

Trial of Lizzie Andrew Borden Volume 1

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**TRIAL OF
LIZZIE ANDREW BORDEN**

1893

PART ONE

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09/21/01 Rev. 1

06/01/03 Rev. 2

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;

**MASON, C. J. and BLODGETT and DEWEY, J. J.
Presiding**

Official Stenographic Report

**by
Frank H. Burt**

1893

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APPEARANCES

For the Government:

**Hon. Hosea M. Knowlton, District Attorney for the
Southern District
William H. Moody, Esq., District Attorney for the
Eastern District**

For the Defendant:

Hon. George D. Robinson

Hon. Andrew J. Jennings

Melvin O. Adams, Esq.

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PRELIMINARY PROCEEDINGS

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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 Monday 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 instrument, 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 upon the head of her, the said Abby Durfee Borden, giving to her, the said Abby Durfee Borden, by the

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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 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 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, 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.

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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 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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The prisoner was arraigned on the eighth day of May, 1893, in the Superior Court at New Bedford, before Mr. Justice Hammond, and pleaded not guilty to each count of the foregoing indictment.

Hon. George D. Robinson of Chicopee, Hon. Andrew J. Jennings of Fall River,
and M. O. Adams, Esq., of Boston entered their appearance as counsel for the prisoner.

**TRIAL OF
LIZZIE ANDREW BORDEN**

Vol. I

TRIAL OF LIZZIE ANDREW BORDEN

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

The Court came in at 28 minutes past 11 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.

Prayer was offered by the Rev. M. C. Julien of New Bedford, as follows:

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Almighty and all wise God our Father, we look to Thee as the only source of wisdom, as the only source of courage. We pray Thee that Thou wouldst grant that in entering on the solemn duties of this Court we shall have not only such help as comes from the experience of the past, through the history of the world, but such help as Thou, by Thy providence, wilt and canst give to thy earthly children. We pray thee that so innocence may be revealed and guilt exposed, to the glory of thine own great name and the well being of the world. We ask it all for Thy name's sake. Amen.

MR. KNOWLTON. May it please the Court: The Attorney General finds himself in such a condition of health that he fears to engage actively in the trial of this

cause, and has, I think wisely, determined that it will be well for him not to partake in it. He has suggested, and I have concurred in the suggestion, that my associate, Mr. William H. Moody of Haverhill, the District Attorney of the Eastern District, an experienced criminal attorney, be assigned to assist the Attorney of this District of the cause now to be tried. I trust the Court will give it's consent to that assignment.

Lizzie Andrew Borden is now at the bar, charged upon an indictment in two counts with the murder of Andrew Jackson and Abby Durfee Borden. I have the honor to move that a jury be impanelled for the trying of that indictment, and

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that the statutory inquiries be put to the members of the jury as usual in such cases.

MASON, C. J. Before impanelling the jury the Court desires to say a word to the persons summoned as jurors. It will be the duty of the Court to put to each juror, as he is called, questions as to whether he has formed or expressed any opinions in relation to the cause, or is sensible of any bias or prejudice in it. It will also be the duty of the Court to ask each juror whether he has any opinions which would preclude him from finding a defendant guilty of an offence punishable with death. It was said by Chief Justice Shaw, in *Commonwealth v. Webster*, and it has never been questioned as law, that the statute intends to exclude any person who has made up his mind or formed a judgment in advance, no matter in favor of which side: still, the opinion or judgment must be something more than a vague impression formed from casual conversation with others, or from reading imperfect, abbreviated newspaper reports: it must be such an opinion upon the merits of the question as would be likely to bias or prevent a candid judgment upon a full hearing of the testimony. I desire to call the attention of all those persons who are summoned as jurors to this statement by the Court of last resort with reference to the opinions to which the statute refers. And I also wish to remind every juror that he will be called to answer these questions under oath: that he must answer them truly, not availing himself of the questions to escape an unpleasant duty, but to answer them truly, and to

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accept what may follow thereon. Also with reference to the question as to whether opinions are entertained which preclude one from finding a defendant guilty of an offence punishable by death. It is not at all what opinions are entertained with reference to capital punishment, but there are some persons so constituted mentally that they could not sustain a law of the land which they deemed wrong. There are some persons so mentally constituted that they could not declare the simplest axiom of mathematics if it were to follow that death was to be inflicted in consequence of the declaration of such truth. If any person is satisfied that he so mentally constituted that he could not find upon evidence that a defendant was guilty of an offence punishable with death, then, in

response to that question he should so answer. But in answering that question, as the others, each juror should keep in mind, that he is answering upon oath. The Clerk will proceed to impanel the jury.

THE CLERK. Lizzie Andrew Borden. You are now set at the bar to be tried, and these good men whom I shall call are to pass between the Commonwealth and you upon your trial. If you object to any of them, you must do so as they are called and before they are sworn. You have a right to challenge 22 of them peremptorily, and as many more of the jurors as you can show good cause for so doing.

The following jurors were then called and examined by the Chief Justice:

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ANSEL G. BAKER, New Bedford.

Q. Are you related to the prisoner at the bar?

A. I am not, sir.

Q. Or to Andrew J. Borden or Abby D. Borden, the deceased?

A. No, sir.

Q. Have you any interest in this cause?

A. Not any.

Q. Have you formed or expressed any opinion in relation to it?

A. I have.

Q. Have you any opinion which, in your judgment, would prevent your rendering a true verdict upon the whole evidence, or would be liable to bias you with reference to such verdict?

A. I don't think, your Honor, that any evidence which can be produced would induce me to change my mind in regard to this case.

MASON, C. J You may step aside.

GEORGE WINSLOW, Mansfield.

This juror answered all the statutory questions in the negative.

MR. KNOWLTON. We do not challenge.

THE CLERK: Prisoner, look upon the juror: juror, look upon the prisoner.

Challenged by the prisoner.

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GEORGE POTTER, Westport.

Not related to the parties.

Q. Have you any interest in this cause?

A. No, sir.

Q. Have you formed or expressed any opinion in relation to it?

A. I have, sir.

Q. Have you any opinion that would, in your judgment, prevent your rendering a true verdict upon full consideration of the evidence?

A. I don't think I have.

Q. I understand you to say you think you have not?

A. Yes, sir, I have not.

Q. Have you any opinion that produces any bias or prejudice with reference to the case, in your own judgment?

A. No, sir.

Q. Are you sensible of any bias or prejudice?

A. Not to my knowledge.

Q. Have you any opinion that would preclude you from finding a defendant guilty of an offence punishable with death?

A. No, sir.

MR. KNOWLTON. We do not challenge.

MR. ADAMS. We accept him.

Mr. Potter was sworn in as the first juror for the trial of the cause.

MORTIMER SEARLES, New Bedford.

Not related to the parties: had no interest in the cause.

Q. Have you formed or expressed any opinion in relation to it?

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A. I have, both.

Q. Have you any such opinion as, in your judgment, would prevent a candid judgment upon a full hearing of the evidence?

A. My opinion is pretty well set: it would be pretty hard work to change it.

MASON, C. J. You may step aside.

WILLIAM H. WILLIS, New Bedford.

Not related to the parties.

Q. Have you any interest in this cause?

A. None at all.

Q. Have you formed or expressed any opinion in relation to it?

A. Well, I have talked it over in the family, that is all. I have not formed any opinion at all.

Q. Have you any opinion that would bias or prejudice a candid judgment upon a full hearing of the testimony?

A. No, sir.

Q. Are you sensible of any bias or prejudice in it?

A. I am not.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. No, I don't know as I have.

MR. KNOWLTON. We do not challenge.

MR. JENNINGS. Here is a question which I would like to ask or have asked, your Honor. (Passing paper to the Court).

After consultation with counsel for the defence the Chief Justice proceeded to ask the juror the following questions:

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Q. Have you read the newspaper reports of the testimony at the hearing in the District Court?

A. I was not in the city at that time: no, sir.

Q. Or before the Justice at the inquest?

A. No, sir.

Q. Have you taken part in any discussion as to the guilt of the defendant?

A. No, sir, any more than I have talked with my family.

Q. Did you then argue that the prisoner was the guilty party?

A. Why, I have no recollection of making up my mind to that effect.

Q. Have you said that she was guilty, or that you believed she was guilty, or words to that effect?

A. No, sir.

Q. Have you said so since you were drawn as juror?

A. No, sir.

Q. Have you said that you desired to sit on the jury for the purpose of convicting her, or words to that effect?

A. No, sir.

Q. Have you said that if you were on the jury you would find her guilty?

A. No, sir.

Q. Or words to that effect?

A. No, sir.

Q. Have you said that she must be guilty, for no one else could have done it, or words to that effect?

A. No, sir.

Q. Are you at present a client of the prosecuting officer?

A. Am I what?

Q. Are you at present a client of the prosecuting officer,---Mr. Knowlton, the District Attorney?

A. No, sir.

MR. KNOWLTON. I assume that the Court did not intend that I should decide whether to exercise the right of

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challenge before these questions were put. The last question that was put I have not the slightest objection to as to any juror. It may be, your Honor, that in some cases we might desire your Honor to put a similar question to some of the jurors with reference to some of my learned friends upon the other side. We will indicate when the time comes, if your Honor thinks such is proper inquiry. I beg to suggest that if the Court would indicate by an announcement that the juror appears to be eligible, that I should know exactly when to exercise my right of challenge, if it is convenient for the Court to do so. We do not challenge.

Challenged by the prisoner.

JOSIAH T. HORTON, Dighton.

Not related to the parties.

Q. Have you any interest in this cause?

A. No, sir.

Q. Have you formed or expressed any opinion in relation to it?

A. I have, both.

Q. Are you sensible of any bias or prejudice in it?

A. No.

Q. Have you formed any opinion that would prevent a candid judgment upon a full hearing of the evidence?

A. I have not.

Q. Have you any opinions which would preclude you from finding the defendant guilty of an offence punishable with death?

A. I have not.

MR. KNOWLTON. We have no questions to submit.

MASON, C. J. The juror stands indifferent.

MR. KNOWLTON. The Commonwealth challenges.

OTIS T. SPRINGER, No. Attleborough.

Excused, not being summoned correctly by the record.

WILLIAM F. DEAN, Taunton.

Q. Are you related to the prisoner at the bar?

A. No.

Q. Or to Andrew J. Borden or Abby D. Borden, the deceased?

A. I am not.

Q. Have you any interest in this cause?

A. I have not.

Q. Have you formed or expressed any opinion in relation to it?

A. I have.

Q. Are you sensible of any bias or prejudice in it?

A. I am not.

Q. The opinions that you have formed or expressed---are they such as would prevent you from rendering a candid judgment upon the full hearing of the evidence?

A. They are not.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I have not.

MASON, C. J. The juror stands indifferent.

MR. KNOWLTON. The Commonwealth does not challenge.

MR. JENNINGS. The defendant does not challenge.

The juror was sworn and took his seat upon the panel as the second juror.

JAMES GRUNDY, New Bedford.

This juror answered all the statutory questions in the negative; challenged by prisoner.

GILBERT K. BROWNELL, New Bedford.

Q. Are you related to the prisoner at the bar?

A. May it please the Court, I was advised by counsel to put in my excuse, having served three years ago at this time.

Q. Have you a certificate of that fact?

A. No certificate; but City Clerk Leonard informed me that City Clerk Borden would have the record.

MASON, C. J. Mr. Clerk, have you the records here?

THE CLERK. The record is not here.

MR. KNOWLTON. If it is proper to say so, I have a personal recollection of the fact. It was a criminal term, this same term.

MASON, C. J. The fact is admitted, and the juror is clearly exempt.

WILLIAM GRAVES, Mansfield.

Q. What is your age?

A. 68.

Q. Do you desire exemption on that ground?

A. I am not particular.

This juror answered all the statutory questions in the negative; challenged by the Commonwealth.

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JOHN WILBUR, Somerset.

Q. Are you related to the prisoner at the bar?

A. I am not.

Q. Or to Andrew J. or Abby D. Borden, the deceased?

A. I am not.

Q. Have you any interest in this cause?

A. I have none.

Q. Have you formed or expressed any opinion in relation to it?

A. I may have formed an opinion partially.

Q. Are you sensible of any bias or prejudice in it?

A. I am not.

Q. Would any opinion which you may have formed prevent your rendering a candid judgment upon a full hearing of the evidence?

A. It would not.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I have none.

MASON, C. J. The juror stands indifferent.

MR. KNOWLTON. I think, if your Honor please, I would like to have that question put that was suggested a while ago.

Q. Are you at the present time a client of either of the counsel in this case?

A. No, sir.

MR. KNOWLTON. The Commonwealth do not challenge.

MR. JENNINGS. The defendant does not.

The juror was sworn and took his seat upon the panel as the third juror.

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FREDERIC C. WILBAR, Raynham.

Q. Are you related to the prisoner at the bar?

A. No, sir.

Q. Or to Andrew J. or Abby D. Borden, the deceased?

A. No, sir.

Q. Have you any interest in this cause?

A. I have not.

Q. Have you formed or expressed any opinion in relation to it?

A. I have, sir.

Q. Are you sensible of any bias or prejudice in relation to it?

A. No, sir.

Q. Would the opinions that you have formed prevent your giving a candid judgment on a full hearing of the evidence?

A. No, sir.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I think I have.

Q. You have considered that in the light of what was said by the Court, have you?

A. What do I understand you?

Q. You have considered that carefully in the light of what was said? It has nothing to do with what your opinions may be with reference to capital punishment, but whether you have any opinions that would prevent your observing the law of the land and declaring the truth upon the evidence, without regard to consequences?

A. No, sir.

MASON, C. J. The juror stands indifferent.

MR. KNOWLTON. The Commonwealth do not challenge.

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MR. JENNINGS. We do not.

The juror was sworn and took his place upon the panel as the fourth juror.

ELIJAH SMITH, Easton.

Not related to the parties; no interest whatever in the cause; had formed or expressed opinions.

Q. Would the opinions that you have formed or expressed prevent your rendering a candid judgment upon a full hearing of the testimony?

A. I do not think I have, sir.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I think I have, sir.

Q. You make that statement in view of all that has been said with reference to it?

A. Yes, I do.

MASON, C. J. You may be excused.

JOSEPH. W. HATCH, New Bedford.

(The juror presents a communication to the Court.)

MASON, C. J. The juror has presented a certificate, but it is not sworn. The Court is informed by the clerk that the physician is a physician of reputable standing here, but the certificate is not sworn. The statement in the certificate is sufficient to excuse the juror. The juror may be excused.

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JOHN F. STAPLES, Berkley.

Not related to the parties.

Q. Have you formed or expressed any opinion in relation to it?

A. Yes, sir; both.

Q. Are the opinions you have formed or expressed such as would prevent your giving a candid judgment upon a full hearing of the evidence?

A. I think it would.

MASON, C. J. You may be excused.

BENJAMIN T. CUNDALL, Somerset.

The juror stated that he was 59 years of age. He answered all the statutory questions in the negative.

Q. Have you any infirmity of sight?

A. A little near sighted; yes, sir; but then going around the rivers or boating or common business I can read and write.

Challenged by the Commonwealth.

GEORGE H. WHEELER, Taunton.

Not related to the parties; no interest in the cause; had formed or expressed opinions in relation to it; not sensible of any bias or prejudice; the opinions formed or expressed would not prevent him from giving a candid judgment upon a full hearing of the evidence.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. Yes, sir.

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Q. Do you make that statement after a full consideration of what has been said with reference to that question?

A. Yes, sir; I do.

MASON, C. J. You may step aside.

LEMUEL K. WILBER, Easton.

The juror answered all the statutory questions in the negative. He was sworn and took his place upon the panel as the fifth juror.

HOBERT AMES, Easton.

Not related to the parties; no interest in the cause; had formed or expressed opinions in relation to it; not sensible of any bias or prejudice; the opinions formed or expressed would not prevent him from giving a candid judgment upon a full hearing of the evidence; had no opinions that would preclude him from finding a defendant guilty of an offence punishable with death.

MASON, C. J. (After private consultation with counsel) The Court are of the opinion that the facts constitute no legal ground of challenge.

Challenged by the Commonwealth.

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ORVILLE W. CRANSTON, New Bedford.

Not related to the parties; no interest in the cause.

Q. Have you formed or expressed any opinion in relation to it.

A. I have.

Q. Are you sensible of any bias or prejudice in it?

A. Yes, sir.

Q. You are?

A. I am.

MASON, C. J. You may step aside.

HENRY P. JENNEY, New Bedford.

Not related to the parties; no interest in the cause.

Q. Have you formed or expressed any opinion in relation to it.

A. I have.

Q. Are you sensible of any bias or prejudice in it?

A. I am; yes, sir.

MASON, C. J. You may step aside.

FRANK W. FRANCIS, New Bedford.

The JUROR. I would like to say to the court before taking the oath that I have served as a juror within three years in this county, and if the laws allow, I object to serving at this time.

Q. At what term did you serve?

A. September term, 1890.

Q. Have you the record of your service?

A. I have not with me

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except of my memory; I feel quite positive that that is the fact.

Q. Have you taken any steps to verify your recollection by going to the record at all?

A. I have not, except in the way of my business.

Q. Well, have you done that, to verify the date?

A. I couldn't swear positively that such is the fact, but I believe beyond all doubt, in my own mind, that it is so.

Q. It is a ground of exemption if you can establish it; but if you cannot positively recollect yourself and have no record, the Court will hardly be able to say that you are exempt.

A. I feel very positive that I did serve at the September term in 1890.

Q. Where did you serve?

A. I served at Taunton and Fall River; the Court was holden in Taunton and Fall River.

MR. KNOWLTON. Will your Honor ask him who the justice was that presided?

The JUROR. I believe the Honorable Judge Sherman and his Honor served at that term.

MASON, C. J. The juror may stand aside until after the recess. Meantime we may be able to consult the record.

The officers were sworn to take charge of the jurors already sworn in, and at one P.M. a recess was taken until 2.15 P.M.

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AFTERNOON SESSION

The Court came in at 2.15 P.M.

MASON, C. J. As to the juror Francis, who was under examination before recess, inquiry made by the clerk during the recess shows that the juror's memory is correct, and that he did serve in September, 1890, and he is therefore exempt.

WILLIAM WESTCOT, Seekonk.

The juror answered all the statutory questions in the negative. He was sworn and took his place upon the panel as the 6th juror.

LYMAN PALMER, Taunton.

Not related to the parties; no interest in the cause; had formed or expressed opinions in relation to it; was sensible of bias or prejudice; thought the opinions formed would prevent a candid judgment upon a full hearing of the evidence.

MASON, C. J. You may be excused.

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CHARLES W. ALLEN, New Bedford.

Not related to the parties; no interest in the cause; have formed or expressed opinions in relation to it; no bias or prejudice; did not think the opinions formed or expressed would prevent the rendering of a candid judgment upon a full hearing of the evidence.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I have.

MASON, C. J. You may be excused.

EDMUND E. HILL, Taunton.

Not related to the parties; no interest in the cause; had formed or expressed opinions in relation to it; no bias or prejudice; the opinions formed or expressed would not prevent the rendering of a candid judgment upon a full hearing of the evidence; no opinions that would preclude finding a defendant guilty of an offence punishable with death.

Challenged by the prisoner.

GORDON H. GODFREY, Taunton.

Not related to the parties; no interest in the cause.

Q. Have you formed or expressed any opinion in relation to it.

A. I have, decided.

Q. Have you any bias or prejudice in it?

A. I have.

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MASON, C. J. You may be excused.

EDWARD S. TABER, New Bedford.

Not related to the parties; no interest in the cause; have formed or expressed opinions in relation to it; no bias or prejudice.

Q. The opinions which you have formed or expressed---would they prevent your giving a candid judgment upon the full hearing of the evidence?

A. They would not. If it is a suitable time in which I should present as a plea my age to the court---

Q. What is your age?

A. 67

Q. Do you desire to be excused on that ground?

A. I felt that I would so present it.

MASON, C. J. You are exempt if you claim it. It is your privilege to claim it.

GILBERT M. HORTON, Rehoboth.

Q. What is your age.

A. 66.

Q. Do you claim exemption on that ground?

A. No, sir.

The juror answered all the statutory questions in the negative.

MR. KNOWLTON. I should like the further inquiry put, if your Honor please, that was suggested this morning.

Q. Are you at the present time a client of either of the counsel engaged in the cause?

A. No, sir.

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Challenged by the prisoner.

GEORGE W. CURIEN, Attleborough.

Answered all the statutory questions in the negative.

Challenged by the prisoner.

TIMOTHY W. DRISCOLL, Easton.

Not related to the parties; no interest in the cause; had formed or expressed opinions in relation to it; no bias or prejudice; the opinions formed or expressed would not prevent the giving of a candid judgment upon a full hearing of the evidence; had formed no opinions, that would preclude the finding of a defendant guilty of an offence punishable with death.

Challenged by the prisoner.

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LEWIS B. HODGES, Taunton.

Not related to the parties.

Q. Have you any interest in this cause?

A. No, sir.

Q. Have you formed or expressed any opinion in relation to it?

A. I have.

Q. Have you any bias or prejudice in it?

A. I think not.

Q. The opinions which you have formed or expressed,---would they prevent your giving a candid judgment upon a full hearing of the evidence?

A. I don't think it would.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. No, sir.

Sworn in as the seventh juror.

HARRY J. LEACH, New Bedford.

Not related to the parties; no interest in the cause; had formed an opinion, but had not expressed it; no bias or prejudice.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I have, most assuredly.

Excused.

AUGUSTUS SWIFT, New Bedford.

Answered the statutory questions in the negative.

MR. JENNINGS. Will your Honor ask if he is a client of

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the attorney for the State?

Q. Are you at present a client of any of the counsel in this cause?

A. No, sir.

Sworn as the eighth juror.

DAVID B. TINKHAM, Easton.

Not related to the parties; had formed an opinion, but thought it would not prevent a candid judgment.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I have.

Excused.

DANIEL WHALON, Westport.

Excused on account of opinions which would preclude him from finding a defendant guilty of an offence punishable with death.

AUGUSTUS MOSHER, Westport.

Excused on account of opinions which would preclude him from finding a defendant guilty of an offence punishable with death.

OLIVER AMES, 2nd, Easton.

Not related to the parties.

Q. Have you formed or expressed any opinion in relation to the case?

A. Yes, sir.

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Q. Have you any bias or prejudice?

A. Yes, sir.

Excused.

GEORGE A. COBB, New Bedford.

Excused for previously formed opinions, and bias or prejudice.

FRANK G. COLE, Attleboro.

Answered all the statutory questions in the negative, and sworn as the ninth juror.

OSCAR R. DOUGLASS, Swansea.

Had formed an opinion, but it would not prevent giving a candid judgment.
Challenged by the Commonwealth.

JOHN C. FINN, Taunton.

Answered the statutory questions in the negative: sworn as the tenth juror.

JOHN H. TABER, New Bedford.

Excused on account of age, being 70 years old.

ISAAC ALGER, Attleboro.

Not related to the parties; have expressed no opinion only what would be expressed in every day intercourse with fellow citizens; no bias or prejudice; his opinions would not prevent a candid judgment. Challenged by the prisoner.

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NATHAN O. WALKER, Dighton.

Excused for opinions and prejudice.

WILLIAM J. MILLS, New Bedford.

Answered the usual questions in the negative. Challenged by the Commonwealth.

CHARLES F. FOLGER, New Bedford.

Had formed an opinion, but not such as would prevent a candid judgment; is not at present the client of counsel on either side. Challenged by the prisoner.

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GIDEON HOWLAND, Dartmouth.

Not related to the parties; no interest in the cause; had expressed an opinion; had bias.

Excused.

GEORGE F. KING, Easton.

Not related to the parties; no interest in the cause; had expressed an opinion; no bias or prejudice; opinions would not prevent giving a candid judgment upon a full hearing of the evidence; had opinions that would preclude from finding a defendant guilty of an offence punishable with death.

Excused.

HENRY A. HODGES, Taunton.

Name called, but no response.

WILLARD B. MUNROE, Rehoboth.

Not related to the parties; no interest in this cause; had formed or expressed no opinion in relation to it; no bias; no opinions that would preclude from finding a defendant guilty of an offence punishable with death.

MASON, C. J. The juror stands indifferent.

Challenged by the Commonwealth.

NATHAN CLARK, Taunton.

(Before being sworn Mr. Clark said):

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Mr. CLARK. Can I speak to the Court a minute? On account of defective hearing I should choose to be excused.

MASON, C. J. How much is your hearing impaired?

Mr. CLARK. I can hear ordinary conversation.

Q. Do you think you would have difficulty in hearing the testimony?

A. How?

Q. Do you think you would have difficulty in hearing ordinary testimony given on the stand?

A. Well, I might at times unless I was looking the individual right in the face.

Q. What is your age?

A. 68.

MASON, C. J. You are exempt then by age.

GEORGE A. HOWE, New Bedford.

Not related to the parties; no interest in the cause; had formed or expressed an opinion in relation to it; had bias or prejudice in it.

Excused.

GEORGE E. HATHAWAY, Taunton.

Not related to the parties; no interest in the cause; had formed or expressed an opinion in relation to it; had no bias or prejudice; opinions would not prevent giving a candid judgment upon a full hearing of the evidence; had no opinions that would preclude from finding a defendant guilty of an offence punishable with death.

Challenged by the Commonwealth.

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ALBERT M. WILCOX, Fairhaven.

Not related to the parties; no interest in the cause; had formed or expressed an opinion; had bias or prejudice.

Excused.

GEORGE W. DAVIS, Dartmouth.

Not related to the parties; no interest in the cause; had formed or expressed an opinion in relation to it; no bias or prejudice; opinions would not prevent giving a candid judgment upon a full hearing of the evidence; had opinions that would preclude from finding a defendant guilty of an offence punishable with death.

Excused.

WALTER PEASE, Freetown.

Not related to the parties; no interest in this cause.

Q. Have you formed or expressed any opinion in relation to it?

A. I don't think I have.

Q. Have you any bias or prejudice in it?

A. No.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I have, yes, sir.

Excused.

OLNEY GREEN, Seekonk.

Not related to the parties; no interest in this cause;

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had formed or expressed an opinion in relation to it; had no bias or prejudice in it; opinions would not prevent giving a candid judgment upon a full hearing of the evidence; had no opinions that would preclude from finding a defendant guilty of an offence punishable with death.

Challenged by the Commonwealth.

JOSEPH PELTIER, Taunton.

The JUROR
to be in this case.

I can't talk enough English. I can't understand well enough

MASON, C. J.

You do not understand English clearly?

The JUROR. No, sir.

MASON, C. J. You may be excused.

EDWIN GUSHKE, Raynham.

Not related to the parties; no interest in the cause; had formed or expressed an opinion in relation to it; had no bias or prejudice; opinions would not prevent giving a candid judgment upon a full hearing of the evidence; opinions would not preclude finding a defendant guilty of an offence punishable with death.

Challenged by the prisoner.

DEXTER E. HORTON, Jr., Rehoboth

Not related to the parties; no interest in the cause; had formed or expressed an opinion in relation to it; had no bias or prejudice in it; opinions would not prevent giving a

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candid judgment upon full hearing of the evidence; had opinions that would preclude from finding a defendant guilty of an offence punishable with death.

Excused.

FREDERICK E. LAWTON, Fairhaven

Not related to the parties; no interest in the cause; had formed or expressed opinion in relation to it.

Q. Have you any bias or prejudice in it?

A. I can't say that I have.

Q. Such opinions as you have formed or expressed, would they prevent you from giving a candid judgment upon a full hearing of the evidence?

A. They might interfere. I don't think they are strong enough, no, sir.

Excused.

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GEORGE H. MILLIKEN, New Bedford.

Excused on medical certificate.

EZRA J. SWIFT, New Bedford.

Excused on account of opinions which would preclude him from finding a defendant guilty of an offence punishable with death.

HENRY W. KENYON, New Bedford.

Not related to the parties; had no interest in the case; had formed opinions relating to it but they would not prevent his giving a candid judgment; is not a client of any of the counsel in the case. Challenged by the Commonwealth.

F. WILLIAM OESTING, New Bedford.

Had formed an opinion in regard to the case, which he thought would prevent him from giving a candid judgment.

Excused.

HENRY C. DEAN, Taunton.

Answered all the statutory questions in the negative. Challenged by the Commonwealth.

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WILLIAM A. BENNETT, North Attleborough.

Had both formed and expressed an opinion; had no bias or prejudice in the least; his opinion would not prevent his giving a candid judgment. Had opinions that would preclude from finding a defendant guilty of an offence punishable with death.

Excused.

LEON H. TINGLEY, Attleborough.

Had formed an opinion, but it would not prevent his giving a candid judgment. Challenged by the prisoner.

ELIHU M. DAVIS, Taunton.

Excused on account of defective hearing.

GEORGE A. WOOD, Taunton.

Excused on account of opinions which would prevent him from giving a candid judgment.

GEORGE B. BAILEY, Mansfield.

Not related to the parties; no interest in the cause.

Q. Have you formed or expressed any opinion in relation to it?

A. I should say not.

Q. Have you any bias or prejudice in it?

A. No, sir.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. No, sir. I beg pardon, I meant to have answered yes.

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Q. You have?

A. Yes, sir.

MASON, C. J. You may stand aside.

CHARLES I. RICHARDS, North Attleborough.

Not related to the parties.

Q. Have you any interest in this cause?

A. Not any.

Q. Have you formed or expressed any opinion in relation to it?

A. I have.

Q. Have you any bias or prejudice in it?

A. I have not.

Q. Such opinions as you have formed or expressed,---would they prevent your giving a candid judgment upon a full hearing of the evidence?

A. They would not.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I have not.

Sworn as the eleventh juror.

EUGENE M. BARROWS, New Bedford.

