there when that was done?

A. No, sir.

Q. Well, now, we will go into Miss Lizzie's room. What did you do in there? That is the quarter past twelve visit?

A. Yes, sir. We looked at the bed, took and lifted up and looked under the mattress.

From there I went over under the sofa or lounge that sat the west side of the room: I looked that all over. That is all I done in that room.

Q. Were the family gone to the funeral at that time?

A. Yes, sir.

Q. So that they were not there to object, and you had full run of the house?

A. The family, the immediate family, was not there. There was two persons there.

Q. Yes, Miss Russell and who else?

A. Mrs. Holmes.

Q. Did you go into any other room at that time?

A. Yes, sir, I went into the room to the northward, that was termed Miss Emma's room.

Q. What did you do in there?

A. I looked at that bed that was there, that is all.

Q. You did not pull that to pieces?

A. No, sir.

Q. You did not find anything in Miss Lizzie's room, as I understand you?

A. No, sir.

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Q. Nothing worth talking about? And you did not go into Miss Emma's room?

A. No, sir.

Q. Where did you go then?

A. I came out and went down stairs, went out of the building.

Q. Did you go up at all into the third story?

A. No, sir.

Q. Not then?

A. No, sir.

Q. You went away, so that, as far as you know, that was all that was done at the quarter past twelve visit?

A. That is all that I know of, sir.

Q. And did the other officers go away with you?

A. Yes, sir.

Q. Now when did you next come there?

A. About three o'clock that afternoon.

Q. And I think you said you stayed there three hours and a half, about?

A. Yes, sir.

Q. What were you really doing all that time?

A. Searching the house.

Q. From top to bottom?

A. Yes, sir.

Q. How many of you?

A. Six of us.

Q. Did you make a thorough search?

A. Yes, sir.

Q. Was Officer Seaver present?

A. He was.

Q. And the others were all members of the Fall River police?

A. No, sir.

Q. Who else?

A. There was Assistant Marshal Fleet, District Police Officer Seaver, Acting Captain Desmond, Dr. Dolan, Mr. Jennings, myself.

Q. You did not object to Mr. Jennings' presence?

A. Not at all.

Q. When you arrived there, on going in that afternoon on the three o'clock visit, did you see either of the sisters before

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you went upstairs?

A. Yes, sir.

Q. Where did you meet them?

A. I met Miss Emma Borden---we were in the kitchen and she came there into the kitchen.

Q. Did you talk with her about it?

A. Yes.

Q. That is, as to searching the house?

A. Yes, sir.

Q. She gave you full permission, did she not?

A. Yes, sir.

Q. Expressed a desire to have you?

A. Yes, sir.

Q. And wanted you to search everything?

A. Yes, sir.

Q. And did you have some talk with Miss Lizzie, or did you meet her during your search?

A. I had no talk with Miss Lizzie myself. I heard her speak, but I did not have anything to say myself.

Q. Was there anything said at that time about taking out the bottoms of the chimneys?

A. No, sir; that was afterwards. That was after we had searched the upper parts of the house and gone into the cellar.

Q. Now as long as I have mentioned that, to keep the record right, just go on and tell what was said about the chimneys at that point. It was later, but we will take it now.

A. I said that I wanted a mason to take and cut a hole through into the chimney there to see if there had been anything thrown there.

Q. Well, what was said in reply?

A. Only by Mr. Jennings.

Q. Was not Miss Lizzie there?

A. No, not at that time. This was in the cellar that I am speaking of.

Q. Well, I mean upstairs in the kitchen, when you first spoke about it.

A. I didn't speak of it upstairs in the kitchen---that is, about the chimney. The chimney was spoke about

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down cellar.

Q. Mr. Jennings was there?

A. Yes, sir.

Q. No objection made?

A. None whatever.

Q. Well, now, you came into the kitchen, all of you, and where did you go? I want you to

describe to the jury the effectiveness and the thoroughness of your search in all its details, and take one room at a time and follow the order of your going.

A. Well, I would say that I didn't search all the rooms. We divided up, searched here and there. I didn't search every room in the house.

Q. Well, you were at the head of the searching party?

A. Well, I was one of them; yes, sir.

Q. I don't want to underrate your dignity and office, but you were the captain?

A. Well, I was with the immediate men in my police department---

Q. Everybody but Mr. Seaver and Mr. Jennings?

A. Mr. Seaver and Mr. Jennings and Dr. Dolan.

Q. And Dr. Dolan?

A. Yes, sir.

Q. Well, we will leave them to go it on their own account.

A. Yes, sir.

Q. You took charge of the police? Now go ahead: tell me what you know about it?

A. We went from the kitchen, went up two flights of stairs into the attic---what I call the attic of the building. I first went into a room which would be on the north---what I term the north and east room in the attic. I searched that thoroughly,---the bed and the clothing

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that was there. Mr. Fleet---

Q. Whose room was that, if you know?

A. All I know is what I was told, that Mr. Morse was occupying that room at that time.

Q. It was not Miss Bridget's room, then?

A. No, sir, not as I understood.

Q. Very well: we will except that.

A. Mr. Fleet and Mr. Desmond was in what was Miss Bridget's room, searching, and I went in there after I got through this other room. We searched that room all through, the bed and the clothing that was there. We also searched the water tank that is in that room--what I term as in by the clothes press. From there we came out and went in---I went into a room which was on the south side of the attic---of the building. I was in there searching: Officer Seaver was there; Mr. Jennings was in there, Dr. Dolan. We searched that room, all of the trunks, we looked at the stove, the inside of the stove, in fact, we searched everything there was in that room.

Q. You are certain of that?

A. Yes, sir. That is, I am certain that as far as I went it was searched. I see trunks opened there that I didn't search myself but other officers did.

Q. Did you find any trunk which you had any difficulty with?

A. Yes, sir, all that was there had difficulty with that trunk.

Q. What is that?

A. Everyone that was there had difficulty with that trunk in trying to open it.

Q. Well, there seems to have been a "that trunk," and I want to know about it.

A. Yes, sir.

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Q. Well, there was a "that trunk". What did you do with it?

A. Well, we couldn't get it open unless we broke it.

Q. Didn't you get it open at all?

A. Yes, sir.

Q. Well, tell us about it.

A. Miss Emma and Miss Lizzie came up stairs, and I won't be positive which one that spoke about the trunk showed us how to open it, but I think it was Miss Lizzie; I ain't positive of that. We opened the trunk and searched that and found nothing.

Q. Some sly catch or spring about it, was there?

A. There was a spring there, yes, sir.

Q. You had not detected it?

A. No, sir.

Q. It was not a key that was wanted?

A. No, sir.

Q. Now both of these sisters came up there; didn't they tell you that you had had a good deal of fuss about getting another trunk open, and why didn't you send down for them, or something of that kind?

A. I didn't hear any such remark as that.

Q. Well, I probably have not put it in the right words. You were looking after a key there which you did not find, and they told you where it was?

A. Yes, sir.

Q. Tell us about that: tell us all of it without my questioning: go right on.

A. As I said, we opened all the trunks in that room. There was one trunk that we could not find the key to, and finally they told us where the key was.

Q. And where was it?

A. That key, I think, was tacked onto the trunk itself, side of the lock. It hung down, if I remember right. We passed from that room into---

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Q. Let me recall your attention. You said Miss Emma told you before you started that she wanted you to make a thorough search?

A. Yes, sir.

Q. Did she tell you (without giving her exact words) that she wanted you to make as thorough an examination as possible of every part of the house, everything in the house, and if there was any place or box or anything else that you did not understand or could not open, the keys would be given to you?

MR. MOODY. Who said that?

MR. ROBINSON. Miss Emma, I asked him.

MR. MOODY. I don't want to be captious about it, if you think it is of any value. I do not see how it is competent, but I don't want to object to it.

MR. ROBINSON. Well, then we will not have the objection raised. I take it by your courtesy: I would take it as a right. (To witness). Go right on and answer the question.

THE WITNESS. I will say there was words to that effect used there. I can't say that was just the words, but that was the sum and substance of it.

Q. And that was before you started?

A. Yes, sir, that was in the kitchen.

Q. Did you search the roof at all?

A. No, sir, I did not. I saw Mr. Fleet go up through a scuttle and go in there; he had a lamp with him.

Q. If you have finished in the attic the different rooms, we

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will go next where you went.

A. I should say that the room that is on the west and north side of the house I did not do any searching in myself.

Q. That is the large storeroom?

A. Well, it is a large room.

Q. Trunks in it?

A. I won't say about whether there was any trunks in that room or not, because I didn't pay any attention to that room.

Q. Well, you say you did not make any search: you mean personally?

A. Yes, sir.

Q. But the officers did?

A. Oh, yes, sir.

Q. Now if you have finished in the attic, we will go next where you went?

A. Yes, sir. We went down stairs and went into what is termed Mr. and Mrs. Borden's room. We searched that room thoroughly: went through the bureaus, drawers, went into the closet, went through the shelves, looked all around everything that was there, and we looked into a place where there was a cupboard by the chimney, where we was trying to get a stick down in by the chimney in order to poke around there. We went from that room into Miss Lizzie's room: Mr. Desmond and myself searched that room. Mr. Jennings was there and Dr. Dolan sat there.

Q. Searched it thoroughly?

A. Yes, sir, we searched that room thoroughly. Mr. Seaver and Mr. Fleet---I won't say whether Mr. Desmond was with them or not at that time or afterwards---was in the room to the westward, which is termed Miss Emma's room, and also in a room on the west end of the house from the

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front hallway. But my search---that was as far as I searched in that building upstairs, and I was there in Miss Lizzie's room until I got down into the cellar.

Q. And you know that the search of the guest room was made?

A. What say?

Q. You know that other officers searched the guest room?

A. Oh, yes, yes, sir; that was searched in there.

Q. That is the front corner room: and then was the clothes room searched?

A. That is the room that I speak of that run off the front hallway at the west end of the house. I think Mr. Fleet and Mr. Seaver, I ain't sure but Mr. Desmond---

Q. Did you go in there at all?

A. No, sir; I didn't go in there.

Q. Where were you when the dress and skirt were called for?

A. I was in the spare room, so termed.

Q. Right opposite the door there, the door open, out in the hall?

A. Yes, sir.

Q. You called on Mr. Jennings for the dress and the skirt: the dress first I believe?

A. Yes, sir.

Q. And he went and got it?

A. Yes, sir.

Q. Did you see Miss Lizzie go to the clothes room and get it?

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A. No, I don't remember of that.

Q. Would you say she did not pass right by that door?

A. No, sir, I wouldn't say. I say I don't remember.

Q. Mr. Jennings brought it right in to you?

A. He came into the room with that.

Q. Well, when I say right in, I mean without any unusual delay.

A. Oh, yes, in a few moments.

Q. In a reasonable time?

A. Yes, sir.

Q. And then did you call for the white skirt?

A. I won't be sure whether he brought that in at that time, or went back and got it afterwards.

Q. But you got it immediately?

A. Yes, sir.

Q. And took it into your possession from that time?

A. Yes, sir.

Q. As I understand you, for the time being, you handed it back to Mr. Jennings, and the skirt, too---the dress and the skirt, for him to keep for a little while and bring it down to you at the office?

A. Yes, sir.

Q. You have no doubt you got the same one?

A. No doubt at all.

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Q. No doubt at all, you did not suspect anything there. That, so far as your immediate knowledge is concerned, is what happened on Saturday afternoon?

A. I would say that Mr. Jennings and I looked at the parlor there, the piano that afternoon.

Q. With the same result?

A. Yes, sir.

Q. In fact your whole search was, as the doctors call it, with a negative result?

A. It might possibly be; I call it a thorough search.

Q. When did you get the shoes and stockings?

A. That was on Wednesday.

Q. That was after the inquest commenced?

A. Yes, sir.

Q. And you went home with Miss Lizzie, didn't you?

A. I did, yes, sir.

Q. You did right along through the inquest?

A. Yes, sir, I won't say I went home every time with her, I think not. I think I went once with her back to the house. I might have gone twice.

Q. Did you go for her?

A. Yes, sir.

Q. Brought her down in a carriage and took her back in the same way?

A. Yes, sir.

Q. When I say "went back" I mean as long as you would let her go back? Went back in the carriage when she did go back home?

A. I won't be positive that I went every time she went back. I might go once or twice. I know I went once for a positive fact.

Q. This was Wednesday afternoon, after the inquest when you asked for the shoes and stockings?

A. Yes, sir, and she remarked---

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Q. Never mind the remark. You did ask her?

A. Yes, sir.

Q. Do you recollect what you then asked her about the shoes and stockings?

A. Yes, sir.

Q. What was it?

A. I asked her if she would be kind enough to find me the shoes and stockings that she had promised the District Attorney she would hand.

Q. What did she say?

A. "Yes, sir."

Q. No objection at all then?

A. No, sir.

Q. What did she do?

A. She went up stairs and I think it was Mrs. Brigham that brought me the shoes and stockings down.

Q. Was there any other article of clothing or for clothing that you received?

A. None that I know of from Miss Lizzie.

Q. Did you call for a dress pattern?

A. No, sir, I did not.

Q. Did you hear anybody?

A. No, sir, not any of the times that I was there myself.

Q. Do you know that a dress pattern was got from the house?

A. I believe that Mr. Jennings and I think it was Mr. Harrington, I won't be sure but I think it was him that had a dress pattern brought from the house.

Q. And where is it now?

A. I don't know, sir.

Q. Was it returned or not?

A. I think it was in Mr. Jennings' custody; I don't know where it is.

Q. You haven't it?

A. No, sir.

Q. Was it examined by you at all?

A. No, sir, it was in the court room; I did not look at it.

MR. ROBINSON. (Addressing Government counsel) Have you

that?

MR. KNOWLTON. We attached no significance to that in reference to this matter, and dropped it.

MR. ROBINSON. It had no significance at all.

Q. Saturday afternoon when you were there making this search, did you ask to have Miss Lizzie come into the room where you were?

A. I did not.

Q. Ask Mr. Jennings?

A. No, sir.

Q. Do you remember asking him to have Miss Lizzie come in and pick up something?

A. No, sir, I don't remember any such conversation taking place.

Q. Would you say it did not?

A. I won't say it didn't, but I say I don't remember of any such thing as that.

Q. Didn't you ask him to have her come in and pick up something, or hand some body something?

A. No, sir, not that I recollect of.

Q. Or to take hold of something?

A. No, sir, it is something I never heard of before.

Q. Didn't he ask you what you wanted her to do that for?

A. No, sir.

Q. Didn't he tell you, as you recall it, that he was willing to have her do anything that was right but he was not going to have any experiments unless you told him what you wanted it for?

A. No, sir, I don't remember any such conversation taking place with Mr. Jennings and Miss Lizzie and myself.

Q. I don't mean with Miss Lizzie,

A. Or Mr. Jennings.

Q. It does not come back to your mind?

A. No, sir.

Q. I am inquiring of that Saturday afternoon?

A. That is what I am speaking of.

Q. Then we agree as to the day and the time in the afternoon?

A. Yes, sir.

Q. You went there Saturday night and had conversation with the Mayor, the two sisters and their uncle Mr. Morse in the parlor?

A. Yes, sir.

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Q. And whatever was said there was heard by the Mayor and the other three, altogether there?

A. Yes, sir.

Q. And there was no other conversation that occurred that evening unless what was heard by the five persons?

A. None that I know of.

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Q. Had you told Mr. Jennings prior to that evening that you suspected this defendant?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment.

MASON, C. J. It may be answered.

A. No, sir; I didn't tell him that I suspected her.

Q. Well, that leads me to ask you, did you tell him that anybody did?

MR. KNOWLTON. I pray your Honors' judgment.

MR. ROBINSON. That is the same.

MASON, C. J. It may be answered.

A. Yes, sir.

Q. Then you went there Saturday evening. As I understand you, it was the mayor that did the talking.

A. Yes, sir.

Q. The Mayor then advised them that, there being great excitement, they had better stay in the house and not go out. Was that it?

A. The substance of it; yes, sir.

Q. Well, you understood that, did you, as advising them for their own good?

A. That is what I understood; yes, sir.

Q. You didn't think it had reference to keeping them in the house for your good?

A. No, sir.

Q. Did you have a warrant in your pocket at that time?

A. No, sir.

Q. Well, you had it round you somewhere?

A. No, sir.

Q. That was Saturday?

A. That was Saturday.

Q. When did you get it?

A. The first warrant I got was about

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twelve o'clock on Monday forenoon.

Q. Well, when I say a warrant, I mean to arrest this defendant?

A. Well, that is what I mean, sir, but I had none.

Q. No; on Monday you did?

A. On Monday, I had, yes, sir.

Q. And the mayor said if they were annoyed by the people he would have the people dispersed? In brief that is the substance of it?

A. That is what he said.

Q. And then there was the talk about the mail, getting the mail. That was comparatively a slight matter?

A. Yes, sir.

Q. Not much conversation about that. Then came this conversation. You had been there and made the search, a vigorous search, all that afternoon, as Miss Emma, her sister and Mr. Morse were there, and you and the mayor?

A. Yes, sir.

Q. And you had advised them not to go out doors?

A. The mayor did the talking.

Q. Well, I know, but it was done there in your presence?

A. Yes, sir.

Q. He was the mouthpiece of the city at that time. And Lizzie asked you if anybody was suspected in this house, didn't she?

A. Yes, sir.

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Q. Now, you know that Mr. Morse was in or about those premises on the day of the tragedy, you had learned that as a fact?

A. Yes, sir.

Q. You know also that Bridget Sullivan was on or about the premises on that same day, Thursday?

A. Yes, sir.

Q. You know also that the defendant, you had learned, I suppose, that she was also there?

A. Yes, sir.

Q. And had you been investigating, looking after other people up to that time?

A. Yes, sir.

Q. A good many of them?

A. Yes, sir.

Q. And there had been a good deal---I don't ask what it was---there had been a good deal of comment in the public press about it?

A. Oh, yes.

Q. A great deal?

A. Yes.

Q. A great deal of street talk, rumor and suggestions; a great deal of help afforded to the officers probably in the way of advice?

A. Well, I don't know how much help was afforded the officers by that.

Q. But it came nevertheless?

A. That I don't know.

Q. Then what did the Mayor say in answer to that question?

A. Which question?

Q. The question that Miss Lizzie asked.

A. He said "I think Mr. Morse could answer that question for you."

Q. Is that all he said?

A. "From what occurred last night."

Q. "From what occurred last night."?

A. Yes, sir.

Q. Well, is there anything more? You didn't tell us that, I

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think.

A. Yes, sir.

Q. I don't remember it. Is that all?

A. That is, in answer to that question.

Q. That is the Mayor's answer?

A. Yes, sir.

Q. And thereupon Lizzie said, "I want to know the truth."?

A. Yes, sir.

Q. Spoke earnestly?

A. Yes, sir.

Q. "I want to know the truth"?

A. Yes, sir.

Q. Then what was the answer to that?

A. The Mayor says, "I regret very much, Miss Borden, but you are suspected."

Q. "That you are suspected"?

A. Yes, sir.

Q. Now, what was the reply that Emma said to that?

A. Emma says, "We have tried to keep it from her as long as we could."

Q. You understood by that then that Emma had heard the report of your suspicion?

A. No, sir. I don't know as she had heard the report of my suspicion.

Q. Well, I don't mean you personally, but the suspicion of the Mayor, or somebody else?

A. Well, I cannot say. That is the way she answered it.

Q. Well then, I will not ask you for your construction of it, if you didn't understand it. I will leave it there.

MR. KNOWLTON. He did not say he did not understand it.

MR. ROBINSON. I know he did not.

Q. Did you understand what he said?

A. Certainly, I understood what he said, that is, in answering that question.

Q. Now, what did Lizzie say to that?

A. Lizzie said, "Well,

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I am ready to go any time" or "now", or words to that effect. I can't give you the exact words.

Q. "Go any time" or "go now"?

A. Yes, sir.

Q. Spoke it right out?

A. Yes, sir.

Q. Earnestly?

A. Yes, sir.

Q. Frankly?

A. Yes, sir.

Q. Sure about that?

A. Yes, sir.

Q. That was about what time Saturday evening?

A. Well, I should say that was probably somewhere in the vicinity of four or five minutes to eight, somewhere about that.

Q. Now, to make it sure, all the same five persons were present at that time?

A. Yes, sir.

Q. Were the doors into the other rooms closed at that time, leading to the hallway and sitting-room?

A. I think the door that led into the front hall was thrown partially to. I wouldn't say it was closed, but I think it stood ajar, as nearly as I remember it.

Q. That, I suppose, you are not quite sure of?

A. No, sir, I don't say I am.

Q. Then she was asked where she was at the time her father was killed, and she said she was in the barn looking after some lead for some sinkers?

A. Yes, sir.

Q. Or to make sinkers out of?

A. Yes, sir.

Q. What did she say about it?

A. As I remember, she said she was in the barn looking for some lead to make some sinkers of.

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Q. About twenty minutes all together?

A. Yes, sir.

Q. Then you gentlemen departed and left the family, the occupants of the house, to themselves at that time?

A. Yes, sir.

Q. And nothing more that you recall?

A. Nothing that I recall, no, sir.

Q. Do you recall at that time that you said to them you had completely finished the search of the house except the cellar?

A. No, sir, I don't remember of making that remark at that time.

Q. But you really had?

A. I had, that is, when we came up out of the cellar I think I made that remark to Mr. Jennings.

Q. Came up out of the cellar on Saturday?

A. Saturday, yes, sir.

Q. You told Mr. Jennings that except the cellar you had completed the search?

A. Yes, sir. I told him something like this, that I wanted to have a mason come and take out the bricks out of the chimney, but I wouldn't do that to-morrow, being Sunday, but I wanted to do it the first thing Monday morning.

Q. Did you look in the house to see where the running water was supplied?

A. No, sir, I did not.

Q. Can't you tell us?

A. No, sir, I could not.

Q. Did you discover any up in the upper part of the house, if you recall?

A. There was a tank of water where Bridget Sullivan's room was, a small wooden tank there. I couldn't say where it went to, nor nothing about it.

Q. You didn't notice then whether in the rooms on the second

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floor there were faucets or whether the rooms were supplied with bowls and pitchers?

A. No. I didn't see any faucets that I remember at all.

Q. Didn't see any?

A. No, sir.

Q. You have said that Mr. Allen was not in uniform. Are you able to make a statement in regard to others that went up there?

A. I am in regard to officer Mullaly.

Q. What was it in regard to him?

A. He had a uniform on. I know he had a uniform on.

Q. What about Mr. Doherty?

A. Well, that I am not able to state.

Q. Or Mr. Medley?

A. I can't say because I didn't see him.

Q. Gillam or Wilson?

A. I saw Mr. Wilson---gave him the order. At the time I saw him he was in citizen's clothing.

Q. And Mr. Fleet?

A. Mr. Fleet, I didn't see him.

Q. Well, when did you receive the two axes and the two hatchets?

A. I received them Friday morning about eight o'clock.

Q. Who brought them?

A. Officer Edson.

Q. How were they brought, if you saw?

A. Well, they was in my office. When I came he had them there.

Q. You didn't see them come?

A. No, sir.

Q. And you got the one without the handle on what day?

A. On the following Monday.

Q. Who brought it?

A. Officer Medley brought it.

Q. What did you do with it?

A. Well, I finally locked it up in my trunk in the store room.

Q. Well, finally, but what did you do that Monday with it?

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A. Oh, I had it there in my private office.

Q. Did you put it with the other four?

A. No, sir, I did not.

Q. When did you go to either Dr. Dolan or Prof. Wood?

A. It was delivered to Prof. Wood on the 30th of August.

Q. It wasn't produced at the preliminary examination at all?

A. No, sir, not that I know of.

Q. You were present at the preliminary examination?

A. Oh, yes, sir.

Q. And saw the two axes and the two hatchets there?

A. Yes, sir.

Q. And heard the testimony about those?

A. Yes, sir.

Q. And you didn't bring down the other one at all?

A. No, sir.

Q. Did you give it to Prof. Wood yourself?

A. Yes, sir.

Q. Where?

A. Down in the private office.

Q. Of your own motion, your own thought, or at his request?

A. No, by what was said in court.

Q. Well, in your own mind then?

A. No, sir. I was ordered to deliver anything that I had in my possession to Prof. Wood.

Q. Oh, yes. And when you got it, it was with that little piece of wood---I don't now see it; it is not material; we know what it is---that little piece of wood, was it in the eye

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of the hatchet?

A. Yes, sir.

Q. Apparently in its proper position?

A. Yes, sir.

Q. And that had a whitish substance on the blade?

A. All over the iron part of it.

Q. Looked like ashes?

A. Well, it looked like ashes to me. I don't know what it was.

Q. It looked like ashes to you?

A. Yes, sir.

Q. You didn't examine it closely yourself at all?

A. Yes, sir, I looked the hatchet over pretty thoroughly.

Q. I mean anything more than that, looked it over?

A. No, sir.

Q. You laid it aside when you received it, laid it away, and didn't put it into the case there, and didn't have anything to do with it in connection with that inquiry?

A. No.

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Q. When you first got it was it wrapped up in anything?

A. It was in a paper.

Q. Do you recall what kind of paper?

A. No, sir, I couldn't tell you.

Q. Was it kept wrapped up in the paper?

A. Yes, sir; it was wrapped up in the paper until, I think, it was taken out of the paper and handed to Mr. Wood, and re-wrapped in the paper again.

Q. Was it seen or handled by anybody from the time you got it on the 10th of August to the 30th?

A. Well, I wouldn't be positive whether Dr. Dolan see it or not. That I am not positive of.

Q. Or Mr. Knowlton?

A. No, sir; I don't think that Mr. Knowlton see it until the 30th of August.

Q. That was after the conclusion of the preliminary hearing?

A. That is, for that forenoon.

Q. Had Dr. Wood testified at that time?

A. Yes, sir.

Q. You heard his testimony?

A. I heard part of it; part of it I didn't.

Q. Substantially, on the questions of blood and stains, as has been given here in regard to those four?

A. Yes, sir.

Q. That is, the four?

A. No; that is, the small hatchet, I would say, the smallest one of those hatchets with a handle---I have made a mistake---that was given to him on the 30th too.

Q. Then we will speak of the two axes and the claw-headed hatchet.

A. Yes, sir.

Q. And you had heard his testimony substantially as he has

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given it here with regard to that?

MR. MOODY. He has not heard it here.

A. I haven't heard the testimony here.

Q. Well, you have heard the testimony that there was no blood?

A. Yes. That is, if I remember it correctly, I think that was what was testified to in the lower court, the preliminary hearing.

RE-DIRECT.

Q. (By Mr. Moody.) What was this occurrence that was referred to as having happened to Mr. Morse the previous night?

MR. ROBINSON. Wait a moment; unless it was talked about at that time.

MR. MOODY. Its description was not talked about; it was referred to.

MR. ROBINSON. Well, I object.

MR. MOODY. The only purpose, your Honors, and I think I ought to state it, is this. From the cross-examination it might appear, and be argued later, that the visit which purported to be to offer protection was a pretext. Now I offer to show that on the previous night Mr. Morse had gone to the post office, and a crowd of four or five hundred or a thousand, a very large number of people, had gathered, and that there had been violence threatened; and it was, as your Honor recalls, mentioned in the conversation. I ask that only to show that the visit to this household was in

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good faith, for the purpose for which it was stated.

MR. ROBINSON. I want to suggest this, that I think we can see that my brother's intimation has no relevancy, because we were asking for the whole of that conversation that occurred between the mayor and the three members of the family, if I may say so, and it is given consecutively, and upon an answer to the question by Miss Lizzie, "What, is there anybody in this house suspected?" the mayor's reply was, "Mr. Morse can answer." Then Lizzie says, "I want to know the truth." Then the mayor says, "I regret to say that you are suspected." meaning her. Now there is no reference at all to any extension of that conversation in regard to Mr. Morse. We have it all twice stated from this witness. Now to show that something happened on Saturday night with regard to Mr. Morse does not at all assist us to learn what this conversation was.

MR. MOODY. Your Honor will remember that the whole conversation was not stated. "Mr. Morse will know from the occurrence that happened to him last night."

MR. ROBINSON. Well, that does not assist us about the charge to Lizzie.

MASON, C. J. As I recall it, it was that "Mr. Morse can tell that, from what I heard last night." That would be a remark which perhaps calls for information, and would make the occurrence itself an assistance to understand the remark.

MR. ROBINSON. But, if your Honor please, it does not

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appear that Miss Lizzie knew anything about what had occurred Saturday night, and I do not see how we are to be concluded by what happened to Mr. Morse and what Mr. Morse knew. It wasn't talked about there, what was done Saturday night. If it had been, I have no more time to take in the matter, but they seek to get in something that did not touch this defendant.

MASON, C. J. It is excluded.

JOHN W. COUGHLIN, Sworn.

Q. (By Mr. Moody.) What is your full name, doctor?

A. John W. Coughlin.

Q. You are a physician and surgeon in Fall River?

A. Yes, sir.

Q. And in 1892 and at the present time mayor of that city?

A. Yes, sir.

Q. On the Saturday evening following the homicide did you go to the Borden house?

A. I did.

Q. With whom?

A. City Marshal Hilliard.

Q. As you approached toward the house did you see any persons on the street?

A. I saw a large number of people congregated around the Borden house.

Q. What was done with reference to those people?

A. I instructed the marshal to have them removed.

Q. Were they removed?

A. They were.

Q. Can you give us an idea of about how much of a crowd there

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was there on the street?

A. The sidewalk on the east side was some little distance down, both north and to the south, was crowded with people. The middle of the street---there were a large number of people gathered there, and, in fact, it was with difficulty, that we were able to drive through without running some of them down. I notified the marshal that they should be removed. We drove to a police box, he got out of the carriage and pulled in the box.

Q. Well, I don't care to go into the details. The officers were called?

A. Yes, sir.

Q. Did you go into the house, doctor?

A. After coming back from the corner of Fourth and Rodman Streets we went into the house.

Q. And there did you have an interview with any of the inmates of the house?

A. We did; after we had been in the house a few moments.

Q. With whom had you the interview?

A. The first person that I saw was Miss Emma Borden.

Q. Then did you later see other persons who lived there?

A. I did.

Q. Whom?

A. I saw Miss Lizzie, Miss Emma, Mr. Morse. The three were together.

Q. In what room did you talk?

A. In the parlor.

Q. Doctor, I wish you would recall that conversation as best you can at this time?

A. Upon taking my seat, as near as I can recall, I said to the family, "I have a request to make of the family, and that is that you remain in the house

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for a few days, as I believe it would be better for all concerned if they did so." There was a question arose---I think Miss Lizzie, to the best of my recollection, Miss Lizzie asked me, and said, "Why, is there anybody in this house suspected?" I said, "Well, perhaps Mr. Morse can answer that question better than I, as his experience last night, perhaps, would justify him in the inference that somebody in this house was suspected." Miss Lizzie said, "I want to know the truth." And I believe that she repeated the statement. "Well," I said, "Miss Borden, I regret to answer, but I must answer yes, you are suspected." And if I remember rightly, at that time Miss Borden, replying, said, "I am ready to go now." I asked her where she went to after she had left her father.

Q. Excuse me a moment. Before coming to that, do you recall in that connection whether anyone else said anything?

A. Miss Emma Borden. Yes, Miss Emma Borden said, "Well, we have tried to keep it from her as long as we could."

Q. Now, you were going on, doctor? Go on in your own way.

A. I asked Miss Borden---

Q. (By Mr. Robinson.) Which one?

A. Miss Lizzie; where she went to after leaving her father. She said that she went to the barn for some lead for sinkers. I asked her how long she remained in the barn. She said about twenty minutes. I then said "If you are disturbed in any way, or if you are annoyed by the crowds upon the street, I would like to have you notify the officer in the yard and instruct him to inform the marshal, or, if you do not desire to do that, if you will inform me I shall see that you receive all the protection that the police department can afford from the annoyance and the disturbance of the people congregating about the streets." On

leaving, I think Miss Emma Borden made the statement, "We

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want to do everything we can in this matter." And on leaving I stated that I would return on Sunday; but I did not, on account of my mother being taken ill. She was out at Stone Bridge, and I was summoned to see her very early in the morning, and didn't get back till late at night.

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MR. MOODY. Your Honors did not announce the exact ground of the decision. This witness has spoken a little more about the previous night.

MASON, C. J. It does not change the situation.

CROSS EXAMINATION

Q. (By Mr. Robinson.) You had said, as I understand it, you did the talking in the parlor?

A. I believe I did.

Q. The Marshal did not participate in that?

A. I would not swear he did not.

Q. Do you recall that he did?

A. He may have re-affirmed what I said about the request to remain in the house. I don't recall that he entered into any lengthy conversation.

Q. You had advised them to remain in the house and on the premises?

A. Yes, sir, I did.

Q. And thereupon Miss Lizzie said, "why, is there anybody in this house suspected?"

A. To the best of my knowledge.

Q. Spoke right up to you earnestly and promptly, did she?

A. She made that statement.

Q. Will you answer my question?

MASON, C. J. He may answer.

(The question was repeated) You understand it?

A. Yes sir.

Q. Will you give me an answer?

A. She spoke up somewhat excitedly, I should say.

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Q. She did?

A. Yes, sir.

Q. What did you say to her?

A. When she asked me if there was some body in the house suspected, I replied by stating that Mr. Morse could best answer that question, as the conference of last night would justify him in drawing the inference that there was.

Q. What was the next thing?

A. Lizzie said, "I want to know the truth."

Q. Lizzie said so?

A. Yes, sir, and she repeated it, if I remember rightly.

Q. Before you answered?

A. Yes, sir.

Q. What did you say?

A. I said, "I regret, Miss Borden, but I must answer yes, you are suspected."

Q. What did she say?

A. She said, as I now recall it, "I am ready to go now."

Q. "Or any time," didn't she?

A. I cannot recall that; she may have said it.

Q. Spoke up earnestly and promptly then, didn't she?

A. It would depend altogether by what you mean by "earnestly" and "promptly".

Q. I mean what you know the words mean?

A. She replied in a manner you can call earnestly and promptly. There was no hesitation about it.

Q. That is, promptly, no hesitation, isn't it? You understand that, don't you?

A. I do, yes, Sir.

Q. Now did she speak earnestly?

A. Well, I would not say she did not speak earnestly.

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Q. What is that?

A. I should say I would not say she did not speak earnestly.

Q. I know you say so. Did she speak earnestly?

A. Well, I should say yes, she spoke earnestly so far as the promptness of the question goes.

Q. Do you know any difference between promptness and earnestness?

A. There is a difference between promptness and earnestness.

Q. Keeping that distinction in mind, you say she answered you, did she, earnestly?

A. She did, as far as I am---

Q. What is that?

A. As far as I would be able to determine by her action, she was earnest.

Q. That is what I asked you,---prompt and earnest. What was then said?

A. I believe I said that if the people annoyed them in any way, that they should notify the officer in the yard and instruct him to tell the Marshal.

Q. Hadn't you said that before this other conversation? Didn't it come in earlier?

A. No, sir, it was about when I was ready to go.

Q. When was it Miss Emma told you she wanted you to do everything you could about it?

A. About when I was ready to go.

Q. That was after you said in her presence that her sister was suspected?

A. Yes, sir.

Q. She wanted you to do everything you could about it?

A. Yes, sir.

Q. That is all?

A. That is all I now recall.

(Recess of five minutes was here taken).

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MRS. HANNAH H. GIFFORD, Sworn.

Q. (By Mr. Moody.) What is your full name, madam?

A. Mrs. Hannah H. Gifford.

Q. You live in Fall River, do you?

A. Yes, sir.

Q. How long have you lived in Fall River, Mrs. Gifford?

A. Well, a long time.

Q. Where do you live in Fall River, what street and number?

A. Franklin Street, #39.

Q. What is your occupation there?

A. I make ladies outside garments.

Q. That is, by outside, you mean cloaks, outside of the dresses?

A. Yes, sir.

Q. Had you made cloaks of the ladies of the Borden family?

A. Yes, sir.

Q. For how long?

A. Seven or eight years, more or less.

Q. Did you do some work for Miss Lizzie Borden in the spring of last year?

A. Yes, sir, I did.

Q. What did you make for her then?

A. A garment, a sack.

Q. Did you at any time have any talk with her about Mrs. Borden, the step-mother?

MR. ROBINSON. I object to that.

MASON, C. J. She may answer.

MR. ROBINSON. The objection, if your Honor please, may be material, or may not, depending on the time, and therefore I want to call that to the attention of the Court.

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MASON, C. J. As a preliminary question, it is proper.

MR. ROBINSON. Perhaps for that mere question.

Q. Can you tell any nearer what part of the spring it was you had the conversation?

A. I think it was in March.

Q. Will you state what that talk was?

MR. ROBINSON. Now I object to that, your Honors, on the ground that it is too remote, too long prior to the tragedy of August 4th.

MASON, C. J. She may answer.

MR. ROBINSON. I do not know whether that is a subject which is properly within the scope of an exception, but if it is, I ask for an exception.

Q. Now Mrs. Gifford, will you state the talk, what you said and what she said?

A. I was speaking to her of a garment I had made for Mrs. Borden, and instead of saying "Mrs. Borden" I said "Mother" and she says, "don't say that to me, for she is a mean, good for nothing thing." I said, "oh Lizzie, you don't mean that?" And she said, "yes, I don't have much to do with her; I stay in my room most of the time." And I said, "you come down to your meals, don't you?" And she said, "yes, but we don't eat with them if we can help it." And that is all that was said.

CROSS EXAMINATION.

Q. (By Mr. Robinson.) You had made cloaks for them other times?

A. Yes, sir.

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Q. During six or seven years?

A. Yes, sir.

Q. Had you been at the house quite a good deal?

A. No, sir, I never was at the house at all.

Q. You do the work at your own rooms?

A. Yes, sir.

Q. And in six or seven years you had made garments for all three of them?

A. Yes, sir.

Q. Did that happen every year?

A. No, sir, not every year.

Q. And do you recall when prior to that time you had made a garment for any of them?

A. Prior to the spring?

Q. Prior to March of last year?

A. Well, I made a garment for Mrs. Borden,---well, I don't know whether it was the year--it was a year before, I think, sure.

Q. For Miss Lizzie, had you, before that?

A. Yes, I had a long time before.

Q. And for Miss Emma?

A. Yes, sir.

Q. So that you were frequently called upon?

A. Yes, sir, every season, nearly.

MISS ANNA H. BORDEN, Sworn.

MR. MOODY. Be good enough to lift your veil.

Q. (By Mr. Moody.) What is your full name?

A. Anna H. Borden.

Q. You live in Fall River, Miss Borden, do you?

A. Yes, sir.

Q. And have all your life?

A. Yes, sir.

Q. You are, I believe, not a relative of the prisoner?

A. No, sir.

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Q. How long have you known her?

A. About five years.

Q. Did you at some time make a trip abroad with her?

A. I did.

Q. In what year?

A. 1890.

Q. Did you occupy the same cabin in the steamship?

A. I did.

Q. On the outward and homeward voyages?

A. I did.

Q. When was your return voyage? What time did you arrive in New York, if you landed

in New York?

A. I think it was the very first of November.

Q. And your voyage was about the preceding week,---the week preceding the 1st of November?

A. Yes, sir, the last week of October, I think.

Q. During that voyage did you have any talk---during the return trip, I am speaking of now---did you have any talk with the prisoner with respect to her home?

MR. ROBINSON. I object to that.

MASON, C. J. What year?

MR. MOODY. 1890, the week preceding the 1st of November in 1890, and this is simply a preliminary question. On the question of the admissibility of this testimony I should like to say a word to your Honors. I wish to call attention to the nature of the conversation in arguing upon its admissibility. Your Honors can very readily see that statements which indicate a permanent alienation may be of importance even though quite distant from the time under inquiry, although if they were merely petulant statements, they would not be so important at so long a distance from the period of inquiry. In order to fully understand the nature of this testimony and its

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importance, I shall be obliged to state more fully about it. It is merely a preliminary question now.

MR. ROBINSON. I object to the question on the threshold of the subject. If there be any statement of substance, we will consider that subsequently.

MR. KNOWLTON. My associate has made a statement of what it is desired to submit.

MR. ROBINSON. I so understood it.

MASON, C. J. The witness may step down. The Jury may retire with the officers and remain until sent for.

MR. ROBINSON. I request that the witness stay down stairs.

MR. KNOWLTON. Yes.

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MR. MOODY. The evidence which we offer is substantially this, your

Honors: that upon the return voyage, after this witness and the prisoner had spent the summer in various parts of Europe in travel, there was this conversation which I am about to state, which was several times repeated: it was in substance that she (the prisoner), regretted the necessity of returning home after she had such a happy summer, because the home that she was about to return to was such an unhappy home. This conversation, as I say, was repeated several times, and we submit that, owing to the nature of the statement that was there made, it would be competent. I should agree that if at that time there had been a mere passing word of resentment, if there had been any characterization of Mr. and Mrs. Borden such as might come from a passing feeling of resentment, that the distance of time of the conversation would be such as in your Honors' discretion would well warrant if not compel the exclusion of the testimony offered. But there is no language than can be stronger than the language used to express a permanent condition of things in that household. The word home means a great deal in everybody's mind and everybody's mouth, and I submit that where a person states that he has an unhappy home, states it deliberately, states it more than once, it expresses such a continued and existing state of feeling that it is competent even although it occurred two years before the homicide into which we are inquiring. This is a case not of the expression of feeling towards persons who are brought casually together, but it is the expression of a feeling or of a state of feeling

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by one member of a family in respect to the whole family of which she has been a member ever since, almost, her birth, and continuously a member, because, according to this testimony, there was no absence except this absence in Europe: and of course after she returned home she continued always to live in the family up to the time of this homicide. It is to be taken into account, also, with what we know of the feelings of people who are about to return home, persons who have been absent from home, who have been absent, especially from the country, from their own country,---unless their feeling about the home is firmly hostile and firmly fixed as a hostile feeling, we would hardly expect such a statement as we offer to show was made in this case. I think I have made the ground upon which we offer this clear to your Honors. Perhaps I have not expressed it so fully or so well as I might do, but I think your Honors understand precisely what I mean.

MR. ROBINSON. I would like to have the reporter read Mr. Moody's statement of what he said.

(The stenographer read Mr. Moody's offer of proof.)

MR. ROBINSON. Now of course we stand upon this statement---that it is altogether too remote. I cannot see how it can possibly fall within the line of the cases permitting such statements to be made. It differs very largely, as I am frank to say, from the condition as applied to the former witness. That was in March 1892; the tragedy was

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in August 1892; and that was an express declaration in regard to one individual, as appeared when the testimony was finally given. Now the witness had been abroad, we understand, in Europe, travelling in Europe during the summer,--- two ladies together, perhaps more, I am not informed; and as they are coming across upon the ship this conversation occurs. Now there is nothing in it that any one would think of offering an objection to, except that her home was an unhappy one. However much as we all want to get home after we have been abroad a long time, those who have had an opportunity to go---a good many have not,---but however much we think of that, I presume there is not a party that has ever gone on a journey that does not say,---"well, I have had so good a time I really wish I was not going back." That is about all there is of it. Suppose she had said abroad in 1890, "My home is unhappy", suppose she had said it two or three times with no reference to anybody in person: is that significant of a state of mind that was operative down through till August 4, 1892, when we have the clear and unquestioned testimony given by the government that this family lived together in perfect peace and quiet and harmony, on the testimony of Bridget Sullivan, through the whole time? Does it not show that if she did make that statement---and we assume she did from the offer for the time being---if she did, that everything was right afterwards? And within the line of the distinctions made in the case of Commonwealth v. Abbot, which your Honor must be quite familiar with it is properly held to be too remote.

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And there the offer was altogether more radical and threatening and decided. There was the display of force, apparent intention to do a personal injury, offered---

Mr. MOODY. Excuse me a moment, but wasn't that something that did not relate at all to the prisoner on trial in that case?

Mr. ROBINSON. I believe that referred to showing that there was such a conflict between the husband and wife that there might be suspicion that he wanted to commit the act, but the Court said, "Nay, you may not show that, but these parties have lived together in peace and quietness for years"---two or three or more, I do not remember exactly---"and we cannot hear it: it is too remote." I do not need to enlarge on this. It seems to me it lies right close up to our experience all around.

Mr. MOODY. If your Honors will permit me, I do not intend to reply but to call attention to the fact that we put Mrs. Gifford on first intentionally to show the continuation of feeling until Spring. And I do not at all assent to the construction of Bridget Sullivan's testimony that has been stated to the Court. On the contrary, it appeared on her cross examination that down to the time of the tragedy the alienation continued, so that a large part of the time the daughters took their meals at a separate table.

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MASON, C. J. The Court are of the opinion that the character of the testimony

offered, the expressions used, are too ambiguous, so that aside from its remoteness the evidence is not competent. If the expressions were distinct of personal ill will to either the father or the step-mother, it might not be too remote. We think the evidence should be excluded

MR. MOODY. I would like to state to your Honors that I would like to reserve the right to offer this testimony again at a later stage in this case, if anything occurs which will change your Honors' views upon this subject, after the evidence in behalf of the defence has gone in.

MR. ROBINSON. I think perhaps you should not ask the Court to grant that privilege now.

MASON, C. J. We shall not pass upon it until it arises.

MR. KNOWLTON. We gave the notice so that there might not be any misunderstanding about it.

LUCY COLLET, Sworn.

Q. (By Mr. Moody.) Will you tell us your full name?

A. Lucy Collet.

Q. You live in Fall River, do you?

A. Yes, sir.

Q. On what street in Fall River do you live?

A. Borden street.

Q. With what family do you live?

A. My family.

Q. Your father's family?

A. Yes, sir.

Q. You live with your father?

A. Yes, sir.

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Q. Do you remember the morning of August 4th, 1892?

A. Yes, sir.

Q. On that morning did you receive a message through the telephone from any one?

A. Yes, sir.

Q. What time did you receive that message?

A. It was about twenty minutes past---it was ten minutes past ten.

Q. Ten minutes past ten?

A. Past eleven.

Q. Past eleven?

A. Yes, sir.

Q. You speak English readily, do you?

A. Not very well.

Q. I will ask you to stop a moment and think what the time was that you received the message by the telephone? In the first place, did you look at a clock or watch?

A. Yes, sir, I looked at the City Hall clock.

Q. Now, tell us what time it was?

A. Well, it was about ten minutes past eleven.

Q. You are sure of that?

A. Well, I am almost sure.

Q. What did you do then?

A. I put on my hat and went to Dr. Chagnon's house.

Q. What time did you get there to Dr. Chagnon's?

A. Quarter past eleven.

Q. Have you testified before?

A. Yes, sir.

Q. Do you remember what you said the time that you went over to Dr. Chagnon's before was?

A. Well, I said about the same time.

Q. Let me ask you if you didn't say there that at the time you received the telephone you looked at the City Hall clock and it was quarter of eleven?

A. I made a mistake.

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Q. Where did you make the mistake?

A. To-day.

Q. To-day you made the mistake?

A. Yes, sir.

Q. Well, was there anything else besides the clock that called your attention to the time, any train or anything of that sort?

A. Well, I wanted to see which train Dr. Chagnon took.

Q. Now, I wish you would take plenty of time and state to us the time that you received this telephone message, and be sure about it this time. If you have any doubt about it, say so.

A. Well, I don't remember.

Q. You don't remember?

A. No, sir. I think it was fifteen minutes to eleven.

Q. You think it was fifteen minutes to eleven?

A. Yes, sir.

Q. Where did you go then?

A. Dr. Chagnon's office.

Q. When you got there to Dr. Chagnon's house, what did you do?

A. I went in the yard, and I went to try all the doors, and they were all locked, so I stayed out.

Q. Do you know who telephoned to you, what the person's name was?

A. Dr. Chagnon's clerk.

Q. What is his name?

A. Mr. Norman.

Q. Norman, is it?

A. Yes, sir.

Q. After you had tried the doors, where did you stay at Dr. Chagnon's house?

A. I sat near the front piazza, near the front steps there.

Q. Whereabouts near the front steps; did you sit on them or on either side of them, which?

A. On the left side.

Q. Facing which way would be your left?

A. Facing the yard.

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Q. Were you between the steps and the yard or between the steps and the passageway

which leads into the barn?

A. Between the steps and passageway.

Q. Would that be your left hand facing toward the yard; would that be left of the steps facing toward the yard?

A. It is left of the steps.

Q. Do you suppose you could point it out on this plan? (Exhibiting plan.) There is Third street; there is Dr. Chagnon's house?

A. I was sitting about here. (Indicating between the steps and the passageway leading to the barn.)

MR. MOODY. It was at the place where each of the jurymen went to sit down to see what he could then see in the Chagnon yard.

Q. Do you recall which way you were facing?

A. Facing the yard.

Q. How much, if any, of the yard could you see?

A. Well, I could see the whole yard on one hand, half on the other.

Q. I can't hear you?

A. I could see half of the yard on one hand and the whole yard on the other end.

Q. On which end could you see the whole yard? You readily pointed out on this plan where you sat. Perhaps you can point out what you mean in reference to seeing the yard. There are the steps. Now, how much of the yard could you see?

A. I could see going---I don't know how to say it.

Q. Will you indicate with your finger what part of the yard you could see so the jury may see it?

A. I could see going crossways.

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MR. MOODY. She says she was sitting on the steps there or the other side of the front steps, so that she could see the yard, that part of the yard which is to the right of the line indicated by my finger. There is the Borden house here.

Q. How long did you remain in that position?

A. Until about quarter to twelve.

Q. Did any one return at that time?

A. Yes, sir.

Q. Who?

A. Dr. Chagnon's clerk.

Q. What were you doing while you were sitting there?

A. Nothing.

Q. Were you reading?

A. I had nothing to read.

Q. Did you have any knitting work or crochet work or anything of that sort?

A. No, sir.

Q. What were you there for? What were you doing there?

A. Keeping the door and telephone.

Q. Could you get in to their telephone?

A. No. They had locked the door.

Q. Dr. Chagnon is a practicing physician?

A. Yes, sir.

Q. As well as physician in title?

A. Yes, sir.

Q. Now, during that time did you see any one cross that part of the Chagnon yard which you could see?

A. No, sir.

Q. Or did you see any one pass out at all of the Chagnon yard?

A. No, sir.

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CROSS-EXAMINATION.

Q. (By Mr. Robinson.) What did you say you went there to do?

A. To keep the door and telephone.

Q. Well, the doors were all locked up?

A. Yes, sir, but if somebody came to see the doctor I had to tell them that he was not there.

Q. Well, did you have a key to the house?

A. No, sir.

Q. Where was the telephone?

A. Inside.

Q. And you sat out on the piazza?

A. Yes, sir.

Q. And you were keeping the telephone?

A. Well, they told me to go there for them.

Q. What were you doing to keep it? Won't you tell us what you were doing to that telephone?

A. I wasn't doing anything.

Q. Well, you didn't keep it much, did you?

A. No.

Q. Did the bell ring any?

A. Well, once.

Q. What did you do about it?

A. Well, I told them the doctor wasn't there.

Q. Told who?

A. The gentleman.

Q. Oh, I mean the telephone bell.

A. The telephone bell---well, I didn't hear it.

Q. Didn't hear it?

A. No, sir.

Q. You don't know whether it rang or not, do you?

A. No, sir.

Q. Well, you were keeping the door; that is, you sat there so if anybody called you could tell them about it?

A. Yes, sir.

Q. There was a man came?

A. Yes, sir.

Q. Who was he?

A. Mr. Robinson.

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Q. Mr. Robinson?

A. Yes, sir.

Q. Did you ever see him before?

A. No, sir.

Q. Seen him since?

A. No, sir.

Q. Did he drive or walk?

A. He walked.

Q. Which way did he come?

A. From Borden street.

Q. Did you see him as he was coming along?

A. Yes, sir.

Q. On the sidewalk?

A. Well, not all the time.

Q. He came up from Borden street on the west side of Third street?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. That is where Dr. Chagnon's house is?

A. Yes, sir.

Q. You could see him as he came along up?

A. Well, not all the time. I could see him a little ways up.

Q. Was there anything---

MR. MOODY. Don't interrupt her.

Q. Say anything more about it.

A. I don't know anymore.

Q. Whose is the next house down toward Borden street, next to Chagnon's house?

A. Well, I don't know.

Q. Don't know who lives there?

A. No, sir.

Q. Don't know who did live there at that time?

A. No, sir.

Q. A Kirby family?

A. It might be. I don't know.

Q. Well, there is a house there?

A. Yes, sir.

Q. And as you sat on that piazza you could, of course, look right by the Kirby house, if that is the name, down towards Borden street, couldn't you?

A. No, sir, I couldn't see.

Q. Where were you sitting?

A. Near the steps.

Q. You were not on the piazza?

A. No, sir.

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Q. Down by the steps?

A. On the left side of the steps.

Q. On the left hand?

A. Yes, sir.

Q. Were you on the north or south side?

A. South side---north side.

Q. North side?

A. Yes, sir.

Q. The north side of the steps, is that what you mean?

A. Yes, sir.

Q. Is there a driveway between there and the Kirby house, between the steps and the Kirby house?

A. Yes, sir.

Q. Well, if you were looking off across the Chagnon lot, you couldn't see much of the driveway, could you?

A. I could see---well, not way back.

Q. You were not looking around? You didn't keep your head going, did you, like that? (Turning his head several times from side to side.)

A. No, sir.

Q. You didn't watch the Chagnon lot at all, did you, really?

A. Well, I had no reason to watch it.

Q. You sat down there for anybody who came to tell them that Dr. Chagnon had gone away?

A. Yes, sir.

Q. And that was about all there was to it; and whether there was a man went through that lot, or not, you don't know, do you?

A. Well, I didn't see any one.

Q. You didn't see him, but you don't know?

A. I would have seen him.

Q. You would have seen him?

A. Yes, sir.

Q. Which way?

A. In the yard.

Q. Well, suppose you had been looking into the yard and one man went through the yard and you had seen him, would you see the

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other one going down the driveway?

A. No, sir.

Q. How do you know you would have seen either one of them?

A. Well, I suppose there was not two.

Q. Suppose there was not, then you think you might see one?

A. Yes, sir.

Q. But supposing there was not but one, how are you going to get along with him? You were sure to catch him, were you, if he came?

A. I would have seen him.

Q. If there hadn't been but one, no matter which way you were looking?

A. No.

Q. Oh, it would make a difference, wouldn't it?

A. I couldn't see him back of me.

MR. ROBINSON. That is just the thing I want to find out.

MR. MOODY. We do not claim she could.

MR. ROBINSON. I don't know but you could. You don't claim you could?

Q. You don't know what time you went there after all, do you?

A. It was quarter to eleven.

Q. Was it?

A. Yes.

Q. I thought you said ten minutes past eleven?

A. I made a mistake.

Q. Why didn't you say quarter past eleven? How did you happen to get ten minutes past eleven?

A. Well, I couldn't---

Q. How was it?

A. I don't know.

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Q. You came right up on the stand, didn't you, the first of it, when you were asked by this gentleman here, and you said right off "Ten minutes past eleven." Do you remember that?

A. Yes, sir, I remember, but I made a mistake.

Q. That was a mistake?

A. Yes, sir.

Q. Then you put it right for him?

A. Quarter to eleven.

Q. Was it just quarter to eleven?

A. Well, I am sure it was that when I got there.

Q. What clock did you look at?

A. City Hall clock.

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Q. You looked at it just as you went and sat down, did you?

A. No, as I left home.

Q. What time was it, then, when you left home?

A. It was 15 minutes to eleven.

Q. Fifteen minutes of eleven when you went from your home?

A. From my home.

Q. And I suppose you have talked this over with some of these gentlemen since?

A. Once.

Q. When?

A. Last week?

Q. Over here?

A. No, sir.

Q. Over at Fall River?

A. Yes, sir.

Q. I don't think there is any doubt, is there, about where the passageway is, the drive way?

A. No.

Q. You know where that is?

A. Yes.

Q. Down at the side of the Chagnon house toward Borden Street?

A. Yes, sir.

Q. And the Chagnon yard is on the other side of the Chagnon house. Is that it?

A. Yes, sir.

Q. Did you see any man getting up on the fence and walking along?

A. No, sir.

Q. How long did you stay there?

A. Well, I stayed there until quarter of twelve.

Q. Do you know Mr. Wixon, the deputy sheriff?

A. No, sir.

Q. Well, did you see a man with whiskers?

A. I didn't see no man.

Q. Didn't see a man at all?

A. No, sir.

Q. Whiskers or no whiskers. You didn't see any man get up on

the fence, did you?

A. No, sir.

Q. On the fence between the Chagnon yard and the Borden yard?

A. No, sir.

Q. Do you say there didn't anybody?

A. I didn't see anybody.

Q. Well, there was nothing about it that morning that made you watch those yards any more than any other morning, was there?

A. No, sir.

Q. Not the least?

A. No, sir.

Q. You didn't go to sleep that morning?

A. No, sir.

Q. Wide awake. Was there anybody there sitting with you?

A. No, sir.

Q. Did any young man go along?

A. No, sir. Well,---

Q. Did any young man go along?

A. I didn't see any.

Q. You didn't speak to him?

A. No.

Q. (By Mr. Moody.) A single question. How far is your house on Borden street from the Chagnon house?

A. It is the second house from the corner of Borden Street.

Q. How long would it take you to walk from your house to the Chagnon house?

A. Two or three minutes.

THOMAS BOWLES, Sworn.

Q. (By Mr. Moody.) Tell us your full name?

A. Thomas Bowles.

Q. You live in Fall River, do you?

A. Yes, sir.

Q. What do you do in Fall River, what is your occupation?

A. Hostler.

Q. On the morning of the homicide at the Borden house where were

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you at work?

A. I was washing a carriage in my yard.

Q. What do you mean by "my yard"?

A. Miss Churchill's yard.

Q. Did you work for Mrs. Churchill at that time?

A. Yes, sir.

Q. Now will you look at that plan long enough to see what it is and where it is, and then point out where you were at work. That is the Borden house, there is the barn, there is the wall.

A. Yes, sir.

Q. There is the ell of Mrs. Churchill's house. This is Mrs. Churchill's house and here is the yard. Now tell us about where you were washing carriages?

A. Well, I would be away in here. Right in through here.

Q. In the yard of Andrew J. Borden's house were you washing carriages?

A. No, Mrs. Churchill's.

Q. Well, then, go to the Mrs. Churchill's yard and tell us where you were washing there, and leave the Borden yard---if this plan will help you at all. There is the Churchill house, there is the Borden house, there is the fence between the Churchill house and the Borden house. Here is Dr. Chagnon's yard. Well, were you in Mrs. Churchill's yard?

A. Yes, sir; I was.

Q. Well, now, can't you tell us without the plan in about what part of Mrs. Churchill's yard you were washing carriages?

A. Well, I was between the house and Miss Burt's yard, right between the wall and Miss Churchill's house, so I could see the well house and the lath works on it.

Q. What do you mean by Burt's house?

A. This Burt's is the

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other side of our house.

Q. On Second Street?

A. On Second Street.

Q. So you were in the yard between your house and the house next north?

A. Yes, sir.

Q. And where you could see the well house?

A. Yes, sir.

Q. Do you remember what time you began washing carriages that morning?

A. No, sir; I don't.

Q. Did you wash more than one?

A. No, sir; one.

Q. How long were you there at work in that yard washing or doing anything else?

A. Well, I wasn't more than 15 minutes washing the carriage.

Q. Did you do anything else beside wash the carriage in that yard?

A. Yes, sir.

Q. What?

A. Carried it over to Mr. Hall's barn.

Q. Did you do anything else in the yard besides to wash the carriage?

A. Yes, sir.

Q. Where did you get the carriage from?

A. The boy brought it that morning.

Q. After you had finished washing the carriage you say you took it over to the barn?

A. Yes, sir.

Q. Whose barn?

A. Mr. Hall's barn.

Q. Did you see Mrs. Churchill when she came over to Mr. Hall's barn for you?

A. I didn't see her not till she called for me.

Q. When she called for you did you see her?

A. Yes, sir, I did.

Q. What were you doing then?

A. Why, I was backing the

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carriage in the shed.

Q. The carriage that you had just brought over?

A. Yes, sir.

Q. From the Churchill house?

A. Yes, sir.

Q. And how many minutes would it take you to carry the carriage from Mrs. Churchill's yard to Mr. Hall's barn where you were backing it in?

A. No more than two minutes.

Q. Now during the time that you were washing carriages there did you see anyone go in or come out of the Borden yard, or go through the yard in which you were?

A. No, sir; I did not.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) What time did you begin to wash the carriage that morning?

A. I didn't have no watch on me, I didn't keep any account of what time.

Q. You didn't have your watch on you at that time?

A. No, sir.

Q. How soon after breakfast was it?

A. Well, a good while after breakfast, it was nearer dinner.

Q. Oh, pretty near dinner time?

A. Yes, sir.

Q. Was it past eleven o'clock?

A. It was about quarter past eleven.

Q. About quarter past eleven when you began?

A. No, sir; when Mrs. Churchill came after me.

Q. About quarter past eleven when she came after you?

A. Yes, sir.

Q. Then you got through washing the carriage and had gone over

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to Hall's stable?

A. No, I carried the carriage over to Hall's stable.

Q. But you had got through washing it before that?

A. Yes, sir; I got through washing it before I carried it over there.

Q. And it was about quarter past eleven when she came for you?

A. Yes, sir.

Q. And, as I understand it, when you were washing the carriage over in her yard were you pretty close up to the Borden barn or were you pretty well down toward the Burt house?

A. I was close to the wall, pretty close to the wall.

Q. And now which wall do you mean?

A. The wall runs between.

Q. Do you mean the walk or the wall?

A. Well, the drive way, right on the drive way.

Q. Is your drive way on the same side as the Borden house?

A. No, sir; on the other side.

Q. How far do you think you were washing the carriage---how far do you think you were away from that well house?

A. About 14 yards.

Q. Would it look to your eye as far as from you down to the other wall of the court room there?

A. No, sir.

Q. Not as far as that?

A. No, sir.

Q. About half as far?

A. Well, I couldn't say how far; but it is about 15 yards.

Q. You have got it in your mind about 15 yards?

A. Yes, sir.

Q. Well, the Borden barn comes right up there against Mrs. Churchill's lot?

A. Yes, sir.

Q. And the well house too?

A. The well house comes right close

to our house.

Q. There isn't much space for you to see, then, between your house and the well house, is there?

A. Not a great deal. The lath work is on our side of our house. There is lath work up between the well house.

Q. Then you have got to either look through the barn or well house or that lattice work to see there, then?

A. Well, you couldn't see through that lattice work, that is sure.

Q. Then could you see through the barn?

A. Well, how are you going to see through the barn?

Q. Or the well house?

A. You couldn't see through the well house, not very well.

Q. You couldn't see much of the Borden yard anyway, could you?

A. No, sir; not unless you got close up to it.

Q. And so you didn't see anybody?

A. No, sir.

PATRICK McGOWAN, Sworn.

Q. (By Mr. Moody.) Your name is Patrick McGowan?

A. Yes, sir.

Q. You live in Fall River, do you?

A. Yes, sir.

Q. What do you do?

A. Mason's laborer.

Q. Do you remember the day that there was someone killed in the Borden house?

A. Yes, sir.

Q. On that morning did you go anywhere near the Borden house?

A. Well, I was in the yard.

Q. What time did you get to the yard that you speak of? I will

point it out later.

A. About eight minutes past ten, as near as I can judge, about that time.

Q. How long did you remain about the yard?

A. Well, I stayed there about twenty minutes, I guess.

Q. So that you were there until about half past ten, is that it?

A. Yes, somewhere around that time, between half past ten and---

Q. Now what yard do you mean you were in?

A. The Crowe yard.

Q. Was there anyone working there in that yard?

A. Yes, sir.

Q. Who was working there, do you know them by name?

A. Well, yes, I know the Frenchman by the name of Joe Desrosiers was sawing wood there, and the stone mason---he cut stones and lays them.

Q. Was there more than one stone mason there?

A. No, sir; only the one that came along with me. He wasn't inside in the yard, only out at the front gate.

Q. What is the name of the stone mason?

A. John Denny.

Q. What was the name of the man that came with you?

A. Robert Melton.

Q. You say he didn't come into the yard.

A. No.

Q. What did you do while you were there?

A. Well, I went back into the yard where this French fellow was sawing wood, and there was a pear tree just right over him, and I went to get a few pears off the tree, and he says that they were no good.

Q. Never mind about what you said. The only thing I want to call your attention to is, did you go anywhere near the Borden yard at that time?

A. Yes, sir; I went over as far

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as the fence.

Q. What did you do there?

A. I went up on a wood horse that we used to have for staging, for Mr. Crowe, and I got a few pears off of one of the trees.

Q. From whose trees was that?

A. Mr. Borden's.

Q. Now can you tell us how long you had been there when you did this?

A. About two or three minutes, I guess.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) As I understand it, Mr. McGowan, you were not there but just once that day?

A. That is all, sir.

Q. You were not round there after this affair happened?

A. No, sir.

Q. And how near is your home to that place?

A. Well, as near as I can judge, about three quarters of a mile?

Q. Were you working there that morning, working in the Crowe yard?

A. No, I wasn't working in the Crowe yard. I just happened to come into the Crowe yard. I was working on another job.

Q. You happened along there with a friend of yours, and what was his name?

A. Robert Melton.

Q. You went into the Crowe yard to speak with some of the men working there?

A. No, sir; I was waiting for orders from Mr. Crowe to go to another job.

Q. Is Mr. Crowe a boss mason?

A. Yes, sir.

Q. And you were working for him?

A. Yes, sir.

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Q. That was your place then to go and get your orders?

A. Yes, sir.

Q. I understand now. And you got your orders and went away?

A. Yes, sir.

Q. Then while you were there waiting this Frenchman, Desrosiers, was sawing wood in the Crowe yard?

A. Yes, sir.

Q. Did you have any talk with him?

A. Only just a few words. He can't understand much English anyway, only just an odd word.

Q. And then the stone mason, John Denny, was there?

A. Yes, sir.

Q. He was working alone?

A. Yes, sir.

Q. As I understand it, you went up near where the Frenchman was?

A. Yes, sir.

Q. That is when you tried to eat one of the Crowe pears?

A. Yes, sir.

Q. And that didn't go?

A. No, sir; they were no good. They were not ripe enough.

Q. You found a wooden horse there?

A. Yes, sir.

Q. And got up on that and got some pears off of Mr. Borden's tree?

A. Yes, sir.

Q. And that went; that was a good pear?

A. Yes, sir.

Q. You didn't see anything around the house, you didn't look,

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I suppose?

A. No, sir, I didn't notice anything around there.

ARUBA P. KIRBY, Sworn.

Q. (By Mr. Moody.) Would you like to sit while you testify or stand?

A. I will stand.

Q. What is your full name?

A. Aruba P. Kirby.

Q. Did you live in the house next north of the Chagnon house?

A. Yes, sir.

Q. That is the house that faces on Third street?

A. Yes, sir.

Q. That is your house, is it? (Photograph)

A. I should say it was.

Q. Between your house and the passage way leading into Dr. Chagnon's yard there is a yard, your yard, isn't there?

A. Yes, sir.

Q. What sort of a fence is there between your yard and the passage way leading into Dr. Chagnon's barn?

A. It is a low fence with slats.

Q. A picket fence?

A. No, a slat fence.

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Q. Are the slats up close together?

A. Yes, sir.

Q. So that you cannot see through the fence?

A. Yes, you can see through it; there is a little space between the slats.

Q. About how high is that fence?

A. I don't think I can tell that.

Q. Look at the fence in this picture, Mrs. Kirby. Is the fence between your yard and the Chagnon passageway like that front fence in your yard?

A. Yes, sir.

Q. It is?

A. Yes, sir, that is about the height, I should say.

Q. Can you or not see over the fence as well as through it?

A. That fence between the yard?

Q. Yes.

A. Yes, sir, you can see over it.

Q. And in case a person passes up and down there, are you able to see them from the windows of your house?

A. Yes, sir, when I am there in the kitchen, I can see them.

Q. On the morning of August 4th of last year, the morning when Mr. Borden was killed, where were you, say between eleven and twelve o'clock?

A. I was there in my kitchen.

Q. How long had you been in the kitchen? What time did you go there in the morning?

A. I went in there at six o'clock sure.

Q. Where were you say between nine and ten o'clock?

A. I was in there.

Q. In the kitchen?

A. Yes.

Q. Between eleven and twelve o'clock what were you doing in the kitchen?

A. Preparing my dinner.

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Q. What?

A. Preparing my dinner.

Q. Were you at any time at the window?

A. Yes, sir.

Q. When? Can you tell about what part of that time was between eleven and eleven-thirty?

A. Yes, sir, I was looking out of the window about half past eleven.

Q. Can you tell where you were earlier than that?

A. I was in my sink room.

Q. Where does that look to?

A. It looks out north, north-east.

Q. How much of the time were you in view of the passageway that leads into Dr. Chagnon's barn, where you could see it?

A. I passed back and forth by the window.

Q. When you were not by the window, you could not see it?

A. No, sir.

Q. Now during any time that you could see---during the times you could see it, did you

see any one pass in and out of that passage?

A. No, sir.

CROSS EXAMINATION.

Q. (By Mr. Robinson.) That window, Mrs. Kirby, is on the south side of your kitchen: Am I right?

A. What say?

Q. Is the window you spoke of towards the passage way, on the south side of your kitchen?

A. Yes, sir.

Q. And your sink room is on the other side, on the northerly side?

A. Yes, sir.

Q. When you are in the sink room, you would not see the passage-way?

A. No, sir.

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Q. Were you alone in your house that day?

A. Yes, sir, all the forenoon.

Q. During this time we are speaking of?

A. Yes, sir.

Q. At half past eleven, had you heard of the tragedy over at Mr. Borden's house?

A. No, sir.

Q. You spoke of looking out at half past eleven?

A. Well, I had not heard of that then.

Q. Before half past eleven, before that whether you looked out or not, you have not any recollection?

A. No, sir.

Q. There was nothing that happened that morning to make you look out?

A. No, sir.

Q. You were not looking for any one?

A. No, sir.

Q. You were about your work?

A. Yes, sir.

Q. You said you began your work about six o'clock in the morning?

A. Yes, sir.

Q. And you were to have dinner at twelve?

A. Yes, sir.

Q. And were making preparations for dinner?

A. Yes, sir.

Q. Where does your stove stand in the kitchen?

A. On the north side.

Q. When working around the stove in your kitchen, your back would be towards the window, would it not?

A. Yes, sir.

Q. I will ask whether you were cooking something for dinner? I will not ask what it was.

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. So you had something there to look after and watch and to get ready at twelve o'clock, and expected somebody home to dinner

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at that time?

A. Yes, sir.

Q. Then I do not think you can tell us whether any one went in or out of that passageway?

A. Not when I was at the stove.

Q. Or when you were in the sink room?

A. No, sir.

MR. MOODY. Mr. Derosier. There is an interpreter to come up with him.

The witness called for appeared with the interpreter, and the oaths were administered, first to the interpreter and then to Mr. Derosier.

JOS. DEROSIER, Sworn.

Q. (By Mr. Moody.) What is your name?

A. Joseph Derosier.

Q. How old are you?

A. Twenty three.

Q. Do you remember the day that Mr. Borden was killed?

A. No, sir.

Q. I do not ask you the date, but do you remember where you were the day that he was killed?

A. I think it was on Wednesday.

Q. I am not asking you the day in the week, but I will ask you if you remember hearing about the killing the same day that he was killed?

A. As far as I know, it was on Wednesday he was killed.

Q. I don't want to ask you what day in the week it was or what day in the month it was, but whatever day it was, where were you at the time?

A. I worked in John Crowe's yard.

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Q. What time in the morning did you go to work in John Crowe's yard?

A. Seven o'clock in the morning.

Q. What time did you leave off work?

A. Five o'clock in the evening.

Q. What time did you leave off work at noon time?

A. We had an hour at noon.

Q. What time did your hour begin?

A. At noon.

Q. What were you doing in the Crowe yard?

A. Sawed and split wood.

Q. Did you that morning hear from somebody that there had been a murder in the next house?

A. About ten o'clock a man came to us and told us about it.

Q. Well, some one told you at some time?

A. Yes, sir; we were told that there had been a murder.

Q. Up to the time you were told that there had been a murder committed in the next house, did you see any one go through your yard and get over into Mr. Borden's yard---over across Mr. Borden's fence and into his yard, or come over from his yard over the

fence and go out of your yard?

A. No, sir.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) (Addressing the interpreter). How much wood did he have to saw?

A. I can't say how much we had, but I sawed about a cord. They were old pieces of wood---boards and old lumber.

Q. (Addressing the witness). Do you speak English?

A. (By

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witness personally). No.

Q. How old are you? (No answer).

Q. How old? (No answer).

Q. What is your name? (No answer).

Q. Can't you talk at all? (No answer).

Q. What did you shake your head for? What did you do that for? (To the interpreter) Ask him what he shook his head for.

(Witness answered in French).

MR. ROBINSON. Tell me what he says now, Mr. Interpreter.

A. (Through the interpreter). I can understand a few words. I could understand you when you asked me if I could speak English. I could understand a little but not much.

Q. (Addressing interpreter). Did he see any man in the Crowe yard beside himself?

A. I saw those that were working with me.

Q. Who were they?

A. A man named Pat.

Q. Ask him if he talked to Pat?

A. No. He is an Irishman, I can't make him understand.

Q. What did Pat do?

A. He was helping Crowe's teamers loading the team.

Q. Ask him if he (Derosier) got any pears off the tree? Did Derosier get any pears off the tree?

A. Yes.

Q. Whose tree?

A. I don't know; I didn't know at the time that I ate them.

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Q. The same yard that he was working in?

A. There was a limb hanging in the yard that I was working in.

Q. Did it hang on the tree that was in the yard or in another yard?

A. It was in the other yard.

Q. Did Pat get any pears?

A. Yes.

Q. Did he see any other man but Pat?

A. A stone cutter there.

Q. Did he see a man get over the fence and come up to him?

A. No.

Q. Didn't see any man at all come over the fence and come up to him?

A. No, sir.

Q. Does he know Mr. Wixon, the sheriff?

A. No.

Q. Didn't see any officer get over there and come over into that yard?

A. No.

Q. What was he doing?

A. Sawing wood.

Q. Sawing wood all the time?

A. All the week.

Q. All the week. And was he doing it by the job or by the day?

A. By the day.

Q. And which way did he stand? Which way was his face?

A. South.

Q. South; and his back was to that pear tree, wasn't it?

A. Yes, sir.

Q. And he did not see any man get over the fence and come right up to him where he was sawing wood?

A. No, sir. There was a man that came, but he came into the front gate; the man that told us that there was a murder committed.

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Q. That man came through the front gate?

A. Yes.

Q. Was he a Frenchman?

A. He was an Irishman; told the other Irishmen.

Q. Well, did he see anybody---I have asked him once---now ask him if there was anybody got over the fence and came to him when he was sawing?

A. I didn't see any.

Q. Was there anybody working with him sawing wood?

A. No, I was sawing alone.

JOHN DENNY, Sworn.

Q. (By Mr. Moody.) What is your full name?

A. John Denny.

Q. You live where?

A. Fall River.

Q. What is your occupation, Mr. Denny?

A. Stone cutter.

Q. You remember the day Mr. Borden was killed last summer, do you?

A. Yes, sir.

Q. Where you at work that day?

A. In Mr. Crowe's yard.

Q. About what part of Mr. Crowe's yard were you at work at?

A. On the side next Third street, the east side.

Q. You must be somewhat used to plans; perhaps this may help you a little, if you will take time enough to look at it. (Showing plan to witness). Now let me help you. There is Mr. Borden's house.

A. (Indicating). I was right there.

Q. Out towards Third Street.

A. Yes, sir.

Q. Were you working alone then?

A. Yes, sir.

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Q. Do you know Derosier?

A. Yes, sir.

Q. Where was he at work?

A. Right here. (Pointing).

MR. MOODY. I would like to point those two things out to the jury.

(Mr. Robinson suggested that the marks previously made on the plan by the witness Wixon as indicating the places where he saw the stone cutter and the man sawing wood at work be shown to the jury, and Mr. Moody assented.)

MR. MOODY. (To the jury) Mr. Wixon pointed out that Mr. Denny was at work here and the Frenchman was at work about here. (Indicating).

Q. How did you learn,---by the way, what time did you go to work in the morning, Mr. Denny?

A. About quarter of seven.

Q. What time did you knock off at noon?

A. 12 o'clock.

Q. During that whole time did you remain at work about the place where you have told us?

A. Yes, sir, until about quarter of 12.

Q. Was Derosier there at work?

A. Yes, sir.

Q. During the whole morning?

A. Yes, sir.

Q. When did you first learn that there had been some one killed in Mr. Borden's house?

A. About quarter to 12.

Q. Now say for the hour prior to that, had you seen any stranger or any one come from

the direction of Mr. Borden's premises and go out on to Third street?

A. No, sir.

Q. Had you seen any one at any time during the morning taking the contrary course, coming from Third street and going in

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toward the back yard?

A. No, sir.

Q. Of course from where you were, it is very plain, you could not see the fence itself between the two premises?

A. No, sir.

Q. Nor could you see any part of the back yard which is in the rear of the barn?

A. No, sir.

CROSS EXAMINATION.

Q. (By Mr. Robinson.) I understand you are a stone cutter?

A. Yes, sir, stone mason.

Q. Stone mason?

A. Both.

Q. Well, probably you know the difference better than I do, but does that include the cutting of stone?

A. Yes, sir, where I come from.

Q. That means the cutting, too?

A. Yes.

Q. And cutting and laying---doing all that work?

A. Yes, sir.

Q. Were you engaged that morning in cutting the stone, dressing it, something of that kind?

A. Yes, sir.

Q. Were there other men with you?

A. Yes, sir, men going out and in the yard all the forenoon.

Q. Who was that?

A. I can't mention the name.

Q. Oh, men going in and out of the yard?

A. Yes, sir; they were drawing stone for me to cut.

Q. Was anybody working with you, actually cutting the stone, staying there all the time?

A. No, sir.

Q. They were drawing in these blocks and you were cutting them, trimming them, as I understand?

A. Yes, sir.

Q. You were pretty well down towards Third street?

A. Yes, sir.

Q. Pretty well down at that end? I suppose you can tell whether the way I am pointing is right. Pretty well down at the end beyond the barn?

A. Yes, sir.

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Q. Further down than the barn so that that mark as it is put on there---I would like to have you look at the plan so as to be sure you see it right, because sometimes a plan confuses a witness.

A. That is the Crowe barn right there.

Q. So that mark there wouldn't be in the right place?

A. No, sir. That is an old shed where they put brick in.

Q. If I put a mark about there it will be in the right place?

A. Yes, sir.

Q. Have I got that about right?

A. Yes, sir.

MR. ROBINSON. I put a D there. That is for the name of the witness, Denny. Mr. Wixon made a mark at that point, but Mr. Denny says he was working over further down towards Third street, and in his testimony D is to be taken as the mark instead of the cross.

Q. How do you get into the Crow yard from the street?

A. You can get in two ways, from Second or Third.

Q. Whose is the property next south of that?

A. Crapo, I think; just south of where I worked.

Q. If a person should get over the Borden fence into the Crow yard, could he then go out into Second street?

A. Yes, they could get out that way. There is gap right in the fence between Kelly's yard and Crow's.

Q. There is a gateway there right in front of the shed?

A. There is a gap, no gate.

Q. So there is no difficulty, if a man wanted to get over from the Borden yard and go right along, he could pass right out that opening?

A. Yes, sir.

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Q. And then go right out on Second street?

A. Yes, sir.

Q. Or he could come down and go out down past where you were at work?

A. Yes, sir.

Q. And you think, I suppose, that if you were working there cutting stone, if any man had come along you would have seen him?

A. Yes, sir. The carriage way is only about ten feet wide, or team way.

Q. What could he do if he wanted to go through the Kirby yard; how could he go through?

A. Well, quite a pile of lumber to go over before he got through that way.

Q. He could walk right up on it and go over easy enough?

A. Yes, sir.

Q. See if I understand it right. I don't see any difficulty, if a man got over the Borden fence, he would go right across the Crow yard, and come on this old lumber, step on the Kirby fence and come to Rodman street?

A. Well, if he passed there where the Frenchman was chopping wood---

Q. We will leave that out, and talk about that by-and-by. If he got over the Borden fence and came across the Crow yard, and then if he went down on the lumber, he would come in the Kirby yard?

A. Yes, sir.

Q. Is the Kirby yard next Rodman street?

A. It is on Third street, the Kirby yard.

Q. Oh, yes. Then he would come right out on Third street?

A. Right out on Third street, passing the house.

Q. If, as you think, the Frenchman looked up he would see him go by him?

A. Yes, sir.

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Q. If he didn't look up, there wouldn't be much trouble?

A. No, sir.

Q. Did you see Mr. Wixon come there?

A. Yes, sir.

Q. Did you see him before he got there?

A. No, sir. He stood right in the gap.

Q. What gap?

A. Gap in the fence between Kelly's and the Crow yard.

Q. Did he come in through the gap?

A. No. He stood there. He never came into the yard.

Q. He was standing there, and did he speak to you in the yard down where you were?

A. No, sir. He spoke to the Frenchman, but he couldn't understand.

Q. Do you speak French?

A. No, sir.

Q. Then you didn't have anything to do with the Frenchman?

A. No, sir.

Q. You hadn't seen anybody go by there?

A. No, sir.

Q. I suppose you were attending to your work, weren't you down there?

A. Yes, sir.

Q. You weren't looking out for anybody, watching?

A. No, sir.

Q. Were you there all the forenoon, Mr. Denny?

A. Yes, sir.

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Q. Do you know anybody by the name of Pat who was working there?

A. Pat McGowan?

Q. I wanted to know who it was. I didn't want to tell you.

A. McGowan came there and stayed about half an hour.

Q. You know Mr. McGowan, Pat?

A. Yes, sir.

Q. That is his name, Patrick?

A. Yes, sir.

Q. Is there any other Pat that works there or did at that time?

A. Yes, sir, there was another one,---Pat Cavanagh. He came out in the team drawing stones. They were there just about 12 o'clock.

Q. Did you see either of the Pats go and get some pears off the Borden tree?

A. No. I couldn't see round the corner.

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Q. (By Mr. Moody.) Who informed you of the murder?

A. Mr. Wixon.

Q. This gap which you speak of, in which you saw Mr. Wixon standing, was that marked "gate" on the plan?

A. Yes, sir.

Q. That was within your view?

A. I was in the habit of passing through there.

MR. ROBINSON. I should like to have the Frenchman come back and Patrick McGowan too.

MR. MOODY. You want one at a time I suppose.

MR. ROBINSON. There being two Pats, I want to know which one it is. It will take but a moment.

MR. MOODY. We have no objection to its being done.

JOSEPH DEROSIER, Recalled.

Q. (By Mr. Robinson.) Is that the Pat you refer to here? (Pointing to man near by)

A. Yes, sir.

Q. Did you see that man get pears from the tree?

A. I did not see him take them but I saw him eat them.

Q. Did you see any other Pat there?

A. No, sir.

MRS. HANNAH REAGAN, Sworn.

Q. (By Mr. Moody.) Won't you give me your full name?

A. Mrs. Hannah Reagan.

Q. Are you married, single, or a widow?

A. Married, sir.

Q. Are you the matron at the Police Station in Fall River?

A. Yes, sir.

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Q. How long have you held that position?

A. Five years the 8th day of last August.

Q. My attention was diverted when you answered. How long did you say you had been matron there?

A. Five years the 8th day of last August.

Q. What are the duties of your position, Mrs. Reagan?

A. To look after the woman, sir.

Q. Those who are in custody?

A. Yes, sir.

Q. How long was the prisoner in your charge at Fall River?

A. I should say from nine to ten days; I have not kept the run of it.

Q. What part of the place of confinement did she occupy?

A. The matron's room, sir.

Q. That is, your own room?

A. Yes, sir.

Q. Were you with her during the day time?

A. Yes, sir.

Q. Every day?

A. Yes, sir.

Q. I will call your attention to the 24th of August,---was it the 24th of August?

A. Yes, sir.

Q. Did Miss Emma Borden come to see her at that time?

A. Yes, sir.

Q. About what time in the morning did she come?

A. About 20 minutes to nine.

Q. What were you doing when Miss Emma Borden came?

A. I was tidying up the room.

Q. Doing what?

A. Cleaning up the room, helping to tidy up the room.

Q. Were you in the same room with them after Miss Emma Borden

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came?

A. Yes, sir.

Q. Now will you go on and describe in your own way what occurred after Miss Emma came, the time that elapsed, and all that was said and done?

A. Miss Emma Borden came to my room about twenty minutes to nine o'clock on the 24th day of August, and I let her in and she spoke to her sister Lizzie, and I left the two women talking together and I went into a toilet room about four feet from where Miss Lizzie Borden was lying on a couch, and I heard very loud talk, and I came to my door and it was Miss Lizzie Borden; she was lying on her left side and her sister Emma was talking to her and bending right over her, and Lizzie says, "Emma, you have gave me away, haven't you?" She says, "No, Lizzie, I have not." "You have," she says, "and I will let you see I won't give in one inch," and she sat right up and put up her finger, and I stood in the door way looking at both of them.

Q. Was Miss Borden's tone loud or low?

A. I could not hear what Miss Emma said only "I did not, Lizzie," "I did not give you away, Lizzie." She says, "you have."

Q. Now what was the tone of Miss Lizzie Borden's voice?

A. Well, I am speaking kind of loud now and she spoke just as loud as I am talking.

Q. Was it louder or less loud than Miss Emma's voice?

A. Louder, some.

Q. What occurred then?

A. Lizzie Borden lay right down on the couch on her left side and faced out the window and closed her eyes, and Miss Emma got a chair, I gave her a chair, and she

sat right down beside her sister, and that was in the forenoon, I should say then after nine o'clock.

Q. How long did they continue to sit together?

A. They sat there till Mr. Jennings came to my door, somewheres about eleven o'clock, or after eleven o'clock.

Q. During the time that the two sisters sat that way did Miss Lizzie speak to her sister at all?

A. No sir, not any more that forenoon.

Q. Did she turn her face to her in any way?

A. No, sir, she did not.

Q. Then Mr. Jennings came.

A. Mr. Jennings came some where after eleven o'clock.

Q. When he came did you remain in the room or retire?

A. No, sir, Mr. Jennings said he wanted to talk with Miss Lizzie Borden and---

Q. You did not remain in the room?

A. No, sir.

Q. You say you were in this closet four feet away when you heard the noise first, the loud tones?

A. Yes, sir.

Q. Did you step in the room or remain in the closet?

A. No, sir, I came right to the door, the same as I am standing here now, and the two Miss Bordens were as far from me as the head of the trunk there. (Indicating trunk in front of witness).

Q. When were you first in a position where they could see you?

A. When standing in the door way.

Q. When was that in reference to the time that Miss Lizzie turned to lay on the couch?

A. Emma was standing over her when I

went to the door. It was Miss Lizzie's loud talk that fetched me just where I was standing.

Q. Did you see Miss Emma when she departed from her sister that morning?

A. Yes, sir.

Q. Was there anything said between them?

A. No, sir.

Q. Any "good bye", or anything said of that kind?

A. No, sir, she never spoke to her sister anymore that forenoon.

Q. Did you see them looking at you at any time while this conversation you have described was going on?

A. Both of them see me. They turned right,---there, I suppose I was standing there (illustrating) Lizzie lay this way and her sister was standing right beside her.

MR. JENNINGS. Would your Honors wish me to begin the cross examination now?

MASON, C. J. Something can be done.

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CROSS-EXAMINATION.

Q. (By Mr. Jennings.) How long did Miss Emma remain that morning in the room?

A. She remained, sir, from twenty minutes of nine o'clock until you came to the door.

Q. And where did she go then?

A. She went right home, I suppose. She went out of the room and down stairs, and you asked when she was going out, "Have you told all to Lizzie?" and she says, "Yes, all I had to tell." That was the words you said to her when she was going out.

Q. I said that?

A. Yes, sir; you did. I was standing right beside you when you said it.

Q. Well, what happened after that?

A. Mr. Jennings went into the room and stayed there until half past twelve o'clock, and he came out and said he was all through and I could go in, and I went in.

Q. All through?

A. With Lizzie.

Q. I was all through?

A. Yes, sir.

Q. Did Miss Emma come again that day?

A. In the afternoon, sir.

Q. What time did she come in the afternoon?

A. I never kept the time of when she came. She came at all hours of the day.

Q. How came you to keep the time she came in the morning?

A. Well, I was cleaning up that morning, and it was rather early.

Q. You say she came at just twenty minutes of nine that morning, and now when I ask you what time she came in the afternoon you say you didn't keep the time?

A. Well, in the forenoon

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I kept more time than I did in the afternoon, because the court was going to come in, and I always had to be ready, and did up my work early.

Q. Can you give us any idea of what time she came in the afternoon?

A. No, sir; I cannot.

Q. Did anybody else come in the afternoon?

A. Let me see. Why, yes, there was lots of visitors came in the afternoon.

Q. Who were they?

A. Mr. Buck came in the afternoon.

Q. Are you sure he came that same afternoon?

A. Well, I know we had visitors that afternoon and I think Mr. Buck came.

Q. Well, how sure are you of that?

A. Well, he came every day. There wasn't a day while Miss Borden was there that he hadn't come to the central police station.

Q. How do you know he didn't come in the morning?

A. No, he didn't come that time in the morning.

Q. Are you sure he came in the afternoon?

A. I couldn't say about it.

Q. Have you any recollection about it?

A. No, I was taken away with this trouble so much that it upset me, Mr. Jennings.

Q. You were so taken up with this trouble that happened in the morning that you cannot recall what took place in the afternoon?

A. Well, if I had kept a record of that I could let you know everything about it.

Q. No, answer my question. Is that what you mean to say, that you were so taken up with this trouble that happened in the morning that you cannot recollect what happened in the

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afternoon?

A. Yes, I think Mr. Buck came there in the afternoon.

Q. Now is that what you meant to say?

A. Oh, yes; I was taken really away with that trouble, so much---

Q. Answer the question please.

MR. MOODY. Let her finish.

MR. JENNINGS. She don't answer my question I submit.

The WITNESS. In the afternoon. No, I didn't keep run of the visitors, but I know we had visitors in the afternoon.

MR. JENNINGS. I would like to have the question read that I asked her before the last.

(Question was read beginning, "No, answer my question. Is that what you meant to say? etc.)

A. Yes, sir.

(At 1.00 P.M. a recess was taken until 2.15 P.M.)

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AFTERNOON SESSION

CROSS-EXAMINATION OF HANNAH REAGAN, Continued.

Q. (By Mr. Jennings.) Now, Mrs. Reagan, I was asking you to tell me as nearly as you could when Miss Emma came in the afternoon?

A. I don't remember.

Q. Can't you give us any idea?

A. No, sir.

Q. Can you tell us of anybody else that you think was present beside Mr. Buck in the afternoon?

A. I can't tell you, sir.

Q. Was there anybody else there in the morning?

A. No, sir, there was no one there in the morning but her sister and you.

Q. Are you sure about that?

A. Yes, sir, I am.

Q. Let me see if I can refresh your recollection. Wasn't Mrs. Charles J. Holmes there in the afternoon?

A. Not in the morning, sir. You asked me who was---

Q. In the afternoon?

A. In the afternoon? Well, I don't---

Q. I asked you if you could tell of anybody else who was there in the afternoon besides Mr. Buck?

A. No, sir.

Q. Did you so understand it?

A. Yes, sir.

Q. Was there or was there not?

A. I don't remember.

Q. Now I will ask you, was Mrs. Charles J. Holmes there in the afternoon?

A. I don't remember, sir.

Q. Was Miss Annie Holmes there in the afternoon?

A. I don't remember, sir.

Q. Was Mrs. Brigham there in the afternoon?

A. I don't remember.

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Q. Will you say they were not?

A. I don't remember, sir.

Q. Can you tell us anything that you recollect about that day except what you have already related?

A. No, sir, only that Miss Borden looked more excited---

Q. Never mind. ---What is that?

A. Only that Miss Borden was more excited when you left the room than she was before you came into it.

Q. Now let me go a little further and see if I can refresh your recollection. Don't you remember that Mrs. Holmes was there that afternoon and you had some conversation

about an egg?

A. About what?

Q. About an egg.

A. I remember about the egg, but I couldn't tell you whether it was that afternoon or not, sir.

Q. What was it about the egg?

A. The breaking of an egg.

Q. Well, what was said or done?

A. We were talking in the afternoon, me and Lizzie Borden, and I says, "I can tell you one thing you can't do," and she says, "Tell me what it is, Mrs. Reagan." I says, "Break an egg, Miss Borden," and she says, "Break an egg?" I says, "Yes." "Well," she says, "I can break an egg." I says, "Not the way I would tell you to break it." She says, "Well, what way is it, Mrs. Reagan?" So I told her that she couldn't break it the way I wanted her to break it, and I said I would bet her a dollar that she couldn't, and she said she would bet me a quarter, and in the afternoon some one fetched Lizzie an egg, and Miss Emma Borden was sitting down beside her, and I told Miss Emma Borden to get a little ways away, "because," I said, "if she will

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break the egg the wrong way it will destroy your dress," and she did get the egg, and she got it in her hands, and she couldn't break it, and she says, "There," she says, "that is the first thing that I undertook to do that I never could."

Q. Was Mr. Brigham there that afternoon?

A. Yes, sir. There were parties in the room that afternoon.

Q. Didn't you have quite a pleasant time that afternoon, all of you?

A. Yes, sir. We laughed about the egg, the breaking of the egg.

Q. Had quite a pleasant time all the afternoon, didn't you?

A. The day of the breaking of the egg we did, laughed and talked.

Q. If it was that afternoon, why, you had quite a pleasant afternoon that afternoon, didn't you?

A. The day of the breaking the egg, we talked it over, sir.

Q. Well, the afternoon of the breaking of the egg you weren't very much disturbed, were you?

A. No, sir.

Q. Had quite a pleasant afternoon that afternoon, didn't you?

A. Well, I don't know as it was very pleasant, not to me.

Q. Weren't you talking and laughing about that a good deal?

A. Well, yes, talking about the breaking of the egg.

Q. Wasn't that afternoon of the egg episode about as pleasant an afternoon as you had had while Miss Lizzie was there?

A. I can't answer that.

Q. Didn't Miss Emma take part in it?

A. No, sir, Miss Emma didn't take part in it.

Q. Wasn't there at all?

A. Miss Emma was sitting in the room when Lizzie had the egg in her hand.

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Q. Did she take part in the talk about the egg?

A. I can't tell you, sir. I don't remember.

Q. The day that this conversation took place that you have repeated, was it a quarrel between Miss Emma and Miss Lizzie, this consultation which you have repeated?

A. On the 24th of August?

Q. Yes.

A. I don't know. I can't tell you any more than what I heard, sir. I couldn't tell you whether it was a quarrel or it wasn't a quarrel.

Q. Did you speak of it as a quarrel?

A. Well, I spoke of it to a man---I thought it was in one sense, that Miss Borden talked---

Q. Didn't you speak of it as a quarrel?

A. No, sir.

Q. You didn't speak of it as a quarrel?

A. I spoke of it in this way---

Q. Did you speak of it as a quarrel between the two sisters?

A. Yes, I did. Now I remember; yes, I did.

Q. That was the day before the hearing in the Second District Court began?

A. I can't tell you that; it was before the Court. It was on the 24th day, and I can't tell you whether---

Q. Didn't the hearing begin on the 25th, the next day?

A. I didn't keep the date on what day the court commenced, sir.

Q. Do you know what day of the week this quarrel was on?

A. The 24th of August---no, I don't. I remember the date.

Q. Was it Thursday?

A. No, sir,

Q. Was it Wednesday?

A. No, sir. I didn't keep no---

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Q. Didn't the hearing begin on Thursday?

A. I couldn't tell you what day the hearing did commence, sir.

Q. Was the story of the quarrel published the next morning in the paper?

A. I don't know, sir. I didn't see it.

Q. Did you hear of it?

A. No, sir. Yes, I heard of it through Mr. Buck.

Q. No, before that.

A. No, sir, I didn't.

Q. Didn't hear of it before that?

A. No, sir. I didn't hear of it on the 24th.

Q. No, before Mr. Buck spoke to you about it?

A. Oh, yes. I heard rumors of it.

Q. Weren't you asked about it by reporters?

A. Yes, sir.

Q. Weren't you asked whether or not there was any truth in it?

A. I didn't tell them, sir, whether there was any truth in it or not.

Q. Weren't you asked whether there was any truth in the story about the quarrel between the two sisters?

A. Yes, sir, by the reporter, I was.

Q. Soon afterwards, weren't you?

A. Right away that afternoon, sir.

Q. And the next morning?

A. No, sir, not the next morning.

Q. And that evening?

A. Yes, sir, the next morning I was, but that afternoon I was asked by the reporter, and I gave it to the reporter.

Q. And the next evening and that evening?

A. Yes, sir, and asked up until now about it.

Q. Did you tell any of them that there wasn't anything to it, nothing in it?

A. No, sir, I didn't.

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Q. Did you tell any reporter that it was all a lie?

A. No, sir, I didn't.

Q. That there was not a word of truth in it?

A. No, sir, I didn't.

Q. To no reporter?

A. No, sir.

Q. Did Mr. Buck come to you in the court room and ask you about it?

A. No, sir. Mr. Buck never spoke to me in the court room.

Q. Didn't Mr. Buck speak to you in the court room about it?

A. No, sir, he did not.

Q. Where did he speak to you about it?

A. In my room.

Q. Didn't you tell him that it wasn't true?

A. No, sir, I didn't.

Q. Did you ever speak to Mrs. Holmes about it?

A. No, sir.

Q. Did you ever talk with her about it at all?

A. No, sir.

Q. Never said a word to her about it?

A. No, sir, I didn't.

Q. Subsequent to that was a paper drawn up for you to sign?

A. Yes, sir.

Q. In relation to this story?

A. Yes, sir.

Q. Was it read to you?

A. Yes, sir.

Q. Can you tell us what it was?

A. No, sir, I can't.

Q. Can you tell us anything that was in it at all?

A. No, sir.

Q. Wasn't it two or three days after this alleged quarrel took place?

A. Yes, sir, some time after it, but I couldn't tell you how long.

Q. Wasn't it at the close of one of the days of the hearing, of the trial?

A. Yes, it was in the evening.

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Q. Who brought it to you?

A. Mr. Buck.

Q. And you say you can't recall any part of it?

A. No, sir.

Q. Will you listen to this and see if this sounds anything like it:

"This is to certify that my attention has been called to a report said to have been made by me in regard to a quarrel between Lizzie and her sister Emma, in which Lizzie said to Emma, 'You have given me away,' etc., and that I expressly and positively deny that any such conversation took place, and I further deny that I ever heard anything that could be construed as a quarrel between the two sisters."

Does that sound anything like it?

A. No, sir. I don't remember one word that Mr. Buck said to me that evening.

Q. Will you say that that was not the substance of the paper that was presented to you?

A. I couldn't tell you, sir.

Q. Will you say that it was not?

A. I couldn't tell you, sir.

Q. Can you recollect at all whether it was or not?

A. No, sir.

Q. Did he read it to you?

A. He read it in the entry-way, and I think there was about fifty or sixty men standing around, and I couldn't tell him one word, nor I didn't understand one word that Mr. Buck said to me, but if you will let me, I will explain it to you.

Q. No, I will ask you questions and then you can explain afterwards, if it is proper. Did you then express willingness to sign it if Marshal Hilliard was willing that you should?

A. No, sir.

Q. Didn't you ask Mr. Buck to go down to Marshal Hilliard's with

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you to see if he would let you sign it?

A. No, sir.

Q. Did you go down to see Marshal Hilliard?

A. Yes, sir.

Q. What did you go down for?

A. I asked Mr. Buck if he would let me have that paper, and I would take it to the Marshal to see what it was, and his words was---

Q. To see what it was?

A. Yes, sir.---and his words were---he says, "I can't give you this paper, but I will go with you to the marshal, if you will go down." and I says, "Yes." and I did go down stairs with Mr. Buck into the marshal's office.

Q. Did you express willingness down there to sign it?

A. No, sir.

Q. Did you say anything to Marshal Hilliard about it?

A. No, sir.

Q. Not a word?

A. Not a word.

Q. Did Marshal Hilliard say anything to you?

A. No, sir, not about that paper.

Q. Not a word?

A. He told me to go to my room, and he would tend---

Q. Now, one moment. Did Marshal Hilliard say a word to you about that paper or about signing it?

A. No, sir.

Q. Not a word?

A. No, sir.

Q. Are you sure about that?

A. Well, as well as I can remember.

Q. Now, didn't he say to you, "Mrs. Reagan, if you sign that paper you do it against my express orders."?

A. I don't remember.

Q. Will you say he did not?

A. I don't remember Marshal

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Hilliard's words to that effect, sir.

Q. Will you say that Marshal Hilliard didn't say to you at that time, "If you sign that paper you do it against my express orders."?

A. I don't remember Marshal Hilliard to say that to me at that time, sir.

Q. Did he order you to go to your room?

A. Yes, sir.

Q. After you went to your room was anything said by anybody to you about the signing of that paper?

A. No, sir, I left right away and went home.

Q. Was anything said to you at all?

A. No, sir. In my room there was never a word said to me.

Q. Or in the hallway?

A. No, sir.

Q. Didn't Mr. Buck ask you if you were willing to sign that paper if Mr. Hilliard was willing?

A. No, sir.

Q. Didn't you say so yourself?

A. No, sir, I didn't.

Q. Who was in the room when you returned from the marshal's office?

A. Oh, I couldn't tell you. There was lots of people in the marshal's office.

Q. In the matron's room?

A. In the matron's room there was Lizzie Borden---I can't tell you how many was in my room when I left that evening.

Q. I ask you who was in the matron's room when you returned there from the marshal's office?

A. There was no one in my room but Lizzie Borden. I had the door locked, and I had the key with me.

Q. Wasn't Emma Borden in there after your return to that room?

A. No, sir, not that I remember.

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Q. Wasn't Mrs. Holmes in there?

A. No, sir.

Q. Wasn't Mrs. Brigham in there?

A. No, sir, not that night.

Q. Didn't Mr. Buck also come in there?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Didn't you say at that time that it was all a lie from beginning to end?

A. No, sir.

Q. Didn't you say that you were willing to sign that paper, but the marshal wouldn't let you?

A. No, sir, I didn't.

Q. Did you at any time say anything of that kind?

A. No, sir.

Q. Did you at any time say you told the marshal that you would rather leave your place than have such lies told about you?

A. No, sir.

Q. I will ask you again, did you---at the time I am now speaking of, your return from the marshal's office to the matron's room---have any conversation with Mrs. Holmes about that paper?

A. No, sir.

Q. Or about this quarrel?

A. No, sir.

Q. Did you at any time have any conversation with her about it?

A. No, sir.

Q. Did you at anytime ask Mrs. Holmes if she had heard that story they were telling about the sisters having a quarrel?

A. No, sir.

Q. Never said anything of that kind to her?

A. No, sir, I never did.

Q. Did you say to her, "You know they did not, because you were here, and we were talking about the egg."?

A. No, sir, I never said such a thing.

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Q. And wasn't that talk before you were asked to sign this paper?

A. No, sir.

Q. Nor after?

A. Nor after it, no, sir.

Q. What position do you hold, Mrs. Reagan?

A. Matron, sir.

Q. Matron of what?

A. Of the central police station; Fall River central police station.

Q. Who appoints you to that office?

A. I was appointed by the Mayor and the city government.

Q. And under whose orders are you at the station?

A. Marshal Hilliard's.

Q. And were at the time?

A. Yes, sir.

RE-DIRECT.

Q. (By Mr. Moody.) Mrs. Reagan, you told Mr. Jennings that you told this story to some reporter on the afternoon it occurred. What reporter was that?

A. The reporter of the Fall River Globe.

Q. Do you see him here now?

A. Mr. Porter, yes, sir.

Q. The gentleman sitting at the end of the second seat?

A. Yes, sir.

Q. That was in the afternoon?

A. That was in the afternoon.

Q. Now, following that did you or did you not tell any other reporters?

A. No, sir, I did not.

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Q. And was there any reason for that?

MR. JENNINGS. Wait a moment. We object to that.

MR. MOODY. Well, I will pass it.

