

**TRIAL OF  
LIZZIE BORDEN**

**EDITED, WITH A HISTORY OF THE CASE  
BY  
EDMUND PEARSON**

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## LIZZIE BORDEN

THE BORDENS of southeastern Massachusetts are a large and honorable clan. They appeared in America in the persons of two English colonists, Richard Borden and Joan, his wife, who came to Portsmouth, Rhode Island, in 1638. Descendants spread into adjoining territory, and in Massachusetts, especially in the city of Fall River, they are still numerous. Their name was celebrated in two important business enterprises; it has even glittered on those newspaper pages which tell of fashionable folk at Newport, or elsewhere. (1)

Concerning one daughter of the clan, the genealogist and family historian is conspicuously reticent. She is the subject of the present book---she whose still unexplained conduct during ninety minutes of a sultry August morning, nearly half a century ago, resulted in four legal investigations, agitated the nation for a year, and has perplexed students ever since.

It is by no means a waste of time to consult Hattie Borden Weld's Historical and Genealogical Record of the Descendants of Richard and Joan Borden. Among other matters of interest, this painstaking record reproduces "the Borden coat of arms"---that is, armorial bearings once granted to somebody of that name. If some personage, long ago, was permitted to bear arms and display an escutcheon, others of the name think they are entitled to have it illuminated on their dining-room walls. And, if prosperity smiles, perhaps to engrave it on their letter paper, introduce it in stained glass in their library windows, or emblazon it on the doors of their motorcars.

Without discussing this, we may rejoice that the family historian of the Bordens saw fit to present the heraldic symbols once granted to a man of that name. Else we

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(1) The Fall River directory, in 1892, listed 125 Bordens---only part of the total number in that city.

should have missed the fact-which to some readers will be pregnant with prophecy-that the Borden arms carry as a crest, "a Lion rampant, holding a Battle-Axe, proper."

Fall River, like other industrial cities of New England, is suffering from the hard times, and especially from the closing of the cotton mills. The line of steamboats, which takes its name from Fall River, has declined in glory. The city is not one of the fairest in New England; certainly it never rivaled Portland or Hartford in their pleasant prospects, nor does it compare too favorably with its close neighbor, New Bedford. Yet from its hills there are agreeable views of Mount Hope Bay and other sheets of water, and away from its business streets are shaded avenues, with lawns and flower beds to separate the comfortable houses from the pavement. It was on one of these leafy streets that this story came to an end; it began in a less spacious region.

In 1892, the year with which we are concerned, Fall River had about seventy-five thousand people. The foreign-born were French Canadian mill operatives; Italians; a few Russian Jews; the usual half-dozen Chinese laundryman; and the sprinkling of Portuguese from the Azores, who are to be found everywhere in this part of the state. The city was not too large for most of the old Yankee families to know the rest---for the Durfees, the Bordens, or the Buffintons to have at least some knowledge of one another's affairs.

North Main Street and South Main Street bisect Fall River's shopping district. In August, 1892, this region was quieter and less crowded than today. The streetcars were horsecars; doctors and other citizens went about by horse and buggy; all traffic was under power of the horse. In what they wore, men made no concession to the intense heat of summer. They sweltered in woolen clothes, dark if not black in shade; they wore black shoes or boots; the well-to-do had starched shirts and collars, waistcoats tightly buttoned and stiff black hats. A straw hat might be tolerated on a college boy, or on what was then called a dude, but it was too frivolous for the sober, conservative citizen, or for the businessman. Except for a few sea captains who had

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learned comfort in Singapore or Calcutta, it took the male inhabitants of the northeastern United States almost three hundred years to recognize the fact that their climate, from June to October, is tropical. That discovery had not been made in 1892.

Policemen, instead of sporting smart flat caps of military cut, covered their heads with bulbous gray helmets. The officers had big spreading mustaches, or else they wore short chin beards. If one of the patrolmen on this August morning had seen an erect, white-bearded old gentleman, who was trudging through South Main Street, he would have given him a respectful bow. Everybody knew old Andrew J. Borden, the bank president.

Mr Borden's short walk became famous, and in five-minutes time, today, you may follow his route as he went home. On South Main Street, near the City Hall, turn east

into Borden Street. A few steps along this, and you are to turn to the right into Second Street. Here is the dismal sight of a thoroughfare, pleasant enough, once on a time, a long while ago, but now down-at-heel. Except for the well-kept grounds and vine-covered arches of the Roman Catholic Cathedral, the buildings, for the first block, are old family houses, some empty and others occupied; but all neglected. The few shade trees, which in Mr Borden's day partly hid the ugly angles of the buildings---these, like the gardens and pear orchards behind the houses, are gone. A few jigsaw decorations still adhere to what was Mrs Churchill's house: the place, when her father was alive, which was proudly known as "the Mayor Buffinton residence." But these ornaments are relics of past grandeur. Even in 1892 Second Street was losing its residential character, and that fact may have had some bearing upon the tragedy which befell. Today it is neither a quiet street of private houses, nor a neat row of modern shops. It is a sad, run-down combination of the two, as shabby as a worn-out pair of shoes.

### § 3

Number 92 Second Street, a wooden house on the easterly side, was the home of, Andrew J. Borden.(2) To this he made his way, carrying a small parcel. He had picked

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(2) The street has been re-numbered and the house number is now 230.

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up a lock somewhere on the street, wrapped it methodically in a bit of paper and was taking it home. This act, one of the last of his life, was characteristic. His possessions, at the moment, were valued at more than a quarter of a million dollars, but he had not departed from the thrifty habits of his youth. He was still weak from a recent illness and was unprotected from the blazing sun. Yet he had stopped to putter over a thing worth less than ten cents.

Distinct recollections of Mr Borden still linger in Fall River, and vague memories of his father, Abraham Borden. The latter patriarch is said to have peddled fish in the streets.

His son, Andrew, was now, in 1892, seventy years old. With two partners he had, years earlier, engaged in the undertaking business. Prospering in this, and proud of the fact that he never had to borrow money, he had invested his profits to such advantage that a mere list of his offices and directorships show how, in the golden years between 1870 and 1890, he had risen to the status of a local magnate.

There still stands, on South Main Street, the Andrew Borden Building, constructed by him for business purposes, and, in 1892, thought to be rather imposing.



He was president of the Union Savings Bank and a director of the First National Bank, as well as of an institution with the long-winded titles of B.M.C. Durfee Safe Deposit and Trust Company. He also sat as director at the councils of the Troy Cotton and Woolen Manufacturing Company, the Globe Yarn Mills and the Merchants Manufacturing Company. If all these corporations observed the charming old custom of giving their directors, at each meeting, a pourboire in the form of a ten-dollar gold piece, the pockets of Mr Borden's black broadcloth trousers must have given forth from time to time a very pleasant jingling sound, as the golden eagles clashed against each other.

It has been the custom to paint Mr Borden as Old Scrooge; as a tight-fisted, tyrannical miser. Partly, this view of him is based on incidents like that of the lock; partly, it is founded on the news of a strange breakfast served one morning in his house--- a meal which will be described later. There is some misconception here: the

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faults of the meal were faults of delicacy, not of generosity. In quantity and heartiness, it would have sufficed for a gang of lumberjacks in midwinter.

Before a man is described as a miser it has to be considered by what standard he is judged. Today, some folk will call a man a "piker" if he lives within his income, and will insist that a wealthy man must wallow in champagne, whether he likes it or not. For Mr Borden to cut a dash would have been absurd; he would have been miserable. He and his family did not live in a hovel; the three able-bodied women of his household were assisted by one maidservant---if only one; and she, in turn, was occasionally relieved of the heavier work by a hewer of wood and a carrier of burdens. Mr Borden, at one time, had kept a horse and buggy---the contemporary equivalent of a Ford car---and he had presented at least one of his daughters (the younger) with a diamond ring and a sealskin coat or cape. Moreover, she had been able to take a long holiday in Europe, and that, in 1890, was not the common occurrence it is today.

Yet, after making these allowances, there are few who remember Andrew Borden who do not agree that he was a cold-eyed old fellow, given to the persistent and joyless acquisition of money, and more money, and that he ignored the fact that his never-complaining wife and his perpetually complaining daughters might be entitled to a more comfortable and better equipped house, in a neighborhood less visibly on the down grade. Such people refer you to Mr Borden's portrait and say: Look at that mouth.

Unable to serve both God and Mammon, we sometimes compromise by serving Mammon and patronizing God. Mr Borden found even this too much; when an officer of his church, who happened also to be the local assessor of property, increased the Borden taxes, Mr Borden in an icy rage left the church and, of a Sunday, sat no longer in his accustomed pew.

#### § 4

Writing these words has made me wonder what on earth the old gentleman could do with himself during the long, long Sabbaths of those days. Cut off from church, he was deprived of any occupation for the morning. To go for a drive in the afternoon was permissible (except to the extremely righteous), but in the city he no longer kept his

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horse and carriage. To slip down to one of his banks, and, in company with a few fellow directors, plan the despoilment of the widow and the orphan, although perfectly proper on the Monday, would have been irreligious on Sunday. There was no golf---at least, in Fall River---at that date, and had there been a course, it would have been closed on the Lord's Day. And one can as easily fancy old General Andrew Jackson in a modern swimming suit, as his namesake, Andrew Jackson Borden, in golfing clothes. For outdoor diversions there is one possible suggestion. He owned farms in Somerset, across the Taunton River, and many a man then could be supremely happy interviewing the cows, observing the pigs, or sitting all a summer's afternoon in the ammoniacal odors of the stable, talking with the hostlers and gazing at the harnesses, the bottles of horse liniment and the fly-specked print of Maud S., trotting her celebrated mile in 2.08-34.

If the ways were wet and muddy I cannot imagine what he did. Surely no one could endure, from early breakfast to early bedtime, merely gnawing one's fingers and fretting about investments. Of books in the Borden household, there is the scantiest information. The master's reading habits are disclosed only for an instant (when the Angel of Death hovered near!), but then in a way altogether to his credit. He read a good newspaper: the *Providence Journal*.

#### § 5

Mr Borden's family affairs are even more important than his financial career. As a young man of twenty-three he had married Miss Sarah A. Morse, one year younger than himself. Four years later, Emma Lenora, their first child, was born. After five years, they had another daughter, Alice Esther, who died when she was about two.

On July 19, 1860, their third daughter and last child was born. She was christened Lizzie Andrew. She was never called Elizabeth.

In the Civil War years, Mrs Borden died, leaving her husband a widower somewhat more than forty years old, with two daughters: Emma, aged twelve, and

Lizzie, less than three. Two years later, in 1865, Mr Borden stood, one noonday, outside the church, waiting for the appearance of two ladies: Miss Abby Durfee Gray, a little spinster in her late thirties, and her stepmother. The elder of the two women, seeing the tall grave widower, knew that this was no lightsome occasion, but the beginning of a serious courtship. She tactfully faded away, leaving Andrew to "beau" Miss Abby Gray home from church. Not many months afterwards, Miss Gray became the second Mrs Andrew Borden, assuming the difficult position of stepmother to the two little girls. The elder could remember her own mother; Lizzie could not.

There is no hint that the second Mrs Borden was in any sense the cruel stepmother of tradition. Nothing reliable suggests that she was otherwise than kind to the two little girls and later to the two young maidens whose mother was dead. That she had offended in any way, other than by agreeing to their father's proposal of marriage, appears nowhere. If she seemed to either, or both, as an enemy or a rival, it was not that she competed with them for their father's affections. Much more certainly it was his property which aroused their concern and animosity; the acquisitive instincts of Mr Borden had descended to his children or, at all events, to one of them.

The dissension's in the family were known outside the household. They may have commenced as early as 1884 or '85. Within a year or two, they centered around a house, or part ownership in a house, which Mr Borden gave to his wife for the use of her half-sister, Mrs Whitehead. His daughters learned of this, and as the younger one put it:

"I said what he did for her people, he ought to do for his own children."

In 1887 Mr Borden tried to remedy the alleged injustice by giving his father's house to his daughters. This was "Grandfather Borden's homestead on Ferry Street"---property much more valuable than the gift to his wife. But there were "words" between Miss Lizzie and her stepmother, and the younger woman ceased to call the elder by the name of "Mother."

One is tempted to reflect that the modern and less sentimental custom, which does not insist on giving people titles which do not belong to them has its advantages. (Miss

Emma, with good sense, called Mrs Borden by her first name). In the 1880's Miss Lizzie's change from "Mother" to "Mrs Borden" was thought rather shocking. However that may be, it was certainly significant of a degree of chilliness.

The gift of the Ferry Street house, and further gifts of securities, did not smooth away the troubles of the family, nor make 92 Second Street a bower of harmony. The Misses Borden let their house for occupancy, but found that the life of landlords was not as delightful as they had hoped. Rents were low, costs of repairs high, and tenants usually dissatisfied. They passed this dissatisfaction on to their father, who re-purchased his gift, giving his daughters \$5,000 in cash for the house. This happened July 15, 1892. The price was probably as much, if not more, than the property would have brought in the open market; so here, once again, was an incident which we have to ignore if we desire to think of Mr Borden as a Shylock, devoid of any spark of generosity.

In August, 1892, the Borden family was one of mature people. Mrs Borden was a short, stout woman, six years younger than her husband: she was about sixty-four. Miss Emma was forty-two and Miss Lizzie Borden, thirty-two years old. The servant, Bridget Sullivan, twenty-six years of age, had been with them nearly three years. Both the daughters called her "Maggie." This was the name of a former servant, and the Misses Borden were too conservative, or too indolent, to recognize the change.

For a long time there had smoldered in that house feelings which may or may not have amounted to open hatred. To what degree of evil they tended is one of the disputed points, but nobody has ever denied that affection had waned between the daughters on one side, and the stepmother on the other. It is undisputed that the house was well guarded against intruders by locks and bars, and that, moreover, the family of four was divided into two groups, separated by bolts and barricades, and living, in some degree, separate existences. There was a tendency on the part of the daughters to avoid meeting the older people at the dinner table. Mr and Mrs Borden went to their room by the back stairs; things were so arranged that there was no other route. The front stairs formed the only passage to the bedrooms of Miss Emma and Miss

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Lizzie; they entertained their infrequent callers---exclusively ladies---in their own rooms, upstairs.

Today, the daughters would be free to go elsewhere and make their own establishment. Then, however, the four Bordens had to sacrifice to the idol, Respectability, and keep up the wretched pretence of family unity.

## § 6

In whatever is said about the Borden case, one comment is seldom omitted. This is that the case is "so typical of New England"; it had its roots "in the bleak soil of New England, and the bleaker characters of New England people"; or it could have happened

nowhere except among "puritanical Yankees." Even counsel in the trial rang the changes on "the stern old stock of the Puritan."

It is true, of course, that in some of the surroundings, incidents and minor characters, the case is amusingly redolent of New England. That is one reason why it has always fascinated people of that region. But to say that it could have happened nowhere else is rather sweeping: it suggests some of that narrowness of viewpoint which is supposed not to exist except in the New England states. In a lifetime, more than half of which has been spent outside my native New England, it has been my hope to arrive at a just estimate of that section of the country, of the Puritans and their descendants. Judging from what may be gathered in enlightened and tolerant communities, it seems that the Puritans were foes of pleasure, happiness and beauty; were offensively virtuous, with the saving grace of no pleasant vice or human weakness. And, at precisely the same time, they were horrid old rascals, addicted to carnal indulgence, as fond of "liquor, love and fights" as any Cavalier, and enjoying the occasional added ecstasy of "burning" a witch, or, in modern times, putting to death innocent young Italians of saintly character, for no reason except to satisfy a blood lust.

This slightly contradictory information may be derived from books and plays of the past thirty years. The more the influence of the Puritan fades, the less his hands rest upon arts and life, the more do dramatists, novelists and critics work themselves into a fury about him. To excoriate the Puritan---the world's whipping boy---brings

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one such firm convictions of one's own breadth and tolerance, that even a scanty knowledge of history is thought superfluous.

The Puritan is rather better dissected by those who really know a little about him. They can deplore his narrowness while admitting that he was not intellectually shallow. Many of his perpetual denouncers are persons of wondrous breadth of mind---miles broad, like rivers in the prairie states---and, also like those rivers, about three-quarters of an inch deep. The commentator on life and letters, who gets up every morning looking for something to be tolerant about, is the person who is usually glowing with indignation about the Puritan. After hearing professional liberals exalt human freedom everywhere (except in Russia) one comes to feel sympathy for the landlady who was accused of religious intolerance. Her lodger brought the charge, on the ground that she was interfering with him in the performance of the rites of his faith. What he wished to do was to sacrifice a black bull to Jupiter in the front parlor.

The major events of the Borden case might have happened anywhere. Its chief personages could have flourished in Oregon, in Alabama, in France or Russia. Stepmothers, dissatisfied spinster daughters and grim old fathers are not peculiar to Massachusetts. It is my impression that they appear in Balzac's novels.

Perhaps this is mere whistling against the wind. We shall never give up the black-coated scarecrow of the Puritan; throwing stones at him is too much fun. For three hundred years New Yorkers have intimated, sometimes jocosely, sometimes angrily, that the folk of New England, or most of them, are sour bigots. The New Englanders often retort with the complacent suggestion that New York is the home of godlessness and debauchery. In three hundred years, no famous criminal trial in New England has been conducted so as to win the approval of the New York press. Acquittals or convictions have been equally wrong and have somehow resulted from "Bostonian snobbishness" or "fierce puritanical hatred."

This has become a convention, fostered by many who profess to scorn convention.

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The feverish village patriotism of frontier days subsides for a time, but editors whip it up again to tickle local pride. We pretend that the vinegar-faced Puritan is still bothering us, just as we cling to our belief in the parsimonious Scot of the anecdotes. Or to that profound bit of ethnology from the school geographies:

"The French are a pleasure-loving people, fond of dancing and light wines."

## § 8

In the third week in July, 1892, Miss Emma Borden went to visit a Mrs Brownell in Fairhaven. This town, well described by its name, is across the harbor from New Bedford, and about fifteen miles from Fall River.

Her younger sister accompanied her as far as New Bedford, to visit some friends there. She stayed four or five days, her first considerable absence from home since her return from Europe two years earlier. There had been some talk by Miss Lizzie of a further and extended visit to the town of Marion, but this did not occur. She made a brief trip of one day only to Marion and was back at the house in Second Street before the end of July. Miss Emma remained in Fairhaven.

Miss Lizzie's visit to Marion had been discussed with her friends, and her reason for abandoning it became a topic of interest. She explained that she had taken over the offices of secretary and treasurer of the Christian Endeavor Society; there was to be a roll call on

the first Sunday in August and naturally she thought she ought to attend. (When that Sunday arrived, however, she was otherwise occupied.)

Religious work may not be postponed because of hot weather, nor may the town of Marion, however pleasantly situated on Buzzards Bay and with whatever splendid opportunities it has for fishing, be permitted to interfere with church duties so pressing and varied as those of Miss Lizzie Borden. Her father might have left the Central Congregational Church in a huff; her sister and stepmother were but lukewarm in their devotion to it. But Miss Lizzie, beside the offices already mentioned, was active in the Fruit and Flower Mission, and the Woman's Christian Temperance Union. At the

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Church Mission she taught a Sunday School class. Mr Borden droned at home on the Sabbath, but his younger daughter toiled mightily in the vineyard, under the approving eyes of a pair of pastors: the Rev. Mr Buck and the Rev. Mr Jubb.

August came in, and the streets of Fall River were parched. A lumbering water cart, or householders, with the garden hose, kept down part of the dust. Second Street rumbled with the sound of horses' hooves, and rattled as carts went by. In some quarters of the town there was the ever-present hum of the mills or, if these were quiet, the whirr of cicadas in the horse-chestnut trees. The hollyhocks were nearly gone, and mid-summer flowers were blooming in the gardens: phlox and petunias. The althea bushes began to put out their mauve blossoms. Behind the houses early Bartlett pears ripened and at night dropped to the ground with a thud.

It has been conjectured that at some time during this hot season Mr Borden took a step which suggested that he was making his will. This rests on no evidence but is the surmise of many. Whether he consulted his lawyer, or whether a conversation was overheard, we do not know. There had been a move, we have seen, as recently as July 15, toward peace in the family: the re-purchase of the Ferry Street house. That within a fortnight afterwards he talked of making a will is unproven, but it has been the belief of well-informed persons. (3)

## § 9

The first disturbing event occurred in the middle of the night between Tuesday and Wednesday, August 2nd and 3rd. Aside from Mr and Mrs Borden and Miss Lizzie, the only person in the house was Bridget, in her attic bedroom. The two elder people were attacked by a severe vomiting illness. That Miss Lizzie was also ill rests solely on her own statement. According to that, she was less seriously affected; she did not vomit and was rather better next day than the others. She said that, hearing the sounds made by her father and stepmother in their distress, she knocked on the door between her

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(3) For example, the late John W. Cummings, Esq., an attorney of Fall River, who was well acquainted with the counsel at the trial. At a later date, he was mayor of Fall River.

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bedroom and theirs (a double-locked and barricaded door) and offered to help them. They told her there was nothing she could do.

In the morning, Mrs Borden insisted on an opinion from Dr Bowen, the family physician, who lived diagonally across the street. In Mrs Borden's belief, there was something unaccountable about this sickness; she believed they had been poisoned.

In addition to Mrs Borden's inconclusive visit to Dr Bowen, there were a number of curious incidents on Wednesday, August 3rd. One of these was the unexpected arrival of Mr John Vinnicum Morse. This tall dignified white-bearded old farmer was a brother of the first Mrs Borden, and therefore uncle of Miss Emma and Miss Lizzie. The middle part of his life, twenty years, had been spent farming at Hastings, Iowa, but he had returned to his old home in South Dartmouth. Feeling confined on this meager Massachusetts farm after his career in Iowa's wider spaces, he indulged himself, and perhaps earned a few dollars, by inspecting Mr Borden's farms at Somerset and Swansea, and advising him on their management. There was business with livestock; Mr Morse was bringing some horses from the West. Mr Borden seems to have liked his brother-in-law and made him welcome at the Second Street house.

In a detective novel, the arrival of a person like Mr Morse, so close to the culmination of a tragedy, would have some special significance, or would be a deliberately planted false clew. Life, however, has an odd way of putting upon the scene quite meaningless characters. The events of next day may have been precipitated (quite innocently on his part) by the arrival of "Uncle Morse" or, on the other hand, his presence may have been devoid of any influence whatsoever. It is my belief that he was simply a chance guest, who "proposed" himself---and had the worst luck in the world. He was like someone who had gone out into the meadows to pluck buttercups and listen to the song of the lark. By evil fortune, he wandered into the reek of a slaughterhouse.

At half-past one, Wednesday noon, Mr Morse blandly appeared at the front door. If he had as much as a toothbrush and nightshirt with him, he carried them in his pockets. The midday dinner was over, but Mrs Borden kindly got him a meal. (4)

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(4) Soup and mutton. This was Mr Morse's first encounter with the mutton soup, later to become celebrated.

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She and her husband sat and conversed with him as he ate, and for an hour or more afterwards. Bridget was in the kitchen; she cleared the meal away. The evidence as to Miss Lizzie's presence or absence from the house, until evening, is confused and in dispute. Her uncle did not see her. Apparently, by her own account, she was upstairs in her room during at least part of the time between 1.30 and 4.00, while her uncle refreshed himself and talked with his host and hostess in the dining room.

No one who has seen that small house, with its thin partitions, will be unable to believe that conversation in any room on the first two floors might be overheard in any other room, especially in hot weather, when windows would be open.

Towards four o'clock Mr Morse departed on one of his inspections. He went to Mr Borden's farm in Swansea, "to see about cattle". There he stayed until early evening, driving about in a wagon. He returned to Second Street at 8.30 or later. Nothing is said about giving him tea or supper; he must have taken some nourishment at the farmhouse. (At the Borden table, the mutton soup had made its second appearance.)

Mr Morse, until about ten o'clock, chatted with Mr and Mrs Borden. They sat in the melancholy dusk of the sitting room, opposite and very near the front door of the house. Thus, chance so arranged it that the guest spent the evening hours in one room of ill omen, and then passed the night in another.

There were no gaslights in that house, the only illumination coming from kerosene lamps. It is probable that, according to the frequent custom of elderly people of a summer evening, they lighted no lamp, but sat in the gathering darkness. From time to time they talked, but throughout their talk fell long silences.

## § 10

As the three sat in the shadows a strange conversation was in progress in a neighboring house. The humdrum streets of Fall River have no resemblance to

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mythical palaces of ancient Mycenae; nor are these simple folk comparable to the godlike figures of Greek tragedy. But there are certain curious parallels between one event of this summer's night and the scene in which Cassandra foretold the doom of the house of Atreus. The inspired daughter of the King of Troy seems far removed from the daughter of the Fall River banker, but as Cassandra and Miss Borden are the only two genuinely inspired prophetesses recorded in history, it is proper to mention their resemblance.

Miss Lizzie Borden, having felt but poorly all day, decided to try the evening air and visit Miss Alice Russell in Borden Street. This was such a short distance that the brief walk in the fresh air could hardly have been the attraction, so much as a desire to relieve her soul of a burden.

Miss Russell had formerly been a next-door neighbor of the Bordens, living in the house to the south, occupied at this time by Dr Kelly. She was a vigorous lady, with a mind very much her own. Rather more was she the friend of Miss Emma than of the younger sister. She may have been a little surprised at this evening visitation. Whether this is so or not, she was soon to be wholly amazed.

Said Miss Lizzie: "I am going to take your advice and go to Marion (5). . . . But I feel depressed . . . I feel as if something was hanging over me that I cannot throw off . . . Father has so much trouble . . . He and Mrs Borden were awfully sick last night; we all were but Maggie. We had some baker's bread, and all ate of it but Maggie . . . Sometimes I think our milk might be poisoned."

Miss Russell expressed surprise and said she thought it unlikely that poisoners were creeping about Second Street in the early morning, putting lethal doses in the milk cans.

But her caller went on: "I feel afraid sometimes that Father has got an enemy. He has so much trouble with his men . . . And I saw a man run round the house one night . . . And the barn has been broken into, twice."

"Oh!" exclaimed Miss Russell, you know that that was boys after pigeons. There's nothing else there but the pigeons."

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(5) Despite the roll call of the coming Sunday! It was at a later date that the abandonment of the Marion trip was explained by the roll call.

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"Well," continued the lugubrious one, "they have broken into the house in broad daylight."

"I never heard of that," replied the other.

"Yes . . . They ransacked Mrs Borden's dressing room; took a watch and chain, money and car tickets . . . Father went to the police about it, but the police didn't find out anything."

Miss Borden went on to describe how malicious "they" had been around the Borden house, and what further mischief might be expected from "them." Her listener, who until

that night had no idea of anything of the kind, was actually convinced that the Bordens were a family beset.

"I am afraid somebody will do something," moaned Miss Borden. "I don't know but that somebody will do something."

And she closed these forebodings with the remark: "I feel as if I wanted to sleep with one eye open---for fear they will burn the house down over us."

Miss Russell was unconsciously taking the role of the old men of Mycenae, who stood deprecatingly about while Cassandra wailed out her prophecies of doom. She did not, of course, adopt their words, and ask the sibyl:

*"Why biddest thou some fiend, I know not whom,  
Shriek o'er the house?"*

Nor did the Fall River seeress become as specific as her Trojan predecessor, so many centuries before, when in the moment of inspiration she sang of:

*"The bloodstained hands of them that smite their kin . . . and spattered o'er  
With human blood, the reeking floor!"*

Cassandra, in the Aeschylean tragedy, foresees death to Agamemnon as soon as he enters his own house; death by an ax, wielded by a furious woman. And, in terror, she sees that she is to share his doom.

Miss Borden, in words less majestic than Cassandra's, but with prescience fully as remarkable, said:

"I am afraid somebody will do something!"

The Trojan woman, of course, was inspired by the god,

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and her prophecies, therefore, were actual clairvoyance. Miss Borden's remarkably apt prognostication, so a learned judge of the Superior Court later intimated, was only one of those extraordinary coincidences! (6)

When this portentous conversation had ended at a little before nine, and Miss Lizzie picked her way homeward through the warm, dimly lighted streets, nothing suggested that she, herself, dreaded any ill fortune.

Cassandra had started back in terror at the portal crying:

*"Pah! The house fumes with stench and spilth of blood,  
'Tis rank as charnel-scent from open graves."*

But Miss Borden sedately let herself in with her door key, and closed and double-locked the door. Her father and his wife, with her uncle (whom still she had not seen), were close at hand. They sat in the little room opening from the front hall. She said nothing to them, nor did they speak to her. Without a word, she went softly up the little twisting staircase.

§ 11

Mr Morse slept well in the front bedroom, the guest chamber. He arose on Thursday morning, August 4th, at the hour of six. It was the beginning of a sultry day of typical August weather; a day, as the hours advanced towards noon, of almost intolerable heat.

The servant, Bridget Sullivan, was the first to come downstairs. She busied herself with her morning tasks and built a fire in the kitchen stove---that contrivance which helped make housework so pleasant in hot weather. At seven o'clock, Mr and Mrs Borden and Mr Morse ate breakfast. The kind of food served has less importance than the fact that Mr and Mrs Borden ate together. It is agreed that they had mutton,(7) some kind of bread or cakes---sugar cakes or johnnycakes--- and coffee. Mr Morse remembered bananas; Bridget who cooked, served, and afterwards partook of the meal, said that they also had mutton soup.

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(6) It may amuse the curious to know that Fall River, from 1804 to 1834, was called Troy.  
(7) The mutton had first appeared at the table, in the form of a roast leg, on the preceding Saturday. So says Arthur S. Phillips, Esq., *Sunday Standard Times* of New Bedford, May 13, 1934.

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About quarter to nine, Mr Morse departed on a round of errands and social calls. His host accompanied him to the side door (carefully locking it afterwards) and bade him be sure to come back for dinner. Then Mr and Mrs Borden engaged in certain household duties which they reserved to themselves. Bridget took care of no bedroom except her own, and never went to the second floor of the house. Mrs Borden began to dust some of the lower rooms.

It may have been nine o'clock when Miss Lizzie Borden came downstairs. She was disinclined for breakfast, but languidly drank a cup of coffee. Perhaps she nibbled a cookie. Mrs Borden was dusting the dining room. They exchanged some trifling words

about household affairs. Bridget, having finished her own breakfast, was soon rather unhappy. She had arisen that morning with a headache, and so far from feeling better for her breakfast, was now overtaken by nausea, and had to go into the backyard to vomit. This illness of Bridget's, so similar to that of the master and mistress on Tuesday night, is still mysterious. There was an icebox in the house; precautions were taken to keep the food unspoiled. That at least three out of the five persons in the house should be sick within the course of a day and a half, might be the ordinary result of hot weather and an injudicious diet. Except for later events and fuller knowledge, this might be a satisfactory explanation.

The dietary peculiarities of the Bordens aroused public interest. At a later date, attorneys for the Commonwealth were concerned merely to establish that Mr Borden and his wife ate breakfast at the same time---and this point was made for reasons connected with the medical evidence. The lawyer for the defence assumed that the breakfast was being attacked as parsimonious. He took the opportunity to defend Mr Borden's table as plain but hearty (which it certainly was) and to arouse the sympathy of the jury for the good old-fashioned customs of our forefathers, instead of the wiles of foreign cooks and "fixed-up notions" at city hotels.

Bridget, in the lower court, testified that her own breakfast, Thursday, consisted of mutton soup and bread of her own making. (And she had "felt sick" when she arose

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that morning!) Also, according to Bridget, "when they were taken sick" on the Tuesday, "we had swordfish warmed over for dinner; had baker's bread, too." On Wednesday, they had "pork steak, johnnycakes and coffee for breakfast." But, between breakfast and dinner, the word must have been passed to the servant: Revenons a nos moutons. For "they had soup and mutton for dinner; soup, bread, cake and tea for supper." The dinner planned for Thursday noon---a meal never served---was to be "soup to warm over, and cold mutton." My belief is that Mr Morse received some advance hint of this; it will be seen that he took steps to ruin his appetite before dinner. This precaution proved unnecessary. Had the Thursday dinner been brought to the table, it would have been the fourth appearance of the mutton soup in twenty-four hours.

When Bridget returned to the house, Mr Borden had departed for a few business calls downtown. This was at about 9.15.

Mrs Borden gave Bridget some directions about washing the windows, and the maid had sufficiently recovered to begin the work. She got her brushes and pails from the cellar and the barn, closed the windows, and slowly moved around the house from rear to front. She rested for a few minutes, while on the south side, to chat with the servant of Dr Kelly, the neighbor on that side. She visited all sides of the house during her work. Also,

of course, she left the side door---the screen door---unlocked while she was at work. This would hardly be noted except in a house as well guarded as this one.

With the members of the family departing, one by one, and Bridget engaged outdoors, there were finally left in the house two persons, Mrs Borden and Miss Lizzie. Nobody saw any other; nobody ever has appeared who could say that there was any other. Mrs Borden had put the guest room in order, tidied it up and made the bed. She came downstairs and remarked to her stepdaughter that she was going up again to put fresh pillow slips on the guest-room bed.

Bridget, at work on the windows from the outside, had a chance to glance in all the rooms downstairs. Later, coming indoors to close the windows, preparatory to washing them inside, she entered the kitchen, dining room, sitting room. All were empty.

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Mrs Borden went upstairs on her errand with the pillow slips. Nothing else was to be done in that room. It was about 9.30--- She entered the guest room, and there, within a moment or two, in all probability, she met her death.

She must have become aware, for one instant, of the approach of the person whose presence meant deadly peril. She may have tried to flee, but there was no way out; she was trapped.

## § 12

Of the hour and a half spent by Mr Borden during his walk downtown and back, almost every minute is known. In the banks he visited, in the shops at which he called, someone was sure to notice him. In such places he was a personage, and men deferred to him.

It was about 10.45 when he returned to his home. Young Mrs Kelly, passing the house on her way to the dentist's, saw him coming out the yard from the side door. He had found it locked, for Bridget was now inside. He made his way to the front door, where he began to try his key.

An hour or more had elapsed since the death of Mrs Borden, an hour which, as we have seen, had been spent by Bridget in her work on the windows. How it must have been spent by the murderer is interesting to conjecture. That it was a period of dreadful anxiety will occur to most of us. For even the coolest and most experienced criminal to endure an hour, in those narrow rooms, would have been trying. He who might become the second victim was yet to arrive---when would he come? Where would the other

members of the household be? How many of them might have to be destroyed, in order safely to accomplish the main purpose, or to conceal the crime already perpetrated?

Bridget heard Mr Borden at the front door and went to let him in. She was hampered in opening the door, perhaps by a brush or cloth carried in her hand, but more by the fact that the door was not merely double, but triple-locked: with key, bolt and spring lock. This unusual hindrance caused Bridget to make some exclamation of annoyance.

As she did so she heard a sound from Miss Lizzie Borden, who was on the landing at the head of the front stairs.

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Miss Borden laughed.

The meaning of this has been much discussed; it has been dismissed as an incident vulgar and unimportant; and it has been described by others as the most appalling moment in a grim tragedy. The significance of Miss Borden's presence at that precise place at that moment has been investigated with great care: whether anybody descending or ascending the stairs would necessarily see all that was in the guestchamber. Leaving this question, it may be said that one thing is not seriously disputed: anyone on that landing stood within fifteen or twenty feet of Mrs Borden's dead body as it lay on the floor of the guestchamber.

Mr Borden entered his house; Miss Lizzie came downstairs and asked if there were any letters. If he was about to say "Where is Abby?" his daughter forestalled him; she said, in Bridget's hearing:

"Mrs Borden has gone out---she had a note from somebody who is sick."

Mr Borden was not too well himself; he was fatigued from his walk in the heat. He took the key of his bedroom from a shelf, and ascended the back stairs to his bedroom. After a moment or two, he returned to the sitting room. There were two windows here, both opening on the south side, toward the Kellys'. Later, some of the Kelly family observed that, contrary to custom, the shades of both windows were drawn that morning.

Bridget finished with her windows and hung up her cloths in the kitchen. Miss Lizzie started to iron handkerchiefs in the dining room. She began to show interest in the maid's plans.

"Maggie, are you going out?"

The so-called Maggie answered: "I may, and may not. I don't feel well."

That she might enjoy a rest period of some kind was evidently in the minds of both. She had not ceased her labors since six o'clock, and the noon dinner would not be hard to prepare.(8)

"If you do go out," said Miss Lizzie, "be sure to lock the door. Mrs Borden has gone out--somebody is sick. And I might go out, too."

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(8) Bridget's testimony in the District Court. See Porter, p. 104. This disagreed with Miss Borden's inquest testimony; according to that, Mrs Borden was going marketing for some other meat.

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This was news to the servant. She promptly asked: "Miss Lizzie, who is sick?"

The answer was: "I don't know. She had a note this morning; it must be in town."

A few more minutes passed; Bridget setting her kitchen in order; the other studiously ironing her few handkerchiefs. Then Miss Borden came out into the kitchen with another tempting suggestion:

"There is a cheap sale of dress goods at Sargent's, at eight cents a yard."

Bridget expressed a polite interest, but still made no move to leave the house. She did, however, do something equally convenient to the plans which must have been rapidly revolving in the brain of someone close by. She went up the back stairs to her room, intending to use her half-hour's leisure taking a nap.

Mr Borden was overcome by weariness and the sultry air. He had moved from his chair to the sofa against the north wall of the sitting room. Here he stretched himself out almost at full length, but with his feet resting on the carpet.

His wife had been surprised alone, and in a place from which there was no escape. The old man had walked into his home as unsuspecting as an animal going to slaughter. But he was a tall man, still on his feet, and with his senses about him. A doubtful enemy to attack, he could at least shout for help.

But now everything was made secure for his assassin. He lay down and slept.

### § 13

How long Bridget was in her room on the third floor, she never knew. Perhaps ten, probably twenty minutes. She heard the near-by clock on the City Hall strike eleven. She



lay on her bed and dozed. It was a drowsy, hot hour; the energy had gone out of the day, and out of everyone. The neighbors and the few people who passed the house dragged their steps; the sun blazed through the dusty street; men stopped in the sparse shade of the trees and wiped the sweat from their foreheads.

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Suddenly Bridget was awake. She was being called from below, from the foot of the back stairs.

"Maggie!" came the voice of Miss Borden, and the note of alarm startled the servant at once. "Maggie! Come down!"

"What's the matter?"

"Come down here! Father's dead; someone came in and killed him!"

Bridget was downstairs in an instant. Miss Borden stood near the side door. It was Bridget's first impulse to look into the sitting room, a few steps distant. She was stopped.

"No, Maggie, don't go in there. Go over and get the doctor. I must have him. Run!"

Bridget obediently ran across the street to Dr Bowen's, learned from Mrs Bowen that the doctor was out, left her message and hurried back. In the meantime, she had begun to wonder how Miss Lizzie had escaped, and if she had seen the man who had done this thing. She gave the information about the doctor, and, full of concern and wonder, asked: "Where were you, Miss Lizzie, when this happened?"

She was told: "I was out in the yard, and heard a groan, and came in and the screen door was wide open."

Bridget was now dispatched to bring Miss Russell, and that lady prepared to follow her back to Second Street. Miss Russell was stricken with awe at this prompt fulfillment of the dismal prophecies of the night before. Truly, something had been "hanging over" the Bordens!

Before her arrival, however, the nearest neighbor to the north, Mrs Churchill, had become aware that something was wrong. She had heard of the illness of Tuesday and now beheld Bridget hurrying to and from the doctor's house. It is worth note that Second Street is narrow, with houses close together---and that in 1892 it was a quiet street, where all the neighbors knew each other, so that not only would a stranger attract attention, but any unusual action by a resident was quickly observed.

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Looking out, Mrs Churchill beheld Miss Borden at the side door. She called across to her and received the reply: "Oh, Mrs Churchill-do come over. Someone has killed Father!"

In a minute the friendly but horrified neighbor was putting a hand on Miss Borden's arm. "Why, Lizzie! Where is your father?"

"In the sitting room."

"Where were you when it happened?"

"I went to the barn to get a piece of iron. . ."

Then, for the first time, a question was asked about the dead man's wife.

"Where is your mother?"

"I don't know; she had a note to go to see somebody who is sick, but I don't know but that she is killed too, for I thought I heard her come in."

Mrs Churchill departed for help; to find another doctor---anyone. At Hall's stable, near by, she told what she knew to some men, and one of them telephoned to the police station. The message was received by City Marshal Hilliard at 11.15. Only half an hour had elapsed since Mr Borden entered his house.

Returning to the house, Mrs Churchill was joined by Dr Bowen. He observed that Miss Lizzie was in the care of Mrs Churchill and Miss Russell, who were rubbing her forehead and hands, and suggesting various comforts: eau de cologne, lying down, having her dress "loosened", and so on. No one heard her ask for any of these attentions, but they seemed eminently proper. Dr Bowen went on to the sitting room. His first impressions were given to newspapers:

"Mr Borden lay partly on his right side, with his coat thrown over the arm of the sofa. . . . His feet rested on the carpet. It was his custom to lie that way . . . I am satisfied that he was asleep when he received the first blow, which was necessarily fatal . . . his clothing was not disarranged, and his pockets had apparently not been touched. . . ."

The dead man's head and face were so hacked that the wounds and blood made him unrecognizable. Dr Bowen said: "The cuts extended from the eye and nose around the ear.

In a, small space there were at least eleven distinct cuts . . . Physician that I am and accustomed to all kinds of horrible sights, it sickened me to look upon the dead man's face. I am inclined to think an ax was the instrument. The cuts were about four and a half inches in length, and one of them had severed the eyeball and socket. There was some blood on the floor and spatters on the wall, but nothing to indicate the slaughter that had taken place. I calculated that nearly all the blows were delivered from behind with great rapidity . . ."

A sheet was brought, at Dr Bowen's request, to cover the body. Mrs Churchill and Miss Russell declined to look at the dead man; they saw his feet, in Congress shoes, (10) protruding from under the sheet. Then the doctor complied with a request of the afflicted Miss Borden; he went in his carriage to the telegraph office to send a wire to Miss Emma at Fairhaven.

It was Miss Lizzie, while Dr Bowen was absent, who suggested that somebody look for Mrs Borden. Bridget, not caring to go upstairs alone, went in company with Mrs Churchill. These people all feared that the murderer might still be concealed somewhere. No such fears seem to have oppressed Miss Borden. The front stairs, near the top, turn to the left, and the eyes of anyone ascending naturally glance along the floor of the landing into the guest room. Mrs Churchill had not been instructed to look in any particular direction, but her glance easily carried into the room and under the bed. On the floor, at the other side of the bed, she saw a human figure.

Both she and Bridget abruptly went downstairs. Soon Dr Bowen was back at the house and was told of the discovery of the second death. He went up and into the front room. Here was a large double bed of heavy carved wood. The coverlet was spotless; the two ruffled pillowcases were carefully adjusted, as the mistress of the house, in the last act of her life, had left them. Against the wall, on the other side of the bed, was a ponderous dressing table, its marble top equipped with the usual assortment of useless toilet accessories: among other things, a lace-covered pincushion, and two white glass bottles, supposed to contain "toilet water" or something---always correctly at their posts, and always empty. A guestchamber was hardly decent without them.

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(10) Shoes with elastic sides, but with neither laces nor buttons.

Between bed and dressing table lay the body of Andrew Borden's wife. To this hideous and grotesque death she had come; this was the end of the road which had begun on that Sunday morning, so long ago, when she looked up and saw her suitor waiting for her. That far-off spring day, at the close of the Civil War, was in the same momentous season when Walt Whitman marked the lilacs near his cottage, and fancied that the hermit thrush at evening was singing a dirge for the dead president. It was a time of deep and sad

concern to the Republic, but to little Miss Abby Gray, in her voluminous silk petticoats, the spring of her romance. Dull, dull years had followed, and now everything had come to this pitiful moment, and she was an undignified heap of shabby workaday clothes, her feet in clumsy shoes sprawled behind her, their soles turned up; her head savagely hacked to bits; locks of her hair chopped off; her poor, plain old face lying in a puddle of blood." (11)

§ 14

The events of the next hour at 92 Second Street are told with some degree of clearness in the evidence at the trial. They can never be wholly clear. Friends, neighbors, physicians, policemen and reporters entered or tried to enter the house. The police soon had the doors guarded and would-be intruders kept out. Curious folk were left standing on the sidewalk or peering into the windows. By noon, the street was blocked by a throng of people.

Well before this, however, and while only the persons inside the house were aware of the crimes, Mr John Vinnicum Morse sauntered into the side yard. His calls were made, and he was returning to the dinner to which he had been invited.

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(11) The appalling discovery of the second murder left Mrs Churchill almost speechless. She went back to the dining room and uttered a groan. Miss Russell said: "Is there another?" Mrs Churchill replied: "Yes; she is up there." The words were commonplace, but not the event. The two ladies would have been astonished to know that, more than forty years later, their eight words would be repeated verbatim throughout the world, by a device unknown in their day. The double murder, with the husband lying dead downstairs, the wife upstairs, so impressed an English director of motion pictures, Mr James Whale, that he adopted the situation in a film play. In "The Bride of Frankenstein" two of the characters, who had entered a house and discovered a double tragedy, repeated Miss Russell's question and Mrs Churchill's answer.

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His spirit at peace and his mind concerned with nothing more than horse trading, he walked to the rear of the house and began to forage for pears. Here he amused himself for a while, until at last, entering the house, he was informed that the state of affairs was not altogether normal. How, when, or on what Mr Morse dined that day, is, I am sorry to admit, unknown to me.

It has often been asserted that the police of Fall River made a mess of things from the start. This idea was strengthened by the odd circumstance that, on this greatest day in their history, most of them were absent on their annual picnic. With bands playing, they had merrily sailed away, early that morning, for a clambake at Rocky Point. This, however, had little influence. The secret and mysterious murders would have been

committed had there never been a police holiday. The head of the force, City Marshal Hilliard, was at his post, with a third of his officers on duty.

That which hampered the police from the beginning was not stupidity on their part, nor that they were ruthless and brutal inquisitors. The reverse was true. The crimes were astounding, and practically outside the experience of any policemen, in Fall River, or elsewhere. Had these deaths been, as it was supposed for a few moments, the result of a gory brawl in the underworld, a fight between razor-armed Negroes, or Neapolitans conducting an argument with banana knives, matters would have been simple.

But the house of Borden was steeped in the respectable atmosphere of the Central Congregational Church, and the holy aroma of the B.M.C. Durfee Safe Deposit and Trust Company. Policemen cannot rush into such a place and conduct investigations in the ordinary way. Public opinion demands that they step softly. This does not mean that there were no interrogations or no search. It does mean that there was no prompt examination, properly conducted by police matrons or female inspectors, of the persons and clothing of the two women left alive in the house. Fingerprinting was not yet in use in Fall River.

There had been no struggle and no robbery---Mr Borden's watch and money were undisturbed. Besides, it was apparent both "to laymen and physicians, that a

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considerable time had elapsed between the two murders. The difference in temperature of the bodies and the more advanced coagulation of Mrs Borden's blood indicated this fact, even before the autopsies confirmed it. Moreover, ordinary non-technical evidence---what was known of the activities of the two victims that morning---gave further corroboration to the belief that Mrs Borden had been killed about ninety minutes before her husband. This presented to the police the astonishing problem of a murderer who had been able to conceal himself in that house for an hour and a half, unseen and unheard both by Miss Lizzie and by Bridget.

It should be understood that all who came to the house after the discovery of the murders, whether they came as friends to fan the "poor, dear girl" and flutter around her, or whether they came as police officers to investigate and report, had but one idea. It was that some fiend, some unknown assassin, had entered and done these ghastly murders. To everyone, it seemed the deed of a maniac, of a Frankenstein's monster, a senseless atrocity which could only be imagined by creatures from the infernal pit. Not so long before everyone had been reading of the Whitechapel murders; within about a year newspaper reports had suggested---although erroneously---that Jack the Ripper had come to America. A visitation by someone like this, so everyone thought, was the explanation of the frightful event.

Nobody had any other theory or belief. Puzzling as it was to think that there could be such enmity towards old people; or to explain why the foe of one of them should kill the other; or why, if the killer were a madman, he should have spared Miss Lizzie and Bridget, the belief in a "criminal" from the outside was, for many hours, perhaps days, all but universal.

That night the Kelly family did not care to go to bed; even with police officers stationed on the street, they felt insecure, so long as this mysterious villain had not been arrested. The special horror was that he could get into a house, ferociously butcher helpless people, and flit away, still invisible!

A young police officer, Martin Feeney, posted at night in the back yard---to protect the Bordens from further attack---felt rather jumpy during the dark hours

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because of an occasional thumping sound near by. He became more at ease when he found it was nothing but ripe pears falling to the ground. The belief in "some terrible man" as the author of the crimes lingered long with Bridget Sullivan. The same Officer Feeney, a few days later during the inquest, was detailed to escort Bridget to and from the hearings. Years afterwards, when he was Chief of Police, Mr Feeney told me of his unofficial attempts to learn a little from Bridget:

"I thought that a young Irish fellow, like meself, might get an Irish girl to talk. So, while we went through the streets I asked her what she thought about the murders. She wouldn't say a wor-r-d! She said, 'I'd be afraid to say anything at all. If I did, that terrible man that killed poor Mrs Borden might come back and kill me, too!'"

## § 15

There were few careful or shrewd observers in the house that day. With friends and neighbors it was: "Why, Lizzie, you poor darling! It's God's own mercy, that fearful creature didn't kill you, too!" Less emotional persons were either handicapped by exaggerated ideas of gallantry; or were awe-stricken in the presence of an heiress; or else they were godly folk, blinded by sectarian prejudice. All that the third and last class needed to know was that nothing but spotless virtue has ever surrounded a secretary and treasurer of the Young People's Society for Christian Endeavor.

Consequently, the first reports of what was discovered are sometimes confusing, sometimes contradictory. Miss Borden did not lessen the contradictory element. That she should have been ignorant of the first murder, when it happened, was puzzling enough. But this was nothing as compared to her strange failure to be aware of the second murder,

to hear or encounter the killer as he came and went. At least seven persons, within an hour, repeated, in one form or another, Bridget's question:

"Where were you, Miss Lizzie, when this happened?"

To Bridget, as we have seen, she replied that she came in from the back yard on hearing a groan. Her replies to six of the others were:

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To Mrs Churchill: "I went to the barn to get a piece of iron. I heard a distressing noise and came back and found the screen door open."

To Miss Russell: "I was out in the barn getting a piece of tin or iron to fix the screens."

To Officer Fleet: "I was up in the barn for half an hour."

To Dr Bowen: "I was in the barn to get some iron."

To Officer Doherty: "I was in the barn; heard no screams; did hear some noise like scraping."

To Officer Harrington: "I went out in the barn. I remained there twenty minutes... I was up in the loft."

As it was pointed out, some of these minor discrepancies may be insignificant. A person might be on an innocent errand outdoors, an errand which included going to the yard and also going to the barn for a piece of iron. It is, to me, a matter of astonishment to hear people dogmatize upon the correct behavior of persons who are suspected of murder. If the suspect is calm, say these folk, it is a sign of guilt---or innocence; and if he is agitated it is also proof of whatever the dogmatist likes to think. No guilty man would do this-or that-according to what the speaker would do. This woman is guilty because she has "black eyes"; this man is innocent because he is "clear-eyed" or is reputed to be "nice to his mother". The fact is that there is both the calmness and the confusion of guilt; the serenity and the agitation of innocence, and that not one of us knows how he or she would act if accused of murder, or how anyone else "ought" to act.

The reasons why the police and law officers found themselves in a state of incredulity were not minor differences in Miss Borden's explanations. Hysteria, strong emotion, excitement, grief, might in many cases explain small contradictions. But these were not present. The one calm person at 92 Second Street, during the hour or two beginning at 11.15 A.M. on August 4th, was Miss Lizzie Borden. There were no tears, no

agitation, no signs of grief, fear or confusion. An excitable or timid woman, at the dreadful spectacle presented by Mr Borden, and the knowledge that the murderer could still be in the house, might have rushed screaming into the street. Miss Borden had stepped six feet away and called to Bridget. While others were almost in panic, she was coolly remarking to Miss Russell:

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"When it is necessary for an undertaker, I want Winwood."

So there was no excitement or confusion here.

And it was not the difference between going to the barn for a piece of iron, or going there for sinkers for a fishing line---according to her final version---which staggered the police. It was the story told to Officer Harrington that she was up in the barn loft for twenty minutes, which seemed to pass belief. That anyone, ironing handkerchiefs on a hot morning, should desert this torrid occupation and deliberately seek out the stuffiest, dustiest place on the premises, and do this for precisely the time needed to give the murderer a chance to commit his crime and make his escape, seemed doubly hard to believe. It was not only a queer thing to do, but it was an extraordinary coincidence that it should be done at a time so favorable to the murderer's plans.

As between a "groan", a "distressing noise", and a "scraping noise" there is perhaps little difference. But between the two stories, there is a great difference. The early version was that some sound emanating from her father---who died at the first blow---attracted her attention and caused her to hurry indoors. She could have been but a few feet away, and the murderer still at work. The second version omitted all mention of any sound; she went in (according to her inquest testimony), put down her hat and, quite without warning, discovered the murder.

On the other hand, nobody noticed anything amiss about her; no disarrangement of hair or dress, and, especially, no bloodstains visible anywhere. With many people, this out-weighed all else.

At no time was there any inquisition, any "third degree", by the police. No blustering detective---that figure so dear to the stage and the screen---breezed into the house and shouted brutal questions. She was not isolated, tormented by officers, subjected to glaring lights and the other tortures which dramatists love to exhibit. The policemen who made inquiries of her did so one at a time, when she had her friends with her; they asked admittance, entered the room hat in hand, and respectfully requested help in clearing up an astounding and atrocious crime. They went in hoping

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to obtain light and be aided in the performance of duty. They came out trying hard to swallow.

§ 16

The story of the Tuesday night sickness had been told by Dr Bowen, and, as the milk was under suspicion, Dr Dolan, the Medical Examiner, took samples of it for analysis. It may be said now that the tests for poison showed negative results.

In the afternoon following the murders, police began inquiries as to any purchase of poison. Two police officers began to visit the pharmacies. Probably the nearest one to the Borden house is that of D. R. Smith, at the corner of South Main and Columbia streets. Here, an astonishing story was uncovered. A clerk, named Eli Bence, said that on Wednesday, the day before the murders, sometime between 10 and 11.30 A.M., a woman,---known to him by sight, came into the pharmacy and asked for ten cents' worth of prussic acid. She desired it for use "on a sealskin cape." He refused to sell it, except on a prescription from a doctor. The woman, he said, was Miss Lizzie Borden.

Two other men, Frederick E. Hart and Frank H. Kilroy, one of whom was also a clerk there, overheard the request and corroborated the identification.

Mr Bence was taken to the Borden house that evening, and placed where he could see Miss Borden. He repeated his statement that this was the person to whom he had refused prussic acid. Of course, this was not the best method of identification, but even had it been possible to place her in a line-up, it would have been superfluous to do so, since Mr Bence for years had seen Miss Borden passing on the street, and recognized her when she made her request.

The judicial decision, which finally disposed of this interesting evidence, will be discussed later. It may be said now, that after all these years the episode remains unexplained. The three men were flatly contradicted by Miss Borden herself during her examination under oath. There the matter stands. (12)

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(12) Open attempts to buy poison, in cases of murder or suspected murder, are puzzling, and, to many, seem incredible. See *Trial of Madeleine Smith*, by F. Tennyson Jesse. (Notable British Trials.) Of course, Miss Smith's guilt was "not proven."