Answered all the statutory questions in the negative: challenged by the prisoner.

WALTER G. SLOCUM, Dartmouth.

Had formed an opinion but not such as would prevent a candid judgment.
Challenged by the prisoner.

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HAROLD V. HOPKINS, Attleborough.

Answered all the statutory questions in the negative, challenged by the Commonwealth.

JOHN T. WADE, Taunton.

Had formed an opinion, but not such as to prevent a candid judgment. Challenged by the prisoner.

JOHN W. DIXON, Taunton.

Had formed an opinion and was conscious of bias or prejudice. Excused.

CHARLES F. HATHAWAY, Swansea.

Had formed an opinion, but not such as to prevent giving a candid judgment; was not at the present time a client of counsel on either side in the case. Challenged by the Commonwealth.

AUGUSTUS O. HALL, No. Attleborough.

Answered all the statutory questions in the negative. Challenged by the Commonwealth.

HENRY B. ALMY, New Bedford.

Excused on account of opinions which would preclude him from finding a defendant guilty of an offence punishable with death.

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THOMAS DONAGHY, Jr., New Bedford.

Excused on account of having formed an opinion, and of bias and prejudice.

DANIEL F. DRISCOLL, New Bedford.

Excused on account of opinions which would prevent him from giving a candid judgment.

EZRA DAVOLL, Taunton.

Excused on medical certificate.

CHARLES W. KNIGHT, New Bedford.

Excused on account of opinions which would preclude him from finding a defendant guilty on account of an offence punishable with death.

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OLIVER E. GIFFORD, New Bedford.

Excused, being related to the prisoner at the bar.

SIMEON A. WHEELER, Taunton.

Not related to the parties; no interest in the cause; had formed or expressed opinions in relation to it; had bias or prejudice.

MASON, C. J. You may stand aside.

FRANCIS H. PASEL, New Bedford.

Not related to the parties; no interest in the cause; had formed or expressed opinions in relation to it; had bias or prejudice.

MASON, C. J. You may stand aside.

EBEN S. GRINNELL, Freetown.

Not related to the parties; no interest in the cause; had formed or expressed opinions in relation to it; no bias or prejudice; the opinions formed or expressed would not prevent the giving of a candid judgment upon a full hearing of the evidence; had opinions that would preclude the finding of a defendant guilty of an offence punishable with death.

MASON, C. J. Stand aside.

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GEORGE E. SMITH, Norton.

Not related to the parties; no interest in the cause; had expressed an opinion several times; no bias or prejudice; the opinions formed or expressed would not prevent the rendering of a candid judgment upon a full hearing of the evidence.

Q. Have you any opinions that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I have but one.

Q. Do you say that you have?

A. I have but one---one opinion.

Q. I do not understand the answer. The question is whether you have any opinion that would preclude you from finding a defendant guilty of an offence punishable with death?

A. I think I have one.

MASON, C. J. You may step aside.

CHARLES L. SEAVER, Mansfield.

Not related to the parties; no interest in the cause; had formed or expressed opinions in relation to it; no bias or prejudice; the opinions formed or expressed would not prevent the giving of a candid judgment upon a full hearing of the evidence; no opinions that would preclude finding a defendant guilty of an offence punishable with death.

Challenged by the prisoner.

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DWIGHT F. LANE, Dighton.

Had formed an opinion, but such as would not prevent candid judgment upon full hearing of the evidence; no opinions that would preclude from finding a defendant guilty of an offence punishable by death. Challenged by the Commonwealth.

JOHN F. HAMMETT, Acushnet.

Had formed an opinion, but not such as to prevent candid judgment upon full hearing of the evidence; had opinions that would preclude finding a defendant guilty of an offence punishable with death. Excused.

JAMES O'LEARY, Jr., No. Attleborough.

Had formed or expressed an opinion in relation to the case; such opinion would not prevent a candid judgment upon full hearing of the evidence; had opinions that would preclude from finding a defendant guilty of an offence punishable with death. Excused.

ROBERT H. CARTER, New Bedford.

Had formed or expressed an opinion in relation to the case; had bias or prejudice. Excused.

JOSEPH CHAUSE, New Bedford.

Had formed or expressed an opinion in relation to the

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case which would prevent giving a candid judgment upon full hearing of the evidence.
Excused.

DAVID FISHER, Mansfield.

Excused on account of opinions that would preclude from finding a defendant guilty of offence punishable with death.

FREDERICK PARKER, New Bedford.

Had formed or expressed an opinion in relation to the case; had bias or prejudice.
Excused.

FRANCIS A. BOOTH, New Bedford.

Answered all the statutory questions in the negative; at the present time was not a client of any of the counsel on either side of the case. Challenged by the prisoner.

MATTHEW COSTELLO, Somerset.

Had formed or expressed an opinion in relation to the cause; had bias or prejudice.
Excused.

CYRUS WASHBURN, Raynham.

Excused on account of age.

JOHN T. WILLIAMS, Taunton.

Excused on account of opinions that would preclude finding a defendant guilty of an offence punishable with death.

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LLOYD S. LINCOLN, Norton.

Excused on account of opinions which would prevent giving a candid judgment upon a full hearing of the evidence.

HENRY M. HOXIE, Fairhaven.

Excused because of opinions that would preclude from finding a defendant guilty of an offence punishable with death.

JASON T. GUILD, No. Attleborough.

Excused on account of age.

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EZEKIEL P. FRANCIS, Taunton.

Not related to the parties; no interest in the cause; have formed or expressed opinions; no bias or prejudice; the opinions formed or expressed would not prevent giving a candid judgment upon a full hearing of the evidence; no opinions that would preclude finding a defendant guilty of an offence punishable with death.

Challenged by the prisoner.

HENRY M. GROSS, Attleborough.

Not related to the parties; no interest in the cause; have formed or expressed opinions; no bias or prejudice; think that the opinions formed or expressed would prevent the giving of a candid judgment upon a full hearing of the evidence.

MASON, C. J. You may stand aside.

GEORGE LYNCH, Somerset.

Not related to the parties; no interest in the cause; had formed or expressed opinions; and had bias or prejudice.

MASON, C. J. You may stand aside.

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OLIVER H. GROSSMAN, Taunton.

Not related to the parties; no interest in the cause; had formed or expressed opinions, and had bias or prejudice.

MASON, C. J. You may stand aside.

SILAS D. DAMMON, New Bedford.

Not related to the parties; no interest in the cause; have formed or expressed opinions; no bias or prejudice; think the opinions formed or expressed would prevent the giving of a candid judgment upon a full hearing of the evidence.

MASON, C. J. You may stand aside.

ALLEN H. WORDELL, Dartmouth.

Not related to the parties; no interest in the cause; has formed or expressed opinions in relation to it; no bias or prejudice; does not think the opinions formed would prevent the giving of a candid judgment upon a full hearing of the evidence; no opinions that would preclude the finding a defendant guilty of an offence punishable with death.

Q. Are you at the present time the client of any of the counsel on either side of this cause?

A. No, sir.

Mr. Wordell was sworn and took his place upon the panel as the twelfth juror.

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The jury as completed was made up as follows:

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. Cole,	Attleborough.
John C. Finn,	Taunton.

Charles I. Richards,
Allen H. Wordell,

No. Attleborough.
Dartmouth.

The clerk called the roll of the jury, the crier counted as they responded, and the clerk announced that all the jurors had responded to their names.

MASON, C. J. --- As it is the usage in this State for jurors in capital cases not to separate after being sworn until finally discharged from the case, it is customary to give a brief recess for the purpose of the jurors communicating with friends and making their arrangements for such seclusion. You will be under the charge of the officers, and you may now take such recess for half an hour, or so much of it as you may need for that purpose.

The officers were sworn to take charge of the jury, and at 5:00 P.M. a recess was taken.

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The jury returned to the court room at 5:30 P.M., and Charles I. Richards, of North Attleborough, was appointed foreman by the Court. The officers were then sworn to take charge of the jury, and the court adjourned until nine o'clock A.M., Tuesday, June 6th.

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S E C O N D D A Y

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COMMONWEALTH vs. LIZZIE A. BORDEN

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:

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OPENING STATEMENT FOR THE COMMONWEALTH

By William H. Moody, Esq.,

May it please your Honors,---Mr. Foreman and Gentlemen of the 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 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.

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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 27 or 28 years before he died, leaving two children, now alive,---the prisoner at the bar, Lizzie Andrew Borden, the youngest, and then somewhere between 2 and 3 years of age a sister, Miss Emma Borden, being a woman at the present time in the neighborhood of 10 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 25 years before the time of their deaths, and there was no issue of the second marriage, at least none living and known 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, 64 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 20 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 step-mother 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 anything 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 offset. The details of what happened

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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, 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 step-mother 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 step-mother. My mother is dead."

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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 impassible wall.

In the early part of August of last year the older daughter, Miss Emma, was away, I believe, at Fairhaven at that time. 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 Borden's. 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

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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 drug-store in Fall River, the situation of 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 seal-skin 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 drug store, 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 Emma 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

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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."

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"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 what 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 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."

And so the talk went. That, I beg you to keep in your minds, was with Miss Russell---Alice M. Russell.

There comes now the most difficult duty which I have in this opening. I am consoled, Mr. Foreman and gentlemen, by the fact that you will be aided beyond any explanation that I give you by a view of these premises that I am about to explain. I hope that I shall be able, even without the view, to make myself entirely intelligible to you, because no one can understand this testimony that is to come, and rightly reason upon it, without an exact knowledge of the interior and the exterior of that house.

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In the first place, I may say that 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.

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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 entry-way which leads into the kitchen. There is a third door exactly in the rear of the house, which leads down to the cellar. There is what might be called a porch, and a door leading into it, as you will see.

As you enter the front hall you enter a hall from which lead two doors: a door into a parlor, which is the front room in the house, making the north-west corner of the first story, a door leading into the sitting room, and a stairway leading upstairs. Let us, in the first place, go upstairs and see the arrangement there.

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It will aid us in considering this arrangement to remember that this house was originally a double tenement house, and with the slight exception that I shall refer to later on, the arrangement as it is upstairs is as it is upon the first story. As you are about to see the premises, gentlemen, I do not deem it wise to detain you at the present time by explaining this plan in detail. I will try to make it as clear as I can by stating it to you.

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 bedroom; another door, which leads into the guest chamber, which is directly over the parlor below and corresponds to it in every respect. The guest chamber 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 toward the north, you can look directly into the door of the guest chamber. The other door which leads from this hall is a door which leads into a bedroom and leads towards the rear of the house.

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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 guest chamber, and to your right is the door leading into a chamber which at that time was occupied by the prisoner. Between the guest chamber and the bedroom of the prisoner there was a door. I may as well dispose of it now for good. 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 guest chamber 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. Follow me, if you please, then, into the prisoner's bedroom. As you enter her 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, and directly opposite the door of entrance which leads into the room occupied by Mr. and Mrs. Borden, which is over the kitchen. The prisoner's room was exactly over the sitting-room. The room

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in the rear of the prisoner's room was exactly over the kitchen and was occupied as the bedroom of 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, passing to the rear into Mr. and Mrs. Borden's room, we find a door, and only a single door, leading out into the entry-way which is over the entry-way 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.

Now then, gentlemen, if I have made myself clear upon this description, which is wearisome, I know, but it is one of the wearisome duties we must undertake in this cause. I have made it clear to you that as you go up the hallway you get access to but four rooms, the hallway itself, if you call that a room, the closet, the guest chamber in which Mrs. Borden was found, and the room of the prisoner and the room leading out of that, the blind room, so to speak, that was occupied by Miss Emma when she was at home, and there is no other access whatever to the rear of the house.

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Now gentlemen, let me, at the expense of ??? go below. As you enter the hallway below it is, I believe, exactly as above except, of course, there is no clothes closet there as there is above. There are two small closets, very small ones, as you will see. To your left as you enter is the door which leads into the parlor under the room where Mrs. Borden was found dead. Going straight ahead you enter into the sitting-room, which is a room in the rear of the hall at the south of the house, and directly under and corresponding to the prisoner's bedroom.

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Now you come to a difference in construction in the two storeys. You turn to the left from the sitting room as you enter and you enter the dining room which is upon the north side of the house and is directly under Miss Emma's room, and a large room which was

used as a closet by Mr. Borden, and which joined his room, another blind room. That difference is made either by the taking down or putting up of a partition. You enter the dining room and there is a door of exit which goes into the kitchen. Above, that arrangement is varied by a partition directly down through the room, which would correspond to the dining room, so that above the door corresponding to the door leading from the sitting room to the dining room, leads from Miss Emma's room to the bed room of the prisoner and the door corresponding to the door leading from the dining room to the kitchen leads from the room which adjoins the blind room, which adjoins the bed room of Mr. and Mrs. Borden, so that the effect of that partition is that while there is free communication two ways from the kitchen to the front part of the house down stairs, up stairs 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.

Again, gentlemen, I say that the difficulty of understanding this is great, but I am comforted by the fact that you will be aided by a view of these premises.

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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.

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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.

Now, then, it becomes my duty to relate in considerable detail, all that occurred in that household down to the time of the discovery of these homicides. 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 down stairs 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

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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 day time, 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. It will appear what the material of their breakfast was, but it is not important at for me to state it at this time. After breakfast the first one to depart is Mr. Morse. He goes away at quarter of eight, 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

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she came back Mr. Borden had apparently gone down town. 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 pillow cases upon two pillows that were there,---a trifling duty, 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 room, because no living person saw Mrs. Borden from that time until her death, except the assailant.

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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 in the sitting-room and the dining-room 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.

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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 windows upon 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 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 29 minutes past ten, or at 29 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 down town, coming around, apparently, from the screen door, where he had attempted to get in, out upon the sidewalk and toward his own front door, taking out his key to open it. Mrs. Kelly will fix that time at 27 or 28 minutes of eleven,

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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 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

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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 down town, 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 than perhaps 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

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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 down stairs, 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 was 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 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.

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Therefore the time between Bridget's going up stairs 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 11 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 up stairs 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, of the prisoner, Where were you? before a thought of the 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 says, "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

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

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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 turned and her head reached above the level of the floor. She looked in and saw Mrs. Borden's dead body as she looked 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,

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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 her dead father, up stairs by the room where her step-mother 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

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repeats it again and again, and finally repeats it under oath, that at the time after Bridget went up stairs 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 up stairs 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 up stairs.

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

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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 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 Prof. 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.

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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 Mrs. Borden's case contained partially digested food: in Mr. Borden's case was empty of food. It will appear the lower intestine in Mrs. Borden's case was empty,---the food had not

reached that stage of digestion. In Mr. Borden's case, that was the intestine which contained the breakfast as it been digested.

Now, gentlemen, you will have the opinion of many who are competent to give an opinion upon all these facts, and they will say to you that upon those facts alone they are able to give a judgment that Mrs. Borden must have died at least an hour before her husband. And that, gentlemen, you will remember and take into view with the fact that at somewhere between nine 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 one or more spatters of blood would be upon the person or upon the clothing of the assailant. And there has been produced for the inspection of the Commonwealth---it was produced

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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 upon 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 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

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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

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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. Hanscomb, 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,

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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 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

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weapons with which these homicides were committed. Upon careful examination neither of these hatchets is seen to contain the slightest evidence of blood-stain. 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 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,

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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 to the night's dew, such rust as must result from an exposure uniform in its extent upon all parts of the hatchet. Prof. 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 hatchet 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

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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 possession through the streets of Fall River at noon day, 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

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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 step-mother; that upon Wednesday, August 3, she was dwelling upon murder and preparing herself with a weapon which had no innocent use; that upon the evening of Wednesday, August 3, she was predicting disaster and cataloguing defences; that from the time when Mrs. Borden left the dining

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room to go upstairs for this momentary errand, up to the time when the prisoner came down stairs an hour later from this hall-way which led only to her chamber and that in which Mrs. Borden was found, there 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.

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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 fourth.

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 10:55, at the conclusion of Mr. Moody's opening, a recess was taken.

The jury returned to the court room shortly after 11 o'clock.

TESTIMONY FOR THE GOVERNMENT

THOMAS KIERAN, Sworn

Q. (By Mr. Moody.) Your full name, sir?

A. Thomas Kieran

Q. You are by profession an engineer?

A. Yes, sir.

Q. And I believe city engineer of Fall River?

A. No, sir.

Q. At the request of the government you made some surveys and plans?

A. Yes, sir.

Q. How far is it from the Borden house to the central police station going the direct way through the streets?

A. I measured that distance, sir, and gave the notes of it to Mr. Knowlton this morning. (Notes produced.) Those are the notes. From the Borden house to the central police station is about 1300 feet.

Q. How far is it from the Borden house to City Hall?

A. About 900 feet.

Q. How far is it from the central police station to the northern police station?

A. About 6025 feet, or one mile and 14/100.

Q. Is there any difference in distance between the distance from City Hall to the northern station and the distance from the City Hall to the central station?

A. Yes, sir.

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Q. And in which way is that difference?

A. The City Hall is about 150 feet further from the northern station than the central police station is from the northern station.

MR. ROBINSON. He did not exactly answer your question. I do not care to object.

Q. Which is the lesser distance?

A. From the central police station to the northern station is the lesser distance.

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Q. You have drawn, Mr. Witness, a plan of Main, Second, Borden, Spring and Rodman streets, or parts of those streets, including the city hall, post office, and some of the adjoining streets?

A. I had that plan made in my office. I verified the distances myself on it.

(Plan marked Ex. 1.)

Q. Are these distances indicated upon plan no. 1 correctly stated upon the plan, so far as they are stated?

A. Yes, sir.

Q. The scale of the plan is 50 feet to an inch?

A. Yes, sir.

Q. Will you tell me the distance indicated on this plan from the store now occupied by Jonathan Clegg on Main Street to Mr. Borden's house, passing from Main street through Spring street, and then north to Mr. Borden's house?

A. I should have to scale it from the plan in order to tell you.

Q. If you can do that readily I wish you would do so.

A. (Measuring). It is about 540 feet.

MR. MOODY. (To the jury). That is the store now occupied by Mr. Clegg, and passing south up Main St. then turning to the left and going down Spring street, then turning to the left and going north and down hill, you come to the Borden house: and the distance between those two places is what the witness has stated.

Q. Have you absolutely correct measure, Mr. Witness?

A. Yes, sir. (Showing measure to counsel).

Q. Will you see if that is (showing another measure to witness), or will you let us have that, (referring to measure produced by witness)?

A. Both of those are supposed to be standard

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measures.

Q. Have you drawn a plan showing the Borden premises and the surrounding premises upon its three sides?

A. Yes, sir.

Q. (Showing plan to witness). And is that the plan?

A. Yes, sir.

MR. MOODY. Unless I hear some objection, I will go on. Are the measurements on this plan correct?

A. So far as I know, yes, sir.

Q. Did you make them yourself?

A. Yes, sir.

Q. What is the scale of this plan?

A. This is 8 feet to one inch.

(Plan marked Ex. 2)

MR. MOODY (To the jury). I don't think, gentlemen, it will be necessary to delay with this at present.

Q. Have you drawn a plan of the Borden premises themselves? (Showing plan to witness)

A. Yes, sir.

Q. And the scale on which that plan is drawn?

A. Four feet to one inch.

Q. Are the measurements and drawings upon this plan correct?

A. So far as I know, they are.

Q. You drew them yourself--- you made them yourself?

A. Yes, sir.

(Plan marked Ex. 3).

Q. This plan contains upon it and as a part of it the interior of the house upon the ground floor. Are those measurements also correct?

A. Yes, sir.

Q. And the scale is the same?

A. Yes, sir.

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Q. Let me ask you, what is the height of the first story of that house?

A. I have measured it and marked it on the plan.

Q. Well, I want you to state it, please; use that to refresh your memory.

A. The first story?

Q. Yes, the first story.

A. Eight feet and 10 inches from the plastering down to the carpet.

Q. What is the height of the second story of that building?

A. Eight feet and four inches.

Q. Have you drawn a plan similar to the last in every respect, except that the second story of the house is indicated on the plan instead of the first?

A. Yes, sir.

Q. And are the measurements on that plan correct?

A. So far as I know, they are.

Q. And the scale is what?

A. Four feet to one inch.

Q. And on this plan there is a red indication; that means where the carpet is now cut out, does it not?

A. That means where the carpet was cut out on the day I made the measurements.

Q. That is in the guest chamber?

A. Yes, sir.

(Plan marked Ex. 4.)

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Q. Mr. Witness, on this plan showing the second story it would appear as if steps were indicated. There is no such thing on the second story?

A. There are no steps.

Q. That apparent indication of steps is to show the relative position of the steps to the rooms upstairs?

A. This is a plan which shows the grounds surrounding the house, but shows the second story of the interior of the house.

Q. Is this a plan of the interior of the sitting-room of the house?

A. Yes, sir.

Q. What is the scale of that plan?

A. That is one inch to one foot.

Q. It is indicated in the plan?

A. Yes, sir.

(Plan of interior of sitting-room marked Ex. 5.)

Q. Are these blue prints duplicates, so far as they go, of the plans which are in the case?

A. Of those parts of them

Q. Of those parts of the two rooms?

A. Yes, sir.

(Blue print of down stairs marked Ex. 6. Blue print of upstairs marked Ex. 7.)

CROSS EXAMINATION.

Q. (By Mr. Jennings.) Is this plan drawn by you?

A. This is a blue print made from a plan which I drew.

Q. Are the measurements on that correct?

A. So far as I know they are; yes, sir.

Q. What does that represent?

A. This shows the Andrew Borden house and lot. There is the Buffington house just north

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of it and Dr. Kelly's house and lot and sheds just south of it, and Dr. Chagnon's house just to the eastward of it and the Buffington house.

Q. Have you stated that it represents upon it the position of the Bowen and Miller house?

A. I did not so state. It does so contain them.

Q. It is double house, is it?

A. I presume so, I have never been inside of it, but I think so from the appearance of it outside.

Q. What do these front projections on the Bowen-Miller house represent?

A. There are two bay windows, square bay windows on the front, and between those two are the steps and the piazza. In front of those two steps are the two gates, and a short walk that leads up to each flight of steps, and those lead up to the two front doors.

Q. Now have you made any experiments or tests to see what the line of vision is in passing up Second Street or down Second Street by the Borden house relative to the barn door on the south side of the barn?

A. Yes, sir.

Q. What was the result of your experiments?

A. If a man stands on Second Street and brings his eye---

MR. JENNINGS. If you will please step down so the jury can see.

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Q. This is Second Street?

A. This is Second Street.

Q. West of the house?

A. West of the house, yes.

Q. Now, you said, "If a man stood upon Second Street at a point"---

A. South of the house, and brought his eye directly in line, in a line drawn past the corner of Dr. Kelly's house----

Q. Which corner?

A. The northwest corner, and the southeast corner of the Andrew Borden house, if his eye was in a direct continuation of that line on Second Street, he could see the 12 inches of the barn door of the Andrew Borden barn---

Q. (By Mr. Moody.) Would it be the hinge side or the latch side?

A. That I should want to refer to my notes before answering. Shall I do so?

MR. JENNINGS. Yes, if they want it.

(At this point the examination of the witness was suspended until 9 A.M. The plan last referred to by the witness was marked Exhibit 8.)

MR. KNOWLTON. At our own desire and also at the desire of the learned counsel for the defence, who are as anxious as we are that everything connected with this tragedy should be seen by the jury, I now move that the jury be directed to take the view of not only the interior, but exterior of the house, and of such other points as to which there will be testimony, as counsel may be able to agree that the jury shall see.

MR. ROBINSON. I would say on behalf of the defendant this has been a subject of conference, and we cheerfully join

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in it. We should have made the same request of the Court, if the government had not made it. I would suggest that while, of course, the defendant is entitled to accompany the jury, she does not desire to go, and does not really feel able to take this excursion this afternoon for that purpose, and we waive all her rights, (I say this in her presence and with her consent), to any participation in the view.

MASON, C. J. The Court in ordering the view desire it to be distinctly understood that if the defendant desires to be present at the view, she may be permitted to be present. She will not be required to be, if she does not desire to be.

MR. ROBINSON. I have made her fully informed of the situation, and that is her wish.

(The officers were then sworn to accompany the jury upon the view. It was agreed that Mr. Moody on behalf of the Commonwealth, and Mr. Jennings on behalf of the defendant, should accompany the jury.)

MASON, C. J. I desire to say to the jury a single word. This view is not at all for the purpose of receiving any testimony at the view. You are only to observe the physical objects that shall be called to your attention. Counsel will not be at liberty to address you in any other way than to call your attention to the objects which you are desired to observe. It will not be proper for you to ask questions of counsel with reference to anything that is seen. The testimony with reference to all that you see will be given here

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upon the stand; and you are to keep together. All of you are to see everything that any of you see. You are not to separate at all to make independent observations individually, but you as a jury are to see all that is called to your attention. You will observe the strict oath which the officers have taken, and you will be exceedingly careful that no others address than those that the officers have permission to allow to address you; and when the view is completed you will return to the officers, and come into court at 9 o'clock to-morrow morning. The officers now will suffer the jury to obtain luncheon before leaving upon the train.

The court will remain open. The court will take a recess.

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Third Day

New Bedford, June 7, 1893

The Court came in at five minutes past nine o'clock.

THOMAS KIERAN, resumed.

Cross Examination continued.

Q. (By Mr. Jennings.) Near the close of your testimony yesterday you referred to a line passing by the northwest corner of Dr. Kelley's house and the southeast corner of Andrew J. Borden's house. Is that line indicated upon this plan? (Showing plan to witness).

A. Yes, sir.

Q. How?

A. It is drawn on there,---this dotted line.

Q. How is it marked?

A. It is marked by a dotted white line on this blue print, called a "ranged" line.

Q. What does it indicate relative to the barn door on the south side of the barn?

A. It strikes 12 inches from the hinge side of the door.

Q. And the hinge side is which side?

A. The east side.

Q. Is or is not the point of contact of that line with the east side of Second street the point where there is the best observation of the barn door from the street?

MR. KNOWLTON. I submit, if your Honors please, that the jury have seen that exact thing and have the measurements.

MR. JENNINGS. Does your Honor care to hear me?

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MASON, C. J. It does not seem to the Court that it is a matter of expert knowledge. It must be obvious.

MR. JENNINGS. Not necessarily so. This man is a civil engineer, and has been along that street for the express purpose of finding the best point of observation, by instrument or otherwise, to that barn door from the street.

(The Court consulted together).

MR. JENNINGS. If your Honor will permit me to suggest a moment, it is quite material in getting the point of observation here to know the relation in which the corners of these two houses are to each other, and he has determined it in view of that fact.

MASON, C. J. Isn't it all exhibited on these plans?

MR. JENNINGS. Yes, sir. It is not exhibited that it is the best point of observation. The line is exhibited there.

MASON, C. J. You have the relation of every object and the distance on the plan. The plan is made to a scale, and the jurors have all seen the premises. It would seem to be obvious. While the Court sees no importance in the question, if the counsel deem it important it may be answered.

MR. JENNINGS. I think it is a perfectly proper question your Honor.

MASON, C. J. If you deem it important, it may be answered.

(Question read).

A. I thought when looking at it that when I was on that line I

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could see more of the door than from any other point.

MASON, C. J. That is clearly not responsive to the question.

MR. MOODY. I ask your Honor to strike it out.

MASON, C. J. That clearly may be stricken out if it is requested

MR. JENNINGS. I do not object to its being stricken out.

MASON, C. J. It may be stricken out.

(Question read)

Q. Now, if you please, answer the question just as it is put, if you can, Mr. Kieran.

A. I think it is.

Q. Did you make observations at other points?

A. Yes, sir.

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Q. Within what space?

A. Do you refer to the immediate vicinity of that line now?

Q. I refer to the barn door on the south side of the barn.

A. Yes, sir. I looked---

Q. Well, now, within what space?

A. I looked at it from the vicinity of that line within a distance of perhaps a foot or two feet either way, and also---

Q. How far south from the point of contact of that line with the street would you have to go to lose sight of the barn door altogether?

A. The instant that you go any south of it you lose sight of the barn door.

Q. How far do you have to go north of it to lose sight of the barn door altogether?

A. That I didn't measure exactly.

Q. Can you tell from your plan?

A. A very few inches. I didn't measure it, I estimated it. A very few inches north of it you lost sight of the barn door.

Q. And the moment you pass south of it you lost sight of it altogether?

A. Yes, sir.

Q. Now at that point of contact was there anything to obstruct the view of the barn door?

A. There is at the south-east corner of the Borden house a plant, some kind of a climbing plant, like a climbing rose bush, that obstructs to some extent one's view of the barn door from any point in the vicinity of that line on Second Street.

Q. Is there anything else?

A. I didn't notice anything else.

Q. Is there a fence on the front of the Kelly yard?

A. Yes, sir.

Q. How about that fence, to one standing in the middle of the

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sidewalk?

A. I didn't think that that obstructed the view to any extent.

Q. Is there also a partition fence between the Kelly yard and the Borden yard?

A. Yes, sir.

Q. What is the height of that fence? (Handing plan to witness)

A. At the front, near Second Street, the fence, measuring from Andrew Borden's yard to the top of it, is four feet ten inches high.

Q. Is that a closed fence or an open fence?

A. It is a picket fence with a cap on the top of the pickets.

Q. What is next east of that picket fence between the Kelly yard and the Borden yard?

A. The shed.

Q. And beyond the shed to the east?

A. A high board fence.

Q. How high?

A. Six feet.

Q. And what, if anything, does that form the boundary between, and the Borden yard?

A. It forms the boundary between the Borden yard and a yard which is part of Dr. Kelly's property, but which is separated from his dooryard by a partition fence.