Q. Was it the same day that Mr. Buck came in with this paper that has been described, was it this same day that you heard the talk between the sisters?

A. No, sir.

Q. About how long afterwards was it, can you tell?

A. I should say about---I couldn't really tell how many days it was.

Q. Where were you when he came to see you with the paper?

A. I was in my room, sir; in the matron's room.

Q. Was that after Miss Borden had gone back to Taunton?

A. No, sir.

Q. While she was still there?

A. No, sir, Miss Borden was in court when Mr. Buck came in with this paper.

Q. Was anyone with you when Mr. Buck came in with the paper?

A. No, sir.

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Q. Did anyone come in with him at that time?

A. No, sir, not into my room.

Q. Did you see whether it was a typewritten paper or written out in common handwriting?

A. I never see the paper,---never see the paper.

Q. Just say what he said to you when he brought the paper?

A. The Court was going on in the afternoon and Mr. Buck came in and said, "Mrs. Reagan, there is a report going round," he says, "that there has been trouble between Miss Emma Borden and her sister." I said, "where did you hear it?" He says, "it has come from the papers." I said, "you can't believe all you read in the paper." He went away and came back again and called me out of my room on to the landing and all the reporters were standing there and he turned round and he says, "Mrs. Reagan, I want you to sign this paper." Said I, "for what, sir?" He says, "if you will sign this paper it will make everything all right between Miss Lizzie Borden and her sister." I said, "will you give me that paper and I will take it to Marshal Hilliard?" He says, "no, I can't give it to you, but I will go down stairs with you," and I went down stairs with him.

Q. Now tell us all that was said or done in the Marshal's office?

A. Mr. Buck went in and showed this paper to Marshal Hilliard, and I stood outside the rail. Marshal Hilliard said, "you go to your room and I will attend to this business, and you, Mr. Buck, attend to yours."

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Q. Anything else said?

A. Not as I can remember.

Q. Anything about court?

A. If I had anything to say, I should say it in the Court.

Q. And you then went to your room?

A. Yes, sir.

Q. Who said that?

A. If I had anything to say, I would say it in the Court.

Q. Did Mr. Hilliard say that?

A. Mr. Hilliard said that.

RE-CROSS EXAMINATION.

Q. (By Mr. Jennings.) Did I go down there, Mrs. Reagan while you and Mr. Buck were in the room, in the office of the Marshal?

A. I don't remember.

Q. Don't you remember?

A. No, sir.

Q. Didn't I come down there and take the paper and say to Marshal Hilliard "if this woman is willing to sign this paper, are you unwilling that she should do it?"

A. I never heard you have any conversation.

Q. You never heard me have any conversation with Marshal Hilliard?

A. No, sir, not at that time, I didn't hear you.

Q. Do you recollect about that as distinctly as you do about the other parts of it?

MR. KNOWLTON. Wait a minute.

A. I don't remember your having any talk with Marshal Hilliard. I remember Mr. Buck showing the paper to Marshal Hilliard.

Q. Didn't I come in afterwards and say to Marshal Hilliard, "I understand that this woman is willing to sign this paper, unless

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you object?"

A. I don't remember what you said.

Q. Was it not then, Mrs. Reagan, that he said that your story, whatever story you had to tell, you would tell in Court,---when I said that to him?

A. I don't remember seeing you. You might have been there among the folks, but I don't remember seeing you there with Marshal Hilliard.

Q. Didn't he say that whatever story you had to tell, you would tell in Court?

A. I don't remember about you being there.

Q. Didn't you hear me tell him that if he refused to let you sign that paper, I would publish him to the world?

A. No, sir.

Q. Was not I standing there when he and I talked, and weren't you present?

A. I don't recollect anything about it.

Q. Will you say that it did not happen?

A. I don't remember. I can't say whether it happened or not, but I don't remember your talking to Marshal Hilliard about it.

RE-DIRECT EXAMINATION.

Q. (By Mr. Moody.) Were there many or few people there before you went down stairs?

A. There were so many there---there were as many as fifty or sixty people there on the landing, or on the stairs. The court was just adjourned and all the people coming out on the landing.

Q. (By Mr. Jennings.) You did not understand me as speaking of anything that took place at that place, on the landing?

A. I thought you spoke of what took place in the Marshal's office. Yes, sir, I remember hearing you say it very well, but I don't

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remember your being there.

WILLIAM A. DOLAN, Recalled.

Q. (By Mr. Knowlton.) Do you recognize that, Doctor? (Referring to piece of paper lying on a piece of newspaper)

A. Yes, sir.

Q. What is it?

A. It is the piece of paper with the adhering plaster that was removed from the guest chamber of the Borden house.

Q. Who removed it?

A. I could not tell you who removed it. It was removed at my request; I forgot who it was.

Q. Was it in your presence?

A. No, sir, in the presence of the Marshal.

Q. Marshal Hilliard?

A. I think so.

Q. When you state which is the top, or approximately, which is the top of that piece?

A. I think practically the way it lies at the present time.

Q. What do you mean by that?

A. (Holding the object in a certain way) As I remember it; I would not swear positively.

Q. So that as near as you can remember it, there is on it a little pear shaped drop of blood, and as you have held it up, the heavy part of the pear is pointing towards the upper part and somewhat to the left?

A. Yes, sir.

MR. KNOWLTON. There was one subject which in examining his testimony I find I did not ask him about.

Q. Did you examine the carpet in the sitting room in front of the

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sofa at any time.

MR. ADAMS. He testified to that.

MR. KNOWLTON. It may have been in his cross examination; it was not in his direct. I did not find it in his direct.

Q. Did you look at the carpet in front of the sofa relative to blood spots at any time?

A. I did.

Q. When was that?

A. It was at my visit with Prof. Wood.

Q. Did you make any examination of the carpet at that time?

A. Yes, sir.

Q. What did you find?

A. Found nothing.

Q. What were you looking for?

A. Blood spots.

Q. Can you furnish the Court with a magnifying glass?

A. I can by going down stairs, yes, sir.

Q. I thought you had it here. If you will hand one in at the conclusion of your testimony, I should like to have you do it.

A. Yes, sir.

Q. This magnifying glass you will bring in, is what power?

A. I cannot tell you the power.

Q. An ordinary magnifying glass?

A. Yes, sir.

CROSS EXAMINATION.

Q. (By Mr. Adams.) This piece of plaster which you have produced here is the one that came off the wall of the guest chamber, and that portion of the wall which is between the north window and the bureau?

A. That is right, yes, sir.

Q. About how many feet from the floor?

A. I think something

like three foot. I can tell you by reference to the notes.

Q. As you described the spot, your recollection is that the small end of the pear was down?

A. Yes, sir.

Q. And the larger was up?

A. Yes, sir.

Q. (By Mr. Knowlton.) Won't you just point it out? You just recognize the hole in that picture?

MR. ADAMS. Is this something you forgot about?

MR. KNOWLTON. Yes, I suppose that is so; I didn't know about that picture at the time.

MR. ADAMS. Those are already in.

A. I think that is the spot, yes, sir.

MR. KNOWLTON. I may be permitted to say that the one we are talking about is the one the attention of the Jury was called to in the view. I think I will not trouble to have the Jury see it now,

Q. Is that the glass you refer to? (Showing magnifying glass)

A. Yes, sir.

MR. KNOWLTON. That is all. I would like to put that into the case for convenience.

BRIDGET SULLIVAN, Recalled.

Q. (By Mr. Moody.) This handkerchief was not here, or under our control at the time the witness was on the stand. Have you seen such a handkerchief as that before? (Showing dark, old handkerchief.)

A. Yes, sir.

Q. What was it commonly used for and by whom?

A. Mrs. Borden used

to use handkerchiefs the same as dusters is.

Q. Did she use it as a pocket handkerchief?

A. Mr. Borden used them as pocket handkerchiefs, and Mrs. Borden, when they got worn out, took them as dust rags.

MR. MOODY. A single question was omitted and which a very careful examination of the testimony shows was not put in.

Q. When you went out to wash the windows, Bridget, how did you find the screen door?

A. It was locked, I think.

Q. Locked with the hook, of course?

A. Yes, sir.

Q. (By Mr. Robinson.) Did you tell us about that before, do you remember?

A. Yes, sir, I think the door was locked as I went out to wash the windows.

Q. You told us that the other day when you came here?

A. Yes, sir.

Q. And then you left it unlocked?

A. Yes, sir.

Q. And all the time you were out, as you told us before, it was unlocked, unhooked?

A. Yes, sir.

MR. ROBINSON. That is all for the present.

ELI BENCE, Sworn.

Q. What is your full name?

A. My name is Eli Bence.

Q. Do you live in Fall River?

A. I do.

Q. What is your occupation?

A. I am a drug clerk.

Q. For whom do you work?

A. For D. R. Smith.

Q. Where is Mr. Smith's shop?

A. On the corner of South Main and Columbia streets in Fall River.

Q. How long have you been connected with that business?

A. Something between 13 and 14 years.

Q. How long have you been employed by Mr. Smith?

A. Something over four years now.

Q. And always at this same place?

A. For Mr. Smith, yes, sir.

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MR. ROBINSON. May it please your Honors, there is a question here that we consider of vital importance, and I believe the Commonwealth also recognize it as of that character, and we do not want to go into it by piecemeal; and this inquiry, I suggest, ought to stop here, and the question be discussed with the Court alone.

MR. MOODY. There are certain preliminary things and characteristics that are to be considered that we want to prove. Perhaps, however, if it would suit the convenience of the other side, we could state what we expected to prove upon that subject matter.

MR. ROBINSON. I am speaking of this evidence when there is any question about it. It is deemed important to both sides, and it is important for the Court to consider and pass upon it.

MR. MOODY. That is entirely in the hands of the Court. We wanted to prove, however, one or two preliminary things, not at all turning in the direction of this prisoner.

MR. ROBINSON. I understand what the question is, and I say that it is not quite the statement that should be made, because it really involves and touches this case somewhat.

MR. MOODY. I am entirely content to state it.

MR. ROBINSON. I think you better not state it now.

MR. MOODY. No, I understand. I am entirely content to state it upon the argument to your Honors.

MR. ROBINSON. It is nothing that ought to be stated now,

MASON, C. J. The jury may retire with the officers and

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remain until sent for. The witness may return down stairs.

(The jury and the witness withdrew from the court room.)

MR. MOODY. I perhaps ought first to state what the testimony is that we offer. We offer to show, in addition to what Prof. Wood testified to the other day with respect to prussic acid, that it is not an article in commercial use, that it is an article which is not sold except upon the prescription of a physician, and in prescriptions, and as a part, a minute part, of a prescription; that this witness during his experience as a drug clerk, up to the 3rd of August, 1892, never had a call for prussic acid; that it is not used for the purpose of cleaning capes, seal skin capes, or capes of any other sort, and has no adaptability to such use.

We now offer to show that upon the 3rd day of August, sometime in the forenoon, the time of which is not material, the prisoner came to this shop in which the man was employed and asked for ten cents worth of prussic acid, stating that she wished it for the purpose of cleaning capes, either seal skin capes, or capes, I am not quite sure which, and that she failed to procure the poison for which she asked. Perhaps I ought to state it with some accuracy.

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"This party came in there, and inquired if I kept prussic acid. I was standing out there, I walked in ahead. She asked me if we kept prussic acid. I informed her that we did. She asked me if she could buy ten cents worth of me. I informed her we did not sell prussic acid unless by a physician's prescription. She then said that she had bought this several times, I think; I think she said several times before. I says, 'Well, my good lady, it is something we don't sell unless by a prescription from the doctor, as it is a very dangerous thing to handle.' I understood her to she wanted it to put on the edge of a seal skin cape, if I remember rightly."

"She did not buy anything, no drug at all, no medicine?"

"No sir."

Then follows merely the identification. I do not know in what way your Honors desire to hear the discussion.

MASON, C. J. Perhaps we had better hear the objection.

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MR. ROBINSON. I understand that the offer does not include facts to show that there was any sale.

MR. MOODY. No, sir.

MR. ROBINSON. And we perhaps may anticipate, but I believe it may be fair to ask whether there is any evidence of any sale to this defendant?

MR. KNOWLTON. No, sir.

MR. ROBINSON. In any other place?

MR. KNOWLTON. No, sir. It would be fair to say we have evidence to show some attempt to purchase prussic acid in another place, with the same negative results.

MR. ROBINSON. You propose to bring evidence upon attempts, but no success?.

MR. KNOWLTON. Yes, sir.

MR. ROBINSON. It appears upon the testimony of Prof. Wood that an examination of the stomachs of the deceased persons showed no traces of any poison whatever, or anything but a normal condition. Certainly not any prussic acid. That was directly and fully negated. So there is shown no connection, as assailing the lives of these two persons. In fact, this evidence only goes so far as to show, assuming that they may show it for the time being in this discussion, that she asked to buy prussic acid under precisely the circumstances that the offer is now made. She is charged in this indictment with slaying or killing these two people with a sharp instrument; committing the murder with an axe, for instance. Nothing else. Now here, if it has any force at

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all, suppose it were carried away up to its legitimate result, it is an attempt to charge her with an act causing death by a wholly different means, for which, of course, she is not now on trial.

Now oftentimes this question arises on discussion as to the connection in time. I must say at the outset that, on one branch of the question, it cannot be considered here, because the offer is on the 3rd of August, Wednesday, and the killing as charged in the indictment was on Thursday the 4th. So perhaps I am bound to say that the nearness of time may be considered out of this consideration; it is not sufficiently near, if it were pertinent. It must be shown, I maintain, that any act which is to be put in evidence on the part of this defendant must have some natural tendency to show that she has committed the act for which she stands on trial. Now to my mind it does not show that. It does not carry any weight at all. It is not aimed to these persons at all by the evidence, it is not brought to them upon the evidence, and, in fact, it is entirely negative to what has already gone in; and so it has no tendency to prove the substantive acts for which the defendant stands under indictment. And before any such thing can be shown, I say there must be substantive facts tending to implicate her in the charges for which she stands now on trial. Now I maintain that while this is not remote in time, it is entirely remote and distinct in

connection, and foreign to this inquiry. And I emphasize it the more because the offer of the evidence

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in itself is so extremely lean, if I may say it, taking this witness alone, and taking the others, if there are more, tending to show the same thing, but not brought down to any act that has any natural tendency to sustain this charge.

It is an attempt to buy an article which is used for other purposes. It is said that it is an article that is not used in the arts, but it is an article which a person may legitimately buy. Its sale is provided for under the statute, and it is not to be said that because a person may wrongfully use, in a distinct transaction, an article which she purchases, therefore its purchase has a tendency to show that he has committed some other crime for which he is indicted. Does it have any tendency at all to show that this defendant killed these two persons with an axe? That is all we are inquiring about. I maintain it does not.

MR MOODY. May it please your Honors, if that last statement of my learned friend were accurately true I do not think I should rise to press upon your Honors the admission of this evidence, because it is quite clear that the failure to purchase prussic acid on the 3rd day of August has no tendency whatever to show a killing by an axe on the 4th day of August, and it is not offered for any such purpose.

The whole discussion, as I understand it, evades the precise bearing of this testimony. This indictment not only charges that the prisoner killed Mr. and Mrs. Borden, but that she did it with a certain intent and with premeditation,

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and the purpose for which this testimony is offered is upon the intent and premeditation, or, in other words, upon the state of mind of the defendant just prior to this homicide.

Under our law at present, as I understand it, in Massachusetts, there is no presumption of law arising from the mere act of killing. So far as that once was declared to be law, I understand it to be overruled. And it is incumbent upon the Commonwealth not only to prove the killing, but to prove that it was done with deliberation and premeditation.

One of the hypotheses in dispute in this case upon which the Commonwealth has the right to offer testimony is that the killing was with deliberation and with premeditation. I suppose it is safe to assume at this stage of the case that there is some evidence in the case, the weight of which is to be considered by the jury and not by the court, tending to show that this prisoner is guilty of the two homicides charged in the two counts of the indictment; and the testimony has been reserved until that statement might fairly be made to the Court. Of course its admission can do no harm unless there is testimony tending to show that, because in that case the case would be taken from the

consideration of the jury by the action of the Court.

Now let us see exactly where we are upon this testimony. On Tuesday night Mr. and Mrs. Borden were ill. It is not the claim of the Commonwealth, and the Commonwealth has no

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right to claim upon this testimony or upon any that is likely to be introduced, that that sickness was produced by the design of any person, but it was an illness suggestive of opportunity to a person desiring to procure the deaths of one or the other of those people. That was upon the Tuesday night.

Upon the very Wednesday morning, according to the knowledge of this prisoner, Mrs. Borden had been to Dr. Bowen and stated that she had been poisoned the night before. Prussic acid is an article of which, we may fairly say, the properties are known to most people in the community; and upon the Wednesday she attempts, unsuccessfully, to procure that drug or that poison. Upon the Wednesday night your Honors will recall, without rehearsing it, the conversation which she had with Miss Russell at Miss Russell's house, and upon the Thursday morning there is the killing by the axe or hatchet by somebody.

Now then, the precise question which I desire to discuss to your Honors is this: whether upon the question of deliberation and premeditation, upon the state of mind of the prisoner just prior to the homicide, this act on her part is or is not competent.

I approach that discussion, may it please your Honors, with great reluctance, because if it is to be discussed at all there is no escape from discussing it thoroughly. There is no case in this Commonwealth that fairly may be said to be decisive upon it by reason of its resemblance in fact

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to this case; and it seems to me that I ought to discuss it thoroughly, tedious as it must be to your Honors. I cannot see any escape from doing it, and doing it in the manner that I have stated to the Court.

I quite understand that it is desirable, especially in a criminal cause, to avoid the trying of what are called collateral issues. It might be that an issue of this sort should be put into the case, and upon it the veracity, for instance, of the defendant be tried, and it might have an injurious effect where it ought not to have an injurious effect. And therefore, before offering this testimony, we have carefully considered whether it is fairly relevant to any proposition that is in dispute between us in this case; and we thought that it was, and that it was our duty to offer it. I know of no better definition of relevancy than is given by Mr. Wharton in his treatise upon Evidence. It is in a word, or I should not trouble your Honors with it.

"Relevancy is therefore to be determined by free logic unless otherwise settled by statute or controlling precedent. All facts that go either to sustain or impeach a hypothesis logically pertinent are admissible."

Now then, according to the rule of free logic, has this purchase or attempted purchase of prussic acid upon Wednesday the 3rd, any evidence to show that at that time this prisoner was in what may be called a murderous state of mind? Was she deliberating mischief towards somebody?

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It seems to me, merely to state that proposition is to answer it. There is no connection, there is nothing in the testimony itself which tends to show to whom or towards whom she is meditating this mischief. Greenleaf, in his treatise on Evidence, states the rule generally to be, that collateral facts are often admissible and competent, at first sight in apparent contradiction to the rule, but because they have a bearing upon the intent with which a person does a certain act.

There is something said in the case of *Commonwealth v. Abbott*, 130 Mass. 472, a case that has already been referred to this afternoon, which so well lays down the principles under which the consideration of this question ought to proceed that I feel like taking the liberty of reading it to your Honors, even if it is one of our own cases and a comparatively recent one. The facts themselves in the case are of no special aid to us. The opinion is given by Mr. Justice Colt, and the language to which I desire to call your Honors' attention is this:

"The rules which govern the admission of evidence apply with equal authority and force in criminal and civil proceedings. These rules must be received in all cases as the surest guide which the law affords for ascertaining the truth of any alleged matter of fact, and must be the same both on the criminal and civil side of the court, whatever the nature of the fact to be investigated. There can be no safe departure from them under the influence of a feeling of tenderness

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or humanity for persons charged with crime. It is a cardinal rule governing the production of evidence, that the testimony offered must correspond to the allegations, and be relevant to the issue on trial. It is not necessary that the evidence should bear directly on the issue. It is sufficient if it tends to establish the issue, or constitutes a link in the chain of proof. But in order to be admissible, it must either alone, or in connection with other evidence produced, be capable of affording a reasonable presumption or inference as to the principal fact in dispute. The rule excludes all collateral facts which tend to divert the mind from the real question, and are calculated only to prejudice and mislead the jury. The existence of a criminal motive is an element which it is often necessary to establish in order to give character to the acts and conduct of a party charged with or suspected of

crime. In such case, the conduct or declarations of a party, both before and after the principal fact in issue, are admissible, provided they are sufficiently near in point of time, and sufficiently significant of the motive or intent to be proved. The rules which govern human conduct are to be reasonably applied in these cases, as in all other investigations of fact. They are to be so applied in all cases where the inquiry is as to the mental or moral condition of a person at the time a particular act was done. The intent or disposition, when it constitutes an element of crime, can only be ascertained, as all moral qualities are, from the acts and declarations

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of the party. It is difficult, in dealing with this description of evidence, to define, as matter of law, the precise limits which must practically control its admission."

It seems to me that there, in general terms, we have laid down the rule which should govern us in this inquiry; and it seems to me that any act or any declaration of this prisoner which is sufficiently near in point of time or significant in point of character of the state of mind that she had at or about the time of this homicide, is competent against her, and its bearing and proper weight is for the consideration of the jury.

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Now, if your Honors please, there are several cases in Massachusetts which illustrate that principle. There is the case of *Commonwealth v. Turner*, 3 Met. 19, which is this case: The defendant was indicted for the kidnapping of a free colored boy in a certain town in the County of Worcester, and there was evidence tending to show that he had assisted in removing that colored boy from the possession of his father, and that the person with whom he was removing this boy subsequently carried the boy to Virginia. The Commonwealth was permitted to prove that on the day before the actual removal of the boy for whose kidnapping the indictment was had, the defendant on trial had, under some false pretences, attempted to obtain the possession of another colored boy in another town in the same county, and the admission of that testimony was sustained by the Supreme Court upon the ground that it was an act which tended to show the intent with which he did the act upon the following day: that is, the intent of kidnapping. The act itself might be said to be neutral: it consisted simply in the removal of a boy from one town to another. The Commonwealth was permitted to show that something was done on the previous day which characterized that intent. So here, the act of killing in the eyes of the law is neutral: it may be innocent, and it may be of various degrees of guilt: and whether it is one of several degrees of guilt is a matter of evidence, upon which the Commonwealth has the burden of proof. There

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are two extremely familiar cases to your Honors which I need not dwell upon:

Commonwealth v. McCarthy, 119 Mass. 354;

Commonwealth v. Bradford, 126 Mass. 42.

One of them was cited day before yesterday. In those cases it was held competent, where the burning of a building was charged in the indictment, for the Commonwealth to prove that two or three days before the burning charged, the defendant had set fire to the same building. Of course the objection was made that it tended to prove another crime. The Supreme Court, however, said that it was competent upon the question of the intent with which the defendant did the act which was charged in the indictment. And in one or the other of those cases the defendant's counsel offered to concede to the Court that whoever did do the act of burning did it with an unlawful intent: but the Court said that they would not exclude the Commonwealth from proving its case in its own way.

Now there are various cases---some of them I will cite to your honors; they are here for examination: I am not going to read them all---which bear with more or less force on the inquiry. I will cite them all, and then call attention to those which seem to me to be the most significant in this regard.

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People v. Kern, 61 Cal. 244.
Hopkins v. Com. 50 Pa St. 12.
Kernan v. State, 65 Md. 253.
People v. Selden, 7 N.Y. 445.
State v. Frank, 64 Ia. 39.
La Bean v. People, 34 N.Y. 223.
Walsh v. People, 88 N.Y. 458.
Austin v. State, 14 Ark. 555.
State v. Adams, 20 Kan., 311.

Now I am not going to call your Honors' attention to all of those cases. I may say generally of them that they are illustrations of the rule that I have attempted to state to your Honors, that where a given intent is in question in a given case any act near in point of time and significant in character is competent, no matter whether it tends to prove the commission of another crime or not.

Now out of these cases I shall select one or two only to which I desire to call your Honors' attention. I understand that on the question of intent there is no essential distinction between declaration and act. A declaration of a person is admitted to show his intent because it has some tendency to show the intent: the act is admitted for the same purpose. Now the case in Pennsylvania is this: A man was charged with a homicide on a certain day. The Commonwealth was permitted to show that earlier in the same

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day the man had made threats that he would kill somebody before the day was out. There was no pretence that it had any reference to the person subsequently killed on that same

day, and it was objected to that it had no tendency to connect the defendant with the actual killing, or to show a state of malice against the person afterwards actually killed. But the Court said this:

"It was of material consequence that the Commonwealth, who sought to convict the prisoner of murder in the first degree, should give evidence of a premeditated purpose, a formed design to kill or do some great bodily harm; for without malice prepense there could be no conviction of the higher grade of murder; nor is it necessary that the premeditated malice should have selected its victim." (Hopkins v. Commonwealth, 50 Pa. St., 9.)

The next case to which I desire to call your Honors' attention is a case that I cite rather to serve as an illustration than as a good authority, because the case is not reported in full. It is the case of *State v. Frank*, 64 Ia. 39. There it was held competent to show that shortly after the breaking and entering, of which the defendant stood indicted, he had possession of burglarious instruments. It is unfortunate that in that case it does not appear whether they were the same sort of instruments that were used in the breaking or not, and therefore the value of that case is perhaps less to us. The language of the Court,

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however, is general, saying that--- "If it be shown that he had burglars' tools in his possession at the time, such fact would go far to show the intent of the party charged."

An illustration is suggested to me that is borrowed, if your Honors please, from my own experience. It is no infrequent thing to hear in the Grand Jury room a case of this sort: A person found in the night time in a building, the window perhaps open or perhaps easily opened, so that it could be shut or opened without leaving any marks; nothing stolen, no indication of the intent with which he is there, except his mere presence. Now, of course, there is a case where mere presence is not a crime: it must be an entering with an intent to commit a felony. Suppose it could be shown that on the day before the man was found in the building, he had attempted to borrow or purchase a jimmy, and unsuccessfully attempted to do so. It must be clear, under the rules of free logic that Wharton speaks of, that such a piece of evidence would be competent and would be persuasive.

The next case to which I desire to call your Honors' attention is a case already cited, *Walsh v. People*, 88 N.Y. 458. In that case the indictment was for murder, and murder by stabbing with a knife. It appeared that on the morning of the homicide the prisoner had sharpened the knife which was afterward used. The State was afterward permitted to show a conversation on that same morning with a fellow workman of the prisoner in which he asked him what the effect

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of throwing pepper in a person's eyes would be, and what the punishment for such an act

would be. The evidence was admitted. There was no claim that pepper was used in the homicide at all: in point of fact, it was not used, and it was a fact entirely disconnected from the actual homicide, precisely as the failure to purchase prussic acid was disconnected with the action in this case. And the Court of Appeals of New York, giving its opinion by Mr. Chief Justice Andrews, held that that testimony was competent, and there is a very little language in their opinion which is very material upon this case.

"The conversation in respect to the pepper tended to show that the prisoner was meditating the commission of a personal injury upon some one, and it was so proximately related to the other circumstances, and to the actual commission of the crime charged, that the jury would be authorized to infer that the prisoner was then meditating a personal injury to the deceased. The throwing of pepper was not the crime charged, but if the prisoner, in the morning, among other things was considering an assault upon the deceased by the throwing of pepper, it was cumulative evidence of deliberation in respect to the crime actually committed."

Now if your Honor's please, there are but one or two more cases to which I desire to refer, and one is an early case in Arkansas. The authority, perhaps, is not so high as in other states, but in point of fact the facts resemble

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somewhat those of the case at bar, and I therefore refer to it. In this case (*Austin v. State*, 14 Ark, 555) the defendant, who was a slave, was charged with the killing of a certain man named, not his master. The state was permitted to prove that the day before the killing the master had a conversation with the defendant, in which there was angry talk: that the defendant then procured a club, carried it in his house, there got another club and put it by the door. The next day after he got these two weapons together, while the defendant was at work he had some words with the master: thereupon the master ordered him to lay down his axe with which he was working, and at this point the defendant struck with the axe the person for whose murder he was tried, and killed him. And it was held that, as bearing on the question of premeditation, the preparation of obtaining the clubs the night before was a competent piece of evidence.

MR. ROBINSON. When was that?

MR. MOODY. That was in 1854. There is a case which seems to me to be more important, perhaps, than any other that I have cited, and the last one which I shall cite in detail, although I have called your Honors' attention to the others, and they are here: we had them brought from Boston. This is the case of *State v. Adams*, 20 Kan. 311. That was in 1878. The charge in that case was burglary and there were four defendants indicted. One was admitted as a witness for the state. The four confederates met two nights prior

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to the burglary and arranged for committing the deed, and fixed the time at which it should be committed. Defendant then said that a bar of iron and a pair of pinchers were all that would be needed for the commission of the crime, and that he would get them. At the time appointed the defendant did bring the bar of iron and the pinchers. Now here is the testimony that was objected to: the State was permitted to show that on the day before the burglary the defendant and one of his confederates went into a store, and the defendant took a carpenter's brace from that store and hid it behind some boxes, and it was taken away after he went away so that he could not use it. As this is the last case that I shall cite, and as the language of this decision is apt in the extreme upon the present discussion. I crave permission to read what the Court said in that case. (Reading):

"This last is the testimony objected to. As detailed by the witnesses it establishes an independent crime, that of larceny. As such, say counsel, it is incompetent. Nor is it competent as evidence of preparation, for the brace was not an instrument intended to be used or in fact used in the burglary. To this we reply that the State, having offered evidence of a conspiracy and agreement between the parties to commit the crime, might properly show any conduct or acts of either thereafter tending to sustain evidence of the agreement and indicating preparation to accomplish the crime or remove the fruits. It is not essential that the State establish beyond peradventure that

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the acts or conduct were based upon the conspiracy or in reference to the crime. It is enough that they harmonize with and tend to confirm the charge of the conspiracy and are reasonably indicative of preparation for the crime. If no act or conduct of the defendant could be shown unless the motive therefore or the connection between it and the crime were made indisputably clear, the range of inquiry would be limited and narrow. It is enough that the act has an apparent or probable connection with the crime and that the motive of the defendant and the weight of it as testimony are to be considered by the jury. The fact that defendant and another of the four implicated in the conspiracy were engaged for a long time in private conversation the noon prior to the burglary may of itself, when the nature and substance of their conversation is unknown, prove nothing, yet it is a circumstance harmonizing with the alleged conspiracy and proper for the consideration of the jury in determining whether there was as charged such a conspiracy. So, while the testimony of the accomplice is that a bar of iron and pinchers were to be and were the instruments of the crime, may not the state show that defendant was engaged between the conspiracy and the crime in procuring other instruments therefore? That a brace and bit might be very serviceable in forcing an entrance through a door cannot be doubted."

I call your Honors' attention to the entire innocence of the things that were procured by the defendant. They were

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not necessarily guilty instruments: they were capable of an innocent as well as of a guilty use; but the Court said that it was for the jury to consider the weight of the testimony in

that respect. (Reading).

"That the brace stolen by the defendant was not used in the burglary, was prevented by the act of one who witnessed its larceny"---

--- as in this case the use of prussic acid was prevented by the declination of the clerk to sell it to the prisoner:

--- "that it was intended to be so used, is not affirmatively shown. But in as much as it was an instrument one intending burglar might naturally seek to obtain, as it was taken intermediate the conspiracy and the crime, and immediately after a long interview between two of the conspirators, the taking and concealment of it was a circumstance which might fairly be presented to the jury for their consideration. Suppose that instead of stealing a brace, the defendant had on that day gone many miles away and brought his own brace thence to a place whence it could easily be obtained on the coming night for the contemplated burglary, and that then, without the knowledge of the defendant, it was taken away by some third party: could not this circumstance be shown and that notwithstanding the testimony of the accomplice as to what was agreed to be and what was in fact used? Would not the act be one tending to show preparation---

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a preparation made fruitless by the unexpected act of another."

And I call your Honors' attention to that sentence.

"Could it not be shown that one charged with homicide, immediately prior thereto, was providing himself with several weapons, though only one was in fact used?" and if so, does the manner in which he so provides himself affect the competency of the testimony? If one weapon he stole, one he borrowed, and one (his own) he simply put in order, would proof as to the first be incompetent, while evidence as to the others were admissible? and must it be affirmatively shown that each weapon was procured with reference to the homicide before evidence concerning its procurement is competent? or are the facts concerning all to be put in evidence, leaving their weight to be determined by the jury? This we think must be laid down as the true rule: that where there is evidence of a conspiracy to commit a crime ---

--- or in a case where there are not two acting, where there is evidence tending to show the formation of an intent,---that of course is my language ---

--- "and of its subsequent commission, the state may in support and corroboration thereof show any act or conduct of the alleged conspirators intermediate the conspiracy and the crime, which apparently recognizes the existence of the

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conspiracy, or reasonably indicates preparation to commit the crime or preserve its fruits, and this, notwithstanding such special act of preparation was not the one discussed and agreed upon by the conspirators, and is rendered actually fruitless and unavailing by the unexpected interference of third parties, and also involves the commission of another and distinct crime."

There has one illustration come to my mind which I will put to your Honors---a case which I have not been able to see today, because it has not arrived, and that is the case of Commonwealth v. Trefethen, which is certainly weaker in this respect than the case at bar. In that case I understand one object of inquiry of was the intent of Tena Davis, the person who was killed in that case. And the Court held that certain declarations of her, recently before death, were competent as tending to show her state of mind, if I have not misunderstood the decision. Would it not, a fortiori have been competent for the defence to have shown in that case that Tena Davis, upon the day before she came to her death, had unsuccessfully attempted to obtain prussic acid? I submit that under the rule of law in this Commonwealth and the rules of law everywhere that it would. I can conceive of no more significant act, nothing which tends to show more the purpose of doing mischief to some one than the attempt, under an excuse which upon this offer of proof was false, to obtain

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one of the most deadly poisons that is known to human kind at the present time. And I submit that this testimony should be submitted to the jury under proper instructions as to its weight, to be applied only to the purpose which I have indicated.

MR. ROBINSON. There is no question about the general rules which are stated in our text books in regard to the relevancy of proof. But I think we may all discriminate as to the cases that are cited as precedents here. And I observe very clearly in my own mind, the line that runs through these cases, even those that have been cited here with so much confidence. Let us not forget the facts of the case at bar in its present posture. Before August 3rd there is no evidence given to implicate this defendant in the purpose that it is charged was wrought out on the fourth of August, except that at a time prior, in March, 1892, she spoke of Mrs. Borden in the language given by Mrs. Gifford. Your Honors have that in mind, I have no doubt, but surely there is nothing whatever in that that anyone can say manifests a murderous intent, or an intent to injure, to harm physically; nothing whatever. Subsequent to the murder, the defendant, upon being talked with by the police,---and therefore I may take that in precisely the same way,---said of Mrs. Borden, she was not her mother but her stepmother. She had said to Mrs.

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Gifford, "she is not my mother, my mother is dead." That was the statement of a truth in either case. Now can that statement made by herself to the policeman, which was subsequent to the crime, or the statement made to Mrs. Gifford antecedent to the tragedy, be raised into the force of a declaration indicating any personal violence to Mrs. Borden?

I do not discover anything of that kind. If there is anything else in the evidence that has gone in thus far---and that is where we stand---I shall be very glad to have it suggested to me, but those are all the parts that I now recall.

Now on the third of August nothing has been said more than I have quoted; nothing has been shown other than I have said. The previous sickness of Mr. and Mrs. Borden has been alluded to, but the evidence of the examining physician, Dr. Wood, disposes of any possible connection between this defendant and the sickness of those two persons. In fact, the evidence just as clearly shows that the defendant herself was ill, and in the same way that the other two were. So that there is nothing in the fact of sickness drawn from their condition that gives any force to this act. On Wednesday night, the third, the defendant, according to the evidence---and I take all there is of it, ---is narrating the experience of the family on the prior day, Tuesday, saying that Mrs. Borden and Mr. Borden had been ill, and she had, on Tuesday, the day before, and talking of the trouble; and it appears that Mrs. Borden on Tuesday had visited her family

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physician with her statement of her suspicion that they were all poisoned. Now is there anything up to that time, up to the time of Wednesday morning---and this offer to prove includes the time of Wednesday forenoon---is there anything up to that minute that connects or involves or implicates this defendant in a murderous intent? I fail to see it upon any facts here. Therefore we are bound to consider this act of the defendant---assuming it to be an act for the purpose of this discussion,---we are bound to assume it upon the condition of things then, and as my friend says, was she then in a murderous state of mind? That is his inquiry. Is there any proof that she was? Is there the slightest evidence of it that rises to the dignity of proof? It is not as if she had said, as cited in the case there to which I will come by and bye, "I intend to kill somebody before the end of this week---" not naming the person---"I have murder in my heart; I do not mark the victim now." That is the case that has been cited. There is an open, absolute, plain declaration of a criminal purpose. But here there is nothing of that. It is entirely absent. Now, of course, as has been said, this evidence ought not to go in so as to operate to the prejudice of this defendant before the jury, unless it is legally, logically and fairly competent to prove the act with which she stands charged. My friend said in his admission that there is nothing in this evidence to show against whom she meditated the malice. I repeat it. The

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Commonwealth admits that up to this time there is nothing in the evidence to show to whom she meditated the malice. Let us see where we are, then, if that is so. It is so: the Commonwealth takes it as a fact: it is a fact. Therefore can it any more be said that that act of August 3, on the Wednesday forenoon, is at all indicative of a purpose to injure these two persons? The Commonwealth say there is no evidence to show to whom she had such purpose. Suppose for the purpose of a violent assumption, in order to illustrate that, it had been claimed that she bought this to poison some other person, if you please---

I don't quite dare to take it, but I will assume Miss Sullivan. Suppose that had been her intent. Would it have been competent to prove that intent to consummate the tragedy for which she is now on trial? They say that would be a distinct crime. It would. But they seek to take an innocent act---and the buying of prussic acid is an innocent act,---it is not a criminal act, and there is a world wide difference between the facts here and the illustrations that are cited. I grant you, if a man goes to work upon a criminal act, meaning violence in a particular direction, you may draw the logical inference from it. But if he does an innocent act, the presumption runs with him in his act, and we cannot reach forward and say, "You intended to do that which at that time you had no sort of intention to commit, so far as the proof goes." There is nothing to show to whom she meditated the malice. Would this Court sit here for a moment and listen to a proposition that she undertook on a former day, to shoot Dr. Bowen, for instance,

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to show that she had a murderous intent towards Mr. and Mrs. Borden? No, not if she had it one hour before. That would be setting up a distinct and separate crime. Now, says the Government, right on the thresh-hold, we do not claim that there is the least evidence to show to whom the malice was directed, if any.

MR. MOODY. There is tendency to show to whom the malice is directed.

MR. ROBINSON. Is that what you said?

MR. MOODY. That is what I said.

MR. ROBINSON. As to that I cannot say, but now it is "nothing in the least tending to show that she intended malice to those two persons." Where is it? Where is the least tendency? Where a scrap, even? Well, people buy prussic acid to kill animals ---it may be the cat. That is innocent. It is not a crime, at any rate. Now, I cannot see any difference. If you grant that that is innocent, and it is because the statute provides for the sale of prussic acid under such instructions and restrictions as druggists will observe,---provide for its sale. And when it is said that it is not connected with these persons in any way, but is sought to be used to throw some sort of prejudice on the minds of men who are to pass on these facts, it discloses the whole purpose. My friend argued that if there is a link in the chain, quoting from the learned opinion of Judge Colt,---if there is one link in this long chain, although that may be in

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itself a crime, if there is a link, I say, this link must be brought forward. Yes, but you must have your chain with two ends, or else it is not a link in a chain. It may be a link of iron or of gold or of silver, and yet a link in the chain. So either of these links in that one chain of continuing and cooperating causes may be a distinct crime in itself, but so long as they tend to make one chain, then they are competent. But the moment they are different from that chain, then they are immaterial.

Now, says, the Government, we do not know anything about this. We do not claim that it points to these two persons, but we want to show that she had something in her possession, not that she intended to use it upon them---we cannot show it---but something she might have used, although there is no evidence to sustain it, and cannot be. I find no light at all, and the Court is too familiar with the distinction in cases of false pretences and the passing of counterfeit money ---

MR. MOODY. I did not cite any cases of counterfeit money.

MR. ROBINSON. You spoke about false pretences, and the passing of counterfeit money I take on my own responsibility as an instance of a kindred character. For well known reasons a man may have counterfeit money in his possession with intent to pass the same. If any of us unfortunately had it and were charged with intent to pass it, the reason to believe that accusation might be shown by the fact that we had been

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passing just such money as this for a week or a day, circulating it around. So that I find no light there.

Take the case of Commonwealth against Bradford, 126 Mass., that has been alluded to. What is that case? This man was indicted in Hampshire County on charge of crime for burning his building with the intent to get the insurance and defraud the insurance company. And Commonwealth vs. McCarthy is just like it. Now what are the facts? His building was burned. He set it on fire. In order to show his intent of setting that same building on fire they did not let him show that he set a fire under another building, but that he tried to fire that same building which was then under insurance protection. The Court said very properly that he might burn his building, that was all right, but that he could not burn his building and at the same time damage the insurance company, so if he undertook to burn it at a prior time to get insurance, it was evidence that he undertook to burn this same building on another day to get insurance. And, if I recollect Commonwealth vs. McCarthy, that was a case where the Government was allowed to show that he undertook to set fire to his building, setting fire to one so closely connected [with] it that it must take this one, and upon that ground it was properly received. I suppose nobody would claim that if he undertook to tear his building down, tried to destroy it by doing that, I do not suppose any one would claim that that was evidence of his purpose to burn it up to defraud the insurance company.

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If not, why not, if this doctrine is sound?

In this case that has been cited, I believe it is a Pennsylvania case,---I have not examined it, only heard it read, but these things affect a lodgment one or the other side of the line, as a person reads them. They are not to be decided on single words or phrases

but on the true method or spirit of the case. Take that case,---his threat that he would kill somebody. There was a felonious purpose declared in the outset making every element that would tend to show a criminal act, having a criminal connection, and so differing entirely from an act which is in itself innocent,---confessedly so. So when my friend cites the case in his own experience in the Grand Jury room of the man who was found in the building and might be charged with having broken in with an intent to steal, and he says, if the man had a jimie on him it would be pretty good evidence of what he was in there for.

MR. MOODY. You mistook my point of illustration.

MR. ROBINSON. I was liable to mistake it because you were giving us something that you had heard in the Grand Jury. But I will follow it out. Suppose a man had a jimie upon him when arrested, and he said he had an innocent purpose in having it. The question then would be, Will you tell me, sir, what you use it for? It certainly has a bad name, and I think the courts look upon it with disfavor. Then the case in Walsh and New York, I think it was, as to the inquiry as to throwing pepper in a man's eyes. What would be the offense?

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There is a criminal offense in itself. It starts with a criminal purpose. It is an assault. That is altogether different from an act that is innocent.

MR. MOODY. I understand you to say that in that case throwing pepper was a crime and therefore being a crime, it is competent in an indictment for murder?

MR. ROBINSON. No, sir, not at all. I say it is a criminal act of itself. If I remember, in Commonwealth against Turner---I will not be sure that I have that right, a man was arrested for breaking into the City Hall of Charlestown.

MR. MOODY. That is in the 2nd Cushing.

MR. ROBINSON. The 2nd Cushing then, at any rate, somewhere in the books,---to commit a burglary. He is found with a key in his possession, and it was attempted to be shown in order to show the purpose for which he got into the City Hall, it was offered to be shown that that key would fit the Lancaster Bank.

MR. MOODY. Was fitted to the Lancaster Bank?

MR. ROBINSON. Very well, it being the purpose to show that this man was in the Charlestown City Hall with a burglarious intent and they said, Here is this man with a key, a key that will fit the Lancaster Bank: Ergo, he was a robber when he got into the City Hall in Charlestown. The Courts say no; my friends say that is a distinct crime. I say that goes to prove intent, if you prove the fact. The act was connected with a criminal proceeding on his own part, and hence they

might try to connect it.

Take the Kansas case, which I never saw, but have just read in part. There was a specific declaration before any act was committed and before anything was done, and there the case finds that there was evidence of a conspiracy, evidence of a crime to carry it out,---to accomplish the death of a person, and so the Court said anything that lies intermediate in that connection between the conspiracy and the crime tends to prove the performance of the criminal act. There is again Judge Colt's link in his chain, ---an intermediate act connecting the two. If it does so connect it, it is proper. If it does not so connect it, it is wholly irrelevant.

I must say I have said all the Court desires to hear, and I have made my meaning, I trust, plain.

MASON, C. J. We will withdraw for consultation.

The Court returned at 4.33.

MASON, C. J. Mr. Moody, the Court desire to have restated the limitations or purpose for which the testimony is offered.

MR. MOODY. There is no purpose of offering this testimony for any other use or using it for any other use than as bearing upon the state of mind of the defendant prior to the homicide; the intent, the deliberation and the preparation, and for that or any part of it which your Honors may suggest which it has a natural tendency to prove, we offer it.

MASON, C. J. The Court are of the opinion that, provided the preliminary evidence comes up to the proffer, the evidence is competent. Of course, the preliminary evidence must be submitted before the main question can be finally determined.

(After the foregoing statement by the Court, a conference was held between counsel and the Court, after which the jury returned to the court room, officers were sworn to properly care for them, and the Court adjourned to Thursday, June 15th, at 9 A.M.)

TENTH DAY

Thursday, June 15, 1893

The Court came in at nine o'clock.

CHARLES H. LAWTON, Sworn.

Q. (By Mr. Knowlton.) Charles H. Lawton is your name?

A. Charles Henry Lawton, yes, sir.

Q. Do you live in New Bedford?

A. I do.

Q. How long have you lived in New Bedford?

A. Forty years.

Q. And what is your business?

MR. ROBINSON. Mr. Knowlton, will you pause a moment? The suggestion was made by the Court last night that the offer be put in writing, and we understand that nothing of that kind is prepared except by reference to the testimony of yesterday.

MR. KNOWLTON. Not the testimony: the offer yesterday.

MR. ROBINSON. The offer yesterday.

MR. ADAMS. Pages 1240 and 1241 of the record.

MR. MOODY. We do not intend to be limited to that: we intend to prove at least that.

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MR. ROBINSON. I should suggest that the Court had intimated very plainly to the counsel for the Commonwealth that before we entered on any testimony of this character, the offer should be put in writing and should be definite. Now we have nothing further than we had yesterday, and that the Court deemed insufficient.

MR. MOODY. I did not so understand it.

MR. ROBINSON. Of course your Honor will say whether that was the Court's opinion or not: that we understand to be the suggestion. Now we have nothing more this morning that is contained on page 1240 of the report.

MR. MOODY. I will call your attention to page 1273---the statement of his Honor the Chief Justice.

MR. ROBINSON. It seems to me we are entitled under the understanding of last night to know more definitely the offer, according to the Court's intimation.

MASON, C. J. The offer of proof was deemed sufficient if the evidence should come up to the offer. It was suggested, to avoid uncertainty, that the offer should be distinctly stated: but possibly it is sufficiently so in the stenographic report of the oral offer.

MR. KNOWLTON. I have also given my friends the names of the several witnesses through whom I propose to substantiate the offer outside of Mr. Bence.

MR. ROBINSON. That does not add to the offer. We have just received them at this moment.

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MASON, C. J. We did not intend to exclude the Commonwealth from proving more than its offer.

MR. KNOWLTON. That is exactly the understanding we had.

MR. ROBINSON. Of course our rights will be saved, even as to this. We make the objection, and it lies along the whole line. I don't want it said that we have admitted a part without any objection, therefore the whole is competent. I want your Honors to save us that, and we take an exception here. Of course no question has been put to the witness as yet, but I don't want our rights lost through any inadvertence.

MR. KNOWLTON. I am entirely content that the general objection shall stand to each question, with the further understanding that if any special objection is made to any question I may know it, so that I may modify it,---if that is agreeable: the general objection to the whole subject.

MR. ROBINSON. Yes.

MR. KNOWLTON. If you have any special objection you ought to make it, so that I can modify the question or withdraw it.

MR. ROBINSON. Other than is included in the general objection.

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Q. What is your business, Mr. Lawton?

A. A druggist.

Q. And do you carry on the drug business?

A. Together with my brother, yes, sir.

Q. How long have you carried on the drug business?

A. Oh, 20 years.

Q. And where is your store?

A. We have two stores; one, corner of Purchase and Union streets, and the other corner of Union and Second streets.

Q. In New Bedford?

A. Yes, sir.

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Q. I suppose Purchase street and Union street are perhaps the principal business streets of this city?

A. Supposed to be, yes, sir.

Q. And you carry on the business at retail or wholesale or both?

A. Both.

Q. How large a retail business do you carry on?

A. Well, I don't know as I could tell exactly. We calculate to carry on the heaviest of any one in the city.

Q. The heaviest retail business of any one in the city?

A. Yes, sir.

Q. And before you engaged in the business for yourselves or yourself, Mr. Lawton, were you also engaged in it in anybody's employ?

A. I have always been in those stores. I was clerk for E. Thornton.

Q. You were retail clerk?

A. Yes, sir.

Q. Including your service as retail clerk and all your connection with the drug business, what period of time does it cover, generally speaking? I don't care to a year.

A. Oh, for a rough guess from 30 to 35 years, say 30 years.

Q. Always in New Bedford?

A. Yes, sir.

Q. You are acquainted with the drug called prussic acid?

A. We keep it in stock, yes, sir.

Q. Have you always?

A. Yes, sir.

Q. As a drug or in the pure form?

A. We never have had it only in solution.

Q. Do you know whether it is kept, as a matter of fact, in drug

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stores in any other form than a solution?

MR. ROBINSON. Wait a moment. We object to that.

Q. Have you ever heard of it being kept in any other form?

MR. ROBINSON. We object to that.

MR. KNOWLTON. I don't press it.

Q. What is your experience with that matter, as to how it is kept?

MR. ROBINSON. Wait a moment;---in his own store, if it is limited to that.

MR. KNOWLTON. I won't press it, your Honors.

Q. What is the proper name of the acid?

A. Prussic acid or diluted hydrocyanic acid, but we have never had it.

Q. Is prussic acid a proper name for hydrocyanic acid?

A. It is called both.

Q. In the time that you have been in business, what will you say as to its being sold? For what purposes have you sold it other than as a medicine?

MR. ROBINSON. I object to that.

Q. I will modify the question a little. Have you sold it during that time for any other purpose than upon a prescription of a physician?

MR. ROBINSON. Wait a moment.

MASON, C. J. I do not think the question in that form is competent.

Q. In your experience as a druggist, Mr. Lawton, is that drug an

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article of commerce for any other purpose than as a medicine?

MR. ROBINSON. Wait a moment. I object.

Q. Or upon a prescription of a physician?

MR. ROBINSON. I object to that.

MASON, C. J. I do not think the question is what it has been in his experience; if he knows what form it is---if he can omit that element---

Q. Mr. Lawton, is the drug called prussic acid sold commercially for any other purpose than upon the prescription of a physician?

MR. ROBINSON. Wait a moment. I object to that, your Honors.

Q. For medicinal purposes, I will add to the question.

MR. ROBINSON. The same objection.

MASON, C. J. Excluded.

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Q. Have you ever had in your experience a call for prussic acid for any other than upon the prescription of a physician?

MR. ROBINSON. That I object to

MASON, C. J. It is excluded.

Q. Do you know of any use to which prussic acid is put other than the purposes of a medicine?

MR. ROBINSON. Wait a moment, I object to that.

MASON, C. J. It may be answered.

MR. ROBINSON. It goes in under our exception.

(The question was read.)

A. Not that I know of; no, sir.

(No Cross-Examination.)

HENRY H. TILLSON, Sworn.

Q. (By Mr. Knowlton.) Henry H. Tillson is your name?

A. That is my name, sir.

Q. Do you live in New Bedford?

A. New Bedford.

Q. How long have you lived here, Mr. Tillson?

A. I have lived here over 50 years, about 60 years.

Q. What is your business?

A. Hats, caps, furs, and furnishings.

Q. What have you had to do with furs?

A. I have always had the care of furs since I have been in the business, in packing them and preserving them from moths, and have had the sale of them.

Q. Do you mean simply your own furs that you keep in stock?

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A. Not altogether. I have taken others in keeping.

Q. Do you do that extensively?

A. Quite so.

Q. And how long have you carried on that business of caring for and selling your own furs and the furs of other people?

A. Always, since I have been in the business.

Q. Not selling the furs of other people, of course. And did that include the cleaning of furs?

MR. ROBINSON. I don't think that is a proper question under the circumstances. We object to it.

Q. Does your business have anything to do with the cleaning of furs?

A. No, sir; nothing more than preserving the furs, taking care of them.

Q. Mr. Tillson, is prussic acid used in any connection with the care of furs?

MR. ROBINSON. Wait a moment; that is objected to.

MASON, C. J. Perhaps it is necessary to develop a little more fully what

the witness's experience has been, the extent of his experience, and whether it has embraced any scientific study other than his practical experience.

MR. KNOWLTON. I will concede it embraces no scientific study of drugs; his business is wholly practical.

MASON, C. J. And no study of its application to furs?

MR. KNOWLTON. No, sir. I propose to call another witness on that point, who is an expert. I only call this man as to his practical knowledge. I concede he has no scientific knowledge of the nature of the drug. I offer to show by him that it is not a drug that is used in the business in

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connection with furs in any way.

MASON, C. J. Do I understand you to disclaim showing that he has any knowledge except that gained from his own operations?

MR. KNOWLTON. I suppose so, your Honor; no study of the subject. I understand so. I will ask the question.

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Q. Mr. Tillson, have you any knowledge of the effects of prussic acid upon furs?

A. Not at all, sir.

Q. I will ask you one more question, as to whether you have any knowledge of the use of acid on furs?

MR. ROBINSON. Wait a moment. I object to that.

(The question was excluded).

MR. KNOWLTON. Now, I leave the witness as I did before, as a man without scientific knowledge, but with practical information.

MASON, C. J. I do not think it should be included in that view of the circumstances.

Mr. Knowlton then called for Mr. Hathaway and he not responding at the moment, Dr. Dolan was called for.

MR. ROBINSON. May it please your Honors, Dr. Dolan has been here all the time. We were told yesterday that he was not to be called for anything, and with that

understanding we consented to his remaining in the Court House. We submit that it is not within reason on that understanding that he should be now called in on any preliminary question.

MR. KNOWLTON. Very well. I do not quite concede that, but I will call Mr. Hathaway. We think we have a right to call Dr. Dolan.

Dr. Dolan was leaving the room when Mr. Robinson remarked to Mr. Knowlton "it does not heal it by sending him out now."

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NATHANIEL HATHAWAY, Sworn.

Q. (By Mr. Knowlton.) Nathaniel Hathaway is your name?

A. Yes, sir.

Q. You reside in New Bedford?

A. I do.

Q. What is your business?

A. An analytical chemist.

Q. Where were you educated as such?

A. At the School of Mines, New York,---Columbia College.

Q. Have you practiced your profession?

A. Yes, sir, since '79.

Q. Have you had occasion to be called as witness in matters involving your profession?

A. Yes, sir.

Q. Are you acquainted with the nature and uses of drugs?

A. Yes, sir.

Q. Are you acquainted with the drug called hydro-cyanic acid, or prussic acid?

A. Yes, sir.

Q. In both its pure and diluted forms?

A. In the diluted form.

Q. What is the drug usually sold in commerce?

A. What is called two percent solution.

Q. Is that what is known as prussic acid in commerce?

A. Yes, sir.

Q. Mr. Hathaway, what will you say of the adaptability or suitability of the drug called prussic acid in connection with furs?

MR. ROBINSON. Please do not answer that; I object.

MASON, C. J. The form of the question does not admit an answer that is perfectly responsive. If it did, that would be competent. The qualifications of the witness are deemed by the Court sufficient. But what he has to say with reference to the use or adaptability is a very broad

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question. He might have a good deal to say that would not be competent.

MR. KNOWLTON. Perhaps so, sir. My question was purposely broad so as to cover the whole ground. The answer that I expected was obvious. I will not state it now, because the witness is present. For that reason I put it in that form. It is precisely, however, if your Honor will pardon me, within the line of the offer I make, and is exactly what I expect to prove. I do not like to say in the presence of a witness what I want to prove, but I offer to show a---

Q. Has prussic acid any suitability or adaptability for use in connection with sealskin furs.

MR. ROBINSON. Wait a moment, sir. I object to it.

MASON, C. J. The question may be answered.

MR. ROBINSON. I desire to save an exception.

MR. KNOWLTON. You desire the witness to hesitate longer?

MR. ROBINSON. Only to call attention to your offer.

MR. KNOWLTON. That is broader, I know.

MR. ROBINSON. I know it is broader; that is what I am complaining of. The objection is that we are leaving the field that is mapped out in that offer. The Court says anything in that line might properly be made the subject of inquiry. Now, the Government go on to involve something else.

MASON, C. J. The Court did not intend that the Government Counsel should not go beyond the offer.

MR. ROBINSON. I understand your Honor. It seems to me that

they were asked to apprise us of anything contemplated beyond the offer. The defendant is fairly entitled to any enlargement of it at this time.

(The question was repeated)

A. In my opinion it is unsuitable.

Q. Has it any suitability or adaptability for use in cleaning furs?

A. No, sir.

MR. KNOWLTON. I will ask you one or two more questions.

Q. What is the nature of prussic acid as to its volatility?

A. You are speaking now of the commercial prussic acid?

Q. Yes, sir.

A. I can only say it is quite volatile, or very volatile. I cannot give any ratio or degree of volatility.

Q. In that volatile form has it any effects, if distributed in the air, upon a person in the vicinity of it?

MR. ROBINSON. Wait a moment. I object to that.

MASON, C. J. It may be answered.

A. It would cause headache and nausea.

Q. I put this further question. I ought to caution you not to answer until it is finally decided that the question may be answered. You were not in here when the other caution was given. Mr. Hathaway, is prussic acid in any form to your knowledge used for the purpose of cleaning furs?

MR. ROBINSON. I object to that.

MASON, C. J. He may answer.

A. Not to my knowledge, no, sir.

MR. ROBINSON. I suppose, your Honors,---I do not want to trouble the Court,---that there is no misunderstanding that all this is subject to our exception,

although I do not rise every time to say so.

MR. KNOWLTON. We have power to do so. As we said, we do not object to the general exception.

MR. ROBINSON. No, special objection.

MASON, C. J. Your general objection I understand to be saved, but if there is anything peculiar about this last question differing from your general objection, our attention ought to be called to it.

MR. ROBINSON. Well, I object to this specially.

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CROSS-EXAMINATION.

Q. (By Mr. Robinson.) It is volatile, you say?

A. Yes, sir.

Q. Well, that means that it passes off in the air?

A. Yes, sir.

Q. Do you know any other liquid that does the same?

A. Yes, sir, a number of others.

Q. For instance?

A. Ammonia.

Q. Again.

A. Hydrochloric acid, a strong acid.

Q. And have you another name for that?

A. Muriatic acid.

Q. And anything else?

A. Yes, sir.

Q. What?

A. Nitro benzole.

Q. Anything else?

A. Yes, sir, concentrated nitric acid.

Q. Without going too far into chemistry, state commoner things. How is it about ether?

A. Ether is very volatile.

Q. And that used in great quantity is deadly, is it not?

A. Yes, sir.

Q. How about chloroform?

A. That is also volatile.

Q. And benzine?

A. Yes, sir.

Q. Well now, those three last ones that I have named, ether, chloroform and benzine, are in common use among us, aren't they?

A. I should hardly say in common use, sir.

Q. How about benzine?

A. I can't say very much about that.

Q. Well, don't you know anything about benzine, what it is?

A. Yes, I think I do.

Q. Don't you know anything about its common use?

A. I know it is used in gas stoves or a similar compound is used in gas

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stoves. I don't know exactly what you mean by benzine.

Q. Tell me what you mean by benzine? I would like your definition.

A. By benzine I mean the same compound as naphtha or light oil distilled from petroleum.

Q. Yes. Now, naphtha you have spoken of. Naphtha is quite a common article sold, is it not.

A. Yes, sir.

Q. That is very volatile?

A. Yes, sir.

Q. And benzine, am I right in assuming that you will find it for sale in bottles, in small bottles in all drug stores labelled "Benzine"?

A. I am unable to say, sir.

Q. Are you a family man, have a house?

A. Yes, sir.

Q. And you don't know anything about what we call benzine used for cleansing

purposes?

A. No, sir.

Q. In domestic affairs?

A. No, sir. I know that it is used, yes. I know that I never used it.

Q. I don't ask you whether you have used it. You do tell us then that you do know about that?

A. Yes, sir.

Q. For taking out spots?

A. Yes, sir.

Q. Removing grease?

A. Yes, sir.

Q. It would be destructive to small animal life, wouldn't it?

A. Yes, sir.

Q. Bugs, flies and moths, and all those things would go, wouldn't they?

A. Yes, sir.

Q. They would emigrate or die, would they?

A. Yes, sir.

Q. Well, how about ether?

A. That would probably cause death too to insects.

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Q. To all those creatures?

A. Yes, sir.

Q. And the same of chloroform?

A. Yes, sir.

Q. And naphtha?

A. Yes, sir.

Q. It will do up almost any of those things, will it not.

A. I think it will, yes.

Q. Well, they are all volatile?

A. Yes.

Q. Now, because they are volatile, that is no objection to their use, is it, for these

purposes?

A. It is not an objection, regarding them as a poison. It is an objection to their use. It renders them unsuitable for such use.

Q. And yet it is done right along in every-day life?

A. Yes, sir.

Q. On all those articles?

A. Yes, I think likely.

Q. And they are unsuitable nevertheless?

A. I should consider them so, yes, sir.

Q. Because there might be an explosion or fire or something of that kind?

A. Yes, sir.

Q. Well, that is all?

A. Yes, sir, because they are dangerous compounds to have about.

Q. Oh, yes; especially ether and chloroform, and kerosene oil, that is used in all families, or nearly all, is dangerous in certain conditions, isn't it.

A. Yes, sir, under certain conditions.

Q. And you have perhaps in your house gas for lighting purposes?

A. Yes, sir.

Q. You can neglect or use it in such a way as to be dangerous?

A. Yes, undoubtedly.

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Q. And the different forms of gas used for illuminating purposes differ quite a good deal in that respect, do they not?

A. Yes, sir.

Q. Some kinds of illuminating gas are not perceptible to the sense of smell, are they, from a leakage?

A. I have heard of that kind, but I have never met it in practice.

Q. Well, you are here today?

A. Yes, sir.

Q. But if you had met it in your sleeping room, left the plug open, what would have been its effect upon you?

A. It is impossible for me to state.

Q. Impossible for you to give an opinion as a chemist acquainted with its effect upon you?

A. Yes, sir; I think it is, as a chemist. I don't claim to be a physician as well.

Q. Your knowledge of the composition of illuminating gas is not sufficient for you to express an opinion upon this point?

A. I can express an opinion; I don't think it is an expert opinion.

Q. I am trying now to get it.

A. Will you repeat the question, please?

Q. What is the effect of illuminating gas upon the human body?

A. I presume it would either suffocate or poison.

Q. It would bring death?

A. Bring death, inhaled sufficiently long.

Q. Then I am right in inferring, after all, that because an article is volatile in its character that is not the ground of objections to its use for a purpose that it accomplishes?

A. I think it is no objection to its use as a poison, but it

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certainly---

Q. That is not what I am asking you now. I suppose you don't really think anything that is used as a poison is desirable to take?

A. No, sir; I should not; not in a poisonous dose.

Q. Well, it isn't poison unless you get enough of it; it is not a success. But you want to kill moths, you want to kill any insects or creatures that will destroy an article. Would you say you wouldn't use any article that would do it because it was volatile?

A. I don't know as I should say that, sir, no.

Q. Then that is not any ground of objection, really, if a person takes care of it, is it? Is careful in the use of it, I mean?

A. No, it would not be.

Q. Arsenic is a poison, isn't it?

A. Yes, sir.

Q. Is it an ingredient of the common article know as "Rough on Rats"?

A. I believe it is, sir.

Q. Is that article, "Rough on Rats", something that is very commonly used in households to dispose of rats?

A. I suppose it to be, yes, sir. I really don't know.

Q. Now it is an entirely proper thing to use to kill the rats, isn't it?

A. No, sir; I should say not.

Q. You don't think so?

A. No, sir.

Q. You would rather have the rats?

A. I think it would; yes, sir, rather than have such stuff about my house.

Q. Well, what I want to get at is whether we are all going wrong in using these poisons that will kill the rats?

A. Yes, sir; I think we are.

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Q. Simply because somebody may get it by accident into his own stomach?

A. Yes, sir; or somebody has a chance to use it criminally.

Q. Well, if somebody wants to use it criminally, that is what we spoke of. But if you don't use it for that purpose there is no objection to it then?

A. Yes, I think it is a dangerous commodity to have in the house.

Q. Arsenic?

A. Yes, sir; I do.

Q. Do you know anything about the use of arsenic to beautify the complexion?

A. No, sir; I do not.

Q. Perhaps you have not used it yourself?

A. No, sir; I have not.

Q. And none in your family?

A. No, sir; I hope not.

Q. Well, I will not insist that you ought to. But you never have heard anything about its use in cosmetics?

A. Yes, sir; I have heard something about it.

Q. And the use of arsenic, then, is quite general in innocent ways, isn't it?

A. No, sir; I think not.

Q. What do they kill cats with? If you want to kill a cat, and don't shoot her or knock her on the head or tie a stone around her and leave her in a bag down by the river? What would you kill cats with if you wanted to do it quietly?

A. I am unable to state, sir.

Q. You have no experience in that way?

A. No, sir.

Q. Well, suppose you put one in a box and put some strong chloroform in with her, what about it?

A. I think if the box was tight the cat would die, if you put in enough

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chloroform.

Q. Is it the same about ether?

A. I am a little doubtful about ether, with a cat.

Q. You don't know I suppose?

A. No, sir.

Q. Now take prussic acid. You have got the two per cent solution, as I understand it?

A. Yes, sir.

Q. That is what you call it. Now suppose you were to dilute it still more, what fluid could you use to dilute it with more?

A. You could use either water or alcohol or ether.

Q. It would mix with water?

A. Yes, sir.

Q. It would mix with alcohol?

A. Yes, sir.

Q. Now suppose you were to dilute it one hundred times more?

A. That is, until it contained two hundredths of a per cent?

Q. Yes, sir.

A. Yes, sir.

Q. Would you say that any such use of that would not kill the animal life on a piece of fur?

A. It would be impossible for me to say so without experimenting upon it.

Q. You do not know about that?

A. I am not quite prepared to admit that.

Q. You never have looked into that question at all?

A. Excuse me sir; I have.

Q. Tell me the result of your experiments?

A. I have used the two per cent solution, tried its effect on insects.

Q. That is two per cent in a hundred?

A. Yes, sir.

Q. Will that kill them?

A. Yes, sir.

Q. Promptly?

A. Yes, sir.

Q. Whether any greater dilution of it will accomplish the

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result, you don't know?

A. No, sir.

Q. Well, your experiments in that direction, have been very limited, have they not?

A. Yes, sir.

Q. And when did you make them with reference to testing the effect of prussic acid upon insect life?

A. Made them between last night and this morning.

Q. And that is as far as you have got up to this morning?

A. Yes, sir.

Q. That is, you took the common prussic acid, what you say is used in commerce, the two per cent solution, and tried that?

A. Yes, sir.

Q. What did you try it on?

A. I tried it on ants.

Q. It killed the ants?

A. No difficulty about that; and various nondescript bugs. Unfortunately, I am not a naturalist. I cannot tell you what the various small insects I used were. I remember some spiders.

Q. When did you begin to experiment?

A. You mean on that?

Q. Last night.

A. I commenced about ten o'clock, sir.

Q. Have you been at it all night?

A. No, sir; I gave it up about twelve and commenced again early this morning.

Q. Well, now, the result of all your experiments is simply to tell us that the two per cent solution, taken just as it is, will kill flies and will kill moths and ants?

A. Yes, sir.

Q. That is all you can say about it, isn't it?

A. That is all I can say of my own knowledge from my own experiments.

Q. I don't care about anybody's else knowledge. And you

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cannot tell anything whether if reduced twice as much, four times as much, what the effect will be?

A. No, sir.

Q. And that is all the objection that you see to its use on a seal skin cape, isn't it?

A. What objection, sir?

Q. What you have stated. It will kill the insects. That is no objection, is it?

A. No, sir.

Q. Well, that is the two per cent solution?

A. Yes, sir.

Q. Now is there any other objection?

A. I think that the poisonous properties of its vapor constitute an important objection.

Q. And that degree of volatility will depend upon the strength of the solution, will it not?

A. On the strength of the solution and upon the temperature.

Q. Leave that element out. Suppose the person is careful in using it, as with the use of benzine, as you have said, and the use of chloroform and others---suppose the person is careful in the use of it you don't see any harm that it will do to the seal skin cape, do you?

A. No, sir.

Q. Not any?

A. No, sir.

Q. Then leave out the question of the effect it may have upon the person who is using it, the care to be taken by that person, there is nothing in prussic acid that makes it an

unsuitable article to use to kill moths on furs?

A. Leaving out the effect on the person?

Q. Yes.

A. Or any other person present?

Q. Yes.

A. Yes, sir.

Q. None whatever, no objection whatever?

A. No objection

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under such circumstances.

Q. And you tell us that that effect upon the person using it will depend entirely, or very largely, upon the degree of strength of the fluid?

A. Yes, sir.

Q. And you tell us that you cannot say whether a reduction of the strength of the liquid will not accomplish the same results as the two per cent solution?

A. Yes, sir.

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WILLIAM A. DOLAN, Recalled.

MR. ROBINSON. Your Honor, I object to this witness testifying.

MASON, C. J. The Court do not think that the fact that he has been in the room should exclude him, under the circumstances.

MR. KNOWLTON. I perhaps owe an apology to the Court. I supposed that I had got through with him. I was not personally aware that he was in the Court room when this examination was going on: my associate was.

MR. ROBINSON. The Court had ruled upon it.

MR. KNOWLTON. Yes, I thought an apology was due to the Court.

MR. ROBINSON. Then if I may be permitted, my apology for interfering is that we had understood that Dr. Dolan had been in consultation with one of the counsel for the Commonwealth since he has been in the Court room.

MR. MOODY. That is quite true. I asked him how he could answer a

certain question.

MR. ROBINSON. He has been in conference with the eminent counsel. I don't want to argue it. That is my ground for making the objection.

Q. (By Mr. Knowlton.) Dr. Dolan, are you acquainted with the drug called prussic acid?

A. Yes, sir.

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Q. And with its use and properties?

A. Yes, sir.

Q. What are its properties as to volatileness?

A. It is one of the most volatile drugs that we have.

Q. And what about the poisonous effects of the vapor of prussic acid?

A. The most poisonous that we have.

MR. ROBINSON. This I suppose is included under our general objection, now.

Q. I am now talking about the vapors?

A. Yes, sir.

Q. Did you say the most poisonous?

A. Yes, sir.

Q. Has prussic acid any capacity, adaptability or suitability for use in connection with furs, either in cleaning or preserving or protecting them from vermin?

MR. ROBINSON. I object to it.

MASON, C. J. Do you desire to qualify the witness any further before we rule on the question?

Q. What study have you made of prussic acid, Doctor?

A. I have not made any study of it, other than has come in my scope as a physician.

Q. Has it come within your scope as a physician to study the effects and properties of it?

A. It has, yes, sir.

Q. And its capacity for use other than as medicine?

A. Yes, sir. I should qualify that statement---"as a physician:" my experience as a medical examiner---

Q. What is it?

A. Of course it has also come to me in my position as a medical examiner to know its qualities.

MR. ROBINSON. Will the reporter read the answer?

(Answer read.)

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MR. ROBINSON. I understood the witness to say he had had experience as a medical examiner in detecting its presence.

MR. KNOWLTON. He did not say so.

THE WITNESS. I don't think I said so.

Q. Would you say so if your attention was called to it---as to detecting its presence?

A. Yes, sir.

Q. In the course of your medical education did you attend lectures upon materia medica?

A. Certainly.

Q. And that included the properties and effects and use of prussic acid?

A. It did.

MR. KNOWLTON. That is the extent of the qualification, if your Honors please.

(After conference between the Court and counsel the Court ruled that the witness was not qualified to answer the question, and the witness was excused.)

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MASON, C. J. The jurors may withdraw with the officers until sent for.

The jury retired at 10.10 and at 10.20 returned to their seats.

MASON, C. J. The Court are of opinion that if there is delay asked, we shall grant it.

MR. KNOWLTON. I now offer the testimony of Eli Bence, the witness who was called last night, and excused for the time being.

MASON, C. J. The Court is of opinion as the evidence now stands, the preliminary questions are not included. I concluded that that testimony was finished. The

Court did not desire to rule upon it piecemeal.

MR. KNOWLTON. Very well. I will put the question and your Honor may exercise the discretion of the Court upon it. The first question is a preliminary one.

MR. ROBINSON. We, of course, object to any further inquiry. It is a subject for the Court and not the Counsel. The defendant's position is one of objection now.

MASON, C. J. We do not know what the question is.

MR. KNOWLTON. I say it is a preliminary question.

HENRY H. TILLSON, Recalled.

Q. (By Mr. Knowlton.) As sealskin is used and sold, is it in its natural state, or has it been colored by some drug?

MR. ROBINSON. Wait a moment; I object .

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MASON, C. J. I think you ought not to reopen that question.

MR. KNOWLTON. There is one other question upon which I will take the ruling of the Court.

Q. Whether in your experience, sealskins as used in commerce are subject to the action of moths or other vermin?

MR. ROBINSON. We object.

MASON, C. J. That is excluded.

MR. KNOWLTON. We offer formally now, if we have not done so before, all the plans---I think they are already in the photographs,---I think they are already in, and the various exhibits that have been produced and identified by the witnesses, a list of which we can give if desired. That includes all the hatchets, including that without a handle, the two skulls, the dresses or the dress, skirt, the various pieces of the house, marble slab, piece of plastering and the bed clothing and the pieces of carpet, and also the things that were produced by Prof. Wood,---the piece of pear skin. I should have to examine the trunk to know if there is anything more. If my friends desire me to examine it, I will do so. I also offer the basket and box which came from the barn, and the handkerchief. I think that is all I remember now.

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MASON, C. J. Is that all the testimony you desire to offer?

MR. KNOWLTON. I was waiting to see if any objection was made to the offer of those things.

MR. ROBINSON. No, sir, both those that have been proved.

MR. KNOWLTON. The Commonwealth rests.

MR. ROBINSON. The Commonwealth rests, as we understand it.

MR. KNOWLTON. That is what I said.

MR. ROBINSON. Your Honors will bear with us for a moment. They stopped a little earlier than we expected. Will your Honors do us the great favor, as we supposed the government's case would run until the intermission,---we had abundant reason to think so because of the number of witnesses that were behind the pending question, and we think we could save time if your Honors will give us ten minutes now to arrange our own matters. It will save the time of the Court and jury.

MASON, C. J. You may take that. The jury may retire with the officers.

(The jury then retired from the court room.)

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The jury returned to the court room at 10.50, and A. J. Jennings, Esq., proceeded to open the case for the defence as follows:

OPENING ARGUMENT FOR THE DEFENCE

By

A. J. Jennings, Esq.

May it please your Honors, Mr. Foreman and Gentlemen of the Jury:

I want to make a personal allusion before referring directly to the case. One of the victims of the murder charged in this indictment was for many years my client and my personal friend. I had known him since my boyhood. I had known his oldest daughter for the same length of time, and I want to say right here and now, if I manifest more feeling than perhaps you think necessary in making an opening statement for the defence in this case, you will ascribe it to that cause. The counsel, Mr. Foreman and gentlemen, does not cease to be a man when he becomes a lawyer.

Fact and fiction have furnished many extraordinary examples of crime that have shocked the feelings and staggered the reason of men, but I think no one of them has ever surpassed in its mystery the case that you are now considering. The brutal character of the wounds is only equaled by the audacity by the time and the place chosen here, and, Mr. Foreman and gentlemen, it needed but the accusation of the

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youngest daughter of one of the victims to make this the act, as it would seem to most men, of an insane person or a fiend.

I do not propose to go into detail about the character of those wounds or the appearance that was presented. I think you have heard sufficiently about that already. But, Mr. Foreman and gentlemen, knowing what they were, the person who is arrested for doing the deed which I have characterized as I have was the youngest daughter of one of the victims themselves. A young woman, thirty-two years of age, up to that time of spotless character and reputation, who had spent her life nearly in that immediate neighborhood, who had moved in and out of that old house for twenty or twenty-one years, living there with her father and with her step-mother and with her sister,---this crime that shocked the whole civilized world, Mr. Foreman and gentlemen, seemed from the very first to be laid at her door by those who represented the government in the investigation of the case.

We shall show you that this young woman, as I have said, had apparently led an honorable, spotless life; she was a member of the church; she was interested in church matters; she was connected with various organizations for charitable work; she was ever ready to help in any good thing, in any good deed; and yet for some reason or other the government in its investigation seemed to fasten the crime upon her.

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Now a crime like this naturally awakens as its first result a sort of selfish fear in men. There is really an outcry of human hearts to have somebody punished for the crime. But, Mr. Foreman and gentlemen, no matter how much you want somebody punished for the crime, it is the guilty and not the innocent that you want. The old law of blood for blood and life for life, Mr. Foreman and gentlemen, even in its strongest form in the past, never, except in barbarous and uncivilized nations, called for the blood of the innocent in return for the blood or life of the murdered one. I know there is---I am told there is---one country at least, one of the great countries of the world, where it has been the practice, in case there is no direct evidence of who the murderer is, to measure the distance to the nearest person at the time when the murder was committed, and if he cannot prove his innocence or make known the guilty party, he is executed, the rules of that country requiring that somebody shall be punished for the crime.

But, Mr. Foreman and gentlemen, that is not the law of Massachusetts today. That

is not the law of this Christian civilization of today. Our law---and it is the law that you have sworn to apply to the evidence in this case,---presumes every man innocent until he is proved guilty, not guilty until he is proved innocent. I know you may say it is the duty of the State to vindicate the death of one of its citizens. Mr. Foreman and gentlemen, it is a higher duty, and one

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recognized by the law of this State, that it shall protect the lives of the living citizens. Perhaps some of you have read the drama of Richelieu, perhaps some of you have seen it played, and you remember that most dramatic scene, when the king, in the exercise of absolute authority, without right or justice, sends to drag the pure and virtuous ward of Richelieu from his arms, how the old Cardinal draws that circle about her, and no man dares to cross it. Just so, Mr. Foreman and gentlemen, the law of Massachusetts today draws about every person accused of this crime or any other the circle of the presumption of his or her innocence, and allows no jurymen or jury to cross it until they have fulfilled the conditions required; until they show that it has been proven beyond a reasonable doubt that he or she is the guilty party, they are not allowed to cross the line and take the life of the party who is accused.

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Mr. Foreman and gentlemen, I say this is a mysterious case. Everybody, every thinking man, must say the same. But you are not sitting there, Mr. Foreman and gentlemen to answer the question how this deed could have been committed, who committed it; that is not the issue at all. The issue is a simple and direct one. The Commonwealth here has charged that Lizzie Andrew Borden, in a certain way, at a certain time, killed Andrew Jackson Borden and Abby Durfee Borden with malice aforethought. And that, and that alone, is the question that you are to answer: did she on that day commit that deed? did she commit it in the way alleged? or, to put it in its other form, have they satisfied you beyond a reasonable doubt that she did it? And what is a reasonable doubt? Well, I saw a definition, and it struck me it was a very good one. A reasonable doubt is a doubt for which you can give a reason. If you can conceive of any other hypothesis that will exclude the guilt of this prisoner and make it possible or probable that somebody else might have done this deed, then you have got a reasonable doubt in your mind.

Now, Mr. Foreman and gentlemen, I want to say a word about the kind of evidence. There are two kinds of evidence, direct evidence and circumstantial evidence. Direct evidence is the testimony of persons who have seen, heard or felt

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the thing or things about which they are testifying. They are telling you something which they have observed or perceived by their senses. For instance if this was a case of murder by stabbing, and a man should come before you and testify that he saw the prisoner strike

the murdered person with a knife, that is direct evidence; that tends directly to connect the prisoner with the crime itself. Circumstantial evidence is entirely different, and I want to say right here, Mr. Foreman and gentlemen,---I call your attention to it now, and I do not think that the Commonwealth will question the statement when I make it---that there is not one particle of direct evidence in this case from beginning to end against Lizzie Andrew Borden. There is not a spot of blood, there is not a weapon that they have connected with her in any way, shape or fashion. They have not had her hand touch it or her eye see it or her ear hear of it. There is not, I say, a particle of direct testimony in the case connecting her with this crime. It is wholly and absolutely circumstantial. Now what do we mean by that? We know, of course, that almost everything occurs under regular and general law, and we know that if certain things exist, certain other things will exist, that is, they follow as a consequence. We know, for instance, that water, if the temperature of the atmosphere falls below a certain degree will transform itself into ice. And so other things in the same way. Now circumstantial evidence consists of certain facts which, if proved true, necessarily cause you to infer that a certain other fact must have followed or existed.

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And in proving a murder it is necessary for the Government to prove that all of the facts existed which to your minds make you certain,---make you morally certain that the murder must have followed from it. In other words, in circumstantial evidence it is simply an opinion on your part, it is simply an inference drawn by you as to the facts that are proved as to whether the essential issue has been proven or not.

Now in certain cases circumstantial evidence may be as sure and certain as direct evidence, in some cases more so because the eye and ear deceive as well as circumstances and events; but, Mr. Foreman and gentlemen, there is no class of evidence known that under certain circumstances is so dangerous and misleading as circumstantial evidence. Our books are filled with cases where the accused has evidently been proven by circumstantial evidence to have committed the crime and subsequent investigations or confessions have shown that he did not. Now to illustrate how certain circumstantial may be and at the same time how uncertain: A man was shot. No evidence whatever connecting the accused party with the crime, no direct evidence, but in extracting the bullet there was drawn from the wound a roll of paper which turned out to be the wadding of the pistol or the gun which fired the bullet, presumably. Upon un-rolling that wad of paper, Mr. Foreman and gentlemen, it was found to be a portion of a piece of paper upon which was printed a song, and in the pocket of the arrested man at the time when he was arrested, was found a

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piece of paper which fitted to that part. Now that made it pretty certain that that man fired that shot, but on the other hand, take this case of circumstantial evidence, which was brought to my attention last August: A man was discovered dead in a car in Jersey City, I think it was, in the morning. Upon the floor of that car was found a piece of cotton cloth

stained with blood, evidences of a struggle. The man was stabbed to the heart. The police investigated. A woman was found who had seen a man run from the car about four o'clock in the morning and take to the woods. A man was found who saw two tramps come in to town on the edge of the evening before. And that was all the evidence they had for some time. Searching parties were organized, they surrounded the woods where the woman saw a man disappear, and the man was found. He was identified by the person who had seen the two tramps the evening before, as one of them. The woman thought he was about the same height and general appearance as the man she had seen run from the car in the morning. Here is the point, Mr. Foreman and gentlemen,---this piece of cotton cloth fitted right into a tear in that man's sleeve. They arrested him, charged him with murder, tried him and convicted him, but as there was evidence of a struggle, the sentence was imprisonment for life. He was convicted of manslaughter. or murder in the second degree,---I have forgotten what it was. That man remained in prison seven years and was pardoned out last August on the confession of

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the man who did the deed.

Now here was the story he told at the trial, which nobody believed. He said he went into that car after trying to find a place to sleep, found the man lying asleep, laid down and went to sleep. In the morning the man awoke, tried to awaken his companion, failed to do so, that he shook him violently and that the man saw that he had covered his sleeve with blood, became frightened, tore the piece from his sleeve and fled to the woods. That was the story at the trial. Nobody believed it, and yet it was the literal truth, Mr. Foreman and gentlemen, and the dying man, who confessed it to his pastor,---the dying man who confessed, told the story of how it happened, and it just fitted into this man's story. This man who had made the confession had also sought the car for a place to sleep, he stepped on this man's face, the man awoke and seized him by the throat, he thought he was about to be strangled and he drew his knife, not expecting to kill him but struck him to the heart at the first blow and he fell dead, and he fled. Nobody had seen him get into the car or come out of it, although it was all surrounded by workshops and people.

Now that shows by these two illustrations the certainty and uncertainty of circumstantial evidence. It seemed impossible to that jury in that last case of which I have spoken that anybody could have committed that murder in that way. Nobody was seen to enter or leave the car. This man was

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there. This man had fled. It was this man's shirt that was blood stained and it seemed absolutely sure he was the man and yet you see the explanation. Nobody could think of any then. Nobody could think of any then, but after it was told to them they could see it, just as Columbus when he discovered America and returned to his native land, people said anybody could do that; all you need do is keep on sailing West and you could not

help striking it. He said, gentlemen, can any of you stand an egg on end? They all tried. And nobody could because it kept rolling about and falling over.

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It kept falling over and over. Finally Columbus took it and set it up hard on the end and it stayed there, and they said "Anybody can do that." "Yes," he said, "after you know how." So with many of these cases of circumstantial evidence, Mr. Foreman and gentlemen. While there may be much mystery attaching to this matter, while it seems to be impossible for you to unravel the mystery, it may be in the future its explanation will be as simple as that furnished in the illustration which I have stated to you when you look back upon this case.

It is not then, as I said before I started upon this long talk about circumstantial evidence, and I hope you will pardon me, for I think it is very important that you get this point in your mind,---it is not for you to unravel the mystery of how he died. It is not for you to withhold your decision until you have satisfied your mind as to how it was done and just who did it. It is, have they furnished the proof, the proof that the law requires, that Lizzie Andrew Borden did it, and that there is absolutely no opportunity for anybody else?

Now, Mr. Foreman and gentlemen, I have taken a little more time than I intended to in discussing the question of circumstantial evidence. I have said that it was necessary for them to prove beyond a reasonable doubt the allegation in the indictment. Circumstantial evidence has often been likened to a chain. These facts which have to be proven in

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order to allow you to draw the inference as to her guilt or innocence have been called links in the chain, and every essential fact, Mr. Foreman and gentlemen, every essential fact in that chain must be proved beyond a reasonable doubt---every one of them. You cannot have it tied together by weak links and strong links. You cannot have certain facts in there which you believe and tie them to some other facts of which you have a reasonable doubt. You cannot put them together. You must throw aside every fact about which you have any reasonable doubt, and unless with the links which you have left you can tie this defendant to the body of Andrew J. Borden and Abby Durfee Borden, you must acquit her. That is the law, and that is the law you have sworn to apply to the evidence.

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Now these facts, and essential facts, I mean, when I say these facts, from which you are to draw your inference as to her guilt or her innocence, might be classed, perhaps, under the four heads of motive, weapon, exclusive opportunity, and conduct and appearance of the defendant.

Now, Mr. Foreman, we contend that, with the evidence that has already appeared in this case, and what will be shown to you, there is absolutely no motive whatever for the commission of this crime by this defendant. They have not a scrap of evidence in the case but that which was given by Mrs. Gifford, and you have heard also the evidence of Bridget Sullivan.

But it may be said that it is not necessary to prove the motive. Somebody killed them; what motive did somebody else have? We cannot tell, Mr. Foreman and gentlemen. One of these persons that is killed is this girl's own father. And while in direct evidence, where the person was seen to kill, where they have been directly connected with the killing, it is of little or no importance whether a motive is shown or not, (if you kill, the law infers a motive, the law infers a motive where direct evidence connects you with the crime), yet where, Mr. Foreman and gentlemen, you want the motive in order to have it as one of the links of the chain which connects the crime with this defendant, it becomes of tremendous importance. Tremendous importance! And we shall show you, if not already shown, that this defendant lived there quietly with her father;

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that the relations between them were the relations that ordinarily exist between parent and daughter. We shall show you by various little things, perhaps, that there was nothing whatever between this father and this daughter that should cause her to do such a wicked, wicked act as this.

And I want to say right here, Mr. Foreman and gentlemen, that the Government's testimony and claim, so far as I have been able to understand it, is that whoever killed Abby Durfee Borden killed Andrew J. Borden; and even if they furnish you with a motive on her part to kill the stepmother they have shown you absolutely none to kill the father. Absolutely none; unless they advance what seems to me the ridiculous proposition that she, instead of leaving the house after killing the mother, waits there an hour or an hour and a half for the express purpose of killing her own father, between whom and herself there is shown not the slightest trouble or disagreement whatsoever. In measuring the question of motive you have got to measure it in this case as applied between the defendant and her father, because, as I understand it, the Government claim that whoever killed one killed both.

Now as to the weapon, Mr. Foreman and gentlemen, I do not know as it is necessary for me to say much about that. The blood that was shown upon the axes, which were guarded so carefully at first in this case, as shown by the evidence, has disappeared like mist in the morning sun. The claw headed hatchet that Dr. Dolan was so sure committed this deed

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at the Fall River hearing, so sure that he could even see the print which the claw head of

the hatchet made in the head of Mr. Borden, has disappeared from the case. And I would like to remark in passing, Mr. Foreman and gentlemen, that it didn't disappear, and the new hatchet didn't appear, until after Prof. Wood had testified so absolutely, on that, to the counsel for the defence, glorious morning in Fall River, that there was not a particle of blood upon either one of those hatchets, and that they could not be cleaned in any reasonable time from blood if they had been used in killing those persons.

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And, Mr. Foreman and gentlemen, I contend that as to the weapon, they have either got to produce the weapon which did the deed, and, having produced it, connect it in some way directly with the prisoner, or else they have got to account in some reasonable way for its disappearance.

Now as to the exclusive opportunity I do not propose to spend very much time farther, Mr. Foreman and gentlemen, in regard to the opening of this case. The attempt has been made here to surround this house, completely close it in. You have seen it; you have seen how it is shut in; you have seen the opportunities that anyone would have to escape through it. You have heard what Mr. Thomas Bowles said about being down in Churchill's yard, with a barn and a well house and a high board fence between him and the Borden yard. You have heard what Miss Collet told you about being down back of the Chagnon house there, and you know how much she could see from there and whether anybody could get by in that north passage or not. You have heard this Frenchman testify that he was over in Crowe's yard, and these other men that were there in Crowe's yard, and you know, because you have been there, that you cannot see a thing in Mr. Borden's yard because there is a six-foot fence between you and that. And, Mr. Foreman and gentlemen, I want to call to your attention right here that there has not been a living soul in all this search and investigation that has been made about the whereabouts and the doings of Mr. Andrew J. Borden

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upon that morning,---there has not been a living soul put on the stand here to testify that they saw Andrew J. Borden come down street from his house. From his house to the Union Savings Bank he has been absolutely invisible. Was it any easier for him to be [unseen] than it would be for somebody escaping from this house if they walked quietly away? But we shall show you, in addition to that, that there were other strange people about that house; people who have not been located or identified. We shall show you that the government's claim about Miss Lizzie's not having been out to the barn is false and that this---well, if it was not for the tremendous importance, I should be tempted to call it cake walk of Officer Medley in the barn, exists in his imagination alone. We shall show you by evidence which I think will convince you,---as we are not bound to convince you, beyond a reasonable doubt, that people were up and around and in that barn and all over it before Officer Medley opened the door. And I think we shall satisfy you that Miss Lizzie did go out to that barn, as she stated in those conversations, and was out there when this deed was committed, so far as Mr. Borden was concerned.

As to the burning of this dress, we shall show you that it did have paint upon it, according to the statement which was made by Miss Lizzie in the testimony of Alice Russell; that it was made sometime in May; that soon after it was made this was got upon it; that the dress was soiled and useless, and that it was burned there right in the broad light of day in the presence of witnesses, with windows open, with

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the inside door open, with officers on every side of that house. We are going to ask you to say, Mr. Foreman and gentlemen, whether you believe that there was anything which satisfies you beyond a reasonable doubt that the burning of that dress proves that she committed this crime. And we shall also introduce evidence to show you that she did not have that dress on on the morning of the murder: that she had on the very dress she says she had on, and the dress that I gave to the officers when they asked for it.

And so, Mr. Foreman and gentlemen, without spending further time, we shall ask you, if you believe this testimony which has been offered, or drawn out, rather, from the government witnesses by the cross examination of the defence, supplemented as it will be by the evidence which I have suggested,---we shall ask you to say in view of the presumptions in favor of human nature, in view of the feelings which exist between a father and a daughter who stand here, so far as the evidence today is concerned, just as every other father and child stood: from the presumption of innocence which the law says you shall consider: from the fact that there is no blood, not a spot upon her hands, her head, her dress, or any part of her, no connection with any weapon whatever shown by any direct evidence in this case: with an opportunity for others to do the deed: with herself in the barn when it was done,---we shall ask you to say, Mr. Foreman and gentlemen, whether the government have satisfied you beyond a reasonable doubt that she did kill not only her

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stepmother, Abby Durfee Borden, but her loved and loving father, Andrew Jackson Borden on the fourth day of August last.

(Mr. Jennings concluded his opening at 28 minutes past eleven.)

MR. JENNINGS. It is understood, your Honors, that these photographs are in. (Referring to small photographs exhibits 24-43 inclusive). They are all marked as exhibits, and Mr. Knowlton simply omitted to mention them in his list.

(Mary A. Durfee was called as the first witness but the officer reported that she was not present. Mr. Jennings then called Martha Chagnon.)

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TESTIMONY FOR THE DEFENCE

MARTHA CHAGNON, Sworn.

Q. (By Mr. Jennings.) What is your name.

A. Martha Chagnon.

Q. And where do you live?

A. On Third Street.

Q. Are you Dr. Chagnon's daughter?

A. Yes, sir.

Q. Is your yard right in the rear of the Borden yard?

A. Yes, sir.

Q. Is there a fence between your yard and the Borden yard in the rear of your house?

A. Yes, sir.

Q. Is there a corner there where there is a dog house?

A. Yes, sir.

Q. (Showing Exhibit 31 to witness.) Will you look at that picture and see if that fairly represents the boundary fence between your yard and the Borden yard, and the dog house?

A. Yes, sir.

Q. The same dog house that is there now, Miss Chagnon?

A. Yes, sir.

Q. Now, will you tell us anything that you heard, about any noise that you heard on the night preceding the Borden murder?

MR. MOODY. Can you not fix the time a little better?

Q. Did you hear a noise that disturbed you on the night before the Borden murder?

A. Yes, sir.

Q. About what time of night was it?

A. About 11 o'clock.

Q. At night?

A. Yes, sir.

Q. And won't you tell what it was, what it sounded like?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment about that.

MASON, C. J. She may describe the noise.

MR. JENNINGS. I supposed the words "sounded like" called for description. I thought she would understand it in the language that I put it.

MASON, C. J. She may give a description of it.

Q. Well, describe the noise. Tell us about it as well as you can?

A. Well, I couldn't describe the noise because I didn't see.

Q. Well, you don't often see a noise, do you?

A. Why, no, sir.

Q. How it sounded to you?

MR. KNOWLTON. Wait a minute. I object to that.

MR. JENNINGS. I beg your Honors' pardon. Perhaps I ought not to ---

MASON, C. J. That is a proper question. It calls for a description of how it sounded.

A. Well, the noise sounded like pounding.

Q. Pounding on what?

A. On wood, on the fence or a board.

Q. Fence or board?

A. Yes, sir.

Q. From what direction did it come?

A. Well, it came from the fence, Borden fence direction.

Q. (Exhibiting photograph.) What fence do you mean, or what part of the fence do you mean?

A. The noise was here (indicating).

Q. Somewhere along the line of that fence?

A. Yes, sir.

Q. How long did it continue, Miss Chagnon?

A. About four or five minutes.

Q. What was the effect upon you?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment.

Q. I withdraw the question. What did you do in consequence of hearing the noise?

MR. KNOWLTON. I pray your Honors' judgment as to that.

MASON, C. J. That may or may not be material. If it were shown that further investigation was made, it would be.

MR. KNOWLTON. If he proposes to show that.

MR. JENNINGS. No, I do not.

MASON, C. J. There is no suggestion of what is expected to show to make it competent.

Q. Did you go outdoors to see what it was?

A. No, sir.

Q. Did you do anything to investigate what the cause of the noise was?

A. No, sir.

Q. Where were you sitting?

A. In the sitting room.

Q. Is that down stairs or up?

A. Down stairs.

Q. Which side of the house is that?

A. Well, it may be the south side of the house.

Q. Is there any room between that and where the noise appeared to be?

A. Yes, sir.

Q. What room is that?

A. The dining-room.

Q. So that the dining-room was between you and where the noise appeared to be?

A. Yes, sir.

Q. Now, where are that fence and dog house located in respect to the dining-room window, what direction from it?

A. You mean what side?

Q. Yes.

A. Well, to the west side.

Q. Did you keep any horse at that time in the barn?

A. No, sir.

Q. Any horse in there of anybody's?

A. No, sir.

Q. Now, was anybody present there at that time besides yourself?

A. Yes, sir.

Q. Who was it?

A. My step-mother.

Q. Did she do anything in consequence of the noise?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment, unless my brother proposes to show under the limitations which your Honor suggested.

Q. Did your mother go to look and see what was the occasion of the noise?

A. Well, I don't remember.

Q. Where was this piazza relative to the room that you were in?

A. On the east side.

Q. East side of the room?

A. Yes, sir.

Q. The south side of the house?

A. Yes, sir.

Q. That is, it was at the southeast corner, was it?

A. Yes, sir.

Q. Can you describe any more accurately the noise except that it was a pounding on boards?

A. No, sir.

Q. Could you see from where you were out into the back part of the yard?

A. No, sir.

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Q. Is there a door between the door you were sitting in and the dining-room to the west?

A. Yes, sir.

Q. Are there windows in the west of the dining room?

A. Yes, sir.

Q. Well, do you mean that you were so far away from the dining-room windows you couldn't see out or that it was too dark to see out? What do you mean?

A. I think it was too dark. The curtains were down.

Q. What is there in the front of your house adjoining the street? Is there any piazza there?

A. There are steps.

Q. Steps, and what else?

A. A concrete walk.

Q. Is it a concrete walk along up the whole space between the fence and the house?

A. Yes, sir.

Q. As to whether or not there is a settee usually kept there for people to sit in?

A. Yes, sir.

Q. Where is that located, do you know?

MR. KNOWLTON. Wait a minute.

Q. Is the settee a movable settee?

A. Yes. You mean a bench?

Q. Yes, a bench.

A. Yes, it is movable.

Q. Were you at the house in the neighborhood of 11 o'clock on the day of the murder?

A. No, sir.

Q. How late were you there on the day of the murder?

A. I came in the evening.

Q. Of the day of the murder?

A. Yes, sir.

Q. Didn't you go away in the morning?

A. Yes, sir.

Q. What time in the morning did you go away?

A. About 8 o'clock, I think.

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Q. Where was the settee then?

MR. KNOWLTON. Wait a moment; I pray your Honors' judgment.

MASON, C. J. She may answer.

Q. Where was the settee then, when you went away?

A. Well, I couldn't say, I didn't notice.

Q. I mean, was it or was it not on the concrete?

A. Yes, it was on the concrete.

Q. You don't know what particular part?

A. No, sir.

CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) You were away all day that day, were you, Miss Chagnon?

A. Yes, sir.

Q. Went off at eight o'clock in the morning?

A. Yes, sir.

Q. Did your step-mother go with you?

A. No, sir.

Q. Where were you gone?

A. Providence-Centreville.

Q. What time did you get home?

A. About six o'clock.

Q. At night?

A. Yes, sir.

Q. Who else was in the room when you heard the noise that you have described besides

yourself?

A. My step-mother.

Q. What is her name?

A. Marianne.

Q. Marianne Chagnon?

A. Yes.

Q. Is she here?

A. Yes.

Q. And she was in the room at the time when you were?

A. Yes, sir.

Q. Do you remember whether the windows in that room were shut or

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open?

A. They were all shut.

Q. Couldn't you speak a little louder?

A. They were all closed.

Q. No window was open, not even the window leading to the piazza?

A. No, sir.

Q. There is a piazza on that side?

A. Yes, sir; on the east side.

Q. And does one of the windows of that room open out on to the piazza?

A. Yes, sir.

Q. And that would be the east window of that room, would it not?

A. Yes, sir.

Q. And how many rooms are there that look out toward the south, one or two?

A. Well, there is one and a half of the other one.

Q. That is, the other window is partly in that room and partly in the room behind it?

A. Yes, sir.

Q. Is that so?

A. Well, I don't mean the same direction. I mean the kitchen and part of the dining room.

Q. How many windows are there to the room that you were sitting in?

A. Three.

Q. And one of them faces to the east, out on to the piazza?

A. Yes, sir.

Q. And the other two face to the south?

A. Yes, sir.

Q. And then there isn't any window which is partly in that room and partly in another?

A. Well, I don't understand that.

Q. Well, I am only repeating your words, if you will allow me

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to say so. Didn't you tell me one of the windows was partly in that room and partly in another? The half of it, you said, in one, and half in another?

A. You mean the dining room?

Q. I mean the room that you were sitting in?

A. Oh, well, no; no, sir.

Q. It is not so; all right. And these windows were all closed?

A. Yes, sir.

Q. And how could you tell the direction from which the sound came?

(No answer)

Q. I won't press an answer to it. Was it anything more than an impression as to how the sound came? Was it only what you thought at the time, that the sound came from that way?

A. Yes, sir.

Q. That is all there was to it, was there?

A. Yes, sir.

Q. That was your impression at the time?

A. Yes, sir.

Q. You wouldn't say positively that the sound was over there, would you?

A. Well, not over the fence, no; but in that direction.

Q. What say?

A. Well, I would say it was in that direction.

Q. Well, you made no conversation other than just your listening to see where it came from, did you?

A. I don't quite understand the question.

Q. You didn't go out of the room at all, did you?

A. No, sir.

Q. And you didn't look out of the window either?

A. No, sir.

Q. You simply heard a noise?

A. Yes, sir.

Q. And it sounded to you as though it came from that way?

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A. Yes, sir.

Q. And for aught that you know it may have come from further to the south?

A. Yes, sir.

Q. And for aught that you could tell by your hearing at that time it might have come from further to the south? Is that so?

A. Yes, sir.

Q. There is an ice house, isn't there, the next house but one to you?

A. Yes, sir.

Q. And where ice carts are kept?

A. Yes, sir.

Q. And the ice carts are kept, do you happen to know, on wooden platforms or something that is wood?

A. I don't know.

Q. You never looked into the yard to see?

A. No, sir.

Q. You never observed whether the ice carts are driven to a place which brings them on a wooden plank floor?

A. No, sir.

Q. Could you say now positively that that sound didn't come from the ice house direction, or wasn't from the ice house?

A. It wasn't from the ice house.

Q. Could you say that it wasn't?

A. Yes, sir; because it wasn't in that direction.

Q. It didn't seem to you to be in that direction?

A. No, sir.

Q. Is that all there is to it, that it didn't seem to be in that direction?

A. I don't know.

Q. Is it anything more than that?

(No answer)

Q. I don't want to embarrass you, of course. Do you mean to say anything more than it didn't seem to be in that direction?

A. No, sir; it didn't come from that direction.

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Q. Could it have come from the ice company's house, their property?

A. No, sir.

Q. Didn't you tell me so? You have testified, have you not?

A. I don't think so.

Q. You have testified before, have you not?

A. You mean for that question?

Q. No, in the case.

A. Oh, yes; yes, sir.

Q. And do you remember this question and answer put by me, page 467: "You didn't know but what it was in the ice house over there where they were dumping ice?" Answer, "No, sir." Do you remember giving that answer?

A. Yes, I remember it.

Q. Was that so?

A. Well, I said I don't think---it didn't come from the ice house.

Q. Didn't you say you didn't know but what it came from there?

A. Well, I don't remember of saying.

Q. Don't you remember of that question?

A. No, sir.

Q. Didn't you just tell me you remembered that question and answer?

A. No, I don't remember.

Q. Didn't you just tell me that you did remember it?

(No answer)

Q. I put the question. Didn't you just tell me that you did remember that question and answer when I read it to you? Do you understand the question I put to you?

A. Yes, sir.

Q. Will you answer it?

(No answer)

MR. KNOWLTON. I won't press it any further if you don't care to answer it.

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Q. Will you say that you did not make that answer to that question that you did not know but what it was in the ice house over there where they were dumping ice, and that you did not answer to that, no sir?