For a few days, both Bridget Sullivan and John Vinnicum Morse were suspicious characters, in public estimation. Some trace of this has lingered, especially with persons who, early in a mysterious case of this kind, adopt a theory and cling to it, regardless of fact.

The police soon ceased to look upon either Bridget or Mr Morse as in possession of guilty knowledge. Neither had any interest in the deaths; indeed, it was probably to Mr Morse's advantage to have Mr and Mrs Borden alive. Both he and Bridget were exonerated by Miss Lizzie, herself. That Mr Morse had been calling upon his relatives, a mile distant on Weybosset Street, until after the murders, or about 11.20, and that he had returned by streetcar, as he said, was ascertained to be the truth. His alibi has been jeered at, as too perfect, but nevertheless no evidence whatever placed him at the house till he came mooning into the side yard, after everything was over. Had he left Weybosset Street thirty minutes earlier, he might have interrupted the second murder.

It dawned gradually upon his placid mind that he was in the center of dreadful events. On Friday evening, the day following the crimes, he set out serenely for the post office. He returned from this brief jaunt under police protection, and followed by a mob of about one thousand curious people---an incident which may have given him some inkling of a certain state of public unrest.

That Bridget, in later years, "retired to Ireland, with a big sum of money" is a favorite legend in the case. It rests on nothing better than gossip, and is, I believe, untrue as to the money, and not even certain as to the return to Ireland. She was a Government witness and a damaging one, and rendered no service to anyone which had to be repaid with secret gifts of cash.

Press comments, in the early days of the case, were extremely frank. Thus, on August 5th, the Fall River *Globe* printed an account of the incident at the pharmacy and the identification by Mr Bence, under the heading: "What Did Lizzie Want of Poison?" And on the next day papers printed an interview with a brother-in-law of Mr Borden---one Hiram C. Harrington, a blacksmith. He was the husband of Mr Borden's only sister.

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A few of Mr Harrington's pointed remarks were these:

"The motive of the crime was money, unquestionably money . . . Last evening I had a long interview with Miss Lizzie, who has refused to see anyone else. She was very composed, showed no signs of emotion . . . This did not surprise me . . . She said her father came home at 10.30. She was very solicitous concerning him and assisted to remove his coat, and put on his dressing gown and inquired about his health. She told me that she

helped him get a comfortable place on the sofa, and asked him if he did not wish the blind closed . . .

"All these things showed a solicitude and thoughtfulness that I never had heard was a part of her nature or custom before. She described these little acts of kindness minutely . . . On leaving the house, she says she went directly to the barn to obtain, some lead . . . It was her intention to go to Marion . . . and she wanted the lead in the barn loft to make some sinkers. She was a very enthusiastic angler . . . She told me it was hard to place the exact time she was in the barn, as she was cutting the lead into sizable sinkers, but thought she was absent about twenty minutes. Then she thought again, and said it might have been thirty minutes . . ."

Mr Harrington gave the reporters a detailed account of the dissension's about money, saying, among other things:

"Lizzie did most of the demonstrative contention, as Emma is quiet and unassuming . . . Lizzie, on the contrary, was haughty and domineering, with the stubborn will of her father, and bound to contest for her rights . . . Lizzie is of a repellent disposition, and, after an unsuccessful passage with her father, would become sulky and refuse to speak to him for days at a time . . . Her father's constant refusal to allow her to entertain lavishly angered her. I have heard many bitter things she has said of her father . . .

"I am positive that Emma knows nothing of the murder." (14)

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(13) Actually, a cardigan jacket.

(14) Compiled from a report in the Fall River *Evening News*, Aug. 6, 1892, and from Porter, pp. 24-26, the latter probably a reprint from the Fall River *Globe*.

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Four days later, Miss Lizzie repaid Mr Harrington in his own coin. When asked, at the inquest, to name anybody who was on bad terms with her father, she promptly said: "Hiram C. Harrington."

## § 18

The note which had brought the "sick call" to Mrs Borden became the object of great curiosity. What invalid, friendly enough with Mrs Borden to ask her immediate attendance at a bedside, had suddenly become so shy as to remain hidden when police were seeking her, when lawyers were agonizing over her identity, and when the mere revelation of her name would have secured the reward of \$500, offered by a paper called *Once A Week?*

Early reports spoke of the note as a post card; this proved incorrect. Other reports told of a "boy" as the messenger, but the only authority on the subject of the note---Miss

Lizzie---said that she saw neither the messenger nor the note, and knew neither the name of the sender of the note nor whether Mrs Borden answered the call.

A later theory tried to explain these puzzles by suggesting that the note was a scheme of the murderer to lure Mrs Borden out of the house, so that he might attack her husband unimpeded. The reasoning of this singular murderer seems to have been that if the stout, elderly Woman could be drawn away, the presence of two young women--- Miss Lizzie and Bridget---would not matter."

Perhaps no murder mystery in America was ever more provocative than this one of curious rumors, of vague gossip about "wild" or "murderous" looking people who,

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(15) That "Mrs Borden was called to the rear door by a boy who presented a note" is asserted as if it were a proven fact by Arthur S. Phillips, Esq. (New Bedford *Standard-Times*, May 13, 1934.) Mr Phillips, who aided Mr Jennings in preparing the defence, adds that defence counsel "believed that the note called for the delivery to the bearer of some article from Mr Morse's room; that the assassin followed Mrs Borden into that room . . ." It is not clear whether this means that the boy was also the assassin, or if there were two in the plot. At all events, why Mrs Borden should have deceived Miss Lizzie as to the contents of the note, saying that it said "somebody was sick" (see Miss Borden's inquest statement), and where the "assassin" was standing during the conversation between the two women, are points which this theory does not reveal.

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both before and after the crimes, wandered about the streets or the countryside, advertising their intention of committing the crimes, or loudly bemoaning the fact of having committed them. In the credulous minds of an astonishing number of persons there is a belief that murderers invariably look the part of murderers; that they go around with glaring eyes and disheveled hair. The fact that newspapers have published the portraits of thousands of assassins, and that they are usually ordinary looking men and women, sometimes even amiable in appearance, has taught these amateur detectives nothing.

When the Lindbergh child was slain, thousands of people raised clenched fists to heaven and expressed a desire to burn the culprit alive. When the police caught the murderer, and he appeared, in his portraits, rather commonplace, with nothing worse about his looks than a pair of shifty eyes, these same avengers were disappointed, and called upon the police to bring in someone whose features more strikingly resembled Satan.

Many of the known facts in the Borden case became twisted, and furnished the stuff for legendary tales. Thus, the laugh uttered by Miss Borden herself, and heard by Bridget, sometimes turns up in tradition as a "wild, maniacal laugh" heard in the house, and suggestive of the presence of a dangerous lunatic.

One or two of the rumors about "crazy" men waving blood- stained axes over hill and dale were so far honored as to be brought. to the doors, at least, of the courtroom. A favorite tale, in the newspapers for many days, related the encounter of Dr Benjamin Handy with a "Wild-Eyed Man" in Second Street, an hour or two before the murders. That the cause of the physician's agitation was one Michael Graham---called "Mike the Soldier"---and that his wild eyes resulted from a simple hangover---a frequent disorder in his case---was ascertained in a few days. But Dr Handy, who impresses one as a busy little man, to whom everything that happened was always extremely important, clung sturdily to his "Wild-Eyed Man" and his ominous significance. Similar delusions attend every notorious crime.

If anything was clear it was that Mr and Mrs Borden were slain neither by a maniac nor a drunkard. The victims were carefully selected (two of the household being spared) and their deaths were shrewdly planned.

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At one time or another suspicions have been entertained, or vague accusations uttered, against five persons, in addition to the one actually brought to trial. It was suggested that they might have been principals in the crime or, perhaps, accessories. These persons were Bridget, Mr Morse, Dr Bowen, Hiram Harrington and Miss Emma Borden. It should be said that the police took nothing on faith. The absence of these persons from the scene was definitely established by independent witnesses and other satisfactory evidence. Perhaps the most absurd suggestion is that which brings Miss Emma Borden to Second Street at a time when she was actually fifteen miles away.

As to all the comic chorus of Wild-Eyed People, Portuguese farm laborers, men who might have quarreled with Mr Borden, gypsy horse traders in Westport, mysterious loafers or unknown buggy drivers on Second Street, men brandishing axes in gloomy glades, chicken farmers with bloodstained hatchets in South Somerset, men who had stolen pears and jumped over the fence, Frenchmen who were running from something or other, and sailors who had mutinied, sixteen years before, on a ship which had no connection whatever with Mr Borden---every single one of these---and many hundreds more were patiently and intelligently investigated by the police. And, incredible as it may seem to those who have derived their knowledge of crime from detective novels, or from murder mysteries on the stage and in motion pictures, policemen are not invariably fools or scoundrels.

I have examined the enormous mass of letters which poured in upon the chief law officer of the county. Perhaps one, per cent of these showed intelligence, although they offered little which had not occurred to everyone who had paused to think. The remaining ninety-nine per cent, coming from crystal-gazers, soothsayers, planchette or Ouija-board manipulators, wisecracs, village oracles and amateur Sherlocks all over

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(16) A favorite bit of gossip in Fall River casts Dr Bowen for the part of concealer of the weapon. All other considerations aside, the trouble with the theory is that when the doctor first came upon the scene---and then was his only opportunity--- neither he nor anyone realized the importance of the hatchet as legal evidence.

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the United States and Canada, either produced, as original suggestions, theories which had been discussed for weeks in the newspapers, or else they contained ideas which had the same value as the regurgitations of an infant.

§ 19

In the Fall River *Evening News*, Saturday, August 6, and probably in other papers, appeared this:

\$5,000 REWARD

The above Reward will be paid to any  
one who may secure the

ARREST AND CONVICTION

of the person or persons who occasioned the  
death of

MR ANDREW J. BORDEN & HIS WIFE

EMMA J. [sic] BORDEN.  
LIZZIE A. BORDEN.

That morning, funeral services were held for Mr and Mrs Borden at their house. Several thousand people gathered in the vicinity and a detachment of police was needed to keep the street open. When the two hearses and eleven carriages proceeded to the Oak Grove Cemetery they made their way through crowded streets. Further services were held in the cemetery, and the coffins were placed in a receiving vault.

The same evening, the Mayor of Fall River, Dr John W. Coughlin, was unfortunately moved to make a call at the Borden house. He took the City Marshal with him and went for two purposes: to request the family to remain at home for a few days, and to offer them further police protection if they were annoyed by curious crowds. Mr Morse, on the previous evening, had attracted unwelcome attention merely by appearing on the

streets, so, for that reason, if for no other, it was advisable for the now notorious family to be discreet.

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Miss Lizzie, as usual, took a leading and rather militant part in the conversation, and succeeded in drawing from the Mayor the admission that she herself was under suspicion. For reasons which will appear, this disclosure was both awkward and unnecessary.

The call may have reminded City Marshal Hilliard of a visit to that same house, paid by one of his police captains, a little more than a year earlier. In the summer of 1881, Mr Borden reported a robbery at his home. This was the theft, "in broad daylight" which Miss Borden had described to Miss Russell as one of the evil deeds which "they" had committed in her father's house. The officer interviewed the Borden family and found that from Mr Borden's desk had been stolen over \$100, of which about \$25 was in gold; a number of street-car tickets; Mrs Borden's watch, and other trinkets.

Miss Lizzie, the most voluble at this interview, suggested the cellar door as the thief's place of entry, and produced a large nail which she had found in the keyhole of a bedroom door. No clew and no solution were ever discovered, and Mr Borden soon showed a disposition to abandon the inquiry. The police believed that he was not wholly in doubt as to the identity of the robber.

The first legal investigation of the murders, an inquest before Judge Josiah C. Blaisdell, of the Second District Court, was held, August 9 to 11. Witnesses were examined by the District Attorney, Hosea M. Knowlton, Esq. These witnesses included both the Misses Borden, Mr Morse, Bridget Sullivan, Dr Bowen, Mr Harrington and Mrs Churchill. The family attorney of the Bordens, Andrew J. Jennings, Esq., made an appearance and asked permission to be present. The judge, in accordance with the statute which empowered him to hold inquests in private, denied permission.

In doing this, Judge Blaisdell was technically correct, but it appears to have been the second strategic blunder of the authorities---the first being Mayor Coughlin's remark during his unlucky call. The District Attorney did not personally warn Miss Lizzie of her constitutional right to decline to give evidence, but he informed Mr Jennings that he could confer with her on the matter, and Mr Jennings did so confer with his client. Miss Lizzie then testified.

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On Thursday afternoon, August 11th, one week after the murders, the inquest was ended. Miss Lizzie had testified for hours, and her examination---the only part of the inquest ever made public---is printed near the end of this book.

At the close of the inquest, Mr Jennings was sent for, and Miss Lizzie was arrested for the murder of her father. The other murder was not mentioned in the warrant. Everything was done with consideration. She was not confined in a cell, but was put in charge of the matron of the police station, and occupied the matron's room." (17)

## § 20

With Miss Borden's arrest began an outbreak of sentimentalism which rose to extraordinary heights. Such waves of emotion, inspired by prejudice or ignorance, more usually follow a conviction on the capital charge. On this occasion, it preceded the trial.

The church party, which, without waiting for any information, promptly absolved Miss Lizzie, was led by two clerical busybodies, the Rev. W. Walker Jubb and his brother shepherd, the Rev. E. A. Buck. Henceforth these elderly, hirsute pastors were conspicuous on every occasion, officiously escorting the prisoner into this hearing or that, and almost visibly drawing around her form the awful circle of holy church. Newspapers might have kept standing in type the phrase: "The prisoner entered the Court, leaning on the arm of the Rev. Mr Buck"---or, as an occasional alternate, "the arm of the Rev. Mr Jubb."

That this was sectarian activity of a pernicious character was illustrated on the Sunday following the murders, two days before the opening of the inquest, before any charges had been made. The Rev. Mr Jubb, at the Central Church, not only took occasion, in the course of his prayer, to assure the Almighty that Miss Lizzie was "innocent and blameless", but he renewed this statement in his sermon, spoke of her "blameless" life and asked God to comfort the "poor stricken girls."

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(17) During her subsequent detention in jail at Taunton, while awaiting trial, she was taken out for occasional walks! On whose authority this was done is unknown. So far from suffering police persecution, as her more hysterical sympathizers asserted, she was throughout granted unusual and unwarranted privileges.

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The ecclesiastical party was joined by unintelligent feminists, and by militant ladies like Mrs Mary A. Livermore, Mrs Susan Fessenden (president of the Woman's Christian Temperance Union) and even by the estimable Miss Lucy Stone. The leaders in the movement for votes for women were, at that date, apt to feel it their duty to champion any woman in any cause whatsoever. This has fortunately changed: in the more recent



trial of Mrs Ruth Snyder, for example, few women were heard to ask special consideration for the defendant on account of sex.

In the autumn of 1892, Mrs Livermore leaped into the fray, cheering for Miss Borden, and denouncing her "persecutors" in a manner that seemed to indicate that she regarded the arrest in Fall River as merely one more outrage perpetrated by "the tyrant Man."

That a large number of vociferous persons should be found ready to acquit Miss Borden in advance of trial was not strange. It was surprising to learn that the reason they "knew" she was innocent was that "a woman could not do such a thing." If by "such a thing" they meant commit murder, they were singularly lacking in information, as hardly four years had elapsed since, in the same state, a woman named Sarah Jane Robinson was found to have murdered seven people.(18)

If, however, they meant kill an old lady with an ax or hatchet, wait an hour or two, and then slay an old gentleman in the same manner, then they were on surer ground. Poisoners and killers by firearms are frequently found among women; the butcherlike method of the murder of the Bordens is rare indeed, and made it possible to contend that such brutality seemed to have nothing feminine about it.

## § 21

Miss Lizzie was arraigned before Judge Blaisdell the next morning. She "leaned upon" the arm of the Rev. Mr Buck as she entered the room; it consoled her sympathizers to have this man of God as her shield and buckler. In their eyes, she was thus safe from ravening wolves of the law. As many spectators began to realize,

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(18) Official Report of the Trial of S. J. Robinson. Published by the Attorney General of Massachusetts.

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however, the presence of Mr Buck was but the beginning of a determined attempt to overbear the courts by sectarian pressure.

Mr Jennings objected to Judge Blaisdell as presiding magistrate, on the ground that he had been "sitting on the case in another capacity", at the inquest. Mr Knowlton replied that the procedure was both legal and customary, and had been followed more than twenty times to his knowledge. The inquest had been an action against nobody. Judge Blaisdell was not sitting in double capacity. The judge overruled the objection of Mr Jennings and ordered the proceedings to continue.

The extraordinary public interest aroused by the murders, together with the influences which were rallying to the defence, enforced by the fortune to which the Misses Borden were now the sole heiresses, insured that every point would be examined and contested, and that the defence would benefit by the best legal advice. That which far exceeded propriety, however, was the ignorant comment by various newspapers demanding absurd favors for the "unfortunate girl", such as a special form of warrant in her case, lest her feelings might be wounded by the "harshness" of the ordinary phrases. Leaders of the Women's Auxiliary of the Y.M.C.A. and visiting clergymen decided the case, acquitted the prisoner out of their own small knowledge, and invited prayers through-out the United States for the "unfortunate girl."

As Mr Edwin Porter remarked, it seemed to occur to no one that perhaps Mr and Mrs Borden had been a little "unfortunate." The Rev. Mr Jubb emitted a blast in which he denounced Judge Blaisdell's action as "indecent, outrageous and not to be tolerated in any civilized community." Mr Jubb, a native of England, resident in this country about one year, had already become, according to a frequent custom of our adopted citizens, a severe critic of things American. Probably it did not occur to him that in his own land, had he made a similar utterance concerning a judge, he might very quickly have been laid by the heels. A date was set, later in the month, for a preliminary hearing before the District Court, and Miss Borden was taken to the jail at Taunton. After one postponement, the hearing began on August 25. Reporters were

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there from forty news. papers. Except for the presence of a jury, this was practically a trial, and lasted six days. More than a score of witnesses were examined, and as nearly all of them, with others, testified later at the trial before the Superior Court, it is needless to go into the evidence heard on this occasion.

One or two differences may be noted. Miss Alice Russell's evidence related events of the day of the murder only. Eli Bence and Messrs Hart and Kilroy from Smith's pharmacy swore to Miss Borden's attempt to buy prussic acid on August 3. Hart and Kilroy were both near enough to overhear parts of the conversation with Bence, and to hear her request for prussic acid. The appearance of Bence, says an observer, "in the judgment of many of the spectators in Court, produced evidence of uneasiness on the part of Lizzie Borden." (19)

Dr Edward S. Wood, professor of chemistry at Harvard Medical School, deposed that his tests for bloodstains on a hatchet and two axes found in the Borden house, and on a dress waist, two skirts, shoes and stockings belonging to the accused, were negative--- except for a minute spot on one of the skirts. This important point in Miss Borden's favor gave great relief to her friends and supporters.

The District Attorney then read the examination of the accused at the inquest. There followed two addresses to the Court: Mr Jennings for the prisoner, and Mr Knowlton for the Commonwealth. Mr Jennings did not dispute that Mrs Borden had been killed as early as 9.30 or 10 A.M., but he said that Professor Wood's evidence was "the deliverance of Lizzie Borden."

"They haven't proved that this girl had anything to do with the murder. They can't find any blood on her dress, on her hair, on her shoes. They can't find any motive. They can't find any axes . . . and so I say I demand the woman's release."

At the close of Mr Knowlton's reply, the judge gave his decision. The kindly, familiar tone of it was indicated when he addressed the prisoner by her first name.

"The long examination is now concluded, and there remains for the magistrate to perform what he believes to be his duty. It would be a pleasure for him, and he would

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(19) Porter, p. 110.

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doubtless receive much sympathy, if he could say: 'Lizzie, I judge you probably not guilty. You may go home. But upon the character of the evidence presented through the witnesses who have been so closely and thoroughly examined, there is but one thing to be done.

"Suppose for a single moment a man was standing there. He was found close by that guest chamber, which, to Mrs Borden, was a chamber of death. Suppose a man had been found in the vicinity of Mr Borden, was the first to find the body, and the only account he could give of himself was the unreasonable one that he was out in the barn looking for sinkers; then he was out in the yard; then he was out for something else; would there be any question in the minds of men what should be done with such a man?"

The old judge paused; his eyes filled with tears.

"So there is only one thing to do, painful as it may be---the judgment of the Court is that you are probably guilty, and you are ordered committed to await the action of the Superior Court."

## § 22

At some time in the weeks that followed, the District Attorney investigated a number of reports and rumors. The matter of the prisoner's sanity was not raised by the defence, then or later, but it had been questioned by someone, so a study was made of the

family history. Nothing of any significance was discovered. Positive assertions had been made that the accused woman, before the murders, had written a mad letter to friends in Fairhaven, saying that she had a new ax and was having a fine time whetting it. This is one of a dozen similarly wild tales: no such letter was written or received.

It may have been now that the anonymous rhyme began to circulate:

*Lizzie Borden took an ax  
and gave her mother forty whacks;  
When she saw what she had done  
She gave her father forty-one!"*

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(20) One raconteur of anecdotes of the case has reminded me of another couplet: "Andrew Borden, he is dead; Lizzie hit him on the head," etc.

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This was sung, so it is said, to the tune, "Ta-ra-ra-boom- de-ay", and used by children in "counting-out" games, like "Eeny-meeny-miny-mo." Whether this be true or not, the quatrain has gone round the world; I have seen it printed in newspapers from Australia, and from Durban, Natal.

Another contemporary bit of jocularly was that, on the morning of the fatal 4th of August, someone asked Miss Lizzie the time of day. "*I don't know," she replied, "but I'll go and ax Father."*

§ 23

Two detectives made brief and curious appearances. Soon after the murders, Superintendent O. M. Hanscom, of the Boston office of the Pinkerton Detective Agency, came to Fall River. Mr Hanscom had recently been consulted in New Hampshire, in the hunt for Almy, the murderer of Christie Warden, and his opinion proved to be correct. He was employed, so said Miss Emma Borden, by herself and her sister. He soon returned to Boston, and the results of his inquiries have never been published. It was popularly believed that he showed a disposition to pursue investigations within rather than outside the Borden house, and that his services became embarrassing. At all events, his engagement came to an end.

The other affair was more complicated. It illustrates the fact that the unscrupulous and meddlesome activities of individual reporters began even before the phrase "yellow journals" had been coined to describe two New York newspapers.

At the first news of the Borden murders, a private detective of Providence, named Edwin D. McHenry, who was at the time in New York, rushed to Fall River and began to make investigations. He was retained by nobody, but was moved purely by professional enthusiasm. The day of his arrival, so he said, he was engaged by City Marshal Hilliard to continue his studies, and to "take care of a Pinkerton man" who was in the city.

Mr McHenry had an old friend, associate and occasional enemy, in the person of a reporter for the Boston *Globe*, with the incredibly apt name of Trickey. Together they had investigated other notorious murder case's and made two stories grow for the newspapers, where no one else could find even one.

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During the dull weeks that now elapsed between the hearing in the District Court and the meeting of the Grand jury, newspapers and their readers were voracious for news, or, failing that, for gossip. Especially had many of the writers moaned and wrung their hands over the fact that there seemed to be so little in this crime to attract the sixteen-year-old reader, to whose taste and intelligence sensational journalism is directed. There was nothing amorous in the case, and this was a shocking state of affairs. It did not penetrate the minds of these folk that the *crime passionel* is sometimes a stupid, bungling affair, totally lacking in mystery and in the niceties of light and shade which make a murder interesting. Many of the best murders are committed, not for the hot passion of love, but for the colder one of avarice. In the 1890's, people did not use the word "sex" as an all-embracing term, but they knew what "love interest" was---and panted for it."

During September Mr Trickey and Detective McHenry brought out their colors and began to paint the lily. The exact share of blame to be assigned to each, in the affair which followed, can never be determined. When it came to an end, they abused each other like fishwives. The detective's own description of "the stuff I sold Mr Trickey", and its preparation, leaves him far from unspotted, but Mr Trickey has usually been considered the greater liar of the two.

Over the signature of Henry G. Trickey, the Boston *Globe*, October 10, 1892, printed "Lizzie Borden's Secret", an article beginning with three columns on the front page, and with ten more columns in the inside of the paper. Mr Trickey gilded the refined gold of the Borden case with a tale of which it would be rash to assert that it contained six lines of truth.

Beginning with the outrageous statement that the Government had twenty-five new witnesses, in addition to those examined before Judge Blaisdell, the reporter led

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(22) Some of the more preposterous Borden legends were invented at this time excursions into imaginary regions of psychopathia sexualis. The chronicler of murders soon learns to

view with suspicion the person who possesses information It which never came out", "inside stuff", "the straight dope" about a case. Not nine times, but ten times out of ten this proves to be sexual scandal of the most doubtful authenticity, and, whether true or not, utterly without any bearing upon the case.

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out a procession of affidavit makers called "John H. Murphy", "Mrs Gustave F. Ronald", "Peter Mahany", "Mr and Mrs Frederick Chace", "Mrs Abigail Manchester", "Mr G. Romaine Pittson" and others. Mr Trickey had something of Defoe's ingenuity in inventing names---for all of these persons were fictitious. They had- plausible addresses: "89 Eight Rod Way"; or "14 Dey Street, New York, residing at 108 East 126th St., in that city"; or "the second Queen Anne cottage on the street below Rhodes' pavilion on the right hand side of Broad St., Pawtuxet, Rhode Island."

The imaginary Murphy was to tell of seeing Miss Lizzie, at the time of her father's return, peering cautiously through the blinds in the room where Mrs Borden lay dead. Mrs Ronald, who dwelt in the Queen Anne cottage in Pawtuxet, had wheeled her baby's carriage through Second Street, in time to hear a dreadful groan and see Miss Borden in the guestchamber, her hair covered with a rubber cap. "Peter Mahany" sauntered along at a moment which enabled him to corroborate Mrs Ronald up to the hilt. Probably "Mr and Mrs Frederick Chace" had the best luck of all, for while they missed joining the group who all but witnessed the murders., it was their happy chance to call upon the Bordens the evening before. Here they overheard a loud quarrel between Mr Borden and his younger daughter, during which the old gentleman exclaimed:

"I *will* know the name of the man who got you into trouble !"

Here at last was something for the newspapers to set their teeth in. Here was the emergence of "Lizzie's lover"---that desirable being, whose failure to exist was making a thousand editors and reporters bite their nails in bitter despair.

Recriminations, threats and counter threats followed. With Miss Borden's lawyer, Mr Jennings, was now associated an attorney of Boston, Melvin O. Adams, Esq. He is said to have visited the office of the *Globe*, rumbling ominously of suits for gigantic damages. A prosecution for libel, however, would have been inconvenient for everybody, and General Taylor, of the *Globe*, pointed out reasons why an apology and retraction might be found satisfactory. The slice of humble pie on which the *Globe*

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breakfasted, October 12, took the form of an abject apology in the most conspicuous place in the paper. The *Globe*, it said, had been "grievously misled." Its "heartfelt

apology" was extended to Miss Borden and to her uncle. (Mr Morse had been implicated, as an accessory engaged in the suppression of evidence.)

Trickey had also been busily tampering with a Government witness-he tried to induce Bridget Sullivan to leave the country. He was indicted by a Grand Jury and fled to Canada, where, soon afterwards, he was killed by a railway train. It may be imagined that the Reverend Messrs Buck and Jubb exchanged solemn nods of comprehension at this, and quoted appropriate texts to the effect that the judgments of the Lord are righteous altogether.

The name of Detective McHenry was conspicuous through-out Mr Trickey's novelette. While Mrs McHenry, clad in black as guarantee of respectability, was going up and down the earth, ferreting out information, Mr McHenry was engaged, in Fall River, in the most active snooper. He said that he managed to crawl under the couch or bed in Miss Lizzie's room at the police station, and, while rather cramped for space, nevertheless overheard conversations which repaid him for his trouble. He seems to have been easily repaid, for all he heard were a few unctuous utterances from the lady's spiritual comforters, and her request to her sister to take back two biscuits left from luncheon and have them warmed over for supper.

In this year, 1892, the fame of Mr Sherlock Holmes was beginning to resound throughout the world. To the youthful readers of the Boston *Globe*, the piffling discoveries of Detective McHenry, smothering his sneezes under Miss Borden's bed, must have contrasted painfully with the exploits of the mighty Sherlock, during the creepy adventure of the Speckled Band, or while forestalling the schemes of the Red-headed League.

The exploit of the reporter and the detective was shameful, but, rather than working any harm to Miss Borden, my surmise is that it strengthened her cause. If such tales as these were false, many people may have argued, might not everything said against her be equally false?

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The reference of mythical Mrs Ronald to the rubber cap worn by the woman at her deadly work in the upper room, was an offshoot of the theory that the murderer of the Bordens had the foresight to wear a waterproof garment, or "gossamer ", as a protection against the shower of drops of blood which were supposed to have fallen at every swing of the hatchet. About three thousand persons conceived the idea of the "gossamer", or waterproof cloak, and nearly all of them wrote a letter about it to the District Attorney.

Far more delicious, however, was a notion which someone may have derived from reading about the murder of Lord William Russell by Courvoisier. It was that to avoid

blood-stains the person who killed Mr and Mrs Borden had stripped himself---or better, herself---totally naked. This had the flavor of lubricity which has made it the darling anecdote of the case. It will never die, so long as the Fall River murders are re- membered.

The thought is so precious, the notion of the secretary of a Christian Endeavor Society prancing through the house like a blood-drunken nymph at the Witches' Sabbath is so delightful, that it is with great sorrow that I must say that all evidence for it is wanting, and, on strictly practical grounds, it is most improbable. There was calculation and scheming in the murders; a plan hastily executed, to be sure, but nevertheless a plan. The possibility of interruption or premature discovery must have been considered, and, in that event, it would be easier to explain away a drop or two of blood on the clothing than to be surprised, at eleven o'clock of a Thursday morning, stripped to the buff.

It should be emphasized that the truth of the theory is denied by me on purely practical grounds; no question of modesty, either false or true, is considered. The anti-Puritan is so keen in finding prudes behind every bush that this must be reiterated. The sweet vision of a naked murderess has been revived lately, and with a new twist. The assertion has been made that the theory was gravely discussed at the trial and successfully refuted by Miss Borden's lawyer on the grounds that "a New England girl would be too prudish to do such a thing." The fact is, that nothing of the kind was mentioned by the prosecution, nor did counsel for the defence charge, by implication,

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that girls outside New England always pull off their clothes before slaughtering the old folks. For more than a dozen years, I lived in Greenwich Village, a region supposed to be entirely without inhibitions, where the Puritan is abhorred, and prudery a sin. In all that time, virtually none of the local parricides was committed by a naked damsel." (22)

§ 24

The Grand jury of Bristol County met at Taunton, November 15th. The District Attorney departed from custom by inviting Mr Jennings, Miss Borden's lawyer, to attend and present witnesses for the defence. Mr Jennings declined. Neither this, nor any of the other special privileges and courtesies extended to the prisoner, did anything to lessen the abuse which was visited upon the District Attorney and the Fall River police by partizans of Miss Borden and ill-informed sentimentalists. The ancient

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(22) The idea of a murder done by someone who is naked continues to have a great appeal, especially in England. It was suggested at the time of the murder of Emily Dimmock in Camden Town; and also when Mrs William Herbert Wallace was killed in Liverpool. On the stage, it was mentioned in Emlyn Williams' play "*Night Must Fall*."

The suggestion that the theory of nakedness in the Borden case originated with someone who had been reading about Courvoisier was found in a stray newspaper item, which I cannot



now identify. His story is interesting, since it illustrates how a mere rumor grows, with accretions, into an imperishable legend. Courvoisier, the Swiss valet of Lord William Russell, killed his master in London, May 5, 1840, was convicted and hanged. Thackeray, present at the hanging, wrote an essay about it. The murderer made a detailed confession (*The Times*, June 26, 1840) in which he specifically says that his only change in costume was to roll up his sleeves. But a rumor had it that an unnamed gentleman was in a near-by house, the night of the murder, and that, looking across into Lord William's, he saw a naked man bathing. Even while Courvoisier's guilt was still undetermined, the observing gentleman could not inform the police of what he had seen, because the house in which he was at the time, was one where he had no right to be! On this slight foundation, aided by the piquant incident of the unknown gentleman adulterer, seems to have arisen the legend of the naked murderer. That the whole tale was invented in some club, or that the amorous gentleman might have looked not only out of the wrong house, but into the wrong house as well, and that the bather was not Courvoisier at all, or, if it was he, that he was merely taking a bath in the ordinary course of his toilet, and had undressed for the purpose (many people do) with no thought of bloodstains--- any one of these prosaic explanations would be abhorrent to the determined romantics. By his own account, which sounds reasonable throughout, Courvoisier received few bloodstains, and removed them easily---as many murderers have done. For his case, see J. B. Atlay's "*Famous Trials of the Century*" (1899), or the same essay in the *Cornhill Magazine*, May, 1897.

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charge was trotted out that the police were deliberately trying to hang an innocent woman and had manufactured the evidence. People demanded her liberation without trial, because she was a woman, or because she was a church member.

The question of her guilt or innocence caused violent family dissension's and wrangling at dinner tables. The frequent, but not the invariable, division in families was according to sex: men saying, "Of course, she did it", and women retorting, "She never could have done it." Almost everywhere in the United States, mention of "Lizzie" would start an argument. A lawyer who chanced to travel at this time from San Francisco to Boston and Fall River found that believers in the prisoner's innocence were more numerous in distant places, where the newspapers had printed less about the case. This belief steadily dwindled as he came east, and dropped sharply in and near Fall River.

The activities of Mr Buck and Mr Jubb, and some of their flock at the Central Church, were, of course, constant. In various places, men and women of literary distinction felt sure that the officers of the law were in error. This was especially true of novelists, since the first article in the creed of the writer of fiction is that persons arrested by the police are invariably innocent. The criminal classes owe a great debt to the writers of detective novels, short stories, plays and motion pictures, who during fifty years have, over and over again, displayed the prisoner in the dock as the only spotless character in the cast.

Another reason for imaginative writers to disagree with the officers was that, artistically speaking, the Borden murders were impossible.

It would be unfair to suggest that all of Miss Borden's partizans were either people of superficial knowledge or else narrow sectarians. A number of Congregationalist ministers deplored the efforts of the Fall River group to interrupt the course of justice with hallelujahs. And later events showed that the Fall River church was far from unanimous.

Many of Miss Lizzie's defenders were moved by influences which arise after every notorious homicide. Those whose humanitarian zeal leads them to wish to abolish capital punishment are often inclined, somewhat disingenuously, to proclaim

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their belief in the innocence of everyone who is accused or convicted of murder. Their minds, supersensitive rather than robust, shrink from the mere thought of crime; they try to believe that the thing did not happen; or else eagerly search for an excuse for it, such as "insanity." Sometimes they are curiously willing to believe in the guilt of another distant person---anyone, so long as there is no convincing evidence against him, and no reason for convicting him. They start a backfire to distract attention from the convict, or seek to do away with the particular law by pretending either that it has not been broken, or has not been broken by the person duly convicted.

The Springfield *Republican*, at this time one of the ablest newspapers in Massachusetts, comparable to the Manchester *Guardian* in its political and social doctrines, published an editorial article denouncing the Fall River police for "lack of wisdom" and "lack of ability", adding:

"Because someone, unknown to them [the police] and too smart for them to catch, butchered two people in the daytime . . . using brute force, far in excess of that possessed by this girl, they conclude that there is probable reason to believe that she is the murderess."

The *Republican*, at a later date, slightly altered its tune. But what has been written here, so far, is vain labor if it does not tend to suggest to the reader that the Fall River police were right in thinking there was "probable reason", and that Judge Blaisdell would have been acting in defiance of common sense had he failed to commit the accused for trial.

That this crime interested people of notable intellectual ability is indicated by an anecdote about one of the most brilliant families in the land. A guest at the Lowells' was at dinner one night with Amy Lowell, the poetess, Percival Lowell, the astronomer, and his brother, Lawrence Lowell, now president emeritus of Harvard. In the midst of dinner, they suddenly began to act out the Borden trial: Percival took the role of prosecuting

attorney, while Lawrence, in an astonishing speech, proved that the ax committed the double murder all alone, and then went and buried itself in the garden." (23)

After listening to many witnesses, the Grand jury, towards the end of November, adjourned until December 1st. It has been said that they were in doubt, but this seems improbable. It is a fact that events were to be influenced by a struggle then going on

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(23) Amy Lowell. By S. Foster Damon. (Boston 1935). P. 106.

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in the mind of a witness, who had appeared at this "Grand Inquest" as she had also appeared at the lesser inquest, and the hearing before Judge Blaisdell. She had obeyed the oath to tell the truth but feared she had not regarded that part of it which demands "the whole truth." Her conscience was troubling her, and so was the practical consideration of her own safety before the law.

Much is said, in admiration or in satire, about "the New England conscience." As I have ventured to doubt whether New England is afflicted by any specially rigid brand of Puritanism not found in many other regions, I am also disinclined to believe in any special kind of conscience, whether pure and lofty, or merely fussy and foolish, possessed exclusively by New Englanders. Doubtless, there are among them, as with every other sort of people, men and women highly conscientious and noble, and others whose consciences are simply morbid. But it was true at this time that secret torments were being endured, because information had been withheld.

Miss Alice Russell, it will be remembered, was the friend and neighbor of the Bordens, who had listened to Miss Lizzie's singularly accurate predictions of disaster. After the murders, she had spent three or four days and nights in that tragic dwelling on Second Street--an act of devoted friendship, for the place was not only a charnel house, but a focus of curiosity and sensation. Miss Russell's reputation is that of a high-minded and courageous woman. Ever since the inquest, she had literally been spending sleepless nights.

Finally, she sought legal advice, which was emphatically given. It was to communicate instantly with the District Attorney. This she did, with the result that when the Grand jurors met again, December 1st, Miss Russell re-appeared before them and gave evidence as to a single incident, hitherto unrevealed.

On the Sunday following the murders (when the roll call was being held at the church) those who ate breakfast at 92 Second Street were the Misses Borden and

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Miss Russell. Mayor Coughlin had paid his maladroit visit the evening before, and given warning to Miss Lizzie. After breakfast, Miss Russell went into the kitchen, where Miss Emma was washing dishes---the servant being absent. Miss Lizzie was at the stove, preparing to burn a dress. In reply to a question from her sister, Miss Lizzie said she was going to burn "the old thing" up, as it was covered with paint.

Miss Russell advised her not to let anybody see her do it, whereupon Miss Lizzie took a step backwards, as if to keep out of sight, but continued with what she was doing. There was a policeman on guard outside. Miss Russell left the room. Next day she said to Miss Lizzie:

"I am afraid, Lizzie, the worst thing you could have done was to burn that dress. I have been asked about your dresses."

To which Miss Lizzie replied: "Oh, what made you let me do it?"

Having heard this testimony, the Grand jury returned three indictments against Miss Lizzie: one for the murder of Mr Borden, one for the murder of his wife, and one for both murders. At the time of voting, there were twenty-one Grand jurors present. Twenty voted "a true bill" and there was one negative vote. (24)

## § 25

Between the return of the indictments and the trial, there was a delay of six months--not unusual in our slow-moving courts. It was entirely agreeable to counsel for the defence, but it gave the more chuckle-headed of the Borden partisans an added opportunity to abuse the legal authorities, to allude to Taunton jail as a "Bastille" and Miss Lizzie as a Christian martyr. Mr Knowlton, the District Attorney, was again assailed.

That officer was in, perplexity. It would have been customary for the Attorney General of the Commonwealth to lead in the prosecution of such an important case, but the incumbent, Mr Albert E. Pillsbury, had decided to refrain. His official reason was stated to-be his impaired health. Mr Knowlton was more conversant with the evidence than anyone else, and was not the man to avoid a duty because it promised to be unpleasant. He understood, better than anyone else, both the strength and weakness of his case.

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(24) For the vote in the Grand jury, see Porter, p. 142.

To the almost insuperable difficulty of inducing a jury to convict a woman on the capital charge, even on strong evidence, was added the unusual array of influences working in behalf of this prisoner. There was also to be considered the ignorant but persistent prejudice against circumstantial evidence---certain to be invoked, as all of the evidence was of that kind. (25)

Mr Knowlton wrote to the Attorney General this letter:

New Bedford, Mass.  
April 24, 1893

Hon. A. E. Pillsbury, Attorney General:  
My Dear Sir:

I have thought more about the Lizzie Borden case since I talked with you, and think perhaps that it may be well to write you, as I shall not be able to meet you probably until Thursday, possibly Wednesday, after- noon.

Personally I would like very much to get rid of the trial of the case, and fear that my own feelings in that direction may have influenced my better judgment. I feel this all the more upon your not unexpected announcement that the burden of the trial would come upon me.

I confess, however, I cannot see my way clear to any disposition of the case other than a trial. Should it result in disagreement of the jury there would be no difficulty then in disposing of the case by admitting the defendant to bail; but a verdict either way would render such a course unnecessary.

The case has proceeded so far, and an indictment has been found by the Grand Inquest of the county, that it does not seem to me that we ought to take the responsibility of discharging her without trial, even though there is every reasonable expectation of a verdict of not guilty. I am unable to concur fully in your views as to the probable result. I think it may well be that the jury might disagree upon the case. But even in my most sanguine moments I have scarcely expected a verdict of guilty.

The situation is this: nothing has developed which satisfies either of us that she is innocent, neither of us can escape the conclusion that she must have had

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(25) The widespread delusion that circumstantial evidence is not reliable is another advantage enjoyed by criminals and their attorneys. Thousands of writers of fiction, over a period of many years, have done much to implant the idea that more mistaken convictions result from circumstantial than from direct evidence. The exact reverse is the truth.

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some knowledge of the occurrence. She has been presented for trial by a jury which, to say the least, was not influenced by anything said by the Government in the favor of the indictment.

Without discussing the matter more fully in this letter I will only say as above indicated that I cannot see how any other course than setting the case down for trial, and trying it, will satisfy that portion of the public sentiment, whether favorable to her or not, which is worthy of being respected.

June seems to be the most satisfactory month, all things considered. I will write more fully as to the admission of her confession after I have looked the matter up.

Yours truly  
HOSEA M. KNOWLTON

The reference to the Grand jury recalls the fact that the jurors, at the close of their session, wished to enter upon the records, and also to publish, a document stating that Mr Knowlton had been thoroughly impartial in presenting the evidence for the Commonwealth. On his advice, they did not do this.

The use of the word "confession", in the last paragraph of Mr Knowlton's letter, can be explained only by inadvertence. There had been nothing like a confession by Miss Borden. What was undoubtedly meant was her examination at the inquest. Instead of a confession, it consisted of denials, but it contained so many contradictions that the prosecution relied upon it as important to their case.

§ 26

The arraignment of Miss Borden before Mr Justice Hammond of the Superior Court, took place at New Bedford, May 8, 1893. To the indictments she pleaded "Not guilty", and then was returned to Taunton jail.

Shortly before the trial a deputation of clergymen called upon the judges who were to preside. Their purpose seems to have been to announce that they desired the trial to be fair--that is, to result in an acquittal. So certain were they of their own righteousness that it probably did not occur to them that they were guilty of a gross impropriety. These reverend Meddlesome Matties were received courteously, instead of being treated according to their deserts and thrown out.

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The trial was set for June 5th, also at New Bedford. It was the newspaper sensation of the year, even in this summer of the World's Fair at Chicago. The Boston *Herald* described the plans made for reporting the trial. It was expected that 150,000 words would be sent out daily. Eight or ten wires had been run in by the Western Union and Postal Telegraph companies, and fifteen or twenty operators brought to town. Carriage sheds in the rear of the courthouse were to be used by telegraph operators. The *Herald*

would have two wires, for use day and night. Thirty newspaper correspondents and artists were in New Bedford the night before the trial opened.

Reporters at recent trials, like that of Hauptmann in New Jersey in 1935, will be inclined to smile at these preparations for the big story of the year 1893. They will have to get their amusement out of this side of it alone. In every other aspect, in the adequate space provided, and in the decorum of the Court, the advantage was all with New Bedford of the '90's. Dignity and the proper conduct of trials are perfectly possible in communities where public opinion supports the judge who refuses to allow spectators and newspaper men to overrun the room and create disturbances. The sensational trial of Mrs Costello at Salem, in 1933, was conducted in perfect decency.

The newspaper correspondent who made the greatest splurge at New Bedford was a pompous old personage called Joseph Howard, Jr. The perpetrator of a hoax during the Civil War, containing an alarming report likely to depress the stock market, he had been shut up for a while in a fortress, from which he was released through the lenience of President Lincoln. The hoax called for an enormous conscription, and was issued in a bogus presidential proclamation. Similar offenders, in some countries, have ended their careers before a firing squad-but American "good nature" is boundless." (26) Mr Howard at New Bedford, with the assistance---then unusual---of a golden-haired

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(26) In an autobiographical sketch in later years, Mr Howard described his feat as a harmless joke, This is not the view of it taken by Nicolay and Hay, in their life of Lincoln, nor was it thought harmless by Manton Marble, editor of *The World*, one of the papers which was suspended because of Mr Howard's "joke."

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stenographer, represented the New York *Recorder* and the Boston *Globe*. He made himself look more important than judges, jury and prisoner, as he filled several columns daily with despatches which were eagerly read by those who prefer bubbling impressions to matter-of-fact reports.

Possibly the most distinguished newspaper correspondent in America at this time was Julian Ralph. He attended the Borden trial for *The Sun* of New York, whose policy, for many years, had been to print admirable reports of trials of this kind. Mr Ralph's despatches were also printed in the Boston *Herald*.

According to the requirement of law at that time, three judges of the Superior Court presided. These were Chief Justice Albert Mason, and Associate Justices Caleb Blodgett and Justin Dewey. Gray-bearded and benign, they sat upon the bench in black coats, but wearing no robes. They gently waved palm-leaf fans. To the intense discomfort of all who were to spend the next two weeks in that court, the weather was intolerably warm.

On the advice of her attorneys, Miss Borden had retained, as the leader of her defence, George D. Robinson, Esq., who had the reputation of being one of the ablest jury lawyers in the state. Mr Robinson, years earlier, had been serving as a Member of Congress when his party called him back to Massachusetts as the only candidate who could defeat General Benjamin F. Butler for the office of Governor of the Commonwealth. He was elected for three terms, and had retired from the governorship about six years before this trial. He was a shrewd Yankee, who thoroughly understood the opinions and prejudices of the "plain man" in rural districts and small communities. With him were Mr Jennings and Mr Adams.

Mr Knowlton had secured for his associate in the prosecution, a District Attorney from the northeastern part of the state: William H. Moody, Esq., youngest of all the counsel in the trial, although he was then forty years of age. Mr Moody was the only one of the five lawyers in the case who was to win distinction outside his own state. He was later to serve in Washington as Secretary of the Navy, Attorney General, and for four years as an Associate Justice of the Supreme Court of the United States.

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(27) For biographical details see "The judges and Counsel", at end.

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The prisoner, doubtless acting by suggestion of her lawyers, who are often thoughtful stage managers, appeared entirely, or almost entirely, in black. For the first time since the murders she had gone into mourning. She was carefully observed by reporters and sob sisters. Artists filled the newspapers with dreadful sketches of her, but one competent magazine illustrator, B. West Clinedinst, did justice to her and her leading counsel in Leslie's Weekly. Twice, during the trial, she swooned or seemed to be overcome in some degree. Once was at the close of Mr Moody's speech for the prosecution; and once was during the production in Court of her father's skull. Whether these were actual faintings, or whether she was prostrated, temporarily, by the heat, and her "new dress of black mohair," with leg-of-mutton sleeves, it is impossible to determine.

## § 27

In discussing a trial, especially in a book which includes a report of the proceedings, it would ordinarily be proper or desirable to refrain from comment, and allow the reader to arrive at his own conclusions. This is often imperative in the event of a verdict like that in the Borden case. But there are special considerations in this instance, and these, it seems to me, permit a different course.

First, this article is designed to trace the whole history of the event and to tell something of the career of the woman most concerned, and the state of public opinion---



both the thoughtful and the ill-considered. It would be idle to pretend that the prima facie case against the accused was other than strong; that the police could have acted otherwise than they did; or that any of the theories of the crime advanced as alternatives to the case for the prosecution were not close to incredible. Almost every person intimately connected with the case is now dead, and there is no possibility of wantonly hurting anybody's feelings.

Finally, and most important, the case was peculiar in that the verdict was never considered a satisfactory conclusion. In spite of the hosannas of partizans, and the

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applause of a press which had become girlish in its enthusiasm, many responsible and well-informed persons expressed themselves as disgusted at the outcome. The foremost writer in America on the subject of evidence published, in *The American Law Review*, only a few months after the trial, an article which plainly 'indicates that he believed the police of Fall River had committed no error when they made the arrest. Moreover, a learned judge of a Massachusetts court departed from custom so far as to write, for a newspaper, letters which contain the severest strictures upon the interpretations of rules of evidence by the judges at New Bedford.

To take advantage of the exposition of the case published by Professor Wigmore,(28) it will be convenient to adapt and condense his analysis of the case for either side. The Commonwealth sought to establish that there were prior indications of guilt as shown by motive and design; concomitant indications, in that the accused had opportunity, and both means and capacity; and that there were posterior indications as shown by consciousness of guilt.

The evidence as to motive was in the family history: the ill will shown by Miss Lizzie in various remarks about Mrs Borden, such as describing her in conversation with Mrs Gifford as "a mean, good-for-nothing old thing", and in the fact that the sisters tried to avoid sitting at table with the older people. The general motive was that the daughters feared that their stepmother, through their father's will, or otherwise, might get more than her fair share of his property, and that this fear increased an animosity already in existence.

It was intended to show design to commit a murder by the attempt to buy poison; by the conversation with Miss Russell predicting disaster; and by the inducements offered to get Bridget out of the house to attend a bargain sale. [In the morning!] As for opportunity to commit the crimes, the facts as to this were obvious. Capacity to kill these people (despite the scepticism of the *Springfield Republican*) was hardly to be denied; medical testimony was to the effect that there was nothing to show that the

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(28) "The Borden Case", by John H. Wigmore. In *The American Law Review*, Nov.-Dec., 1893- Vol. 27, No. 6, pp. 819-845. Mr Wigmore, author of *Treatise on Evidence, Principles of Judicial Proof*, etc., has long been Professor of Law at Northwestern University and was Dean of the Law Faculty, 1901-29.

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blows could not have been struck by any woman of ordinary strength. Means to commit the crimes were to be found in the "handleless" hatchet discovered in the cellar. (29)

Consciousness of guilt was declared to be proven by the story about the note brought to Mrs Borden, when no such note came; by the false stories of the visit to the yard or to the barn, and by other contradictory statements about her own conduct at the time of the murder. It was charged that she must have had a knowledge of the death of Mrs Borden when she was pretending otherwise, and, moreover, that she concealed this knowledge, when she sent others to look for the dead woman. And it was charged that she destroyed suspicious material---that is, the dress which might have been stained with blood in sufficient quantity to be revealed by chemical analysis, though not enough to be noticeable in a hasty inspection by excited friends.

Professor Wigmore thought that the prosecution failed to show that the dress destroyed was the dress worn at the time of the murders, but that the evidence was very strong that the one worn on that day was missing, and was not the one handed over by the accused as the dress of that day. She gave the officers a silk dress.

The defence, to go on with this analysis, relied first on character evidence, based on the church membership and charitable work of the accused. Counsel for the defence could not shake the evidence of motive, although Miss Emma's testimony was to the effect that she, herself, rather than Miss Lizzie, had failed to become reconciled with their stepmother. The only flaw they could suggest in regard to the exclusive opportunity of the prisoner was to reveal a brief period when the side door was unlocked. Otherwise they relied on vague reports of strange loiterers seen in Second Street that day. That the "handleless" hatchet could have been the weapon was not seriously impugned---except by the suggestion that the police evidence was wilfully false. The best they could do with the damaging story of the note to Mrs Borden was

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(29) There is an almost universal belief that the actual weapon was never found. Yet the "handleless" hatchet fitted all the requirements, and bore suspicious traces of having been recently washed, rubbed in ashes and deliberately broken.

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to offer a theory that it was part of the murderer's scheme to entice Mrs Borden away. The inconsistent stories told by the prisoner were explained by the excitement of the murder, or they were "in part slid over, in part ignored, and in part discredited."

"The stronghold of the defence," wrote Mr Wigmore, "was the utter absence of all such traces or marks as would presumably be found upon the murderer. No blood was seen upon her by the five or six people who came in within ten minutes . . . One or two of the experts were willing to say that it was practically impossible to deal the twenty-nine blows without receiving more or less blood on the garments and perhaps in the hair (though it does not appear that her head was examined for blood). It is safe to say that this was the decisive fact of the case."(30)

The proceedings, thinks Mr Wigmore, were a model of what trials should be. The cross-examinations of Bridget Sullivan and Emma Borden were superb pieces of work.

"Not an objection was made with anything but courtesy; but not a point was yielded that could by possibility be maintained . . . not an item of evidence was offered without carefully laying the necessary foundations."

## § 28

From the viewpoint of legal procedure the Borden trial was notable for two surprising decisions by the Court as to the admissibility of evidence. On June 12th, the seventh day of the trial, the District Attorney offered the examination of Miss Borden at the inquest. (See following the Trial.)

The importance of this to the case for the Commonwealth lay in a number of points. It was her only statement under oath; never before and never again did she permit herself to give evidence. It told in detail the strange story of her visit to the barn, and was at variance with her earlier accounts. And it contained a remarkably large number of answers which were either self-contradictory or opposed to the evidence of others.

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(30) The subject of the extent and direction of the shower of blood drops in an attack with a weapon of this kind is one that needs more investigation. Thomas Bram, in the U. S. Circuit Court in Boston, in 1897-98, was twice convicted of the murder of three persons on the ship Herbert Fuller at sea. An ax was the weapon, and it was necessarily swung in the confined space of a ship's cabin. There was less opportunity here than in the Borden house, to wash away blood-stains. Yet the men who saw him directly after the murders saw no blood at all on him.

For examples, at the inquest, she said that she changed her dress to a pink wrapper after the murders, because "they" told her to. No one was found who told her to do this.

She said that she was in the kitchen or dining room when her father returned; then, that she was in her room upstairs, when the bell rang; then, that she was on the stairs coming down; and finally that she was in the kitchen. In this she contradicted Bridget, who heard her laugh upstairs, when Mr Borden came in. These contradictions might have sounded natural enough, had she not seemed to be fumbling, when there dawned on her the implications in being placed so near to Mrs Borden's body. She said that she did not see Bridget after Bridget let her father in-again contradicting the servant, who reported remarks made to her by Miss Borden after Mr Borden was in the house. She said that her father had taken off his shoes and put on slippers, and later said, again, "I saw him taking off his shoes." Mr Borden, when found, had on his Congress shoes.(31)

At the inquest, Miss Borden further testified that she went to the barn to get sinkers, because she knew that she needed sinkers on fishlines which were at the farm, fishlines she had not seen for five years! Further, that she stayed in the hot barn loft fifteen or twenty minutes hunting sinkers, eating pears and looking out the window. And that when she discovered her father, she did not know whether he was dead or not, and made no effort to find out. Yet Bridget and Mrs Churchill both testified that she said "Father's dead" or "Someone has killed Father." And that Mrs Borden had told her she was going out without changing her dress, saying "This dress is good enough." Mrs Borden was wearing a cheap calico working dress; to anyone who knows the old-fashioned housewife of her type, and what a stickler she was for little decencies of precisely this kind, the story is unbelievable.