Q. Do you know whether or not that is sometimes called Crowe's yard?

A. I know Crowe occupies it.

Q. Now on the western side of the Borden premises what is there, if anything, as a boundary?

A. Did you say on the west?

Q. I should have said the east---on the east side of the Borden premises?

A. There is a high close board fence.

Q. How high?

A. I measured the height and marked it on the plan. (Referring to the plan) Six feet.

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Q. What is there on the north side?

A. Beginning at the street, there is a low, close board fence between the Borden yard and the Mrs. Buffington property. That runs back from the street about as far from the east side of the Buffington house. There it runs against a well house. That well house stands close against the Borden barn. From that point on---

Q. Well, stop right there. Have you indicated on the plan there whether there is any door or not upon the Borden barn---front door?

A. I have not.

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Q. Is there any?

A. Yes, sir.

Q. Can you give us an idea of its size and location as to the barn?

A. I have no measurements to that large door.

Q. Well, as near as you can tell us?

A. I should have to guess at it.

Q. Well, you have seen it many times, haven't you?

A. Yes, sir.

MR. MOODY. He needs to more than guess at it. If it is an estimate---

Q. Can you give an estimate of the size of that front door of the Borden barn?

A. I think I can.

Q. Give it please.

A. The door is on the south side of the barn.

Q. The south side of the barn?

A. It is at the---the door is in the west wall of the barn, but is on the south side of the barn.

Q. The south side of the west end of the barn, do you mean?

A. Yes, sir.

MASON, C. J. Was not this all pointed out to the jury? Is it necessary to take time now for him to describe it?

MR. JENNINGS. Well, I do not know that that door was particularly pointed out. I suppose they saw it if they looked at it---so many things, your Honor.

MASON, C. J. Have they not photographs of it from which they can tell in one second more than you can get from the witness in half an hour?

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Q. (Exhibiting plan of cellar.) Was that plan drawn by you?

A. Yes, sir.

Q. What does it represent?

A. The cellar of the Borden house.

Q. Are the scales and measurements of that correct?

A. So far as I know, they are.

(The plan was marked Exhibit 9, and put in evidence.)

MR. KNOWLTON. And I suppose it may be understood that all the plans we offered yesterday are put in as evidence.

Q. Was either of those plans that was presented here yesterday, Mr. Kieran, plans showing the location and size of the closets down stairs?

A. Yes, sir.

Q. At the time you were making measurements of the closets on the lower floor of the Borden house, was your attention called particularly to the size of the closet in the front hall?

A. It was.

Q. Did you see at that time any experiment performed as to whether a person could or could not go in there and have the door completely shut?

MR. MOODY. Well, I pray your Honors judgment as to that.

MASON, C. J. He may answer.

A. I did.

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Q. Will you describe the experiment?

A. A man went into the closet and I shut the door on him in there.

Q. The closet in the front hall?

A. Yes, sir.

Q. At the foot of the stairs?

A. Yes, sir.

Q. Any difficulty in shutting the door?

A. Not from the man inside. Not any that I remember.

Q. Do you remember whether or not while he was in there the door was at any time left partly ajar to see whether he could be seen or not from the hall?

MR. KNOWLTON. I object to that.

MASON, C. J. He may answer.

A. I do remember.

Q. What was the result?

A. The door was left slightly ajar with the man in the closet and my attention was called to it. From the point I stood in the hall I looked at the door partly ajar and failed to see the man inside.

Q. Now how near were you to the door and how far from the front door of the house?

A. I think about 8 or 10 feet.

Q. From what?

A. From the closet door and practically the same distance from the front door of the house.

Q. Was or was not your observation called to it while you were standing there near the door that went into the parlor?

A. It was.

Q. Could you see him from there?

A. I did not notice as particularly there as I did from a point further back in the hall.

Q. Did you look at all from the parlor door?

A. I did, yes, sir.

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Q. Could you see him from there? Did you see him when you looked?

A. Well, when I did look before I had time to verify whether I could see him or not if the door had been left as it was, he moved out to the door and moved a little and then I did see him.

Q. Did you notice whether there was anything in the closet at the time?

A. There were some things in it, yes, sir, that I noticed.

Q. Whether or not you knew what they were ?

A. I think there were some leaves from a dining table in a box which stood up on end, and I think a carpet sweeper.

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Q. This plan will show the size of those closets, will it, by measurements?

A. Yes, sir.

Q. Did you make any experiments as to what could be seen of an object between the bureau and the bed in the room upstairs over the parlor?

A. I did.

Q. Now tell us what you did.

A. I had my assistant lay down on the floor in the guest room, between the bed and the bureau.

Q. How large is he?

A. He is just about my size?

Q. And how tall are you?

A. I don't know sir.

Q. Well.

A. Then I went down stairs and came up the stairs in the middle of the stairs, as I would if I had not been trying to see this man.

MR. KNOWLTON. We pray your Honors judgment on that portion of the answer.

Q. You mean you went up in the ordinary way that you would go up stairs?

MR. KNOWLTON. We object to that portion of the answer where he says that he went up "as he would if he were not trying to see."

MASON, C. J. It was not responsive. The witness must be very careful to observe the question that is put and answer that,---not make any other remark. When a question has been deemed competent you may answer it, but if you make any other remark no one can tell whether it is competent or not until it is before the jury. If you answer the questions we shall get on very well.

Q. Did you go up the stairs in the ordinary way that you go up stairs?

A. I did.

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Q. Now, tell us what you saw and what you did not see.

A. Under the bed, as I went up stairs, I saw the man stretched on the floor. I did not see him in any other way.

Q. Well, what were you doing when you saw him under the bed, and where were you on the stairs?

A. I was looking for him while I was going up the stairs.

Q. What do you mean,---looking to see if there was any point at which you could see him?

A. Yes, sir.

Q. And what was that point?

A. It was from the centre of one of the stairs which brought my eye a little above the level of the floor. From that point I could see under the bed, and see this man, or part of him.

Q. Could you at any other point, in passing up the stairs, except the point where your eye was just on a level with the floor?

A. Well, a short distance above there brought my eye above the level of the bottom of the bed, and then I could not see him from any other point.

Q. And that you say was when you were particularly looking to see?

A. Do I understand your question?

Q. And that you say was when you were particularly looking to see him?

A. Yes, sir, when I tried to see him.

Q. How was it when you went up as you ordinarily went up?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment as to that. That introduces too many factors.

MASON, C. J. I think that question is not proper.

Q. How was it when you stood upon the floor of the hall upstairs, in front of the door which we will call Miss Lizzie's room?

A. I couldn't see him.

Q. Do you know whether the position of the bed and the bureau, as you had it that day you were taking the observations, corresponded at all with what it was when Mrs. Borden's body was found?

A. I do not.

Q. Were you requested to take measurements by Dr. Dolan, the medical examiner, or Mr. Hilliard, of the distance between the bureau and the bed at any time?

A. I was.

Q. How soon after the tragedy?

A. I went there at Dr. Dolan's request on the 16th of August.

Q. Do you know whether the bed and the bureau were adjusted in their positions at that time for you to take measurements by Mr. Hilliard or by Dr. Dolan?

A. I do not.

Q. What was the distance at the time you took those measurements at Dr. Dolan's or Mr. Hilliard's request, of the bureau from the bed?

A. (Referring to memorandum) Thirty-four inches.

Q. What was the distance of the bureau from the bed at the time you were making the experiments you have just described?

A. Just the same.

Q. In what position did you place the man who was lying between

the bureau and the bed on the day you made the experiments, relative to the mop board at the head of the bed? (No answer.)

Q. What I want to get at is, if you know what the distance of the man's head was that was lying down the day you made the experiments---the distance of the man's head from the mop board behind the head of the bed?

A. His head was about three feet from the mop board.

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Q. Do you know how tall he was?

A. I only know he is about my size.

Q. Did his feet project beyond the edge of the bed?

A. They did.

Q. As you stood in the hall did you stand in the hall in front of Miss Lizzie's door and look for him?

A. I did.

Q. Could you see any portion of his body from that position?

A. No, sir.

Q. Do you know how far his feet projected beyond the foot of the bed?

A. I do not.

Q. Do you know the length of the bed?

A. Yes, sir. It is six feet and seven inches.

Q. Could you see his feet from any portion of the stairs?

A. I could not.

Q. (Exhibiting plan not marked.) Take the southwest corner of the L of Dr. Chagnon's house, and the northeast corner of the fence around Mr. Borden's premises; I see an open space there upon the plan. Does that represent the condition of things?

A. No, sir. There is a fence runs from the steps to the corner of the Borden lot.

MR. KNOWLTON. This plan I have shows that, and this is marked No. 2, so you can take that plan back.

Q. Can you tell what the height of that fence is?

A. I can't.

RE-DIRECT

Q. (By Mr. Moody.) Did you make some measurements with respect to a sofa under the direction of Dr. Dolan?

A. I did.

Q. Will you state those now? The sofa was placed in position, was it not, in the sitting-room, and you made some measurements?

A. I did.

Q. Will you state those measurements?

MR. ROBINSON. You assume it was put in position?

MR. KNOWLTON. Hereafter evidence will be offered as to what the position was.

A. I made a number of measurements relating to that sofa.

Q. State them all, if you please.

A. I measured the length and width of the sofa.

Q. Give us that.

A. Found the length to be seven feet and one inch over all; the width of it two feet, three inches. At each end of the sofa was a pillow or arm which was a cylindrical---just a roll.

Q. A part of the sofa itself?

A. Forming a part of the sofa itself, and between those two arms or pillows the sofa measured four feet, eleven inches. The seat of the sofa was 18 inches high, and the top of the arm 28 inches.

Q. When you say the seat of the sofa was 18 inches high, do you mean the top of the seating part of the sofa was 18 inches from the floor?

A. Yes, sir.

Q. Does that complete the measurements in respect to the sofa itself?

A. Yes, sir.

Q. Now will you state the distance that you found the sofa to be placed as it was from the various parts of the room?

A. It was placed against the north wall of the dining-room, and almost exactly in line with the east side of the door which leads from the sitting-room into the dining-room. It projected by the door just half an inch.

Q. How far was the head of the sofa from the door leading from the sitting-room to the parlor?

A. I didn't make that measurement direct. I have figures here which will give it.

Q. Without stopping to compute?

A. No, sir.

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Q. If it will take but a moment, please do so.

A. The east side of this door to which I referred is 5 ft. and 4 inches from the wall where the parlor door is.

Q. That is the east side of the dining-room door is the distance you have stated from the parlor?

A. Yes, sir.

Q. Can you tell me how far the east end, or the east pillow of the sofa was from the door leading into the kitchen?

A. I did not make that measurement direct, and I have to foot up several distances in order to get that.

Q. I will not ask you to do that. By the way, who was it, or with whom was it that you made these experiments with reference to the closet in the front entry?

A. With Mr. Jennings.

Q. I did not understand you.

A. With Mr. Jennings.

Q. Is there any ventilation whatever to that closet except by keeping the door open or partially open?

A. I did not see any.

Q. How long did Mr. Jennings stay in there with the door shut?

A. Mr. Jennings did not go in the closet.

Q. Then you misunderstood my question.

A. I mean that he did not go in the closet at the time to which I refer. He called my attention to the experiment. Mr. Phillips went in the closet.

Q. Mr. Phillips, associate of Mr. Jennings?

A. Yes, sir. Mr. Jennings went in the closet but not at the time when I made my experiment.

Q. Then I will ask the same question with respect to Mr. Phillips: How long did he stay in the closet with the door shut?

A. Oh, I don't know, not more than a few minutes, I think.

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Q. Passing back again to those measurements of which you have spoken, will you tell us the date when they were made, for the purpose of identifying the occasion?

A. Which measurements do you refer to?

Q. I mean the measurements up stairs in the guest chamber and the measurements with respect to the sofa.

A. The measurements that I have just given you in relation to the sofa---Mr. Jennings --- in relation to the bed and bureau, were made August 16.

Q. Would you be kind enough---first, give us the year.

A. 1892.

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Q. Would you be good enough to give us a duplicate of the plan of the cellar, Mr. Witness, that has been put in evidence. I do not mean at this moment, but later in the trial?

A. Yes, sir.

Q. Did you notice whether the front door of the Borden barn that has been referred to was a door that ran on wheels,---sliding door?

A. I did not.

Q. You know nothing about that?

A. No, sir.

Q. Will you state with respect to the fences between the Borden lot and the adjoining lots anything that you observed of barbed wire, either on top or on the bottom of the fences?

A. All of the fences in the back part of the Borden yard have barbed wire on top. The fence between the Borden yard and the yard occupied by Mr. Crowe, has barbed wire on the side,---on the corner of the top stringer. That is all I have any note of.

Q. Did you notice whether or not there was barbed wire at the bottom of any of these fences?

A. I did not see any.

Q. Did you notice whether or not there was barbed wire raised above the line of the fence at the corner of any of these fences?

A. I did not notice.

RE-CROSS EXAMINATION.

Q. (By Mr. Jennings.) One thing I have omitted to call your attention to. Did you take the location of any particular blood spots in or about the sitting room or dining room,--- what were pointed out to you as blood spots?

A. I did.

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Q. Where were they? Who pointed the spots out to you?

A. Dr. Dolan.

Q. The Medical Examiner?

A. Yes, sir.

Q. When?

A. On August 16, 1892.

Q. Now I will call your attention particularly to spots on or near the door opening from the sitting room into the kitchen. Will you give us the location of those spots, if any there were?

A. From the point pointed out to me by Dr. Dolan as being the point where Andrew Borden's head was on the sofa---

Q. I don't care anything about that: I want to know where they were on the door?

A. I measured from this point which Dr. Dolan showed me to the blood spot on the door.

Q. Well.

A. I think that is the only measurement I have,---to that spot.

Q. Well, how far was it?

A. Eight feet and six inches.

Q. Now can you tell us where it was in respect to the door itself?

A. It was on the architrave, on the side of the door farthest from the dining room wall.

Q. How far from the floor?

A. I did not measure,---don't know.

Q. Can you give us an idea?

A. No, sir.

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Q. Was any spot pointed out to you upon the door itself?

A. I don't remember any.

Q. Now you say this spot was on the architrave of the door. Will you state, or will you indicate, by the door behind you, what you mean by that?

A. (Indicating piece at side of door) This is called the architrave.

Q. Was it what you would call the beading?

A. Well, I refer to this whole casing as the architrave.

Q. Was the spot on what you would call the beading?

A. I don't know.

Q. Now was your attention called to a spot in the dining-room?

A. Yes, sir.

Q. Where?

A. On the casing of the door which opens from the sitting-room into the dining-room, and on that side of the door farthest away from the sofa.

Q. Now you say the casing. What is the difference between the casing and the architrave?

A. None, I mean the same thing.

Q. Well, how far was that from the floor, if you can tell us?

A. There were two spots there. One was 12-1/2 inches from the floor, the other 14-1/2.

Q. Who pointed those out to you?

A. Dr. Dolan.

Q. The medical examiner?

A. Yes, sir.

Q. Was any spot pointed out to you on the ceiling of the sitting-room?

A. None that I remember.

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JAMES A. WALSH, Sworn

Q. (By Mr. Moody.) State your full name.

A. James A. Walsh.

Q. And you are a photographer doing business in Fall River?

A. Yes, sir.

Q. At the request of the Government have you recently taken photographs of the premises?

A. Yes, sir.

Q. (Producing photographs) Are those the photographs?

A. Yes, sir.

Q. And are they accurately taken from their respective points of view?

A. Yes, sir.

Mr. MOODY. We offer these, your Honor. There are five of them.

(Five photographs of Borden premises marked Exhibits 10 to 14 inclusive.)

Q. Perhaps you had better give us the exact date when these views were taken?

A. Those were made last Saturday.

Q. Did you take some views soon after or upon the day of the homicide?

A. Yes, sir.

Q. At whose request were those views taken?

A. The medical examiner's.

Q. (Producing photograph) That is apparently a view of Mrs. Borden?

A. Yes, sir.

Q. What time in the day was this taken?

A. Probably half past three.

Q. In the afternoon?

A. Yes, sir.

Q. Under whose direction were the body, the bed and the bureau

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adjusted to the position seen in the view?

A. They were that way when I went in the house. I didn't see anyone move them.

MR. MOODY. I offer, then, first, this view.

Mr. ROBINSON. He hasn't answered your question.

Q. You took them, you say, as you found them in the afternoon?

A. Yes, sir.

MR. MOODY. Of course it is a question of the order of evidence. We shall have some evidence later on with respect to them.

MASON, C. J. It will be sufficient to mark them to identify them, and offer them later.

Q. Do you identify this one as a view that was taken upon that afternoon?

A. Yes, sir.

(Photograph of Mrs. Borden's body marked Ex. 15 for identification.)

Q. Do you identify this other view of Mrs. Borden's body as one made by you upon that afternoon?

A. Yes, sir.

(Marked Ex. 16 for identification.)

Q. Do you identify this view of Mrs. Borden's body as one taken upon that afternoon?

A. Yes, sir.

(Photograph marked Ex. 17 for identification.)

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Q. In who's presence were these views taken?

A. There were several officers there and Dr. Dolan.

Q. Was Dr. Dolan present while each view which you have identified was taken?

A. I could not say that he was present at all of them; he was at some of them.

Q. Do you remember what officer was present at all of them?

A. No, I could not say any officer was present at all,---going in and out of the room.

Q. Do you identify this (Exhibit 18) as a view taken upon Aug. 4, 1892?

A. Yes, sir.

Q. The one just identified was a view of Mrs. Borden's head?

A. Mrs. Borden.

Q. You identify that (Exhibit 19) as a view of Mr. Borden's head taken on the same day and time?

A. Yes, sir.

CROSS-EXAMINATION

Q. (By Mr. Robinson.) When were those last two taken?

A. They were taken probably at half past four that afternoon.

Q. Am I to understand that all five were taken the same afternoon?

A. Yes, sir.

Q. They are all the work of the same day?

A. Yes, sir.

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JOHN V. MORSE, Sworn.

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 60.

Q. How long has your residence been that which you have just stated?

A. Well, something over a year previous to about four months, I have been west.

Q. Prior to that time 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.

Q. Mr. Borden's first wife---

A. His first wife was my sister.

Q. ---was a Morse of course?

A. Yes, sir.

Q. Do you now recall when Mr. Borden was first married or about when?

A. Oh, I can by studying it over a little.

Q. If you can give us the date approximately without delay, I wish you would be good enough to do so.

A. I should think about fifty---about forty-seven years ago.

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Q. Of that marriage how many children were there?

A. Three.

Q. One died a good many years ago?

A. Yes, sir.

Q. The two others were the prisoner and Miss Emma Borden?

A. Yes, sir.

Q. Do you remember when your sister died?

A. I think she died in 1861.

Q. By the way, the child of the first marriage who died, was he or she older or younger than the surviving children?

A. She was younger than Lizzie, between the two.

Q. Your answer is somewhat inconsistent.

A. Well, Emma is the oldest, then Alice, her name was next, and then Lizzie.

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Q. Do you remember when Mr. Borden's second marriage occurred?

A. Well, I think, to the best of my judgment, about '64.

Q. What was the name of the lady whom he married the second time?

A. Abby.

Q. The full name, sir, if you please? Let me assist you: was it Abby Durfee Gray?

A. Abby Durfee,---that is it.

Q. And the wife of the second marriage was the Mrs. Borden whose death is the subject of this inquiry?

A. Yes, sir.

Q. How old was Andrew Borden at the time of his death?

A. I think he was 69.

Q. Do you remember his birthday?

A. I do not.

Q. How old was his wife at the time of her death?

A. I can't tell exactly; 65 or 64.

Q. Were there any children of the second marriage?

A. No, sir.

Q. Never had been a child? Are you able to give us the age of the prisoner?

A. Well, I think about 33.

Q. Do you know how old Miss Emma Borden is?

A. I think she is 41.

Q. Upon Wednesday, August 3, of last year, did you go to the Borden house at any time?

A. The 3rd?

Q. Yes, Wednesday, the 3rd of August.

A. Yes, sir.

Q. Prior to that Wednesday had you been a visitor at that house recently?

A. Well, several weeks before, I don't recollect just how many,---probably three or four weeks before that.

Q. How long before August 4 was the last time you saw Miss Lizzie Borden?

A. I have no recollection of seeing her for three or four months previous to that.

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Q. What time in the day on August 3 did you arrive at the Borden house?

A. I think about half past one.

Q. Had they had their noonday meal?

A. Yes, sir.

Q. Did you see the prisoner at any time during your stay at the noon?

A. No, sir.

Q. Whom did you see there on the Wednesday noon as you came?

A. I saw Mr. Borden, his wife, and Bridget Sullivan.

Q. Did you see any other person in the house on the Wednesday?

A. That was the 3rd, I believe?

Q. Yes, sir

A. No, sir.

Q. Did you eat dinner on Wednesday with the Bordens?

A. Yes, sir

Q. Did they sit down and eat with you, or did you eat separately?

A. I ate separately; they had been to dinner.

Q. They had completed their meal. How long did you stay on the first visit on Wednesday?

A. Between three and four o'clock.

Q. Until between three and four, you say?

A. Yes, sir.

Q. During that time did either Mr. or Mrs. Borden leave the house?

A. No, sir.

Q. Where did you go at three or four o'clock when you left the house?

A. I went over to Swansea.

Q. Did you return again on Wednesday?

A. Yes, sir.

Q. What time did you return to the house?

A. Somewhere in the neighborhood of half past eight.

Q. In the evening?

A. Yes, sir.

Q. When you returned to the house in the evening, which door did you enter?

A. The front door.

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Q. How did you get in?

A. Mrs. Borden let me in.

Q. Do you remember whether the door was locked or otherwise when you came to the door?

A. I do not.

Q. How did you announce your presence at the door?

A. I rang the bell.

Q. And Mrs. Borden came to the door?

A. Yes, sir.

Q. Did you notice after you entered whether the door was closed or not?

A. It was shut when I went in----after I went in.

Q. Did you notice anything else with respect to the door, except that it was closed?

A. No, sir.

Q. Was anyone except Mr. and Mrs. Borden in the house that you saw on the Wednesday night, when you returned?

A. No, sir, they were all there were there that I saw.

Q. Did you see Bridget Sullivan at all that night?

A. No, sir.

Q. Did you see Miss Lizzie Borden at all that night?

A. No, sir.

Q. When you entered the house, into which room did you go?

A. Sitting room.

Q. How long did you remain in the sitting room?

A. Well, if I got there at half past eight, I was there till a few minutes past ten.

Q. Who went to bed first?

A. Mrs. Borden

Q. Which way did she go to go to bed?

A. She went out of the rear door, up the back stairs.

Q. Who next went to bed?

A. Mr. Borden and me both left at the same time,---left the room.

Q. Had you heard anyone before you went to bed?

A. Yes, sir.

Q. Won't you describe what you heard before you went to bed?

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A. I heard some one come to the front door, open it, went in, went up stairs, went into Lizzie's room, shut the door.

Q. Did you see the person who went up stairs into Miss Lizzie's room?

A. I did not.

Q. In which room did you go when you went to bed?

A. The guest chamber up stairs. It is in the northwest corner of the house.

Q. Directly over the parlor?

A. Yes, sir.

Q. That is the room in which Mrs. Borden was found dead next day?

A. Yes, sir.

Q. When you got upstairs did you notice anything with respect to the door leading into the prisoner's room?

A. It was closed.

Q. Do you know whether it was locked or not?

A. I do not.

Q. You slept all night, I suppose, in that room?

A. Yes, sir.

Q. In the guest room. Do you recall whether your door was open or not during the night's sleep?

A. It was open.

Q. Did anything occur until you arose in the morning?

A. No, sir.

Q. Did you see any person or hear any person?

A. No, sir.

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

A. No, sir.

Q. What time did you get up in the morning?

A. About six o'clock.

Q. You dressed of course?

A. Yes, sir.

Q. And went down stairs?

A. Yes, sir.

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Q. Do you recall whether you left the door of the room in which you had slept open or shut?

A. Open.

Q. By the way, did you have occasion to go into that room again before you went away on Thursday?

A. No, sir.

Q. Did you notice anything with respect to Miss Lizzie Borden's room when you got up?

A. I did not.

Q. Was the door open or closed?

A. Closed.

Q. Into which room did you go when you got up and went down stairs on the Thursday morning?

A. Sitting room.

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MR. ROBINSON. May it please your Honors, we may say with perfect propriety with the counsel for the Commonwealth that we have agreed that the witnesses that have not testified on either side might be excluded from the room during the testimony of witnesses. We concur in that and we think it right in order to arrive at a right conclusion. It may have been carried out thus far. I do not know whether it has or not.

MR. KNOWLTON. It has been, strictly.

MASON, C. J. Do you desire that the order be without exceptions,---- including professionals as well as other witnesses?

MR. ROBINSON. I understand that the government desires to have some exceptions made.

MR. KNOWLTON. Yes, sir. I think it is a very proper order in itself. We have two witnesses who happen to be actively engaged in reporting for the newspapers in Fall River, however, whom we desire to except from the order, Messrs. Manning and Stevens. I have told our friends on the other side practically what they will testify to and they have agreed that they not be excluded. I never knew the order to include witnesses who are purely professional, who were to testify on matters of opinion only. We should not care to ask for the presence of Dr. Dolan because he testifies largely to facts, but when witnesses do arrive on either side who have no knowledge of the circumstances whatever, are called for their opinions as men of experience, I suppose the Court would not enforce an order for their exclusion?

MR. ROBINSON. We wish to except from the order Mr. Buck, Mr. Jubb, Mr. Holmes, and a reporter, a Mr. Caldwell, who may or may not be called.

MR. KNOWLTON. He is actively engaged in reporting now. That is agreed to.

MASON, C. J. The defence do not desire to have excluded experts who testify as such.

MR. ROBINSON. We do not.

MR. KNOWLTON. I would say Dr. Draper did assist at the autopsy, but I suppose you do not care to make an exception of him?

MR. ROBINSON. We do.

MR. KNOWLTON. We will talk of that later.

MASON, C. J. All the witnesses that have been summoned on either side, with the exception of the three that are serving as reporters and have been named, and with the exception of those who are summoned for expert testimony exclusively, and the three that have been named by counsel, called for the defence, may now withdraw, and the sheriff will see that a suitable place is provided and that all witnesses that may hereafter come will also withdraw from the room until they testify.

MR. KNOWLTON. As a matter of fact that has been largely done during the trial.

Q. I may repeat, Mr. Morse, a question or two.

A. All right.

Q. When you came down stairs on Thursday morning, into which room did you go?

A. Sitting-room.

Q. What sort of a day was it Thursday with respect to its temperature?

A. Pretty warm.

Q. Was any one else in the sitting-room when you came down stairs on Thursday morning?

A. No, sir.

Q. Did you remain in the sitting-room until some one else came down stairs?

A. Yes, sir.

Q. Was the door between that room and the kitchen open or closed at that time, if you recall?

A. I think it was closed to the best of my recollection.

Q. Whom did you first see after you got up on that morning?

A. Mr. Borden.

Q. Into which room did he come?

A. Sitting-room.

Q. Whom did you next see?

A. Mrs. Borden.

Q. Into which room did she come?

A. Sitting-room.

Q. Did you remain in the sitting-room until breakfast time?

A. Yes, sir

Q. You took breakfast, I take it, in the dining room?

A. Yes, sir.

Q. Who of the family breakfasted with you?

A. Mr. and Mrs. Borden.

Q. Can you tell us the time that breakfast was served?

A. I think about seven.

Q. Can you tell what there was for breakfast?

A. Well, we had some mutton, has some bread, coffee, cakes, &c

Q. What sort of cakes, what material?

A. Well, made of sugar, sugar cakes.

Q. Do you recall anything else except those articles you have named?

A. Fruit on the table.

Q. What sort of fruit?

A. Bananas.

Q. Do you recall a dish that is called fried johnny cakes?

A. I don't recollect whether we had fried johnny cakes or not that morning.

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Q. Do you remember about how long you remained sitting at the breakfast table?

A. Oh, I should judge about a half an hour or such a matter.

Q. Did you all arise at the same time, completing your breakfast?

A. I think so.

Q. Did all who sat at the breakfast table partake of the breakfast?

A. Yes, sir.

Q. After you had completed your breakfast into what room did you go?

A. The sitting-room.

Q. Did anyone go in with you?

A. Mr. Borden went in.

Q. What became of Mrs. Borden?

A. Well, a short time after, she came in there afterwards.

Q. Did you go into any other room than the sitting-room before you started to go away?

A. No, sir.

Q. Did Mr. and Mrs. Borden remain in the sitting-room until you started to go away or not?

A. Mr. Borden was in and out of the room several times. Mr. Borden and Mrs. Borden were both in and out. Mr. Borden was there most of the time.

Q. I didn't quite understand you.

A. Mr. and Mrs. Borden were out and in several times, but Mr. Borden was there most of the time.

Q. Did you notice where Mr. Borden went when he went out of the sitting-room?

A. I don't know any more than he went out of the east door, out into the kitchen. I don't know where he went from there.

Q. Did you notice where Mrs. Borden went when she left the sitting-room?

A. She went into the front hall.

Q. Did you notice any other place she went to except into the front hall?

A. I did not.

Q. How long was it after she went into the front hall before she returned again to the sitting-room, if you can tell?

A. I didn't see her after that.

Q. How long was that before you went away, that Mrs. Borden went into the front hall?

A. I don't think more than some fifteen or twenty minutes.

Q. Did you see Mrs. Borden doing anything by way of housework before she went into the front hall?

A. Before she went in there she was dusting.

Q. And dusting in which rooms?

A. The sitting-room.

Q. Did you see her dusting in any other room?

A. I did not.

Q. Did you see her in the dining-room at all?

A. Not after breakfast.

Q. And she was dusting with what?

A. A feather duster.

Q. Do you know whether she had anything on her head as she was dusting?

A. I think not.

Q. Did you notice, Mr. Morse?

A. I didn't notice anything.

Q. To put my question again, did you notice whether she did or not have anything on her head?

A. I think she did not.

Q. What time did you go away from the house on the Thursday morning?

A. Well, fifteen or twenty minutes to nine.

Q. In going from the sitting-room out of doors, where did you go and out of which door did you go?

A. Went out the rear door.

Q. That is what is called the screen door?

A. Yes, sir.

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Q. Did anyone accompany you?