A. Yes, I remember that.

Q. You remember that,---was that true?

A. Yes, sir.

Q. So that you don't know but what it was in the ice house over there?

A. No, I saw it was not in the ice yard.

Q. Now what do you mean to say? I won't press that any further. Was there a dog on your premises?

A. Yes, sir.

Q. Where was the dog?

A. On the piazza.

Q. What kind of a dog was it?

A. Well, I think a Newfoundland dog.

Q. Right on the piazza, right outside of that window?

A. Yes, sir.

Q. Did he leave the piazza?

A. No, sir.

Q. No time while that noise was going on?

A. No, sir.

Q. (By Mr. Jennings.) Did you or your father notify a police officer that night?

MR. KNOWLTON. Wait a moment. I pray your Honors' judgment.

MR. JENNINGS. It is a question I omitted to ask.

MR. KNOWLTON. I do not object on that ground. Your Honors do not understand me to object on that ground.

MARIENNE CHAGNON, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Marianne Chagnon.

Q. You are the wife of Dr. Chagnon?

A. Yes, sir.

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Q. And live on Third Street, Fall River?

A. Yes, sir.

Q. Your house is right in the rear of the Borden house?

A. Yes, sir.

Q. Do you remember last August that there was a murder committed in the Borden house?

A. Yes, sir.

Q. Now where were you the evening before the murder?

A. At home.

Q. Did anything happen which attracted your attention about eleven o'clock in the evening on the night before that murder?

A. Yes, sir, some noise.

Q. Will you describe the noise as well as you can?

A. Describe the noise? Why, it was like the sound of steps on wood, on a wood sidewalk, on a wood sidewalk, or on a fence.

Q. Like steps on a wood sidewalk or fence?

A. Yes, sir, fence.

Q. Is there a fence between your house and the Borden yard?

A. Yes, sir, the fence is between our yard and the Borden yard.

Q. Is there a dog house there?

A. Yes, sir.

Q. At the corner?

A. Yes, sir.

Q. Does that picture (exhibit 31) represent the condition of things that existed in regard to that fence on the evening you speak of?

A. Yes, sir, exactly.

Q. Where were you, Mrs. Chagnon, at that time?

A. At this time? I was lying on a sofa in the sitting room.

Q. Can you speak a little louder?

A. I was lying on the sofa in the sitting room.

Q. Which side of the house is that,---north, south, east or west?

A. The room is on the south side.

Q. On the south side of the house?

A. Yes, sir.

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Q. Does that (exhibit 32) represent the house?

A. Yes, sir.

MR. JENNINGS. That does not seem to be marked. (Marked by the reporter in ink, ex. 32).

MR. KNOWLTON. No, I have not seen it.

Q. Now, will you point out where the sitting room is upon that picture?

A. Yes, sir. (Showing).

Q. There?

A. Yes, sir.

Q. And what is directly in the rear of the sitting room?

A. The dining room, sir.

Q. The window that you pointed out was the window of the sitting room?

A. Yes, sir.

Q. The window of the sitting room?

A. Yes, sir, the sitting room.

Q. And the open piazza,---is that just to the east of the sitting room?

A. Yes, sir.

Q. Now where is that fence and dog house that I called your attention to, relative to the dining room windows?

A. In the yard,---in the back yard.

Q. Is it in the rear of the dining room window?

A. Yes, sir, in the rear yard,---of the dining room window.

MR. JENNINGS. I withdraw it.

MR. KNOWLTON. It's too late to correct the error.

Q. Can you tell the direction of the dog house from the dining room windows, north, south, east or west?

A. It was on the south side of the yard, of the back yard, near the fence.

Q. Near the fence?

A. Yes.

Q. Near what fence?

A. The Borden house.

Q. Near a corner?

A. Yes, sir, just near a corner.

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Q. Well now, can you tell where the dining room windows are relative to that dog house? Can you tell anything about it? (Using plan).

A. Is that the dining room?

Q. Is that the ell of the house?

A. Yes, here is the window of the dining room.

Q. Now where is the dog house?

A. Here. (Showing on plan).

Q. Right at that corner?

A. Yes, sir.

MR. JENNINGS. (To the jury) Here are the dining room windows, (showing on plan) and here is the dog house, right at the corner.

Q. Can you give us any idea of the direction from which the noise seemed to come relative to that dog house?

A. I don't understand.

Q. From what direction did the noise seem to you to come?

MR. KNOWLTON. If she can tell.

MR. JENNINGS. If you will pardon me, I don't think---

MR. KNOWLTON. I object to that question unless that is put in.

MASON, C. J. The witness may go on.

A. I heard the noise coming from the back yard.

Q. By the back yard, what portion of the back yard do you mean?

A. Near the window of the dining room.

Q. Can you locate it at all as to that fence or dog house? Can you tell whether or not it came from the direction of that fence or dog house?

A. Because it is very near.

Q. Can you tell whether or not it did come from that direction?

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A. I cannot tell. We heard that noise and we thought---

MR. KNOWLTON. Wait a moment.

MASON, C. J. Proceed with the answer.

MR. JENNINGS. Go on, Mrs. Chagnon.

A. We heard that noise, and we thought that noise would be---I don't speak very well--- would be the same on the fence as on a wood sidewalk. I can tell better---

MR. KNOWLTON. I will take your Honors judgment on that?

MASON, C. J. I think it may stand.

Q. Is there a short piece of fence going from the dog house towards the house?

A. Yes, sir.

Q. Well now, which do you refer to as the back yard?

A. To which do I refer? I don't understand.

Q. I mean which had you referred to as the back yard,---on which side of the fence, running from the corner up to the house?

A. It is not easy to tell.

Q. You understand the piece of fence running from the dog house down towards the house?

A. Yes.

Q. Now looking from the house, do you call the back yard the portion of the yard on the right hand side or the left hand side?

A. The left hand.

Q. Which way are you looking?

A. From the dining room.

Q. You call the back of the yard the one on the left hand side of that fence, over there where the trees are?

A. Yes, sir, the left.

Q. What do you call that part on the right hand side of the fence?

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A. The barn that Mrs. Kirby has,---that is in the orchard.

Q. I don't think you quite understand me. Your yard runs from Mrs. Kirby's, doesn't it?

A. Yes, sir.

Q. And goes down to Crowe's barn?

A. Yes, sir.

Q. Well now, is not that divided by a fence which runs from where the dog house is, towards your house?

A. Yes, sir, it is divided.

Q. Now, from which side of that fence did this noise appear to come,---that fence in your yard, on the side towards Mrs. Kirby, or towards Crowe's?

A. Yes, on the side of our fence, not on Mrs. Kirby's side.

Q. I do not mean on the fence between you and Mrs. Kirby. I do not mean that fence at all. What do you call that portion of your yard where the barn is?

A. Barn,---our barn or Mr. Crowe's barn?

Q. Is not there any barn in your yard?

A. Yes, sir,---but there is no fence near the yard.

Q. There is a yard, or part of it near the barn?

A. Yes, sir.

Q. What do you call that,---front or back?

A. Back yard.

Q. You do call it back yard?

A. Yes, sir.

Q. And what do you call that part of your yard where all the trees are?

A. We call it orchard.

Q. You don't call that front or back yard either?

A. No, sir.

Q. You call the back yard that part where the barn is?

A. Yes, sir.

Q. Is the barn near the dog house?

A. Not very near; there is a larger space.

Q. Is the barn in the same portion of the yard as the dog house is, or is it near the orchard?

A. I do not understand.

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Q. Is there any fence between the orchard and the back yard?

A. Yes, sir, there is a fence between the yard and the barn---Mr. Borden's barn.

Q. What say?

A. There is a fence in the back yard between the barns and Mr. Borden's barn.

Q. Running from the end of Mr. Borden's fence?

A. Yes, sir.

Q. Towards your house?

A. Yes, sir, to our barn. In the back yard there is a fence.

Q. But isn't there a little fence running from the corner of Mr. Borden's yard towards your house?

A. Yes, sir.

Q. And towards the plank walk?

A. Yes, sir.

Q. Now I want you to keep your mind right on that fence if you can. Which side of that fence do you call your back yard? The short fence that runs from the corner of Mr. Borden's fence towards your house.

A. Yes, sir, there is a short fence between Mr. Borden's yard and our house.

Q. Now as you stand and look out of your dining room window, which side of that fence do you call the back yard, the side to the right of it or the side to the left of it?

A. I can't tell.

Q. Don't you understand very well what I mean?

A. I understand, but I tell you---as I tell you, I heard the noise like it was a step on the fence---

Q. No, no, I don't care anything about the noise now; I want to know what you call your back yard?

A. The back yard?

Q. Yes.

A. By the back yards I understand the yards behind the house.

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Q. Not the orchard?

A. No, not the orchard at all.

Q. Well, that is what I want to get at. Now I will ask you whether you heard the noise in the back yard or from the orchard?

A. I don't know any noise from the orchard,---only from the back yards of the house.

Q. How long did it continue? How long did it last?

A. About five minutes, with space between the noise.

Q. What do you mean by that? Did it cease and begin again?

A. We heard some noise, and after---we wait, and we heard noise again.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) You did not go out of the room, did you, Mrs. Chagnon?

A. What is it, sir?

Q. You did not go out of the room where you were?

A. No, sir. I come just in the door of the sitting room to hear the noise at all.

Q. Did you say that the--- Was there much of an interval between the two parts of the noise?

A. What, sir?

Q. Much of a space between the two noises?

A. There is two or three minutes.

Q. Two or three minutes between the noises?

A. Yes, sir.

Q. And did you think it was a dog?

A. I tell to my daughter, because I don't wonder that she was afraid---

Q. I beg your pardon, I don't ask what you said. I asked you if you thought it was the sound of a dog.

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MR. JENNINGS. I object.

A. Not directly: not directly.

Q. Did you think it was the sound of a dog?

MR. JENNINGS. Well, I object, your Honors.

MR. KNOWLTON. Wait a moment, madam. I thought that had been ruled on.

MASON, C. J. The question may be answered.

Q. When you heard it, didn't you think it was the sound of a dog?

A. No, sir.

Q. Did you have that idea at all?

A. In the beginning I have the idea, but---

MR. KNOWLTON. That is all I want to know.

MR. JENNINGS. You did not let her finish.

MR. ROBINSON. I suppose she has a right to give her answer, the whole of it.

MR. KNOWLTON. Not if she is going to state conversation.

MR. ROBINSON. No, you asked her what she thought.

Q. If you want to add anything to the answer that is not the talk you had with your daughter, you may.

A. Will you repeat what you said? I don't understand.

Q. I am requested to let you complete any answer that you wanted to make. I don't want to interrupt you. Have you anything more that you want to say?

A. No, sir,

Q. Did the dogs sometimes come into your yard?

A. Sometimes: I have seen them.

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Q. Did you have an ash barrel out in your yard?

A. Yes, sir.

Q. Did that ash barrel contain bones sometimes?

A. Sometimes.

Q. And didn't dogs sometimes come to that ash barrel?

A. Sometimes, yes, sir.

Q. Did the noise sound to you like pounding?

A. What is it?

Q. Did the noise sound to you like pounding?

A. Like---?

Q. Pounding?

A. I don't understand that expression.

Q. Pounding?

A. No, sir.

Q. Don't you understand what pounding is?

A. Pounding?

Q. Yes.

A. No, sir.

Q. What?

A. No, I don't understand it.

Q. Don't know that word?

A. No, sir, pounding.

Q. All right; I can't put the question. You don't understand the word pounding?

A. No, sir.

Q. To pound.

A. Pounding?

Q. Yes.

A. No, sir.

Q. All right. Do you remember of seeing the dogs there at that ash barrel at any time afterwards?

A. We have since seen some dogs sometimes taking some bones in the barrels.

Q. And do you remember of your husband pounding that dog one time--- (correcting himself) or moving that ash barrel at one time?

A. I don't understand.

Q. What?

A. I don't understand.

Q. Do you remember of Mr. Harrington, the officer, being there one day?

A. Yes, sir.

Q. And your husband made a noise with that barrel?

A. Yes, sir.

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Q. And didn't you say that that sounded like the noise that you heard?

A. Yes, sir, but---

MR. KNOWLTON. I beg your pardon.

THE WITNESS. Yes, sir, but---

MR. KNOWLTON. I beg your pardon. You had not finished.

THE WITNESS. But it was not in the same direction.

Q. It was not in the same direction?

A. No, sir.

Q. But it sounded like the noise that you heard?

A. Yes, sir.

Q. Didn't you say that that was the noise you heard?

A. It was the same noise but I tell to my husband it isn't in the same direction.

Q. But it was the noise that you heard?

A. Yes, sir.

Q. When your husband shook---what did your husband do to the ash barrel that made it?

A. Nearly the noise, about the noise.

Q. Well, you said it was the noise, didn't you?

A. About that.

Q. What?

A. About that.

Q. Where was your ash barrel that night?

A. At night in the barn.

Q. In the barn?

A. In the barn, yes, sir.

Q. And that is right out of the back yard?

A. In the back yard, yes, sir.

Q. Was the ash barrel in the yard or in the barn?

A. In the barn: it was in the barn that time.

Q. It was, and the barn is in the back yard?

A. Yes, sir.

Q. And that was the noise---you said that that was the noise you

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heard when your husband did something to the ash barrel?

A. I said it was about that noise.

Q. didn't you say that was the noise you heard?

A. I don't know. Perhaps I will tell it about that noise.

Q. didn't you say that that was the noise you heard?

A. Perhaps it was the same noise, but it was not in the same direction.

Q. Yes, but didn't you say that was the same noise you heard?

A. I don't remember, sir.

Q. What was it your husband did to the ash barrel that made you say that?

A. What is that?

Q. What did your husband do to the ash barrel that made a noise that made you say that?

A. Take the ash barrel and---

Q. Roll it?

A. He strike the barrel near the---the little barn, and he said, "is it not that noise that you heard?" I tell, "yes, perhaps it is so, but it seems to me it was not in this same direction."

Q. What did he strike the barrel with, his hand?

A. With his hands.

Q. With his hand?

A. Yes, sir.

Q. And when he struck the barrel with his hand, it seemed like the same noise that you heard?

A. Yes, because it sounds on the wood like that, (Tapping on the rail of the witness stand).

Q. But it didn't seem to you like the direction in which you heard it?

A. No, sir.

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RE-DIRECT EXAMINATION.

Q. (By Mr. Jennings.) Your barn, Mrs. Chagnon---is that right next to the Kirby yard?

A. Yes, sir.

Q. (Showing plan to witness). Here is your house here: or if you will step down here in front of the jury, will you point out to the jury your barn? This is your house?

A. Yes, sir.

Q. Now tell us where the dog house was?

A. Here (pointing).

Q. And is Kirby's house next to it?

A. Yes, sir.

Q. And you say that the sound did not appear to come from the direction of the barn?

A. No, sir, the sound appeared to come from here.

Q. Right back in there?

A. Yes, sir.

MR. JENNINGS. If your Honors will allow me to call a witness out of order, it will accommodate him. Mr. Grouard may take the stand.

JOHN W. GROUARD, Sworn.

MR. KNOWLTON. Before you begin, Mr. Jennings,---I have nothing to say; it was an inadvertence; this witness has been in the Court room. I hope it is understood that your witnesses will not remain in the Court room. I do not object in this particular case. We have been very particular to try and keep ours out.

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MR. JENNINGS. We appreciate your effort. Mistakes will be made, you know.

MR. KNOWLTON. Yes, we made one this morning.

MR. JENNINGS. Yes, you made one this morning. We are just as human and make just as many mistakes as you. If in some way notice can be given by the clerk, calling attention to the order that any witnesses that are to testify shall stay out until they are to testify, we shall be very glad. We have no intention to have them here.

THE CLERK. All witnesses who have been summoned by the defence in this cause will retire from the room and remain out of the room until they shall be called to testify, except those that were heretofore excepted.

(The examination of the witness then proceeded).

Q. (By Mr. Jennings.) What is your full name, sir?

A. John W. Grouard.

Q. What is your occupation?

A. Painter.

Q. Did you paint the house of Andrew J. Borden, 92 Second St., some time?

A. Yes, sir.

Q. When did you paint it last?

A. In May, a year ago.

Q. 1892?

A. Yes, sir.

Q. Can you tell when you took the paint up there, Mr. Grouard?

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A. Yes, sir.

Q. When was it?

A. The ninth day of May.

Q. Did you see Miss Lizzie Borden there on or about that time?

A. Not that day.

Q. When did you see her, if at all, after you got the paint up there?

A. Next morning early.

Q. Where was that?

A. In the back yard, near the barn.

Q. Where was your paint?

A. In the barn.

Q. What was it in?

A. Tubs, pots, etc.

Q. Now won't you tell what was done by you and she at that time in regard to paint?

A. The color was not satisfactory that we had mixed in the tub, and so I made the color to suit,---to suit her.

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Q. Well, what did she do? State whether or not she was about the premises where the paint was?

A. Oh, yes, she was, and I mixed the colors to get a satisfactory color. Of course, I mixed the color in the large tub.

Q. Will you state what part of the barn the tubs of paint were in?

A. Well, near the door.

Q. The front door or side door?

A. The south door.

Q. And was she during any portion of that time in the immediate vicinity of those tubs or not?

A. I think she was.

Q. Did you paint the house?

A. We did.

Q. How soon after that?

A. The next morning, of the 10th.

Q. Was that outside or inside?

A. Outside.

Q. What was the color of the paint?

A. Kind of dark drab.

Q. The same that is now upon it?

A. The same color, yes, sir.

Q. Was that the last time it was painted, so far as you know?

A. Yes, sir.

Q. What was the trimmings? Was there any difference in the color of the trimmings?

A. A little darker.

Q. Do you remember whether or not any tests were made from time to time by you and her in regard to the appearance of the paint when you were mixing it?

A. Well, the paint was carried there on the afternoon of the 9th and her father said that she was to select the color, and I better not go on with it until the color was determined, and she not being present, it was delayed until the next morning. That evening she came to my house and said the color was not just what she wanted.

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MR. KNOWLTON. You are not to state the conversation.

Q. She came to your house. In consequence of what she said to you was an appointment made for the next morning?

A. The next morning early before the men came to go to work, that was about six o'clock in the morning---

Q. That is the time that you have told us about?

A. Yes, sir,---and I mixed the colors then satisfactorily.

Q. She was there at that time?

A. Yes, sir.

Q. You painted the steps and everything connected with the house, I presume?

A. Yes, sir.

Q. The well-house and fence, everything?

A. Yes, sir.

CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) Where were the paints in the barn, near the door or in the stall?

A. Well, probably partially---there was two tubs, one dark and one light color.

Q. Well, you don't remember whether they were in the stall or not?

A. Well, one color may have been, but one color was near the door.

Q. You did all the mixing?

A. Yes, sir.

Q. Who else besides you did it?

A. Well, I directed the mixing of it.

Q. Well, either you or some of your men did all of the mixing?

A. Yes, sir.

Q. Well, she looked on and saw it done?

A. Yes, sir.

Q. (By Mr. Jennings.) After it was mixed did you take it out and try it on the house?

A. Yes, sir, on the corner of the house near the back steps.

Q. In consultation with her?

A. Yes, sir.

Q. So as to show how it appeared on the house?

A. Yes, sir.

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MARY A. DURFEE, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Mary A. Durfee.

Q. Where do you live, Mrs. Durfee?

A. Mr. Clark's house, 124 Second Street.

Q. Did you know Andrew J. Borden when he was alive?

A. Yes, sir.

Q. Do you know where his house is or was upon Second Street?

A. Yes, sir.

Q. Are you familiar with the premises?

A. Yes, sir.

Q. I call your attention to a time when you saw a man there upon the steps talking with him. Do you recall a time when you saw a man upon the steps talking with him?

A. Yes, sir.

Q. When was it?

A. Well, it was some time before the murder.

Q. Was anything in the nature of a threat---

MR. KNOWLTON. I beg your pardon; wait. Won't you fix the time more perfectly.

Q. Can you tell any nearer than that, Mrs. Durfee?

A. Well, no, I cannot; it was before Thanksgiving, I know.

Q. Before the previous Thanksgiving?

A. Yes.

MR. KNOWLTON. If your Honors please, I desire to object to the evidence. We have been very careful not to expose the nature of any evidence and I do not suppose our friends want to either. I am aware of the nature of the evidence. I might ask counsel whether they expect to connect this in any way, any further than this circumstance would of itself

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connect it?

MR. ROBINSON. Not at present. We will not discuss that just now, at this time, I mean.

MR. KNOWLTON. Well, it might have to do with the admission of the evidence.

MASON, C. J. Perhaps counsel can fix the time a little more accurately.

Q. How near Thanksgiving would you say this was, Mrs. Durfee?

A. Well, I couldn't say; I couldn't say that.

Q. Well, do you locate it as about Thanksgiving time, is that what you mean?

A. Well, I lost my sister, and I know it happened after my sister died, and she died the 27th of October, I believe. The 27th of October she died. And what I heard I heard before then, because I went home and told it.

Q. How long before that?

A. Well, I couldn't say, because it didn't trouble me any, or I didn't---

Q. Well, is that the time that you fix it by?

A. Yes, I was going for medicine for her, and as I was coming home---

MR. KNOWLTON. I beg your pardon. And may I ask a question, your Honor, as to that subject?

Q. (By Mr. Knowlton.) Didn't you tell me that it was two months before your sister died, you thought?

A. No, I don't know as I did, because I couldn't.

Q. Well, don't you think it was about two months before your sister died?

A. Well, it couldn't be any more.

Q. Well, don't you think it was about that?

A. Well, my sister

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was taken to her bed the second time.

Q. And don't you think it was about two months?

A. Well, it wasn't any more.

Q. (By Mr. Jennings.) Well, do you think it was as much as two months?

A. Well, I shouldn't judge it was. I didn't put the day or the date down.

MASON, C. J. It seems to the Court too remote, and it is excluded.

MR. JENNINGS. I would like to put it in proper form, your Honor. I don't know that it is quite subject to exception, but I would like to save the right if it is. I have it stated here; I do not care to read it aloud.

The defence offered to prove that witness saw Mr. Borden standing in door talking with a man; heard angry words; heard the man say to Mr. Borden, "You have cheated me and I'll fix you for it."

This was objected to by counsel for the Government and was excluded by the Court, to which ruling the defendant excepted.

CHARLES N. GIFFORD, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Charles N. Gifford.

Q. What is your business?

A. C. E. Macomber and Co., clothing store.

Q. Where do you live?

A. 29 Third Street.

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Q. Is that the house next north of Dr. Chagnon's?

A. It is.

Q. Whose house is it?

A. Well, it belongs to the heirs of George Johnson, I think.

Q. Who lives there?

A. Uriah Kirby.

Q. Does that represent the house? (Ex. 42.)

A. It does.

Q. Were you there at the house about eleven o'clock the night before the murder?

A. I was.

Q. Did you see any man about there at that time?

A. Yes, sir; I saw a man on the steps.

Q. What steps?

A. Those steps leading into the yard, right here.

Q. Right on those front steps?

A. No, here are the front steps here.

Q. Oh, yes. The side steps?

A. Yes, sir.

Q. Will you step down here to the jury and see if I get this right? The side steps there, you mean?

A. Yes, sir.

Q. Where that gate is?

A. Yes, sir.

Q. Now won't you describe the man and tell what took place?

MR. KNOWLTON. Just a moment. Won't you divide that question, Mr. Jennings?

Q. Well, will you describe the man?

A. The man, I should judge, a man that would weigh between a hundred and eighty to ninety pounds, and he sat there on the steps apparently asleep, with a straw hat pulled over his face, and I took hold of his arm and shook him, and in shaking him his hat

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fell off onto the sidewalk, and then I lit a match and held it up in front of his face to see if I knew who it was, and found that I didn't, and I went into the house and left the hat on the sidewalk. A few minutes afterwards Mr. Kirby came by---

MR. KNOWLTON. Wait a minute.

Q. Well, now, you needn't tell unless you saw it?

A. Well, I heard it, I didn't see it.

Q. Well, wait a minute before we get through with that. Did you notice any smell of liquor about him?

A. I did not.

Q. Did you try to see whether you could smell any liquor about him?

A. Yes, sir.

Q. Did you get any response from him whatever?

A. None whatever.

Q. Well, now, tell us what you heard afterwards in regard to that man and Mr. Kirby?

MR. KNOWLTON. Do you now inquire for conversation?

MR. JENNINGS. No, I will withdraw that question.

Q. Did you see anything take place between Mr. Kirby and the man?

A. I did not.

Q. What time of night do you say this was?

A. It was in the vicinity of eleven o'clock.

Q. Did you ever see the man before?

A. Not to my knowledge.

Q. Or since?

A. No, sir.

Q. You know most of the people living around in that vicinity?

A. I would be pretty apt to.

Q. How long have you lived there?

A. Well, with the exception

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of 12 years I have lived there about 31.

Q. In that same house?

A. Yes, sir.

Q. That was your father's house, wasn't it?

A. Yes, sir.

Q. And how long have you lived there this last time?

A. A year ago last month.

Q. You say it is nobody that you know of that lives in that vicinity?

A. No, sir.

Q. Do you know what became of that man?

A. I do not.

Q. Was any noise that you heard take place out there outside of conversation?

A. Nothing outside of conversation. Well, there wasn't any conversation only what I heard Mr. Kirby say.

Q. Oh, well, we don't want that. How long was it after you went in before Mr. Kirby came in?

A. A very few minutes.

Q. And where did the hat go when it fell off the man?

A. On to the sidewalk.

Q. Can you tell what steps he was sitting on, whether the lower steps or upper steps?

A. Well, as near as I could recollect, it was the third one.

Q. Can you tell by this photograph?

A. I should say it was this step here.

Q. That third step?
A. I should say it was.

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CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) Is there a gate at the head of those steps?
A. Yes, sir.

Q. Outside of the gate?
A. Out side of the gate the man was.

Q. On the street side of the gate?
A. Yes, sir.

MR. JENNINGS. I do not think there is any misunderstanding about this, that it was the sidewalk of the street, and not leading up to the house.

MR. KNOWLTON. I do not see how there can be.

URIAH KIRBY, Sworn.

Q. (By Mr. Jennings) What is your name?
A. Uriah Kirby.

Q. Where do you live?
A. Fall River.

Q. What street?
A. Third.

Q. The house next north of Dr. Chagnon's house?
A. Yes, sir.

Q. Were you living there on the 4th day of August last?
A. Yes, sir.

Q. And the 3rd day of August?
A. Yes, sir.

Q. The 3rd day of August was the day before the murder of Mr. Borden was it?
A. Yes, sir.

Q. Now, did you notice any man about your premises the night before the murder?

A. When I went home that night about 11 o'clock there was a man sitting on the steps, four stone steps leading from the sidewalk which reaches up into the yard.

Q. What did you do to him, if anything? What took place?

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A. Well, sir, I looked at him.

MR. KNOWLTON. Pardon me. Did you ask him what was said?

MR. JENNINGS. No.

Q. I don't ask what was said at all; just what was done there.

A. In the first place, I looked at him---

MR. KNOWLTON. Will you caution the witness not to say anything that was said.

MR. JENNINGS. They do not want you to tell any talk that you had.

Q. Did you have any talk with him?

A. Well,---

Q. I only ask you the question, not what it was,---did you have any talk with him?

A. I spoke to him.

Q. You need not say what it was. Did he speak to you?

A. No, sir.

Q. Now then, begin and tell us what took place there.

A. Well, sir, he was sitting, and, as I said before, I spoke to him, hollered out to him or spoke loud; no reply; sat there dormant, as it were, in about the middle step, I should think, either the second or third. There was four steps in all, and he was back in this form, laid back against the side of a little fence that ran there, with his hat pulled down nearly over his eyes, and sitting there very quietly; didn't seem to move at all; paid no attention to my voice. Then I put my hand on his hat on top of his head, and shook him in this form, and spoke again to him; no reply.

Q. Well, is that all that took place?

A. That is all that took place. I left him there; went into my house; considered

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him to be a man that was---

MR. KNOWLTON. I beg your pardon, sir.

Q. Did you take hold of him on any other portion of the body except the hat?

A. No, sir.

Q. Do you recollect what sort of hat he had on?

A. It was dark. I couldn't tell, no, sir, only it was a dark hat.

Q. Do you know whether he had any signs of liquor about him?

A. Didn't smell anything.

Q. He said nothing?

A. He said nothing.

Q. Did nothing?

A. Did nothing; couldn't seem to arouse him.

Q. Did you see Mr. Charles Gifford after you got in?

A. No, sir. He had retired; gone up to his room.

Q. (Showing photograph Exhibit 42.) Does that represent your house?

A. Yes, sir.

Q. Won't you step down and point out to the jury just where you saw that man sitting?

A. (The witness stepped in front of the jury.) There is the four steps, and I can't be positive---

Q. You need not tell them anything about it.

A. He was leaning up here.

Q. Where was he?

A. In here.

(The witness returned to the witness-stand.)

MR. KNOWLTON. Is that the same place the other witness pointed out?

MR. JENNINGS. Just the same.

MR. KNOWLTON. Why do you need to dwell on it?

MR. JENNINGS. I thought you were objecting to his statements

he was making.

MR. KNOWLTON. I do not know what they were. He did not tell them anything very definite.

Q. How far are those steps, Mr. Kirby, from the driveway of Dr. Chagnon's yard?

A. I can't be positive; some 15 to 17 feet perhaps.

Q. Just south, that is, the driveway was just south of the steps?

A. Yes, sir.

Q. (By Mr. Knowlton.) You said it was the night before?

A. Yes, sir.

MARK P. CHASE, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Mark P. Chase.

Q. What is your occupation?

A. Hostler, sir.

Q. Formerly on the police force?

A. Yes, sir.

Q. What was your position there?

A. Patrolman.

Q. Where is your place of business, Mr. Chase?

A. Right opposite Mr. Kelly's.

Q. On Second street?

A. On Second street.

Q. What is it?

A. Barn, New York & Boston Express barn.

Q. You have charge of it?

A. I do, yes, sir.

Q. (Showing witness a photograph Exhibit 35.) Can you indicate on that picture where it is?

A. Right here, sir.

Q. Where that open door is?

A. Yes, sir.

Q. Is that the Kelly house directly opposite it?

A. Yes, right opposite.

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Q. Were you at that barn the morning that Mr. Andrew J. Borden was murdered?

A. I was, sir.

Q. Were you there all the morning?

A. I was, sir.

Q. There at 11 o'clock?

A. At 11 o'clock.

Q. Well, about at 11 o'clock?

A. About 11 o'clock. I was there all the forenoon.

Q. Now, about 11 o'clock did you see any carriage or person in the immediate vicinity of the Andrew J. Borden house on Second street?

A. I did, sir.

Q. Tell us what it was or who it was?

A. I can't tell you who it was.

Q. Well, sir, where was it?

A. It was standing right by a tree right front of Mr. Borden's fence.

Q. What was it?

A. And open buggy, box buggy. It was a high top seat, high back.

Q. Anybody in it?

A. Yes, sir.

Q. What?

A. A man with a brown hat and black coat. He was back to me.

Q. Do you know who he was?

A. I can't tell.

Q. Did you ever see him before?

A. No, sir.

Q. Do you know what he was doing?

A. He was sitting in the carriage.

Q. Do you know when he went away?

A. No, sir, I couldn't tell.

Q. And as near as you can fix it, what was the time that you saw him there?

A. I should say it was about five to ten minutes of eleven.

Q. Did you ever see such a buggy as that around there before?

A. I never did, no, sir.

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Q. Did you ever see that man around there before?

A. No, sir, not to notice him.

Q. Did you inform the police of this about the time of the murder?

MR. KNOWLTON. Wait a minute.

MASON, C. J. I do not see how it is competent.

Noon recess.

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Afternoon Session.

MARK P. CHASE, Resumed.

Q. (By Mr. Jennings.) Where do you live, Mr. Chase?

A. 8 Rodman Street.

Q. Did you live there at the time of the murder?

A. No, sir.

Q. Where did you live at the time of the murder?

A. Boarded at the St. James and had a room in Mrs. Chase's.

Q. Where is that?

A. Over Wade's grocery store.

Q. Across the street from your stable?

A. On the same street, yes, sir.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) The place where you were standing was north or south of the Borden house?

A. South of the Borden house.

Q. Further up the hill?

A. Yes, sir.

Q. Pretty near up to the corner of Spring street?

A. Very near.

Q. On the same side or the opposite side of Second street?

A. On the opposite side to the Borden house.

Q. How long had you been around there?

A. All forenoon.

Q. When was your attention first directed to this team?

A. It was directed to it five or ten minutes to eleven.

Q. What?

A. Five or ten minutes to eleven.

Q. You had not seen it before that time?

A. No, sir.

Q. Have you been where you could have seen it before that time?

A. No, sir.

Q. Whether it had been there any length of time, you don't know?

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A. No, sir.

Q. What position did you have?

A. I was going over to Mr. Wade's to cut a pad for [a] horse's back and I cast my eyes around and saw it.

Q. Did you stop to look at it?

A. No, sir.

Q. When you went across the street, you looked at it on your way to Wade's?

A. Yes, sir.

Q. That is a grocery store?

A. Yes, sir.

Q. That is also further up the hill?

A. Yes, sir.

Q. Wade's store in on the corner of Spring street?

A. No, sir.

Q. That is next to Kirby's?

A. No, sir, next to Dr. Kelly's.

Q. You went in there?

A. I did, on the curbing.

Q. And did not look around to see about this team any more?

A. No, sir.

Q. The team was descending on the north?

A. Yes, sir.

Q. How many times did you see the team?

A. I saw it once, sir.

Q. And that was when crossing the street?

A. Yes, sir.

Q. Did you stop to look at it?

A. No, sir, just glanced at it.

Q. Could you tell what the position of the team was with reference to the Kelly house?

A. Whether it was below or above?

Q. Yes.

A. It was below Dr. Kelly's house, right next to the tree that stands in front of Mr. Borden's fence, his property.

Q. Is it a tree somewhere near the boundary of the two places?

A. Yes, sir.

Q. Will you point out the tree? (Referring to plan)

A. There is

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the tree, sir, right there.

MR. KNOWLTON. That tree is pretty near the boundary of the two places, is it?

A. Yes, sir.

(Mr. Knowlton showed the positions to the Jury).

Q. That tree is further down hill than you were?

A. Yes, sir.

Q. I have to use that expression, as I am not very clear about the points of the compass. Was the head of the horse towards that tree?

A. It was, sir.

Q. That is, the body of the wagon was nearer you than the tree?

A. Yes, sir.

Q. And no part of the horse was by that tree, was it?

A. No, sir.

Q. It was all to the south of the tree?

A. South of the tree.

Q. The horse facing down hill?

A. Yes, sir.

Q. Near the curbing?

A. Yes, sir.

Q. So that no part of the team was in front of the Borden property?

A. That I could not say, whether it was---the tree is just below the boundary of the Kelly house.

Q. Ain't it just about on the boundary?

A. I think a little below.

Q. Is it more than a foot below?

A. Yes, sir, I should judge six or seven feet below.

Q. Six or seven feet below the boundary, you judge then?

A. Yes, sir, I never measured it.

Q. So that all in front of the Borden property would be that part comprised there?

(Indicating)

A. Yes, sir.

Q. Did you notice how near the tree the horse's head was?

A. Yes, sir.

Q. How near was it?

A. Pretty close.

Q. Was the horse's head beyond it?

A. I could not say.

Q. Was there a place on that tree to hitch a horse to?

A. I don't know, sir.

Q. Don't know that?

A. No, sir.

Q. Was that a top buggy, or an open one?

A. No, sir, an open one.

Q. Was it a buggy with a high or low back?

A. It was a buggy with a high back.

Q. One of those padded cushions on the back of it?

A. I can't say as it was.

Q. You say the man was back to you?

A. Yes, sir.

Q. How much of the man did you see?

A. From his shoulders up to the top of his head.

Q. So that you saw the top of his head and his shoulders?

A. Yes, sir.

Q. Did you see any part of his face?

A. Yes, sir, the side of his face.

Q. You do not recognize it as anybody you know?

A. No, sir.

Q. But I suppose you would not undertake to say it was not somebody you knew?

A. No, sir, I could not.

Q. It might have been some one you knew, for ought you know?

A. For all I know.

Q. How far was the rear of the team from Dr. Kelly's front

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door?

A. From the front door perhaps there was twenty-five feet,---perhaps thirty feet.

Q. 25 feet from there, north or south?

A. North.

Q. Further down hill?

A. Yes.

Q. Did the man turn around?

A. No, sir, he did not.

Q. Didn't see anything in the team, did you?

A. No, sir, I did not.

Q. Well, is the whole distance between Dr. Kelly's front steps and the Borden fence as much as 25 feet?

A. From the gate, do you mean?

Q. Yes.

A. I should say it was.

Q. What should you say it was?

A. I should say it was 25 feet and more.

Q. So that the rear of the team could not have been 25 feet from Dr. Kelly's front gate?

A. I could not say about that; I never measured it. That is my judgment.

Q. Was not the rear of the team within a very short distance of Dr. Kelly's front gate?

A. I should say 25 feet.

Q. I thought you told me a little while ago that the whole distance between Dr. Kelly's front steps and the Borden fence was 25 feet?

A. 25 feet in my judgment.

Q. Didn't you just tell me the whole distance from Dr. Kelly's front gate to that tree was not over 25 feet?

A. Yes, sir---of course I never measured it and I could not say what the distance was. I call it 25 feet from his front gate up to the---

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Q. If it should turn out that the whole distance was not more than 25 feet, that would not be so, would it?

A. No, sir.

Q. Did you notice Dr. Kelly's sign?

A. Over his front door?

Q. No, over the rooms that are on the north of the front door?

A. He had a sign over his front door.

Q. That is right on the front door?

A. Yes, sir.

Q. Is there anything except that it was a little further down the hill to show it was not somebody who was waiting for a call on the Doctor?

A. That I cannot say.

Q. Nothing to indicate to the contrary, was there?

A. No, sir.

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DR. BENJAMIN J. HANDY, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Benjamin J. Handy.

Q. What is your occupation?

A. Physician.

Q. Where?

A. Fall River.

Q. How long have you been a physician?

A. Twenty years.

Q. How much of that time have you practiced in Fall River?

A. Nearly the whole of it.

Q. Do you know where the Andrew J. Borden house is?

A. I do.

Q. Do you remember the day of the murder?

A. Yes, sir.

Q. Did you go by that house on the morning of the murder?

A. Yes, sir.

Q. At what time?

A. About 9 o'clock.

Q. Did you go at any other time?

A. I did.

Q. What time?

A. About half past ten, a little after probably.

Q. Did you see any person in the vicinity of that house that attracted your attention at that time?

A. I did, sir.

Q. Won't you describe what you saw and what the person was doing, as near as you can?

A. I didn't know the person that I saw.

Q. Well, tell us what took place?

A. I saw a medium sized young man of very pale complexion, with his eyes fixed upon the sidewalk, passing slowly towards the south.

Q. Where was he in reference to the Borden house?

A. As near as I can tell, opposite a space between the Kelly house and

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Mr. Wade's store.

Q. What, if anything, attracted your attention to him?

A. In the first place, he was a very pale individual, paler than common.

Q. Anything else?

A. Yes, sir, but I cannot describe very well what I saw, but he was acting strangely.

MR. KNOWLTON. I pray your Honors' judgment of that answer. Of course, I could not anticipate that by the question.

MASON, C. J. The answer may stand.

Q. In consequence of his appearance did you do anything?

A. I turned in my carriage to watch him as I drove by, to look at him.

Q. Did you know who the person was?

A. No, sir.

Q. Did you ever see him before?

A. I have a faint idea that I had seen him on Second street some day's before.

Q. Do you know Thomas Bowles that works for Mrs. Churchill?

A. Yes, sir.

Q. How well do you know him?

A. He used to work for me.

Q. Was it he?

A. No, sir.

Q. Do you know George L. Douglass that used to keep the stable on Second street just above Spring?

A. Yes, sir.

Q. Was it he?

A. No, sir.

Q. Do you know him well?

A. I do.

Q. Can you describe this man any more fully than you have already?

A. He was dressed in a light suit of clothes. He was well dressed,---

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collar and necktie.

Q. Have you searched or attempted to have others search for him since?

A. Yes, sir.

Q. Whether you have or have not accompanied the police to see different persons to see whether they were the person that you saw that morning?

A. I have sir.

Q. Could you identify the persons shown to you as that person?

A. No, sir.

Q. So far as you know, have you ever seen him since?

A. No, sir.

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CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) What time in the morning was that?

A. I said at the other hearing it was sometime between twenty minutes past ten and twenty minutes of eleven.

Q. I beg your pardon, I didn't ask you that. The question was what time in the morning.

A. That was the same answer.

Q. What do you say now it is?

A. Somewhere between twenty minutes past ten and twenty minutes of eleven.

Q. Which way was the man progressing?

A. Southerly.

Q. To the south?

A. He was progressing away from the Borden house.

Q. And was he walking or running?

A. Walking very slowly, scarcely moving.

Q. He was progressing, however, but progressing slowly?

A. Yes, sir.

Q. He wasn't hurrying?

A. No, sir.

Q. But still was making progress, but slowly, toward the south?

A. Yes, sir.

Q. Won't you describe more particularly what you meant when you said he was acting strangely?

A. I can't put it into words, sir. He was acting differently than I ever saw any individual on the street in my life. He seemed to be either agitated or extremely weak, staggering, or confused, or something of the kind.

Q. Did you describe his appearance before at any time?

A. I don't think any more fully than I have just now.

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Q. Did he turn around?

A. No, sir; he did not.

Q. Did he look back?

A. Yes, sir.

Q. Did he appear to be intoxicated?

A. No, sir.

Q. Did he do anything more than to walk and sort of half stop and go on again?

A. No, sir; not as I observed.

Q. As though he was hesitating whether to go or not?

A. I shouldn't think he was hesitating where to go. He seemed to be more mentally agitated. That is the best way I can describe it.

Q. In what way did he show he was mentally agitated?

A. The intense expression of his face, and his not observing anything that was about him?

Q. Anything else?

A. That is all I would say.

Q. Anything in his movements that showed any mental agitation?

A. No, sir.

Q. Then I ask you again whether he appeared to be hesitating whether to go on or not?

A. I didn't think so.

Q. Did he stop occasionally?

A. No, sir.

Q. Did he appear to half stop and then go on?

A. No, sir.

Q. Did he turn around at all?

A. No.

Q. I believe you told me he didn't. Well, will you describe any more in detail what he did; not how he looked to you, but what he did?

A. He didn't observe what was passing around.

Q. Is there anything besides that?

A. He didn't see me, his eyes were fixed upon the ground.

Q. You told me his eyes were on the sidewalk?

A. Yes, sir.

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Q. And he didn't look up?

A. No, sir.

Q. And walked slowly?

A. Very slowly.

Q. Now is there anything else that you observed about him that made you think he was agitated?

A. I can't tell you any more. There might have been. I couldn't put it into words.

Q. Well, I want you to tell me if you can?

A. I said I could not.

Q. All you can tell, so the jury could get an idea, is that his eyes were on the sidewalk, and he walked very slowly, and didn't look at anything around him?

A. Yes.

Q. He was a well dressed man?

A. He was.

Q. And there was nothing about his clothing that attracted your attention?

A. Only he was well dressed, in light colors.

Q. But nothing about his appearance attracted your attention?

A. No, sir.

Q. Did he have anything in his hand?

A. Not that I observed.

Q. How long was it before that you had seen him before?

A. It would be merely a matter of opinion; several days.

Q. Had you seen him before that day?

A. I think I had. I wouldn't state that as a fact.

Q. You mean on that day?

A. No, sir.

Q. But you think you may have seen him before on some other day?

A. Yes, sir; on the same street

Q. You had not seen him before on that day?

A. No, sir.

Q. And this was the only time you saw him on that day?

A. Yes, sir.

Q. Did you see where he went to?

A. No, sir; I did not.

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Q. Was he alone?

A. Yes, sir.

Q. Did you see anybody else on the sidewalk?

A. No, sir.

Q. Did you see anybody else join him?

A. No, sir.

Q. Did you see Mr. Cuneen there?

A. No, sir; I did not.

Q. You didn't speak to Mr. Cuneen?

A. No, sir.

Q. Which way were you going?

A. North.

Q. Down the hill?

A. Down the hill.

Q. And you met him?

A. Yes, sir.

Q. Was he on the sidewalk?

A. He was.

Q. Did you see anybody else on the sidewalk at the time?

A. No, sir.

Q. And you say there was absolutely nothing in his clothes or about his clothes that attracted your attention in any way?

A. No, sir.

Q. And all you can put in words was that he was looking down toward the sidewalk, and didn't notice anything that was going on around, and walked slowly?

A. Well, I said he seemed to be agitated about something or other.

Q. You cannot express that agitation any more than that?

A. No, sir.

Q. Did he stagger?

A. No, sir.

Q. I understood you to use the word "stagger." Perhaps I misunderstood you?

A. I didn't mean to.

Q. You didn't mean to say he staggered?

A. No, sir.

Q. And that any movement of his was other than that the man was walking slowly and lost in thought---any movement of his?

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A. He was moving very slowly, and I imagined that he was---

Q. I beg your pardon, I didn't ask you what you imagined.

A. Put the question again, please.

Q. Was there any movement that he made other than that of a man walking slowly and lost in thought?

A. I thought there was, sir.

Q. What was it?

A. I said he seemed to be moving, swaying, rolling, possibly, a little.

Q. Not staggering?

A. Not staggering; no, sir.

Q. Was it any more than the swaying of a man---

A. I thought it was, sir.

Q. Thought it was what?

A. I thought it was more than the ordinary movements.

Q. I didn't ask you that. Was it anything more than the observation or variation of a man hesitating whether to turn around or not?

A. I thought it was.

Q. You mean he moved from side to side?

A. I do, as near as I can remember; yes, sir.

Q. How much space did he move in?

A. You mean the movement from his shoulders or from his feet?

Q. From the feet?

A. I should say not much.

Q. That is, his feet didn't oscillate any?

A. No, sir.

Q. But the oscillation was in his shoulders?

A. In his body.

Q. On his feet?

A. On his feet.

Q. And yet he didn't appear to you to be intoxicated at all?

A. No, sir.

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Q. Was it nearer twenty minutes past ten or twenty minutes of eleven, or can't you tell?

A. I couldn't say; I can't tell you.

Q. You know the defendant?

A. Yes, sir.

Q. Let us see; were you the one who had the cottage at Marion?

A. Yes, sir.

Q. And had she been down there to that cottage?

A. Not to my knowledge: I understood that she had.

Q. I do not ask you for that. You had not seen her down?

A. No, sir.

Q. She was expected?

A. I understood so.

Q. (By Mr. Jennings.) I understand you to say that you heard she was down there one day?

MR. KNOWLTON. I did not ask for that answer: I do not think it responsive, and I do not think it should stand or be inquired of.

MR. JENNINGS. That is all.

DELIA S. MANLEY, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Delia S. Manley.

Q. Where do you live, Mrs. Manley?

A. Fall River.

Q. In what part of the city?

A. 206 Second street.

Q. Are you familiar with that street?

A. Yes, sir.

Q. How long have you lived on it?

A. Four years.

Q. Are you familiar with the premises about the Borden house?

A. I am.

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Q. Did you know Andrew J. Borden while he was alive?

A. No, sir.

Q. Did you know where he lived?

A. Yes, sir.

Q. Do you know the Kelly house?

A. Yes, sir.

Q. Did you have any relatives occupy that house at any time?

A. I did.

Q. Who was it?

A. Mrs. Russell, my sister-in-law.

Q. Were you or not in the habit of visiting there frequently?

A. I was.

Q. While she lived there?

A. Yes, sir.

Q. Now did you pass by the Borden house on the morning of the murder?

A. I did.

Q. Did you stop in the vicinity of the house?

A. Yes, sir.

Q. Did you see anybody on the premises at that time?

A. I did.

Q. What time was it, as near as you can fix it?

A. As near as I can fix it, it was either a quarter or ten minutes of ten.

Q. Now won't you tell us what you saw, and describe as well as you can the appearance of the person, if there was any person there?

A. Well, there was a man standing in the north gateway, dressed in light clothes.

Q. Was it a young man or an old man?

A. I should say he was young.

Q. Well, can you give any further description of him?

A. I don't think I can. I didn't look at him sufficient to describe his features at all.

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Q. What was he doing?

A. He was standing in the gateway, leaning his left arm on the gatepost.

Q. Was it Andrew J. Borden?

A. No, sir.

Q. Did you see John V. Morse in the District Court below?

A. I did.

Q. Was it John V. Morse?

A. No, it was not as old a man as he.

Q. Was it anybody that you had ever seen before?

A. No, sir.

Q. Well, what did the man do, if anything?

A. He was standing there, seeming to be looking at us and taking in what we were talking about, I should judge.

Q. Was there anybody with you?

A. There was.

Q. Who was it?

A. Mrs. Hart of Tiverton.

Q. Were you both going down the street together?

A. Yes, sir.

Q. What occasioned your stopping there?

A. We stopped there to see some pond lilies that a young fellow had in a carriage.

Q. Where did the carriage stop?

A. Between the two houses---between the Borden house and the Churchill house: a little nearer the Borden house than the Churchill house.

Q. And did you see the man when you were going down the street?

A. I did not.

Q. When did you first notice him?

A. When I was coming from the street back on to the sidewalk, then I noticed him.

Q. Well, what do you mean; the team stopped, and then you went around behind the team?

A. The team stopped and I went back of the team to see those pond lilies, and as I was

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coming back on to the sidewalk, then was when I saw this man.

Q. But you did not notice him at all as you went by?

A. I did not, no.

Q. Can you point out on that picture (showing small photograph to the witness) where it was that you saw him?

A. Well, there is the gateway that he was standing in, and if you notice that gatepost is higher than this, and that is the one he was resting his arm on: and as I came back from this carriage, that is, as I stepped back on the sidewalk, I stepped right up so I almost faced him, or nearly so.

Q. Will you step down a moment and point to the jury where you say he stood?

A. He was standing in this gateway, resting his arm upon this gatepost, and of course as I stepped back from the carriage on to the sidewalk, I came nearly face to him,--- not exactly.

Q. Is there any other similar gatepost in that vicinity, or gateway?

A. The gateway to the Kelly house is very much like it, only there is no tree as near to it.

Q. Well, are you sure that it was not the Kelly house gate?

A. I am.

Q. You say you are very familiar with the Kelly house premises?

A. Yes.

Q. And is there any other gateway similar to those two gateways along there?

A. I haven't seen any: I never noticed.

Q. Do you know what became of the man?

A. I don't, for I left him standing there.

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Q. When you went away?

A. Yes.

Q. When you were stopping there looking at the lilies, which way were the people in the team looking?

A. They were looking toward the back of the team.

Q. Not towards him?

A. No.

Q. And did he leave when you did?

A. Yes, sir.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) How long did the man stand there, so far as you know, Mrs. Manley?

A. Well, that I could not say; for all I saw of him was just---I stepped on to the sidewalk and saw him, and I went right away.

Q. The last you saw of him he was standing there?

A. Yes, sir.

Q. And the first you saw of him he was standing there?

A. Yes, sir.

Q. Standing there quietly?

A. Yes, sir.

Q. In full view of everybody?

A. Yes, sir.

Q. And looking right towards you?

A. Yes, sir.

Q. So you could see his face and see all of him?

A. Well, I could had I been particular to notice, but, as I say, I didn't notice him.

Q. He was where you could have?

A. Yes, sir.

Q. And where anybody could see him that was on the sidewalk?

A. Yes, sir.

Q. Looking right out towards the street or looking out into the street somewhere?

A. Yes, sir.

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Q. You didn't know who it was?

A. No, sir, I didn't.

Q. That, you think was about, a little before ten o'clock?

A. Yes, sir.

Q. About how long before ten do you think it was?

A. Well, about quarter or ten minutes.

Q. How young a man was he, should you say?

A. Well, I should say he was a man about thirty, as near as I could judge.

Q. Did you notice anything about his appearance at all except he was standing?

A. No, sir.

Q. Did you notice anything out of the way about him?

A. No, sir.

Q. About his clothes or anything of the sort?

A. No, sir.

Q. Had nothing in his hand that you noticed?

A. He did not.

JEROME C. BORDEN, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Jerome C. Borden.

Q. What is your business?

A. Lumber business.

Q. Where do you live?

A. In Fall River.

Q. What part of the city?

A. On Fourth street.

Q. Are you a relative of the defendant?

A. I am.

Q. Did you go to the house soon after the murder?

A. On the next day.

Q. What time in the day was it?

A. About two o'clock.

Q. What door did you go into?

A. The front door.

Q. Was the door locked or not?

A. I opened it without any one unlocking it for me.

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Q. How closely to was it shut?

A. It was closed as close as it could be.

Q. Did you observe anything about the spring lock?

A. I didn't examine it, no, sir.

Q. You need not answer this question until the Court rule upon it. Was or was there not any manifestation of surprise by the inmates of the house upon seeing you open the door?

MR. KNOWLTON. I object.

MR. JENNINGS. I will add a little to that, if your Honors will allow me to, and then have it ruled upon.

Q. Or anything said about how you could get in with the spring lock on?

MR. KNOWLTON. I object.

MASON, C. J. Excluded.

Q. I will put the question then as originally put. Was there any manifestation of surprise on the part of the inmates at your coming into the door without it being opened by somebody?

MR. KNOWLTON. I object.

MASON, C. J. Excluded.

Q. Did you ring before you opened the door?

A. I did not.

Q. What did you do? Tell us exactly what you did.

A. I walked up the steps, and took hold of the door-knob, and turned it, and pushed the door open.

Q. Do you know whether there is or was a spring lock upon the door at that time?

A. Not of my own knowledge, nothing but hearsay.

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CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) Was there anybody at the door, any officer?

A. There was one leaning of the front fence.

Q. What is his name?

A. I don't know the officers well enough to distinguish them from one another by name.

Q. Was it Chase?

A. No, sir.

WALTER P. STEVENS, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Walter P. Stevens.

Q. Were you reporter for the Daily News at Fall River at the time of the Borden murder?

A. Yes, sir.

Q. Did you go up there that morning?

A. Yes, sir.

Q. What time did you first hear of the trouble up there?

A. I don't know the exact time.

Q. Can you tell us what time it was when you arrived there?

A. I arrived there with officer Mullaly.

Q. Whom did you see there when you arrived?

A. There were several people in front of the house.

Q. Was officer Medley there when you arrived?

A. I didn't see him.

Q. Did you go into the yard?

A. Not when officer Mullaly did. I did afterwards.

Q. How soon afterwards?

A. Very soon. He had just entered the house.

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Q. Which gate did you go into?

A. I don't remember.

Q. Do you remember whether you went into the gate at all?

A. I went into the gate.

Q. Can you tell whether it was the front gate or the side gate?

A. My impression is it was the side gate, but I am not sure.

Q. Where did you go first after you went in?

A. Went around the front of the house and yard between the Kelly yard and Borden house.

Q. What did you do there?

A. Looked out through the grass and at and along the fence

Q. What did you do next?

A. Went to the rear fence.

Q. And next?

A. Looked over it.

Q. Well, go right on, please.

A. I looked over the fence into the Chagnon yard, along the length of the fence, following it to the corner. Then I came by the barn and---

Q. Go into the house at all?

A. I went into the house, yes, very soon. I don't remember just all that I did before I went into the house.

Q. You went into the house very soon after you got there, did you say?

A. Yes, sir. I didn't spend very much time in the yard before I entered the house.

Q. Did you see officer Medley at all in the house?

A. Yes.

Q. Where was he and where were you?

A. I was standing in the side entry-way, and he passed me.

Q. Was he going in?

A. Going in.

Q. And you coming out?

A. No, I was standing there.

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Q. Did you go out after he came in?

A. Very shortly afterwards.

Q. What did you do then?

A. I went to the back of the house and went back as far as the fence. I think I looked over the fence again. Then I went into the barn.

Q. Do you know whether that was before Mr. Fleet came or not?

A. I didn't see Mr. Fleet at that time.

Q. Hadn't seen him up to that time?

A. No, sir.

Q. Did he go into the house while you were there?

A. I didn't see Mr. Fleet until I went away and returned to the house.

Q. When you went into the barn was there anybody in there?

A. No, not down stairs.

Q. Well, did anybody come in while you were in there?

A. Yes, sir.

Q. Who?

A. I don't know.

Q. Did you go up stairs?

A. No.

Q. Did you see anybody go up stairs?

A. I heard somebody go up stairs.

Q. How soon was that after you saw Mr. Medley going into the house?

MR. MOODY. He did not say he saw him go into the house.

A. It could not have been many minutes.

Q. How soon was it after you saw Mr. Medley in the house?

A. It couldn't have been many minutes.

Q. How many people do you think you saw or heard going up stairs?

A. There were at least three.

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Q. In the barn, I am referring to.

A. Yes.

Q. Did you hear them walking about up stairs?

A. I heard them go up stairs, and they had disappeared when I turned.

Q. In the barn?

A. In the barn.

Q. Did you go up stairs at all before you came away?

A. In the barn?

Q. Yes.

A. No, never been there.

Q. What time did you go away?

A. I don't know the exact time.

Q. As near as you can recollect?

A. I walked down with Mr. Bury to the Union bank, into the Union bank; stopped there for a very short time, returned and stopped a shorter time in front of Talbot's, and turned back into Second street when the clock struck twelve, City Hall clock.

CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) Did you say what time you got there, Mr. Stevens?

A. I went with officer Mullaly.

Q. Did you say what time you got there?

A. I didn't say.

Q. You don't know what time it was?

A. No.

Q. And you can't give me any approximation of the time at all?

A. Only as far as going in with officer Mullaly, that is all. I arrived there with him.

Q. And after you got there did you see Mr. Medley come?
A. As I was standing in the hallway he came into the door.

Q. Did you see him come into the premises?
A. No, I did not.

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Q. When he came you don't know?
A. No.

Q. Did you speak to Mr. Medley?
A. I did not.

Q. Where was Mr. Medley when you first saw him?
A. In the entry passing through from the side door into the kitchen.

Q. Did you see him again after that?
A. I don't remember that I saw him again.

Q. At all?
A. Not at all.

Q. So that all of Mr. Medley's movements you know is that at one time while you were there you saw him going into the kitchen?
A. Yes.

Q. Where he had been before that you don't know?
A. I don't.

Q. Where he went after that you don't know?
A. I don't.

Q. And when he went into the barn you don't know?
A. I don't

Q. Nor whether he was one of three that went into the barn you don't know?
A. He was not.

Q. You saw who they were?
A. I saw who they were, although I couldn't recall afterwards. He was not one of them.

Q. Can you tell me who they were?
A. I don't know exactly. I have an idea that I know one of the men.

Q. Who do you think that is?

A. John Donnelly.

Q. The others you don't know?

A. No, sir.

Q. When you first got there where did you go?

A. I went to the yard between the Borden house and Kelly yard.

Q. How did you get information, some telephone come to you?

A. No. I walked into the guard-room of the police station and the city marshal was instructing Mullaly.

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Q. You got the information from the police station?

A. Yes.

Q. When you got there to the house where did you say you went to?

A. I met Mr. Manning in front of the house, and at his suggestion we walked through the yard.

Q. What were you doing in the yard?

A. Looking around.

Q. Looking around where in the yard?

A. Well, we looked in the grass as we walked through it, looked to the other side of the fence, looked at the fence.

Q. Which side of the house was that on?

A. On the south side.

Q. Next to Dr. Kelly's?

A. Yes.

Q. Did you see any tracks or traces of a person there?

A. Well, there was a break in the fence, but it wasn't a new one.

Q. An old break?

A. It had been wet, I should judge.

Q. Something that had been out in the rain, you mean?

A. Yes, sir.

Q. Besides that did you find any traces?

A. No. The grass was trampled considerably; it was quite long.

Q. That is, a good many people?

A. It might have been.

Q. So that other people might have gone along there before you did?

A. Yes.

Q. Was that next the Kelly fence that you thought that was?

A. Right in that part of the yard.

Q. Well, next to the Kelly fence did you find it so?

A. I don't remember being right next the Kelly fence. It was so

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generally in the yard.

Q. The trampling was next that yard?

A. It was in that part of the yard. I don't remember exactly where.

Q. Who was with you when you examined that?

A. Mr. Manning.

Q. Where did you go then?

A. We went to the back of the yard by Chagnon's fence.

Q. What did you do there?

A. Looked over the fence.

Q. What were you looking there for?

A. Tracks of any sort.

Q. What?

A. Anything we could find.

Q. Did you find any tracks there?

A. No.

Q. How did you look over the fence?

A. Stood on the stringer.

Q. You didn't get up on the lumber pile then?

A. I don't remember whether I did or not.

Q. You do remember looking over the stringers

A. Yes, I looked along there.

Q. What did you do then?

A. I came back of the barn, that is, the west side of the barn, and I followed the fence all the way along to the barn.

Q. Away out behind the barn, do you call it?

A. Yes.

Q. Followed along doing what?

A. Looking the other side for tracks.

Q. Looking over the fence?

A. Yes.

Q. Could you look over the fence without climbing up on the stringer?

A. Well I was on the stringer walking along.

Q. You mean you walked along on the stringer?

A. Yes.

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Q. Hand over hand?

A. Yes.

Q. Looking along for tracks?

A. Yes.

Q. And in that operation you went clear to the corner?

A. Yes.

Q. Were you looking for anything else?

A. Looking for anything I could find.

Q. Looking for blood stains on the fence?

A. I don't recall that I thought of blood stains. I would probably have noticed them.

Q. You went as far as the corner?

A. Yes. I think I went way to the barn.

Q. Did you look over the fence on the Kelly side before you got there?

A. That is a low fence. I looked right over it as I walked along.

Q. Well, the fence beyond the Kelly fence, the Crow fence?

A. I didn't look over that fence at that time.

Q. Did you afterwards?

A. Probably the next day. I know I was over there.

Q. Not that day?

A. No, sir.

Q. After you got out to the corner what did you do then?

A. I stepped down from the fence and walked up to the barn.

Q. Didn't go into the barn?

A. Not at that time.

Q. What were you doing there?

A. Well, we looked into the filled-in well. We looked there.

Q. That is in front of the barn?

A. In front of the barn.

Q. Did you also look in the vault behind the barn?

A. Looked into it.

Q. Before you came to the barn?

A. Yes.

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Q. You had to take off a piece of board to do it?

A. I am under the impression the boards had been moved.

Q. Looked as though somebody had been there before you?

A. May have been.

Q. The boards were removed?

A. I don't remember any boards myself.

Q. But you looked in there?

A. Yes.

Q. Then you came around and looked into the filled-up well?

A. Yes.

Q. You were making a search of the yard?

A. Yes, sir.

Q. Looked at everything you could think of on your way round?

A. Yes.

Q. Then after you looked into the covered-up well, where did you go then?
A. Well, I don't recall whether it was at that time I went to the rear cellar door or not.

Q. You did go to the rear cellar door?
A. I did at one time, but I don't recall just when it was.

Q. How did you find it when you went there?
A. I tried the door.

Q. How did you find it?
A. It didn't open when I tried it.

Q. That is, you couldn't open it?
A. No, it didn't open when I tried it.

Q. Well, you didn't try to open it?
A. Yes.

Q. You couldn't open it, is that right?
A. It didn't open. I didn't open it.

Q. Did you try to open it?
A. Yes.

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Q. And you failed to open it?
A. Yes.

Q. And your trying to get into it didn't open the door?
A. No, sir.

Q. How it was fastened, you don't know?
A. No, sir.

Q. But it appeared to be fastened in some way, didn't it?
A. It didn't open. That is all I should care to say.

Q. It appeared to you to be fastened?
A. Well, I say I tried the door and it didn't open.

Q. It appeared to you to be fastened?
A. Yes, I should [say] it was. My impression at that time was it was fastened.

Q. Was there any objection to your answering the question the first time I put it?
A. No, I haven't any objection, only I wanted to be sure.

Q. And you got the impression from your trying that it was fastened?

A. Yes, sir.

Q. What did you do then, if you did anything at all?

A. I went into the house very shortly. I may have gone in before that. It wasn't very long before I went into the house.

Q. You don't remember the order of your movements?

A. No. I don't remember whether I tried the door before or afterwards.

Q. Where did you go in?

A. Went through in the kitchen.

Q. Whom did you see there?

A. Miss Borden was there. I didn't know her at that time.

Q. Any one else?

A. Bridget Sullivan.

Q. Were there many people in the yard there before you went into the house?

A. No, sir, no one in the rear of the yard.

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Q. Was there anybody in the front part of the yard?

A. There may have been one or two.

Q. When did you first see Donnelly?

A. I don't recall whether it was before I went into the house or afterwards. He was in the driveway when I first saw him.

Q. Was that before you went into the house?

A. I don't recall.

Q. You can't tell?

A. No.

Q. And when did you first see the other man that you saw going up the barn?

A. When I was in the barn.

Q. And you never saw them before?

A. Not that I know of. I don't know that I did.

Q. Then did you talk with anybody in the house?

A. Mrs. Churchill.

Q. And did you make notes of your talk as you talked?

A. No.

Q. Did you talk with anybody else besides Mrs. Churchill?

A. Not at that time.

Q. Then where did you go?

A. Came out of the house. I stayed in the entry for a short time.

Q. When you stayed in the entry whom were you talking with there?

A. I wasn't talking with any one. I may have been talking with Mr. Manning, if he was there. I don't recall.

Q. Then what did you do?

A. I came out of the house.

Q. Then what did you do after that?

A. Then I went to the barn.

Q. Do anything else before you went to the barn?

A. Nothing. I may have searched around about the barn before I stepped

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inside.

Q. Do you remember whether you did so?

A. I don't.

Q. Was the door shut when you went into the barn?

A. It was not.

Q. It was open then?

A. It was open.

Q. Wide open, was it?

A. Swung open.

Q. How long did you stay in the barn?

A. A very short time.

Q. And came right out?

A. Yes.

Q. Then you went right away?

A. No. I don't think I went right away.

Q. What did you do then?

A. Well, I won't be certain whether I went right away or not.

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Q. Why won't you be certain?

A. Because I don't recall just what I did at that time.

Q. Do you certainly recall any of your movements or the order of them?

A. Yes, sir, I know that I went down as far as the Union Bank---

Q. I mean on the premises.

A. Yes, sir, I remember the first part. I don't remember just when I tried the door, whether it was before or after I entered the house.

Q. Do you remember doing anything else before you left the premises, after getting out?

A. Not specially.

Q. Have you any remembrance in general of what you did after you came out of the barn?

A. I think I started off shortly after.

Q. And from there you went down to the Union Bank?

A. Yes, sir, I went in there.

Q. The Union Bank is next to the City Bank, is it?

A. Yes, sir.

Q. What did you do there?

A. My object was to get Mrs. Borden's antecedents, but I did not succeed. Mr. Burry was with me.

Q. Did you remain any length of time in there?

A. Not very much.

Q. You came out and where did you go?

A. As far as Talbot's clothing store.

Q. Where is that?

A. Corner of Pleasant street and Main.

Q. In the Borden block?

A. No, sir.

Q. That is in the Pocasset block?

A. Yes, sir.

Q. And that is next to the City Hall?

A. Yes, sir.

Q. What did you do then?

A. Mr. Burry left me then.

Q. Was that when the clock struck twelve?

A. No, sir, I was in

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Second street then.

Q. How far back?

A. Just as the clock struck.

Q. After you left the Borden premises, not remembering whether you did anything in the Borden barn, you went straight to the bank?

A. Yes, sir.

Q. And only stayed a moment there?

A. I did not stay long there. I went to inquire for Mr. Hart, but whether I saw him or not, I don't remember.

Q. You don't remember talking to him there?

A. I don't remember that I did. I saw him during the day.

Q. Do you remember doing anything else in there beside inquiring for Mr. Hart?

A. No, sir, that is all.

Q. You came right out and went to the clothing store then?

A. Yes, sir.

Q. There the other man left you?

A. Yes, sir.

Q. How far up Second street were you when the clock struck twelve?

A. I had just turned the corner.

Q. So that the amount of space of time that elapsed when you left the barn was the stay, the length of time during which you remained in the yard?

A. I did not go directly from the barn into the street.

Q. Do you remember doing anything else?

A. No, sir.

Q. You don't remember of doing anything more?

A. I don't remember what I did more.

Q. You don't remember of doing anything more, do you?

A. I can't recollect any one thing now.

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Q. You do not recall anything you did after you left the barn except coming down to the Bank and going back to Second Street and hearing the clock strike twelve?

A. No, sir.

Q. You did not see Officer Medley on the premises when the clock struck twelve?

A. No, sir.

Q. Or when he went into the barn?

A. No, sir.

Q. You did not see him except when going through the entry and you went to the barn?

A. No, sir.

Q. You found the barn door open?

A. I found the barn door open.

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ALFRED CLARKSON, Sworn.

Q. (By Mr. Jennings.) Your name is Alfred C. Clarkson?

A. No, sir.

Q. What is it?

A. Alfred.

Q. Alfred Clarkson?

A. Yes, sir.

Q. What is your business?

A. Steam engineering.

Q. Were you at the Borden house on the morning of the murder?

A. Yes, sir.

Q. What time did you get there?

A. I should say 11:30.

Q. And did you go into the barn at all that day?

A. Yes, sir.

Q. How soon after you got there?

A. Seven or eight minutes.

Q. Did you go in the upper part of the barn?

A. Yes, sir.

Q. What did you do up in the barn there?

A. Just looked around, that is all.

Q. Was there anybody else up there when you were there?

A. Yes, sir.

Q. Who?

A. I couldn't tell you who.

Q. Well, how many?

A. There were three.

Q. Didn't you know any of them?

A. No, sir.

Q. Did they go up before or after you?

A. They went up before.

Q. Were they men or boys?

A. They were men, I should say; young men, twenty two or three years old.

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Q. How long did you stay there?

A. Where?

Q. Up in the barn, the upper part of the barn?

A. Not more than three or four minutes.

Q. What did you do then?

A. Went down stairs.

Q. Where did you go then?

A. Went around the cellar door and around on the north side of the house.

Q. Do you know officer Medley?

A. Yes, sir.

Q. Was he there when you got there?

A. No, sir, I didn't see him.

Q. Do you know officer Fleet?

A. Yes, sir.

Q. Was he there when you got there?

A. No, sir.

Q. Did you see either one of them come?

A. I saw Officer Fleet come.

Q. Where were you when Officer Fleet came?

A. Standing at the gate.

Q. Which gate?

A. The north gate.

Q. Did you go into the upper part of the barn before or after Officer Fleet came?

A. Before.

CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) You didn't see Mr. Medley at all?

A. Not in the morning.

Q. Did you see him around the premises at any time during that visit?

A. No, sir.

Q. When was the first time you saw Mr. Medley?

A. I couldn't state positively, but I think late in the afternoon.

Q. So that any time when you were round there that morning you

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didn't see anything of Mr. Medley?

A. No, sir.

Q. So when you say he had not been there when you was there, all you mean is you didn't see him?

A. Yes, sir.

Q. And you didn't see him come?

A. No, sir.

Q. And didn't see his movements after he got there?

A. No, sir.

Q. If he came there you don't know?

A. No, sir.

Q. And when he went into the barn, if he went in, you don't know?

A. No, sir.

Q. When you went into the barn did you go alone?

A. No, sir.

Q. Who did you go with?

A. Officer Wixon.

Q. What?

A. Charlie Wixon.

Q. Did Wixon go upstairs with you?

A. He went on the stairs, I don't think he went up there.

Q. Anybody else?

A. No, sir.

Q. Nobody but you and Wixon went at that time?

A. Not with me.

Q. That is what I mean, with you?

A. Yes, sir.

Q. Wixon went up as far as the stairs but didn't go in?

A. I believe not.

Q. Did Wixon come to the house with you?

A. No, sir.

Q. Did you find Wixon there?

A. I found Wixon right opposite the side entrance.

Q. You say that after you got there it was seven or eight minutes before you went up in the barn?

A. Yes, sir.

Q. Do you fix that by any time?

A. No, sir; not positively.

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Q. Simply your estimate.

A. Yes, sir.

Q. So that all you can say is that, so far as you now estimate, it was seven or eight minutes after you got there before you went into the barn?

A. I estimated at the time.

Q. Yes. But that is all?

A. That is all, sir.

Q. You had no watch to look at?

A. I had a watch; yes, sir.

Q. You didn't look at it?

A. Not to count that time.

Q. During that seven or eight minutes what were you doing?

A. During the seven or eight minutes, the first part of it, I went up to the door and talked to Charlie Sawyer.

Q. Well, what else?

A. Then I came down and stood on the walk talking to some gentlemen.

Q. Who are the other gentlemen you were talking to?

A. I couldn't say now who they were.

Q. Could you name any of them?

A. I could not.

Q. You can't tell me the names of anybody you talked with?

A. Not just that time.

Q. Well, you did talk with some at that time?

A. Yes.

Q. Had you seen Wixon then.

A. Yes, sir.

Q. Where was Wixon when you first saw him?

A. He was right opposite the back steps.

Q. What was he doing?

A. Looking around on the ground, around on the fence.

Q. And Wixon was there when you got there, you say?

A. He was the first one that I saw, after Sawyer, that I recognized.

Q. You didn't see Wixon come?

A. No.

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Q. The first thing you saw of Wixon he was there?

A. Yes, sir.

Q. After you had stood there a time you now estimate to be seven or eight minutes--- would you swear it wasn't nine?

A. No, sir.

Q. Would you swear it wasn't ten?

A. Yes, sir.

Q. You would swear it wasn't ten?

A. Yes, sir.

Q. Then you are able to fix that time?

A. Yes, sir,

Q. There was no excitement around there at all, was there?

A. No, sir.

Q. Everything was quiet?

A. Everything was quiet.

Q. You knew a double murder had been committed?

A. Yes, sir.

Q. That didn't make you any less observant of the time so but what you could swear it wasn't over ten minutes that you were round there in the yard?

A. Sir?

Q. That didn't excite you so you didn't keep accurate run of the time so you know it wasn't over ten minutes?

A. No, sir; I wasn't excited at all.

Q. What made you think it wasn't over ten minutes?

A. For the simple reason I went on the steps and didn't stay there with Sawyer more than one or two minutes, and came down, and I don't think I could have stood more than two or three minutes before I went with Wixon to the barn.

Q. Was you there six minutes, would you say, before you went in the barn?

A. I think I was.

Q. Was you there seven before you went to the barn?

A. Possibly.

Q. Will you swear you were?

A. No, sir; I wouldn't want to swear I was seven minutes.

Q. But you think you can swear it was not ten minutes?

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A. Yes, sir.

Q. And that you swear by your estimation?

A. Yes, sir.

Q. Only?

A. Only, to the best of my belief.

Q. You had no particular thing to do excepting to talk?

A. That is all, sir.

Q. And you estimate you didn't talk to exceed ten minutes?

A. I didn't talk to exceed five minutes.

Q. And all you did, you estimate, didn't exceed ten minutes?

A. No, sir.

Q. And you got there what time?

A. About 11.30.

Q. How do you fix that, sir?

A. I looked at my watch at 11.20.

Q. Have you ever said different from that?

A. Yes, sir.

Q. What did you say different from that?

A. I said that I looked at my watch at 11.30 and I thought I got there at 11.35.

Q. Have you ever said different as to the time you got there from what you now state?

A. Not to my memory.

Q. Under oath, have you not?

A. Not to my memory.

Q. Do you remember testifying in the district court?

A. Yes, sir.

Q. Do you remember of Mr. Jennings asking you this question and your giving this answer. I shall have to read the previous question in order to show the connection. "Were you at the Borden house the morning of the murder?" "Yes, sir" I read that to make the question plain. "At what time, as near as you can recollect?" Answer "About 11.40."

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Do you remember of giving that answer?

A. I think I said from 11.30 to 11.40.

Q. Will you swear you didn't answer just as I have given it, 11.40?

A. No, sir; I wouldn't swear.

Q. Is your recollection any better about it now than when you stated 11.40, if you did say 11.40?

A. Possibly not.

Q. It was full as good at that time, wasn't it?

A. I think so.

Q. It was a couple of weeks after the thing happened?

A. Possibly; I don't remember the date.

Q. You remember it was in the district court?

A. Yes, sir.

Q. You haven't seen anything to refresh your memory since that time?

A. No, sir.

Q. Will you now swear it was any earlier than 11.40 when you got there, on your oath?

A. Well, to the best of my belief.

Q. Will you swear you got there now before 11.40?

MR. JENNINGS. Well, he swears to everything he says. I submit that is not a fair way to put it. To the best of his belief, he started to say. I submit he may answer it in that way.

MASON, C. J. Proceed with the examination.

Q. Will you swear it was any earlier than 11.40 when you got there?

A. Well, I don't see how I could when I didn't look at my watch, but that is the best of my belief.

Q. Was the front door open when you went to the barn?

A. Yes, sir.

Q. Wide open?

A. Yes, sir.

Q. Did you see anybody go there before you did?

A. Sheriff

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Wixon.

Q. Anybody else?

A. No, sir; I believe not.

Q. Are you sure of that?

A. I say I believe I didn't see anybody go there before Sheriff Wixon.

Q. Did you see Donnelly there?

A. Yes, sir.

Q. Did you see him go into the barn?

A. No, sir.

Q. Did you find anybody up in the barn when you went up there?

A. Yes, sir.

Q. Who?

A. There were three gentlemen. I don't know who they were.

Q. And you don't know Donnelly, you say?

A. Yes, sir.

Q. Do you know whether Donnelly was one of them?

A. Donnelly wasn't one of them.

Q. Did you see anything of Mr. Stevens, the reporter?

A. I believe he was on the steps with Mr. Manning, but I wouldn't be positive about that.

Q. When was that?

A. That was when I was on the back steps.

Q. Before you went up?

A. Yes, sir.

Q. Before you went into the barn?

A. Yes, sir.

Q. Did you see him go up in the barn?

A. No, sir.

Q. Did you see Mr. Manning go up in the barn?

A. No, sir.

Q. When they went up you don't know?

A. No, sir.

Q. Whether they went before you or not you don't know?

A. No, sir.

Q. How long did you stay in the barn?

A. I should say possibly seven or eight minutes.

Q. Did you see anybody else besides those three men in the barn?

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A. I saw another person in there, I don't know who it was.

Q. That makes four?

A. Yes, sir.

Q. Who was the other person?

A. I couldn't say.

Q. That was in the barn loft?

A. Yes, sir; I saw him going in the barn loft.

Q. You didn't see him going upstairs?

A. No, sir.

Q. You saw him going in the barn?

A. Going upstairs.

Q. You don't know who that was?

A. No, sir.

Q. Was it before of after you went up?

A. Before.

Q. Was he up there when you got up there?

A. No, sir.

Q. You don't know what that man's name is?

A. No, sir; I do not.

Q. Was it Mr. Stevens?

A. I don't know.

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HYMON LUBINSKY, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Hymon Lubinsky

Q. What do you do?

A. Peddle ice cream---ice cream peddler.

Q. Do you work for yourself or somebody else?

A. I work for Mr. Wilkinson.

Q. Does he keep a store?

A. Yes, sir.

Q. Where?

A. 42 North Main St.

Q. Does he keep a team?

A. Yes, sir.

Q. Do you peddle by the team?

A. Yes, sir.

Q. Do you remember the time of the Borden murder?

A. Yes, sir.

Q. Do you know where the house is?

A. I didn't know at that time where the house is.

Q. Do you know now?

A. I know now.

Q. Did you find out the day of the murder?

A. Yes, sir.

Q. Where do you keep your team?

A. Second street.

Q. In whose stable?

A. Charley Gardner's stable.

Q. Is that near Morgan Street?

A. Near the corner of Second and Rodman street---near Morgan street, too.

Q. Between Rodman and Morgan?

A. Between Rodman and Morgan.

Q. Is it on the same side of the street that the Borden house is, or the other side?

A. Up a little.

Q. Opposite? Did you go by the Borden house that morning in your team?

A. Yes, sir.

Q. Where did you get your team?

A. From the stable.

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Q. Can you tell about what time it was when you left the stable?

A. It was after eleven.

Q. How much after eleven?

A. Well, a few minutes after eleven.

Q. Was anybody there when you left the stable that you knew?

A. Well, I knew there was Charley Gardner and some peoples: I didn't know who are they.

Q. Well, when you got your team and drove out of the stable, which way did you drive?

A. Towards Second street.

Q. Did you go down by the Borden house?

A. Yes, sir.

Q. Well, when you got to the Borden house did you see anybody on the premises?

A. Yes, sir.

Q. Whom did you see?

A. I saw a lady come out the way from the barn right to the stairs back of the house--- the north side stairs, from the back of the house.

Q. Right side of what?

A. I saw a lady come out the way from the barn right to the stairs from the back of the house.

Q. Can you tell how she was dressed?

A. She had on a dark colored dress.

Q. Could you give the color of it?

A. I can't tell what kind of color it was.

Q. Did she have anything on her head?

A. No, sir.

Q. What was she doing?

A. She was walking.

Q. In which direction?

A. She was walking very slow.

Q. Which way, towards the steps or away from them?

A. She was going down on the stairs toward the house.

Q. Toward the steps?

A. Toward the steps.

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Q. Did you see her go in the house?

A. I don't know; I couldn't tell this.

Q. Where were you when you saw her?

A. I was in the team.

Q. Did you stop your team?

A. No, sir; I just trotted a little: not fast.

Q. Had you ever seen the servant who worked in that house?

A. Yes, sir.

Q. Had you ever delivered any ice cream to her?

A. Yes, sir.

Q. How long before this?

A. Oh, two or three weeks before the murder.

Q. Was the woman you saw the servant?

A. I saw the servant and the woman too.

Q. Was the woman you saw the day of the murder the same woman as the servant?

A. No, sir.

Q. Are you sure about that?

A. I am sure about it.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) Where did you go after that?

A. From where? From the stable.

Q. No, after you left the Borden house?

A. Right to the store.

Q. What store is that?

A. To Mr. Wilkinson's.

Q. Where is that?

A. 42 North Main Street.

Q. What did you do there?

A. I took my cream and went for business.

Q. Where did you go for business?

A. In June Street.

Q. Whereabouts is June Street?

A. Well, the first street from

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Rock, between Rock and North Main.

Q. Pretty near the police station?

A. I don't know as the police station is in June street.

Q. Eh?

A. I don't know as the police station is in June street; I did not take notice.

Q. Where did you go there?

A. All round the street.

Q. Peddling on the street?

A. Certainly.

Q. Where did you peddle beside June Street?

A. What street?

Q. Yes.

A. The first I peddled on June and then Rock, High, Winter, Prospect, Grove and Linden Streets.

Q. Whereabouts on Rock Street did you go?

A. Peddled on the streets.

Q. You went along holloaing ice cream?

A. I don't do any holloaing.

Q. Did you go from house to house?

A. I went to the house and looked in the windows and see people and I sell the cream.

Q. Where did you go then?

A. I went to the stable to give my horse dinner.

Q. Whereabouts was the stable?

A. Up Second Street.

Q. How long did you peddle?

A. In that day?

Q. Yes, that forenoon, before you went to dinner?

A. I was peddling to half-past four.

Q. Before dinner?

A. Before dinner I was peddling till between one and half-past one.

Q. Before dinner?

A. Before dinner.

Q. Hadn't you peddled any before one o'clock?

A. I peddled all the time from that time when I left the store,---I peddled

till half-past four and went to dinner.

Q. You said you peddled till one or half past one?

A. Not half past one; I said it was that time when I left the store.

Q. What time did you leave the store?

A. I could not tell you the right time.

Q. How long were you peddling before dinner?

A. I don't stop my business at twelve, I stop from one to half-past one.

Q. Did you eat dinner?

A. No, sir.

Q. Did you put your horse up for dinner?

A. No, sir.

Q. Did you say a little while ago that you did put your horse up to dinner?

A. I didn't say I put him up then. I told you I put my horse up.

Q. Did you put your horse up, or didn't you put your horse up?

A. You ask me too fast. I put my horse up for dinner.

Q. What time did you put your horse up for dinner?

A. Between one and half past one.

Q. How long had you been peddling before that?

A. It might have been two and one half hours.

Q. Two hours before that time?

A. Yes, sir.

Q. Are you pretty sure of that?

A. What do you mean by sure?

Q. Sure? I mean sure.

A. I don't know what you mean,--sure---that I put my horse up for dinner?

Q. Are you sure you were peddling two hours?

A. I could not tell you, sir.

Q. That you peddled three hours?

A. I don't know.

Q. Were you peddling four hours?

A. No, sir.

Q. Might have been peddling three hours?

A. Might have been two

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hours.

Q. Would you be sure it was not three hours?

A. I am sure it was not three hours.

Q. Although you have just told me it might be three hours?

A. No, sir, I said two hours.

Q. When did you look at the clock,---at any time during that day?

A. I looked at my watch that time when I left the stable.

Q. When was that?

A. A few minutes after eleven.

Q. How many?

A. I could not tell you whether five or ten minutes, but a few minutes after eleven.

Q. Didn't you look to see how much after eleven?

A. It was a little after eleven.

Q. You didn't look to see?

A. I could not tell whether it was five or ten minutes after eleven.

Q. Where is your stable?

A. Up Second Street.

Q. How far up that street?

A. Corner of Second and Rodman Sts.

Q. Whose stable is it?

A. Charlie Gardner's stable.

Q. You looked at your watch at that time?

A. Yes, sir.

Q. Did you have a cart?

A. What do you mean by cart? I had a heavy team, not an ice cream cart.

Q. Did you ride?

A. Yes, sir.

Q. Did you trot your horse?

A. Yes, sir, a little.

Q. Trot down Second street?

A. Yes, sir.

Q. Did you look at any other yards beside the Borden yard?

A. I looked all over the yard.

Q. What were you looking round for?

A. Because I am acquainted

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with looking around.

Q. Were you looking in any other yard beside the Borden's?

A. I don't think there is any more yards---no other yards more. I looked all over yards.

Q. Were you trotting when you went by the Borden house?

A. Easy,---I was trotting.

Q. Trotting down hill, were you?

A. Down towards Second Street.

Q. That is down hill?

A. Yes, sir.

Q. Had you an empty cart?

A. Which cart?

Q. Yes.

A. My team was at that time empty.

Q. Where were you when you saw this woman that you speak of?

A. I was in the team.

Q. Whereabouts was the team?

A. What part of the team?

Q. Where was the team?

A. The team was on the street.

Q. Whereabouts on the street was the team?

A. Well, not very far from the sidewalk.

Q. What part of the street was it on? Don't you understand these questions I put now? Don't you understand all I am saying? Don't you understand I am asking what part of the street your team was on?

A. On Second Street, my team was on. That is what I answered you.

Q. What part of the street was your team on when you saw the woman?

A. Between the Borden house and Dr. Bowen's house.

Q. In front of the Borden house?

A. Little in front of the Borden house. (Illustrating) This was the Borden house and this my team.

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Q. Did you know the woman?

A. No, sir.

Q. Had you got by the house when you saw her?

A. When I went with my team?

Q. Yes.

A. I was passing by the house.

Q. Had you got by the house when you saw her?

A. Certainly, went by the house.

Q. Had you got by the house when you saw the woman?

A. I don't know what you mean.

Q. Why?

A. Because not educated in the English language.

Q. Had you passed the house when you saw the woman?

A. Certainly, I had.

Q. How far had you passed the house when you saw the woman?

A. I could not say how much.

Q. Where was the woman when you saw her?

A. She was coming down the way from the barn.

Q. Had she got as far as the house?

A. Out near the barn, near the house, she was.

Q. Which was she nearest to?

A. Nearest to the house.

Q. How near was she?

A. I could not tell you.

Q. Can you give me an idea?

A. Not that I know of.

Q. What?

A. Might be four or five feet from the house.

Q. Was she walking?

A. Walking.

Q. Was she walking towards the house?

A. Towards the stairs from the house.

Q. Walking towards the stairs?

A. Yes, sir.

Q. How near the stairs was she?

A. I don't know.

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Q. Can you give me an idea?

A. Three or four feet.

Q. Three or four feet from the stairs?

A. Yes, sir.

Q. Then if she was three or four feet from the stairs, she was right beside the house, wasn't she?

A. Right beside the house?

Q. That is what I asked you.

A. She was three or four feet from the stairs.

Q. Then she was right on the side of the house, wasn't she?

A. By the side of the house.

Q. On the side of the house walking towards the house?

A. Towards the steps.

Q. Was she on that walk there, do you remember, or don't you know whether there is a walk there or not?

A. She was coming---I don't understand what you mean.

Q. Then she was as near the steps as from you to where, that pile of books is there?

A. From me?

Q. No, I don't mean that,---I don't mean where you were then, but where you are now to that pile of books there?

A. I don't know.

Q. Did you see her go up the steps?

A. I don't know.

Q. What?

A. I don't know.

Q. Don't know whether you saw her go up the steps or not?

A. No, sir.

Q. Why don't you know that?

A. I didn't take notice.

Q. You mean you don't know whether she did go up the steps or not?

A. I don't know whether she went up the stairs or not.

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I saw her go towards the house.

Q. Then where she came from, you don't know?

A. No,---away from the barn.

Q. What makes you say that, away from the barn?

A. The barn is not far from the house.

Q. How do you know she came from the barn?

A. Already I told you she come from the barn.

Q. You have said that several times.

A. No, sir,---I said away from the barn.

Q. Then you did not see her come from the barn? Whether she came from the barn, you don't know?

A. I don't know.

Q. Or away from the barn?

A. I know she came from the barn.

Q. Her back was toward the barn, that is all you know?

A. That is what I know, sir.

Q. She was right close to the steps, very near the steps, almost ready to step on the steps when you saw her?

A. I don't know.

Q. Was she on the side steps,---was she toward the street or from the street?

A. She was on the other side, not next to the street

Q. On the other side. How come you to look at your watch when you left?

A. Because I was busy that time. I was late and I was very busy and that made me look at my watch.

Q. If you looked at the watch, why didn't you find out what time it was?

A. Didn't I tell you it was after eleven?

Q. That was all you found out, it was after eleven?

A. Yes, sir.

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Q. Have you that watch on now?

A. Yes, sir.

Q. Let me see it, will you? (Watch shown) Could not you tell what time it was by that watch?

A. I could tell now.

Q. What time is it now?

A. About thirteen minutes to four.

Q. Why could not you tell at the time, what time it was?

A. I did not take notice.

Q. Did you take notice enough to notice whether it was after eleven?

A. I know it was.

Q. Is the little hand that you told that with?

A. Who? I say it was after eleven. Nobody didn't tell me.

Q. You did not take notice of the big hand, but you took notice of the little hand?

A. I took notice of the little hand.

Q. Who did you tell about that?

A. I told next Mr. Wilkinson.

Q. Who else?

A. And then I told Mr. Mullally, the policeman.

Q. When was that?

A. I guess two days after the murder.

Q. Where did you tell him?

A. In Mr. Wilkinson's store.

Q. What did you tell him?

A. Because I wanted to.

Q. What did you tell him?

A. I told him everything that I saw.

Q. Just as you told it here now?

A. Yes, sir.

Q. Just as you tell it now, and told him the time and everything?

A. I told him the time and everything.

Q. When did you tell anybody else?

A. I told the reporter.

Q. Who was the reporter?

A. I don't know; I could tell by the face and not the name. He was in my store and I told him everything I know, what I saw.

Q. When was he in your store?

A. I could not tell what day.

Q. Mr. Mullally was in the store,---what store?

A. Mr. Wilkinson's

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boot store.

Q. And that was the next day after this thing happened, you say?

A. Yes, sir.

Q. Did you see anybody in the Kelly yard?

A. I don't know.

Q. Did you see anybody in Mrs. Churchill's yard?

A. I don't know.

Q. When did you hear of the murder?

A. The same day.

Q. What time?

A. About half past twelve.

Q. Where were you when you heard of it?

A. About there peddling at the time.

Q. On what street were you when you heard of it?

A. Between Winter and High Streets.

Q. You had been all through Rock Street?

A. I got through before that.

Q. Had you been through June Street?

A. Yes, sir.

Q. Had you been on any other street beside the street you was on when you heard of the murder?

A. I told you before when I heard of the murder I went to Grove Street.

Q. Do you remember what you told officer Mullally?

A. Certainly, I do.

Q. Can you tell who else you told about it?

A. Yes, sir; Mr. Wilkinson, who is my boss, I told.

Q. Did you ever tell Mr. Jennings?

A. Yes, I told Mr. Phillips.

Q. When did you tell Mr. Phillips?

A. About two weeks after that.

Q. Did you tell him before the trial in the District Court?

A. I don't know when the trial was; I did not take any notice.

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Q. What?

A. I did not take notice when the trial was; I heard of it. They came into my store and told me.

Q. You did not hear of it?

A. I heard there was a trial, but I did not know where.

Q. Was it before the trial that you told Mr. Jennings---

A. Mr. Phillips, I told.

Q. Was it before the trial you told him?

A. I don't know whether before or after the trial.

Q. Did you know that at the trial it was a question as to whether she went to the barn or not?

A. What do you say?

Q. Did you know that at the trial it was a question as to whether she went to the barn or not?

A. Did I hear that she was going to the barn?

Q. That that was one of the questions at the trial?

A. I never heard of it.

Q. Did you go to the trial yourself?

A. To this trial?

Q. No, the District Court?

A. They did not call me.

Q. I did not ask that. Did you go to the trial?

A. I don't know what you mean by District Court. The District Court,---I don't know what it is.

Q. Judge Blaisdell's Court?

A. I was not there.

Q. The Police Court?

A. I was not there.

Q. The Court at Fall River?

A. I was not there.

Q. You were not?

A. I don't go.

Q. You told Mr. Phillips?

A. Yes, sir.

Q. Have you talked with him since about it?

A. No, sir.

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Q. Never?

A. This time I talked with him about it.

Q. When did you talk with him about it now?

A. Before this trial came up.

Q. Where?

A. Where did I talk?

Q. Yes.

A. At his office.

Q. Where?

A. At Mr. Jennings' office.

Q. Did you go before the Grand Jury? Do you know what that means? If you do not, it is all right. Your silence answers my question. You say it was about two weeks after the murder that you told Mr. Phillips about it?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. You say you put your horse up from one to half past one?

A. Yes, sir.

Q. How do you know that?

A. Any time that I got through.

Q. Have you any remembrance when you put it up?

A. I know it was after one, and between that and half past.

Q. All you know is that is your time for putting up?

A. Yes, sir.

Q. What time did you take the horse out the day before?

A. Half past ten from the stable, but that day we were getting out late.

Q. Do you remember what time you took him out the day before?

A. Yes, sir.

Q. What time the day before?

A. I can't remember.

Q. But you do remember this day particularly well?

A. Yes, sir, I do.

Q. What made you remember this day?

A. Because we were getting

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out late that day.

Q. Do you remember seeing any one in the Borden yard any other day before that day?

A. I don't remember.

Q. You go down the street every day, don't you?

A. Every day.

Q. You didn't take any notice any other day?

A. Something made me look at it that day. What has a person got eyes for, but to look with?

Q. Why didn't you look the day before?

A. I might have looked; I don't remember. I could not remember.

Q. Do you remember ever seeing any one in the yard the day before?

A. I don't remember.

Q. Didn't you always look in there every day?

A. Might have.

Q. What kind of weather was it that day?

A. It was a hot day.

Q. You don't remember whether you ever saw any body there before that day or not?

A. What do you mean?

Q. If you don't understand, I will not ask it?

A. You ask too fast; I can't understand what you mean.

MR. KNOWLTON. That is all, sir.

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CHARLES E. GARDNER, Sworn.

Q. (By Mr. Jennings.) Your name is Charles E. Gardner?

A. Yes, sir.

Q. Last August did you keep a stable on Second street?

A. Yes, sir.

Q. Between Rodman and Morgan?

A. Yes, sir.

Q. Did Mr. Wilkinson, the ice cream man, put his horse and carriage up there?

A. Yes, sir.

Q. Do you know the man that drove that carriage?

A. Yes, sir.

Q. Is he the man who just testified?

A. Yes, sir.

Q. Do you remember the occasion of the Borden murder?

A. I do, yes, sir.

Q. Do you remember anything about what time it was that day when Mr. Lubinsky took his carriage away?

A. I do, yes, sir.

Q. Won't you tell us---about what time was it?

A. I was ---

Q. About what time was it?

A. When he went out with his team?

Q. Yes.

A. Between five and ten minutes past eleven.

Q. How do you fix the time, Mr. Gardner?

A. I used to feed at noon, or my man used to feed, at eleven o'clock every day, and that day when he came in and ordered his horse I told him his horse was eating ---

MR. KNOWLTON. I beg your pardon.

Q. You need not tell what you told him.

A. The horse was eating, and I told him to wait ---

MR. KNOWLTON. I beg your pardon.

Q. Never mind. Did he have to wait at all to get his horse?

A. Yes, sir.

Q. For what reason?

A. There was a number of teams ahead of him, ordered ahead of him, and he wanted his team: he said "hurry up"---he was late: he wanted his team to go right out.

Q. Do you know whether either of those teams went out while he was waiting?

A. Yes, sir; there was one if not two of them.

Q. Do you remember who either one of them was?

A. Yes, sir, I remember one of them.

Q. Who was it?

A. George Douglass.

Q. Did you afterwards drive down Second street yourself?

A. I did, yes, sir.

Q. In your own team?

A. In my own team.

Q. Did you go alone or with somebody?

A. No, I had Mr. Newhall of Worcester with me, a drummer.

Q. Where did you go to from your stable?

A. We went from the stable to the Massasoit Bank.

Q. Where is that?

A. Corner of Bedford and Second.

Q. That is at the end of Second street, is it?

A. The end of Second street.

Q. Where it goes into Bedford street?

A. Yes, sir.

Q. Right opposite the post office?

A. Yes, sir.

Q. What did you do there?

A. Well, we couldn't make change---he had a hundred dollar bill, and I drove down to the bank to get the bill changed to make the change between us. We went to the bank, and I got that changed, and from there we went back up Second street, through Fourth street, from

there to Hartwell, over Eightrod-way to the New Bedford depot, to leave him for the train.

Q. What train was that that he took?

A. 11.50.

Q. Did he make any stop anywhere before he got there?

A. Yes, sir, we made a call at Fourth street to a harness shop kept by Mr. Estes.

Q. Did you hear anything about any trouble as you were driving down Second street?

A. Yes, sir, there was a young lad told me that there had been a fight, but I didn't know at the time where: he said there had been a fight down below, but he didn't tell me where.

Q. You didn't know it was Andrew J. Borden or not?

A. No, sir: I didn't.

Q. About how long was it, should you think, after Lubinsky left, before you went?

A. Well, I should judge from ten to fifteen minutes.

Q. Did you see Mr. Manning at any time while you were driving?

A. Yes, sir.

Q. Where did you see him?

A. When we left the bank we went back up Second street, and as we turned to go up Pleasant street I saw Manning on the run going up Second street, or going across Pleasant to go up Second, and I said to Mr. Newhall, "I guess he ---

MR. KNOWLTON. Wait a minute.

Q. Did you call Mr. Newhall's attention to him?

A. I did: I told him who he was and what he was.

Q. Well, you need not tell what you said. (Turning towards

the reporters seats). Mr. Manning, will you stand up, please? (To the witness). Is that the man that you saw?

A. Yes, sir; sure.

Q. Mr. Manning, the reporter of the Fall River Globe?

A. Yes, sir.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) Where were you when you saw Mr. Manning, Mr. Witness?

A. I was turning the corner of Second onto Pleasant.

Q. Coming south on Second street?

A. Yes, sir, I was coming from the bank, going to Fourth street.

Q. Had you heard about the fight then?

A. Yes, sir; I heard of that as I was coming down Second.

Q. Where were you on Second street when you heard about what you call the fight?

A. Well, just this side of Rodman St., if I remember right.

Q. Before you got to the Borden house?

A. Yes, sir.

Q. Did you see anybody at the Borden house when you got there?

A. I never noticed.

Q. Did you look in to see?

A. I didn't have occasion to.

Q. You didn't look into the yard as you went by?

A. No, sir.

Q. Although you had heard there was a fight there?

A. I didn't hear it was there: I heard it on the street.

Q. But you didn't notice any people on the street then?

A. I didn't notice anything unusual.

Q. That was ten or fifteen minutes after Lubinsky went down?

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A. Yes, sir.

Q. That you went down?

A. Yes, sir.

Q. And didn't notice anything unusual around the Borden house?

A. No, sir.

Q. Didn't see anybody going towards the house?

A. I never noticed anything.

Q. What time of the day was that, do you think?

A. Well, it might have been quarter past eleven, it might have been later: I can't say what time it was when I went by that house.

Q. What?

A. I can't say what time it was when I went by that house: I had no reason to ---

Q. You say you started ten or fifteen minutes after this time?

A. As near as I could judge.

Q. If it was fifteen minutes after, and it was quarter past eleven, then it was eleven o'clock when he started, if your ---

A. Yes: it must have been later than that, for he didn't leave at eleven.

Q. What?

A. He didn't leave the stable at eleven o'clock.

Q. What time do you think he did leave the stable?

A. I think he left the stable about ten minutes past eleven.

Q. And you didn't leave for ten or fifteen minutes after that?

A. Somewhere in that neighborhood.

Q. If it was ten minutes after, it was twenty minutes past eleven?

A. Yes.

Q. And if it was fifteen minutes after, it was twenty-five minutes past eleven?

A. I waited long enough for my own driving horse to eat her dinner before I went out, for I had to carry him to

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the depot, and I was going away with her, and I didn't want to have to hitch her again.

Q. So that if you fix the time when you left the stable at ten minutes past eleven, your time must have been twenty or twenty-five?

A. Possibly.

Q. And at that time you were not attracted to the Borden house so as to notice anything around there at all?

A. No, sir.

Q. Didn't look that way?

A. No, sir.

Q. If there was anybody in the yard or on the premises, you didn't notice anything?

A. I didn't notice anybody.

Q. You didn't notice any commotion on the street?

A. No, sir.

Q. Or any running on the street?

A. No, sir.

Q. Until you saw Manning?

A. Yes, sir.

Q. What makes you think it was ten minutes after eleven when he left?

A. Because I always feed at eleven o'clock,---that is the hour: and when he came in and ordered his horse the feed cart was on the floor. They had not finished all the horses. I had been to the depot after Mr. Newhall, and ordered my horse and told my man to take her out and feed her first. There were something like 35 or 40 horses to be fed, and when he came in and ordered his horse the cart was on the floor, and they were feeding, and I told him to wait until it was fed. He said he couldn't, he was in a hurry.

Q. Then how do you know it was ten minutes after eleven?

A. I knew it was eleven when we fed.

Q. And it was something after that this man left?

A. Yes, sir.

Q. Whether it was eight or nine or ten minutes after you could

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not tell?

A. No, sir, I could not.

Q. For aught that you know, it was quarter past eleven when he left?

A. Yes, sir; I couldn't come within one minute or five of that time.

Q. For aught that you know, it was quarter past eleven when he left the stable?

A. I don't think it was ten minutes past eleven, for he was in a terrible hurry.

Q. But that is a mere matter of estimation?

A. Yes, sir.

Q. For aught that you can say now, I don't suppose you recollect distinctly the order or succession of things, do you?

A. I do, quite distinctly.

Q. But you didn't take any notice of the time?

A. Only at feeding time.

Q. And you have told me it might have been quarter past eleven?

A. It might have been as late as that.

Q. And I don't suppose you took any particular notice of how long you left afterwards?

A. No, sir.

Q. Who were the people that went out before him, you say?

A. George Douglass was one of them: he was a boarder with me at that time. But there was some one else, and I don't know but two other teams, because the floor was ---one or two or three teams standing on the floor when he gave his order.

Q. Who is George Douglass? Where does he live?

A. Well, he has been keeping a stable in Fall River: I don't know where he is at the present time.

Q. How long had he been in the stable?

A. Mr. Douglass?

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Q. Yes, sir.

A. I think he came in just as---followed us in: as I drove in from the depot he came in afoot: and that was the occasion why we had to go to the bank, was on account that he had a hundred dollar bill and he wanted to get it changed.

Q. What time did he come in, do you think?

A. It might have been when he came in---it was before eleven o'clock.

Q. What train had you come from?

A. Ten-twenty, I think, it arrives in Fall River.

Q. Where is that from?

A. Boston.

Q. The Boston train that gets in at ten-twenty?

A. I think that ---

Q. Did you walk up or ride up?

A. We rode up. I went to the depot.

Q. And you found him there when you got there?

A. Yes, sir.

Q. Did you take any notice when it was eleven o'clock that day?

A. Yes, sir.

Q. By the city bell, or something else?

A. By my watch.

Q. What was there that was happening at eleven o'clock?

A. It was feeding time.

Q. And you took out your watch just at that time?

A. At that time it might have been a few minutes before.

Q. And it was after that that Lubinsky came in?

A. Yes, sir.

Q. After you had seen your time?

A. We was feeding when he came in.

Q. But it was after eleven when he came in?

A. Possibly it might have been.

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Q. Don't you think it was? You just said it was; I thought perhaps you meant it.