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(31) This contradiction might possibly be explained by confusion: that on some previous occasion she had seen him taking off his shoes, etc. But I have been told by a person who well knew Mr Borden and his daughters, that the story told to Mr Hiram Harrington, of her solicitous attentions to her father, was incredible, in view of the strained relations between them. Mr Harrington testified at the inquest.

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Not any one of these items is, perhaps, of great importance, and some readers may be inclined to minimize them all, as the result of confusion, mistakes of memory, or the like. But that counsel for the defence considered the sum total injurious to their client is indicated by their vigorous efforts to have them excluded. (See Trial, for arguments and ruling.)

In this, they were successful: the Court decided that Miss Borden was "practically under arrest" from the time of Mayor Coughlin's call, and would be denied her constitutional rights if her answers were read to the jury and she were thus made a witness against herself.

The other contest about the admission of evidence arose when the prosecution offered the testimony of Eli Bence and his associates, as to the attempt to buy prussic

acid. After listening to argument, the Court excluded this evidence on the ground that it had not been proven that prussic acid may not have an innocent use! At this, the layman is simply floored. To decide that a jury, investigating a murder, shall not be allowed to hear of an attempt by the accused to procure a deadly poison only twenty-four hours before the murder, and to hear that the decision is based on such a reason, seems to him equivalent to a ruling that they should not be told of an attempt to buy a revolver, because a revolver may have innocent uses. And it is with satisfaction that he finds a judge using the same analogy.

Upon the exclusion of the inquest testimony, Professor Wigmore writes:

"Is there any lawyer in these United States who has a scintilla of doubt, not merely that her counsel fully informed the accused of her rights, but that they talked over the expediencies, and that he allowed her to go on the stand [at the inquest] because he deliberately concluded that it was the best policy for her, by so doing, to avoid all appearance of concealment or guilt? And yet the ruling of the Court allowed them to blow hot and cold---to go on the stand when there was something to gain and to remain silent when the testimony proved dangerous to use."

Upon this point, and upon the conduct of the entire case, we have the comments of a Massachusetts judge, published a few months after the trial. Judge Charles G.

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Davis, of the Third District Court, writing under date of Dec. 23, 1893, to the Boston Advertiser, (32) said among other things:

"It is difficult to see how Miss Borden was under arrest when she was not under arrest . . . If she was a voluntary witness her testimony was admissible . . . It surely appears that she was a voluntary witness, and the Court had the same powers of judgment which a jury would have on a simple question of fact, to consider whether, unless there was a guilty conscience which believes 'each bush an officer', she had any reason to consider herself under arrest any more than the other persons in the house, and whether or not she testified because it would be a moral condemnation to refuse."

Upon the exclusion of the poison testimony, Professor Wigmore says:

"A professional furrier . . . was held unqualified to say whether prussic acid was used in preserving furs . . . and the medical examiner . . . Dr Dolan was not allowed to say whether prussic acid had any capacity . . . in the same connection . . . What a wonderful web of obscurity the legal mind can contrive to weave over the simplest matters! A woman of ordinary knowledge is alleged to have bought [sought?] prussic

acid for cleaning furs; but two men of technical accomplishments are not allowed to say that there is no such use known to their experience! . . .

"As for the authorities, which were fully cited on both sides, the clear result is for the admission of the evidence . . ."

And on this subject, Judge Davis, in the letter already quoted, says:

"There was a ruling during the trial which was received with almost universal surprise by the Bar. I refer to the rejection of evidence that the prisoner, within twenty-four hours of the homicides, attempted to purchase a deadly poison. It seems sufficient to claim that it is a common practice to trace back before a jury all the life of a prisoner, as a detective would trace it for at least that period before the alleged crime; of course, with certain limitations, such as not proving another crime of a different nature as evidence of guilt in the case in issue; leaving it to

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(32) *The Conduct of the Law in the Borden Case . . .* By Judge Charles G. Davis, Plymouth, Mass. (Boston Daily Advertiser, 1894.) This is a compilation of five letters addressed to the Editor of the Advertiser, Dec. 1893 and Feb. 1894. The author, Charles Gideon Davis, was born in Plymouth, Mass., May 30, 1820. Graduated from Harvard, 1840. Practiced law in Boston and Plymouth. In 1874, appointed judge of the Third District Court. Was an Overseer of Harvard College.

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the jury to decide whether they see any evidence or ground for suspicion of murderous intent or "dreadful preparation" for the crime in question.

"The Court permitted the Government to prove the general facts as to the character and recognized uses of prussic acid, for which it was claimed that the prisoner inquired, and which she said she wanted to treat sealskin furs; and then, because a furrier and a druggist did not know that it was used for such a purpose, rejected the evidence. This was in effect a ruling that a circumstance of independent or helpful evidence, not essential to proof of guilt, but looking in that direction, could not be shown in a case of circumstantial evidence. It was a ruling that such evidence should not be left to a jury, but only admitted or rejected, at the whim of the Court. It was a ruling that if the homicide was committed with a hatchet evidence that the prisoner sought the purchase of an ax the day before was not admissible because an ax is used to split wood; in other words, if the murder was committed with one deadly instrument or article, the fact that she endeavored to obtain another deadly agent and could not get it, could not be shown.

"It is a matter of common knowledge that sealskins furnish no nidus for moths. The occasion was in August, long after midsummer, and if the evidence had been admitted it would have been open to explanation, like any other inculpatory fact. Suppose that the Government had offered to show that the prisoner's dress, after the murders, was as white as the newly driven snow, and the defence had objected. The

prisoner, by her counsel in his opening, declared that 'the relations between father and daughter were the relations that ordinarily exist between parent and daughter' . . . and that he was her 'loved and loving father'. Suppose that the Government had claimed, what to many minds is one of the most suspicious facts in the case, that, if innocent and ignorant of this terrible and unsuspected crime, she would as a loving daughter not have failed to have been in some way marked with blood by that sea of gore from 'twenty mortal murders on their crowns'.

"In the rejection of the testimony offered on the attempt to purchase prussic acid, the Court practically held that if a prisoner tried to purchase a gun the day before a murder, and the murder was committed with a pistol, his attempted purchase could not be shown, if the prisoner stated that he wanted the gun to shoot cats, unless the Government could show affirmatively that a gun was never used for shooting cats."

## § 29

The decision excluding the poison testimony was the second blow at the case for the Commonwealth. It was given on the tenth day of the trial, and many newspaper correspondents began to show the disposition of rats aboard a sinking ship. At least

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one reliable newspaper, hitherto impartial in its reports, commenced to publish, in its special correspondence, articles written by "sob sisters", full of phrases about the "dawn of hope" for Miss Borden, and the "sun breaking through the clouds" and shedding its radiance upon her ivory brow.

Among her more ecstatic friends, the only question appeared to be whether, when she was carried in triumph once more to her home, counsel for the Commonwealth and the City Marshal of Fall River should be led behind her in chains, or should instantly be immolated in public, in front of the New Bedford courthouse.

An attorney, who had come to New Bedford at request of Mr Knowlton to advise in the debate about the poison testimony, arrived too late to help. The decision had been rendered. During a recess, he found Mr Knowlton and Mr Moody in their private room. Mr Knowlton was sitting in a chair, pale and depressed, while Mr Moody stalked up and down, protesting against going on with the case. He wished not to prosecute further, since the evidence for the Commonwealth was being thrown out. His advice was to put upon the Court---a hopelessly biased Court, as they both believed---the responsibility of freeing the prisoner. Mr Knowlton refused.(33)

Some of the other comments of Mr Wigmore and Judge Davis are of unusual interest. They refer to aspects of the trial aside from the rulings upon the inquest and poison evidence.

Upon the great difficulty of the bloodstains, Mr Wigmore has this:

"It is difficult to see how the assailant could have avoided receiving blood marks during the assaults; it is also difficult to understand what arrangements of implements and clothing, and what combinations of opportunity, sufficed to allow the accused, if she was the assailant, to remove the traces upon weapon and clothes after each assault. But, first, these are difficulties of ignorance; in other words, there is no proved fact which is inconsistent with the thing being so; we merely cannot find traces of the exact *modus operandi*; second, this difficulty is equally as great for any other person than the accused, and we may say greater; it is a difficulty that cannot change the balance of the conviction. On the other hand,

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(33) Statement to the editor by the late John W. Cummings, Esq., who was the attorney.

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the conduct of the accused after the killing was such that *no conceivable hypothesis except that of guilt* (34) will explain the inconsistencies and improbabilities that were asserted by her.

"The statements about the purpose of the barn visit, and about the discovery of the father's death, are frightfully inconsistent; while the story of the note requires for its truth a combination of circumstances almost inconceivable. (34)

"We may add to this the inevitable query: Why did the accused not take the stand to explain these things? Of course, it was her legal right to remain silent, but the rule against self-incrimination is not one of logic or of relevancy; it is a rule of policy and fairness, based on broad considerations of average results desirable in the long run. It cannot prevent us, as logical beings, from drawing our inferences, and if we weigh in this case the confounding inconsistencies and improbabilities of those statements, and then place with these the opportunity and the refusal to explain them, we cannot help feeling that she failed to explain them *because she could not*; (35) and one side of the balance sinks heavily.

"This is not saying that the evidence justified a conviction. If we were to subtract the evidence that never got before the jury, and measure our judgment by the rule which requires proof beyond a reasonable doubt, we might well conclude, as jurymen, not to cast the die for conviction and death. (36) The mind is inclined to hesitate at that point."

Against only one of the counsel does Mr Wigmore direct severe criticism, and this is against the eldest, and, in public life at that time, the most distinguished. It was ex-



Governor Robinson who was responsible for the "only blot upon an almost perfectly conducted trial" when he attempted to show in argument that the information as to the note emanated originally from Bridget, and that the accused merely repeated it.

"This was decidedly a breach of propriety, because it was not merely an argument suggesting the fair possibility of that explanation, but a distinct assertion that the testimony was of that purport, and therefore, in effect, a false quotation of the testimony. In truth the accused's statement about the note was her own alone, and was one of the facts to be explained.

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(34) Italicized by the editor.

(35) Ibid.

(36) The use of the word "death" as a possible fate for Miss Borden is rhetorical, whether used by Mr Wigmore or by her counsel. For 150 years, apparently, Massachusetts has been too tenderhearted to execute a woman. Even Mrs Robinson, slayer of seven people, was spared.

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One final quotation from Professor Wigmore:

"As for the police and their work, there were complaints that they exceeded their duty and exhibited a spirit of persecution utterly unjustifiable. This, one is persuaded, was an unfounded accusation . . . On the contrary, such criticism as the police deserve is that of lack of thoroughness, system and care in their methods. They did not go far enough . . . Doubtless the irresponsible babblers would have raised an outcry at the enforcement of a strict and businesslike search; but such outcries will have to be ignored if crime is to be traced out . . ."

§ 30

While Mr Wigmore, writing from another state (from Northwestern University, Illinois) did not hesitate to speak frankly, he was exceeded in outspoken criticism by judge Davis, of the Massachusetts judiciary, who was senior to the judges at the trial, both in years and in service on the bench. Moreover, he commented upon the charge to the jury the third great surprise of the trial--which Mr Wigmore did not mention.

Judge Davis said:

"With the profession there is a general dissatisfaction with the law of evidence administered at the trial . . .

"The radical mistake of the trial seems to have been a disregard of the rule laid down by Starkie on evidence, Vol. 1, P. 505, [10th American edition, 1876, p. 859] concerning circumstantial evidence, which I give entire.

" 'But thirdly, it is essential that the circumstances should be of conclusive nature and tendency. Evidence is always indefinite and inconclusive when it raises no more than a definite probability in favor of the fact alleged, as compared with some definite probability against it, whether the precise proportion can or cannot be ascertained. It is, on the other hand, a conclusive nature and tendency when the probability in favor of the hypothesis exceeds all limits of an arithmetical or moral nature.'

"In this case, two important elements or matters of inquiry were practically eliminated at the outset. These homicides were neither the acts of a robber nor of a roving [sic] maniac. They were acts showing plan and intent. There was no evidence of any motive of any stranger to murder the victims, and especially a quiet, inoffensive woman of domestic habits. And they were not acts of homicidal spasm or mania of a wild man, inasmuch as the prisoner was neither harmed nor made cognizant of his presence.

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"The question was not alone, 'What are the chances that any murder should be committed by a stranger in the middle of the forenoon, with more or less windows open, in a city, in a dwelling house, on a frequented street, with workmen on adjoining lots and a servant girl outside washing windows?' Nor, 'What are the chances that such a murder should be committed unknown to a person in possession of the home at the time?' Nor, 'What are the chances that two homicides should be committed an hour or more apart, on different floors of such a dwelling house, by a stranger, with another person in possession, without knowledge or alarm?' Nor, 'What are the chances in such a house, of all others, more guarded by locks and bolts than was the general custom?' Nor, 'What are the chances that, with one victim an hour before felled to the floor by a thumping fall, the second homicide should be committed when the only person in possession had gone to the barn on a trivial errand, and returned in time to hear a groan in the yard of a man who must have been stunned by the first blow upon his head?' Nor, 'What are the chances that the person in possession in the middle of a hot forenoon should go to ironing a few pocket handkerchiefs and leave them unfinished at the very moment of the second murder to go to the barn, under a broiling sun, to get a piece of metal for a screen, or lead for a sinker for a fishing line without hooks, for use upon a contemplated excursion, when she might have bought the sinker for a cent when she purchased the hooks?'

"These were not the material questions alone to be considered. The popular mind and the Court seem to have considered that if each [any?] one of these facts was possibly consistent with innocence, or possible by another, there could be no conviction. But the material question was whether a jury could find that all the circumstances, with others to be alluded to hereafter, with such others as may suggest themselves, could concur and happen at the same time, and whether the

probability of the happening of the coincidences did or did not 'exceed all limits of an arithmetical or a moral nature . . . ' "

"It is a rule of law that the possession of property stolen and unaccounted for is sufficient for conviction . . . But the same law . . . applies to capital crimes. Here was a person who had in possession the bodies of two victims robbed of the precious jewels of their lives. Does anybody think that if this evidence had been applied to a case of robbery, or of mere property, the law administered, or the verdict, would have been the same?"

### § 30

"Joe" Howard, in one of his rosy despatches, called the charge to the jury, as delivered by Mr Justice Dewey, a "plea for the innocent." Mr Howard had already

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decided for innocence, but whether this was correct or not, he was unintentionally correct in calling the charge a "plea." The Justice not only supported the defence: he went further than they had done.

He suggested to the jury that they should think of the prisoner's remarks to Mrs Gifford, about her stepmother, as merely the extravagant language of a young woman, who was neither "a philosopher nor a jurist." He advised them to wonder why, if guilty, Miss Borden should have invented a story about a note, when merely to say that Mrs Borden had gone out would have been enough. The justice did not even concede the hour's interval between the murders---although the defence had conceded it---but virtually challenged the testimony of the physicians on the point. And he intimated that no one about to commit a crime would predict it the night before."

The reasons for this charge were long discussed. Gossip (and it may be no more) had it that the charge was agreed upon by the three judges the night before it was delivered, but that Mr Justice Dewey, on his own responsibility, notably strengthened it in favor of the prisoner. The explanations of this have never contained the faintest suggestion of corruption, but have leaned to the idea of emotional bias. The Justice had three daughters, the eldest of whom was nearly Miss Borden's age. The thought of parricide, it has been urged, so shocked him as to leave him in no impartial mood. It is also a fact (perhaps of no importance) that he was appointed to the bench by Mr Robinson, when the latter was governor. Mr Robinson's arguments may have fallen on a very friendly ear. At any rate, a newspaper drawing, in my possession, shows "Judge Dewey Smiling at one of Mr Robinson's Witticisms." I have sedulously hunted for this witticism, hoping with it to relieve the sobriety of these pages. But it has escaped me. The wit of the Bar, like that of the Bench, is of so delicate a character that its flavor perishes as soon as it is put in print, or typescript. And the jests of even such an

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(37) Again, one must express surprise that the name of Sarah Jane Robinson was so soon forgotten, especially by a Massachusetts judge. Mrs Robinson, the most notorious wholesale murderer in the criminal history of the state, customarily predicted the deaths of her victims. So did her amazing English counterpart, Mary Ann Cotton, in 1872.

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eminent judicial humorist as Lord Darling seem to wither outside the courts, and quite vanish during the Atlantic passage. (38)

Let us turn once more, and for the last time, to the legal critics of this trial---this time to Judge Davis, for a few sentences from his long letter on Justice Dewey's charge. He wrote:

"I do not set myself up as authority in the law, but it seems to me right that one of the elder members of the Bar whom the weight of years must fast push from active practice should speak out. Let it be expressly understood that no charge or thought of imputing or believing in any corruption or anything but the most upright and conscientious intent prevailed with him [Justice Dewey]; but judges are mortal and liable to be unconsciously influenced by bias and prejudice. For it is of their very essence that bias and prejudice are unknown while they rule us.

"Our claim is that in the charge, as well as certain rulings which have been commented upon, *it was not the prisoner, but the Commonwealth which did not have a fair trial.* (39) He commences with a caveat that he must not charge the jury on matters of fact and indicates that he may go to the very verge; and he proceeds essentially and practically to argue the case upon the evidence to the jury . . .

"His Honor, during the charge uses this language '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, at any place, under any circumstances,* she found any fault with the officers for asking her questions, or for making searches?' [The italics are Judge Davis's.]

"Why this vehemence of language, not displayed alone in the passage I have quoted? Is this the tone of a judge or an advocate? Consider that this sentence gives tone, character and tendency to all the rest of the charge . . ."

Judge Davis, on a later page, said:

"The suggestion is made that the murderer, watching in a closet for an hour or more after the first murder, waited a half hour after Miss Borden left the house, before he attempted his bloody deed; and had not accomplished the act when she entered the house; (40) that he departed unknown and unseen without noise and without a trail. The questions, then, on this part of the case were, did the

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(38) Readers may prefer the unintentional humor in the cross-examination of Mrs Hannah Reagan. See the Trial.

(39) Editor's italics.

(40) Since she heard a groan.

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father have power to groan after the first blow? Could she have heard such a groan? Why did not the groan arouse her to make immediate investigation? . . . Why did not that murderer of her mother complete his second crime at the first opportunity after the prisoner left the house?

"And now what did the learned judge charge upon this matter? Can it be possible our eyes deceive us? We give the exact words of the charge.

"Is it reasonable or credible that she could have killed Mrs Borden at or about the time alleged by the Government?"

"'Credible' is a strong word. Can such things be and overcome us like a summer's cloud, without the wonder of all judicial minds? Consider that this phrase 'credible' was practically telling the jury not only to acquit, but that she was not guilty."

§ 32

Mr Knowlton's bearing, in cross-examination, was a little formidable. Observing him, for a short time, while questioning a witness during a murder trial in 1901, when he was Attorney General, it struck me that his heavy frame and bulldog manner might easily terrify a dishonest witness and make even the honest one rather timid. But he was neither discourteous nor sly.

Mr Robinson appears to have been more suave. At least two witnesses in the Borden trial had words put into their mouths by him. In the cross-examination of Bridget Sullivan, Mr Robinson tried to explain away the inconvenient fact that Miss Lizzie and her sister frequently absented themselves from the family table at meals. He did his best, by insinuation that this happened merely at breakfast, when the daughters arose late. But he returned to the question of dinner and supper, and quoted to the witness her answers at the inquest. He read the question and answer:

"Did she always eat at the same table with Mr and Mrs Borden?" And your answer: "Always did eat dinner and supper when she was in the house."

And Bridget answers: "Yes sir; she ate the meals when she was in the house."

Q. That is so, is it? "They always ate together when she was in the house, except when she was out on an errand." Is that so?

A. Yes sir; they always ate at the same dining room.

Then he slips in the word he is seeking:

Q. Always ate together in the dining room?

A. Yes sir.

Another instance was in the cross-examination of Mayor Coughlin, when Mr Robinson insisted that the witness should characterize Miss Borden's manner as "earnest."

There was something a little specious in his argument to the jury that the prisoner's presence in the house that morning, so far from showing guilt, was a sign of virtue---in that she was about her domestic duties. His reference to the bargain sale at Sargent's is amusing, since he made it appear that the question was whether there was such a sale. Of course, that was not the point: Miss Borden's suggestion that Bridget go downtown was simply one more curiously suspicious circumstance.

Mr Robinson's assertion that Sargent was really holding the sale recalls the pioneer who said that he had killed an Indian, who was hiding behind a tree, by throwing a stone, which went round the tree: "And if you don't believe it, I can show you the tree."

Mr Moody's opening for the Commonwealth was characteristically forthright and clear. He was youthful in appearance and had an earnest and impetuous manner which sometimes disarmed his opponents, who did not always realize that his reasoning was mature, his judgment sound.

As between Mr Robinson and Mr Knowlton, in their closing arguments, even the press, which was almost wholly favorable to the prisoner, acknowledged the superiority of Mr Knowlton's address. He spoke gravely, assuming that the jury were intelligent citizens, intent upon duty, rather than given over to an inclination to burst into tears at the plight of "the unfortunate girl." Mr Robinson, assuming a rustic twang, seemed to be informing the jury that they and he were simple, virtuous countryfolk, and that their wisdom and moral conduct---coming as jurors did from villages like Raynham and Seekonk---were naturally preferable to such highfalutin manners as existed in centers of metropolitan wickedness, like Fall River and New Bedford.

Yet, to criticize counsel for the defence is a little like trying to prove that Napoleon really won at Waterloo. Mr Robinson's methods, old as they were, prevailed. The jury can hardly have failed to be aware of the waves of emotion which were beating upon the Court and resounding in the press. It is probable, like many juries, that they looked upon the prisoner, meditated the extreme savagery of the crimes, and resolved that "she just couldn't have done it." It is not unusual for men to adopt this kind of reasoning---often called "plain common sense"---rather than to follow where they are led by cold logic.

And if they had any doubts, they were presently to be told by the venerable judge that the prisoner's lawyers had not really pointed out all the weaknesses in the case for the prosecution.

On the afternoon of June 20th, the thirteenth day of the trial, the Chief Justice addressed the prisoner:

"Lizzie Andrew Borden: Although you have 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, knowing that the advantage was all hers---that no one could ask her a question---rose and repeated the words in which Mr Robinson had drilled her:

"I am innocent. I leave it to my counsel to speak for me."

Her failure to take the witness stand in her own behalf seems to have dismayed none of her friends. Professor Wigmore's comments upon this have been quoted, but the incident is so significant that it may be appropriate to refer to it again. She had no past career of wickedness, which, upon the witness stand, might be exposed to her prejudice; she was a young woman in full physical strength and protected by astute attorneys; she was a native citizen among her own countrymen; she was literate and fluent in the English language. Not one of the reasons, which might keep an innocent defendant out of the witness chair, existed in her case. Yet she sheltered herself behind her constitutional rights.

One recalls the advice given a lawyer by Justice Edgar J. Sherman of the Massachusetts Superior Court:

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"If the attorney believes his client innocent, put him on the witness stand without hesitation. If, however, he believes him guilty, never put him on the witness stand." (41)

One also recalls the different conduct of Mrs Hall, at the Hall-Mills trial in New Jersey in 1926. This was that preposterous case in which, at the instigation of the editor of a sensational newspaper, three innocent persons were put on trial for murder. Mrs Hall, like her brothers, gave testimony and faced a merciless cross-examination. The bearing of all three did much to convince the jury of the fact of their innocence.

After Miss Borden's thirteen words to the jury, there followed the charge of the Court. The jury went out at half-past three. They returned in an hour; the verdict was "Not guilty."

There were the usual rejoicings, and the heroine of the day returned to her home, to spend the evening, with a few of her friends, merrily examining the newspaper portraits of herself, her sister and everyone in the case. Miss Alice Russell was not among those present.

§ 34

Few newspapers did anything except rejoice at the outcome. To the *Boston Journal* Miss Borden was "a true, modest and upright woman" now vindicated after "cruel suspicion." The *Herald*, of the same city, was neutral; the *Globe* applauded the jury's verdict; the Post being politically in opposition, dutifully criticized the Government. Papers of the better class outside Boston modified their ecstasy: The *Springfield Republican* and the *Providence Journal* both admitted that the verdict would be unsatisfactory to many people.

Newspapers of New York City, running true to form, found that the entire proceedings reflected great discredit upon New England. Of course, Miss Borden was innocent---that had always been clear---but the verdict did not relieve Massachusetts of a black disgrace. The *Herald*, the *World* and the *Tribune*, after giving three rousing cheers for Lizzie Borden, now in "her rightful place in a world of hope and happiness," (Tribune) turned their guns on the police and legal officials for their "blundering."

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(41) *Some Recollections of a Long Life*. By Edgar J. Sherman. (Boston. 1908.)

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The *New York Times*, not the great newspaper it is today, was at least a sober and respectable journal. Yet it made the editorial announcement that "there was never any serious reason to suppose that she was guilty." The authorities of Fall River and the legal officers had "secured the indictment and conducted the trial" of "this most unfortunate' and cruelly persecuted woman." It was (of course) "a shame to Massachusetts." The law officers were "guilty of a barbarous wrong to an innocent woman and a gross injury to the community." The police of Fall River were the "usual inept and stupid and muddle-



headed sort", and her acquittal was but "a partial atonement for the wrong that she has suffered."

For an explanation of this, one must imagine that the Times had entrusted the composition of this article to "Amy Robsart"---one of the sob sisters at the trial---assisted by Mrs Livermore and Mrs Fessenden.

Here and there, a newspaper writer discussed the case as a man might who had given it some intelligent consideration. The Fall River *Globe* had supported the police and the Government; it did not cease to do so. And the Providence *Journal*, five days after the end of the trial, published a despatch from Boston, signed by Edward Fuller, which contains a number of interesting comments, expressed with moderation.

Mr Fuller wrote that no trial in recent years had aroused so much discussion and excited so much bitterness among disputants. Those who had always believed Miss Borden innocent were now making the most noise. But many others were far from satisfied. There remained the evidence which had justified the arrest, and this had not been explained away. Now that Miss Borden could speak freely, and no one could use it against her, she surely would tell---since she is innocent. She must have some coherent and reasonable account of her actions on the morning of the murders, and there must be some means of corroborating it.

As for her zealous advocates, Mr Fuller continued, they have not been content to express their joy at the verdict. They have insulted and maligned the law officers of the Commonwealth, the police, and the newspapers that discussed the case cautiously and with dignity. Now they were asking why Miss Borden couldn't sue the State for damages. Mrs Mary A. Livermore, and women like her, were denouncing Mr

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Knowlton and his associates; "atrocious" was their mildest word, and, with feminine archness, they alluded to "repulsive bullying", "mountainous iniquity", and "mendacious officials."

"The vicious and unjust attacks upon the District Attorney," wrote Mr Fuller, "must not be taken as representing thoughtful public opinion here. Among men whose praise is worth while, you hear his zeal and ability highly commended . . . His argument is regarded as a masterly piece of work; far better than that of Governor Robinson, who has come out of the case, on the whole, with withered laurels."

An engaging illustration of the manner in which the editor of a rural newspaper will sometimes boil over with wrath, and hit right and left, is afforded in successive numbers of the Rockland *Independent*, (42) a weekly newspaper published in a small town not far

from Fall River. The editor not only spoke his opinion frankly throughout many columns of his paper, but continued to advocate the unpopular side of the controversy. More than that, he took the unusual course of flatly contradicting larger newspapers, accusing the Boston *Herald* of coloring its headlines in favor of the defence. It was his contention that the papers which swung over to the prisoner's side, while printing on their inner pages correct reports of the proceedings, misrepresented the facts in front-page headlines and in special correspondence.

§ 35

After a short time in the old house in Second Street, the sisters moved to a much more spacious dwelling on French Street, a quiet shaded thoroughfare in the better part of the city. Miss Lizzie effected a change in her name and appeared in the telephone directory as "Lizbeth" A. Borden. It was on the advice of her lawyers, so I have been told, that she continued to live in the city of her birth, instead of moving away. It is probable that she had cause to regret the advice; she was so ostracized as to be decidedly unhappy. She soon ceased to attend the church whose pastors had been so energetic in her defence. For the rest of her life---nearly thirty-five years---

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(42) For these papers, I am indebted to Mr Oliver S. Hawes.

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she was at ease only in other cities, like Boston and Washington, where she was unrecognized. In Fall River she seldom entered a shop, or any other place, and was never seen on the streets, except in her well-set-up carriage, or, in later years, her motor-car. The lack of exercise, or something, had an unfavorable effect upon her figure.

From time to time, her name appeared in newspapers, and it is with much regret that I record one of the first of these occasions. Four years after the trial, in 1897, a lady in Providence brought to the Tilden-Thurber Corporation, a firm of silversmiths of that city, a painting on porcelain, called "Love's Dream." She asked to have it repaired. They showed great interest and asked where she had acquired it. She innocently replied that it was a gift from Miss Lizzie Borden of Fall River. Since they had already missed this and another similar picture, which had vanished from the store without any sale, a warrant was issued for Miss Borden. Newspaper articles discussed this incident under such headings as "Lizzie Borden Again. A Warrant for the Arrest Issued from a Local Court. Two Paintings Missed from Tilden-Thurber Co.'s Store. Said to Have Been Traced to Miss Borden's Home in Fall River." (43)

It is possible that some of her loyal friends were seriously disturbed by this happening. The matter was "adjusted" out of court, and the warrant was never

served. (44) Let us turn from this unpleasant interlude: it is unlike the tragic theme of the case, and is not in the grand manner.

There was a vein of romance in Miss Borden's nature. It may not appear in the choice of the new name "Lizbeth"---there were practical reasons behind that---but it shows for an instant in the title "Maplecroft", chosen for her new estate, and carved on the stone steps. It is revealed in her intense admiration for the distinguished actress, Miss Nance O'Neil, who early in the twentieth century was greatly admired in Boston, in tragic roles. Miss Borden not only made frequent trips to Boston to see this artist in all her plays, but, for a time, ventured daily into the hated atmosphere of a courtroom, where Miss O'Neil was involved in litigation with her managers and creditors.

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(43) The Providence *Journal*, Feb. 16, 17, 1897.

(44) Letter from the Tilden-Thurber Co. (1924).

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When Miss Borden one night illuminated "Maplecroft"---known to the postman as 306 French Street---and entertained Miss O'Neil's company after their performance that evening in Fall River, it would be unjust to say that Fall River was shocked. It was, however, surprised, and Miss Emma Borden went into a state which might be described as low dudgeon. Miss Emma, not long afterwards, ascended to the more usual heights, when her sister took a house at Tyngsboro, where she entertained Miss O'Neil and her whole company at a house party lasting a week.

Probably this caused the final rift between the sisters. They had long found each other's society cloying; now Miss Emma packed up, and moved away to Fairhaven, to Providence, and finally to parts, for many years, unknown. This was in 1904, and if the heiresses to Andrew Borden's fortune ever met again, this side of their final meeting place, the fact is not recorded.

### § 36

On each recurring fourth of August, anniversary of the murders, the Fall River *Globe* printed an article which correctly represented the opinion, and the indignation, of many citizens. Thus, in 1903, the *Globe* headed an article on its front page:

Years Roll On  
And Yet the Brutal Butcher  
of the Bordens  
Travels about the Land Free  
and Unpunished  
Eleven Years Ago Today It

Handled an Ax with Deadly Effect  
in this City.

The meaning of the article which follows is unmistakable. After some years, Fall River began to look forward to these outbursts as a regular event. They were written by the late James D. O'Neil, city editor of the *Globe*. In 1904, the heading included this sentence: "Perhaps Murderer or Murderess May Be in the City. Who Can Tell?" This article referred to the "vile-minded murderer" as "the man---or woman",

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"he or she", and so on. Next year the headlines were "Great Wrong Is Righted. . . No Murders Were Committed on August 4, 1892." This ends:

There were no Borden Murders!  
Both the victims of 13 Years Ago  
Died as the Result of Excessive Heat!

After some years a clergyman (I believe, of the Roman Catholic faith), thinking that these articles were in the nature of unchristian persecution, succeeded in persuading some influential persons to bring to bear a pressure which resulted in stopping this annual feast of sarcasm.

The anecdotes and legends of the Borden case are endless. (45) To one, only, does it seem important to refer now. This is the cruel story---often repeated with many solemn guarantees of truth---of the kitten, which Miss Borden is supposed to have carried down cellar and decapitated with a hatchet. I speak of it only to express my entire disbelief. Too many people are witnesses to Miss Borden's almost fanatical love for animals to allow even a faint possibility of its truth. Miss Borden kept bull terriers and canaries; was unusually fond of her horses---she was a good driver---and put up small houses in the trees around her home for birds and squirrels. She loved to feed the squirrels. And her last will and testament expressed, to a very high degree, her concern for the welfare of animals.

In 1913, a long newspaper article, signed Gertrude Stevenson (Boston *Herald*, April 6, 1913), and called "Lizzie Borden Twenty Years After the Tragedy," described her life in Fall River as that of an "outcast, an Ishmael, a social pariah . . . Her name is uttered with contempt . . . her nearest neighbors pass her without a nod or sign of recognition." She lives, said this writer, "as if she were behind prison bars . . . lives in the great silent house she purchased . . . knowing no human companionship save that she can hire . . . She is a frequent visitor to Boston, where she makes her home at

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(45) Many of them, mostly incredible, with a few which are veracious, are recounted in "Legends of Lizzie", an article in *The New Yorker*, April 22, 1933, and reprinted in *More Studies in Murder*, (N.Y. 1936) by the editor of this book.

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the Bellevue, registering as Lizbeth Borden, although her story is well known to the hotel attaches."

To Miss Stevenson's comments, it may be added, on other authority, that Miss Borden's solitary theater-going expeditions to Boston were planned to avoid all annoyances or inconvenience. She would be met at the South Station by her favorite cabman, and driven to the Bellevue. After dinner, his cab took her to the theater, and waited there till the end of the performance. He was at her service during the rest of her stay in the city, for shopping and all purposes. In short, Miss Lizzie "did herself very well," and lived in marked contrast to the parsimonious existence of her elder sister.

She was, from maturity, a rather plump person, of middle height, and with light-brown hair. Whether she had anything "peculiar" in her looks; whether her eyes carried any menace in them; whether everybody, on seeing her, felt that there was something "strange" about her, it is impossible to discover. All these things are asserted. The reader is referred to the portraits in this book. Two of them are now published, as I believe, for the first time. Only one, and that curiously enough, the most youthful of all, seems to me to justify the phrase "forbidding", which I have heard applied to her by someone who had daily chances to see her over a period of years. Perhaps that portrait may be explained by the unfortunate angle from which it was taken: the mouth and jaw are certainly unpleasing.

A friend of many years describes her as unimpressive in appearance, timid and shy in manner! All other considerations aside, says this friend, Miss Borden lacked the courage and initiative to commit a crime. She saw, of course, no dreadful possibilities in any of Miss Lizzie's features.

### § 37

The murders at Fall River are supposed to have figured in fiction, in Miss Mary Wilkins' story *The Long Arm*, and in a novel by Lily Dougall called *The Summit House Mystery*. Readers who are inclined to search for these forgotten tales, because of any reputed resemblance to the Borden case, are advised not to waste their time. Much more pertinent is the psychological study in Edward Hale Bierstadt's *Satan Was a Man*.

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The Borden murders reached the Broadway stage---for a run of three weeks---beginning April 27, 1933. On that evening, "*Nine Pine Street*", by John Colton and Carlton Miles was presented at the Longacre Theatre. Miss Lillian Gish successfully portrayed "Effie Holden", the name given to the character representing Fall River's celebrated lady. The setting, in the Holden house at New Bedford, (not Fall River) was admirably designed by Robert Edmond Jones.

A credible motive for the murders was supplied by the dramatists, who caused Mr Holden to begin a flirtation with the woman who was to become his second wife, while the mother of his daughters was still living. As the second Mrs Holden is practically responsible for the death of her predecessor, Miss Effie's hatred is altogether natural. The scenes of the murders, and of the return to the house after the trial and acquittal, were the strongest in the play. They departed little from the alleged events at 92 Second Street except that they represented the weapons as a flatiron (a favorite contemporary heresy) and a loaded cane. Miss Effie, of course, was given a blameless lover---a pale young curate.

The play really ended when Effie, acquitted of the murders, forsaken by her sister, her friends and her church brethren, is left alone in her darkening house. An epilogue, many years later, showing her in solitary old age, was not a valuable addition. In the scene in which Effie crept toward her sleeping father, Miss Gish's superb impersonation of a woman moved by venomous hatred, was unforgettable. The curtain hid the actual killing from the audience.

### § 38

In later life, in company with one of her few intimate friends, Miss Borden often referred to her father, quoting him and his phrases. She mentioned Mrs Borden without hatred, but with a general disapproval of stepparents of any kind---"steppies" was her word for them. She had a strong pair of arms, could row a boat well, and drive a spirited pair of horses. One of her great delights was the theater; another was an

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art gallery: the Corcoran Gallery at Washington gave her much pleasure. To be in Washington---"where nobody knows me"---was joy. She had feared Mr Knowlton as if he were the Day of judgment, and shuddered at the thought that he would ever question her again. She never liked Mr Jennings, but adored the memory of Governor Robinson. He had reassured her at their first meeting, saying, "It's all right, little girl", and patting her arm. It was by his advice that she was impassive in Court, although, throughout the trial, she was "numb", and more or less unaware of events. She was impatient when anybody spoke scornfully of money, saying: "Where should I be without it?" She meant that money had secured her the services of the most shrewd and resourceful attorney in the

state: a curious commentary upon her transparent innocence, of which Mrs Livermore and the New York Times were so certain. Yet she and her sister were annoyed at the size of Mr Robinson's fee of \$25,000 since they would have preferred, in place of the homely style of his final argument, some tall oratory. She did not realize how skillfully his art concealed his art, and caused the jury to follow "honest old Governor Robinson" as he was leading them away from the wiles of the "city fellers."

As a conversationalist, she was commonplace. Her favorite books were sentimental romances of the '90's. When, in 1924, three or four years before her death, a book was published, giving a long account of the Borden murders, the Fall River bookseller refused to keep it in stock, out of respect for Miss Borden, and with a keen eye to her patronage. His solicitude was unnecessary; she procured the book elsewhere and read it. Cruelty to animals roused her wrath; of a man who abused a horse, she cried: "I could strangle him myself!" To the end, her nominee as the murderer was the "big strong blacksmith" Hiram Harrington: "He hated Father." When Harrington died without a confession she said the last chance was gone that she might ever be cleared. "If he didn't do it," she would say, "who did?" Then she would add sadly, "But, of course, that's what they say of me!"

Few readers will expect to find here any of the pseudo-learning so fashionable ten years ago: speculations, at long distance, on Miss Borden's "psyche", or futile

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attempts to explain her deeds and emotions, her "fixations" and "complexes" in the light of sheer guesswork, or as derived from some (imaginary) event in her childhood. Biographers, a decade ago, were practically forced into writing this pretentious nonsense, even if they had to invent the juvenile adventures of their subject for the sake of their argument. I have talked with at least two persons who knew Miss Borden intimately, and for many years, as well as with others who had some acquaintance with her. Not one had any explanation of her character, or pretended to knowledge of her inner life. Anybody who fancies himself a psychoanalyst, capable of "interpreting" a person he never saw, may, if he likes, concentrate, on her "mother fixation", her "zoophily" or anything else. Eighty years ago he would have indulged in the foible of that day: phrenology. One is as important as the other.

§ 39

As the judges, all the counsel, most of the witnesses, and finally, all the jurors died, notices in the papers never failed to record their connection with the celebrated case. With many, it was their only claim to the press association despatch which carried the news over the country. In 1923, litigation was initiated between Miss Lizzie and Miss Emma Borden over a sale of a building. The case never came to trial. In 1926, news came that Miss Lizzie had been in hospital for an operation, and that she was permitted to register

as Miss "Mary Smith" Borden. Even in legal transactions, such as purchases of land to add to the grounds about her house, she had tried to proceed incognito.

On June 1st, 1927, Miss Lizzie Borden died at her home in Fall River. She was a little less than sixty-seven years old. Romantic souls, who believe that such things as "death-bed confessions" actually occur, were deeply disappointed because there came no news of anything of the kind. The renewed interest in the lady aroused a curiosity as to her sister, who had been leading a secluded life---no one knew where---for a number of years. Miss Emma solved the question of her domicile, by dying, just ten days after her younger sister, at Newmarket, New Hampshire. Her uneventful

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existence at this place had been interrupted only twice a year: in the spring she went to Boston to put her fur coat in storage, and in the autumn she went there to get it out again.

The faithful friends and relatives were bidden to the funeral services for Miss Lizzie at her house in French Street'. When they had dutifully assembled and seated themselves, with faces properly composed for the occasion, they were informed that the funeral had really taken place the night before, and Miss Lizzie was already in her grave at Oak Grove. Everything was done in secrecy, and her body was carried to and from the hearse by the undertaker's assistants, who were black men. So they buried her darkly-if not at dead of night, at least after set of sun. As for the mourners at the house, she had fooled them all---to the end.

#### § 40

The wills of the sisters gave cause for newspaper discussion for years. Miss Lizzie left \$30,000 to the Animal Rescue League of Fall River, saying:

"I have been fond of animals, and their need is great, and there are so few to care for them."

There were other bequests to friends, distant relatives and servants, in sums of from \$1,000 to \$10,000 and amounting in all to about \$80,000. All the rest and residue of the estate, in equal shares, went to a friend, Miss Helen Leighton, and a cousin, Mrs Grace H. Howe, then the wife, now the widow of Louis McHenry Howe.

Miss Emma's legacies to charitable institutions of all kinds, as well as to the Animal Rescue League, the Boy Scouts and the Girl Scouts, amounted to \$ 100,000. There were also many personal bequests. Miss Emma's estate seems to have amounted to about \$425,000, and Miss Lizzie's to \$265,000. The younger sister, always the more adventurous of the two, was also more liberal in her expenditures during her life.



These wills continued to rumble in the courts for years. The actions of Mr Charles C. Cook, the executor, failed to please some of the legatees, who had recourse to litigation. The Courts decided that their complaints were just.

Two years after the deaths of the Misses Borden an absurd incident again displayed the continued public interest in all that concerned this family. The occupants

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of the house on Second Street had pulled down the barn in order to erect on its site a small brick building---said to be for the purpose of manufacturing stuffed cotton rabbits for Easter toys. Reporters gathered to watch the demolition, and, by an odd coincidence, they were rewarded by the discovery of what someone, in a misuse of language, called an "ax." In truth, it was a cooper's hammer, with a short, blunt edge, quite unlike the keen, longer blade which had been used in the murders. Five-minutes consultation of the records would have satisfied anybody that this was not the weapon, but the newspaper pother was great enough to cause a long discussion, and finally to have the county incur a bill of several hundred dollars to an analytical chemist for a test for bloodstains.

Of what importance were such stains, had any been discovered, it is difficult to see. The chief suspect was secure from prosecution, not only by reason of a verdict of acquittal, but because she had been removed beyond the jurisdiction of any earthly court.

#### § 41

It may be entertaining to speculate upon two or three theories of the crime. That one which assumes Miss Borden's innocence seems to rely upon the possibilities of the closet at the foot of the front stairs. Counsel laid the ground for this defence, by photographs of the closet, (with Mr Jennings lurking inside) and in cross-examination of Mr Kieran, the engineer. But, for some reason, they did not proceed with it. In the closet, it is suggested, the unknown murderer might have secreted himself, after his entry of the house, and after he had successfully passed the eyes of the neighbors, passed the locked doors, passed the inmates of the house. From it he ventured forth to slay Mrs Borden---unseen and unheard by her step-daughter---and into it he popped again, for a wait of an hour and a half. He lay doggo all this time, until, somehow, assured of Bridget's absence upstairs, and Miss Lizzie's trip to the barn, he came out, slew Mr Borden and escaped into the open. He must have gone out the side door; the others were found locked. This made it all the more fortunate he did not meet Miss Lizzie going to or coming from the barn.

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Who this mysterious murderer was, whence he came, why he killed Mrs Borden, where he went, how he concealed the incriminating weapon---upon all these points, theorists are silent.

Another idea, halfway between active guilt and innocence, suggests Miss Lizzie as the accessory, rather than the agent. It supposes that she admitted and harbored the ruffian, then sped him on his way. This would, of course, be abhorrent both to the Rev. Mr Jubb and to the editor of the World, of New York, who had protested even at the indictment of Miss Borden. Some recent theorists, persons who have special reasons for wishing to clear Miss Lizzie, at anybody's cost, name Miss Emma as the actual perpetrator of the crimes. To exonerate Miss Lizzie, who was actually present in the house, and throw blame upon her sister, in Fairhaven, is intellectual bankruptcy.

To the remark that the crimes were not those of a maniac, will come the retort, from folk familiar with the lore of the alienist, that many kinds of madmen are capable of cool planning, of craft and cunning. Granted; but there are some things which no one can do, give him whatever name you like to describe his mental abnormality. Not even the newest and most fascinating subspecies of lunatic, the latest child of psychiatry, can, for instance, make himself invisible. (46)

To meditate the case for the Commonwealth, let us suppose that not the New Bedford jury, but Marshal Hilliard, Mr Knowlton, Judge Blaisdell, the Grand jury, Mr Porter, Professor Wigmore and Judge Davis were right. Let it be remembered that when seven or eight clear items of circumstantial evidence point directly to the guilt of a person, that person is innocent nowhere but in a detective novel.

The murders were probably long considered. The earlier attempt to buy prussic acid (in New Bedford) to which Mr Knowlton referred in the trial, rested upon evidence.(47) When Mr Knowlton first entered the Borden house, he chanced to

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(46) The glorious possibilities of the homicidal maniac appear in the notion that the murders on the Herbert Fuller (for which Bram, the mate, was convicted) were really the work of the helmsman, a "madman", who left the wheel untended, while he was below killing three persons. But mariners insist that as the feat was a miracle of seamanship, impossible for a sane man to accomplish, it would be too much for even a novelist to require of a "homicidal maniac."

(47) See Trial, Ninth Day, note 5.

pick up a large book. It dealt with recipes, drugs and medicines. It fell open in his hand---the back was half broken---to an article on prussic acid.

The murder of Mrs Borden with a hatchet was finally planned on the Wednesday, after the second failure to buy poison. It has been conjectured that Mr Borden's talk with Mr Morse, either in the afternoon or the evening before the murders, mentioned making a will, and that this was over-heard. It is not essential to believe this. The death of Mr Borden was possibly not part of the original plan. With Mrs Borden dead, the daughters were the sole heiresses. The defence, by the way, were well advised not to protest too much against the prior death of Mrs Borden; had her death been simultaneous with, or subsequent to, her husband's, the title of the daughters to the whole estate might have been less clear.

Beginning the night before, with Miss Russell, and continuing next day, with Bridget, Mrs Churchill and the police, everyone was systematically fed on falsehood. A web of lies was spun, and many were caught in it. So much came to depend on "who first said what to whom" that it was not hard to befog the jury. The key to the case, as Mr Knowlton observed, was the story about the note. That lie could not be consistent with innocence. Mrs Churchill, testifying that she heard the story both from Miss Borden and from Bridget, admitted, upon re-direct examination, that it was after Miss Borden had told it to her that Bridget repeated it. Mr Robinson avoided the direct question to Bridget, if she ever heard of the note from Mrs Borden. He dared not ask. And Bridget testified clearly that up to the time Miss Lizzie told her father about the note, she (Bridget) had not heard of the note from anyone. The story began and ended with the accused. Yet Mr Robinson misquoted the evidence to the jury, saying that Bridget heard Mrs Borden mention the note, and this met with no reproof from the complacent or somnolent Court. Who can say what was the final impression of the jury upon this most important point?

The murder of Mrs Borden was made easy as soon as the poor woman entered the guest room, into which Bridget never came. There followed more than an hour, in which blood-stains, if any there were, might be removed from the person of the murderess. All the perfumes of Arabia were not needed to sweeten that little hand. A gill of water sufficed.

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That about one and a half hours did elapse between the murders came to be accepted by everyone except a few extremists---like Mr Justice Dewey. Otherwise it had to be assumed that the entrance of the murderer, the two crimes and his escape all took place during the barn visit. Not even counsel for the defence could so ignore the medical evidence. Other medical experts had been consulted by the defence; they refused to differ from Professor Wood and his associates. So high was the reputation of the medical witnesses, so convincing their evidence, that for once there was no conflict of expert testimony.

With Mr Borden's life, it was touch and go. Had Bridget not gone upstairs, had he not lain down, the second murder might not have happened. A bare arm, holding a hatchet, could reach around the door from the dining room, and strike the blows necessary to kill a man lying on the couch. Few bloodstains, perhaps none, would be received. The handleless hatchet was probably the weapon; it was quickly washed at the kitchen sink, taken down cellar, rubbed in ashes and broken. Perhaps it was broken during commission of the second murder.

All of this was resolved and executed in ten minutes. She had fifteen or more: the time was ample. Time was too brief to allow the construction of a faultless alibi: hence, the first blundering statements about presence in the yard---which was too near---and about hearing the groan, which was also too near the murder, both in space and in time. Hence, also, the difficulty in finding some excuse---not too wildly absurd---for the visit to the barn. First came "the piece of iron to fix the screen"; then the sinkers. The sinkers story was a straw to clutch at, but it was seized. These small errors almost tripped her.

It is often asked: how could she have expected to avoid interruption, and not be caught red-handed, or, if she escaped that and immediate arrest, how did she expect to avoid ultimate suspicion?

As for the danger of interruption, it can only be said that she acted, as others have done, with great boldness---fool-hardiness, if you like. Although such daring is

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inconceivable to most of us cautious folk, that does not alter the fact that, every day in the year, crimes occur which are characterized by audacity. Hauptmann, the murderer of the Lindbergh child, acted with similar foolhardy courage, and, for a time, fortune attended him. The single-minded, inhuman bravado with which his deed was performed also brought a reward: the growth of the persistent legend that he must have had confederates; that he could not have acted alone. People insist upon reading their own minds, their own characteristics, into the plans of a murderer. Because they never take a risk, they forget that frightful risks are taken daily, and that criminals succeed in their plans because of their daring.

It is probable that the perpetrator of the Borden murders did not expect to be arrested or even seriously to be suspected. Reliance was placed upon previous good reputation; upon a life which was outwardly one of religious devotion; and upon the widespread delusion that "a woman couldn't do such a thing." Here, her calculations were sound. The extreme barbarity of the murders was a bulwark of her defence. In her conversation with Miss Russell, she laid the foundation for a belief in the guilt of the unknown enemies of her father; the sinister "they", who might burn the house down over the sleeping family.

She had never expected to be cross-examined. After getting through the inquest, she was in lively terror of facing the same questioner at her trial. Great was her relief when the law not only protected her from this, but the Court kept the jury from hearing her sworn statements made at the inquest.

No gangster or professional criminal, aided by a lawyer of his own kind, ever sought more eagerly to profit by every tender indulgence of our criminal code, or more earnestly invoked the law's technicalities, than did (to quote the *Boston Journal*) this "true, modest and upright woman," who was buttressed by the clergy and defended by an eminent advocate. Her pious supporters raised glad shouts of joy, not because she had fearlessly tried to prove her innocence, but because she was protected from explaining her own words and actions by a clever counselor, who won all the legal tricks.

The first serious intimation that she was suspected came in Mayor Coughlin's

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warning, two days after the murders. And it was followed, next morning, by the burning of the dress.

#### § 42

"O eloquent, just, and mighty Death! whom none could advise, thou hast persuaded; what none hath dared, thou hast done . . . Thou hast drawn together all the far-stretched greatness, all the pride, cruelty, and ambition of man, and covered it over with these two narrow words---HIC JACET"

In his modern elegy in a Western graveyard, *Spoon River Anthology*, Edgar Masters makes the dead speak from their tombs. A place that is fair-seeming, decent to the eye, solemn and almost holy, proves to reek of secret sins, pious frauds, lusts of the flesh.

Not any tragic irony in that book is more strange than, to one who knows its story, the burial place of Andrew Borden and his family. If you ask the way to it, at the entrance lodge of Oak Grove Cemetery, you may be received with a scowl. The people of Fall River are weary of constant reminders of the name of their best-known citizen.

This cemetery was planned at a later time than the age of severity. It lacks the austere simplicity of the burial grounds of our great grandfathers, whose plain headstones make similar places in many European countries seem, by comparison, tawdry and puerile. But it is far enough from the metropolis to escape flamboyance: the enormous mausoleums which, at Woodlawn, shout the names of wealthy nonentities. The monuments in Oak Grove are usually inoffensive, and, as in many parts of New England,

if men have made bits of the landscape angular, they have planted the lovely elms which make it graceful.

Here is the small plot of ground; a modest monument; six headstones. Under the quiet branches of old trees, the family are gathered together. Mr Borden lies between his two wives. Near the first wife is the child who died so long ago. The mother and the little daughter were buried here a full generation before there was any thought of the tragedy which was to destroy the lives of all the others.

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The name of the most enigmatic of them is carved, with the rest, upon the monument: her first name prettified by herself into "Lizabeth"; her second, misspelled by the stonecutter to "Andrews." She and her sister---who could not even live together in the same house---lie now side by side, and both at their father's feet. They are in entire accord with him: the law decided that it was so. The bodies of the husband and wife, who were so violently slain, are presumably again complete, awaiting a glorious resurrection, and the skulls which once the jurors contemplated, like Hamlet in the churchyard, are now laid with the rest of their bones.

This narrow space of earth, the turf, the memorials, look like a hundred others. Nowhere else do three or four graves conceal a puzzle like this. A small squirrel, who lives near by, comes out of hiding, sits upon one of the headstones, and chatters. The visitor, who is meditating the grim satire of the place, can look as deep into its final mystery as the squirrel can---and no deeper.

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#### DATES IN THE BORDEN CASE

1822. September 13. Andrew J. Borden born. 1845. December 26. He marries Sarah A. Morse (who was born 1823).

1851. March 1. Emma Lenora Borden, their first child, born.

1856. Alice Esther Borden, their second child, born.

1858. Alice Esther dies.

1860. July 19. Lizzie Andrew Borden, their third child, born.

1863. March 26. Mrs Borden dies.

1865. June 6. Mr Borden marries Abby Durfee Gray (who was born 1828).

1879. Miss Lizzie Borden is graduated from the Fall River High School.

c.1884-c.1887- Beginning of disputes in the Borden family over money.

1887- October 1. Mr Borden gives his daughters the house on Ferry Street. This was followed by other gifts.

1890. Summer. Miss Lizzie Borden, with a party of young ladies, makes a tour in Europe.  
1891. June. Mysterious daylight robbery in Borden house.  
1892. July 15. Mr Borden re-purchases from his daughters the house on Ferry Street.  
1892. August 2-3. Mr and Mrs Borden are sick at midnight. (Tuesday, Wednesday)  
1892. August 3. 11 A.M. The alleged attempt by Miss Lizzie to buy prussic acid. (Wednesday)  
1.30 P.M. Arrival of John Vinnicum Morse. 7-9 P.M. Miss Lizzie calls on Miss Russell and utters dark forebodings.