A. Mr. Borden.

Q. As you went out did you see Bridget?

A. I did.

Q. Where was she?

A. In the kitchen.

Q. What was she doing in the kitchen?

A. I don't know; I don't recollect what she was doing.

Q. Won't you describe what occurred at the door, not stating what anyone said to you, but what occurred at the door as you went out?

A. I unhooked the door and went out, and Mr. Borden hooked it.

Q. Will you describe how that door was hooked as you unhooked it to go out?

A. A small hook right at the side, and hooks right in the casing.

Q. Was it inside or out?

A. Inside.

Q. And hooked into what?

A. Into the casing of the door.

Q. Well, into some steel or iron or metallic instrument?

A. No, I think not. I think it is just into the wood---I think it is.

Q. Do you mean to say that there was not any metallic or iron instrument into which it hooked---a ring of any sort?

A. My recollection is there was nothing there but the wood and that screw that goes into it.

Q. The screw is precisely what I wish to call attention to. Describe the screw into which it hooked?

A. A small round screw, a round place where the hook goes into it, the same as this would be.

Q. A screw, and on the end of the screw an eye for the hook to go in?

A. Yes.

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Q. Are you familiar with the premises at the present time, Mr. Morse?

A. Yes, sir.

Q. Is it or not the same arrangement that is there now?

A. Yes, sir; the same, without it has been changed within a few days.

Q. Now then, as you came to the door you say it was locked---it was hooked?

A. Yes, sir.

Q. Who unhooked it, you or Mr. Borden?

A. I did; I unhooked it.

Q. Did you have any conversation with Mr. Borden at the door? I don't ask you what was said, but did he speak to you or you to him at the door?

A. He spoke to me.

Q. After you crossed the threshold of the door did you see what was done with respect to it, whether it was closed or not?

A. I saw him hook it.

Q. Did you notice where Mr. Borden went after he hooked the door?

A. I do not.

Q. You turned and went away, did you?

A. Yes, sir.

Q. Now without any detail, where were you until you returned again that morning to the Borden house; in the city of Fall River or elsewhere?

A. The city of Fall River.

Q. Where did you first go?

A. The Post Office.

Q. And from there where did you go?

A. Went to Weybosset Street.

Q. To visit some one?

A. Yes, sir.

Q. Whom did you visit there?

A. A nephew and niece. I went to see them, there was only one of them there.

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Q. Where is Weybosset Street with respect to the Borden house?

A. It is just off Pleasant Street, and probably a mile or such a matter from Pleasant Street east.

Q. And that does not give us the distance from the Borden house. Will you give us the distance from the Borden house or about the distance?

A. Well, probably a mile and a quarter.

Q. Did you walk there or drive there?

A. I walked there.

Q. Did you visit any one there?

A. I did.

Q. I don't know whether you told me whom you visited?

A. I went up to see a nephew and niece, but the nephew wasn't there.

Q. Did you see any one in that house?

A. I saw my niece.

Q. And her name is what?

A. Morse.

Q. Do you recall how long you stayed there?

A. I left there about twenty minutes past eleven.

Q. Did you go anywhere else before you returned to the Borden house?

A. No, sir.

Q. You did return to the Borden house, did you, that morning?

A. Yes, sir.

Q. How did you come?

A. On the cars, horse cars.

Q. Horse or electric cars?

A. Horse cars.

Q. Did the horse cars go by the house on Weybosset Street?

A. It is just off a short distance from Pleasant Street where I went.

Q. That is to say, you can take the cars not far from where you were visiting?

A. Yes, probably within ten or fifteen rods.

Q. Did you have to wait for a car or did one come right along?

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A. One came right along.

Q. Where did you leave the car?

A. At the corner of Pleasant and Second Streets.

Q. That is not far from the Borden house, I believe?

A. Not a great ways.

Q. How did you go to the Borden house then?

A. Walked.

Q. Immediately?

A. Yes, sir.

Q. When you got to the Borden house did anything attract your attention at first?

A. No, sir.

Q. Where did you first go?

A. Went into the back door, round the rear part of the house, to a pear tree.

Q. Did you do anything out there?

A. Picked up two or three pears.

Q. Did you begin to eat them or not?

A. I ate part of one of them.

Q. Where did you go then?

A. Went to the house.

Q. When you got to the house were you informed by any one that something had happened there?

A. Yes, sir.

Q. In consequence of that information did you go into the house?

A. I did.

Q. Which one of Mr. and Mrs. Borden did you first see?

A. Saw Miss Lizzie.

Q. You misunderstood my question. Which one of the victims did you first see?

A. Oh, yes; Mr. Borden.

Q. After you saw Mr. Borden where did you go?

A. I went part ways up the front stairs.

Q. Won't you describe the journey up the front stairs and what you saw?

A. I went up far enough so I could look under the bed where I slept the night before, and I saw Mrs. Borden lying there with blood on her face.

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Q. About how far up the stairs did you have to go in order to see Mrs. Borden?

A. Why, probably two-thirds of the way so I could get my head above---

Q. Where was your head with respect to the floor of the hall when you saw Mrs. Borden?

A. Well, might have been six or eight inches or ten above the floor.

Q. At that time you had been informed that she was in that room, had you?

A. I had.

Q. Did Mr. Borden have a farm at any place in the neighborhood of Fall River?

A. Yes, sir.

Q. In what town?

A. Swansea.

Q. Before you went away upon the morning of Thursday had you seen Miss Lizzie Borden at all?

A. On Thursday?

Q. Yes, Thursday.

A. That is the day of the murder?

Q. Yes.

A. Yes, I saw her.

Q. Possibly I didn't make myself clear to you. I mean before Mr. Borden let you out of the door had you seen Miss Lizzie Borden?

A. No, sir.

Q. Then you didn't see her until after your return and your hearing of the homicide?

A. No, sir, I didn't see her previous to that.

Q. Had you seen Miss Lizzie Borden at all from the time you arrived Wednesday morning up to the time you left Thursday morning?

A. I did not.

Q. Can you tell who was in the kitchen or dining-room or sitting-room when you got there, Mr. Morse?

A. When I got there the day of the murder, you mean?

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Q. I mean after the murder, the homicide.

A. Mr. Sawyer was at the door, and I think Bridget Sullivan.

Q. Were there any people in the house that you now recall?

A. Dr. Bowen and two or three policemen.

Q. Do you know who those officers were?

A. I don't.

Q. Were there any ladies there at that time?

A. I think Mrs. Churchill was there. I think she was.

Q. Do you know Miss Russell?

A. I do.

Q. Was she there?

A. I think she was.

CROSS-EXAMINATION

Q. (By Mr. Robinson.) I have only a few questions, Mr. Morse. If I understand it correctly, on Thursday 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?

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

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

A. 15 or 20 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. She went to bed earlier?

A. Yes, sir.

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.

MASON, C. J. In the opinion of the Court, it will be hearsay evidence.

Q. Then until your hour of retiring, I think you said (perhaps it may be repetition) that you didn't see Bridget Sullivan that night?

A. I did not.

Q. And to make it plain, from half past one when you first came until you went to bed that night, you didn't see her at all?

A. I did not.

Q. Do you know whether or not she was in the house, of your own knowledge?

A. Not of my knowledge.

Q. Do you know from your acquaintance there where her room in the house was?

A. Bridget's room?

Q. Yes.

A. In the attic in the southeast room.

Q. Would that be above that occupied by Mr. and Mrs. Borden?

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A. Yes, sir.

Q. After you arrived in the evening at 20 minutes of nine did you and the other two remain in the sitting-room all the time until you went to bed?

A. Yes, sir.

Q. Or until on Mrs. Borden's part she went to bed?

A. Yes, sir.

Q. Do you recall whether or not as a matter of positive recollection you had a light in the sitting-room that evening?

A. I don't think there was any.

Q. You don't think there was any light in the sitting-room?

A. No, sir.

Q. This was a warm evening in August?

A. Yes, sir.

Q. You sat there in the sitting-room without having any artificial light?

A. I think there was no light. That is my recollection.

Q. Do you recall, Mr. Morse, whether the door leading from the sitting-room into the hall was open during the time you sat there?

A. I think it was open.

Q. You think it was?

A. I know it.

Q. Whether it was swung wide open?

A. I think it was.

Q. Do you recall whether or not there was any hall light?

A. I think there was a hall light.

Q. Now, as you sat there in the sitting-room, I understand from your answer that you were not seated so that you could see who did come up and go into the room above?

A. No, sir, I didn't. I sat in a position so I couldn't see into the hall.

Q. Do you recall in what part of the sitting-room you sat?

A. I sat near the middle, that is, more south, but the middle of the room east and west, right in front of a table that stands there.

Q. You know nothing whatever about that front door that night, about it's fastening at all, do you, after you came in?

A. I do not.

Q. You paid no attention to it?

A. No attention.

Q. You heard nothing about that to give you any information?

A. No, sir.

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Q. Somebody had come in and gone up stairs, passed up, according to the sounds which you heard, into the room overhead, which was Miss Lizzie's room?

A. Yes, sir.

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Q. Do you recall as a matter of recollection whether there was anything said by the person who came in so that you have a recollection of it?

A. I did not hear anything.

Q. You do not recollect that?

A. No, sir.

Q. This person, whoever it was, had gone up stairs before you retired?

A. Yes, sir.

Q. About what time did you go?

A. It might have been ten or a few minutes after. The clock struck before we retired.

Q. All you know is you went up stairs and went into your room?

A. Yes, sir.

Q. And as you went into your room you found the door open?

MR. MOODY. He did not say that.

MR. ROBINSON. (To Witness) I think you said that you found the door of the spare room open as you went up?

A. Yes, sir, I think it was open as I went up.

Q. And you left it open as you slept?

A. Yes, sir.

Q. And all you have to say of the other door is that it is the entrance into Miss Borden's room and was closed?

A. Yes.

Q. There was nothing in it's appearance to distinguish it from the ordinary closed door?

A. No, sir.

Q. There was nothing in it's appearance to indicate it was locked?

A. No, sir.

Q. Nothing of any consequence to us here transpired until the next morning so far as you know?

A. No, sir.

Q. Were you up in the morning before any one else in the house?

A. I don't know who might have been up; there was no one up down stairs; I did not hear noise, so I suppose I was the first

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one up.

Q. As you went to bed at night you went up one way to go up stairs and Mr. Borden went the other way, and in going to the back stairs you would pass out of the same little hall way that you would take if going out the side door?

A. Yes, sir

Q. Do you recollect whether or not Bridget was up that morning before you came down stairs?

MR. MOODY. How can he know?

A. I don't know.

Q. If you do not know you cannot tell.

A. I don't know.

Q. Do you know whether you heard any sounds in the kitchen indicating any one was there?

A. I did not.

Q. When did you first see her that morning?

A. At breakfast time.

Q. As you went into the dining room?

A. After I sat down to the table.

Q. Did you go out the evening before into the kitchen?

A. No, sir.

Q. Do you know whether or not there was any lamp left lighted on the kitchen table or in any part of the kitchen?

A. I don't know.

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. The same furniture?

A. About the same furniture. I don't see any difference.

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

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white ware.

Q. What did you have to eat with,---the ordinary appliances, knives and forks and spoons?

A. Knives and forks, yes.

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

A. Yes.

Q. And you did not know but what you had Johnnie-cake 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. You think you spent about half an hour there which would bring it round to about half past seven when you got through breakfast?

A. I think so.

Q. You saw Bridget, you said, when you sat at the table. What occasioned that?

A. Mrs. Borden called her when she wanted coffee or anything and she went in and out several times.

Q. How did she call her?

A. Bell.

Q. Didn't call her by her voice?

A. No, sir.

Q. Was she in and out during the breakfast?

A. In and out two or three times.

Q. Did you hear any conversation between Mrs. Borden and Bridget that morning?

A. Spoke to her about washing some windows.

Q. What did she say?

A. Said she would.

Q. That is Bridget said she would?

A. Yes.

Q. Give what Mrs. Borden said to Bridget?

A. I think she said in this way: "Bridget, I want you to wash these windows to-day."

Q. And about what time was that said?

A. At breakfast time.

Q. While you were seated at the table?

A. Yes, sir.

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? State it plainly so that we can hear it. You do not speak quite loudly enough, if you will let me say.

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.

Q. Did you specially examine it to see about that? Was your attention called to it?

A. It was not called especially to that. I went to try the door, and it was unfastened, and I found afterwards by slamming it hard it would catch and if you didn't it would not; and I took the lock off, had it fastened back so it would catch, and a new one was put on while I was there.

Q. A new one was put on?

A. I had it put on.

Q. And do you recall now that the old lock is there and a new latch also?

A. Yes, sir.

Q. And you are now referring to the one that was on August 4, and did not work?

A. Yes, sir.

Q. Now if I understand you, it was simply by mere accident that

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you discovered that the lock behaved so?

A. On my part?

Q. Yes.

A. Yes, sir.

Q. And then, having discovered that it did not lock unless the door was slammed, did you try it again?

A. I did.

Q. And what was the result?

A. The same; you could open it and go out without any trouble.

Q. Did you try it more than once?

A. Yes, sir, I tried it several times.

Q. And that, you say, was after the tragedy?

A. Yes, sir.

Q. Do you recall about how long?

A. Oh, within a day or two.

Q. And do you recall also whether any other person was present at the time,---at the time it was tried, either when you---

A. I don't think there were when I tried it.

Q. You don't think there were. You came back----passing over all the intermediate time from the breakfast, or after the time you went out, having your breakfast and finishing about half past seven, I think you say you left about fifteen to twenty minutes before nine?

A. Yes, sir.

Q. Going out the side door?

A. Yes, sir.

Q. Not going out the front door at all that morning?

A. No, sir.

Q. Not going into the front hall after you came down stairs that morning?

A. Oh, I stood in the door and took my hat off the rack, which is right close: that is all.

Q. Only to get your hat, but no further?

A. No, sir.

Q. You are sure you did not go up stairs?

A. No, sir, I was not up there at all.

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Q. Then you passed out the side door, yourself unhooking the door?

A. Yes, sir.

Q. The you preceded Mr. Borden as you stepped out into that narrow hall?

A. Yes, sir.

Q. And then he went with you and closed the door?

A. Yes, sir.

Q. And you passed out?

A. Yes, sir.

Q. Whether or not the door was locked behind you, do you know?

A. He hooked it after I went out.

Q. That is, that simple wire hook that is there?

A. Yes, sir.

Q. The wooden door, the solid door, so far as you know, was open when you went there?

A. That was open.

Q. And remained open as you passed out, so far as you know?

A. Yes, sir.

Q. Did you go directly out onto Second Street?

A. Yes, sir.

Q. Now, caring nothing about the intermediate time, can you tell us about what hour you arrived on your return?

A. I think about twenty minutes to eleven.

Q. You don't mean eleven, do you?

A. Twelve.

Q. About twenty minutes of twelve?

A. Yes, sir.

Q. And how did you approach the house, by what street?

A. Second Street.

Q. And to which door did you come?

A. I went into the rear door, back door.

Q. Now, as you passed into the yard by that Second Street entrance,---and that is the only entrance on that street, is it?

A. Yes, sir

Q. Did you notice anybody about there, particularly?

A. Not to

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draw my attention at all.

Q. That is a well traveled thoroughfare, is it not, of the city?

A. Yes, sir.

Q. A great many carriages and teams are passing, from time to time there?

A. Yes, sir, of all kinds.

Q. And it is a very noisy street, isn't it?

A. Yes, sir.

Q. So that if you are in the house and the windows are open, you can hear the clatter and noise of that street?

A. Yes, sir.

Q. And at that season of the year the windows were open?

A. Yes, sir.

Q. I think you say that as you came into the side entrance you saw somebody; and who was that?

A. Mr. Sawyer

Q. I do not ask you what was said. Where was he?

A. He was right at the door. He came, and I---

Q. On the inside or the outside, Mr. Morse?

A. He was on the outside.

Q. Was anybody with him?

A. To the best of my recollection, Bridget Sullivan.

Q. And she on the outside too?

A. No, she was inside, sitting on the stairs.

Q. I beg pardon?

A. She was on the inside, sitting on the stairs.

Q. Mr. Sawyer stood just on the top step, the broad step?

A. Yes, sir.

Q. And she was seated. The stair case comes right down close to the door?

A. Comes right down close to the door.

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Q. So that they were near enough to have conversation with each other?

A. Yes, sir; within 3 feet.

Q. I do not ask what was said, but did you notice whether there was conversation between them as you arrived there?

A. No, I didn't hear any.

Q. And you said that you went out to the pear tree?

A. Yes, sir.

Q. Well, they were not there, were they, when you went by, or were they?

A. I didn't see them outside when I went by.

Q. That is, as you came you came up the walk, and instead of passing up the steps you went right around behind the house to the pear tree?

A. I went right around to the tree.

Q. Can you locate the pear tree to which you went; I do not mean the particular one, but which part of the yard, Mr. Morse?

A. It stands to the south part of the yard, not a great ways from the end of the grape vine arbor.

Q. That would be southerly of the southerly end of the grape vine arbor?

A. Yes, sir.

Q. Well, you stopped there because there were pears there?

A. Yes, sir.

Q. Then how long do you think you were out there?

A. I don't think I was there more than two or three minutes.

Q. Then you came back to that side door?

A. Yes, sir.

Q. And then you found Mr. Sawyer and Miss Sullivan, as I understand it?

A. Yes, sir.

Q. And on the outside there was no one but Mr. Sawyer?

A. I didn't see anybody but him.

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Q. And on the inside nobody but Miss Sullivan?

A. That is all I saw.

Q. And was there anybody else around in the yard at that time?

A. I don't think there was, to my recollection.

Q. Well, you went out to this pear tree, which, taking the house as it stands there, was, if I may ask you, about in the middle of the open space?

A. The house is?

Q. No, sir, you do not get my idea. The pear tree is about in the middle of the yard space behind the house?

A. Well, it is more southerly than it would be in the centre,---more southerly.

Q. Now, as you were out there at the pear tree, if there was anybody in the yard, any policemen, were you in a position to see them?

A. Yes, sir, if they were anywhere on three sides of the house I should have seen them,--- that is, on two sides, east side and south side, I should have seen them. I wouldn't have seen them on the north side.

Q. That is, away over to the street?

A. No, sir.

Q. But as you passed into the yard there was nobody toward Mrs. Churchill's?

A. No, sir.

Q. And as you passed to the south part of the yard there was nobody there in sight?

A. No, sir.

Q. And looking out toward Mrs. Kelley's corner, there was nobody there on that side, was there?

A. No, sir.

Q. Did you notice whether the barn door was open or not?

A. I think it was closed.

Q. And at that time did you hear anybody walking around in the barn?

A. I did not.

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Q. Are you pretty positive that there wasn't anybody in the yard then except Mr. Sawyer that you afterwards saw?

A. I didn't see anybody else.

Q. You were not doing anything else except going there to get a pear?

A. That is all.

Q. Well, now, we will come back to the side door, and without giving the conversation, what did you do?

A. Went up the steps.

Q. Well, Mr. Sawyer,--- did he go in?

A. Did Mr. Sawyer go in?

Q. Did he follow you in?

A. No, sir, I think not.

Q. And what did Miss Sullivan do?

A. Nothing as I know of.

Q. Continued to sit there?

A. Yes, sir.

Q. And then where did you go?

A. Went into the sitting room.

Q. The sitting room first?

A. Yes, sir. Well, I went into the kitchen and from there in: of course I had to go there.

Q. Yes, I understand. And after going into the sitting room did you go into the dining room?

A. Not at that time.

Q. Did you go upstairs before you went into the dining room?

A. I went part way up.

Q. And did you go up stairs before you saw Miss Lizzie?

A. Yes, sir.

Q. Now when did you first see her, and where?

A. When I came down after I went part way up the stairs, she was sitting in the dining room on the lounge.

Q. Do you know who were there with her?

A. I don't think there was anyone: there was no one on the lounge with her.

Q. Don't you remember there were some ladies there?

A. Well,

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I say there was Mrs. Churchill and Miss Russell. They were in the other room: they were not in there.

Q. Were they in the sitting room?

A. They were in the sitting room when I went in.

Q. Where Mr. Borden was lying on the sofa?

A. Yes, sir.

Q. Did you remain there then from that time on, at the house?

A. I was about the house and the yard all the afternoon.

Q. I think you said that there were, as you remembered it, two or three policemen there?

A. They were in the house.

Q. After you got in the house?

A. In the house.

Q. And you do not know who they were?

A. I do not; I was not acquainted with them at all.

Q. And in what part of the house were they?

A. They were in the sitting room.

Q. Just to go back a minute,---it escaped my attention. In the yard, against the back fence, the Chagnon fence, were there some piles of lumber at that time?

A. Yes, sir.

Q. Have you seen them within a few days?

A. Not to notice them, I have not.

Q. You have seen them a good while along after this affair?

A. Yes, sir.

Q. Are they substantially,---I do not mean exactly, but are they substantially as they were then?

A. I think they are.

Q. Did you see any of the blood spots upon the parlor door,---that is, the door leading from the sitting room into the parlor?

A. I did.

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Q. And they were washed off, were they not?

A. Yes, sir.

Q. At some time,---do you remember what day?

A. If I recollect right, it was of a Sunday.

Q. They had been on there all day Thursday, the balance of the day, and Friday and Saturday?

A. Yes, sir.

Q. And were they washed off by Miss Emma?

A. Yes, sir.

Q. Were you present?

MR. KNOWLTON. Was that inquiry as to the parlor door?

MR. ROBINSON: (To the witness) The door leading from the sitting room into the parlor---directly behind the head of Mr. Borden as he lay upon the lounge?

A. Yes, sir, west of it.

Q. Did you notice on what part---well, I will not follow that now. 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.

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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.

MR. KNOWLTON. This was the day of the homicide?

Q. This was Thursday, right after you got there?

A. Well, I think it was Friday that I was with them up stairs.

Q. Friday?

A. I think so.

Q. On Thursday afternoon didn't they search some?

A. They searched themselves: I was not with them then.

Q. At any time did they search below stairs in the cellar when you were present?

A. Yes, sir.

Q. Well, where did they go then?

A. Went out to the barn.

Q. No, in the cellar I am first speaking of?

A. They went all over it.

Q. What do you mean by going all over it?

A. Well, in the different rooms. There is a wash room and a coal room and a wood room.

Q. I understand, or I would not ask it, that you were there when they were downstairs in the cellar?

A. I was down there part of the time, not all the time: just a short time.

Q. Well, when you were there, what did they look into: what did they do?

A. Well, they merely looked over the different rooms.

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Q. Did they find anything down there?

A. Except some axes---hatchets.

Q. Did you see them find those---see them have them?

A. I see them have them.

Q. How many officers were there?

A. I don't know: there were three or four, I think, down there.

Q. Would you know those axes if you were to see them?

A. I would not.

Q. Could you give us anything as to whether they were axes or hatchets?

A. I think they were mostly hatchets. I think there was one, what I call an axe.

Q. Long handle?

A. Yes, sir.

Q. Did you examine them yourself?

A. I did not. Not to take them---

Q. Do you know where they were taken from?

A. I don't know. When I saw these hatchets the doctor had them in his hands.

Q. Doctor who? Dr. Dolan?

A. Dr. Dolan, I think.

Q. The Medical examiner?

A. Yes, sir, that is the one.

Q. Did you see those implements again at any other time?

A. Several days after that, as I came around from the back of the house, there was a man on the east side of the back steps with a bag or sack, putting some axes into a sack.

Q. And when you say axes, do you mean hatchets as well?

A. Well, hatchets----I call them all axes.

Q. And did you know this man?

A. I did not.

Q. Was he a policeman, according to his uniform?

A. I should judge not.

Q. You think not; and do you know whether Dr. Dolan was there at

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that time or not?

A. He was not out there: I don't know whether he was in the house or not.

Q. After that time, so far as you know, you have not seen them?

A. No, sir.

Q. Did you attend the preliminary examination at Fall River in the District Court?

A. I did.

Q. And were axes produced there---hatchets?

A. Yes, sir.

Q. Are you able to say whether those were the ones or not?

A. I could not say.

Q. You cannot say about that. Were you there on Saturday, I am reminded to ask you?

A. Yes, sir.

Q. Well, I allude to it as a possible day when there was quite a search made by the officers, a thorough search?

A. I was there every day afterwards for three or four months.

Q. Did you attend the burial?

A. I did.

Q. And so, during that time that you were away at the cemetery, you did not know what happened?

A. I do not.

Q. But after you came back to the house was that searching of the house carried on, continued?

A. I think it was.

Q. And how many officers were participating in that, Mr. Morse?

A. I don't know: four or five, I should think.

Q. Did you know any of them?

A. I did not.

Q. Did not know even the marshal? Well, so far as you saw on that day, where did they go?

A. What do you mean---about the house?

Q. Yes, what parts of the house?

A. Oh, I don't know. I should judge, from the sound, all over it.

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Q. You think they went all over it by the sound? Up into the third story as well?

A. Yes, sir.

Q. Down cellar?

A. Yes, sir.

Q. And Miss Lizzie, the defendant, was there,---I mean in the house?

A. Yes, sir.

Q. And Miss Emma, her sister, in the house?

A. Yes, she came that night after the murders: she was there all the time afterwards.

Q. Was there any objection, the slightest, made to their looking where they wanted to?

A. No, sir.

Q. Or opening anything?

A. No, sir.

MR. ROBINSON: That is all.

(Five minute recess.)

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Q. (By Mr. Robinson.) Mr. Morse, with the Court's permission I would like to ask you one question, because I think you were possibly in error. Did you give correctly, do you think, the date of your sister's death---the year? I mean the first Mrs. Borden?

A. Why, I know that was just the best of my recollection, about that time. It may have been within a year or so of it, I think. I know it was during war times, and I think about the first of it too. It was during war times.

Q. Yes. Well, now, as you recall it, do you recollect that Miss Lizzie was born in July, 1860?

A. I make it she is about 32 or 33 years old.

Q. Yes, sir. But we are not speaking of that, but whether you did not put the date of your sister's death about a year or two too early?

A. Well, I may.

Q. Yes. Miss Lizzie was a little girl two or three years old at that time, wasn't she, at the time your sister died, instead of being about a year?

A. I thought she was about three years old when he married the second time. I have got my mind that way.

Q. Well, you are not certain now, correctly, then; but upon reflection I understand you to say you cannot now positively state the year?

A. No, I cannot.

Q. You may be in error a year or two?

A. Yes.

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RE-DIRECT.

Q. (By Mr. Moody.) Be good enough to give us the name of your sister?

A. You want the whole name?

Q. Yes.

A. Sarah Anthony Morse.

Q. And by the request of Gov. Robinson I ask whether she died in Fall River or not?

A. She did.

Q. Was the second marriage in Fall River?

A. Yes, sir.

Q. You have spoken of some axes and hatchets that were taken away by an officer. Were they hatchets and axes which had handles on them?

A. Yes, sir; those I saw.

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Q. All of them had handles?

A. I think so.

Q. Do you recall whether it was Mr. Edson who took them away?

A. I don't.

Q. Do you know Mr. Edson?

A. I do not.

Q. Did you see a man in the preliminary hearing who testified with reference to taking those hatchets away?

A. I don't recollect that I did.

Q. Is Second street a paved street, macadam street or a mere dirt street at the part that passes Mr. Borden's house?

A. Why, I think that is macadamized there. I think it is. I know it is very hard.

Q. You spoke of using a lamp to go to bed. Is there any gas in the house?

A. No, sir.

Q. Will you give us the best judgment you have as to the time when the person came in and went up stairs into Miss Lizzie Borden's room on the evening of Wednesday?

A. To the best of my recollection, about quarter past nine.

ABRAHAM G. HART, sworn

Q. (By Mr. Moody.) Abraham G. Hart is your name?

A. Yes, sir.

Q. You live in Fall River?

A. I do, sir.

Q. Are you treasurer of some bank?

A. I am, of the Union Savings Bank.

Q. Were you acquainted with Mr. Andrew J. Borden in his life?

A. I was for 40 years or more.

Q. Where is your bank situated?

A. In what is sometimes

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called Market Square, North Main street, a few rods from the City Hall.

Q. Upon which side of North Main street?

A. Upon the east side.

Q. Is it just north of City Hall?

A. It is.

Q. Did Mr. Borden have any relation to that bank?

A. He was president of the bank for four or five years before he died.

Q. Do you recall the day of these homicides?

A. I do.

Q. Did you see Mr. Borden at any time during that day?

A. I did.

Q. When and where did you see him?

A. He came into the bank as was his usual custom in the morning about half past nine. It wouldn't vary but a few minutes from that time, I think.

Q. Do you have any recollection of looking at any time-piece?

A. I don't think I did.

Q. Did you have any talk with him?

A. I did.

Q. Can you tell how long he remained there, or about how long he remained there?

A. He remained there about five minutes, no more than seven.

Q. Was anyone with him?

A. There was not. There were others present, but not with him.

Q. Did you notice where he went after he left your bank?

A. I did not, except that he turned to the right, as I remember.

Q. Is there any other bank in the building in which your bank is?

A. There is the National Union bank, a separate organization from the savings bank.

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MR. KNOWLTON. It is agreed, if your Honors please, to save calling a number of witnesses---

MR. ROBINSON. I will state what we agreed to. For the purposes of this trial, your Honors, it is agreed that the defendant, having no knowledge in regard to a will or otherwise, so far as is now ascertained, the deceased was intestate. Also, without any further inquiries, that the amount of property in the name of Andrew J. Borden at the time of his death may be taken to be from \$250,000 to \$300,000.