A. Well, his horse had been fed when he came in, that was sure,---and was eating, as I told him.

Q. My question was whether you looked at your watch before he came in?

A. Yes, sir, I did.

Q. And it was eleven o'clock when you looked at it?

A. Yes, sir.

Q. And he came in after that time?

A. Yes, sir.

Q. And had to wait for some other teams to be fixed up before he had his?

A. Yes, sir.

Q. And had you fed Lubinsky's horse?

A. Yes, sir.

Q. Had you fed it before he got in?

A. I couldn't say that his horse had been fed when he came in, but I said "they are feeding; let your horse eat before you go out."

Q. Did he finish eating?

A. I don't know. I don't think he did, for there wasn't time.

Q. You don't know whether he finished eating or not?

A. No, sir, I don't.

CHARLES V. NEWHALL, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Charles V. Newhall.

Q. Where do you live?

A. Worcester.

Q. What do you do?

A. Saddlery hardware business.

Q. Were you in Fall River on the day of the Borden murder?

A. I was.

Q. Were you at Charles E. Gardner's stable on Second street?

A. Yes, sir.

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Q. What time did you arrive in Fall River?

A. Ten twenty-five.

Q. Where did you go to from the station?

A. I went to A. D. Thompson's harness shop.

Q. Did you go there with anybody?

A. Mr. Gardner.

Q. Did he take you in his team?

A. Yes, sir.

Q. Stopped there?

A. A few minutes.

Q. Then where did you go?

A. To Mr. Gardner's stable.

Q. How long did you stay there?

A. Well, I couldn't say: perhaps till eleven o'clock or a little after.

Q. Do you know what time you left there?

A. No, sir, I don't exactly.

Q. Where did you go from there?

A. I went down to a bank.

Q. By the way, while you were there, did you have any business with a man named Douglass?

A. Well, there was a gentleman there; I don't remember his name.

Q. Did you have any business with him?

A. Yes, sir.

Q. You say you went from there to the bank?

A. Yes, sir.

Q. How did you go to the bank?

A. Went right down Second street.

Q. Who with, if anybody?

A. Mr. Gardner.

Q. Walk?

A. No, sir, ride.

Q. In going down did you hear anything about any trouble or difficulty?

A. Yes, sir.

Q. What was it?

A. Some one said there was a man stabbed another one.

Q. Did you know who, or did he say who?

A. No, I didn't understand he did.

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Q. Did you go right down to the bank?

A. Yes, sir.

Q. What did you do down there?

A. Got a bill changed.

Q. What kind of a bill?

A. A hundred dollar bill.

Q. Where did you go from the bank?

A. Went up onto Fourth Street.

Q. Do you know the names of the streets so you could tell what streets you went by?

A. I think I came back Second Street and up Pleasant Street.

Q. Are you more or less familiar with Fall River?

A. Well, I am down there; I don't take much notice of streets.

Q. Do you know where Pleasant Street is?

A. Well, I think it is Pleasant Street.

Q. Well, you went up Pleasant Street to what street?

A. Fourth Street.

Q. What did you do on Fourth Street?

A. Went up to see Mr. Estes, a harness maker there. I do business with him.

Q. Did you tell me what your business was?

A. Saddlery hardware business.

Q. Did you stop there?

A. Yes, sir.

Q. And where did you go to from there?

A. Went over to the station to take the train for New Bedford.

Q. Do you remember what time that train left?

A. 11.50.

Q. Do you remember of having your attention called to anybody by Mr. Gardner while you were driving on any part of that route?

A. Yes, sir.

Q. Can you designate who it was?

A. He said he was a reporter.

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MR. KNOWLTON. I pray your Honors' judgment as to that answer.

Q. Whether he called your attention to somebody?

A. Yes, sir.

Q. Can you tell where you were?

MR. KNOWLTON. Well, we object?

MR. JENNINGS. I want to use that, may it please your Honor, to fix the place where he was at the time.

Q. Would you know the man if you saw him?

A. I would not.

MR. KNOWLTON. I object to the answer he gave before.

MASON, C. J. It may stand.

Q. Do you remember where you was at the time your attention was called to the man?

A. I think going around Pleasant Street from Second Street.

Q. Turning the corner of Second Street into Pleasant?

A. Yes, sir; somewhere about there.

Q. Now where was the man to whom your attention was called at that time?

A. I think crossing the street.

Q. Going in which direction?

A. Up Second Street.

Q. That was after you heard that somebody had been stabbed?

A. Yes, sir.

(No cross-examination.)

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EVERETT BROWN, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Everett Brown.

Q. Where do you live.

A. 117 Third Street.

Q. Fall River?

A. Yes, sir.

Q. Were you in Fall River on the day of the Borden murder?

A. Yes, sir.

Q. Was you down there at the Borden house?

A. Yes, sir.

Q. Do you know what time you were down there?

A. No, sir

Q. Did you go down alone or with somebody?

A. Went down with somebody.

Q. Where from?

A. From my house.

Q. Where is your house?

A. 117 Third Street.

Q. How did you get to the Borden house to your house?

A. Walked down Third Street, over Morgan, and down Second.

Q. Can you give us any idea about what time it was when you left your house?

A. Well, I was to leave the house at 11 o'clock with this other party.

Q. What do you mean by that, it was somewhere around eleven o'clock?

A. Well, I don't know whether it was before eleven or after eleven when I left.

Q. Well, would you say it was nearer eleven or twelve that you left the house?

A. I couldn't say because I didn't notice the time.

Q. Well, you went down Second Street. Did you see any person come out of the Borden yard as you were going down Second Street?

A. Yes, sir.

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Q. Where were you when you saw this person?

A. Right front of Dr. Kelly's house.

Q. On the sidewalk?

A. Yes, sir.

Q. Who was this person you saw come out of the Borden yard?

A. Officer Doherty.

Q. Did you know him?

A. Yes, sir.

Q. Do you know what part of the yard he came out of?

A. Well, it was my impression he came out of the front gate.

Q. Yes. Where did he go to?

A. Ran across the street and down Spring Street.

Q. What did you do?

A. I went in the Borden yard.

Q. Well, tell us what you did?

A. Went into the side gate and went up along the path to the door, tried to get into the house, and Mr. Sawyer wouldn't let us in. He was at the door.

Q. Did you see Officer Medley there at that time?

A. No, sir.

Q. Do you know him?

A. Yes, sir.

Q. Was he there at that time?

A. I don't know. If he was I didn't see him.

Q. Was Medley there at the gate when you went in?

A. No, sir.

Q. Was he on that walk when you went in?

A. No, sir.

Q. Was he at the door when you went in?

A. No, sir.

Q. I mean, was he at the door when you went into the yard?

A. At the door of the house?

Q. Yes.

A. I don't know. When I got into the yard all I see was Charlie Sawyer. I asked him to let me in.

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Q. Never mind what you asked him.

A. I didn't take any notice as to who was there.

Q. Where did you go after you came away from the door?

A. Went over to the barn.

Q. Is that the first place you went to?

A. We had to go down the steps first.

Q. You went to the barn. What did you do when you got to the barn?

A. The party that was with me tried the door of the barn, and we went into the barn.

Q. Go ahead.

A. And when we got into the barn we stood a minute to see who would go up first, who would go upstairs first.

Q. What do you mean, you dared each other?

A. Well, he said he wouldn't go up, somebody might drop an axe on him.

Q. Well, go ahead.

A. So we went upstairs and looked out of the window on the west side, and went from there over to the hay, and was up in the barn about five minutes.

Q. Well?

A. Upstairs. We went down again, and I went out first and he went out after me.

Q. Where did you go then?

A. Went up to the south east corner of the house and stayed there a minute and tried to look in, and we couldn't look in. We went back and tried to look in a window.

Q. Tried to look in what?

A. A window.

Q. Was there anybody else there in the yard at that time?

A. There was people trying to look in the window.

Q. Well, go ahead.

A. We couldn't get to look in a window

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so we went and stood in front of the big door on the west side of the barn.

Q. Now, did you see Officer Fleet when he came there?

A. I seen Officer Fleet when he was coming up the walk.

Q. What walk?

A. The concrete walk on the north side, leading into the side door.

Q. Where were you standing there?

A. In front of the big barn door on the west side.

Q. Was anybody with you then?

A. Yes, this other fellow that was with me before was with me then.

Q. Who was he?

A. Thomas Barlow.

Q. Did you see Officer Fleet come in the gate?

A. Well, I seen him coming up the walk; I don't remember.

Q. Well, which direction was he coming, from the street?

A. Yes, sir.

Q. What did he do when he came in?

A. Stopped and talked with somebody.

Q. Well, what did he do then?

A. He went up---I think he went up to the door. I ain't sure.

Q. Do you remember whether he went in the house or not?

A. No, sir.

Q. Well, what happened after that?

A. We got put out of the yard.

Q. Who got put out of the yard?

A. Everybody that was in there.

Q. After Officer Fleet got there you all got put out?

A. Yes, sir.

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CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) Who do you say the other fellow was?

A. Thomas E. Barlow.

Q. Do you say what time you got there?

A. No, sir; I can't say what time.

Q. Whether nearer twelve or nearer eleven?

A. No, sir.

Q. Whether after twelve or not?

A. No, sir; I wouldn't say the time, I don't know it.

Q. It might have been after twelve?

A. I don't know whether it was or not, I don't know the time.

Q. Do you know whether it was after one or not?

A. I don't know the time.

Q. You don't know anything about the time at all?

A. No, sir.

Q. Did you see anything of Mr. John V. Morse?

A. Well, I didn't know Mr. Morse then. I might have seen him and might not have seen him.

Q. You have seen him since, have you?

A. Yes, sir.

Q. You know who he is now?

A. Yes, sir.

Q. He is down stairs now, isn't he? Have you seen him today?

A. I have seen him down there, I don't know whether he is down there now or not.

Q. You didn't see anything of him that day?

A. I might have seen him. I didn't know him then and didn't take notice whether I saw him or not.

Q. Was it some time after that that you went upstairs in the barn?

A. Yes, sir.

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Q. Did you see anybody go up there before you did?

A. No, sir.

Q. Did you see anything of Mr. Medley at all?

A. No, sir.

Q. After you got put out you hung around outside?

A. Yes, sir.

Q. So you could see who went in and out?

A. Yes, sir.

Q. How long did you stay there?

A. Till about five o'clock.

Q. That afternoon?

A. Yes, sir.

Q. Stayed right there all the time?

A. Yes, sir.

Q. Did you see anything of Mr. Medley at all?

A. I might have seen him and might not; I wasn't taking any notice of who I seen there.

Q. Did you see anything of Mr. Medley at all?

A. I ain't sure whether I seen him; I ain't sure of it.

Q. Do you remember seeing Mr. Medley at all that afternoon?

A. No, sir.

Q. At no time?

A. No, sir.

Q. Either when in or out of the yard?

A. No, sir.

Q. He might have come in or gone out of the yard and you not see him anyhow?

A. Yes, sir.

Q. So when he was there you don't know, if he was there?

A. No, sir.

Q. When he came you don't know?

A. No.

Q. And when he went away you don't know?

A. No.

Q. Nor what he did while there you don't know?

A. No.

Q. Because you didn't see him at all?

A. I don't [know] whether I seen him, I don't remember of seeing him.

Q. You don't recall now anything that makes you think you did

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see him at any time, do you?

A. No, sir.

Q. You say you found the door shut to the barn?

A. Yes, sir.

Q. The staple in it?

A. Well, I didn't open the door.

Q. Who did?

A. Thomas Barlow.

Q. He opened the door?

A. Yes, sir.

Q. What made you go in the barn?

A. He happened to try the door.

Q. What for?

A. He says when he tried the door, he says, "Come on in the barn, there might be somebody there."

Q. You thought you would go up and see if you could find the murderer. Was it hasped on the outside?

A. I didn't open the door.

Q. Do you know whether Barlow did or not?

A. I know he opened it.

Q. And you thought you might see the murderer inside?

A. Yes, sir.

Q. Was the pin in the hasp, do you remember?

A. I don't know; I didn't open the door.

THOMAS E. BARLOW, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Thomas Barlow.

Q. Where do you live?

A. 110 Lyons Street.

Q. Fall River.

A. Yes.

Q. Do you remember the day of the Borden murder last August?

A. Yes, sir.

Q. Were you there on the premises at any part of the day?

A. Yes, sir.

Q. From what place did you come to the Borden premises?

A. From my home.

Q. Where did you go from your home first?

A. Down to Everett Brown's house.

Q. Do you know what time you got to Everett Brown's house?

A. Yes, sir.

Q. What time was it?

A. Eleven o'clock.

Q. How long did you stay there?

A. Stayed there about eight minutes.

Q. What did you do then?

A. Left his house and came down Third Street and over Morgan and down Second.

Q. Do you know where the Borden house is?

A. Yes, sir.

Q. When you arrived near the Borden house did you see any person leave the yard?

A. Yes, sir.

Q. Do you know who it was?

A. Yes, sir.

Q. Do you know him?

A. Yes, sir.

Q. Who was it?

A. Officer Doherty.

Q. Do you know what part of the yard he came out of?

A. I should say the front gate.

Q. Where did he go to?

A. Across the road, over toward Spring Street.

Q. What did you do then?

A. We went in the side gate.

Q. You say "we." Who?

A. Me and Brownie.

Q. Well, tell us what you did now?

A. We went up to Mr. Sawyer, he was on the back steps, and asked him to let us

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go in the house, and he wouldn't let us in, so we went in the barn.

Q. Do you know Officer Medley?

A. No, sir.

Q. Was there any Officer there at the side gate when you went in?

A. No, sir.

Q. Any on the walk?

A. No, sir.

Q. Any on the steps?

A. No, sir.

Q. Well, you started from the steps. Now tell us where you went?

A. Went in the barn and went right up to the hay loft. I went over to the front window on the west side and looked out the window. Then we went and looked in under the hay, and after that we came down stairs again and went out.

Q. How was the heat up in the barn compared with it out in the sun?

A. It was cooler up in the barn that it was out doors.

Q. Where did you go after you came out of the barn?

A. Over to the south side of the house.

Q. What did you do over there?

A. Tried to look in the window.

Q. What did you do next?

A. Came back again and stood at the front door in the barn.

Q. Well, what did you do then?

A. We stood there.

Q. Were there any people in the yard when you were trying to look into those windows?

A. Yes, sir.

Q. Do you know how many?

A. I couldn't say how many there were there.

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Q. More than one?

A. Yes, sir.

Q. Several?

A. Yes, sir.

Q. Were they looking in the windows at the time you were trying to?

A. Yes, sir.

Q. Do you know Officer Fleet, the assistant marshal?

A. Yes, sir.

Q. Did you see him when he came there?

A. Yes, sir.

Q. Which way did he come?

A. He came in the side gate.

Q. Came along that path there?

A. Yes, sir.

Q. What did he do?

A. He stopped about the middle of the path and talked with some men.

Q. What did he do then?

A. He went right in the house.

Q. Did you see him after that?

A. I seen him in the afternoon some time.

Q. You didn't see him again at that time?

A. No, sir.

Q. Well, what did you do then?

A. We got put out of the yard then.

Q. You got put out?

A. Yes, sir.

Q. Did you go home then?

A. No, sir.

Q. When did you go home?

A. Five o'clock, about.

Q. Where did you stay all that time?

A. Stayed around the front of the house.

Q. Didn't you go home to dinner?

A. We had our dinner before that.

Q. Had your dinner before that?

A. Yes, sir.

Q. Did you go home for supper?

A. Yes, sir.

Q. What did you do after supper?

A. Came back there again.

Q. Came back to the Borden house?

A. Yes, sir.

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Q. How long did you stay there then?

A. Stayed there until about twelve o'clock.

Q. What, out in the street?

A. Yes, sir.

CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) What do you do, Mr. Barlow, for a business?

A. Work for Mr. Shannon, pool room.

Q. Where is Mr. Shannon's pool room?

A. Corner of Pleasant and Second Streets.

Q. What do you do in Mr. Shannon's pool room?

A. Clean up around there and set the balls up.

Q. And what times of the day are you employed at Mr. Shannon's pool room?

A. I wasn't working then.

Q. What were you doing then?

A. I wasn't doing anything then.

Q. When did you begin to work in this pool room?
A. I have been working there now about a month.

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Q. Were you doing anything at that time?
A. No, sir.

Q. Did you live with your folks?
A. Yes, sir.

Q. Did your father live there?
A. My father is dead.

Q. Is your mother living?
A. No, sir.

Q. Who were your folks you lived with?
A. Lived with my grandmother.

Q. She occupied the house?
A. Yes, sir.

Q. Who else makes the family besides your grandmother?
A. I got a brother and sister, and my uncle and my grandfather.

Q. How old is your brother?
A. He is about ten.

Q. How old is your sister?
A. She is about eleven.

Q. Who else is there in the family?
A. My grandfather and grandmother and uncle.

Q. What was your grandfather's business?
A. He worked for Mr. Dunn down on Central street.

Q. What did he do?
A. He sorted out iron.

Q. Working from day to day down there?
A. Yes, sir.

Q. What time did he go to work in the morning usually?

A. Seven o'clock.

Q. What time did he come home to dinner?

A. Didn't come home to dinner.

Q. Took his dinner with him?

A. Yes, sir.

Q. Anybody else in the family?

A. Only my uncle and grandmother and sister and brother.

Q. Didn't you have dinner pretty early that day?

A. Yes, sir.

Q. About half-past ten?

A. Yes, sir.

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Q. You did?

A. Yes, sir.

Q. What did you happen to have dinner so early in the forenoon for?

A. I always go home to dinner then.

Q. Your general habit was to go home about half-past ten to dinner?

A. Yes, sir.

Q. What did you have for dinner that day, do you remember?

A. I can't say.

Q. Did your grandmother cook a dinner for you?

A. Yes, sir.

Q. Set the table for you?

A. Yes, sir.

Q. So that you sat down to a meal at some time before eleven o'clock, for dinner?

A. Yes, sir.

Q. What time do you generally get your breakfast in the morning?

A. About seven o'clock.

Q. What time do you generally get your supper?

A. Used to go home at five o'clock.

Q. And get your supper at that time?

A. Yes, sir.

Q. So your usual time for eating dinner was before eleven o'clock?

A. Yes, sir.

Q. That is so, is it?

A. Yes, sir.

Q. Every day?

A. Yes, sir.

Q. That isn't so now?

A. No, sir.

Q. Changed now?

A. Yes, sir.

Q. So you were eating dinner at that time in the morning?

A. Yes, sir.

Q. Before eleven?

A. A little before eleven.

Q. How much before eleven?

A. About quarter of eleven I had my dinner that day.

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Q. How did it happen you had your dinner at quarter of eleven?

A. Because I went home for it.

Q. At any rate, when you went down to this place was after dinner?

A. Yes, sir.

Q. Where did you go that morning? What were you doing that morning?

A. Went down to the wharf first and seen the excursion boats go out. The policemen went on an excursion.

Q. What boat did you see go off?

A. Mount Hope.

Q. Any other one besides that?

A. I can't say.

Q. What time did it leave?

A. A few minutes after nine, I guess it was.

Q. Did you see any boat besides that?

A. No, sir.

Q. And you mean for this jury to understand you had your dinner quarter to eleven because that was your usual hour?

A. Yes, sir.

Q. How do you know it was quarter to eleven?

A. Because I looked at the clock before I had my dinner.

Q. Now, did I understand you to say it was cooler up in the barn loft than it was anywhere else?

A. Yes, sir.

Q. It was a cool place, was it?

A. Yes, sir.

Q. You recall, do you, that that barn loft was a place where the roof is sloping, don't you?

A. Yes, sir.

Q. And hangs right down low on the sides?

A. Yes, sir.

Q. And isn't very high anyhow?

A. No, sir.

Q. And not a very large room?

A. No, sir.

Q. What do you suppose made that so much cooler than the rest of the country?

A. I couldn't say. It is always warmer in

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the house, I should say, than out-doors.

Q. And you should think the barn loft was cooler than any place you found that day?

A. Yes, sir.

Q. You mean that, do you?

A. Yes, sir.

Q. Has anybody told you to say that?

A. No, sir.

Q. Have you talked with anybody about this case?

A. Nobody but Mr. Jennings.

Q. Anybody else?

A. No, sir.

Q. When did you talk with him?

A. I can't say now; some time last week.

Q. It really struck you as being a cool place, up in the barn?

A. Yes, sir.

Q. A nice, comfortable, cool place?

A. Yes, sir.

Q. Did the other boy eat dinner, or don't you know about that?

A. He had his dinner before I met him.

Q. Before he came to your place?

A. I went to his place.

Q. You didn't go to his place until after you ate your dinner?

A. No, sir.

Q. And the other boy had had his dinner?

A. Yes, sir.

Q. What time did you get to his place?

A. Eleven o'clock.

Q. Where does he live?

A. No. 117 Third street.

Q. Where do you live?

A. No. 10 Lyons street.

Q. How far apart are the two places?

A. It ain't very far apart.

Q. Round the corner?

A. A little ways up.

Q. How long did you stay there at his home?

A. About eight minutes past eleven.

Q. How did you know that?

A. I looked at his clock when I left his house.

Q. How happened you to look at the clock when you left his house?

A. I had promised to meet him at eleven o'clock. It was eleven when I got there, and I looked when I got there.

Q. What made you look at it?

A. I couldn't say. I happened to look at it.

Q. You remember it?

A. Yes, sir.

Q. What time is it now? ---Don't look at the clock?

A. I can't say.

Q. What time was it when you came up here to testify?

A. I don't know.

Q. Have you noticed the time to-day at all?

A. No, sir.

Q. Have you looked at the clock to-day?

A. No, sir.

Q. And yet you did look at the clock just when you were going out?

A. Yes, sir.

Q. And remember it was eight minutes past eleven?

A. Yes, sir.

Q. Did you go right down to the Borden house?

A. We took our time.

Q. Go right down?

A. Yes, sir.

Q. How far was it down to the Borden house?

A. I can't say. I never measured it.

Q. Well, how many squares is it?

A. About three, I should say.

Q. And you started at eight minutes past eleven?

A. Yes, sir.

Q. And when you got down there Mr. Sawyer was at the door?

A. Yes, sir.

Q. That you know was right?

A. Yes, sir.

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Q. Sure about that?

A. Yes, sir.

Q. You walked three squares?

A. Yes, sir.

Q. You didn't stop?

A. Oh, we stopped, fooling along going down.

Q. What do you mean by "fooling along"?

A. Playing going down.

Q. What do you mean by "playing"?

A. He was pushing me off the sidewalk, and I was pushing him off.

Q. How long do you think that took?

A. I couldn't say.

Q. How long do you think it took pushing him off the sidewalk and he you?

A. About ten or fifteen minutes, I should say.

Q. Fooling?

A. Yes, sir.

Q. On the sidewalk?

A. Yes, sir.

Q. You think that is so, do you?

A. Yes, sir.

Q. Whereabouts were you fooling?

A. All the ways going down.

Q. That delayed you ten or fifteen minutes going about three squares?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. You don't think it took any longer than that?

A. No, sir.

Q. How do you fix that time?

A. I don't fix it. I say it was about between ten and fifteen.

Q. Wasn't it twenty?

A. No, sir.

Q. Couldn't have been twenty possibly?

A. I don't think it could.

Q. You were fooling, and taking no notice of time?

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A. No, sir.

Q. And it was ten or fifteen minutes, it couldn't have been twenty?

A. I don't think it could.

Q. You took no notice of time, and it might have been ten, not fifteen?

A. I don't think so.

Q. When you got down there did you see anybody in the yard?

A. Only Mr. Sawyer, in front.

Q. Did you see anybody else down there?

A. No, sir.

Q. Did you see anybody in the yard after you came down from the barn?

A. Yes, sir.

Q. Whom did you see there then?

A. I don't know. I didn't know him.

Q. How many people did you see in the yard?

A. I guess there was about twenty.

Q. How did you go into the barn?

A. Go through the door.

Q. Did you open the door?

A. Yes, sir.

Q. Was it locked?

A. It was, kind of a thing---pin like.

Q. Was it fastened?

A. Yes, sir.

Q. What made you go into the barn?

A. Why, to see if anybody was in there.

Q. You thought the man had fastened himself in on the outside, I suppose?

A. No.

Q. That didn't occur to you at all?

A. No, sir.

Q. Did you shut the door after you when you came out?

A. Yes, sir.

Q. And nobody was out there when you came out, round that barn?

A. People around the other side of the house, on the south side

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of the house.

Q. Did you go anywhere else except up into that barn loft?

A. No, sir.

Q. Did you look around down stairs in the barn?

A. No, sir.

Q. Did you look around the yard anywhere?

A. No, sir.

Q. Well, then you went right there and saw Mr. Sawyer, went right to the barn, went up stairs and came out, and then you went on the premises where?

A. Went round the side of the house and tried to look in the window.

Q. Well, the place you went to was up in that barn loft?

A. Yes, sir, on the south side of the house.

Q. And you went there to see if you could see a man up there?

A. Yes, sir.

Q. Walked around up there?

A. Yes, sir.

Q. Because it was cool?

A. No. We went up to see if anybody was in there.

Q. Did you look for anybody after you got there?

A. Yes, sir.

Q. Turn the hay over?

A. Yes, sir.

Q. Thought perhaps the man might be hidden in the hay?

A. Yes, sir.

Q. Weren't afraid of him?

A. No, sir.

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Joseph Lemay was the next witness called, and being a foreigner, a French interpreter, George E. Jendren, was sworn at the same time.

JOSEPH LEMAY, Sworn

Q. (By Mr. Jennings.) What is your name?

A. Joseph Lemay.

Q. Where do you live?

A. Fall River.

Q. What part of Fall River?

A. North of Fall River.

Q. In what is called Steep Brook?

A. Yes, sir.

Q. How far is that from the City Hill?

A. About four miles.

Q. Which side of the Wilson Road is that, the north side or the south side?

A. South-west.

Q. Well, I mean is your place on the main road?

A. Main road.

Q. Does the Wilson road run into the main road?

A. Main road. Mr. Tierson's road comes down the main road.

Q. You own a farm there?

A. Yes.

Q. Of how many acres?

A. 56 acres.

Q. Are there any woods in that vicinity?

A. Yes, sir.

Q. How extensive are those woods?

A. There is wood on each side of my farm.

Q. Now on the 16th of August---

MR. KNOWLTON. Unless you want to depart from the rule that I have sedulously observed, not to have any evidence introduced by witnesses---

(At this point Mr. Knowlton dropped his voice, and Counsel on both sides advanced to the bench and held a conference with Mr. Jennings submitting the following order of proof:

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"This witness will testify that on the 16th day of August, at his farm, about four miles north of City Hall, while travelling into the woods for the purpose of cutting poles, just before he reached a turn in the road, he heard the words "poor Mrs. Borden" repeated three times, and immediately saw sitting upon a rock behind a wall and some brushwood, a man. He spoke, to the man in French twice, but received no answer. On speaking to him the second time the man took up from the ground by his side a hatchet, such as is used in shingling houses, and shook it at him. He stepped back and put his own axe up in an attitude of defence. They remained in that position some few minutes, when the man turned, leaped over a wall and disappeared in the woods. He said nothing to the witness at any time. The witness noticed upon his shirt spots of blood. He notified the police the same evening of what he had seen and heard."

(By direction of the Court the witness left the stand and the jury were excused until tomorrow morning at nine o'clock.)

MR. KNOWLTON. The memorandum of authorities which I had prepared with reference to another matter but which is applicable to this question---I did not have any idea of this matter coming up at this time---is at my house, and I cannot present it to the

Court at this moment. The objection we make to the evidence, if your Honors please, is this---I crave the favor of time to examine authorities about it---I will state briefly my position, however, in the matter,

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which is that the issue in this case is whether this murder was committed by Lizzie Andrew Borden; and while it may be true, and I would not dispute the proposition, that anything tending to show that at or about the time of the murder there were circumstances which would tend to show---and I have not objected to any such evidence if it had any tendency to establish that fact---that immediately preceding or following the murder there were seen things of the character that have been described, which would have some tendency to show that some other person was there or that some other person was seen about there or lying in wait there,---while I am not entirely clear about the admissibility of it, I did not think it was worth while to object, and on the whole I should hardly have been warranted in making the objection. This has no relation whatever in time to the occurrence: it has no relation in place to the occurrence: it has no connection with the occurrence excepting so far as some talk had by the person himself, which, of course, is of the purest hearsay, and may well be taken to be the mutterings of some person who had been brooding upon the crime without any reference to his having participated in it. How far would your Honors think this sort of evidence should go? Supposing in New York or New Bedford or Boston, at anytime afterwards---this I understand is three miles away, is it?

MR. JENNINGS. Four miles.

MR. KNOWLTON. Four miles away from this town, 12 days afterwards, a man in seen under circumstances which

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indicate nothing whatever in reference to this tragedy; nothing whatever. I submit, if your Honors please, it has a tendency to confuse and to diffuse the issue and get the jury away from the question in hand, which is whether this murder was committed by Lizzie Andrew Borden, or whether any person was seen around those premises immediately before or immediately after under circumstances which would lead to the conclusion that somebody else had something to do with it. I suppose that the evidence of other persons near the premises is perhaps admissible upon the ground, to put it a little more clearly, that it does away with the suggestion that there was no opportunity for any person to be around there at that time; otherwise I do not see any bearing of that evidence. Supposing that another person had made a confession, as I may say to your Honors that many people have done, both to my brother Jennings and myself, telling absolutely wild and imaginative stories. Those statement could not be put in; nothing could be done about them; they are all investigated and found to be either the results of disordered imagination or the creation of some persons undertaking, for reasons unknown, to obstruct the natural and orderly course of justice. It is not an act which has any bearing on any issue in this

case. I think we have authorities on that subject which I should like to submit to your Honors.

MR. JENNINGS. I have no authority, your Honors, in regard to the matter. It can be shown that this place is comparatively in easy communication with the centre of the

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city; the electric cars run every ten minutes to Steep Brook, as it is called, three miles from the city, and cover the space in a comparatively short time---it can be shown if that is considered essential to the introduction of the evidence. From what he says, he appears to live about a mile beyond the termination of the street car route. Now it is not, your Honors, I take it, in the nature of conversations or in the nature of declarations. The Court have held over and over again that exclamations of pain or suffering or anything of that kind can be put in, not by way of declaration but more in the nature of acts of parties. This was not in the nature of a conversation or a declaration at all. The person, so far as we are able to know, was not aware of the presence of the witness, nor the witness the presence of the person, at the time this exclamation was made. It seems to me it does not fall in a rule which would make an exception to it in case it had been a confession or an admission from this party to the witness in the case. And in addition to that, also, as I understand it, there is the testimony about blood on the clothing of this person, and the hatchet, corresponding in its character to the hatchet which has been put into the case here, claimed, as I presume, by the government as the instrument which may have committed this murder. It is nothing of recent knowledge on the part of either myself or the Commonwealth in this case. The Commonwealth was notified of it at the time, the evening of the day

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it happened, and acted upon the information and made a search for the party, but without result. It seems to me that what was said at that time, under those circumstances, the appearance of the party, the presence of a weapon similar to a weapon which is claimed here could have produced this murder at that time; the man out there in the woods, where he could have easily reached in half an hour from the City hall,---make it perfectly competent,---and the presence of blood on the clothing of the man. Of course it may weigh much or little, but the question is whether that much or little is not for the jury to give it such consideration as they think it deserves. We do not connect that, your Honors, with the murder, it is true. I might argue with a little show that neither do they connect their hatchet with the defendant, but leave that for an inference to the jury.

MASON, C. J. The Court will reserve the matter till the morning. If either party desires to submit any authorities in the morning, they [may] do so. Counsel spoke of desiring to raise some other question?

(A consultation followed between the Court and Mr. Knowlton and Mr. Robinson,

at the conclusion of which the Court adjourned until Friday morning, June 16, at nine o'clock.)

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ELEVENTH DAY

New Bedford, Friday, June 16, 1893.

The Court came in at 9 o'clock, and after a short conference with Counsel, announced the appended decision, with which the proceedings began:

MASON, C. J. The Court are clear that the evidence offered cannot be brought within any of the rules of evidence and must be excluded.

MR. JENNINGS. Your Honor will save whatever rights we have in the premises, that are the subject of exception.

MR. KNOWLTON. At any time will you put in writing what you offer to prove, Mr. Jennings?

MR. JENNINGS. I did. I dictated it to the stenographer last night.

MR. KNOWLTON. Very good, sir.

SARAH R. HART, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Sarah R. Hart.

Q. Where do you live?

A. In Tiverton, near Adamsville.

Q. Live on a farm there?

A. Yes, sir.

Q. You used to live in Fall River?

A. Yes.

Q. How long ago was it?

A. Ten years ago.

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Q. How long did you live in Fall River?

A. 15 or 20 years.

Q. Where did you live?

A. On or near Second street most of the time.

Q. So that you are very familiar with Second street?

A. Yes, sir.

Q. Did you know Andrew J. Borden when he was alive?

A. I knew him by sight; I was not particularly acquainted with him.

Q. Did you know where his house was on Second street?

A. Yes.

Q. Did you have a sister who lived near by that house?

A. My sister-in-law lived in the house now occupied by Dr. Kelly.

Q. That is the next house south of the Borden house?

A. Yes, sir.

Q. How long did she live there?

A. I think some 15 years.

Q. Were you in the habit of frequently going there while she was there?

A. Yes, sir, quite often.

Q. Were you on Second street the day of the murder?

A. I was.

Q. Did you pass by Andrew J. Borden's house?

A. I did.

Q. What time in the morning was it?

A. I think near ten o'clock,---I think somewhere near ten minutes to ten.

Q. Was anybody with you at the time?

A. There was.

Q. Who was it?

A. My sister---Mrs. Delia Manley.

Q. Did you have occasion to stop near the gate of the Borden house?

A. I did,

Q. Which gate do you refer to?

A. The north gate.

Q. And what caused you to stop there?

A. I stopped to speak to my nephew.

Q. Where was he?

A. In a carriage.

Q. What did you do?

A. I stepped from the sidewalk to the back

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of the carriage to get some pond lilies.

Q. Where were the pond lilies?

A. In a tub in the back of the carriage.

Q. Did you notice anybody upon the Borden premises at that time?

A. I noticed some one in the gate way.

Q. Did you know who it was?

A. No, sir.

Q. Was it a young man or an old man?

A. I should judge he was some where near 30 years of age.

Q. Was it Mr. Borden?

A. No, sir.

Q. What was he doing?

A. He was standing resting his head on his left elbow, and his elbow on the south post of the gate way.

Q. Doing anything more than that?

A. He was looking at me as I thought, and then turned and looked at the street as though he were uneasy, trying to pry into my business.

Q. Trying to pry into your business?

A. Yes, sir.

Q. Did you notice him when you went down by the gate?

A. I did not.

Q. You had got by the gate when you turned to look in behind the wagon?

A. I had.

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Q. And it was when you were behind the wagon looking at the pond lilies that you first saw him?

A. It was, sir.

Q. How long did you stay there?

A. Probably I was there five minutes.

Q. And was he there when you went away?

A. He was, sir.

Q. Which way did you go from there?

A. I went down toward Borden street.

Q. Yes. And from there?

A. On to Main. Went down just in time to catch the ten o'clock car for the north.

Q. Well, where does that ten o'clock car start from at ten o'clock?

A. It comes down Main Street and stops there by the City Hall.

Q. Well, do you mean it leaves City Hall at ten o'clock?

A. It left City Hall as the clock was striking ten.

Q. So that you came down Second Street, went through Borden, down Main. Did you stop anywhere before you got to the car?

A. I ran up the stairs and spoke with Ella Gifford.

Q. How long did that take you?

A. It might not [be] more than two minutes.

Q. Then did you go directly to the car?

A. I did.

Q. Was you walking or riding?

A. I was walking.

Q. And is it by the fact that you took a horse car there at ten o'clock that you fix the time as of ten minutes of ten when you saw him?

A. It was, sir.

Q. See if you can point out on that picture where you saw the man? (Producing photograph.)

A. He was standing

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with his elbow on that gate post.

Q. Show it to the jury. Point right where you pointed. Right there?

A. Right on the gate post.

(Pointed out to jury.)

Q. And where was the carriage at that time, Mrs. Hart?

A. A little to the north of the gate way.

Q. Which way were the persons in the team looking at the time when you were examining the lilies?

A. Looking at me and talking with me.

Q. And you say you didn't notice this man as you passed by the gate?

A. I did not.

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CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) The next house north of this Mrs. Churchill's house or the Mayor Buffington house?

A. Yes, sir.

Q. You were going down as he was coming toward that house?

A. Yes, sir.

Q. And was the carriage in which your nephew was with whom you talked somewhere in front of the Churchill house?

A. It was between the two houses.

Q. That is, partly abutting the premises of Mr. Borden and partly the premises of Mrs. Churchill?

A. I should judge the horse stood almost---his head near that tree north of the gateway.

Q. North of the gateway?

A. Of the Borden estate.

Q. I wonder if you mean the tree which is shown here?

A. There are only two trees there.

Q. This seems to be the tree right against the gateway by that picture; that may not be the

tree?

A. That is the tree. His head was near that tree. We stood probably right here.

MR. KNOWLTON. That would be about against the post between the two places she points out.

Q. The horse's head was facing towards the south?

A. It was, sir.

Q. What was your nephew's name?

A. Ezra P. B. Manley.

Q. Did you see them before you got to them?

A. Not until I got---not until he spoke to me.

Q. Whereabouts were you when he spoke to you?

A. We stopped

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right there.

Q. You were walking down the street?

A. Yes, sir.

Q. Down towards City Hall, and didn't notice him until he spoke to you?

A. No, sir.

Q. Was he facing toward you?

A. He was.

Q. And his team was right close to the sidewalk?

A. Yes, sir.

Q. And, of course, you knew him?

A. Yes, sir.

Q. Knew him well, I suppose?

A. Yes, sir.

Q. Had you seen him lately before that?

A. The Sunday before.

Q. There was nothing to obstruct your view of him as you came down the street, was there?

A. Of my nephew?

Q. Yes.

A. No, sir.

Q. But you didn't see him until he spoke to you?

A. No. I was talking with my sister-in-law.

Q. Where was your sister?

A. She was with me.

Q. That is, Mrs. Manley?

A. Yes, Mrs. Manley.

Q. That is, the mother of the nephew?

A. No.

Q. Is she also related to your nephew Manley?

A. Her husband.

Q. That is it. So that you were so absorbed in talking with your sister that you didn't notice your nephew?

A. No, sir.

Q. You don't mean to say the man wasn't standing there when you went by, do you?

A. I didn't notice.

Q. You didn't either notice your nephew, did you?

A. Not until he spoke to me.

Q. So that you wouldn't be quite sure that the man was not standing there, would you?

A. No. When I turned round I saw him.

Q. And when your nephew spoke to you you saw him?

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A. Yes, sir.

Q. So that for aught you know your nephew was there before you spoke to him?

A. I noticed the team coming, but didn't notice who was in it.

Q. And for aught you know the man might have been there before you turned round.

A. Yes, sir.

Q. And was he resting against the post---whether you pointed out or not, I don't know--- that was the nearest to the Borden house or nearest to the Churchill house?

A. He was. His left elbow was on the south post. His head also rested on his hand.

Q. Something in that position? (Mr. Knowlton put his left elbow on the railing of the clerk's desk, and rested his face in his left hand.)

A. It was, sir.

Q. And it was the south post, that is, the one nearest the house?

A. It was, yes, sir.

Q. And that was pretty near as high as his head, wasn't it?

A. Yes, sir.

MR. KNOWLTON. I will call the attention of the jury to the post. It was the south post, the one nearest the house.

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Q. That was pretty near as high as his head, wasn't it?

A. Yes, sir.

Q. It is a much higher post than the other post?

A. Yes, sir.

Q. Did he change his position while you saw him?

A. Simply his head.

Q. That is, turned to look at you?

A. He was looking at me and turned to look up the street.

Q. Otherwise than that, he did not change his position?

A. No, sir.

Q. He did not move except to turn his head to look up the street?

A. No, sir.

Q. And then to look at you. He did not say anything?

A. No, sir.

Q. And remained in that position all the time you saw him?

A. Yes, sir.

Q. And was in that position when you went away?

A. Yes, sir.

Q. You did not know the man, did you?

A. I did not.

CHARLES S. SAWYER, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Charles S. Sawyer.

Q. What is your business?

A. Well, I am a painter; ornamental, fancy painter.

Q. Do you recall the day of the Borden murder?

A. I do.

Q. What was the first that you heard of the trouble, Mr. Sawyer?

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A. I heard there was a man stabbed by the name of Borden.

Q. Where were you at that time?

A. I was in Mr. A. E. Rich's shop.

Q. Where is that?

A. It is No. 81 Second street.

Q. Is it near the Borden premises?

A. Yes, sir.

Q. On the same side of the street?

A. No, sir.

Q. Is it on the same side of the street that the Dr. Bowen house is?

A. Yes, sir.

Q. And can you remember how many houses are between the Rich building and the Bowen building?

A. There is only one house, I think.

Q. One house: well, anything else, any other space?

A. Well, there is a little office to a stable, and a stable yard.

Q. And that with one dwelling house is all the space between the Bowen house and the Rich shop?

A. Well, there are lots intervening.

Q. House lots, you mean?

A. Yes, sir; gateways, etc.

Q. What did you do after you heard of the stabbing?

A. I went out and went down over the steps, and I saw Mr. Hall, the man that keeps the stable connected with the building that I was in. I asked him what he had heard.

Q. You cannot tell what you asked him. Who else did you see about that time?

A. I saw Miss Russell going up on the other side of the street.

Q. Miss Alice Russell?

A. Yes, sir.

Q. You knew her, did you?

A. Yes, sir.

Q. What did you do then?

A. I crossed over to see if she

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knew any particulars.

Q. You had a talk with her?

A. Yes, sir.

Q. Did you walk along with her towards the Borden house?

A. Yes, sir.

Q. Well, what did you do when you got to the Borden house?

A. When I got to the gate I said I guessed I wouldn't go in.

Q. Don't tell what you said; tell what you did.

A. Well, I turned around and came away, started back.

Q. Well, now, did you see Officer Allen about that time?

A. Yes, sir.

Q. Where did you see him?

A. Well, he was about---well, he was just north of Mrs. Churchill's---the house that Mrs. Churchill lives in.

Q. And where were you when you first saw him?

A. Well, that was about the first that I saw him.

Q. Where were you when you saw him?

A. I was right there at Mrs. Churchill's gate, I should say.

Q. You met him there?

A. Yes.

Q. Did you go in the house with him?

A. I did, yes.

Q. Did he stay with you there at the door?

A. He did.

Q. To keep the people out?

A. Yes, sir.

Q. How long did you remain there, Mr. Sawyer?

A. I was there till pretty near six o'clock that day.

Q. Which door was that?

A. The side door on the north side of the building.

Q. When you went into the house did you see any persons inside there?

A. Yes, sir.

Q. Who were they, as near as you can recollect?

A. I saw Miss Russell, Mrs. Churchill, Miss Lizzie, Bridget.

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Q. Where were they at that time that you saw them?

A. In the kitchen.

Q. Can you tell us what Miss Lizzie was doing?

A. She was sitting in a rocking chair---well, not quite in the middle of the room, but quite near the door to the back entry.

Q. What was she doing or what were the other persons doing?

A. The persons that were in there with her?

Q. She or they either.

A. Well, she was sitting in a chair and they seemed to be---I don't know whether they were ministering to her some way, they seemed to be fanning her.

Q. Rubbing her hands or face, anything of that kind?

A. Yes, seemed to be. I couldn't tell exactly what they were doing, but they appeared to be---I don't know but they were rubbing her hands.

Q. How near did you go to her?

A. Well, at one time I was within about three feet of her, I should judge. I stood there quite a while. In fact, she wasn't not more than three or four feet from the door that led from the entry.

Q. Was there anything in her appearance that attracted your attention?

A. No, no more than she was sitting there and appeared to be somewhat distressed, I thought, from her appearance.

Q. Well, now, anything besides that, being distressed? Anything about her clothing, her face, her hands, her hair?

A. No, sir.

Q. Which seemed unusual?

A. No, sir; I didn't see anything.

Q. Any signs of blood upon her head, her hands, her hair or her

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dress?

A. I didn't see anything of it?

Q. Can you tell us what kind of a dress she had on?

A. Well, no, I couldn't tell you the colors, as I know of.

Q. Can you tell whether it was dark or light?

A. No, I don't know as I could.

Q. Where did you go after you were in the kitchen?

A. Well, I was backward and forward in the entry as people would come to the door to ask for information.

Q. You mean the entry that runs from the screen door to the kitchen?

A. To the kitchen; yes, sir.

Q. How long is that entry?

A. Well, I should say it was eight or ten feet.

Q. And you were passing backward and forward in there?

A. Backward and forward, yes.

Q. Were you, at any portion of the time you were there, out upon the steps?

A. Yes, sir.

Q. Who was the first officer that came there, as you recollect?

A. Well, the first---

Q. After Mr. Allen left?

A. The first officer that I recollect is Officer Doherty.

Q. Yes. Have you any idea what time it was when you was stationed at the door there?

A. Well, I should say from ten to fifteen minutes past eleven, I couldn't state the exact time.

Q. Did you look at your watch?

A. No, I did not,

Q. You didn't notice particularly at that time.

A. No.

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Q. And can you give any idea how long it was after Officer Allen left before Officer Doherty came up?

A. I should say from ten to fifteen minutes, somewhere in that neighborhood, although I wouldn't say positive on that point.

Q. Did anybody come with Officer Doherty?

A. I think there was.

Q. Somebody came in the house with him?

A. Yes.

Q. Do you remember whether it was Mr. Manning, of the Globe?

MR. KNOWLTON. Is that the right way to ask the question?

MR. JENNINGS. No, it is not; I didn't know that you objected to it at all.

Q. Well, did you know who it was?

A. I had the impression that it was Wixon, I think.

Q. Frank Wixon?

A. Yes. I ain't sure about that.

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Q. Did they both go into the house?

A. Yes, sir, I think they did, both of them.

Q. Who next do you remember of seeing?

A. Well, Officer Mullally, I think, went right in with them too, about that time.

Q. Who next?

A. Let me see,---some that I didn't really know. One man came and I think Officer Harrington came,---and Assistant Marshal Fleet.

Q. Before Assistant Marshal Fleet got there, were or were there not other people in the yard passing by your door?

A. Oh, yes, a great many.

Q. And where did they go to?

A. Well, they went in all round the building.

Q. By all round the building, what building do you mean?

A. Well, round the Borden house and apparently in there round by the barn,---the door. There were some standing up at the doorway of the barn.

Q. Do you mean the front door?

A. Oh, yes, I could not see any other door.

Q. You could not see the side door from where you were?

A. No, sir. I did not know there was a side door way. I saw them in the door and going in around the barn.

Q. Was that side door open at all?

A. I did not see it open.

Q. Do you mean the big door on the west end of the barn?

A. The one that faces the street.

Q. Will you point (Showing photograph)?

A. There is the door

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right there (showing).

Q. Right there?

A. Yes, sir.

(Mr. Jennings showed the place indicated, to the Jury).

MR. KNOWLTON. That is on one of our pictures?

MR. JENNINGS. Yes, I wanted to show the larger door.

Q. Do you remember seeing Mr. Alfred Clarkson round there?

A. Yes, sir.

Q. Do you remember when he came?

A. He was there almost as soon as I was, I think. He was there early; He was one of the first.

Q. Do you remember whether he came before or after Officer Fleet?

A. Before, yes, sir.

Q. Which do you mean?

A. I should say before Officer Fleet came, quite a time.

Q. Were there any boys in the yard?

A. Yes, sir, lots of them.

Q. Do you know who any of them were?

A. Yes, sir, I knew some that I saw there, but---

Q. I mean at that time did you know any of them by name?

A. Well, one of the Rich boys was around there,---the Rich boys I saw in the yard. Well, there were a great many people in the yard, I could not tell you all.

Q. How often did people come to the door to see if they could get in?

A. They were coming up every few minutes.

Q. Do you recall all the people that came there at that time?

A. I recall a man named Donnelly coming up and speaking to me.

Q. I asked if you recollect all the people that came up and spoke to you at that time?

A. No, I don't think that I knew

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them all.

Q. You say you do remember a man named Donnelly coming up and speaking to you?

A. Yes.

Q. Was there any portion of the time that you were inside of the house that you were not at the door, except as you have told us, in the kitchen?

A. Yes, sir, there was a time.

Q. When was that?

A. When I went up to look at Mrs. Borden's body.

Q. Did anybody go with you?

A. Yes, sir.

Q. Who?

A. I think at that time it was Officer Doherty,---Dr. Bowen,---Officer Mullally, I think went up. I would not be positive on that.

Q. How long did you stay up stairs there?

A. Oh, probably four or five minutes; I don't know exactly.

Q. What did you do then?

A. Went down stairs again and stood at the door. It was facing on the inside when I---

Q. Before you left did you see Officer Medley there at all?

A. I did not, not very early in the day.

MR. JENNINGS. That is all, I think.

MR. KNOWLTON. I have no questions. Yes, I will ask on one point.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) Mr. Sawyer, how soon did you know that there had been a killing?

A. Well, it was after I had been in the house some time when I knew there had been a killing.

Q. When you were stationed at the door, what did you suppose there

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was?

A. I thought a man had been stabbed.

Q. When you were stationed at the door you did not know that there was more than one at that time?

A. No, sir.

Q. Of course before you went up stairs you found that both were killed?

A. Oh, yes.

Q. So that you had been there perhaps ten or fifteen minutes before you found it out?

A. I don't know as it was quite that long. I could not state the time accurately on that.

Q. Did you at any time shut the cellar door going down cellar,---lock it or anything?

A. I pushed the bolt in that door.

Q. You don't mean the outside door, of course?

A. I mean the one that goes down in the cellar from that back entry.

Q. What did you do that for?

A. Well, I didn't know but what somebody might be concealed round there.

Q. Did you step outside the house at any time?

A. Yes, I stepped outside on the steps.

Q. Were you a little nervous yourself?

A. Yes, I was.

Q. Was that one of the reasons you went out on the steps?

A. No, sir, not entirely.

Q. You were rather afraid of the assassin coming down upon you?

A. I didn't know what might come. I was there alone part of the time.

Q. And didn't feel very easy to be there alone?

A. No, sir, I did not.

Q. And you locked the cellar door up on that account?

A. Yes, sir.

Q. And possibly you went out doors because those stairs were pretty near that he might come down?

A. Well, I had that in my head.

JOHN J. MANNING, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. John J. Manning.

Q. What is your business?

A. I am a reporter.

Q. Were you reporter last August?

A. Yes, sir.

Q. In Fall River?

A. Yes, sir.

Q. Did you hear of the Borden murder at that time?

A. Yes, sir.

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Q. When did you first hear of it?

A. Some time before half past eleven. I couldn't give you the exact time.

Q. What was the means of your information?

A. Mr. O'Neal, city editor of the Globe, told me to go up to Second street, a stabbing affray had taken place there.

Q. Did you go?

A. Yes, sir.

Q. How fast did you go?

A. I ran the greater portion of the way.

Q. What time should you judge it was, Mr. Manning, when you received your information.

A. Between 25 minutes and half past eleven.

Q. When you arrived at the Borden house whom did you find there?

A. There was---on the way to the house near the entrance to Hall's stable, I saw Mr. Cunningham, Mr. Bowles and one or two other persons whom I don't recall at this time--- I crossed the road---they didn't care to say much about what had happened. I crossed the road and went into the yard. I tried to open the door, and Mr. Sawyer was inside. It was a screen door. He said he had been told by officer Allen not to---

Q. You are not to tell what he said.

A. I was not allowed to go in. I sat back on the steps; waited for some person to come with whom I could go in. I had been there some two or three minutes, and Dr. Bowen came in. I bade him good morning. He passed in, and I wasn't allowed to go in with him. Shortly after he went in, officer Doherty came along. Mr. Wixon was with him. They passed in, and I went with them.

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Q. Well, did you look through the house more or less?

A. Yes, sir. Passed through the corridor leading from the steps to the kitchen, and Miss Borden was sitting on a chair. Mrs. Churchill and Miss Russell were standing beside her. One was fanning her---didn't notice her particularly. I turned to the right, went into the sitting room. Mr. Borden was lying on the sofa; a sheet was covering him. Dr. Bowen called the officers' attention to him, took the sheet down and used his fingers in describing the wounds. I didn't notice them particularly, Dr Bowen and the officer and Mr. Wixon, and Dr. Bowen stood near the man. I drew back toward the wall. The blood

seemed fresh. There were some few spots around the wall. At that time it didn't strike me that there was much blood there as would be in an ordinary killing.

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Q. Never mind: describe what you did, not what appeared?

A. I went up stairs with Officer Doherty. At that time I think Dr. Bowen said that Mrs. Borden was dead.

Q. Now wait a minute. You must not tell what anybody said: just tell what you did.

A. I went up stairs to a hallway that was dark, and went into a bed chamber, and Dr. Bowen went around the foot of the bed toward the body that was lying between a dressing case and the bed.

Q. Do you remember whether it was light or dark in the room, Mr. Manning?

A. My recollection is that it was not very light: I think that some of the wooden shutters in the room were closed.

Q. Did you see the position of the body?

A. Yes, sir.

Q. Can you tell us what the position of the arms were relative to the body?

A. My recollection is that the right arm was about here (illustrating).

Q. Where was the left arm?

A. I don't recall, sir. That was on the inside, toward the dressing case, and I did not look very close.

Q. Were the arms stretched above the head at all?

A. I don't think they were: I don't recall that they were.

Q. After you had looked at the body what did you do then?

A. Dr. Bowen bent closer to the woman, and Officer Doherty said he thought he could probably see better if he pulled the bed out. He pulled the bed from the wall, and went around the head of the bed and leaned down over the woman, and remarked that he thought---

MR. ROBINSON. Leave out the remark.

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MR. JENNINGS. You need not tell what was said by anybody.

The WITNESS. In consequence of what he saw the doctor bent more closely toward her, and at that time somebody else called some person who was in the room, and when this person went down stairs I went after him.

Q. Do you know who the person was?

A. I don't recall, but it is my impression it was Mr. Morse. I did not know him at the time. It was some elderly man with gray whiskers.

Q. Do you know whether or not it was Mr. Pettee?

A. I could not swear whether it was or was not.

Q. Mr. George Pettee---do you know him?

A. Yes, sir.

Q. Would you say it was not he?

A. I could not say whether it was or was not.

Q. Then did you go down stairs?

A. Yes, sir.

Q. Where did you go then?

A. I went to the kitchen: at that time there was no person there, the people who were there when I went in had gone away, and Bridget Sullivan was sitting on the steps leading up stairs, the stairway leading up stairs, and I asked her about the---

Q. You cannot tell anything that was said.

A. I held a short talk with her and went into the yard.

Q. How long should you think you had been in the house from the time you first entered it?

A. Not more than ten minutes: I don't think it was as long as that.

Q. And when you came out of the house do you recollect whether

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you saw any officers then on the north side of the house?

A. I think that I saw Assistant Marshal Fleet, but I am not positive about it. I do not recall that I saw any others.

Q. Are you sure about that?

A. Well, as I recall it, I am sure, yes, sir.

Q. What did you do then?

A. I went around the east end of the house, went around the yard a great deal: walked along the flower garden on the south side of the building: walked along the Kelly fence: went around a pile of lumber that was in the back of the yard and also along the fence at the back. Then I came to the barn door: it was open: I went in there a moment.

Q. Did you see anybody in there?

A. I think there were two or three persons in there at the time, yes, sir: I do not recall who they were.

Q. Did you go up stairs?

A. No, sir.

Q. Did you see anybody else go up stairs?

A. No, sir, I do not recall that I saw anybody go up stairs.

Q. Did you hear anybody up stairs?

A. No, sir.

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Q. Were there any other people about the yard at that time?

A. I think there were; yes, sir. I don't recall who they were. Some of them, I think---

Q. Were there any boys there?

A. I don't remember of seeing them.

Q. Any men?

A. I remember of seeing Mr. Clarkson, John Cunningham, and I think there were some others, but I don't remember who they were.

Q. What did you do after you came out of the barn?

A. Walter Stevens and myself went to the back door and looked around for footprints that might lead from the back cellar door outward. He tried the door and said it was fastened. And I stayed round there for some little time, then left there, and was back at the office at ten minutes of twelve.

Q. Did you see Officer Medley there?

A. No, sir.

Q. Did you see him when he came out of the house?

A. No, sir; not that I recall.

Q. Was he in the house while you were in there?

A. I don't recall that he was, I don't remember seeing him.

Q. Do you recall the time of the publication of the story about the quarrel between the two sisters?

A. Yes, sir.

Q. As told by Mrs. Reagan?

A. Yes, sir.

Q. Did you have an interview with Mrs. Reagan in regard to the matter?

A. Yes, sir.

Q. Do you remember how soon it was after the publication?

A. It was the night of the morning it was published.

Q. Do you remember what paper that was published in?

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A. I think it was published in the Boston Globe, the Providence Journal, and I don't know whether others or not.

Q. You saw her, did you, the same night of the publication?

A. Yes, sir.

Q. Did you have a conversation with her in regard to the truth or falsity of that story?

A. Yes, sir.

Q. Will you tell us what was said by her or by you to her?

A. In answer to a question she said that there was nothing in it. I asked her for an affirmative or negative statement about it, didn't want the story told, as it had already been published, but wanted to know whether or not it was true.

Q. Did you tell her that?

A. Yes.

Q. And what did she say?

A. She said there was nothing in it.

CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) Where did you see her, Mr. Manning?

A. At her home.

Q. You went to her house?

A. Yes, sir. There was another man with me.

Q. You didn't have any part in the affidavit business, did you?

A. I was there at the time.

Q. Was this after that?

A. I don't recall it, but I think it was.

Q. The affidavit matter was in the afternoon of that same day, wasn't it?

A. I think it was. I am not positive about that, however.

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Q. And that was the same night after that?

A. Yes, sir; I think it was.

Q. And she said there was nothing in it? That is all she said?

A. Yes, sir.

Q. Did you read the report to her?

A. No, sir.

Q. You just called her attention to what was published?

A. Yes, sir.

Q. Do you recall her saying to you that you couldn't always believe what you saw in the papers?

A. I don't recall it. It is probable that I said that, however.

Q. Well, do you recall that she said that?

A. No, sir.

Q. Do you recall that she did not?

A. No, sir.

Q. And don't you think she did?

A. I think it is very likely.

Q. That you couldn't believe what you saw in the newspapers always?

A. Yes, I think very likely.

Q. That she put in "always", if she did put that in?

A. Yes.

Q. Did she say anything about telling what she knew on the stand when she was called upon to testify?

A. That I don't recall.

Q. You don't remember that she said that what she had got to say about it she would say on the stand?

A. No, sir.

Q. Do you remember she didn't say that?

A. No, sir.

Q. I suppose you were not paying particular attention to Mr. Medley, were you?

A. No, sir. He may have spoken to me and I wouldn't be able to recall it because I took no note.

Q. So you couldn't say he wasn't in the house when you were there?

A. No, sir.

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Q. Only you didn't have your attention called to it?

A. I didn't see him that I recall.

Q. How near was the bed to the body of Mrs. Borden before Officer Doherty moved it away?

A. Oh, I should judge about 30 inches, probably more than that, about a yard.

Q. A yard from Mrs. Borden's body?

A. Between the dressing case and the bed.

Q. Oh, the whole distance, you mean?

A. Yes.

Q. My question was, perhaps I will put it again now, how far should you say the body of Mrs. Borden was from the side of the bed---if you paid any attention to that thing?

A. It was far enough to allow Dr. Bowen to put his foot in between the side of the bed and the body.

Q. A narrow space?

A. Yes, sir; a very narrow space.

Q. Does that seem to be to you about the relative position? (Showing witness Ex. 15.)

A. No, I wouldn't say that it was as far from the dressing case as that; my impression is it was closer to the dressing case.

Q. That is, the body was, you mean?

A. It seemed so to me.

Q. But the bed is in about the same relative position?

A. Yes, sir; I should say so.

Q. Do you remember whether the shutters were shut or open, or partly shut or partly open?

A. I have an impression that Dr. Bowen opened the shutters.

Q. And that they were all shut before that?

A. No, sir.

Q. That some of them were shut and some open?

A. Some shut

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and some open.

Q. The outside blinds were not shut, were they?

A. No, sir; I think not. I think there are wooden shutters on the windows.

Q. I understand it; wooden shutters on the inside?

A. On the inside; yes, sir.

Q. And as you went into the room, before Dr. Bowen opened them, some were shut and some were open?

A. That is as I recall it; yes, sir.

Q. How many of each you don't know?

A. No, sir.

Q. Who went into the barn with you?

A. Walter Stevens, reporter for the Daily News.

Q. And you are a reporter for what paper?

A. Fall River Herald.

Q. Did he go around in the search with you around the yard?

A. Yes, sir.

Q. You didn't hear anybody in the barn upstairs, you say, at all?

A. No, sir.

Q. How long did you remain in the barn?

A. Well, a very few moments.

Q. You said you tried the back door, did you?

A. No, sir; Mr. Stevens tried it.

Q. Mr. Stevens tried it in your presence?

A. Yes, sir.

Q. The cellar door. Did you at any time try the front door?

A. No, sir; but I went to the front steps and looked all over them.

Q. You didn't try the door?

A. I don't recall that I tried

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the door.

Q. And what were you looking for on the steps?

A. Well, traces of blood, that it was supposed might come from a person coming from the house.

Q. Did you find any?

A. No, sir.

Q. Did you see any blood spots in the sitting room where the body of Mr. Borden was?

A. Yes, sir.

Q. Where did you see any?

A. On the door back of his head, back of the sofa.

Q. On the parlor door?

A. I should judge it would be; yes, sir.

Q. Did you notice any others at the time?

A. Yes, sir; there was a circle of blood spots around his head.

Q. You mean on the wall behind?

A. Yes, sir; on the wall behind the sofa.

Q. What has sometimes been called the spurt?

A. Yes, sir.

Q. Have you been there since so as to see if the look of them has changed any?

A. No, sir; I wasn't in the house after.

Q. That is the only time you were there?

A. Yes, sir.

Q. Those were mostly very minute spots, were they?

A. They appeared so to me. I thought so.

Q. They were not easily visible, were they, unless you looked for them?

A. Not unless you looked for them; no, sir.

Q. And you did look for them and saw them?

A. Yes, sir.

Q. And you saw some spots on the parlor door behind?

A. Yes, sir.

Q. How many did you see?

A. I couldn't say. I made no report of them.

Q. Quite a number, or one or two, if you can give any idea?

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A. I should judge there would be more than one or two, I should think there would be quite a number.

Q. Did you notice any other blood spots?

A. No, sir; I don't recall that I did.

Q. Were you looking around for blood spots?

A. Not particularly so.

Q. But you did look for blood spots over his head?

A. Yes, a few.

Q. And saw them when you looked for them?

A. Yes, sir.

Q. And that is all the blood spots that attracted your attention, what you have told?

A. Yes, sir. I didn't look very closely.

Q. But as you went and looked that is all that attracted your attention?

A. Yes, sir.

Q. And the parlor door, or the door that went into the hall was white, wasn't it?

A. Yes, sir.

Q. So that spots would show very plainly on that door?

A. Yes, sir.

RE-DIRECT.

Q. (By Mr. Jennings.) At the time you went to see Mrs. Reagan were you also the local reporter for the Associated Press?

A. Yes, sir.

Q. Was it or was it not in that capacity that you went to see her about the truth or falsity of this story?

MR. KNOWLTON. Wait a minute. I pray your Honors'

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judgment as to that.

MR. JENNINGS. Well, the only thing I wanted to show, your Honor, was that it was not a mere casual conversation, but that it was for the purpose of investigating into this story which had been published, on his part, as agent for the Associated Press.

MR. KNOWLTON. I think I will withdraw the objection; not for the reason my brother has stated, but for other reasons.

A. Partially so. I went with a New York World man.

Q. What was his name?

A. White. I went with the New York World man to learn with him---as I was the local correspondent for the World---to learn with him whether the story was true or false.

RE-CROSS.

Q. (By Mr. Knowlton.) She understood that you was a reporter?

A. Yes, sir.

Q. You told her you was a reporter?

A. Yes, sir.

Q. Did she understand that the New York World man was also a reporter?

A. Yes, sir; I told her who he was.

Q. Reporters were pretty numerous around those times, weren't they?

A. Very thick; yes, sir.

Q. Some 30 or 40 in town at that time?

A. Yes, sir.

Q. And somewhat persistent, weren't they? I don't mean you personally.

A. Perhaps you can answer that question yourself.

MR. KNOWLTON. I think I could, yes, if I were allowed to. That is all.

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THOMAS F. HICKEY, Sworn.

Q. (By Mr. Jennings.) Your name is Thomas F. Hickey?

A. Yes, sir.

Q. Are you a reporter for the Fall River Globe?

A. Yes, sir.

Q. Were you reporter for the Fall River Globe last August?

A. Yes, sir.

Q. And also for the Boston Herald?

A. Yes, sir.

Q. Now, in your capacity as reporter, did you see Mrs. Reagan, the Police Matron, in relation to the story published about the quarrel between Emma and her sister?

A. Yes, sir.

Q. Can you tell us when it was, how soon after the publication?

A. I think the publication was Thursday morning and I saw Mrs. Reagan Friday morning.

Q. Now tell us what you said [to] her and what she said to you?

A. I think that I was sent to Mrs. Reagan's room by Mr. Billings, who was in charge of the Boston Herald work in Fall River. He asked me---

Q. You cannot tell what he said. You were sent there?

A. Yes, sir.

Q. What did you do?

A. I remember going into Mrs. Reagan's room and making a remark something like this: "I see you are getting yourself into the paper, Mrs. Reagan. She laughed, and said, "yes, but they have got to take that all back." After some other question, which I have forgotten now, I remember I asked her about the alleged quarrel between Lizzie and Emma.

MR. KNOWLTON. I think he ought to tell what question he asked.

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MR. JENNINGS. I think that is proper, your Honor. Go on.

MASON, C. J. He may state what he said,

A. I asked her if there had been a quarrel, and she said, "no". I asked her if she had repeated any of the words which had appeared in the paper that "you gave me away, Lizzie," and she said she did not. Then I said, "Mrs. Reagan, there is absolutely no truth in the story that was printed?" And she said, "no, sir, no truth at all."

MR. JENNINGS. That is all. Your witness.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) You represented the Boston Herald?

A. Yes, sir.

Q. And whatever was published, was published in the Boston Globe: Is that so?

A. Yes, sir. Do you refer to the story in the first place?

Q. I am referring to what you are talking about?

A. Yes, sir.

Q. And the Boston Globe and Boston Herald are papers of considerable prominence in the city of Boston?

A. Yes, sir.

Q. And in one sense they are sort of rivals,---is not that so, Mr. Hickey?

MR. JENNINGS. I object to that.

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Q. The Boston Globe and Boston Herald are pretty active competitors, aren't they?

A. Yes, sir.

Q. And when one gets an item of news that the other don't, that is considered what they call "a scoop" in journalism, isn't it?

A. Yes, sir.

Q. And in this particular instance the Boston Globe got what they called "a scoop" on your men?

A. Yes, sir.

Q. And, of course, your object was to show that the scoop was good for nothing, wasn't it?

A. Well, I had understood that the Herald had published the story.

Q. That was afterwards, wasn't it?

A. Well, I had understood that morning, that Thursday morning, that the Herald---

Q. They didn't do that?

A. I understood---

MR. JENNINGS. Let him answer the question. He said he understood---

MR. KNOWLTON. He answered what I was asking him.

Q. They didn't do that?

A. I didn't see it.

Q. And you went into her room where she was on duty?

A. Yes, sir.

Q. Did anybody go with you?

A. No, sir.

Q. You went and introduced yourself as a reporter?

A. I knew Mrs. Reagan.

Q. And had known her for some time?

A. Seen her round the station, yes, sir.

Q. That was Friday morning?

A. Yes, sir.

Q. And the publication was Thursday morning?

A. Yes, sir.

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Q. And you were sent by Mr. Billings?

A. Yes, sir.

Q. Mr. Billings represented the Herald?

A. Mr. Billings had charge of the work there, yes.

Q. That is, he was your superior officer?

A. Yes.

Q. And had you got yours published, I suppose, in the paper?

A. Yes, sir.

Q. You published it in the Herald as soon as you got it from her?

A. Yes, sir.

Q. So as to show that the Globe scoop wasn't good for anything, I suppose, didn't you?

A. Yes, sir.

Q. That was what you were after, wasn't it?

A. I was sent to get Mrs. Reagan's story.

Q. That was what you were after, to have something to offset the Globe scoop, wasn't it?

A. Yes, sir.

Q. If you could get it?

A. Yes, sir.

MR. KNOWLTON. Exactly.

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Isaac D. White was called, but was not in attendance.

JAMES E. WINWOOD, Sworn.

Q. (By Mr. Jennings.) Your name?

A. James E. Winwood.

Q. You are an undertaker?

A. Yes, sir.

Q. Did you have charge of the funeral of Andrew J. Borden and his wife?

A. I did.

Q. While you were preparing Mr. Borden's body for the grave, did you observe whether or not he had any ring upon his finger?

A. I cannot remember positively now: I cannot remember positively.

Q. Did you see him have any ring upon his finger while you were having anything to do with him?

A. I cannot remember so long ago.

MR. JENNINGS. That is all, sir.

MR. KNOWLTON. Nothing.

MR. JENNINGS. Charles J. Holmes.

THE OFFICER. Not here; gone down street, they said.

MR. JENNINGS. I will call Mr. Caldwell then.

(No response.) Mrs. Holmes.

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MRS. MARIANNA HOLMES, Sworn.

Q. (By Mr. Jennings.) Your name?

A. Marianna Holmes.

Q. You are the wife of Charles J. Holmes?

A. Yes, sir.

Q. And you live in Fall River?

A. I do.

Q. Do you know Miss Lizzie Borden?

A. I do.

Q. How long have you known her, Mrs. Holmes?

A. Well, I have known who she was from her childhood. She went to school with my daughters.

Q. Did she attend the same church that you did?

A. She does.

Q. A member of the same church?

A. Yes, sir.

Q. What church is that?

A. The Central Congregational.

Q. How long has she been a member of the church, do you know?

A. I think between five and six years; I am not positive about that.

Q. Did she take part in various church enterprises?

A. Yes, sir, the same that all young people do.

Q. What were some of them?

A. She was a member of the Christian Endeavor Society,---

MR. KNOWLTON. Wait a moment. I don't know whether your Honors think it is material to go into particulars. I submit entirely to your Honors' judgment. I do not object to the general evidence, of course, that she was a church member.

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MASON, C. J. The Court are of opinion that the specific detail can be only competent so far as bearing upon the witnesses association with her and the degree of her acquaintance. If she was engaged with her in these organizations she may enumerate them.

Q. Were you engaged in various church or charitable organizations with her, Mrs. Holmes?

A. Well, I am somewhat older than she: I should say not particularly. I am a member of the Bible class of the Sunday school, and she taught in the Chinese department: it does not bring us very near together.

Q. Were you engaged in hospital work? Did she have anything to do with hospital work?

A. She did: she was a member of the same board.

Q. What hospital was it?

A. The Fall River Hospital, sometimes called the Hospital of the Good Samaritan.

Q. That is a charitable organization, is it?

A. Yes, sir.

Q. And a member of the same board that you are on that?

A. She is.

Q. What board is that, what do you call it?

A. The Woman's Board of the Fall River Hospital.

Q. In those capacities and engaged in that work, how long had you known her personally---come into personal contact with her?

A. Well, we have been on the same board for between two and three years.

Q. Did you know Mrs. Abby Borden, her stepmother?

A. I was but very little acquainted with her. I have known her for a great many years---know who she was: no particular acquaintance with her.

Q. Did she attend church there?

A. She did.

Q. The same church?

A. She did.

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Q. Have you within a year of the murder, say, seen Miss Lizzie and her step mother going to church together?

A. I did.

Q. Did they sit together?

A. They did.

Q. Go away together?

A. They did.

Q. Now when was it that you first heard of the murder, or heard of some trouble at the Borden house?

A. I think at about quarter to twelve.

Q. What did you do in consequence of what you heard?

A. I went in to a neighbors and talked about it.

Q. Did you go to the Borden house?

A. I did after dinner, about 1 o'clock.

Q. When you arrived there who did you find?

A. I went first into Dr. Bowen's and he went across with me. We went into a side door and some one told me that I could not see Miss Lizzie.

Q. Never mind what you were told: What did you do?

A. I sat down in the kitchen.

Q. And then after that?

A. Some one came and told me that Miss Lizzie would like to see me.

Q. You went up in her room?

A. I went with Miss Russell through the dining room, through the sitting room, at the head of the sofa, and through the front hall up stairs to Miss Lizzie's room.

Q. Who were with her?

A. I cannot tell you, some men talking with her.

Q. Do you know whether they were officers?

A. Yes, sir, I think they were.

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Q. Did you know Officer Fleet?

A. I did afterwards.

Q. Was he one of those men?

A. I think not. I think he came in later.

Q. Were you there at any time when Dr. Bowen and Mr. Fleet came in?

A. I was.

Q. Do you recollect whether Dr. Bowen was in the room before Officer Fleet came up, or whether he came up from down stairs and came in just before Officer Fleet?

A. My recollection is that he came up a few seconds or perhaps a minute or two before

Officer Fleet came into the room. We kept the door locked. The house was full of men, and if we did not have that door locked, as they came up stairs, they were apt to open it.

MR. KNOWLTON. She is going much further than the question called for.

WITNESS. Excuse me: I am not used to this business and I expect to over-step.

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Q. Did you see any holding of the door by Dr. Bowen at that time so that officer Fleet couldn't come in?

A. Yes. He unlocked the door to see who was there. He said that it was officer Fleet. He turned around and spoke to Miss Lizzie, saying, "The officers wish to come in."

Q. I ask you if there was any holding in the sense of resisting the officers from coming in?

A. I don't know how I shall answer that question. He held it so that he should not come in until he had spoken with us inside and told us who it was that wished to come in. Then Miss Lizzie said, "Open the door."

Q. Well, was there any pushing or pressing by officer Fleet to get in and Dr. Bowen resisting him?

A. Not that I saw.

Q. You say Dr. Bowen had come up, as you recollect it, but a few seconds before?

A. As I recollect it.

Q. Stating that officer Fleet wanted to come up and see her. Now, when Mr. Fleet came in there, tell us what was said as nearly as you can recollect, Mrs. Holmes.

A. What was said, can I tell that? Shall I tell that?

Q. Yes.

A. As I remember it, he said to Miss Lizzie, "I wish to ask you some questions." She says, "Please be brief, for I am very weary. I have answered a great many questions." and he said he would. There were three men, officer Fleet and two others. I don't know who the others were. I did not know any of them until that day.

Q. Do you recollect any other part of the conversation? Give it all.

A. Well, they asked her where she was, and she

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said she went to the barn; and they asked her what for, and she said for something to fasten the screen. I cannot tell you whether at that time she said "a piece of iron" or "a piece of tin" or "something." I heard her say all those things to different people.

Q. Well, go on.

A. And that she came down stairs---I mean that she came out from the barn, came into the house, and saw her father, then went and called Maggie, sent Maggie for Dr. Bowen and also for Miss Russell.

Q. What did they do? Did they do anything besides have this talk?

A. I cannot tell you whether at this time, just at this time, or whether it was later, they said they wished to search the room, and they said "search", and they made what I call quite a thorough search of Miss Lizzie's room and Miss Emma's room.

Q. Who was it said they might search?

A. Miss Lizzie. Miss Emma hadn't come home at this time.

Q. Did Miss Lizzie when they suggested a search make any objection whatever to it?

A. She did not. She was lying upon the lounge, and she still continued to lie there, scarcely opened her eyes.

Q. Where was she when Mr. Fleet first came in?

A. Sitting upon the lounge or couch.

Q. Now, tell us as well as you can what they did about searching that room, Mrs. Holmes.

A. They walked around the room. They went to that little closet that is used as a toilet room and pulled back the portiere, and looked

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upon all the shelves above and below, and moved what things they chose. They looked around the bed, under the bed, felt of it, and they went into Miss Emma's room. I did not see particularly what they did. They were gone a few minutes and looked around there and came out.

Q. How long should you think they were in the room in all?

A. Talking and searching?

Q. At that time talking and searching?

A. Half an hour perhaps.

Q. What was Lizzie doing during that time?

A. Quietly reclining on the lounge.

Q. What time did you go away that night?

A. About half past eight.

Q. Was there any use of the toilet things that afternoon, Mrs. Holmes?

A. Yes, sir.

Q. Any reason why the slop-pail should be filled?

A. I should think so, if I was to stay there all night.

Q. No, I mean in the afternoon, by reason of use in the afternoon?

A. Yes, that is what I say.

Q. For washing and various other purposes. What do you mean by "if you stayed all night you should"?

A. Why, I should think---

MR. KNOWLTON. It is perfectly obvious what she means. You need not ask the details on our account.

MR. ROBINSON. Better have it on the jury's account.

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MR. KNOWLTON. Well, the jury can understand it.

Q. Now, tell us, Mrs. Holmes, anything you can about Lizzie's conduct at the funeral, more particularly in relation to the dead body of her father?

MR. KNOWLTON. I pray your Honors' judgment.

The WITNESS. Please state your question again.

MR. JENNINGS. I will withdraw the question.

Q. Were you there on the day of the funeral?

A. I was.

Q. What day was it?

A. On Saturday.

Q. Forenoon or afternoon?

A. Forenoon.

Q. About what time?

A. Eleven, I think.

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Q. Before the funeral began did Miss Lizzie go down to see her father's remains?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment.

MASON, C. J. Assuming the question to be preliminary only, it may be answered.

A. She did.

Q. Where were they?

A. In the sitting room.

Q. Were they in the casket?

A. They were.

Q. Prepared for burial?

A. They were.

Q. Both bodies in the same room?

A. They were.

Q. What did Miss Lizzie do after she went down into the room?

MR. KNOWLTON. Pray your Honors' judgment

(Question excluded)

Q. Now, Mrs. Holmes, just pay attention to the question which I ask you, and do not attempt to answer anything else except that particular question. At this time when she was viewing her father, did she shed tears?

A. She did.

MR. ROBINSON. Your Honors, the stenographer will write out our offer.

Q. (By Mr. Jennings.) Did you see anything of any handkerchiefs on the day of the murder, Mrs. Holmes?

A. I cannot tell you whether it was the day of the murder or the morning following.

Q. Where did you see them?

A. Miss Russell brought them up into Miss Lizzie's room.

Q. In what condition were they?

A. A part were ironed and a part rough dried.

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Q. What was done with them, if you know?

A. The ironed ones were put into a bureau drawer; I don't know what was done with the others.

MR. JENNINGS. (To opposing Counsel) Will you produce that dress?

Q. What dress did Miss Lizzie have on when you arrived there?

A. A wrapper.

Q. Color?

A. A stripe---pink stripe and white stripe with what I should call a sheeny figure in it.

Q. How many days were you there, Mrs. Holmes, after the murder?

A. I went there, as I told you, on the 4th of August about noon. I was there parts of every day until after Miss Lizzie's arrest.

Q. Did you at anytime see this dress there? (Showing dark blue dress with small light figure)

A. Miss Lizzie had that dress on Friday morning, and I think also on Saturday morning for a short time.

Q. What did she wear when she went to the funeral?

A. She wore a dress---I don't know the technical name, a net dress made over a silk.

Q. What color?

A. Black.

Q. Do you know anything about whether Miss Lizzie was a member of that party that went down to Marion?

A. A member of the party that went to Marion?

Q. Yes.

A. She was to go. She did not go with the party.

Q. Now, I will call your attention, Mrs. Holmes, to a matter of Mrs. Reagan. Do you remember the publication of a story about

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a quarrel between the two sisters?

A. I did.

Q. Did you have any talk with Mrs. Reagan subsequent to the publication about that? That is, after the story was published did you have any talk with Mrs. Reagan about it?

A. Yes---why---yes. I don't exactly know how to answer your question.

Q. Well, did Mrs. Reagan say anything to you about it?

A. She did.

Q. Now tell us what she said?

A. She said, "no, Mrs. Holmes, it isn't so, for that was the afternoon that we were talking about the egg."

Q. And where were you when she said this?

A. In the matron's room of the Police Station, Fall River.

Q. Can you fix the time at all?

A. It was some time during Friday, the 26th of August. I cannot fix the precise time of day.

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Q. Now, do you remember a time after that conversation when there was some talk about Mrs. Reagan's signing a paper?

A. That same night, I think it was.

Q. After the adjournment of the Court?

A. On Friday.

Q. Yes, after the adjournment of the Court?

A. Yes, sir.

Q. And what do you know about that?

A. I was sitting in the room when some gentlemen came---I went directly to the matron's room from the Court room. I was sitting in the room, and some gentlemen came and talked with Mrs. Reagan. She went out with them, and in a little while she came back and seemed quite disturbed and excited and walked past me---I was sitting near the door---across the room, and sat down in her rocking chair and had some conversation, but not with me.

Q. Well, now, then, did you hear any portion of that conversation at all?

A. Not distinctly enough to repeat it.

Q. Do you remember her saying anything more in reference to that story of the quarrel between the sisters than you have already stated?

A. Not to me.

Q. Well, did you hear her say anything to anybody else?

A. I got the impression from what I did hear---

MR. KNOWLTON. Beg your pardon.

Q. State the substance of what you recollect.

MR. KNOWLTON. Well, if she recollects the substance---

THE WITNESS. It was not conversation to me.

MR. KNOWLTON. I think I am justified in making the suggestion: so far she only says she has an impression.

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THE WITNESS. She had no conversation to me---

MR. KNOWLTON. I beg your pardon, Mrs. Holmes. I think she ought to be asked if she can give the substance first.

Q. Can you state anything that you heard, any portion of that conversation?

A. No, I think not.

Q. Whom was she talking with?

A. Mrs. Brigham. I don't know but she was talking generally to whoever was there, but Mrs. Brigham was the one nearest her.

Q. Was Miss Emma there?

A. I think not.

Q. Was Lizzie there?

A. Yes, sir.

Q. Let me call your attention to this, if you have given us all you recollect about it.

MR. KNOWLTON. Just one moment. Well, I suppose you have a right to call her attention but not in that form, because she does not pretend that she has given all she recollects about it; she pretends that she does not recollect anything about it.

MR. JENNINGS. I will withdraw that question.

Q. Have you stated all you now recall of any conversation between you and Mrs. Reagan in reference to the quarrel?

A. All that I recall in reference to the quarrel---all that took place afterwards, yes, sir.

Q. Now did you hear her say anything in reference to the signing or not signing of a paper?

A. I heard her say that she would sign it if Marshal Hilliard was willing.

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Q. When was that?

A. Just before she went out of the room, or as she went out, talking with these

gentlemen. She was not talking with me.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) Miss Lizzie occupied the matron's room, didn't she?

A. She did.

Q. And had for some time?

A. From the time of the arrest.

Q. That is, it was a room that was appropriated to Mrs. Reagan herself?

A. Mrs. Reagan and Mrs. Russell.

Q. Mrs. Russell was the night officer and Mrs. Reagan had charge days?

A. Mrs. Russell was the day officer and Mrs. Reagan was the night officer, but there was a change made.

Q. And all the time that Miss Borden was there she had the privilege of that room?

A. She had.

Q. And also to receive her friends freely?

A. Certain friends.

Q. Yes, certain friends, those that she wanted?

A. No, sir, I think not; there were exceptions made. There were---some of us went all the time.

Q. Well, do you know of your own personal knowledge that anybody was refused that she wanted to see?

A. No, sir, I do not.

Q. You went when you pleased?

A. Yes, but I was told that I was an exception.

Q. And you do not know of anybody else that was refused---of your own knowledge, I mean?

A. I don't think of anybody

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now.

Q. Her counsel, of course, went when he pleased?

A. Yes.

Q. And her pastor went when he pleased?

A. Yes, sir.

Q. And her sister?

A. Yes, sir.

Q. And that was up stairs, away from the other quarters in the place?

A. Yes, sir.

Q. She was there quite awhile after that episode, in the same room?

A. Yes, sir, until she went to Taunton.

Q. That was some week afterwards?

A. I am sure I cannot remember.

MR. KNOWLTON. That is all.

(Five minute recess)

The following is the offer of proof made by the defence in connection with the evidence of Mrs. Holmes:

"The government in its direct case having shown conduct of defendant up to and including the morning of Sunday following the murder, the defendant offers to show by a witness that on Saturday morning after the murder she came down stairs into the room where her father's body was lying prepared for burial, and went to the casket with the witness and kissed her father."

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CHARLES J. HOLMES, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Charles J. Holmes.

Q. What is your occupation?

A. Banker.

Q. Are you a cashier of the Second National Bank of Fall River?

A. I am.

Q. Treasurer of the Fall River Five Cent Savings Bank?

A. I am.

Q. How long have you lived in Fall River?

A. Fifty years.

Q. Do you know Miss Lizzie Borden?

A. I do.

Q. Was you present at the district court house in Fall River the first day of the hearing there?

A. I was.

Q. Do you know anything about any paper which was prepared for Mrs. Reagan to sign?

A. I do.

Q. Do you know anything about the nature of the paper, what its contents were, the substance of it?

A. I do.

Q. Well, what was it?

A. It was to the effect that statements that had been previously made in the paper were not true.

MR. KNOWLTON. What is that answer?

The WITNESS. That the statements that had been made previously, published---

MR. KNOWLTON. What was the question, Mr. Jennings?

MR. JENNINGS. What the substance of the contents of the paper were.

MR. KNOWLTON. I don't know that I am out of the rule;

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my attention was called away or I certainly should have objected to that question. If your Honor thinks my objection comes too late---

MASON, C. J. What was the objection?

MR. KNOWLTON. The affidavit itself should be produced?

MR. JENNINGS. We haven't it. It was given to the reporters at the time.

MASON, C. J. Well, upon the objection of course you must account for its absence before secondary evidence of it can be admitted.

MR. KNOWLTON. Of course that question and answer are out, as I understand it.

Q. Was this paper read to Mrs. Reagan?

A. It was.

Q. Did you hear it read?

A. I did.

Q. State what was said.

MR. KNOWLTON. Well, wait a minute.

MR. JENNINGS. It was read.

MR. KNOWLTON. I haven't yet understood whether the question and answer are excluded.

MASON, C. J. That question and answer may be stricken out.

Q. State the substance, as near as you can, of what was said to her in the reading of that paper.

MR. KNOWLTON. I pray your Honors' judgment as to that.

MASON, C. J. The question should be made clear.

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Q. Was the paper read aloud to Mrs. Reagan?

A. It was.

Q. Did you hear it read to her?

A. I did.

Q. Won't you state the substance of what you heard read to her?

MR. KNOWLTON. I pray your Honors' judgment.

MASON, C. J. Not without accounting for the paper.

The WITNESS. I have the paper in my pocket, that is, a copy of it.

Q. The original paper that was read?

A. A copy of the original paper.

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Q. Was the paper subsequently published in the newspapers?

A. It was.

Q. Have you a copy of the paper in which it was published?

A. I have.

MR. JENNINGS. I will say, your Honors, that I gave the paper to some reporter in order to have it published, and I do not think I have ever seen it since. It was not returned to me. I have not been able to find it. I conclude from that he never returned it to me.

MR. KNOWLTON. Have you ever asked for it from the reporter?

MR. JENNINGS. I do not know who he was. There were a great many reporters there at the time, and he was one of them.

MR. KNOWLTON. I understand that statement may be regarded as evidence so far as it is competent.

MR. JENNINGS. I have endeavored since then to find it by asking a number of reporters whom I know if they were the ones to whom I had given it.

MASON, C. J. The secondary evidence may be admitted.

Q. Now won't you state, Mr. Holmes, the substance of what was read to her?

A. I should prefer to read it.

MR. KNOWLTON. Wait a minute. I thought there was a copy of it in existence.

MR. JENNINGS. Well, there is. I will be very glad to produce that.

Q. Will you produce the paper, Mr. Holmes, which has a copy of

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the certificate in it?

A. (Witness produced a copy of the Fall River Daily Herald.) I don't know but I am mistaken about that. I thought I had it in my pocket. I thought that was it, but I might say the paper was prepared at my request. That is the Herald. I supposed it was the News. I had a copy of the News of that date in which it was, and I supposed when I took it that was it, but it doesn't seem to be---That is the paper. I am very certain now.

MR. JENNINGS. Oh, here it is, I guess.

MR. KNOWLTON. He shows me a copy, and I agree that that may [be] regarded as a copy, if Mr. Jennings says so.

Q. May I cut this paper up?

A. No, sir. It is in my custody.

MR. KNOWLTON. Anything you say is a copy may go, as long as the Court had admitted secondary evidence.

Q. (Handing witness type-written matter.) Mr. Holmes, is that a copy of the paper that was read to Mrs. Reagan as nearly as you recollect?

A. It is.

Q. Will you read it?

A. (Reading:) "This is to certify that my attention has been called to a report said to have been made by me in regard to a quarrel between Lizzie and her sister Emma, in which Lizzie said to Emma, "You have given me away," etc., and that I expressly and positively deny that any such conversation took place; and I further deny that I ever heard anything that could be construed as a quarrel between the two sisters." That is the substance of it.

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Q. After that was read to her did Mrs. Reagan say anything about it?

A. She said it was true.

Q. Well, anything else?

A. You mean what was done?

Q. No.

A. Mr. Buck read this statement to her. She said it was true, and she was asked if she was willing to sign the document, and she said she was willing if the marshal did not object.

Q. Well, what took place then?

A. Then Mr. Buck and Mrs. Reagan went down stairs to the marshal's office, or went down the stairs. That is all I know.

Q. Tell what happened after that. Did you see her again?

A. Yes. After some interval of time she came back with several other parties, and they went into the matron's room.

Q. Did you go in with them?

A. I did not.

Q. Did you hear anything that took place afterwards in the matron's room in regard to this matter?

A. Personally I did not hear the conversation that took place in there.

Q. That is all you know then about the Reagan matter? Is that all you know about the Reagan matter?

A. I heard part of the altercation down stairs after the refusal of the marshal to have it signed by Mrs. Reagan.

Q. Well, that was nothing that Mrs. Reagan said?

A. Nothing that Mrs. Reagan said.

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CROSS EXAMINATION.

Q. (By Mr. Knowlton.) Who was the altercation between?

A. I don't know the names of the parties; there were 20 or 30 gathered in the corridor below. I was up stairs in the Matron's room and the altercation was down below. The corridor seemed to be very full,---20 or 30 people were there.

Q. Did you hear the voice of any one you knew?

A. I heard Mr. Jennings' voice.

Q. Who else did you hear?

A. A reporter whose name I did not know.

Q. Do you know the name?

A. No, sir, I could hardly affirm that I do. I don't know the party, but I think I have heard his name spoken of as Porter, but I won't be positive at all that that is the name.

Q. Is Porter here? I dislike very much to speak of a personal defect, but is Mr. Porter a man with only one good eye?

A. I could not say as to that. I was some distance from him.

Q. You have not seen him since?

A. Not to recognize him as that person.

Q. Mr. Porter was the reporter of the Boston Globe?

A. That I don't know.

Q. Did you understand from his talk that he was?

A. I can hardly say what paper; it was a very hurried conversation between the parties, and I don't know that it is permitted to me to ask a question, but I had an idea he was connected with a Fall River paper in some way, but I don't know that. I

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have only seen him among 20 or 30 heads.

Q. Who had the affidavit?

A. Who had it in the hand, do you mean?

Q. When it was read to Mrs. Reagan.

A. Mr. Buck.

Q. Who was present beside Mr. Buck?

A. Dr. Bowen and several parties came while it was being read. When Mr. Buck came out of the Matron's room with the Matron, Dr. Bowen and myself were standing by the window talking and no one else was present. Before the thing was concluded, I should think there were six or seven persons, perhaps that came.

Q. Who were they?

A. I don't know.

Q. Name any of them?

A. I only know Dr. Bowen with whom I was talking, and some policeman whom I did not know, came up while this was going on. I did not recognize any other person.

Q. Was Mr. Jennings there?

A. No, sir.

Q. Do you know the names of any policemen?

A. I don't know the person and the name of but very few policemen. It was no policeman that I recognized. He came very close to me and they went out. I did not see his face at the time.

Q. Did you know Mrs. Reagan at the time?

A. I did.

Q. Was this in the Matron's room?

A. It was in the corridor.

Q. Was any one else in the corridor?

A. Dr. Bowen and I were the only ones in the corridor at that time. We were each waiting for his wife.

Q. How long had the Court been adjourned?

A. Not many minutes, 15 or 20.

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Q. Had most of the crowd gone out?

A. The crowd had gone out. I went for my wife, who was in the Matron's room, and he for his wife who was in there, and we two were alone talking.

Q. You had been present at Court every day at the trial of the case?

A. Yes, sir, I think I was.

Q. And had Mr. Buck been there every day at the trial of the case as far as you know?

A. He had.

Q. You had been quite actively interested in the case, had not you?

A. Yes, sir.

Q. You attended the Court as a friend of Miss Borden, did you not?

A. I did.

Q. And accompanied her into Court and when she went out?

A. I did.

Q. Sat by her side during the trial?

A. I did.

Q. All these things are also true of Mr. Buck?

A. They are.

Q. It was on Mr. Buck's arm that she leaned as she came into the Court room?

A. It was.

Q. Had Mrs. Reagan then to your knowledge, been summoned as a witness?

A. She had not.

Q. Had you any expectation, or had you been informed by any body that she was to be summoned as a witness?

A. I had not.

MR. ROBINSON. Summned when?

MR. KNOWLTON. At that hearing at the Court. (To witness) You understood what I meant?

A. Certainly. I never understood she was.

Q. And nothing had appeared excepting a publication in the newspaper?

A. To my own person knowledge.

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Q. And the affidavit you wanted her to deny was what was in the paper?

A. It was.

Q. What did she say when the affidavit was read to her?

A. She said it was true.

Q. You are positive of that?

A. I am.

Q. Had you read the report in the paper yourself?

A. I presume I did; I have no recollection of it.

Q. Do you remember that she said she must see Marshal Hilliard first?

A. Words to that effect.

Q. Is not that all she did say?

A. No, sir, she said it was true.

Q. Said the affidavit was true?

A. Yes, sir.

Q. Was not there some excitement at the time?

A. Very soon afterward.

Q. Was there not excitement at the time?

A. When this began there was only Dr. Bowen, Mrs. Reagan and myself present.

Q. Was it not a day of a great deal of excitement?

A. It was.

Q. And most everybody had been strained up, if I may use a good old fashioned expression, by what had been going on at the trial?

A. No more than other days of the trial.

Q. The other days of the trial?

A. All the other days were days of excitement.

Q. Very few people were calm at those times, were they?

A. I can hardly say about that.

Q. What?

A. Some,---I can hardly answer that question yes or no.

Q. Very good: I won't trouble you any further, if that is all the way you want to answer it. You were trying to get a denial of

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something that was published in a newspaper?

A. I was.

Q. For what purpose?

A. For publication in the press.

Q. What for?

A. To prove no such statement had been made over the signature of Mrs. Reagan.

Q. Why?

A. Because I thought it was important that the contradiction of this alleged story of Mrs. Reagan should be denied over her own signature.

Q. It had nothing to do with the proceeding in Court, then?

A. No.

Q. Had no effect, nor was intended to have any effect on the proceeding in Court?

A. No, it was an outside matter.

Q. It was simply an attempt to correct one newspaper story?

A. It was.

Q. And at that time the newspapers were full of all sorts of stories, weren't they?

A. Yes, sir.

Q. All sorts of stories about everybody that had anything to do with the case?

A. Had a good many.

Q. And a good many of them to your knowledge were not true?

A. Were not true.

Q. And you were attempting to correct one story and wanted Mrs. Reagan to sign that for that purpose?

A. I had a special reason for it.

Q. She did not sign it?

A. She did not.

Q. And never has signed it, as far as you know?

A. Not so far as I know.

Q. Did you go to the Marshal's office?

A. I did.

Q. Did you hear her say that what she had to say, she would say in court?

A. I did not.

JOHN R. CALDWELL, Sworn.

Q. (By Mr. Jennings.) What is your full name?

A. John R. Caldwell.

Q. What is your business?

A. Reporter.

Q. Were you reporting this trial last August at the hearing before the District Court in Fall River?

A. Yes, sir.

Q. Do you recall the day on which Mrs. Reagan was asked to sign some sort of a paper?

A. I recall the day, but I could not fix the date. I recall the occasion.

Q. Where did you see or hear anything done or said with respect to that paper, Mr. Caldwell?

A. That was in the corridor outside the Court room after adjournment.

Q. Did you see or hear the paper read to her?

A. I saw the paper read; I did not hear it read; that is, I could not hear what was said.

Q. Were you too far off to hear?

A. I was not near enough to hear.

Q. Did you see or hear anything take place in regard to the paper after that?

A. Yes.

Q. What was it and where was it?

A. Mrs. Reagan took the paper and went down stairs with Mr. Buck and went into Marshal Hilliard's office. I followed them there, and when I came in she was standing inside the railing. Mr. Hilliard came in, and she turned and said something to him which I did not hear, and his reply was---

Q. She said something to him?

A. She said something to him, holding the paper in her hands, that I did not hear, and his reply was, "If you sign that paper it will be against my express orders."

Q. And what followed then?

A. Then he turned and saw me and ordered me out of the office.

Q. Did you go?

A. I went, after explaining that I did not know it was a private office.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) Did you hear him say anything more to her?

A. I heard him say nothing more.

Q. Did you go out pretty soon after that?

A. Well, I remonstrated with him first.

Q. Did you hear him say to her, "Whatever you say about this, Mrs. Reagan, you will say in Court."?

A. No, I did not hear that.

Q. Do you know that that was not said?

A. No.

Q. That might have been said?

A. It might have been said.

Q. But if it was said you do not recall it?

A. I do not recall it.

Q. Was there anybody else there besides you?

A. There was a New York correspondent with me.

Q. Anybody else?

A. Nobody that I knew.

Q. Where were you in the corridor up stairs?

A. That was between the head of the stairs and the Court room door.

Q. In sight?

A. Yes, in the corridor---

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Q. In sight of Mrs. Reagan?

A. Yes, sir.

Q. How far from her?

A. Well, I don't know, I am sure. There was quite a crowd there, and I was not aware at first what was going on, so I paid no special attention to it at all. I saw the paper.

Q. How much of a crowd was there there?

A. There might have been a dozen or fifteen people or more.

Q. Who were they?

A. I don't know who they were.

Q. Were they mostly reporters?

A. Mostly reporters, I think.

Q. And they were all about the corridor?

A. They were all about the corridor.

Q. And talking?

A. There was a good deal of talking going on.

Q. And considerable excitement?

A. Yes.

Q. And what was said to her was said while all these people were present, talking, excited?

A. Exactly.

Q. And so you did not hear anything that was said?

A. I did not hear what was said.

Q. Did any part of the crowd follow her down stairs?

A. I think a number went down stairs; that is, to the foot of the stairs.

Q. That is, when she went down stairs a portion of the crowd followed her down stairs?

A. Yes.

Q. A portion of this excited crowd?

A. Yes.

Q. And some portion of them did not go into the guard room, I suppose?

A. You mean by the guard room the outer office?

Q. No, not the office---

A. I don't know whether they did or

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not; I could not say.

Q. If I understand right, as soon as you go down stairs you go through a little corridor and then you are in the guard room?

A. That is the large office.

Q. But the conversation was in the marshal's office?

A. Yes.

Q. Which leads out of the guard room?

A. Which leads out of the guard room.

Q. Did any part of the crowd go in there?

A. No one, except myself and another person.

Q. Who was the other person?

A. Mrs. Percy.

Q. She is also a reporter?

A. Yes, sir.

Q. Was she one of the party up stairs?

A. She was up stairs.

Q. And you two were the only ones?

A. We were the only ones.

Q. How soon did Mrs. Reagan come out?

A. I don't know, because I went out first.

Q. Did you see her come out?

A. I am not sure that I did. My impression is that she came out very shortly afterwards.

Q. What was said was said in a distinct tone, so that you had no difficulty in hearing it?

A. Very distinct.

Q. That if she signed anything, she signed against his express orders?

A. Yes.

Q. And you do not recall that he also said that whatever she would say about it she would say in Court?

A. I do not recall that.

Q. (By Mr. Jennings.) Do you know whether that Mrs. Percy is now in Europe?

A. I believe Mrs. Percy is now in Italy.

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MARY E. BRIGHAM, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Mary E. Brigham.

Q. Where do you live?

A. Fall River.

Q. Do you know the defendant, Lizzie Borden?

A. I do.

Q. How long have you known her?

A. All my life; as long as I remember to have known anybody.

Q. Were you neighbors and friends when you were children?

A. Yes, sir.

Q. Go to the same school?

A. Yes, sir.

Q. Did you afterwards attend the same church?

A. Yes, sir.

Q. Do you now?

A. Yes, sir.

Q. Are you in the habit of visiting each other?

A. Yes, sir.

Q. How frequently?

A. Quite frequently.

Q. Do you remember anything being said by Mrs. Reagan at any time to you in regard to a quarrel between the sisters?

A. I do.

Q. What was it and where was it?

A. It was in the matron's room at the police station.

Q. About what time of the day?

A. I think it was after court in the afternoon.

Q. Was it this time that has been spoken of when a paper was brought for her to sign?

A. Yes, sir.

Q. What did you see her do or hear her say? What was the first you saw done about the paper?

A. I saw Mr. Buck with a paper in his hand. I saw Mrs. Reagan leave the room

with Mr. Buck. Some one told me---

Q. You can't tell what some one told you. Did she come back soon after?

A. I don't know how long after.

Q. Did she come back?

A. She did.

Q. And how did she appear and what did she do or say when she came back?

A. She acted mad.

Q. Well, what did she say?

A. She sat down in the rocking chair as near me as she could sit. She said to me "It is all a lie from beginning to end. I was willing to sign that paper but the Marshal wouldn't let me do it. He told me to go to my room and obey orders. I would rather leave a place than stay here where I have been so lied about."

CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) Did you see the paper read in the room?

A. I think not.

Q. In the corridor?

A. No, sir; I wasn't out of the room.

Q. Where Mr. Buck and Mr. Holmes were was outside of the room, was it?

A. Yes, sir.

Q. Did she come into the room before she went down stairs?

A. Mrs. Reagan?

Q. Yes.

A. I don't remember.

MISS EMMA L. BORDEN, Sworn.

Q. (By Mr. Jennings.) Your name?

A. Emma L. Borden.

Q. You are the sister of Miss Lizzie Borden?

A. Yes, sir.

Q. How long have you lived at the home where you were living at the time of the murder, Miss Borden?

A. I think 21 years last May.

Q. Did your sister Lizzie always live there too with you?

A. Yes, sir.

Q. Yourself, your father, Miss Lizzie and Mrs. Borden?

A. Yes, sir.

Q. Do you know what property Miss Lizzie Borden had at the time of the murder?

A. Yes, sir.

Q. Will you produce the evidences of it, if you have them with you?

A. (Various vouchers produced.)

MR. KNOWLTON. All I want, Mr. Jennings, is the list. I raise the question as to its competency.

MR. JENNINGS. Oh yes. The District Attorney, your Honors, does not require me to make formal proof. As I understand it, he simply reserves his right to object.

MR. KNOWLTON. I do not know that I will object to the competency of it, if the amount of it is stated to me.

Q. You may state what it consisted of.

MR. KNOWLTON. You may state it yourself. You need not trouble the witness.

MR. JENNINGS. Deposit subject to check of \$170 in B. M. C. Durfee Safe Deposit and Trust Company. Deposit subject to

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check of \$2000 in the Massasoit National Bank, Fall River. Both of those are of Fall River. Deposit in the Union Savings Bank, Fall River, \$500. A deposit of \$141 in the Fall River Five Cents Savings Bank. Two shares of the Fall River National Bank, April 3d, 1883. Four shares of Merchants' Manufacturing Company stock, date of certificate March 8, 1880. Five shares of Merchants' Manufacturing Company stock, date of certificate December 22, 1881.