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1892. AUGUST 4- 7 A.M. Mr and Mrs Borden and Mr Morse (THURSDAY) eat breakfast.  
8.45 A.M. Mr Morse departs upon errands and calls and does not return till about 11.30 A.M.  
8.50 A.M. Miss Lizzie comes downstairs for a meager breakfast.  
9.15 A.M. About this time Mr Borden goes downtown.  
9.30 A.M. Mrs Borden goes to the guest room and is there murdered.  
10.45 A.M. Mr Borden returns to his house. 11.05 to 11.10 A.M. Miss Lizzie informs Bridget Sullivan that Mr Borden has been killed.  
1892. August 6. 11 A.M. Funeral of Mr and Mrs Borden. (Saturday) Evening: Miss Lizzie told by the Mayor she is suspected.  
1892. August 7. Miss Lizzie burns a dress. (Sunday)  
1892. August 9-11. Inquest. (Tuesday to Thursday)  
1892 August 11. Miss Lizzie Borden arrested.  
1892. August 12. Miss Lizzie arraigned in District Court, and confined in Taunton jail.  
1892. August 25- Hearing before Judge Blaisdell in District September 1. Court. Miss Lizzie held for the Grand jury.  
1892. November 15. Grand jury begins investigations at Taunton. Adjourns on Nov. 21 until  
1892. December 1. When Miss Russell re-appears before Grand jury, who on  
1892. December 2. Indict Miss Lizzie for both murders.  
1893. June 5. Trial begins at New Bedford.  
1893. June 20. Miss Lizzie Borden found "Not Guilty."  
1897. February. Newspapers announce shoplifting episode at Providence.  
C. 1904- I 905 - Miss Emma Borden leaves her sister, moving from place to place, finally to New Hampshire.

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1923- Litigation over property initiated between the estranged sisters. Case never brought to trial.

1927- June 1. Miss Lizzie Borden dies at Fall River.

1927- June 10. Miss Emma Borden dies at Newmarket, N. H.

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TRIAL OF  
LIZZIE ANDREW BORDEN

Upon an Indictment charging her with the  
Murder of Abby Durfee Borden and  
Andrew Jackson Borden

Before the Superior Court for the County  
of Bristol, Massachusetts

Mason, C.J., and Blodgett and Dewey, JJ. Presiding

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APPEARANCES:

For the Commonwealth:

HOSEA M. KNOWLTON, ESQ.,

District Attorney for the Southern District.

WILLIAM H. MOODY, ESQ.,

District Attorney for the Eastern District.

For the Defendant:

GEORGE D. ROBINSON, ESQ.

ANDREW J. JENNINGS, ESQ.

MELVIN O. ADAMS, ESQ.

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PRELIMINARY PROCEEDINGS

ON THE 2ND DAY of December, 1892, the Grand Jury for the County of Bristol returned into the Superior Court the following indictment against Lizzie Andrew Borden of Fall River, charging her with the murder of her stepmother, Abby Durfee Borden, and her father, Andrew Jackson Borden:



## COMMONWEALTH OF MASSACHUSETTS

Bristol ss: At the Superior Court begun and holden at Taunton within and for said County of Bristol on the first of November in the year of our Lord one thousand eight hundred and ninety-two.

The Jurors for the said Commonwealth on their oath present: That Lizzie Andrew Borden of Fall River in the County of Bristol, at Fall River in the County of Bristol, on the fourth day of August in the year eighteen hundred and ninety-two, in and upon one Abby Durfee Borden, feloniously, wilfully and of her malice aforethought an assault did make, and with a certain weapon, to wit, a sharp cutting instrument, the name and a more particular description of which is to the Jurors unknown, her, the said Abby Durfee Borden, feloniously, wilfully and of her malice aforethought did strike, cut, beat and bruise, in and upon the head of her, the said Abby Durfee Borden, giving to her, the said Abby Durfee Borden, by the said striking, cutting, beating and bruising, in and upon the head of her, the said Abby Durfee Borden, divers, to wit, twenty mortal wounds, of which said mortal wounds the said Abby Durfee Borden then and there instantly died.

And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said Lizzie Andrew Borden, the said Abby Durfee Borden in manner and form aforesaid, then and

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there, feloniously, wilfully and of her malice aforethought did kill and murder; against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

And the jurors for the said Commonwealth, on their oath, do further present: That Lizzie Andrew Borden of Fall River in the County of Bristol, at Fall River in the County of Bristol, on the fourth day of August in the year eighteen hundred and ninety-two, in and upon one Andrew Jackson Borden, feloniously, wilfully and of her malice aforethought, an assault did make, and with a certain weapon, to wit, a sharp cutting instrument, the name and a more particular description of which is to the jurors unknown, him, the said Andrew Jackson Borden, feloniously, wilfully and of her malice aforethought, did strike, cut, beat and bruise, in and upon the head of him, the said Andrew Jackson Borden, giving to him, the said Andrew Jackson Borden, by the said striking, cutting, beating and bruising, in and upon the head of him, the said Andrew Jackson Borden, divers, to wit, ten mortal wounds, of which said mortal wounds the said Andrew Jackson Borden then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Lizzie Andrew Borden, the said Andrew Jackson Borden, in manner and form aforesaid, then and there feloniously, wilfully and of her malice aforethought did kill and murder; against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

A true bill.

HENRY A. BODMAN,  
Foreman of the Grand jury.

HOSEA M. KNOWLTON,  
District Attorney.

Bristol ss: On this second day of December, in the year eighteen hundred and ninety-two, this indictment was returned and presented to said Superior Court by the Grand jury, ordered to be filed, and filed; and it was further ordered by the Court that

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notice be given to said Lizzie Andrew Borden that said indictment will be entered forthwith upon the docket of the Superior Court in said County.

Attest:  
SIMEON BORDEN, JR.,  
Asst. Clerk.

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## FIRST DAY

New Bedford, June 5, 1893. LIZZIE ANDREW BORDEN, indicted for the murder of her stepmother, Abby Durfee Borden, and her father, Andrew Jackson Borden, was placed on trial at the June term of the Superior Court for the County of Bristol, sitting at New Bedford, beginning on Monday, the fifth day of June, 1893; Hon. Albert Mason, Chief Justice, Hon. Caleb Blodgett and Hon. Justin Dewey, Associate Justices, presiding.

The Commonwealth was represented by Hosea M. Knowlton, Esq., District Attorney for the Southern District, and William H. Moody, Esq., District Attorney for the Eastern District. The prisoner was represented by her counsel, George D. Robinson, Esq., Andrew J. Jennings, Esq., and M. O. Adams, Esq.

The Court came in at twenty-eight minutes past eleven o'clock.

The crier made proclamation to the persons summoned as traverse jurors to answer to their names.

The Clerk proceeded to call the roll of jurors. Of the 148 persons summoned, 145 answered to their names.

After the examination of 108 of these, a jury was selected, as follows:

CHARLES I. RICHARDS North Attleborough  
GEORGE POTTER Westport  
WILLIAM F. DEAN Taunton  
JOHN WILBUR Somerset  
FREDERIC C. WILBAR Raynham  
LEMUEL K. WILBER Easton  
WILLIAM WESTCOT Seekonk  
LOUIS B. HODGES Taunton  
AUGUSTUS SWIFT New Bedford  
FRANK G. COLF, Attleborough  
JOHN C. FINN Taunton  
ALLEN H. WORDELL Dartmouth

The Court appointed Mr Richards to act as Foreman.

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## SECOND DAY

New Bedford, June 6, 1893.

THE COURT came in at nine o'clock. The jurors and the prisoner answered to the calling of their names.

THE CLERK. Gentlemen of the jury, hearken unto an indictment found against the prisoner at the bar by the grand inquest of this County.

The Clerk read the indictment, at the close of which he said:

To each count of which indictment Lizzie Andrew Borden, the prisoner at the bar, has heretofore pleaded and said that thereof she is not guilty, and for trial puts herself upon her country, which country you are. You are now sworn to try the issue. If she is guilty on either or both of said counts, you are to say so, and if she is not guilty on either or both of said counts, you are to say so, and no more. Good men and true stand together and hearken to your evidence.

Mr. Moody proceeded to make the opening statement on behalf of the Commonwealth, speaking as follows:

## OPENING STATEMENT FOR THE COMMONWEALTH

By WILLIAM H. MOODY, EsQ.

May it please your Honors, Mr Foreman and Gentlemen of he Jury:

Upon the fourth day of August of the last year, an old man and woman, husband and wife, each without a known enemy in the world, in their own home, upon a frequented street in the most populous city in this County, under the light of day and in the midst of its activities, were, first one, then, after an interval of an hour, another, severally killed by unlawful human agency. Today a woman of good social position, of

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hitherto unquestioned character, a member of a Christian church and active in its good works, the own daughter of one of the victims, is at the bar of this Court, accused by the Grand jury of this County of these crimes.

There is no language, gentlemen, at my command, which can better measure the solemn importance of the inquiry which you are about to begin, than this simple statement of fact. For the sake of these crimes and for the sake of these accusations, every man may well pause at the threshold of this trial and carefully search his understanding and conscience for any vestige of prejudgment, and, finding it, cast it aside as an unclean thing.

It is my purpose, gentlemen, and it is my duty to state to you at this time so much of the history of the cause and so much of the evidence which is to be introduced upon this trial as shall best enable you to understand the claim of the Government and to appreciate the force and application of the testimony as it comes from the witnesses upon the stand. It is my purpose to do that in the plainest, simplest and most direct manner. And it is not my purpose to weary you with a recital of all the details of the evidence which is to come before you.

Andrew Jackson Borden, the person named in the second count of the indictment, was at the time of his death a man of considerable property-somewhere, I believe, between \$250,000 and \$300,000. He had been retired from business for a number of years. He was a man who had obtained his fortune by earning and saving, and he retained the habit of saving up to the time of his death; and it will appear in the course of this trial that the family establishment was upon what might well be called, for a person in his circumstances, a narrow scale. He had been twice married. The first wife died some twenty-seven or twenty-eight years before he died, leaving two children, now alive: the prisoner at the bar, Lizzie Andrew Borden, the younger, and then somewhere between two and three years of age; a sister, Miss Emma Borden, being a woman at the present time in the neighborhood of ten years older than the prisoner.

Not long after the death of the first wife, Andrew Borden married again, a woman whose maiden name, I believe, was Abby Durfee Gray.

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The marriage, I believe, was something over twenty-five years before the time of their deaths, and there was no issue of the second marriage, at least none living and none that I have been informed of at any time.

Abby Durfee Borden at the time of her death was about six years younger than her husband, and that would make her, of course, sixty-four years of age. Mr Borden, I may say here, was a spare, thin man and somewhat tall. Mrs Borden was a short fat woman weighing, I believe, in the neighborhood of 200 pounds. The house in which these homicides were committed had been occupied by the Borden family for some twenty years. I shall have occasion to consider its construction and its relation to other buildings and streets later on in the course of this opening.

There was or came to be between the prisoner and her stepmother an unkindly feeling. From the nature of the case, from the fact that those who know the most about that feeling, except the prisoner at the bar, are dead, it will be impossible for us at this hearing to get an thing more than suggestive glimpses of that feeling. It will appear that some five years before the death of Mr and Mrs Borden some controversy had arisen about some property, not important in itself. Mr Borden had seen fit to do some benefaction for a relative of Mrs Borden, and in consequence of that fact the daughters thought that something should be done for them by way of pecuniary provision as an off set. The details of what happened at that time are, as I have said, by no means important. It is significant, however, that enough of feeling had been created by the discussion which arose to cause a change in the relations between the prisoner and Mrs Borden. Up to that time she had addressed her stepmother as "Mother." From that time she substantially ceased to do so. We shall show to you that the spring before these homicides, upon some occasion where a talk arose between the prisoner and a person who did the cloak making for the family, the latter spoke of Mrs Borden as "Mother." The prisoner at once repudiated that relation and said, "Don't call her 'Mother.' She is a mean thing, and we hate her. We have as little to do with her as possible." "Well, don't you have your meals with her?" "Yes, we do sometimes,

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but we try not to, and a great many times we wait until they are over their meals, and we stay in our own rooms as much as possible."

I know of nothing that will appear in this case more significant of the feeling that existed between Mrs Borden and the prisoner than a little incident which occurred not

long after the discovery of these homicides. When one of the officers of the law, while the father and the stepmother lay at the very place where they had fallen under the blows of the assassin, was seeking information from the prisoner, he said, "When did you last see your mother?" "She is not my mother. She is my stepmother. My mother is dead." You cannot fail, I think, to be impressed in this respect with what will appear as to the method of living of this family. It will appear later on in the evidence that, although they occupied the same household, there was built up between them by locks and bolts and bars, almost an impassable wall.

In the early part of August of last year the older daughter, Miss Emma, was away, I believe, at Fairhaven. When Miss Emma was away the household that was left consisted of Mr and Mrs Borden and a servant, who had been in the service of the family nearly three years, Bridget Sullivan, and the prisoner. Upon the day preceding the homicides, John V. Morse, a brother of Mr Borden's first wife, and therefore the uncle of his daughters, came upon a visit or a passing visit to the Bordens'. The homicides, I may say now, were upon a Thursday and the visit of Mr Morse was on Wednesday. He came a little after the completion of the dinner; went away, I think, during the afternoon, returned in the evening and slept at the house upon the Wednesday night. Upon Tuesday night, August 2nd, an illness occurred in the household. Mr and Mrs Borden were taken suddenly ill with a violent retching and vomiting sickness, and, it is said, to a less degree the prisoner herself was effected by this illness. Bridget Sullivan was not. Upon the Wednesday morning Mr and Mrs Borden rose feeling, of course, in the condition that people would be in after a night of that character, and Mrs Borden consulted a physician with reference to her condition. Upon the noon of Wednesday, which you will keep in mind was the very day before these homicides, the prisoner went to a drugstore in Fall River, the situation of

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which will be pointed out to you, and there asked the clerk for ten-cents worth of prussic acid for the purpose of cleaning a sealskin cape. She was told that that was a poison which was not sold except on the prescription of a physician, and after some little talk went away. I think, gentlemen, you will be satisfied that there can be no question that the person who made this application for this deadly poison was the prisoner. There were three persons in the drugstore, two of whom knew her by name and sight; one of these too knew her as the daughter of Andrew J. Borden and the third recognized her at once as he saw her. Upon the evening of the Wednesday the prisoner made a call, not in itself unusual or peculiar, upon a friend of hers, Miss Alice Russell. And we shall commend to your careful attention what occurred during that interview. It will appear that the prisoner had been intending to spend a vacation with a party of her friends at Marion and had made some arrangement about going to Marion, and the talk between the two friends started upon that topic. The prisoner said, "I have made up my mind, Alice, to take your advice and go to Marion, and I have written there to them that I shall go; but I cannot help

feeling depressed; I cannot help feeling that something is going to happen to me. I cannot shake it off. Last night," she said, "we were all sick. Mr and Mrs Borden were quite sick and vomited. I did not vomit, and we are afraid that we have been poisoned. The girl did not eat the baker's bread and we did, and we think it may have been the baker's bread." "No," said Miss Russell, "if it had been that, some other people would have been sick in the same way."

"Well, it might have been the milk; our milk is left outside upon the steps." "What time is your milk left?" "At four o'clock in the morning." "It is light then, and no one would dare to come in and do it at that time." "Well," said the prisoner, "probably that is so. But Father has been having so much trouble with those with whom he has dealings that I am afraid that some of them will do something to him. I expect nothing but that the building will be burned down over our heads. The barn has been broken into twice." "That," said Miss Russell, "was merely boys after pigeons." "Well, the house, has been broken into in broad daylight, when Maggie and Emma

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and I were the only ones in the house. I saw a man the other night, as I went home, lurking about the buildings, and as I came he jumped and ran away. Father had trouble with a man the other day about a store. There were angry words, and he turned him out of the house."

The house occupied by this family was a common type of house in this community and in this state, a house with the end to the street and the front door upon the end. It had, I believe, no ell. It was a rectangular house. It was situated upon Second Street, in Fall River, which is one of the most frequented streets outside of the main business streets in the city, and is within, as probably most of you know, a very short distance of the City Hall. It may fairly be called a thoroughfare, as well for foot passengers as for carriages. It is a street used partly for residences and partly for business purposes.

Second Street runs substantially north and south. It is a street which ascends toward the south. The higher part is south; the lower part is north; and upon the east side of Second Street this house is situated.

At the south of the house is the residence of Dr Kelly, and also very near the house. To the north of the house, and also near it, is the residence occupied by Mrs Churchill; and diagonally in the rear of the house is the residence occupied by Dr Chagnon.

The house is separated from the sidewalk by a wooden fence, a picket fence, with two gates; and in the rear of the yard, in which is situated a barn, there is a high board fence, on the top and bottom of which there was at the time, and is, I believe, now, a line of barbed wire.

There are three exterior doors, three entrances to these premises, and only three, excepting of course the windows. There is the front door, leading directly from the sidewalk up a pair of steps into the hall. There is a side door upon the north side, facing Mrs Churchill's house, leading into a small entryway which leads into the kitchen. There is a third door exactly in the rear of the house, which leads down to the cellar.

As you turn and go upstairs from the front entry, you come into a hallway. From that hallway lead three doors; first, a door which leads into a large closet, used at this time for the keeping of dresses, and which is almost large enough to be a small

Page 109 - Drawing of Second Floor, 92 Second St.

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bedroom; another door, which leads into the guestchamber, which is directly over the parlor below and corresponds to it in every respect. The guestchamber is the chamber in which you will subsequently hear that Mrs Borden was found dead. It is a matter which is to be carefully considered, that, as you turn upon the journey upstairs, as the stairs wind about and begin to face into the hall towards the north, you can look directly into the door of the guestchamber. The other door which leads from this hall is a door which leads into a bedroom and leads towards the rear of the house. Following, then, my direction, gentlemen, as you come up the stairs, turn to your left. As you approach the entry, in front of you is the door leading into the guestchamber, and to your right is the door leading into a chamber which at that time was occupied by the prisoner. Between the guestchamber and the bedroom of the prisoner there was a door. It was a door which always, including the day of this homicide, was kept locked upon both sides, and upon the side towards the prisoner's room there was against the door a desk which she used. In other words, it was not a practicable opening.

When you have got up into this part of the house, gentlemen, you can go nowhere except into this clothes closet, into this guestchamber and into the room occupied by the prisoner. It is important to remember that. All access to the other part of the house is cut off, not by the natural construction of the house but by the way in which the house was kept. As you enter the prisoner's bedroom a door leads to the left into a room which has no other entrance than that door. That is the room that was occupied by Miss Emma when she was at home. The only access to it was through the prisoner's room. There is another door at the rear of the prisoner's room which leads into the room occupied by Mr and Mrs Borden. That door leading into that room was kept always locked upon both sides. It was locked upon the front toward the prisoner's room by a hook. It was locked in the rear toward Mr and Mrs Borden's room by a bolt, and I may as well say here as at any time that the proof that that door was locked upon both sides upon this morning,



from the morning down to the time of the arrival of those who came alarmed by this homicide, will be ample and complete. But as we go further,

Page 111 - Drawing of the Ground Floor, 92 Second St.

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passing to the rear into Mr and Mrs Borden's room, we find a single door leading out into the entryway which is over the entryway leading into the kitchen. That door, it will be clearly, amply and satisfactorily proved, was locked all through this day up to and beyond the time of the homicide.

[Downstairs, there is a difference in construction. There is no partition in the dining room to correspond with the one which divides the two rooms above the dining room.] The effect of that partition is that while there is free communication two ways from the kitchen to the front part of the house downstairs, upstairs this partition reduces those ways of communication to one, and that one, you will recall, always and upon the day of the homicide, was barred by two doors, locked.

Mr Morse returned upon a Wednesday night. It is important to show who occupied the house on Wednesday night. Let us first go to the front part of the house. The prisoner came in, the last one that night, and locked the front door. Upon that front door were three fastenings: a spring latch, a bolt and a lock which operated by key. Those three fastenings were closed, by the way, when she came in, the last person, that night, by the front way of the house. The door leading into the cellar, the other exterior door, had been closed since Tuesday, the washing day, and by complete and ample evidence will be proved to you to have been closed all through Wednesday night and on Thursday morning including up to and beyond the time of these homicides.

Bridget came in through the back door that night, found the back door locked when she came, unlocked it, locked it as she went in, went upstairs and went to bed. So, when Bridget and the prisoner had come in at their respective doors, every exterior approach to this house was closed.

Now in the front part of the house that night, the prisoner slept in one room. Mr Morse slept in the guest chamber. There was no other room in that part of the house except Miss Emma's room, which led out, as you will remember, of Miss Lizzie's room. Mr and Mrs Borden slept in their room over the kitchen, and Bridget slept in some room above, in the third story of the house.

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In the morning Bridget was the first person up. We may safely assume that upon the proof the only human beings who were in that house at that time were Bridget, Mr and Mrs Borden, John V. Morse, and the prisoner at the bar. Bridget comes downstairs first, the back way, goes down cellar and gets her fuel, builds up a fire in the stove. Then she went to the door, took in the milk, unlocking the door, locked it after she got through. The rear door, I may explain here, was a double door; it was an ordinary wooden panel door, which was used at night, and a screen door, which was used, at least in hot weather, during the daytime, and was fastened only by a hook on the inside. When the outside door was opened by Bridget at that time, it was opened for good for the day, and the method of security was keeping the screen door locked from that time on.

The next person who came down was Mrs Borden. Bridget came down a little after six; Mrs Borden came down a little before seven. Next, Mr Borden comes down, and after coming down, goes out into the yard and empties his slop pail and unlocks the door to the barn. Bridget saw him do that. Bridget did not see Mr Morse until they all met at breakfast a little after seven, Mr and Mrs Borden and Mr Morse taking breakfast together. After breakfast the first one to depart is Mr Morse. He goes away at quarter of eight, (1) and Mr Borden lets him out and locks the screen door behind him. Soon after Mr Morse went away, the prisoner came downstairs and began eating her breakfast, or what took the place of a breakfast, in the kitchen. While she was there Mr Borden went upstairs, and while Mr Borden was upstairs Bridget went out into the yard, because she was sick and desired to vomit. She was gone some moments, just how long I cannot tell. When she came back Mr Borden had apparently gone downtown. The prisoner was not in the kitchen, and Mrs Borden was in the dining room dusting. There was some talk then between Mrs Borden and Bridget about washing the windows on the inside and the outside, and Bridget received the directions from Mrs Borden to do that service. Mrs Borden disappeared at this time, and it will appear that she told the prisoner that, having made the bed in the spare room, she was going upstairs to put two pillowcases upon two pillows that were there ---a trifling duty,

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(1) Quarter of nine, by Mr Morse's testimony.

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a duty which would take less than a minute. You will be satisfied, gentlemen, that that was not far from half-past nine o'clock, and upon the evidence you will be satisfied that she never left that room alive, and that she was killed within a very few moments after she left the [dining] room, because no living person saw Mrs Borden from that time until her death, except the assailant.

In the course of beginning the duty of washing these windows Bridget had to go to the barn and down cellar to get some of the implements for doing the work. As she was at the screen door, about to go out, the prisoner appeared at that back door, and Bridget said

to her, "You needn't lock that door because I am coming in to get my water to wash the windows; but you may," she said, "if you wish, and I will get my water from the barn"-as she did. The prisoner said nothing, and I believe it to be the fact as the evidence will disclose it, that the door was not locked at that time.

Then Bridget went into the kitchen and dining room and sitting room to close the windows and there was nobody there---neither the prisoner nor Mrs Borden, who were the only two human beings in the house at that time except Bridget.

In washing these windows, there were two of the sitting room windows upon the south side of the house which were out of sight of the screen door because they were on the other side of the house. Those two windows were washed first on the outside. Then Bridget came to the front of the house, washed two windows facing the street; then she came to the north side of the house, the Mrs Churchill side, and washed the parlor window and the two dining-room windows. During all the time that Bridget was washing those windows she saw neither Mrs Borden nor the prisoner in any part of the lower part of the house, or anywhere else.

When she finished washing the windows on the outside she came in at the screen door and hooked it behind her, and began to wash the inside of the same windows that she had washed upon the outside. First she went into the sitting room, which is upon the Kelly side, the south side of the house. She had partly washed one of the two sitting-room windows when somebody was heard at the front door.

Now, gentlemen, let us pause a moment and find out, as well as we can, what time

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that somebody came to the front door, because it was Mr Borden. Mr Borden, it will appear, left the house sometime between nine and nine-thirty o'clock in the morning. He was at two banks, two or three banks, between half-past nine and a little after ten o'clock. At twenty-nine minutes past ten, or at twenty-nine minutes of eleven---I am not quite sure which---he was at the store of a Mr Clegg, who fixes the exact time. The next place we find him is at another store, which belonged to him, upon South Main Street near the corner of Spring, and not far from his own home. He left there, apparently in the direction of his home, at twenty minutes of eleven. That was but a moment or two's walk from there to his house.

The next we see of him is that he is seen by Mrs Kelly who lived upon one side of the house, and who was going downtown, coming around, apparently, from the screen door, where he had attempted to get in, out upon the sidewalk and towards his own front door, taking out his key to open it. Mrs Kelly will fix that time at twenty-seven or twenty-eight minutes of eleven, which cannot be reconciled with the other time that I

have stated here. There will be some explanation of that, and we think you will be satisfied that the clock by which she obtained this time was not one that could be depended upon, and that the real fact is that at twenty minutes of eleven Mr Borden started to his home, which was but a moment or two's walk away.

Now then, we fix that as well as we can. When Mr Borden came home, contrary to the usual custom in that house, Bridget found the front door locked with the key and bolted, as well as secured by the spring lock. Mr Borden had not rung the bell. He had put his key in and made the noise which people usually do who expect to get in the house by the use of a latch key. But the door was locked and bolted. He came into the house, and as Bridget let him in made some talk or explanation about the difficulty of unloosing the locks. The prisoner from the hall above made some laugh or exclamation. At that time, gentlemen, Mrs Borden's body lay within plain view of that hall, dead, probably, more than an hour.

Mr Borden came in, went first into the dining room. There the prisoner came to him, asked him if there was any mail, and said to him, "Mrs Borden has gone out; she

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had a note from somebody who was sick." That, gentlemen, we put to you as a lie, intended for no purpose except to stifle inquiry as to the whereabouts of Mrs Borden.

Mr Borden then took his key, went upstairs, came down again, and as he came down Bridget had finished the other window and a half in the sitting room and was just going into the dining room to finish those windows. As she was washing the windows in the dining room the prisoner again appeared from the front part of the house, went to the kitchen, got an ironing board and began to iron her handkerchiefs. While there she told Bridget this falsehood about the note. She said, "Are you going out, Bridget, by-and-by?" Bridget said, "I don't know, I am not feeling very well today." "Well," she said, "if you do I want you to be careful about the locks, I may go out myself. Mrs Borden has gone out." "Where is she?" said Bridget. "I don't know, it must be somewhere in town, because she received a note to go to a sick friend."

Bridget finished the washing of the windows in the dining room and her work was done. She went out into the kitchen, put her cloth away, emptied her water, and was about to go upstairs, when the prisoner said to her, "There is a cheap sale of goods downtown, Bridget, where they are selling some kind of cloth at eight cents a yard." Bridget says, "Well, I guess I will have some." And Bridget went upstairs.

Now, gentlemen, probably all that occurred after Mr Borden came in occurred in less time perhaps than it has taken me to tell it. We can measure time better by seeing what is done in the time than by the estimate of any witness of the time.

After Bridget went upstairs there is nothing more that happened until the alarm is given to her.

Now, pursuing the same course, let me so far as possible fix the time of that alarm. I shall have to anticipate somewhat in doing it. Bridget, upon the alarm, came downstairs, was immediately sent diagonally across the street for Dr Bowen, returned rapidly, and was sent away for Miss Russell. As Bridget went away Mrs Churchill by accident came to- the house, or got the alarm and came to the house. There w4s a moment's conversation between the prisoner and Mrs Churchill. Mrs Churchill ran out, ran diagonally across the street to a stable, there gave some sort of alarm, was

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seen by a man named Cunningham, who heard what she said and went to a telephone in a paint shop near by, telephoned to the Marshal of Fall River, who gave directions to an officer to go to the spot. The officer, having a duty which called his attention to the time, looked at his watch and found it was quarter-past eleven.

Now then gentlemen, stopping a moment, let us try to find out as well as we can these times. It could not have been, upon the evidence, far from quarter of eleven o'clock when Mr Borden returned. It could not, upon this evidence, have been far from quarter-past eleven when the alarm reached the station.

Therefore the time between Bridget's going upstairs and coming down again must be diminished on the one side by the time consumed by the washing of a window and a half in the sitting room and two windows in the dining room and the putting away of the cloth and the water. On the other side the half hour between eleven o'clock and half-past eleven must be diminished by the acts of Bridget and the acts of Mrs Churchill and the acts of Cunningham which I have described. I shall not attempt to fix that time; you can fix it better and measure it better yourselves when you come to hear the evidence of what was done by Bridget between the time Mr Borden came and the noise was heard upstairs and what was done between the time when the alarm took place and the alarm reached the station house and the Marshal of Fall River.

Now, gentlemen, you will be struck by the fact through the evidence that is to come that instinctively there leaped to the lips of every inquiring person, [to ask] of the prisoner, Where were you? before a thought of suspicion was over her head. She had been the last person left with her father alive. When Bridget came down that question arose and she said, "Where were you, Miss Lizzie?" It is not quite clear what the prisoner told Bridget, whether he was sick, or killed, or dead. That is not important; but the moment the information was received, arose the question: Where were you. She said "I was out in the back yard, I heard a groan, came in and found the door open and found my father."

Bridget was then sent to Dr Bowen. She came down, found the prisoner somewhat agitated, standing by the screen door and inside. There

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had been no scream, no alarm of any kind, and there was an attempt simply to secure the presence of Dr Bowen. She came back unsuccessful from the search for Dr Bowen. As she came back she was seen by Mrs Churchill who, looking out of her kitchen window saw the prisoner standing inside the door, and something in her appearance attracted her, and she called out to her. In the meantime the prisoner had said to Bridget, "You go down to Miss Russell's house." And, gentlemen, it will in this connection occur to you that Miss Russell, though she lived a long distance away from this house, was the person to whom this prisoner was predicting disaster the very night before.

Mrs Churchill came there by accident, and she will testify in detail as to what occurred after she came there. She too said, "Lizzie, where were you?" "I was out in the barn. I was going for a piece of iron when I heard a distress noise, came in and found the door open, and found my father dead." Bridget returns from Miss Russell's, and returning says, "Shall I not go down to Mrs Whitehead's for Mrs Borden?" "No," said the prisoner, "I am almost sure I heard her come in." Up to that time, by alarm, by screaming, or by any attempt, there had been no effort on the part of the prisoner to communicate with Mrs Borden. "I wish you would look," she said, "and see if you can't find Mrs Borden." Mrs Churchill and Bridget together went up this front stairway, turned, as they do turn, to their left, and as they turned Mrs Churchill's head reached above the level of the floor. She looked in and saw Mrs Borden's dead body under the bed.

It is to be regretted that Dr Bowen, a witness accustomed to observation, was the family physician and friend, and therefore affected, naturally, by this dreadful series of murders, for we might expect from him something of accurate observation; but Dr Bowen thought Mrs Borden had died of fright, and so expressed himself at the time.

I do not and shall not attempt in detail to tell you all that occurred for the hour or two after the discovery of these homicides. Soon after, people came in. The prisoner, who had never been into the room where her father lay dead, passed from the dining room diagonally through the corner of the sitting room, without stopping to look at

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her dead father, upstairs by the room where her stepmother lay dead, without an inquiry, without a thought; went into her own room, lay down; soon after without a suggestion from anyone changed her dress and put on a loose pink wrapper.

There are one or two things, however, in what she said that I ought to call your attention to at the present time. She told Dr Bowen at that time that she was out in the barn for a piece of iron; she told Miss Russell that she went out into the barn for a piece of iron or tin to fix a screen; she told Officer Mullaly that she went out into the barn, and upon being asked whether she heard anything or not, she said she heard a peculiar noise, something like a scraping noise, and came in and found the door open. There is, therefore, Bridget Sullivan, to whom she said that she heard a groan, rushed in and found her father; Mrs Churchill, to whom she said she heard a distress noise, came in and found her father; Officer Mullaly, to whom she said she heard a peculiar noise like scraping, came in and found her father dead; and all those, gentlemen, you see in substance are stories which include the fact that while she was outside she heard some alarming noise which caused her to rush in and discover the homicide.

Well, gentlemen, as inquiry begins to multiply upon her as to her whereabouts, another story comes into view, and she repeats it again and again, and finally repeats it under oath, that at the time after Bridget went upstairs she went out into the barn and into the loft of the barn to get lead to make sinkers. Now, gentlemen, having in view the character of her statements, that she heard the noise, you will find that when she gave a later and detailed account, she said that she went into the loft of the barn, opened the window, ate some pears up there, and looked over some lead for sinkers, came down, looked into the stove to see if the fire was hot enough that she might go on with her ironing, found it was not, put her hat down, started to go upstairs to await the fire which Bridget was to build for the noonday, and discovered her father. It is not, gentlemen, and I pray your attention to it, a difference of words here. In the one case the statement is that she was alarmed by the noise of the homicide. In the other case the statement is that she came coolly, deliberately about her business, looking after her ironing, putting down her hat, and accidentally discovered the homicide as she went upstairs.

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Gentlemen, upon this point it is my duty to point out to you a piece of testimony which will be for your consideration. This day, August 4th, 1892, was one of the hottest days of the last summer in this vicinity. The loft of the barn was almost stifling in the intensity of its heat. Officer Medley, who came there quite early after the alarm, went to the barn, went up the stairs of the barn. He had at that time heard of her going up into the loft, and as his head came up on a level with the floor of the barn he saw that it was thickly covered with dust. He stopped, put his hands upon the floor and drew them across, and saw the marks of them. He looked again, stepped up, counting his footsteps upon a part of the barn floor, came down into his position again, and saw plainly every footstep which he made.

I have said to you, gentlemen, that Mrs Borden died some time before her husband, and it is my duty to open to you the proof upon that question. There will be many here who observed the two bodies as they lay in death. I shall not attempt to state their evidence in detail. It will tend to show that Mr Borden's body showed freshly running blood, was warm and was not rigid in death; that Mrs Borden's body showed blood that was coagulated and hardened and dry; that her body was cold, and that she was stiff stiffened in death. There will be the judgments of some professional men who observed the two bodies soon after the discovery of the homicide. There will be other important testimony in this case. The stomachs of the two victims were taken to Professor Edward S. Wood, who examined them, and is prepared to state their exact contents. The stomach of Mrs Borden contained 11 ounces of food in process of digestion. One fifth of that 11 ounces was water, and four fifths of it was this partially digested food.

Mr Borden's stomach-and you will remember that they ate breakfast at the same time-contained only 6 ounces of matter, and nine tenths of that was water, and only one tenth solid food; so you will see there was a very marked difference in the contents of their stomachs. Upon the autopsy it appeared that the upper intestine, leading directly from the stomach-the intestine into which the contents of the stomach first pass---in

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Mrs Borden's case contained partially digested in Mr Borden's case was empty of food. It will appear he lower intestine in Mrs Borden's case was empty---the ad not reached that stage of digestion. In Mr Borden's that was the intestine which contained the breakfast as it been digested.

Now, gentlemen, you will have the opinion of many who t to give an opinion upon all these facts, and they you that upon those facts alone they are able to give a judgment that Mrs Borden must have died at least an her husband. And that, gentlemen, you will remember and take into view with the fact that at somewhere and half-past nine o'clock she went upstairs for a mere temporary purpose, and apparently never left the room that she went to.

Now, gentlemen, it will appear that about the two rooms in which the homicides were committed, there was blood spattering in various directions, so that it would make it probable more spatters of blood would be upon the person clothing of the assailant. And there has been produced for the inspection of the Commonwealth---it was good produced a good many days after the homicide---the clothing said to have been worn by the prisoner on the morning of August 4---the shoes, stockings, dress, skirt.

*[At this point the articles of clothing mentioned were produced and placed on the table, after which Mr Moody continued as follows:]*



The most rigid examination by the most competent expert in this country fails to disclose any marks of blood upon the dress which is produced as the one which she wore on the morning of the homicide, and the skirt which she is said to have worn upon that morning produces one minute spot of blood, which I do not think it worth while to call to your attention at the present time.

I must go back a moment in this story. You have in mind, of course, the interval which elapsed between the two homicides. The prisoner has said---and it is important to consider, and we shall prove that she has said---that the reason she left her ironing was because she found the fire was low; that she took a stick of wood, put it on top of the embers of the fire, and

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went out to the barn to await its kindling; that when she went out it was smoking and smoldering, as if it were going to catch; that when she came back the stick of wood was there and the fire had all gone out. It will appear-and it was pure accident that this observation was made-that soon after the alarm an officer of Fall River was attracted by something that Dr Bowen was doing to the stove-I do not mean to suggest anything-but the fact that he was tearing up a note and was going to put it into the stove; and he looked in and saw what there was, and found a large roll of what appeared to be burnt paper.

The prisoner had a calico, or cotton, dress, perhaps I ought to say, which she was in the habit of wearing mornings. It was a light-blue dress with a fixed figure, a geometrical figure of some sort, and the figure was not white, but was navy blue- a darker blue. Dr Bowen has said, and I have no doubt will say here now, that she had on a cheap calico dress, a sort of a drab-colored dress. Mrs Churchill says she had on, this morning-and Dr Bowen's testimony refers to this morning -that she had on, this morning, a light-blue ground with white in it-that is, white in the blue-not a white figure, but white in the blue, to make it lighter blue, I suppose, and a fixed figure of navy blue, without a white spot in it at all-a diamond figure of navy blue, as she will describe it. And upon being shown that dress [showing dress to the jury], she will say that it is not the dress that the prisoner at the bar had on when she came in upon the morning of the homicide.

You will recall that soon after the homicide Miss Russell and the prisoner went to the bedroom of the prisoner. While they were there the prisoner said, "I think I had better have Winwood for undertaker," and Miss Russell went away upon the errand of getting Dr Bowen to see about the undertaker. And as Miss Russell came back she found the prisoner coming from Emma's room with the pink wrapper on that I have described to you before-the loose wrapper.

Upon Saturday night, the chief executive officer of the City of Fall River, Mayor Coughlin, informed Lizzie Andrew Borden that she was under suspicion for these murders. Saturday night Bridget Sullivan left the house. Alice Russell was staying with her friend, and of course Miss Emma was at home at that time.

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On the morning of Sunday Miss Russell came into the kitchen. There were officers about on the outside of the house, but none in, and there was the prisoner with the skirt of a dress upon her arm and what appeared to be its waist lying upon some shelf by the side, and we will describe that dress. It was a dress which the prisoner had purchased in the spring of that year, a cotton dress and not a silk dress like this. [*Holding dark-blue silk dress up to view.*] It was a light-blue dress. You will recall Mrs Churchill's description of that in this connection. It was a light-blue dress with a fixed navy-blue spot in it. The dress ordinarily worn in the morning corresponds to that description and was also bought in the spring. As she saw the prisoner standing by the stove and as she approached her, Miss Emma turned round and said, "Lizzie, what are you going to do?" The prisoner replied, "I am going to burn this dress; it is all covered with paint." Miss Russell turned away. She came in again to the room and she found the prisoner standing with the waist of the light-blue dress, apparently tearing it in parts, and she said, "Lizzie, I would not do that where people can see you." The only response which the prisoner made was to take a step or two further out of observation. Miss Russell turned again and went away. Upon the following day in consequence of some talk with Mr Hanscom, a Pinkerton detective not in the employ of the Government, Miss Russell went into the room where the prisoner and her sister Emma were sitting and said, "Lizzie, I am afraid the burning of that dress was the worst thing that you could have done." She said, "Oh, why did you let me do it, then?" A considerable search had been made by the officers for clothing and for weapons and they will say that the search was such that no clothing unconcealed covered with paint could have escaped their observation. You have noticed, Mr Foreman and gentlemen, that this indictment states that these homicides were committed with "a sharp cutting instrument, a more particular description of which is to the jurors unknown."

It is the duty of the Government to bring forward all its information upon this subject, and I propose to open it all to you at the present time. Upon the premises

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that day were found two hatchets and two axes. Upon one of those hatchets spots were discovered which upon view were thought to be blood. It is extremely difficult, impossible in fact---Dr Wood, the highest authority on this subject in this country if not in the world, will say---to distinguish between blood and some other substances.

Attention upon the view then was directed to one of these hatchets, it is not important which.

*[Holding both hatchets in hand before the jury.]*

It is said to be the one I hold in my right hand. These axes, gentlemen, are so far out of the question that I need not waste any time on them. They could not have been the weapons with which these homicides were committed. Upon careful examination neither of these hatchets is seen to contain the slightest evidence of bloodstain. The appearances which were thought to be blood turned out to be something else. You will observe, gentlemen, that there are ragged pieces near and about the entrance of the handle to the blade of this hatchet, that the same appearances [that] exist there in that weapon are also on the outside of the handle, and Dr Wood will say to you that those weapons could not in all probability have been used for these homicides, and have been washed so as to have prevented the traces of blood from being caught on those ragged surfaces. In that view of the fact, we may well lay those weapons aside as entirely innocent. Upon the day of the homicide another weapon or part of a weapon was found, after what was thought to be a bloody hatchet had been discovered, and [it] attracted little attention. It was seen by one officer and left where it was. At that time this fragment of the handle was in its appropriate place in the helve, if that is the proper name, of the hatchet, in the place fitted in the head. It was covered with an adhesion of ashes, not the fine dust which floats about the room where ashes are emptied, but a coarse dust of ashes adhering more or less to all sides of the hatchet. Upon the Monday morning this hatchet was taken away, and its custody from that time to the present will be traced. You will observe, gentlemen, that both hatchets are rusty, the hatchet which is innocent, the handleless hatchet now under discussion, but the rust in the case of the handleless hatchet is uniform upon both sides and upon all parts of its surface, such rust, for instance, as might be the result of exposure upon wet grass

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to the night's dew, such rust as must result from an exposure uniform in its extent upon all parts of the hatchet. Professor Wood will say to you---he saw this hatchet soon after it was found---that while there were ragged fragments of wood which would detain absolutely no indications of the blood in these other weapons, that if that weapon had had upon it the remainder of its handle and was as smooth as he saw, by the application of water soon after the homicide, blood could be readily, effectually and completely removed. Dr Wood will also tell you that that break which had not the color then which it has now---it has been subjected to some acid process---was a new break and was a fresh break. By that I do not mean to be understood as a break which had necessarily occurred within twenty-four hours, within forty-eight hours or within a week but perhaps a break which might have been a day or might have been a month old. It was a fresh break.

In accordance, Mr Foreman and gentlemen, with the unbroken practice of the authorities in this Commonwealth, such parts of the mortal remains of the victims as would tend to throw light either in the protection of innocence or the detection of guilt have been preserved and must be presented here before you for your consideration. I do not think it is necessary for me to allude to them at this time. There is one story that is unmistakably told by those skulls and by the chipping blows that are upon them, and that is that the weapon which produced them was a sharp weapon. There is another thing that is unmistakably told by one of the skulls---I think that of Mr Borden---and that is that the weapon which brought him to his death was just 3-1/2 inches on its blade, no more, no less. That is the exact measurement of the blade of that hatchet. Let there be no mistake, Mr Foreman and gentlemen, about my meaning. 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. The one significant fact which in this respect is emphasized is that the bloody weapon was not found by the sides of the victims upon the premises, or near them. Doubtless you will consider that fact well when you come to consider whether these homicides were the acts of an intruder or stranger flying from his crimes with the bloody weapon in his

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possession through the streets of Fall River at noonday, or the acts of an inmate of the house familiar with its resources for destruction, obliteration and concealment.

When these bodies were found it was discovered that not a thing in the house had been disturbed. No property had been taken. No drawers had been ransacked. Mr Borden had upon his person a considerable sum of money as well as his watch and chain. We almost might hope that it was not necessary to exclude another motive, but sad experience tells us that the age of a woman is no protection from an assault from lustful purpose; but I may say, gentlemen, that there was nothing to indicate a motive of that sort. In and about the rooms where these two homicides were committed there was not the slightest evidence of a struggle. The assailant, whoever he or she may have been, was able to approach each victim in broad daylight and without a struggle and without a murmur to lay them low before them. Mrs Borden was found prostrated between the bureau and the bed, her face upon the floor and the right side of her head hacked to pieces by blows, some of great force, some of uncertain and vacillating weakness; Mr Borden was found reclining on a sofa in the sitting room and apparently had passed from life to death without a struggle or a movement, and his head, too, bore the same marks as the head of his wife bore. It will appear that no one---and it is confirmatory evidence, not in itself of the strongest character, but confirmatory of the conclusive evidence of the opportunity in the house---it will appear that no one was seen to escape from any side of that house nor to enter that house on the morning of August 4th. Gentlemen, let me stop a moment and see where we are. The Commonwealth will prove that there was an unkindly feeling between the prisoner and her stepmother; that upon Wednesday, August 3rd, she was

dwelling upon murder and preparing herself with a weapon which had no innocent use; that upon the evening of Wednesday, August 3rd, she was predicting disaster and cataloguing defences; that from the time when Mrs Borden left the dining room to go upstairs for this momentary errand, up to the time when the prisoner came downstairs an hour later from this hallway which led only to her chamber and that in which Mrs Borden was found, there

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was no other human being except the prisoner at the bar present; that these acts were the acts of a human being; that they were the acts of a person who, to have selected time and place as it was selected in this case, must have had a familiar knowledge of the interior of the premises and of the whereabouts and the habits of those who were in occupation of them at that time.

We shall prove that this prisoner made contradictory statements about her whereabouts, and, above all, gave a statement vitally different upon the manner in which she discovered these homicides. We shall prove beyond all reasonable doubt that this death of Mrs Borden's was a prior death. Then we shall ask you to say, if say you can, whether any other reasonable hypothesis except that of the guilt of this prisoner can account for the sad occurrences which happened upon the morning of August 4th.

Now, gentlemen, my present duty is drawing to its close. The time for idle rumor, for partial, insufficient information, for hasty and inexact reasoning, is past. We are to be guided from this time forth by the law and the evidence only. I conjure you to keep your minds in that same open and receptive condition in which you have sworn they were; I pray you to keep them so to the end. If, when that end comes, after you have heard the evidence upon both sides, the arguments of counsel, the instructions of the court, the evidence fails, God forbid that you should step one step against the law or beyond the evidence to the injury of this prisoner. But if your minds, considering all these circumstances are led irresistibly to the conclusion of her guilt, we ask you in your verdict to declare the truth; and by so doing, and only by so doing, shall you make true deliverance of the great issue which has been committed to your keeping.

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At the close of Mr Moody's statement, the Commonwealth presented its first witness, THOMAS KIERAN, an engineer, who testified as to measurements taken on the Borden premises, and as to distances between the house and various banks and shops on Main Street, visited by Mr Borden on the day of the murder.

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On cross-examination, Mr Kieran described an experiment made by counsel for the defence to show that a man might be hidden in the closet in the front hall without being observed by anyone in the hall, and another experiment as to the probability of a man, lying where Mrs Borden's body was found, being seen by a person ascending the stairs.

In the afternoon, the jury were taken to Fall River, and made an inspection of the Borden premises.

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### THIRD DAY

New Bedford, June 7, 1893

**P**RESENTATION of the witnesses for the Commonwealth continued.

JAMES A. WALSH, photographer, identified the official photographs, taken by him, of the bodies of the victims and of the premises.

#### JOHN V. MORSE

Q. [By Mr Moody] Will you give us your name, sir?

A. John Vinnicum Morse.

Q. Where is your present residence?

A. South Dartmouth.

Q. Be good enough to give us your age, sir.

A. About sixty.

Q. Your residence had been in the west?

A. Three years ago last April I came east.

Q. Prior to the time of coming east had you been a resident of the west a number of years?

A. Yes sir.

Q. Did you bear any relation to the first wife of Mr Borden?

A. She was a sister to me.

Q. And you are therefore an uncle of the prisoner and of Miss Emma Borden?

A. Yes sir.

Mr Borden had three children by his first marriage; one died many years ago. Emma was the oldest, then came Alice, who is dead, and then came Lizzie.

I went to the Borden house on Wednesday, August 3rd. I had visited there three or four weeks earlier; had not seen Miss Lizzie for three or four months before that.

I arrived at the Borden house about half-past one, August 3rd. I saw Mr and Mrs Borden and Bridget, but not Miss Lizzie. I had dinner as soon as I arrived; they had finished. Between three and four o'clock I went to Swansea and returned to the house about 8.30 that evening. I rang, and Mrs Borden let me in at the front door. I saw no one except Mr and Mrs Borden. With them I sat in the sitting room until a few minutes after ten. Mrs Borden went to bed first, going up the back stairs. Mr Borden and I went later.

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While I was downstairs I heard someone come in the front door, go upstairs into Lizzie's room and shut the door. I did not see this person. When I went up to bed, my room was the guestchamber over the parlor. This was the room in which Mrs Borden was found dead next day. Lizzie's door was closed when I came upstairs. I slept all night with my door open.

Q. Did you bring with you, Mr Morse, any luggage, baggage of any kind-hand bag, or anything of that sort?

A. No sir.

I got up about six, dressed and went down. I did not enter that room again before I left the house. Lizzie's door was closed when I went down. The first person to come downstairs after me was Mr Borden, and then Mrs Borden.

She came into the sitting room, where I remained until breakfast. Mr and Mrs Borden ate with me about seven. We had some mutton, some bread, coffee, cakes, etc. There were bananas on the table.

We were about half an hour at breakfast; all three partook of the breakfast and arose from the table together. Mr Borden went into the sitting room with me; Mrs Borden was in and out of that room. She was dusting with a feather duster. After that--some fifteen minutes before I went away---she went into the front hall.

I left the house fifteen or twenty minutes before nine. I left by the rear door--the screen door. Mr Borden came to the door with me. I saw Bridget in the kitchen as I went out. I unhooked the door, and Mr Borden hooked it after me. When I left the house I went

to the post office; then to Weybosset Street, to see my nephew and niece. It is about a mile and a quarter distant, and I walked. My nephew was out, but I called on my niece, staying until about 11:.20. I returned by the horsecar, alighting from the car at Pleasant and Second streets and walking to the Borden house.

Nothing attracted my attention at first. I went into the back yard, to a pear tree, picked up two or three pears and ate part of one of them. Then I went to the house where someone informed me that something had happened. I went in and saw the body of Mr Borden; then I went up the front stairs far enough so I could look under the bed and see Mrs Borden. This was the bed where I slept the night before. When I had gone up the stairs so that my head was four or six inches above the floor, I could see her body. I had been told she was there.

I had not seen Lizzie at all, from the time of my arrival on Wednesday, until I returned to the house on Thursday, after the murders. When I came back, Mr Sawyer was at the door, and, I think, Bridget Sullivan. Dr Bowen and two or three policemen were in the house, and, I think, Mrs Churchill and Miss Russell.

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#### CROSS-EXAMINATION

Q. [By Mr Robinson] I have only a few questions, Mr Morse. If I understand it correctly, on Wednesday afternoon you arrived at the house about half-past one?

A. I did.

Q. That was past the dining hour?

A. Yes sir.

Q. So you didn't sit at the table at dinner with anybody in the family?

A. No sir. They were in the room with me, not at the table.

Q. Mr and Mrs Borden?

A. Yes sir.

Q. And do you know of your own knowledge who provided the meal that was set before you?

A. Mrs Borden brought it in herself.

Q. Did you see Bridget Sullivan there at that time?

A. I did not.

Q. Did you see her that afternoon?



A. No sir.

Q. Did you see her that night after your return?

A. No sir.

Q. Then you came there at half-past one and had your dinner; and how long did you remain after that before you went away?

A. I think it was nearly four o'clock.

Q. You were gone until what time in the evening?

A. Fifteen or twenty minutes to nine.

Q. And from twenty minutes of nine until the hour of retiring you remained in the sitting room with Mr and Mrs Borden?

A. Mrs Borden didn't remain there a great while before she retired.

Q. Do you know whether they were sick at that time or not?

A. They were.

Q. Do you know whether Miss Lizzie was or not?

A. Mrs Borden told me she was.

MR MOODY. He did not see her.

Q. Were you told so by Mrs Borden?

MR MOODY. Wait a moment, Mr Witness. I pray your Honors' judgment.

The CHIEF JUSTICE: In the opinion of the Court, it will be hearsay evidence.

Q. You have been asked about the breakfast. You three sat round that dining table there in the dining room practically as it is now?

A. Yes sir.

Q. And was the breakfast room furnished about as you see it now?

A. Yes sir.

Q. And, Mr Morse, generally how was the table set; that is, what kind of dishes or ware were on the table?

A. I think it was white ware.

Q. As I understand, you had for breakfast, mutton and bread and coffee and cakes and bananas?

A. Yes.

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Q. And you do not know but what you had johnnycake too?

A. I don't recollect about that.

Q. You would not say you did not have?

A. No sir.

Q. That was the bill of fare, was it?

A. Yes sir.

Q. You and all partook of what was there, as I understand it?

A. I think so; I did not notice what they were eating.

Q. You did not scrimp yourself at all?

A. No sir.

Q. It was a good fair breakfast?

A. Plenty of it.

Q. There was nothing mean or stingy about it?

A. No, I don't think there was.

Q. I will ask you whether you have observed anything in the use of the front door in regard to the spring lock, Mr Morse?

A. Yes sir.

Q. What is that?

A. Well, if you shut the door hard, the spring lock would catch; if you didn't, it would not.

Q. Then if it did not catch?

A. You could open it without any trouble.

Q. Push it, or turn the ordinary knob, and it would come right open. And when had you noticed that?

A. That was after the tragedy.

When I first saw Lizzie, after entering the house, she was sitting in the dining room. I think there was no one with her: Mrs Churchill and Miss Russell were in the sitting room, where Mr Borden was lying on the sofa. There were blood spots on the door leading from

the sitting room to the parlor. These stayed there until Sunday, when they were washed off by Miss Emma.

Q. Did you notice the officers making any examination of any part of the premises at any time you were there?

A. Yes, I was with them part of the time.

Q. Where did they go?

A. Went up in the second and third story.

Q. And what did they look at?

A. Looked at everything, I guess.

Q. They did? Well, were they thorough about it?

A. I think so.

Q. Well, for instance, what did you see them do in the way of making a search?

A. I see them overhauling everything. I unlocked a chest or a trunk or something of that kind up in the attic that they couldn't get into.

Q. Did they have full opportunity to look about?

A. Yes sir.

Q. Was there anybody there to stop them?

A. No sir.

Q. Did you impose any objection?

A. No sir.

Q. And nobody did?

A. Not that I know of.

Q. To your observation, as they went about, they had free search?

A. They had free access to everything.

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There followed a group of witnesses whose testimony traced Mr Borden during his walk downtown, his business calls and his return to his house, all between about 9.30 and 10-45 A.M. on August 4th.

ABRAHAM G. HART, treasurer of the Union Savings Bank, testified that Mr Borden, who was president of the bank, came in there about 9.30 and stayed five to seven minutes.

JOHN P. BURRILL, cashier of the National Union Bank, observed Mr Borden in front of that bank at a time which he could fix no nearer than between 9.15 and 9.45.

EVERETT M. COOK, cashier of the First National Bank, where Mr Borden was a director, saw him in the bank from 9.45 to 9.55.

JONATHAN CLEGG, a hatter, testified that Mr Borden came into his store, leaving there about 10.29. (1)

JOSEPH SHORTSLEEVES and JAMES MATHER, carpenters, who were at work on some repairs in Clegg's store, saw Mr Borden between 10.30 and 10.45. Mather thought that he left at 10.40.