MR. KNOWLTON. That is agreeable to us. That saves calling a number of witnesses.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) It was a usual thing for Mr. Borden to come about that time?

A. Yes, sir.

Q. There was nothing unusual in his coming at that time?

A. No, sir.

Q. You think it was half past nine and that he ought to come at half past nine as he usually did?

A. Generally he came at that time, but sometimes he would defer it until later when he was going over the river to his farm, between 11 and 12 o'clock.

Q. That would make it a good deal later?

A. Yes, sir.

Q. As you recall it, you have not much doubt he was there some time between nine thirty and nine-thirty five? It would swing either way?

A. I don't think it would swing either way five minutes from half past nine.

Q. You say when he went out of your door he turned to the

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right?

A. Yes, sir.

Q. Which would lead him along further on the main street?

A. Yes, sir. I would not be positive that he turned to the right. That is my impression, but I would not say so under oath. That is the impression I got.

Q. But if a person were intending to go from your bank to the First National Bank, he would go to the right?

A. Yes, sir.

Q. And your bank is somewhere between City Hall and the Wilbur house?

A. Yes, sir.

Q. To your sight that morning did Mr. Borden seem in the usual health?

A. I think he was under the weather, as we say.

Q. He did not look as well as usual?

A. No, sir.

JOHN T. BURRILL, Sworn

Q. (By Mr. Moody.) What is your name?

A. John T. Burrill.

Q. You live in Fall River?

A. I do.

Q. What is your occupation?

A. Cashier of the National Union Bank.

Q. In what building is that situated?

A. In the same building as the Union Savings Bank, No. 3 Market Square.

Q. In the same building as the bank of which Mr. Hart is Cashier?

A. In the same room.

Q. You remember the date of these homicides, August 4, 1892?

A. I do.

Q. Did Mr. Borden have any connection with your bank?

A. He was a stock-holder and depositor.

Q. Did you see him on the morning of August 4, 1892?

A. I did.

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Q. Where did you see him?

A. In the bank in front of the counter where I was at work.

Q. Did you see him in conversation or standing with any one?

A. I saw him standing in conversation with Mr. Hart and a colored man who was there in regard to a loan.

Q. That is, Mr. Abraham G. Hart, the last witness?

A. Yes, sir.

Q. Have you any means of fixing the time or about the time that you saw Mr. Borden there?

A. Not accurately, but I think I can tell somewhere near.

Q. Very well: do so.

A. I think it must have been between quarter past nine and quarter to ten.

Q. Do you recall how long, or about how long, he remained in the building?

A. I should say possibly ten or fifteen minutes.

Q. Did you notice where he went to when he turned and went out of the building?

A. I did not.

Q. Is your bank in the rear or front part of the room?

A. The front.

Q. Mr. Hart's bank is in the rear of yours?

A. Yes, sir.

Q. There is a single counter, a continuous counter, I suppose.

A. It runs the length of the building.

Q. And a counter only on one side of the room?

A. That is all.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) Do I get it right that you say that he came there somewhere between quarter past nine and a quarter of ten?

A. Yes, sir.

Q. That is, you fix these times as the times when he might have

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come in there as somewhere between those two times?

A. Yes, sir.

Q. And you say whenever he did come in that morning, he staid ten or fifteen minutes?

A. According to the best of my recollection.

Q. So that if he came in at quarter of ten or thereabouts, he would not leave you until what time?

A. That would make it between that and eleven o'clock. My impression is that it was between quarter past nine and quarter before ten.

Q. Now does that time to your recollection include the time he was in there, so that you would get him out---if I may be permitted to say so, before ten o'clock?

A. Yes, sir.

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EVERETT M. COOK, Sworn.

Q. (By Mr. Moody.) Your full name is Everett Cook?

A. Everett M. Cook, yes, sir.

Q. You live in Fall River, sir?

A. Yes, sir.

Q. Your occupation is what?

A. Cashier of the First National Bank of Fall River.

Q. And you held that position, did you, on August 4th, 1892?

A. I did, sir.

Q. Where is your bank situated?

A. On North Main Street.

Q. How with reference to the City Hall and the Union Savings Bank? Is it nearer City Hall or more distant from City Hall than the Union Savings Bank?

A. More distant.

Q. That is, it is between the Union Savings Bank and the Mellin House?

A. Yes, sir.

Q. It is on the same side of the street as the Union Savings Bank?

A. No, sir.

Q. The other side?

A. Yes, sir.

Q. Is there any other banking institution in the same building with yours?

A. Yes, sir.

Q. What is that?

A. The B.M.C. Durfee Safe Deposit and Trust Company.

Q. Had Mr. Borden any relation to your bank?

A. To the Trust Company. He was a director.

Q. The Trust Company is in the same building? Is it in the same room?

A. Yes, sir.

Q. In the same room as well as in the same building?

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A. Behind the same counter.

Q. I don't know that I quite caught what his relation was to the Trust Company?

A. He was a director.

Q. Did you see him on the morning of August 4th, 1892, the day of his death?

A. I did, sir.

Q. Where did you see him?

A. At the bank.

Q. Did you see him transact any business there?

A. Yes, sir.

Q. With whom?

A. With me.

Q. How long did he remain in the bank?

A. About ten minutes.

Q. What time did he come in?

A. About quarter of ten.

Q. And left ten minutes later?

A. Yes, sir.

Q. Did you have occasion to consult any time piece with reference to the time?

A. There was a clock, and I should say about that time I had the right of way on the counter that morning, and I glanced at the clock, and I should fix the time about quarter of ten.

Q. Did you notice in which direction he went as he left your bank?

A. I did not.

Q. You told us how long he stayed with you?

A. Yes, sir.

Q. About what was it?

A. About ten minutes.

CROSS-EXAMINATION

Q. (By Mr. Robinson.) His stop was about ten minutes?

A. Yes, sir.

Q. To the best of your recollection; and he went out about five minutes of ten?

A. Yes, sir.

Q. Do you know the defendant, Miss Lizzie Borden?

A. Yes, sir.

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Q. At any time has she had an account in your bank as depositor?

A. I think not, as a personal account.

Q. Do you know anything about the deposits in the B.M.C. Durfee Trust Company?

A. Yes, sir.

Q. Do you know whether or not she had a deposit there?

A. I think not, sir.

Q. You do not recall it?

A. No, sir.

Q. And at that time. Do you know positively without looking?

A. No, sir.

JONATHAN CLEGG, Sworn

Q. (By Mr. Moody.) What is your full name, sir?

A. Jonathan Clegg.

Q. Are you somewhat hard of hearing, Mr. Clegg?

A. Yes, sir.

Q. What is your business?

A. Hatter and gents' furnishings.

Q. Do you live in Fall River?

A. Yes, sir.

Q. How long have you lived in Fall River?

A. 22 years.

Q. Did you know Mr. Andrew Borden in his lifetime?

A. Yes, sir.

Q. How long had you known him?

A. Oh, perhaps 15 years.

Q. Do you recall the day of his death, August 4th, 1892?

A. Yes.

Q. Upon that day did you see him anywhere?

A. Yes.

Q. On August 4, 1892, where was your place of business?

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A. No. 6, North Main Street.

Q. Where is that place of business with reference to the Union Savings Bank?

A. Well, it might have been fifty yards, the opposite side of the street.

Q. Is it the shop that is now occupied as a fruit store?

A. Yes, sir.

Q. Where did you first see Mr. Borden on the morning of August 4th?

A. In my store, 6 North Main Street.

Q. Did you see him before he came into the store?

A. I called him into the store. I wished to see him that morning.

Q. Where was he when you called him into the store?

A. The opposite side of the street. I was wanting to see him specially that morning.

Q. Did you have some talk with him in your store?

A. Yes, sir.

Q. About how long did he remain in the store?

A. Well, perhaps about eight or nine minutes.

Q. Was any one with him at the time?

A. No, sir.

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Q. Did you notice where he went, in which direction he went when he went out of the store?

A. Yes, sir, he went south.

Q. Is that towards the City Hall?

A. Yes, sir.

Q. You occupy another store at the present time?

A. Yes, sir.

Q. Did he go in the direction of that store that you know occupy?

A. Yes, sir.

Q. Now, will you tell me what time it was when Mr. Borden left your shop?

A. Exactly 29 minutes past ten.

Q. By what means did you fix that time?

A. The City Hall clock.

Q. Did you have some occasion---I don't ask what it is---to fix the time that Mr. Borden left you?

A. Well, the reason why I fix it exactly---

Q. No, I didn't ask you what the reason was, but did you have some reason?

A. Yes, sir.

Q. Did you look at the clock before he left you, or after he left you, or as he left you?

A. Just as he left me I looked at the City Hall clock.

Q. Did you ever see him again alive?

A. No, sir.

Q. At that time, Mr. Clegg, were you having some dealings with him with reference to hiring another store?

A. I had already hired it. It was to make arrangements.

Q. And that store is where?

A. 92 South Main Street.

Q. How far from the corner of Spring Street?

A. How far from the present one?

Q. The store that you had then hired from him?

A. Well, I should say it is 300 yards.

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Q. From the corner of Spring Street?

A. Oh, my present store from the corner of Spring Street?

Q. Yes.

A. Oh, three stores, I think.

Q. Near the corner?

A. Yes.

Q. Had you gone to Mr. Borden's house to visit him with reference to this store?

A. Yes, sir.

Q. When and how many times did you go there?

A. Twice.

Q. Do you remember what days you went there?

A. Yes, Tuesday the first day.

Q. Tuesday of this same week?

A. Tuesday, on the second.

Q. Tuesday, the 2d of August, 1892. What day did you next go there?

A. Wednesday.

Q. The following day?

A. Yes, sir.

Q. So that you were there the two days preceding the homicide?

A. Yes, sir.

Q. Who let you in either of those times?

A. The servant Bridget, as I afterwards learned.

Q. Both times?

A. No. I think he let me in the first time. Bridget let me in the second time.

Q. How long did you remain in the house with him?

A. Well, about ten minutes.

Q. Did you go in the front or rear door?

A. Front door.

Q. What was the subject of your conversation?

A. Hiring the store.

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CROSS-EXAMINATION.

Q. (By Mr. Robinson.) Let me see if we understand it right. Were you in a store that is nearer the City Hall than the one where you are now?

A. Yes, sir.

Q. And you wanted to meet him at the store where you now are that morning?

A. What is that?

Q. Did you want to see him at No. 92 Main street that morning?

A. Yes, sir.

Q. And did you see him there?

A. I saw him in 6 North Main street, but I didn't see him at 92.

Q. It was when he left No. 6 North Main street that you looked at the clock?

A. Yes, sir.

Q. I want to know how far that No. 6 North Main street is distant from City Hall?

A. Well, in the mind's eye, I should say from City Hall to my door, it might be 80 yards.

Q. That is the old store?

A. Yes, sir.

Q. And then about how far is it from the old store to the new store?

A. Well. I should [say], 250 yards perhaps.

Q. Was the old store north or south of the City Hall?

A. North. The old store is north of the City Hall.

Q. And the new store, where was that?

A. South.

Q. So that in going he had to pass the City Hall to go from the old store to the new?

A. Yes, sir.

Q. And the new store is only three stores away from the corner of Spring street?

A. Yes, sir.

Q. And Spring street leads off of Main street up into Second

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street?

A. Yes, sir.

Q. You are very clear in your mind that he went out of No. 6 North Main street at ten o'clock and 29 minutes?

A. Yes, sir.

Q. That is the last time you saw him alive?

A. Yes, sir.

JOSEPH SHORTSLEEVES, sworn.

Q. (By Mr. Moody.) Is your name Joseph Shortsleeves?

A. Yes, sir.

Q. Where do you reside, Mr. Shortsleeves?

A. I live in No. 8 Dover street.

Q. In Fall River?

A. Yes, Fall River.

Q. How long have you lived in Fall River?

A. About 16 years.

Q. What is your present occupation?

A. Carpenter by trade.

Q. Have you always been a carpenter?

A. Well, ever since I left the factories, and that is 22 years ago.

Q. Did you know Mr. Andrew Borden when he was alive?

A. Yes, sir.

Q. How long had you known Mr. Borden?

A. Oh, in the neighborhood of ten years.

Q. Had you done some work for him?

A. Yes, sir.

Q. On the 4th of August, 1892, were you at work upon the store that is now occupied by Mr. Clegg?

A. Yes, sir.

Q. The store that is on what street?

A. On Main street, sir.

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Q. And near the corner of Spring street?

A. Third house from Spring street towards the City Hall.

Q. It was South Main street that you were?

A. South Main street, yes, sir.

Q. What were you doing about that store on August 4th?

A. We were making changes in the front windows. We were lowering them down.

Q. It was Mr. Borden's property, as you understood it?

A. Yes, sir.

Q. And, as you understood it, one that was let to Mr. Clegg?

A. Mr. Clegg, yes, sir.

Q. And one that Mr. Clegg now occupies?

A. Occupies at the present time, yes, sir.

Q. Did you see Mr. Borden on this morning of August 4th?

A. Yes, sir.

Q. Where did you see him?

A. I saw him coming up South Main street from the City Hall towards where we were working.

Q. And would that be coming also from the direction of the shop that Mr. Clegg then occupied?

A. Occupied at the present time---at that time?

Q. No. You say he was coming towards your place?

A. Toward where we was working.

Q. From City Hall?

A. From City Hall.

Q. And that would also be coming from the shop that Mr. Clegg then occupied?

A. Yes, sir.

Q. When he came to your shop, what did he do?

A. He came

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into the front door, went to the back part of the store, picked up a lock that had been on the front store door. It was all broken to pieces. He looked at it, laid it down again, went up stairs, then went from the back part of the shop up to the front part of the shop up stairs over our head; was there a few moments, and came down again and picked the lock up and walked out.

Q. In the course of all this did you exchange any words with him?

A. No, sir, not at that time.

Q. Can you tell me about what time it was that he was there?

A. As near as I can remember, it was between half past ten and quarter to eleven.

Q. Did you have any occasion to observe any time-piece at that time?

A. Well, no, not in particular only, of course, I had a watch in my pocket, and I had the City Hall to look at.

Q. I only ask you if you had occasion to look at a time-piece?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Your testimony as to the time is an estimate then?

A. Yes, sir.

Q. When he left did you notice in which direction he was going?

A. Yes, sir.

Q. In which direction did he disappear?

A. He went towards the west across the road, part ways across South Main Street.

Q. Towards the other side of South Main street?

A. Yes, sir.

Q. Did you notice where he went then?

A. He came back, then turned around and looked at us. Says I, "Good morning, Mr. Borden," and says he, "Good morning to you."

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Q. What he do then?

A. He stepped into the store and said---

Q. I don't care what he said. He said something to you, did he?

A. Yes, sir.

Q. Then what did he do?

A. After he had spoken to us, he turned around and went up Main street as far as Spring, then he got out of our sight, then.

Q. In which direction did he turn when he passed out of sight on Main Street?

A. He turned to his left.

Q. I may not have understood you, Mr. Shortsleeves. Did I understand you that he came into the store twice?

A. No, sir.

Q. He did not first come in and then start out across the street and come back again?

A. He come as far as the window where we were at work on the sidewalk.

Q. Was anyone at work with you that day, Mr. Shortsleeves?

A. Yes, sir.

Q. Who was it?

A. Mr. Mather, James Mather.

Q. Did you notice whether he looked at any clock at the time---I do not ask you what he told you, but did you notice him?

A. Well, I noticed he stepped onto the sidewalk and looked down the street; I could not say if he looked at the town clock or not.

Q. From the sidewalk in front of this store is the town clock in sight?

A. Yes, sir, plain.

Q. When did he step out and look down in the direction of the city hall? Was it just as Mr. Borden left, before he left, or after he left?

A. No, when he was on the way coming up.

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CROSS EXAMINATION.

Q. (By Mr. Robinson.) You were at work at No. 92 South Main street?

A. Yes, sir.

Q. And James Mather was working with you?

A. Yes, sir.

Q. If I understand you correctly now, he (Mr. Borden) came along up on your side of the street and stopped, as it where, right in front of your store for an instant?

A. I didn't understand the first word: please tell me again.

Q. As I understand it,---I want to get it right,---the first you noticed of him, he came along up in front of the store where you were working?

A. No, sir.

Q. Well, tell me correctly, because if I am wrong I want to be set right.

A. I should think he was about seventy-five feet from where we were at work: I see him coming up Main street.

Q. And did he come right along up in front of the store?

A. Yes, sir; he came right along up.

Q. And then do I get it right that he went over across the street to the other side?

A. No, sir.

Q. Did you not say something about his coming across the street?

A. He came into the store first: he went into the building first.

Q. He came along up towards the store, the first time, or the only time perhaps: it was when your companion looked at the

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clock?

A. Yes, sir.

Q. As he was coming up, approaching the store?

A. Yes, sir. After I told him Mr. Borden was---

Q. I don't want to know what you told him: leave that out. Then Mr. Borden came in the store, did he?

A. Yes, sir.

Q. And went in around in the lower part?

A. He went right straight through the lower part, didn't go around it: he went through to the back stairs.

Q. And went up stairs?

A. Yes, sir.

Q. And then how long do you think he was gone up stairs?

A. Well, I should judge in the neighborhood of two minutes.

Q. He came down pretty nearly directly?

A. Yes, sir.

Q. And then did he go partly across the street or over the street?

A. Partly across the street, sir: he did not go clear across.

Q. And then changed back again and came over onto the same sidewalk?

A. He turned around and looked at the building and then came over to us. I said "Good-morning Mr. Borden." "Good-morning" he said.

Q. Didn't he say "Good-morning" when he first came into the store?

A. No, sir.

Q. He had not met you then?

A. He had not noticed us.

Q. So that he went into the store and came up stairs?

A. Yes, sir.

Q. And came down again and started to go across the street, and before getting across he turned back, and then came up to you and said "Good-morning"?

A. Yes, sir.

Q. I do not ask what the conversation was, but did he talk more with you than that?

A. Yes, sir.

Q. And about how long did he stay there before he started towards home?

A. I should think probably three or four minutes.

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Q. So that from the time that you saw him coming, about 75 feet away from the store, he came up to the front of the store, went in and was some two or three minutes up stairs and down before he passed out on to the sidewalk again, is that right?

A. That is about as near as I can come to it.

Q. And then he started to go across the street and did not get quite over?

A. No, sir.

Q. Started to come back, exchanged good mornings with you and your friend both and stopped and talked with you three or four minutes?

A. Somewhere's about that.

Q. He did not go back into the store again?

A. No, sir.

Q. Which way did he go?

A. Turned round and went on South Main street as far as Spring street.

Q. Did you see him go round the corner?

A. I could not say. I looked back a few minutes afterwards and he was out of my sight.

Q. You did not see him go round Spring street?

A. No, sir, not round Spring street.

RE-DIRECT EXAMINATION.

Q. (By Mr. Moody.) You said that Mr. Mather looked at the clock after you had told him something. Did he look at the clock before or after you said, Good morning to Mr. Borden?

A. He looked down the street. I don't know whether he looked at the clock before I said good morning to Mr. Borden.

Q. You cannot tell whether he looked at the clock or not?

A. No, I could not exactly say as he did.

Q. (By Mr. Robinson.) I think you said before that as Mr.

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Borden was coming up the sidewalk and coming to the store, you saw him about 75 feet away?

A. From where we were working.

Q. And then he came in and went up stairs, came down and went partly across the street?

A. Yes, sir.

Q. And came back and when he was coming across the street your friend looked down at the clock?

A. I did not say it that way.

Q. Tell me how it was.

A. I said I saw Mr. Borden coming up towards where we were working, about 75 feet from where we were.

Q. And what was done?

A. I told him Mr. Borden was coming. Then he stepped out on the sidewalk---I don't know whether to see the clock or Mr. Borden, but he was coming up anyway,---so finally he stepped into the store again.

Q. He was coming up and from some conversation you had with your companion your companion stepped out on the sidewalk and looked down the street towards the clock, we will say?

A. Toward Mr. Borden. I told him Mr. Borden was coming up. I don't know which he looked to.

Q. That is, when he came right up to the front of your store when you were at work,---

A. That was when he was coming up.

Q. Before he went into the store?

A. Yes, sir.

Q. So that after your companion looked at the clock, Mr. Borden, or down the street, after he looked down the street towards City Hall, Mr. Borden went into your store, came down, started to go across the street and came back and talked with you three or four minutes and then walked on towards home?

A. Yes, sir.

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JAMES MATHER, Sworn

Q. (By Mr. Moody.) Your name is James Mather, is it?

A. Yes, sir.

Q. You live in Fall River?

A. Yes, sir.

Q. How long have you lived in Fall river?

A. Four years.

Q. What is your business, Mr. Mather?

A. Carpenter.

Q. Did you know Mr. Borden in his life time?

A. No, sir.

Q. And never saw him up to at least August 4th?

A. No, sir.

Q. On the 4th day of August 1892, where were you working?

A. I was working up in Jonathan Clegg's store, fixing it for him.

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Q. Do you mean the store that he occupies at the present time?

A. No, sir; the one that he was going to occupy.

Q. The one he was going to occupy on August 4th. Is it the store near the corner of Spring street?

A. Yes, sir.

Q. On South Main Street?

A. Yes, sir.

Q. Who was working with you about the store that morning?

A. Mr. Shortsleeves.

Q. The last witness who came in here?

A. Yes, sir.

Q. What were you doing about the store?

A. We were going to drop the front windows down lower, nearer the sidewalk. We were working on that.

Q. Where were you working?

A. On the outside.

Q. You were working all the time on the outside?

A. Pretty near.

Q. Well, asking as to the time between ten and eleven, were you on the outside?

A. Yes, sir.

Q. All the time. When you were on the outside was the City Hall clock in your view or not?

A. It was in my view.

Q. Do you recall on that morning a person coming there that was told to you to be Mr. Borden?

A. Mr. Shortsleeves is the one that told me it was Mr. Borden.

Q. Let me go ahead a little. Did you hear any conversation between this person who came and Mr. Shortsleeves?

A. Mr. Borden, you mean?

Q. Well, yes, Mr. Borden.

A. Yes, sir.

Q. And any greeting, any morning greeting was there? Did you hear that?

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A. Yes, sir.

Q. Now by what name was that man addressed and how did he reply?

A. Mr. Shortsleeves said, "Good morning, Mr. Borden."

MR. ROBINSON. There is no question it was Mr. Borden, if that is what you want.

Q. Well, then, we will call that man Mr. Borden. When Mr. Borden came to the store did he go in?

A. Yes, sir.

Q. Did you see him on his way to the store or didn't you see him until he got there?

A. I didn't see him until he got there.

Q. What did he do after he got there?

A. He went straight in the store and went upstairs.

Q. What did he do after he went upstairs?

A. I don't know.

Q. Did you see him come down again?

A. Yes, sir.

Q. What did he do after he came down again?

A. He walked out.

Q. Did you notice where he went?

A. He went partly across the street.

Q. What did he do then?

A. He stopped and looked round again and came straight back to the store again.

Q. Did he go inside it?

A. No, sir; he stood at the door where we were working, or the window, rather.

Q. Did he do anything or have any conversation with any one?

A. He spoke to Mr. Shortsleeves that time.

Q. Then what did he do?

A. He went then inside and picked up a lock, and then went out again.

Q. Did you notice where he went?

A. He turned in the direction of Spring Street.

Q. You were on the outside so you could see?

A. Yes, sir.

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Q. Now can you tell me what time it was when Mr. Borden went away from that store?

A. About twenty minutes of eleven.

Q. Did you consult any time-piece at or about the time he went away?

A. I looked at City Hall clock.

Q. Did you notice where Mr. Borden went when he got to the corner of Spring Street?

A. I didn't see him get that far.

Q. Did he come back to the store again or did you see him again at all?

A. No, sir.

Q. The last you saw of him he was between this store and the corner of Spring Street?

A. Yes, sir.

Q. Going towards Spring Street?

A. Yes, sir.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) Were you lowering the windows in the front of the block?

A. Yes, sir.

Q. And you were working on the outside of the window and Mr. Shortsleeves was working on the inside?

A. Yes, sir.

Q. Was there a front in the building at that time?

A. The sash was taken out.

Q. I mean, was the front wall of the building there, and you had cut out the place for getting the windows in?

A. Oh, no; it was old sash we took out and dropped nearer to the sidewalk; it was high up.

Q. Whether it was a new building?

A. No, sir.

Q. And old building being altered?

A. Yes, sir.

Q. And so that the front wall of the building was there?

A. Yes, sir.

Q. Now were there two windows in the front of the store that you were lowering?

A. Yes, sir.

Q. And which window, as you stood facing the store in the front, which window were you working on at that time?

A. The one nearest the north side, nearest the City Hall.

Q. On the left hand side of the door as you would face the building?

A. Yes, sir.

Q. And Mr. Shortsleeves was working on the inside and you on the outside?

A. Yes, sir.

Q. Did you see him coming up the street before he reached the store?

A. No, sir.

Q. The first thing you knew, did he say "Good morning," or you to him?

A. Mr. Shortsleeves spoke "Good morning" to him. Then he went right in. This is the first I see of him; I didn't know him then.

Q. What is that?

A. That is the first time I had seen him.

Q. Did you say you didn't know him?

A. Not until after he returned.

Q. When did you look at the clock?

A. Twenty minutes to eleven.

Q. I know. But I mean when with reference to Mr. Borden. Where was he when you looked at the clock?

A. I couldn't say whether it was the time he left or the time he came there; it was about that time.

Q. Then it might have been that he got there twenty minutes of eleven?

A. It might have been.

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Q. Well, to the best of your recollection that was so, wasn't it?

A. Yes, sir.

Q. To the best of your recollection, 10:40, twenty minutes before eleven, was when he came up?

A. Not when he came up, but while he was around there. That is what I meant.

Q. Now what was he doing when you looked at the clock?

A. I couldn't see what he was doing what time I looked at the clock; I couldn't say that.

Q. When you looked at the clock it was just twenty minutes of eleven?

A. Well, it might have been 19 or 21, but it was neither more nor less.

Q. Something like that?

A. Yes, sir.

Q. Can you tell me whether he went upstairs after you looked at the clock or before?

A. I couldn't say.

Q. And he was there some three or four minutes, upstairs and around?

A. About that time.

Q. And then he came down. Did he stop to talk to you again?

A. No, sir; he came down and went out.

Q. In the first place he started to go across the street, didn't he?

A. Yes, sir.

Q. And then stopped and looked at the building?

A. Yes, sir.

Q. And then he came back?

A. Yes, sir.

Q. And then he stopped and talked with you there some?

A. Talked to Mr. Shortsleeves.

Q. And you were present?

A. Yes, sir.

Q. And then how long did he stay there talking at that time?

A. About a minute or so.

Q. Now you are not able to say positively the time any nearer that, somewhere from 19 to 21 minutes of eleven?

A. No, sir; not positively.

Q. And you cannot positively say where Mr. Borden was when you looked at the clock?

A. No, sir.

Q. And you cannot positively say how long after you looked at the clock he was there or about the premises?

A. No, sir.

Q. Was it something like, take it all together, after you looked at the clock, some five minutes or so?

A. I couldn't say.

Q. To the best of your recollection, can you say?

A. To the best of my recollection, I couldn't say.

Q. You wouldn't be able to tell us then positively that he did not leave there till quarter of eleven, would you, positively?

A. Well, I don't think he stayed that time, but I wouldn't be positive.

Q. And then he walked along up the hill?

A. Walked up towards Spring Street.

Q. It is rising ground, isn't it?

A. No, about level. Spring Street is rising ground up to Second Street.

Q. Well, he was an elderly man?

A. Yes, sir.

Q. And it was a very warm morning, wasn't it?

A. Yes, sir.

Q. And of course he didn't hurry much?

A. I couldn't say.

Q. And you didn't notice how fast he walked?

A. I didn't notice.

MR. MOODY. Although the jury have seen these various spots, I think it might add to the clearness if I pointed them out to them.

(Mr. Moody indicated the localities on the plan to the jury.)

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BRIDGET SULLIVAN, Sworn.

Q. (By Mr. Moody.) What is your full name?

A. Bridget Sullivan.

Q. And were you in the Borden household sometimes called Maggie?

A. Yes, sir.

Q. By whom were you called Maggie, by the whole family?

A. No, sir.

Q. By whom?

A. By Lizzie and Emma.

Q. By Miss Emma and Miss Lizzie?

A. Yes, sir.

Q. Won't you be kind enough to tell us how old you are, Miss Sullivan?

A. 26 years old.

Q. I believe you never have been married?

A. No, sir.

Q. How long have you been in this country?

A. Six years last May---seven years last May.

Q. And where were you born?

A. In Ireland.

Q. And came here seven years ago?

A. Yes, sir.

Q. Came to what part of this country?

A. I came to Newport.

Q. Newport, Rhode Island?

A. Yes, sir.

Q. Did you have any folks here when you came here?

A. No, sir.

Q. Father, mother, brother or sisters?

A. No, sir.

Q. And have you any here now?

A. No, sir. I ain't got no folks here, no more than relations.

Q. When you went to Newport did you stay there quite a while?

A. Twelve months.

Q. And from Newport where did you go?

A. I went out to South Bethlehem.

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Q. That was in Pennsylvania?

A. Yes, sir.

Q. When did you come to Fall River?

A. I came there four years---I was two years out when I came to Fall River; two years in America when I came to Fall River.