Q. Did your father wear a ring, Miss Emma, upon his finger?

A. Yes, sir.

Q. Was or was not that the only article of jewelry which he wore?

A. The only article.

Q. Do you know from [whom] he received the ring?

A. My sister Lizzie.

Q. How long before his death?

A. I can't tell you accurately. I should think ten or fifteen years.

Q. Do you know whether previously to his wearing it she had worn it?

A. Yes, sir.

Q. Did he constantly wear it after it was given to him?

A. Always.

Q. Do you know whether or not it was upon his finger at the time he was buried?

A. It was.

Q. Have you an inventory, Miss Emma, of the clothes that were in the clothes closet on Saturday afternoon, the time of the search?

A. I have.

Q. Will you produce it?

A. I have of the dresses.

Q. Of the dresses. Very well.

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MR. MOODY. Taken at the time?

MR. JENNINGS. No.

Q. When was that made up?

A. This?

Q. Yes.

A. About a week ago.

Q. Was it made up from your recollection?

A. Yes, sir.

Q. You were there on the afternoon of the search?

A. I was.

Q. Do you know what dresses were in there that afternoon?

A. I do.

Q. Will you state either from your own recollection or by the assistance of that memorandum what the dresses were?

MR. KNOWLTON. Wait a minute. I do not object to the question except as to the memorandum.

Q. Well, how many dresses were there in there?

A. I can't tell you without looking at this paper.

Q. Well, can you tell us about how many?

A. Somewhere about eighteen or nineteen.

Q. And whose were those dresses?

A. All of them belonged to my sister and I except one that belonged to Mrs. Borden.

Q. How many of those dresses were blue dresses or dresses in which blue was a marked color?

A. Ten.

Q. To whom did those belong?

A. Two of them to me and eight to my sister.

Q. Were you there on the afternoon of Saturday while the search was going on?

A. Yes, sir.

Q. Do you know how minute or extended that search was?

A. I heard you say that every ---

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Q. You cannot say what you heard me say. Did you hear Dr. Dolan or Marshal Hilliard?

A. I asked Dr. Dolan if they had made a thorough search ---

MR. KNOWLTON. Wait a minute, Madame, if you please. I pray your Honors' judgment as to that answer.

MR. JENNINGS. I think he was asked, your Honors, if he did not say something to the family or some member of the family in regard to the character of the search that had been made.

MASON, C. J. Did both of those witnesses testify to what search they did make?

MR. JENNINGS. Yes, your Honor.

MR. KNOWLTON. I do not understand that Dr. Dolan said he made any search.

MR. JENNINGS. Marshal Hilliard testified that he was at the head of a searching party, and Dr. Dolan was a member of it.

MASON, C. J. If you propose to show either of them made any statement different from what they made on the stand in reference to the search, you may show that.

MR. KNOWLTON. If that is the object, I do not object, of course.

MR. JENNINGS. I cannot recall now exactly what Dr. Dolan said. I offer to characterize his statement of the search at the close of it. There is another ground, your Honors, on which I would ask to have it admitted, as perhaps a basis of

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some subsequent acts on the part of the inmates of the house.

MR. KNOWLTON. To that, your Honors. I should most certainly object.

MASON, C. J. You must be confined ---

(The last question and unfinished answer of the witness were read.)

MR. JENNINGS. I do not think there is any question before the Court at present. I will put a question.

Q. What, if anything, did Dr. Dolan say to you as to the character of the search which had been made?

MR. KNOWLTON. I object.

MASON, C. J. The Court's recollection of Dr. Dolan's testimony is that he testified to the character of the search. If you want to show anything different from what he testified ---

MR. JENNINGS. I think I have a right to put it in ---

MASON, C. J. You may show it.

Q. Will you answer the question? (The last question was read.)

A. He told me the search had been as thorough as the search could be made unless the paper was torn from the walls and the carpets taken from the floor.

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Q. Now, without telling me what I said, did I communicate to you what Marshal Hilliard said in regard to the search of the upper portions of the house?

MR. KNOWLTON. Wait a minute.

MR. JENNINGS. I do not ask you what I said; I ask you whether I communicated.

MR. KNOWLTON. I understand the question exactly.

MR. JENNINGS. I offer to show the fact.

MR. KNOWLTON. I object.

MASON, C. J. Won't you repeat just what it is?

(The question was read.)

MR. JENNINGS. As to whether it was completed or not. I will add that to it, with your Honors' permission.

MASON, C. J. We think the counsel should state a little more fully the purpose of this evidence.

MR. KNOWLTON. Shouldn't it be stated to the Court rather than to the jury?

MASON, C. J. It doesn't occur to the Court that the purpose would prejudice the jury.

MR. KNOWLTON. I think it would, if your Honor pleases.

MASON, C. J. Very well; we will hear you here.

MR. KNOWLTON. That is, if it wasn't followed up by the testimony.

(The Court and counsel consulted.)

MR. KNOWLTON. We are content with our objection, to leave it to your Honors' judgment in the matter. Of course

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that last element has got to come in before we get through with it.

MASON, C. J. Of course, without that were communicated to the defendant it

would be incompetent. The Court understand that counsel expect to make that connection.

MR. JENNINGS. Yes, sir; I so understand it.

MASON, C. J. There should be no misunderstanding, you should not proffer this unless you do that.

(The question was read as follows: ---"Now, without telling me what I said, did I communicate to you what Marshal Hilliard said in regard to the search of the upper portions of the house, as to whether it was completed or not?")

MR. JENNINGS. Now I will change that to "Communicate that to you and your sister, Miss Lizzie."

MASON, C. J. It may be answered.

(The question was read as follows: "Now, without telling me what I said, did I communicate to you or to your sister, Miss Lizzie, what Marshal Hilliard said in regard to the search of the upper portions of the house, as to whether it was completed or not?")

A. You did.

Q. And when was that?

A. Saturday afternoon.

Q. Was that after they had taken the dress away or had been given the dress?

A. Yes, sir.

Q. Was that after they had received the other things that they took that afternoon?

A. I think so.

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Q. Can you tell about what time in the evening it was?

A. I think about six o'clock.

Q. They had been searching all the afternoon, had they?

A. Yes, sir.

Q. And was that about the time they were going away?

A. Yes, sir.

Q. Do you remember this dress of Bedford cord?

MASON, C. J. To prevent any misunderstanding---you do not understand the

Court to exclude what you said to them?

MR. JENNINGS. I did so understand.

MASON, C. J. The Court had not intended to make any such suggestion.

Q. Then I will ask you to state what it was I said to Miss Lizzie and yourself about the completeness of the search in the upper part of the house?

A. You said every box and bag had been examined.

Q. What say?

A. You said everything had been examined, every box and bag.

Q. Was any exception made?

A. No, sir.

MR. KNOWLTON. I beg your pardon, Mr. Jennings.

Q. I would call your attention to the fact if you have said all you recollect, whether anything was stated about the cellar?

A. Yes, I think there was.

Q. Well, what was it?

A. I think you said there would be a search of some portion of the cellar Monday.

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Q. Did you furnish any assistance, you or Miss Lizzie---

MR. KNOWLTON. Are you through with that matter of your communication to her?

Q. Well, are you giving me now what I---you understand what I am asking you about, as to what Marshal Hilliard said in regard to the search?

A. Yes, sir.

Q. And what have you stated ---

A. Is what you told me.

Q. Is what you recollect I told you about what he said about it?

A. Yes, sir.

Q. Now I will ask you, before we leave this matter of the search, whether you or Miss Lizzie at any time during that search Saturday afternoon, furnished any assistance to the officers?

A. We both together went to the attic to assist them about opening a trunk.

Q. Did you or Miss Lizzie, so far as you know, at any time make any objection whatever to the searching of any part of that house?

A. Not the slightest.

Q. Or of anything in it?

A. Not the slightest objection.

Q. Did you assist them in any way you could?

A. By telling them to come as often as they pleased and search as thorough as they could.

Q. Now, then, Miss Emma, I will ask you if you know of a Bedford Cord dress which your sister had at that time?

A. I do.

Q. Won't you describe the dress, tell what kind of a dress it was?

A. It was a blue cotton Bedford Cord, very light blue ground with a darker figure about an inch long and I think

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about three quarters of an inch wide.

Q. And do you know when she had that dress made?

A. She had it made the first week in May.

Q. Who made it?

A. Mrs. Raymond, the dressmaker.

Q. Where was it made?

A. At our home.

Q. What kind of material was it as to cost? Do you know what the price of it was?

A. Very cheap.

Q. Do you know, have you any idea what it cost?

A. It was either 12-1/2 cents a yard or 15 cents.

Q. About how many yards do you think there were in it?

A. Not over 8 or 10.

Q. In what way was it trimmed?

A. Trimmed with just a ruffle of the same around the bottom: a narrow ruffle.

Q. How long were you in making the dress, do you know?

A. Not more than two days.

Q. Did you and Miss Lizzie assist the dress maker in making the dress?

A. Yes, sir.

Q. That was your habit, was it?

A. Yes, sir, I always do.

Q. And where was the dressmaking carried on?

A. In the guest chamber.

Q. Was that where the dress making was always done?

A. Always.

Q. Had Mrs. Raymond been your dressmaker for a good many years?

A. She worked for my sister and Mrs. Borden for a long while: for me part of the time.

Q. Did she usually come to the house in that way to do her work?

A. Yes, sir.

Q. Did Mrs. Borden have her work done at the same time?

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A. Always.

Q. In the same place?

A. Yes, sir.

Q. All of you together there?

A. Yes, sir.

Q. Did she make more than one dress at that time for your sister?

A. Oh, yes, she made several.

Q. Which one was made first?

A. This Bedford cord.

Q. Do you know whether or not they were painting the house at the time that dress was made?

A. I think they did not begin to paint it until after the dress was done.

Q. Do you know anything about her getting any paint on it at that time?

A. Yes, she did.

Q. Where was the paint upon it?

A. I should say along the front and on one side toward the bottom and some on the wrong side of the skirt.

Q. How soon was that after it was made?

A. Well, I think within two weeks; perhaps less time than that.

Q. How soon did she put it on to wear after it was made?

A. I think she put it on the next morning after it was done.

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Q. Now where was that dress, if you know, on Saturday, the day of the search?

A. I saw it hanging in the clothes press over the front entry.

Q. At what time?

A. I don't know exactly; I think about 9 o'clock in the evening.

Q. How came you to see it at that time?

A. I went in to hang up the dress that I had been wearing during the day, and there was no vacant nail, and I searched round to find a nail, and I noticed this dress.

Q. Did you say anything to your sister about that dress in consequence of your not finding a nail to hang your dress on?

A. I did.

Q. What did you say to her?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment as to that. That is clearly incompetent.

MASON, C. J. The question may be answered.

Q. What did you say to her?

A. That night?

Q. Yes, about the dress?

A. I said, "You have not destroyed that old dress yet; why don't you?"

Q. Is that all that was said?

A. All that I remember.

MR. KNOWLTON. I don't think, may it please your Honors, that answer should stand.

Q. Did she say anything in reply?

A. I don't remember.

Q. What was the condition of that dress at that time?

A. It was very dirty, very much soiled, and badly faded.

Q. Do you know whether she had been wearing it for some little

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time prior to the day of the murder?

A. I don't remember seeing her have it on for several weeks before I went away.

Q. How long was it before the murder that you went away?

A. Just two weeks.

Q. Was this material of which this dress was made in a condition to be made over for anything else?

A. It could not possibly be used for anything else.

Q. Why?

A. Because it was not only soiled, but so badly faded. It was a shade that in washing that would be completely ruined,---the effect of it.

Q. I will ask you a little further,---how long was that dress?

A. So long that in the back it perhaps---I might say dragged an inch or more. It was not a train dress, but it was so long that it very quickly got soiled because it was so very light.

Q. How did it compare in length with her other dresses?

A. It was longer than any dresses except those that were made with a train.

Q. How did it compare with the length of her pink wrapper?

A. I should think it was an inch and a half longer, sure.

Q. How was it made as to the sleeve?

A. We called them full sleeves then, but not as large as they are making this season.

Q. But, as to the waist, was that full or snug?

A. The waist was a blouse waist, perfectly loose in front.

Q. Did she have any dress, Miss Emma, that she could get on over that?

A. No, sir.

Q. Why not?

A. Because her dresses were made rather snug.

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Q. What dress did she have on that Saturday morning when she went to the funeral?

A. A black net.

Q. Do you know whether she had this blue wrapper on under that that morning?

A. I know that she had not.

MR. KNOWLTON. What morning is that, Mr. Jennings?

MR. JENNINGS. Saturday morning, the morning of the funeral.

Q. Did she have it on under the pink wrapper when she had that on?

A. I don't think she could possibly have had it on under it.

Q. Was she lying on the sofa with the pink wrapper on?

A. Yes, sir.

Q. Would the dress have shown if she had it on under that?

A. It must have.

Q. Were you with her Friday and Saturday when she had it on?

A. Almost constantly.

Q. In the same room?

A. Yes, sir.

Q. When did you next see that Bedford cord dress?

A. Sunday morning, I think, about nine o'clock.

Q. Now will you tell the Court and the Jury all that you saw or heard that morning in the kitchen?

A. I was washing dishes, and I heard my sister's voice and I turned round and saw she was standing at the foot of the stove, between the foot of the stove and the dining room door. This dress was hanging on her arm and she says, "I think I shall burn this old dress up." Do you wish me to go on?

Q. Go right along.

A. I said, "why don't you," or "you had

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better," or "I would if I were you," or something like that, I can't tell the exact words, but it meant,---Do it. And I turned back and continued washing the dishes, and did not see her burn it and did not pay any more attention to her at that time.

Q. What was the condition of the kitchen doors and windows at that time?

A. They were all wide open, screens in and blinds open.

Q. Were the officers all about at that time?

A. They were all about the yard.

Q. I mean that,---not in the house but around the house in the yard?

A. Yes, sir.

Q. What time in the morning was that?

A. I think about nine o'clock; I am not sure.

Q. Had you been to breakfast before this thing happened?

A. Yes, sir.

Q. Who was there at breakfast?

A. Mr. Morse, Miss Russell, my sister and I.

Q. Do you know where Mr. Morse was at that time?

A. I do not.

Q. Was Miss Russell there?

A. Yes, sir.

Q. What do you do with your rags and pieces of cloth that you had this morning, or what did your sister do with those that she had? What was the custom?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment.

MR. JENNINGS. I will withdraw that question for a moment, with your Honors' permission.

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Q. Did you or your sister keep a rag bag?

MR. KNOWLTON. Wait a minute---

A. We did not.

MR. KNOWLTON. I pray your Honors' judgment.

MASON, C. J. Excluded.

Q. What was done with the pieces of cloth, or pieces of old dresses, or old dresses that you had to dispose of?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment.

Q. Or that your sister had to dispose of?

MASON, C. J. Excluded.

Q. What was the custom and habit of your sister in disposing of pieces of clothing or old dresses?

MR. KNOWLTON. I pray your Honors' judgment.

MASON, C. J. Excluded.

MR. JENNINGS. We take an exception to that, your Honors.

Q. Do you know of your sister's habit of burning old dresses, or portions of old dresses previous to this time?

MR. KNOWLTON. I object.

MASON, C. J. Excluded.

MR. JENNINGS. We desire to save an exception to that, your Honor.

Q. Now, what happened next, Miss Emma, that you recall in reference to this dress, --- anything being said about it?

MR. KNOWLTON. Do you mean after the burning?

MR. JENNINGS. After the burning.

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MR. KNOWLTON. I think you ought to limit your question, and ask by whom? I think I ought to know what talk you have reference to.

MR. JENNINGS. I refer more particularly to Miss Russell.

MR. KNOWLTON. To that I don't object. Call attention to that fact.

Q. Was anything said by Miss Russell in the presence of Miss Lizzie, in regard to this dress?

A. Yes, sir.

Q. Was anything said Sunday?

A. Not that I know of.

Q. Now what was said Monday.

A. Miss Russell came to us in the dining room and said Mr. Hanscomb asked her if all the dresses were there that were there the day of the tragedy, and she told him "yes," "and of course," she said, "it is a falsehood." No,---I am ahead of my story. She came and said she told Mr. Hanscomb a falsehood, and I asked her what there was to tell a falsehood about, and then she said that Mr. Hanscomb had asked her if all the dresses were there that were there the day of the tragedy and she told him "yes." There was other conversation, but I don't know what it was. That frightened me so thoroughly, I cannot recall it. I know the carriage was waiting for her to go on some errand, and when she came back we had some conversation and it was decided to have her go and tell Mr. Hanscomb that she had told a falsehood, and to tell him that we told her to do so. She went into the parlor and told him, and in a few minutes she returned from the parlor and said she had told him.

Q. Is that all as far as Miss Russell is concerned?

A. All that I

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recall.

Q. Now at the time when Miss Russell said "it was the worst thing that could be done ---

A. Oh, yes, sir, she said that Monday morning. When she came into the dining room and said she had told Mr. Hanscomb that she had told him a falsehood, we asked what she told it for, and said "the burning of the dress was the worst thing Lizzie could have done", and my sister said to her "why didn't you tell me? Why did you let me do it?"

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Q. Now, Miss Emma, do you recall a story that was told by Mrs. Reagan about a quarrel between yourself and your sister?

A. I didn't hear Mrs. Reagan say anything about it.

Q. No, but do you remember there was a story round of that kind?

A. Yes, sir.

Q. Was your attention called to the fact by me?

A. It was.

Q. How soon after it, do you know?

A. The morning following.

Q. That is, the morning the story was published in the paper?

A. I think so, yes, sir.

Q. Mrs. Reagan says that the day before the hearing began in the Second District Court

you got down to the room about twenty minutes of nine---if your Honors will allow me to find just the words.

MR. KNOWLTON. I will submit, if your Honors please, whether my brother shall read what Mrs. Reagan said, or ask her what was said. If she said nothing was said, he may put the question. It seems to me the other question should be put first, and if she says there was no conversation, or course, that would be different.

MASON, C. J. There is no question pending.

MR. KNOWLTON. I assume my brother is about to read her testimony, and I wanted to stop him before he began, if he was proposing to.

MR. JENNINGS. I think I have a right to read it to the witness and ask her as to whether any such thing took place.

MASON, C. J. Is it necessary to do that? All you have

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to do is call the witness's attention to the subject and ask what was said.

MR. JENNINGS. Very well. I think, your Honor, I have a right to ask her whether those things were said.

MASON, C. J. You have undoubtedly a right to contradict, and to call her attention to the statement which you desire to contradict.

Q. Now, Miss Emma, on that morning did you have any conversation with Miss Lizzie in which she said, "Emma, you have given me away, haven't you?"

A. I did not.

Q. And did you say in reply, "No, Lizzie, I haven't." "You have," she says, "and I will let you see I won't give in one inch." Was there any such talk as that?

A. There was not.

Q. Anything like it?

A. Nothing.

Q. That morning or any morning?

A. No time, not any time.

Q. Was there ever any trouble in the matron's room between you and your sister while she was there?

A. There was not.

Q. Any quarrel of any kind?

A. No, sir.

Q. Or anything that could be construed as a quarrel?

A. No, sir.

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Q. Did Lizzie put up her finger and say anything about not going in?

A. No, sir.

Q. At any time?

A. No, sir.

Q. Now did I come there that morning before you went away?

A. The following morning, after the ---

Q. No, the morning before the hearing began.

A. Yes, sir.

Q. Now when you went out did I say to you, "Have you told her all?" And you say, "Everything."

A. No, sir; you did not.

Q. Either that morning or any other morning?

A. No, sir.

Q. Was you there at a time when there was some talk in the matron's room at the close of a hearing about a paper that was to be signed?

A. I don't remember it.

Q. Do you think you were there?

A. I can't tell you, I don't know.

Q. You don't remember?

A. I don't remember anything about it.

Q. In order that there may be no mistake, Miss Emma, I would like to ask you again, who was it that said she had told a falsehood to Mr. Hanscom?

A. Miss Russell.

Q. Said she had told a falsehood?

A. She had told a falsehood.

Q. And you asked her what about?

A. Yes.

CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) On the day that this thing happened you were in Fairhaven?

A. Yes, sir.

Q. How long had you been in Fairhaven?

A. Just two weeks.

Q. Where were you in Fairhaven?

A. Do you want me to tell you the street?

Q. What house?

A. At Moses Delano's, on Green Street.

Q. Is that a relative of yours?

A. No, sir.

Q. Or some friends?

A. No, sir; he is not.

Q. The people in the house were?

A. The people that I was visiting were living in his home.

Q. And who was it that you was visiting?

A. Mrs. Brownell and her daughter.

Q. And you received a telegram from Dr. Bowen?

A. Yes, sir.

Q. And came, of course, as soon as you could?

A. Yes, sir.

Q. Where were you when you got the telegram?

A. At Mrs. Brownell's.

Q. At what time did you arrive at the house?

A. I think about five.

Q. That same afternoon?

A. Yes, sir.

Q. Had you seen Miss Lizzie during the two weeks?

A. Yes, sir.

Q. When?

A. Well, I can't tell you what day it was; some few days after; she had been at Fairhaven.

Q. Was it Saturday?

A. No, sir.

Q. Was it on her way over to or back from Marion?

A. Oh, I do

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know. She went to New Bedford when I went to Fairhaven, and I think it was the Saturday following our going Thursday.

Q. That is, she went to New Bedford the same day you went to Fairhaven?

A. Yes, sir.

Q. To make a visit in New Bedford?

A. Yes, sir.

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Q. She did not go to Fair Haven to visit?

A. No, sir.

Q. She was in New Bedford visiting?

A. Yes, sir.

Q. How long did she remain in New Bedford?

A. Until the following Tuesday.

Q. This is, from Thursday until Tuesday.

A. Yes, sir.

Q. During that time, do you know, did she go to Marion?

A. No, sir, she did not.

Q. Do you know of her going to Marion while you were away?

A. Yes, sir.

Q. What day was that?

A. It must have been a week from the following Saturday. We went to New Bedford Thursday.

Q. The Saturday before you came back home?

A. Yes, sir.

Q. Did you see her on the way to or from Marion?

A. No, sir.

Q. That is something she told you, I suppose?

A. That is all.

Q. And she told you that she simply spent the day there?

A. Yes, sir.

Q. How long had you lived in that house, do you say? All your life time?

A. No, sir; I think about twenty-one years.

Q. Had your father since your remembrance occupied the whole house?

A. Except for the first few months when we moved there.

Q. And then he occupied, that three months, the down stairs or the up stairs?

A. The whole of the down stairs and a portion of the upper floor.

Q. Was any change made in the house when you began to occupy the whole house?

A. Two of the sleeping rooms down stairs

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was made into a dining room.

Q. That is, a partition was taken away?

A. Yes, sir.

Q. So as to leave it as it is now?

A. Yes, sir.

Q. And before that time the partition was solid, the same as it is upstairs?

A. Yes, sir.

Q. You have lived there ever since?

A. Yes, sir.

Q. Live there now?

A. Yes, sir.

Q. And live there alone now?

A. Except with the servants

Q. Mr. Morse---had you seen him before you came home that day?

A. Yes, sir.

Q. Well, I do not mean in your lifetime; I mean that week?

A. No, sir.

Q. When had you seen him last before that?

A. I can't tell you exactly; I don't know.

Q. What?

A. I can't tell you, I don't know. I should say within three or four weeks.

Q. About how long was it, as near as you remember?

A. I think three or four weeks.

Q. Did he then come to the house?

A. Yes, sir.

Q. Were you, both the girls, at home at that time?

A. I think so.

Q. Did he stay over night then?

A. I think not.

Q. Do you remember when the last time he came and stayed over night was?

A. No, I do not.

Q. Was it for a good while before that time?

A. No, I should say not a great while, but I don't remember.

Q. Some time that summer, perhaps?

A. Yes, I think so.

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Q. And stayed over night?

A. Yes, sir.

Q. Where did he sleep then?

A. I think in the attic.

Q. Did you then have company at the house?

A. I don't think we did.

Q. Had he usually slept in the attic or in the guest chamber?

A. Just as it happened.

Q. And what made it happen?

A. Sometimes if we were using the room more especially as a sewing room than we did others, he would go into the attic.

Q. And were you using it as a sewing room at the time that he slept in the attic, the time he was there last before?

A. As I tell you, I don't remember; I think very likely.

Q. You do not recall. Did he come there to the house pretty often?

A. Just as it happened.

Q. About how many times had he been there that year?

A. I can't tell you that.

Q. Well, half a dozen, or more or less?

A. Well, I should say half a dozen.

Q. And of those times that he had been there, as near as you can tell, if you can tell, how many times had he stayed over night?

A. Oh, I don't know: perhaps two or three.

Q. He was your own uncle?

A. Yes, sir.

Q. Your own mother's brother?

A. Yes, sir.

Q. Had you any other near kin on your own mother's side?

A. We had other uncles and one or two aunts.

Q. Where did they live?

A. All but one live west.

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Q. And where did the one live that did not live west?

A. In Fall River.

Q. What was that's one's name?

A. Mrs. Morse.

Q. Is she now living there?

A. Yes, sir.

Q. She was not your own aunt?

A. Yes, sir.

Q. She married a Morse, of course.

A. Yes, sir.

Q. And was her name Morse before she was married?

A. Yes, sir.

Q. Oh, she was named Morse and she married a Morse?

A. Yes, sir.

Q. Where did she live in Fall River?

A. I can't tell you the name of the street.

Q. What street was it on?

A. I don't remember.

Q. Didn't you go there?

A. Not very often.

Q. What relatives of your father lived in Fall River?

A. He had a great many cousins and only one sister and no brother.

Q. What was the sister's name?

A. Mrs. Harrington.

Q. Where did Mrs. Harrington live?

A. On Franklin Street.

Q. Did you go there?

A. Yes.

Q. Did you go there much the last year?

A. Yes.

Q. And before that?

A. Yes.

Q. Did he come to the house?

A. Mr. Harrington?

Q. Yes.

A. No, sir.

Q. Did Mrs. Harrington come to the house?

A. Sometimes.

Q. Mr. Harrington did not come?

A. No, sir. Once or twice, perhaps three or four times, he came to the door to inquire for either my sister or I.

Q. Nothing further. Did your stepmother have relatives in Fall River?

A. Yes, sir.

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Q. Who? Near: I don't mean remote: near.

A. Half sister.

Q. What was her name?

A. Mrs. Whiting.

Q. Where did she live?

A. On Fourth Street.

Q. In her own house?

A. Yes, sir.

Q. Did she own the whole of the house?

A. No, sir.

Q. Who owned the rest of it?

A. Mrs. Borden.

Q. Your stepmother?

A. Yes, sir.

Q. And how did your stepmother come into possession of it: by inheritance?

A. No, sir.

Q. How?

A. My father bought it and gave it to her.

Q. That is, your father purchased the interest in the house and gave it to your stepmother?

A. Yes, sir.

Q. When was that?

A. I cannot tell you exactly: I should think five or six years ago.

Q. Do you know how much he paid?

A. I think \$1500.

Q. Did that make some trouble in the family?

MR. ROBINSON. Five or six years ago---I object.

MASON, C. J. She may answer.

Q. Did that make some trouble in the family?

A. Yes.

Q. Between whom?

A. Between my father and Mrs. Borden, and my sister and I.

Q. And also between you and your sister and your stepmother?

A. I never said anything to her about it.

Q. If you will observe the question, I did not ask you that; it is a very natural answer, I find no fault with it. Did it make any trouble between your stepmother and Lizzie and you?

A. Yes, sir.

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Q. Did you find fault with it?

A. Yes, sir.

Q. And did Lizzie find fault with it?

A. Yes, sir.

Q. And in consequence of your fault finding did your father also make a purchase for you or give you some money?

A. Not---I don't think because of our fault finding.

Q. Did he, after the fault finding, give you some money?

A. Yes, sir.

Q. How much?

A. Grandfather's house on Ferry Street.

Q. And was there some complaint that that was not an equivalent?

A. No, sir. It was more than an equivalent.

Q. That it wasn't so productive of rent as the other?

A. I don't know what the other house rented for, but I should think that ours rented for more than hers.

Q. Were the relations between you and Lizzie and your step-mother as cordial after that

occurrence of the house that you have spoken of as they were before?

A. Between my sister and Mrs. Borden they were.

Q. They were entirely the same?

A. I think so.

Q. Were they so on your part?

A. I think not.

Q. And do you say that the relations were entirely cordial between Lizzie and your step-mother after that event?

A. Yes, I do.

Q. Have you ever said differently?

A. I think not.

Q. Did your sister change the form of address to her mother at that time?

A. I can't tell you whether it was at that time or not.

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Q. She formerly called her "Mother", didn't she?

A. Yes, sir.

Q. She ceased to call her "Mother", didn't she, practically?

A. Yes, sir.

Q. And wasn't it about at that time that she ceased to call her "Mother"?

A. I don't remember.

Q. Wasn't it five or six years ago?

A. It was some time ago.

Q. What address did she give her after that time?

A. "Mrs. Borden."

Q. And up to the time when she changed she had called her "Mother"?

A. Mostly.

Q. From her childhood?

A. Yes, sir.

Q. And don't you recall that was some time in connection with the transaction in relation to the house?

A. No, sir, I do not know when it was.

Q. Do you say that you have not said that the relations were not cordial between your sister and your mother?

A. I don't remember that I have.

Q. You testified at the inquest, did you not?

A. I did.

Q. Were you asked questions in relation to that matter?

A. I don't remember what you asked me.

Q. Do you remember the answers that you gave?

A. Only two.

Q. Do you remember whether you answered the questions truly or not?

A. I tried to.

Q. Do you remember that I asked you if your relations were cordial between you and your mother?

A. I think you did either then or before the grand jury. I don't remember which.

Q. Do you remember you said that they were not?

A. I don't

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know whether I did or not.

Q. And do you remember that I then asked you if the relations between your sister and your mother were also cordial?

A. I do not.

Q. Do you still say that the relations between your step-mother and your sister Lizzie were cordial?

A. The last two or three years they were very.

Q. Notwithstanding that she never used the term "Mother"?

A. Yes, sir.

Q. They remained cordial?

A. For the last three years they were.

Q. For how many years before that were they not cordial?

A. I can't tell you. I don't know.

Q. Now I want to ask you if you didn't say this: "Were the relations between you and your step-mother cordial? Ans. I don't know how to answer that. We always spoke"?

A. That was myself and my step-mother.

Q. Do you remember that answer?

A. I do now.

Q. "That might be, and not be at all cordial." Ans. "Well, perhaps I should say no then." Do you remember that, talking about yourself?

A. No, sir, I don't remember it.

Q. "Were the relations between your sister and your mother what you would call cordial?

Ans. I think more than they were with me." Do you remember that answer?

A. Yes, sir.

Q. The next question is pretty long, "Somewhat more than they were with you, but not entirely so, you mean perhaps? I do not want to lead you at all. I judged from your answer

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you mean that, or don't you mean that? You say somewhat more than your relations were. Do you mean they were entirely cordial between your step-mother and your sister Lizzie?

Ans. No."

A. Well, I shall have to recall it, for I think they were.

Q. That is, do you remember giving that answer?

A. No, sir.

Q. How does it happen that you remember the answer in which you did not explicitly state whether they were cordial or not, but don't remember an answer, if one was given, in which you said they were not cordial, which was the following question?

A. I don't understand.

Q. That is a little involved perhaps. You do recall the question next preceding that in which you said "Somewhat more than they were with me"?

A. Not until you read it, I did not.

Q. You did recall it then?

A. Yes, I think I did.

Q. But when the next question, if I may assume to say so, was put to you, if it was put, and such an answer was given by you, you don't now recall that answer?

A. I don't seem to remember it.

Q. Will you say you didn't say that?

A. No sir, not if you say I did.

Q. And would you say that was not true---I haven't said you did at all, Miss Borden, if you will pardon me. Don't understand me as saying that you said anything, so that I think that answer is not pertinent to my question. Do you recall now that

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it is read to you saying that?

A. No, sir, I don't.

(The stenographer read the preceding question and answer as follows: "Will you say you didn't say that? A. No sir, not if you say I did.")

The WITNESS. I don't say I didn't say it, if you say I did. I don't remember saying it.

Q. Do you understand me saying I do? Now, I do not say you did, and have no right to say you did. I haven't said anything about it. I am asking whether you gave that answer to such a question as that: "Do you mean they were entirely cordial between your step-mother and your sister Lizzie? Ans. No"?

A. I can only say I don't remember giving it.

Q. Whether you said it or not, do you say that is true, that the relations were not entirely cordial between your sister Lizzie and your step-mother?

A. I think they were for the last three years.

Q. So that whatever you said then you say so now; you say that is so now?

MR. ROBINSON. Well, I submit ---

MR. KNOWLTON. I don't press that question.

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Q. Now I will read you this question and answer: "Can you tell me the cause of the lack of cordiality between you and your mother, or was it not any specific thing?" Answer: "Well, we felt that she was not interested in us, and at one time father gave her some property, and we felt that we ought to have some too; and he afterwards gave us some." Do you remember that?

A. No, sir.

Q. Is that true?

A. It was true at the time that he gave us the house.

Q. I will read another question: "That, however, did not heal the breach, whatever breach there was? The giving the property to you did not entirely heal the feeling?" Answer: "No sir."

A. It didn't, not with me, but it did with my sister after.

Q. Do you remember making any such distinction in your answer to that question?

A. I don't remember the question nor the answer.

Q. Neither one?

A. No, sir.

Q. Miss Borden, do you know of anybody that was on terms of ill will with your step-mother?

A. No, sir.

Q. Do you know of any enemies that she had?

A. No, sir.

Q. Do you know of anybody that had any hard feelings toward your step-mother?

A. No, sir.

Q. So that you knew of no enemy that your stepmother had in the world?

A. No, sir.

Q. The room that she occupied was the room directly over the

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sitting room?

A. No, sir.

Q. Your sister Lizzie?

A. Oh, yes, sir.

Q. That is what I mean. And the room that you occupied was the room adjacent to it?

A. Yes, sir.

Q. You were much the older?

A. Yes, sir.

Q. Your room was very much smaller?

A. Yes, sir.

Q. Had you previously occupied a different room?

A. Yes, sir.

Q. Which room had you previously occupied?

A. My sister's room.

Q. Had you occupied it with her or had she occupied a different room?

A. She had occupied a different room.

Q. Which room had she occupied?

A. The one that I now have.

Q. When was the change made?

A. I don't know.

Q. How long ago, about?

A. I should think not more than two years.

Q. The room that you occupy was a room that had no exit excepting through her room?

A. No, sir.

Q. Was the change made at her request?

A. No, sir.

Q. At your own suggestion?

A. I offered it to her.

Q. Was it in consequence of anything said by her?

A. No, sir.

Q. Did you make any use of the guest chamber?

A. Yes, sir.

Q. What for?

A. As a sewing room.

Q. Anything else?

A. Why, we sat there in making it a sewing room.

Q. Anything else besides that?

A. Except when some one came that we put there to sleep.

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Q. Anything else?

A. No, sir.

Q. Did you receive your friends there?

A. Oh, just as it happened. If it was some one we were very well acquainted with and we were in there sewing, we had them come up.

Q. And didn't you usually receive your friends there?

A. No, sir.

Q. Didn't you usually receive Miss Russell there?

A. Very often?

Q. Didn't you usually receive Miss Anna Borden there?

A. No, sir; she was never in that room in her life.

(At 1.00 P.M. a recess was taken until 2.15 P.M.)

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Afternoon Session

CROSS-EXAMINATION OF MISS EMMA L. BORDEN, Resumed.

Q. (By Mr. Knowlton.) Miss Borden, how long has Bridget Sullivan been with you?

A. About two years and nine months.

Q. Did she have any duties up stairs, I mean in regard to your sleeping room?

A. No, sir.

Q. Who took care of your own room?

A. I did.

Q. Who took care of Miss Lizzie's room?

A. She did.

Q. And when there was anything to be done with the guest chamber, whose duty was it usually to take care of that?

A. Usually I did.

Q. You?

A. Yes, sir.

Q. Did Miss Lizzie have any particular duties about the housework?

A. She did anything that she cared to do.

Q. She had no particular duty assigned her?

A. No, I don't think of any.

Q. And you usually reached your bedroom by the front stairs?

A. Yes, sir.

Q. And Miss Lizzie too, I suppose?

A. Yes, sir.

Q. Was the front door usually kept locked at night?

A. Yes, sir.

Q. And bolted?

A. Yes, sir.

Q. Who attended to that, if you know, usually?

A. The one that was retiring last.

Q. Whether they slept up stairs or down? You mean whether it was Mr. and Mrs. Borden or the girl?

A. Oh, my sister or I.

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Q. One of you usually attended to that duty?

A. Yes, sir.

Q. Whichever one was last to bed?

A. Yes, sir.

Q. And who usually unlocked it in the morning?

A. Usually my sister.

Q. Miss Lizzie?

A. Yes, sir.

Q. Have you ever caused any search to be made for the note that your step-mother was said to have received that day?

A. I think I only looked in a little bag that she carried down street with her sometimes, and in her work-basket.

Q. You didn't find it?

A. No, sir.

Q. Have you caused any search to be made for the supposed writer of the note?

A. I think there was an advertisement put into the paper.

Q. By your authority?

A. Yes, sir.

Q. In the News, wasn't it?

A. I think so.

Q. The News is a newspaper of large circulation in Fall River?

A. Yes, sir.

Q. And it was there for some time, wasn't it?

A. I couldn't tell you. I think several days perhaps.

Q. And did that notice also include a request for the messenger as well as the writer of the note?

A. I think that it did. It requested the one that carried it.

Q. Didn't mention anything about the writer, but messenger, or both?

A. I think it referred to the messenger.

Q. Don't you think on reflection that it referred both to the one who wrote it and the one who brought it?

A. I don't know. I didn't see the advertisement.

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Q. Have you made any other search besides that?

A. For the writer or the messenger?

Q. Yes, for either the messenger or writer?

A. No, sir

Q. You spoke of one time in your testimony getting Mr. Hanscom. Who was he?

A. A detective.

Q. Employed by whom?

A. By us.

Q. "Us" means whom?

A. Why, my sister and I.

Q. When?

A. I think the first time I saw him was the Sunday after the tragedy.

Q. Where did you see him then?

A. At our home.

Q. And was he at your house considerably?

A. No, I think not.

Q. Was he there some?

A. Yes.

Q. From time to time?

A. Yes.

Q. When was the last time you saw him?

A. I don't remember.

Q. Soon afterwards?

A. Yes, sir, within a few days, but I can't tell you the day.

Q. Did he remain in your employ any length of time?

A. I don't know how long.

Q. Can you give me any idea?

A. I don't think I can very accurately,---an accurate idea.

Q. I would like an approximate idea. Was it two or three days or two or three weeks? Which is nearer?

A. Well, I should think nearer two or three weeks, but I am not sure.

Q. Have you seen the hatchet that has no handle?

A. No, sir.

Q. You never have seen it?

A. No, sir.

Q. Do you know anything about any such instrument?

A. No, sir.

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Q. Nor anything about the handle of any such instrument?

A. No, sir.

Q. And you didn't know that there was one that was broken in the house?

A. Not until you asked me something about it.

Q. Where was that that I asked you?

A. Before the grand jury.

Q. Oh, yes. Do you know anything about the hatchets down cellar any how?

A. I don't remember ever seeing but one.

Q. And do you recall which one that was?

A. I can't describe it to you.

Q. Could you pick it out if you saw it?

A. I can try.

Q. I don't know as I will bother about that. Did any of the members of your family have waterproofs?

A. Yes, we all had them.

Q. What kind were they?

A. Mrs. Borden's was a gossamer, rubber.

Q. That is, you mean rubber on the outside?

A. Yes, sir.

Q. And black?

A. Yes, sir.

Q. Where was that hanging?

A. I think she kept it in the little press at the foot of the front stairs in the front hall.

Q. Did Miss Lizzie have one too?

A. Yes, sir.

Q. Where did she keep hers?

A. In the clothes press at the top of the stairs.

Q. What kind of one was that?

A. Blue and brown plaid, an American cloth.

Q. And you had one too?

A. Mine was gossamer.

Q. Did you have yours with you in Fairhaven?

A. I did.

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Q. So that was not at the house while you were gone?

A. No, sir.

Q. Do I understand you to say that no interview whatever took place that had any foundation like what has been described by Mrs. Reagan, as you have heard it described?

A. I mean to say there was nothing of that kind said.

Q. Do you recall the morning?

A. Yes, sir.

Q. Do you recall being there?

A.. Yes, sir.

Q. Do you recall anything that was said between you and Lizzie that morning?

A. Nothing in particular.

Q. Do you recall anything at all?

A. I don't remember saying anything except when Mr. Jennings came in, that he would like to see her alone, and it was nearly noon, and I would go home.

Q. Do you remember any talk that passed between you and Lizzie? I don't ask you what it was.

A. No, sir.

Q. Nothing whatever?

A. No, sir.

Q. How long did you remain there?

A. I think an hour and a half or two hours.

Q. And do you remember anything that was said that morning?

A. No, sir.

Q. Your attention was very promptly called to the circumstances of that morning's interview, was it not?

A. It was called to me the next morning.

Q. And even then could you recall anything that was said at all?

A. I don't remember now whether I did or not. It was nothing but

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ordinary conversation, and I didn't remember it as I didn't tax my mind with it.

Q. So there is nothing whatever that sounds like anything you heard, what Mrs. Reagan said?

A. Nothing whatever.

Q. And there was no sitting silent for any length of time that morning?

A. I can't remember. I don't know.

Q. She said you remained seated in your chair, if I may be allowed to put it so, and she on the sofa with her back turned away from you, and you yourself remained an hour and a half. If I get the time right, did that take place?

A. I have no recollection of anything of that kind.

Q. Do you remember whether it did or not?

A. I think not.

Q. Miss Russell was a friend of Miss Lizzie's, was she not?

A. Yes, sir.

Q. An intimate friend?

A. No, sir.

Q. A calling friend?

A. Yes, sir.

Q. One that came to see her quite fairly often?

A. Yes, sir.

Q. One that she went to see quite fairly often?

A. Yes, sir.

Q. On excellent terms?

A. On good terms.

Q. No lack of harmony between them at all?

A. Not that I know of.

Q. Were they also associated in church work together?

A. No sir, never.

Q. She and Miss Russell didn't go to that church?

A. Miss Russell went to that church, but they were not associated in church work at all.

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Q. Miss Russell stayed with you three days after the Thursday,?

A. Yes, sir.

Q. Night and day mostly?

A. I think so.

Q. Slept in the house Thursday night?

A. Yes, sir.

Q. Was that at anybody's request?

A. I don't remember.

Q. Did she sleep in the house Friday night?

A. Yes, sir.

Q. Do you remember whether that was at anybody's request?

A. I can't tell you.

Q. And Saturday night?

A. Yes, sir.

Q. Did she stay there Sunday night?

A. I don't know. I think she did, but I am not sure.

Q. Do you recall what the first thing you said was when Miss Lizzie was standing by the stove with the dress?

A. Yes, sir.

Q. What was it?

A. I said, "You might as well" or "Why don't you?" something like that. That is what it meant. I can't tell you the exact words.

Q. Wasn't the first thing said by anybody, "Lizzie, what are you going to do with that dress?"

A. No sir, I don't remember it so.

Q. Do you understand Miss Russell so to testify?

A. I think she did.

Q. Do you remember whether that was so or not?

A. It doesn't seem so to me. I don't remember it so.

Q. Why doesn't it seem so to you, if I may ask you?

A. Why, because, the first I knew about it, my sister spoke to me.

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Q. That is what I thought you would say. Now, you don't recall that the first thing that you said to her, the first thing that was said by anybody was, "What are you going to do with that dress, Lizzie?"

A. No, sir. I don't remember saying it.

Q. Do you remember that you did not say it?

A. I am sure I did not.

Q. Miss Russell was in the room, was she not?

A. I don't know. When I turned to hear what my sister had to say I saw Miss Russell, but she wasn't in the room with her then. She was in the dining-room with the door open.

Q. The reason you don't think you said so was because you had previously spoken with your sister Lizzie about destroying the dress?

A. I don't understand the question.

MR. ROBINSON. Is that a question?

MR. KNOWLTON. Yes.

MR. ROBINSON. It don't sound like one.

MR. KNOWLTON. It is a habit I have to do that. I do not put on the "do you." I am very glad to be corrected about it too.

Q. The reason you think you didn't say so was because you had previously spoken to her about destroying the dress?

A. Yes, sir. I had previously spoken about it. I don't think I had thought of the dress all the time. I had spoken to her about it.

Q. Now, isn't that the reason that you say you didn't say that,

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that argument?

A. The reason that I say I didn't say so is because I didn't say so.

Q. You swear that you didn't say so?

A. I swear that I didn't say it.

Q. Did you just tell me that you didn't remember of saying it?

A. I did.

Q. Do you mean to put it any stronger than that?

A. I think I may truthfully.

Q. What has refreshed your recollection since?

A. Nothing; only thinking, I am sure I didn't.

Q. What sort of figure was it in that dress?

A. You mean shape?

Q. Yes.

A. Or color?

Q. Shape.

A. Well, I don't know how to describe it to you. It was about an inch long by about three-quarters of an inch wide.

Q. Can't you give me any better shape of it than that?

A. It was pointed at the top and broader at the bottom than it was at the top.

Q. Sort of triangular?

A. Well, perhaps so.

Q. And that was a dark blue figure?

A. I think one part of it was black or very dark blue and the other part a very light blue.

Q. That was a Bedford cord?

A. Yes, sir.

Q. It was a cotton dress?

A. Yes, sir.

Q. Was the figure printed on it?

A. I suppose so.

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Q. So that it was a print?

A. Yes, sir.

Q. A print cotton dress of the style called Bedford cord is a proper description of it?

A. Yes, sir.

Q. And you said it was dirty?

A. Very.

Q. What sort of dirt was it on it?

A. Just as any dress would get soiled; it was very light and touched the floor or ground in walking.

Q. And had she worn it?

A. Yes, sir.

Q. And the last time she had worn it you said was some---what did you say?

A. I should say four or six weeks before I went away, but I am not positive.

Q. But she did wear it before that time?

A. Yes sir.

Q. Was it a lightweight dress?

A. Yes, I think you would call it so.

Q. She had worn it. When she wore it what time did she so wear it?

A. Only in the morning.

Q. And had she worn it quite a number of mornings?

A. When she first had it she did, until it was badly soiled.

Q. After the paint was on it?

A. She wore it some after the paint was on.

Q. She got the paint on, if I understand you, immediately after she got it made?

A. I think within a week or two.

Q. Wasn't it within a day or two?

A. I can't tell you exactly how early it was.

Q. And don't you recall that it was almost immediately?

A. It was very soon.

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Q. Was it while the dressmaker was there?

A. Yes, sir.

Q. How long was the dressmaker there?

A. I think three weeks or a little over.

Q. Was it in the early part of the dressmaker's being there?

A. I don't remember whether the painting was commenced immediately or not.

Q. But notwithstanding the paint she wore it mornings?

A. She wore it some until the dress got soiled besides that.

Q. She wasn't interrupted in the wearing of it on account of the paint alone?

A. Well, she was, excepting very early in the morning.

Q. Did you see your sister burn the dress?

A. I did not.

Q. Did you remain in the room?

A. I did.

Q. Did you see Miss Russell come back again the second time?

A. I don't remember. I think she was wiping the dishes and came back and forth and I didn't pay attention.

Q. Did you hear Miss Russell say to her, "I wouldn't let anybody see me do that, Lizzie"?

A. I did not.

Q. Do you mean that you don't remember it or that it was not said?

A. I don't say it was not said. I say that I didn't hear it.

Q. And did you notice that for any reason your sister Lizzie took and stepped away after something was said by Miss Russell?

A. I didn't see my sister at all after she left the stove.

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RE-DIRECT.

Q. (By Mr. Jennings.) You remained in the kitchen yourself all the time washing dishes?

A. I was.

Q. Then did you go to the stove?

A. Yes, sir.

Q. Do you know where this waterproof of Miss Lizzie's was on the day of the search?

A. Hanging in the clothes press that has been spoken of so often.

Q. Do you know where it is now?

A. It is there now.

Q. Been there ever since?

A. Every day since.

MRS. MARY A. RAYMOND, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Mary A. Raymond.

Q. What is your business?

A. Dressmaker.

Q. Where do you live?

A. 31 Franklin Street.

Q. Fall River?

A. Yes, sir.

Q. Have you done dressmaking for Miss Lizzie Borden for a number of years?

A. Yes, sir.

Q. How many?

A. Ten at the house.

Q. And before that?

A. At my own home.

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Q. What portion of that time, if any, have you also done dressmaking for Mrs. Borden and Miss Emma.

A. I worked for Mrs. Borden, not for Miss Emma---for Mrs. Borden during that time.

Q. Where did you do the work for Mrs. Borden?

A. In the same room that I did Miss Lizzie's.

Q. At or about the same time?

A. Yes, sir; at the same time.

Q. Would it be at the same time you were making the others?

A. Yes, sir.

Q. Both of them in there at the same time working?

A. Yes, sir.

Q. Did you make any dresses for Miss Lizzie last spring?

A. I did.

Q. I don't mean this spring?

A. A year from this spring.

Q. A year ago?

A. Yes, sir.

Q. Do you remember at that time making a Bedford cord dress?

A. Yes, sir.

Q. Before I pass to that I will ask you what time you went there?

A. In May.

Q. What time in May?

A. The first week in May. I was there three weeks.

Q. And do you remember in what order the dresses were made, as to when this Bedford cord dress was made?

A. I made that the first one?

Q. Why?

A. Well, she needed it, needed it to wear, and had it made first.

Q. How long did it take to make it?

A. I couldn't tell the exact time, but I should think three days.

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Q. Did the girls assist in the making?

A. Yes, sir.

Q. Can you describe the dress?

A. It was a light blue with a dark figure.

Q. How light a blue?

A. Well, quite a light blue. I don't know that I can tell you exactly.

Q. What they call baby blue?

A. No, I think not, not as light as baby blue.

Q. Do you remember what the figure was upon it?

A. I can't remember the shape of the figure. It was a dark figure and I think ---

Q. Can you say about how large?

A. No, I don't think I can?

Q. In what manner was it made?

A. It was made a blouse waist, and a full skirt, straight widths.

Q. How was it as to the sleeves?

A. The sleeves were full sleeves, large sleeves.

Q. How was it as to the length?

A. Longer than she usually had them.

Q. How did the length compare with those of the other dresses made for her at that time?

A. Well, I should certainly say it was a half a finger longer, two inches longer.

Q. Did you make a pink wrapper for her at this time?

A. I made a pink striped wrapper.

Q. Was this dress longer or shorter than that?

A. I should think longer.

Q. Now what was the material of which this Bedford cord was made?

A. Why it was a Bedford cord. That was the name

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of the material.

Q. Well, I meant as to whether it was cotton or woolen or cheap goods?

A. It was cotton, a cheap cotton dress.

Q. Was it trimmed at all?

A. Trimmed with a ruffle around the bottom.

Q. A ruffle of what?

A. Of the same.

Q. Do you know whether at that time you were there they were painting the house or did paint the house?

A. They did paint the house at that time, yes, sir.

Q. Do you know anything about whether at that time there was any paint got upon the dress?

A. There was.

Q. How soon after it was made did Miss Lizzie begin to wear it?

A. Just as soon as it was finished.

Q. And how soon was it after that, as you recollect, that she got the paint upon it?

A. I can't tell you that, I don't remember.

Q. Was it while you were there?

A. Oh, yes, sir.

Q. Was anything said about it by you at the time to her?

A. Yes, sir.

Q. Where was the paint, if you recollect.

A. It was on the front of the dress and around the bottom of the dress, around the ruffle, on the underneath part of the hem.

Q. Did she wear the dress more or less all the time you were there?

A. Yes, sir.

Q. Do you remember anything about the wearing of it?

A. Well, it either faded or the color wore off, I can't tell you

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which. It changed color.

Q. At that time did she have an old wrapper which this was being made to take the place of?

A. Yes, sir.

Q. Do you remember what she did with the old wrapper?

A. Yes, sir.

Q. What did she do with it?

MR. KNOWLTON. Wait a minute; if she knows of her own knowledge. I object anyhow.

MASON, C. J. The witness is only asked with reference to her own knowledge.

MR. KNOWLTON. My objection, however, is general. I meant to have put it so.

MASON, C. J. She may answer.

Q. Do you know what she did with the old wrapper that this took the place of?

A. She cut some pieces out of it and said she would burn the rest.

MR. KNOWLTON. I pray your Honors judgment as to the answer.

MASON, C. J. That is not responsive.

MR. JENNINGS. The two are connected your Honor.

MASON, C. J. Her knowledge is all the question calls for; not what somebody told her.

Q. After she had cut the pieces out what did she do with them?

A. She started out of the room to go down stairs with it.

Q. In her arms?

A. Yes, sir.

Q. Did you ever see it after that?

A. No, sir.

Q. She came back without it?

A. She came back without it.

Q. Could she get that dress on under any of her other dresses?

A. No, sir.

Q. Why?

A. Because her dresses were always made too snug for that, the waist and the sleeves both.

CROSS-EXAMINATION.

Q. (By Mr. Knowlton.) What sort of a waist was it?

A. Blouse waist.

Q. That means a loose ---

A. That means a loose front.

Q. What sort of a figure was it?

A. I can't tell you the shape of the figure.

Q. What color was it?

A. Of the figure, or the material of the dress?

Q. Yes.

A. It was light blue.

Q. No, the figure?

A. I can't tell you. It was a dark figure, I can't tell you the color.

Q. Do you remember whether it was navy blue or not?

A. I can't remember.

Q. You wouldn't say it wasn't navy blue?

A. No, sir; I shouldn't care to say anything about it.

Q. Don't you think on the whole it was navy blue?

A. I can't tell what the color was.

Q. Was it one color?

A. I think it was.

Q. And was it a color that would be something like navy blue?

A. Well, I can't tell you what the color was.

Q. It faded?

A. Yes, sir. It faded or the color wore off.

Q. Which part faded?

A. The light blue.

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Q. And when light blue fades does it somewhat resemble a drab?

A. Well, I don't know. I shouldn't know how to describe it.

Q. Well, does it look something like drab?

A. Well it didn't look drab to me. It looked as though the color had changed; that is all I can tell you.

Q. But does not light blue when it fades approach the color of drab?

A. Well, it doesn't seem so to me.

Q. Didn't you tell me so?

A. No, sir.

Q. The other day in my room?

A. No, sir. I told you I couldn't tell you.

Q. Didn't you tell Mr. Shaw that this faded so as to look something like drab?

A. I said when I read Dr. Bowen's evidence that I thought he might possibly have taken that for that; I couldn't tell.

RE-DIRECT.

Q. (By Mr. Jennings.) You say it didn't look so to you?

A. It didn't look so to me; no, sir.

Q. Who is this Mr. Shaw?

A. Well, I don't know. It is some one that came where I was sewing. I understood him to say it was detective Shaw.

Q. Is he a dressmaker?

A. Not that I know of. I don't know what his occupation is any more than that.

Q. Was he there to have a dress made?

A. No, sir.

Q. Did you find out what he was there for?

A. Well, he seemed to come to ask me questions.

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Q. That is about all you know of that?

A. That is all I know about it anyway; yes, sir.

Q. Did you tell him or Mr. Knowlton about this old wrapper being burned?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment as to that.

MR. JENNINGS. I think we may see what this conversation was. They have introduced it in part and we have the right to have the whole of it now.

MASON, C. J. That question is excluded.

Q. Will you tell the rest of the conversation that you had with Mr. Knowlton?

MR. KNOWLTON. I pray your Honors' judgment. I asked her a single question and stopped there.

MASON, C. J. I don't think we have any of that conversation.

PHOEBE B. M. BOWEN, Sworn.

Q. (By Mr. Jennings.) What is your name?

A. Phoebe B. M. Bowen.

Q. You live right across the street from Mr. Borden's?

A. I do.

Q. Lived there nearly all your life?

A. Always.

Q. How long have you known the Borden girls?

A. I have always known Miss Emma Borden; Miss Lizzie since she lived on Second Street.

Q. Are you the wife of Dr. Bowen?

A. I am.

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Q. Did you go over to the Borden house on the morning of the murder?

A. I did.

Q. When you got over there who was in the house as nearly as you can recollect?

A. Mrs. Churchill, Miss Russell, Miss Lizzie Borden.

Q. And where were they?

A. They were in the kitchen.

Q. Do you remember of seeing Mr. Sawyer there at all?

A. I did. I saw him at the door.

Q. Where was Miss Lizzie when you went in?

A. She was sitting in a chair in the kitchen.

Q. Where were the other two, Mrs. Churchill and Miss Russell?

A. Miss Russell was sitting in a chair beside Miss Lizzie. Mrs. Churchill was standing in front of her, fanning her.

Q. And how long was you in there, should you think?

A. I couldn't tell.

Q. Well, some little time?

A. Yes.

Q. During all that time was Miss Lizzie there in the same room?

A. She was.

Q. Do you remember what her position was?

A. I do.

Q. Well, state as near as you can what it was?

A. She was reclining in a chair, with her head resting against Miss Russell.

Q. Did she seem to be agitated at all?

A. I thought she had fainted, she was so white, until I saw her lip or chin quiver, and then I knew she hadn't fainted.

Q. How near did you go to her?

A. Stood directly in front

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of her.

Q. Did you see anybody bathe her face or hands?

A. I did not. Miss Russell asked me to wet a towel to bathe her face and hands, and Lizzie shook her head No.

Q. Did you see anybody rub her hands?

A. I did not.

Q. Did you notice anything unusual about the appearance of her hands and face in respect to anything upon them?

A. Nothing upon them, but I noticed how very white they were, her hands especially, as

they laid against her dark dress, in her lap.

Q. What kind of a dress?

A. A dark dress.

Q. Can you describe the dress any more fully than that---a dark dress?

A. It had a blouse waist, with a white design on it.

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Q. Had you ever seen the dress before?

A. I noticed nothing unusual about her dress.

Q. Whether or not that looks anything the waist she had on that morning? (Showing waist)

A. I should say it was.

Q. Say it was what?

A. The waist she had on.

Q. What should you say as to the skirt?

A. I did not notice the figure on the skirt,---that is what she usually wore in the morning?

Q. Did you notice whether it was light or dark?

A. It was dark.

Q. Did you notice anything unusual about the appearance of her hair?

A. No, sir, it was arranged as it usually was.

Q. Did you see any blood on her hands, or face or any part of her?

A. Not any.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) When you got there, Mrs. Bowen, who was there?

A. Mrs. Churchill, Miss Alice Russell, Miss Borden, Miss Lizzie Borden.

Q. Who was at the door?

A. Mr. Sawyer.

Q. You noticed her hands, you say?

A. Yes, sir.

Q. They looked white?

A. They did.

Q. Did you notice that they were clean?

A. Yes.

Q. Clean and white?

A. Clean and white.

Q. The whole of the hands?

A. Yes, sir.

Q. Nothing on them at all?

A. No, sir.

Q. Did they present to you the appearance of having been out in a

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dusty barn?

A. I did not notice anything upon them.

Q. Noticed nothing of that kind whatever?

A. No, sir, I was not thinking of it.

Q. Clean and white, were they?

A. I think they were.

Q. Have you seen that box that has been referred to in the case that came from the barn?

A. No, sir.

Q. You have not looked at that?

A. No, sir.

Q. Were you somewhat agitated yourself, Mrs. Bowen?

A. Before I went home.

Q. But you knew what had happened when you got there?

A. I only knew Mr. Borden had been killed.

Q. You knew that before you got there?

A. Yes, sir.

Q. You were somewhat agitated when you got over at that time?

A. Yes, sir.

Q. You went in there with the knowledge that a murder had been committed?

A. Yes, sir.

Q. You were not looking at her with the idea that any one charged her with the murder, were you?

A. No, sir.

Q. But only as an object of pity?

A. Yes, sir.

Q. And as being afflicted with a common grief, did you?

A. Yes, sir.

Q. Did you notice that dress?

A. I noticed it was dark.

Q. What sort of figure should you say was on that waist?

A. A round figure.

Q. What is the figure on the dress?

A. Round figure or flower.

Q. It is not a spray that is on the dress?

A. I should say not.

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Q. You could not have any idea that the dress with the blouse was a blue dress with white material, and a white spray running right through it?

A. I could not tell the design.

Q. You would not undertake to say it was a design with a spray on it?

A. I noticed it was blue.

Q. You said it was a blue dress with white material in the blouse?

A. I said it was a blue dress and a blouse with white on it. I think I said a white spray, at the time, but I was not sure of the design. I meant to have stated it so.

Q. I want to know if you didn't say, "Q. What dress did she have on? A. A white dress with a waist with blue material, a white spray running right through it."

A. Yes, sir.

Q. Did you mean to convey that impression?

A. I did not mean a dress with any white, but dark blue, the dress with a blouse, that had the figure in it.

Q. You don't think that that dress was in your mind when you testified?

A. No, sir.

Q. But you had not delivered it to the officers?

A. No, sir.

Q. And when you said it was a blouse dress of blue material and a white spray, did you have that figure in your mind?

A. I had a white figure.

Q. Did you have that figure in your mind?

A. No, sir, dark blue with white spray.

Q. That would not be a blouse waist of blue with a white spray

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running through it.

A. That would not be in the blouse, but I did not have any reference to the particular spray.

Q. That would not be described by you in any way as a blouse waist of blue material with a white spray running through it?

A. That is what I had in my mind.

Q. That would not be described by you as a blouse waist of blue material with a white spray running through it?

A. That would not.

Q. When that testimony was given by you, do you remember the date of it?

A. I do not.

Q. What?

A. I do not remember the date.

Q. Were you an intimate friend of the family, Mrs. Bowen?

A. Yes, sir.

Q. And at that time when you gave that testimony you did not know that any question was made as to whether the right dress had been produced to the officers, or not?

A. I did not know anything about the dress.

Q. You do know you had that in mind?

A. I do.

Q. Is your recollection of it any better now than when you gave that answer?

A. No, sir.

MR. JENNINGS. Recall Mrs. Brigham a moment. If your Honors will allow

me, there one or two questions I omitted to ask her, and I will put them now.

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MRS. BRIGHAM, Recalled.

Q. (By Mr. Jennings.) One or two things I omitted to ask you, Mrs. Brigham. Were you at the room of the Matron at the Police Station on the afternoon when some experiments were made with an egg?

A. I don't understand the last part of your question.

(Question repeated)

A. On the afternoon of the day when some experiments were made with an egg? Yes, sir.

Q. Were you the one that took the egg there?

A. Yes, sir.

Q. Now do you recall anything being said by Mrs. Reagan to a reporter that afternoon?

A. I do.

Q. Can you describe the reporter?

A. Miss Emma said ---

Q. Wait a minute. Can you describe the reporter?

A. No, sir.

Q. Do you know what his name was?

A. No, sir.

Q. Have you heard his name given since?

A. I think I have heard it mentioned.

Q. What was it?

A. I think it was Mr. Porter.

Q. Can you describe him at all?

A. The only thing that I noticed at the time was that he had a sandy moustache.

Q. Did he come up there to the room that afternoon?

A. Through the corridor.

Q. Did Mrs. Reagan go out to speak to him?

A. She did.

Q. Did she return to the room soon after?

A. Yes, sir.

Q. What, if anything, was said in regard to the interview with that reporter?

A. She said "that reporter has come after me again, and I told him that I had nothing to tell him."

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Q. Was that the afternoon before this story was published in the paper?

A. It was the afternoon before the preliminary hearing.

Q. Before the first day of the preliminary hearing?

A. Yes, sir.

Q. Now I will ask you if you made any experiment at the house in regard to whether you could see a person lying down between the bed and the bureau while you were standing in the hall?

MR. KNOWLTON. I should take your Honors' judgment as to that.

MASON, C. J. If that question is to be admitted, there must be further description of the conditions. That is a preliminary question?

MR. JENNINGS. That is all, sir. I shall endeavor to follow it up.

MR. KNOWLTON. Your Honors do not understand me to object to that particular question, but to the whole matter.

(Question repeated.)

A. I did.

Q. About what distance was the bed from the bureau, as near as you can judge?

A. I should think about three feet.

Q. Was the bureau up against the wall in its usual place?

A. Yes, sir.

Q. The bed in its usual place?

A. I think so.

Q. Who was the person with whom you made the experiment?

A. Mr. Morse.

Q. What did he do?

A. Laid down on the floor.

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Q. Where?

A. Between the dressing case and the bed.

Q. How did you stand,---did you stand in the hall and in front of that door to see whether you could see him or not?

A. Yes, sir.

Q. Could you see him?

A. I could not see him from the hall. A person of my height could not see him from the doorway. When I advanced a few feet into the room, I saw him.

Q. Were you about that same time present when any experiments were made with the front door in regard to the spring lock?

A. I am not quite sure about that. I waited on the door and had a good many experiments myself with it.

Q. Did you make some yourself?

A. Yes, sir.

Q. What did you find in regard to that spring lock?

A. I found that unless the bolt was used that the spring lock was not sure. Unless the door was shut with a bang you could not depend upon the spring lock working.

Q. You mean by that it would not catch the lock?

A. Yes, sir.

CROSS EXAMINATION.

Q. (By Mr. Knowlton.) When was that?

A. That was when I was waiting on the door after I came to the house.

Q. What Officer was outside?

A. I don't know any of the officers except a few. I don't remember who was outside.

Q. There was a bolt there?

A. Yes, sir.

Q. And when that was used there was not any trouble about the door?

A. That is what I said.

Q. Who was the person that laid down in the guest chamber?

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A. Mr. Morse.

Q. John V. Morse?

A. Yes, sir.

Q. You could not even see his legs?

A. No, sir, I did not stand---I stood in the doorway.

Q. When was that experiment made.

A. It was between the morning and afternoon sessions of one of the days of the preliminary hearing.

MISS ANNIE M. WHITE, Recalled.

Q. (By Mr. Robinson) You were sworn on a former day, Miss White?

A. Yes, sir.

Q. You found it is true that you were the Court stenographer of this County?

A. Yes, sir.

Q. Did you attend the inquest at Fall River in this case that is now pending?

A. I did.

Q. And you there took the testimony as given by the different witnesses.

A. Yes, sir.

Q. You were present when Bridget Sullivan testified?

A. Yes, sir.

Q. And took her testimony?

A. Yes, sir.

Q. I am permitted to show you the printed copy so that you need not trouble yourself about your notes. Mr. Knowlton kindly consents to that. I will refer to page 19. I want particularly to ascertain whether Bridget testified that Miss Lizzie was crying at the time she stood at the screen door? I ask you to read what is marked between the pencil lines. The questions

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were put by Mr. Knowlton.

A. (Witness reading):

"Q. When she hollered, she said what?

A. She says, 'Maggie, come down!' I knew of course something was the matter by the holler she put on her. I says, 'What is the matter?'

Q. What was said then?

A. She says, 'come down quick. Father is dead.' She was leaning against the screen door.

Q. Was the screen door open then?

A. I don't know, I could not say. She was leaning against the inside door that locks, the large door.

Q. Not the screen door but the regular door?

A. Yes, sir.

Q. How did she seem?

A. She seemed to be excited more than I ever saw her.

Q. Was she crying?

A. Yes, she was crying."

Q. Did you also act as stenographer in the preliminary examination in the District Court?

A. I did.

Q. Did you there take the testimony of John Fleet?

A. Yes, sir.

Q. Have you examined at my request your notes of the testimony and furnished copies thereof of the single question I wish to ask you?

A. Yes, sir.

Q. So that perhaps you can answer the question. I want to know whether at the preliminary examination, John Fleet in his testimony stated that at any of the interviews with Miss Lizzie Borden she said this: "She saw her father was feeble and went to him and advised and assisted him to lie down upon the sofa."

A. No, sir.

Q. He did not so testify?

A. He did not.

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CROSS EXAMINATION.

Q. (By Mr. Moody.) A single subject I wanted to ask you about, Miss White. Were you present at the preliminary hearing as stenographer?

A. Yes, sir.

Q. And took notes of that preliminary hearing?

A. Yes, sir.

Q. All through?

A. Yes, sir.

Q. How many days did it occupy?

A. I think 8.

Q. And will you be kind enough to give us the dates that it occupied?

A. August 25, 26, 27, 29, 30, 31; September 1 ---

Q. That is near enough to it. Was there testimony upon both sides at that hearing?

A. Yes, sir.

Q. Who was present as counsel for the prisoner?

A. Mr. Adams and Mr. Jennings.

Q. Any one else?

A. No, sir.

Q. Was Mr. Phillips present during the hearing?

A. Yes, sir.

Q. Constantly, or otherwise?

A. I think he was there all the time.

MR. MOODY. There are some other matters which are more properly in rebuttal. I will delay until that time comes. That is all.

MR. ROBINSON. All the exhibits that have been offered and proved are in the case, I understand?

MR. MOODY. Yes, sir.

MR. KNOWLTON. I omitted to speak of the pieces of

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tin: there may be some more things that I have forgotten. You remember those pieces of tin. I want those in.

MR. ROBINSON. Yes, sir.

MR. KNOWLTON. Anything that has been in in the shape of exhibits, we want to have considered in the case.

MR. ROBINSON. Anything that has been in, if you will call our attention to

it, we will agree. And the defence rests.

MR. MOODY. This is quite unexpected to us, your Honors, at this, and we should like a very few moments to get our rebuttal in order, which will be brief. If we can have fifteen minutes it will be a convenience.

MASON, C. J. The jury may withdraw with the officers and remain until sent for.

(The Court and the jury, thereupon, at quarter past three o'clock, left their seats.)

(The Court returned to the bench at eighteen minutes before four o'clock, and the jury were brought in.)

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TESTIMONY FOR THE GOVERNMENT IN REBUTTAL.

RUFUS B. HILLIARD, Recalled

Q. (By Mr. Moody.) Mr. Hilliard, at some time did you hear---don't ask what you heard--something of an occurrence in the matron's room between Mrs. Reagan and Miss Borden, or rather, as related by Mrs. Reagan?

A. Yes, sir.

Q. Can you tell when you first heard of it?

A. I think it was in the forenoon, Thursday, the twenty-fifth of August.

Q. Was that the first day of the hearing?

A. Yes, sir.

Q. In consequence of what you heard did you go to see Mrs. Reagan?

A. I did.

Q. With whom?

A. Officer Seaver.

Q. Where did you see her?

A. At her house on Globe street.

Q. At what time did you go to see her?

A. Well, it was about nine o'clock in the evening, I should say.

Q. On the Thursday evening?

A. Yes, sir.

Q. The same evening. Now I will call your attention to the next evening, or the next afternoon, at the close of the hearing. Did Mrs. Reagan come to your office?

A. Yes, sir.

Q. With whom did she come?

A. Mr. Buck.

Q. What did either of them have with them?

A. Mr. Buck had a paper in his hand.

Q. Is Mr. Buck here at the present time?

A. I don't see him

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here. He may be here, but I don't see him.

Q. Has Mr. Buck been here during the trial?

A. Yes, sir, I have seen him here several times during the trial.

Q. Was he here when you were on the stand before, Mr. Hilliard, do you remember?

A. I won't say whether he was there that day or not.

Q. Will you state what occurred in your office after they came together, stating who came, and all about it, as you remember it.

A. Well, Mr. Buck came down, came into the office, and Mrs. Reagan came immediately, followed him in, and she took a seat outside of the rail. Mr. Buck came in and handed me a paper, stating that Mrs. Reagan was willing to sign the paper if I said so. I glanced at the paper and I turned to Mrs. Reagan---

Q. Did you read the paper?

A. I read part of it, not the whole of it; and I said to Mrs. Reagan, "Mrs. Reagan, if you sign that paper, you do it in direct violation of my orders. If you have got anything to say about this you will say it on the witness stand in Court."

Q. Was anything else said than that?

A. Yes, sir, there was. I told her---I spoke to her after that and told her to go to her room and attend to her duty.

Q. Was any one else in there at that time? Did any crowd collect?

A. Oh, yes, there was---Mr. Buck was there, Mr. Jennings came in soon after that, and there was a lady and a gentleman stood just inside of the office door from the guard room---I don't know their names; I know they were there.

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I think they was connected with some papers or something.

Q. Now Mr. Hilliard, I will ask you if in any manner or form you have sought to have Mrs. Reagan say anything in this cause which is not the truth?

MR. ROBINSON. Wait a minute, sir. I object to that.

MR. MOODY. It depends, of course, on your attitude in the matter.

MR. ROBINSON. I beg your pardon: I don't think that is competent.

(Excluded)

MR. MOODY. The witness is yours.

MR. ROBINSON. Not anything, sir.

MR. MOODY. That is all, Mr. Hilliard.

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MICHAEL MULLALY, Re-called.

Q. (By Mr. Moody.) Mr. Mullaly, at some time did you receive some information relative to Lubinsky?

A. On the 8th day of August.

Q. From whom did you receive the information?

A. Mr. Wilkinson.

Q. In consequence of anything that Mr. Wilkinson said to you, did you see Lubinsky?

A. Yes, sir.

Q. Tell us his name, if you know?

A. Hymon Lubinsky, that is the way I pronounce it.

Q. You know him?

A. Yes, sir.

Q. What is his occupation?

A. He had then been driving a team for Mr. Wilkinson.

Q. And what sort of a team?

A. Ice cream pedler.

Q. Where did you see him and when?

A. I wouldn't say whether it was in Mr. Wilkinson's shop or on the sidewalk.

Q. Did you have any talk with him?

A. I did.

Q. Did he tell you anything with reference to the Borden house?

A. He told me that he was coming down Second Street, on the 8th day of August, that is, he was coming from Charley Gardiner's stable ---

Q. You mean he told you on the 8th day of August?

A. Yes, on the 8th day of August.

Q. What day did he say he was coming down, on the day of the murder?

A. I will tell you as I go along. This was on the 8th day of August that he reported to me; and he said he

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was coming down Second Street, and as he got along by the Borden house he saw a lady pass from the barn to the house of Mr. Borden's; and he said it was 10.30 at that time; he was positive that it was 10.30.

Q. Did you make any memorandum of that conversation?

A. I did; sir.

Q. Have you it here?

A. Yes, sir; it is on my book.

Q. Will you let me see it?

A. (Producing book) There it is right there.

Q. And is this as you wrote it down at the time?

A. That is as I wrote it down at the time.

Q. What is that book that you have there?

A. That is a book that I take reports, or day's works, or anything, right along; and I reported the same to Mr. Fleet the same day.

Q. And the same time that it was given to you?

A. Yes, sir. The same day. I wouldn't say the same time.

Q. I mean, did you report it?

A. I reported it as it is on that book to Mr. Fleet.

Q. Did you report it as you have told it here?

MR. ROBINSON. Wait a minute. I object to that.

MR. MOODY. I withdraw it.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) This was the 8th of August?

A. Yes, sir.

Q. That you had the talk with him?

A. Yes, sir.

Q. And he told you that on the day of the murder he came down

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Second Street, did he?

A. Yes, sir.

Q. With his team?

A. He didn't say team; he said he was coming down Second Street.

Q. Didn't say whether he had a team or not?

A. No, I didn't understand it that way.

Q. Did you ask him?

A. That is the way that he ---

Q. Did you ask him?

A. I didn't ask him if he had a team; I don't think I did.

Q. Now do you recollect?

A. I don't recollect of asking him if he had a team.

Q. Did you ask him what time he usually went out on his route in the forenoon?

A. No, sir.

Q. Did you know?

A. No, sir.

Q. You didn't learn that his usual time was half past ten?

A. No, sir.

Q. And you didn't learn from him that he found he was a little late that morning, did

you?

A. No, sir.

Q. You didn't think it of much account anyway, did you?

A. Oh, I took it as a report.

Q. You didn't consider it as of much account?

A. Well, I didn't know how much account it was.

Q. And you don't recall that he told you that he usually left at half past ten?

A. No, sir.

Q. And that he was late that morning, or something of that kind?

A. No, sir; I don't.

Q. He said he had come over from Gardiner's stable. You learned that?

A. Yes, sir.

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Q. And you know where the stable is?

A. Well, I don't know about that either.

Q. I say, don't you know where the stable is?

A. No, sir; I don't.

Q. Do you know where the corner of Second and Rodman Streets is?

A. Yes, sir.

Q. Well, do you know if there is a stable there?

A. Well, I wouldn't be sure about it.

Q. You are not familiar with that part of the city, are you?

A. No, sir; that is not on my district.

Q. And that is all the attention you gave to it?

A. That is about all, as a report.

Q. Mr. Wilkinson told you about the occurrence on the 8th of August?

A. No, sir; I wouldn't say whether on the 8th of August; I think it was before.

Q. But you interviewed Lubinsky?

A. To see if it was so.

Q. And he then told you as he was coming down by there he saw a lady coming from the barn to the house?

A. Yes, sir.

ANNIE M. WHITE, Re-called.

Q. (By Mr. Moody.) Miss White, I will call your attention to the testimony of Mr. Clarkson at the preliminary hearing, on page 468.

MR. KNOWLTON. She has not got her notes here, so she will testify from the type-written copy.

Q. Under whose questioning was Mr. Clarkson at that time?

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A. Mr. Jennings.

Q. Will you state what he said about the time, reading enough of the preliminary questions so that we may understand the bearing of the time?

A. "Were you at the Borden house on the morning of the murder?" "Yes, sir." "At what time, as near as you can recollect?" "About 11.40."

Q. Did you take the testimony at the inquest, Miss White?

A. I did.

Q. I believe it already appears you did. Did Miss Emma Borden testify there?

A. She did.

Q. Will you state what she said, beginning there (indicating) and going through all that is said about the relations.

MR. ROBINSON. Is this something in regard to what she was inquired of this morning?

MR. MOODY. Yes.

MR. KNOWLTON. They were the things I read to her.

A. "Were the relations between you and your step mother cordial?" "I don't know how to answer that. We always spoke." "That might be, and not be at all cordial." "Well, perhaps I should say no then." "Were the relations between your sister Lizzie and your mother what you would call cordial?" "I think more than they were with me." "Somewhat more than they were with you, but not entirely so, you mean perhaps? I do not want to lead you at all. I judged from your answer you mean that, or don't you mean that?"

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You say somewhat more than your relations were; do you mean they were entirely cordial between your step mother and your sister Lizzie?"

Q. (By Mr. Robinson.) Is that a question?

A. Yes, sir; that is all a question. Answer "No." "Can you tell me the cause of the lack of cordiality between you and your mother, or was it not any specific thing?" "Well, we felt that she was not interested in us, and at one time father gave her some property, and we felt we ought to have some too; and he afterwards gave us some." "That however, did not heal the breach, whatever breach there was? The giving the property to you did not entirely heal the feeling?" "No, sir."

Q. (By Mr. Moody.) You took the testimony of Mrs. Bowen at the Fall River hearing, did you?

A. Yes.

Q. Pages 479 and 480. Now will you state to the Court, please, what she said with reference to the dress that the prisoner had on on the morning of the homicide?

A. "What dress did she have on?" "A blouse waist of blue material, with a white spray, I should say, running through it." "A white spray?" "I thought it was." "What was the body of the dress?" "I did not notice particularly." "The ground of the blouse, you say it had a white spray?" "Oh, it was blue." "Light or dark blue?" "I should say quite a dark shade; I cannot tell; I was not looking for fashions then." "Do you know what

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skirt she had on?" "I do not. It was nothing more than an ordinary morning dress; I think I had seen her wear it before. I only noticed the dress skirt." "Something you had seen her wear frequently before." "Yes, sir." "In the morning, or when?" "In the morning when I have been in."

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CROSS-EXAMINATION.

Q. (By Mr. Robinson.) Miss White, I would like to have you read the rest of the inquiry from the 112th page in regard to the property. You stopped with the statement, "That, however, did not heal the breach, whatever breach there was?" You remember reading that question?

A. Yes, sir.

Q. And the question continued "The giving the property to you did not entirely heal the feeling? No, sir." Will you read from there down to the little pencil mark I made. It is the continuation of the same inquiry in Miss Emma L. Borden's testimony.

A. (Reading) "Q. That was some time ago? A. Yes, sir, some time ago. Q. How long after he gave the property that he did give to your step-mother was it before he gave some property to you and Lizzie? A. Well, not very long. Q. He did it because you and Lizzie claimed that he ought to do it, I suppose? That is, you put in a claim that he should do it? A. No, sir, we did not. Q. How then did he happen to? A. A friend came to us, and told us that they heard him say that he thought of giving us the homestead on Ferry street, and advised us to ask for it."

Q. That immediately followed what you read before?

A. Yes, sir.

MR. MOODY. I have no objection to the stenographer for convenience putting it right in with it.

MR. ROBINSON. Well, I will put it in in this way.

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MR. MOODY. There is one witness on the way from Fall River, as I suggested, to your Honors. His testimony does not relate to a vital part of the case. He will get here in half an hour or perhaps not so soon as that.

(After conference between the counsel and the Court, the counsel for the Commonwealth stated that they would not insist upon a delay for the expected witness but would close their evidence at this point.)

MR. ROBINSON. The evidence is closed on both sides.

MASON, C. J. I desire to say to the jury that the testimony in this cause is now all in, but from the length of the cause it would not be reasonable to require counsel to begin at once the arguments. The Court regrets that the delay that will be necessary will occasion the jury some inconvenience, but it seems essential for a full and fair presentation of the cause. I ought to caution the jury that notwithstanding the evidence is all in, there is much more to be submitted to them, and they should keep their minds open to the last, until the last word has been said and the cause finally committed to them. Let the officers be sworn.

(The oath was administered to the officers to take charge of the jury during the adjournment, and at quarter past four o'clock the Court adjourned till Monday morning, June 19, at 9 o'clock.)

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LIST OF EXHIBITS.

1. Large plan, showing main street and other streets.
2. Plan of Borden premises, and surrounding estates.
3. Plan of Borden premises, including ground floor of house.
4. Plan of Borden premises, including second story.
5. Plan of sitting room.
6. Blue print of Exhibit 3.
7. Blue print of Exhibit 4.
8. Blue print of Borden premises and surrounding estates.
9. Plan of cellar.
- 10 - 14 (inclusive) Photographs of Borden house.
- 15 - 19 (inclusive) Photographs of bodies.
- 20 & 21 Carpets.
- 22 Tag attached to jar containing Mr. Borden's stomach.
- 23 Tag attached to jar containing Mrs. Borden's stomach.
- 24 - 43 (inclusive). Small photographs of Borden premises.
- 44 Pin produced by Mr. Adams for comparison, in connection with testimony of Professor Wood.

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TWELFTH DAY

New Bedford, June 19, 1893.

The Court came in at 9 o'clock, and Mr. Robinson addressed the Court as follows:

CLOSING ARGUMENT FOR DEFENDANT

By

HON. GEO. D. ROBINSON

May it please your Honors, Mr. Foreman and gentlemen: One of the most dastardly and diabolical of crimes that was ever committed in Massachusetts was perpetrated in August, 1892, in the city of Fall River. The enormity and outrage startled everybody, and set all into the most diligent inquiry as to the perpetrator of such terrible acts. Our society is so constituted, gentlemen, that every man feels that the right must be done and the wrong punished, and the wicked doer brought to his account as promptly as due procedure of law will permit.

Here then was a crime with all its horrors, and well may those who stood first to look at the victims have felt sickened and distressed at heart, and human nature be broken, so that the experiences of a life-time will never

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bring other such pictures. Who could have done such an act? says everybody. In the quiet of the home, in the broad day light of an August day, on the street of a popular city, with houses within a stone's throw, nay, almost within touch, who could have done it?

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Inspection of the victims disclosed that Mrs. Borden had been slain by the use of some sharp and terrible instrument, inflicting upon her head 18 blows, thirteen of them crushing through the skull; and below stairs, lying upon the sofa, was Mr. Borden's dead and mutilated body, with eleven strokes upon the head, four of them crushing the skull.

The terrors of those scenes no language can portray. The horrors of that moment we can all fail to describe. And so we are challenged at once, at the outset, to find somebody that is equal to that enormity, whose heart is blackened with depravity, whose whole life is a tissue of crime, whose past is a prophecy of that present. A maniac or a fiend, we say. Not a man in his senses and with his heart right, but one of those abnormal productions that Deity creates or suffers, a lunatic or a devil. So do we measure up the degree of character, or want of it, that could possibly prompt a human being to such acts.

They were well directed blows. They were not the result of blundering. They were aimed steadily and constantly, for a purpose, each one finding its place where it was aimed, and none going amiss on the one side or the other. Surely we are prompted to say at the outset, the perpetrator of that act knew how to handle the instrument, was experienced in its control, had directed it before or others like it, and it was not the careless, sudden, untrained doing of somebody who had been unfamiliar with such implements.

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Now, suspicion began to fall here and there. Everybody about there even called to account so far as could be. That is proper. That is right and necessary. Investigation proceeds. The police intervene. They form their theories. They proceed to act. They concern this one and that one. They follow out this and that clew with care to them. They are human only. And when once a theory possesses our minds you know how tenaciously it holds its place and how slow the mind is to find lodgment in something else.

Now, no decent man complains of investigation. No one says there ought not to have been anything done. Everything ought to have been done. Nay, more, we say, everything was not done and that the proper pursuit was not taken. Now, proceed with this matter a little and let us see how we stand. A person is charged with a crime like this defendant. Suspicions surround her, investigations in regard to her proceed and inevitably, naturally, if the matter is deemed of consequence, she is brought before the Court---the District Court in that instance, to have an examination preliminarily into the probabilities of the crime on her part. Then, if she, having nothing to do with it, having no control of it, having no opportunity except to be heard that justice ought not to bind

her and compel her to answer to this Court,---what then? Then the Grand Jury of the county is called together and sits by itself under the direction of the District Attorney, to investigate and see whether it ought to come before a Jury like

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yourselves. Now, remember at that time and when this indictment of last December was framed, this defendant had no voice,---it was purely one sided. They said, We make this charge, serious as it is, against the defendant. We will ask her to come to the Bristol County Court House and meet that charge, and if we cannot prove it against her in the ordinary way, she shall go free,---she is not guilty. Now that is one sided up to that point, practically, and so you are to draw no inference whatever, and I know you will not---you will draw no inference whatever as against this defendant until you have heard the evidence in this case, in this Court room at this time.

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You have nothing to do with what was done in Fall River, any more than you have with what is now proceeding in Australia. The finding of Judge Blaisdell of the District Court in Fall River, worthy man as he may be, is of no sort of consequence here and has no sort of influence or obligation over you. We would not be safe if in these great crises our lives hung upon the decision of a single man in a prejudiced and excited community. No, we walk away from Fall River, we come down to the broad seashore, we sniff the breezes of the sea: and here is freedom, here is right, here are you, gentlemen.

I say, then, at the outset, as you begin to contemplate this crime and its possible perpetration by this defendant, you must conclude at the outset that such acts as those are morally and physically impossible for this young woman defendant. To foully murder her stepmother and then go straight away and slay her own father, is a wreck of human morals: it is a contradiction as to her of her physical capacity and certainty.

Now before I pass, let me say that this defendant complains of no persecution on the part of the District Attorney of this district. He has only one duty, and that is as a gentlemen and a lawyer to conduct this investigation so that the truth as to her may be elicited. With his well earned reputation and his high standing at the bar, he would

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have no need to search for laurels for his fame, and he is one of the last men that would demean himself so as even to think of it. He stands above the miserable assertions that unthinking people will make, and he walks into this Court room only as the representative of the Commonwealth of Massachusetts, that is yours and mine and his, and says, "Gentlemen, all I have to show you is the case we have against this woman. And if the case I have brought to me by the Fall River police is not sufficient, or you have any doubt about it," he will say, if he speaks what his heart prompts him to utter---he will say, "for God's sake, say so like men, and Bristol County will be the happier and the

securer afterwards."

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He is not here for blood, neither is he helped to such dishonorable work, if it were attempted, by our excellent friend, the District Attorney from the great county of Essex, one of our best and most reliable lawyers. So you will see no small play; you will see no mean tactics on the part of the Commonwealth here, but only a presentation not over strained in one jot or one tittle, a presentation of what has been proved here, and only that.

So merciful is our provision of the law that a defendant shall have a decent chance that she becomes convinced how faithfully that is carried out, when she recalls the numerous kindnesses and considerations on the part of the sheriff of this county. He has done with her, not as a convicted criminal, but as a young woman of this county entitled to her rights guaranteed to her in the Constitution and laws of our State. And so she comes into this court, presided over by our best of the judiciary, clean, able, honorable gentlemen, who sit vigilantly by on the bench to guard against any possible wrong, who want the Commonwealth's case tried, but the defendant to pass without abuse or wrong, and taking the law into their hands as they will give it to you, you have to deal only with the facts.

I said the case was brought to the District Attorney by the Fall River police. I have not time to go into any sarcasm or denunciation of those gentlemen. They are like a great many bodies of police that you find in all communities.

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Policemen are human, made out of men, and nothing else; and the blue coat and the brass buttons only cover the kind of a man that is inside.

And you do not get the greatest ability in the world inside a policeman's coat. You may perhaps get what you want, and what is sufficient, but you must only call upon him for such service as he can render.

Now when a police officer undertakes to investigate a crime he is possessed and saturated with the thoughts and experiences he has with bad people. He is drifting and turning in the way of finding the criminal, magnifying this, minimizing that, throwing himself on this side in order to catch somebody, standing before a community that demands the detection and punishment of the criminal, blamed if he does not get somebody into the lock-up before morning. "What are the police doing?" say the newspapers; and the newspapers, you know, are not always right, mostly. Saying to him, "Look here, Mr. City Marshal, these murders were committed yesterday. Haven't you the murderer in the lock-up? Get somebody in."

Now they are sensitive to all those expressions---sensitive to it. Naturally, as men

feeling the responsibility of their office, they must go there and do just such work as that, in that way. That can only be expected of them. And when they come upon the witness stand they reveal their weakness, do they not? They knock their own heads together.

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They make themselves, as a body of men, ridiculous, insisting that a defendant shall know everything that was done on a particular time, shall account for every moment of that time, shall tell it three or four times alike, shall never waver or quiver, shall have tears or not have tears, shall make no mistakes. But they, stripped of their blue clothes and in their citizens garb, show themselves to be only men here, and liable to human infirmities and errors.

Now I dismiss them, without any unpleasant reflection. I will talk about them a little later on; but I have nothing to say now any more than this, that you must not ask of them more than they ought to give, you must not be surprised that they fail even of the standard they set up for everybody else.

So I say to you, as a distinguished advocate in a similar cause expressed himself to the jury "This defendant comes before you perfectly satisfied that the jury is the most refreshing prospect in the eye of accused innocence ever met in human tribunal."

Who are you twelve men, and how come you here? Selected out of 150 that were drawn from the body of this county, passing the gauntlet of criticisms, questions, and objections put upon you by the Court or the attorneys, you are sworn here in this cause. Who are you? Men. Bristol County men. Men with hearts and men with heads and men with souls and men with rights. You come here in obedience to the

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law that we prescribe for the orderly administration of our courts. You come here because, in answer to the demand, you feel that you must render this great service, unpleasant and trying as it may be, exhaustive as are its labors; you come here because you are loyal men to the State. Nay, more. You are out of families, you come from firesides, you are members of households, you have wives and daughters and sisters and you have had mothers, you recognize the bond that unites and the flash that plays throughout the household. Now bring your hearts and your homes and your intellects here, and let us talk to you as men, not as unmeaning things.

The clerk swore you to the performance of your duty, and perhaps you did not hear that oath so closely as I did. But I heard him say, "You shall well and truly try and true deliverance make between the Commonwealth and the defendant, whom you shall have in charge."

In no case except a capital case is the oath framed in that way. "Whom you shall have in charge." And Lizzie Andrew Borden, from the day when we opened this trial

until this hour, has been in your charge, gentlemen. That is the oath you took. And not alone with you, Mr. Foreman, or any one of you, but with each and all of you. You have her in charge. Now has come the time when not alone her lawyers are to speak for her, not alone the judges are to watch for her protection, not alone is the learned attorney of the Commonwealth to ask no more than he ought to have, but the twelve men who sit here to try this question take the

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woman in their charge, and the Commonwealth says, "We intrust her to you." Now that is your duty. She is not a horse, she is not a house, she is not a parcel of land, she is not the property of anybody, but she is a free, intelligent, thinking, innocent woman, in your charge.

I noticed one day, as we were proceeding with this trial, a little scene that struck me forcibly. It was one morning as the court was about to open, when you were coming into your seats and standing there, and the judges were passing to the bench to take their positions, and the defendant was asked to pass around from the place where she now sits in order that she might come in so as to be near her counsel, and right at that moment of transition she stood here waiting, between the Court and the jury; and waited, in her quietness and calmness, until it was time for her properly to come forward. It flashed through my mind in a minute: There she stands, protected, watched over, kept in charge by the judges of this court and by the jury who have her in charge.

If the little sparrow does not fall unnoticed to the ground, indeed, in God's great providence, this woman has not been alone in this court room, but ever shielded by His providence from above, and by the sympathy and watch[ful] care of those who have her to look after.

You are trying a capital case, a case that involves her human life, a verdict in which against her calls for the imposition of but one penalty, and that is that she shall walk to her death.

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You are then to say, I will critically consider this question, and I will make no mistake, because if I do, no power on earth or in Heaven can right the wrong. You come here without prejudice or bias, I take it. You said you did. I believed you. I believe you now. You said that though you might have read about this transaction, you might have formed an opinion, might have expressed an opinion, as I think some of you with perfect honesty said, because in this intelligent age people do think and read and talk, and it is all right they should, but when a man is big enough to walk up and say in answer to the questions the Chief Justice put to him, I have read and thought and judged about it and I stand up here now and before my God and my people say I will find a true verdict on the evidence under the law,---that is a man we all want to see in the jury box. I would rather see him there than to have one of those miserable pieces of putty on whom the last man

who stuck his finger into him can make an impression.

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You will need at the outset, gentlemen, to dismiss from your minds entirely---entirely---entirely---everything that the press ever said about this case, anything that your neighbors have ever said about it, anything that you have ever heard about it except in this Court room at this time. Every rumor that has run about, every idle tale or every true tale that has been told, you must banish from your minds absolutely and forever. Why, gentlemen, if we were to try the case on the street, we need not have spent these days and you would have been enjoying your entire freedom like the rest of us: you would not have been prisoners yourselves. But we are not trying the case this way. And so carefully, I believe, does the Court guard it, that you are shut off from reading the newspapers, from having communications, from indulging in conversations about the case during the progress of the trial. What use in taking these precautions if you are all coming in with your heads brimful of what you have heard before and will not give that up? Now every man of you is man enough to say, when you go to the jury room to deliberate on this thing and somebody presents an idea, "Well, that is not in this case." You have no right to consider any such thing. You have no more right to do it than you have to take a knife and cut this woman's throat---I mean under your duties as prescribed by the law.

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Then you come here patiently day after day, and you will sit here again and again until this case is concluded, and then proceed with your deliberations with that calmness and fidelity that is guaranteed in the expression of your countenances, for:

"When the life of man is in debate
No time can be long, no care too great."

Hear all, weigh all with caution.

Now, gentlemen, it is not your business to unravel the mystery. You are not here to find out the solution of that problem. You are here not to find out who committed the murders. You are not here to pursue something else. You are simply and solely here to say, Is this woman defendant guilty? That is all, and though the real criminal shall never be found, better a million times that than that you find a verdict against this woman on insufficient evidence and against your human experience and contrary to the law, so that an unhealthy appetite may be satiated, and blood given that belongs to the owner of it beyond anybody's taking. Not, who did it? Not, how could it have been done? but, did she do it? That is all. And you have reflected I want to say, or it is not proven against her, because it is held in the law, and ought to be, you have done your whole duty, although you sit here as the Commonwealth, including the Court and the District Attorney, if you have not been able yet to bring that evidence with a certainty and a reasonable construction so that you as

decent men can go to your homes and sit down and say, "We have done our whole duty. We have brought in a verdict against her." although perhaps within a week we wish we had not, when we think of it.

Nor must you think for a moment that this defendant is set to the business of finding out who did it. If she cannot find out and tell you who perpetrated these acts, somebody says, "Go, hang her." She is not a detective, and the Commonwealth has put her in a place for the last ten months so she could not be very vigilant or active if she had all the ability in the world. She has been in the jail of this county; she has been under constant control of the police from the very time, from Thursday, August 4th, as you know from all these facts, and do not ask her to do things that are impossible. Pray not load upon her the responsibility of setting her to go when she cannot go or do when she cannot do, or else hold her to account for it with the severest penalty known in the law.

The Commonwealth does not want any victim either. In the old days they had sacrifices of lambs and goats, and even human beings were offered in expiation and in sacrifice. But we have got all over that. We do not even burn witches now in Massachusetts. The Commonwealth wants no victim; and so, gentlemen, I have attempted in this way to array before you what I consider in my own manner, the duties that lie upon you, and the limitations under which you act.

And what is the call upon you? Why simply to be true to yourselves.

"To thine own self be true,
And it must follow, as the night the day,
Thou canst not then be false to any man."

Now, there always goes with any person the presumption of innocence of crime. I stand here at this moment addressing you, and I am clad all over with that presumption of innocence of every crime; so is each one of you. That is your bulwark; that is born with you, nay, rather it is given to you out of the great consent of all the people, and you say, "Guilty? Why, I think not. I am innocent," and the Court will tell you that that started with this prisoner on the 4th day of August and has been with her by night and by day. When you had her in charge that presumption of innocence has been in her favor, and it never leaves her until by the verdict of a jury that presumption is overcome and she is declared guilty. It is true that people who heretofore been innocent commit crime, and so the law says, "We will not demand the unreasonable and impossible thing, but you the defendant, shall have that presumption go with you until it is entirely overturned, and it says that you are of a criminal heart and criminal act."

Now, bear that in mind, if it comes to any question in the discussion of the evidence of a doubtful consideration, then that presumption is all the time in the scale.

The beam of the scale does not stand level to start with. We say the scales of justice

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hang even, but there is always with a defendant the presumption of innocence that tips the scale in her favor, and the Commonwealth must begin and load in on the other side facts until they shall overcome that presumption, nay, more, and over-balance the facts that the defendant shall produce.

I shall not attempt to talk to you at length about the different kinds of evidence, direct evidence and circumstantial evidence. The learned Court will explain those different features to you, and the lines have been drawn so clearly in the many cases that have been tried that is wholly unnecessary for me to take your time and your patience. You know, or will know when his Honor has uttered to you the charge in the best way, what we mean by direct evidence and what we mean by circumstantial evidence. Direct evidence, testimony from actual observation and actual knowledge, is what we very frequently rely upon, but that is not always certain, I am bound to say to you, not always sure, because the man who gives the direct evidence may be a miserable liar, and you would not believe him under oath, unless you kept your hand on him. Now, that is direct evidence, and then sometimes facts are found out by circumstances. You reason from the hearing a noise or from seeing a person in a given place. You see a man going in somewhere, and you say, "He has gone in there for that particular business, because they do that business there," whether it is banking or insurance or grocery. Well, you may be right or you may be wrong.

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You have given different circumstances to try to draw out a reasonable conclusion, but I am not going to enlarge upon that, because I deem it unnecessary, and because I have other things in my mind which are more important. But if you try to convict anybody, or if you are asked to convict anybody, because you do not start in here to try to convict anybody,---other people may, but you do not---if you are asked to convict upon any evidence, whether that is direct or circumstantial, you will, of course, bring to it your clearest perception and your strictest honesty, and look to see whether it fits in, whether it is all right, and whether it has not run against this corner and that corner and knocked itself to pieces; whether the circumstances are all in, and whether something has not been left out; whether the chain is not broken with which it is sought to bind the defendant. Look it over, search it through and through, as I will in the argument as I proceed, and discover whether there is any claim that is insufficiently proved. Then too the Court will tell you that by whichever method you proceed as to this defendant, the proof must come up in your minds to a moral certainty, not a mathematical certainty, but a moral certainty. It must be beyond a reasonable doubt.

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Now you have sat in criminal cases before; very likely you have had a man before

you on trial who had stolen five dollars, or something of that kind, and the same rule applies. And you are told that you must not convict him unless you are satisfied beyond a reasonable doubt. It is not different in this case. In the one case you are perhaps dealing with a man who will be subjected to a penalty of a fine, or a brief imprisonment at the most. Here the same rule applies, and you are dealing with a woman whose life is at stake, and nothing else. Now you will see that while the rule of the law is the same in the one case as in the other, the magnitude of a mistake about it is not to be lightly considered. So that when you are asked to find these essential facts beyond a reasonable doubt, it is not the doubt of a curmudgeon who sits off in a corner, and says, "I won't talk with anybody, I am an ugly fellow, I will make myself disagreeable in the jury room." That is not it. That is not a reasonable doubt, no matter which side he is on. He is not fit for service in the jury room. But it is the doubt of such men as I take you to be, with your home influences, with your church belongings, with your business associations, with your social relations, with all that binds you up to each of us. It is the reasonable doubt of a reasonable man, confronted with the greatest crisis he has ever met in the world. Yes, the greatest crisis: because, though I doubt not some of you have worn the blue and faced the cannon shot, though you may have heard

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and felt the thunders of war, and you may have seen blood flow in streams, yet that is one thing: this---to sit here and to have in charge this young woman and to say upon your oaths you are satisfied that she is guilty or not guilty, is a duty to which very likely none of you have ever been called and which probably you will never be asked to perform again: you will go to your graves thinking of how you performed this task, and it ought not to be that you can have any compunctions that you made a mistake which nobody could retrieve.

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Then again under the laws of this state the defendant in a criminal case is permitted to testify on the stand if she desires to, but if she does not desire to, she can refrain from testifying, and then the statute says specifically and directly, no inference shall be drawn against her from the fact that she has not testified. And so the learned District Attorney in his closing argument will not by the slightest suggestion or insinuation insult this Court and this Jury by intimating that the defendant ought to have testified. That law was born out of two considerations. Formerly the defendant could not testify. Later it seemed to be wise to give a defendant an opportunity to testify, but it says at once, although he does not come to the stand, you shall not take that against him in any way. And again too, as if in the charity of human nature our law givers have felt that it is too great a strain oftentimes to put upon a defendant to place him in such a position that he must either go upon the stand or have that argument made against him, that he ought to have done it, the law which I have cited to you,--- not in its exact terms but in its essential features and expression,---was framed in the way I have stated. And I dismiss that again. The Court will tell you in emphatic and clear language, and will look you in the eye and touching your sense of justice say to you, Gentlemen, you must not consider

that, and you will not as you go to yonder room under your oath, depart from that, because if you do, what is the use of having scales for justice to hold or

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Courts for the apparent administration of it either?

Now I said you must leave out rumors, reports, statements, which you have heard before the trial commenced. That is true. I repeat it: But more, you must leave out of your minds now, absolutely, every single thing that the learned gentleman who opened this case, Mr. Moody, said that he was going to prove, unless he has actually proved it. Now I would not like to say that about him in private affairs. I would not be pleased to intimate to you that he would say anything that he was not going to do, because he is the soul of honor. But he speaks for the Commonwealth, that is all, and the Commonwealth tells him: You must not say anything but what you are going to do, and you must tell them that and that only. And I shall expect the learned District Attorney to withdraw the things that Brother Moody said he was going to prove, because he has not proved them. The Court room ought not to echo still that utterance of the gentleman who opened this case because they tend to create a prejudice against the defendant. Now let me tell you about that so that you will understand it: Mr. Moody said that the Government was going to claim and prove that this defendant was preparing a dangerous weapon on August the 3rd, the day before the murders. You heard him say that. I did. He said it. They have not proved it, have they? Was there a thing about it in the evidence? You have heard some discussion that we have had at the bar because, in order that there should be no prejudice, you have been asked to step

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aside, and many of those things which have been offered in good faith have not been proved because the Court has said they are not proper to be proved in this case. They have nothing to do with it. They will only mislead the Jury, and the Jury shall not hear them in this case. Whenever another case arises, if these things are pertinent and proper, they shall be heard, but not now.