#### BRIDGET SULLIVAN

In the household I was sometimes called Maggie, by Miss Emma and Miss Lizzie. I am twenty-six years old, unmarried; have been in this country seven years last May. Was born in Ireland; came first to Newport, Rhode Island. After a year there, went to South Bethlehem, Pennsylvania. I came to Fall River four years ago; went to work for Mrs Reed. Had been working for Mr Borden two years and nine months at the time of his death. There was no other domestic servant, but a man from the farm used to come and do chores; his first name was Alfred; I don't know his other name.

They used to keep a horse in the barn until about a year before Mr Borden died. After the horse went they didn't use the barn for anything.

My work was washing, ironing and cooking and sweeping. I did not have the care of any of the bedchambers except my own. My room was in the third story, right over Mr Borden's, and his was over the kitchen.

Q. Who did the chamber work in Mr Borden's room and Mrs Borden's?

A. I don't know. Themselves did it. I don't know which of them.

Q. Who took care of the rooms belonging to the daughters?

A. Themselves took care of them, as far as I know.

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(1) The time between 9.55 and 10.20 was probably spent at a barber's, where Mr Borden was shaved. The barber, for many years thereafter, treasured and regarded with awe-stricken veneration the shaving mug, inscribed in letters of gold: "Andrew J. Borden."

I remember Mr Morse coming to the house sometimes, and staying over night. I saw him after dinner on the Wednesday before the deaths. Mrs Borden got dinner for him; I washed the dishes. I did not go out that afternoon; I guess I was ironing. Monday was regular washing day. I dried the clothes on Tuesday, that week. Did the washing down cellar in the washroom. I locked the cellar door after I hung out the clothes.

There was no change in that door, down to the time of the murders; so far as I know it stayed bolted. There was more or less traffic on Second Street---folks, carriages and teams. I went up to my room Wednesday afternoon, say about quarter to five. I left the screen door hooked. Mr and Mrs Borden were sick on Wednesday morning. I was well until Thursday, when I got up with a headache. When I went to the front door on Wednesday to let Dr Bowen in, the door was spring-locked; when I went out to my friend's on Third St. that evening, I left the back door locked. I let myself in with a key. The back door had two spring locks and a bolt; I locked all of them when I came in, and hooked the screen door, too. I went to the ice chest, took a glass of milk and went to bed.

The milk was left at the door every morning at five or half-past. I washed a can every day and left it on the doorstep at night; the milkman took that can and left a full one, so there was an exchange of cans every day.

Next morning I felt a dull headache as I got up. I came down at 6.15, went down cellar for wood, started my fire and went down again for coal. Then I unlocked the back door, took in the milk and put out a pan for the ice man, and a pitcher with some water in it. When I went in again, I hooked the screen door. I worked in the kitchen and dining room, getting breakfast, and didn't go in any other rooms.

Mrs Borden was the first one I see that morning; she gave me orders about breakfast; it was about half-past six.

Mr Borden came down in about five minutes; he went into the sitting room and put the key of his bedroom on the shelf. He kept it there. He then came out into the kitchen, put on a dressing coat and went outdoors with a slop pail he had brought downstairs. The screen door was locked until he went out. I was in the kitchen; the windows of the kitchen look out into the back yard. Mr Borden emptied the slop pail; then he unlocked the barn door and went into the barn. Then he went to the pear tree, picked up a basket of pears and brought them into the house. He washed up in the kitchen and went in to breakfast. When I put the breakfast on the table I saw Mr Morse. For breakfast there was some mutton, some broth and johnnycakes, coffee and cookies. The broth was mutton broth.

After they had their breakfast, I ate mine and commenced to clear things up. Then

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I see Mr Borden and Mr Morse going out by the back door. Mr Borden let him out, came to the sink and cleaned his teeth at the sink, and took a big bowlful of water and took it up to his room. First he took the key off the shelf in the sitting room.

Five minutes later Miss Lizzie came through to the kitchen. I was washing the dishes and I asked her what did she want for breakfast. She said she didn't know as she wanted any breakfast, but she guessed she would have something, she guessed she would have some coffee and cookies. She got some coffee, and she was preparing to sit down at the kitchen table. I went out in the back yard. I had a sick headache and I was sick to my stomach. I went out to vomit, and I stayed ten or fifteen minutes.

When I came back, I hooked the screen door again. I didn't see Mr Borden after he went up to his room. I finished my dishes and took them in the dining room. Mrs Borden was there; she was dusting the door between the sitting room and dining room. She had no covering on her hair. She said she wanted the windows washed, inside and outside both; she said they are awful dirty.

After that I didn't see Mrs Borden any more until I found her dead upstairs.

I didn't see Miss Lizzie anywhere about. I can't say exactly, but I think this was about nine o'clock. Then I cleaned off my stove, went in the dining room and sitting room, shut the windows I was going to wash, and went down cellar and got a pail for to take some water. I didn't see anybody in the rooms. I got a brush in the kitchen closet, filled my pail and took it outdoors.

As I was outside, Lizzie Borden appeared in the back entry, and says, "Maggie, are you going to wash the windows?" I says, "Yes." I says, "You needn't lock the door; I will be out around here; but you can lock it if you want to; I can get the water in the barn." I went to the barn to get the handle for the brush.

First I washed the sitting-room windows---on the south side of the house---the Kelly side. This was away from the screen door. Before I started washing, Mrs Kelly's girl appeared and I was talking to her at the fence.

Then I washed the parlor windows: the two front windows. Between times I went to the barn and got some water. I washed the dining-room windows and one parlor window on the side. I went to the barn for water twice while I was on the south side of the house-- went round by the rear---and went three or four times more while I was working in front or on the other side of the house. Then I went past the screen door to the barn.

During all that time I did not see anybody come to the house.

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Then I got a dipper from the kitchen and clean water from the barn, and commenced to wash the sitting-room windows again by throwing water up on them. When I washed these windows, I did not see anyone in the sitting room, and I did not see anyone in the dining room when I washed those windows. I went round the house rinsing the windows with dippers of water.

Then I put the brush handle away in the barn and got the hand basin and went into the sitting room to wash those windows inside. I hooked the screen door when I came in.

I began to wash the window next to the front door. Had not seen anyone since I saw Lizzie at the screen door. Then I heard like a person at the door was trying to unlock the door but could not; so I went to the front door and unlocked it. The spring lock was locked. I unbolted the door and it was locked with a key; there were three locks. I said "Oh pshaw," and Miss Lizzie laughed, upstairs. Her father was out there on the doorstep. She was upstairs.

She must have been either in the entry or at the top of the stairs, I can't tell which. Mr Borden and I didn't say a word as he came in. I went back to my window washing; he came into the sitting room and went into the dining room. He had a little parcel in his hand, same as a paper or a book. He sat in a chair at the head of the lounge.

Miss Lizzie came downstairs and came through the front entry into the dining room, I suppose to her father. I heard her ask her father if he had any mail, and they had some talk between them which I didn't understand, but I heard her tell her father that Mrs Borden had a note and had gone out. The next thing I remember, Mr Borden took a key off the mantelpiece and went up the back stairs. When he came downstairs again, I was finished in the sitting room, and I took my hand basin and stepladder into the dining room. I began to wash the dining-room windows. Then Miss Lizzie brought an ironing board from the kitchen, put it on the dining-room table and commenced to iron. She said, "Maggie, are you going out this afternoon?" I said, "I don't know; I might and I might not; I don't feel very well." She says, "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." Says I, "Miss Lizzie, who is sick?" "I don't know; she had a note this morning; it must be in town."

I finished my two windows; she went on ironing. Then I went in the kitchen, washed out my cloths and hung them behind the stove. Miss Lizzie came out there and said, "There is a cheap sale of dress goods at Sargent's this afternoon, at eight cents a yard." I don't know that she said "this afternoon", but "today."

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(2) In this conversation, and in the one preceding, it is far more likely that Miss Lizzie said morning, rather than afternoon. In the lower court, Bridget said nothing about afternoon." If Miss Lizzie said "afternoon" the significance of the remark about Sargent fails. But in the previous inquiry, as to whether Bridget was going out, the word "afternoon" would make the inquiry almost meaningless. It is probable that to Bridget as to many people, both afternoon and evening were very indefinite words. It is possible that Miss Borden used the word "forenoon"---a word perhaps unfamiliar to Bridget

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And I said, "I am going to have one." Then I went upstairs to my room. I don't remember to have heard a sound of anyone about the house, except those I named.

Then I laid down in the bed. I heard the City Hall bell ring and I looked at my clock and it was eleven o'clock. I wasn't drowsing or sleeping. In my judgment I think I was there three or four minutes. I don't think I went to sleep at all. I heard no sound; I didn't hear the opening or closing of the screen door. I can hear that from my room if anyone is careless and slams the door. The next thing was that Miss Lizzie hollered, "Maggie, come down!" I said, "What is the matter?" She says, "Come down quick; Father's dead; somebody came in and killed him." This might be ten or fifteen minutes after the clock struck eleven, as far as I can judge.

I run downstairs; I hadn't taken off my shoes or any of my clothing.

Q. What was the usual dress that Miss Lizzie Borden wore mornings? Will you describe it?

MR ROBINSON. Wait a moment; we object to that.

MR MOODY. Not as having any tendency to show what she had on that morning.

MR ROBINSON. I object.

MR MOODY. I don't care to press it against objection.

The WITNESS. Well, she wore a

MR ROBINSON and MR MOODY. Wait a moment. I will call your attention, not asking you when it was worn or what part of the time it was worn, to a cotton or calico dress with light-blue groundwork and a little figure. Does that bring to your mind the dress I am referring to

A. No sir; it was not a calico dress she was in the habit of wearing.

Q. I did not ask you about the habit, but---

MR ROBINSON. That should be stricken out.

MR MOODY. Certainly.

The CHIEF JUSTICE. Let it be stricken out.



Q. Do you remember a dress of such a color with a figure in it?

A. Yes sir.

Q. Will you describe that dress that I have referred to as well as you can?

A. It was a blue dress with a sprig on it.

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Q. What was the color of the blue; what was the shade of the blue?

A. Light blue.

Q. And what was the color of what you have called the sprig on it?

A. It was a darker blue, I think, than what the under part was.

Q. Did it have any light spots or light figures in it?

MR ROBINSON. This is very leading now-----

A. I don't remember.

MR ROBINSON. I would like to have the witness describe the dress; she is competent to do that. Was the last question answered ?

[Question read]

MR ROBINSON. I move that that be stricken out.

MR KNOWLTON. I object. I contend that the question is not leading.

MR ROBINSON. I understand he does not propose to go any further with it.

MR MOODY. I do not.

MR KNOWLTON. That is all-to negative the fact of a white figure in it.

MR ROBINSON. Well, we will have no talk about it now. Let it stand as it is.

When I got downstairs, I saw Miss Lizzie, standing with her back to the screen door. I went to go right in the sitting room and she says, "Oh, Maggie, don't go in. I have got to have a doctor quick. Go over. I have got to have the doctor." I went over to Dr Bowen's right away, and when I came back, I says, "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 wide " She says, "Go and get Miss Russell. I can't be alone in the house." open. So I got a hat and shawl and went. I had not found Dr Bowen when I went to his house, but I told Mrs Bowen that Mr Borden was dead. I went to the house, corner of Borden and Second streets, learned that Miss Russell was not there;

went to the cottage next the baker shop on Borden Street, and told Miss Russell. Then I came back to the Borden house.

Mrs Churchill was in the house, and Dr Bowen. No one else, except Miss Lizzie. She was in the kitchen, and Mrs Churchill and I went into the dining room, and Dr Bowen came out from the sitting room and said, "He is murdered; he is murdered." And I says, "Oh, Lizzie, if I knew where Mrs Whitehead was I would go and see if Mrs Borden was there and tell her that Mr Borden was very sick." She says, "Maggie, I am almost positive I heard her coming in. Won't you go upstairs to see?" I said, "I am not going upstairs alone." I had been upstairs already after sheets for Dr Bowen. He

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wanted a sheet, and I asked him to get the keys in the sitting room, and Mrs Churchill and I went up to Mrs Borden's room and she got two sheets, I guess Mrs Whitehead is Mrs Borden's sister; she lives in Fall River.

Mrs Churchill said she would go upstairs with me. As I went upstairs, I saw the body under the bed. I ran right into the room and stood at the foot of the bed. The door of the room was open. I did not stop or, make any examination. Mrs Churchill did not go in the room. We came right down. Miss Lizzie was in the dining room, lying on the lounge; Miss Russell was there.

Q. Up to the time when Miss Lizzie Borden told her father and told you in reference to the note, had you heard anything about it from anyone?

A. No sir, I never did.

Q. Let me ask you if anyone to your knowledge came to that house on the morning of August 4th with a message or a note for Mrs Borden?

A. No sir, I never seen nobody.

### CROSS-EXAMINATION

Q. [By Mr Robinson] You were called Maggie?

A. Yes sir.

Q. By Miss Emma and Miss Lizzie?

A. Yes sir.

Q. But that was not unpleasant to you?

A. No sir, it was not.

Q. Not at all offensive?

A. No sir.

Q. Did not cause any ill-feeling or trouble?

A. No sir.

Q. Did Mr and Mrs Borden call you by some other name?

A. Yes sir, called me by my own right name.

Q. Did you have any trouble there in the family?

A. No sir.

Q. A pleasant place to live?

A. Yes sir, I liked the place.

Q. And for aught you know, they liked you?

A. As far as I know, Yes.

Q. It was a pleasant family to be in?

A. I don't know how the family was; I got along all right.

Q. You never saw anything out of the way?

A. No sir.

Q. You never saw any conflict in the family?

A. No sir.

Q. Never saw the least-any quarreling or anything of that kind ?

A. No sir, I did not.

Q. Now the daughters, Miss Emma and Miss Lizzie, usually came to the table, did they not, as the father and mother did?

A. No sir, they did not.

Q. I thought you said they did?

A. No sir, they did not.

Q. Didn't you say this morning that they ate at the table with the family?

A. Nobody asked me whether they did or not. They went up the back stairs.

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Q. You did not say so this morning?

A. No sir, I don't remember anybody asked that question.

Q. Didn't they eat with the family?

A. Not all the time.

Q. But they did from time to time and day to day, did they not?

A. Yes sir.

Q. What?

A. Sometimes the family-most of the time they did not eat with their father and mother.

Q. Did they get up in the morning as early as the father and mother?

A. No sir.

Q. So they had their breakfast a little later?

A. Not all the time, sometimes. But sometimes they would be down with the family, more times they would not.

Q. How was it at dinner?

A. Sometimes at dinner; a good many more times they were not.

Q. Sometimes they were out?

A. I don't know where they were; I could not tell.

Q. You don't know whether out or in?

A. Sometimes I knew they were in the house.

Q. Were there sometimes when one would be at the table and the other was not?

A. Yes sir.

Q. Whether or not you heard Miss Lizzie talking with her mother, Mrs Borden?

A. Yes sir, she always spoke to Mrs Borden when Mrs Borden talked with her.

Q. Always did?

A. Yes sir.

Q. The conversation went on in the ordinary way, did it?

A. Yes sir.

Q. How was it this Thursday morning after they came downstairs?

A. I don't remember.

Q. Didn't they talk in the sitting room?

A. I heard her talk as she came along.

Q. Who spoke?

A. Miss Lizzie and Mrs Borden.

Q. Talking in the sitting room?

A. Mrs Borden asked some question and she answered very civilly. I don't know what it as.

Q. When you heard them talking, they were talking calmly, the same as anybody else?

A. Yes sir.

Q. There was not, so far as you knew, any trouble that morning?

A. No sir, I did not see any trouble with the family.

Q. You heard them talking over things about Christmas time, didn't you?

A. I don't know; I did not stay much in the dining room when the folks were eating at all.

Q. I don't mean that; but you heard them talking over about Christmas things?

A. No sir, I don't remember that.

Q . Have you forgotten that?

A. No sir, I did not.

Q. How was Lizzie towards Mrs Borden if Mrs Borden was not feeling well?

A. I don't know. Mrs Borden was not particularly sick when I was there except twice.

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Q. Did not Lizzie treat her properly and help her?

A. I did not see anything; I know that she was sick one time and none of them went into the room while she was sick.

Q. Haven't you testified before about this?

A. No sir, I said when Mrs Borden spoke to them, they spoke to her.

Q. You testified at the inquest?

A. Yes sir.

Q. Do you remember what you testified there?

A. Yes sir.

Q. Did you in answer to this question, "Did they talk pleasantly?" say, "Yes sir," and "they talked over things at Christmas, and if anything was the matter with Mrs Borden, Lizzie did all she could for her."

A. I did not know what was the matter between them.

Q. Didn't you testify that?

A. I don't remember anybody asking me that question.

Q. Do you say you did not?

A. I don't remember anybody asking me such a question.

Q. Mr Knowlton was there asking you questions, was he not?

A. Yes sir.

Q. Did you answer this, "Did you know of any trouble between Miss Lizzie and her mother?" and say, "No sir, never a word in my presence."

A. No sir, I never heard them talking between them.

Q. Do you think you have told us today just as you have twice before?

A. Yes sir; I have told all I know and all I can tell.

Q. I don't ask you that. What I want to know is whether you have told it today just as you did before?

A. Well, I think I did, as far as I remember.

Q. What do you say now you did when you came in from out in the yard when you went out and were sick and vomited?

A. I commenced to wash my dishes.

Q. Let me finish the question. What did you do as to the screen door when you came in?

A. I hooked it.

Q. Did you say so before at the other examination?

Q. Do you know so?

A. I am not sure.

Q. You are not sure?

A.. No sir.

Q. Let me read and see if you said this: "When you came in from vomiting, did you hook the screen door then?" And the answer: "I couldn't tell, I don't know whether I did or not." Did you say so?

A. Well, I must have hooked it because

Q. Well, that isn't it. Was that the way you testified: "I couldn't tell, I don't know whether I did or not?"

A. I don't know what I testified. I testified the truth as long as I remember. As far as I know I told the truth and nothing more.

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Q. I do not imply that you did not. I merely want to know if you recall testifying over there at Fall River that you couldn't tell whether you hooked the door or not when you came in from vomiting?

A. Well, I suppose I don't know whether I did or not. It is likely I did, for it was always kept locked.

Q. You say now that you do not positively recollect one way or the other?

A. Well, I won't say; I can't remember whether I locked the screen door.

Q. You remember now that you testified that you did lock it, don't you, just now, a few minutes ago?

A. Well, I generally locked the screen door.

Q. That isn't what I asked. You said a few minutes ago that you hooked it at that time, didn't you?

A. Yes sir.

Q. Well, now you say you don't know whether you did or not. Isn't that so?

A. Yes sir.

Q. You say now you don't know. Am I right?

A. I don't know whether you are or not.

Q. Well, will you tell which way it was?

A. No sir.

Q. Did you hook it or did you not?

A. I know I must have hooked the door for I always

Q. No, that isn't it. Did you hook it or did you not?

A. I don't know whether I did or not.

Q. Now do you recall what you testified at the inquest about their eating together? I have asked you about it. Have you a clear memory about it now?

A. I don't know if they asked me anything about it.

Q. Well, were you asked this: "Did she generally get up to breakfast?" And you said: "Very seldom, she generally came down about nine o'clock."

A. Yes sir.

Q. "And then helped herself to breakfast."

A. Yes sir.

Q. "Did she always eat at the same table with Mr and Mrs Borden?" And your answer: "Always did eat dinner and supper when she was in the house."

A. Yes sir; she ate the meals when she was in the house.

Q. That is so, is it? "They always ate together when she was in the house, except when she was out on an errand." Is that so?

A. Yes sir; they always ate at the same dining room.

Q. Always ate together in the dining room?

A. Yes sir.

Q. You say if anybody was careless and slammed the screen door you could hear it?

A. Yes sir.

Q. But it was easy enough for anybody to go in and out that door and not let you hear it, wasn't it?

A. Yes sir; they could.

Q. Plenty easy?

A. Yes sir.

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Q. Now if nothing had happened that morning, Miss Sullivan, nothing unusual had happened that day, would there be any reason why you should remember that Thursday more than any other day?

A. What do you mean?

Q. About what happened, what little things were done?

A. Why, no; there was no reason that I should remember that day any more than any other day-not before.



Q. Could you tell us just what Mrs Borden did the Tuesday before when she came downstairs?

A. The Tuesday morning?

Q. Yes

A. Why, she went in the sitting room as usual.

Q. Well, not as usual. I want to know what you remember about it?

A. Why, the woman came downstairs and wanted to know what was for breakfast and so forth, and went into her sitting room and stayed there until her breakfast was ready.

Q. Well, do you know what time of the morning Miss Lizzie came down Tuesday?

A. I don't know if she was in the house at all; I can't remember.

Q. You don't know whether she came down or didn't come down?

A. No sir.

Q. And do you know, if she was in the house, anything about what she did Tuesday?

A. No sir; I do not.

Q. When you first went out, as you got ready to go to work, you saw Mrs Kelly's girl there?

A. Yes sir.

Q. And you went over to the fence and talked with her?

A. Yes sir.

Q. Where was she?

A. She was over in her own yard.

Q. What part of the yard?

A. She was in the yard, front of the house, going to wash windows.

Q. And you went over to the fence in that corner and stood there talking with her?

A.. Yes sir.

Q. The screen door over on the other side of the house was open, unlocked, all that time?

A.. Yes sir.

Q. Can you tell me any reason why a person could not have walked into that door and you not seen him?

A. Why, of course they could.

Q. Then, also, at one time you went to washing the windows on the front end of the Borden house?

A. I washed them in the sitting room first.

Q. I know, but you did at one time wash the end windows in the parlor?

A. Yes sir.

Q. And would there be any difficulty then in a person going into the side door when it was unhooked?

A. Yes sir, anybody could come from the back yard, but not from the front.

Q. They could; no trouble at all. When you were talking with Mrs Kelly's girl, the field was pretty clear, wasn't it? That is, there wasn't much in the way; you stood, back to the Borden house, talking with the Kelly girl over the fence?

A. Yes sir, I was.

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Q. And you could not then see---as you stood you could not see the front gate or the side gate or the side walk?

A. I think I could see the front gate; I am not sure.

Q. You could if you looked?

A. Yes sir.

Q. But if you were talking off that way and the front door was down there, you could not see it, could you?

A. No sir.

Q. Had you ever gone to let Mr Borden in on any other day at the front door?

A. No sir. I don't remember.

Q. What?

A. No sir, I did not.

Q. Let us see if we understand it right. All the time that you lived there did you ever go when he came to the door and couldn't unlock the door?

A. I don't remember.

Q. Don't remember that you did?

A. No sir, I don't.

Q. After you let Mr Borden in you say you heard Miss Lizzie laugh?

A. Yes sir.

Q. And you say she was upstairs somewhere?

A. Yes sir.

Q. And you didn't see her on the stairs?

A. No sir.

Q. Didn't see her at all?

A. No sir. I didn't look.

Q. You heard the sound of the laugh?

A. Yes sir.

Q. Was that all?

A. Yes sir.

Q. And there was talk with her father about the mail?

A. Yes sir.

Q. And what did he say?

A. I don't know.

Q. You don't know what was said?

A. Only I heard her tell her father her mother had a note and gone out.

Q. Did you hear what he said about that?

A. No sir.

When I got back to the house, after going for Miss Russell, Miss Lizzie was in the kitchen. After I came downstairs, she was on the lounge in the dining room. I did not see any blood on her. Not on her face or hands, or anywhere. As far as I can remember, her hair was in order.

Q. 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?

A. Well, I don't know if a note came to the back door that I wouldn't know.

Q. 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.

Q. Don't know anything about it, and so you don't undertake to say it wasn't there?

A. No sir.

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Q. Will you fix the time when you got through washing the windows outside?

A. Why, I can't tell anything about it.

Q. Can't tell very near anyway, can you?

A. No sir, I can't. I don't know anything about the time, and I didn't take no notice of any time. I didn't have no occasion.

Q. Well, a good many things that day aren't very clear in your mind, are they, clear in your recollection?

A. As far as I remember; as far as I know.

Q. But you are not certain of a good many things?

A. Well, I am not certain about the time, because I never noticed anything about the clock or anything else except eleven o'clock. I know I noticed that.

Bridget Sullivan's testimony was interrupted to allow the court to hear another witness---MRS CAROLINE KELLY, next-door neighbor of the Bordens. Mrs Kelly, mother of a young child, was unable to be absent from her home in Fall River more than a few hours, and Bridget Sullivan (whose testimony has been given here, for convenience sake, as continuous) briefly left the stand while Mrs Kelly testified.

Mrs Kelly was the only person on Second Street who saw Mr Borden return to his house. On her way to keep an appointment at a dentist's, she saw her venerable neighbor come out the yard at the side of the house---after unsuccessfully trying to enter at the side door-and go to the front door. She noticed that he carried a small parcel---a lock which he had picked up in the street---and that he bent over to try to open the front door with his key. Usually they exchanged greetings, but this time Mr Borden evidently did not notice her. Mrs Kelly, taking the time from a clock at which she had looked when leaving her house, fixed the time at twenty-eight minutes before eleven, but later investigation showed that the clock was slow.

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## FOURTH DAY

New Bedford, June 8, 1893.

SEABURY W. BOWEN

I HAVE PRACTICED as physician and surgeon in Fall River for twenty-six years. For twenty-one years have lived in my present residence, diagonally opposite Mr Borden's house, to the northwest. The Borden family lived in the house opposite most of that time. I have been their family physician probably for twelve years. Have seldom called at the house except professionally, but have had social as well as professional relations with them.

On August 3rd last saw Miss Lizzie Borden going north on Second Street, between six and seven o'clock.

On the morning of August 4th, I started out on my professional calls, as usual. I came back to my house between eleven and eleven-thirty. Mrs Bowen was looking for me, and in consequence of what she said, I went to the Borden house, to the side or rear door. The only persons-living persons-in the house were Miss Lizzie and Mrs Churchill in the back entry, near the kitchen.

I said, "Lizzie, what is the matter?" She replied, "Father has been killed", or "stabbed"---I wouldn't say which it was. I said, "Where is your father?" She answered, "In the sitting room." Nothing else was then said in reference to her father's tenants, or any other subject. I went into the dining room and thence to the sitting room.

I saw the form of Mr Borden lying on the lounge at the left of the sitting-room door. His face was very badly cut, apparently with a sharp instrument; his face was covered with blood. I felt of his pulse and satisfied myself he was dead. Glanced about the room and saw there was nothing disturbed; neither the furniture nor anything at all. Mr Borden was lying with his face toward the south, on his right side, and apparently at ease, as if asleep. His face was hardly to be recognized by one who knew him.

*[The official photograph of Mr Borden's body was shown to witness and the jury.]*

I made no other examination at the time, except to feel his pulse. Miss Lizzie had

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followed me part way through the dining room, and as I went back to the kitchen I asked her if she had seen anyone. She said, "I have not." Then I asked her, "Where have you

been?" She replied "In the barn looking for some iron." She said she was afraid her father had had trouble with the tenants, and she had overheard loud conversation several times recently.

I asked for a sheet to cover up Mr Borden. Bridget brought me one. Then Miss Lizzie asked me to telegraph to her sister Emma, and I went to the telegraph office. Nothing had been said about Mrs Borden, until now, but before I went to send the telegram, the question was asked, "Where is Mrs Borden?" and the answer-from Miss Lizzie, I think, but I am not certain-was that Mrs Borden had received a note that morning to visit a sick friend, and had gone out.

On leaving the house, I met Officer Allen. On my return from the telegraph office, I met Mrs Churchill, who said, "They have found Mrs Borden." I asked, "Where?" and she replied, "Upstairs in the front room."

I went up the front stairs and stopped a moment at the door of the guest room. At that point, I looked over the bed and saw the prostrate form of Mrs Borden. I was standing directly in the door. I went round the foot of the bed and placed my hand on her head. I found there were wounds. Then I felt her pulse: she was dead.

Never did I say to anyone that she had died of fright. My first thought, when I was standing in the door, was that she had fainted. A moment later, I saw that she was dead. I went downstairs, and told the people in the kitchen that Mrs Borden had been killed, by the same instrument, I thought, and that it was fortunate for Lizzie she had been out of the way, or else she would also have been killed.

*[Exhibits 15 and 16, Photographs of Mrs Borden's body, were now shown to the witness.]*

Q. Doctor, did you at any time in the course of the morning notice anything with reference to the dress that Miss Borden had on?

A. Yes sir.

Q. Will you describe it as well as you can?

A. The only time I noticed anything was when she changed it after she went up to her room. I noticed she had on a different dress when she went to her room.

Q. What did you notice in reference to that dress?

A. I noticed the color of it.

Q. What was it?

A. A pink wrapper, morning dress.

Q. Did you notice anything with reference to the dress that she had on prior to that time?

A. No sir.

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Q. Did you testify on this subject at the inquest?

A. I presume I was asked questions on it.

Q. At that time was your memory as good as it is now or better?

A. Well, about the same, I should judge.

Q. Do you recall making this reply to the question that I am about to read ?

"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 attentions sort of morning calico dress, I should judge."

A. Yes sir.

Q. What do you say as to the color?

A. That is very indefinite there.

Q. What do you say as to the drab?

A. I should say the color is very indefinite.

Q. I did not ask you to criticize your answer, sir.

A. I made the best answer at the time that I could.

Q. Do you assent at the present time to that statement of the color of the dress?

A. With the modification I make now.

Q. What modification do you desire to make?

A. I don't remember distinctly anything about the color.

Q. Do you desire to say that the dress appeared to you to be a drab dress or not?

A. I merely mean to say that the dress is a common

Q. Answer my question.

A. Wait

Q. No, answer my question, and this is the question: Did it appear to you to be a drab-colored dress?

A. It was an ordinary, unattractive, common dress that I did not notice specially.

Q. Will you answer my question?

The CHIEF JUSTICE. Answer the question if you can; if you cannot, say so.

A. I don't think I can answer it better than I did. I don't know.

Q. I would like to try it once more, Doctor. Did it appear to you to be a drab dress?

A. I did not pretend to describe a woman's dress and I do not intend to now.

Q. Did you intend to describe a woman's dress when you testified a few days after this at the inquest?

A. No sir, I did not. I told my impression of the dress.

Q. Did you in point of fact say that it was a sort of drab, or "not much color to it to attract my attention-sort of morning calico dress, I should judge." Did you say that?

A. I should judge I did.

Q. Do you desire to modify that at all?

A. Merely by saying that the drab-there are very many shades of drab to a woman's dress, I should judge.

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Q. Would a faded light-blue dress appear to be drab to you?

Q. [*Exhibiting blue dress*] Does that appear to you, Doctor, to be a sort of a drab, or not much color to it, sort of a morning calico dress?

MR ADAMS. Wait a minute, Doctor. We object.

The CHIEF JUSTICE. Excluded.

Q. Is that the dress that she had on that morning?

A. I don't know, Sir.

Q. Does it appear to be to you the dress that you described at the inquest ?

MR ADAMS. One moment. I object to that.

MR MOODY. I will waive the question.

Q. Give us your best judgment as to whether that is the dress she had on or not?

A. I have told you once.

Q. And what is it?

A. That I didn't know.



Q. Have you any judgment upon the question?

A. I have answered your question.

Q. I understood you to say that you didn't know. I ask you if you have any judgment upon whether that is the dress she had on or not that morning?

MR ROBINSON. I suppose, your Honors, this is the government's own witness. We desire to concede all reasonable latitude, and perhaps a little more than that. I submit the limit is passed already, and I object to the line of examination.

MR MOODY. I will withdraw that particular question and ask another one.

Q. What color do you call that dress, Doctor?

MR ROBINSON. One moment. I object to that. [Question admitted]

The WITNESS. Your question again.

Q. What color do you call that dress?

A. I should call it dark blue.

## CROSS-EXAMINATION

Q. [By Mr Adams] Doctor, when you first came to the house, in what way did you come, by walking or driving?

A. I came driving, from the south, from Tiverton. (1)

Q. You drove there in your carriage?

A. Yes sir.

Q. Did you have a boy who drove with you?

A. Yes sir.

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(1) Scene in 1832 of Fall River's earlier murder sensation, the death of Sarah Maria Cornell, for which the Rev. Ephraim K. Avery of Bristol, R. I., was tried and acquitted.

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Q. Now after you had seen Miss Lizzie and Mrs Churchill and taken a view of Mr Borden and the sheet had been brought, you say you received some request from Miss Lizzie to send a telegram?

A. Yes sir.

Q. And you went to the telegraph office?

A. Yes sir.

Q. How did you go to the telegraph office?

A. In my carriage.

Q. You drove quickly?

A. Yes sir.

Q. You have a good horse, I suppose, in common with other physicians?

A. Possibly.

Q. Well, I won't press that. You drove quickly to the telegraph office?

A. Yes sir.

Q. And sent this telegram?

A. Yes sir.

Q. And when you came back you went into the house again?

A. Yes sir.

Q. Was Mr Borden then covered up with the sheet?

A. Yes sir.

Q. And you went upstairs alone, I understand?

A. Yes sir.

Q. When you went upstairs did you get any view at all of this prostrate form until you got upon the floor of the second hall or the upper entry?

A. No sir.

Q. Then as I understand it, although you had heard that Mrs Borden was dead, and that she was in that front room, and you went up there to see, you did not get any view until you had gone up those stairs and had come to the door leading into the guest chamber?

A. Yes sir.

Q. And then, by looking over the bed, you saw her form in the space between the bureau and the bed?

A. Yes sir.

Q. Do you remember after you went downstairs how soon Dr Dolan, the medical examiner, appeared at the house?

A. I think he was there in ten or fifteen minutes after that.

Q. Did you then go upstairs with him?

A. Yes sir. I went up first with another man.

Q. Did anybody else than you go with Dr Dolan at that time?

A. I don't know, sir.

Q. At that time was an examination made by either you or Dr Dolan, or both, of Mrs Borden?

A. No examination that required any-- it was merely an observation at that time.

Q. Was the body interfered with?

A. Not at that time.

Q. Do you know whether it had been interfered with by anybody between the time when you were up there first and the time when you took Dr Dolan there?

A. No sir, not to my knowledge.

Q. At any time shortly after Dr Dolan came was the body raised up?

A. Yes sir.

Q. And by whom?

A. Dr Dolan and myself and some assistant.

Q. And when it was placed back, do you think it was put back in exactly the position you found it when you went up there first?

A. Somewhat similar. I won't say exactly.

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Q. Do you recall whether the arms were put back in the same position or was it a modification of their position?

A. I didn't notice particularly at that time.

Q. Were you present with Dr Dolan when any autopsy or examination or official examination for the purpose of getting at the cause of death was made?

A. Yes sir.

Q. And did you take some notes for him?

A. I took notes in the morning, if you refer to that.

Q. You mean by morning before one o'clock or before twelve?

A. I mean about twelve.

Q. And those notes concerned which body?

A. Mrs Borden's.

Q. When was the autopsy or official examination for the purpose of getting at the cause of death made on the body of Mr Borden?

A. It was a little after three when I went there.

Q. That same afternoon?

A. Yes sir.

Q. Going back a little to the time you went downstairs after you had viewed Mrs Borden, will you tell me, if you recollect, where you saw Miss Lizzie then?

A. Miss Lizzie was in the kitchen.

Q. Who were with her?

A. My wife, Mrs Churchill, Miss Russell, Bridget Sullivan.

Q. What were they doing?

A. They were working over her. I don't---fanning her and working over her. I don't know exactly what; rubbing her wrists and rubbing her head. I didn't pay any particular attention to that part of it.

Q. Did you see her in the dining room at any time?

A. She went in a few minutes into the dining room, and threw herself on the lounge at the end of the dining room.

Q. Did you give her any direction then or shortly after that?

A. I told her at that time---Miss Russell went in with her at that time, and I told her she better go to her room.

Q. And did she start to go there?

A. Yes sir.

Q. How did she go?

A. She went through the dining room and the corner of the sitting room and front hall upstairs.

Q. And at that time I suppose Mr Borden's body was covered up with sheets?

A. Yes sir.

Q. Did you subsequently see her in her room upstairs?

A. Yes sir.

Q. How long after was that, do you think?

A. Sometime between one and two.

Q. The same day?

A. The same day.

Q. Did you get a message, or did Miss Alice Russell come to you with word from Miss Lizzie?

A. Yes sir, I went to her room.

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Q. What did you give?

A. I gave a preparation called bromo caffeine.

Q. For what purpose?

A. For quieting nervous excitement and headache.

Q. Did you give any directions as to how frequently that medicine should be given?

A. I left a second dose to be repeated in about an hour.

Q. Did you subsequently give other medicine of that kind that day?

A. Yes sir.

Q. In what way?

A. In the same doses.

Q. Did you carry some bromo caffeine over there?

A. I carried some in a bottle over there to be taken.

Q. That was Thursday night. Did you have occasion to prescribe for her on account of this mental distress and nervous excitement after that?

A. Yes sir.

Q. When was it?

A. Friday.

Q. Was the prescription or medicine the same as the other?

A. It was different.

Q. What was it?

A. Sulphate of morphine.

Q. Well, what is commonly called morphine?

A. Yes sir.

Q. In what doses?

A. One eighth of a grain.

Q. When?

A. Friday night, at bedtime.

Q. The next day you changed that?

A. I did not change the medicine but doubled the dose.

Q. That was on Saturday?

A. On Saturday.

Q. Did you continue the dose on Sunday?

A. Yes sir.

Q. Did you continue it Monday?

A. Yes sir.

Q. And on Tuesday?

A. Yes sir.

Q. How long did she continue to have that?

A. She continued to have that all the time she was in the station house.

Q. After her arrest, was it not?

A. And before.

Q. In other words she had it all the time up to the time of her arrest, the hearing and while in the station house?

A. Yes sir.

Q. Does not morphine given in double doses to allay mental distress and nervous excitement somewhat affect the memory and change and alter the view of things and give people hallucinations?

A. Yes sir.

MR ADAMS. I have no other question.

## RE-DIRECT

Q. [By Mr Moody] How many times did you personally see her take the medicine?

A. Not more than twice, I think.

Q. When were those two times?

A. Between one and two in the afternoon, of Thursday.

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Q. And that was bromo caffeine?

A. Yes sir.

Q. Is bromo caffeine a medicine which has a tendency to create hallucinations a week or so after it has been taken?

A. No sir.

## ADELAIDE B. CHURCHILL

I am a widow; have been a resident of Fall River more than forty-three years, and have lived in my present house nearly all my life. It is the house next north of the Borden house. My household consists of my mother, sister, son, niece and a man who works for us. Have known the Borden family for twenty years; have been on calling terms with them.

I saw Mr Borden on the morning of August 4th, about nine o'clock. I was in my kitchen, and he was standing by his steps. At eleven o'clock I went to M. T. Hudner's market on South Main Street, to buy some things for dinner. When I got back to

Second Street I saw Bridget Sullivan crossing the street from Dr Bowen's to the Borden house. She was walking fast, she looked very white, and I thought someone was sick. I went into my house, put down my bundles, and looked out my kitchen window.

Miss Lizzie Borden was standing inside their screen door, at the side of their house. I opened the window and said, "Lizzie, what is the matter?" She replied, "Oh, Mrs Churchill, do come over. Someone has killed Father."

I went over and stepped inside the screen door. She was sitting on the stair. I put my hand on her arm and said, "Oh, Lizzie!" Then I said, "Where is your father?" She said, "In the sitting room." And I said, "Where were you when it happened?" and, she said, "I went to the barn to get a piece of iron." (2) I said, "Where is your mother?" She said, "I don't know; she had got a note to go see someone who is sick, but I don't know but she is

killed, too, for I thought I heard her come in." She said, "Father must have an enemy, for we have all been sick, and we think the milk has been poisoned . . . Dr Bowen is not at home, and I must have a doctor." I said, "Lizzie, shall I go and try to get a doctor?" And she said, "Yes," and I went out.

I went down Second Street to Mr Hall's stable and asked a man there to go for a doctor. Then I went back to the Bordens', and presently Bridget came and then Dr Bowen. The doctor went into the sitting room to see Mr Borden.

Shortly after, he came out and made some exclamation. Then he turned to me and said, "Addie, come in and see Mr Borden." I said, "Oh no, Doctor, I don't want to see him. I saw him this morning. I don't want to see him." Later, after the body was

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(2) In the lower court Mrs Churchill testified that Miss Borden added "I heard a distressing noise," etc. Porter, p. 108.

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covered, I saw his feet. Miss Russell came soon afterwards, and Lizzie said she wished someone would try to find Mrs Borden. So Bridget and I started. She led the way, and as I went upstairs, I turned my head to the left, and when I got up so my eyes were level with the front hall, I could see across the floor of the spare room. At the far side, I saw something that looked like the form of a person.

I turned and went back. I don't know what I did. I went into the dining room and made some noise or other, and Miss Russell said, "Is there another?" I said, "Yes, she is up there."

I had had no information about this, except what I saw myself as my head rose above the level of the floor. I remember that later Miss Lizzie said that she should have to go to the cemetery, and I said, "Oh no, the undertaker will attend to everything for you." I never saw her in tears that morning.

Q. Will you describe the dress that she had on while you were there?

A. It looked like a light-blue-and-white groundwork; it seemed like calico or cambric, and it had a light-blue-and-white groundwork 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.*]

A. It does not look like it.



Q. Was it?

A. That is not the dress I have described.

Q. Was it the dress she had on?

A. I did not see her with it on that morning.

Q. Didn't see her with this dress on that morning?

A. No sir.

#### CROSS-EXAMINATION

Q. [By Mr Robinson] Were you at home all the morning before this occurrence, Mrs Churchill?

A. Yes sir.

Q. In the house?

A. Yes sir.

Q. And were you engaged in your housework that morning?

A. Yes sir.

Q. And I suppose taking no more notice of things outside than you ordinarily do? You had a good deal to do?

A. Yes sir, quite a good deal.

Q. Well, except the fact that you saw Mr Borden in the morning as he was standing about the back steps, you do not recall anything about his movements or those of any of the family?

A. No sir; I saw one other person that morning. I saw Bridget.

Q. She was doing what?

A. Rinsing the parlor window when I saw her.

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Q. What dress did Bridget have on that morning?

A. I don't know; á light calico, I think.

Q. Do you know anything about it?

A. No sir.

Q. You could not tell, could you?

A. No sir.

Q. Have not thought of that at all?

A. No sir.

Q. Have you since that August 4, 1892, ever thought what clothes Bridget had on?

A. No sir.

Q. And if we were now making the same inquiry about Bridget, you could not tell, could you, her dress?

A. No, I never took particular notice of it.

Q. Took no notice?

A. No, not of the dress.

Q. Did Mrs Bowen come there sometime in the morning?

A. Yes sir.

Q. What dress did she have on?

A. I don't remember. I think it was a white groundwork-light calico with a black vine or something on it, but I don't know.

Q. I don't doubt you know what you had on yourself ?

A. Yes sir, I do.

Q. Could you tell us all about that?

A. Yes sir.

Q. But when you get beyond that and what you say of Miss Lizzie's dress, you would not say much more about it, would you? Tell what Miss Russell had on?

A. No, I don't know what she had on.

Q. You had been there with Miss Lizzie all the time?

A. Yes sir.

Q. Did you see any blood on her dress

A. No sir.

Q. [Referring to blue dress] On a dress as light as that, if there had been any blood you would have seen it, wouldn't you?

A. I don't know. I should think if it was in front I might have seen it. If I was right side of her there I couldn't help it, I don't think.

Q. You were right over her fanning her?

A. Yes sir, stood in front of her.

Q. Rubbing both her hands, and she was lying on the lounge?

A. She wasn't on the lounge when I fanned her. She was in the kitchen when I fanned her.

Q. You afterwards saw her with Miss Russell, and she was lying on the lounge?

A. Yes sir.

Q. At that time did you see a particle of blood on her dress?

A. No sir.

Q. Or her hands?

A. No sir.

Q. Or her face?

A. No sir.

Q. Or any disarrangement of her hair?

A. No sir.

Q. Or anything about her shoes?

A. I didn't notice her shoes at all.

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Q. What did Bridget tell you about Mrs Borden having a note?

A. She said Mrs Borden had a note to go to see someone that was sick, and she was dusting the sitting room, and she hurried off, and says, "She didn't tell me where she was going; she generally does."

Q. That was what Bridget told you?

A. Yes sir.

Q. That was not what Lizzie told you?

A. No sir.

Q. Bridget said Mrs Borden had a note?

A. Yes.

Q. And she hurried off ?

A. Yes sir.

Q. She was dusting the sitting room?

A. Yes sir.

Q. And Bridget says, "She didn't tell me where she was going; she generally does"?

A. Bridget said.

Q. Bridget said that?

A. Yes sir.

Q. That was not what Lizzie said?

A. No sir.

Q. Now, you have got that right, haven't you? No doubt about that?

A. That Bridget said that "Mrs Borden had a note to go to see someone that was sick. She was dusting in the sitting room. She hurried off. She didn't tell me where she was going. She generally does."

#### RE-DIRECT

Q. [By Mr Moody] Lest there be any mistake, Mrs Churchill, you don't speak of this talk with Bridget with reference to the note as in substitution, but in addition to what Miss Lizzie Borden told you?

A. It was after Lizzie had told me.

Q. Then Bridget told you what you have told us

A. Yes, after that.

#### ALICE M. RUSSELL

I have lived in Fall River a good many years; I am unmarried. Two years ago last October I lived in the house now occupied by Dr Kelly; had lived there eleven years. All that time the Bordens occupied the house next door; I was acquainted with the whole family. On the fourth of last August I lived in Borden Street. I exchanged calls with Miss Lizzie Borden; she always received me upstairs, in the guest room. About seven o'clock on the evening of Wednesday, August 3rd, of last year, she called upon me. She stayed till about nine.

Q. Won't you state what was said by her and by you, and then go on and state the conversation which followed?

A. I think when she came in she said, "I have taken your advice, and I have written to Marion that I will come." I don't know what came in between, I don't know as this followed that, but I said, "I am glad you are going," as I had urged her to go before. And I don't know just what followed, but I said something about her having a good time, and she said, "Well, I don't know; I feel depressed. I feel as if something

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was hanging over me that I cannot throw off, and it comes over me at times, no matter where I am." And she says, "When I was at the table the other day, when I was at Marion, the girls were laughing and talking and having a good time, and this feeling came over me, and one of them spoke and said, 'Lizzie, why don't you talk?'

Q. [By Mr Moody] Well, then, go on and state how the conversation went on, taking your own method.

A. I suppose it followed right on after that. When she spoke, she says, "I don't know; Father has so much trouble." Oh, I am a little ahead of the story. She said, "Mr and Mrs Borden were awfully sick last night." And I said, "Why, what is the matter; something they have eaten?" She said, "We were all sick," she said, "all but Maggie." And I said, "Something you think you have eaten?" She said, "We don't know. We had some baker's bread, and all ate of it but Maggie, and Maggie wasn't sick." And I said, "Well, it couldn't have been the bread; if it had been baker's bread I should suppose other people would be sick, and I haven't heard of anybody." And she says, "That is so." And she says, "Sometimes I think our milk might be poisoned." And I said, "Well, how do you get your milk; how could it be poisoned?" And she said, "We have the milk come in a can and set on the step, and we have an empty can. We put out the empty can overnight, and the next morning when they bring the milk they take the empty can." And I said, "Well, if they put anything in the can the farmer would see it." And then I said-I asked her what time the milk came, if she knew. She said, "I think about four o'clock." And I said, "Well, it is light at four. I shouldn't think anybody would dare to come then and tamper with the cans for fear somebody would see them." And she said, "I shouldn't think so." And she said, "They were awfully sick; and I wasn't sick, I didn't vomit; but I heard them vomiting and stepped to the door and asked if I could do anything, and they said, No."

Q. Now, go on with the conversation

A. Well, I think she told me that they were better in the morning and that Mrs Borden thought that they had been poisoned, and she went over to Dr Bowen's--said she was going over to Dr Bowen's.

Q. Well, we won't follow that any further. Is there any other thing that she began to talk about? Proceed in your own way, Miss Russell

A. I can't recall anything just now. Of course she talked about something else, because she was there two hours, but I cannot think about it.

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Q. Anything about trouble with tenants, or anything of that sort?

A. She says, "I don't know," she says, "I feel afraid sometimes that Father has got an enemy. For," she said, "he has so much trouble with his men that come to see him." She told me of a man that came to see him, and she heard him say-she didn't see him, but heard her father say, "I don't care to let my property for such business." And she said the man answered sneeringly, "I shouldn't think you would care what you let your property for." And she said, "Father was mad and ordered him out of the house." She told me of seeing a man run around the house one night when she went home. I have forgotten where she had been. She said, "And 'd, " Oh you know the barn has been broken into twice." And I said, "Oh well, you know well that that was somebody after pigeons; there is nothing in there for them to go after but pigeons." "Well," she says, "they have broken into the house in broad daylight, with Emma and Maggie and me there." And I said, "I never heard of that before." And she said, "Father forbade our telling it." So I asked her about it, and she said it was in Mrs Borden's room, what she called her dressing room. She said her things were ransacked, and they took a watch and chain and money and car tickets, and something else that I can't remember. And there was a nail left in the keyhole; she didn't know why that was left; whether they got in with it or what. I asked her if her father did anything about it, and she said he gave it to the police, but they didn't find out anything; and she said father expected that they would catch the thief by the tickets. She remarked, "Just as if anybody would use those tickets."

Q. Yes. Is there anything else that you recall? Anything about burning the house?

A. She said, "I feel as if I wanted to sleep with my eyes half open-with one eye open half the time for fear they will burn the house down over us."

Q. Is there anything else that occurs to you in the conversation?

A. Oh, she said, "I am afraid somebody will do something; I don't know but what somebody will do something." I think that was the beginning.

Q. Please state that.

A. "I think sometimes--I am afraid sometimes that somebody will do something to him; he is so discourteous to people." And then she said, "Dr Bowen came over. Mrs Borden went over, and Father didn't like it because she was going; and she told him where she was going, and he says, 'Well, my money shan't pay for it.' She went over to Dr Bowen's, and Dr Bowen told her-she told him she was afraid they were poisoned-and Dr Bowen laughed, and said, No, there wasn't any poison. And she came back, and Dr Bowen came over." And she said, "I am so ashamed, the way Father treated Dr

Bowen. I was so mortified." And she said after he had gone Mrs Borden said she thought it was too bad for him to treat Dr Bowen so, and he said he didn't want him coming over there that way.

Q. Upon the next morning, August 4th, did you receive a visit from Bridget Sullivan?

A. Yes sir.

Q. What did you do then?

A. I went over to Mr Borden's.

Lizzie was there. I think she was standing in the door, leaning against the doorframe. I asked her to sit down in the rocking chair, which she did. I cannot tell it in order, for it was disconnected. People came around; I don't know who they were. Later, when she told us about going to the barn, I asked her, "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." She said my screen. I heard about the note to Mrs Borden; I don't know who told it. I started to loosen her dress, thinking she was faint, and she said, "I am not faint."

Q. Are you able to give us any description of the dress she had on that morning?

A. None whatever.

When Lizzie went upstairs, I went upstairs with her-at least, I have always thought so. She had not yet changed her dress. She said, "When it is necessary for an undertaker, I want Winwood." I went downstairs and waited for Dr Bowen. I sent for him, spoke to him, and went up to Lizzie's room again. She was coming out of Miss Emma's room, tying the ribbons of a wrapper-a pink-and-white striped wrapper. I stayed at the house all that night, having gone home once that day and returned. I did not suggest to Miss Lizzie that she change her dress; did not hear anyone suggest it. Thursday night, I went down into the cellar with Lizzie; I carried a lamp, she carried a slop pail. Went to the water closet. The clothing taken from the bodies was in the washroom. Miss Lizzie went into the washroom; I did not. She went to the sink there and rinsed out the pail. Then we went upstairs again.

I stayed at the house from the day of the murders till Monday morning. I was there Thursday, Friday, Saturday and Sunday nights. On Thursday and Friday nights, I occupied Mr and Mrs Borden's room; Saturday and Sunday nights, Miss Emma Borden's room. On Sunday morning, I got the breakfast. After breakfast, I left the lower part of the house for a while, returning before noon.

Q. Will you state what you saw after you returned?

A. I went into the kitchen, and I saw Miss Lizzie at the other end of the stove; I saw Miss Emma at the sink. Miss Lizzie was at the stove, and she had a skirt in her hand, and her sister turned and said, "What are you going to do?" and Lizzie said, "I am going to burn this old thing up; it is covered with paint."

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Q. Do you recall anything else said then?

A. No sir.

Q. What did you do then?

A. I am quite sure I left the room.

Q. Did you speak to either of them at that time?

A. No sir, I don't remember that I did. I don't think I did.

Q. Did you come into the room again?

A. Yes sir.

Q. What did you see then?

A. Miss Lizzie stood up towards the cupboard door; the cupboard door was open, and she appeared to be either ripping something down or tearing part of this garment.

Q. What part?

A. I don't know for sure; it was a small part.

Q. A smaller part? Go on and state.

A. I said to her, "I wouldn't let anybody see me do that, Lizzie." She didn't make any answer. I left the room.

Q. Did she do anything when you said that?

A. She stepped just one step farther back up towards the cupboard door.

Q. Did you notice where the waist of the dress was when she held the skirt in her hands as you first came in?

A. I didn't know that it was the waist, but I saw a portion of this dress up on the cupboard shelf.

Q. Inside the cupboard?

A. Yes. The door was wide open.

Q. When you came back the second time and she was tearing the smaller part, did you see the skirt?



A. Well, I am not positive; I think I did.

Q. Did you have any more talk with her that day, or did she say anything to you about it?

A. No sir.

Q. At that time were there any police officers in the house?

A. No sir.

Q. Were there any officers about the premises?

A. Yes sir.

Q. Do you know whether there was anyone else in the house except yourself and Miss Emma and Miss Lizzie Borden?

A. I don't think that there was.

Q. When had Bridget left? Do you know whether she had left before the Sunday morning or not?

A. Yes, she had left.

Q. Do you know Mr Hanscom? (3)

A. Yes sir.

Q. Did you see him at the Borden house on Monday morning, the following day?

A. Yes sir.

Q. I do not ask you what he said to you or you to him, but did you have some conversation with him?

A. Yes sir.

Q. Did you see anyone after that conversation?

A. I saw Miss Lizzie and Miss Emma.

Q. Where did you see them?

A. In the dining room.

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(3) O. M. Hanscom, Superintendent of the Boston office of the Pinkerton Detective Agency.

Q. What talk passed between you in the dining room?

A. I said to them---I said, "I am afraid, Lizzie, the worst thing you could have done was to burn that dress. I have been asked about your dresses."

Q. What did she reply?

A. She said, "Oh, what made you let me do it? Why didn't you tell me?"

Q. Miss Russell, you testified before the inquest, did you?

A. Yes sir.

Q. You testified at the preliminary hearing?

A. Yes sir.

Q. And you testified once and then again before the Grand jury?

A. Yes sir.

Q. At either of the three previous times---at the inquest, at the preliminary, or at the first testimony before the Grand jury, did you say anything about the burning of this dress?

A. No sir.

MR ROBINSON. Wait a moment. I do not see how that is at all material. The Government is not trying to fortify this witness, I hope.

MR MOODY. Well, I do not press it. If you don't want it, I don't care to put it in.

MR ROBINSON. Oh, it is not what I want. You are trying the Government's case; I am objecting.