Q. Did you go to the Bordens the first place in Fall River?

A. No, sir. I went to Mrs. Reed.

Q. When did you go to work for Mr. Borden?

A. I was there two years and nine months.

Q. At the time of his death?

A. Yes, sir.

Q. Was there any other domestic servant in the family except yourself?

A. No, sir, not while I was there.

Q. Or was there any man who worked there while you were there taking care of a horse or anything of that sort?

A. No, sir. There was a man on the farm who used to come there and do chores, and go back again.

Q. He came from the farm?

A. Yes, sir.

Q. What was his name?

A. His first name was Alfred. I don't know his last name. I never asked him.

Q. While I am upon that subject I will ask you about the barn. While you were there was it used at all for anything?

A. They had a horse there while I was there.

Q. And when did they cease to have any horse there?

A. I guess it was about a year before that, as far as I can remember.

Q. You mean before the homicides?

A. Yes, sir.

Q. Before the death of Mr. Borden?

A. Yes, sir.

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Q. After the horse had been discontinued, did they use the barn for anything?

A. No, sir, I don't think they did.

Q. There was some hay in the barn. Was that hay that had been left over from the time that the horse had been kept there?

A. I suppose so. I don't know.

Q. Did you know of any hay being put in after the horse had been sold or disposed of?

A. No, sir, I don't remember.

Q. Perhaps you can tell us while I am on the barn, how that front door runs. Does it go on wheels? Is it a sliding door or is it a door that opens?

A. It opens.

Q. Works on hinges,?

A. Yes, sir.

Q. That is the front door of the barn facing the street, I mean?

A. The front door facing the street goes on hinges, I think.

Q. The carriage door, I mean, that faces the street. (Exhibiting photograph.) You can see it there.

A. Well, I don't know. I never have been in that door, I think.

Q. Have you ever seen that door open?

A. Yes, sir. I don't know but I saw it open.

Q. Do you know whether it was kept locked or not?

A. I don't know anything about it.

Q. Had you seen it open recently before the death of Mr. Borden, or do you mean that you saw it open when they had a horse and carriage?

A. I saw it open a while before the death of the Bordens while some man was looking at some carriages that was there, I guess.

Q. How long was that before their death?

A. I can't remember.

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Q. Some days or weeks?

A. Some weeks.

Q. Had you seen it since that time?

A. No, sir, I don't remember.

Q. What were your general duties in the household, Miss Bridget?

A. Washing, ironing and cooking, with sweeping.

Q. Did you have the care of any of the chambers?

A. No, sir.

Q. Except your own, I suppose?

A. That is all.

Q. You slept in the third story of the house?

A. Yes, sir.

Q. Can you tell us the position of the room that you slept in?

A. Well, it is right over Mr. Borden's room.

Q. And Mr. Borden's room is right over the kitchen?

A. Yes, sir.

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. That is, you didn't do it?

A. No, sir.

Q. Did either of the daughters do it?

A. No, sir.

Q. Perhaps this will aid us in fixing the room. In what way does your window look?

A. It looks out on the back yard.

Q. Directly into the rear of the house?

A. Yes, sir.

Q. (Exhibiting photograph.) Will you look at that photograph and see if you can point out the windows in your room? Take time enough so that you will understand it.

A. I don't know. If that ain't it. I can't explain it.

Q. If it confuses you, quite likely it may, I won't refer to it. Is it one of those windows in the third story?

A. Yes, sir, two rooms. The room next to it had one window in it, and two windows leads out in the back yard.

Q. Do you know whether your room is the room next to Mrs. Churchill's house or next to Mrs. Kelly's house?

A. Next to

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Mrs. Kelly's house.

Q. Who occupied the other room, if any one? Did any one?

A. No, sir, excepting when the hired man slept there. Sometimes Mr. Morse slept there.

Q. Do you know who took charge of the room in the front part of the house?

A. Well, when Miss Emma was home she done it. When Mr. Morse was there and when Mrs. Borden had any of her friends there, I guess she done it or helped do it, that is, as far as I can remember.

Q. That is the front chamber you are talking about?

A. Yes, sir.

Q. Now, do you know who took care of the rooms, belonging to the daughters or occupied by the daughters?

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

Q. And did that care include sweeping and dusting as well as making the beds?

A. Yes, sir. I didn't have anything to do with the rooms.

Q. You had nothing of any kind to do with any bed-room?

A. No, sir.

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Q. Had you known Mr. Morse before the time of Mr. Borden's death?

A. Yes, sir.

Q. How long had you known him?

A. I can't remember how long,---quite a while.

Q. He had occasionally come to the house, had he?

A. Yes, sir.

Q. And staid over night?

A. Yes, sir.

Q. Can you tell who took charge of the parlor sweeping, dusting and cleaning of it?

A. Miss Lizzie in the summer.

Q. Did you have anything to do with it?

A. No, sir.

Q. Do you remember Mr. Morse's coming to the house on the Wednesday the day before the death?

A. Yes, sir.

Q. Did you see him?

A. Yes, sir.

Q. When did you see him on the Wednesday?

A. Well, I could not exactly tell whether it was two o'clock or after two or before two, but after dinner.

Q. Where did he come from,---what door?

A. Came in the back door.

Q. Who let him in?

A. I don't know; I can't remember who let him in. I think Mrs. Borden,---I cannot tell, but I saw the man coming in.

Q. Did you get any dinner for him?

A. No, sir.

Q. Do you know whether any dinner was got for him?

A. Mrs. Borden did.

Q. Did you clean up the dishes after dinner? or Mrs. Borden?

A. Mrs. Borden put the dishes out in the kitchen from the dining-room.

Q. You washed them?

A. Yes, sir.

Q. Did you go out that afternoon?

A. No, sir.

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Q. Where did you remain on the afternoon of Wednesday after Mr. Morse came?

A. I guess I was ironing until four or half past four o'clock in the kitchen.

Q. What day had you done your washing that week?

A. Monday.

Q. What day had you done the drying of your clothes?

A. Monday, if it was pleasant.

Q. I mean this particular week. Monday was the regular washing day. Did you wash on Monday, the week of Mr. Borden's death?

A. Yes, sir.

Q. Did you dry your clothes Monday?

A. No, sir.

Q. On what day did you dry your clothes?

A. Tuesday.

Q. Where did you do your washing?

A. Down cellar.

Q. In that part of the cellar known as the wash room?

A. Yes, sir.

Q. Is there any other faucet down stairs except the faucet in the sink of the wash room?

A. No, sir, not that I know of.

Q. When you did do your washing on that week, how was the door leading out into the back yard from the cellar,---open or closed?

A. It was open while I was down there.

Q. How was it on the day on which you did your drying, Tuesday? Was the door opened or closed?

A. It was closed.

Q. Who had locked that door after you got through washing and taking in your clothes?

A. I locked the door as I hung out the last of my clothes all the time.

Q. How did you lock that door?

A. A bolt.

Q. A bolt on which side of the door?

A. The inside.

Q. Now from that time, which was Tuesday, was it Tuesday you locked it or Monday?

A. Tuesday.

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Q. From that time did you have occasion to go down into the cellar and wash-room from time to time?

A. I went down but not through that door.

Q. I mean down from the inside of the house?

A. Yes, sir.

Q. Did you notice any change in that door down to and after the time of the death of Mr. and Mrs. Borden?

A. No, sir, I did not.

Q. So far as you know it had remained bolted?

A. So far as I know I did not see any change in it.

Q. Before going again to Wednesday, I will ask you to describe the character of the travel on Second street, as far as you can: Were there few people or many people who passed up and down that street?

A. On Wednesday?

Q. No, I mean generally.

A. I could not say. There was traffic more or less,---folks, carriages and teams.

Q. Did you go to your room at all on the Wednesday afternoon after you finished your ironing?

A. Yes, sir.

Q. About what time did you go up to the room then?

A. I should say quarter to five or half past four; I cannot tell.

Q. What time did you come down again?

A. About half past five as far as I remember. I cannot exactly tell.

Q. Do you remember how you left the screen door when you went up?

A. Yes, sir.

Q. How was it?

A. The screen door was hooked.

Q. The hook was inside, I believe?

A. Yes, sir.

Q. Did you get supper on the Wednesday night?

A. Yes, sir.

Q. Passing back a moment, did you notice anything---don't tell me what anyone said ---about Mr. Borden's and Mrs. Borden's condition

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of health on Wednesday morning?

A. Yes, sir.

Q. What did it appear to be?

A. Sick.

Q. Did you go out on Wednesday night?

A. Yes, sir.

Q. Had you been there through Wednesday?

A. Yes, sir.

Q. Were you sick at all that week before Thursday morning?

A. No, sir, I don't remember that I was.

Q. What was your condition on Tuesday night, the night preceding your description of Mr. and Mrs. Borden?

A. I was feeling pretty well in the morning and I got up with a headache.

Q. Which morning?

A. Thursday morning.

Q. I am speaking of Tuesday night. You passed a good night, did you?

A. Yes, sir.

Q. Did you have any occasion after the dinner hour on Wednesday to go into the front part of the house?

A. No, sir.

Q. To do any work of any kind?

A. No, sir, I went to the front door on Wednesday.

Q. What was the occasion of going to the front door on Wednesday?

A. I let Dr. Bowen in.

Q. Was that in the morning or afternoon?

A. It was in the morning.

Q. Did you go to the door again on Wednesday after you let Dr. Bowen in?

A. No, sir.

Q. How was the door when you let Dr. Bowen in on Wednesday?

A. The spring lock had the key in it.

Q. Sprung locked, was it?

A. Yes.

Q. Did you say you had no occasion to go to that door again on that day?

A. No, sir.

Q. I was about to ask you where you passed Wednesday evening?

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A. I was up in my friend's in Third street.

Q. Was it far away from the house?

A. No, sir, not far.

Q. What time did you go and what time did you return on the Wednesday evening?

A. I guess I got out about 7 o'clock on Wednesday evening and I went down Second street, called for a friend of mine on Third street: we went down Main street and up Morgan street and turned up Third street to my friend's on Third street.

Q. If you can tell me about what time you got home, I would like to have you?

A. I think about five minutes past ten.

Q. When you got home was there any light in the house?

A. The lamp was in the kitchen.

Q. The lamp waiting you?

A. Yes, sir.

Q. Did you light it?

A. No, sir, it was lighted. It was always left lighted when I was out.

Q. Was there any light in the sitting room, dining-room or either of the chambers that you saw?

A. No, sir, I did not see any light in any part of the house.

Q. When you went out on Wednesday evening, how did you leave the back door?

A. Sprung locked.

Q. The wooden door, was that shut?

A. Yes, sir.

Q. Did you have a key?

A. Yes, sir.

Q. When you came back how did you find the door?

A. It was locked.

Q. You unlocked it, I take it?

A. Yes, sir.

Q. With your key?

A. Yes, sir.

Q. Did anyone else have a key to the back door?

A. I think Mrs.

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Borden had a key to it.

Q. After you passed in through that door did you notice anything as to how it was locked,---whether locked or otherwise?

A. I locked it myself with three locks as I came in.

Q. How did you lock it after you came in?

A. There was a lock, a spring lock, a bolt and spring. There were two spring locks and a bolt.

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Q. In what condition were all those locks left on the Wednesday night when you last came in?

A. Well, I hooked the screen door, I came in and locked the wooden door, and sprung the latch, and a catch which couldn't be opened from the outside with any key, and then bolted the other lock.

Q. And you say you hooked the screen door in addition?

A. Yes, sir.

Q. Did you go directly to bed?

A. Yes, sir; I went and took the lamp off of the table and went to the ice chest and took a glass of milk. That was all.

Q. Just before you went to bed?

A. Yes, sir; that was all I did; I went upstairs.

Q. What milk was that you took?

A. Well, I guess it was the milk we had that day.

Q. The Wednesday's milk?

A.. Yes, sir.

Q. Did you use milk every day?

A. Yes, sir.

Q. From time to time. What time in the morning did the milkman come, if he came in the morning?

A. I couldn't tell. The milk was always left. I guess probably five or half past five; I can't tell.

Q. Before you got up?

A. Yes, sir.

Q. And how was it left?

A. Left in the can outside the door.

Q. The night before what did you do about the can?

A. I put the can out the night before on the doorstep.

Q. That is, you washed the can yourself?

A. Yes, sir.

Q. And put it out?

A. Yes, sir.

Q. And then in the morning was that same can filled?

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A. No, that can was taken and there was another can left.

Q. There was an exchange each morning?

A. Yes, sir.

Q. You had two cans?

A. Yes, sir.

Q. One of which was with the milkman all the time and the other at home?

A. Yes, sir.

Q. Now in the course of that night did anything occur to you, should you say, in any way?

A. No, sir.

Q. In the morning did you feel anything different from ordinary?

A. Yes, sir; I felt kind of a dull headache as I got up in the morning.

Q. During the night did anything of any kind attract your attention?

A. No, sir; not at all.

Q. No noise on the part of any one?

A. No, sir.

Q. What time did you get up on the Thursday morning?

A. Quarter past six.

Q. You came down your back stairs, of course?

A. Yes, sir.

Q. Which are not carpeted---the upper part?

A. The upper part ain't.

Q. That is, from the second to the third story there is no carpet on it?

A. No, sir.

Q. But from the second story to the kitchen entry there is a carpet on the stairs?

A. Yes, sir. There is from the hall leading from Mr. Borden's to the first story stairs, there is a carpet in there down to the lower floor.

Q. And the only thing on the route up to your room that is uncarpeted is the stairs?

A. Yes, sir.

Q. That lead directly to the attic?

A. Yes, sir.

Q. Did you have any timepiece in your room?

A. Yes, sir; I

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had a clock.

Q. What sort of a clock was it?

A. One of them little round clocks.

Q. Those little round tin ones, or metal ones?

A. Yes, sir.

Q. Did you look to see what time it was when you got up that morning or not?

A. I looked when I came down to the kitchen.

Q. Is there a clock there?

A. Yes, sir.

Q. Do you mean that is the clock you looked at?

A. Yes, sir.

Q. What time was it when you came down to the kitchen?

A. Thursday morning?

Q. Yes.

A. Quarter past six.

Q. Where did you first go after you came down to the kitchen?

A. Down cellar.

Q. What did you do down cellar?

A. I brought up some wood, started my fire, and went down and got some coal.

Q. And you brought that up in what, the coal hod?

A. The coal hod.

Q. You went down what way to the cellar?

A. Down the back stairs.

Q. Not the stairs leading out to the back yard, but the stairs inside the house?

A. Yes, sir.

Q. Did you have occasion to go into or go by the back part of the cellar, the wash room part?

A. No.

Q. Or through it?

A. Yes, sir. The door was open there. I went down into the wood room.

Q. Which door do you speak of as being open?

A. The door from

the wash room into the other cellar was wide open all the time.

Q. Did you come within observation of the door leading from the wash room out of doors?

A. No, sir.

Q. After you had got your wood and coal and started your fire, what is the next thing that you did?

A. I unlocked my door and took in the milk and put a pan out for the ice man and a pitcher with some water in it.

Q. When you came to the door to get your milk how did you find the locks compared with the condition you left them in the preceding night?

A. Just the same way as I left them.

Q. After you had unlocked the door, taken in your milk and put out your pan for the ice, how did you leave the back door then?

A. I hooked the screen door.

Q. That is, the panel door was left open, was it?

A. Yes, sir.

Q. And so far as you know was the panel door closed again that day down to the time and after the time of the deaths of Mr. and Mrs. Borden?

A. The wooden door?

Q. The wooden door.

A. No, sir.

Q. When you unlocked the wooden door and left it open, did you do anything to the screen door after you went in?

A. Only hooked it.

Q. Now do you recall doing anything else before any one came down stairs?

A. No, sir; excepting my work around the kitchen generally, getting the breakfast; and I had clothes on the clothes horse; I suppose I took them down, as I generally did.

Q. Did you go into any other room before any one else came down stairs?

A. The dining-room.

Q. Did you have occasion to go into the sitting-room or any other room?

A. No, sir.

Q. Just those two rooms?

A. Yes, sir.

Q. Upon this morning what was the condition of the door between the dining-room and the sitting-room, open or shut---during the morning I mean?

A. Shut.

Q. I do not mean when you first came down, but during the morning, if you know?

A. Well, as far as I remember it was closed; I don't remember to see it open.

Q. The door between the dining-room and the sitting-room?

A. Between the sitting-room and dining-room?

Q. Yes.

A. Well, that was always open.

Q. And what door did you have in mind when you said it was always closed?

A. The door leading from the kitchen to the sitting room.

Q. Who first appeared on the morning of Thursday?

A. Mrs. Borden, I see, the first person.

Q. Where did you first see her when she came?

A. I was in the kitchen, and she came through the back entry, down stairs from her bedroom.

Q. Keep your voice up a little; you are lowering it.

A. She came down stairs from her bedroom, and I was in the kitchen.

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Q. Did she go out of the house at all before breakfast?

A. No, sir; I did not see her.

Q. What did she begin to do or where did she go after she came down stairs?

A. She came down stairs that morning; she told me---

Q. Perhaps what she told you I will not ask you. Where did she go?

A. She went in the sitting room.

Q. Now did you receive any directions about the breakfast from her?

A. Yes, sir.

Q. I don't care what they were. Did you notice whether she went into any other room than the sitting room?

A. No, sir, not that time.

Q. Did you begin to make preparations for the breakfast---I mean by way of selecting the food for breakfast,---before or after you saw Mrs. Borden?

A. After she came down.

Q. After she came down and gave the directions?

A. Yes, sir.

Q. Who next appeared?

A. Mr. Borden.

Q. And in what way did he appear: I mean from what stairway?

A. He came down the back stairway from his bedroom.

Q. Let me ask you if you have ever known of any communication on the second story between the front and the back part of the house? Is there any way to go that is ever used, to your knowledge?

A. Well, there was a door leading from Mrs. Borden's room into the front part of the house.

Q. And how was that door kept?

A. I couldn't tell you anything about it.

Q. You know nothing about it?

A. No, sir.

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Q. Have you ever known people to go to the front part by way of the back stairs, or to the back part by way of the front stairs?

A. Yes, sir.

Q. When?

A. Once in a while I used to see the girls, Miss Lizzie and Miss Emma, coming down the back stairs.

Q. So they must have gone through, of course, in order to have done that?

A. Yes, sir.

Q. Now what time do you think it was when Mrs. Borden came down stairs?

A. Well, it might be twenty minutes of seven or half past six: I can't tell the time, for I never noticed it.

Q. How long after Mrs. Borden came down was it before Mr. Borden came?

A. Well, no more than five minutes, I don't think.

Q. What did he do when he came down stairs?

A. He came down stairs; he went into the sitting room and put a key on the shelf in the sitting room.

Q. What key was it he put on the shelf in the sitting room?

A. The key of his bedroom door.

Q. Where did he ordinarily keep that?

A. In the sitting room.

Q. On the shelf

A. Yes, sir.

Q. Did you notice what he did after he brought his key down and put it there?

A. He came out into the kitchen; he put a dressing coat on, as far as I think, and went outdoors.

Q. Did he bring anything else down stairs besides his key?

A. Yes, sir; a slop pail.

Q. What did he do with that?

A. Took it out doors.

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Q. At the time you have just spoken of?

A. After putting his key back.

Q. Did you notice him when he went out of the screen door?

A. Yes, sir.

Q. Did you notice whether at that time the screen door was locked or unlocked?

A. It was unlocked when he was out doors.

Q. I mean when he went out, when he came to the door?

A. It was locked.

Q. While he was out doors where did you remain?

A. In the kitchen.

Q. And the windows of the kitchen look out into the back yard, I believe?

A. Yes, sir, one of them.

Q. Now perhaps you can tell us what he did when he went out with his slop pail?

A. He emptied it, and unlocked the barn and went into the barn.

Q. What door of the barn did he unlock?

A. The large door leading out in the yard.

Q. You do not mean the front door, the carriage door?

A. No, sir.

Q. But the door which is just this side of the privy door?

A. Yes, sir. (Photograph shown witness). Yes, sir, the door where the water is,---the water inside the door.

(At this point the noon recess was taken, from one o'clock until quarter past two.)

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AFTERNOON SESSION

MR. KNOWLTON. If your Honors please, Mrs. Kelly, a witness who testifies to a single fact or incident, was not present this morning. She came on the noon train. She is the mother of a young child and it was very much to her convenience, she said, if she could be called and then excused. My learned friends are willing that the examination of Miss Sullivan be interrupted for that purpose.

MRS. CAROLINE KELLY, Sworn.

Q. (By Mr. Moody.) Your name is Caroline Kelly?

A. Yes, sir.

Q. You are married, I believe?

A. Yes, sir.

Q. The wife of Dr. Kelly of Fall River?

A. Yes, sir.

Q. You live in the next house to the south of the Borden house?

A. Yes.

Q. And lived there, did you, on August 4th of last year?

A. Yes, sir.

Q. Were you at home on Aug. 4th?

A. Yes.

Q. Do you remember what sort of day it was, whether warm or cold?

A. Very warm day.

Q. Was it a pleasant day?

A. Yes.

Q. At that time had you been about the house during the morning up to the time you left it?

A. Yes.

Q. Attending to your ordinary household duties, I suppose?

A. Yes.

Q. Had you an engagement to go down town on that morning?

A. Yes.

Q. To the dentist's?

A. To a dentist's.

Q. Did you start and go down town?

A. Yes.

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Q. Did you consult any time piece before you started?

A. Yes.

Q. What time piece was it?

A. Kitchen clock.

Q. After you consulted the kitchen clock, did you remain about the house any before you went out?

A. No, I went right out.

Q. You went directly out?

A. Yes.

Q. And from your yard did you go out into the street into Second street?

A. Yes.

Q. Now what time did your kitchen clock show?

A. About twenty eight minutes of eleven.

Q. What sort of a clock was that?

A. An old fashioned clock.

Q. Wooden clock?

A. Square, wooden clock with weights.

Q. How long had you had it?

A. It has been in the family for years; I have only had it for two years in my house.

Q. At that time in August of last year, what sort of time-keeper was it?

A. Not a good one.

Q. Was it a time keeper you could depend upon for accurate time?

A. No, sir.

Q. Since then has anything happened to that clock?

A. It does not run at all; it is broken.

MR. ROBINSON I do not see how that is material.

Q. Which side of the house did you go from to the street? The side between Mr. Borden's house and yours, or the south side of yours?

A. The west,---it faces the west. I went west.

Q. Did you go out of the front door?

A. Yes.

Q. And came directly to the street?

A. Yes.

Q. Which way did you turn when you got out on the street?

A. I turned to the right and north, down.

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Q. Down hill?

A. Yes.

Q. And in going down the hill of course you had to pass Mr. Borden's house?

A. Yes.

Q. Did you know Mr. Borden?

A. Yes.

Q. Knew him to speak to as well as by sight? Did you see him that morning?

A. Yes, sir.

Q. Won't you describe where he was when you first saw him?

A. He was on the inside of his yard coming round the house.

Q. From what direction?

A. From the back of the house, east, I think.

Q. Where did he go then?

A. To the front door.

Q. In going from the yard to the front door did he go out on to the side walk, or did he go inside the fence?

A. Inside the fence.

Q. What did you see him do at the front door?

A. He stooped down as though putting a key in the door, that is all.

Q. Did you see whether he had anything in his hand?

A. A little white parcel, I think.

Q. Did you speak to him?

A. No.

Q. Or he to you?

A. No.

Q. Did he see you, do you think?

A. I don't think so.

Q. Where did you go then?

A. Down to the dentist's.

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Q. This, to be certain about it, Mrs. Kelly, was when you were going out to go to the dentist's?

A. Yes.

Q. And immediately after you had looked at your clock?

A. Yes, sir.

CROSS-EXAMINATION

Q. (By Mr. Robinson.) You started to go to the dentist, did you?

A. Yes, sir.

Q. From your house?

A. Yes, sir.

Q. You were going northerly down Second street, were you not?

A. Down Second, yes.

Q. Which would carry you past the Borden house and then past Mrs. Churchill's house?

A. Yes.

Q. And about where were you when you saw Mr. Borden passing around from the side of the house to the front door?

A. I was near his gate.

Q. Which gate do you refer to?

A. The front gate leading to the front door.

Q. But then you could almost put your hand on him, could you?

A. Well, he was inside the fence.

Q. You were one side of the fence and he the other?

A. Yes.

Q. And you think he didn't see you?

A. I don't think so.

Q. He knew you well?

A. Well, I spoke to him when I met him, that is all.

Q. And he spoke to you when he met you?

A. Yes, sir.

Q. There was no sort of variance or difficulty between you?

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A. Oh, no.

Q. A pleasant acquaintance, and you can't conceive of any reason why he didn't speak to you only he didn't see you?

A. No, sir.

Q. Was he reading anything as he passed along?

A. No. I think he had his eyes cast down, but he was not reading.

Q. Was he walking very briskly?

A. No, usual gait.

Q. Which was about the usual gait for an old gentleman like him, I suppose?

A. Yes.

Q. He wouldn't walk as spry as my friend Mr. Moody, would he?

A. I don't know.

Q. And he came around the side of the house and walked up toward the front door?

A. Yes.

Q. Didn't go out on the sidewalk?

A. No, sir.

Q. Well, really there was nothing between you and the fence and him?

A. Yes.

Q. As a fact, you could have touched him, couldn't you?

A. If I had tried, I think so.

Q. No doubt about it?

A. I think so.

Q. Well, you didn't speak to him even if he didn't look up?

A. No, sir.

Q. Were you alone?

A. Yes, sir.

Q. Before you left the house had you looked at the time-piece in the kitchen?

A. Yes.

Q. That was a wooden clock?

A. Yes.

Q. What year was it made?

A. I couldn't tell you; a good

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many years ago.

Q. Before you were born?

A. Oh, I think so.

Q. Was it your grandfather's clock?

A. I don't know, I am sure. It has been in the house as long as I can remember.

Q. Did you ever hear anybody say when that clock first ran?

A. No.

Q. The clock had got tired, hadn't it?

A. I shouldn't wonder. I don't know.

Q. You don't consider it very much of a clock at that time?

A. No.

Q. And that was the only thing you had to fix the time by?

A. Yes, sir.

Q. Did you notice at that time who were passing on the street?

A. No. I don't remember any one.

Q. Didn't take any notice at all?

A. No, sir.

Q. Don't you remember a carriage that passed by there, an open buggy, right at that time, and right against you?

A. No, sir, I don't.

Q. And a couple of men in it?

A. No, sir, I don't.

Q. That street isn't very wide?

A. I know it, but I don't remember it.

Q. Do you remember any carriage or team passing you right at that place?

A. No, sir, I don't.

Q. Going either way?

A. Either way. It might have possibly, but I don't remember it. I didn't take notice.

Q. Then two or three might have passed you and you not notice them at all?

A. Yes.

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Q. Did you meet any people on the sidewalk there?

A. I don't remember.

Q. And do you say you did not?

A. I don't say I did not, no.

Q. You didn't take notice enough so but what if you had seen two or three men along there, you wouldn't think anything about it?

A. No, I don't think so.

Q. And especially if they were across the street. Do you know where Mr. Miller's house is across the street?

A. Yes.

Q. And where Dr. Bowen's house is, part of the same block?

A. Yes, sir.

Q. Did you see anybody over there in front of that house?

A. I didn't look. I don't remember.

Q. Did you pass down by Mr. Hall's stoop on the same side of the street as Mr. Miller's house?

A. I passed on the opposite side.

Q. Did you notice anybody about there?

A. No, sir.

Q. Really then the only moving thing that you noticed was Andrew J. Borden?

A. All I can remember now.

Q. And you haven't been able since that day to remember anything else, have you?

A. Well, I haven't thought of it.

Q. You know Mrs. Churchill's house quite well?

A. Yes.

Q. Was there anybody on those steps when you went by?

A. I don't remember anybody. I don't think there was.

Q. Did you glance into Mr. Borden's yard on the north side of the house as you passed along?

A. No, sir.

Q. So as to see whether there was anybody at the outside door or not?

A. No, sir.

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Q. Were you in somewhat of a hurry in going to the dentist?

A. Yes. I was an hour late, an hour after my appointment.

Q. And then your clock was running wrong?

A. Yes, sir.

RE-DIRECT

Q. (By Mr. Moody.) Perhaps this photograph may assist you in showing just where you were and just where Mr. Borden was when you first saw him?

A. That is his front gate, you know, and I was above that.

Q. And where was he?

A. I saw him come around the corner. I must have been---that is my house, you know --
-I must have been---he would be at that side of the gate when I saw him come around this
corner.

Q. Where were you when he was at the door?

A. I was about opposite his gate as near as I can remember.

(Locations on the photograph pointed out to the jury.)

RE-CROSS

Q. (By Mr. Robinson.) Which gate do you say now? Was it their front gate or the side
gate?

A. Their front door.

Q. Opposite the front door?

A. When I saw him at the door, I was about opposite his gate, as near as I can remember.

Q. (By Mr. Moody.) Of course, at that time his back was turned towards you?

A. Yes. He was stooping down.

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Q. (By Mr. Robinson.) Let us see a moment. As he came around the corner of the house
his back wasn't towards you?

A. Oh, no, but as I passed his front gate he was facing me.

Q. You met right there just as he was turning up to go up to the front door?

A. Yes.

Q. There was ample opportunity for him to see you if he had been looking at you?

A. Yes.

Q. And you certainly saw him all the time?

A. Yes.

Q. So he was not back to you when he had his opportunity to look, was he?

A. No.

DIRECT EXAMINATION OF BRIDGET SULLIVAN RESUMED.

Q. (By Mr. Moody.) At the time of the adjournment you had told us about Mr. Borden's going into the back yard and unlocking the barn door?