Now the Commonwealth came with the idea of putting these things before you, I say with good intention, but the Court says no, though your intention is good, it is not proper, and we will not complicate this thing. It will create a bias against the prisoner which may divert the course of justice and that shall not be introduced here, it has no right here, though you mean to be right. Now there is no proof at all, Gentlemen, about any dangerous weapon having been prepared on the 3rd of August. And to make it more specific, Mr. Moody said in his opening that they would prove that this young woman went out to buy a poison on August 3rd. You have not heard any such evidence; it is not proved, the Court did not allow it to be proved and it is not in the case. Now you will not go to the jury-room with the thought if it had been allowed, you would have considered that it was proved. But it was not allowed, no such evidence came before you, and I shall expect the District Attorney, man fashion, to get up and say so, and I think you will, and I

shall be disappointed in him if he does not. He will tell you that upon that subject

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and that the case is not touched at all. Then he said that they were going to show you that the defendant had contradicted herself under oath about these occurrences. Well, there is another question which went to the Court and the Court said: That is not proper in this case. You cannot show that. And so there is not anything of the kind. Now you are not going to sit back there and say, "Well, I rather think Mr. Knowlton and Mr. Moody would not have offered it unless there is something behind it." That is not the way to try cases. That is not the way you held this defendant in charge. You might just as well have got your verdict before you started and said guilty because she is here. You might as well say, we don't want to hear any evidence. You do not want to say that you do not care whether you hang her right or wrong,---give us somebody! Now the Court sits here to guard you and all of us against any such mistake. That will not do. The Court says: Here gentlemen, decide this case on the evidence given right here from the witness stand, and on nothing else. Why, it is not impossible that any one of twenty or even twelve men might not be brought up under a like charge. But when you stand there in the box ready to answer, and somebody says to you, "Oh, don't mind what they put in, about particular evidence, whether it is competent or incompetent," you say No, I want my rights. I am here under the protection of the law, and I call upon those twelve men, decent men under their oaths to stand by me and see that I am not wronged. So you will leave those things out, Gentlemen. No poison in this case, no

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prussic acid, no preparation of a weapon by this woman, no statement made by her under oath in this trial or anywhere that you know anything about or have any right to consider. I do not care what you have read.

Now we shall agree in the consideration of this case very largely upon many things. My position in this case in speaking for the defendant is not to misrepresent or distort facts, but to take the proofs as they are, put them against each other and find out what is right. This defendant wants nothing but justice and she desires to have it in the proper administration of the law. Things that are not in dispute, I hope I shall not contest. I hope I shall array before you the facts all together in an intelligent and a clear way and then ask you to give me your judgment on them by and by, and I just as sincerely trust that I will not even by a single letter step over the line of the proof or deal unjustly even with the Commonwealth that is really so dear to us all. Now let us see if we cannot get at these things in a fair way without prejudice. Mr. Andrew J. Borden left his house and went down street that morning, Thursday, August 4th, about half past nine o'clock, so that he arrived at the Savings Bank, upon the evidence, about 9.30. He went into several places along the street, not material now to consider, walked back along South Main street towards his house, stopped at a store of his that was being repaired, talked with Mr. Shortsleeves and Mr. Mather, and after picking up an old lock which he wrapped up in a paper and took home, he started to go to his house. You recollect something was said,

that it is not now material to consider in this connection, but he walked along up towards his house, arriving there, the defendant thinks, about quarter before eleven o'clock--- about 10.45.

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It did not vary, probably, more than two or possibly three minutes from that time. It must have been as much as that, because you recollect how Mr. Mather put it,---his looking at the clock, and the time that Mr. Borden lingered at the store, went up stairs, came down, went out into the middle of the street, looked at his block, went back and talked with Mather and Shortsleeves a minute or two, and then went on. It was 10.40---20 minutes of eleven---as he came up to the store. Now he probably consumed two or three or four minutes in doing those things that they have spoken of, and so you may well, perhaps, infer that he reached his house about 10.45. Now the alarm of the murders reached the police station about 11.15, and within that time Mr. Borden was murdered. We have learned of several things that he did---that he came into the house, sat down, went up stairs to his room, laid down his little package, and so on,---was occupied with a few things that would consume a short space of time; so that we can say that he was murdered somewhere within a given fifteen or twenty minutes of time, which fairly, perhaps, may be between five minutes of eleven and ten minutes past eleven. I presume that the Commonwealth will not differ with me about this. At any rate, if there is a more clear statement of it to be made, the defendant has no objection if it lies within the proofs. That is the way I propose to argue, to take that as a fact. Mrs. Borden had died earlier; on the testimony of the physicians,

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inspecting the character of the wounds, the condition of the blood, the state of the stomachs and the intestines, they put it from an hour to an hour and a half earlier than he died. That is probably correct: at any rate, no issue is made about it; and so, if I may be permitted to state it, she would seem to have died between 9.45 o'clock and 10.15, somewhere within that half hour, taking all the evidence into account. That answers the demands of the physicians, and seems to me, if I may be permitted to say it, to accord with the facts.

Now you have those tragedies within that short space of time, in that place, and it is for us to see whether the defendant is connected with them---whether the defendant alone or the defendant with any confederate, if there is any proof about it, did the deed. I am at a loss to know where there is any evidence about any accomplice or anybody else connected with it at all, and so it is only my inquiry to find out if there is any proof as to this defendant. Of course I need only to suggest to you that until there is some sort of evidence that connects somebody with it, it is not well to assume that she must have had somebody because you cannot think of anything else. That is not the way to try this case.

Now it will be my endeavor in discussing these questions to be very guarded about giving you my own opinion of the evidence. I have no right to put in whatever

personal weight I may have in my construction of the evidence. That

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is bad practice, and I should expect if I get over the line, for the learned Court to call me to order, because I trust I know my place. I have no right to tell you that I believe so and so about this case. I may believe all I want to, but my duty is to keep it inside of me, that is all. And so the District Attorney will do the same: carrying his great weight and his strength, his connections every way into this case he is not so to demean himself as to tell you that he believes so and so. You do not want our beliefs: we want yours, and your judgment.

Now there sits the defendant. In yonder city were the crimes. Those crimes were of the foulest and darkest kind. She becomes here under this presumption of innocence. It must overcome absolutely, and you must bind her up to the acts before you can say she is guilty. What is the cord that holds her to those terrible criminal acts? Let us see where it is to be found. It is not in the charge that is read in the indictment: it is not in the procedure of the Court, but it must be in that chain of circumstances or in that line of direct proof that shall show you that she is tied up to this thing, that she is the one, and that it is not reasonable that anybody else did it or could have done it: that there is no reasonable way of accounting for the things that are proved except that she did it. That is the kind of bond that you must frame in order to hold her, or to permit you even to think of holding her.

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If a person commits a murder like this, and we know it, we have no occasion to inquire for what reason he did it. If he did it, then it does not make any difference whether he had any motive or not. He might have done it for pure deviltry, without a motive. He may have done it in insanity, and then the law comes in in another way to intervene in his behalf. But if it is proved---proved, I say, not guessed, but proved that he did it, it is not of the slightest importance whether he had a motive or not. If he did it, that is all there is about it. Now why is the Commonwealth bound in this case to attempt to show a motive for doing it? Merely for this, gentlemen: because they say, Here are the crimes---there are the crimes there, there sits the defendant---you see her over there. Now in order to hold her responsible for the crimes, we have got to bind her up to the crimes. We have no direct evidence that puts her there; we have some circumstances that look as if she might get there; and so in order to bring her to it, we must show a reason why she would do it,---what moved her to do it; and that is the motive. That is to say, the motive in this case is only to explain the evidence. You get my idea, I think. It is only to tell you how you can explain her acts or her words. If you can explain them in a reasonable and honorable way, then she is entitled to that. But if they cannot be explained except that you find a criminal thought running through them, then that motive operates against her, not to make her commit the crime, but to show you that what is said about it is a reasonable construction---that she was led to do it.

That is it, if I understand the case properly, and I state it just as I believe it to be--- the Court will correct me if I am wrong---and I believe I state it about as the Commonwealth attorney's would state it; intentionally I do; and so that motive is only to be inquired into to help you out about the circumstances, and I think I can explain it to you---and I am guarding myself against saying anything I ought not to.

Suppose the crime were committed in another place, and a man was suspected of it, and he proved that he were in the State of Georgia at the time, at the very instant, and everybody knew it. Well now, you could not bind him from doing the crime anyway, no matter if he stood down there and swore profanely that if he could only get home he would have killed that man. That would not be anything, because the circumstances do not come up to it, they are not connected. So you do not want his motive to explain his acts. He hasn't any acts to explain.

Now the Government says that Miss Lizzie A. Borden has some acts to explain, therefore they will find out whether there is anything in her motives that will put a color on it. I think you see that. And they are inseparable from the conditions.

Now I say that the argument will be, perhaps, only this: that you are to look at the motive to see what effect you shall give to the evidence. It will not do, to say that

no adequate motive is shown and none is necessary. That is true when the crime is proved. That is true when you have the facts. But that is not true when you are trying to show the motive in order to explain the facts.

Now there is absolutely (and I think the Commonwealth will say it) no direct evidence against Miss Borden, the defendant. You know what I mean. Nobody saw or heard anything or experienced anything that connects her with the tragedies. No weapon whatever, and no knowledge of the use of one, as to her, has been shown. You know if you had found her with some weapon of that kind in her control, or in her room, or with her belongings, that would be direct evidence. But there is nothing of that kind. It is not claimed. It is not shown that she ever used an implement of the character that must have produced these murders. It is not shown that she ever touched one or knew of one or bought one or had one. In fact, the evidence is that she didn't know where the ordinary things in the house of that kind were.

And the murders did not tell any tales on her, either. There was no blood on her, and blood speaks out, although it is voiceless. It speaks out against the criminal. Not, a spot from her hair to her feet, on dress or person anywhere. Think of it! Think of it for an instant!

Yes, there was one drop of blood on the white skirt, as big as the head of the

smallest pin, says Prof. Wood; less

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than a sixteenth of an inch in diameter; and that is every particle of blood that was found upon her clothing. And that was not where you would expect it to be; not in the front of the skirt, that must, if she had had it on and had done these foul deeds, have first come in contact, but around back, down toward the bottom, near the placket, as I believe the women call it, out of the way.

I do not know but the Government are going to say that she turned her skirt around hind side before, before she commenced, in order to get at it in a practical way. I don't know what they are going to say yet. I shall have occasion to speak of that by and by. But Prof. Wood does not claim, and Dr. Dolan does not claim now---he did---he does not claim now---I don't know as there is a Fall River policeman from the top down that claims now that that little fly speck, as it were, of blood, tells any tale here. I forbear to allude to what is proved in this case, Miss Borden's illness, monthly illness, at that time, and to tell you or remind you that Prof. Wood said he would not undertake to say that that blood was not the menstrual blood. You know the facts. I need not give them in detail. You know enough in your own households; you know all about it. You are men, and human. You have your feelings about it. I am not going to drag them up, but you must not lose sight of these things.

Then there was some talk about a roll of burned paper in the stove, where Mr. Philip Harrington, I believe, was the

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officer. He took off the cover and saw what he said looked like the embers of a rolled up piece of paper, burned. That is all. And there was some sort of dark insinuations here, floating around, they didn't clothe themselves in words---but there was something in the manner that meanly intimated that Dr. Bowen was doing something about it. Dr. Bowen! I suppose they don't make any allegation that he committed these murders, or helped, or helped to cover up, or assisted in doing anything about it. When the evidence is heard it seems that Mr. Philip Harrington says that Dr. Bowen was throwing in some pieces of an old letter. The letter had nothing to do with these transactions, something about his own family matters, of no account. And Mr. Harrington---I think I am right in the name of the officer---when they were thrown in, saw some little piece of paper, rolled up paper, about an inch in diameter, that had been rolled up and was lying there, the embers of it, and there was a small, low fire.

Well, we thought the handle was in there. We thought that was the plan, that the Government possessed itself with the idea that that handle was rolled up by the defendant in a piece of paper and put down in there to burn, and it had all burned up except the envelop of paper. Did you ever see such a funny fire in the world? What a funny fire that was! A hardwood stick inside the newspaper, and the hard wood stick would go out

beyond recall, and the newspaper that

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lives forever would stay there! What a funny idea! What a theory that is!

And we wrestled with that proposition here, on the part of the defence, through weary nights, troubled about it, until Fleet and Mullaly got here together, and then we were relieved from our doubt. For the handle is in it and it is out of it. Fleet didn't see it and Mullaly did see it. Fleet didn't take it out of the box and Mullaly saw him do it. And it is in the box now, and they run over to Fall River to get it; or they wanted to, and can't get into our house, and explain about it. So we rather think that that handle is still flying in the air, a poor orphan handle without a hatchet, flying around somewhere. For heaven's sake, get the 125 policemen of Fall River, and chase it, till they can drive it in somewhere and hitch it up to its family belongings.

Then, too, upon the best testimony of the experts, and probably in your own common sense, whoever committed that murder of Mrs. Borden stood astride her body. She was a large, stout, fleshy woman, weighing 200 pounds. Conceive of the situation. You looked at the place. You saw the little gap between the bureau and the bed, stated to be about 30 to 34 inches; and you are to conceive of the murderer standing over that body in this way. Here she lies, there; and the murderer standing over her and literally chopping her head to pieces. I shall have more to say about that by and by, but

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I call it to your attention now. And they all agree that Mr. Borden was butchered by somebody who stood at the head of the sofa, and between that and the parlor door. You know how that is placed, and we make no question about it. That looks reasonable, we will say, and so we take the things as they are.

Now what reason is there for saying that this defendant is guilty? The Commonwealth asks you to come up here and hear all this evidence and point out whether you think she is guilty or not. If you do not think she is, why, you say, "Not guilty," and the Commonwealth is satisfied, the district attorney goes away, having done his whole duty, satisfied to let it alone. He doesn't find any fault about it, he is relieved of it. It is a great relief to him to get rid of the case. He doesn't enjoy it. He says, Come up and hear all we have got against her, and let the jury say she is not guilty, and that will stop this matter, or, if you come up and hear it, and you say she is guilty, then that relieves me about it. I put this responsibility on you. And the Court says, I put this woman into your charge. Now you have got it all.

Now what right have they to say anything about it? Well, I want to run it through (which I have done with some care), and tell you why they claim that she did it.

In the first place, they say she was in the house in the forenoon. Well, that may

look to you like a very wrong place for her to be in. But it is her own home. I suspect

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you have a kind of an impression that it would be a little better for her than it would be to be out travelling the streets. I don't know where I would want my daughter to be, at home ordinarily, or where it would speak more for her honor and care, and reflect somewhat of credit upon me and her mother, (who is my wife, I want to say), than to say that she was at home, attending to the ordinary vocations of life, as a dutiful member of the household, as belonging there. So I do not think there is any criminal look about that. She was at home.

She is shown to have been upstairs to her room, the Government says, about ten minutes before ten; and she must have seen, as they claim, the dead body of Mrs. Borden, as she, the defendant, went up and down the stairs.

Now let us look at that, because that is an important feature in the case; important for the Commonwealth, important for the defendant. You went there and saw the situation. You know how the stairs go up, turning around as you go up, and at the top of the landing you are right there at Miss Lizzie's door. When you stand at the top of the landing you cannot see into the guest chamber, you know. It is as if you stood over there where that officer stands, or a little further. You are not looking into the door at all. It is not like a great many houses where you come up to the top and are looking into both doors at the same time.

Then it is said that at a certain point on the stair case, right on one tread of one stair, if you look in under the bed

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across the floor of the guest chamber you could see any object that was over between the bed and the bureau. And you were all asked to do that, by travelling up and travelling down---you remember the experience you had---and looking. And therefore they say that, although Miss Lizzie, when she was at her door, as she undertook to pass down, could not see Mrs. Borden over there behind the bed, that if she went down stairs she could have seen Mrs. Borden lying there behind the bed, and therefore that she must have seen her.

Now if we had marched you up and down the stairs and told you nothing of what we wanted you to look at, there isn't one of you that would have squinted under that bed, on that particular tread of the stairs. You wouldn't have thought of it. But you were going to see if you could see, and you were told to look all you could and see if you could see. So you got ready to see, made up your minds you were going to see if there was anything to see. You have not been home for the last two weeks. But when you get home, and after you get over this, in two or three weeks from now, and I meet you, I want you to tell me where you looked when you came down stairs that morning, and whether you looked to

see what you could see at any particular stair. How was it the last day you were at home? Do you remember anything about it? What time in the morning did you come down? At what stair did you look to see what you could see? Right in your own house, where nothing had happened.

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Now we are talking of a time with regard to Miss Lizzie when nothing had happened, when everything was all right. It was, at that time, to her. Now people do not go searching and squinting and playing the detective and all that, to begin with. I do not. If I did I should think I was a rascal some way or other, and that something was happening to me. If she did that thing, if she was looking to see if anybody could see it, if she had walked down and looked under and had not said anything about it---there goes the murderess, see her! She didn't see it, and she might. Therefore she is the criminal. She did see it because she could, and therefore she is the criminal.

No, no. You and I, until we get to be too old, run up and down stairs just as we have a mind to. They are our stairs. We do not ask anybody's pardon or qualify our act a particle. Then there is not the slightest evidence that that door was open at that time. Remember that---that that door was open at that time. There is evidence that it was open later, but no evidence that it was open before Mr. Borden came in. I am right about that, and that is very important.

So that if, when Miss Lizzie went down stairs and went up stairs, as she undoubtedly did during that forenoon, to her room, if she went up and down stairs and the door was closed or nearly closed, or stood ajar, then of course she could not see. She had no occasion to go into that spare room,

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wouldn't go in there. As you know about the habits of the family in which she lived, the spare room was closed up practically. Mrs. Borden had gone there to make the bed, and after she had left it all right undoubtedly she would push to the door. The door was pushed to, at any rate. There is no evidence it was wide open.

Now the Government starts out with the idea that that door was standing right wide open, and therefore that she could see; and I have told you how you can reason it very plainly out in your own common experiences. You wouldn't look. If she had been lying right front of the bed, outside, why, I should have said it would be very improbable that a passer up and down the stairs would not have seen her, and yet that is not impossible. You walk along the streets sometimes, possibly---I do not want to say anything wrong about you---and you meet your own wife and don't see her, go right along. They used to tell a story about Prof. Pierce over at Cambridge who didn't know his own wife when he met her, and he had been spoken to so much about it that finally he thought, to make amends, he would speak to the first thing he met, and that was a cow. He said, "Good morning." He didn't make any more mistakes. People are not looking for

everything at every minute, especially if they are innocent. It is the guilty man that is always looking around to see when there is somebody round going to catch him, lay a hand on him.

Now do not ask her to do things that nobody else does.

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Besides, you remember the testimony from Dr. Bowen and Mr. Manning and some others---it is not necessary to state them---that the upper hall was dark when they went up there, and that the guest chamber was dark.

You remember that in that guest chamber there are these tight board shutters, not open blinds like this court room, but tight board shutters that shut up. And you know the New England housewife does not like to have her carpet fade, and the more they live in the old style the more careful they are. I remember with some reflections about my old mother, how she looked after the carpets and the boys, that they didn't get the light in. The boys wanted to live out in the sunlight; she didn't want her carpets there. And so the natural thing in that room in the Borden house was to keep the shutters shut, those tight shutters. And the doctor says, they all of them say, that when they went in it was dark and they had to open them so they could see something.

Now you recollect we tried that on you over there. You marched up and down, in the first place, with the shutters all flung open, so that that room was as light as this, or more so. Then we shut the shutters and asked you to go up. You know the instance. You can see across the street, but it is always difficult to look down into a well and see what is at the bottom.

Now they say further, as a reason that she is guilty, or they claim it, that Mr. Fleet tells you that Lizzie said

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she saw Mrs. Borden about nine o'clock, when she, meaning Mrs. Borden, was making the bed.

Now, taking that as true---there is no contradiction of it. I am bound to say, however, in fairness to the defendant, that it is possible that Mr. Fleet was mistaken. But it is of no great account, as the defence looks at this case. Admit that, then, for the time being, for this discussion, to be true---I do not say it is---but just assume it. See what it comes to then. That is, Miss Lizzie said to Mr. Fleet---assume that that is a fact---that as she went down stairs or went upstairs she saw Mrs. Borden making the bed in the spare room.

Well, what of it? What of it? True, you say. Your daughter goes up stairs this morning to her room and she sees her mother in the spare room making the bed. Well,

what of it? Well, they say she was upstairs when Mrs. Borden was making the bed. That is true. But she was upstairs in her own house, in her own room, at a time when the orderly woman of a house goes to look after the morning work. It does not appear one way or the other whether they were in conversation or not, and it does not appear whether she went up and down stairs that morning two or three or more times or not. Why, you would naturally infer, I should say, that it would be the commonest thing in the world for this young woman to pass up and down stairs to her room in the ordinary way of living. Why not? Do you suppose that your wives and daughters can tell the number of times

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they went up and down stairs six months ago on a given day? Not at all, or even the day before, unless they were very careful about something.

Now there is no doubt at all in my mind, that she did go up and down stairs. Mrs. Borden was making the bed. That was before she had been killed, of course. And while she was there, pursuing that work, nothing whatever except the passing up and down is what is claimed here. Now grant it all. Grant that she did go up and down stairs that morning about nine o'clock. Mrs. Borden was alive. It isn't claimed that she was killed then, at that time. But the Commonwealth undertakes to tell you without any evidence, gentlemen, without any evidence, that she stayed up there that forenoon, practically, until her father came in. I say there is no evidence of it, and I will show you that later. That she went up and down I do not care to question. I should expect it. That she stayed up, no; or that she was there, having stayed all the time until her father came, no.

Now she told about the note, they say, and that is evidence of guilt. She told about Mrs. Borden having a note. Now there is considerable interest in that question and I ask your attention to it. You know that after the tragedies, when Miss Lizzie was asked about where Mrs. Borden was, she told Bridget, so Bridget tells us, that Mrs. Borden had a note and had gone out.

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"I said, 'Who is sick?' 'I don't know, she had a note this morning, it must be in town.' "

Now that is what Bridget says. Then Mrs. Churchill comes, and she says, "I said," meaning herself, "I said, 'Where is your mother?' She said, 'I don't know, she has got a note to see someone who is sick.' "

Next question: Listen to it.

"What did Bridget tell you about Mrs. Borden having a note?" Answer: "She said Mrs. Borden had a note to go and see someone that was sick, and she was dusting the sitting room, and she hurried off, and said she didn't tell me where she was going, she generally does."

Now that is what Bridget told Mrs. Churchill. You get the idea. Both Bridget and Lizzie had learned from Mrs. Borden that she had had a note. Mrs. Borden had told Lizzie. Mrs. Borden had told Bridget. She had given Bridget the work to do, washing the windows. She says to her:

"I have got a note to go out and see some one that was sick." That was when she was dusting in the sitting room. That is when Bridget says it was to Mrs. Churchill. That was at the first when there was no mistake about it. And Bridget says, "She didn't tell me, she hurried off." Now Lizzie didn't say anything about her hurrying off; nobody says that. Bridget told it to Mrs. Churchill. She hurried off, and she, Mrs. Borden, didn't tell me, Bridget, where she was going; she generally does.

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Now have you the slightest doubt about that? Mrs. Churchill you saw. She was called upon three times to tell that, and she told it very clearly, and I think convincingly. Now notice the questioning that followed:

"That was what Bridget told you?" "Yes sir."

"That was not what Lizzie told you?" "No sir."

"Bridget said Mrs. Borden had a note?" "Yes."

"And she hurried off?" "Yes sir."

"She was dusting the sitting room?" "Yes sir."

"And Bridget says, 'She didn't tell me where she was going; she generally does?'"
"Bridget says-----"

"Bridget said that?" "Yes sir."

"That was not what Lizzie said?" "No sir."

"Now you have got that right, haven't you, no doubt about that?" "Bridget said that Mrs. Borden had a note to go and see some one who was sick. She was dusting in the sitting room, she hurried off, she didn't tell me where she was going, she generally does."

Now my friend who opened this case for the Commonwealth said that Lizzie told a lie about that note. He used that word.

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I submit that that will hardly stand upon his evidence. If he had heard the

evidence fully through he would not have uttered that expression, because here you have it proved that Bridget gave the clearest and fullest statement about this matter, and you will probably infer from this that Lizzie learned from Bridget that Mrs. Borden had gone out, and she had a note to go, because Bridget tells it with exact detail, and holds it down to herself. That is not criminal on the part of Bridget at all. I am only calling your attention to the directness of the testimony at the time right on the very moment.

Now, there is not anything in the testimony that really qualifies that at all. Miss Russell says that she heard the talk about the note, but she did not know who told it. Now, notice that. She got there, and Bridget was there, Lizzie there, Mrs. Churchill there, and Miss Russell says she heard the talk about the note, but she does not know who told it, so that you see you are uncertain there. Then Miss Russell tells about the conversation with Dr. Bowen, and with Lizzie about the note. Listen to it: "Lizzie, do you know anything about the note your mother had?" "And she hesitated and said, well, no, she didn't. He said, (Dr. Bowen) 'I had looked in the waste basket,' and I think I said (that is, Miss Russell)---no, he said, 'Have you looked in her pocket?' And I think I said, 'Well, then she must have put it in the fire.' And Lizzie said, 'Yes, she must have

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put it in the fire.' "

You see that the suggestion of putting it in the fire came from Miss Russell, not from Lizzie. Dr. Bowen had been searching the waste basket. He had looked around to see if he could find the note. He did not succeed; he calls their attention to it in the way I have stated, and then Miss Russell suggests that probably she burned it up, and they all assent to it, and very likely that was true. It was not of any account. The woman had got the note and tossed it away, very likely threw it in the kitchen stove and burned it, but we do not know anything about it, but they all seemed satisfied right there on the spot. Then he said that he had searched for it---Dr. Bowen,---it is Miss Russell telling it, and at any rate she says what was said about that was said in the presence of Lizzie, and "The same person said she must have burned it? Ans. I think I answered that question," that is, Miss Russell.

Well now, you get nothing from the officers, merely that Mr. Fleet learned from Miss Lizzie that Mrs. Borden had a note and had gone out. Officer Wilson says the same thing, that she said she had received a note, and that she thought she had gone out. That was after the murder and she said that Mrs. Borden had a note and she thought she had gone out, that is, during the forenoon she thought she had gone out. Dr. Dolan says the same thing, so that when you come to consider it you see that the evidence in regard to the

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note comes from what she told at the very first instant by Bridget and Lizzie, and if you believe, and the facts here seem to warrant that, if you believe that Mrs. Borden told both

Lizzie and Bridget about the note, it all looks plain. And why should it not? They were all in the family there together, and she receives a note to go out, and she did have the note, or else they both tell something that Mrs. Borden told that was not true, and we are not going to believe that. Taking the evidence that comes from the living and that drops from the lips of the dead, you must find that Mrs. Borden did have the note, and that she told the two women about it, and hurried off, as they thought, and did not tell Bridget or either one of them where she was going. It was not of any great account probably. She got a note to go out to see a woman, and did go out as far as we learn to the contrary. It was a natural and ordinary thing, and the note was tossed away and thrown in the fire. It was not a bank note to be kept, but a little scrap of paper probably indicating what was wanted.

Now, a person may say, "Where is the note?" Well, we would be very glad to see it, very glad. They looked after it and they could not find it. The construction of Miss Russell was that she had burned it up. Very likely that was it. They say that nobody has come forward to say that she sent it. That is true. You will find men now living perhaps in this county who do not know this trial is going on,

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do not know anything about it, do not pay much attention to it; they are about their own business; do not consider it of any consequence.

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And after a lawsuit is over, it very often happens in every court room that some one will come forward and say "Well, if I had really known that that question was in dispute, I could have told you all about it." Bless his dear heart, why didn't he come out of the cellar so we could see him? Well, sometimes people don't want to have anything to do with it; they don't want to get into the Court room, even if a life is in danger---women especially; they have a dread of all sorts of things. The note may have been a part of the scheme in regard to Mrs. Borden. It may have got there through foul means and with a criminal purpose. We don't know anything about it. But that a note came there on this evidence you cannot question. That Lizzie lied about it is a wrongful aspersion, born out of ignorance of the facts as they were to be developed in this case, not with a purpose to wrong her, but misstating the evidence as we all do when we do not know quite what is coming--- really anticipating something that is not proven. So I say that it is not true that Lizzie told a lie about it. If she did, Bridget did the same, and I would not say that for a minute. There is nothing to connect Bridget with this transaction. See how quickly you would suspect anybody because you get them under pressure. Now look at it. Suppose that Bridget were suspected of this crime and Mrs. Churchill came forward and told that Bridget said these very words that I read,---how quick some people would be to say,--- "Oh, Bridget

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did it; she did it because she told a lie about that note." Do you see it? It is plain, it is a demonstration. Now I dismiss it with the remark that nobody thinks that Bridget Sullivan had anything to do with this crime at all. Lizzie does not think so, because she has said so openly.

Now she told about her visit out to the barn, they say. She told the officers that she went out to the barn; went out in the yard,---some twenty or thirty minutes. Now remember that we get this information in regard to the time from the police officers. The others tell us that she said she went to the yard and the barn. It takes Assistant Marshal Fleet here to tell us about the thirty minutes---thirty minutes. You see him. You see the set of that mustache and the firmness of those lips and the distinction that he wrought here in the Court room telling that story. And there he was, up in this young woman's room in the afternoon, attended with some other officers, plying her with all sorts of questions in a pretty direct and peremptory way, saying to her, "You said thirty minutes, and now you say twenty minutes; which way will you have it?" Is that the way for an officer of the law to deal with a woman in her own house? What would you do with a man---I don't care if he had blue on him---that got into your house and was talking to your wife or your daughter in that way? You would do just what Marshal Hilliard did with Caldwell---get him out. That is the way to do. Recollect that this was after the tragedies: this was when the terrible pall was over that house and

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the neighborhood, and an officer should be pretty careful. Recollect that the air was full of policemen at that time: they were running in all over that house, putting her to every possible strain, asking her in her loneliness, her absence from any friend, her sister gone--following her up in this way, insinuating in that way and talking to her as if she were a liar. Well, I can tell the truth and behave pretty well if a man treats me decently, but I want to get him out if he talks to me as a liar to begin with.

Now she told about her visit to the barn, and they undertake to tell you that she did not go out to the barn. Now let us see about it. They say that is another lie. We have got so we know what the small words in the English language mean in the idea of the Commonwealth. We can get rid of three letters pretty quick, but you cannot dispose of the facts. Now let's see about that. Did she go to the yard or the barn? She told them she did, and they bring it in here and they say she could not have gone to the yard or the barn. Now let us see whether she did or not. If she did go out to the yard or the barn, then she was there, upon her own showing, at the time when the murder of her father was committed. You see that. That will end the case if you see it. Now Bridget Sullivan said, "I went right over to Dr. Bowen's, and when I came back I asked her 'Miss Lizzie, where was you?' I says, 'Didn't I leave the screen door hooked?' She says, 'I was out in the back yard and heard a groan and came in, and the screen door was

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wide open.' "

Now that is what Lizzie told Bridget right off. I am going to talk about going to the barn, and bye and bye talk about the groan,---take them separately. Now she says that she went out into the yard, you understand. What did they have in the yard? Pear trees. That is the evidence, and the evidence that in the partially digested contents of the stomachs pear skins were found. Bridget says Mr. Borden had been out and had brought in a basket of pears, and they had those in abundance. You saw the trees: the neighbors saw the trees; Patrick McGowan saw them and got up on one of them and helped himself. We know that: there is no lie about that. This was an August morning, and it appeared that before this time Lizzie had been ironing,---had been around the kitchen trying to iron some handkerchiefs. No doubt about that. She had been in and out about her work. She tells us she had been out in the yard. That was true, we will say, upon that statement.

Now Dr. Bowen said, "Where have you been?" Her reply was, "In the barn, looking for some irons," or "iron." Now both can be reasonably true, can't they? She could not get into the barn unless she went into the yard, naturally, and that she should stop there by the trees five or ten minutes is perfectly consistent. Does that look unreasonable? Do you not see families out in the yard, strolling about in your own yards, stopping under the trees, sitting under the trees, especially when they have a right to have a little leisure?

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Mrs. Churchill says, "I stepped inside the screen door and she was sitting on the second stair, at the right of the door. I put my right hand on her arm and said, 'Oh, Lizzie.' I then said 'Where is your father?' She said, 'In the sitting room.' And I said 'Where were you when it happened?' And said she, 'I went to the barn to get a piece of iron.'" Miss Russell says, "She told us about going to the barn. She said she went to the barn. She told us when she came in she saw her father, and he was killed."

"Q. Did she say anything about what she went to the barn for?
A. Not until I asked her."

"Q. State what you asked her and what she replied?
A. I said, 'What did you go to the barn for, Lizzie?' And she said, 'I went to get a piece of tin or iron to fix my screen.'

"Q. Did she refer to any screen in particular, or simply 'my screen'?
A. My screen."

Now Mr. Fleet told us that she went into the dining room, she said; that her father lay down, and that she went out in the barn; and he brings in the half hour---he is the only one that does. And then he goes there and talks to her about it, as to whether she means a half hour or twenty minutes. Now just listen to this man. Recollect when this was--- Thursday afternoon. Recollect he is the same man that said Dr. Bowen was holding the door on him---holding the fort. Think of it. And Mrs. Holmes and Dr.

Bowen and Miss Russell tell you, and Wilson, the officer who went with him, comes right up here and says there was not the slightest resistance; that he knocked at the door, and just as soon as Dr. Bowen could ask them if they were ready to have the officers come in---and I am sure that was perfectly proper---they were admitted without any trouble. Now this man Fleet was troubled, and he was a-scent for a job. He was ferreting out a crime. He had a theory. He was a detective. And so he says, "You said this morning you were up in the barn for half an hour. Will you say that now?" I think the man was impertinent---I beg your pardon, the defendant thinks he was; thinks he was impertinent. She said, "I do not say half an hour; I say twenty minutes to half an hour." "Well, we will call it twenty minutes, then." Much obliged to him. He was ready to call it twenty minutes, was he? What a favor that was! Now Lizzie has some sense of her own, and she says, "I say from twenty minutes to half an hour, sir." He had not awed her into silence. She still breathed, although he was there. Think about a woman saying something or doing something in the presence of a man who talks that way to her under those circumstances.

Mr. Harrington states that she said to him that she was there about twenty minutes. He asks her whether she would not have heard the opening or the closing of the door. "Why not?" You

were but a short distance, and you would have heard the noise if any was made." But Bridget said she did not hear the screen door shut at all, and she said she would not hear it in her room, and never heard it when it shut unless somebody slammed it or was careless about it. You remember that. Now you see there is no inference to be drawn from the fact that Miss Lizzie did not hear it when she was in the barn, or in the yard, for that matter. And you recollect how the side door stands with reference to the yard: That when a person is out around the corner under the pear trees, even under the first pear tree that stood from the south door to the barn, he cannot see up to that door, because of that jog. So that if she was even out under that pear tree anybody could have passed in or out that side door without her seeing him,---much more if she were in the barn, either up stairs or down stairs. Wilson has told us that she said "twenty minutes to half an hour." He was there with Fleet. Medley says "she said she was up stairs in the barn---I am not positive to the stairs part: she was up in the barn."

Now take that; is there anything unnatural or improbable in her going to the barn for anything she wanted? She was, you will say, a person who was free to go about and did go about, and went in the natural call of things that she was going to do. You have heard talk about the party at Marion, and you know where it is better than I do, but I suspect from what has been said about it that it [is] somewhere near the water and where fish swim, and it would not be strange

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if a party of women were going there, they would try to catch something---I mean fish; and when they got there they would want something to catch fish with. Perhaps they do; that is the way we bob around for fish up in the country. We don't have much to do with sea fish, but isn't that common? She said she wanted some lead for sinkers. She also said she wanted something to fix the screen. Perhaps she had both things in her mind. It is perfectly natural. She wanted a piece of tin or iron to fix the screen. If she had set out to be this arch criminal that they claim, she would have had it all set down in her mind so that she would tell it every time just the same, line for line and dot for dot.

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They say a story is true because told all times alike, but those of us that have dealings with witnesses in Court know that witnesses who tell the truth often have slight variations in their stories and we have learned to suspect the ones that get off their testimony like parrots, as if they had learned it by heart. Honest people are not particular about punctuation and prepositions all the time.

Now did she go to the barn? She says she did and her statement is entitled to credit as she gave it on the spot, the moment when Bridget was up stairs and might know about it. Did she go to the barn? Well, we find she did,--- find it by independent, outside witnesses, thanks to somebody who saw her. Possibly this life of hers is saved by the observation of a passer on the street. There comes along a pedlar, an ice cream man, known to everybody in Fall River. He is not a distinguished lawyer, or a great minister or a successful doctor. He is only an ice cream pedlar, but he knows what an oath is, and he tells the truth about it, and he says he passed down that street that morning and as he passed right along it was at a time when he says he saw a woman, not Bridget Sullivan whom he knew, coming along, walking slowly around that corner just before she would ascend those side steps. Now there was no other woman alive in that house except Bridget and Lizzie at that time. He knew it was not Bridget by the best of instinct, because he had sold her ice cream and he knew her. He says it was the other woman whom I had never sold ice cream to.

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Recollect that was Lizzie or some stranger in the yard. You will say undoubtedly it was Lizzie as she came back from the barn. It may be asked why did he look in? I say because any one might do so---they say Lizzie must have looked under the bed; I say Lobinsky must have looked into the yard. He was an enterprising young man, he was looking for business because he had sold ice cream there before and therefore he noticed the yard. Now is that something he remembers today and comes up here to tell about or anybody has bought him to tell about? Nobody will make that insinuation in regard to the defendant. Was he got to tell it? Let us see. He told it the 8th of August to the police and they had it all in their possession. Now, that is not a yarn made up for the occasion at all, and the only sort of conflict about it is attempted in this way, not to dispute it, but to

admit or say that Mr. Lobinsky is mistaken about a half hour of time. Mr. Mullally is one of the knights of the handle, you know. You know who he is. Mr. Mullally,---Mr. Mullally comes with a book and it is thrown down here on the table with a great display to us for us to pick it up and with something written in it. It is not competent evidence and has no business on the table, because it might be lost and carried away, and it should be,---but Mr. Mullally says that on the 8th of August he had a talk with Mr. Lobinsky and Mr. Lobinsky told him it was half past ten o'clock. Now if Mr. Lobinsky went by that yard at half past ten, he did not see Miss Lizzie go to the barn. Is Mr. Mullally

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mistaken, or is he biased, trying to work up the case? He had to stay in the court room until the other fellow was heard, to hold him. We had the twins here; they did not look alike. We kept them here. That is Mr. Mullally. Now you are going to say, Gentleman, whether you believe Mr. Lobinsky who stands uncontradicted and undisputed, or believe another man who is fully contradicted by a man with him who was his own associate on the police force. Now, Mr. Foreman and gentlemen, the Government knew where Mr. Lobinsky was, and that was at the shop of Mr. Wilkinson. They knew where he was. And they knew too that Lobinsky's horse was kept at Mr. Gardner's stable on Second street corner of Rodman, and they could have found whether Lobinsky had left the stable at eleven o'clock or half past ten. But we have not troubled them to do that. Mr. Gardner who owns the stable has told his own story, and has he not told you that Lobinsky's statement is correct, that he did not leave the stable until after eleven o'clock? He testified that that was because other teams were to be hitched up to go ahead of Lobinsky, and he was late so that he did not get away until eleven or five minutes past eleven o'clock. My friend Knowlton in cross-examining him wanted to know whether he told the time on his watch by the long hand or the short hand. But that is all right. It is a good practice, but it is no test. Gardner remembers it and fixes it even if Lobinsky did not have that watch. He tells us what time he left and the time he was passing by the

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yard on Second street, and then we have Mr. Newhall, a man from Worcester, who happened to be there. He comes here and tells you that he passed along the street and he fixes the time by the hour that he went to the bank and the places where he was that morning, and you have those three men that hold it down to the time I refer to, that is, half past ten o'clock. Is it not fair to say that Mr. Mullally is mistaken, to say the least? Then if they want to find anything more about it, we land Mr. Douglass in this case, who was there at the time in Fall River, having a horse. They knew about it and they could have proved about it, and they know it was as we say and yet they did not try to prove it. Gentlemen, as you take cases in court, carefully weighing the evidence, would not you say that Lobinsky went there at the time he states, and that the two others passed along that street, and that he saw Miss Lizzie going into the house? If that is true then the Commonwealth must take back the charge that she lied about going to the barn, and if she did not lie but told the truth about going to the barn, she was out of the house at the very time when the slayer murdered Mr. Borden.

I will stop at this time for a moment.

MASON, C. J. The Jury may withdraw with the officers for a recess of five minutes.

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One other thought, as you remember, that Lubinsky saw Manning as he was going down, and I think Gardner and Newhall also: and you know when Manning got there to the house all about it, so that you see it is confirmed again in another way. Then they have opportunity to find out by Mr. Wilkinson whether this man was really late that day or not, and as they have not told us anything to the contrary, we will assume that that is proved.

Now the District Attorney brought out the fact from Mrs. Bowen that when Lizzie sat there in the kitchen her hands were white and she was pale and distressed, as you know from the other witnesses. And I suppose from that, he is going to argue to you that she was not all covered up with rust and dust, that she got in the barn. Well, you will see the strength of that argument and think what it amounts to. Think whether she could not go up there and look. Whether she picked up anything there or not nobody knows; I don't know how he can tell that she was fumbling around with dusty iron and lead. There is no evidence here about it, and I have seen many a young woman and I presume most of them, who could walk out into the barn and come back without getting their hands dirty. So I will not stop long about that.

Bridget told about the groan and Mullaly told about the scraping, speaking of her statements, but there is nothing else. Whether she said that or not we don't know. And if

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she did, it was nothing more than the statement that all of us are likely to make. When a thing has happened we imagine that we heard something; if it had not happened we should not have heard anything. How common that is. Then there were noises not connected with this tragedy which might actually have been heard---there are noises in that street; you were there long enough to find out about that; such noises are a common occurrence. Then it may be that the people in their excitement---Bridget in great excitement, because she was running about breathless to find out something, and Mullaly in the breathlessness of his zeal, may have got it wrong---may not have got it just right. It is not a serious matter. They may argue it for all it is worth on the part of the Commonwealth.

She thought she heard Mrs. Borden come in. They undoubtedly will make something out of that, so I want your attention there to see about that. This comes now in the first place from Bridget Sullivan. She is asked, after detailing the circumstances to a certain point, "what happened then?" You recollect that Bridget had told Mrs. Churchill

that Mrs. Borden had a note and had gone out---"hurried off; didn't tell me where she was going." So you see anything from Bridget about that note and about Mrs. Borden's coming in is all sustained. Now Bridget Sullivan says, in answer to the question, "What happened then?" " 'Oh,' I says, 'Lizzie, if I knew where Mrs. Whitehead's was I would go and see if Mrs. Borden was there and tell her that Mr. Borden was very sick.' "

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You see the confirmation about that note business right there, right off. What should she say that she should go and see Mrs. Whitehead for if Mrs. Borden was there, unless she (Bridget) knew that Mrs. Borden had a note, and supposed she had gone out, as they both did? Then Lizzie said, "Maggie, I am almost positive I heard her coming in, and won't you go up stairs and see?" Bridget said, "I am not going up stairs alone." Now, following the testimony down, the very next question is:

"Before that time that she said that, had you been up stairs?" "A. No sir. I had been up stairs after sheets for Dr. Bowen."

Now remember how that occurred. When Dr. Bowen came he wanted a sheet to cover up the body of Mr. Borden, and he called upon Bridget and Mrs. Churchill to get one. They went into the sitting room and took the key off the mantel and went up the back stairs (where you went), unlocked the door to Mrs. Borden's room, got the sheets and came down the back way. So Bridget had been up the back stairs to that room, but she had not been up the front stairs. Therefore when they got down stairs with the sheets Bridget and Mrs. Churchill knew that Mrs. Borden was not in her own room because they had been up there. Therefore they knew that she was not in the back part of the house, and Lizzie knew that she was not in the back part of the house because they went up to get the sheets into Mrs. Borden's room. See how plain that is

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when you look at the testimony, and it is brought out plainly in the testimony here in the questions that are asked by the Commonwealth. So you see that when Lizzie spoke about going up stairs to see if Mrs. Borden was in Lizzie meant the front stairs, because they all knew, the three of them, that Mrs. Borden was not in her own room and that if she was anywhere in the house she must be in the front part of the house.

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So Lizzie knew that Mrs. Borden had had a note and had gone out, and Bridget knew that she had a note and had gone out, as they both believed; that she had seen her up in the room making the bed and finishing up before 9 o'clock and she had not seen her since, believing that she had gone out, and she recalled that she might have heard her come in before her father came back, before Mr. Borden did, and she said at once, "Go up and see if Mrs. Borden isn't up in her room. Mrs. Borden isn't here. I heard a noise as though she came in, and she must be up stairs in the front room some where. Go and see."

Now, that is natural. They thought that she was in the upper and back part of the house, and there can be no doubt about that because Miss Russell testifies to the same thing, Mrs. Churchill does, Bridget Sullivan does, and then after they came down there it was that conversation about going to Mrs. Whitehead's occurred. "Q. What happened then? A. 'Oh,' I says, 'Lizzie, if I knew where Mrs. Whitehead was, I would go and see if Mrs. Borden was there.'" Those two women were acting in perfect good faith about it, relying upon the truth of that note story which Mrs. Borden had told them. Then Bridget would not go up the front stairs because in order to go up the front stairs they must necessarily pass through the sitting room where Mr. Borden's dead body was lying, or else they must pass through the dining room way and go by the corner of the room. They went that way, and found Mrs. Borden was

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killed. Mrs. Churchill and Miss Russell tell precisely the same thing in substance about going up and finding Mrs. Borden.

Now, the suggestion on the part of the Commonwealth would be if this evidence was not so clear, that Lizzie knew she was up there, and if you assume Lizzie had killed her, then, of course, it would be quite plain that she knew where she was, but if you do not presume the defendant guilty to begin with, it shows nothing until she is proved guilty. Then we have no difficulty with the statement of these three women. They define it and make it very plain.

Mr. Borden, you will remember, came in, as I have said, about quarter of eleven o'clock. Now, the inference that Mrs. Borden had come in was the most natural thing in the world. Hearing some noise in the house, perhaps the shutting of a door---by and by we will say something about who might have shut it;---perhaps the movement of somebody else in that house that she heard,---she had no occasion to go to look and see; she was not called to, and her father came in, and, as Mrs. Borden had not appeared in the sitting room, you understand, and as the two women going up stairs found she was not in the back room up stairs, they would undoubtedly think if she had come in she was in the front part of the house, and then she recalled, as she thought she did, the fact, that she had heard a noise which indicated to her that Mrs. Borden had come in.

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Now I submit to you, gentlemen, that taking the testimony as it is here, and there is no other that I know of, it exactly and clearly gives the situation as it was, and just as they all acted.

Then they say that she showed no feeling when her stepmother was lying dead on the guest room floor; that she laughed on the stairs. Well, Bridget said something about opening the door. She said she said, "Oh, pshaw," and she said it in such a way that Lizzie laughed, standing somewhere at her room door, a room where she could not see into the guest chamber, and the door of which, so far as we know, was closed. Nobody

knows anything about it. What was there then why she should not laugh? Oh, they say, she had murdered her step-mother. Oh, hold on. That is not proved yet. You might think that everything was all right in your house, and somebody cracks a joke on you and you laugh, but if the evidence should turn out that your son had fallen dead on the floor above, that does not warrant the conclusion that you were laughing when his dead body was lying on the floor, because you did not know it. They say, she knew it. Well then, I should agree if she knew it and was laughing and joking about what Bridget said that she should be blamed, and we would criticize her and condemn her, but they have not any evidence of it. They assume it, and the District Attorney opened it, that while the dead body of Mrs. Borden was lying in the guest chamber Lizzie laughed. Well, the

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inference was that she had murdered her and then laughed; but that is assuming what they have not proved. They say she did not look at her dead father. Well, she had looked at him with horror. She had come in from the outside into the back hall-way and had come into the kitchen, and the door stood a little ajar, and she started to go into the sitting room when this horrible sight met her gaze. She had seen her father. Did they ask her to go and wring her heart over the remains that were mutilated almost beyond recognition? And because she did not rush into the sitting room and stand over against that mutilated body they say she is guilty. Why, Mrs. Churchill and Bridget Sullivan and Miss Russell could not pass through there except they touched the corner after the body was covered. Let us ask of other innocent people the same thing that you would ask of Lizzie. They say that Miss Lizzie did not show any signs of fear, but that Dr. Bowen and Mr. Sawyer were afraid. They told you about it. Well, how do they know she did not show any signs of fear? Why do they make any such statement as that? Because she said to Bridget, "You must go and get somebody, for I can't stay in this house alone." Is not that a cry of distress? "Go and get somebody. Go to Dr. Bowen's house. Go for Alice Russell. Go somewhere. I can't be alone." Look at things in a natural and easy way, in a common-sense way, assuming her innocence and not assuming her guilt. That is the way you will meet these things and all of these facts.

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Then they start off on another task, and they say she killed her step-mother and her father because that was a house without any comforts in it. Well, gentlemen, I hope you all live in a better way than the Borden family lived, so far as having good furniture and conveniences. Are your houses all warmed with steam? Do you have carpets on every one of your floors, stairs and all? Do you have pictures and pianos and a library, and all conveniences and luxury? Do you? Well, I congratulate you if you do. This is not a down-trodden people. There are lots of comforts in our country homes. I know something of them, but I remember back in my boyhood we did not have gas and running water in every room. We were not brought up that way. We did not have such things as you saw in the Borden house. It wasn't in a poverty-stricken, desolate quarters like a shanty where the folks simply live and breathe and do not eat anything. They paraded here the bill of fare for breakfast. I do not know what they are going to talk about, what

sort of breakfast the ordinary country people have in their houses. They do not live as well as we do in hotels, perhaps they live better. I do not wish to say a word against the hotel, but perhaps a coarser fare is as good as the fixed up notions that we get on the hotel table, but at any rate it is the way people live in our towns and cities, and no considerable number of people have come to harm. Andrew Borden was a simple man, an old fashioned man. He did not dress himself up with jewelry. He carried a silver watch.

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He was a plain man of the every day sort of fifty years ago. He was living along in that way. His daughters were brought up with him. They had become connected with prominent things in Fall River, for they lived at home; they had the things which you saw about them. You all know well enough they were not poorly supplied, and were not pinched and were not starved into doing this thing. Do you think it looked as if they were starved into the crime and pinched into wrong? Here was a young woman with property of her own. Starved to death, they say; pinched so she could not live, wrought up to frenzy and madness, so that she would murder her own father for the want of things, and yet, as has been shown here, worth, in her own right of money and personal property from four to five thousand dollars, owning also real estate in common with her sister there in Fall River. What is the use of talking about that? Did she want any more to live on in comfort? Do they say she wanted to get her father's property, or half of it? Do they reason that she went and killed the step-mother first so that when the property came by inheritance it would pass to herself and her sister? They must say something. They say she killed her step-mother because of trouble. That is one of the arguments about which I will speak by and by; but then there is no trouble with her father, as they see, and then she had a change of purpose, or she had a double purpose---to kill Mrs. Borden because she did not like her, and to kill her father because she liked him but she wanted his money. What sort of a compound

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are you making out of this defendant by any such argument as that? ---two motives running through it inconsistent with each other, each directed independently to a specific end; carried out as to one in the early part of the morning, and then not only changed her dress and cleaned herself and became another woman, but found herself inhabited with a distinct motive, and then slaughtered her father.

Sometimes when a young man goes on a rig and becomes dissolute and a spendthrift, he will do almost anything to retrieve what he calls the misfortunes that he has brought even upon himself, and many an old father has found the gray hairs in his head multiplied because of the waywardness of his boy. Sometimes these great crimes are committed in that way, but if you expect to find it in this case that a young woman like her was slaughtering her father, when she herself was moral, and upright and Christian, and charitable, and devoted to good things in this world, you will find something that the books have never recorded, and which will be a greater mystery than the murder itself.

Then they tell us about the ill-feelings. Well, gentlemen, I am going to consider that in a very few words, because I say to you that the government has made a lamentable failure on that question. They say that is the motive that so qualifies the different acts that are testified to here that it puts this defendant in close connection with the murder of Mrs. Borden, and then they say that Mrs. Borden being

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murdered, Lizzie murdered Mr. Borden for his property, or possibly they may say, murdered him to conceal her crime,---for that or some other reason, but it does not rest at all on this foundation of family relations. Let us see what there is in it. What have they proved? They have proved that from five or six years ago Lizzie did not call Mrs. Borden "Mother." Lizzie is now a woman of thirty-two or thirty-three years old, thirty-two when these crimes were committed. Mrs. Borden was her step-mother; she was not her own mother. It is true that Mrs. Borden came there when Lizzie was a little child of two or three years, and sometimes we see that where a step-mother has come into a family and has brought up a family the children know no difference and always call her "Mother" just the same. That is true in a very large degree, happily so too, but sometimes when the children get grown up and when they are told about their mother that died long ago, some how or other there springs up in the mind of the children a yearning or a longing to know of the parent that they really had, and how many a man says in speaking of the family from which he came, "She is not my mother." He calls her mother, perhaps. He introduces her as "My mother", but the first words after you engage him in conversation are, "She is not my mother; she is my step-mother. My own mother died long ago. She lies buried twenty five years, but still she was my mother."

I suspect that never a man never lets into the inner

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chambers of his heart the feeling that anybody else in the world can stand where his own mother did. You may close it over, you may talk about it as much as you will, but happy is the man that remembers his mother, that pure mother that lived to see him grow up, and kind as anybody else may be, there never goes out of his heart the feeling for that dead one that is gone, that stood first and foremost with him and nursed him in his baby-hood. It does not require passion or ill will to hold that feeling, begotten in the heart. Show me not the man that does not stand for the reputation and character of his mother, for nobody forgets that his own mother was the one he first was interested in, although he from a prattling child has never known her to remember her.

Now, says Mr. Fleet, in his emphatic police manner, Miss Lizzie said to him, "She is not my mother; she is my step-mother." Perhaps she did. We will assume she said it, but there is nothing criminal about it, or nothing that indicates it, or nothing that savors of a murderous purpose, is there? Why, Martha Chagnon, a very well-looking little girl that was here a day or two ago, stepped on the stand and began to talk about Mrs. Chagnon as

her step-mother. Well, I advised the City Marshal to put a cordon around that house, so that there will not be another murder there. Right here, in your presence she spoke of her step mother, and a good looking woman came on the stand afterwards, and I believe the blood of neither of them has been spilled since

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that time. Why, Lizzie, who undoubtedly speaks in just that positive way, you saw, when the police asked her about where she was and what she was doing, spoke positively. There are a good many people living in New England who will do the same. They know when they are insulted, and are free in expressing their minds, and sometimes do so too freely and talk too much, but we never think they are going to murder anyone. Now, you have got the whole thing right there in that statement, as they call it. Now, they say that Mrs. Gifford told us this. It was told on the stand. Let us have it for all it is worth. She is the cloak maker, you remember. I do not discredit her. "'Don't say mother to me. She is a mean good for nothing thing.' I said, 'Oh, Lizzie, you don't mean that?' And she said, 'Yes, I do. I don't have much to do with her. I stay in my room most of the time.' And I said, 'You come down to your meals, don't you?' And she said, 'Yes, but we don't eat with them if we can help it.'" That is the whole of it. That was a year ago last March. Now, my learned friend who opened the case said that Mrs. Gifford would say that she hated her, so my friend, the District Attorney, who makes the argument, will take out that, will admit she did not say any such thing. You heard her story on the stand here, and that was not so.

Now I agree with you right off that that is not a good way to talk. I agree with you that Lizzie A. Borden is not a saint, and, saving your presence, I have some doubts

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whether all of you are saints; that is to say, whether you really never speak hurriedly or impatiently. I hope that is so for the peace of your families, but I do know good looking men, just as good looking as you, if you will allow me to say it, that speak sometimes in their households a little bit hastily and quickly, and sometimes the daughters do, and sometimes the fathers and mothers do. It is to be regretted that they do, but they will. And yet we don't read of murders in those houses. There is nothing to indicate any deep seated feeling. You will hear people speak to each other on the street in such a way that if you thought it really amounted to anything, it would shock you.

Now, is there anything bad about this case where a woman like this defendant who speaks out openly and frankly and says right out, "She is not my mother; she is my step-mother."? She spoke so about the man who was called a Portuguese. What did she say? "He is not a Portuguese; he is a Swede." in just the same tone of voice. That is her way of speaking, you will find on this testimony, and she speaks right out. Now, those people are not the ones who do the harm in this world. The ones who do harm are like the dog that does not make any noise about it.

The dog that comes around to your heels and barks is not the one that bites. It is the one that stays inside and looks serious, you will find. So it is with individuals. It is not the outspoken, blunt and hearty that are to be heard about it that do the injury. But now I do not want to trouble myself about it. That is one single declaration, and that is all that the Government has shown with Bridget Sullivan who lived in that family two years and nine months, who was nearer to all of them than anybody else. She tells you the condition of the household. She says though brought in constant contact with them she never heard anything out of the way. There was no quarreling; everything seemed cordial among them. The girls did not always go to the table; they were often out late, and I suppose they did not get down to breakfast as early as the old folks. The longer ago that you were born, the earlier you will probably rise now. If you were born seventy years ago you will probably be up in the morning by four o'clock and be disposed to find fault with the Creator that it cannot be summer all the time with more light and longer days. But the girls did not come down until they wanted to. They had a right to do that. Bridget says she never heard a word of complaint. And mark you that Thursday morning on which they tell you that Lizzie was entertaining that purpose or plan to murder both these people---that is their theory and is what they will undertake to satisfy you of---that Lizzie was talking with Mrs. Borden. Bridget Sullivan says, "I heard them talking

together calmly, without the least trouble, everything all right." Mr. Borden talks about the meal and the conversation goes on in the usual way without the slightest indication of any ill feeling. That is the way my people do at home. That is the way your family greets you, in ordinary conversation. They are waiting for you to come back just now, and they will meet you in the same way I know, and there will be no suspicion about it.

Oh, they say, just look at her,---wretch and fiend and villain that she was, she could put all this on when she had terrors unimaginable in her heart and purposes that no language can describe. Well, gentlemen, you have to judge of people according to the ordinary things. There being no proof of such purposes on her part, you will not justify yourselves in ascribing them to her. You will remember that Mrs. Raymond, the dressmaker, a lady to all appearances, who came and testified of their being together a few months before, four of them, during dress making, sitting in the guest chamber sewing, a regular dressmaking party. Phillip Harrington ought to have been there and had the whole story developed to him, to learn more than he knows, if it is possible to put anything into his head on the subject. There they are. Was that an angry family? Was that a murderous group?

You take another thing: you have them there as Bridget says, and there is no evidence to the contrary, they have told

you the whole thing, when Emma Borden comes on the stand to tell you the inside condition of the family, and they will say to you that Miss Emma Borden, the sister who was away from home on a visit at this time, against whom they have not the slightest suspicion, but about whom they will say that her sisterly affection carries her along to swing her from the truth. You will judge of her. I will not apologize for her. She has a right to be where her sister is. It is creditable that she does stand by her and it will take a long time for a man to say in his heart she is untruthful for telling what she does here. She went on to say that they had trouble five or six years ago in regard to the property and there was no resentment; so far as Lizzie was concerned it was all adjusted. When we get the open and unrestrained testimony of Miss Emma we are told there was trouble. The father had put in Mrs. Borden's hands a piece of property, and she says we did not feel satisfied and we told him so, and then came the word to us through another person, Your father is all ready to give you a property for yourselves, to make it even, if you will only ask for it. They asked for it and got it. And Emma says she never felt just right about it afterwards. She says up to the day of the death of Mrs. Borden she had not overlooked it, but she says as to Lizzie there never was any trouble about it,---never was after that time. There is a difference between the two girls. One blurts out exactly as she feels; the other bears what she is called upon to endure in

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silence. You will find the same fact, separate and distinct dispositions often in the same family. From that time, five years, more than half of it covered by the residence of Bridget Sullivan, there is no word of any trouble, or indication of anything except this remark made to Mrs. Gifford. If you take the whole of it, if Mrs. Gifford has not slipped in a single word,---take it all, what is there in it that signifies anything? Enough to find the motive for these dastardly crimes? But there is another thing: Here was an old man with two daughters, an older one and a younger one. They had gone on together. He was a man that wore nothing in the way of ornament, of jewelry but one ring, and that ring was Lizzie's. It had been put on many, many years ago when Lizzie was a little girl, and the old man wore it and it lies buried with him in the cemetery. He liked Lizzie, did he not? He loved her as his child; and the ring that stands as the pledge of plighted faith and love, that typifies and symbolizes the dearest relations that is ever created in life, that ring was the bond of union between the father and the daughter. No man should be heard to say that she murdered the man that so loved her. Old fashioned man, lived in a simple way, did not care anything about the frivolities of life, not attractive perhaps to some of the younger and go ahead people, but one who lived in his own way, had worked himself up to what would be called a fortune, had taken care of it, was then superintending its use and the income, and for all that on his little finger was that ring which

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belonged to his little girl. You may tell me if you want, that the relation between that parent and child was such that alienation was complete and wrong was the purpose of her heart, but you will not ask me to believe it. Mind you too, that on this question of the relations of these people there is not a word that comes from Mr. Morse of any ill feeling,

or from Miss Russell or any other living person, and so I think you will agree with me that there is not anything whatever in this assumption that the feelings were such that this defendant could have had this guilty intent and worked out this guilty act.

I pass. The learned District Attorney in his opening said that there was an impassable wall built up through that house. But the moment we got at the wall, down it went, doors flew open, and instead of showing a line in the house shut in and hedged in by locks, we find that Mr. Borden's room was doubly and trebly locked, Bridget's room was locked and Mrs. Borden's door was locked, and you find Miss Lizzie's room locked, as well as Emma's, the guest chamber locked, the parlor and the sitting room---I don't know but what everything, and that was all because there had been a burglary in the house and barn, as it came out in the story, and Mr. Borden, old fashioned man that he was, thought they wanted to lock the house pretty securely. He kept a safe in that back room in which he kept valuables. This was locked day and night, and no little care was given to the fastenings of the doors in all parts of the

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house. But you see the impassable wall was not as against the two girls but was simply a matter of protection to keep people out. If it was an impassable wall and not to keep people out, why did they have a lock on the door to the back stairs and why did they lock up the attics?

They say she rushed in from the outside and discovered the homicide. There is no proof of that. In another place they say she did not go out of the house. They claim in one breath that she did not go to the barn, and then say that she rushed in and discovered the homicide. Rushed in from where, if she did not go out? But if after she discovered it, she passed in and saw the horrid sight, the testimony shows that she retreated to the side door and got as far from it as she could. She undoubtedly dreaded an attack from the murderer who had killed her father and she would naturally get as far from the body of her father as she could, and she stood at the closed screen door with the open wood door behind it and shouted to Bridget. Bridget was the quickest to respond. She could not go to the front part of the house, for there was nobody there, without passing the horrible sight, her dead father. Where could she go? Where would you go under the circumstances? She called for Bridget to run and get some one as quickly as she could. If she had murdered those two people, do you think she would have called for Bridget as quick as that? Would not she have gone down the street or done something of that kind where she would not have been seen in such close proximity to the scene

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of this tragedy? But she went and shouted for Bridget and asked her to come down, all in trepidation and alarm, to find Mr. Borden killed. You cannot faint away, you cannot look pale when you try to and so when Bridget had gone this woman stood pale and trembling by that open door on that August morning and looking over she saw Mrs. Churchill. Mrs. Churchill too saw her and observed the distress she was in and as she stood by the closed

window where she could not speak to her she hurried at once to the open window and called out, "Oh, Lizzie, what is the matter?" Have you any patience with any man who will tell you that Lizzie stood at that door that morning like a marble statue without any feeling? What drove Mrs. Churchill to that window? Nothing but that picture of distress and agony that she saw across that narrow space and then she went over and Lizzie says, "Oh, Mrs. Churchill, come quick." and she went as quickly as she could. What do they want people to do? Then when she got there, she was crying, she was faint. At that they bathed her, trying to restore her, Dr. Bowen, Mrs. Churchill, Miss Russell, Mrs. Bowen all contributing to get her to lie down on the lounge in the dining room. Oh, but they say she was a hardened rascal and did not want to lie down. It was all a make up. Did she grow pale and faint all for a sham? Let us have some consistency in this case. I said crying. The District Attorney said she did not cry. But Bridget says she did, and Bridget was there and Brother Moody was not. Bridget said in her former testimony

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in answer to Mr. Knowlton that she was crying. You heard the evidence read by Miss White, the stenographer who took it down, but now Bridget says she does not remember it. But we will take it as we find it under oath. Bridget says she never saw her so distressed and agitated before. I have told you about Mrs. Bowen. All these three people were sick in the house on Tuesday, including Lizzie. It was in August weather and whether they had eaten something or the weather had caused it we do not know, but the Government seems to be floundering around with the idea that because Bridget was not sick, they had been poisoned. There is no evidence of this. I have known the time in my own family that sometimes two or three members fell sick and one escaped. It is not uncommon for several in one family to have the grip and the rest escape it. They are to be congratulated. You cannot draw any inference from that. Then it was said she went round to see Miss Russell Wednesday, and told her about the burglary, and how the father was aroused and took her to Dr. Bowen and was not going to pay a bill. He was a man who spoke his mind, and Lizzie was getting worried about it. They had had a burglary in the house and in the barn, which is not contradicted, and she was getting alarmed, and she said so and talked about going to Marion. Miss Russell said, You had better go, and she finally said she would. She goes down there and talks it over. Naturally she would. Miss Russell had visited there and told her all about it. Those were indications, they say,

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that crime was in her heart. There are a good many people, we may say that believe in premonitions, and things will happen sometime for which we see no adequate cause for predicting and often the succeeding events happen through a mere coincidence, there is no connection between the two, but an event will so happen as to seem to furnish a connection. I do not say it is one way or the other. It is not for me to declare, but you will recollect that Miss Lizzie's illness was continuing at that time, and we know from sad experience that there is many a woman at such a time as that is all unbalanced, her disposition disturbed, her mind unsettled for the time being and everything is out of sorts and out of joint and she really is disabled for a period of time. Now that appears to have

been the case at this time. It is a common fact and a common explanation in every day life and you cannot overlook it.

There was talk about poison and poison was feared in the family because all had been made sick. Then they say for some reason, I don't know what, that Miss Lizzie went down stairs in the cellar that Thursday night. Well, she did with Miss Russell. But what did they do? They did what a good many of us have to do at home. They did something about the house. There had been people there examining the room and looking over the bodies and there was water in the pitcher up in her room and people had been washing there during the day and Mrs. Holmes said, "If I should stay there all night I should

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want the slop pail emptied." These two young women went downstairs. You will be inclined to say there was not any criminal act in that, especially as Miss Lizzie took Miss Russell with her and everything was seen that they did. They say after that Miss Russell returned and Lizzie came with the light all round and sat it on a table in the lower wash room and went over and stooped down near the sink. I will not say she did not stay there all the time,---stooped down, but she really did straighten up at length and get back up stairs and took the light with her. What of it? What of it? They say that those clothes which were taken off the dead bodies were lying there in a pile. Very well. Take it for what it is worth. But that house was surrounded by policemen and officer Hyde was there and Miss Lizzie had a full grown kerosene lamp in her hand and the windows were all open with ample opportunity for observers outside to see in and those within the house knew that policemen were all round so that there was nothing concealed. Now a person who is going to do anything to cover up crime will not carry an electric light with him. You don't usually travel round when contemplating crime, in that way. The criminal goes into the dark to do his dark deed. Miss Lizzie did not see anybody though they say Officer Ferguson was in front, but he is not brought forward, and if he were he could not see through two high board partitions. That would tax the energy and perspicacity of even a Fall River policeman. Where is Ferguson? He is not here, so he did not see

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anything.

Taking again her own sickness at that time, the fact that that pail was standing right by the sink---I am not going to make any suggestions, but I am quite certain that you will guess what she was there for. I will leave it there.

Then they say she burned a dress. Well, the general thought in the mind of everybody is that if a person burns up anything in connection with some important transaction, he does it to get it out of the way for the purpose of avoiding observation. That is natural. In the olden days in New England a rag bag was the most common thing in a household and rags were sold to the paper makers because they were worth something to them, but nowadays when rags are not worth anything you have almost to

pay a man to take them away from the house, the paper makers do not want them, and a common way of getting rid of old things is to put them into the fire and burn them up to save being annoyed and pestered by tramps. The Government stakes its case on that dress. The Government says: You gave us up the blue dress that lies before me. That is not the dress. You practically commit a falsehood by giving us that. The defendant says that is the dress. The Government says, we want that Bedford cord and if we had that Bedford cord we should know all about it, and you burned the Bedford cord. Now let us look at it. There is a dispute here, a disagreement, not intentional but unavoidable among the persons who saw what Lizzie had on that morning, some of them

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saying that she had this very dress, or a dark-blue dress, and another and Mrs. Churchill speaking of it as a lighter blue than that, coming almost up to a baby blue, or something a good deal lighter than this. Now between the two there is a difference of recollection, just as good people on one side saying it was a dark blue as those on the other who say it was a light blue. But you will remember that at that time there were several ladies in there and Bridget was there with a lighter colored dress, so that those who speak of a lighter colored dress may have had in mind what Bridget had on. It was not a time for examining colors and afterwards they recollected as well as they could. They are good honest people, but some of them are mistaken and of course are not wilfully stating what they do not believe to be the fact. So that there is a conflict of testimony about that. That dark blue dress lying here has [been] given as the one Lizzie had on. They say you had a light blue dress. We say it is not so, and a number of witnesses say it is not so, but we say to you when we produced the dark blue dress you took it and put it into the hands of Dr. Dolan, the medical examiner, and you went away with it and used it in framing your indictment, and now you find through Professor Wood, a man who knows something, instructing Dr. Dolan, that there is not and never was any blood on it. Then the Government does not want that dress but another. They want the Bedford cord. We will talk about it then. Let us look at it. Suppose they had this Bedford cord.

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Lizzie had it on, you say, that morning. That is the present theory. The Government said she had it on up to twelve o'clock so that she did not change to the pink wrapper until that time. The witnesses all say and every single person who has testified says that while she was there and about with them, including Mrs. Churchill, Bridget and Dr. Bowen, Mrs. Bowen and others, that there was not a particle or spot of blood on it. They say there was no blood on her hands, her face or hair. I am talking now of the dress, principally. Now recollect that she had that on. Policemen were coming in all about there. She was lying on the lounge. They tell you that that dress was covered, or had blood spots on it and not a living person saw or suggested it. Suppose she did burn it up, the time that had elapsed for observation would be long enough. They had all had it to look at at that time. They had all seen her and every one says that there was not a spot of blood on it. So you see you start with a dress that every one of the witnesses they produced says did not have

blood upon it. Now, you have removed from that all idea that that dress was burned with a wrongful intent because all the witnesses say it was perfectly clear of blood. Now what more? That dress was in that closet, you gentlemen saw it over the front door and there it remained. In that closet were 18 or 20 dresses and the Government witnesses claimed that they did not see any such dress notwithstanding that Miss Lizzie had eight blue dresses of different shades in that

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hall closet. They examined and did not see any that had a particle of blood upon them and so now the pretence of the Government is that that dress was not in there; but Miss Emma says when she came home on Thursday night she went to the closet room to put away her clothes and that on Saturday night she was there again and that dress was hanging on the second nail of the nails that were driven into the edge of the shelf. She says she discovered that old dress hanging there that had been covered with paint ever since May, and by covered with paint I mean, stained and daubed with it. She says she spoke to Lizzie about it, saying why don't you get rid of that thing? I can't find a place to hang my dress on. It had been in there and Saturday night they ransacked this place and found the dress with what they supposed was blood upon it. It was carried to Dr. Dolan who made the discovery certain to their mind that would convict this woman and so they did not want anything else. They went through the form of looking over everything else but had got the damning evidence here; but when Dr. Dolan conversed with a man who knew something, they were told it was not blood at all, and then they said: Get us another dress. Now is it true, was there grease or paint on it? We have brought you the painter here that painted that house a week early in May and we have brought a dressmaker who made the dress, and the painter has told us that Lizzie did the superintending of the painting and got up at 6 o'clock in the morning to see that the paint was of the proper color and says that she tried it on the side of the house. You have heard Mr. Grouard who testified that that dress had got soiled and said it was not fit to wear,

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and then it was not worn of any account, except on the days when she had dirty work to do, and Emma knew about it: Mrs. Raymond knew about it, and it is the indisputable fact that it was besmeared with paint and it was not fit for anything else. Why, we are talking about a dress that did not cost but 12-1/2 or 15 cents a yard, and took 8 or 9 yards to make it, and did not cost altogether when it commenced, probably over \$2 and was not good for anything after they got it done, because the material was so poor, wearing out and fading out. And then it got dirty, got paint on it, and what more did they want of it? As Emma said, "Put it out of the way, why do you keep that old thing?" This morning, you remember, was after the police has searched everything in the house so completely that there was nothing more to be found unless they took the paper off the walls and the carpets off the floors, and we will take their word for it. Unless that, there was nothing more to be seen and nothing more to be found, and they had had all they wanted and had got her clothes and her stockings and even an unmade dress pattern and wanted to see if that had not been made up into some sort of a mantle to wrap her up in. They had got the

whole thing and looked over everything, and had taken all they could find and all they wanted and notified them that they had got all through. Then, in obedience to Emma's injunction, Lizzie walks into the kitchen with it that Sunday morning, the windows all open, no blinds shut, policemen in the yard, looking right in at everything

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that was going on---and deliberately, and in the presence of Emma, Emma saying to her, "Well, I think you had better do it,"---put it into the fire and burnt it up. Had not she time enough from Thursday morning down to that time to burn it up without anybody's knowing it, if that was covered with blood? Had not she time enough to have got it out of the way? And if she had that purpose to cover up this crime, if she had committed it, would she have burned it in the presence of her sister and Miss Russell, and said she was going to do it? That is not humanly probable. Now you have got the whole thing about the dress. There is no concealment about it. And when Miss Russell in her trepidation, and having been advised by somebody about it, came to her and said, "I think you have done the worst thing you could in burning that dress," Lizzie spoke up in her prompt and honest way, saying, "Oh, why did you let me do it, then?" reproaching them for not advising her against it. And then, truthful as they are, when they knew Miss Russell had been questioned about the matter, they said, "Tell all you know about it." And Miss Russell walks in to the man Hanscom and says she has come to tell him because they said "Go and tell all about it." Lizzie said, "Go and tell all about it." It does not hurt people sometimes to tell the truth, to tell all about it. You find people like this defendant that speak sometimes impulsively and suddenly, but after the brain within that leads them to utter the truth although the circumstances might seem to indicate suspicion around them.

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But, gentlemen, they hang upon that one blue dress. They have it in the testimony now; they know all about it. Their own witnesses that they bring here do not help them at all in this theory. But I ask them this: if Lizzie Borden killed her mother at 9:45 o'clock in that morning, and then was ready to come down stairs and greet her father and meet him, having on that blue dress, do you think that is probable, besmeared and bedaubed as she would have been with the blood of the first victim? Standing astride her and chopping her head into pieces by those numerous blows, blood flying all over the walls and the furniture, on the bed and everywhere, wasn't she touched all over with that testifying blood?

Then of course they are going to say, "Oh, but she changed her dress, and then when she killed her father she either had that back again or she put on another." Did she have it back again? Then she had to put that on over her clothes again and over her person, exposing herself to have her underclothing soiled in that way, a thing not probable in any way. And then if she put on another dress, then there were two dresses to burn and dispose of, instead of one, and the government only wants one---they have all the rest. Think of it! That she walked right into that sea of blood and stood there slashing it over herself in the first murder, and then went and took off that dress and laid it away

until her father came in, and then dressed herself for the second slaughter. It is horrible to contemplate. I said it was not morally or physically possible. And yet the government is

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driven to that extremity in its theory about this case.

Well, they will go another step yet in their theory, I think likely. I would not wonder if they are going to claim that this woman denuded herself and did not have any dress on at all when she committed either murder. The heart waits to learn what theories they will get up about this woman without evidence. First, create your monster, and then put into him the devil's instincts and purposes, and you have created a character. But start with a woman, with woman's impulses and a daughter's love, and your imaginings are foreign and base.

Then they say that she murdered these two people because Mrs. Reagan---I forbear almost to mention her name---came up here and told you that those sisters had a quarrel, and that Lizzie said to Emma, "You have given me away." Gentlemen, if there is anybody given away in this case it is Mrs. Hannah Reagan, and nobody gave her away but herself. And she is gone so completely that the government did not think it worth while to call her on the stand again. The whole business came out here, and I dare to say to you that I shall call your attention to whether you think that those bald and blank statements of Mrs. Reagan, supported as they actually are by Marshal Hilliard when he is recalled to the stand---they brought him in for his good looks, not because he was going to contradict the witnesses for the defence, because he actually sustained them. But you have Mr. Charles J. Holmes and Mrs. Holmes and Mrs. Brigham and John R. Caldwell. Now I have got out of the church, you know: I do not mean I have

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got out of all church, because I presume Caldwell goes somewhere, but what I mean is, we have got out of the church that the Holmes go to and the Bordens go to. You know sometimes people say that because people go to the same church they will say anything--- I do not believe that. But we have got right over among the reporters for the solid truth, now, and we have got John R. Caldwell and Thomas F. Hickey and John J. Manning. They come out of different papers and out of different cities, and those gentlemen tell you they went to Mrs. Reagan and she said there was not a word of truth in it: and while Mr. Caldwell was trying to find out the facts from Marshal Hilliard, that official, in the abundance of his politeness, told him to get out. My learned friend asked Hickey if it was not a "scoop" between the Boston Globe and the Boston Herald. I am not going out of my way to advertise those papers: they are enterprising papers and they do a great business and are always looking out for getting scoops on one another: but Mrs. Reagan got scooped pretty badly. Met by everybody, isn't she, when Emma says that from first to last there has been no ill feeling between them and that there is not the slightest foundation for this story. And we forbore to call Mr. Buck or anybody else who knew anything about the matter: we might have done so but you were tired: you said, "Deliver us from any

more Mrs. Reagan or anything she can tell us."

Now it is said that out of these contradictions and verbal admissions a verdict of guilty ought to come. Nobody

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will recognize better than you on the question of verbal admissions that it is not possible for anybody under the pressure of the moment to recite them just as they were given. A slight gesture or expression will tell what you mean. When a person tries to repeat them before 12 men, he leaves out the expression of the voice and the gesture, and you do not get the whole meaning of the phrase. Besides, when the person is charged with crime and officers are making inquiries, you have to be extremely cautious when you look at his statements, because the vigilant officer is watching for evidence of the crime, and he tries to recollect it just as he wants it, even if he does not have any design to do wrong, his mind is colored. So you find this young woman confronted by Harrington and Doherty and Fleet and Mullaly and Wilson and Medley and Desmond, all of them investigating and interviewing her in her room, with those bodies lying there untombed in that house before the funeral. And they say that possibly she contradicted herself in some little things: and you noticed the humor there was about it when Philip Harrington said, "I advised her not to submit to another interview that day." I thank him. But in walked the rest of the score, and they proceeded to interview, not asking Harrington's leave; and Harrington himself went there that night again to try his search over with her. That is the way they dealt with her.

Now they say that if these things, gentlemen, separately stand, any of them, put them all together and they will stand. Now, gentlemen there is not one of them that,

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interpreted in the light of the common every day transactions in the household, is entitled to your credit. And if not, then you cannot group them so as to make them strong of any influence.

She did not try to get Bridget out of the house. If she had undertaken to do these deeds, think you not that she would not have sent Bridget down street to buy something, to go for the marketing, to go to the store, one thing and another?---or send her on some errand, and then have had time undisturbed? No. You know that she would. But instead of that, everything goes on as usual, and Bridget was about the work. Lizzie happens to walk out to the door, and Bridget says to her---Lizzie was not trying to lock the door---there is no evidence of that---Bridget said, "You needn't lock the door, I will be around here." Bridget knew what the habit of that house was, and so she said, "You needn't lock the door, I will be out around here." So Lizzie did not lock it. Lizzie called her attention later, after she got the work done,---and that, they say, was after Mrs. Borden was killed---she called her attention to locking the doors if she went out, because she herself might go out. And she spoke to her about the cheap sale at Sargent's, and there

is no doubt about that being true, because they could readily find out in Fall River whether there was any cheap sale at Sargent's at that time.

Now these are the grounds on which the government will claim or has claimed --- and I don't know what other theories

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they have claimed---the guilt of the prisoner. I have told you what was the position of the assailant in both the murders, and that is agreed to by all the doctors in every respect: they all put the murderer of Mrs. Borden astride the body, and they all told you and you all know it from your knowledge and common sense, that a murder could not have been committed under those circumstances striking into a skull filled with blood, flying in Mr. Borden's case from the severed carotid artery, flying all over the parlor door, flying upon the hinge of the kitchen door, and not flying on that table that stood close by because the assassin as he stood there at the head of Mr. Borden was striking right across in this way and not striking off there, because the head was not off there: the table stood on the right and did not happen to receive any of the spots, but the person of the assailant in both cases must have been thoroughly covered and spattered. So say all the doctors, every one of them. Dr. Dolan tells us that Mrs. Borden's height was five feet three inches, and Dr. Cheever says that the wounds on the top of the head, were, in his judgment, caused by the assailant standing up and striking her when she stood up, and he says that would come from an assailant of a greater height, who would have to strike down. Now there is no evidence as to what Lizzie Borden's height is, but you have seen her walk in and out, and you have a right to say how near she comes to five feet three inches. You can judge. So that you take those facts, and you find the position of the assailant, and you find the results, and you find that the

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person, upon everybody's statement and without going to experts,---you know as a fact that he must have thoroughly covered with blood.

Now what was it done with? The government has a theory about it, or at least seems to have a theory, and then does not seem to have a theory. And if we can tell---we shall know perhaps, bye and bye, but now we do not---we are in ignorance---we should like to know, I wish we could before have found out what did this deed. You have had all the armory of the Borden house brought here. First, these two axes. I put them down, because they have the seal of the Commonwealth to their credit when they are declared innocent. (Laying down the two axes). Then I pick up this one (holding up hatchet with plain head) and they tell me that is innocent and had nothing to do with it. I put it down in good company (laying hatchet down with the two axes). I pick this one up (picking up claw hammer hatchet) and they tell me today that that is innocent, and I put that down immediately in the same good companionship, except I want to talk about it. Let us see. The claw-hammer hatchet is four and a half inches wide on the edge. Dr. Dolan says in his testimony that that could be an adequate instrument and a sufficient instrument to

produce all the wounds. Now remember about that fitting of that piece of tin into the skull. You have got the medical examiner, appointed and commissioned in this Commonwealth, saying that that is the hatchet with that breadth of 4-1/2 inches, that would have done these deeds, including those

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wounds upon Mr. Borden's head. Then comes Dr. Draper, who says that the cutting edge of the instrument which caused the wounds was 3-1/2 inches, not 4-1/2. Dr. Cheever says that he puts the cutting edge at 3-1/2 inches; it might have been very considerably less; it could be done by one 3 inches wide, possibly by one 2-3/4. These are our experts that they are talking about. We do not usually hang people upon the testimony of experts. It is not safe. You see that. Dr. Dolan says that that one fits the bill. Dr. Draper says that one 3-1/2 inches fits the bill. Dr. Cheever says that one 2-3/4 inches is sufficient. So, gentlemen, you are confronted with the actual fact in regard to this theory that a certain other hatchet, to which I will allude, of 3-1/2 inches, did the jobs, because the doctors themselves do not agree and they cannot agree and they do not know, and Dr. Dolan says that he maintained the theory, and he knows it now, held up to it then, that this was used because of that rectangular shape of the head the crushing blow upon Mr. Borden's head was caused. Now there you have it, one man saying that that is what did it or that is what could do it, another one saying that that could not do it, but that one 3-1/2 inches did do it, and then another one comes along and says it might have been a 3-1/2, but a 2-3/4 or 3 inch would do it, and would have accomplished it. And as you and I all know, when we strike a hatchet like that down into something and then pull it up---as we are standing over the object---you cut into a squash---did you ever try that on the floor?---strike down that

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way and draw it up---don't you know that you make a broader cut than just the blade of the hatchet? You can tell about that just as well as I. You have lived on a farm, some of you, and know those things. That is, if you strike it right down in and let it stay there, then I agree that you will get just the breadth of the edge of the hatchet: but if you stand up over it and strike in like that, and draw it out as a person would in striking rapidly those blows that have been described here, you would inevitably make a broader cut. Dr. Dolan is reasonable on the idea that you strike it right down in, perhaps, and there are blows on one of those heads that are as large as this or larger, while there are blows that are smaller than any of the hatchets that they bring here. So that you see there is nothing definite in this testimony that they have given here, and we find either that they come to this extremity---they say, "We experimented with a piece of tin on Mr. Borden's skull as we find it, and we say that it is 3-1/2 inches. But Dr. Cheever says it was not necessary for the hatchet to be that length; it could be done just as well with one 2-3/4 inches, and Dr. Dolan says it could have been done just as well with one 4-1/2.

Well, then comes this little innocent looking fellow called the handleless hatchet, and that is the one on which you first think the government is going to stand. They have

abandoned the claw hammer, so I will bring it down, somewhat disgraced by its former associations and suspicions, but just as innocent---all four of those---as is the defendant sitting here today: not guilty, all of them. They have been suspected;

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the police have had them; Dr. Dolan has sat on them. He found blood on them all, found human hair on one; sent off to the professor, and it turned out to be the hair of a cow. Blood on them all; and Professor Wood walks up and he says there is not a particle of blood on any one of them. Well, then they find this little fellow, and they find this down in the old cellar, thrown up in an old box that had old tools in it, and they find that covered all over with ashes, with the handle in the eye as it should have been, and assuming that it once had a handle that had disappeared from it, and of which it had been bereft, and it was lying there, of no account, and when the officers went down there and got those four that I have put aside as innocent, they did not take this handleless hatchet here. Now whether Mr. Mullaly or Mr. Fleet is right about it, there is no handle here now, and we will leave them to explore, and when they find it I hope they will carry it to the British Museum, because it ought not to stay in this country, and I hope they will be there to deliver a lecture upon it, to tell the astonished multitude which one of them found it and which one did not find it, and which one of them saw the other put it back into the box when he did not put it back into the box. That is their story, the way they stand. Now you have it, and they try to claim to you that this hatchet had something peculiar about it. Well, you will have it to look at. They say that it was all covered over with rust and all covered over with ashes, etc. I should expect everything to be covered with ashes. One of the

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policemen tells us it had been dropped in the ashes. Well, that is down cellar; it had been lying in the ash heap, and it was then. Mr. Borden, who never threw anything away,--- who even carried home an old lock to save it and was going to put it up in his barn sometime, had probably put it away there to save it, and it happened to be in the ashes and was tossed there in the box and had fine dust upon it, and they say it had coarser dust upon it. Yes, I have no doubt that it had. I have no doubt there are farmers on the jury, and I have no doubt in your barns or your shops or cellar you will find some of these old things that you have thrown away. This is an Underhill hatchet---one of the kind that you and I remember well when we were young: there have been thousands of them in use all around in the New England towns. When you get your magnifying glass and examine it you will see the words upon the blade "Underhill Edge Tool Co." You can tell just as well as I, and you will not stop very long discussing these theories about dirt and dust and coarseness of ashes on that old hatchet down there in the cellar. You will not stop long there. I will not trouble you to find out about who wrapped it up in a paper, Medley or Desmond. That is of no account. That is one of the little by-plays in this case, and it only illustrates the peculiarities of the officers. It was carried off to the police station and left there on the floor, called of no account, and they went through the preliminary examination on the four that I have laid aside, and found in them sufficient evidence to

convict this defendant

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until Professor Wood appeared upon the scene, and when he told them there was nothing on them and no significance about them, then they had got to look for something else. Then they went and got this handleless hatchet, which Mr. Fleet says when he found it he threw back in the box because it played no part. You recollect that. He said it played no part. They did not think it was of enough account to take it away: and it lay around there in the police station until August 30 before they paid any attention to it, when they picked it up and gave it to Professor Wood. Now they start on the theory that that handleless hatchet did the business. Why, gentlemen, that hatchet has got to be sharp enough to cut the eyeball, which you will make up your mind whether it would or not. It has also got to be sharp enough to cut Mrs. Borden's natural hair off as cleanly as a razor would do it, or a shears. Do you believe it? Cut a mass of hair right off like shears? It might tear it, snarl it up, break it, but not the other thing. Now this hatchet was not referred to at the preliminary examination at all. It formed no part. Fleet said it took no part, and it was of no consequence. He threw it back into the box with the others. Bearing upon the rust, do not forget that the box in which they were put was an old salt box. Did you ever have an old salt box that you put old irons in, that you did not find them rusty? That is a good place to put irons if you want to get them rusty. The remains of the salt in that box as the axe was thrown into it would just be sufficient to rust that axe. It may be

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argued that there are no ashes on it, but you will have the magnifying glass, and I want you to look to it and see that this is a very porous piece of wood, and if there had been any blood it would have got into that end. Their theory, I suppose, is that it was used, and after it was used, washed thoroughly, so as to get all the blood off, and then the handle broken off by the person that used it. That is a very violent assumption, but that is their theory. And their theory is that it was all gotten off. But this piece of wood was inside of the eye, and Professor Wood tells you that blood will flow into a very narrow place. And he boiled it with iodide of potassium, and says he cannot get the slightest trace of blood. Even that telltale fluid that preached of murder was not found on it at all, and that is an innocent hatchet. Last summer it was the claw hammer hatchet, and Dr. Dolan and the officers found the marks of blood on it's blade, and on the handle, and they found the rectangular wound in Mr. Borden's head to confirm its use. They found the human hair on that, and on that they bind this woman over to await the action of the grand jury. Dr. Dolan said the cutting edge of that hatchet was adequate for any injury that appeared, and he says so now. There was no blood, as I tell you, and as a last resort they come in here timidly and haltingly at the opening of this case, and say, "We bring you this handleless hatchet, but we do not tell you whether it is the hatchet or not." It is pretty significant. It made us all pause and wait when the District Attorney, Mr. Moody, said in speaking of the break

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in the handle and you know that they could not, any of them, tell how long it had been made---there is not a man of them; although Mr. Seaver was a carpenter, he would not tell within six or ten months when that handle had been broken off: he said it was a fresh break, but it was not so fresh as to be within six months past or eight months or ten, and Professor Wood could not tell, and Mr. Moody cannot tell; he cannot tell, he says, whether the break had occurred within 24 hours or 48 hours or within a week, but perhaps a break which might be a month old. It might have been a month old. Then it was broken before the murder. Then it could not have murdered anybody in this way, surely. And we know that whoever handled the hatchet must have had the leverage of a handle on it at least from 12 to 14 inches long. But more than that, Mr. Moody in speaking of that very handleless hatchet, says, "The government does not insist that these homicides were committed by this handleless hatchet: it may have been the weapon: it may well have been the weapon," He is a cautious gentleman. You do not catch any well grown Essex man putting himself in a place where he cannot get out. He says, "I bring you this and I hold it up to you, and I say that is one without a handle, but," he says, "the government does not insist that that did it." He has before told you that all four of them on the floor are innocent. There they stand. They have been cleaned up by the Commonwealth's brush, and they are perfectly clean, wholesome and pure. And then he walks up to you and says, "I show you that, but I do not tell you that we claim anything of it." But it shows you that the District Attorney and his associate, the chief in this case, do not believe it did. Because Dr. Wood is at their elbow and telling them that there is not a spot on it, and there is not a sort of an intimation that can be made about it that stands justified.

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He has boiled it with the most searching of chemical fluids, that will bring even the smallest corpuscles of blood to the surface, so he can find them, and it is as pure as the other four. It has been in such good company, it has got the endorsement of the district attorney, it has been said to you, "You may go too, we do not claim anything about you." I put it in good company. There they all are.

Who did it, and what did it? You see last year they had the theory about these other things, and if they could have tried the case at that time they would have sought to convict this woman on those first four. They now do not dare to say that they would ask to convict her even upon these. They say, It may have been. Is the Government trying a case of may-have-beens? Will the judges tell you, as they charge you, that you can convict this defendant upon a theory that it may have been? I think not. Never. And if they cannot tell you that that is the implement that committed the crimes, where is it? Fall River seems to be prolific of hatchets. Perhaps if we wait a while there will be another one born. Possibly the district attorney, or the officers over there---not the district attorney, for I don't think he has anything to do with it, to do justice to him---possibly some officer will find some other hatchet and want to bring it in.

Well, we are thankful, gentlemen, that this woman was not tried last August or

September, because then, if she had

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gone to trial on the things that are now declared to be innocent, and they had convicted her with the cow's hair and the appearances of blood, she possibly would now have been beyond their recall, although they had actually put her to death wrongfully. So much for the theory of experts.

And now we are asked at this time to take up another one that they do not vouch for, and that they did not dare to stand on, and we are asked to submit this defendant to that incriminating evidence which they say they are not sure about or may have been, and they want to convict her now on a thing they do not know anything about and do not claim to know anything about, and put it out of her power, six months hence, to tell them if she knows anything about somebody else committing these murders. They have had her for ten months in close control. It has been irksome and wearisome and wearing. Bad as the Government would represent her to be, and falsely so too, bad as they would picture it, it is a paradise compared with a jail; and they have transferred her, such is the process of the law, from her home into the custody of the State.

Now, do they want to take the next step and pursue the quest for some other hatchets, or, failing in this, to find her guilty? Isn't it best to let the defendant live until all the theories are born and exploded, as they have already been? Gentlemen, you walk upon the edge of a precipice. You think you feel the hand of the Commonwealth guiding you,

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but it is not the hand of the Commonwealth. It is a fraud, it is a theory, born in an emergency at a time of disaster. It is a theory that was sought to be set up here to work a conviction, to which men have testified, I do not say dishonestly, but mistakenly. Walk with that theory and you will find it leads you into the dark, and abandons you when you find almost what you assume to be a resting place. Oh, save us from such calamities as that! Murder is bad enough, but murder at the hands of theorizing experts or practicing officers is terrible ten-fold more.

When they were looking around for that hatchet last summer and couldn't find any more, the late Gen. Butler said,---and you know he had pretty keen insight and vigorous expression---he said, "Why don't they get Dr. Dolan to hold an autopsy on Lizzie Borden and find the hatchet?" That does seem to have been lacking. Other abandoned theories they have had. They had the stringy spot on this door post, of blood; and they would convict somebody of it on the theory that the person stood inside the door of the dining room and as he threw the handle of the hatchet over it struck there. Dr. Dolan said it was blood. Well, Prof. Wood examined it, and he said it was tobacco juice. There it is. It does play a very important part. They wouldn't even let these girls wipe that off for fear they couldn't convict Miss Lizzie. But they say nothing about it now, and I believe Dr. Dolan

thinks it is not blood.

Her shoes, and dress, she had blood on them. Now they

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find there is nothing of the kind. And they thought that Tuesday's sickness and Wednesday morning's sickness was caused by some irritant poison. But Dr. Wood said, "No, everything is right; no blood, no poison, nothing whatever." He has practically said to these men, "Hold on, you are going too fast, you cannot go this way." I have not time to elaborate, gentlemen, further upon that point.

Now failing in that, as I argue to you they have, unmistakably, they proceed upon the theory, Who did it? Now we are not obliged to resort to that, as I told you at the outset. The question is, is this defendant a guilty person, and that is all.

But they say, and they said they would prove to you, that there is exclusive opportunity. Well, gentlemen, I meet it right squarely. I say that if they can lock into that house Bridget and Lizzie alone, and without having any other way for any other person to get in, and no other person does get in, and two persons are found dead, I am ready to say that Mr. Borden did not kill his wife in that way and then afterwards kill himself. I am sure about that. But the exclusive opportunity is nothing but an anticipation that was not realized, as I think we have shown you. They said nobody else could have done it. Emma was gone. Morse was gone. There is no doubt about that. Bridget was out doors, they said, and later in her room. They said that the defendant was really shut up in that house with the two victims and that everybody else was actually and absolutely

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shut out.

Well, now let us see about that. If it was so it would be very strong evidence against the defendant, but if it is not so it has gone to the winds.

Now I think you and I will agree about this evidence. The cellar door was undoubtedly locked. I mean the one outside. I have no doubt of that. The front door, in the usual course, so says the evidence, was bolted up by Lizzie Wednesday night and unbolted by her Thursday morning. Now they assume she bolted it Wednesday night, but they are not going to assume, I suppose, that in the usual course she unbolted it Thursday morning; but I do, because that is the evidence; leaving only the spring lock on when she unbolted it. They say, You do not know that. Well, I say, You do not know it, and you have got the burden of proof, not I. It was fastened by the bolt when Bridget let Mr. Borden in; that is true; the bolt and the key.

Now how it was afterwards---because there is one officer says it was bolted afterwards---is of no consequence except as bearing upon the escape of the assassin

by the front door. You get the point. It does not make any difference whether it was bolted afterwards or not so far as anybody's coming in is concerned, but it does make a difference as to whether he went out the front door, because if he did he couldn't have bolted the door behind him when he went out; and it doesn't appear anybody else did, and that is all the significance it has.

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The side screen door, gentlemen, was unfastened from about nine o'clock to 10.45 or eleven. That is when Bridget was washing windows and about the house and around the premises in the way she said she was. Now if that door wasn't locked, gentlemen, Lizzie wasn't locked in and everybody else wasn't locked out. Was it so, the screen door unfastened? You know Bridget said to Lizzie, "You needn't lock the door, I am going to be round here." There is no doubt about it. Bridget says she didn't lock it. Then there was a perfect entrance to that house by that rear screen door, wasn't there? And when the person got in all he had to do was to avoid meeting Bridget and Lizzie. Bridget was out doors, she wasn't in the way, and therefore there was but one person in the house, so far as appears, one person below, against whom the intruder could run.

Now look at it. Bridget was outside talking with the Kelly girl, over there on the south side, away off at the corner. She said plainly and decidedly there was nothing to hinder anybody going right in. Mr. Borden had gone down street, and there was nobody there on the outside but Bridget, and she was everywhere on the outside. She washed the parlor windows. You know how those are. She couldn't see the side door when she was there. She went to the barn seven or eight times for water, she says; it may have been more. She was at the dining room windows on the north side of the house; and she says that when she was there she

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couldn't even see into the dining room, because the windows are so high that unless a person stood up close to the window they couldn't see in.

Now see the significance of that. The Government will be going to claim that she stood there and she could have seen way across into the sitting room. But she could not. She was washing the windows with a pole and brush; she wasn't up on steps on the outside.

And then Lizzie was about the house as usual. She was in the house and about the house. What was she doing? Doing just the same as any decent woman does, attending to her work, ironing handkerchiefs, going up and down stairs, going down to the cellar, to the closet. You say those things are not all proved. No; but I am taking you into the house just as I would go into your house, for instance, and say, What are your wives doing now? Well, doing the ordinary work around the house, getting the dinner. Well, where do they go? Undoubtedly they are going down cellar for potatoes, going out into the kitchen, to the sink room, here and there. You can see the whole thing. It is photographed in your

mind. It was just the same there. She was ironing, and she was in the dining room; Bridget says she don't know but she had the dining room door shut to keep the heat out; and she would have occasion to go down cellar for the reasons stated. Might she have gone into the parlor for anything? There was a clock there. There are various things you might think about.

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Now suppose the assassin came there, and I have shown you he could without question, the house was all open on the north side, and suppose he came there and passed through. Suppose Lizzie were upstairs, suppose she were down stairs in the cellar. He passed through. Where could he go? Plenty of places. He could go upstairs into the spare room, right up the front stairs, and go in there; he could go into that hall closet where you opened it and looked in, and where two men can go and stand; he could go into the sitting room closet; he could go into the pantry there in the kitchen; you saw that. He could go into various places. He could go into just places in that house as all these common thieves run into if they can find a door open. So it was easy enough for a man to do that. It was easy enough for him to go up into that bed chamber and secret himself, to stay there, and when he is in there he comes confronting right onto Mrs. Borden. Now what is going to be done? He is there for murder; not to murder her, but to murder Mr. Borden. And he is confronted and surprised with her. And he knows---possibly he is somebody that she knew---you do not know, she cannot tell us---somebody that would be recognized and identified, and he must strike her down. A man that had in his mind the purpose to kill Mr. Borden would not stop at the intervention of another person, and Lizzie and Bridget and Mrs. Borden, any or all of them, would be slaughtered if they came in that fellow's way.

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Now at that time in the morning, with the opportunity to go in there and go up into all that house, and when he went in there and had murdered Mrs. Borden in that front chamber, Lizzie could pass up and down stairs and go to her room and know nothing about it, see nothing about it, because of course he did not have the door open and disclose himself. She could pass up and down stairs. There is no trouble about that, closed door or open door.

And when he had done his work and Mr. Borden had come in, as he could hear him, he made ready then to come down at the first opportunity, and when he came down he would very naturally leave the door open, and so they find it afterwards; the door, I mean, to the spare chamber. He could come down, and he was right at the scene ready. Bridget was out doors, Lizzie out doors, on all the evidence, which you certainly believe. And then he could do his work quickly and securely, and pass out the same door, if you please, that he came in at, the side door.

Now that is not all. It is well enough to see that a person could come into the front door. The bolt slid back in the morning, the latch lock on, a man can open that door, they

all say, by giving it a pressure and trying to come in. And when he gets in what does he do? He doesn't want to be surprised. He locks the door himself, he takes care of himself, and then when Mr. Borden comes it is slid back by Bridget and left in that way. It is easy enough to see all these things.

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We say that nobody saw him go in, and nobody saw Mr. Borden go out down the street, and you hear nothing about him until he gets away down to that savings bank, and nobody saw anything of him except those people in the bank and Shortsleeves and Mather up at the store. Why, even Mrs. Kelley saw him right there upon the steps so that she could lay her hands on him. Mr. Borden didn't see her. You cannot see everybody, you do not see everybody, and they bring in here Lucy Collet, who stood on the piazza on Third street, or on the side steps, to show that no person could have gone by there, but Frank Wixon got up on the Borden fence and walked along the stringer right in plain sight, and she never saw him. How much do you think she saw? Then there was Derosier and Denny and McGowan, and neither of them saw anything. There was Thos. Bowles over there in Mrs. Churchill's yard who said he could not see anything because there was a barn and well house and lattice work, and he saw nothing unusual or anything that would show that anybody went there. There were other people about there, as you saw on that morning, and you also heard the testimony of Mrs. and Miss Chagnon that they heard somebody the night before. There was the testimony of Mr. Kirby and Mr. Gifford that they heard somebody and it was not a dog eating bones in a barrel because the barrel was in the barn. There was somebody about there that alarmed them, and Dr. Handy described to you a man on the side walk he saw there just before the

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murder and somebody he did not know, although he knew everybody about there. And Mrs. Manly and Mrs. Hart came along there at ten minutes before ten, and you find a man on the outside looking out for things. This was not done by one man alone; there was somebody else in it, and there was a man standing there at the gate post whom they did not notice as they passed by, but as they stooped to look at some lilies in a wagon they saw that this man was watching them and seeing what they did, watching their movements, standing there. Nobody knew him. They did not know him. Mrs. Manly and Mrs. Hart were acquainted with everybody about there. Now, he was the man that stood outside, and the other man was inside at that same time, and they were looking out for each other. That is a very common thing to do.

You can see then how everything in this idea of exclusive opportunity falls to the ground, because there was no exclusive opportunity. There is nothing to show that Bridget was in position so she could control the inside of the house, for she was not. There is nothing to show that the defendant was there, because she says she went up and down stairs, and they must admit that she was in the dining room and they prove it, with the door shut and with opportunity for anybody to pass through there. If anybody, all these things are plain, and if there was a little noise heard, or if it was not heard, there

were noises in that street there all the time, as you saw,---and with the window open on an August day, so that a

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person would not notice, and that was probably what Miss Lizzie heard when she thought her mother had come in. It was perhaps the noise of the fall up stairs. It sounded like something in the house, and yet as Mrs. Borden did not appear she knew nothing about it. The man could have carried away any weapon. They have been searching in that ash cellar of the Borden house to find a weapon. Lizzie sent them down stairs, and if Lizzie perpetrated these murders with the handleless hatchet, think of her actually sending Bridget down to that box with the officers to the place where the hatchets were with which she had committed the crimes. It is too preposterous an assumption. Why, we know very well that men commit these crimes and take away the instruments with them sometimes, and sometimes they fling them aside and leave them on the ground, but oftener, if they use an article found on the premises they would leave it, because it cannot be connected with them, but if they bring an article to a house with which to commit the act, they take it away because it is a clue to their arrest.