MR MOODY. I waive the question.

MR ROBINSON. I think it should be stricken out.

MR MOODY. I agree that it may be stricken out.

Q. Miss Russell, to go back again to the day of the homicide, do you remember anything about a search for a note by anyone---Dr Bowen?

A. Yes sir.

Q. State what there is about that.

A. When we were in the dining room Lizzie was lying down, and I think Dr Bowen came in---I always thought it was Dr Bowen---came in and said, "Lizzie, do you know anything about the note your mother had?" And she hesitated and said, well, no, she didn't. He said, "I have looked in the wastebasket," and I think I said-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 put it in the fire."

### CROSS-EXAMINATION

Q. [By Mr Robinson] I don't care to trouble you at all about the conversation of Wednesday evening, only, as I understand it, she told you that they had all been sick up there?

A. Yes sir.

Q. And that Mr and Mrs Borden were sick and that the doctor had been----

MR MOODY. Oh, excuse me; an important matter I forgot.

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### DIRECT EXAMINATION, *resumed*

Q. [By Mr Moody] Miss Russell, will you tell us what kind of a dress-give us a description of the dress that she burned, that you have testified about, on Sunday morning?

A. It was a cheap cotton Bedford cord.

Q. What was its color?

A. Light-blue ground with a dark figure---small figure.

Q. Do you know when she got it?

A. I am not positive.

Q. Well, about when she got it?

A. In the early spring.

Q. Of that same year, do you mean, or some other year?

A. Yes sir, I think that same year.

Q. Was your attention called to it at the time she got it in any way

A. At the time I first saw it.

Q. To make it clear, between the time you saw it on Miss Lizzie Borden and had the talk about it in the spring, you did not see it again until the Sunday morning after the homicide?

A. I never remember of ever seeing it, and I am quite sure I did not-that I never had.

Q. Can you give me any further description of the dark-blue figure?

A. No sir.

Q. Could you give any further description?

A. Nothing, only that it was small.

Q. A small dark-blue figure?

A. Yes sir.

### CROSS-EXAMINATION, *resumed*

Q. I remarked I did not want to trouble you about Wednesday evening except that she said they had all been sick, and she herself, as I understand you?

A. Yes sir.

Q. Now we will go right along to Thursday, the fourth of August. You were called up there and went as rapidly as you could to the house?

A. Yes sir.

Q. Where was she when you saw her during any time that morning when you were there?

A. I asked her to go into the dining room and said, "It is warm here; don't you want to go into the dining room and lie down?" And she went there.

Q. What was done with reference to Miss Lizzie?

A. I think I fanned her.

Q. Was she bathed, her hands and face?

A. I don't remember whether I bathed her face. I don't think I bathed her face in there. It was in the kitchen I bathed her forehead.

Q. Was she complaining and feeling badly?

A. No.

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Q. Was she pale?

A. I don't know.

Q. I thought you said, you spoke of her sitting down as if she was going to faint

A. I did not. say that she fainted, but she sat down as though she was going to be faint, and I asked for a towel.

Q. Was that furnished?

A. Yes sir.

Q. She did not faint?

A. No sir.

Q. At any time did she say anything about her head aching or feeling badly?

A. Upstairs? That was before---

Q. That was after you went upstairs?

A. Yes sir.

Q. Did you see any handkerchiefs about there?

A. I found some handkerchiefs in the dining room.

Q. Had they been ironed?

A. Some of them.

Q. And some, I infer, had not been, from your answer?

A. Yes sir.

Q. What was the condition of those that had not been ironed?

A. They were sprinkled to iron.

Q. About how many were there altogether?

A. I don't know positively.

Q. I am not very particular---about how many?

A. After hearing about handkerchiefs I tried to remember, and as nearly as I could judge there were four or five ironed and two or three sprinkled to be ironed.

Q. You say you cannot tell us about a dress that she had on that morning?

A. No sir.

Q. Now, Miss Russell, did you see any blood upon her clothing?

A. No sir.

Q. A speck of it?

A. No sir.

Q. Or face?

A. No sir.

Q. Or was her hair disturbed?

A. I don't think it was. I think I should have noticed it if it was disordered.

Q. Saw nothing out of the way at all, did you?

A. No sir.

Q. About any of her clothing or about her person?

A. No sir.

Q. Everything looked all right, did it?

A. As far as I saw.

I was at the house all day. In the afternoon a good many police officers were there. I remember showing them the two smaller rooms out of Mr and Mrs Borden's room, and their coming into Miss Lizzie's room. I went downstairs and into the parlor with them.

Thursday night there were officers about the house and in the yard. And on Friday there were police---I don't remember much of their being in the house. I spoke of the clothing of the deceased persons being in the cellar; their bodies were laid out in the dining room.

The dress which I saw Sunday was neither calico nor cambric; it was a Bedford cord. I did not take hold of it, nor examine it. Sunday morning, Miss Lizzie, Miss

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Emma, Mr Morse and I had breakfast together; Bridget was not in the house. I went upstairs, after breakfast, to put my room in order, and left Miss Emma to do the dishes. I don't know if Miss Lizzie helped in that. When I came back and saw Miss Lizzie with the Bedford cord dress, it was broad daylight. There was a policeman in the yard.

I saw no blood on that dress. Not a drop. The edge of the dress was soiled. I did not actually see her put it in the stove.

The funeral, Saturday, was in the forenoon, about eleven or twelve o'clock. Miss Lizzie went to the cemetery; I did not. I stayed in the house with Mrs Holmes and the undertaker's assistants.

Officers did come in the house, during the absence of the funeral party, but they didn't come as soon as the party left. They made a search, but they didn't search everywhere. They went into Miss Lizzie's room.

Q. Did you go up into the room while they were at work there?

A. Yes sir.

Q. What did they do?

MR MOODY. This was on Saturday?

MR ROBINSON. This was on Saturday while the bodies were going to the grave.

Q. Do you wish to answer the question?

A. Yes sir. I think one of the officers took the keys that lay on the bureau after Miss Lizzie had left and unlocked one or two drawers in her bureau, and didn't search any farther there. I think they opened what she called her toilet room, pulled the portiere one side, just looked there a little. I don't know how much they searched. I don't think very much; and they went into Miss Emma's room and looked around, and opened the cupboard door in her room, and I remember one of the officers pressing against a bundle after he shut it, some pillow or blanket, something of that kind, and the bed was taken to pieces. That is all that I saw.

Q. There was no resistance or objection made at all?

A. No sir.

Q. They had full sway?

A. Yes sir.

Q. Well, that was the same at all the searches, wasn't it, they had no resistance or objections?

A. I never heard of any while I was there.

#### RE-DIRECT

Q. [By Mr Moody] What is the material of which the Bedford cord dress is made?

A. All cotton. That dress was all cotton.

Q. And not silk?

A. No sir.

JOHN CUNNINGHAM, newsdealer, testified that he learned of the murder as a result of Mrs Churchill's visit to the stable, and that he telephoned to the City Marshal's office. He noticed a clock near by: it said 10.50 Like a number of clocks, it was wrong; the correct time was 11.15.

GEORGE W. ALLEN, police officer, was the next witness. He was committing officer at the police station; he testified that at 11.15 he was told by Marshal Hilliard that "there was a row up on Second Street", and that he should go there. Walking and running, he arrived at the house at 11.19 and was positive as to this time because he tested his speed over the same course at a later date. He was thus the first officer to arrive. He met Charles S. Sawyer on the way, and afterwards posted him as a guard at the door. At the house, Allen saw Miss Lizzie sitting in the kitchen, and also saw Mr Borden's body. It was then he put Mr Sawyer on guard. He went through to the front of the house and inspected the front door. It was locked with "a night lock", and also bolted. He went back to the station to report. He was sent again to the house, and this time was told of the death of Mrs Borden; on going upstairs to see her body, he saw it before he reached the landing---as soon as his head was level with the floor. (4)

Police witnesses were now introduced. FRANCIS H. WIXON, a deputy sheriff, was followed by an important witness, JOHN FLEET.

### JOHN FLEET

Q. [By Mr Moody] Are you at present assistant city marshal of Fall River?

A. I am, sir.

Q. Were you last year?

A. I was, sir.

*[Mr Fleet testified to his arrival at the Borden house at 11.45 A.M., the day of the murders. On being requested by Mr Moody to tell what took place at an interview he had with Miss Lizzie Borden, in her room, he answered as follows.]*

A. I went in there and told her who I was---(I was then in citizen's clothes) and I asked her if she knew anything about the murders. She said that she did not; all she knew was that Mr Borden, her father, as she put it, came home about half-past ten or quarter to eleven, went into the sitting room, sat down in the large chair, took out some papers and looked at them. She was ironing in the dining room-some handkerchiefs.

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(4) An unofficial but reliable account of Allen's visits, received from two newspaper reporters, says that the sight of Mr Borden's body nearly scared the officer "out of his wits". He ran back to the station, and to his chief gasped out: "He's dead!" The unperturbed marshal replied: "Who's dead, you fool?" Allen managed to say: "Old Mr Borden!" The marshal could



not leave his post, but ordered Allen back to the house of death. In ten minutes, however, Officer Allen came panting back again, this time croaking: "She's dead!"

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She saw that her father was feeble, and she went to him and advised and assisted him to lay down upon the sofa. 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, upstairs, 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 on the lounge, in the position in which she had left him, but killed, or dead. I then asked her what she did, finding him in that condition, and she said that she went to the back stairs and called Maggie. And I asked her who Maggie was; she said Maggie was the servant girl. And she said that she told Maggie to go for Dr Bowen. She said that she went, but Dr Bowen was not in the house; she then told her to go for Miss Russell, and Miss Russell came, as she stated, and so did Dr Bowen soon after. I asked her, "Who was in the house this morning or last night?" She said, no one but her father, Mrs Borden and Bridget, and Mr Morse and herself. I asked her, "Who is this Mr Morse?" She said, "He is my uncle, and he came here yesterday and slept in the room where Mrs Borden was found dead." "Do you think that Mr Morse had anything to do with the killing of your parents?" She said no, she didn't think that he had, because Mr Morse left the house before nine o'clock, and did not return until after the murders. I asked her if she thought that Bridget could have done this, and she said she didn't think that she could or did; that Bridget-(I would say here that I did not use the word "Bridget" at that time, because she had given me the name as Maggie; I should say Maggie); I asked her if she thought Maggie had anything to do with the killing of these. She said no, that Maggie had gone upstairs previous to her father's lying down on the lounge, and when she came from the barn she called Maggie downstairs.

Q. Anything else?

A. I then asked her if she had any idea who could have killed 'net father and mother. Then she said, "She is not my mother, Sir; She is My stepmother; My Mother died when I was a child." I then asked her if there had been anyone around this morning whom she would suspect of having done the killing of these people, and she said that she had not seen anyone, but about nine o'clock that morning a man came to the door and was talking with her father. I asked her what they were talking about, and she said she thought they were talking about a store, and he spoke like an Englishman.

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I think about all the conversation I had with her at that time--, Oh no. Miss Russell was in the room, and she says to Lizzie, "Tell him all; tell him what you was telling me." And she looked at Miss Russell, and then she says, "About two weeks ago a man came to the house, to the front door, and had some talk with Father, and talked as though he was angry." And I asked her what he was talking about. She said, "He was talking about a store, and Father said to him, 'I cannot let you have the store for that purpose.' The man seemed to be angry." I then came downstairs.

Q. Where did you then go, Mr Fleet?

A. I then had a talk with some of the officers in the yard, and took them into the dining room of the Borden house.

Q. You took them into the dining room?

A. Consulted with Officers Minnehan and Wilson, and Inspector Dexter of the State Board.

Q. And right here, is Officer Minnehan now dead?

A. He is, sir.

Q. What did you then do after you had given these instructions?

A. After I had given the instructions I went in the dining room and consulted with these two officers and this inspector, and after that I went upstairs to make a search of Lizzie's room.

Q. Which way did you go up?

A. I went up the front stairs.

Q. Did anyone go with you, Mr Fleet?

A. Mr Minnehan and Mr Wilson.

Q. Will you describe all that you did and said after you got up into talk hallway upstairs-the front hallway upstairs?

A. I went to Lizzie's door, rapped on the door. Dr Bowen came to it, holding the door-opening the door, I should say, about 6 or 8 inches, and asked what was wanted. I told him that we had come there as officers to search this room and search the building. He then turned around to Miss Borden and told me to wait a moment. He then opened the door again and said----

Q. Had he shut it in the meantime?

A. He had; he closed the door. He then opened the door again and said that Lizzie wanted to know if it was absolutely necessary for us to search that room. I told him as officers, murders having been committed, it was our duty so to do, and we wanted to get

in there. He closed the door again and said something to Miss Borden, and finally opened the door and admitted us.

Q. What did you do or say after you got into that room?

A. We said that we had come to search the room, search the premises. We proceeded to search, looking through some drawers, and the closet and bedroom. While the search was still going on I said to Lizzie, "You said this morning that you was up in the barn for half an hour. Do you say that now?" She says, "I don't say a

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half an hour, I say twenty minutes to half an hour." "Well, we will call it twenty minutes, then." She says, "I say from twenty minutes to half an hour, sir." I then asked her when was the last time she saw her stepmother-when and where. She said that the last time she saw her stepmother was about nine o'clock, and she was then in the room where she was found dead and was making the bed.

Q. Well, proceed with the talk and with the acts on your part?

A. She then said that someone brought a letter or note to Mrs Borden and she thought she had gone out-had not known of her return.

Q. What did you do then?

A. Came downstairs, went down in the cellar again, saw Dr Dolan, the officer still in the cellar, saw Officer Mullaly, and asked where he got the axes and the hatchet

Q. He will have to tell us about that. What did you do after you said something to Officer Mullaly?

A. In consequence of my asking him, I found in a box in the middle cellar, as I call it, on a shelf or a jog of a chimney---an old-fashioned chimney---the head of a hatchet.

Q. What sort of a box was it in which this head of the hatchet was?

A. Well, it was a box, I should say, about a foot or fourteen inches long, perhaps eight or ten inches wide. It might be a little larger, and I should say about four inches deep.

Q. Was there anything else in the box except the head of the hatchet?

A. Yes, there were other tools---I can't think just what they were now, but there were other small tools in there, pieces of iron.

Q. At the time you found that hatchet, was the wood and iron or steel separate?

A. Let me see if that is the one?

Q. Yes. I will withdraw that question and ask you if that is the hatchet you found?

A. This looks like the hatchet that I found there; pretty sure that that is the one. This piece of wood was in the head of the hatchet, broken off close.

Q. Mr Fleet, will you describe everything in respect to the appearance of that hatchet, if you can?

MR ROBINSON. Don't want anything but just what the hatchet was at that time; don't want any inferences.

MR MOODY. I think he will be careful.

Q. Any appearances that you noticed about the hatchet, you may describe.

A. Yes sir, I don't want to do anything else, Mr Attorneys. The hatchet was covered with a heavy dust or ashes.

Q. Describe that ashes as well as you can

A. It was covered with a white ashes, I should say, upon the blade of the hatchet-not upon one side, but upon both.

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Q. Could you tell anything about whether there was ashes upon the head of the hatchet?

MR ROBINSON. I don't think you ought to make any suggestions. I object to that style of question.

Q. Well, describe further.

A. I should say that upon this hatchet was dust or ashes as though the head

MR ROBINSON. Wait a moment: I object to that.

Q. Describe on what parts of the hatchet.

A. On both the faces, and all over the hatchet was covered with dust or ashes.

Q. Was that fine dust?

MR ROBINSON. Wait a moment. The witness did not say fine dust. We object to that.

Q. Describe the dust there.

A. The dust, in my opinion, was ashes.

Q. According to your observation, what did it look like?

MR ROBINSON. I object to it.

The CHIEF JUSTICE. Describe it. Whether he recognized it as ashes or any particular substance, he may say.

A. I recognized it as ashes.

Q. Can you tell me how fine or coarse the ashes were?

A. They were fine.

Q. 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 in respect of 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.

Q. What difference was there, if any?

A. The other was a kind of a dust, and there might be the dust of ashes. It was a light dust.

Q. How in appearance did it differ from the covering of this hatchet?

MR ROBINSON. Wait a moment: I object.

The CHIEF JUSTICE. He may describe the difference, if there was any.

A. That is, the dust on the other tools was lighter and finer than the dust upon that hatchet.

Q. At that time, Mr Fleet, did you observe anything with reference to the point of breaking of the hatchet?

A. The only thing that I recognized at the time was that this was apparently a new break.

MR ROBINSON. I object to that answer, that this was a new break.

Q. At that time did you observe anything with reference to ashes upon the point of the break of the handle, upon the wood where it was broken?

A. There seemed to be ashes there like the other.

Q. What did you do with that hatchet, Mr Fleet?

A. I put it back in the box.

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Q. That was after you had sequestered, separated this hatchet (i.e., claw hammer)?

A. Yes sir.

Q. After you had seen this hatchet, Mr Fleet, what did you do?

A. I put it back in the box.

Q. Where did you go then?

A. I went round to the cellar and then went outside, that is, went in the wash cellar, and afterwards went outside.

Q. At any time while you were there did you pay any attention to the door leading from the cellar out into the back yard ?

A. I did the first time I went down the cellar.

Q. Let me ask you in what condition you found that door at that time?

A. I found that the cellar door was open, the inner cellar door. I found the outer door was fastened.

Q. And what do you mean by the outer door?

A. The one that leads out into the back yard.

Q. How was it fastened?

A. By a bolt.

Q. The bolt upon which side?

A. Upon the inside.

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## FIFTH DAY

New Bedford, June 9, 1893

JOHN FLEET'S TESTIMONY was concluded.

## PHILIP HARRINGTON

Q. [By Mr Moody] You are on the police force of Fall River?

A. Yes sir.

Q. How long have you been upon the force, Mr Harrington?

A. Ten years last March.

Q. Do you hold any rank in it now?

A. Captain, sir.

Q. What was your position in August of last year?

A. Patrolman.

*[Mr Harrington, after describing his arrival at the Borden house at 12.15 to 12.20 P.M., the day of the murders, and further deposing as to his inspection of the bodies of the victims, continued as follows.]*

I then turned around to come out [of the guestchamber], and on the threshold of the door stood Officers Cogswell and Riley. I stepped into the hall, turned towards these to go to the head of the stairs, and as I did the door on the east of the end of the hall was ajar. In that room I saw Miss Borden and Miss Russell.

Q. That was Miss Lizzie Borden, of course, you mean?

A. Yes sir.

Q. Well, proceed then.

A. I stepped into the room, and, taking door in my right hand, I passed it back. Miss Russell stood on my left, and she received the door and closed it.

Q. Did you have some conversation with Miss Lizzie Borden?

A. Yes sir.

Q. Was there anyone else except Miss Russell and Miss Borden there at the time?

A. No sir; not outside of myself.

Q. Where were they?

A. Miss Russell stood in front of a chair which was at the north side of the door which I entered. Miss Lizzie Borden stood at the foot of the bed, which ran diagonally across the room.

Q. Did you have some conversation with her?

A. Yes sir; I told her I would like to have her tell me all she knew about this matter.

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Q. Will you state what she said and what you said?

A. She said, "I can tell you nothing about it." I asked her when she last saw her father, and she said, "When he returned from the post office with a small package in his hand and some mail. I asked him if he had any for me, and he said, No. He then sat down to read the paper, and I went out in the barn. I remained there twenty minutes. I returned and found him dead."

Q. You may proceed with anything you said and she said. Give the whole conversation.

A. I then asked her, "When going to or coming from the barn did you see anybody in or around the yard, or anybody going up or down the street?" She said, "No sir." "While in the barn did you hear any noise in or about the yard as of anybody walking there?" She said, "No sir." I said, "Not even the opening or closing of the screen door? Why not? You were but a short distance, and you would have heard the noise if any was made?"

Q. What did she say?

A. She said, "I was up in the loft."

Q. Is there anything else that occurs to you that she said at that time?

A. Yes sir. I then said, "What motive?" And she said, "I don 't know." "Was it robbery?" "I think not, for everything appears all right, even to the watch in his pocket and the ring on his finger."

Q. [By Mr Robinson] That was her answer or your question?

A. Her answer, sir.

Q. [By Mr Moody] Do you recall anything else that was said at that time?

A. I then asked her about the rest of the house, and she said everything appeared all right.

Q. Was there any more talk about the time she was up in the barn?

A. Later on, sir.



Q. Well, then, proceed in your own way and tell the whole conversation without further questioning

A. I then asked her if she had any reason to suspect anybody, no matter how slight. I said, "No matter how insignificant it may be, it may be of great moment to the police, and be of much assistance to them in ferreting out the criminal." And she said, "No-o-o; I have not." Said I, "Why hesitate?" "Well," she said, "a few weeks ago Father had angry words with a man about something." "What was it?" "I don't know, but they were very angry at the time, and the stranger went away." "Did you see him at all?" "No sir; they were in another room, but from the tone of their voices I knew everything wasn't pleasant between them." "Did you hear your father say anything about him?" "No sir. About two weeks ago he came again. They had a very animated conversation, during which they got angry again, and I heard Father say, 'No sir; I will not let my store for any such business.' But before they separated I heard Father say, 'When you are in town come again and I will let you know about it.' "

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Q. Anything else that you recall?

A. About here I cautioned her then of what she might say at the present time.

Q. Give us the words rather than the caution.

A. I said, "Owing to the atrociousness of this crime perhaps you are not in a mental condition to give as clear a statement of the facts as you will be on tomorrow. By that time you may recollect more about the man who wished to hire the store. You may remember of having heard of his name or of having seen him, and thereby be enabled to give a description of him. You may recollect of having heard your father say something about him or his visit." There was something else there, sir, and I do not recollect it.

Q. Well, state any answer that she made, if she made any.

A. There was something there that I would like to remember, Sir.

Q. Anything about time?

A. That was later.

Q. Anything about whether it was some man or not?

A. No sir. I think I have it. "So by that time you may be in a better condition to relate what you know of the circumstances." To this she made a stiff courtesy [sic] shaking her head, and she says, "No, I can tell you all I know now just as well as at any other time."

Q. Mr Harrington, without characterizing, can you describe her appearance and manner during this conversation?

Mr ROBINSON. Wait a moment: what she did and what she said.

The CHIEF JUSTICE. If the witness observes the question carefully he may answer it.

MR ROBINSON. Your honor very properly says if he discriminates carefully he may answer properly. The difficulty is he may give his judgment upon her state of mind from what he saw; that is the difficulty with it.

The CHIEF JUSTICE. The question does not call for it, and the witness appears intelligent. Having his attention called to it that he is to do nothing but to answer the question, he may answer it. I will ask a preliminary question. Do you understand the distinction that I intend to draw

A. Well, I would like to have the question read.

*[The question was read.]*

.A. She was cool---

MR ROBINSON. Wait.

MR MOODY. Well, that is the difficulty.

The WITNESS. Well, it is rather a difficult thing to get at, sir.

MR MOODY. By leading a little, perhaps I can get at it.

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MR ROBINSON. It should be stricken out; it is not a completed answer.

MR KNOWLTON. It is not completed because you stopped him. I suppose what he said is an answer strictly within the rule. "She was cool."

The CHIEF JUSTICE. If you are content to have the answer stop there it may stand.

MR MOODY. I am content to have it stop there.

MR ROBINSON. I am content if it stays there.

Q. During any part of the interview was she in tears?

A. No sir.

Q. Did she sit or stand during the talk with you?

A. She stood.

Q. During any part of the interview was there any breaking of the voice, or was it steady?

A. Steady.

Q. Now will you state anything more that was said while you were there?

A. I then spoke to her again about the time that she was in the barn. She said twenty minutes. I asked her wasn't it difficult to be so accurate about fixing the time-to fix the time so accurately. Said I, "May you not have been there a half an hour or perhaps only fifteen minutes?" she says, "No sir; I was there twenty minutes."

Q. Did that complete the conversation with her, Mr Harrington?

A. I think so.

Q. Then you went where?

A. I went out the door, downstairs, through the front hall, passed through the sitting room into the kitchen.

Q. When you got into the kitchen who was there?

A. Well, there were quite a number of people, among whom I noticed or recognized Drs Bowen and Dolan, Assistant Marshal Fleet and the servant girl, whose name at that time I did not know.

Q. Did anything occur with reference to the stove in the kitchen?

A. Yes sir. just as I went to pass by Dr Bowen, between him and the stove, I saw some scraps of notepaper in his hand. I asked him what they were.

Q. Where was he standing?

A. He was standing a little west of the door that led into the rear hall or entryway.

Q. Go on and describe what was done and what you and Dr Bowen said, not what anyone else did.

A. I asked him what they were, referring to the pieces of paper, and he said, "Oh, I guess it is nothing."

MR ROBINSON. I cannot let this go in unless you give me an assurance that it has nothing whatever to do with it.

MR KNOWLTON. It has nothing to do with the case at all.

MR ROBINSON. You claim the paper has no significance?

MR KNOWLTON. Well, he said it has no significance.

The WITNESS. So he started to arrange them so as to determine what was on them, or to learn their contents. They were very small and it was rather difficult, but on one piece, on the upper left-hand corner, was the word "Emma." And that was written in lead pencil, as well as other pieces I saw.

Q. Now then, what did you do with that paper?

A. I asked him again what they contained, and he said, "Oh, I think it is nothing. It is something, I think, about my daughter going through somewhere." He then turned slightly to his left and took the lid from the stove and threw the papers in, or the pieces in.

Q. Now then, did you observe anything as he lifted the lid from the stove?

A. Yes sir.

Q. Go on and state what you did and what you observed.

A. I noticed the firebox. The fire was very near extinguished. On the south end there was a small fire which I judged was a coal fire. The embers were about dying. It was about as large as the palm of my hand. There had been some paper burned in there before, which was rolled up and still held a cylindrical form.

Q. Now will you describe that roll of burned paper by measuring it with your hands, please?

A. Well, I should say it was about that long. [Indicating] Twelve inches, I should say.

Q. And how large in diameter?

A. Well, not over two inches.

The next police witness was CAPTAIN PATRICK DOHERTY. He was followed by

### MICHAEL MULLALY

Q. [By Mr Moody] You are a police officer of Fall River, are you?

A. Yes sir.

[Officer Mullaly arrived at the Borden house at 11.37 A.M.]

Q. What did you do after you got there, Mr Mullaly?

A. I told Mrs Churchill that I came there for a report.

Q. Well, did you have any talk with Miss Borden?

A. I did. I went to Miss Borden, and I told her that the marshal had sent me there to get a report of all that had happened to her father; that is, he laid dead on the sofa at that time. I then inquired of her if she knew what kind of property her father had on his person, and she told me that her father had a silver watch and chain, a pocketbook with money in, and a gold ring on his little finger.

Q. Well, state what occurred then.

A. I then inquired of her if she knew whether there was a hatchet or an ax on the premises, and she told me there was, and that Bridget Sullivan would tell me where they were.

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Q. Did you learn at that time whether the property which she described was on his person?

A. About that time Officer Doherty came there, and I told him to look, and he reported to me that the watch

Q. In her presence?

A. In her presence, yes. He reported to me that the watch and chain were there in substance, that.

Q. Well, when you came downstairs where did you go?

A. I went from there down into the cellar.

Q. What did you do down there, Mr Mullaly?

A. Bridget went with us. We went down looking for the hatchet and axes. Bridget led the way. She went into the cellar there, and she took from a box two hatchets.

Q. Can you tell in what room that was?

A. Well, that was at the east end of the house, in the cellar towards the east end.

Q. Could you tell those hatchets if you should see them again?

A. I think I could.

Q. [Presenting the claw hatchet and another] What do you say as to those?

A. That (not the claw hatchet) looks very much like one of them which she took out. There was a spot on this large hatchet (i.e., claw hatchet), a little round spot, a rust spot.

Q. What did you do with the hatchets?

A. I took them out into what I call the washroom and laid them on the floor, and I stayed there with them until Mr Fleet came, and when Mr Fleet came-----

Q. Now then, Mr Fleet came, you say. After he came was anything done?

A. I gave him---called his attention to them hatchets and axes.

Q. What did you do?

A. I looked around there, and from there I went up the stairs again, and I went to the room-no, I didn't. I went into the yard and into the barn and made a search of the premises all around.

Q. Did you find any weapon or any indication of blood on any part of the premises on the outside of the house?

A. We did not.

I went into both the upper and lower parts of the barn, into the yard, looked around the woodpile. Went into the house again, into the room where Mrs Borden was found dead. Searched there, with Officer Hyde. Then went down cellar again. Mr Fleet came down too, and I showed him the box where Bridget took the hatchets from. He took out a smaller hatchet; the handle was broken; the break looked cleaner, looked fresh, as if just broken. Both sides of the blade was covered with ashes-looked as though it was rubbed on there, wiped on.

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Went upstairs again to this room where Mrs Borden lay. Saw Miss Borden. I inquired whether she saw anybody around the premises, and she said she saw a man there with dark clothes on. Said he was about the size of Officer Hyde. I had another search with Mr Fleet, at the east end of the house. Went into the yard, got over the fence into Dr Kelly's yard. Found no weapon or signs of blood anywhere.

### CROSS-EXAMINATION

Q. [By Mr Robinson] Do I understand that you went [to the Borden house] with Mr Allen?

A. With Mr Allen, yes sir.

Q. Did you learn whether that was the second time he went or the first time?

A. I think he told me he had been there before.

Q. You asked Miss Lizzie about what her father had on his person, property?

A. Yes sir.

Q. She told you a watch, a chain and a ring on the little finger?

A. A silver watch, a chain, and a pocketbook with some money in it, and a gold ring on his little finger.

Q. Did you find those articles?

A. I did not.

Q. Did you see anyone find them?

A. I called on Officer Doherty to look and see, and he reported to me that the watch and chain was on him.

Q. Well, did he make any report about the pocketbook?

A. He did not.

Q. Or ring?

A. He did not.

Q. You didn't see the articles yourself?

A. I did not.

Q. Well, on the whole, Mr Mullaly, you made, yourself, and [with] what you witnessed, pretty thorough searches through that house, did you?

A. As far as I know, I did.

I went into the attic. Went into Bridget's room, looked under the bed and around the room. Did not disturb the bed. Did not look in the closet, don't know she had a closet; didn't search trunks or examine dresses. Don't remember going into Mr and Mrs Borden's room.

Bridget took us to where the hatchets were, in the cellar, because Miss Lizzie told me Bridget would show me where the axes was; Bridget did not go searching for the hatchets, and axes; she led the way right to them. There was no hesitation in finding them. She took out two hatchets and handed them to me. The two that are here in Court look very much like them. There was then a rust spot on the larger one. There was no dust or ashes on them.

The two axes you show me were found on the south side of the cellar. They were very dusty.

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Another police witness called today was CHARLES H. WILSON.

Other witnesses were ANNIE M. WHITE, official stenographer for Bristol County, brought to testify regarding the notes which she took at the inquest; AUGUSTUS P. GORMAN, from whose shop John Cunningham telephoned to the city marshal---he testified merely as to the inaccuracy of his clock; and MRS CHURCHILL, who was recalled.

GEORGE A. PETTEE, a former tenant in the Borden house, testified that he came to the scene of the crime before 12 noon, the day of the murder, and saw both of the bodies. As a nonofficial observer, neither a police officer nor a medical man, he deposed that he noticed the freshness of Mr Borden's blood, and the coagulation of Mrs Borden's.

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## SIXTH DAY

New Bedford, June 10, 1893

### WILLIAM H. MEDLEY

Q. [By Mr Moody] You are at present doing special work on the Fall River police force?

A. Yes sir.

Q. Under the title of inspector?

A. Inspector.

Q. And last year you were a patrolman?

A. Patrolman.

*[Mr Medley testified that he arrived at the house at "about twenty or nineteen minutes of twelve; that after a brief talk with Miss Lizzie, who said that she was "upstairs in the barn" during the murders, he went to the barn himself.]*

Q. After you went into the barn what did you do? Describe in detail.

A. I went upstairs until I reached about three or four steps from the top, and while there part of my body was above the floor, above the level of 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, and I stooped down low to see if I could discern any marks on the floor of the barn having been made there. 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 I did by putting my hand down so fashion [*illustration*], and found that I made an impression on the barn floor.

Q. Describe what there was on or about the floor by which you made an impression.

A. Seemed to be accumulated hay dust and other dust.

Q. How distinctly could you see the marks which you made with your hand?

A. I could see them quite distinctly when I looked for them.

Q. Go on and describe anything else which you did?

A. Then I stepped up on the top and took four or five steps on the outer edge of the barn floor, the edge nearest the stairs, then came up to see if I could discern those, and I did.

Q. How did you look to see if you could discern those footsteps which you had made?

A. I did it in the first place by stooping down and casting my eye on a level with the barn floor, and could see them plainly.

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Q. Did you see any other footsteps in that dust than those which you made yourself?

A. No sir.

Q. After you had made that examination what did you do?

A. I came downstairs and searched around the pile of lumber and other stuff there was in the yard, looking for anything that we could find, and after a while I met Mr Fleet.

Q. Wait a moment now. Did you notice what the temperature was in the loft of the barn as you went up there?

A. Well, I know it was hot, that is all, very hot. You know it was a hot day.

Q. Did you notice whether the windows or the hay door were open or closed?

A. Those were closed, at that time.

### CROSS-EXAMINATION

Q. [By Mr Robinson] Did you go up, Mr Medley, to the Borden house with anybody?

A. No sir

Q. When you arrived there I think you called the gentleman you first saw, a Mr Sawyer?

A. Yes sir.

Q. Was there anyone else you saw on the outside of the house?

A. Yes.

Q. Who were they?

A. I cannot recall now--some officers, one or two, Mr Doherty

Q. Mr Doherty is an officer?

A. Yes sir, he was in citizen's clothes. I mean, in speaking of officers in that connection, officers in uniform, and Mr Doherty was in citizen's clothes.

Q. Now, tell me just what your movements were.

A. I went into the room where Mr Borden lay dead, and from there I went upstairs in the room where Mrs Borden lay dead, and then I came out from there and spoke to an officer in the front hallway upstairs and wrapped on the door occupied by Miss Borden.

Q. When you went to Miss Lizzie's room did Mr Fleet go with you?

A. No sir.

Q. You went in alone?

A. I did.

Q. Who else was there?

A. Miss Borden, Dr Bowen, Mr Buck, and I think Miss Russell, but I won't be sure.

Q. Was that the time that you had conversation with Miss Borden?

A. Yes sir.

Q. And the only time, I think you said?

A. The only time.

Q. That is the time when you asked her where she was, and she told you up in the barn?

A. Yes sir.

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Q. And there was nothing more said: you have given it all?

A. As near as I can recall.

Q. Where did you go then?

A. I came downstairs and went out and upstairs in the barn, as I described, to the head of the stairs.

Q. When you went in the barn do you know what time it was?

A. I only know by the length of time that I think I was in the house.

Q. Perhaps you cannot tell any more than the rest of us can infer from where you say you went. Did you stop anywhere there in the house, in any of the rooms other than in Miss Lizzie's?

A. That is the only place I stopped.

Q. Then you went in the barn and looked about, as you said?

A. Yes sir.

Q. And you did not see any evidence of any tracks in the dust?

A. No sir.

Q. Did not see any at all?

A. No sir.

Q. Anywhere?

A. No sir.

Q. It was all perfect?

A. Seemed so to me.

Q. You went in alone?

A. Yes sir.

Q. Do you know whether the window on the west end had a curtain or not?

A. I cannot say about that; I don't know.

Q. You don't remember about that?

A. I don't.

Q. How about the window on the east?

A. Well, I don't remember that, but I think there was a curtain on one of the windows, but I can't say which.

Q. Did you look at boxes or baskets up there?

A. I did not go on the floor other than the time I have described, and I stood round there with my body halfway above the floor and looked round; and on the south side of the barn there was a bench, I think, and some things on it. What they were, I don't know, but I think there was quite a large basket, a basket of some kind or other.

Q. Do you think this is the one here?

A. I could not say whether it was or not, because I am not sure of it.

Q. How long were you up there in the barn?

A. Two or three minutes.

Q. What were you doing?

A. I was looking round.

Q. Did I understand you that you did not go round on the barn floor?

A. No sir, I did not.

Q. Your looking round consisted of the time you occupied standing on the stairs and looking about?

A. Yes sir.

Q. You did not go up on the floor except when you went up two steps and came back, as you said?

A. No sir.

Q. You did not go over to the window?

A. No sir.

Q. And you did not examine over there at all?

A. No sir, I did not.

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Q. Then two or three minutes would be consumed in standing there and looking about generally, and taking a general look?

A. Yes.

Q. That was all you did?

A. That was all.

Q. Then you came right down?

A. Yes sir.

The other witnesses today were members of the police: FRANCIS L. EDSON, lieutenant; BENJAMIN F. MAHONEY, patrolman; Captain DENNIS DESMOND; and GEORGE F. SEAVER, a member of the State Police.

The following stipulation was filed with the Court on Saturday, June 10, and made a part of the record:

## COMMONWEALTH OF MASSACHUSETTS

Bristol ss.

Superior Court. June, 1893.

## COMMONWEALTH v. LIZZIE A. BORDEN

### *Agreed Statement*

1. The declarations offered are the testimony, under oath, of the accused in a judicial proceeding, namely, an inquest as to the cause of death of the two persons named in the indictment now on trial, duly notified and held by and before the District Court in Fall River, in accordance with the provisions of the Public Statutes.

2. The defendant was not then under arrest, but three days before the time of giving such testimony was notified by the City Marshal and Mayor of Fall River that she was suspected of committing the crimes charged in the indictment on trial; and the house and the inmates, including the defendant, were thereafter until her arrest under the constant observation of police officers of Fall River specially detailed for that purpose and stationed around the house.

3. That before she so testified she was duly summoned by a subpoena to attend said inquest and testify thereat.

4. That before she so testified she requested, through her counsel, A. J. Jennings, of the District Attorney and of the judge to preside and presiding at said inquest, the privilege to have her said counsel there present, which request was refused by both the District Attorney and the judge, and said counsel was not present.

5. That when her testimony so given was concluded she was not allowed to leave the courthouse, and was about two hours afterwards placed under arrest upon a warrant issued upon the charge and accusation of having committed the crimes set forth in this indictment. Said warrant was issued upon a complaint sworn to before the

clerk of said District Court, acting as Justice of the Peace under the statute, which was returnable to said District Court, by said City Marshal after the conclusion of the testimony of the defendant at the inquest, being the same complaint upon which the defendant was tried before said District Court and held to answer before the grand jury. Said City Marshal was present at the inquest when the defendant testified.

6. Prior to said inquest, to wit, on the day next before she was summoned as above stated, a complaint, charging her with the murder of the two persons as to whose deaths the inquest was held, was sworn to by said City Marshal before the same Justice of the Peace and clerk, and a warrant issued thereon returnable like said first named warrant for the arrest of the defendant, and placed in the hands of said City Marshal. The City Marshal did not serve this warrant and the defendant was not informed of it. No action was taken on said warrant, but the same was returned after the conclusion of the defendant's testimony and before the issuance of the warrant upon which she was arrested.

7. That before giving her testimony as above, she was not cautioned by said Court or said District Attorney that she was not obliged to testify to anything which might criminate herself; but said counsel was informed by the said District Attorney that he could, before defendant testified, confer with her in relation thereto, and he did.

8. The nature and character of the testimony offered may be considered by the Court in determining the question of its admissibility.

9. All rights as to the competency of all or any of the above agreed facts are reserved.

HOSEA M. KNOWLTON, District Attorney.  
LIZZIE A. BORDEN.  
GEORGE D. ROBINSON, A. J. JENNINGS, MELVIN  
O. ADAMS, of counsel for defendant.

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## SEVENTH DAY

New Bedford, Monday, June 12, 1893

**T**HE COURT came in at 9.10 A.m., and after being opened in due form the Chief Justice said: The jury may now retire with the officers, and remain until sent for.

*[The jury was then escorted to an adjoining room by the officers in charge.]*

MR MOODY. May it please your Honors, the question we understand now to be under discussion is that of the admissibility of the declarations of the defendant made under the circumstances that were stated in the stipulations filed and made part of the record of this case.

It will perhaps conduce to clearness of discussion and thinking, even at the expense of traveling over familiar ground, to recur briefly to the statute law under which that inquest was held. It is, of course, as your Honors well know, in Chapter 26 of the Public Statutes, and after the provision that the medical examiner, (1) upon view or personal inquiry in respect to a body that is found dead by violence, shall notify the justice of a district court, police, or municipal court, or the district attorney, and then follows the principal section, 13, where the provision is that "The court or trial justice shall thereupon hold an inquest, which may be private, in which case any or all persons, other than those required to be present by the provisions of this chapter, may be excluded from the place where such inquest is held; and said court or trial justice may also direct the witnesses to be kept separate, so that they cannot converse with each other until they have been examined. The district attorney, or some person designated by him, may attend the inquest and examine all witnesses."

I do not understand from the facts that were suggested as material upon this inquiry that there is or can be any question made but that the inquest at which this defendant testified was held in accordance with the law of this Commonwealth; that the exclusion of such persons as those who had in charge the interests of justice saw fit to

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(1) The coroner, in Massachusetts, since 1877, has been superseded by the medical examiner. He must be a qualified physician, and is appointed by the governor.

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exclude was entirely within the right of those who had the control of that inquiry. The provision of the law is that the inquest "may be private", and that "any or all persons may be excluded." Of course, the implication from that language is that the privacy or the degree of privacy of the inquest is entirely within the control of those representing the Commonwealth, because the language is that "any or all persons may be excluded" from attendance upon the inquest.

At that inquest it appears that the defendant, responding to a subpoena, appeared as a witness and testified. The question, the precise question in this case is whether there is anything in the circumstances, agreed upon which would take the declarations there made by her out from the general rule that any act or declaration of the defendant material to the charge upon which he or she is being tried, is competent and admissible. Your Honors will observe that the last clause of this stipulation provides that the nature and character of

the testimony offered may be considered upon the question of its admissibility. From the view which I shall endeavor to impress upon your Honors, the nature and character of this testimony is not of importance, but there is a possible view that may be taken by the other side (and, so far as I can, I desire to anticipate instead of being called upon to make a long reply), in which the character of that testimony may be of some importance. Without attempting at all to state it in detail, I may say that it is clearly not in the nature of a confession, but rather in the nature of denials, the significance of which, of course, must be treated of at a later stage of this inquiry. In that respect I desire to suggest to your Honors that there is a difference between confessions strictly so called and statements of a defendant which, though not in the nature of confessions, are evidences of guilt. The distinction appears very clearly in the case of *Commonwealth v. Piper*, reported in the 120 Mass. 185. (2) In that case the Government offered the testimony of Mr Pentecost, the pastor of the church in the belfry of which Mabel Young was murdered. It appeared, as the question originally arose, that a police officer of Boston having in charge of the investigation had used words to Piper, when he was under arrest, which clearly constituted an inducement by way of favor to confess the crime to Mr Pentecost, representing the church people. While the effect of that inducement was still operative on Piper's mind, Mr Pentecost had a conversation with him, and that conversation was offered by the Government. It was first discussed upon the view that the conversation constituted a confession, and from that point of view it in-as excluded by the trial court. It was then stated by the Attorney General that the conversation did not amount to a confession, but rather to denial, and we have assumed, it being the second trial, that

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(2) Trial also published by the Attorney General of Massachusetts.

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that statement was assumed to be true, the testimony of Pentecost was allowed to go in, and it was in substance of a conversation with the defendant in which he made such pauses, such statements, such hesitating denials of guilt followed by absolute denial that one could not fail to be impressed with the fact that although it was not a confession it was stringent evidence of guilt. To the ruling of the court an exception was taken, and it was disposed of in the upper court in this way: The Attorney General of the Commonwealth then stated that he did not offer a confession of the defendant, but proposed to show his conduct and declarations as showing a consciousness of guilt. The court properly held that such evidence was admissible. "The fact of promises or threats will exclude a confession influenced thereby, but it will not preclude the Government from showing independent acts and declarations of the defendant not in the nature of a confession, which tend to prove his guilt."

The other rule of law which comes into play in this case is a rule which, under our Government, has been sanctified by a position in our Constitution, and finds its place in



Article 12 of the Declaration of Rights, and is, in words that are not to be misunderstood, that "no subject shall be compelled to accuse or furnish evidence against himself."

I believe, whatever discussion that rule of law has received, and upon whatever grounds it may have been placed by this court or that court, that after all the only intelligible ground is one that includes the idea of compulsion, and the proposition which I desire to submit to your Honors is this; that the true rule is, declarations voluntarily given, no matter where or under what circumstances, are competent; declarations obtained by compulsion are never competent.

I think we never ought to approach, in these days, a discussion of any open question upon the criminal law, forgetting that many rules in respect to the criminal law arose at a time when an accused person had not the right of testifying in his own behalf, because in that fact we find the origin of many rules of criminal law that no longer have reason for existence.

I think I might very well leave this question entirely upon the authority that we find in the reports of our own Supreme Court, but yet I feel that I should not be doing my duty to the court, as discussion is called for, unless I went somewhat further; and I begin, as we always do, with the English cases, and I dismiss them very briefly.

They are with one exception *nisi prius* cases, ill reported, upon unintelligible grounds, contradictory and confusing; and, in addition to that, the decisions were embarrassed by considerations arising under the statute of William and Mary, which permitted a modified examination by the committing magistrate, of one who was accused of crime. I know that the New York case to which I shall hereafter refer,

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People v. Hendrickson, is probably familiar to your Honors. It contains so full a discussion of the English cases that I do not feel it my duty to go further. I simply say, and believe it to be true, that we can obtain no aid upon this question from a consideration of the authorities in England.

There is only one state, so far as my investigation informs me, in which this question has been thoroughly discussed, and in which the line has been clearly drawn, and that is the State of New York; and we have a satisfactory line of decisions in that state, to which I shall call your Honors' attention.

The first time when the question arose, it arose in the case of People v. Hendrickson, 10 New York 721, and arose in the year 1854. That was an indictment for murder. The examination of the prisoner before a coroner's jury was offered by the state, was admitted, and the admission was sustained by the Court of Appeals. In that case it

appeared that the testimony offered was, as here, denials, and not a confession. It appeared at that time, or at the time of the coroner's inquest, that the accused was not under arrest nor under suspicion-differing in the last respect from the case at bar. There is an extremely valuable discussion---I have not the report here at this moment-by the Court in that case. The prisoner was represented by eminent counsel, the late John K. Porter, and the opinion of the Court is, I think on the whole, the most valuable discussion of this subject which I have seen anywhere.

[Mr Moody cited, further, *People v. McMahon*, 15 New York 384; *Teachout v. People*, 41 New York 7; *People v. Mondon*, 103 New York 211.]

In the case of *People v. Mondon*, the Court of Appeals held that where the prisoner had been arrested without a warrant, and while actually in custody examined as a witness before the coroner's jury, being ignorant of the English language, not being cautioned as to his rights, and being examined by the District Attorney, his declarations were not competent against him at his trial. And I may be permitted to read--I think I have copied it correctly--the final summing up by the New York Court of the law in New York, in that case.

"The three cases," says Mr Justice Rapallo, "which have been cited---the Hendrickson case, the McMahon case, and the Teachout case---draw the line sharply and define clearly in what cases the testimony of a witness examined before a coroner's inquest can be used on his subsequent trial, and in what cases it cannot. When a coroner's inquest is held before it has been ascertained that a crime has been committed, or before any person has been arrested charged with the crime, and a witness is called and sworn before the coroner's jury, the testimony of that witness, should he afterward be charged with the crime, may be used against him on his trial, and the mere fact that at the time of his examination he was aware that a crime was

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suspected and that he was suspected of being the criminal, will not prevent his being regarded as a mere witness whose testimony may be afterwards given in evidence against himself. If he desires to protect himself he must claim his privilege. But if, at the time of his examination, it appears that a crime had been committed and that he is in custody as the supposed criminal, he is not regarded merely as a witness but as a party accused, called before a tribunal vested with the power to investigate preliminarily the question of his guilt, and he is to be treated in the same manner as if brought before a committing magistrate, and an examination not taken in conformity with the statute cannot be used against him on his trial for the offence."

That decision was in the year 1886, and it is to be observed that the line may be stated in a single word: it is whether the person is then under arrest or not.

[Mr Moody now cited a case in the State of Maine in 1862: State v. Gilman, 51 Maine 206; and one in Wisconsin, in 1880: Dickerson v. State, 48 Wisconsin 288.]

In the Wisconsin case A was charged with murder before the lower tribunal. The defendant at that time was under arrest for the same murder, and testified at the preliminary hearing upon the accusation against A; testified while he was still under arrest, and it was held that the declarations which he made in the course of that testimony were admissible upon his subsequent trial for murder, the Court saying:

"There is no pretence for saying that his testimony on that examination was not entirely voluntary in every legal sense. It is quite true he was himself at the time actually under arrest, perhaps resting under a strong suspicion of having had some agency in the murder. He might have refused to testify on that examination on the ground that his answers would tend to criminate himself ; but if he was willing to give his evidence, and did voluntarily testify, we cannot see why, upon principle and within the reasoning of the above authorities, his testimony may not be subsequently used against him."

[Further cited. State v. Vaigneur, 5 Rich., South Carolina, 391.]

Very clearly, where a person is himself the subject of prosecution, and through ignorance of the prosecuting officers and his own ignorance, and his destitution of counsel, is called upon that prosecution by the Government and there testifies, what he says in that testimony is not admissible against him. It is very clear by all the authorities so far as I am aware of them, at least by all the authorities of weight, that upon an inquiry into the death of a person, if one then under suspicion and informed that he is then under suspicion, responds to the subpoena of the State, and in the eye of the law voluntarily gives testimony at that inquiry, if he is subsequently arrested upon the accusation of being guilty of that death, what he has said at the inquiry is admissible against him.

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[Coming to decisions of Massachusetts courts, Mr Moody referred to Commonwealth v. King, 8 Gray 501; Commonwealth v. Bradford, 126 Mass. 42. Further to a case in which the Chief Justice had presided, in Norfolk County, and one at the November term in Essex County, in 1890, familiar to Mr Justice Dewey.]

In view of the authority outside of this State, in view of the authority and the intimation by the court within this State, in view of the common practice which prevails all over this State, and has prevailed constantly within at least my memory, and in view of the fact that if any error is committed this defendant's rights are secure, I submit that

this important testimony should be admitted by your Honors and submitted to the consideration of the jury.

MR ROBINSON. May it please the Court, it is not the question today whether in this court from time to time the proper and salutary rule may or may not have been departed from. Your Honors are to inquire today whether, if there have been any such departures, they have been rightly taken. Therefore, without conceding as facts what are stated as facts by my learned brother, I want to say that in a question of this great moment, where the life of this defendant is involved, this court will not, I trust, take any possible chances resting upon passing decisions made in the heat of a trial. If the important question has been settled in the highest court of this Commonwealth, then so far as it has been covered, that settlement becomes an authority to guide us at this moment. But no matter what the practice has been. We stand today upon the right of this defendant at this hour; and I should be unjust in my opinion of this Court if I did not know that whatever has been said or done upon so important a question as this one before us, that it would have no effect unless it had received the sanction of the highest judicial tribunal of the Commonwealth.

Now,, in order to ascertain where this defendant stands confronting the Commonwealth, we must not lose sight of the exact facts that are before this Court. I have taken the trouble to prepare a brief, a copy of which I now hand to the Court and to the counsel for the Government, presenting the facts, clearly I hope, and correctly. Let us look those over, to see upon what ground we argue the question involved.

[Mr Robinson's brief stated:

1st. The homicides were committed August 4, 1892, and the medical examiner took immediate possession of the bodies.

2nd. Defendant's testimony given August 9 to 11, 1892.

3rd. Defendant accused of the crimes by the Mayor, August 6.

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4th. Defendant kept under police observation from August 6 till arrest. "The house was surrounded"; she knew the police were around her.

5th. Defendant, on or before August 9 subpoenaed to appear and testify at inquest.

6th. Before testifying defendant requested counsel. Request denied. "She alone-a woman unguided by her counsel, confronted with the District Attorney, watched by the City Marshal, at all times surrounded by the police."

7th. Defendant not properly cautioned.

8th. A warrant for her arrest placed in the hands of City Marshal, August 8, which was before she testified.

9th. At the conclusion of her testimony she was not allowed to depart, but was arrested two hours later on another but similar warrant.]

In other words, the practice that was resorted to was to put her really in the custody of the City Marshal, beyond the possibility of any retirement, or any release or any freedom whatever, keeping her with the hand upon the shoulder---she a woman, could not run---covering her at every moment, surrounding her at every instant, empowered to take her at any moment, and under those circumstances taking her to that inquest to testify. And that went on for three days, with no intimation to her from anybody who was authorized to make it, nay, we may say, and who was bound to make it, that she had any rights at all. Denied counsel, neglected so far as the court acted or the District Attorney, to tell her that she ought not to testify to anything that might tend to criminate herself, she stood alone, a defenseless woman, in that attitude. If that is freedom, God save the Commonwealth of Massachusetts!

[10th. The inquest was not to discover if a crime had been committed, but its use and power was devoted to extorting from defendant something that could be used against her.]

I have not claimed that the rule of law applicable to confessions is of material consequence here. Whether, as touching that question, these statements which are offered are to be considered as confessions or denials, to my mind is quite unimportant, because I do not consider the question trends that way at all, so while my friend guarded himself against a possible argument that I might make, it was agreeable to hear him, but unnecessary on this discussion. So that the Piper case had no sort of reference here. That was merely an inquiry as to the effect of alleged confessions, in the first place, made under inducements; secondly, not made so. I leave that question out, because it is a weariness and unnecessary expenditure of time to talk more about it.

My friend said in alluding to the English cases and the earlier cases that we must not lose sight of the fact that the rules of law were established when defendants were

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not permitted to testify. We are here considering a question of a great right. And I apprehend it makes no difference in this discussion that our statutes permit a defendant to testify if she so desires, because those statutes say that no inference against her shall be drawn if she chooses not to testify. Therefore, so far as this question is concerned, we

are to settle it upon precisely the same ground that she would have occupied fifty years ago, when she could not have taken the stand.

Looking into the reports in Massachusetts for the adjudications made by our Supreme judicial Court, we find that there are but two, and therefore we are bound to scan those very closely to see if they are authority upon this case with these facts before us.

The first is the case of *Commonwealth v. King*, 8 Gray 501 This was an indictment for burning a barn. There was offered in evidence the testimony of the defendant, taken in writing on oath before a fire inquest. [Reading] "It appeared that this inquest was held prior to the institution of any proceedings against the defendant; that he was duly summoned and testified with other witnesses before said inquest on oath, and that said testimony was reduced to writing and signed by the defendant. It did not appear that the defendant was cautioned that he need not criminate himself."

Now those are the facts in the *King* case. See how they differ from the present. It appeared that the inquest was held prior to the institution of any proceedings against the defendant. In this case, the proceedings had been commenced and fruited in the warrant before she was brought before the inquest tribunal. In the *King* case the testimony was reduced to writing and signed by the defendant. In this case the testimony was undoubtedly reduced to writing, but it was not signed by the defendant, and so far as anything is shown here, never submitted to her for her examination or correction. Again, in the *King* case, it did not appear that the defendant was cautioned that he need not criminate himself. In this case it does affirmatively appear that she was not cautioned. Now- we should be surprised indeed if the Supreme Court of Massachusetts had upon those facts decided the question that we have now upon the present facts.