A. Yes, sir.

Q. Did he do anything else out in the yard besides unlock the door and empty the slops?

A. Yes, sir. He brought in a basket of pears that he picked off the ground, and brought them in.

Q. From the back yard where did he go to?

A. Well, went to the yard where the pears trees was.

Q. Well, I mean after he had picked the pears, what did he do?

A. He brought them in the kitchen and left them on the table there.

Q. Did you notice how he left the door after he came in?

A. Yes. He left it open.

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Q. Did you remain in the kitchen?

A. Yes, sir.

Q. Did you do anything to the door at that time after Mr. Borden came in?

A. I don't remember doing anything to the door.

Q. Perhaps I misled you. I mean when he came in through the screen door did he do anything to that?

A. I don't know. I can't say whether he hooked it or not.

Q. You don't know whether he did or not?

A. No, sir.

Q. After he put the pears down in the kitchen what did he do or where did he go?

A. He washed up in the kitchen and got ready for breakfast.

Q. Do you know where he then went after he had completed his washing?

A. Breakfast.

Q. To breakfast?

A. Yes, sir.

Q. Up to that time had you seen anyone besides Mr. and Mrs. Borden, up to the time when Mr. Borden went in to his breakfast?

A. No, sir, not until I put the breakfast on the table and Mr. Morse sat down to breakfast.

Q. Where he had been up to that time, of course, you can't tell?

A. No, sir.

Q. Had he been in the kitchen at all where you were?

A. I don't remember to see him.

Q. Now, will you tell us what there was for breakfast that morning?

A. There was some mutton, some broth and johnny cakes, coffee and cookies.

Q. The broth was made of what?

A. Mutton.

Q. It was mutton broth and the meat itself, mutton?

A. Yes, sir.

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Q. Do you recall anything else that there was for breakfast?

A. No, sir. I don't remember anything else.

Q. Do you remember whether there was any fruit or not in the dining room?

A. No, sir. I don't remember. I didn't put them on.

Q. What time about was it when they sat down to breakfast?

A. Well, it might be quarter past. I can't exactly tell the time.

Q. Do you have any idea of how long they were at their breakfast?

A. No, sir, I have not.

Q. What were you doing while breakfast was going on?

A. I was around the kitchen cleaning up things, &c., I don't know exactly what I was doing.

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Q. Had your ironing been completed the day before?

A. Yes, sir.

Q. And the clothes put away?

A. Yes, sir.

Q. You spoke of their being at breakfast. Who was at the breakfast?

A. Mr. Borden, Mrs. Borden and Mr. Morse.

Q. After the breakfast was completed do you know where those three went or either of them?

A. Well, I guess they must go in the sitting-room. The bell rang, and when I went in there was nobody in the dining-room.

Q. The bell from the table, do you mean?

A. Yes, sir.

Q. Indicating that the breakfast had been completed?

A. Yes, sir.

Q. And they had gone from the dining-room at that time?

A. Yes, sir.

Q. What did you do then?

A. I sat down and had my breakfast.

Q. Did you have your breakfast in the dining-room?

A. Yes, sir.

Q. After you had completed your breakfast what did you do?

A. I cleared off the dishes, etc., and commenced to wash them.

Q. Now during that time were you in any other room except the kitchen and dining-room?

A. No, sir; except going in the kitchen closet to put the things away, and so forth. Of course I had to go there, and the ice chest.

Q. The closet you speak of is the closet that leads right out of the kitchen?

A. Yes, sir.

Q. The door opens from the kitchen itself?

A. Yes, sir.

Q. After you had completed your breakfast what did you do?

A. I took the dishes off out of the dining-room and brought them

out in the kitchen and began to wash them.

Q. Did you complete the washing of the dishes before any one else appeared?

A. No, sir.

Q. Who next appeared?

A. The next I remember to see was Mr. Borden and Mr. Morse going out the back entry--the back door.

Q. Did Mr. Morse return after the two went out to the screen door?

A. No, sir; he went out.

Q. Did Mr. Borden return at that time?

A. Yes, sir.

Q. Were you in a position to see how Mr. Borden left the door after he let Mr. Morse out?

A. No, sir; I couldn't tell how he left the door.

Q. While you were eating your breakfast in the dining-room how was the door between the dining-room and the kitchen?

A. Opened.

Q. When Mr. Borden returned from letting Mr. Morse out where did he go, where did Mr. Borden go?

A. He came to the sink, and he cleaned his teeth in the sink, and after that he took a bowl, a big bowl, and filled it with water and took it up to his room.

Q. Up to that time had any one else appeared, up to the time that Mr. Borden went up into his room?

A. I don't remember to see anybody.

Q. Do you know whether he took the key or not as he went up with the pitcher?

A. Yes, sir; he had the key in his hand.

Q. Did you see where the key came from?

A. He took it off of the shelf in the sitting-room.

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Q. After Mr. Borden went upstairs did you continue to remain in the kitchen until some one else came, or did you go away?

A. No, sir, I was washing the dishes at the sink, and Miss Lizzie came through.

Q. About how long was it after Mr. Morse went that Miss Lizzie Borden came?

A. I don't know how long it was. It was no more than five minutes, I don't think. I don't remember how the time was.

Q. When she came, into which room did she come? Where did you first see her?

A. The kitchen.

Q. From what room did she come?

A. From the sitting-room.

Q. What did she do?

A. She came through the kitchen and she left down the slop pail, 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 would have some coffee and cookies.

Q. (By Mr. Robinson.) What did you say?

A. I asked her what did she want for her breakfast. She said she didn't want any breakfast but she felt as if she should have something, she guessed she would have some coffee and cookies.

Q. (By Mr. Moody.) And what did she do after she said that?

A. She got some coffee, got her cup and saucer and got some coffee; and I went out in the back yard, and she was getting her own breakfast.

Q. Had she sat down before you went out to the back yard?

A. Yes, sir; she was preparing sitting down at the kitchen table.

Q. When you went out in the back yard had Mr. Borden come down

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again?

A. No, sir; I didn't see him.

Q. When you went out in the back yard how did you find the screen door?

A. It was hooked.

Q. Of course you unhooked it and went out?

A. Yes, sir.

Q. Leaving Miss Lizzie Borden in the kitchen?

A. Yes, sir.

Q. What was the occasion of your going out that morning?

A. I had a sick headache and I was sick to my stomach.

Q. And did you go out to vomit?

A. Yes, sir.

Q. Where did you go to?

A. I was in the back yard.

Q. Right in the yard, do you mean?

A. Yes, sir.

Q. How long do you think you stayed out there, if you can give us any judgment of the time?

A. Well, I can't tell how long I was out there. I may be ten minutes, I may be fifteen; I can't tell exactly the time.

Q. Perhaps I can help you. Did you do anything out there except to accomplish the purpose for which you went out?

A. No, sir; I didn't.

Q. When you had completed that where did you go?

A. I came in the kitchen.

Q. As you returned to the kitchen did you do anything with reference to the screen door?

A. Yes, sir; I hooked it as I came in from the back yard.

Q. As you returned to the kitchen, who, if anyone, was there?

A. I didn't see anybody.

Q. Did you see Mr. Borden again?

A. No, sir.

Q. Did you see Mr. Borden again before you saw him at the front door later on in the morning?

A. No, sir; I didn't see

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Mr. Borden since I think he went up to his room with the water until I left him in the front door.

Q. Where he had gone in the meantime you do not know?

A. No, sir; I do not.

MR. ROBINSON. I can't hear her now.

THE WITNESS. No, sir; I don't know where he went to.

Q. So the last time you saw him was when he went upstairs with his pitcher and his key?

A. Yes, sir; that is the last I remember of.

Q. That was before Miss Lizzie came down?

A. Yes, sir.

Q. What did you go to doing when you came back into the kitchen?

A. I completed washing my dishes. Some of them was washed, and all of them wasn't, and I finished them and took them in the dining-room, and I got them completed, and Mrs. Borden was there.

Q. You will have to speak a little louder.

A. Mrs. Borden was in the dining-room as I was fixing my dining-room table, and she asked me if I had anything to do this morning. I said, No, not particular, if she had anything to do for me. She said she wanted the windows washed. I asked her how, and she said "inside and outside both, they are awful dirty."

Q. What was she doing when you had that talk with her in the dining-room?

A. She was dusting. She had a feather duster in her hand. She was dusting between the sitting-room and dining-room, the door.

Q. Do you recall whether she had any covering over her hair at that time?

A. No, sir; I don't think she did.

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Q. When after that did you see Mrs. Borden?

A. I don't remember to see her; I don't remember to see Mrs. Borden before since she came down into the kitchen.

Q. I don't think I made myself clear to you. You have told us that in the dining-room, after you had finished your dishes, that she gave you some directions about washing the windows?

A. Yes, sir.

Q. And that at that time she was dusting between the dining-room and sitting-room?

A. Yes, sir.

Q. Now I ask you when next after that event did you see Mrs. Borden alive?

A. I didn't see her any more until I found her dead upstairs.

Q. At that time did you see Miss Lizzie Borden anywhere?

A. No, sir.

Q. At the time you received this direction?

A. No, sir; I don't remember to see her.

Q. Are you able to fix the time or about the time when you received this direction from Mrs. Borden the last time you saw her alive?

A. Well, I can't exactly tell the time, but I think it was about nine o'clock.

Q. How long was it after Miss Lizzie Borden had come down stairs that you saw Mrs. Borden dusting between the two rooms?

A. I don't know; it might be fifteen minutes. I can't tell the time, what time it was. I never noticed the clock, although there was enough of them around.

Q. Well, that answers it. After you received this direction from her where did you go and what did you begin to do?

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A. I was out in the kitchen.

Q. What were you doing in the kitchen?

A. Oh, I was cleaning off my stove and putting things in their places, and so forth, and when I got ready I went in in the dining-room and sitting-room and left down the windows which I was going to wash, and went down cellar and got a pail for to take some water.

Q. Then you say you went in the dining-room and sitting-room and left down the windows?

A. Yes.

Q. And what did you do to them, exactly?

A. Well, the windows was up, and I left down the windows.

Q. Shut them up?

A. Yes, sir.

Q. Did you shut the windows in both rooms?

A. Yes, sir; there was a window up in both the rooms.

Q. Were the curtains up or down in the rooms?

A. There was no curtains there.

Q. Were the shutters closed or open?

A. They was open at the bottom, I remember.

Q. Did you change their position at the time you shut the windows---the position of the shutters?

A. No, sir; I don't think I did.

Q. Up to the time when you shut the windows on the outside in those two rooms had you in any way closed the shutters of the dining-room and the sitting-room?

A. No, sir; I don't think I did.

Q. When you went in the dining-room and the sitting-room to close the windows did you see Miss Lizzie Borden there at all?

A. No, sir; I didn't see anybody.

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Q. From there you say you went down cellar?

A. Yes, sir.

Q. What did you get down cellar?

A. A wooden pail.

Q. Where did you then go?

A. I came upstairs. In the kitchen closet I found a brush which was to wash the windows with. I filled my pail with water in the sink and took it out doors. As I was outside the backdoor Lizzie Borden appeared in the back entry, and says, "Maggie, are you going to wash the windows?" I says, "Yes." I said, "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."

Q. Did she make any reply to that?

A. I don't know, sir, she didn't.

Q. Now had you seen her between the time you left her in the kitchen eating her breakfast and the time she appeared at the screen door as you went out with your pail of water and brush?

A. I don't remember to see her.

Q. Do you know what she did to the door?

A. She didn't hook it.

Q. Do you know where she then went as you went out doors?

A. No, sir; I do not.

Q. You have said that, going out with your pail and your brush, you went to the barn?

A. I went to the barn to get the handle for the brush.

Q. Where was that in the barn?

A. It was in the barn right in one of the stalls.

Q. On, of course, the first floor of the barn?

A. Yes, sir.

Q. What did you then do?

A. I went washing the dining-room

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windows.

Q. Did you wash the dining-room windows first?

A. No, sir; I washed the sitting-room windows first.

Q. And the sitting-room windows, were, I believe, on the south side of the house---the Kelly side?

A. Yes, sir.

Q. And on the side away from the screen door?

A. Yes, sir.

Q. While you were washing those windows did you see the girl who worked in the Kelly house?

A. Before I started to wash the windows, as I had the water and brush, Mrs. Kelly's girl appeared, and I was talking to her at the fence.

Q. How did you wash these windows, if you will be kind enough to tell us?

A. I washed them with the brush and water.

Q. That is, using a pail?

A. Yes, sir.

Q. And a long-handled brush?

A. Yes, sir.

Q. After you had washed the windows on the south side of the house, the sitting-room windows, in the way you have told, what did you next do?

A. The parlor windows.

Q. While you were washing the sitting-room windows did you see anyone in the sitting-room?

A. No, sir; I don't remember to see anybody.

Q. How many windows on the front of the house, of the parlor windows, did you wash?

A. Two.

Q. That is all there were?

A. There is three windows in the parlor, but there are two in the front.

Q. Had you been into the parlor to do anything that morning?

A. No, sir.

Q. Were the blinds of the parlor open or closed?

A. Closed.

Q. To wash them of course you had to open the blinds?

A. Yes, sir.

Q. Were the shutters in the parlor opened or closed?

A. There was curtains for the inside of the parlor.

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Q. And these curtains, were how?

A. I don't remember how they were.

Q. You don't remember whether the curtains were up or down?

A. No, sir, I do not.

Q. After you had washed the two front windows, where did you go?

A. Between times I went to the barn and got some water. I washed the dining-room windows, one side parlor window, one window on the side of the house, the dining-room.

Q. Now where did you get your water from in washing these seven windows?

A. In the barn, except the first pail I brought from the kitchen.

Q. How many times during the time you were washing the sitting room windows on the south side of the house did you go round to the barn to get your water?

A. I could not tell how many times.

Q. Can you give us any idea?

A. No, sir; I went there to get water---I must go there twice anyway to get water to wash them the first time.

Q. Washing the first two windows I am speaking of now?

A. Yes, sir.

Q. In going to the barn to get your water, how did you go? Did you go round the front of the house or round the rear of the house?

A. I went round the rear of the house when I was on that side and when I was in the front I went beside the back door.

Q. That is, when washing that front part windows you went by the screen door?

A. Yes, sir.

Q. But when washing the sitting room windows you did not go by

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the screen door?

A. No, sir.

Q. Can you tell us how many times you went to the barn for water while washing the two front windows?

A. I know I got six or seven pails,---I can't tell the right number.

Q. Now during all that time did anyone come to the house, that you saw?

A. No, sir, I did not see anybody.

Q. When you came to washing the dining-room windows did you see anyone inside the dining room?

A. No, sir.

Q. After you had completed washing your windows, what did you do?

A. I went after I completed them,---with the brush I went and got a dipper in the kitchen.

Q. And found the screen door, of course, unlocked?

A. Yes, sir, I went and took a dipper full of water and went to the barn and got some clean water and commenced to wash the sitting room windows again by throwing water up on them.

Q. By taking the dipper and dashing the water up on them?

A. Yes, sir.

Q. When you went into the kitchen to get your dipper, did you see anyone there?

A. No, sir.

Q. Did you go into the kitchen more than once during the process of washing windows?

A. No, sir.

Q. After you had dashed the sitting room windows in the way you have described, did you do anything to the other windows?

A. Yes, sir, I went right round.

Q. Doing the same thing?

A. Yes, sir.

Q. When you had completed this rinsing of the windows, if I may call it that, what did you do?

A. I went into the kitchen. I put the handle of the brush away in the barn and brought

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the pail and dipper in and put the dipper behind and I got the hand basin and went into the sitting room to wash the sitting room windows.

Q. Did you go to the barn to put away the handle of the brush before you went in, or after?

A. Before I went in.

Q. Before you went in?

A. Yes, sir.

Q. Now I think you said you took the basin in there?

A. Yes, sir, a hand dish in the sink.

Q. What else did you take?

A. A step-ladder in the kitchen.

Q. Anything else?

A. No, sir, except a cloth I had to wash with.

Q. When you came into the kitchen after having put your brush handle in the barn, did you do anything to the screen door?

A. I hooked it.

Q. After you had got your washing materials into which room did you first go?

A. The sitting room.

Q. I may ask you if you washed the inside of the parlor windows?

A. No, sir.

Q. You did not go into the parlor, as I understand it?

A. No, sir, I did not.

Q. Which window did you begin to wash in the inside?

A. The next window to the front door.

Q. In which room?

A. In the sitting room.

Q. How much had you done of that work before you heard something?

A. I had the upper part of the window done.

Q. Done?

A. Yes, sir.

Q. Had you seen anyone up to that time since you saw Lizzie at the screen door?

A. No, sir, not that I remember.

Q. Will you describe what you heard which attracted your attention?

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A. Well, I heard like a person at the door was trying to unlock the door and push it but could not, so I went to the front door and unlocked it.

Q. Did you hear the ringing of any bell?

A. No, sir, I don't remember to hear any bell.

Q. When you got to the front door what did you find the condition of the locks there?

A. I went to open it, caught it by the knob, the spring lock, as usual, and it was locked. I unbolted it and it was locked with a key.

Q. So that there were three locks?

A. Yes, sir.

Q. What did you do with reference to the lock with the key?

A. I unlocked it. As I unlocked it I said, "Oh pshaw," and Miss Lizzie laughed, up stairs,---Her father was out there on the door step. She was up stairs.

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Q. Up stairs; could you tell whereabouts up stairs she was when she laughed?

A. Well, she must be either in the entry or in the top of the stairs, I can't tell which.

Q. Was there any talk passed between you and Mr. Borden as he came to the door?

A. No, sir; not a word.

Q. I am reminded that one question was unanswered. How many locks on the front door were locked as you went there,---locks and bolts, I mean?

A. There was a bolt and there was a spring lock, and there was a key.

Q. And those were all locked?

A. Yes, sir.

Q. During the morning hours, usually, was that door kept locked otherwise than by the spring lock?

A. I don't know anything about the door; I didn't have nothing to do to it.

Q. After you had let Mr. Borden in, where did you go?

A. I went on washing my window.

Q. Into the sitting room again?

A. Yes, sir.

Q. Where did he go?

A. And he come into the sitting room and went into the dining room.

Q. Did you see whether he had anything or not?

A. He had a little parcel in his hand, same as a paper or a book; I can't tell what it was.

Q. Speak a little louder, please.

A. He had a parcel in his hand, the same as a paper or a book; I can't tell what it was.

Q. Did you see what Mr. Borden did when he went into the dining room?

A. He sat down in a chair at the head of the lounge.

Q. And what did you continue to do?

A. I was washing my windows. I went out into the kitchen after something; I see

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the man sitting on the lounge, and the chair at the head of the lounge.

Q. In the dining room?

A. Yes, sir.

Q. Did any one else appear at that time?

A. Miss Lizzie came down stairs, probably five minutes---I couldn't tell exactly the time; she came down through the entry, the front entry, into the dining room, I suppose to her father.

Q. And in going to the dining room did she have to go through the sitting room in which you were?

A. Yes, sir.

Q. What did she say, if anything, to her father?

A. I heard her ask her father if he had any mail, and they had some talk between them which I didn't understand or pay any attention to, but I heard her tell her father that Mrs. Borden had a note and gone out.

Q. What is the next thing that happened?

A. The next thing I remember, Mr. Borden went out in the kitchen and come in the kitchen door, come from the kitchen into the sitting room and took a key off the mantel piece and went up stairs to his room.

Q. What key was it that he took?

A. The key of his bedroom door.

Q. And what stairs did he go up?

A. The back stairs.

Q. What is the next thing that you did?

A. Well, as Mr. Borden come down stairs, I was completed in the sitting room, and taking my water and taking the hand basin and step ladder into the dining room. As I got in there he pulled a rocking chair and sat down in the rocking chair near the window and let down the window, as I left it up when I got through.

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Q. Sat in a rocking chair in which room?

A. The sitting room.

Q. As he sat down in the sitting room, what did you begin to do?

A. I began to wash the dining room windows.

Q. At the time that he came down and you were passing from the sitting room to the dining room, was Miss Lizzie Borden there then?

A. I don't remember to see her.

Q. You began washing your two windows in the dining room, did you?

A. Yes, sir.

Q. While you were washing those windows did any one appear in the dining room?

A. Yes, sir.

Q. Who was it?

A. Miss Lizzie.

Q. From what room did she appear? Through what door did she appear?

A. She came in from the sitting room into the dining room.

Q. Will you state what she did after she came in?

A. She came into the dining room, went out in the kitchen and took an ironing board and placed it on the dining room table and commenced to iron.

Q. You in the meantime washing the windows?

A. I was washing the last window in the dining room.

Q. Did she say anything to you, or you to her, while you were doing that, and she was doing what you describe?

A. 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

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note this morning; it must be in town."

Q. Did you complete the washing of your two windows in the dining room?

A. Yes, sir, I washed them before I got through with them.

Q. And in the meantime did she go on ironing whatever she was ironing?

A. Yes, sir; she got through, and I went out in the kitchen.

Q. What was she ironing?

A. Handkerchiefs.

Q. And where were the flats that she was ironing with?

A. In the stove, in the kitchen.

Q. Do you know anything of the condition of the fire at that time?

A. No, sir; I couldn't tell how it was.

Q. You say you finished your washing of the windows and went into the kitchen?

A. Yes, sir.

Q. What did you do in the kitchen?

A. I washed out the cloths that I had washing the windows, and hung them behind the stove. As I got through, Miss Lizzie came out 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." And I said, "I am going to have one."

Q. What did you do then?

A. I went up stairs to my room.

Q. Up to that time, Miss Sullivan, had you seen or heard any other person about the premises except those whom you have named?

A. No, sir, I don't remember to hear a sound of anybody else.

Q. What did you do when you got to your bedroom?

A. I went up stairs to my bedroom. When I got up in the bedroom I

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laid in the bed.

Q. When is the first occasion that you had to notice the time after you got up in your bedroom?

A. I heard the bells outdoors ring, the city hall bell, as I suppose it was, and I looked at my clock and it was eleven o'clock. My clock was in the room.

Q. Were you lying on the bed at that time?

A. Yes, sir.

Q. Had you become drowsy at all, or anything of that sort?

A. I don't remember; I know I wasn't drowsing or sleeping.

Q. Have you a judgment as to how long you were there between the time you reached your bed and the time that the city hall clock struck eleven?

A. Well, I might be there---of course I can't tell, I didn't notice the time when I went to my room, but by my judgment I think I was there three or four minutes.

Q. Did you get drowsy at all up to the time you were called; didn't you go to sleep at all?

A. Why, I don't think I did.

Q. Up to the time when some one called you, did you hear any noise?

A. No, sir; I don't remember to hear a sound of anybody.

Q. Did you hear any opening or closing of the screen door?

A. No, sir, I did not.

Q. Are you able to hear the opening or closing of that screen door from your bedroom?

A. Yes, sir: if anybody goes in or out and is careless and slams the door, I can hear it in my room.

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Q. What is the next that occurred as you were lying upon the bed?

A. Miss Lizzie hollered, "Maggie, come down!" I said, "What is the matter?" She says, "Come down quick; father's dead: somebody come in and killed him."

Q. Can you give me a judgment of how long that was after the clock struck eleven?

A. Well, it might be ten or fifteen minutes, about as far as I can judge.

Q. You had a clock, as you have told us, in your room?

A. Yes, sir.

Q. Did you look at the clock?

A. No, sir, I did not.

Q. What did you do?

A. I run down stairs.

Q. Had you, by the way, changed any of your clothing?

A. No, sir; I did not.

Q. Or taken off your shoes?

A. No, sir.

Q. Or taken off any clothing at all?

A. No, sir.

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.

Q. 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

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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.

MASON C. J. 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.

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

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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.

Q. When did she procure that dress?

A. Last spring, I guess.

Q. Do you know who made it?

A. Yes, sir.

Q. Who? (Witness hesitated). If you do not know of your own knowledge, I won't ask you.

A. I know her, but I forget the lady's name.

Q. It is the name that you are hesitating about, is it?

A. Yes, sir.

Q. Do you know where her place of business is?

A. No, sir, I do not.

Q. Was it made at the house or made somewhere else?

A. I think it was made at the house.

Q. Was it a dress maker that she usually had, or some other dress maker?

A. Why, generally the same dressmaker has been there ever since I have been in the house.

Q. The same dressmaker that has always been there?

A. Yes, sir.

Q. The same one that was always there made this dress that you describe?

A. I can't tell who made the dress at all, but I know the dress maker was there in the house dressmaking that spring.

Q. And she got that dress that spring?

A. I can't tell who made it.

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MR. MOODY. Yes, I understand. There is a dress, your Honors, which is not here at the present time, that we intended to show to the witness. I would like to reserve the privilege of doing so. It is here, but it is under lock and key.

MR. KNOWLTON. Professor Wood has the key with which it is locked up, and he is absent.

Q. When you heard this outcry, did you go down stairs?

A. Yes, sir.

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Q. Whom did you first see when you came down stairs?

A. Miss Lizzie.

Q. Let me ask you in this connection if you are able to tell us what dress she had on that morning?

A. No, sir, I couldn't tell what dress the girl had on.

Q. And you couldn't describe it?

A. No, sir, I couldn't.

Q. Where was Miss Lizzie standing as you came down the back stairs?

A. Standing at the back door, standing at the door that was leading in, a wooden door.

Q. Was the door open or closed?

A. The door was open.

Q. Was she in or outside or upon the threshold?

A. She was inside the threshold, as far as I can remember.

Q. You spoke of her standing with her back towards something. What was her back towards?

A. Standing with her back to the screen door. I don't know as she leaned against the door or not.

Q. When you said the door was open, you meant the screen door, I suppose?

A. No, sir. I meant the wooden door. The screen door was shut.

Q. Could you tell whether it was hooked as well as shut?

A. No, sir, I couldn't tell whether it was hooked or not.

Q. Did you say anything to her at that time or she to you?

A. I went around 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." So 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 open."

Q. Did you have anything more said between you at that time?

A. No, sir, not at that time. She wanted to know if I knew where Miss Russell lived, and I says, "Yes." She says, "Go and get her. I can't be alone in the house." So I stepped inside the entry and got a hat and shawl that was hanging inside the entry and went down to Miss Russell.

Q. Had there any outcry or alarm been given at that time to the neighbors?

A. No, sir.

Q. Where did you first go to get Miss Russell?

A. I went in the corner house, the corner of Second and Borden street.

Q. It is suggested you didn't tell us whether you found Dr. Bowen or not.

A. No, sir, I did not. His wife came to the door, and I told her that Mr. Borden was dead. I think that is what I told her, and she said the doctor wasn't in, but she expected him along any time, and she would send him over.

Q. Now, you were about describing to us the house where you first went to get Miss Russell?

A. I went in the house on the corner of Second and Borden street.

Q. Did you find any one there?

A. I found a woman and asked her if---

Q. Never mind that. You learned that Miss Russell was not there?

A. Yes, she was not there.

Q. Where did you go then?

A. I went out and on the corner I met a man which Mrs. Churchill sent, looking for a doctor, I guess, and I asked him---

Q. One moment. Please do not repeat that. Where did you go? You learned where Miss Russell lived from some one?

A. Yes, sir.

Q. Where did you go?

A. She lived on Borden street.

Q. In the little cottage house next the baker shop?

A. Yes, sir.

Q. How far did you go before you found her?

A. I can't tell how long it was.

Q. Well, was Miss Russell there then?

A. Yes. I saw Miss Russell at the screen door as I came to the door. She appeared at the door, and I told her.

Q. She appeared at the door as you approached the door?

A. Yes, sir.

Q. And after some conversation with her did you go away?

A. Yes, sir. I went back home.

Q. Where did you go to?

A. I went to the house where I left.

Q. Now, going back a moment, in going over to Dr. Bowen's and returning, did you go rapidly or slowly or how?

A. I don't know. I guess I ran. I don't know whether I did or not, but I guess I went as fast as I could.

Q. When you returned to the house by what door did you enter?

A. The back door.

Q. The screen door, as we call it?

A. Yes, sir.

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Q. Who had got there then, if any one?

A. When I came from Miss Russell's?

Q. Yes.

A. Mrs. Churchill was in and Dr. Bowen.

Q. Was any one else there at that time except Mrs. Churchill and Dr. Bowen?

A. No, sir,---and Miss Lizzie.

Q. Where were they when you returned from your errand in seeking Miss Russell?

A. I think Miss Lizzie was in the kitchen with Mrs. Churchill, 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."

Q. What happened then?

A. "Oh," I says, "Lizzie if I knew where Mrs. Whitehead was I would go and see if Mrs. Borden was there 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 up stairs to see." I said, "I am not going up stairs alone."

Q. Before that time that she said that had you been up stairs?

A. No, sir. I had been up stairs after sheets for Dr. Bowen.

Q. Into whose room?

A. Into Mrs. Borden's and into the little room where he kept the safe.

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Q. What led you to go up stairs into Mrs. Borden's room? Describe all that was done and said.

A. Dr. Bowen wanted a sheet and I said "I guessed the sheets were up in Mrs. Borden's room, Mrs. Borden's desk where she kept the bed-clothes, and he wanted to get the keys, and I asked Dr. Bowen if he would get the keys off the shelf in the sitting room, and he did so and Miss Russell said she would do anything to help me. She went in and unlocked the door and got two sheets, I guess.

Q. Was it Miss Russell or Mrs. Churchill?

A. Mrs. Churchill.

Q. When you went up with the key from Dr. Bowen from the sitting room, did you find the entrance to Mr. Borden's sleeping-room locked or unlocked?

A. Locked.

Q. When you returned with the sheets did you lock the door?

A. Yes, sir.

Q. It was after that then that the conversation about going to Mrs. Whitehead's occurred?

A. Yes, sir.

Q. Won't you state that again? I did not quite hear it. You said, "I says Lizzie, if I knew---" Now upon your return, what was said?