Now, it is not for us to maintain a theory. It is for the government to prove theirs. You may adopt a theory just as well as I. You may find other theories, as I have no doubt you will as you look at the evidence. You will see other ways in which persons could enter that house by which the exclusive opportunity theory is overturned. It is not a matter for you to sit down in the jury room and criticize

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the theory that I have advanced to you, because you are going to sit down in the jury room and criticize the theory that the government advances, and you will see that it is vulnerable, and when you see that a person can take one of those theories just as well as another, and one will harmonize as well as another, you will hear from the Court that you cannot convict upon such evidence, because all the essential facts must be in harmony with this charge against the prisoner, and must not be in harmony with any other theory or any other reasonable explanation.

(Noon Recess)

Afternoon Session.

The Court came in at 2.15, and Mr. Robinson resumed his argument as follows:

As I said, any theory that we may present or suggestion we may have is open to criticism and inquiry. You are to bring your judgment to bear upon them, and if they are found in your opinion such that you think they would meet with difficulty, you are to consider that difficulty. We are not bound to furnish you any theory of it. I said at the outset, that is not our duty, that is, we are not to find who did the act or how it was done,

but I am only showing you in connection with the discussion of the reasonable

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opportunity that, as you have seen, the house is all open to anybody who sought to go in there, and that it is very easy for any person who entered for that person to have passed by without being noticed by the other occupant of the house, in whatever place she might be. The government has not proved at all that Miss Lizzie went up stairs and remained up stairs all the time from the time her father went out until she came down on his return; that is not proved at all; that is not in the case, consequently you are not to assume that, and I believe it will not be argued, so that if you are to test the government's theory as applied to this criticism and these considerations which the defendant is entitled to claim fairly, as the Court will tell you,---but we do not take upon ourselves the task of finding somebody who did it. If we knew ourselves who was the murderer we would not be bound to bring him in, although we certainly would. You see then the distinction. The question simply is as to the defendant, did you do it? Failing in that, the crime is to be further investigated, new searches to be made, new clues to be followed up, new theories to be adopted and presented and some other person to be put upon trial. If nothing of that kind is done, and if the murderer goes unpunished, that is not to affect this defendant manifestly.

I have said that such things as that are easy in all our houses, and that is the danger of a verdict here against this defendant, simply for the reason that you do not see how anybody else could do it. That is very dangerous ground.

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You go away from your home in the morning; you go back and you find your wife or your daughter dead in the house; the house apparently all locked. You do not know who has been in there. You return just after the murder has been committed. You in taking care of the bodies get blood upon your clothing; suspicious circumstances fasten upon you, and somebody tells that you and your wife had some little disagreement at the breakfast table that morning or some neighbor says he heard you say that you hated her, if you please, or, not so much as that, called her some unpleasant name, and at once they begin to suspect you, and everything is turned against you, whereas you are entirely innocent. You can see how that can happen, so I want you to reflect upon the extraordinary dangers of drawing conclusions in so important a case as this that affects so seriously this defendant, and the importance of requiring the Commonwealth to prove it, and of saying, "Whatever our suspicions, it is better even that this defendant should go free than that we should take any chances about it.", because, every man, woman and child in this Commonwealth is entitled to a full confidence in the regular administration of justice according to law and according to well settled practice.

It is only a short time ago, probably you are familiar with it, that a murder was committed in a house in Philadelphia in a block. A woman was killed. The doors were found all fastened on the inside and on the outside. Nobody could

discover how any person could come into that house; there was nobody there. The woman had not killed herself. It was not found out for some time how it was done, when it was discovered that the murderer had crept up on the outside, climbing up on a block that was remote and yet touched, and had gone along on the roof and down into a window and committed the murder, retiring in the same way. Now, had there been some other person in that house, a servant, perhaps, or a friend, somebody who would be timid when charged with crime, somebody who would make contradictory expressions, as all of us here would be likely to when though innocent are suspected,---how easy it would have been to put that charge upon that person, and how almost impossible for that person to bring any proof that he or she did not do it. That illustrates.

Again the fact that it is done in the daylight is nothing, as I have told you before. Instances will occur all the time of that kind.

Now there are two or three things which in the hurry of speaking this morning,---perhaps you thought I had not hurried, but speaking rapidly, they were inadvertently passed by,---little things, but I want to speak of them before I pass on.

Miss Lizzie was ironing down stairs, and there cannot be any question about that. Bridget says so, and you recollect the testimony of Miss Russell and Mrs. Holmes, that that

morning when they were clearing up they found the handkerchiefs that she had ironed in part, and the sprinkled ones were carried up stairs and put away separately by themselves, a dozen or more. You see that is genuine; it is not a fiction. It is really one of those little things that help to establish the truth.

I must also in this connection speak of Mr. Medley's testimony, because the Commonwealth relied upon Mr. Medley to make the examination, as he said, of the dust in the barn, to show you that Miss Lizzie could not have walked on the upper floor. Now, if you could be sure of that there would be some test in it. If you did not see a track through freshly fallen snow you would say no person passed there. It would be a little more doubtful about walking on a floor, but when you find a detective looking after this thing, you begin to suspect that he may be in error, and when you find as you do by the testimony, a half or dozen or more people up there in that barn walking around before Mr. Medley got there at all, as it was proved upon the testimony there had been when he got there, and when he met Mr. Fleet and where he met him between the gateway and the back steps, and then went directly into the house, Sawyer being at the door,---you see how unreliable his testimony is.

Well then you have the testimony of Mr. Clarkson, and you have that of Mr.

Manning and Mr. Stevens, and the two boys that called themselves "Me and Brown", Barlowe and Brown. Now, those boys, like all boys, just the same as you and I,

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when we were boys, wanted to go up stairs, to look at things about there, and stay as long as they could, and it appears they went there, and were out in that barn before Mr. Medley came there. He went into the house and talked with Miss Lizzie, and was some minutes in the house before he went to the barn, so when he got there there had been people all about there, and those people give their testimony in such a way as to carry the conviction of truth in their statement, so that you find them up there and walking around in the very place where Mr. Medley went to look, and it shows you that Mr. Medley must have been in error. His detection was not so sure as he thought. He was mistaken about it, consequently while he may have honestly meant what he said, I do not call that in question for the time being, but I want to say that that is not anything that you can depend upon under those circumstances, and when you find him confronted with three or four other witnesses, John Donnelly, and the boys, and Clarkson, there can be no question that Mr. Medley is mistaken, so that we have in addition to the positive proof that Miss Lizzie went to the barn, to which I called your attention this morning, the affirmation of these other witnesses that they were there, and Mr. Medley finds nobody to support him.

And there was another matter. In speaking of the 3-1/2 inch hatchet, a piece of tin was fitted in and a hatchet also fitted into the skull in order to show that it would fit. You see at once that if you take a hatchet such as Mr. Adams

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produced here, one that was not ground down on the edge, it was too thick, as the doctors said; it did not go in, but the Underhill hatchet would go in. You might as well say they were at fault because you could not put one of these large axes in there. Nobody claims you could. It was a new hatchet that was brought and never had been ground, and it proved to be thick upon the edge.

Then you will remember, what was very significant, there was no blood upon Miss Lizzie's hair. Now, it does not seem possible that she could have gone through that without getting blood upon her hair, and you know very well, as the doctors told you, as Doctor Cheever did, if you get blood in the hair it is almost impossible to get it out except by special treatment. You will bear in mind if she endeavored to get it out her hair would be wet, and these ladies noticed her when they bathed her face, and surely if her hair had been wet they would have known it, and you would have heard of it.

Now, assume for the time being, in order to illustrate the argument of the Commonwealth, that Miss Lizzie committed these acts. What did she have to do? I have spoken to you about the change of dress or the substitution of another dress and disposing at one time or another of both of them, and keeping all these blood-stained garments out of the way where the officers had searched everything except behind the paper and below

the carpets. From that time on until Saturday

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night she did not go out of the house. She had nobody with her that would have resorted to any expedient of carrying anything out of the house. The consequence is then that whatever she had on remained in that house; whatever article she had was there, continued there until that Sunday morning. Now, if she did that first act upon Mrs. Borden's body, what did she have to do afterwards? All that, you remember, occurred, it is assumed, that she committed that first murder from 9.45 to 10.15, and then what would she have to do? Of course she would completely change her clothing. There was that waterproof exposed, and nothing found missing there. She had nothing over her, and you assume that, and then you have to assume that the wrapper was put out of the way and destroyed. To get out of one alternative you get into another. She must have gone to the cellar where there was running water and she must have washed her face and wet her hair, as I said before, with that difficulty attending it, so that she could be all right when her father came. Undoubtedly she was all right when her father came, and nothing suspicious about her. She had on at that time that blue dress they talk about, which must have been all soiled with blood at that time, and yet they keep it on her, according to their statement, until 12 o'clock. You can see that that is not probable. It is not within the realm of probability that she would allow that to remain on her. If she took it off and put it away and put on another in place of it, Bridget would have noticed the change. She had on an old blue

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dress up to 9 or 10 o'clock; then she appeared in something else, and then she got back again into the blue dress, because she was in the blue dress when Mrs. Churchill came. So you must have her come down in the morning with the blue dress or get back into the blue dress again; she must get rid of the blue dress temporarily, and get into it again by the time the second murder is committed, and then get into something else, then get out of it again. You are putting upon her a good many things to do in a very short space of time; within twelve or at the most fifteen minutes after Mr. Borden came into the house he was killed.

Now, what did she have to do before she called Bridget? Well, the officers from the police station arrived at 11.15, and everything was accomplished. She would have to get that bloody dress off the second time, or else a second time get on another. I think she had on a blue dress. The government says, "You burned up the dress we want," but the government says, "You had on the blue dress when you gave the alarm," and the blue dress is as clean and as free from bloodstains as the blue sky. What are you going to do about that? How is this to be accounted for on their theory?

Then having that blue dress on and having killed him, she must change it for another. Surely she got it spotted, and yet they say she had it on, remained with it on, and no blood upon it, but free and pure, and they want that one, and yet it is impossible upon

any theory to conceive

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of its being used in one or the other or both and remove and restore---she could not restore and clean it. It was a cheap cotton dress, as has been explained to you, that no human ingenuity could clean up in that space of time and have it dry so it could be worn. Had it been a blue dress, a spot of water would have been as significant as a drop of blood. She did not have one dress over the other. The dress maker would have perceived it on account of its tightness, and in the next place she did not have two on because such women as Mrs. Churchill and Mrs. Holmes and Miss Russell, being round her as she was lying on the lounge, fanning her, and doing everything to comfort her, and the doctor attending her, with the blue dress two or three inches longer than any other dress she had, would have noticed the fact. It would have shown her shoes and stockings, but there was not a drop on them. Why, do you not all think with me of what a blessed providence it was that interfered with that girl, so that as she walked about that house, passing from the sitting room into the dining room and hall, she did not step on some of the blood and have it on her shoes? Anybody else, according to the theory of the government, could have stepped on that blood and have bloody shoes, but if Lizzie had walked there just the same as any other person innocently, and there had been so much as a pin head stain upon one of her shoes, it would have led her to the severest penalty on their theory.

See within what close limitations we walk in

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commonest things, and see how close we come to precipices of danger when we find any part in the wrong. Then she would have to clean herself and secrete everything. Why, upon the theory of the government---no, it is not the theory of the government. for I really do not know what it is, but the handleless hatchet down there in the box, the theory being for the time, if it is a theory and is indulged, that she ran down and put that through a course of washing, scraping with ashes, etc. and threw it up in the box after breaking the handle off, as claimed, and then got rid of the handle, and yet she didn't get rid of the handle; they say that they found it there, and put it right up into the box to which she directed Bridget to go with the officers and find the hatchets and axes. Why, gentlemen, she is not a lunatic or an idiot. She is a great, colossal contriver of wrong and murder, shrewd, discriminating, far seeing, with premeditated malice aforethought, and planned all this thing. Well, she did not plan so foolishly as that. She would not send officers to find the very thing and in the very place where she had put it.

She burned no clothing that day. She put none away. They help us nothing about that with all the vigilance of their searches, and you know that the officers say that when they went there first and looked in that box down cellar they took out the two smaller hatchets that were on top. Now, whatever the theory, on any theory of the government in regard to that hatchet, you have got to assume she was

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down there and washed it up and got it all clean beyond what science can do, and got the blood out of it, and then broke off the handle, and went herself and took out the other two hatchets so as to get this old one down underneath, and then she had it all covered with ashes too.

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And when they found it that Thursday afternoon it was all dry and covered with dust like the other. They undertake to tell you it was coarser dust. Just see into what a labyrinth of impossibilities and improbabilities they try to lead this woman!

Then she had to run upstairs, run up to her own room and make a change, run down cellar and take care of herself, and take care of the hatchets, upon their theory, run back again and get up there and call Bridget---all in that short space of time. I said it was morally and physically impossible. Have I said too much? When you think of the time and the conditions and the necessities of that woman, to meet the call that was made upon her, and to be in the condition which everybody says she was found.

And then she had to go to that door and stand there crying. And you cannot put that on. Some men can sneeze when they want to, but they cannot cry. That is something that is involuntary. You cannot look distressed, you cannot be pale and faint. You cannot so manifest your agony, as you stand at the door, that your neighbor is not willing to wait until she can throw up the window where she is but goes to the next one that is open and cries out to her, "What is the matter?" Think of that picture, think of that occurrence, and then tell me if, in any ten or twelve minutes that ever passed since the first dot of time, any woman could have gone through these things and come up and

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been at that point under those circumstances and in those conditions? That is the task the Government sets you in order to find belief in their statement.

It is enough, as I have said, if the Government fails to prove the charge. Then your duty is to find her not guilty; although you might think it yourselves---and I by no means say or believe that you are led to that conclusion---although you might think that if something more were found out the crime would be fastened upon her; but you have reached the point where at the present trial there is not evidence enough to convict her, not a showing by the Government upon which it would be safe to convict her, not evidence enough upon which any one could look back with satisfaction and say he counted that enough to take her life. That is what confronts you.

You may find her not guilty, if that be your judgment, for two reasons. One because you know that it has not been proven; and the Court will tell you that if, when you reach that point in your decision, you are not satisfied and convinced as reasonable

men, beyond a reasonable doubt, no matter what your suspicions may be, and what you may think about it otherwise, you have but one duty to perform, and one that is safe to you to render in this case. And when I say a reasonable doubt, it is not to be cast away to the winds as of no consequence, a mere fleeting name, but is the well-founded, sensible, reasonable doubt of a reasoning

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man who says, "I cannot go to the length of a verdict of guilty on this evidence." You may have heretofore thought things looked dark for her. You may have said, "If they can come into court and show all the things I have seen in the newspapers, gossip and rumor and report, I might feel that I ought to, but now when I find the Government's case only the thing that it is, insufficient, weak, contradictory, critical, lame, why, I have nothing else to do in my conscience but to say to Massachusetts, We have this woman in charge; you have not proved it against her, we still keep charge of her, and we say to you, You have not proven this against her and she is not guilty."

But there is another ground. If, when you see through this evidence clearly, you are satisfied again, convinced---which is more---you are convinced affirmatively that the woman is innocent, then you are entitled to say "Not guilty", and you are bound so to speak. It is rare that the defendant goes so far as to prove her innocence. It is not a task that is set before her. But I dare to speak to you upon that branch in this case with full confidence. Look at it. Take the facts as they are, and I would not misrepresent or belittle any of them. I have not knowingly omitted any of them for a purpose of benefit to the defendant. Take them as they are. What is there to prove to you absolutely, as sensible men, the innocence of this defendant?

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In the first place you will take a few things into account. You will consider also the life, the standing and the associations of a defendant. It is not impossible that a good person may go wrong,---one heretofore good may go wrong and a good reputation be blasted by a wrongful act, but our human experience teaches us that if a daughter grows up in one of our homes to be 32 years old, educated in our schools, walking in our streets, associating with the best people and devoted to the service of God and man, binding up the wounds of the unfortunate, teaching the ignorant and down-trodden, spending her life for others, it is not within human experience to find her suddenly come out into the rankest and baldest murderess. That would be a condition of things so contrary to all that our human life has taught us that our hearts and feelings revolt at the conception. I agree with you right there that that is not final or convincing, but it is certainly very weighty in the consideration. When a person is under suspicion of having committed a crime and he is really guilty and knows it himself, he is always happy to avail himself of an opportunity to let somebody else be suspected. You go and search some other man's house and let me alone. Search somebody else,---I think he had some trouble with my father---that would be the policy of such a defendant. What was her conduct? Uniformly, openly frank every time, shutting all the doors against any person that might be put under this foul suspicion.

Why, you say, shutting them against herself.

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Yes, it was the impulse, the outcome of an honest woman. Were she a villain and a rascal, she would have done as villains and rascals do. There was her uncle, John Morse, suspected as you heard, followed up, inquired about and she is asked and she said, no, he did not do it. He went away from the house this morning at nine o'clock. Some one said Bridget did it. Now there were but two persons around that house as we now find out, so far as we can locate anybody, and the busy finger was pointed at Bridget Sullivan,--- Bridget Sullivan only an Irish girl, working in the family, working for her weekly pay, been faithful to them, been there two years and nine months, lived happily and peacefully with them and they have had no trouble, and Lizzie spoke right out determinedly, as you know, and promptly, Why, Bridget did not do it. Then somebody said: Why, the Portuguese on the farm. No, says Lizzie, he is not a Portuguese; he is a Swede, and my father has not any man that ever worked for him that would do that to him. Not Alfred Johnson that worked for them, not Mr. Eddy, another farmer that worked for them, no assistant,---I cannot believe it of any of them.

How do you account for that except in one way? She was virtually if she were a criminal,---virtually putting every body away from suspicion and leaving herself to stand as the only one to whom all would turn their eyes. Suppose she had been wicked and designing and Bridget as innocent as Bridget is today. Suppose Lizzie had undertaken to tell something

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that would involve Bridget, would it not have been easy? And it might have been. Then if she had led the way in treachery and repeated crime, Lizzie might have led Bridget right into the toils in which she herself became involved to the relief of Bridget by her statement that Bridget is not to be suspected. It is not every human being who can stand that strain. It is not every man that has strength of purpose and purity of mind enough to step forward and say, I will not listen to these baseless aspersions against the people that have been with us and lived with us and toiled with us and served us well, and who are of us. Then I say that although the Commonwealth undertakes to lay it before you that her conduct opens her to suspicion, I say to you, knowing the woman as you have seen her here, knowing of her as you have heard her testified about, that her whole demeanor and conduct places her far ahead in the realm of innocence.

What has she done? We are very apt to say, people who hurriedly judge, that if we find a man in the custody of the officers he must be guilty. See him, we say, how guilty he looks. In the same spirit it is said, See her, how she cries because the punctures of conscience are lacerating the heart. How she shrinks under the ordeal! How would your wife or mine act if taken by an officer, investigated and crowded and pushed and then bound over to lie in the jail of this county for ten months, being scanned by everybody that can put eyes on her. How would she stand the strain of being here

two weeks or more in this crowded room to be watched by hordes of people as she goes to and from the carriage or waits to go into it. Think of standing the strain of that. Why, men of the Jury, you would quail under it. You can look the best people out of countenance sometimes, and it is not considered civil to look at a man too long, and yet you know beyond all that when you put a prisoner in the dock, you put her under a strain that human nature is hardly equal to. It will not do to judge her and say that she has manifested no emotion, that she has contained her feelings because she has nerves and womanly character enough to say, Here, though long been abused, though foully suspected, though I know I am innocent as I was when I was born, I recognize that under the law I must stand this ordeal and I will bear it though the best I can, and when it is over and I walk again the soil of my entire liberty, then it will be time for me to have the woman's nature again and exercise her right to weep. Whatever I do now will be misrepresented and misunderstood and I will endeavor to behave myself in a proper way. The time will come, gentlemen, I trust when you shall utter the verdict that will give her your judgment that she is innocent, that she then in her own retirement may let loose the feelings which the necessities of the situation have commanded her to curb. You know well as the little song runs that

"The eyes that cannot weep,
Are the saddest eyes of all,"

And then when the flood is allowed to run, the heart breaks out again with the refrain:

"Oh, ye tears, I am thankful that ye flow."

Did the officers want to search that house and not succeed? Did she ever stand in the way, or her sister like-wise? Go search everything; we will come and help you open everything. We will join you; find out all you can. Do all you want to here. Never a sign of reluctance. Never an intimation of objection is the unanimous testimony of everybody that went there. They say she was cool. Thank the Lord there was enough left of her so that she could be cool under the visitations of gentlemen who flocked there by the score. Her clothes, her dress, her unmade dress, her shoes, her stockings, everything, her absolute freedom from the marks of the crime, her readiness to do anything that was wanted, and then that scene of Saturday night which transcends all in exhibition of innocence. There had been that woman shut up in that house, the premises crowded by the police. She was virtually then under arrest. She could almost feel the pressure of the hand upon her arm, and in that house on that Saturday night were the Mayor and City Marshal of Fall River, and in the parlor they called her, her sister and uncle together and then they began that advising them---now notice how it was done, for this is an essential part of their case---they advised them that the family had better remain in the house. Miss

Lizzie says, why? Well, the Mayor says, Mr. Morse perhaps can

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tell you. It was something that occurred down street last night, and then comes the question that from there Morse went down street and had some trouble. Now that seemed to indicate that Mr. Morse was probably under suspicion, and Lizzie spoke at once as they spoke of putting officers around the house, and said, "Why, is there anybody in this house suspected?" And the Mayor says, "I regret to say, Miss Borden, that you are suspected." Then she says, "I am ready to go now or at any time." Gentlemen, murderers do not talk that way. Criminals are not so situated as to have concocted this great and monstrous wrong and then have had that superb quietness of spirit and that confident feeling that wrong has been done her in the charge that is made and the assurance within herself that, God knowing it, she is free and pure.

Gentlemen, as you look upon her you will pass your judgment that she is not insane. To find her guilty you must believe she is a fiend. Does she look it? As she sat there these long weary days and moved in and out before you, have you seen anything that shows the lack of humanly feeling and womanly bearing?

A word more. There must be no mistake, gentlemen. That would be irreparable. There can be but one mistake which nobody can ever right and for which there can never be any atonement to her. If you make a mistake as against the Commonwealth, that is something which the future may correct, but if you go wrong as to this woman now and go the length of saying

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that she is guilty, and you have done it on insufficient grounds and the improper findings, the case and the woman have gone beyond your control and so far as you can know, beyond the power of man. To condemn her as guilty of the diabolical crimes that have been described to you when there remains any reasonable doubt in the mind of any one of you of the true verdict would be so deplorable an evil that the tongue can never speak its wickedness. We say the crier utters it, God save the Commonwealth of Massachusetts, and the prayer is heard in the prosperity of the old Bay State, but little it amounts to if we hear some one pray to God for his guidance of the old Commonwealth that when we have a prisoner in charge we forget that we can do a good deal towards saving the Commonwealth and all her people. It will be little worth preserving if the innocent are to be executed and one calamity and wrong step fast upon the heels of another, and that too under the forms of law made as well to shield the innocent as to punish the guilty.

Do I plead for her sister? No. Do I plead for Lizzie Andrew Borden herself? Yes, I ask you to consider her, to put her into the scale as a woman among us all, to say as you have her in charge to the Commonwealth whom you represent: It is not just to hold her a minute longer, and pleading for her I plead for you and myself and all of us that the verdict you shall register in this most important case shall not only commend your

approval now, unqualified and beyond reasonable

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doubt, but shall stand sanctioned and commended by the people everywhere in the world who are listening by the telegraphic wire to know what is the outcome as to her. She is not without sympathy in this world. She is not having people by day and by night thinking that it is not to be found out in Massachusetts that so great a wrong against her can be committed as to condemn her upon the evidence that has been offered.

Gentlemen, with great weariness on your part, but with abundant patience and intelligence and care you have listened to what I have had to offer. So far as you are concerned it is the last word of the defendant to you. Take it; take care of her as you have and give us promptly your verdict "not guilty" that she may go home and be Lizzie Andrew Borden of Fall River in that blood stained and wrecked home where she has passed her life so many years.

MASON, C. J. The Jury may retire with the officers for a brief recess.

After the return of the Jury, Mr. Knowlton's argument was submitted as follows:

MR. KNOWLTON'S CLOSING ARGUMENT.

May it please your Honors, Mr. Foreman and you, gentlemen of the Jury: Upon one common ground in this case all humane men may stand together. However we may differ about many of

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the issues in the trial, there can be no doubt and I do not disguise my full appreciation of the fact that it is a most heart rending case. Whether we consider the tragedy that we are trying and the circumstances that surround it, the charge that followed it, the necessary course of the trial that has been had before you, the difficult and painful duty of the Counsel upon both sides of the case, or the duty that shall finally be committed to your charge, there is that in it all which lacerates the heartstrings of humanity.

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It was an incredible crime, incredible, but for the cold and merciless facts which confront and defeat that incredulity. There is that in the tidings of a murder that thrills the human heart to its depths. When the word passes from lip to lip and from mouth to mouth that a human life has been taken by an assassin, the stoutest hearts stop beating, lips pale and cheeks blanch, strong men grow pale with the terror of the unknown and the mysterious; and if that be so with what I may, perhaps, by comparison call an ordinary assassination, what were the feelings that overpowered the community when the news of

this tragedy was spread by the lightning to the ends of the world? Nay, gentlemen, I need not ask you to imagine it: You were a part of the community. It came to you in your daily avocations, it sent a thrill through your beings, and you felt that life was not secure.

Every man turned detective. Every act and fact and thought that occurred to the thousand, to the million men all over the United States, was spread abroad and furnished and given for the identification of the criminal, and still it remained an impenetrable mystery.

My distinguished friend says, Who could have done it? The answer would have been, Nobody could have done it. If you had read the account of these cold and heartless facts in any tale of fiction, before this thing had happened, would you not have said, Mr. Foreman---you would have said---That will do for a story, but such things never happen.

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In the midst of the largest city of this County, in the midst of his household, surrounded by houses and people and teams and civilization, in the midst of the day, right in that household, while they were attending to their household duties in the midst of their family, an aged man and an aged woman are suddenly and brutally assassinated. It was a terrible crime. It was an impossible crime. But it was committed. And very much, very much, Mr. Foreman, of the difficulty of solving this awful tragedy starts from the very impossibility of the thing itself. Set any human being you can think of, put any degraded man or woman you ever heard of at the bar, and say to them, "You did this thing," and it would seem incredible. And yet it was done; it was done.

And I am bound to say, Mr. Foreman, and I say it out of a full heart, that it is scarcely more credible to believe the charge that followed the crime. I would not for one moment lose sight of the incredibility of that charge, nor ask you to believe it, unless you find it supported by facts that you cannot explain or deny.

The prisoner at the bar is a woman, and a christian woman, as the expression is used. It is no ordinary criminal that we are trying today. It is one of the rank of lady, the equal of your wife and mine, of your friends and mine, of whom such things had never been suspected or dreamed before. I hope I may never forget, nor in anything that I say here today lose sight of the terrible significance of that

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fact. We are trying a crime that would have been deemed impossible but for the fact that it was, and are charging with the commission of it a woman whom we would have believed incapable of doing it but for the evidence that it is my duty, my painful duty, to call to your attention.

But I beg you to observe, Mr. Foreman and gentlemen, that you cannot dispose of the case upon that consideration. Alas, that it is so! But no station in life is a pledge or a

security against the commission of crime, and we all know it. Those who are intrusted with the most precious savings of the widow and the orphan, who stand in the community as towers of strength and fidelity, suddenly fall, and their wreck involves the ruin of many happy homes. They were Christian men, they were devout men, they were members of some Christian church, they had every inducement around them to preserve the lives that they were supposed to be living, and yet when the crash came it was found that they were rotten to the core.

Nay, Mr. Foreman, those who are installed with the sacred robes of the church are not exempt from the lot of humanity. Time and again have we been grieved to learn, pained to find, that those who are set up to teach us the way of correct life have been found themselves to be foul as hell inside.

Is youth a protection against crime? It is a matter of the history of this Commonwealth that a boy of tender years was the most brutal, the most unrelenting, the most

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cruel, the most fiendish murderer that the Commonwealth ever knew.

Is sex a protection against crime? Is it not a matter of common knowledge that within the remembrance of every man I am talking to, a woman has been found who murdered a whole cart load of relatives for the sake of obtaining a miserable pittance of a fortune?

Ah, gentlemen, I do not underestimate, I do not speak lightly of the strength of a Christian character. Far be it from me to join in the sneers which are sometimes thoughtlessly indulged in, that a man who is a good Christian is not therefore a good man. Most of them are. Many times all of them are. But they are all sons of Adam and Eve. They fall because they are human. They fall all at once because they have never been shown to the light, and their fall is all the greater because their outward lives have been pure before. I do not forget what a bulwark it is to you and me, Mr. Foreman, that we have heretofore borne a reputation that is above the suspicion of crimes and felonies. It is sometimes the only refuge of a man put in straits. But nobody is beyond the rank of man. Else would it not have been said, even by the Disciples themselves, Lead not thy servant into presumptuous sins. It was not ordained by the Savior that the weak and the trembling and the wicked and the easily turned only should utter the prayer, Lead us not into temptation. We are none of us secure. Have you lead,

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sir, an honorable and an upright life? Thank your heavenly Father that the temptations have not been too strong for you. Have you, sir, never been guilty of heinous crimes? Is it your strength of character or is it your fortune that you have been able to resist what has been brought against you?

Mr. Foreman, let me not be misunderstood. Not for one moment would I urge that because a man or a woman has led an upright and devout life that therefore there should be any reason for suspecting him or her of crime. On the contrary, it is a buttress to the foundation, to the presumption of innocence, with which we start to try anybody.

I am obliged to tread now upon a more delicate ground. The prisoner is a woman, one of that sex that all high-minded men revere, that all generous men love, that all wise men acknowledge their indebtedness to. It is hard, it is hard, Mr. Foreman and gentlemen, to conceive that woman can be guilty of crime. It is not a pleasant thing to reflect upon. But I am obliged to say, what strikes the justice of every man to whom I am talking, that while we revere the sex, while we show our courtesies to them, they are human like unto us. They are no better than we; they are no worse than we. If they lack in strength and coarseness and vigor, they make up for it in cunning, in dispatch, in celerity, in ferocity. If their loves are stronger and more enduring than those of men, am I saying too much that, on the other hand, their hates

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are more undying, more unyielding, more persistent.

Is that an unjust criticism? I do the sex no injustice. I read in my library of history and fiction that many of the most famous criminals have been women. I am told by the great master of human nature, the poet who was almost superhumanly wise, that when the courage of a man failed, it was the determination, the vigor, the relentless fury of a woman, that struck the king down, that her husband might succeed to the throne. I read in that other master of human nature, the great novelist of England, that the most dastardly, the most desperate, the most absolutely brutal crime that he details in his works of fiction, was the murder of Tulkington by the woman who hated him.

We must face this case as men, not as gallants. You will be slow to believe it is within the capacity of a man to have done it. But it was done. You will be slower to believe that it was in the capacity of a woman to have done it, and I should not count you men if you did not, but it was done. It was done for a purpose. It was done by hatred. It was done, and who did it?

My learned associate asked you, and I adjure you, that in the trial of this cause no unworthy considerations shall find a place. Undoubtedly this matter has been in your thoughts. Undoubtedly you may have formed impressions. Undoubtedly you have talked this matter over. But in this sacred presence there is not room for a vestige of prejudice. You have been educated to believe, you are proud to recognize

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your loyalty, your fealty to the sex. Gentlemen, that consideration has no place under the oath you have taken. We are to find the facts.

I am said to be impervious to criticism, but those who have said one thing of me may have the consolation of knowing that the shaft has struck home. When it has been said of me that in the trial of this cause, in the prosecution of this case, there entered into it anything but the spirit of duty, anything like a spirit of revenge, any unworthy motives like ambition or personal glory, if they had known how I shrank from this horrible duty, those slanderous tongues would never have uttered those words. Gentlemen, it is the saddest duty of my life---it is the saddest duty of my life. Gladly would I have shrunk from it if I could have done so and been a man. Gladly would I have yielded the office with which I have been entrusted by the votes of this district if I could have done so honorably. And if now any word I say, any evidence I state, any inference I draw, shall be done with any purpose or intent to do that woman an injustice, may my right hand wither and my tongue cleave to the roof of my mouth. With that spirit, gentlemen, let me ask you to enter upon this case.

With all sympathy for the woman, in which, believe me, I share with you; with all distrust of any evidence until it is brought home to your convictions, in which you will let me share with you, and all good and true men; with due regard,

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if you please, to the consequences of your action, yet let me remind you that you stand not only to deliver that woman but to deliver the community. It was a crime which may well challenge your most sober and sacred attention. That aged man, that aged woman, had gone by the noonday of their lives. They had borne the burden and heat of the day. They had accumulated a competency which they felt would carry them through the waning years of their lives, and hand in hand they expected to go down to the sunset of their days in quiet and happiness. But for that crime they would be enjoying the air of this day. But for that assassin many years of their life, like yours, I hope, sir, would have been before them, when the cares of life were past, when the anxieties of their daily avocations had ceased to trouble them, and together they would have gone down the hill of life, serene in an old age which was happy because the happiness had been earned by a life of fidelity and toil.

Over those bodies we stand, Mr. Foreman. We sometimes forget the past. Over those bodies we stand, and we say to ourselves, is it possible that this crime cannot be discovered? You are standing, as has been suggested, in the presence of death itself. It is not only what comes hereafter, but it is the double death that comes before. There is a place, it is the chamber of death, where all these personal animosities, passions and prejudices have no room, where all matters of sentiment are one side, where nothing but the

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truth, the naked truth, finds room and lodgment. In that spirit I adjure you to enter upon the trial of this case. It is the most solemn duty of your lives.

Before passing to a consideration of the evidence in the case, which I shall endeavor to state exactly as it is, and to comment upon in a way which I hope will address itself to your understandings and your convictions, let me say a word as to the nature of the evidence. We have brought before you, as fully and as frankly as we could, every witness whom we thought had any knowledge of any surrounding of this transaction. I do not know of one that has been kept back. They were not merely the officers of the police. They were the domestic of that establishment, the tried and faithful servant, and for aught that I know or have heard, the friend of these girls today. They were the physician, who was the first one called on the discovery of the tragedy. They are the faithful friends and companions of this defendant. And we have called them all before you and listened to what they had to say, whether it was for her or against her. Nay, we called the relative himself, and had his story of what he knew in the matter, and all the people who by any possibility could have known anything about this thing we have tried to produce to you, to tell all that they could tell.

Then there came another class of witnesses, if I may classify them. As soon as this crime was discovered, it

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became, Mr. Foreman, did it not, the duty of those who are entrusted with the detection of crime to take such measures as they thought were proper for the discovery of the criminal.

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They are the officers of the police. When you go home, sir, to your family, after this long agony is over, and a crime has been committed that approaches this in magnitude, or any crime whatever, where will you go? to whom will you appeal? on whom will you rely? Upon the very men that my distinguished friend has seen fit by indirection to criticize as interested in this case. He put a question the other day which I forgave him for because it came in heat, but it illustrates what I am saying,---saying to one of these officers "speaking to you not as a police officer, but as a man." It is true they are police officers, but they are men too. They are to find out what the truth of it is. They made many mistakes. The crime was beyond the experience of any man in this country or in this world; what wonder that they did? They left many things undone that they might have done; what wonder that they did? It was beyond the scope of any man to grasp in its entirety at that time. But honestly, faithfully, as thoroughly as God had given them ability, they pursued the various avenues by which they thought they might find this criminal. My distinguished friend has not charged in words, and it is not true, that their energies have been bent to this unfortunate prisoner. It was in evidence that many things were followed up, that many trails were pursued, and I am not permitted even to tell you how many men were followed with the thought that perhaps they had something to do with this crime, how many towns and cities were investigated, and how many people were watched and followed,

how many trails have been pursued. Don't you suppose, Mr. Foreman, they would be glad today if it could be found that this woman did not do this thing? Is there a man so base in all this world that hopes she did it, that wants to believe she did it, that tries to believe she did it? Nay, nay, Mr. Foreman: all the evidence in this case that is entitled to great weight from the police officers came before (as I shall show you bye and bye) any suspicion came to them that she was connected with it. And it was only after they had investigated the facts, had gotten her stories and put them together that the conviction forced itself upon them, as perhaps it may upon you, that there is no other explanation which will answer the facts that cannot be denied.

A blue coat does not make a man any better; it ought not to make him any worse. They are men: Mr. Fleet is a man, Mr. Mullaly is a man, Mr. Medley is a man: and they are not to be stood up in a row and characterized as good or bad because they are officers, but upon what you think of them as men. There is no presumption that any class of people do not tell the truth. There is not even a presumption that thieves do not tell the truth. There is no presumption one way or the other about policemen. They are to be judged as other men are. And because they have been called into this case and because they have found things which they present to you, I say it is wicked to brand them as over zealous or unkind or prejudiced or biased. Judge each man as he appears before you, and judge him righteously.

Another class of evidence still is that which is sometimes looked upon with some suspicion, particularly when they disagree, and that is the testimony of those who are called upon to give their opinions,---sometimes called experts. Fortunately, however, in this case, Mr. Foreman and gentlemen, the matters they testify to (and I am going to dismiss all further consideration of them with this remark) are matters which there has been no attempt to deny whatever. Nay, more than that; it is customary in the trial of a cause for murder to afford to those who represent the defence an opportunity on their side to select such men of reputation and eminence as they see fit, who are accorded the privilege of examining the facts and the evidence and the exhibits, and the various things that are put in the case, and see if they have any different conclusion to draw. These things were put into the hands of Dr. Draper, and no less eminent men than Doctors Dwight and Richardson, whom some of you know to be the equals of those who have been called here, have examined them to their hearts' content, and it is not for my distinguished friend to challenge the conclusion to which these gentlemen came when their own experts are silent in reply. You will believe what they said because those interested to find flaws in them have not told you of a flaw. You will find that their conclusions are accurate because those who could have disputed them have not done so. And while ordinarily, when one expert says one thing and another another, little weight can be attached to

their opinions; when everybody agrees upon both sides, either by their silence or by their testimony that part of the case is left beyond any question whatever.

There is another thing that troubles my friends---I now include the learned advocate who opened this case as well as the distinguished counsel who closed it --- and which perhaps from your ordinary and accustomed channel of thought may have troubled you. I speak of it frankly, for many honest men have been heard to say---I have heard many an honest man say that he could not believe circumstantial evidence. And I respect the honesty of the man who says it. But, gentlemen, the crime we are trying is a crime of an assassin. It is the work of one who does his foul deeds beyond the sight and hearing of man. All it means is this: that when one sees the crime committed or one hears the crime committed, then the testimony of him that sees or hears is the testimony of a witness who saw it or heard it, and is direct evidence. All other evidence is circumstantial evidence. That is the exact distinction. Direct evidence is the evidence of a man who sees and hears: circumstantial evidence is all other kinds of evidence. Supposing you should say, Mr. Foreman, "I will not believe any array of circumstantial evidence whatever," what follows? Did you ever hear of a murderer getting a witness to his work who could see it or hear it? Crimes are committed every day of this character, not only murder but other felonies of like character, arson, burglary: and they are committed by stealth: they are committed in secret: the

traces of them are hidden. Murder is the work of stealth and craft, in which there are not only no witnesses, but the traces are attempted to be obliterated. And yet murder must be punished. What is called sometimes circumstantial evidence is nothing in the world but that presentation of circumstances---it may be one or fifty---there isn't any chain about it--the word "chain" is a misnomer as applied to it; it is the presentation of circumstances from which one is irresistibly driven to the conclusion that crime has been committed. Talk about a chain of circumstances! When that solitary man had lived on his island for twenty years and believed that he was the only human being there, and that the cannibals and savages that lived around him had not found him nor had not come to his island, he walked out one day on the beach, and there he saw the fresh print in the sand of a naked foot. He had no lawyer to tell him that that was nothing but a circumstance. He had no distinguished counsel to urge upon his fears that there was no chain about that thing which led him to a conclusion. His heart beat fast: his knees shook beneath him, he fell to the ground in fright, because Robinson Crusoe knew when he saw that circumstance that man had been there that was not himself. It was circumstantial evidence: it was nothing but circumstantial evidence, but it satisfied him. It is not a question of circumstantial evidence, Mr. Foreman: it is a question of the sufficiency of circumstantial evidence. Let me anticipate a little. Nobody that has told of

it has seen Lizzie Andrew Borden burn that Bedford cord dress. There is not a witness to it. And yet my distinguished friend never said to you, "the evidence of that is circumstantial and you cannot believe it." Oh, no. We heard what she said before the act was supposed to have been done: we heard what she said after the act was supposed to have been done: we saw the position she was in: we saw the act she was doing that preceded it, and we put those circumstances together and we say, as we have a right to say, as it never occurred to one of you not to have said until I suggested the fact,---that circumstances have proved that that dress is burned, so that counsel themselves do not dispute the proposition. It is like the refuse that floats upon the surface of the stream. You stand upon the banks of the river and you see a chip go by. That is only a circumstance. You see another chip go by. That is another circumstance. You see a chip in front of you going the other way. That is only another circumstance. Bye and bye you see a hundred in the great body of the stream, all moving one way, and a dozen or two in this little eddy in front of you going the other way. The chain is not complete: some of the chips go upstream: but you would not have any doubt, you would not hesitate for a moment, Mr. Foreman, to say that you knew which way the current of that river was, and yet, you have not put your hand in the water and you have only seen things from which you inferred it, and even the things themselves did not all go the same way. But you had the wit and the sense and the human and

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common experience to observe that those that went the other way could be explained and the great body of them went that way.

I speak of this perhaps with more earnestness and at more length than I need to, Mr. Foreman, because I know how prone the mind is, judging from what is loosely said sometimes by the press and by unthinking people, "Oh, it is nothing but a case of circumstantial evidence." Mr. Foreman, there have been very few cases of assassination in which there was direct testimony. My learned friend the counsel who opened this case has culled out from the billions of cases that have been tried to juries in English-speaking countries,---I think I do not exaggerate---from the thousand million of cases which have been tried upon circumstantial evidence in English-speaking countries, an instance here and an instance there where it was found, perhaps, that there was a mistake: and even those cases, with one single exception (and in that case the man never got hanged) are open to great doubt and discredit. But every lawyer knows, every man who is accustomed to the trying of cases is familiar with the fact that the testimony of men is wrong a hundred times where facts are wrong once. Men will not tell the truth always: facts cannot tell but one story. Witnesses are under oath but will perjure themselves: circumstances are not under oath, but they cannot do but what they have to do. If this case is not to be considered because it is a case of circumstantial evidence, Mr. Foreman, there is no case that can be considered, and murder goes unpunished.

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What impresses one as the remarkable and distinguishing feature of this case is

the gradual discovery of the surprising fact that these two people did not come to their death at the same time. I have no doubt that each one of you, as you heard the stories as they came flashed over the wires, had the idea that was common to everybody who did not know anything about it,---and there was nobody that did,---that some man had come in, rushed through the house, killed the old gentleman, rushed up stairs and killed the old lady, and then had made his escape. But it has been found that that was not so. It has been proved so conclusively that counsel do not dispute the proposition. It is scarcely worth while for me to recapitulate the evidence. I will not do it. Mr. Wixon, Mr. Pettee, to say nothing of the officers and Dr. Dolan, and Dr. Dedrick, who is not in any way connected with the government and holds no government office,---came in there and made their examination, and as Dr. Dedrick put it, it appeared to him,---for he is a physician of experience---that the deaths were several hours apart. Dr. Dolan examined more carefully the blood and the wounds and the head, and he thought there was a difference of from an hour to an hour and a half. But, gentlemen, there is within us, provided by the Almighty, a clock by which the eye of science can tell the time. When a man fall overboard into the water and drowns, his watch stops, and fixes the time when he drowns: anybody can tell that. But when the human life stops, if

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precautionary measures are taken, as were taken in this case, a man who is skilled in the examination of these things can tell as accurately the relative time of the death of that man as we can tell the time by that clock up there. And so we proved---ah, it was a suspicion born of consciousness and not of anything we said in this case when it was suggested that we were trying to show the poverty of the mode of life here: there never has been a word of that on our side of the case: my learned associate did not even hint that we were going to claim there was anything mean or poverty-stricken in this family, and it never was said until my distinguished friend saw fit to defend that family from what never was charged. But for the purpose of scientific investigation, which was necessary, we proved---and for no other purpose whatever---what was the breakfast of that family that morning, and that the members of it sat down and partook together. It was a good breakfast: it was the ordinary New England breakfast, and nobody has said the contrary. Do not let me be misunderstood for one single moment in this case. And for that purpose we showed you that these people sat down to breakfast at from seven to quarter past seven, and finished from half past seven to quarter of eight, and ate together and ate at the same time. They lived their lives out, prematurely cut off by the hand of the assassin: their bodies lay upon the floor. Their stomachs were taken out, digestion stopped when they stopped, and were sent to that eminent, that scientific, that

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honest, that utterly fair man, Professor Wood, whom my learned friends will join with me in saying is the most honest expert there is in Massachusetts today. He alone was able to determine accurately the time of their death, assuming that digestion went on normally within them, and he says that in all human probability the time of her death preceded his by an hour and a half: it might possibly have been a half hour less, it might possibly have

been a half hour more: that there was no evidence of abnormal digestion: that there was no evidence of irritants that would hasten it or retard it in either case: that digestion had begun in the ordinary and regular way and was going on when their lives were taken from them. And it appears from his testimony---and Dr. Cheever corroborated it, for he says the minimum would be an hour and the maximum two hours, but he is not so good a judge as Wood himself---it appears by all the probabilities in the case that that woman came to her death by the period of an hour and a half before the man. Singularly enough, science is corroborated by the facts. Singularly enough, everything fits into that proposition. As I shall attempt to show you hereafter, Andrew Jackson Borden probably never heard the clock strike eleven as it pealed forth from the tower of city hall: and she was found dead with the implement with which she had been engaged in dusting the rooms at her head and close by her in death. She was stricken down while she was in that morning work in which she was engaged the last time that anybody saw her. And all the evidence in the case points to the irresistible

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conviction that when Andrew Borden was down at his accustomed place in the bank of Mr. Abraham Hart, the faithful wife he had left at home was prone in death in the chamber of the house he had left her in. At half past nine, if we are to believe the consensus of all this testimony, the assassin met her in that room and put an end to her innocent old life.

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Gentlemen, that is a tremendous fact. It is a controlling fact in this case. It is the key of the case. Why do I say that? Because the murderer of this man was the murderer of Mrs. Borden. It was the malice against Mrs. Borden that inspired the assassin. It was Mrs. Borden whose life that wicked person sought; and all the motive that we have to consider, all we have to say about this case bears on her. It is a tremendous fact for another thing, a significant fact for another thing. We are now driven to the alternative of finding that there was a human being who had the unparalleled audacity to penetrate that house when the entire family were in and about it so far as he knew, to pursue his murders with a deadly weapon in his hand to the furthest corner of the house and there to select an innocent, an un-offending old lady for his first victim and then lie in wait until the family should all get together an hour and a half later that he might kill the other one. This murderer was no fool; he was the embodiment of craft and cunning. He could not foresee that Bridget would go up stairs; he could not foresee that Lizzie would go to the barn. He might have known from the habits of Andrew Borden that he would come back, but it would be back to a house full of people,---Morse might come at any time, he knew not when, Emma might come. He was waiting, waiting for the family to assemble, this man who committed this deed. It was no sudden act of a man coming in and out. It was the act of a person who spent the forenoon in this domestic

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establishment, killing the woman at her early work and waiting till the man returned for his noon day meal in order that he could be killed when everybody would be likely to be around him. It is a tremendous fact, Mr. Foreman. It appears in this case from beginning to end. I shall have to ask you now to go back with me to that morning in the guest chamber and stand over the body of that poor woman as she lay there mangled and bleeding, and ask who could have done it? She had not any enemy in the world. You and I sometimes have our jars, our discords. Andrew J. Borden had had his little petty quarrels with his tenants, nothing out of the ordinary, but Mrs. Abby Durfee Borden had not an enemy in all the world. There she lay bleeding, dead, prone by the hand of an assassin. Somebody went up there to kill her. In all this universe there could not be found a person who could have had any motive to do it. But let us see. Let us see. We must now go into this establishment and see what manner of family this was. It is said that there is a skeleton of the household of every man, but the Borden skeleton---if there was one---was fairly well locked up from view. They were a close mouthed family. They did not parade their difficulties. Last of all would you expect they would tell the domestic in the kitchen, which is the whole tower of strength of the defence---and yet Mr. Foreman there was a skeleton in the closet of that house which was not adequate to this thing,---oh, no, not adequate to this thing. There in not anything in human nature that is adequate to

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this thing---remember that. But there was a skeleton of which we have seen the grinning eye balls and the dangling limbs. It is useless to tell you that there was peace and harmony in that family. We know better. We know better. The remark that was made to Mrs. Gifford, the dressmaker, was not a petulant outburst such as might come and go. That correction of Mr. Fleet at the very moment the poor woman who had reared that girl lay dead within ten feet of her voice was not merely accidental. It went down deep into the springs of human nature. Lizzie Borden had never known her mother. She was not three years old when the woman passed away, and her youthful lips had scarcely learned to pronounce the tender word Mamma, and no picture of her lay in the girls mind. It was not so perhaps, with Emma, but Lizzie Borden had no remembrance of her mother such as your child or mine would have, if ever three years of age and their mothers were suddenly taken away. And yet she had a mother,---she had a mother. Before she was old enough to go to school, before she had arrived at the age of five years this woman, the choice of her father, the companion of her father who had lost and mourned and loved again, had come in and had done her duty by that girl and had reared her, had stood in all the attitudes which characterize the tenderest of all human relations. Through all her childhood's sicknesses that woman had cared for her. When she came in weary from her sports, feeble and tired it was on her breast

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that that girl had sunk as have our children on the breast of their mothers. She had been her mother, faithful and persevering, and had brought her up to be at least an honorable and worthy woman in appearance and manner. This girl owed everything to her. It was not a case where after a period of childhood from ten, twelve, or fifteen years, the loved

one is taken away and another one comes in to take its place who tries as we know often how faithfully they try, but cannot do it, to fill the place of the one that has gone. Mrs. Borden was the only mother she had ever known, and she had given to this girl her mother's love and had given her this love when a child when it was not her own and she had not gone through the pains of child birth, because it was her husband's daughter. And then a quarrel,--what a quarrel! What a quarrel, Mr. Foreman! A man worth more than a quarter of a million of dollars, wants to give his wife, his faithful wife who has served him thirty years for her board and clothes, who has done his work, who has kept his house, who has reared his children,---wants to buy and get with her the interest in a little homestead where her sister lives. How wicked to have found fault with it. How petty to have found fault with it. Nay, if it was a man sitting in that dock instead of a woman, I would characterize it in more opprobrious terms than those. I trust that in none of the discussion that I engage in today shall I forget the courtesy due from a man to a woman; and although it is my horrible and painful duty to

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point to the fact of this woman being a murderess, I trust I shall not forget that she is a woman, and I hope I never have.

And she repudiated the title that that woman should have had from her. Did you ever hear of such a case as that? I have once. I once knew of some young man who had acquired that contempt for a dissolute and drunken father that they denied him the title of his paternity. I know how utterly vile and worthless his life was. I shared in their contempt for them. But it struck me as the most unnatural thing I ever knew a young man to do.

My distinguished friend says this defendant had grown to be a woman, that is true, but that mother of hers had grown to be an aged woman, and she was as much a mother to her then as she ever was. The assassin's blade cuts deep. That wicked hatchet when deep down into the brain of that old woman, but Mr. Foreman it never went so deep into Abby Durfee Borden as did the contemptuous refusal of this girl to call her by the name of mother. It was a living insult to that woman, a living expression of contempt, and that woman repeated it day in and day out, saying to her, as Emma had said, you are not interested in us. You have worked round our father and have got a little miserable pittance of \$1500 out of him, and you shall be my mother no more. Am I exaggerating this thing? She kept her own counsel. Bridget did not know anything about it. She was in the kitchen. This woman never betrayed her feelings except when some one else tried to make her call her

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mother and then her temper broke forth. Living or dead, no person should use that word mother to that poor woman unchallenged by Lizzie Borden. She had left it off herself; all through her childhood days, all through the times when growing to womanhood, all through her young life Mrs. Borden had been a mother to her as is the mother of every

other child to its offspring, and the time comes when they still live in the same house and this child will no longer call her by that name.

Mr. Foreman, it means much. It means much. Why does it mean much? I stop speaking to a man who goes by my office or house. You stop intercourse with a man you are accustomed to meet. You refuse to address him or you call him by some unworthy epithet. He goes his way and you go yours. But these people day in and day out, year in and year out under the same roof, compelled to eat the same bread, compelled to sleep in the same house, compelled to meet each other morning, noon and night yet maintain this strained, unnatural hostility. I don't know but what some of you to whom I am talking, Mr. Foreman and gentlemen, are connected with families in which there are second wives and two sets of children. I am not in my own, but there are such in my immediate surroundings, so that I can speak frankly and fairly about it. I agree because I know it is so, and you probably do,---I agree that in very, very many cases it can and does happen that when the mother or

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father dies leaving children and the relict marries again, that by the forbearance, by the Christianity, by the mutual love that they bear to each other the family relations go on unimpaired. But alas, I know, alas you know too, that when once the seeds of discord are sown by the relation of step-father, step-daughter or step-mother there are no more bitter hatreds in this world. Are there? When once those seeds come in, such must be the result because they are nurtured and fostered every day and every month. The back of the jaded horse becomes galled. If he can be freed from his work it will heal and become well, but if he is kept with a saddle on the galled part and worked and worked and worked and has no chance to get away from it, it will fester and finally infect his whole system. And so we find it here. They did not eat together. Bridget says so. My distinguished friend tried to get her to take it back and she did partly. The woman would have taken most anything back under that cross-examination, but this is her testimony "That is so, they always ate together? A. Yes, they always ate in the same dining room." Bridget is going to have her own way yet. But I do not put it on Bridget. I put it on Lizzie herself. When Mrs. Gifford spoke to her, talking about her mother, she said, "don't say mother to me,---" that mother who had reared her and was her father's companion, under the roof with whom she was then living, whose household she shared, to whom every debt of gratitude was due and whom she had repudiated as her mother, she could not find the heart to

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say to this dressmaker was her mother, for I believe that you believe this story is true,--- "she is a mean, good for nothing old thing." Nay, that is not all--- "we do not have much to do with her. I stay in my room most of the time." Is not that so? Uncle John Morse came to visit them. Stayed over night and during the afternoon and evening and next morning and never saw Lizzie at all,---her own uncle. "Why you come down to your meals?" said Mrs. Gifford, and Lizzie said, "yes, but we don't eat with them if we can help it." I heard what Miss Emma said Friday and I could but admire the loyalty and

fidelity of that unfortunate girl to her still more unfortunate sister. I could not find it in my heart to ask her many questions. She was in the most desperate strait that an innocent woman could be in, her next of kin, her only sister stood in peril and she must come to the rescue. She faintly tells us the relations in the family were peaceful, but we sadly know they were not. But you will say, you will fairly say, Mr. Foreman,---let me not under rate this thing one atom,---you will fairly say what is that? I don't know. I don't know how deep this cancer had eaten in. It makes but little show on the surface. A woman can preserve her appearance of health and strength even when the roots of this foul disease have gone and wound clear around her heart and vital organs. This was a cancer. It was an interruption of what should have been the natural agreeable relations between mother and daughter, a quarrel about property, not her property but her fathers, and property

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that he alone had the right to dispose of. A man does not surrender his rights to his own until he is dead, and not even then if he chooses to make a will. She could not brook that that woman should have influence enough over her father to let him procure the little remnant of her own property that had fallen to her from her own folks. She had repudiated the title of mother. She had lived with her in hatred. She had gone on increasing in that hatred until we do not know, we can only guess how far that sore had festered, how far the blood in that family had been poisoned by the misfortune of these unfortunate relations between them.

I come back to that poor woman lying prone, as has been described, in the parlor. It is wicked to have to say it, it is wicked to have to say it, but gentlemen there is no escape from the truth. Had she an enemy in all the world? She had one. Was anybody in the world to be benefited by her taking away? There was one. There was one.

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It is hard to believe that mere property would have influenced this belief. We are not obliged to, although it appears that property was that which made or broke the relations of that family, and a small amount of property too. But there was one woman in the world who believed that that dead woman had stood between her and her father, and was the enemy of her and the friend of her father, and between whom there had grown up that feeling that prevented her from giving her the title that the ordinary instincts of decency would have entitled her to.

Let us examine the wounds upon that woman. You will see the skull by and by. In the effort which counsel have made, and I which I hope you will not be ungrateful to us for, to try this case, this horrid case, as decently as we could, we have refrained from bringing in to you, excepting upon a single occasion when it was necessary for the purposes of experiment, the mutilated remains of those people. I am glad, too, that my distinguished friend has had the manliness, as I knew he would, not to criticize that otherwise awful act of producing those bones. It is a horrid thing to do. But, gentlemen,

murder is a horrid thing, and all that goes with it---all that goes with it. It is necessary for the purpose of evidence, and, as I shall show you by and by, it might be equally necessary for the protection of this woman, if affairs had taken another turn, for it might have just as well be her shield as our weapon---what was found within

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those skulls. It is done in every important murder case; nay, it was done in the very last case that was tried in this room for a capital crime. And while we deplore the violation of the tomb, murder knows nothing of decency.

So we look at that skull and we look at those wounds, and what do we read there? We know afterwards, by another examination down stairs, that no thief did this thing, there was no object of plunder. We are spared the suspicion that any base animal purpose had to do with this crime. It has not been suggested, owing to the frankness and courtesy of our friends, and we are not obliged to talk about that.

No, Mr. Foreman, there was nothing in those blows but hatred, but hatred, and a desire to kill. What sort of blows were they? Some struck here at an angle, badly aimed; some struck here in the neck, badly directed; some pattered on the top of the head and didn't go through; some, where the skull was weaker, went through. A great strong man would have taken a blow of that hatchet and made an end of it. The hand that held that weapon was not the hand of masculine strength. It was the hand of a person strong only in hate and desire to kill. We have not proved anything yet, but we must take things as they come, no matter where they lead us. It was not the work of a man who, with a blow of that hatchet, could have smashed any part of that skull, and whose unerring aim would have made no false blows or false work. It was the blows of hatred; the weak, puttering, indecisive,

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badly aimed, nerveless blows---I forbear for the present to bring that sentence to a conclusion, for I won't do it until I am obliged to, I won't ask you until I am obliged to, to listen to it. I will come at this one step at a time.

Now we must go back and see what the circumstances of that crime were, for that is the crime we are trying. We will come at the other one by and by, and see how and when and why that happened. But now we are trying that crime, the motives of that crime, the possible author of that crime, who could have committed that crime, what sort of person committed that crime; and why was it done.

We find, Mr. Foreman, perhaps the most remarkable house that you ever heard of. My distinguished friend has admitted so many things that I am saved the necessity of arguing very much about the circumstances surrounding that house. Everything was locked up. Why, did you notice there was even the barbed wire at the bottom of the fence as well as on the top and on the stringers? Everything was shut up. It was the most

zealously guarded house I ever heard of. The cellar door was found locked by all the witnesses that examined it. The barn door was locked at night, and was kept locked all night and opened in the morning, by the undisputed testimony of Bridget, whom nobody has suggested or ventured to suggest has told anything more than she knows in this case.

The closet door, up at the head of the stairs, was found

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locked by Mr. Fleet, and every time that he wanted to go in there, or anybody else wanted to go in there, or Lizzie herself, she furnished the keys that unlocked it. So that door was locked up.

The front door was a door which had been kept by a spring lock until that day. The day before, when Dr. Bowen called, Bridget let him in by the spring lock. That night, when Lizzie came home from her call on Miss Russell, she let herself in by the spring lock. There isn't an atom of evidence that up to the time of this tragedy, and when people began to come in and out, and upset the ordinary arrangements of that house, but that front door had always been kept by a spring lock, opened in the morning. That morning it was not opened. It was that woman's business to open it, and she did not open it. She came downstairs and went into the kitchen and went about her ordinary avocations, and by and by, when Mr. Borden came home, he expected to find it unlocked, because he tried his key to it, and it wouldn't fit, and he had to call her attention to get in.

And it was locked not only with the spring lock but with the bolt and with the lower lock, all three put together, as people lock their door when they go to bed. Not the shutting in of an assassin, as my distinguished friend has suggested, who was trying to lock himself into the house, wild and improbable as that suggestion is. But it was the lock of those who retire at night, when they turn all the

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keys, and it was not unlocked the next morning.

Then the screen door. I hesitate to weary you with details. My distinguished friend in his cross-examination found one time, that was when Bridget came in from the little trip she made to the yard when she was sick, and she once said she did lock the screen door up then, and a little afterwards, when my brother cross-examined her, she wasn't quite sure, but she was almost sure she did. But the next time anybody went through the screen door was when she went out to wash the windows, and she found it locked, and unlocked it.

Now let us go through the movements of that family. It may be, perhaps, as good a way to do as any to refresh your memories about it as well as my own. I will go back to the night before, because I want to keep this house locked as zealously as I can. We go back to the night before. That afternoon at five o'clock that screen door was locked. That

night when Bridget went out she locked the back door after her. That night when she came back she found it locked, and she locked up the screen door and the outside door and went upstairs to bed. No chance for anybody to get in that day. The cellar was never unlocked except on the Tuesday before---and I get this right from the testimony, because I do not want to argue anything but what is strictly correct.

The next morning Bridget got up at 6.15 and took in the

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milk and hooked the screen door, unlocking the big door. A little while afterwards Mrs. Borden came down, some time between half past and quarter of seven, and went into the sitting room. Mr. Borden came a little while afterwards, put his key on the shelf, and unhooked the screen door and went into the yard, Bridget remaining in the kitchen all the time. When he came back Bridget was out of view of the screen door and don't know whether he locked it or not. But the next person that went out was Morse, and Mr. Morse tells us---for he fills all that cavity up---Mr. Morse tells us that he unhooked the screen door when he went out and Mr. Borden hooked it after him, so that Mr. Borden must have hooked it when he came in. Then when Mr. Borden came in he hooked the screen door again, Bridget being on guard in the kitchen all the time. She didn't see Mr. Morse come down, but he did come down and went into the sitting room, as he said himself. Then they sat down to breakfast about quarter past seven. Then they went into the sitting room and she went about her work outside; and the next thing she knew, as she thinks, or, as Mr. Morse thinks, somewhere about quarter of nine---that is the way he fixes it himself---Mr. Borden came to the door and let Mr. Morse out. That was the next person that had used the screen door after Mr. Borden had come in; and Mr. Morse says and testifies, as you heard him, on the first day of this trial, that he unhooked the screen door and went out and that Mr. Borden bade him good by, and I believe told him

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to come to dinner---I have forgotten whether that is in the case or not---and hooked the screen door after him. Then Bridget went about her work, eating her breakfast, clearing off the dining room dishes, right there on guard in the kitchen all the time.

By and by Lizzie came down. Lizzie came into the kitchen, and her father had not then gone, and Bridget went out in the yard a few moments, because she was sick too. She remained right there in the yard for a moment or two, and when she came in Lizzie had got through her breakfast and had gone back into the other part of the house, she didn't know where, and Mr. Borden had gone off down town. When she came in she hooked the screen door. She didn't remember whether she did or not, but as she says afterwards that she found it hooked when she went out, and she was the next person who went out, she must have hooked it when she came in.

Now we are getting around to the vicinity of this occurrence, because Mr. Borden, as my distinguished friend has said, must have gone down town in the neighborhood of

half past nine; for the first that is seen of him that is introduced here in evidence is his visit---possibly he went to the Post Office, which is almost on the way, and possibly he went around to inspect his tenement, which is almost on the way---but the first that is seen of him he appears at the bank where he was accustomed to be at half past nine in the morning.

Up to that time, Mr. Foreman, no human being could have

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got into that house. We go further than that. By and by Bridget goes into the dining room to clear off her dining room things, and sees Mrs. Borden dusting in and out of the sitting room and the dining room, and Mrs. Borden directs her, when she gets through her work, to wash the windows. Bridget goes on about her work and Mrs. Borden disappears upstairs, and Lizzie is out of sight. She gets through with her work---and I call particular attention to this. She gets through with her work, Bridget does, goes down cellar and gets her pail, comes back up into the house, goes through the house and puts down the windows, and there isn't anybody below the stairs. Mr. Borden has long since gone down town. It must have been about half past nine when Bridget went out to wash the windows, or possibly a little later. She goes out of that screen door, which, up to that time, no human being could have gone into. She has no more than got out of doors than Lizzie, who had not been down stairs up to that time, who had not gone away from the house, and, as she herself says, saw her mother up there making the bed, or working in that guest chamber---Lizzie comes to the back door to see if Bridget is fairly out of doors, goes back into the house, and the murder is then done, as Prof. Wood's clock tells us.

Never mind the impossibility---I won't argue that now, Mr. Foreman---never mind the impossibility for the present of imagining a person who was so familiar with the habits of

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that family, who was so familiar with the interior of that house, who could foresee the things that the family themselves could not see, who was so lost to all human reason, who was so utterly criminal as to act without any motive whatever, as to have gone to that house that morning, to have penetrated through the cordon of Bridget and Lizzie, and pursued that poor woman up the stairs to her death, and then waited, weapon in hand, until the house should be filled up with people again that he might complete his work. I won't discuss with you the impossibility of that thing for the present. I will come back to the facts in this case and ask you whether or not, at that time when the murder was done--up to that time there had been no room for the assassin to come in, and after that time the house was there alone with Lizzie and her murdered victim.

The dead body tells us another thing. It is a circumstance, but it is one of those circumstances that cannot be cross-examined, nor made fun of nor talked out of court. The poor woman was standing when she was struck, and fell with all the force of that 200

pounds of flesh, flat and prone and dead on the floor. That jar could not have failed to have been heard all over that house. They talk about its being a noisy street. Why, Bridget tells us that she could hear the screen door from her room when it slammed. She did hear Andrew Borden trying the lock of the front door and went to let him in without the bell being rung. Lizzie heard

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her down there letting her father in. Nothing happened in one part of the house that wasn't heard in the other.

My friend has spent sometime in demonstrating, as he believes, to you, the unlikelihood of her seeing her murdered mother as she went up and down the stairs. But Lizzie Borden has ears as well as eyes. If she was downstairs she was in the passage way of the assassin. If she was upstairs there was nothing that separated her from the murder but the thinness of that deal door that you saw. And do you believe for a moment, Mr. Foreman and gentlemen, do you believe for a moment that those blows could have been struck---that woman was struck in a way that did not make her insensible---that she could have been struck without groaning or screaming; that she could have fallen without a jar, a woman as heavy as I am (I just use that by way of illustration), on that floor, nearer than I am to you, sir, from Lizzie, and she know nothing of it?

If the facts I have put to you, Mr. Foreman, are true, that house consisted of a parlor chamber and a passage way to it, practically, from the screen door; a parlor chamber and a passage way to it. At the very instant when the murders were committed we leave Lizzie and Mrs. Borden in the house together. Was she in the passage way when this assassin came in? She alone knows. Was she in her room when that heavy body fell to the floor? She alone knows. But we

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know, alas, we know, Mr. Foreman, that when Bridget opened that screen door and went out to wash the windows, after Mr. Borden had met his half past nine appointment at the bank, that she left in the house this poor woman and the only enemy she had in the world. And there had been no more chance if there was any conceivable possibility existing to mankind, that anybody else got in, than there would be of getting into this room and you and I not seeing them.

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But that is not all. It is provided, as I humbly and devoutly believe, by the Divine Justice itself, that no matter how craftily murder is planned, there is always some point where the skill and cunning of the assassin fails him. It failed her. It failed her at a vital point, a point which my distinguished friend has attempted to answer, if I may be permitted to say so, and has utterly failed. She was alone in that house with that murdered woman. She could not have fallen without her knowledge. The assassin could not have

come in without her knowledge. Nothing could have happened that she did not know. She was out of sight and Mrs. Borden was out of sight, and by and by there was coming into the house a stern and just man, who knew all the bitterness there was between them. There came into that house a stern and just man who would have noticed the absence of his wife, and who would have said to her, as the Almighty said to Cain, "Where is Abel, thy brother?" And that question must be answered. He came in; he sat down; she came to him, and she said to him, "Mrs. Borden---she would not even call her "Mother" then,--- "Mrs. Borden has had a note and gone out." That stilled his fears; that quieted any apprehensions he might have felt by reason of her absence either from the sitting room or the dining room or the kitchen, or her own room up stairs, where he was sure to go with his key, as he did.

When Bridget went to her room, and I call your attention

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to this as being the first information that Bridget had of it---it will appear by and by, by the evidence itself---before Bridget went up stairs to her room Lizzie says to her, "If you go out, be sure and lock the door, for Mrs. Borden has gone out on a sick call, and I might go out too." Bridget says, "Miss Lizzie, who is sick?" naturally enough. She said, "I don't know, but she had a note this morning, and it must be in town."

While I am about it, I will read the rest of the statement she made about it. These are not the inquisitorial prying of the police officers. They are her friends, her relatives, her servant, her confidantes, that she says this story to. Mrs. Churchill came over. "Where is your mother, Lizzie?" She said, "I don't know. She had a note to go to see some one who was sick, but I don't know but she is killed too, for I think I heard her come in." I will talk about that by and by, if I don't weary you too much. Then she said something to Fleet. Although she told Fleet that the last time she saw her step-mother was 9 o'clock, and she was then making her bed in the room where she was found dead, she said, "Some one brought a letter or a note to Mrs. Borden," and she thought she had gone out, and had not known of her return. Then when Bridget came back she wanted to find her. She knew that one of the mother's only relatives was Mrs. Whitehead, the sister of her husband, as it turned out, because it turned out by Miss Borden's cross-examination, and she said, "Oh, Lizzie, if I knew where Mrs. Whitehead lived, I

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would go and see if Mrs. Borden is there, and tell her that Mr. Borden is very sick."

Mr. Foreman, charged with the due responsibility of the solemn trust imposed upon him, my learned associate said in opening this case that that statement was a lie. Conscious as I am, Mr. Foreman, that any unjust or harsh word of mine might do injury that I never could recover my peace of conscience for, I reaffirm that serious charge. No note came; no note was written; nobody brought a note; nobody was sick. Mrs. Borden had not had a note. My learned friend said, "I would stake the case on the hatchet." I will

stake it on your belief or disbelief in the truth or falsity of that proposition. They tried to get rid of the force of it by telling us what Bridget said to Mrs. Churchill. Let me discuss it thoroughly and fully. Afterwards, after Lizzie had told Bridget that Mrs. Borden had had a note to go out and see some one, that Mrs. Borden had gone out on a sick call and had had the note come that morning, she told her before she went to the room and that murder was discovered, and after it was a matter of common talk, and when Mrs. Churchill was asking Bridget not as a source of original information, but for all the news there could be had about it, Bridget then said to her, "not to my own knowledge Mrs. Borden had a note to go out to see some one who was sick," but repeated it as the story of the original and only author, Lizzie Borden. Obviously that is so, because when my learned and

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distinguished friend comes to the cross-examination of Bridget, this is what Bridget said, that she never had any knowledge of a note at all except what Lizzie told her. Pardon me for reading it, because this is vital to the case.

"You simply say that you didn't see anybody come with a note? A. No sir, I did not
Q. Easy enough for anybody to come with a note to the house, and you not know it, wasn't it?" He couldn't fool Bridget. "A. Well, I don't know if a note came to the back door that I wouldn't know." The door bell never rang that morning at all.

"But they wouldn't necessarily go to the back door, would they? A. No. I never heard anything about a note, whether they got it or not. I don't know. I never heard anything about a note. Q. Don't know anything about it, and so you do not undertake to say"--- anything about it? A. No sir."

She was obviously telling the story as Lizzie had told it to her. Bridget had last seen Mrs. Borden dusting in the sitting room. She had been told by Lizzie that she had got a note and gone out. She knew that Mrs. Borden had not told her that she had gone out, as she always did when she left the house, and so she put those things together and told them as a piece of news to Mrs. Churchill, and the chances are that the next person that Mrs. Churchill saw she told the same thing to. Nobody was suspecting Lizzie then. Nobody was saying to themselves, "Lizzie is not telling the truth." Nobody was dreaming for a moment that there was anything

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wrong in that story. Lizzie says to Bridget, "Mrs. Borden had a note and has gone out." Bridget then says to Mrs. Churchill, "Mrs. Borden has had a note and has gone out." Mrs. Churchill went home and told her sister, probably, "Mrs. Borden has had a note and has gone out.", just as you tell the news from mouth to mouth. There is not any ground to argue that Bridget knew anything about it from Mrs. Borden for she says she did not. No, gentlemen. In the first place Bridget was on guard at that back door until she had washed the windows, and no note came that way. She testifies, and you can easily believe her testimony because the front door was locked with three locks all the time, that nobody

came to the front door and rang the bell with a note.

I said that Almighty Providence directed the course of this world to bring murderers to grief and justice. Little did it occur to Lizzie Borden when she told that lie to her father that there would be 80,000 witnesses of the falsity of it. My distinguished friend has had the hardihood to suggest that somebody may have written that note and not come forward to say so. Why, Mr. Foreman, do you believe there exists in Fall River anybody so lost to all sense of humanity, and it is her friend, who would not have rushed forward, without anything being said, and state, "I wrote that." I hoped somebody would come forward and say so, and relieve this case of that falsehood. They have brought to us evidence of a drunken man seen the night before; they have

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brought to you evidence of the man waiting in the carriage in front of Dr. Kelley's, and going down in the shade of the tree instead of standing in the hot sun. They have advertised for the writer of the note which was never written and which never came.

Gentlemen, incredulity sometimes can be dismissed by evidence, but I am not looking in the face of one single man that will believe for an instant that the writer of that note would not months ago have come forward and cleared that thing up. There never was one. Ah, but my distinguished friend is pleased to suggest---he hardly dares to argue it, such is his insight and fairness,---he is pleased to suggest that it was part of the scheme of assassination. How? To write a note to get a woman away when he was going there to assassinate her? Of course not. And if the note came it must have come with him and not by him. Suppose I take his contention, that the object was to assassinate Mr. Borden. What earthly use was there in writing a note to get rid of Mrs. Borden when there would still be left Lizzie and Bridget in the house? Oh, no, that is too wild and absurd. The whole falsehood of that note came from the woman in whose keeping Mrs. Borden was left by Andrew Borden, and it was as false as was the answer that Cain gave to his Maker, when he said to him, "Where is thy brother Abel?"

I regret to ask you so to believe, gentlemen. It pains me beyond expression to be compelled to state these things.

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God forbid that anybody should have committed this murder, but somebody did, and when I have found that she was killed, not by the strong hand of man, but by the weak and ineffectual blows of woman, when I find that those are the blows of hatred rather than of strength, when I find that she is left alone at the very moment of murder, shut up in that house where every sound went from one end to the other, with the only person in all God's universe who could say she was not her friend, with the only person in the universe who could be benefited by her taking away, and when I find, as I found, and as you must find, if you answer your consciences in this case, that the story told about a note coming is as false as the crime itself, I am not responsible, Mr. Foreman, you are not

responsible, for the conclusions to which you are driven.

(Adjourned to Tuesday, June 20, at 9 A.M.)

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THIRTEENTH DAY

New Bedford, Tuesday, June 20, 1893

The Court came in at 9 A M. and Mr. Knowlton resumed his argument as follows.

CLOSING ARGUMENT OF DISTRICT ATTORNEY KNOWLTON, Continued.

May it please your Honors, Mr. Foreman and gentlemen of the jury:

I congratulate you that the end of this hard season is drawing nigh. I trust that before even another day shall have dawned you will be able to return to the home, to the family, to the dear ones and to the surroundings which have become doubly dear to you by your long and enforced absence. It was my hope and expectation to have concluded what I had to say to you before the day closed upon yesterday; but it was felt, and I shared in the feeling, that you were too weary to longer listen to us. My distinguished friend had occupied the greater part of the day, and you had followed his masterly and close and able presentation of the facts that bore upon his client's case with that fidelity which has marked your course during this whole trial. You did the honor also to give me some respectful attention, and it

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was thought but fair that after a rest I should undertake to take up the thread of my broken discourse, and, so far as I can, proceed through these unwelcome and unpleasant facts to the bitter end.

The learned counsel who opened this cause for the defence said that one of the essential facts to be proved in connection with the case was the question of motive. I allude to that for fear that I may not have fully explained or made you understand the position of the Commonwealth in this respect. I think upon reflection my learned friend will agree with me that that was not so accurate a statement of law as he is accustomed to make upon consideration and reflection. It is not so, Mr. Foreman. Motive is not a part of the case of the Commonwealth. We are called upon to prove that the thing was done, and our duty stops there. We are not called upon to prove why it was done. It is no part of the Commonwealth's evidence; it is no essential link in its chain of proof, and it has happened, nay, often will happen, that the whole case is substantially proved, thoroughly proved, and the jury's minds are led to a degree of satisfaction that is expressed by the term, proved beyond a reasonable doubt, when no apparent motive is shown for the crime

at all. I do not disguise the fact that the consideration of motive has its weight in helping us to elucidate the mystery. I do not either conceal the fact, for I desire to be as frank as frankness can be in discussing the case, that the lack of

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apparent motive, nay, that the existence of motive not to have done the crime is a circumstance what must be well weighed before you can arrive at the result that the Commonwealth asks in this case.

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But it is a matter of history that motives are neither adequate nor even tolerable when considered in connection with a crime. It is matter of public history that a Professor of one of our institutions for learning, a man whose character was above reproach, whose surroundings were of the best, whose position if I may be pardoned for saying so, was not less eminent and respectable than that of the learned judges themselves, who preside here,---was tempted by the demon of sin to commit foul murder for no more motive than that he was pressed for the payment of a debt of a thousand dollars. That was the entire incentive in his case. Neither was his character a bulwark against crime, nor was his motive at all to be compared with the enormity of the crime that he committed. The motives of mankind, Mr. Foreman and gentlemen, are as inscrutable, though for a different reason, as are the ways of Divine providence. It does afford some satisfaction to the conclusions to which we are compelled to be brought in this case, it does afford some satisfaction to our reasoning, but it is no part of the essential elements of the case to have discovered that there were conditions existing in that unfortunate family which we can take our experience of mankind from and suspect even,---that is enough, it is not any matter of proof beyond a reasonable doubt, because it is no part of our case,---for which we can suspect even the existence of the malice which prompted that deed. I have referred to that condition. I have called your attention to the circumstances in which they were compelled

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to live under the same roof. They impressed me deeply. I can only say to you that they must impress you as you find your consciences to respond. Speaking for myself alone--- and you must answer whether it finds a responsive chord in your hearts, fathers if you are fathers---if I were to have my choice whether a daughter of mine should cast me from life unconsciously to death, without my knowledge, on the one hand, or should live with me for years and taunt me with ingratitude, deny me the title I had earned by years of patient devotion, far would I prefer the unconscious ending that knew not the ingratitude that had marked it.

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The malice was all before this fact. The wickedness was all before the fourth day

of August. The ingratitude, the poisoning, the hate, the stabbing of the mind, which is worse than the stabbing of the body, had gone on under that roof for many, many months.

And we cannot tell, it is not necessary that we should be able to tell, what new fuel was added to that fire of discontent. It is only necessary that we can consider that there may have been---there had been a quarrel unworthy of that girl, unworthy of anybody, because the man wanted to make a present to his wife of her homestead. We do not know---the lips of those that know are sealed in death, and we never shall know in this world---we do not know what new propositions this poor man had ventured to make with regard to his own. We do not know what had occurred in that family that kept that young woman from the delightful shore of Marion, where all her friends are; and kept her by her father and mother during those hot days of that hot summer. We do not know but that man had talked, as many a man does when he comes to that age, of exercising his legal right of making testamentary disposition of his property. We know nothing of it. It is not necessary that we prove it. It is no part of the Commonwealth's case.

All we know is that there was a jealousy which was unworthy of that woman. All we know is that, as Emma expressed it herself, they felt she was not interested in them, and

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consequently was interested as against them with her father. And no step could be taken by that poor man, no suggestion could be made by that poor man, that would not fan the embers of that discontent into the active fires of hatred that we have seen, alas, too many times manifested in many an unhappy home.

I speak of these things, Mr. Foreman, at this time, because I have left the dead body of that aged woman upon the guest chamber floor in the room where she was last at work, and am now asking you to come down with me to a far sadder tragedy, to the most horrible word that the English language knows, to a parricide. I do not undertake, far be it from me to seek to detract one iota from the terrible significance of that word; and when I am asked to find and prove and declare and explain a motive for that act, well may my feeble powers quail at the undertaking.

But I do see, I do think I see, and I only suggest it as a course of comment upon the conduct of that young woman, for your consideration, and without undertaking to prove it, for, as I have undertaken to say again and again, motive is not part of our case.

There may be that in this case which saves us from the idea that Lizzie Andrew Borden planned to kill her father. I hope she did not. I should be slow to believe she did. I should be slow to ask you to believe she did. But Lizzie Andrew Borden, the daughter of Andrew Jackson Borden,

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never came down those stairs. It was not Lizzie Andrew Borden, the daughter of Andrew J. Borden, that came down those stairs, but a murderess, transformed from all the thirty-three years of an honest life, transformed from the daughter, transformed from the ties of affection, to the most consummate criminal we have read of in all our history or works of fiction.

Nay, Mr. Foreman, that was not all. She came down to meet that stern old man. His picture shows that, if nothing more, even in death. That just old man, of the stern Puritan stock, that most of you are from, gentlemen. That man who loved his daughter, but who also loved his wife, as the Bible commanded him to. And, above all, the one man in all this universe who would know who killed his wife. She had not thought of that. She had gone on. There is cunning in crime, but there is blindness in crime too. She had gone on with stealth and cunning, but she had forgotten the hereafter. They always do. And when the deed was done she was coming down stairs to face Nemesis. There wouldn't be any question of what he would know of the reason that woman lay in death. He knew who disliked her. He knew who couldn't tolerate her presence under that roof. He knew the discussions which had led up to the pitch of frenzy which resulted in her death, and she did not dare to let him live, father though he was and bound to her by every tie of affection. It is the melancholy, the inevitable attribute of crime, that it is the necessary and fruitful parent of crime.

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Ah, Mr. Foreman, how many a man, if he could only be told before he began to commit a crime---could be told and assured that there is no such thing in divine justice as stopping with one crime, would hesitate before he crossed the threshold of virtue. He must go on; he cannot go back. Crime breeds crime, and is the mother of crime. And so when that woman came down stairs, it was her father---it was her father; but it was also the husband of her stepmother whom she had slain, and it came to her---God grant it never came before!---let me have that confidence in human nature to believe it never came before, let me have that confidence in human nature to believe it never came before---it came to her that she had become a criminal and there was no escape from the consequences of that crime but to complete the bloody work.

Let me not be misunderstood, Mr. Foreman. I do not say that that took place. It is not necessary for me to say that that took place. It is no part of this controversy to say that that took place. The Commonwealth is charged with a duty of satisfying you that she killed her mother and father; not why. But it is a grateful relief to our conceptions of human nature to be able to find reasons to believe that the murder of Andrew Borden was not planned by his youngest daughter, but was done as a wicked and dreadful necessity, which if she could have foreseen she never would have followed that mother up those stairs as she left Bridget after giving her instructions about washing

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the windows---followed her into that room, slain her as she stood perhaps at that very

marble that was found spattered with her blood, dusting it in the line of her ordinary avocations. But people never stop to think of the hereafter in crime. And so I leave that there, not as a matter of proof---oh, no, oh, no,---but to relieve my mind of the dreadful necessity of believing that there is a deliberate parricide yet living in America.

Let me go back with you to the history of what happened. Bridget finished her washing of her windows, came into the house, no one being below the stairs, took her step ladder and began the work upon the inside of the windows. Meanwhile the old gentleman was finishing the last walk of his life. We have followed his movements, and it is unnecessary for me to recapitulate them to you now. You find him leaving his house by the back door, where Mrs. Churchill saw him, probably, although it may not have been the occasion of his leaving. We certainly find him down at his accustomed place in the bank that had honored him by making him its president at his usual hour of half past nine. We find him going on from there to the other bank that had honored him by making him a trustee, a little later in the day.

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He moved slowly. Everybody moved slowly that day. If you remember the day, gentlemen, you remember that it was not a day of activity on anybody's part. He came back from Mr. Clegg's store, and had a talk with him a little before half past ten. He walked up, as was his wont, I presume, by the store he was having prepared on Main street, talked to the carpenters there at about twenty minutes of eleven, passed around Spring street by the route you went yourselves to see where the old gentleman went; turned down Borden street into the house where his wife lay dead, all unknown to him. He went to the back door, as was his custom, but nobody was there to open it, and so he went around to the front door, as very likely he often did, supposing, of course, that he could gain entrance, as any man does into his own house in the day time, by the use of a spring lock. We have heard something said about the noise and confusion of that street, but Bridget's ears, which are no quicker than Lizzie's, heard him as he put the key into the lock, and came to the door and let him in. He came in; passed into the dining room because she was, I presume, working in the sitting room, took off his coat and replaced it with a cardigan jacket and sat down, and down came Lizzie from the very place where Mrs. Borden lay dead, and told him what we cannot believe to be true about where his wife was.

I am told, gentlemen, that circumstances are to be regarded with suspicion, but, Mr. Foreman, a falsehood that goes right to the very vitals of the crime is not a

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circumstance---it is proof. Where was that mother? She knew. She told what never was true. That would pass off for awhile; that would keep the old man silent for a time, but it would not last. She took out her ironing board. Why had she not been ironing in the cooler part of the day, Mr. Foreman, we do not know. She had no duties around the house,---so Emma tells us. There was nothing for her to do. Bridget goes into the dining

room, having finished her windows in the sitting room; it took only a moment to wash them inside; comes into the dining room to wash the windows, and the old gentleman comes down from his room and goes into the sitting room and sits down. She suggests to him, with the spirit in which Judas kissed his master that, as he is weary with his day's work, it would be well for him to lie down upon the sofa and rest.

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Then she goes into the dining room again, gets her ironing board and proceeds to iron her handkerchiefs. Bridget finishes her work; she tells Bridget, and that is the first time that Bridget heard it directly, as I stated to you yesterday, that if she goes out that afternoon to be sure and lock the doors because Mrs. Borden had gone out on a sick call. And she says, "Miss Lizzie, who is sick?" Miss Lizzie replies, "I don't know, but it must be in town, for she had a note this morning."---she never did---and Bridget goes up stairs to take her little rest and leaves this woman ironing those handkerchiefs, nearer to her father as he lay on that sofa than my distinguished friend is to me, at that moment. Again she was alone with her victim. Oh, unfortunate combination of circumstances always! Again she is alone in the house with the man who was found murdered. In what may be safely said to be less than twenty minutes from that time she calls Bridget down stairs and tells her that her father is killed. There is another straw, Mr. Foreman, another chip on the surface, not floating in an eddy, but away out in the middle of the current, that tells us with irresistible distinctness of what happened after Bridget went up stairs. She had a good fire to iron the clothes with. Why do I say that? I will not speak without the evidence if I can help it. Officer Harrington comes along, takes a car that reaches City Hall at quarter past twelve, goes along Main Street, goes to the house, talks with Miss Lizzie, and last of all, in his search takes the cover off the stove and sees there, and I will read his own words: "The fire was near

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extinguished on the south end. There was a little fire---I should judge about as large as the palm of my hand. The embers were about dying." That was as early as half past twelve. I need not say to you that if there was fire enough to be seen at half past twelve there was fire enough to work with an hour and a half before,---before eleven o'clock. There was fire enough. There is no trouble on that account. It was a little job she had to do,---nine handkerchiefs at the outside, perhaps eight or seven, and when this thing is over Miss Russell gets the handkerchiefs and takes them up stairs, and we find---a fatal thing---we find that four or five, I give the exact words, of those handkerchiefs "are ironed and two or three are sprinkled ready to iron," whatever else is true. She had begun her work before Bridget went up stairs; she was engaged in it when Bridget left her; it was a job that could not have taken her more than ten minutes at the outside, if I may use the common experience of mankind, in that sort of work, and the clock of her course of life, of Lizzie's course of life, stopped the instant Bridget left that room. What for? What for, gentlemen? It would have taken but a minute or two to finish them. The day was well gone, the dinner hour was approaching. There were four or five to take away and but two or three to finish and in less time than I am speaking it would have been done. It is

terribly significant. Why did she stop? Why stop the work she had set herself to do right at the eve of its being done?

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Mr. Foreman and gentlemen, the officers have been criticized for catechizing Miss Lizzie. It has been suggested that they brutally intruded on her privacy to ask her questions. I never could see the force of that criticism. I never could understand the meaning of it. I don't know how you would feel. It is not for me to say how I would feel, but would it not be the most natural thing in the world to invite the inspection of the officers of the law to punish and avenge if possible the fiend who had murdered the father and mother who lay dead? I will come to that again by and by. But Mr. Foreman and gentlemen, it was not the catechism of the officers alone. The question leaped to every lip, her own friends asked it in wonder, her own servant asked it in amazement, her own physician must know why it was---if it was not put in words it was put in thoughts: "Lizzie, you were there in touch of your father,---how did it happen that he has got killed and you did not know it?" Nobody came there who did not ask her the question. It is not a matter of Fleet, Harrington or Mullally. It began with Bridget who had left her there so near her father that she could have touched him. She asked, "Where was you? Didn't I leave the screen door hooked," and she tells her first story of it. Let me be fair. The little incidental differences in the story I will not touch upon. They are the natural results of excitement. I would not ask you to consider them vital or significant. There is that in this case which is far deeper than those accidental

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variations. She says to Bridget, not to an officer "I was out in the back yard and heard a groan and came in and the screen door was wide open." I may have occasion to say that that story was not true either, and was not consistent with any other story that she told. Dr. Bowen came next, I believe. He says, "Where have you been?" Oh, pregnant question that nobody could fail to ask! "In the barn looking for some irons or iron," she answers. Mrs. Churchill came next---I may not have the order right---and that honest woman asked it the first thing, "Where was you when it happened, Lizzie?" "I went to the barn to get a piece of iron." Miss Russell heard the remark. She does not distinctly remember asking it, and she is her friend; "What did you go to the barn for, Lizzie?" "I went to get a piece of tin or iron to fix my screen." I pass over, for I must hasten, the various ways in which she put it to the officers who came from time to time, but there came finally---no, I ought not to say finally,---but among the first the representative as my distinguished friend has been pleased to call him, the representative of the majesty of the law in Assistant Marshal Fleet. He came there about as much dreaming that Miss Borden had anything to do with this crime as he did his own Chief did. He is a gentleman. I think I may not inappropriately suggest that to you. He is next in authority to the chief himself. His manners are those of a gentleman, his appearance is that of a gentleman, and as the most natural and obvious thing in the world, not in any spirit

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of criticism or fault finding or prying or inquisition but as was his duty he came to her room to get the correct story of all this tragedy. And I am going to give it now.

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And I am going to say before I give it to you, Mr. Foreman, that there isn't any doubt that it is true, word for word and letter for letter. It is no difficulty of remembrance on Mr. Fleet's part. He was not then suspecting her of crime; he was getting the particulars of this transaction from which to make up his mind what course to pursue, as was natural. But there is another reason for it than that. There is a far more powerful and important reason for it than that. When he went into her room to talk with her she was not alone. Miss Russell was there. But there also sat upon the lounge with her that Christian and kindhearted friend of hers, the Rev. Mr. Buck, whose fidelity and zeal in her behalf, as well as that of all her friends, have won my most sincere commendation. He has been here within this Court during the whole progress of this trial, sitting by her and giving such consolation as those of his profession are able to give in hours of distress, and I honor him for it. He heard that talk; he heard every word of that talk, and, Mr. Foreman, if officer Fleet had misconstrued a syllable of it, don't you suppose we should have heard from it? Am I wrong in asking you to believe that he confirms it too? My learned friends have not been slow to produce witnesses that they felt it was safe to produce. And Mr. Buck does not deny that this conversation was true to the last letter. Nor was there then that petty, that miserable ---and I say it without reference to the learned counsel, who have been so courteous in this case---that cowardly suggestion

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that that woman could not tell the truth because she had taken a drug. Ah, desperate is the cause that has to apologize in that way. It was before anything of that sort. It was when she was cool to a degree of coolness that, whether she is guilty or innocent, has challenged the amazement of the world. She had just told Officer Harrington that she did not want to wait till the next day, that she was as ready to talk then as ever she would be--or it was right afterwards---I don't know which; it was right at that time. And Mr. Fleet came in, and politely, as you may believe, courteously, as you are glad to think, he talked with her about that important question of where she was when this thing happened. Let me read it, word for word, for it is vital and significant, and Mr. Buck will not say that one word of it is misconstrued or misremembered or falsely stated. He asked her if she knew anything about the murders. (Reading from Fleet's testimony).

"She said that she did not; all she knew was that her father came home about half past ten or quarter of eleven, went into the sitting room, sat down in a large chair, took out some papers and looked at them. She was ironing in the dining room, some handkerchiefs, as she stated. She saw that her father was feeble, and she went to him and advised and assisted him to lay down upon the sofa."

My friends have introduced the fact that Mr. Fleet did not remember that at the

other trial. Mr. Buck never remembered that it was not so. And that is all the difference they can find between Mr. Fleet's remembrance of it when it was fresh in his mind, and what he remembers today, for if

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there had been a difference of a hair in any other respect, we should have heard from it. (Reading).

"She then went into the dining room to her ironing, but left after her father was laid down, and went out into the yard and went up in the barn."

"Up in the barn"

No, I won't repeat, because I want you to get this word for word. It is only down once---"up in the barn." Let me read again, for I desire not to repeat but to give it just as it is, for it is vital. (Reading).

"She then went into the dining room to her ironing, but left after her father was laid down and went out in the yard and up in the barn. I asked her how long she remained in the barn; she said she remained up in the barn about a half an hour. I then asked her what she meant by 'up in the barn.' She said, 'I mean up in the barn, up stairs, sir.' She said after she had been up there about half an hour she came down again, went into the house, and found her father lying on the lounge."

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Mr. Foreman and gentlemen, we must judge all facts, all circumstances, as they appeal to our common sense. There is no other test; there is no other duty; there is no other way of arriving at justice. And, tried by that standard, I assert that that story is simply incredible, I assert that that story is simply absurd, I assert that that story is not within the bounds of reasonable possibilities.

I have briefed the evidence upon that thing, but no evidence is needed. There is not a man of you that does not remember that day. There is not a man of you that does not remember the hour of the day when the tidings of that murder were flashed to you. There is not a man of you that does not remember that that day, which was within four days of being the very midsummer day of one of the hottest summers within our remembrance, was hot to a degree by which this very day upon which I am now talking to you was cool and comfortable in comparison.

And you are asked to believe, and it is addressed to your credible understandings as men, you are asked to believe that, being engaged in an occupation which of itself would be heating, the ironing of those handkerchiefs, she left that job on the eve of its completion, and went out of the house and up in that barn, to the hottest place in Fall River, and there remained during the entire time that was covered by the absence of

Bridget upstairs.

Am I overstating it? You were there on a comparatively

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comfortable day in June. Some kind friend---and I make no misconstruction of it, I do not for a moment suggest it was done with intent to mislead you---some kind friend had opened the front door and windows so that you should not be suffocated by the heat when you were there, on that comparatively cool day of June, compared, I mean, with August. But this was under the hot and broiling sun of August. This was at the hour of the day when the sun is right over the barn, roof. This was a building that had been shut up for a year and no air allowed to get to it.

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This was a place hot beyond the power of description, and yet you are asked to believe that this woman chose that place, that time and that hour to be out of the way when the assassin should strike the blow that killed her father.

That is not all. Saturday night again the Mayor of the city, who I assume is a gentleman, whom I think you will believe to be one, and Marshal Hilliard, who has answered by his dignified and courteous and wholly respectable presence all the slanders you have heard about him in his simple and unaffected way of testifying in this case, which is refutation enough of all the wicked things that have been said of him,---those men came there Saturday evening, and again incidentally that story was referred to. She had told her friend Alice that she went to get a piece of iron to fix her screen. She told them that she went out into the barn to get some sinkers. It is not so much the contradiction I call your attention to, for I want to be entirely fair, for both errands might have been in her mind; let me be entirely fair in this, if there is such a thing as an attorney being fair in a case, and if there ever was a case in which to be fair it is in a capital case,--they have introduced to you the evidence of timid women who were frightened by the shaking of ash barrels by the dogs on Wednesday night, and have taken up your time with that story. Why could we not have had somebody to have told us what was the screen that needed fixing, and to have corroborated that story by finding the piece of iron that was put into the

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screen when she was left alone and when she came back in her fright? They have told us how some time after the excitement of this murder was over and the front door had been used by thousands of people probably, that as sometimes is the case with my own door, and yours, I presume, it did not work when it was shut to. Show us the fish line that those sinkers went on. It was easy to do if they were in existence; if there was any truth in the story, show us something by which we can verify this ferocious fact, that the alibi she was driven to put for herself, is a good one, which she first gives to Mr. Harrington, and

Mr. Harrington is a gentleman who, not to be too fine upon it, is apparently quite a lady's man, one with whom a lady would be at her ease in conversing. My learned friend saw fit to make some sport about his minute description. I was glad that he could relieve the tedium of this trial by any sort of jokes. I cannot. It is too serious for me to indulge in anything of that kind. I leave that to my distinguished friend. Officer Harrington said to her, "Miss Lizzie, if you were out in the barn, why did you not"---all innocently enough; he had not thought of her in connection with this crime then---"Why should you not have heard"---I have not his exact words, but I can state them fully enough,---"Didn't you hear any noise, any outcry, any scream, any closing or shutting of the door?" "No, sir. I was up in the loft."

Ah, Mr. Foreman and gentlemen, it was necessary that she

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should be in the loft. It was not only the hottest place in all this hot day, this hot city, this hot country; it was the only place where she could put herself and not have known what took place.

Mr. Foreman, let us be just. We are trying a woman of high social station for a high crime. Some of you have been on juries before and have heard suggestions of what are called alibis. In all your observation and experience have you heard an attempt to create an alibi which was more unreasonable and less within the credence of jurors? My distinguished friend utterly fails to explain it by suggesting that she only went up into the barn on an errand. Cool and comfortable in the seclusion of her home, seated by the side of her spiritual adviser, calmly, much more calmly than I can tell it to you here now, she tells that gentleman who came to talk with her absolutely as a fact that she went to the barn, and went up stairs in the barn, and remained there for twenty minutes. That story is not true. That alibi will not stand. We leave her again by the side of the victim. We leave her nearer even than she was to the murdered woman. We leave her engaged in an employment which if followed to its conclusion would have scarcely have taken the time I am now occupying in completing the sentence. We come back and find her father dead, the occupation surrendered and forgotten, and the story at her lips ready to tell, which has no vestige of truth in it.

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I will spend little time in the prosecution of this argument to discuss Mr. Lubinsky. What he saw and when he saw it are absolutely indefinite. Let me treat him with entire fairness and justice. To begin with, he is a discarded witness. He went with his story first to Wilkinson and then to Mr. Mullaly, and then to Mr. Phillips before the hearing in the district court. Mr. Mullaly tells you just what he told him.

MR. ROBINSON. That is not in evidence.

MR. KNOWLTON. Exactly in evidence. Find it, Mr. Moody, for I won't mis-

state a hair of this evidence. He saw Mr. Mullaly and told him that it was about half past ten when he went by and saw somebody coming from the barn. That was on the eighth day of August. About two weeks after that time---I do not need the record, for I remember it as though it was yesterday---about two weeks after that time he told Mr. Phillips---yes, it would be the 22nd of August. This hearing ran through the 24th, 25th, 26th, 27th, up into the first day of September. He told a reporter, and I presume it was published, although I do not know anything about that. I won't say that, for I do not know. Mr. Phillips was present there in court; witnesses were called for the defence, and Lubinsky was not called. He had not got things patched up.

MR. MOODY. Here it is.

MR. KNOWLTON. My friends won't contradict it when I have stated it. They are too fair. I have put it exactly

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as it was. And I want to know in this connection what was the necessity of having that line drawn so carefully by the surveyor across that plan the first day. What has been the significance of that thing, by which it was made to appear that a surveyor could find a line clear from a point on the street to the barn door? And you were asked to squint across there. You saw that you could not see the fraction of a rabbit that came out of that barn door. Has that any connection with the first attempt at Lubinsky? I do not know. It is one of those things they have started and have flashed in the pan. But taking his story as he tells it now, and dealing with Lubinsky with entire fairness, all that is absolutely known is that at 11 o'clock, by the testimony of Mr. Gardner, who gives to us as he remembers it, about 11 o'clock when he looked at his watch, Lubinsky came in for his horse. He was in a hurry. The horse was being fed. He had to wait for him to be fed, and for some other teams to be harnessed, and as soon as he had got through feeding he started away with him. How long does it take to feed a horse? Half of you know, and you can tell the rest. It is a matter of ordinary common knowledge. At some time, taking his story, going down in his haste, he forgot that he was in a hurry when he was going down the street, going down the street in his haste, and not as my distinguished friend says, looking around for ice cream customers, for his cart was empty then and he was going to have it filled, he glanced into that yard and he saw a female form. It may have been

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Mrs. Churchill, it may have been Bridget, it may have been Alice Russell. It was more than likely that it was quarter past eleven or ten minutes past eleven, for the news of the tragedy was communicated to the world, and was known at the police station which it reached at quarter past eleven, and what he saw and when he saw it have no significance whatever.

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And, to be exact about it, Mr. Foreman and gentlemen, it is not charged here that she did not go to the barn. It is not charged here that perhaps, in some part of the work of concealing the evidence of that crime, she may have not found it necessary to visit the barn. What is charged here---and Lubinsky never touches a hair of it in any part of this story, if you take it to the uttermost---what is charged here is that her deliberate, her chosen, her formal alibi of being up in the loft of that barn for twenty minutes (she won't even vary in the time of it upon being asked again), is absolutely beyond the power of human credence to believe.

That is not all. It was an old and dusty barn loft. It had been used for hay a year before. (I think that is the evidence, if I am wrong I may be corrected), when the horse was last kept there. The time is not material. Its use has ceased. It had become a depository of rubbish. The accumulated dust of months had settled down upon it; and among the early men that came there was the keen eyed Medley. And he heard her story. He went in there very soon. He spent but little time in the house. He went in and asked her also where she was, and she told him.

"I asked her where she was when this thing occurred, and she said she was upstairs in the barn."

Well, he seems to have had his wits about him. I say it in no spirit of criticism, for it was an occurrence when men's wits might well leave them. There were few people in Fall River that kept their heads that day excepting the woman

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who now sits in the dock. Everybody was lost in excitement and wonder and amazement. Hard headed and trained officers of the police forgot their duty, and who is there that can criticize them for it.

But Medley did not. It occurred to him, not in a spirit of criticism of her, perhaps, but with a desire to verify every fact as he went along, to go to that barn. He found the door shut. He went in. He went upstairs. Let me read his account of it.

"I went upstairs till I reached about three or four steps from the top, and while there part of my body was above the floor, and I looked around the barn to see if there was any evidence of anything having been disturbed, and I didn't notice that anything had or seemed to have been disturbed. I stooped down low to see if I could discern any marks on the floor of the barn having been made there."

Just as one can see when they get in a line with dust.

"I did that by stooping down and looking across the bottom of the barn floor. I didn't see any, and I reached out my hand to see if I could make an impression on the floor of the barn, and found that I could. What was on the floor was accumulated hay dust and other dust. Then I stepped up to the top and took four or five steps on the outer edge

of the barn floor, the edge nearest the stairs they came up, to see if I could discern them, and I did. I did it by stooping down and cast my eye on the level of the barn floor, and could see them plainly."

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Gentlemen, that thing occurred; that thing occurred. There is not a man on this panel that will believe that a man, even if he is an officer, can take the oath of God upon his lips and stand upon that stand and face that unfortunate woman and deliberately commit perjury to send her to an ignominious doom.