In the present case Miss Borden had been under suspicion. She had been put under a personal charge or accusation, to use another word, of the chief officers of the city. She had been proceeded against; in other words, proceedings formally had been instituted against her, and the warrant issued, and it was in the hands of the city marshal of the city directing him, not permitting him, directing him to take her into custody. He had not any right when he had received the mandate of that court to choose whether he would execute it or not, and it was not in the power of the district

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attorney to instruct him to disobey the order of that court. It was a pocket warrant, but that pocket did not belong to Marshal Hilliard, but was the pocket of the Commonwealth, and Hilliard was but the instrument or agent directed to execute it.

Now let us look at the Bradford case; that is a fire inquest case; and, without reading all the facts at length, it will be seen at a glance, as the Court say in the opinion, "There is nothing in the case to show that Bradford, at the time his testimony was given, was proceeded against criminally, or was then under suspicion of crime," and the Court say further, "The testimony was given voluntarily." That is, this whole question that we are now discussing found as a fact. In the statement of the case prior to the opinion, of course,-it is not contended by the defendant that this statement was not made voluntarily. In other words, here was a burning of a building, and Bradford was asked or summoned to come in and testify, without a word of objection, without any proceedings against him, without any suspicion on him, without anything that could possibly suggest to him any right in the matter, or the exercise of it. He walks up and testifies voluntarily. Now, there is a very lean authority in the Bradford case for the proceedings that were instituted and prosecuted against this defendant.

Now I look at the State v. Gilman, 51 Maine 206. There the Court expressly found that he had been cautioned that he was not obliged to testify to anything which might criminate himself. That is expressly alleged as a fact in the statement of the case, and taken as settled by the Court in giving the opinion. That being the fact, I care not to linger to discuss the authorities, that are there considered, much at length or to say whether, as upon those facts just as they are found there, the decision of that court would be consistent generally or not; but they were not discussing the situation as involved in the present issue. I do not fail, however, to read from that case something that to my mind has a healthy tone. "Great care should undoubtedly be taken to protect the rights of the accused. His secret should not be extorted from him by the exercise of any inquisitorial power. He should be fully informed of his legal rights when called upon or admitted to testify as a witness in a matter in which his guilt is involved."

Let us look now at the Mondon case, 103 New York 2 11 and in that case, as has been said already, the Court proceeds to examine the authorities with great care and with much discrimination. This was a case of an Italian, "an ignorant Italian laborer, unfamiliar with the English language, arrested without warrant as the suspected murderer, and while under arrest was taken by the officer having him in charge before a coroner's inquest, and after proof had been given of the homicide, was examined, on oath, by the district attorney and the coroner as to circumstances tending to connect

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him with the crime." There had been then no complaint made; there had been then no warrant issued. He was arrested on suspicion of the crime, and I will read a portion of that opinion which my learned friend did not read, because it seems to me to present an argument against what he did read. I read from page 216: "It thus appears that when the prisoner was called upon to make his statements on oath before the coroner, he stood in the attitude of an accused person, and was required to answer for himself, as a party, and

not as a mere witness to aid the coroner in investigating the cause of the death of the deceased. The cause of the death was evident. The body had been examined, with the marks of violence plainly apparent: the bruised head, the fractured skull and the broken club lying near it with hair still adhering to it. It was evident that a crime had been committed. From the time that a felonious homicide was established, the proceedings assumed the form of a criminal investigation."

Why, it is the homicide at the Borden house over again practically. Is it to be conceived as possible that Dr Dolan had not then discovered that there had been a homicide, or that the learned district attorney had not found it out? To suggest it is to refute it, and the cause of death was evident. The moment that the felonious homicide was determined, says this Court, the proceedings assumed the form of a criminal investigation.

I read farther in this same Mondon case: "The defendant was called and sworn as a witness upon the inquest. At that time it did not appear that any crime had been committed, or that the defendant had been charged with any crime, or even suspected, except so far as the nature of some of the questions asked of him might indicate such a suspicion."

MR MOODY. That does not refer to the Mondon case, what you are reading.

MR ROBINSON. This last language I have read is in a discussion of the Hendrickson case to which my friend alluded.

So again in that earlier case, in the McMahan case that has been cited, "The constable took" the defendant "before the coroner who was holding an inquest on the body, by whom he was sworn and examined as a witness. It was held that the evidence thus given was not admissible."

So in the Teachout case. The defendant was informed, and he voluntarily attended. He was not under arrest before that time. He was informed by the coroner "that some of those rumors implicated him, and that he was not obliged to testify unless he chose. He said he had no objection to telling all he knew." So that, as the Court say, "the statements were made voluntary in every legal sense." Why, no doubt they were. They were made voluntary in every sense.

The weight of the Wisconsin decision, to which my friend has alluded, is reduced almost to a minimum, because the essential things to be ascertained do not appear.

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Whether or not it was voluntary does not appear in that case. It does not show that the defendant requested to testify. It is to be borne in mind that at that time there was an examination as to another person, and that this defendant was also arrested ; and it was



important then to ascertain whether he requested to be examined or whether it was voluntary. That does not appear in the case. Neither does it appear how he got there upon the witness stand. So we get no light as to the main facts in the case, the turning points.

Now there is a line of cases which I have not put upon the brief, but which to me carry considerable weight in the discussion of this important question. I will not take but a moment in citing them, and I will not discuss them at length. I refer to Emery's case, in the 107 Mass. 172. I have not put it down upon the brief. I also refer to the case against Jacob Sharpe in New York, 107 New York 427. I also refer to the case of Counselman v. Hitchcock, 142 U. S. 547. Page after page in this discussion here in this last opinion is occupied with the demonstration of the soundness of the declaration which was in a maxim in the olden time, that no person should be bound to accuse himself, and later in the authoritative declaration in our own Constitution that: No person should be bound to give any evidence against himself, or accuse himself, emphasizing as an essential right to be protected for every defendant who might be placed in peril this safeguard, first in maxim and then in constitutional expression. In all those cases, in the Emery case and in the Sharpe case and in the Hitchcock case, the doctrine is reiterated and stated and all the cases cited from the beginning down with so much firmness and clearness that there seems to be no doubt.

I have stated my position as a matter of law---nay, rather the defendant's position. If I have given the Court emphasis on it, it is hers rather than mine. I stand by these rights which are hers by the Constitution, and to depart from their preservation will be peril, not alone to her, but to everybody hereafter who may be placed in a similar position, and who may desire to find the Constitution his protection.

### MR MOODY'S REPLY

May it please your Honors: I have very little to offer in reply. I could not help being reminded, as I heard what my friend is pleased to term his argument on this question of the law, of a remark of a French general officer, which I may make suitable to this occasion, on the Charge of the Light Brigade, and I say of the argument generally: It is magnificent, but it is not law.

I have been trying to find out throughout this discussion precisely what the learned

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counsel means, and so far as I can understand his position, it is that this testimony is not admissible because it is not. And that declaration is surrounded with a good many vocal gymnastics and fireworks, but so far as any statement of law or citation of opinion upon this question is concerned, I have not seen any. There is not, if I have

followed the argument correctly, a single case cited anywhere of an exclusion of declarations of this sort unless it was when a person testifying at the time was actually under arrest, not a single case.

Now I have very little to reply except to correct a good many misstatements of fact that have been made during the course of this argument. I left intentionally the discussion of the statement of fact until I was apprised what significance should be attached to it by our friends on the other side. In the first place, and I may as well dispose of that once for all, although there is no case that decides that the absence of caution by the magistrate or prosecuting officer is of itself enough to exclude the testimony, and although the intimation from our own Supreme Court is to the contrary, still a great deal of stress apparently is laid upon that fact in the argument coming from the other side. Well now, let us see what in point of fact the stipulation does determine. Let us go back a moment to the date of this inquest in order to understand exactly the position of the facts. These two people, Mr and Mrs Borden, had been murdered in their house by someone. That, I agree, was a matter so clear that it did not require an inquest to determine.

Our statutes then required certain things to be done. The first step was the view and personal inquiry of the medical examiner. If he then should be of opinion that the death was caused by violence, he has done his duty. Then the matter by his report is referred to the District Court or the District Attorney for investigation, not whether there was a death by violence, because the medical examiner determines that, but, assuming that to be true, how was that violence committed, and by whom? And Section 15 of the same chapter provides that after the presiding justice has, heard the testimony, he shall "draw up and sign a report in which he shall find and certify when, where and by what means the person deceased came to his death, and all material circumstances attending his death; and if it appears that his death resulted wholly or in part from the unlawful act of any other person or persons, he shall further state the name or names of such person or persons, if known to him." And all this discussion that has been founded upon the fact that the judge of the District Court, aided by the District Attorney was inquiring whether this was a death by violence, whether it was a death by violence by human design, when the death occurred, by whom it occurred---all the eloquence that has been wasted upon that subject depends entirely upon a misunderstanding of the law. It was the duty of that Court to do that very thing, and in

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doing that very thing it was performing the duty which was imposed upon it by the laws of this Commonwealth.

Now, then, a step further before we consider this question of caution. During the time that one of those persons was killed, there were but two other human beings who

can be suggested up to this present moment of time in the house-Bridget Sullivan and the daughter. At the time when the other one was killed there was but one human being in the house, so far as is suggested up to this time-the prisoner at the bar. Is it to be supposed that either Bridget Sullivan or Lizzie Andrew Borden should be exempt under the law from an inquiry concerning the death of those two people? Let us go a step further. She is summoned, according to this stipulation, in the usual form of law. She appears. She appears by counsel learned in the law, friend and counsel both, I think I may say, although it does not appear in this stipulation; a counsel, at least, in whom she well might place great confidence. Counsel asks the privilege of being present at the inquest. It is entirely beyond precedent in this Commonwealth, and the District Attorney and the Court, in accordance with almost unbroken precedent, declined that privilege-declined it because the law expressly gives them the power to decline it. She is there. She is not cautioned before the magistrate, but her counsel is told before she goes in to testify that he may confer with her in respect to her rights as a witness, and the stipulation says that he then did confer with her. Now we are looking at the substance of the thing, at the common sense, as---Mr Robinson has said, of the thing---the common sense, which he thinks is much better than the law; and the substance and the common sense of the thing is, your Honors, that a caution delivered by her friend and counsel without the surroundings of the Court, without her being in the presence of strangers, would be very much more effectual to inform her of her full rights than any caution by the magistrate or the District Attorney possibly could be. And your Honors can have no doubt that the reason why the caution was omitted at the beginning of this testimony was because that subject had been thoroughly talked over between counsel and client, and she knew and understood her rights. And after she had had the opportunity of talking with her counsel; after-and I think, if we can presume some things about the District Attorney, we can presume some things about as learned a lawyer as brother Jennings is, and we can presume that he informed her that she would have the right to decline to testify upon a single ground, otherwise she must be obliged to go in there and testify what she knew about the matter; she could only decline to testify upon the ground that it would criminate herself. And can your Honors have any doubt, can your Honors have a particle of doubt that after she had talked with Mr Jennings in reference to her rights thereto, in the words of the stipulation, that

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she went in with a full consciousness that she had a right to decline at the beginning, at the middle or at the end; and that when she went in there she testified as a voluntary witness in every possible sense of the word, legal or otherwise?

Upon that part of the case it appears to be assumed that there could have been no possible object on the part of those who conducted that inquiry except to develop the woman's guilt. Why is it necessary to do that? Why can it not be believed that those who had that inquiry in charge felt that they had a duty to perform, which, under the law of

this Commonwealth, which recognizes no distinction between any man or woman, according to their degree, compelled them to call Lizzie Andrew Borden as well as to call Bridget Sullivan? Why should not it be assumed that those who had that in charge believed that she, as well as Bridget, by her own declarations and by her own testimony, could clear herself from the suspicion instead of adding to it in such a way that her arrest became necessary? I say, then, in this case, it is not a case of a failure to caution, but it is a case where the caution was exercised in the most considerate manner in which it is possible so to do.

Now it has been said all the way through this case that the woman was under control of someone, that she was under the charge of someone, that she was under the constant watch of someone—entirely beyond the facts contained in this stipulation. All that there is in this stipulation is this: that the house, between the time of the homicide and the time of the inquest, was surrounded with officers stationed about it who constantly observed the house and the inmates, including the defendant. No distinction whatever was shown between this defendant and Bridget Sullivan, or between this defendant and John V. Morse.

It was the duty of the officers constantly to do that very thing. There is not a single line in this stipulation or in the testimony in this case that shows that the liberty of that woman was restrained for one instant, either by word or action, up to the time when she had completed her examination and was arrested upon the warrant that was subsequently sworn out.

But it was said that there was a warrant undisclosed to her in the possession of the city marshal of Fall River, which is quite true. She could have at any time been arrested without a warrant, as your Honors well know. There was nothing in that warrant in Mr Hilliard's pocket which changed her legal position or her legal liabilities one iota. If it be true—and I agree that it is true as my learned friend has said, that the only question in this case is whether this testimony was given voluntarily or not, how can an undisclosed warrant, of which she had no suspicion whatever, bear in any degree upon the exercise of her will when she appeared as a witness before the inquest? So far as it bears upon the question of voluntariness, it is out of this case. It

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couldn't do it from its very nature. It couldn't do it until it was disclosed to her either by some action taken upon it or by its being communicated in some way to her. So I think fairly we may strike out of consideration as of any importance the fact of the undisclosed warrant in this case.

Now it is---and perhaps it is not a fair subject for discussion in this case, does not bear upon the question of law, but it may be that I am the only one that can say a word

about that subject---it is suggested and assumed that the existence of this warrant was known to the district attorney. I dispute it, your Honors. There is no evidence of it, and I say that it is not true, and that any assumption to the contrary on the part of my learned friends is entirely unwarranted.

What, precisely, does this word "voluntary" mean? It means this: if a witness, having the privilege to decline to answer upon the constitutional ground that it will tend to criminate him, does not exercise that right of declination, and testifies, then that testimony is voluntary within the meaning of the law; and in that point of view there was nothing that occurred here that was not voluntary.

There are several things stated upon this typewritten paper which has been handed to your Honors by counsel upon the other side, and I desire to refer to some of them in some detail. Perhaps I have already done so. I think I have, in respect to the facts, all I care to call attention to; but I am somewhat surprised that my learned friend should appeal to the Constitution of the United States, or rather to the first amendments to the Constitution of the United States, as a shield to the defendant in this case; because, of course, he must be aware that those amendments, including Article 5, have been held not to regulate the rights between the state and its own citizens, but to regulate the rights between the United States and citizens of the respective states.

The case of *People v. Sharpe* and *Emery's case* are so clearly distinguished from any possible bearing upon the case at bar that I do not think I shall undertake to take up any of your Honors' time in considering them.

I do not think there is anything else upon this subject in which in any respect I could aid your Honors. I say that as there is no case to be found, none has been cited, anywhere over the length and breadth of this land or in England, as to an exclusion of this testimony, it should be admitted.

The CHIEF JUSTICE: The Justices will withdraw for consultation upon the question raised.

*[At 11.16 A.M. the Court withdrew, and returned to the bench at 12.38 P.M.]*

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The CHIEF JUSTICE. The propriety of examining the prisoner at the inquest, and of all that occurred in connection therewith, is entirely distinct from the question of the admissibility of her statements in that examination. It is with the latter question only that this Court has to deal.

The common law regards this species of evidence with distrust. Statements made by one accused of crime are admissible against him only when it is affirmatively established that they were voluntarily made. It has been held that statements of the accused as a witness under oath at an inquest before he had been arrested or charged with the crime under investigation, may be voluntary and admissible against him in his subsequent trial, and the mere fact that at the time of his testimony at the inquest he was aware that he was suspected of the crime does not make them otherwise. But we are of opinion both upon principle and authority that if the accused was at the time of such testimony under arrest, charged with the crime in question, the statements so made are not voluntary and are inadmissible at the trial.

The common law regards substance more than form. The principle involved cannot be evaded by avoiding the form of arrest if the witness at the time of such testimony is practically in custody. From the agreed facts and the facts otherwise in evidence, it is plain that the prisoner at the time of her testimony was, so far as relates to this question, as effectually in custody as if the formal precept had been served; and, without dwelling on other circumstances which distinguish the facts of this case from those of cases on which the Government relies, we are all of opinion that this consideration is decisive, and the evidence is excluded.

DR ALBERT C. DEDRICK testified that he had practised as a physician in Fall River for five years, following two years hospital experience in the Bellevue Hospital, New York.

I went to the Borden house on August 4, after 2 P.M. Examined both bodies. Blood on Mrs Borden's body was of aropy consistency and would not run. On Mr Borden, it was more of an oozy character. Mrs Borden's body felt colder and was stiffer. Formed opinion that Mrs Borden died first. Should judge she died several hours earlier.

JOSEPH HYDE, police officer. Testified that he was on guard on the Borden premises the night after the murders. He was stationed outside. About nine o'clock he saw Miss Lizzie Borden and Miss Russell come into the cellar, and empty a slop pail in the closet there. He further saw Miss Borden go into that room in the cellar in which were the clothes taken from the two bodies. Miss Russell did not follow her there.

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#### DR WILLIAM A. DOLAN

I have practised medicine in Fall River for eleven years; received my education in the medical department of the University of Pennsylvania.

I have been in general practice, with probably more surgery than medicine. Have had several cases of fracture of the skull. Have been medical examiner for Bristol County for two years; for one year, when these murders took place. Arrived at the Borden house about 11.45 A.M. Noted the striking of the city hall clock at twelve, and had then been ill the house ten to fifteen minutes. Saw Charles Sawyer at the door; Dr Bowen, Bridget, Mr Morse, Mrs Churchill, Miss Russell, and several officers.

Had a brief talk later in the day with Miss Lizzie Borden in her room. Asked her what it was about that note Mrs Borden was said to have received, and she said Mrs Borden had received a note to go and see somebody that was sick. Asked her where the note was. She said she didn't know. She said that probably Mrs Borden had burned it in the kitchen stove. That is all I remember of our talk.

When I entered the house, I went into the kitchen and then to the sitting room. The body of Mr Borden was lying on the sofa. Sofa was against the north wall of the room, running east and west, with the head towards the parlor and the feet towards the kitchen, that is, towards the east. The sofa was against the jamb of the dining-room door. The body was covered with a sheet. Dr Bowen was with me. I found that Mr Borden's hand was warm; the blood was oozing from his wounds and was bright red in color. The head was resting on a sofa cushion that had a little white tidy on it. The cushion, I think, rested on his coat, which had been doubled up and put under there. And the coat, in turn, rested on an afghan or sofa cover. I made no particular examination of the wounds then; only stayed two or three minutes; went upstairs to see Mrs Borden. She was lying between the dressing case and the bed. I touched the body, noted the wounds on the back of her head; noted that her blood was coagulated and of a dark color. She was lying with her back exposed; her hands were nearer the wall than her head; they were not clasped. The upper part of her dress---the waist---was bloody. I found an old silk handkerchief there and took it with me. It was nearer the wall than the head. It was not cut, but it was bloodstained. [Witness identifies the handkerchief.] I was there, examining the body, for only two or three minutes. When I saw Mr Borden I had a clinical thermometer with me, but I did not use it. At Mr Borden's head, the blood was dripping on the carpet underneath. There were two blood spots on the carpet, about eight or ten inches in diameter.

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Turning back to Mrs Borden's body, I felt of that with my hand; touched her head and band; it was much colder than that of Mr Borden. Did not use thermometer. Her blood on the head was matted and practically dry. There was no oozing from it, as in Mr Borden's.

I returned downstairs and made a more careful observation of Mr Borden's wounds. At that time I counted from eight to ten; I made a more accurate examination later.

He was clad in a cardigan---a woolen---jacket, black vest, black trousers and a pair of Congress shoes. He had a watch and pocketbook; the money in the pocketbook amounted to [referring to notes] \$81.65---four ten-dollar bills; five fives; one two-dollar bill; eleven ones; and in his pocket, two fifty-cent pieces; three twenty-five cent pieces; six tens; five five-cent pieces; and five copper cents. (3) He wore a ring, I think a gold ring on his left hand.

Went upstairs again, and with Dr Bowen's assistance lifted Mrs Borden's body sufficiently to make a preliminary count of her wounds; then collected from Bridget a sample of the morning's milk and of yesterday's milk; sealed them and later sent them to Professor Wood. Went to the cellar; saw two axes and two hatchets; took the heavy clawhammered one and put it with the cans of milk. Returned to the house that afternoon and had the rooms and the two bodies photographed.

I removed the stomachs from both bodies; tying each at both ends, and putting each into a clean jar which was sealed, labeled and , with the two jars of milk, sent by express to Professor Wood.

Next day I examined with a magnifying glass the two hatchets at the city marshal's office. Found two hairs on one of them; put them on a piece of paper, then in an envelope and delivered them to Professor Wood. There were spots on the axes that looked like blood, or rust. I also delivered hatchets and axes to Professor Wood.

On August 11, at the Oak Grove Cemetery, we made a thorough autopsy. Present were Dr Francis W. Draper of Boston, and Drs Cone and Leary of Fall River. Examined every organ of Mr Borden's body; found them in healthy condition.

The wounds in the head were the cause of death; we made an examination of them.

*[A plaster cast of a head, upon which the position of the wounds was marked in blue, was produced and handed to the witness.]*

Q. We will take the head of Andrew J. Borden first. Is this the cast that you used to illustrate the wounds on Mr Borden?

A. Yes.

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(3) Expert accountants assure me that these bills and coins would amount to \$80.65, and not \$81.65 as Dr Dolan stated. Perhaps the witness was in error; or perhaps the court stenographer misunderstood him.

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Q. How many wounds did you find on his head?



A. Ten on the fleshy part.

Q. And what was the condition, generally speaking, of the skull of Mr Borden as to being crushed in?

A. From in front of the ear, commencing about 1-1/2 inches in front of the ear, to probably 1-1/2 inches behind the ear, the bone was all crushed in.

Q. [*Placing cast on its side on the rail in front of the stenographer's table*] Now if you will let me rest it here. Now, then, go on and describe in detail the wounds that you found upon his head? [*The witness left the stand and took a position beside counsel to point out the position of the wounds upon the plaster cast.*]

A. In taking this wound and counting that No. 1 ---I do not mean to say that that is the first wound that is given, I simply take it to have some commencing point---this wound started in what we call the left nasal bone, that is, the left nose bone, and extended down through the fleshy part of the side of the nose, over the upper lip and the lower lip and chin, and cut slightly into the bone. That wound was 4 inches long.

Q. And how deep?

A. Well, cutting slightly into the bone. The other wound started here, at the angle of the eye---this is all the left side---commenced here at the angle of the eye and cut down through the flesh, down past the angle of the mouth and into the chin, and also cut slightly into the bone. That one was 4-1/2 inches long. That wound here over the eye---over the left eye, 2 inches above the left eyebrow was a glancing wound, starting here and cutting out a piece of bone the size that you see marked there, cutting it right out from the skull. That is the wound there. This next wound ran into that, came down through the eye, and cut the eye completely in half and cut through the cheekbone, severing it, and ended just below the cheekbone. That wound was 4-1/2 inches long.

The next commenced about 2-1/2 inches above the eyebrow and to the outside of it. That one was 2 inches, cutting into the skull. The next was 1 inch to the left, and 1/2 inch long; it simply left its mark in the bone. The others went through into the brain. The two directly in front of the ear, and separated by about 1/2 inch, were 4 and 4-1/2 inches respectively, or 2 inches. (4) One was 2 inches and the other 4 inches. The last one was 2 inches---that is, directly above the ear.

There were also some wounds that showed in the skull, but not in the fleshy part, possibly by the hatchet going into the same cuts, but not exactly underneath on the bone. There were no wounds on the body except those on the head.

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(4) Confusion here may be accounted for by the omission of a few words in the report.

Q. Which of them crushed the skull?

A. Those last four, and this one, of course, cut into the skull in front.

Q. Did you afterwards remove the skull?

A. Yes sir.

Q. And removed the flesh from the bone?

A. Yes sir.

Q. And you have it in your possession?

A. Yes sir.

Q. What is the process of removing the flesh from the bone? I will ask you this question. Perhaps my friends will know the reason I ask it in the form I do just now. What is the process of removing the flesh from the bone? Does it in any way affect the integrity of the bone?

A. No sir.

Q. What is the thickness of the skull at the point where those four wounds went through into the brain?

A. About one sixteenth of an inch.

Q. Is it comparatively speaking a thin skull or not?

A. It is, yes.

Q. What is the thickness of that part of the skull in proportion to the rest of the skull?

A. I think the skull on top is a quarter of an inch.

Q. Which is the thinnest place on the skull?

A. Just this region, the temple region.

At the same time, we made an examination of the intestines. The upper part of Mr Borden's intestines was comparatively empty. In the upper part of Mrs Borden's intestines was some undigested food.

On Mrs Borden's body there was one wound on the back---at the juncture of the neck with the body, the lower part over the spine, and the upper part running upwards and downwards for 2-1/2 inches. All the other wounds were on the head. There were three contusions on the face: two over the left eye, and one just over the bridge of the nose. The right side of Mrs Borden's head was crushed in; there was a hole there,

1-1/2 by 5-1/2 inches. There was a scalp wound on the left side of the face; a flap wound, where the flesh was cut off, but not separated from the head; it was 2 inches long by 1-1/2 inches wide. On the left side of the middle line of the head, there were four wounds. Three of them went into the skull, one taking a piece right out of the skull. Two wounds simply left imprints on the head. Many of the wounds crushed through into the brain. They varied from 1/2 inch to 5 inches long. Altogether, eighteen wounds on her head.

With Mr Seaver, I made a memorandum of the blood spots in the house. In the guest room there was one spot on the north wall 9 inches from the window and 2-1/2 inches from the floor. There was one spot 5-1/2 inches west of the dressing case and

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16-1/2 inches from the floor . . . There were about fifteen spots on one of the marbles of the dressing table. On the lower part of the dressing table about fifty spots; fifteen spots on the mirror. On the east wall seven spots. Downstairs in the sitting room, there was one, 3 feet 2 inches from the jamb of the dining-room door; the highest on the wall was 6 ft. 1-3/4 inches from the floor. Back of the lounge, in a space 18 by 10 inches, there were eighty-six spots describing the arc of a circle. There were seven spots on the parlor door and three on the parlor-door jamb. There were forty spots on the picture and frame that hung over the lounge.

I removed the skull of Mrs Borden also, and prepared it in the same way, and also without interfering with the integrity of the bone. It is slightly thicker than Mr Borden's. Where the skull was crushed in, it is not over 3/8 inch thick. The wounds in her skull were made with some sharp cutting instrument, possibly a hatchet. I should say that a hatchet would be consistent with the nature of her wounds.

Q. In your opinion were the wounds that you found upon the skull of Mr Borden such as could have been inflicted with a hatchet by a woman of ordinary strength?

A. Yes sir.

Taking all circumstances into consideration, including the condition of the blood and the heat of the bodies---everything that came to my attention during the examination on Thursday, the day of the murders---I formed the opinion that Mrs Borden died first. I should say from 1-1/2 to 2 hours, or from 1 hour to 1-1/2 hours.

And, further, assuming that these two persons ate at the same time before they were killed, and considering the conditions disclosed in the intestines of both, I conclude that digestion had ceased in Mr Borden, and was still going on in Mrs Borden. And, therefore, that she had died first. These conditions support the opinion I have already given.

## CROSS-EXAMINATION

Q. [By Mr Adams] I do not understand, Doctor, that you received any message to take you to this house on the day of the tragedy?

A. No sir.

Q. But you were driving to your patients and going by this house?

A. That is it; yes sir.

Q. And saw something which led you to get out and go in?

A. Yes sir.

Q. And you fix the time when you got there as near or a trifle before twelve o'clock?

A. Quarter of twelve, about; yes sir.

Q. Would you insist on its being exactly fifteen minutes of twelve?

A. No sir; not exactly, I would not.

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Q. It might be five minutes later?

A. Possibly it might have been that time.

Q. Haven't you said that you were calling upon a patient upon Third or Fourth Street, and you got there about 11.40 and stayed three or four minutes, and then drove around?

A. No sir; not as late as that, I don't think.

When I went into the guestchamber to view Mrs Borden's body, the room surely was not dark. The shutter on the north window was open. I did not know then that Patrolman Doherty had lifted the body. I know it now. I did not know that Dr Bowen had pulled out her right hand and felt of the wrist. I know it now. I did not know that Doherty had moved the bed, and I do not know it now. When I later measured the distance between the bed and the dressing table, where the body lay, I found it to be 37 inches. I did not tell you it was 2 feet or 2 feet 10 inches: I said a foot on either side of the body. There was enough room for a person to go between her and the bed.

*[MR ADAMS read from the testimony of Dr Dolan at the preliminary examination, as follows:*

*"Q. In your opinion, would that hatchet that you saw furnish an adequate cause of these incised wounds? A. Yes sir. "Q. The wounds in both cases? A. Yes sir."]*

Q. Now did you say that?

A. I said it if it is there; yes sir.

Q. Didn't I then have, or didn't you have in front of you, this hatchet with the claw head?

A. I don't know as to the presence of the hatchet, sir.

Q. At all events, it referred to that hatchet, didn't it?

A. Yes sir, it referred to that.

Q. Do you desire to change that opinion now?

A. I do; yes sir.

Q. In what respect?

A. That is, providing the cutting edge of that axe is a certain distance a certain length.

Q. Hadn't you measured it at that time?

A. No sir, I had not.

Q. Have you measured it since?

A. No sir.

Q. Do you know what it is now?

A. I should judge about 4-1/2 inches by looking at it; I don't know.

Q. Were there any injuries upon the heads of either of these people that were more than 4-1/2 inches long?

A. Yes sir.

Q. On Mr Borden there was one four and a half plus, wasn't there?

A. Yes sir.

Q. And on Mrs Borden there was one five inches, wasn't there?

A. Yes sir.

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Q. Wouldn't this hatchet, then, adequately cause those?

A. Yes sir.

Q. And would the injuries that you found there, other than these two, not have been adequately caused by a cut from this instrument or one like it which did not meet the skull along the whole cutting edge?

A. State that again, please.

MR ADAMS. I will let the stenographer read it; I don't think I can state it just the same again.

*[The stenographer read the question.]*

The WITNESS. I don't understand the question now. *[The question was read again.]*

MR KNOWLTON. I submit whether the questioner himself understands the question.

MR ADAMS. I do. I understood one of yours a little while ago, that you had trouble about understanding yourself.

Q. Well, do you understand the question now?

A. If I may be permitted to state what I think the question is?

Q. Well, go on.

A. In other words, could the hatchet that made the other wounds on that head produce those two? Is that the substance of it?

Q. Yes sir.

A. It could.

Q. Did you subsequently have authority from the law officers of the state to make the second view, or attempt at an autopsy, or whatever it may be called?

A. I don't understand what you mean an "attempt at an autopsy."

Q. Or the completion of the autopsy?

A. If you mean the autopsy at Oak Grove Cemetery, yes sir.

Q. That was on the 11th day of August, the day the defendant was arrested, was it not?

A. I could not say as to the arrest.

Q. At all events, it was on the eleventh of August?

A. Yes sir.

Q. And the Oak Grove Cemetery contains the family lot of this family?

A. Yes sir.

Q. Where the bodies had been taken for interment?

A. Yes sir.

Q. At that time did you remove something from the bodies?

A. Yes sir.

Q. You removed the skulls, the heads, didn't you?

A. Yes sir.

Q. Did you notify these daughters, or any of them, that you were about to do it?

A. No sir.

Q. Did you notify anyone that you were about to do it, or cause that to be done?

A. No sir.

Q. When they were interred, did you give any information to them that the interment took place under such circumstances?

A. I did not.

Q. This second, or the Oak Grove autopsy, revealed to you some other appearances that you had not discovered in the first one, did it?

A. Yes sir.

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Q. It revealed among other things, the blow in the back of Mrs Borden?

A. Yes sir.

Q. Where was the assailant standing, in your opinion, when that blow was given?

A. In the rear.

Q. There was a flap cut here? [*Indicating on forehead*]

A. Yes sir.

Q. When that blow was given, where in your opinion did the assailant stand?

A. In front, facing the assaulted.

Q. That is, the assailant and assaulted faced each other?

A. Yes sir.

Q. Did you entertain the opinion that the bruises and contusions found on the forehead of Mrs Borden were caused in any other way than by falling?

A. No sir.

Q. How many different marks, indicating separate blows, did you find on the head of Mrs Borden?

A. Eighteen.

Q. Did Dr Frank W. Draper, of Boston, assist you in this Oak Grove autopsy?

A. He did.

Q. With the wound on the back there would be nineteen cutting injuries which indicated so many separate blows?

A. Yes sir.

Q. Now when these hatchets were seen by you and some of them were taken by you, did you then from your examination with a magnifying glass express the opinion that there was blood upon them?

A. No sir.

Q. You simply said, did you, that there were appearances that looked like blood?

A. Yes sir. If you will allow me I will make that statement.

Q. What statement?

A. About the hatchet. It has been ascribed to me that I swore that that hatchet was covered with blood.

MR KNOWLTON. I object to that statement.

MR ADAMS. It is your own witness.

MR KNOWLTON. I object to the statement.

MR ADAMS. [*To the witness*] You see that the counsel for the Government objects. While I have no objection, I doubt if you can go on.

Q. Did you at that time, namely, the time when these hatchets were seen by you in the cellar and handled by you, have the opinion that there was human hair on any one of them?

A. Not in the cellar.

Q. Anywhere?

A. Yes sir.

Q. Did you at the marshal's office?

A. Yes sir.



Q. Do you entertain that opinion now?

A. No sir.

Q. Did you at that time have any opinion with reference to the condition of the samples of the milk that were obtained?

A. As to what?

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Q. As to there being any foreign and poisonous substance in them?

A. I had no opinion on them.

*[At 5.00 P.M. the Court adjourned to Tuesday morning, June 13th, at nine o'clock.]*

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## EIGHTH DAY

New Bedford, June 13th, 1893.

THE COURT came in at 9.10 o'clock.

MR ADAMS. Call for Dr Dolan.

MR KNOWLTON. Dr Dolan.

### CROSS-EXAMINATION, resumed

Q. Have you an opinion as to where the assailant of Mr Borden stood, taking into account the spots which you saw?

A. I have.

Q. From the appearance of things, where did the assailant stand?

A. Stood close behind the head of the lounge, that is, between the parlor door and the head of the lounge.

Q You no longer, if you have ever put him there, make him stand in the dining-room door?

A. I never put him there.

Q. Did you ever have an opinion that one or more of these blows might have been given by a person reaching around the jamb of the dining-room door and striking the head?

A. Well, to stand even behind the dining-room door you would not have to reach around.

Q. You think the assailant swung the instrument from left to right, don't you?

A. Yes sir.

Q. And all those wounds can be fairly accounted for by blows from left to right?

A. Yes sir.

Q. That is to say, it is a left-handed blow?

A. In what sense lefthanded; delivered by the left hand?

Q. That it strikes the body in a left-handed direction---from left to right?

A. Yes sir, to a certain extent. Those that are most markedly from left to right are those that would come down directly as the head lies there now, and give the direction of a left-handed blow.

Q. And those blows made quite as severe injuries as any?

A. Yes sir.

Q. And the strongest left-handed blow, in your opinion, was the blow upon the eyebrow where that bone was chipped out?

A. Yes sir.

Q. In your opinion, would a strong and crushing blow not have been necessary to have made that?

A. No sir.

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Q. A light blow, in your opinion, could have done that?

A. Not a light blow; no sir.

Q. A fairly strong blow?

A. Yes sir.

Q. Was it a one-handed or a two-handed blow, in your opinion?

A. I could not tell you.

Q. Have you any opinion about that?

A. I think one-handed could do it.

Q. Assuming that the carotid artery (which is the artery running up through the neck, here, and under the angle of the jaw) had been cut, would there be a large flow of blood?

A. It depends upon where it was cut, sir.

Q. Suppose it was the interior one; there are two of them, I believe, or two branches?

A. Even then it would depend upon where.

Q. Well, supposing it was cut near the angle of the jaw, would there be a large flow of blood immediately?

A. There would, immediately; a very large flow of blood.

Q. And if the assailant, using the instrument which you have described, or a similar one, had cut that, would not it have been natural that the assailant would have been covered with blood or would have been spattered and sprinkled with blood?

A. Not necessarily.

Q. How do you explain that they would not have been?

A. Because it would not spurt in that direction.

Q. In what direction?

A. In the direction of the assailant.

Q. But when the hatchet goes into the wound, doesn't it get covered with blood, particularly the edge of it?

A. Yes sir.

Q. And when it is covered with blood, which is fresh and warm, isn't it liable to come off in a swinging blow?

A. Yes sir.

Q. And isn't that liable to strike the assailant somewhere as he swings his blow from front to rear and rear to front?

A. Yes sir.

Q. And wouldn't you say it would be probable that the assailant would be covered with blood or have spatters upon him?

A. He would have spatters; yes sir.

Q. And in what part of the body, in the case of Mr Borden, would these spatters come?

A. The upper part.

Q. That is, the head, the breast?

A. Yes sir.

Q. Would the hands be liable to be spotted or spattered ?

A. They might.

Q. Would not it be probable?

A. Probable.

*[After an extended cross-examination as to the Position of Mrs Borden's body, the direction of the blows and the location of the blood spots, the examiner reached this question:]*

Q. Now taking the position of Mrs Borden, the pillow shams, the bed spreads, the spots on the pillow sham, mirror and baseboard, where, in your opinion, did the assailant stand when inflicting this injury?

A. Astride the body.

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Q. Did you say at the time when you got to the house how long in your opinion Mrs Borden had been dead?

A. Did I say so then?

Q. Yes.

A. I have no recollection, sir.

Q. Is your opinion about the time of her death based upon what you saw there on Thursday?

A. Yes sir.

Q. Well, haven't you said that in your opinion she died about an hour and a half before the time you saw her?

A. I don't know whether I said it that way or whether I said an hour and a half before Mr Borden. I am not sure, sir.

Q. But your opinion which you formed was made up of the appearances which you saw on Thursday?

A. Yes sir.

Q. Didn't you testify about that at the other hearing in Fall River?

A. In what particulars?

Q. As to the time of her death?

A. Yes sir.

Q. Don't you recall that you said there that in your opinion she died about an hour and a half before the time that you saw her body at the house?

A. As I say, I am not sure of making it that way.

Q. Let me read to you and see if this is what you said, page 105:

"From what you saw, and all you saw, did you form any opinion as to how long she had been dead when you found her?"

Answer: "I couldn't say exactly how long she had been dead, but it was my impression she was dead anywhere from an hour to an hour and a half when I saw her."

Did you say that?

A. I said it if it is there ; yes sir.

Q. And you saw her in the vicinity of twelve o'clock?

A. Yes sir.

Q. So that the opinion which you formed then was that she died somewhere from half-past ten to eleven o'clock?

A. According to that statement, yes sir.

Q. Well, wasn't that statement your opinion?

A. Yes sir; at that time.

Q. Didn't you say you formed your opinion from what you saw at that time?

A. Yes sir.

Q. Do you desire to change that opinion now?

A. I don't know that I desire to change it, except that---since it is there of course I said that, but I hadn't the impression that I said it, just as I told you--I hadn't the impression that I said it was from the time I saw her or from the contrasting of the deaths of the two bodies.

Q. What would you say now?

A. I will say, taking everything into consideration, what I saw then and what I have learned since by examination, that the difference between the deaths of the two bodies would be from an hour to an hour and a half.

Q. What other factor comes into your opinion?

A. The difference in the warmth of the bodies.

Q. Well, what is the common period of time assigned for the cooling, of the body?

A. Well, anywhere from ten to twenty-four hours.

Q. Take the body of Mrs Borden, who was a woman 60 odd years of age, weighing about 200 pounds, how long at that time do you think it would take for her body to cool, to become cold?

A. I don't know. Of course the external temperature would have something to do with it, but I am not prepared to say how long it would take for her body that particular day. As I say, all normal bodies differ very much in length of time.

Q. Can you give me any opinion as to the length of time?

A. I could not; no sir.

Q. Would there be any difference in the time between her body and Mr Borden's, assuming both died at the same instant?

A. There would; yes sir.

Q. What difference would there be?

A. The difference would be that hers would be warmer than Mr Borden's.

Q. That is to say, hers would be warm longer than his?

A. Be warm longer than his and warmer than his.

Q. Was there some other factor, the factor of digestion, that came into your opinion?

A. Yes sir.

Q. Well, the stomach is a rebellious member of the body, isn't it, and often doesn't perform its duty well?

A. Yes sir.

Q. Even in people who are in comparative health?

A. That is a fact.

Q. So that food passes from the stomach into the intestines without always being digested, doesn't it?

A. Not in a normal stomach; no sir.

Q. I know it. But assume that the stomach is not in a normal condition; that is, that one is suffering from indigestion?

A. Yes.

Q. And from that condition of body which is followed by summer sickness?

A. Yes sir.

Q. Under those circumstances would not food naturally pass from the stomach into the upper intestine without being fully digested?

A. Yes sir.

Q. If the person was in that condition could you safely express any opinion as to the length of time that the meal was taken before you saw the upper intestine?

A. No sir, not safely.

Q. That is, you couldn't form an opinion within some half hour or an hour, could you, of the time of the meal?

A. I hardly think you could.

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Q. In other words, if a person had eaten breakfast at seven o'clock in the morning, and a day or two days before that had been ill and vomited up her food that day, and after breakfast at some time you found her dead with some undigested food in the lower intestine, could you tell from that fact alone, knowing also that they had been ill, how long before that they had eaten their morning meal?

A. Not accurately, no sir.

Q. I mean within half an hour or an hour?

A. I don't think so.

Q. Well then, isn't the opinion which you give as to how long before Mr Borden died, Mrs Borden died, one of speculation largely?

A. No sir. You mean, as far as the intestine is concerned?

Q. Yes.

A. It is not as marked, of course, as the temperature and the condition of the blood.

Q. On digestion alone how far will you go as to the difference of time in the death of Mr and Mrs Borden?

A. Well, knowing that they had partaken of the same food, and knowing that both had been ill to a certain extent, and---

Q. I am allowing you to answer, although you put in things that I did not put into my question. Go on.

A. I have to do that to make up my result.

Q. Go on.

A. And finding nothing in the upper bowel of one and something in the upper bowel of the other, I think it makes the thing equal; that is, their having eaten at the same time, and their having both been ill at the same time, I think it takes away considerable of the force of your question could I tell by the intestines of Mrs Borden that she had had breakfast within half an hour or an hour, that is, within half an hour or an hour's time. Taking those things into consideration, I think that it is not speculation to say that by her intestines you could say that digestion was still going on.

Q. I think my question was, within what period of time you would dare to give an opinion based upon the digestive appearances alone?

A. I misunderstood you. I thought you said was it speculation.

Q. Well, will you answer that question? I asked you before that about speculation. Will you answer that question?

A. I wouldn't say within half an hour, no sir.

Q. Assuming that one had been more ill than the other, that one had had a severer attack than the other, would it make any difference in that digestion?

A. It would, yes sir.

Q. And would that interfere with the expression of an opinion with reasonable accuracy as to the length of time?

A. It would, yes sir.

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Q. Assuming that was the fact, would you then fix the limit as more than half an hour?

A. No sir.

Q. You would still stick to your opinion that you could determine within half an hour the difference in time?

A. No sir, I would not.

Q. And I understand you to have already told me upon the coagulation of blood, you wouldn't dare after fifteen minutes to express an opinion, within fifteen minutes or half an hour as to the difference of time?

A. No sir, not to swear to it, I wouldn't.

Q. So that you have nothing left but the temperature of the body?



A. Yes sir.

Q. And that is tested simply by touch?

A. Yes sir.

Q. I neglected to ask you one question. When I was inquiring about the position of the assailant of Mrs Borden, you told me, I think, that in your opinion the assailant stood astride of the body and over it. If in that attitude the assailant stood, would there be a general spattering of blood over his body?

A. I don't know whether there would be a general one over the entire body. I think there would be surely some on the lower part of the body.

### RE-DIRECT

Q. Something has been said, Doctor, about the capacity and different sizes of the hatchets which inflicted the wounds, in respect to the length of them. You have testified, as I understand it, if I am in error you will correct me, that these wounds varied from half an inch to four or more in length?

A. I have, yes sir.

Q. Would those lengths of themselves afford any indication, the exterior length of the wounds, afford any indication of the size in respect to the length of the weapon which inflicted them?

A. I don't think so, no sir.

Q. Why not?

A. Simply that the coming down, taking the particular case, coming down on a hard surface they are liable to slide.

Q. Is there anything in the length of the wounds which is inconsistent with their having been inflicted by a weapon, for example, of three and one half inches in length?

A. There is not, no sir.

Q. And why so? Explain why. How could a three-and-one-half-inch hatchet make a two-inch wound, for example?

A. Because the whole cutting edge wouldn't be brought into play at once.

Q. That is, didn't go through?

A. Yes sir.

Q. And how can a three-and-one-half-inch hatchet make a four-and-a-half-inch wound?

A. By sliding and by also going in underneath, that is, crushing into.

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Q. And if it went, not vertically but at an angle, would that also have a tendency to make it?

A. It would, yes sir.

Q. You spoke of the food in the intestines as undigested?

A. Yes sir.

Q. What portion of the food in the intestines of Mrs Borden was undigested?

A. I couldn't tell you that, sir.

Q. Was there anything in the appearance of what you found in the small intestines to indicate that there had been anything abnormal or irregular or showing disease of any kind in the operation of digestion?

A. No sir.

Q. So far as that indicated anything at all, did it appear whether or not the digestion had been normal?

A. It indicated nothing abnormal, no sir.

Q. Now, you said that there were back of the lounge eighty-six [blood] spots describing the arc of a circle. When was the last time that you saw them?

A. I couldn't tell you that, sir.

Q. How long after the homicide?

A. They were there, I think it was the 13th that I counted them.

Q. The 13th of what?

A. August.

Q. You say [they] formed a sort of arch. Can you tell what, in your opinion, caused that, spattering or spurting?

A. Spurting.

Q. Spurting is the force of the heart, of the blood?

A. Yes sir.

Q. Spattering comes from contact of the instrument with the blood?

A. Yes sir.

Q. Or dropping from the hatchet?

A. Yes sir.

Q. Did you find any other spurts besides those there that in your opinion formed that arch?

A. I did not.

## RE-CROSS-EXAMINATION

Q. [By Mr Adams] From the appearance of an injury having various lengths like one, two, three, four or five inches you are hardly able to determine the length of the cutting edge giving them, are you?

A. No sir.

Q. Do the appearances disclosed by examination after death in reference to upper intestine aid you in forming any opinion at all about digestion?

A. It does, yes sir.

Q. Do you mean to say that indigestion is indicated by the appearance of the intestine itself?

A. Of course if the intestine was inflamed.

Q. Does inflammation indicate that a person has indigestion always?

A. No sir.

Q. In other words, one may have indigestion without inflammation of the intestine?

A. Yes sir.

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Q. So that the appearance of the intestine would not necessarily help you in determining whether or not a person had poor digestion, or indigestion, not normal digestion?

A. No sir.

## EDWARD S. WOOD

I am physician and chemist---since 1876 professor of chemistry in the Harvard Medical School. Have given special attention to medical chemistry, to medico-legal cases, involving poisons and bloodstains. Have been called upon in several hundred trials, including a large number of capital cases.

On August 5, last, I received, at the Harvard Medical School, a box containing jars with samples of milk, and other jars containing the stomachs of Mr and Mrs Borden. First examined Mrs Borden's stomach; it was perfectly healthy in appearance, with no evidence of the action of any irritant. It contained about eleven ounces of partly digested food, and of liquid. So far as could be determined from appearance it was undergoing the usual stomach digestion, which had progressed approximately two to three hours from the last meal, possibly a little longer.

In Mr Borden's stomach there was very much less food. Digestion was much further advanced; nearly all the solid food had been expelled into the intestine. This would make it appear that digestion, at ordinary rapidity, had been going on somewhere in the neighborhood of four hours; anywhere from 3-1/2 to 4-1/2 hours. His stomach showed no diseased condition, nor the action of any irritant--judging from ocular examination.

Contents of both stomachs were immediately tested for prussic acid; an immediate test was necessary, as being a volatile acid it would escape to the air shortly after exposure. The test for prussic acid showed a negative result. Afterwards, they were analyzed for the irritant poisons, also with a negative result. In short, I found no evidence of poison of any kind.

Both samples of milk were then tested without obtaining evidence of any poison.

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.

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(1) Edward Stickney Wood (1846-1905) ; A.B., Harvard, 1867; M.D., Harvard, 1871; A.M., Harvard, 1872. Assistant Professor of Chemistry, Harvard Medical School, 1871-76; Professor of Chemistry, 1876-1905. Testified as expert at murder trials as early as 1878, and as far distant as Denver.

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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 postmortem change.

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. 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.

Q. And taking all those circumstances that you say you regard as important, all 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.

On August 10, at Fall River, I received from Dr Dolan the large hatchet known as the claw-hammer hatchet; the two axes; the blue-dress skirt and waist; the white skirt which is there [*garments being exhibited by counsel as witness names them*] ; the sitting-room carpet [*holding it up*] ; the bedroom carpet; a false switch; a lounge cover; three small envelopes, one labeled "hair of Mrs Borden, 8/7/92, 12.10 P.M."; one labeled "hair from A. J. Borden, 8/7/92, 12.14 P.M."; one labeled "hair taken from the hatchet."

The claw-hammer hatchet had several stains on it which appeared like bloodstains, on handle, side and edge. All the stains on the head of the hatchet were subjected by me to chemical and microscopic tests for blood, and with absolutely negative results. The two axes, which I designated A and B, had stains which appeared like blood, but tests showed them absolutely free from blood.

Q. 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.

The hair labelled "taken from the hatchet" was a short hair, one inch long, with a red-brown pigment. It is animal hair, no question of that, and probably cow's hair.

The blue skirt has, near the pocket, a brownish smooch, which resembled blood, but a test showed it was not. Another, lower down, proved not to be blood. The waist had not even a suspicion of bloodstain. The white skirt had a small blood spot, six inches from the bottom of the skirt. It was 1/16 inch in diameter: the size of the head of a small pin. The corpuscles, examined under a high-power microscope, averaged 1/3,243 of an inch, and it is therefore consistent with its being human blood. Some animals show a similar measurement: the seal, the opossum and one variety of guinea pig. The rabbit and the dog come pretty near.

Experiments which I made with the two carpets, from the sitting room and the guest-chamber, showed that blood dried on them with equal rapidity. I examined a pair of shoes and a pair of black stockings, and found no blood on either. There is the small hatchet, which I should have mentioned in connection with the claw-hammer hatchet. The latter has a cutting edge of 4-1/2, inches; the small one an edge of 3-1/8 inches.

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 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.

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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.

*[Witness now deposed as to a hatchet head he received from the City Marshal, a broken piece of the handle being still in position.]*

Both sides of this hatchet were rusty. There were several suspicious spots on the side of it, but they were not blood. When I received it, there was a white film, like ashes, on 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.

The CHIEF JUSTICE. 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?

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.

The CHIEF JUSTICE. He may answer.

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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.]*

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?

The CHIEF JUSTICE. 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.

The CHIEF JUSTICE. 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.

The CHIEF JUSTICE. 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.

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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 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 used for, if you know?

A. For medicine.

Q. Alone, or in prescriptions?

A. Prescriptions.

## 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. 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?

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

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.

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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. 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.

I am not willing to fix the difference in time between the deaths of these persons beyond an hour. If one died at eleven, the other might have died at ten, or at nine.

As to the break in the handle of the "handleless" hatchet, I would not express any opinion as to the freshness of the break.

### RE-DIRECT EXAMINATION

Q. [By Mr Knowlton] 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 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.

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

A. Above the position of the head, or from this 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.

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.

## FRANK W. DRAPER

I am by profession a physician, educated at the Harvard Medical School, and in practice for twenty-four years since 1869. Have been one of the medical examiners for Suffolk County-that is, the city of Boston-since the office was created by the legislature in 1877. Have been called upon in nearly 3500 cases of death, when homicide was suspected or charged, and examined in court perhaps six or eight times annually, since 1877. I am professor of legal medicine in the Harvard Medical School: the old title was professor of medical jurisprudence.

Took part with Dr Dolan in the autopsy at Oak Grove Cemetery. I made a careful examination of the wounds on Mr Borden's head. The first one studied-this has no reference to the order in which they were inflicted-the first studied and recorded was through the left nostril and to the lips, nearly to the tip of the chin. It was 4 inches long. The next followed around in a groove between cheek and nose, and was 4-1/2 inches. It crushed in the bone, just below the eye. The next was above the left eyebrow; left a gouged-out portion of the external table of the skull, breaking into the frontal sinus. The next one passed down through the left eyebrow, cut through the eye, and crushed into the left cheekbone. It was 4 1/2 inches. The next one was above the left eyebrow,

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a flesh wound only, was bevelled. Next was a short cut in the scalp. The next was two inches long; also a scalp wound. There was a group of three wounds in front of and above the left ear, all crushing into the brain. The last but one examined was right in front of the left ear, passing through where the largest artery on that side comes into the cavity of the skull. This one measures with approximate accuracy the length of a blade which would enter there. It was 3-1/2 inches. The last one studied was above the left ear and 2 inches long. It penetrated the cavity of the skull.

*[Witness then gave a similar enumeration and description of Mrs Borden's wounds.]*

I also examined the intestines in both bodies. The stomachs were absent, having been sent to Professor Wood. In the case of Mr Borden, digestion had gone forward in the small intestines so that they were relatively empty. The large intestine was filled with the residue of the last digestion. There was nothing to indicate anything abnormal in the process of digestion in either body. I have heard the testimony of Professor Wood as to the contents of the stomachs and I say that the conditions which I observed in the intestines are consistent with his testimony.

Taking all the facts together--color and consistency of the blood, temperatures of the bodies, progress of digestion-I am sure that Mrs Borden died before Mr Borden. The interval between the deaths, I conclude to have been at least an hour.

I could not determine from Mrs Borden's skull the size of the cutting edge of the instrument used to inflict the wounds. I could arrive at a conclusion from Mr Borden's skull.

[MR KNOWLTON. *Then in that case, although I regret very much the necessity of doing it, I shall have to ask Dr Dolan to produce it. Dr Dolan brought the skull into the courtroom, and counsel for the defence agreed to its identity.*]

The WITNESS. I believe that the cutting edge of the weapon was 3-1/2 inches long. I determine that by this metallic plate of stiff tin, which I now hold in my hand, and which is 3-1/2 inches on its longer edge. Adjusting it thus [*illustrating*] 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. Are you able to say whether that hatchet head [*showing witness handleless hatchet head*] is capable of making those wounds?

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.*]

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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. 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 3-1/2 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 4-inch piece of tin?

A. I attempt to get this 4-inch in and I cannot get it in in any way, into that wound in the base. The same applies 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 a half inches.

A hatchet is consistent with these wounds. In my opinion the wounds could have been made by the use of an ordinary hatchet in the hands of a woman of ordinary strength.

With Mr Borden, the cutting across of the internal carotid artery within the skull meant immediate death. With Mrs Borden, 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. The extreme length is ten minutes.

I believe that Mrs Borden's assailant stood astride the prostrate body. This is my opinion, but it is an open question. As to the flap wound in the scalp at the left side of the head: that was delivered while Mrs Borden was standing and facing her assailant.

In my opinion, Mr Borden's assailant stood at the head of the sofa, over the head of the victim. Mr Borden, at the time, was lying on his right side, his face well turned to the right, and his right cheek concealed in the pillow. I think all the blows could have been received with the body lying as shown in the photograph. To speak as to the spattering of blood from his wounds is mere guesswork. As to whether the assailant would be spattered with blood, I have no opinion.

[By Mr Adams] The flow of blood, from severing the carotid artery, would be large. Assuming that Mr Borden weighed 160 pounds, I think there would be eleven pints of blood in his body. The weapon with which he was struck would naturally have a good deal of blood on it. I think the blood spots in the room where he lay were caused by spattering where the weapon struck, and from the weapon as it was swung, and not by spurting of the arteries.

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

*[Mr Adams produced a hatchet, approximately the size of the "handleless" hatchet, and asked Dr Draper to fit it into the wound in Mr Borden's skull as he had done with the Government's exhibit. Dr Draper tried it, and reported, "It does not fit."]*

Taking into consideration the spots of blood in the guestchamber, the number of injuries received by Mrs Borden, and the appearance of the flowing of blood, I should think the assailant would of necessity be spattered with blood.

I think that blood could be so effectively removed from a metal instrument that a subsequent chemical test would find no trace of it. It could not be easily done.

## RE-DIRECT EXAMINATION

Q. [By Mr Knowlton] 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.

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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. Do I understand 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. 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. Whether in your opinion those wounds that you found could have been inflicted by that hatchet? [Indicating the "handleless" hatchet.]

A. In my opinion they could.

### DAVID W. CHEEVER

I am physician and surgeon, educated in the Harvard Medical School ,and in Paris; have been an instructor in the Harvard Medical School since 1860, and professor of surgery since 1882. Have been a surgeon on the staff of the City Hospital since 1864.

Have examined the skulls of Mr and Mrs Borden, and heard the medical evidence so far given in this case. As to the priority of death, the comparative coolness of Mrs Borden's body, the coagulation of her blood, as compared with Mr Borden's, and the advanced stage of digestion in Mr Borden's body convinced me she had died first.

There was an interval between the deaths which I should place, as a minimum, at one hour; and, as a maximum, at not more than two hours. The injuries to the skulls indicate a heavy metallic weapon with an not over 3-1/2 inches in length. This hatchet [indicating the "handleless hatchet"] could have caused the wounds.

I have no means of determining the direction in which blood would spattered in the assault upon Mr Borden.

### CROSS-EXAMINATION

Mr Borden's assailant would almost of necessity have been spattered blood.

Q. In your opinion would the assailant of Mrs Borden be so spattered?

A. I think they would; I think he would, or she.

### RE-DIRECT

[By Mr Knowlton] You speak of a garment which you put on during surgical operations does it protect your clothing entirely?

A. Yes sir.

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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.

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## NINTH DAY

New Bedford, Wednesday, June 14, 1893

THE COURT came in at 9 A M.

### RUFUS B. HILLIARD

I am City Marshal of Fall River; have been in the police force over fourteen years, and City Marshal for a little over seven years. On the 4th of last August, I received a telephone message telling me of trouble at the Borden house. I left the telephone, went into the guard room and sent Officer George W. Allen to the house. Later, I sent Officers Doherty, Mullaly, Medley, Gillan, Wilson, and Assistant Marshal Fleet. I went to the house at 3 P.M.

When I arrived I looked around the yard and searched the barn. It was a very hot day; the heat in the barn loft was almost suffocating. I went into the house and looked at one or two rooms; had no talk with Miss Borden. Went to the house again Saturday forenoon, after the funeral. Looked into the rooms upstairs; officers were there engaged in a search: looking for a weapon or for bloody clothing. In the afternoon, was there again, for 3-1/2 hours; made a thorough search of the house, and a partial search of the cellar. With a number of officers, took part, personally, in the search.

Asked Mr Jennings where the dress was that Miss Lizzie wore that day. He went away and came back with a dress which I took away with me. [Witness identifies a skirt and waist as the dress given him; also a white petticoat.]

Went again to the house at 7.45 that evening with Mayor Coughlin. [The account of this visit is given in the testimony of Mayor Coughlin, which follows.]

## CROSS-EXAMINATION

[By Mr Robinson] I found nothing in my search of the yard. No one objected to my going into the house. I said I went again Saturday forenoon; I mean about 12.15. Yes, it was actually after twelve. There was no objection to my going in Mr and Mrs Borden's room. The immediate family were not there on this Saturday visit, but Miss

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Russell and Mrs Holmes were there. While there we were really searching the house from top to bottom. We did not object to Mr Jennings' presence. Miss Emma gave us full permission to go ahead. I did not talk with Miss Lizzie. We searched the bedroom and the attic. Mr Jennings brought the dress I asked for in a reasonable time.

## JOHN W. COUGHLIN

I am a physician and surgeon in Fall River. I was, in 1892, and now am, Mayor of that city. On Saturday evening following the murders, I went to the Borden house with City Marshal Hilliard. There were large numbers of people around the house: the sidewalk on the east side, both to the south and north, was crowded; the middle of the street was so crowded that we had difficulty in driving through without running down some of the people. I notified the Marshal that they should be removed. We drove to a police box; he got out and pulled in the box.

We went into the house; the first person I saw was Miss Emma; we sat down in the parlor and had an interview with all the family, with Miss Lizzie, Miss Emma and Mr Morse. I said, "I have a request to make of the family, and that is that you remain in the house 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, "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. Miss Emma Borden said, "Well, we have tried to

keep it from her as long as we could." I asked Miss Lizzie where she went after leaving her father. She said 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." On leaving I think Miss Emma said, "We 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.

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### 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?

The CHIEF JUSTICE. 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.

Q. She did?

A. Yes sir.

Q. What did you say to her?

A. When she asked me if there was somebody in the house suspected, I replied by stating that Mr Morse could best answer that question, as the experience 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 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.

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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.

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.

MRS HANNAH H. GIFFORD. I live at 39 Franklin Street, Fall River, and make cloaks for ladies. In the spring of last year I made a garment for Miss Lizzie Borden. It was in March.

Mr Robinson objected, on the ground that it was remote. The Chief Justice allowed the witness to continue.

The WITNESS. I was speaking to her of Mrs Borden, and said "Mother." 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."

MISS ANNA H. BORDEN. Not related to the defendant. Miss Borden, before testifying, had to be requested to "lift her veil." She was offered as a witness for the

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Commonwealth, to repeat a remark made by the defendant during their trip to Europe in 1890. The two ladies shared a cabin on the ship, and on the return voyage Miss Lizzie said something to the effect that she was not glad to go back, as hers was not a happy home.

The Court excluded this testimony as remote.

Witnesses now appeared to support the contention of the Commonwealth that no stranger had been seen, at the time of the murders, escaping from the Borden house, crossing the Borden yard, or fleeing into adjoining premises.

LUCY COLLET came to Dr Chagnon's house that morning to answer the doctor's telephone and receive his office callers. The Chagnon premises adjoin the Borden yard at the rear, to the northeast. Miss Collet sat on the Chagnon veranda most of the morning, and saw nobody cross the yard.

THOMAS BOWLES was washing a carriage in Mrs Churchill's yard, to the north. No intruder came under his observation.

PATRICK McGOWAN, JOSEPH DESROSIER and JOHN DENNY, stonecutters, were all at work in John Crowe's stoneyard, at the rear of the Bordens'. They saw no stranger escaping by that route.

ARUBA P. KIRBY, another neighbor with a view of the yard, saw nobody.

### MRS HANNAH REAGAN

I am the matron at the Fall River police station. The prisoner was in my charge for nine or ten days; she occupied my own room. 06 August 24, Miss Emma Borden came to see her sister; it was about twenty minutes to nine in the morning, and I was tidying up the room.

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,

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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 doorway looking at both of them.

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. They sat there till Mr Jennings came to my door, somewheres about eleven o'clock. Miss Lizzie didn't speak to her sister, nor turn her face to her any more that forenoon.

### 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 mile o'clock until you came to the door.

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. 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.



I don't remember when Miss Emma came in the afternoon; I can't give you any idea. I am sure that there was no one there in the morning but her sister and you [Mr Jennings]. I don't remember Mrs Holmes in the afternoon.

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

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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 someone 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 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."

Yes, I did speak of the talk between the two sisters as a quarrel. I don't remember the day of the week; it was August 24. I didn't see about it in the papers; I heard of it from Mr Buck. I was asked about it by the reporters. I did not tell reporters it was all a lie. I didn't tell Mr Buck it wasn't true.

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. 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.

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*.

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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. Was anyone with you when Mr Buck came in with the paper?

A. No sir.

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 t,) 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 downstairs with you," and I went downstairs 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.

ELI BENICE. I am a drug clerk at D. R. Smith's pharmacy, corner of South Main and Columbia streets, Fall River. Have been employed over four years at this same place.

At this point, Mr Robinson rose to object to the admission of this testimony.

After brief discussion between counsel, it was ordered by the Chief Justice:

"The jury may retire with the officers, and remain until sent for. The witness may return downstairs." The jury and witness withdrew.

MR MOODY. I perhaps ought first to state what the testimony is that, we offer. We offer to show, in addition to what Professor 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

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as a part, a minute part, of a prescription ; that this witness during his experience as a drug clerk, (3) up to the third of August, 1892, never had a call for prussic acid ; that it is not used for the purpose of cleaning capes, sealskin capes, or capes of any other sort, and has no adaptability to such use.

We now offer to show that upon the third 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 sealskin 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.

"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 sealskin cape, if I remember rightly."

"She did not buy anything, no drug at all, no medicine?"

"No sir." (4)

Then follows merely the identification. I do not know in what way your Honors desire to hear the discussion.

The CHIEF JUSTICE. Perhaps we had better hear the objection.

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?

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(3) A term of thirteen to fourteen years.

(4) Mr Bence was dead, when, in 1923, I visited Fall River. A former associate, at the same pharmacy, assured me that there was no doubt that Bence knew Miss Borden by sight: her home was but a short distance away, and she frequently passed the place. Her "peculiar" appearance made her easily remembered. He further said that Bence was a careful man, not inclined to make rash accusations.

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.(5)

MR ROBINSON. You propose to bring evidence upon attempts, but no success?.

MR KNOWLTON. Yes sir.

MR ROBINSON. It appears upon the testimony of Professor 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 ax, for instance. Nothing else. Now here, if it has any force at 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

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(5) An article in the Morning Mercury, of New Bedford, June 3, 1927, says that the attempt was at the Church pharmacy, in New Bedford, in the summer of 1892. The clerk, a former resident of Fall River, recognized Miss Borden, who had waited upon him at a church supper. He saw her at the Taunton jail, but refused to admit that he knew her, as he "didn't want to get mixed up in the case." Later, he described the incident to the Mercury's writer. As this identification failed, it would seem that Mr Knowlton had still further information, which is lost to us today.

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 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 he 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 ax? 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 third day of August has no tendency whatever to show a killing by an ax 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, 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 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. (6) 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, and upon the Thursday morning there is the killing by the ax 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 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."

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(6) See inquest testimony.

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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?

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. 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 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 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.

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: 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.

There are two cases extremely familiar 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.

Now there are various cases---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:

People v. Kern, 6I Cal. 244.  
Hopkins v. Corn. 5o 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, 2o Kan. 3I I .

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 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 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."

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, 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 nighttime 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 New York 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 afterwards used. The State was afterwards permitted to show a conversation on that same morning with a fellow workman of the prisoner in which he asked him what the effect 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 language in the 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 someone, 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."

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 there were four defendants indicted. One was admitted to the State. The four confederates met two nights prior to the burglary and arranged for committing the deed, and fixed the time it would be committed. Defendant then said that a bar of iron and the pinchers were all that would be needed for the commission 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 to the defendant took a carpenter's brace from that store and some boxes, and it was taken away after he went away and not use it. As this is the last case that I shall cite, and as 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 crime or remove the fruits. It is not essential that the State establish beyond peradventure that 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 . . ."

I call your Honors' attention to the entire innocence of the things that were procured by the defendant. They were 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. And I call your Honors' attention to this sentence:

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"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?*"

I can conceive of no more significant act, nothing which tends to show more the purpose of doing mischief to someone than the attempt, under an excuse which upon this offer of proof was false, to obtain one of the most deadly poisons that is known to humankind 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 textbooks 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 arch, 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 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

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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 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 by, "I intend to kill somebody before the end of this week," not naming the person; "I have murdered 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 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 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. Therefore can it any more be said that that act of August 3rd, 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 brought this to poison some other person, if you please---I don't quite dare make 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

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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 sir here for a moment and listen to a proposition that she undertook on a former day to shoot Dr Bowen, for instance, 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 threshold 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 argues 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 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.

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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 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 v. 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 v. 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; 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 v. 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 anyone would claim that that was evidence of his purpose to burn it up to defraud the insurance company. 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 if the man had a jimmy on him it would be pretty good evidence of what he was in there for.

MR MOODY. You mistook my point of illustration.

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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 jimmy 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 of Walsh in New York, I think it was, as to the inquiry as to throwing pepper in a man's eyes. What would be the offense? 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 v. 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.

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The CHIEF JUSTICE. We will withdraw for consultation.

The Court returned at 4.33.

The CHIEF JUSTICE. 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 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.

The CHIEF JUSTICE. 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 courtroom, officers were sworn to care for them, and the Court adjourned to Thursday, June 15th, at 9 A.M.]*

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## TENTH DAY

New Bedford, June 15, 1893

CHARLES H. LAWTON, pharmacist.  
HENRY H. TILLSON, furrier and clothing dealer.  
NATHANIEL HATHAWAY, analytical chemist.

These three witnesses were offered by the Commonwealth to testify as to the quality and uses of prussic acid; as to its utility, if any, in the cleaning or preservation of furs; and as to its effect as a poison and insecticide. They were all heard, while the decision of the Court as to the admissibility of the testimony of Eli Bence, about the attempt to buy prussic acid, was pending.

For about half an hour, counsel conferred at the bench, the justices and counsel all speaking in low tones, and out of the hearing of the stenographer. The exact words in which the Court rendered its decision are not recorded in the official stenographic report. It was understood by the newspaper correspondents, and so reported by them, that the Court held that the Commonwealth had not been able to keep the proof within the limits agreed by them; that is to say, it was not proven that the acid could not be used for an innocent purpose.

The poison evidence was therefore excluded.

The Commonwealth then rested.

## THE CASE FOR THE DEFENCE

The jury returned to the courtroom 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

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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 equalled by the audacity, by the time and the place chosen, and, Mr Foreman and gentlemen, it needed but the accusation of the 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.

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 stepmother 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.

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, one of the most dramatic in all literature, where, 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 juryman or jury to cross it until they have fulfilled the conditions required; until they show that it has been proved 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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Now, Mr Foreman and gentlemen, I want to say a word about the kinds 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 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 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.

Circumstantial evidence has often been likened to a chain. These facts which have to be proven in 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.

Now these facts might be classed, perhaps, under the four heads of motive, weapon, exclusive opportunity, and conduct and appearance of the defendant.

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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, 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. And we shall show you, if not already shown, that this defendant lived there quietly with her father; 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 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, Mr Foreman and gentlemen, I contend that as to the weapon, they have

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either 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. 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 upon that morning, there has not been a living soul put on the stand here to testify that they saw Andrew J. Borden come downstreet 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 cakewalk of Officer Medley in the barn, exists in his imagination alone.

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 the inside door open, with officers on every side of that house.

And so, Mr Foreman and gentlemen, without spending further time, we shall ask you to say whether the Government have satisfied you beyond a reasonable doubt that she did kill not only her stepmother, Abby Durfee Borden, but her loved and loving father, Andrew Jackson Borden on the fourth day of August last.

## EVIDENCE FOR THE DEFENCE

### MARTHA CHAGNON

I am Dr Chagnon's daughter; we live on Third Street. Our yard is in the rear of the Bordens' ; there is a fence between the yards, and a doghouse in the corner. About eleven o'clock, the night before the murder we were disturbed by a noise of pounding

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on wood---on a fence, or a board. It came from the direction of the Borden fence, and continued four or five minutes. I was in our sitting room and I did nothing to stepmother was there with me. I cannot describe it any pounding on boards. I don't remember that my stepmother did anything about it.

## 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 stepmother 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. Who else was in the room when you heard the noise that you have described, besides yourself ?

A. My stepmother.

Q. What is her name?

A. Marianne.

Q. Marianne Chagnon?

A. Yes.

Q. Is she here?

A. Yes.

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?

A. Yes sir.

Q. And for aught that you know it may have come from further to the south?

A. Yes sir.

Q. There is an icehouse, 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. Could you say now positively that that sound didn't come from the icehouse direction, or wasn't from the icehouse?

A. It wasn't from the icehouse.

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.

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Q. And do you remember this question and answer put by me, page 467: "You didn't know but what it was in the icehouse over there where they were dumping ice?" Answer, "No sir." Do you remember giving that answer?

A. Yes, I remember it.

Other witnesses who appeared today were:

MARIENNE CHAGNON, stepmother of the preceding witness, whose testimony was similar to that of her stepdaughter.

JOHN W. GROUARD, house painter. Testified as to the painting of the Borden house, about the time the Bedford cord dress was made.

MARY A. DURFEE, who had heard a man quarreling with Mr Borden, about nine months before the murders. Her testimony was excluded as remote.

### CHARLES N. GIFFORD

I live at 29 Third Street next north of Dr Chagnon's. Uriah Kirby lives there. I was at this house about 11 P.m., the night before the murder. There was a man on the side steps. He would weigh 180 to 190 pounds; he sat on the steps apparently asleep, with a straw hat pulled over his face. I took hold of his arm and shook him. His hat fell off. I lit a match to see if I knew him; found I didn't, and went into the house, and left his hat on the sidewalk. I smelled no liquor about him. I know most of the people in the vicinity; this house was my father's.

*[Cross-examination of this witness consisted of three questions about the location of the gate, and the Position of the mysterious stranger.]*

URIAH KIRBY. In his house lived Charles N. Gifford, the preceding witness.

MARK P. CHASE, hostler. Mr Chase testified that he saw a man with a horse and buggy on Second Street, morning of August A. The man, like the horse, was a stranger to Mr Chase.

## DR BENJAMIN J. HANDY

I am a physician, and have been practising medicine in Fall River nearly twenty years. I went by the Borden house, on the morning of the murders, at nine o'clock, and again at a little after 10-30. Saw a medium-sized young man of very pale complexion, with his eyes fixed on the sidewalk. He was passing slowly towards the south. He was paler than common, and acting strangely. I turned in my carriage to look at him. Never have seen him before. Had light suit of clothes, collar and necktie.

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Have searched for him since; been to the police station to look at various persons; but have never seen the young man since.

## CROSS-EXAMINATION

He was walking very slowly, scarcely moving. He was agitated, or weak, staggering; or confused, or something of the kind. Did not appear intoxicated. Seemed mentally agitated; showed this by intense expression of his face. I think I had seen him on some previous day. He did not stagger. I did not mean to say he staggered; he didn't. His body oscillated. He did not appear intoxicated.

I know the defendant. I had the cottage at Marion, at which she was expected.

MRS DELIA S. MANLEY. Testified that, accompanied by Mrs Sarah R. Hart of Tiverton, she was passing the Borden house at about 9.45 A.M., on August 4th. They paused to look at some pond lilies "a young fellow had in a carriage." Mrs Manley saw a stranger; a young man, not Mr Borden nor Mr Morse, standing in front of the Borden house. He was, in fact, leaning his arm on the Borden gatepost.

JEROME C. BORDEN, a relative of the defendant. Called at the Borden house, the day following the murders. He was able to get in the front door merely by pushing it open. It was unlocked.

WALTER P. STEVENS and ALFRED CLARKSON, reporters. Their testimony was offered in refutation of that of Officer Medley as to the visit to the barn loft; the contention of the defence being that others had visited the loft of the barn before Medley made his inspection and found no footprints in the dust. All of these witnesses, on both sides, were rather vague as to time, and consequently inconclusive.

## HYMAN LUBINSKY

I am an ice-cream peddler working for Mr Wilkinson of 42 N. Main St. I peddle ice cream by the team [i.e. drive a wagon]. On day of murder the stable a few minutes after eleven and drove by the Borden house. Saw a lady come out the way from the barn right to the stairs back of the house, the north side stairs. She had on a dark-colored dress. Nothing on her head.(2) Was walking very slow. I didn't see her go in the house. Have seen the servant at that house: delivered ice cream there two or three weeks earlier. This woman was not the servant. Am sure of it.

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(2) Miss Borden's inquest testimony suggests that during her visit to the barn ,she wore a hat. At least, on her return to the house: "I went into the dining room and laid down my hat."

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### 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. 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. Where did you go there?

A. All round the street.

Q. Peddling on the street?

A. Certainly.

Q. Where did you peddle besides 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 until 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.

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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. Did you look at any other yards besides the Borden yard?

A. I looked all over the yard.

Q. What were you looking round for?

A. Because I am acquainted with looking around.

Q. Were you looking in any other yard besides the Bordens'?

A. I don't think there is any more yards---no other yards more. I looked all over yards.

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. Do you remember seeing anyone 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. You don't remember whether you ever saw anybody 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.

Mr Lubinsky was followed on the witness stand by CHARLES E. GARDNER and CHARLES V. NEWHALL. Mr Gardner, the stableman, where Lubinsky kept his horse, testified as to the ice-cream salesman's movements.

### EVERETT BROWN (3)

[By Mr Jennings] My name is Everett Brown, living at 117 Third St., Fall River. On day of murder, with another party, left my house ,somewhere around 11 A.m. and went down to Borden house. Saw Officer Doherty come out of the Borden yard. We went in the yard, tried to get in the house; Mr Sawyer wouldn't let us in. Didn't see

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(3) A youth.

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Officer Medley there. Then went to the barn. The party that was with me tried the door, and we went in. We stood a minute to see who would go upstairs; he said he wouldn't go up, somebody might drop an ax on him. We went upstairs, looked out of the window on the west side, and went over to the hay, and was up in the barn about five minutes, then came down and out into the yard.

Went to the southeast corner of the house; tried to look in and couldn't, there was other people trying to look in the window. I seen Officer Fleet coming up the walk. This other fellow was with me then. He was Thomas Barlow.

Then we got put out of the yard. Everybody that was in there got put out.

### CROSS-EXAMINATION

Q. [By Mr Knowlton] 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; I can't say what time.

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. Was it some time after that that you went upstairs in the barn?

A. Yes sir.

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. He might have come in or gone out of the yard and you not see him anyhow?

A. Yes 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. What made you go in the barn?

A. He happened to try the door.

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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.



## THOMAS E. BARLOW

My name is Thomas Barlow; live at 10 Lyons St., Fall River. On day of murder went to Everett Brown's house at 11 A.M., stayed there about eight minutes, then came to Borden house. Saw Officer Doherty leave the yard. Then we went in the side gate.

Q. You say "we." Who?

A. Me and Brownie.

Mr Sawyer wouldn't let us in the house, so we went in the barn. Do not know Officer Medley. Went in the barn and right up to the hayloft. Looked out the west window, then looked in under the hay, and then came downstairs and went out.

It was cooler up in the barn than it was outdoors.

Went to south side of house; tried to look in window. There were several people looking in the windows. Officer Fleet came in the side gate. We got put out of the yard. Stayed round the front of the house till 5 P.m. Didn't go home to dinner; had had dinner before. Went home to supper; came back, and stayed there in street in front of the Borden house till twelve o'clock, midnight.

## CROSS-EXAMINATION

Q. [By Mr Knowlton] What do you do, Mr Barlow, for a business?

A. Work for Mr Shannon, poolroom.

Q. What do you do in Mr Shannon's poolroom?

A. Clean up around there and set the balls up.

Q. And what times of the day are you employed at Mr Shannon's poolroom?

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 poolroom?

A. I have been working there now about a month.

Q. Did you live with your folks?

A. Yes sir.

Q. Who were your folks you lived with?

A. Lived with my grandmother.

Q. Who else makes the family besides your grandmother?

A. I got a brother and sister, and my uncle and my grandfather.

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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. 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 Didn't you have dinner pretty early that day?

A. Yes sir.

Q About half-past ten?

A. Yes sir.

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. 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. 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. 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 the house, I should say, than outdoors.

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.

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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. 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 today at all?

A. No sir.

Q. Have you looked at the clock today?

A. No sir.

Q. And yet you did look at the clock just when you were going out?

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. 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---pinlike.

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.

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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.

JOSEPH LEMAY

(A French interpreter was sworn to translate this testimony.)

I live at Steep Brook, north of Fall River and about four miles from the City Hall. I own fifty-six acres there, with woods on both sides. On August 16-----

MR KNOWLTON. Unless you want to depart from the rule that I have sedulously observed, not to have any evidence introduced by witnesses-----

*[Mr Knowlton dropped his voice, and Counsel on both sides, advancing to the Bench, held an inaudible conference.]*

Mr Jennings submitted this order of proof:

"This witness will testify that on the 16th day of August, at his farm, ,about four miles north of City Hall, while traveling 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 ax 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 the next morning at nine o'clock.]

*[The proffered testimony of Mr Lemay was subsequently excluded by the Court.]*

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## ELEVENTH DAY

New Bedford, June 16, 1893.

MRS SARAH R. HART, of Tiverton, gave testimony. Mrs Hart was Mrs Manley's associate in the inspection of the pond lilies, and in observing the young man leaning on the Borden gatepost.

CHARLES S. SAWYER described himself as "an ornamental painter, a fancy painter." He was the guard, posted at the door by Officer Allen. He testified that he was nervous as he stood at the door, and apprehensive lest the murderer might attack him by way of the cellar door.

JOHN J. MANNING, reporter for the Fall River Globe; THOMAS F. HICKEY, another reporter; JOHN R. CALDWELL, another reporter; CHARLES J. HOLMES, banker, an active member of the Central Congregational Church; and Miss MARY E. BRIGHAM, a friend of the defendant, were all called by the defence to confute the testimony of Mrs Hannah Reagan. The reporters testified that Mrs Reagan had denied the truth of the story of the quarrel between the Misses Borden. Mr Manning was also relied upon to dispute the truth of Officer Medley's testimony.

JAMES E. WINWOOD, undertaker. Testified that he prepared the bodies for burial. The purpose of his appearance was to bring out that Mr Borden, when buried, had a ring on his finger. Mr Winwood was unable to remember anything about it.

MRS CHARLES J. HOLMES, (Marianna Holmes) fellow church-member with the defendant, and one of her most zealous supporters. She testified as to the defendant's religious activities and the numerous charitable societies to which she belonged. She testified that Miss Lizzie taught a Chinese class in the Sunday School. (1)

The following is the offer of proof made by the defence in connection 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

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(1) A fact which influenced the late James L. Ford to form a theory that the murders were committed by one of the defendant's Oriental pupils as an act of devotion to his beloved teacher. Evidence that the deaths were caused by a hatchet---a favorite weapon in Chinese "tong wars" in New York---may have influenced Mr Ford.

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a witness that on Saturday morning after the murder she came downstairs 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."

This testimony was excluded.

MISS EMMA L. BORDEN (2)



Q. [By Mr Jennings] 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 twenty-one 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? [*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. 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 check, of \$2000 in the Massasoit National Bank, 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 3, 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.

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(2) In the Life of Joseph Hodges Choate, by E. S. Martin (N. Y. 1920) Vol. 1, P. 454, Mr Choate, in a letter to his wife, June 16, 1893, says: "I suppose that you still read the daily reports of the Lizzie Borden case. Her defence, today and yesterday, has come out very strong, especially her sister Emma's evidence, and of course she must be acquitted."

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 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.

MR MOODY. Taken at the time?

MR JENNINGS. No.

Q. When was that made up?

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 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

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.

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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.

The CHIEF JUSTICE. 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-----

THE CHIEF JUSTICE. 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.

Q. Did you or Miss Lizzie, so far as you know, at any time make any objection to the searching of any part of that house?

A. Not the slightest.

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 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 eight or ten.

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 dressmaker 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 guestchamber.

Q. Was that where the dressmaking was always done?

A. Always.

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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. 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. 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.

The CHIEF JUSTICE. The question may be answered.

Q. What did you say to her?

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. What was the condition of that dress at that time?

A. It was very dirty, very much soiled and badly faded.

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.

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." I said, "Why don't you," or "You had 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

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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. 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.

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.

The CHIEF JUSTICE. 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 ?

The CHIEF JUSTICE. 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.

The CHIEF JUSTICE. Excluded (3)

MR JENNINGS. We desire to save an exception to that, your Honor.

Q. Was anything said by Miss Russell in the presence of Miss Lizzie, in regard to this dress?

A. Miss Russell came to us in the dining room [Monday] and said Mr Hanscom 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 Hanscom a falsehood, and I asked her what there was to tell a falsehood about, and then she said that Mr Hanscom 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

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(3) In Professor Wigmore's opinion, this ruling, in the event of a conviction, would have caused a reversal.

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her go and tell Mr Hanscom 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. 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 Hanscom that she had told him a falsehood, we asked what she told it for, and [she] 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?"

Q. Now, Miss Emma, do you recall a story that was told by Mrs Reagan about a quarrel between yourself and your sister?

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. 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.

Q. Did Lizzie put up her finger and say anything about not giving in?

A. No sir.

Q. At any time?

A. No 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. 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.

## CROSS-EXAMINATION

Q. [By Mr Knowlton] On the day that this thing happened you were in Fairhaven?

A. Yes sir.

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Q. How long had you been in Fairhaven?

A. just two weeks.

Q. And you were visiting?

A. Mrs Brownell and her daughter.

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 ... she had been at Fairhaven.

Q. Was it on her way over to or back from Marion?

A. Oh, I do 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. 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. Was any change made in the house when you began to occupy the whole house?

A. Two of the sleeping rooms downstairs was made into a dining room.

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. Had you any other near kin on your own mother's side, [in addition to Mr Morse]

?

A. We had other uncles and one or two aunts.

Q. Where did they live?

A. All but one live West.

I have an aunt, Mrs Morse, who is living now. She lives in Fall River. Her maiden name was also Morse. I do not visit her very often. My father had a great many cousins, one sister and no brother. The sister is Mrs Harrington. She sometimes came to our house. Mr Harrington did not, except to call at the door to inquire for my sister or for me. My stepmother had a half-sister in Fall River: Mrs Whitehead. She owned half her house, and my stepmother the other half. My father bought the interest in the house and gave it to my stepmother. This was five or six years ago. I think he paid \$1500 for it.

Q. Did that make some trouble in the family?

MR ROBINSON. Five or six years ago---I object.

The CHIEF JUSTICE. 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.

Q. Did you find fault with it?

A. Yes sir.

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Q. And did Lizzie find fault with it?

A. Yes sir.

Q. And in consequence of your faultfinding did your father also make a purchase for you or give you some money?

A. Not---I don't think because of our faultfinding.

Q. Did he, after the faultfinding, 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 stepmother 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 stepmother 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.

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 sometime 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.

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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 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 stepmother 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 stepmother cordial?" Answer: "I don't know how to answer that. We always spoke"?

A. That was myself and my stepmother.

Q. Do you remember that answer?

A. I do now.

Q. "That might be, and not be at all cordial." Answer: "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?" Answer: "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 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 stepmother and your sister Lizzie?" Answer: "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.

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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 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 stepmother and your sister Lizzie?" Answer: "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 stepmother?

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.

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.

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Q. Neither one?

A. No sir.

Q. Miss Borden, do you know of anybody that was on terms of ill will with your stepmother?

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 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 guestchamber?

A. Yes sir.

Q. What for?

A. As a sewing room.

Q. Did you receive your friends there?

A. Oh, just as it happened. If it was someone 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. Miss Borden, how long has Bridget Sullivan been with you?

A. About two years and nine months.

Q. Did she have any duties upstairs, 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 guestchamber, whose duty was it usually to take care of that?

A. Usually I did.

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.

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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. And who usually unlocked it in the morning?

A. Usually my sister.

Q. Have you ever caused any search to be made for the note that your stepmother was said to have received that day?

A. I think I only looked in a little bag that she carried downstreet with her sometimes, and in her workbasket.

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. Have you made any other search besides that?

A. No sir.

Q. You spoke, one time in your testimony, of 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. From time to time?  
A. Yes.

Q. Did he remain in your employ any length of time?  
A. I don't know how long.

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. 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. 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.

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. 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. 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.

Q. Miss Russell stayed with you three days after the Thursday,?

A. Yes sir.

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Q. Night and day mostly?

A. I think so.

Q. Slept in the house Thursday night?

A. Yes sir.

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? Ó--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.

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 your 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, that argument?

A. The reason that I say I didn't say so is because I didn't say so.

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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.

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.

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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.

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 stepped away after something was said by Miss Russell?

A. I didn't see my sister at all after she left the stove.

### 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, dressmaker. Mrs Raymond deposed that she made the Bedford cord dress, and that she had seen it after it had received paint stains. On cross-examination it was brought out that she had said, on hearing that Dr Bowen had described the dress worn by the defendant as "drab", that the Bedford cord might have so faded as to look drab.

PHOEBE B. M. BOWEN, wife of Dr Bowen. Testified that when she saw the defendant, within a short time of the discovery of the crimes, Miss Lizzie was pale and faint; she had no blood on her; and the dress she wore was "dark."

MRS BRIGHAM and Miss ANNIE M. WHITE were recalled, and the Commonwealth called, briefly, in rebuttal: Rufus B. Hilliard, Michael Mullaly, and Annie M. White. Officer Mullaly was called this time with the intent to show that the testimony of Hyman Lubinsky had been considered by the police and discarded.

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## TWELFTH DAY

New Bedford, June 19, 1893

THE COURT came in at nine o'clock, and Mr Robinson addressed the Court.

### CLOSING ARGUMENT FOR THE DEFENCE by GEORGE D. ROBINSON, ESQ.

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, so that the experiences of a lifetime will never bring other such pictures.

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.

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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. 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.

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.

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 of her physical capacity and certainty.

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.

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.

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

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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 lockup before morning. "What are the police doing?" say the newspapers; and the newspapers, you know, are not always right. Saying to him, "Look here, Mr City Marshal, these murders were committed yesterday. Haven't you the murderer in the lockup? Get somebody in."

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.

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 courtroom, but ever shielded by His providence from above, and by the sympathy and watchful care of those who have her to look after.

You are trying a capital case, a case that involves her human life, a verdict which, against her, calls for the imposition of but one penalty, and that is that she shall walk to her death.

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

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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. 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.

You must leave out rumors, reports, statements, which you have heard before the trial commenced. 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. Moody said that the Government was going to claim and prove that this defendant was preparing a dangerous weapon on August 3rd, the day before the murders. They have not proved it, have they? Was there a thing about it in the evidence? You have not 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 aside, and many of those things which have been offered in good faith have not been proved because the Court has said they are

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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.

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. 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 hold this defendant in charge. You might just as well have got your verdict before

you started and said, "Guilty", because she is here. So you will leave those things out, gentlemen. No poison in this case, no 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. 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 downstreet 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

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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.

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 upstairs 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. Mrs Borden had died earlier; on the testimony of the physicians, 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.

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.

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. 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 sits the



defendant. 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 to say, the motive in this case is only to explain the evidence.

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Now the Government says that Miss Lizzie A. Borden has explain, therefore they will find out whether there is anything in her motives that will put a color on it.

Now there is absolutely (and I think the Commonwealth will say it) direct evidence against Miss Borden. Nobody 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 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. 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 Professor Wood; less than a sixteenth of an inch in diameter; and that is every particle of blood that was found upon her clothing.

I forebear 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 Professor Wood said he would not undertake that that blood was not the menstrual blood.

Then there was some talk about a roll of burned paper in the stove where Mr Philip Harrington, I believe, was the 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 were 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 something about it. Dr Bowen! I suppose they don't make any allegation that he committed these murders, or helped to cover up, or assisted in doing anything about

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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.

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 envelope of paper. Did you ever see such a funny fire in the world? A hard wood stick inside the newspaper, and the hard wood stick would go out beyond recall, and the newspaper that lives forever would stay there! What a theory that is!

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 thirty to thirty-four inches; and you are to conceive of the murderer standing over that body in this way. Here she lies; and the murderer standing over her and literally chopping her head to pieces. 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.

Now what reason is there for saying that this defendant is guilty? 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 you have a kind of an impression that it would be a little better for her than it would be

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to be out traveling the streets. I don't know where I would want my daughter to be, than to say that she was at home, attending to the ordinary vocations of life, as a dutiful member of the household. So I do not think there is any criminal look about that.

She is shown to have gone 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. 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 guestchamber, you know.

Then it is said that at certain point on the staircase, right on one tread of one stair, if you look in under the bed across the floor of the guestchamber you could see any object that was over between the bed and the bureau. And you were all asked to do that, by traveling up and traveling 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 downstairs 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 downstairs 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?

Now we are talking of a time with regard to Miss Lizzie when everything was all

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right. Now people do not go searching and squinting and playing the detective and all that, to begin with. 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.

Then there is not the slightest evidence 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.

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.

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.

"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

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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 someone that was sick." That was when she was dusting in the sitting room. That is when Bridget says it was [speaking] 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.

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 said-----"

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 someone 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.

I submit that that will hardly stand upon his evidence. If he had heard the evidence

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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.

Miss Russell says that she heard the talk about the note, but she did not know who told it. 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 wastebasket,' 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 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 wastebasket. He had looked around to see if he could find the note.

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.

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, 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. And after a lawsuit is over, it very often happens in

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every courtroom that someone 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 courtroom, 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 did it; she did it because she told a lie about that note."

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 courtroom 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

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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? Recollect that this was after the tragedies; this was when the terrible pall was over that house and 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.

Now she told about her visit to the barn, and they undertake to tell you that she did not go out to the barn. They say that is another lie. 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 backyard and heard a groan and came in, and the screen door was wide open.' "

Now that is what Lizzie told Bridget right off. I am going to talk about going to the barn, and by and by 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. 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?

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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?

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 on the scent for a job. He was ferreting

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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.

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 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. 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 upstairs and might

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know about it. Did she go to the barn? Well, we find that 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 peddler, 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 peddler, 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 he had never sold ice cream to. 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 Lubinsky is mistaken about a half hour of time. Mr Mullaly is one of the knights of the handle, you know. You know who he is. Mullaly says that on the 8th of August he had a talk with Mr Lubinsky and Mr Lubinsky told him it was half-past ten o'clock. Now if Mr Lubinsky went by that yard at half-past ten, he did not see Miss Lizzie go to the barn. Is Mr Mullaly mistaken, or is he biased, trying to work up the case?

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 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.

She thought she heard Mrs Borden come in. They undoubtedly will make

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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.' " You see the confirmation about that note business right there. Why should she say that she should go and see Mrs Whitehead, 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 upstairs and see?" Bridget said, "I am not going upstairs alone." Now, following the testimony down, the very next question is:

"Before that time that she said that, had you been upstairs A. No sir. I had been upstairs after sheets for Dr Bowen."

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.

Mr Borden, you will remember, came in 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---she recalled, as she thought, the fact that she had heard a noise which indicated to her that Mrs Borden had come in.

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

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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 guestchamber, and the door of which, so far as we know, was closed. Nobody knows anything about it. Why should she not laugh? Oh, they say, she had murdered her stepmother. That is not proved yet. 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 hallway 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. 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. 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? 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.

Then they start off on another tack, and they say she killed her stepmother 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 downtrodden 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. 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 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. He was a plain man of the everyday sort of fifty years ago. 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.

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 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 stepmother; 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 stepmother has come into a family and has brought up a family the children know no difference and always call her "Mother" just the same.

Now, says Mr Fleet, in his emphatic police manner, Miss Lizzie said to him, "She is not my mother; she is my stepmother." Perhaps she did. We will assume she said it, but here is nothing criminal about it, or nothing that indicates it, or nothing that savors of a murderous purpose, is there? Why, non, a very well-looking little girl that was two ago, stepped on the stand and began to s Chagnon as her stepmother. Well, I advise the I to put a cordon around that house, so that be another murder there. Right here, in your spoke of her stepmother, and a good-looking on the stand afterwards, and I believe the blood them has been spilled since 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 cloakmaker, 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 whether all of you are saints; that is to say, whether you really never speak hurriedly or impatiently.

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Bridget Sullivan lived in that family two years and nine months, and 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. 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 Lizzie was talking with Mrs Borden. Bridget Sullivan says, "I heard them talking together calmly, without the least trouble, everything all right." 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 dressmaking, sitting in the guestchamber sewing, a regular dressmaking party. Philip 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 ?

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.

Here was an old man with two daughters, an older one and a younger one. 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

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not? He loved her as his child; and the ring that stands as the pledge of plighted faith and love, that typifies and symbolizes dearest relation that is ever created in life, that ring 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.

The learned District Attorney in his opening said that 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 by locks, we find that Mr Borden's room was doubly and triply 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 guestchamber 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 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 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. Where could she go? Where

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would you go under the circumstances? She called for Bridget to run and get someone 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 of this tragedy? All those 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. 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, that crime was in her heart. There are a good many people, we may say, that believe in premonitions, and things will happen sometimes 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 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.

Then they say for some reason, I don't know what, that Miss Lizzie went downstairs in the cellar that Thursday night. Well, she did with Miss Russell. But what

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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 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.

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 papermakers 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 papermakers 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 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, 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

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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 is 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. 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 the 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 everyone 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 eighteen or twenty dresses, and the Government

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witnesses claimed that they did not see any such dress notwithstanding that Miss Lizzie had eight blue dresses of different shades in that 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 six 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.

Then, in obedience to Emma's injunction, Lizzie walks down into the kitchen with it that Sunday morning, the windows all open, no blinds shut, policemen in the yard looking right in at everything 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 burned 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

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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."

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 downstairs 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 driven to that extremity in its theory about this case. Well, they

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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.

Lizzie 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 downstreet 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? But instead of that, everything goes on as usual, and Bridget was about the work. 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 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. 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

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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 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.

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; 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

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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 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 damp. 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

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examination on the four that I have laid aside, and found in them sufficient evidence to convict this defendant 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 30th 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. 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. 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."

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

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you can convict this defendant upon a theory that it may have been? 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.

Well, we are thankful, gentlemen, that this woman was not tried last August or September, because then, if she had 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.

But they say, and they said they would prove to you, that there is exclusive opportunity. Well, gentlemen, I meet it 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. 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 outdoors, 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 shut out.

Now I think you and I will agree about this evidence. The cellar door was undoubtedly locked. 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

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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.

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. 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. 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 outside talking with the Kelly girl, away off at the corner. She said plainly and decidedly there was nothing to hinder anybody going right in. Bridget washed the parlor windows. 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.

And then Lizzie was about the house as usual. 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.

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 downstairs in the

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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 such places in that house as all these common thieves run into if they can find a door open. It was easy enough for him to go up into that bedchamber and secrete himself, to stay there, until he finds himself confronting 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.

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 outdoors, Lizzie outdoors, 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.

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.

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There was somebody about there, and Dr Handy described to you a man on the sidewalk he saw there just before the murder and somebody he did not know, although he knew everybody about there. And Mrs Manley 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 gatepost 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 Manley 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.

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.

Well, you have the testimony of the two boys that called themselves "Me and Brownie", Barlow and Brown. Now, those boys, like all boys, wanted to go upstairs, 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.



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

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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 bloodstained garments out of the way where the officers had searched everything except behind the wallpaper and below the carpets. From that time on until Saturday 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? You remember, 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 twelve 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

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and put on another in place of it, Bridget would have noticed the change. She had on an old blue dress up to nine or ten 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 of its being used in one or the other or both and remove and restore---she could not restore and clean it. She did not have one dress over the other. The dressmaker 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.

Then she had to run upstairs, run up to her own room and make a change, run

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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?

It is enough, as I have said, if the Government fails to prove the charge. Then your duty is to find her not guilty. 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 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 guilt of this defendant? 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. 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. 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. 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. Someone 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, 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.

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How do you account for that except in one way? She was virtually, if she were a criminal, virtually putting everybody away from suspicion and leaving herself to stand as the only, one to whom all would turn their eyes.

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 here these long weary days and moved in and out before you, have you seen anything that shows the lack of human feeling and womanly bearing?

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 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.

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 bloodstained and wrecked home where she has passed her life so many years.

## CLOSING ARGUMENT FOR THE COMMONWEALTH

By HOSEA M. KNOWLTON, ESQ.

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

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differ about many of 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 heartrending 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.

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.

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.

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

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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 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 entrusted 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 cruel, the most fiendish murderer that the Commonwealth ever knew. (1)  
Is sex a protection against crime? Is it not a matter of common knowledge that, within

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(1) Jesse Pomeroy. Convicted for one of a series of sadistic murders and assaults, 1874. Served life sentence, and died 1932. Trial never published.

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the remembrance of every man I am talking to, a woman has been found who murdered a whole cartload of relatives for the sake of obtaining a miserable pittance of a fortune? (2)

I am obliged to tread now upon a more delicate ground. The prisoner is a woman, one of that sex that all highminded 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. 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 are more undying, more unyielding, more persistent?

Is that an unjust criticism? 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 Tulkinghorn 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. It was done for a purpose. It was done by hatred. It was done, and who did it?

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

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(2) Sarah Jane Robinson, of Somerville, Mass., indicted for seven murders by poison. Convicted; sentence of death commuted to life imprisonment. See Official Report of the Trial of S. J. Robinson. Pub. by the Attorney General of Massachusetts. 1888.

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let me share with you, and all good and true men; with due regard, 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 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.

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. 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

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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. As soon as this crime was discovered, it 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. 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. 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? 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 by-and-by) 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

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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.

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.

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. 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,

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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 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

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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. By and by 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 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. 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 can tell but one story. Witnesses are under oath, but will perjure themselves; circumstances are not under oath, but they can 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.

What impresses one as the remarkable and distinguishing feature of this case is

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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 upstairs 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. 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. 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 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

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and regular way and was going on when their lives were taken from them. Singularly enough, science is corroborated by the facts. 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. 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. 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 unoffending 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 upstairs; he could not foresee that Lizzie would go to the barn. 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 establishment. I shall have to ask you now to go back with me to that morning in the guestchamber 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. We must now go into this establishment and see what manner of family this was. It is said that there is a skeleton in 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. It is useless to tell you that there was peace and harmony in that family. 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. 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. And then a quarrel--what a quarrel! 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 [give?] 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. 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 the 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. 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. 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.

I come back to that poor woman lying prone. 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.

Let us examine the wounds upon that woman. You will see the skull by and by. 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.

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, badly aimed, nerveless blows---I forbear for the present to bring that sentence to a conclusion.

Now we must go back and see what the circumstances of that crime were. We find, Mr Foreman, perhaps the most remarkable house that you ever heard of. My

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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 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 keys, and it was not unlocked the next morning.

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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. Mr Borden, as my distinguished friend has said, must have gone downtown in the neighborhood of half-past nine. Up to that time, Mr Foreman, no human being could have got into that house. 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 downstairs 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 guestchamber---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 Professor Wood's clock tells us.

Never mind the impossibility of imagining a person who was so familiar with the habits of 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. 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.

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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 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 some time 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 passageway 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 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, 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 passageway to it, practically, from the screen door. At the very instant when the murders were committed we leave Lizzie and Mrs Borden in the house together. Was she in the passageway 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 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. But that is not all. 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 was out of sight and Mrs Borden was out of sight, and by-and-by

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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 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 upstairs, where he was sure to go with his key, as he did.

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 someone who was sick, but I don't know but she is killed too, for I think I heard her come in."

Then she said something to Fleet. Although she told Fleet that the last time she saw her stepmother was nine o'clock, and she was then making her bed in the room where she was found dead, she said, "Someone brought a letter or a note to Mrs Borden," and she thought she had gone out, and had not known of her return.

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

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and see someone, 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 knowledge Mrs Borden had a note to go out to see someone 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 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 doorbell 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 wrong in that story. 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 so anybody-

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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 advertised for the writer of the note which was never written and which never came.

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? 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? 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. 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, June 20, 1893

THE COURT came in at 9 A.M., and Mr Knowlton resumed his argument as follows:

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. 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.

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 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, was tempted by the demon of sin to commit foul murder

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(1) John W. Webster, professor of chemistry at Harvard, convicted of the murder of Dr George Parkman, and executed in Boston, 1850. See Report of The Case of John W. Webster, by Geo. Bemis. Boston, 1850.

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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.

The malice [in the Borden household] 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. 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 were; 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.

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 that she was not interested in them, and consequently was interested as against them with her father.

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.

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. But Lizzie Andrew Borden, the daughter of Andrew Jackson Borden, never came down those stairs. It was not Lizzie Andrew 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.

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, gentle- men. 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 downstairs to face Nemesis. There wouldn't be any question but that 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.

Let me not be misunderstood, Mr Foreman. I do not 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 the windows---followed her into that room, slain her as she stood perhaps at that very marble that was found spattered with her blood.

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 stepladder and began the work upon the inside of the windows. Meanwhile the old gentleman was finishing the last walk of his life. 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 went to the back door, but nobody was there to open it, and so he went around to the front door, supposing, of course, that he could gain entrance, as any man does into his own house in the daytime, by the use of a

spring lock. He came in, passed into the dining 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 circumstance--it is proof. Where was that mother? She knew. She told what never was true. 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.

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. Bridget goes upstairs 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 this 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 downstairs 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 upstairs. 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

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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 extinguished on the south end. There was a little fire---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 upstairs, 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 upstairs; 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, 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?

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, never could understand the meaning of it. 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 within touch of your father,

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how did it happen that he is 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 Mullaly. 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 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 were 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 Assistant Marshal Fleet. He came there about as much dreaming that Miss Borden had anything to do with this crime as that his own Chief did. 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 of criticism or faultfinding 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. 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. When he went

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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 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? 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 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 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

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in his mind, and what he remembers today, for if 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 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, upstairs, 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."

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 is 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 comfortable day in June.

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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.

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.



Saturday night the Mayor of the city and Marshal Hilliard, who has answered by his dignified and courteous and wholly respectable presence all the slanders you have heard about 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 both errands might have been in her mind; but 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 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.

Ah, Mr Foreman and gentlemen, it was necessary that she 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.

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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 upstairs 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 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.

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 misstate 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,

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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. I have put it exactly as it was. But taking his Story as he tells it now, and dealing with Lubinsky with entire fairness, all that is absolutely known is that at eleven o'clock, by the testimony of Mr Gardner, about eleven 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, 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 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.

And, to be exact about it, 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 is absolutely beyond the power of human credence to believe.

That is not all. It was an old and dusty barn loft. The accumulated dust of months had settled down upon it; and among the early men that came there was the keen-eyed Medley.

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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.

"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."

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.

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. Oh, 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.

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, nerved as she is, brave as she is,

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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 storybooks, 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, 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? Sometimes we 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 halfway 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 Churchill in her house across the way,

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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 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 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 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 fifteen minutes afterwards.

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. 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

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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 had I know not what connection 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 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?

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 there was any lack of opportunity. 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. 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

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dress in silk when they go down in the kitchen to work, and in their household duties in the morning, before dinner? 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 someone 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.

Q. "Will you describe the dress that she had on while you were there?"

A. It looked like a light-blue-and-white groundwork; it seemed like calico or cambric, and it had a light-blue-and-white groundwork 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:

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"I did not see her with it on 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.

Now comes another witness who I believe would cut his heartstrings before he would say a word against that woman, if 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 attentions 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. 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 turned 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 brought forward to say that, up to the time her father and mother were killed, they 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 Churchill, calm, self-reliant, friendly to the

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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 undoubtedly. She never wears it afterwards. Friday she has on this dress. Saturday she has on this dress, morning 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. 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.

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But the Thursday's search had put them on their guard, 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 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

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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 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.

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. 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.

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. 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

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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.

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 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. 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, 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. 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 and said to Lizzie, "You better destroy this dress." And Lizzie said she would. Nobody heard that

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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 downstairs 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 [sic] 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 pert 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. 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 week 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.

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.

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I am not quite willing to dismiss the conduct of Miss Lizzie Borden in the guardroom 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 was 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 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.

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 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,

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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.

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 prosecuting 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 was done having 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 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

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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 a 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 anyone 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 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 ex- amine; 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

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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---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 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. 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 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.

Now let us turn that hatchet over to Professor Wood and see what he says. The first thing Professor Wood does is to turn the eye of science with the magnifying

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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 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 courtroom."

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 ax 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.

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 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 Professor 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.

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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 passageways 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 steep 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 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.

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 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

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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 Professor 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 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 downstairs. 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

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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.

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 someone 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. 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 upstairs 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

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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.

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 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 daytime 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,

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never opening her mouth except to tell that story of the barn and 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 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 passersby; of a pale and irresolute man walking up the street in broad daylight. 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

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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 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 cars. 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.

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

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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 lay hold of eternal life.

## 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 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.

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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 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.

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.

I understand the Government to 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.

It is competent for the Government to show that the defendant had motives to commit the crimes 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 sixty-nine years old, and Mrs Borden more than sixty 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:

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"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?

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 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 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 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 the 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 part of defendant towards her stepmother as to justify you in drawing against her upon that ground inferences unfavorable to her innocence.

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 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. 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.

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 twofold 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 of 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 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.

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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 the 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 murder of her father by her own hand unless you are satisfied that she was where he was when he was murdered.

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 stepmother'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. 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;

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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 stepmother 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 her where Mrs Borden was, or if she knew where she was. She might reasonably and naturally expect that that 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 stepmother 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 look at the case for a moment from her standpoint, 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 before-hand that the defendant is guilty, does the evidence satisfy you as reasonable men beyond any

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reasonable doubt that these statements of the defendant in regard to that note must necessarily be false? Sometimes able judges and 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 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.

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

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that line of proof or outside of it--which cannot reasonably be 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 bloodstain; that when Bridget Sullivan came to her upon call and not long after some of the other women, she had no bloodstains 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 defendant's guilt was to a moral certainty proved. So you see that in estimating the force of different facts or 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. 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 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?

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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 claims was used by her as showing that she professed not only to have been in the barn, but upstairs 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 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."

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 pointed out, I think I may say to you that expert testimony constitutes a class of

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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 partizan 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. 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 bloodstains 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 bloodstain." 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 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.

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.

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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.

But you notice the essential element. There must have been an understanding between her and this [other] 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.

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 own defence. 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."

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 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 defence. In another case where there was no doubt that an offence had been committed by someone, 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."

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.

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, at any place, under any circumstances she found any fault with the officers for asking her questions or for making searches? 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 understood the argument, you were asked to look upon those statements 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.

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.

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MR KNOWLTON. Not by me, sir. I admit it.

MR JUSTICE DEWEY. Admit what?

MR KNOWLTON. That she did deny it.

MR JUSTICE DEWEY. Mrs Reagan?

MR KNOWLTON. Yes sir.

MR JUSTICE DEWEY. 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 assurances 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 press has ministered 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

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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.

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 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 oycers, 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 doorframe taken from inside of dining room.  
Piece of molding taken from guestchamber west of dressing case.  
Piece of plaster.  
Two axes.  
Claw-hammer hatchet.  
Hatchet with plain head.  
Handleless hatchet and bit of wood.  
Blue blouse and dress skirt.

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White skirt.  
Magnifying glass.

*[At eighteen minutes before four the Court retired from the bench.]*

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.

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.

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The CHIEF JUSTICE. 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.

The CHIEF JUSTICE. 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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INQUEST TESTIMONY OF  
MISS LIZZIE BORDEN

This examination was on Aug. 9-11, 1892. More than anything, it led to Miss Borden's arrest. It was later read to the Court, at least in part, at the hearing before Judge Blaisdell, when she was found "probably guilty." Offered in evidence for the prosecution at the trial, June 12, 1893, Copies of it were released for press publication, whether admitted or excluded. It was excluded.