Perjury is a light word to use in a liquor case, in an assault and battery case, in an ordinary civil case involving a thousand dollars, but it is a terrible thing to face a defendant like this, and be guilty of it.

That thing occurred. Whether his conclusions were right is entirely for you. Your judgment is as good as mine about that. It would not be becoming in me to say one word as to whether his observations were accurate or not. You have been upon barn floors. You have seen dust. You can tell as well as I about that. But that thing occurred.

Other things occurred, too. Mr. Manning and Mr. Stevens came there, and they went upstairs. They did not see Medley and they cannot say they went up first. Nay, when they went there they found the barn door open, and Medley found it shut. Mr. Clarkson came there. He tries hard to put himself early. But in the district court he put it at 11.40, and he has not given us any reason for changing it now. He went there at 11.40 and he stayed around in the yard seven or eight minutes. How indefinite! And then he went up, and the barn door was open. He did, undoubtedly, but

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he didn't go there before Medley.

I dismiss, with scarcely a word of comment, the testimony of those two boys, who got their dinner at half past ten, who seemed to have been engaged in no useful occupation, and who say that they went up there at some early time in the day. O, did my learned friend, did my learned friend expect, when he asked the question of that boy if the barn was a hot place or a cool place, did he expect to offer some evidence to you to control the evidence of your own senses, your own experience, to get the boy to say that it was cool and comfortable? Out upon such testimony! It is not worth the weight of consideration at all. If it happened it never happened before Medley.

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Medley was the first one there. He got the news before half past eleven. He took a team that was coming up the street and drove as fast as he could drive it. He went to the

station house and got the news and started for the Borden house, and as he went by the City Hall clock it was nineteen or twenty minutes before twelve. He went there; he went into the house. He saw Miss Borden. He came out and went into the barn. Other men did the same thing: it occurred to many. He went there first, because he was the one that found the door shut, and the others, excepting these wonderful boy detectives, found it open. All the contradiction of Medley is an attempt to contradict him about time. Time, gentlemen---what can you tell about time in ordinary events? Who of you can tell at this moment---you went there to those premises, you looked around up stairs and down, you went into the barn and into the yard, and you went with cool deliberation, as cool as you could be on that rather warm day,---with cool deliberation and the purpose of taking your time and seeing all that was to be seen. Are there two men on this panel that can tell when you got there within half an hour? Is there a man on the panel that can tell within ten minutes how long you were in the house, how long you were in the cellar, how long you were in the yard, how long you were in the barn, how long you spent there all together? People do not notice the flight of time in ordinary and deliberate events: and here was the occurrence of a century, when every heart stopped beating and every hand forgot its cunning. That thing occurred, and it is

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another nail in the coffin in which we are sadly compelled to lay away the dead and blasted remains of that attempted alibi. Something has been said, Mr. Foreman and gentlemen, as to the conduct of the defendant during this trying time. In my desire to say no word that is not borne out by the exact facts, I forbear to criticize or to ask you to consider against her her general demeanor after this tragedy. I quite agree for once with my distinguished friend in his suggestion that the absence of tears, that the icy demeanor, may have either meant consciousness of guilt or consciousness of loss. I would not lift the weight of my finger to urge that this woman, remarkable though she is, nervy as she is, brave as she is, cool as she is, should be condemned because grief, it may have been, but for other things in the case, drove back the tears to their source and forbade her to show the emotions that belong to the sex.

But there are some things that are pregnant. My distinguished friend tells of the frequency of presentiments. They are frequent in the story books, Mr. Foreman. If they occur in real life they are usually thought of afterwards. Did you ever hear one expressed beforehand? She goes to her friend the evening before, this friend of hers in whom she confided, and prepared her for something dreadful. As my associate has expressed it, more tersely and more exactly than I could by any words, she catalogued the defences she would have to make. She said she felt something was hanging over her. What did it mean? What did it mean? Sometimes we

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feel that way, but we seldom say so; and if we say so, the something hanging over does not happen. All the disasters of your life, Mr. Foreman, all the things that ever came with crushing weight upon the happiness of your life, came like a flash of lightning out of the

clear sky. Today you are happy; tomorrow you are plunged in grief. You do not know it beforehand, you do not think of it beforehand, you do not speak of it beforehand. I do not attach the utmost significance to that thing, but it is one of these little chips that may float in the current, or may float in the eddy, as you look at it one way or the other.

But I come rapidly from that to what does strike one as exceedingly remarkable. Do you remember how that strong man, Charles S. Sawyer, betrayed the qualms of fear that agitated him as he was stationed at that screen door after the officers had come, after the women were in the house, after he was secure in the presence of the world? He, man that he was, could not bear to stand in that hallway without bolting the cellar door, and sometimes even coming out upon the steps for fear that this assassin might come down those back stairs. We laughed at it a little, we thought it was somewhat ridiculous. But put yourself in his place, Mr. Foreman, and see how you would feel. Lizzie tells us that she came into that sitting room and found that foul murder had been done almost within the flash of an eye. She could not know that the assassin was not there. She could not know that he had escaped. She was surrounded by kind and sympathizing neighbors--- Mrs.

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Churchill in her house across the way, within reach of her voice, and all the household that belonged thereto; Mrs. Kelly, a lady, as you saw the other day, on the other side of her. A single cry would have alarmed that street and brought crowds to her assistance. And yet I find, you find, that after the discovery of what would send the most abject terror to any one of you that I am talking to, she never left that house; she never even went out on the steps; she stood there beside the screen door, inside the screen door, and calmly summoned her picked and chosen friends---first her intimate friend, the physician across the street,---what on earth she wanted a doctor for I cannot imagine, because there was the dead body of the man, and she told Maggie that he was dead,---and when it was found that Bowen was not there, not Mrs. Churchill, not Mrs. Kelly, not any passer by who could have come to her assistance, but the only sign of recognition of the public she made in this matter was to send Bridget down two squares to the very woman to whom she had been predicting this thing the night before. And did it occur to you before I said it---perhaps it did: jurymen sometimes see much deeper than counsel think they do---did it occur to you before, gentlemen, that the public never knew of this thing except by accident? Mrs. Churchill came in from her visit to the market, saw Bridget running across the street, looked out of the window, saw Lizzie in agitation, raised the window and asked her what the matter was; and then murder was out. How long it would have been

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before the police authorities would have discovered this thing but for the vigilant eye of Mrs. Churchill, no human being knows. No cry was made, no escape from the house was made, no thought of danger was suggested, but we have the calm and quiet demeanor of a woman contrasted with the agitation of a man in the same position within fifteen minutes afterwards when he was surrounded by those who could assure his safety.

I do not care to allude to the visit to the cellar; I do not care to allude to her remarkable coolness of demeanor to the officers in the afternoon. She is certainly a remarkable woman: she is certainly a remarkable woman. Some people may share with me in that dread of going down below the stairs into the somewhat damp and gloomy recesses of the cellar after dark. I should not want to confess myself timid, but there have been times when I did not like to do it. And all the use I propose to make of that incident is to emphasize from it the almost stoical nerve of a woman, who, when her friend, not the daughter nor the stepdaughter of these murdered people, but her friend,---could not bear to go into the room where those clothes were, should have the nerve to go down there alone, alone, and calmly enter the room for some purpose that I do not [know] what connection it had with this case.

Tell me that this woman was physically incapable of that deed? My distinguished friend has not read female character enough to know that when a woman dares, she dares and when she will she will, and that, given a woman that has that absolute command of herself, who told Mrs. Reagan, even, that the failure

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to break that egg was the first time she had ever failed in anything she undertook,---a woman whose courage surpasses that of any man I am talking to, I verily and humbly believe,---tell me that she is physically incapable of this act?

But those are trifles, Mr. Foreman, those are trifles. Those are little chips that do not perhaps directly indicate which way the current flows. But there is more in the case than that.

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Of course the question arises to everyone's lips, how could she have avoided the spattering of her dress with blood if she was the author of these crimes, as to the first crime it is scarcely necessary to attempt to answer the question. In the solitude of that house with ample fire in the stove, with ample wit of woman nobody has suggested that as to the first crime there was ample opportunity, ample means and that nothing can be suggested as a reason why all the evidence of that crime could not have been amply and successfully concealed. I dwell no more upon that. But as to the second murder, the question is one of more difficulty. I cannot answer it. You cannot answer it. You are neither murderers nor women. You have neither the craft of the assassin nor the cunning and deftness of the sex. There are some things however in the case that we know, and one of them is, and perhaps one of the pregnant facts in this case is that when the officers had completed their search and in good faith had asked her to produce the dress she was wearing that morning they were fooled with that garment which lies on that trunk, which was not upon her when any human being saw her. That is a pretty bold assertion. Let us see what the evidence of it is, because as to that matter the evidence is contradictory, and it is the first proposition, I believe, that I have addressed to you touching which there is

even an attempt to show contradictory evidence. Up to this time I have traveled in the path of unchallenged facts. Bear that in mind. I have tread on ground

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on which no attempt has been made to block the ordinary course of reasoning, and I now approach the first subject in which there is any attempt to show contradiction, and it turns out to be no contradiction whatever. This dress has been described to you as a silk dress and dark blue evidently, a dress with a figure which is not at all like a diamond, a dress which is not a cheap dress, a dress which would not be worn in ironing by any prudent woman. Of course not. It is an afternoon dress. Do your wives dress in silk when they go down in the kitchen to work, and in their household duties in the morning, before dinner? But I am not compelled to stay at suppositions of reasonings. I come to facts. There was one woman in this world who saw Lizzie Borden after these murders were done and who when she saw her did not suspect that murder had been done. Who was that? It was that clear eyed, intelligent, honest daughter of one of Fall River's most honored citizens, Adelaide Churchill. Everybody else saw her when they knew that murder had been done. Addie Churchill saw her when the most she suspected was that somebody had become sick again. She saw Bridget going for the Doctor and she looked across the yard, and saw Lizzie by the door in agitation. She thought some one was sick and raised the window and inquired, and she is the only woman in the case who saw Lizzie when she was completely out of the suspicion of the excitement of murder. She describes the dress she had on that morning. I will read it word for word to you because it is vital.

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"Q. Will you describe the dress that she had on while you were there?

A. It looked like a light blue and white ground work; it seemed like calico or cambric, and it had a light blue and white ground work with a dark navy blue diamond printed on it.

Q. Was the whole dress alike, the skirt and waist?

A. It looked so to me.

Q. Was that the dress she had on this morning? (showing dark blue dress)."

She did not want to harm a hair of Lizzie's head. She was her neighbor and her friend, and she would avoid it if she could. But she answers: "it does not look like it." Mr. Moody puts it again: "Was it? Was it?" Ah, Addie Churchill will have to give an answer which will convict this woman with putting up a dress which is not the one she wore. She is no police detective conspiring against her life, but her next door neighbor, her friend then and her friend today. When Mr. Moody puts the straight question to her, "Was it?" she answers, "that is not the dress I have described." Still it is not quite close enough; my learned friend wants it answered more closely and asks: "Was it the dress she had on?" Mrs. Churchill can avoid answering no longer and she says: "I did not see her with it on that morning." She further describes the dress as having the ground work of a color "like blue and white mixed, blended." And Mrs. Churchill was shown that dress by my learned friend who opened the case for the defendant, within a day or two, I presume

after the occurrence, or as soon as it was put in his hands, it is not material

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which. What she told him I do not know and do not care. It was called to her attention at once and she is compelled to say that she did not see Miss Lizzie wear that dress that morning. It is not the testimony of one who wants her convicted. I may well believe, I am glad to believe, although I know nothing of it, that it is the testimony of one who would rejoice if she were not convicted.

Some little point was made as to whether this dress was a Bedford cord or not. Mrs. Churchill did not know a Bedford cord, some women do not, but she did know it was a cheap cotton or calico dress. Officer Doherty, whose testimony I do not attach much importance to, but whose testimony I will allude to, said "I thought it a light blue dress with the bosom in the waist," whatever that may mean, and on being shown the dress he was asked, "if that is the dress," and he says "no, I don't think it was." My distinguished friend tries to turn it into a faint recollection, and he adroitly puts a question to him which is answered by the officer that he has only a faint recollection that it was a light blue dress. The next question is "but it is only a faint recollection?" And Doherty responds, "well, I am confident it was not a dark nor as full of blue as that." (alluding to this dress). I do not attach much weight to that. Men have only a general idea of such subjects.

Now comes another witness who, I believe would cut his heart strings before he would say a word against that woman if

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he could help it, and that is her physician and friend, Dr. Seabury W. Bowen, who away back in the early stages of this case gave testimony, and the testimony is all the more valuable because it comes from her intimate friend, and was given at a time when it was not supposed there was ever to be any discussion about it. He undertakes to describe the dress:

"Q. Do you recall how Lizzie was dressed that morning?

A. It is pretty hard work for me. Probably if I could see a dress something like it, I could guess, but I could not describe it; it was a sort of drab, not much color to it to attract my attention,---a sort of morning calico dress, I should judge."

Not a bad description for a man and one that hits so near the mark that Mrs. Raymond, who was called by the defence, said that when she read Dr. Bowen's testimony she thought that the Bedford cord was undoubtedly the dress he had in mind for he came so near describing it. We wanted to know whether he would modify that at all and he answered by saying that he would modify it 'merely by saying that the drab,---there are very many shades of drab to a woman's dress, I should judge.' He had said "if I could see a dress something like it, I could guess." My associate takes the suggestion, holds that

dress up to Dr. Bowen to see if he is color blind and says, What do you call that, Dr. Bowen? Dr. Bowen replies, I should call that dark blue. Oh, the significance of it, of that unwilling testimony as to the character of that dress! Unwilling testimony, not necessarily or even remotely tending to perjury, but the testimony of one who does not want to hurt his friend but whose very words have damned her because he has

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described a dress that is not in the case. The only person who undertakes to contradict that, the only human being is Mrs. Bowen herself, and when her testimony is considered with reference to all the facts in this case, it is in fact the most significant corroboration of it. She said the other day that it was a dark blue. Witnesses are put on the stand, Mr. Foreman, for you to see them take their oath as well as to testify. It may be that you observed that when Mrs. Bowen raised her hand to take her oath it shook like an aspen leaf. Poor woman, she knew what she had said. She knew she had been describing that dress and I pitied her from the bottom of my heart. But I turn back from Mrs. Bowen appearing in this Court for the defence of this girl to Mrs. Bowen who gave earlier testimony in which she described that dress as a light blue, having a blouse waist of blue material with a white spray on it. That does not mean so much to you and me.

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That doesn't mean so much to you and me, not so very much to you and me. But if a carpenter calls a cornice a pilaster, it means a good deal. If a lawyer calls a deed a lease, it means a great deal. It means you don't want to employ him. If a woman calls a circle a spray, she is not a woman.

But she goes further; by what she does not mean to say she says more accurately than anything else.

"What was the body of the dress?" "I didn't notice particularly."

"The ground of the blouse. You say it had a white spray?" "Oh, it was blue."

"Light or dark blue?"

This is away back, you know, before she thought it was important.

"I should say quite a dark shade, I can't tell."

True for you, Mrs. Bowen.

"I wasn't looking for fashions then."

"Do you know what skirt she had on?" "I don't know. It was nothing more than an ordinary morning dress, such as I had seen her wear before."

"Something you had seen her wear frequently before?" "Yes sir."

"In the morning or when?" "In the morning when I have been in."

A morning dress she had on that morning, by the testimony of everybody in this case; and there is not a human being

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brought forward to say that, up to the time her father and mother were killed, they [n]ever saw her wearing that silk dress before dinner; never.

How does that testimony leave your minds, Mr. Foreman and gentlemen? Mrs. Bowen all at sea, but involuntarily describing it as a dress which was a cheap morning dress. Dr. Bowen, strained to the utmost, he cannot describe it other than as a drab which looked like a light blue; and Mrs. Raymond well put it; and Mrs. Churchill, calm, self-reliant, friendly to the uttermost point of human interest for this poor girl, accurately telling us that that was not the dress.

Do you believe it was the dress? Do you believe that that hot morning in August, the hottest of all that year, that girl would be found in the hottest and the most exhausting occupation that a girl can be engaged in in the morning, ironing, in a silk afternoon dress? Oh, no; oh, no.

That is not all. The morning dress she had worn, she had worn for many times, as Miss Emma is obliged to say. Poor girl! She put it in her testimony---she wanted to help her sister---that it was very early in the morning. Oh, unfortunate expression! Did you ever know a girl to change her dress twice a morning, ever in the world? It was a morning dress. And the day before the tragedy happened, Bridget tells us that that cheap morning dress, light blue with a dark figure, Wednesday morning, the dress she had on was of that description, and it was this very Bedford cord

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undoubtedly. She never wears it afterwards. Friday she has on this dress. Saturday she has on this dress, mornings and afternoon. It is good enough for her to wear then. Perhaps there isn't any distinction of morning and afternoon then, in that house of the dead. I make no great point of that, but I pass rapidly on, for I fear I am wearying your patience, to one other fact which has not been explained.

We have had evidence of the character of the search that was made in the house. It can perhaps all be well summed up in the suggestion, that the search of Thursday was perfunctory, insufficient and indecisive. It was with no particular, definite aim in view. It was absolutely without any idea that the inmates of the house knew of this crime. It was that sort of a search which goes through and does not see what it ought to see. But it was

enough to put them on their guard. There was in that house somewhere a Bedford cord dress. That Bedford cord dress had been stained with paint. I welcome that fact. My learned associate never said it had not been stained with paint. I believe it had. No, I ought not to say that. I hope I may be corrected if I say I believe it at any time. There is no assertion or pretence that it had not been stained with paint. It had not stopped the wearing of it, though. It was good enough for a morning dress, good enough for an ironing dress, good enough for a chore dress around the house in the morning.

But the Thursday's search had put them on their guard,

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and when, Saturday afternoon, the officers came there, they were prepared for the most absolutely thorough search that could be made in that house. Where was that paint stained Bedford cord? Where was that dress with paint spots on it, so thickly covering it that it wasn't fit to wear any more? Where was it, that the officers didn't see it? Emma alone can tell us, and Emma tries to tell us that it was in that closet. At the fear of wearying you with the tale of facts, because this is a case where I must go into the details, let me read the exact testimony of that accurate Saturday afternoon search. Fleet says:

"Upon the Saturday did you go into the clothes closet in the front hall upstairs?"
"I did."

"Did you examine all the dresses you found there?" "We looked at them; yes, sir."

"Did you see either in that closet or in any other closet in the house or anywhere in the house, a dress with marks of paint upon it?" "No, sir."

"How critically, how carefully, were you examining the dresses at that time on the Saturday?" "Very closely."

Of course they were; they were looking for things then.

"Did you find any blood upon any dress? I have asked you about paint. Did you find anything that looked like blood or any discoloration of any kind?" "No, sir."

Ah, but my distinguished friend may say, Fleet cannot be trusted; he is in the conspiracy to fasten guilt upon this

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woman. But his partner in that search was State Detective Seaver of Taunton, a man who has held the commission from the executive of this Commonwealth for many times repeated, for thirteen or fifteen years; a man out of the reach of all that attaches of suspicion, if there is any, if there ever was any, to the officers of the Fall River police.

What does Seaver say? Some of you may know him and know what he means when he is talking. I read again from the testimony.

"Captain Fleet was with me, and I commenced on the hooks, and took each dress, with the exception of two or three in the corner, and passed them to Fleet, he being near the window, and he examined them as well as myself, he more carefully than myself. And I took each garment then and hung it back as I found them, all excepting two or three which were heavy or silk dresses in the corner. I didn't discover anything whatever upon any of these dresses. I didn't see any light blue dress with diamond spots and paint around the bottom of it or upon the side."

Men are not critical observers of dresses. I do not claim that. But Officers Fleet and Seaver could see a dress that was so dirty that it had got to be destroyed. And it was not there. It was not found. It was concealed.

And we have another fact, in addition to the burning, that had not appeared when this case began, because we did not know where they pretended it was. It was the dress that Mrs. Raymond made in the spring. It was a cheap morning

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dress that had become soiled with paint. It had been, however, good enough to wear for mornings during the spring and early summer, and was even worn by her on Wednesday morning before the tragedy. It corresponds to the dress that Mrs. Churchill saw her have on that morning. It corresponds to the description that is wrenched from Dr. Bowen, that dress he saw her have on that morning. It was not seen from that time until Sunday. It was not where the officers could find it on Saturday night. It was concealed.

Am I putting things too strongly, Mr. Foreman? Pardon me if in the heat of this argument I overstate anything. I do not mean to. I mean to be courteous and fair, but I use these words with the full responsibility of what they mean. That dress with paint on it was concealed on Saturday.

Still I have not answered the question, how could it be that it didn't get covered with blood? I cannot answer it. Woman's deftness, the assassin's cunning, is beyond us. There are some things in the case as to which I have not hear[d] any attempt at explanation. In that stove which had been used for heating irons to iron with, there was found a roll of paper. What does that mean? I can think, in my coarse masculine way, I can think of many ways in which the person, the upper part of the person, could have been protected, easily protected, while this thing took place.

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Paper would have done it. Burnt paper was found, and no attempt was made to explain it. My distinguished friend raises a man of straw and proceeds to demolish it with hilarity by suggesting that the handle of the hatchet was in that roll of paper. It was the

defence that thought of that, not we. It never occurred to us; it was not so. It was a roll of paper that had been burned, and nobody tells us how nor when, which might have been done. Did it ever occur to you---I am only suggesting these things. It is not our business to prove what she did to conceal the blood spots; that is for the defence, not part of our case. We prove the murders. The concealment is a part of the assassin's business. Did it ever occur to you, however, how remarkable it is that the coat which the old man took off, which I presume he took off, at any rate whether that coat or another, instead of being hung upon a nail, as a prudent old man would have hung it, was folded up underneath his cushion? That might have been used. I can't tell. There are plenty of ways in which a woman can conceal that sort of thing.

It was possible---and I do not urge it in the face of this testimony. You may believe it for I understand it is a matter that doctors do not understand more than anybody else---it is very possible that very few blood spots that would be subject to observation would get upon the dress. Although Mr. Manning, the reporter, went into that sitting room to see if there was anything he could find, and if there is anything that a reporter does not see, it is

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pretty hard to see it, all he saw was a little spot, one on the door, and one spot of blood that had spurted upon the wall by the side of the sofa. The table right by the side never received a drop of blood; the books never received a drop of blood; the carpet never received a drop of blood. Yet, I do not know, the doctors tell me it would be hard work for her not to get spattered, and I do not undertake to say it might not be. The chance might have been taken, but it was not probable. Some attempt might well have been made to cover up that dress. A woman's cunning can devise that. There is no difficulty in that. She had had one experience. She had found how blood spurted from hatchet wounds. She had learned the business, and she knew the thousand and one ways by which that could be done. But Saturday afternoon they came there to search. They went all through that house. Then, not before that time, as my distinguished friend has suggested. Then, after they had been through the house they said to her, "Give us the dress you wore that morning," and we took it away, and it never was worn that morning at all, and is not the dress, and we were fooled and deceived. "Give us the skirt that you wore that morning," and they gave us a skirt, and at once it was discovered, and that is the only use I make of it at all in this case,---at once it was discovered that notwithstanding the precautions, it may be, or by accident, it may be, I do not know which, I make no point of it in connection with this tragedy except this, at once it was discovered and vigilant counsel brought back

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the information to her, I have no doubt, that on the only skirt she gave up was found a drop of blood, on the outside of the skirt, that had not come there by smearing, but by spattering, and the officers might come again. They had not said they had finished. Our learned friend tried to show that Emma told her so, but she did not say so. She said that

all they said was, what Mr. Jennings said to her was that they had searched every box and every barrel, and she said, "Let them come as often as they please." They were coming to search the cellar. The spot of blood might attract their attention. The eye of science through the microscope might well see on that fatal Bedford cord the drops of blood that had not been prevented from going upon it by imperfect concealment; and while the church bells were ringing people to come to divine worship, the morning after she was told that she was suspected, the morning after they had searched and had not found what they sought, the morning after she probably knew that they had found a spot of blood upon that skirt, she did that fatal thing.

Now, there are two versions of that story, and you must decide between them. It is for you to pass upon this evidence, gentlemen. It is for you to search the truth. It is at the bottom of a well, but you must find it. Emma says that Saturday night she saw that dress upon the hook

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and said to Lizzie, "You better destroy this dress." And Lizzie said she would. Nobody heard that conversation but Lizzie and Emma, so we cannot contradict those words excepting by what followed. Now mark the exact use of language. Alice Russell said that when she came down stairs that morning she went into the kitchen, and Lizzie stood by the stove with a dress skirt in her hand and a waist on the shelf near by, and Emma turned round and said to her, "Lizzie, what are you going to do? Answer. I am going to burn this old thing up. It is all covered in paint." If that question was put by Emma and that answer was given by Lizzie, there was no such talk Saturday night as Emma has testified to, was there? Because that talk is to the purport that Emma had advised her to do that thing, and had given the reason for it, and she had acquiesced in that advice. Emma says that talk did not take place. She does not put it as a matter of memory. She gives the only really part answer that she gave in all the examination that I made of her, and in which I endeavored to be as courteous as I knew how to be to a lady. She said that talk did not take place because it did not take place. She knew the importance of that talk. She knew how important it was for you to believe that did not take place; but, Mr. Foreman, you have got to believe one of the two. You have got to believe Alice Russell or you have got to believe Emma. I forbear to comment upon the desperate straits that that unfortunate sister, that innocent sister, is put into in this case; but it is my right

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and privilege to suggest to you, and I do it to the credit of human nature, that this Alice Russell, who, it turns out had a conscience, as they found the next day, who was, and for aught that I know is the friend of this woman to this hour, that all the wealth of Indies could not persuade that woman to twist the inflexion of a voice against this girl, do you believe she could? You saw her. You judged her. You heard how that testimony was wrenched from her conscience and not from her interest. She said that it was as she said it was, that Emma was the one that was surprised. Alice was speechless at first. Emma was the one that was surprised, the one that now pretends that she advised her to do it.

"What are you going to do, Lizzie?" It was an astonishing thing, on Sunday morning. That dress had been good enough to keep through May, through June, through July, through the first weeks in August. It was a singular thing that of all times in the world it should be selected on the Lord's day to destroy a dress which had been concealed from the search of the officers made the afternoon before and within twelve hours of the time that Lizzie was told that formal accusation was being made against her. It was an astonishing thing, and well may Emma have asked her what she was doing. She would not have asked it if she had advised it to be done. Lizzie would not have thought it necessary to explain it if she had acquiesced in that advice. She asks it as though she had not heard of it before, and Lizzie

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gives the explanation as though it had never occurred to Emma before, "It is all covered in paint. I am going to burn the old thing up."

Ah, gentlemen, search your consciences and tell me which of those two women you think is entitled to credence. Some point was made in the testimony, not by my distinguished friend in the argument, to his credit be it said, about what occurred the next day. Oh, what a dreadful thing a conscience is! What a master conscience is! How it drives us to the path of duty, unwilling though we may be. That stern Puritan conscience of Alice Russell, friend and confidante of that family as she was, could not brook even the telling of a falsehood to their own hired detective, and she came to these girls, I presume with tears in her eyes, with anxiety in her heart, and says, "Oh, Lizzie, Oh, Lizzie, the burning of that dress I am afraid is the worst thing you could do. Mr. Hanscom has asked me about it." I do not know as the conversation followed exactly in this order, "and I first told him you did not, and I have told a lie, and it must be corrected." So she came to them. She was loyal to them, but she was loyal to the God within her soul, and all that Emma pretends to say about it is that it was decided, of course it was, they knew that conscience had decided it already, that the incident must be told and it was told. To whom? To anybody in the world excepting this mysterious Hanscom who came into this case on Sunday morning and has

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gone we know not whither. There was the servant, their own employee. It was never disclosed until the conscience of Alice Russell pursued her and compelled it to be made public to the world. Oh, gentlemen, it was a dreadful thing. It is not that there was paint on it; there was; it is not that it was burned up: it is not that Lizzie Borden destroyed it. It is that she should keep that dress and wear it, should think it was good enough for May and June and July: should wear it on Wednesday, should wear it on Thursday, if you believe Mrs. Churchill and Dr. Bowen. She concealed it upon Saturday and she was told that she was charged with the crime on Saturday night, and of all times in the world she committed it to the flames on Sunday morning.

In all criminal cases, Mr. Foreman, in all cases that you are called upon to try,

destruction of evidence is regarded as of the utmost significance. It has occurred to me to suggest that in the house where these people were found dead there were two human beings, Bridget and Lizzie, and of those two human beings there has never appeared, so far as we know in this case, one single incriminating fact against Bridget to connect her with this transaction. She is as clean and pure and white as snow. There is scarcely a fact that is not incriminating against Lizzie. One is poor and friendless, a domestic, a servant, uneducated and without friends, and the other is buttressed by all that

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social rank and wealth and friends and counsel can do for her protection, but, gentlemen, it is my pride that I am a member of a bar, an officer of a court, the seal of the highest bench of which is, "To no man we deny, to no man do we sell justice." When this court ceases to be, when you, gentlemen, cease to be judges of the rich and of the poor, of the high and of the low, in equal rank and without distinction, then shall I cease to be a member of a court which is so disgraced.

Now, if you please, supposing those things that have been suggested against Lizzie Borden had been found against Bridget Sullivan, poor, friendless girl. Supposing she had told wrong stories; supposing she had put up an impossible alibi; supposing she had put up a dress that never was worn that morning at all, and when the coils were tightening around her had burned a dress up that it should not be seen, what would you think of Bridget? Is there one law for Bridget and another for Lizzie. God forbid.

MASON, C. J. The jury may withdraw with the officers for a recess of five minutes.

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(At the conclusion of the recess Mr. Knowlton resumed his argument, speaking as follows:)

The trial of causes before juries, Mr. Foreman, is a feature peculiar in many respects to English speaking countries. It is absolutely necessary in criminal causes, at least, and, except certain specified cases, in civil causes as well, that the witnesses that are to give their evidence shall be brought before you for you to look at them, for you to look in their faces, for you to hear them answer the questions that are put to them, for you to hear them sustain the test of cross examination, which is, as it ought to be, and as I trust it has been, in this cause,---so far as I can observe it has been,---conducted for the purpose merely and only of testing the truth and fairness and honesty of the witness. Of course there are other tests of a witness's honesty, but to men who have been accustomed to look into the faces of men and women and to read faces and to read character, there is no better test. I say this, Mr. Foreman, because I am not quite willing to dismiss the conduct of Miss Lizzie Borden in the guard room of the police station in so supercilious and satirical a manner as my distinguished friend. There is more to it than that. Mrs.

Reagan has come on to the stand and has told upon her oath against a woman who is her friend for a brief period, with whom she had no difficulties and who is of her sex and against whom she can have no object of resentment or hatred so as to induce her to commit the foulest of crimes,---has told a story which is extremely significant. I

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should have hesitated to express myself as to its significance were it not for the attestation of that fact by the agitation, the hurrying and scurrying, the extraordinary efforts put forth by her friends, as soon as it was unadvisedly published to suppress it and deny it. They saw its significance; they are unwilling witnesses to the character of the story and to the way it bears upon this case. That thing took place. Mrs. Reagan has appeared before you, and you are to judge whether you like her looks or not. You are to be the judges of her evidence. And if a man strong in the fortifications of truth comes forward and tells his story, and you like his looks, you have got to believe him.

The thing happened. Then, as sometimes also happens, and as has happened more than once in this case, as all the gentlemen with whom I am associated unfortunately can bear witness, including myself, a wily reporter, under some guise or other, extracts the facts and publishes them for a sensation in his newspaper the next day. It was an ill-advised thing for Mrs. Reagan to do. It was an unfortunate thing for her to do. She would not probably have given it to Mr. Porter if she had any idea that he was going to publish it. But it was done. And I have no question in saying, I am frank enough to say that when that was done, and by anxious and excited friends it was brought to her attention how much damage she had done to the woman in her charge, that she proceeded in many and divers ways to give the assurance that it was not so. But that was out of the kindness of her

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heart and not the malice of it. It was because she wanted not to injure this girl; not because she wanted to injure her. It is extremely significant, and I call your attention to it because I am not willing to let an honest woman go by with a slur such as my distinguished friend in courteous words imposed upon her. It is an extremely significant thing that as soon as that interview, which was between Mrs. Reagan and Miss Emma and Miss Lizzie, was published in the paper, the friendly and, I may say without impertinence, the officious Mr. Holmes, the friendly and interested Mr. Buck---who, by the way, is not called to tell what he told Mrs. Reagan,---the friendly Mrs. Holmes, the friendly Miss Brigham, indeed, all the buzzing and excited and eager and anxious crowd of friends came round in troops to harass Mrs. Reagan into taking it back. Miss Emma who knew what took place, Miss Lizzie who knew what took place, never came to Mrs. Reagan and said, "You have told a lie." They were the ones to have denied it. They were the ones to have asked her to take it back. Miss Emma was in there the next day after the publication and she never found it in her heart to say to Mrs. Reagan, "Why, Mrs. Reagan, you have published an infamous and wicked lie about us." It was these same self constituted friends who have filled the newspapers with denunciations of delay in a

trial of this cause because the appointed officer was lying sick at his home and could not attend to it, when the courteous and accomplished gentleman who had her interests in charge, my learned friends, never complained and do not to this day complain, to their credit be it

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said. It was not Miss Emma that said, "That story is false, Mrs. Reagan." It was not Miss Lizzie who said, "That story is false, Mrs. Reagan." They alone knew. But officious reporters---if you had any experience in this case you know how officious they are: I criticize them not; the public was hungry and thirsty for all sorts of news, good, bad or indifferent, and they do only what you or I would have to do if we were hustled on by enterprising publishers,---enterprising and officious reporters, interested and officious friends made her take it back, but not under oath ever. To please Lizzie to please Emma, to please these people, she was willing to sign that certificate. They have called it affidavit, but it was not; it was a certificate. But she went down to Mr. Hilliard (and he) said to her---what? Just what an honorable man ought to have said, just what you would have said, Mr. Foreman, if you had been chief of police. "Mrs. Reagan, if you sign that paper you sign it against my express orders. What you have to say in this case you will say only in Court under your oath."

That is right. That is right. She has done it. She has done it. And against this waiting (?) and excited crowd who came to her in the corridors, when the very air was charged with electricity, when nobody had their sober ???, when Mr. Buck came to her and said things that we do not know how powerful and convincing they were because he has not come to tell us,---weak and accommodating as she was, she had struck a dagger into the peace of this family, she would do anything

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to make peace there, as many a man and woman has done before. That is one thing, Mr. Foreman. The oath of God is another. It is not vital to this case, but it is not to be dismissed in any such way as that. Mrs. Reagan is here upon her looks, her appearance, her fairness, her honesty, and she is to be judged like any other witness.

My distinguished friend has seen fit to make some humorous comments upon the various hatchets that have been produced in the case. Let me say at the outset, Mr. Foreman, that the production is no part of the Commonwealth's case. We do not undertake to prove that this crime was done with this instrument or that instrument. We do not undertake to assert where the weapon was concealed, nor how it was concealed, nor what it was. We have a duty to perform, and that is to produce before you everything bearing upon this case for or against this girl that has come to our possession or knowledge. A persecuting officer, a policeman, would be false to the high duty imposed upon him in a criminal case if he did not lay before the jury all that he knew that he thought was honest and true, whether it be for her or against her.

Now let me review: and what I have to say about the instrument with which it is done has no relation to the proof of the Commonwealth's case. It has relation to this: it has been suggested, and with more or less force---perhaps it may have impressed some of you---that if that crime was done by somebody within the house, although she might burn a dress, although she might conceal the blood spots, although she might

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do many things to hide perishable articles, a hatchet must be within the walls of that house unless it was carried out by some accessory after the fact. And the latter proposition is very difficult to believe. Out of all the interested people in this case, let me say once for all that I know of no one who is capable of doing it that has been produced here as a witness in the case. And I do not urge it upon your serious consideration as worthy of a serious argument. But it is a fact that some weight must be attached to the suggestion that if the crime was done by one within the house, the hatchet that did it could not have been destroyed, and in all probability must be in existence. Not necessarily. That house was known to Lizzie Borden: how much do we know about it? The recesses and mysteries of that house are all within her twenty years acquaintance of it. How little can any one else know of it. But still a search was made, as thorough as officers knew how to make it, and we have produced before you the results. When they went down cellar that afternoon and were directed by Bridget to the box where the hatchets were kept, they found there this hatchet. (Holding up claw-hammer hatchet) An examination of it made at that time disclosed not merely---let me now do justice to these men in Fall River, for they have been most cruelly maligned,---and I am not now referring to my distinguished friend upon the other side, although he shared in a milder degree and with more courtesy in what has been said; not merely the officers in Fall River, not merely the medical examiner of that district, but the keen-eyed Professor Wood from Boston, when he saw it in Fall River, saw

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on it what appeared to him and them to be spots of blood upon the blade and upon the handle and what appeared to be pieces of hair in the interstices of the handle and clotted in the spots of rust upon the blade. It was their duty to take that hatchet. Nay, more; in their eagerness to reach the true result, the officers thought they had the very hatchet, and inconsiderate as they were they let everything else go by. If there are any more Borden murders they won't leave anything undone or untouched; but we don't learn these things until it is too late to be of any use to us. They found a hatchet stained with blood. They found a handle with hairs on it. They saw in that box a handleless hatchet, an old rusty head which they did not examine; an old rusty instrument, which in its then condition could not have done the work, and they attached no importance to it.

The hatchet was sent to Professor Wood for his examination, and it was produced in the trial at the District Court. It is not true, and my learned friend did not mean to say so, if he did say so---I don't know as I understood him---it is not true that Lizzie was adjudged probably guilty because of that hatchet. It was in spite of it. Because at that very

Court Professor Wood came there and said, "that hatchet is innocent of blood, that hatchet has no hairs upon it of a human being; that hatchet could not have been cleaned because of the peculiar construction where it goes into the head." Nay, more, Mr. Foreman, mark the significance, mark the exactness of science

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---and if falsely and maliciously or inconsiderately and upon imperfect examination it had been said at the last, as it was said at the first, that those spots were spots of blood and those hairs were the hairs of Andrew Borden, still science had another answer to make, and the examination of the physicians who measured and discussed and probed and fitted the wounds in that skull would still have said, "That is not the hatchet; it could not have inflicted the wounds, it is a 4-12-inch hatchet, and could not have inflicted the wounds." And so the very skulls, upon which some comment has been made because they were examined and put into this case as a part of these facts, might still have been the salvation of this defendant if that had been all there was to it. Evidence is evidence, whether it bears one way or the other, and the very skull of her mother might have been, if there had been false evidence about this blood and hair---might have been her triumphant acquittal if it had been charged that that was the instrument with which it was done. It turned out that that was all wrong, that that was all innocent, that there was nothing to it. We are not proving the hatchet, mind you; we are discovering all there is. That is all. We are discovering all there is. That afternoon that Fleet and Mullaly searched that box, the very box where these hatchets were found---the very box, mind you, where these hatchets were found, they found in there a small hatchet head, which obviously---obviously at first inspection would disclose nothing suspicious whatever. Any one seeing that at first sight, as it was then,

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covered with dirt of ashes, would have said. "There is nothing to it." The discrepancy between the testimony of Fleet and Mullaly I do not pretend to explain. It was as much of a surprise to me, as I manifested---therefore I have a right to say it---otherwise I should not---and I said so frankly at the time, as it was to the counsel for the defence. I don't understand it now; I don't attempt to explain it. All I say is that whichever is right, it makes no difference to the case. If Mullally saw a handle, it was left in the house where the defendant lived and has never been seen since. If Fleet was right it never was in the box, and therefore was never in the case. But they both saw that hatchet. The next Saturday Officer Seaver of the State District Police went down there and saw that hatchet. He did not attach importance to it. The next Monday, Officer Desmond, a very clean cut, slow-spoken, careful, deliberate man---you saw him on the stand---saw that hatchet and was cool enough to know that that ought to be taken down to the station for what it was worth. It was a cutting instrument, and a broken cutting instrument at that. So it was taken down. There isn't anything got up about it. Gentlemen of the jury, do you imagine for a moment, conceding that Fleet and Mullaly and Seaver and Desmond and Medley conspired to lug into the case a hatchet that was faked---if I may use a vulgar word---that they could have had the extraordinary luck to have produced a hatchet which

when applied to those wounds by the hand of science was found to fit them exactly? Oh, no. Oh, no. My learned and distinguished associate never

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suggested it. You will not think of it a moment. They took that hatchet to the police station. It lay there unnoticed, because they supposed---they had a right to suppose--- Professor Wood had told them, Dr. Dolan had told them, their own eyes had told them that there was in the hands of the expert in Boston a hatchet covered with blood and hairs. And so this remained there. But the first hatchet came down from Boston, and we produced the evidence that one hatchet was out of the case. Then Hilliard said, of course, as it was the business of an honest and impartial detective, "See what about this hatchet; take it down." And Professor Wood took it down and examined it and has reported to you the results.

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Now let me, even at the expense of being a little tedious, get into this matter. I hope you will pardon me. You are in no more of a hurry to get through this case than I am and you are no more anxious than I to see justice done,---I hope you are as much so. Let me give you a description of that hatchet and see if there was not something about it that was peculiar. If not, you will tell me so. Officer Mullally says of the handle---I will not read it all to you---that "it was covered with dust or ashes, or something like that and both sides of it was covered with something, what I called ashes." "Q. Can you give any further description of it? A. It looked as though it was rubbed in there." That is the ordinary man. "I think that would be my way of expressing it. It looked different from what it does today." But I will not read that at length, for Prof. Wood covers what he says about it. Fleet and Mullally say the hatchet was covered with heavy dust or ashes. It was covered with white ashes not on one side where it would fall, but on both. And Fleet says when he asked "Did you notice anything with reference to the other tools in the box at that time? A. Yes, sir.

Q. Did you notice anything with reference to their condition with respect to ashes? A. I did.

Q. Will you tell us what it was? A. There was dust upon them.

Q. The same as upon this? A. No, sir."

Of course not.

Seaver was the next man that saw it on Saturday, and he was not connected with the Fall River police. He says, "It appeared to be covered with a coarse dust or ashes; I should

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call it more of ashes than of dust, it being a coarser dust than the dust on the box and other things

Q. And other things in the box, do you mean?

A. I think the things in and about the box."

It was peculiar.

Desmond gave an answer which was not grammatical but quite expressive. It was an attempt to explain something that cannot be put clearly on account of the restrictions in Court which will not allow a thing to be described by comparison. He says, "I looked it over, examined it quite closely---it had been in some place which was not very clean. It was all dirty, that is, it was covered with a dust which was not of a fine nature, that it is, it was too coarse to be called a fine---what I mean is it was not any sediment that might have collected on from standing there any length of time. It was a loose, rough matter which might be readily pushed off or moved off by pushing your finger on it."

"The dust that we found in general throughout the cellar was nothing at all such as was on that hatchet."

Now let us turn that hatchet over to Prof. Wood and see what he says. The first thing Prof. Wood does is to turn the eye of science with the magnifying glass upon that white and clean broken edge, and all the magnifying power of the lens that he used could not find in the interstices of the break one particle of dust. We had a great deal of dust thrown in our eyes about this dusty cellar, this ashy cellar and the dirt there, but that break was innocent and as clean of dust as though it was kept in a glass case. How long had it been broken, how long had it been there so that the magnifying power of the lens could not find deep down in the recesses of that place one atom of dust? It was covered with

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rust as it is now. Let me read it exactly. "When I received the hatchet it contained more of a white film on both sides than it does now, but it still contains adherent tightly in little cavities here in the rusty surface which can easily be seen with a small magnifying glass, white, dirt like ashes, which is tightly adherent and which has resisted all the rubbing in the Court room."

My distinguished friend involuntarily handled it and rubbed it off and it was rubbed off more and more, but when Prof. Wood got it it was in the condition he has just described, and he adds "that coating looks as if it might be ashes," and when my learned friend who cross examined him called attention to that as a good place to contain blood stains, the fatal wash of ashes was there in the same crevices where blood went if it went,---the ashes went too. I never said and I do not say now that blood was ever on that hatchet. I am only putting before you all the facts and I stop there. I said to Prof. Wood,

"What would cause it to be adherent? A. It is in the crevices there and if the hatchet had been when wet placed in that material it would stick more tightly

and permeate those angles there more closely."

Not quite all of that. Then Prof. Wood could not have been clear of finding blood by any ordinary process and I asked him,

Q. "Assuming this hatchet to have been used for inflicting the wounds which you have heard described and then subjected to some sort of a cleaning process, whether or not that could have reasonably possibly to have occurred without your having discovered traces of blood upon the hatchet or the handle that you found? A. Before the handle was broken, not after."

That is to say, of course the hatchet could not have been used without the handle, but the handle had been broken and the man of science who examined into the question says that that instrument could have been cleaned and gives as his reason

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that the cavities and crevices would not take up the blood as that did. And he is as honest an expert as there is in the State of Massachusetts.

Then I took the skull and I have foreborne to ask to bring them in here. I would not for one moment harass the feelings of this unfortunate woman whom I am compelled to subject to this discussion. I must ask you gentlemen of the jury to do as well as you can. The eye of science takes that skull. You will have to do the best you can with the pieces of tin and remember that tin comes up perpendicularly and not on a bevel as in a hatchet. The use of the tin was necessary as when being handled it rests at the point of juncture at the upper part of the skull; and those men who have testified have told you two very significant things. Dr. Cheever who did not see the external wounds and the sharp edges, from what he saw on the single wound says that those two wounds, one of which terminated in the jaw something like that, could not have been made by a hatchet three and a half inches in length and might possibly have been done with one as small as three inches. Dr. Draper who saw the external wounds and the skull after the flesh had been removed, tells us that it must have been three and a half inches, no more and no less. The difference is not material. It is not pertinent to the case and is not worth talking about. It has been said, and I must say here it has been said by my distinguished associate under a misapprehension of this evidence, that Dr. Dolan has been telling

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you in this Court room under oath that that hatchet was adequate to those wounds. My learned friend did not mean to do him any injustice, and at the expense of being tedious I must ask you to do him justice here now. All he said was this in the District Court case, and if I am not correct I will be set right,---that before he had examined the skulls, before the eye of science had probed the depths of the mystery of that cut he had said that that hatchet was adequate to inflict the wounds, but that afterwards when he examined the skulls he had changed his opinion as an honest man always does. It is the wicked man

that does not change his mind or correct his testimony. On mis-information or lack of information Dr. Dolan said what was obvious to almost any one, that any ordinary hatchet could do it. He does not say so and ought not to be reported as saying so now. But that is not all. Oh, cruel fate, that brought us to our doom. Here was the ordinary shingler's hatchet like any other hatchet in ordinary appearance. One would have said, one with even the consummate skill of my friend who examined this witness would have supposed that any three and a half inch hatchet would have been the same as this. I would have thought so. You would have thought so. But it was brought in and applied by the solemn men of science and they said slowly and fatally to you, "It does not fit; it will not go in." You saw it yourself. This hatchet was put in there and they said,---it is a large word for a man of science to use,---we talk without due regard to the weight of our words, but when a man of science, as both of these men say, that that hatchet head fits accurately, it means a great deal.

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What is the end of all this? Did that hatchet do that thing? I am unable to say. There is more to it than that. My associate reminds me, and justly, for I had almost forgotten the most significant thing of it all, that that handle was broken off not as axe handles are splintered---those of you who are carpenters know that---but, as I submit, not with entire confidence, because I am not so sure of my ground, not being used to this business, but I submit it for your consideration, broken off not as accidental, but as by design, that no part of the wood of that handle should be exposed to view.

I may be wrong. Correct me if I am. Do not take it on my submission of the proposition; take it on your own experience. Broken off so that no part of that wood should be seen. A pretty punky piece of wood, as it appears; not a difficult thing to break, but broken so recently. So far as the break is concerned nobody can tell when it was, within a month, two months, three months. But so far as the tell tale ashes and dust are concerned, it had not been there long enough to get the first settling or first sifting that had been put into that ash cellar, not the very first one.

What is the sum of it all? A hatchet head is found in that cellar, despised and rejected of men at first, because a false king was set up for them to worship, and it was only when he was deposed that they thought of trying what there was in this one. A hatchet head which had been

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broken off singularly and freshly; a hatchet head which was different in appearance from anything in that box, which is examined by the police officers and afterwards by the eye of science, which disclosed the fact that it had been wet and then rubbed in ashes; a hatchet head which Prof. Wood, with the same honest candor with which he said that could not have been cleaned, tells us could well have been cleaned after having been used; and a hatchet which almost miraculously fits to the dot the cuts that the dead man presents to the eye of those men.

I can do no more. All the language at my command could do no more than to reiterate the well chosen words of my associate. We do not say that was the hatchet. It may have been. It may well have been the hatchet.

What is far more significant, in my opinion, is this circumstance to which he alluded and of which I am reminded, that if this mysterious and unknown assassin, who came into that house when there was no chance to get in, who hid in closets where there was no blood found, who went from room to room where no trace of blood was found in the passage ways or stairs, and who came out where there was no opportunity to come out without being seen by all the world; that unknown assassin, who knew all the ins and outs of that family, who knew that Bridget was going upstairs to sleep when she didn't know it herself, who knew that Lizzie was going to the barn when she couldn't have told it herself, who knew that Mrs. Borden would be up there dusting that room when no

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person could have foreseen it, who knew that he could get through and escape the eye of Lizzie and would find that screen door opportunely open at the exact time when it was possible for him to run in; that unknown assassin, with all that knowledge stored up in his head, which no human being can know, never would have carried away the bloody weapon with which this thing was done. Never. Never. He never would have gone into the streets, armed and loaded and fated with the evidence that would convict him. It would have been left beside the body of his victim. The very fact that no hatchet was found there is a piece of evidence, is one of those chips that float right with the stream, which points directly to the inmates of that house as the authors of this awful crime.

I am reminded, Mr. Foreman, that I omitted to allude to one fact. To do that I must once more ask your attention to the circumstances of that note, for it is introductory to what follows.

Mr. Morse went away at about quarter or ten minutes of nine. We do not know when, but as he thinks. Nobody knows certain times. He sees before he goes---let me ask you to go right back to this evidence exactly as it was given---just before he goes he sees Mrs. Borden in the sitting room, and she disappears up the front stairs, obviously to make the bed. He goes out, Morse does, and away. Lizzie comes down. She sees Mrs. Borden making the bed, because she tells Fleet

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so. That is about nine o'clock, as she tells Fleet. She comes down. She goes to her breakfast in the kitchen. Bridget goes out in the yard a moment. When she comes in Lizzie has gone upstairs again, and Mrs. Borden is still upstairs. The bed is not made. Bridget goes about her work, in and out of the dining room, to clear off the things. Mr. Borden has gone on his usual morning jaunt, and arrives at the bank at half past nine. Mrs. Borden comes down again, and Bridget sees her there in the dining room or sitting

room, between the two rooms, dusting, and there receives her directions as to washing the windows. These things are in detail, but they [are] of the essence of this thing.

Then Bridget finishes her work out in the kitchen, cleans up the dishes and puts away the cloths, goes down cellar and gets her pail and water, and comes up again and goes into the house, through the rooms in the house, to shut the windows down. And Mrs. Borden has gone again. She was dusting the last time she saw her. She was dusting when she was struck in death. She goes upstairs, and it is almost the exact time that Prof. Wood's clock tells us, almost to a dot the time Professor Wood's clock tells us. And even then Lizzie couldn't bear to trust the deserted and empty house, but away down the front stairs she must come, away through the house, and to the back door, to make sure that Bridget was out there and that the house was deserted and empty; and it was then, it was then, that Mrs. Borden

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was killed.

No assassin could have come in without going through the house where she could see him. No assassin could have gone into that room without her seeing him or hearing him. No blow could have been struck, no groan could have escaped her dying and anguished lips, no weight could have fallen on that floor if she had not been where she could have seen him, that must not have instantly attracted her anxious attention.

Then she comes down stairs. Nobody has come to the back door. Bridget tells us they could not come without her knowing it. Bridget has come to the front door. It is shut and locked and bolted and locked again. And she tells Bridget---no, first she tells her father that Mrs. Borden has had a note and has gone out. She then tells Bridget about locking the doors if she goes out, because Mrs. Borden has had a note and has gone out. Bridget wants to know where. She says she has gone out to visit a sick friend; she had a note this morning, and it must be in town. Bridget had not heard anything about it. Bridget swears upon her oath she didn't know anything about it; she never knew anything about the note excepting what Lizzie tells her. And what she said to Mrs. Churchill was after that, long after that.

It is just as you would tell the news, Mr. Foreman, if it were true that a man were killed upon the railroad. You would go home and tell your wife that John Brown was killed upon the railroad this morning, not because you saw it but because you received it from a source that you did not question. You would not say, "Peter Jones told me that John Brown was killed." You would say it happened.

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And that note was not the note of the assassin. If he was the assassin of Mrs. Borden, he never would have written a note for her to go when he went there to kill. If it was the assassin of Mr. Borden, he would not have written a note to ask the oldest and

feeblest and dullest of the whole family to have left the house, and leave Lizzie and Bridget there to watch his proceedings. That wild and absurd suggestion is out of the case, and only the anxiety to find room to let this woman go led to its origin. Nobody has ever heard that the note was written. It never was. But a guilty conscience, gentlemen, is stronger than any power of craft, and this is what I am coming to. She had just told Bridget that she had gone out. She had told her father she had gone out, but she says to Bridget when she suggested about going out to see her, after it was known that the father was killed, she says to her---to Mrs. Churchill, it was, "She had a note to go and see some one who is sick, but I don't know but what she is killed too, for I thought I heard her come in." Who predicted disaster the day before? Who was the first one that told of it that day? Then Bridget says, "I will go to Mrs. Whitehead's and find out." She had not heard her come in. The distinguished counsel for the defence says that the noise of the fall was what deceived her. Great heavens, has he forgotten that the fall was long before she had told this story to Bridget of her having had a note to go out? She had not heard her come in.

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She had not thought she heard her come in, but she says, "Maggie, I am almost positive I heard her come in. Won't you go up stairs and see?" And yet when her father was found dead on the sofa she had no thought, no intent, no voice to call her mother, who might be in her own room one flight up, but called the domestic who was two flights up and never suggested "mother" until, by the accident of Mrs. Churchill's presence, they had begun to crowd around and she knew that the fatal moment was coming, and it must be broken to them by degrees. The craft of murder, gentlemen, is deep down, but there is a thread of providence through it all.

I had intended, Mr. Foreman and gentlemen, at this point to attempt to recapitulate these things to you. I do not think I will do it. If I have not made them plain they cannot be made plain. Every one of them excepting the incident of the burning of the dress and the accuracy of the witnesses as to the dress that is produced, depend upon facts that there is no denial of whatever. We find a woman murdered by blows which were struck with a weak and indecisive hand. We find blows which were inspired by hatred, and not for lust or lucre. We find that that woman had no enemies in all this world excepting the daughter that had repudiated her. We find that that woman was killed at half past nine when it passes the bound of human credulity to believe that it could have been done without her knowledge, her presence, her sight, her hearing. We find a house

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guarded by night and by day so that no assassin could find lodgment in it for a moment. We find that after that body has been found murdered, a falsehood of the very essence of this whole case is told by that girl to explain the story to her father who would revenge it, and delay him from looking for her, which story is repeated to everybody that comes along. We find her then set in her purpose, turned into a maniac, so far as responsibility is concerned, considering the question of what to do with this witness who could tell

everything of that skeleton, if he saw fit. He had not always told all he knew. He had forbidden any telling of that burglary in the day time of Mrs. Borden's things for reasons that I do not know anything about, but which I presume were satisfactory to him, but he would not have so suppressed or concealed this tragedy, and she knew it, and so the devil came to her, as God grant it may never come to you and me, gentlemen, but it may, and when the old man lay sleeping on the couch she was prompted to cover her person in some imperfect way and remove him from life, and conceal the evidences so far as she could in the hurried time that was left her. She had all she wanted. She did not call Maggie until she got ready, until she had got through. She had fifteen minutes, which is a long time, and then called her down, and without helping the officers in one single thing, but remonstrating with them for going into her room and asking her questions, those servants of the law who were trying to favor her, never opening her mouth except to tell that story of the barn and

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that story of the note, which is all she ever told in the world. We find that woman in a house where there is found in the cellar a hatchet which answers every requirement of this case, where no outside assassin could have concealed it, and where she alone could have put it. We find in that house a dress which was concealed from the officers until it was found that the search was to be resumed and safety was no longer assured. The dress was hidden from the public gaze by the most extraordinary act of burning that you ever heard of in all your lives by an innocent person.

We say these things float on the great current of our thoughts and tell us where the stream leads to. We get down now to the elements of ordinary crime. We get hatred, we get malice, we get falsehood about the position and disposition of the body; we get absurd and impossible alibis. We get contradictory stories that are not attempted to be verified; we get fraud upon the officers by the substitution of an afternoon silk dress as the one that she was wearing that morning ironing, and capping the climax by the production of evidence that is beyond all question that there was a guilty destruction of the dress that she feared the eye of the microscope might find the blood upon.

What is the defence, Mr. Foreman? What is the answer to this array of impregnable facts? Nothing; nothing. I stop and think, and I say again, nothing. Some dust thrown upon the story of Mrs. Reagan, which is not of the essence of the case; some question about time put upon the acts of Mr.

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Medley which is not of the essence of the case; some absurd and trifling stories about drunken men the night before, and dogs in the yard the night before, of men standing quietly on the street the same day of the tragedy exposing their bloody persons for the inspection of passers-by; of a pale and irresolute man walking up the street in broad day light. Nothing, nothing. The distinguished counsel with all his eloquence, which I vainly hope to match or approach, has attempted nothing but to say, "Not proven." But it is

proven; it is proven.

We cannot measure facts, Mr. Foreman. We cannot put a yardstick to them. We cannot determine the length and breadth and the thickness of them. There is only one test of facts. Do they lead us to firm belief? If they do they have done the only duty they are capable of. You cannot measure the light that shines about us, cannot weigh it, but we know when it is light, because it shines into our hearts and minds and eyes. That is all there is to this question of reasonable doubt. Give the prisoner every vestige of benefit of it. The last question to be answered is, taking all those facts together, are you satisfied that it was done by her?

I have attempted, Mr. Foreman, how imperfectly none but myself can say, to discharge the sad duty which has devolved upon me in this case. He who could have charmed and entertained and inspired you is still detained by sickness, and it has fallen to my lot to fill unworthily the place of

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the chief law officer of this Commonwealth. But I submit these facts to you with the confidence that you are men of courage and truth. I have no other suggestions to make to you than that you shall deal with them with that courage that befits sons of Massachusetts. I do not put it on so low a ground as to ask you to avenge these horrid deaths. Oh, no. I do not put it even on the ground of asking you to do credit to the good old Commonwealth of Massachusetts. I lift you higher than that, gentlemen. I advance you to the altitude of the conscience that must be the final master of us all.

You are merciful men. The wells of mercy I hope are not dried up in any of us, but this is not the time nor the place for the exercise of it. That mighty prerogative of mercy is not absent from the jurisprudence of this glorious old Commonwealth. It is vested in a line of magistrates, one of the most conspicuous of whom is the honored gentleman who has addressed you before me, and to whom no appeal for mercy ever fell upon harsh or unwilling ears. Let mercy be taken care of by those to whom you have entrusted the quality of mercy. It is not strained in the Commonwealth of Massachusetts. It is not for us to discuss that. It is for us to answer questions, the responsibility of which is not with you nor with me. We neither made these laws nor do we execute them. We are responsible only for the justice, the courage, the fidelity with which we meet to find and answer the truth.

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Rise, gentlemen, rise to the altitude of your duty. Act as you would be reported to act when you stand before the Great White Throne at the last day. What shall be your reward? The ineffable consciousness of duty done. There is no strait so hard, there is no affliction so bitter that is not made light and easy by the consciousness that in times of trial you have done your duty and your whole duty. There is no applause of the world, there is no station of height, there is no seduction of fame that can compensate for the

gnawings of an outraged conscience. Only he who hears the voice of his inner consciousness---it is the voice of God himself, saying to him, "Well done, good and faithful servant," can enter into the reward and lays hold of eternal life.

(Mr. Knowlton concluded his argument at five minutes past twelve.)

MASON, C. J. I desire to remind the jury that there is still a further word to be said before this cause will be finally committed to them, but for their convenience as well as for the convenience of the Court, the recess will now be taken till quarter before two.

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AFTERNOON SESSION

The Court came in at 1.45 P.M.

The Chief Justice addressed the prisoner as follows:

Lizzie Andrew Borden: Although you have now been fully heard by counsel, it is your privilege to add any word which you may desire to say in person to the jury. You now have that opportunity.

The prisoner arose and responded:

I am innocent. I leave it to my counsel to speak for me.

The charge to the jury was then delivered by Mr. Justice Dewey, as follows:-

CHARGE TO THE JURY.

Mr. Foreman and Gentlemen of the jury: You have listened with attention to the evidence in this case, and to the arguments of the defendant's counsel and of the District Attorney. It now remains for me, acting in behalf of the Court, to give you such aid towards a proper

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performance of your duty as I may be able to give within the limits for judicial action prescribed by law; and, to prevent any erroneous impression, it may be well for me to bring to your attention, at the outset, that it is provided by a statute of this State that the Court shall not charge juries with respect to matters of fact, but may state the testimony and the law.

Without attempting to define the exact scope of this statute, it is not to be doubted, in view of expositions made of it by our court of last resort, that it was intended to prevent the judges presiding at the trial from expressing any opinion as to the

credibility of witnesses or the strength of evidence, while it does not preclude them from defining the degree of weight which the law attaches to a whole class of testimony, leaving it to the jury to apply the general rule to the circumstances of the case.

I may perhaps illustrate this distinction in the course of my remarks; but, speaking comprehensively, I may now say to you that it will be your duty, in considering and deciding the matters of fact necessary to rendering your verdict, not to allow your judgment to be affected by what you may suppose or believe to be the opinion of the Court upon such matters of fact.

The law places upon the Court the duty and responsibility of furnishing you with a correct statement of such rules and principles of law, applicable to the case, as you need to

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know; and places upon you, and you only, the distinct duty and responsibility of deciding all questions of fact involved in the issue between the Commonwealth and the defendant; and your decision can properly rest only on the law and the evidence given you, together with those matters of common knowledge and experience relating to the ordinary affairs of life, and the common qualities of human nature and motives of action, which are never proved in court, but which, as jurors, you are expected to bring with you to this investigation.

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I will here add that nothing in the prior official proceedings in this case, neither the inquest nor the hearing or trial in the District Court at Fall River, nor the action of the Grand Jury in finding the indictment can properly influence your judgment in this case. In connection with those proceedings, by the usual legal formalities, the case is brought before you for inquiry, and it is independently of any official action that has gone before. It is still more plain that neither the defendant's confinement in prison nor her coming here in the custody of an officer, nor the legal restraint under which she manifestly is, raise against her any presumption of guilt. They are a part of that necessary discomfort which under our laws, as they now are, one is called to experience who is regularly charged with a capital crime. The defendant is being tried before you on a written accusation, termed an indictment, which contains two charges or counts; one count by the use of the usual legal language in substance charges her with the murder of Andrew J. Borden, and the other count charges her with the murder of Abby D. Borden in Fall River in this county on August 4th, 1892. Chapter 202 of the Public Statutes contains these sections: "Murder committed with deliberately premeditated malice aforethought, or in the commission of or attempt to commit a crime punishable with death or imprisonment for life, or committed with extreme atrocity or cruelty is murder in the first degree. Murder not appearing to be in the first degree, is murder in the second degree.

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The degree of murder shall be found by the jury"---in connection with rendering their verdict, if they find against the defendant. The Government claims that the killing of Mr. and Mrs. Borden, by whomsoever done, was done with premeditated, deliberate malice aforethought within the meaning of the statute and it was murder in the first degree. The statute nowhere defines murder itself, and for such definition we must resort to the common law, and according to that law "murder is the unlawful killing of a human being with malice aforethought." A short explanation may be needed of these elements of murder in the first degree. The term malice as here used means more than personal hatred or ill-will. It means any unlawful motive, or it is sometimes said to denote a state of mind manifested by the wrongful act done intentionally without just cause or excuse. The words malice aforethought by themselves alone have been settled by our Supreme Court to imply purpose and design in contradistinction to accident or mischance. The words "deliberately premeditated" mean that the wrongful intention to kill must have been formed before the act of killing. The killing must be the result of a plan or purpose to kill unlawfully, formed without reflection and deliberation by the guilty party. The law does not require that this intention, plan or purpose to kill shall have existed for any considerable time before it is carried out. The time may be very short. It is enough if there was a clear intent to kill formed before the act of killing; and so the Government claims that you ought to be satisfied that the killing of Mr. and Mrs. Borden was wrongful and malicious, that is, without just cause or excuse, and that it was deliberately premeditated,---that is, the design to do it was first formed and after that was carried out.

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Although most of the evidence may relate to both counts in the indictment, the counts are distinct and will require a separate finding by you.

The second main proposition in the case is that the killing of Mr. and Mrs. Borden was done by the defendant. In considering the evidence with regard to this issue, you will need to have certain legal principles in mind and to use them as guides. One such principle is the presumption of law that the defendant is innocent. This presumption begins with her at the outset of the trial, and continues with her through all its stages until you are compelled by the evidence to divest her of it. As one learned writer has expressed it, "This legal presumption of innocence is to be regarded by the jury in every case as matter of evidence to the benefit of which the party is entitled." This presumption of innocence operating in behalf of the defendant also operates in behalf of all of us, and as was declared in an important capital trial, it is a presumption founded on that universal beneficence of the law which says that every man does right till the contrary appear.

The law does not undertake to fix or measure the force of this presumption in this case by any formal or arbitrary rule, but leaves it to your just and intelligent judgment. It may vary in different cases, its force being strengthened amongst other things by the character and previous way of life of the defendant. I understand the government to

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concede that defendant's character has been good; that it has not been merely a negative and neutral one that nobody had heard anything against, but one of positive, of active benevolence in religious and charitable work. The question is whether the defendant, being such as she was, did the acts charged upon her. You are not inquiring into the action of some imaginary being, but into the action of a real person, the defendant, with her character, with her habits, with her education, with her ways of life, as they have been disclosed in the case. Judging of this subject as reasonable men you have the right to take into consideration her character such as is admitted or apparent. In some cases it may not be esteemed of much importance. In other cases it may raise a reasonable doubt of a defendant's guilt even in the face of strongly incriminating circumstances. What shall be its effect here rests in your reasonable discretion.

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It is competent for the government to show that the defendant had motives to commit the crime with which she is charged, and evidence has been introduced from which you are asked to find that she had unpleasant relations with her stepmother, the deceased, and also that her father, Andrew Jackson Borden, left an estate of the value of from \$250,000 to \$300,000, and that so far as is known to the defendant, he died without having made a will. If his wife died before him, it is not disputed that he left the defendant and her sister as his only heirs. It appears that Mr. Borden was 69 years old, and Mrs. Borden more than 60 years of age at the time of their deaths. Taking the facts now as you find them to be established by the evidence, and taking the defendant as you find her to be, and judging according to general experience and observation, was the defendant under a real and actually operating motive to kill her father and his wife? An able writer on the criminal law says:

"In the affairs of life it is seldom a man does anything prompted by one motive alone to accomplish one end." Unless the child be destitute of natural affection, will the desire to come into possession of the inheritance be likely to constitute an active, efficient inducement for the child to take the parent's life?

If you find as a fact that the defendant was under an actually operating motive, pecuniary or any other, to destroy the life of her father and stepmother, then it becomes a matter

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proper to be considered. For, as one has said: "It may tend to repel the presumption which exists, in addition to the general presumption of innocence, that a person will not commit a crime without reason, inducement or temptation."

It is not necessary for the government to prove motive. It has been said that there can be no adequate motive for murder, but it is a part of the folly and sin of man that he will sometimes act contrary to the highest and strongest motive; by his perversity he will

make a weak motive strong and then act upon it.

Imputing a motive to the defendant does not prove that she had it. I understand the counsel for the government to claim that defendant had towards her stepmother a strong feeling of ill will, nearly, if not quite, amounting to hatred. And Mrs. Gifford's testimony as to a conversation with the defendant in the early spring of 1892 is relied upon largely as a basis for that claim, supplemented by whatever evidence there is as to defendant's conduct towards her stepmother.

Now, gentlemen, in judging wisely of a case you need to keep all parts of it in their natural and proper proportion, and not to put on any particular piece of evidence a greater weight than it will reasonably bear, and not to magnify or intensify or depreciate and belittle any piece of evidence to meet an emergency. I shall say something before I have done on the caution to be used in considering testimony as to conversations. But take Mrs. Gifford's just as she gave it, and consider whether or not it will fairly amount to the

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significance attached to it, remembering that it is the language of a young woman and not of a philosopher or a jurist. What, according to common observation, is the habit of young women in the use of language? Is it not rather that of intense expression, whether that of admiration or dislike? Consider whether or not they do not often use words which, strictly taken, would go far beyond their real meaning. Would it be a just mode of reasoning to make use of the alleged subsequent murder to put enmity into the words and then use the words, thus charged with hostile meaning, as evidence that defendant committed the murder?

Again, every portion of the testimony should be estimated in the light of all the rest. What you wish, of course, is a true conception,---a true conception of the state of the mind of the defendant towards her stepmother, not years ago, but later and nearer the time of the homicide: and to get such a true conception you must not separate Mrs. Gifford's testimony from all the rest, but consider also the evidence as to how they lived in the family; whether, as Mrs. Raymond, I believe, said, they sewed together on each other's dresses; whether they went to church together, sat together, returned together; in a word, the general tenor of their life. You will particularly recall the testimony of Bridget Sullivan and of defendant's sister, Emma, bearing on the same subject. Weigh carefully all the testimony on the subject in connection with the suggestions of counsel, and then judge whether or not there is clearly proved such a permanent state of mind on the

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part of defendant towards her stepmother as to justify you in drawing against her upon that ground inferences unfavorable to her innocence.

Recall the evidence; reflect upon it; compare one part of it with another, and see

whether you, as intelligent and reasonable men, desiring to approach the consideration of this case from a just and true standpoint, would be warranted upon the evidence in taking into your minds the conception and allowing that conception to operate upon all your construction and estimation of the other evidence,---the conception that at and about the time of these murders this defendant had towards her stepmother a feeling that could be properly called hatred. If that is not a just conception warranted by the evidence, then it should not enter and find lodgment in your minds as a controlling idea under the operation of which the evidence in this case is to be judged. Such a conception, if erroneous, may be more serious upon the operations of your mind and more liable to affect improperly your final conclusion than a mistake on any single portion of the evidence.

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Because, if it is a wrong conception, unwarranted by the evidence, unjust to the defendant, and you start out in the case with that, it colors and affects all the action of your minds till your verdict is rendered.

Now, gentlemen, the material charge in the first count of the indictment is that, at Fall River, in this County, the defendant killed Mrs. Borden, by striking, cutting, beating, and bruising her on the head with some sharp cutting instrument. In the second count the same charges are made in regard to Mr. Borden. And the Government claims that these acts were done with deliberately premeditated malice aforethought, and so were acts of murder in the first degree.

The law requires that before the defendant can be found guilty upon either count in the indictment every material allegation in it shall be proved beyond a reasonable doubt.

Now what do the words "beyond reasonable doubt" mean? Some courts do not favor an attempt to define them, thinking that the jury can judge as well without any suggestions. But I am unwilling to omit any further explanation, and I can in no way give you so accurate a description of their meaning, as by reading to you an extract from an opinion of the Court by whose views it is our duty to be governed. The Court says:

"Proof beyond reasonable doubt, is not beyond all possible or imaginary doubt, but such proof as precludes every reasonable hypothesis or theory except that which it

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tends to support. It is proof to a moral certainty, as distinguished from an absolute certainty. As applied to a judicial trial for crime, the two phrases, beyond reasonable doubt, and, to a moral certainty, are synonymous and equivalent. They mean the same thing. Each has been used by eminent judges to explain the other, and each signifies such proof as satisfies the judgment and conscience of the jury as reasonable men, and applying their reason to the evidence before them, that the crime charged has been

committed by the defendant, and so satisfies them as to leave no other reasonable conclusion possible. In other words, they must have as clear and strong a conviction in their own minds of the proof of that conclusion as they would require to have in the truth of a conclusion to be acted on by them in matters of the highest importance to themselves."

Now you observe, gentlemen, that the Government submits this case to you upon circumstantial evidence. No witness testifies to seeing the defendant in the act of doing the crime charged, but the Government seeks to establish by proof a body of facts and circumstances from which you are asked to infer or conclude that the defendant killed Mr. and Mrs. Borden.

This is a legal and not unusual way of proving a criminal case, and it is clearly competent for a jury to find a person guilty of murder upon circumstantial evidence alone. Indeed, judges and juries have been somewhat divided in their views

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as to the comparative strength and value of circumstantial and direct evidence. In direct evidence witnesses testify that they have actual and immediate knowledge of the matter to be proved, so that the main thing to be determined is whether the witnesses are worthy of belief. The chief difficulty with this kind of evidence is that the witnesses may be false or mistaken, while the nature of the case may be such that there are no means of discovering the falsehood or mistake.

In circumstantial evidence the facts relied upon are usually various, and testified to by a large number of witnesses, as you have seen in this case. When the evidence comes from several witnesses and different sources, it is thought that there is more difficulty in arranging it so as to escape detection if it is false or founded on mistake. The principle that underlies circumstantial evidence we are constantly acting on in our business, namely, the inferring of one fact from other facts proved.

Sometimes the inference is direct, and almost certain. For instance, the noise of a pistol is heard from a certain room in a hotel. The door is unlocked or otherwise opened. A man is found, just dead, with a bullet hole in his temple. Near him is a revolver with one barrel discharged. In such a case, if no contradictory or controlling facts appeared, we should infer, with a very strong assurance, that the death was caused by the pistol. In other cases the facts from which the conclusion is sought to be drawn are numerous and complicated, and the conclusion not so closely connected with the facts or so easy to draw.

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This is illustrated by the case on trial here. You have got to go through a long and careful investigation to ascertain what facts are proved. This is the same process essentially that you go through in dealing with direct evidence. Then after you have

determined what specific facts are proved, you have remaining the important duty of deciding whether or not you are justified in drawing and will draw from these facts the conclusion of guilt, Here therefore is a two-fold liability to error, first in deciding upon the evidence what facts are proved, and second in deciding what inference or conclusion shall be drawn from the facts. This is often the critical or turning point in a case resting on circumstantial evidence. The law warrants you in acting firmly and with confidence on such evidence, but does require you to exercise a deliberate and sober judgment, and use great caution not to form a hasty or erroneous conclusion. You are allowed to deal with this matter with your minds untrammelled by any artificial or arbitrary rule or law. As a great judge has said, "The common law appeals to the plain dictates of common experience and sound judgment." The inference to be drawn from all the facts must be a reasonable and natural one, and to a moral certainty a certain one. It is not sufficient that it is probable only. It must be reasonably and morally certain.

In dealing with circumstantial evidence in such a case as this some special considerations need to be borne in mind. One of them is this. Inasmuch as the conclusion of

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guilt, if reached at all, must be inferred or reached from other facts that are proved, every fact which in your judgment is so important and essential that without it the conclusion of guilt could not be reached must itself be proved beyond reasonable doubt, must be proved by the same weight and force of evidence as if it were the main fact in issue. But in seeking to establish a case by circumstantial evidence it may often happen that many facts are given in evidence, not because they are thought to be necessary to the conclusion sought to be proved, but to show that they are not inconsistent with that conclusion, but favorable to it and have some tendency to rebut a contrary presumption.

If any facts of this second class should fail to be proved to your satisfaction, that would not prevent you from drawing the conclusion of guilt from other facts, if they were sufficient to warrant it. In other words, failure to prove a fact essential to the conclusion of guilt, and without which that conclusion would not be reached, is fatal to the government's case, but failure to prove a helpful but not an essential fact may not be fatal.

Now let me illustrate. Take an essential fact. All would admit that the necessity of establishing the presence of the defendant in the house, when, for instance, her father was killed, is a necessary fact. The government could not expect that you would find her guilty of the

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murder of her father by her own hand unless you are satisfied that she was where he was when he was murdered. And if the evidence left you in reasonable doubt as to that fact, so vital, so absolutely essential, the Government must fail of its case, whatever may be the force and significance of other facts, that is, so far as it is claimed that she did the

murder with her own hands.

Now, take the instance of a helpful fact. The question of the relation of this handleless hatchet to the murder. It may have an important bearing upon the case, upon your judgment of the relations of the defendant to these crimes, whether the crime was done by that particular hatchet or not, but it cannot be said, and is not claimed by the government that it bears the same essential and necessary relation to the case that the matter of her presence in the house does. It is not claimed by the government but what that killing might have been done with some other instrument. Take another illustration. I understand the government to claim substantially that the alleged fact that the defendant made a false statement in regard to her step-mother's having received a note or letter that morning bears an essential relation to the case, bears to it the relation of an essential fact, not merely the relation of a useful fact.

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And so the counsel in his opening referring to that matter, charged deliberately upon the defendant that she had told a falsehood in regard to that note. In other words, that she had made statements about it which she knew at the time of making them were untrue, and the learned District Attorney, in his closing argument, adopts and reaffirms that charge against the defendant.

Now what are the grounds on which the Government claims that that charge is false, knowingly false? There are three, as I understand them,---one that the man who wrote it has not been found, second that the party who brought it has not been found and third that no letter has been found, and substantially, if I understand the position correctly, upon those three grounds you are asked to find that an essential fact---a deliberate falsehood on the part of the defendant has been established.

Now what answer or reply is made to this charge? First, that the defendant had time to think of it; she was not put in a position upon the evidence where she was compelled to make that statement without any opportunity for reflection. If, as the Government claims, she had killed her step-mother some little time before, she had a period in which she could turn over the matter in her mind. She must naturally anticipate, if she knew the facts, that the question at no remote period would be asked where Mrs. Borden was, or if she knew where she was. She might reasonably and naturally expect that that

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question would arise. Again, it will be urged in her behalf, What motive had she to invent a story like this? What motive? Would it not have answered every purpose to have her say, and would it not have been more natural for her to say simply, that her step-mother had gone out on an errand or to make a call? What motive had she to take upon herself the responsibility of giving utterance to this distinct and independent fact of a letter or note received with which she might be confronted and which she might afterwards find it

difficult to explain, if she knew that no such thing was true? Was it a natural thing to say, situated as they were, living as they did, taking the general tenor of their ordinary life, was it a natural thing for her to invent? But it is said no letter was found. Suppose you took at the case for a moment from her stand-point, contemplate the possibility of there being another assassin than herself, might it not be a part of the plan or scheme of such a person by such a document or paper to withdraw Mrs. Borden from the house? If he afterwards came in there, came upon her, killed her, might he not have found the letter or note with her, if there was one already in the room? Might he not have a reasonable and natural wish to remove that as one possible link in tracing himself? Taking the suggestions on the one side and the other, judging the matter fairly, not assuming beforehand that the defendant is guilty, does the evidence satisfy you as reasonable men beyond any reasonable doubt that these statements of the defendant in regard to that note must necessarily be false? Sometimes able judges and

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writers in dealing with circumstantial evidence have made use of illustrations. They have compared the indispensable facts to the several links in a chain. If one link of the chain breaks, the chain ceases to serve its purpose as a chain, no matter how strong the remaining links may be. So in the chain of circumstantial evidence, if one essential fact fails to be proved, the connection is broken, a gap arises in the process of proof and it cannot be legally affirmed that the conclusion aimed at is established beyond reasonable doubt.

Sometimes the process of proof by circumstances is compared to a rope cable, and the several facts that may be material but not absolutely essential to the conclusion, are likened to the strands or cords in that cable. Some of the strands or cords may give way and yet the cable may not be broken, but may bear the strain put upon it. So in the process of proof by circumstantial evidence. Important but not absolutely essential facts may fail to be established, and the loss of them, while it may weaken, may not destroy the force of the remaining evidence. But I much doubt whether in ordinary life in reaching a solution and determination of problems that arise, the elements on which our decision depends assume either in the visible outward world or in our minds, the relation to each other of links in a chain or strands in a cable. Some of the facts may have a real connection with each other so that one may involve or imply the other; and they may thereby have additional weight and importance to us. Another

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fact may be independent of the rest, may have no connection with them in the real and outward world, the only connection being in our minds, and yet this separate fact may be decisive upon our conclusion. Let me illustrate: Suppose a gentleman already engaged in business is proposing to himself to start some kind of manufacturing business in this city. He inquires into the matter, the cost of his plant, the facilities for transportation, the cost of making the article intended, the probable demand for and the price of the goods in the market, and all such other things as a prudent man would consider, and reaches the

conclusion with a clear and strong assurance on which he is ready to act, that he will go forward with the enterprise. He then mentions his plan to his family physician. The physician at once says to him: This new enterprise may promise all that you think of it, but you must not undertake it. You are already carrying all the burden that your strength of body or mind will endure. If you take on another burden there is great danger that it will be disastrous to you. Having confidence in the skill and fidelity of his physician and believing the opinion given to be correct, he at once decides to relinquish the enterprise. Now we see a large body of facts leading to a certain conclusion are controlled by one separate fact opposed to that conclusion. Yet the body of facts and the separate fact have no connection with each other, save in the person's mind. This body of facts had nothing to do with causing his state of health, and his state of health

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had nothing to do with the body of facts.

Hence it is a rule in the use of circumstantial evidence that as every real fact is connected with every other real fact, so every fact proved must be reasonably consistent with the main fact sought to be proved,--namely in this case, the fact of the defendant's guilt. However numerous may be the facts in the Government's process of proof tending to show defendant's guilt, yet if there is a fact established---whether in that line of proof or outside of it---which cannot be reasonably reconciled with her guilt, then guilt cannot be said to be established. Now gentlemen, you know that I am expressing no opinion as to what is proved: I am only trying to illustrate principles and rules of law and evidence. Referring to the present case let me use this illustration: Suppose you were clearly satisfied upon the testimony that if defendant committed the homicides she could by no reasonable possibility have done so without receiving upon her person and clothing a considerable amount of blood stain; that when Bridget Sullivan came to her upon call and not long after some of the other women, she had no blood stains upon her person or clothing; that she had had no sufficient opportunity either to remove the stain from her person or clothing, or to change her clothing. If these supposed facts should be found by you to be real facts, you could not say upon the evidence that the defendant's guilt was to a moral certainty proved. So you see that in estimating the force of different facts, or

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portions of the evidence, it is not enough to consider them as standing apart, for the force which they appear to have when looked at by themselves, may be controlled by some other single fact. In order to warrant a conviction on circumstantial evidence it is not necessary for the Government to show that by no possibility was it in the power of any other person than the defendant to commit the crimes; but the evidence must be such as to produce a conviction amounting to a reasonable and moral certainty that the defendant and no one else did commit them. The Government claims that you should be satisfied upon the evidence that defendant was so situated that she had an opportunity to perpetrate both the crimes charged upon her. Whether this claim is sustained is for your judgment. By itself alone the fact, if shown, that the defendant had the opportunity to commit the

crimes would not justify a conviction; but this fact, if established, becomes a matter for your consideration in connection with the other evidence. When was Mrs. Borden killed? At what time was Mr. Borden killed? Did the same person kill both of them? Was defendant in the house when Mrs. Borden was killed? Was she in the house when Mr. Borden was killed? In this connection you will carefully consider any statements and explanations of defendant put in evidence by the Government and shown to have been made by defendant at the time or afterwards, as to where she was when either of them was killed, and all other evidence tending

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to sustain or disprove the truth and accuracy of these statements. Did other persons, known or unknown, have an equal or a practical and available opportunity to commit these crimes? Is there reason to believe that any such person had any motive to commit them? Is there anything in the way and manner of doing the acts of killing, the weapon used, whatever it was, or the force applied, which is significant as to the sex and strength of the doer of the acts? For instance, the medical experts have testified as to the way in which they think the blows were inflicted on Mrs. Borden, and as to what they think was the position of the assailant. Are these views correct? If so, are they favorable to the contention that a person of the defendant's sex and size was the assailant? Is it reasonable and credible that she could have killed Mrs. Borden at or about the time claimed by the Government, and then with the purpose in her mind to kill her father at a later hour, have gone about her household affairs with no change of manner to excite attention? As you have the right to reason from what you know of the laws and properties of matter, so you have a right to reason and judge from what you know of the laws and property of human nature and action; and if it is suggested that the killing of Mr. Borden was not a part of the original plan, that it was an incident arising afterwards, it will be for you to consider under all circumstances, and upon all the evidence whether that suggestion seems to you to be reasonable

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and well founded.

Several witnesses called by the Government have testified to statements said to have been made by defendant in reply to questions asked, I believe in each instance, as to where she was when her father was killed, and considerable importance is attached by the Government to the language which it is claimed was used by her as showing that she professed not only to have been in the barn, but up stairs in the barn. And the Government further claims it is not worthy of belief that she was in the upper part of the barn, as she says, because of the extreme heat there and because one of the officers testifies that on examination they found no tracks in the dust on the stairs and flooring. Now what statements on the subject the defendant did make and their significance and effect is wholly for you upon the evidence, and there is no rule of law to control your judgment in weighing that evidence. But here, gentlemen, I may repeat to you the language of a thoughtful writer on the law, not as binding upon you, but as

containing suggestions useful to be borne in mind in dealing with this class of evidence. He says, "with respect to all verbal admissions it may be observed that they ought to be received with great caution. The evidence, consisting as it does, in the mere repetition of oral statements, is subject to much imperfection and mistake, and the party himself either being misinformed, or not having clearly expressed his own meaning, or the witness having misunderstood him. It

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frequently happens also, that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the party actually did say. But where the admission is deliberately made and precisely identified, the evidence it affords is often of the most satisfactory nature."

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Gentlemen, it will be for you to judge whether that extract which I read, which I say I give to you in the way of suggestion and not as a binding authority, expresses a reasonable principle, a principle that is wise and safe and prudent to be acted upon in such a case as this--whether there is not more danger of some misunderstanding, some inaccuracy, some error creeping into evidence when it relates to statements than there is when it relates to acts. Would you not hold that it was a just and reasonable view to take that if a party is to be held responsible in a case like this largely upon statements, that those statements should be most carefully and thoroughly proved?

Now the Government has called as witnesses some gentlemen of scientific and medical knowledge and experience, who are termed experts, and there has been put into the case considerable testimony from them. Now, following a distinction which I have before pointed out, I think I may say to you that expert testimony constitutes a class of evidence which the law requires you to subject to careful scrutiny. It is a matter of frequent observation to see experts of good standing expressing conflicting and irreconcilable views upon questions arising at a trial. They sometimes manifest a strong bias or partisan spirit in favor of the party employing them. They often exhibit a disposition to put forward theories rather than to verify or establish or illustrate the facts. While they are supposed to testify on matters not the subject of common knowledge and

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experience, and in distinction from ordinary witnesses, are allowed to express their opinions where the ordinary witness could not, yet when the jury pass judgment upon them and their testimony they have no peculiar privileges. The jury have the full right to consider them, their appearance, their candor or want of it, their apparent skill, the reasons they give in support of their view, the nature of any experiments which they have made, the consistency or otherwise of what they say with other proved facts or with the common knowledge and experience of the jury, and finally, acting under a due sense of their responsibilities, to give to the testimony of the experts such value and

weight as it seems to deserve. It often happens that experts testify to what is in substance a matter of fact rather than of opinion. A surveyor called to prove the distance between two points may express his opinions founded on his observation, or he may say, "I have actually applied my measuring chain and found the distance." So, for instance, Professor Wood may say, "There are in science tests of the presence of blood as fixed and certain as the surveyor's chain is of distance. I have applied those tests to supposed blood stains on a hatchet, and I find no blood;" or, "I have applied them to stains on a piece of board furnished, and I find it to be a blood stain." This testimony may be regarded as little a matter of opinion as the testimony of a surveyor. On the other hand, if Professor Wood shall be asked to testify as to the length of time between the deaths of

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Mr. and Mrs. Borden, from his examination of the contents of the stomachs, his testimony must perhaps be to some extent a matter of opinion, depending possibly on the health and vigor of the two persons and constitutional differences; upon whether they were physically active after eating, or at rest; upon whether one or the other was mentally worried and anxious, or otherwise. Now his knowledge and skill may enable him to form an opinion upon the subject with greater or less correctness; but the question to be dealt with is by its essential nature different from the other. If you should accept his testimony as correct and satisfactory on the first subject, it would not necessarily follow that you should on the second. So as to whether certain wounds in the skull were caused by a particular hatchet head or could have been caused by that hatchet head only, if you have the hatchet head and the skull, you may think you can apply them to each other and judge as well as the expert. I call your attention to the subject in this way to make clear to you, first, that you are not concluded on any subject by the testimony of the experts, and, second, that it is important to apply to their testimony an intelligent and discriminating judgment. So doing, you may find that each person who has appeared as an expert has so testified as to warrant your confidence in his skill and knowledge, in his fairness, and in the correctness of his opinions.

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Now, gentlemen, I have been asked by the counsel for the Commonwealth to give you instruction upon another view of this case, a view, so far as I remember, not suggested in the opening, or in the evidence, or hardly in the closing argument for the Commonwealth. And yet the evidence is of such a nature that it seems to us that, as a matter of law, the Government is entitled to have some instruction given you on this point; as a matter of fact, it would be entirely for you to consider whether the claim of the Government upon the matter to which I am going to refer is consistent with the claim which it has argued to you; whether the Government has not put this case to you, practically, upon the idea that the defendant did these acts with her own hands.

But it is a principle of law that a person may be indicted in just the form in which this defendant is indicted, that is, indicted as if she were charged with doing the act herself, and yet she may be convicted upon evidence which satisfies a jury beyond

reasonable doubt that the act was done personally by another party, and that her relation to it was that of being present, aiding, abetting, sustaining, encouraging. If she stood in such a relation as that to the act, the act was done by some other person and she aided him, encouraged him, abetted him, was present somewhere, by virtue of an understanding with him, where she could render him assistance, and for the purpose of rendering assistance, then she would be a principal in the act just as much as the other party who might be acting.

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But you notice the essential element. There must have been an understanding between her and her and this third party, if there was one, an agreement together for the commission of these crimes. She must have given her assent to it. She must have encouraged it. She must have been in a position where she could render assistance to the perpetrator, with his knowledge, by virtue of an understanding with him, and for the purpose of giving assistance either in the way of watching against some person's coining or furnishing him facilities for escape or in some other manner. The central idea of this proposition is that she must have been present by virtue of an agreement with the actor where she could render assistance of some kind, and for the purpose of rendering assistance. And if there was another party in this crime, and if she is proved beyond reasonable doubt to have sustained the relation to him in committing that crime which I have expressed to you, then she might be held under this indictment, because under such circumstances in the eye of the law, they both being in the sense of the law present, the act of one is the act of both.

Gentlemen, something has been said to you by counsel as to defendant's not testifying. I must speak to you on this subject. The constitution of our State in its Bill of Rights provides that "No subject shall be compelled to accuse or furnish evidence against himself. " By the common law persons on trial for crime have no right to testify in their

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own defense. We have now a statute in these words, "In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offences, a person so charged shall, at his own request, but not otherwise, be deemed a competent witness; and his neglect or refusal to testify shall not create any presumption against him." You will notice that guarded language of the statute. It recognizes and affirms the common law rule that the defendant in a criminal prosecution is an incompetent witness for himself, but it provides that on one condition only, namely, his own request, he shall be deemed competent. Till that request is made he remains incompetent. In this case the defendant has made no such request, and she stands before you, therefore, as a witness incompetent, and it is clearly your duty to consider this case and form your judgment upon it as if the defendant had no right whatever to testify.

The Supreme Court, speaking of a defendant's rights and protection under the constitution and statutes, uses these words, "Nor can any inference be drawn against him

from his failure to testify." Therefore I say to you, and I mean all that my words express, any argument, any implication, any suggestion, any consideration in your minds, unfavorable to defendant based on her failure to testify is unwarranted in law.

Nor is defendant called upon to offer any explanation of

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her neglect to testify. If she were required to explain, others might think the explanation insufficient. Then she would lose the protection of the statute. It is a matter which the law submits to her own discretion, and to that alone. You can see, gentlemen, that there may be cases where this right to testify would be valuable to a defendant. It may be able to afford the jury some further information or give some explanation that would help the defense. In another case where there was no doubt that an offence had been committed by some one, he might have no knowledge as to how or by whom it was done, and could only affirm under oath his innocence, which is already presumed. The defendant may say, "I have already told to the officers all that I know about this case, and my statements have been put in evidence; whatever is mysterious to others is also a mystery to me. I have no knowledge more than others have. I have never professed to be able to explain how or by whom these homicides were committed."

There is another reason why defendant might not wish to testify. Now she is sacredly guarded by the law from all unfavorable inferences drawn from her silence. If she testifies, she becomes a witness with less than the privileges of an ordinary witness. She is subject to cross-examination. She may be asked questions that are legally competent which she is not able to answer, or she may answer questions truly and yet it may be argued against her that her answers were

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untrue, and her neglect to answer perverse. Being a party, she is exposed to peculiar danger of having her conduct on the stand and her testimony severely scrutinized and perhaps misjudged, of having her evidence claimed to be of little weight, if favorable to herself, and of great weight so far as any part of it shall admit of an adverse construction. She is left free, therefore, to avoid such risks.

Gentlemen, we have given our attention to particular aspects of this case and of the evidence. Let us look at it broadly.

The government charges the defendant with the murder of Mr. and Mrs. Borden. The defendant denies the charges. The law puts on the government the burden of proving beyond reasonable doubt every fact necessary to establish guilt. The defendant is bound to prove nothing. The law presumes she is innocent. The case is said to be mysterious. If so, the defendant cannot be required to clear up the mystery. There is no way, under the law, by which the burden of proof as to any essential matter can be transferred to her. The government offers evidence. She may rest on the insufficiency of that evidence to prove

her guilt, or she may also offer evidence partially to meet or rebut it, or raise a reasonable doubt as to any part of the government's case. You are not to deal with the evidence in a captious spirit, but to allow it to produce on your minds its natural and proper effect. You are to think of

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it and reason upon it in the same way you think and reason on other matters, only remembering the strict proof to which the government is held by the law.

In such a case as this, or in any case, you cannot be absolutely certain of the correctness of your conclusions. The law does not require you to be so. If, proceeding with due caution and observant of the principles which have been stated, you are convinced beyond reasonable doubt of the defendant's guilt, it will be your plain duty to declare that conviction by your verdict. If the evidence falls short of producing such conviction in your mind, although it may raise a suspicion of guilt, or even a strong probability of guilt, it would be your plain duty to return a verdict of not guilty. If not legally proved to be guilty, the defendant is entitled to a verdict of not guilty. The law contemplates no middle course.

You will be inquired of by the clerk as to each count of the indictment separately and in the same manner. If you find the defendant guilty of murder in the first degree, the Foreman, in reply to the inquiry of the clerk, will say, "Guilty of murder in the first degree", and so as to murder in the second degree, if you find that to be the degree of murder. As to the second count, if the finding is the same, the answer should be the same. If, on the other hand, your finding is "Not guilty," the Foreman should so reply to each inquiry.

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Gentlemen, I want to refer at this point briefly to one or two matters, not in a connected way, where it seems proper to me that a brief suggestion should be made. Something was said in the arguments in regard to defendant's attitude towards the officers, and criticism made of the officers by defendant's counsel, not by her.

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Of course there are certain senses in which a party is represented in Court by his counsel or her counsel and bound by their action. But in a matter relating to the personal guilt of the defendant, where evidence is sought to establish that guilt, I do not understand that the law turns the attention of the Jury to any action of the Counsel. The action of the Counsel may affect her in some ways, may affect her legal rights, but the question is: Is she guilty? Has she done anything which, as a matter of evidence, should be reckoned against her?

And now take this question of her relations to the officers. Turn over the

evidence, recall so far as you can, every portion of it, and do you recall any portion ---it will be for you to determine whether you do or not---do you recall any portion of the evidence where it appears that at any time, any place, under any circumstances she found any fault with the officers for asking her questions or for making searches? Something was said in the argument---properly said because the Counsel charged with the duty of presenting the evidence to the Jury in such a light as they honestly think the evidence ought to be considered and weighed,---in regard to statements alleged to have been made by the defendant. The duty of Counsel for the Government is different from that of the Jury and different from that of the Court. Primarily it is,---while they do not seek to do anything wrong or to mislead the Jury or to introduce any untrue evidence---to present

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to the attention of the Jury those things that make for the side which they are sustaining or seeking to sustain. I said something was said in regard to the statements which there was evidence tending to show the defendant had made in regard to presentiments of some disaster to come upon the household; and as I understand the argument, you were asked to look upon those statements, which were testified to by one of the witnesses, as evidence tending to show that the defendant might have been harboring in her mind purposes of evil with reference to the household,---statements made only, I believe, the day before this calamity fell on the household, only the day before the deed was done by the defendant, if she did it.

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Now, in considering that evidence, you should not necessarily go off in your view of it upon the suggestion of counsel, but, so far as you deem it important, hold it before your minds, look at it in all its lights and bearings, and see whether it seems to you reasonable and probable that a person meditating the perpetration of a great crime, would, the day before, predict to a friend, either in form or in substance, the happening of that disaster. Should any different principle be applied to such a statement made by the defendant with reference to her own family than should be applied to the statement which one man might make to another man and his family?

Suppose some person in New Bedford contemplated the perpetration of a great crime upon the person or family of another citizen in New Bedford, contemplated doing it soon. Would he naturally, probably, predict, a day or two before hand, that anything of the nature of that crime would occur? Is the reasonable construction to be put upon that conversation that of evil premeditation, dwelt upon, intended, or only of evil fears and apprehensions?

Take this matter of the dress, of which so much has been said, that she had on that morning. Take all the evidence in this case, Bridget Sullivan's, the testimony of these ladies, Dr. Bowen's. Lay aside for the moment the question of the identification of this dress that is presented. Taking the evidence of these several witnesses,

considering that evidence carefully, comparing part with part, can you, gentlemen, extract from that testimony such a description of a dress as would enable you from the testimony to identify the dress? Is there such an agreement among these witnesses, to whom no wrong intention is imputed by anybody---is there such an agreement in their accounts and in their memory and recollection, and in the description which they are able to give from the observation that they had in that time of confusion and excitement, that you could put their statements together, and from those statements say that any given dress was accurately described?

Then take, again, the matter of Mrs. Reagan's testimony. It is suggested that there has been no denial of that testimony, or, rather, that the persons who busied themselves about getting the certificate from Mrs. Reagan had no denial of it.

MR. KNOWLTON. Not by me, sir. I admit it.

DEWEY, J. Admit what?

MR. KNOWLTON. That she did deny it.

DEWEY, J. Mrs. Reagan?

MR. KNOWLTON. Yes, sir.

DEWEY, J. Oh, no doubt about that. It is not claimed that Mrs. Reagan does not deny it. But I say it is suggested that the parties who represented the defendant in the matter, and who were seeking to get a certificate from Mrs. Reagan, were proceeding without having received any

authority to get the certificate, and without having had any assurance from anybody that the statement was false and one that ought to be denied.

You have heard the statement of Miss Emma about it here; and it would be for you to judge, as reasonable men, whether such men as Mr. Holmes and the clergymen and the other parties who were interesting themselves in that matter, started off attempting to get a certificate from Mrs. Reagan contradicting that report, without first having taken any steps to satisfy themselves that it was a report that ought to be contradicted.

Gentlemen, I know not what views you may take of the case, but it is of the gravest importance that it should be decided. If decided at all it must be decided by a jury. I know of no reason to expect that any other jury could be supplied with more evidence or be better assisted by the efforts of counsel. The case on both sides has been

conducted by counsel with great fairness, industry, and ability. You are to confer together; and this implies that each of you, in recollecting and weighing the evidence, may be aided by the memory and judgment of his associates. The law requires that the jury shall be unanimous in their verdict, and it is their duty to agree if they can conscientiously do so.

And now, gentlemen, the case is committed into your hands. The tragedy which has given rise to this investigation deeply excited public attention and feeling. The

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press has administered to this excitement by publishing without moderation rumors and reports of all kinds. This makes it difficult to secure a trial free from prejudice. You have doubtless read, previous to the trial, more or less of the accounts and discussions in the newspapers. Some of you, when you were selected as jurors, said that you had formed impressions about the case, but thought that they would not prevent you from giving a candid judgment upon a full hearing of the testimony. Doubtless you were sincere in that declaration; but in this matter you will need great care and watchfulness, for we are often influenced in forming our judgments by what we have heard or read at some previous time, more than we are conscious of. You must guard so far as possible against all impressions derived from having read in the newspapers accounts relating to the question you have to decide. You cannot consistently with your duty go into any discussion of those accounts or in any way use or refer to them. Your attention should be given to the evidence only, for the discovery of the facts; and any other course would be contrary to your duty.

And, entering on your deliberations with no pride of opinion, with impartial and thoughtful minds, seeking only for the truth, you will lift the case above the range of passion and prejudice and excited feeling, into the clear atmosphere of reason and law. If you shall be able to do

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this, we can hope that, in some high sense, this trial may be adopted into the order of Providence, and may express in its results somewhat of that justice with which God governs the world.

(The charge was concluded at twelve minutes past three o'clock.)

MR. KNOWLTON. If your Honors will pardon me for the suggestion, there are quite a number of exhibits in the case, some of which have ceased to be valuable either to the jury or to counsel. I would respectfully suggest that the jury be allowed to retire and the counsel agree upon such exhibits as they desire to be sent to the jury, which may be sent subsequently.

(At twenty-four minutes past three the oath was administered to the officers, and

the jury retired to consider their verdict.)

The following articles which had been offered in evidence during the progress of the trial were selected from among the exhibits in the case by counsel and sent to the jury:

Plans and photographs marked as exhibits in the case.
Skulls of Mr. and Mrs. A. J. Borden.
Bedspread and pillow shams.
Handkerchief found by Mrs. Borden's body.
Piece of door frame taken from inside of dining-room.
Piece of moulding taken from guest chamber west of dressing case.

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Piece of plaster.
Two axes.
Claw hammer hatchet.
Hatchet with plain head.
Handleless hatchet and bit of wood.
Blue blouse and dress skirt.
White skirt.
Magnifying glass.

(At eighteen minutes before four o'clock the Court retired from the bench.)

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At twenty-eight minutes before five o'clock the judges resumed their seats and the jury were brought in.

THE COURT. Gentlemen of the jury will answer as their names are called. The crier will count as they respond.

The jurors having answered to their names, the Clerk said, "Lizzie Andrew Borden, stand up."

The prisoner arose.

THE CLERK. Gentlemen of the jury, have you agreed upon your verdict?

THE FOREMAN. We have.

THE CLERK. Please return the papers to the Court.

The Officer returned the papers to the clerk.

THE CLERK. Lizzie Andrew Borden, hold up your right hand. Mr. Foreman, look upon the prisoner; prisoner, look upon the foreman. What say you, Mr. Foreman---

THE FOREMAN (interrupting). Not guilty.

(There was an outburst of applause from the spectators, which was at once checked by the officers. The prisoner dropped into her seat.)

THE CLERK. Gentlemen of the jury, you upon your oaths do say that Lizzie Andrew Borden, the prisoner at the bar, is not guilty?

Several Jurors. We do.

THE CLERK. So say you, Mr. Foreman; so say all of you, gentlemen?

THE FOREMAN. We do.

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MR. KNOWLTON. May it please the Court: There are pending two indictments against the same defendant, one charging the murder which is charged in this indictment on the first count, and the other charging the murder which is charged in this indictment on the second count. An entry should be made in those cases of nol prossed by reason of the verdict in this case. Now, congratulating the defendant and the counsel for the defendant upon the result of the trial, I believe the duties are concluded.

MASON, C. J. The jurors may be seated.

THE CLERK. Lizzie Andrew Borden. (The prisoner rose.) The Court order that you be discharged of this indictment and go thereof without day.

MASON, C. J. The Court desires to express to the jury its appreciation of their faithful service and recognize its performance under conditions imposing great hardship upon the members of the jury. I trust it is not necessary to assure them that it is only in deference to the usages of the law and to what is deemed essential for the safety of rights that they have been subjected to the inconvenience in question. I trust that they will have the satisfaction of having faithfully performed an important duty as their compensation for this inconvenience. You are now discharged from any further attendance.

(At twenty-two minutes before five o'clock the Court adjourned).

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