A. I said, "Miss Lizzie, if I knew where Mrs. Whitehead's was I would go and see if Mrs. Borden is there." She said, "Maggie, I am almost positive I heard her coming in," she said, "I am sure she is up stairs." I said, "I am not going up again."

Q. Who is Mrs. Whitehead?

A. Mrs. Borden's sister.

Q. Who lived in Fall River?

A. Yes, sir.

Q. In consequence of what was said to you, what was said or done?

A. Mrs. Churchill said she would go with me. I went from the

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dining room into the sitting room and up stairs.

Q. Describe what you saw as you went up stairs?

A. As I went up stairs I saw the body under the bed. I ran right into the room and stood at the foot of the bed.

Q. How far up stairs did you go before you saw the body?

A. I don't remember how far, but I remember to see the woman's clothing.

Q. (By Mr. Robinson.) What?

A. I don't remember how far up I went. I guess I went far enough to see.

Q. (By Mr. Moody.) The woman's clothing you were saying---

A. Right between the bed and the wall, the bed was high enough to see,---I went right into the room and stood at the foot of the bed.

Q. Was the door leading into that chamber where Mrs. Borden was found dead open or closed as you came up the stair-way?

A. Open.

Q. Do you recall anything about the curtains or shutters in that room at that time?

A. No, sir, I could not tell how they were.

Q. Can you tell anything about how light it was in that room at that time?

A. No, sir, I could not tell; I did not stay long enough to notice anything.

Q. Did you stop to make any examination of Mrs. Borden at that time to see what the matter was with her?

A. No, sir, I did not.

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Q. What did you then do?

A. I came down stairs.

Q. Did Mrs. Churchill go into the room with you?

A. No, sir.

Q. When you came down stairs what occurred?

A. When I came down stairs Miss Lizzie was in the dining room, lying on the lounge with Miss Russell.

Q. Can you tell anything else that was done or said before you came down after having found this second dead body?

A. No, sir, I cannot say, but they asked if I would go over and tell Mrs. Bowen to come over. I went over and told Mrs. Bowen, rung the front door bell and told her that Mrs. Borden was dead and they wanted her to come over.

Q. That was another time that you went to Dr. Bowen's house?

A. Yes, sir.

Q. After you found Mrs. Borden dead?

A. Yes, sir.

Q. While you were speaking to Mrs. Bowen the second time you went to the house, did you see anyone else, did anyone else come there?

A. To Mrs. Bowen's?

Q. Yes, or the adjoining door.

A. Mr. Miller spoke to me and wanted to know what was the matter.

Q. I don't care what he said.

A. Mr. Miller spoke to me. That was all, I guess.

Q. Do you recall anything else that Miss Borden said to you with reference to her whereabouts after you went up stairs?

A. No, sir, I do not remember.

Q. I don't know that you made it quite clear what Miss Lizzie Borden was doing as you went up stairs?

A. To my room, do you mean?

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Q. Yes, to your own room.

A. She was in the dining room, turned in, and as she went into the dining room I went up stairs.

Q. Had she stopped ironing at that time?

A. No, sir.

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 Aug. 4th with a message or a note for Mrs. Borden?

A. On that day?

Q. Yes.

A. No, sir, I never seen nobody.

Q. Will you state again (Turning to Mr. Robinson)---

I would say that there is some difference of recollection between my associate and myself and I should like that statement repeated.

MR. ROBINSON. I think there is great objection to repeating testimony simply because counsel do not remember. The testimony may be read from the minutes.

MR. MOODY. I will not ask the question.

Q. Have you stated all that she said to her father about Mrs. Borden's absence?

A. Yes, sir.

Q. Do you recall whether anything was said about a note?

A. She told her father her mother had a note and had gone out.

MR. ROBINSON. That has already been gone into.

MR. MOODY. That is my recollection, but my associate---

MASON, C. J. It is my recollection that that has been gone into.

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MR. ROBINSON. I ask then that the answer just given be stricken out.

MASON, C. J. The last answer may be stricken out.

Q. Was anything in that conversation with the father said about a sick person?

A. No, sir, she had a note and gone out. I did not hear any more.

Q. I neglected to ask you whether Miss Emma Borden was absent?

A. Yes, sir.

Q. On the day of these homicides?

A. Yes, sir.

Q. How long had she been away?

A. I think she was two weeks; I cannot tell exactly.

Q. I suppose you only know from information where she was?

A. No, sir, I did not know where she was.

Q. Did you see some officers about the premises that day after the murder, after the homicides?

A. Yes, sir.

Q. Do you know which officers they were?

A. I know them now but I did not know them then.

Q. Do you know now which officers they were?

A. Officer Doherty was there and the Assistant Marshal and officer Medley, I guess.

Q. Anyone else that occurs to you?

A. I don't remember.

Q. Did you go into the front part or the rear part of the house with the officers?

A. No, sir, I did not; I went up stairs to Mrs. Borden's room, up to my own room and to three other rooms in the first story.

Q. My question was, did you go up into the front part of the house at all with them?

A. Not with the officers.

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Q. Had you ever seen a hatchet with a broken handle about the premises?

A. No, sir, I did not see any hatchet. I had no occasion to see any of them.

Q. A hatchet with the handle broken off close to the blade of the hatchet. Had you ever seen such a thing?

A. No, sir, I did not.

Q. Who did the cutting of the wood?

A. The man on the farm.

Q. Do you remember what his name was?

A. His first name was Alfred; I don't know his last name.

Q. How often did he come to do it?

A. I think he cut it over on the farm and brought it over and split it small, some of it, down cellar.

Q. Did you have anything to do with that cutting or chopping of the wood at all?

A. No, sir, I did not.

Q. You used it just as it was prepared for you?

A. Yes, sir, I did.

Q. On the day before, on Wednesday, did you see Miss Lizzie Borden at any time during the day?

A. Yes, sir, she was down to her breakfast and down to her dinner.

Q. Did you see her between those times?

A. I don't remember. I know she was down before the dinner was put on the table Wednesday.

Q. Were you in the habit of tending the bell calls at the front door?

A. Yes, sir, when Mr. Borden or Mrs. Borden was not at home, but when they were in the sitting room I did not go to the door.

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Q. At any time when you answered the bell call did you find the door locked in the way you described this morning?

MR. ROBINSON. Wait a moment. I object to that.

MR. MOODY. It has been suggested that it may appear hereafter on the testimony of Miss Lizzie Borden that it was her habit to unlock the door in the morning and leave the door on the spring lock only.

MR. ROBINSON. I suppose that is not now before the Court.

MASON, C. J. We exclude it.

MR. MOODY. The witness is yours unless something has escaped us. I tried very hard that there should be nothing.

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. How long had you been at the house living there?

A. Two years and nine months.

Q. Did you have any trouble there in the family?

A. No, sir.

Q. Not at all?

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,

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yes.

Q. Treated you well?

A. Yes, sir, they did.

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. And during the whole time that you were there? You were there two and a half years, I think you said?

A. Yes, sir, two years and nine months.

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.

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

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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. Some times 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 some times 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 down stairs?

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 was.

Q. Who answered civilly?

A. Miss Lizzie answered.

Q. Answered properly, all right?

A. Yes, sir,

Q. When you heard them talking, they were talking calmly, the

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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. Where were you at that time?

A. I was in my kitchen.

Q. Was Mr. Borden there at that time?

A. No, sir, I don't think that he was.

Q. He had gone out at that time?

A. No, sir, I don't think he was out; I don't know where he was.

Q. I am talking now of Thursday morning when you heard Mrs. Borden and Lizzie talking together?

A. Yes, sir.

Q. Then they got along congenially, did they?

A. Yes, sir, as far as I could see.

Q. And talked pleasant?

A. Yes, sir, as far as I could see. When Mrs. Borden talked to them, they talked to her.

Q. You waited on the table at times when they were all at the table?

A. Yes, sir, I put the meals on and rung the bell.

Q. Whenever they rang the bell you went in?

A. Yes, sir.

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.

Q. Did not Lizzie treat her properly and help her?

A. I did not

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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. Do you remember it all?

A. I think I do.

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. And they were talking pleasantly that Thursday morning in the sitting-room.

A. Yes, sir.

Q. That is so, is it?

A. Yes, sir.

Q. You said, "I never heard a word that I could say was between the two."

A. No, sir, I never heard anything between them.

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Q. You said "They seemed to get along congenially".

A. Yes, sir, for all I saw.

Q. Is that so?

A. Yes, sir.

Q. But did they get along pleasantly, and "if anything was the matter with Mrs. Borden, Lizzie did all she could for her?" Is that so?

A. I don't know that Christmas was mentioned at all.

Q. Will you say that you did not say that?

A. No, sir.

Q. You won't say you did not say it?

A. No, sir.

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Q. Where have you been living since you left the Borden house?

A. In New Bedford.

Q. Where?

A. Mrs. Hunt's.

Q. Where does Mrs. Hunt live?

A. On Court Street.

Q. What is Mr. Hunt's occupation?

A. Keeper.

Q. Keeper of what?

A. Of the jail house.

Q. Then you have been at the jail, have you, helping work all the time?

A. Not in the jail.

Q. I don't mean in the jail, but at the keeper's house?

A. Yes, sir.

Q. And you have been there all the time?

A. Yes, sir.

Q. And are still there employed?

A. Yes, sir.

Q. You came right over from Fall River?

A. Yes, sir.

Q. And have been there ever since?

A. Yes, sir.

Q. You were under a recognizance to appear here, were you, -- to appear here as a witness?

A. Yes, sir.

Q. And was the city marshal of Fall River one of your sureties?

A. Yes, sir; as I understand.

Q. And was the other one of the detectives, Mr. Seaver?

A. Yes, sir.

Q. So you have been in the family of Mr. Hunt, the keeper of the jail, all the time since?

A. Yes, sir.

Q. I suppose you have not had much talk with either Miss Lizzie or Miss Emma since that time?

A. No, sir.

Q. Or anybody representing them?

A. No, sir.

Q. You have seen some people that were on the other side of the case, haven't you?

A. I don't know what you mean.

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Q. You have seen Mr. Knowlton since?

A. Yes, sir.

Q. Where?

A. At Mr. Hunt's.

Q. How many times?

A. Once.

Q. When?

A. Last Thursday.

Q. And have you seen any of the officers besides?

A. No, sir; not ----

Q. Not to talk with them?

A. I don't remember to see any of the officers, not to talk to, I don't think.

Q. Have you talked with anybody but Mr. Knowlton?

A. And this other gentleman.

Q. This gentleman here?

A. Yes, sir.

Q. Anybody else?

A. That is all.

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 to the screen door when you came in?

A. I hooked it.

Q. Did you say so before at the other examination?

A. I think so.

Q. Do you know so?

A. I am not sure.

Q. You are not sure?

A. No, sir.

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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.

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.

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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. Do you say that Second Street is a quiet street?

A. No, sir; I didn't say no such thing.

Q. Well, is it a quiet street?

A. Well, I don't know; I didn't see any quarreling there.

Q. No, no; I don't mean quarreling, but the noise of travel?

A. Well, there is quite a lot of teams and hacks and so forth goes by there.

Q. And so if you were back in the kitchen, the rear end of the house, you would be farther away from it than anybody else in the house?

A. Yes, sir.

Q. You said that Wednesday morning, I think, that you let Dr. Bowen in?

A. Yes, sir.

Q. Whom did he come to see; somebody that was ill?

A. Yes, sir; he came there to see Mr. Borden, I suppose.

Q. Well, was Miss Lizzie complaining?

A. She said that morning that she was sick.

Q. You say that she was down at breakfast time that morning?

A. Yes, sir.

Q. And about during the forenoon?

A. She was down before the dinner was served on the table.

Q. Well, she was down at breakfast time too, I think you said?

A. Yes, sir.

Q. Sat down with them?

A. Yes, sir.

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Q. And you don't know, of course, how much she ate? You don't know about that?

A. No, sir; I do not.

Q. You went out to meet some friends Wednesday night?

A. Yes, sir.

Q. And did you go out alone?

A. Yes, sir.

Q. And came home alone?

A. Yes, sir.

Q. How far did you go from the house?

A. I couldn't tell. I went as far as Third Street, up Third Street. I went down Second Street, through Borden Street and up Third Street. I went down Main Street and up Main Street, and out as far as Morgan Street.

Q. And you got home about five minutes past ten, I think you said?

A. Yes, sir.

Q. And there you found the lamp in the kitchen?

A. Yes, sir.

Q. Which you had not lighted yourself; you had gone out before lamp-light?

A. Yes, sir.

Q. And you took that and went to bed?

A. Yes, sir

Q. Did you tell us what time (I think you did not) they had dinner the day before?

A. Wednesday?

Q. Yes.

A. Twelve o'clock.

Q. Twelve o'clock was the usual hour. There was a key to the side wooden door?

A. Yes, sir.

Q. And do you know whether Mrs. Borden or anybody else had a key to it besides yourself?

A. I know Mrs. Borden had a key for it; Mrs. Borden got a key for it when I got mine.

Q. So there were two keys?

A. Yes, sir.

Q. Where did you keep yours when you came into the house?

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A. I hung it on a nail that was hanging down near the lamp in the kitchen---the mantel-piece.

Q. That was your rule, to hang it there?

A. Yes, sir.

Q. Do you know where the other one was kept?

A. No, sir; I do 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. Dinner and supper. You had nothing to do, as I understand you, in the line of your work, mainly, except in the kitchen and in the wash-room below?

A. In the front entry---back entry.

Q. You didn't have anything to do with the parlor at all?

A. No, sir.

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Q. And nothing to do with the spare room above stairs?

A. No, sir.

Q. Or the rooms of Miss Lizzie or Miss Emma?

A. No, sir.

Q. And you didn't take care of Mr. and Mrs. Borden's room?

A. No, sir.

Q. And you had no charge at all, no care of the front part of the house?

A. No, sir.

Q. And seldom went in there?

A. No, sir; I never had no business there.

Q. And had no work to do there. And if Mr. and Mrs. Borden were in the house, and the door bell rang, they attended, one of them, to the door, and you did not go?

A. Yes, sir.

Q. And even the little care of the rooms, such as the taking care of the toilet slops in the rooms of the daughters, you didn't see to it?

A. No, sir; I didn't have nothing to do to them.

Q. Nothing to do with them?

A. No, sir.

Q. And you didn't see to them even in the room of Mr. and Mrs. Borden?

A. No, sir.

Q. You could easily go to their room, could you not?

A. No, sir; except I would want the key---except I would take the key.

Q. Then Mr. Borden kept---

MR. MOODY. Why not let her finish?

THE WITNESS. No, sir; I didn't have nothing to do to their rooms; there was nothing to take me there. I had nothing to do to it. If they wanted me to go on any errand there they would let me have the key.

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Q. Mr. and Mrs. Borden had a key?

A. Yes, sir.

Q. Did they have more than one key to that door?

A. I don't know.

Q. They had one?

A. Yes.

Q. I mean their bedroom door upstairs?

A. Yes, sir; I mean their bedroom.

Q. Their bedroom door. Going up the back stairs you would reach their bedroom door, and that key was kept on the mantel in the sitting-room unless it was in use there? up

A. Yes, sir.

Q. There is a bell that hangs there in Mrs. Borden's room, I suppose you know?

A. Yes, sir.

Q. An old bell?

A. Yes, sir; I have seen it.

Q. But that is not connected with the front door knob, is it?

A. I don't know anything about it.

Q. Did you ever hear it ring up there?

A. No, sir; I don't remember.

Q. The bell you did hear ring was downstairs?

A. I didn't hear any bell that morning.

Q. No, I don't mean any particular time.

A. No, sir; in the kitchen.

Q. But while you were there was that bell upstairs, to your knowledge, ever in use?

A. No, sir; I don't know anything about the bell upstairs. Always the bell I heard was in the kitchen.

Q. Well, that is it. All the bell you ever heard was in the kitchen?

A. Yes, sir.

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Q. Now coming in at night on Wednesday night, you went to your room and rose in the morning at quarter past six?

A. I came down to the kitchen at quarter past six.

Q. Did you lock your door above?

A. No, sir.

Q. Was anybody else occupying any room in the upper part of the house at that time?

A. No, sir.

Q. On the third floor?

A. No, sir.

Q. Your room up there?

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.

Q. Your window opened out into the yard?

A. Yes, sir.

Q. Now you speak about the time as 6.15 in the morning, quarter past six, on looking at the clock. How many clocks were there in the house?

A. Well, there is one in the sitting-room, one in the kitchen, one in my bedroom, and I think there was one in Mr. Borden's bedroom.

Q. Any other?

A. That is all I remember; all to my knowledge.

Q. Did you ever see a clock in the parlor?

A. Yes, sir; I think there was a clock in the parlor; but I am not sure.

Q. Do you recall whether there was a clock in Miss Lizzie's room or Miss Emma's room?

A. No, there might be there; I don't remember.

Q. You, don't know about that?

A. No, sir.

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Q. There were clocks enough, weren't there?

A. Yes, sir; there was.

Q. One in the sitting-room, you said?

A. Yes, sir.

Q. You prepared the breakfast Thursday morning, as I understand you, and will you tell us again what they had for breakfast?

A. They had some broth and mutton, johnny cakes, and coffee, and cookies, and butter, and so forth.

Q. There was butter on the table then, was there?

A. Yes, sir.

Q. And you don't say that there was no fruit?

A. I don't remember of any fruit.

Q. You remember that you didn't put it on the table?

A. No, sir.

Q. Was it usually standing on the sideboard there?

A. Yes, sir; sometimes it was there.

Q. You said that Mrs. Borden came down into the kitchen, and you didn't recollect that she went into any other room than the sitting-room?

A. No, sir; I do not.

Q. But you don't know certainly about that, do you?

A. I know she went into the sitting-room, where---

Q. You don't know where else she went?

A. No, sir; I do not.

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.

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Q. Could you tell us just what Mrs. Borden did the Tuesday before when she came down stairs?

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 down stairs 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. Do you remember anything about what dress she had on?

A. Yes; she generally wore a light---

Q. No, not generally; what did she have on Tuesday?

A. I don't remember what she had on Tuesday; I can't tell.

Q. Do you remember anything about Wednesday, what dress she had on?

A. Yes, sir.

Q. What was it?

A. It was a light blue.

Q. You say you don't remember Thursday?

MR. MOODY. Well, let her finish.

THE WITNESS. Wednesday morning she had a blue wrapper on her; skirt and basque.

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Q. Now you say you do not remember on Thursday?

A. No, sir. I can't tell.

Q. Can't remember?

A. No, sir. I can't tell what dress the girl had on.

Q. Have you any recollection at all what dress she had on any part of Thursday?

A. No, sir, excepting the afternoon I went to her room and she had on a pink wrapper.

Q. A pink wrapper in the afternoon?

A. Yes, sir.

Q. Before that you can't tell anything about it?

A. No, sir; I couldn't.

Q. Now, Mr. Borden went out in the garden or under the pear trees in the morning at what time?

A. It might be seven o'clock or five minutes or ten minutes---I can't tell what time it was.

Q. Was it before breakfast?

A. Yes, sir.

Q. And where was Mr. Morse at that time?

A. I couldn't tell where he was.

Q. Is there a room connected with the kitchen beside the closet?

A. Why, there is the sitting-room, dining-room, closet and sink room.

Q. Anything else?

A. Front hall---front entry.

Q. Small hall leading to the outside door? Is there a room there in the corner, the northeast corner?

A. Downstairs?

Q. Yes.

A. There is a parlor there.

Q. No; leading out from the kitchen?

A. There is a closet there.

Q. Well, you call it a closet?

A. Yes, sir.

Q. Is that the only closet there is in the kitchen?

A. That is the closet, the kitchen closet. There is a little closet

there, where the wood and coal was kept, and there is a sink room there where the refrigerator was.

Q. Then there is a closet, and that is quite a large closet,---a sort of a pantry, wasn't it?

A. Well, I always called it the kitchen closet. I don't know what anybody else called it.

Q. You could go right into it?

A. Yes, sir.

Q. And shelves around?

A. Yes, sir.

Q. And did you have occasion to go in when you were preparing breakfast?

A. Yes, sir.

Q. Regularly?

A. Yes, sir.

Q. And when you were clearing away and were putting in food did you have occasion to go in there?

A. Yes, sir.

Q. That was a common thing, wasn't it?

A. Yes, sir.

Q. You went in there that morning did you not?

A. Yes, sir.

Q. And in and out that room several times?

A. Yes, sir.

Q. There was a window opening from that closet out into the back yard, was there not?

A. A window was there; I don't know whether it was open or shut.

Q. I don't mean whether it was exactly open, up or down,---but a window that let the light in?

A. Yes, sir.

Q. And there was a door which could be shut to that closet?

A. Yes, sir.

Q. Now while Mr. Borden was out in the back yard, do you know whether the door was hooked or not?

A. I didn't hook it.

Q. You didn't hook it?

A. No, sir.

Q. And you have not the least knowledge whether it was hooked or not, have you?

A. No, sir; I have not.

Q. And I think you have told us, just a moment ago that when you

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yourself went out into the yard at the vomiting time, that now you cannot say whether you hooked it or not when you came back?

A. I didn't hook it when I went out, for I couldn't.

Q. No; when you came in?

A. Well, I generally always hooked it.

Q. No, I did not ask you that. You have told us now that you cannot tell, haven't you, certainly?

A. Well, I am most sure that I hooked it, but I wouldn't say.

Q. You won't say?

A. I won't say.

Q. All the time that you were washing windows, that door was unhooked, wasn't it?

A. Yes, sir.

Q. Now what time did you begin to wash windows?

A. Well, as far as I remember---my knowledge of it---it was half past nine.

Q. Mr. Borden was gone down street, then?

A. Yes, sir, he had gone out of the house.

Q. He had gone out of the house?

A. Yes, sir.

Q. And from the time you commenced at half past nine in the morning until you got through with the washing outside, that screen door was unhooked?

A. Yes, sir.

Q. And you made the suggestion to Miss Lizzie that she need not hook it because you would be around there to look after it?

A. Yes, sir.

Q. Now, as a matter of fact, you were not around there all the time to look after it, were you?

A. I didn't know as there was anybody to come into the kitchen, but I said I would be around there.

Q. You didn't anticipate any trouble, or anybody getting in?

A. No, sir; I did not.

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Q. You expected it would be all right?

A. Yes, sir.

Q. And that is the reason you told her so?

A. Yes, sir.

Q. You did not tell her to keep it so only to let you in, did you?

A. Yes, sir.

Q. That is what you wanted?

A. Yes, sir.

Q. Now let us see. You went out to the barn to get water several times, six or seven or more pails of water?

A. Yes, sir.

Q. And that is while the screen door was unfastened?

A. Yes, sir.

Q. You were washing; you went in and shut the windows in the sitting room?

A. Yes, sir.

Q. And the dining room?

A. Yes, sir.

Q. And you do not know how you did leave the shutters in there, or the curtains?

A. Well, I didn't disturb the shutters or the curtains. The upper shutters were shut, I know they were, and the lower shutters I didn't disturb them; they was partly open, I suppose,---I can't tell; but I let down the windows.

Q. Really, you don't know; you put the windows down, but how you left the lower part of the shutters you don't know?

A. Well, I know they was open a little.

Q. What is that?

A. I know they were partly open.

Q. They were partly open?

A. Yes, sir.

Q. When you first went out, as you got ready to go to work, you saw Mrs. Kelley'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.

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Q. What part of the yard?

A. She was in the yard, front of the house, going to wash windows.

Q. She was over on the Second Street front?

A. Yes, sir.

Q. She was going to wash the windows in the front part of that house?

A. Yes, sir.

Q. And you went over to the fence in that corner and stood there talking with her?

A. Yes, sir.

Q. That was before you commenced to wash?

A. Yes, sir, I had the water and---

Q. The screen door over on the other side of the house was open, unlocked, all that time?

A. Yes, sir.

Q. And you had left it so, hadn't you?

A. Yes, sir; I did.

Q. That was before you commenced to wash?

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. Kelley's girl, the field was pretty clear, wasn't it? That is, there wasn't much in the way; you stood back to the

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Borden house, talking with the Kelley girl over the fence?

A. Yes, sir, I was.

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. You were talking to that girl?

A. Yes, sir.

Q. Talking right straight to her?

A. Yes, sir; I was.

Q. When Mr. Borden went out that morning---let Mr. Morse out, rather,---you do not know yourself how that door was left, do you?

A. Well the door was hooked when I went out in the yard.

Q. That is all you know; the door was hooked when you went out at a later time in the yard?

A. Yes, sir.

Q. But who hooked it you do not know?

A. Well, I suppose Mr. Borden.

Q. No, don't suppose; you can suppose anything. You don't know that, do you?

A. No, sir.

Q. You had your breakfast in the dining room?

A. Yes, sir.

Q. What part of the dining room did you sit?

A. I sat at the table.

Q. Which side?

A. The south side, towards Dr. Kelley's.

Q. You sat on the south side of the dining room?

A. Yes, sir.

Q. And your back was towards the sitting room?

A. My back was towards the sitting room.

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Q. You sat on the side of the table?

A. Yes, sir.

Q. Whose place was that, ordinarily?

A. Mr. Borden's.

Q. That was where Mr. Borden ordinarily sat, with his back to the sitting room wall?

A. Yes, sir.

Q. And his face would be looking over towards Mrs. Churchill's?

A. Yes, sir.

Q. You saw Mr. Borden go up after the breakfast time,---take his key and go up the back stairs?

A. Yes, sir.

Q. And how long he was gone you do not know?

A. No, sir; I do not.

Q. But he came down, and then he went off out of the house?

A. I didn't see him going out that morning.

Q. But you knew he went?

A. I suppose he went out, because I did not see him in the house.

Q. And Mrs. Borden at that time was attending to dusting about?

A. I suppose so; I didn't see her dusting at that time.

Q. You did not go into the front part of the house at all, that morning, until the time when you went to the front door to unlock it?

A. No, sir; not through the front part.

Q. I beg pardon?

A. No, sir; I didn't go from the dining-room.

Q. While you were washing the windows in the sitting room and dining room inside, you had not gone into the front hall that morning---

A. No, sir, I did not.

Q. Until you heard the noise at the front door?

A. No, sir; I did not.

Q. And you certainly did not then go up the front stairs?

A. No, sir, I did not.

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Q. And the last time, then, that you saw Mr. Borden, was when he was going up stairs with his pitcher and his key?

A. Yes, sir, that is what I remember.

MR. MOODY. Until he came back to the front door,---you understand that; you do not want mislead her, of course.

MR. ROBINSON. Yes, I mean until he came to the front door,---(to the witness). You understand that?

A. Yes, sir.

Q. And you have said, I think, and made it plain, that when you suggested to Miss Lizzie that she need not hook the side door, she did not hook it?

A. No, sir; she did not.

Q. You know she did not, because you could get in there,---in and out?

A. Yes, sir.

Q. When you went to the barn to get the water, you got it at that faucet under the stairs, didn't you?

A. Yes, sir.

Q. As you went in at the door you would go around under the stairs?

A. Yes, sir.

Q. And draw the water in your pail?

A. Yes, sir.

Q. Now, could you see much of the yard when you were in there?

A. I could see facing out; that was all.

Q. What?

A. I could see if I was looking out; that was all.

Q. If you were looking out. You were getting water, weren't you?

A. Yes, sir.

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Q. You were really honestly at work, of course?

A. Yes, sir.

Q. You were not upon the watch looking out for people?

A. No, sir.

Q. Watching your work?

A. Yes, sir.

Q. How many pails of water did you get in all from the barn?

A. Well, I couldn't remember.

Q. Did you say something like six or seven?

A. Yes, I probably got that much. It might be more, it might be less.

Q. It might be more than six or seven?

A. Yes. I can't tell.

Q. In the first place, you had been out in the barn to get this stick and came in again?

A. Yes, sir.

Q. And then got your things together?

A. No, sir, I didn't.

Q. Well, how was it?

A. I went out---I went down stairs and got a pail, and took the pail out doors full of water, and went in the barn and got the handle of the brush, the stick, whatever you call it.

Q. On the outside of the parlor you say the blinds were closed when you went around there?

A. I know they was closed on the front part any way.

Q. But you can't tell us at all whether the parlor curtains or shutters on the inside were closed?

A. I can't remember how they were.

Q. Whether anybody was in that room you can't tell?

A. No, sir, I couldn't.

Q. You didn't see anybody come in there at all?

A. No, sir. I didn't see anybody around the house.

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Q. When you walk along on the north side of the house on the walk,---you know where I mean, coming from the street in---

A. Yes, sir, I know what you mean.

Q. ---how high is the window-seat of the dining-room? How does it come with reference to your body or your head?

A. I don't know. It is quite high, I think.

Q. Can't see in, can you?

A. I can't see, except anybody had been at the window I could see them, I guess.

Q. And as you are walking in along there from the street and going into the back door, the window-seats are up so high and the walk so low that you can't see unless a person is right up to the window?

A. I think so. I don't remember how it was.

Q. Now, what you say is that you went into the kitchen to get the dipper after you had got through with the outside, to rinse it off, I suppose?

A. Yes, sir.

Q. And when you went into the kitchen you didn't see anybody?

A. No, sir, I didn't.

Q. That is all there was about that?

A. Yes.

Q. Whether there was anybody in the dining-room or anybody in the sitting-room or elsewhere, you don't know?

A. No, sir, I don't.

Q. You were not taking any pains to find out, were you?

A. No, sir. I wasn't thinking of anybody in the house.

Q. Didn't think of any trouble at all?

A. No, sir, I didn't.

Q. Then after you got through did you go out to the barn again to

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put the tools away or any part of them?

A. No, sir. I put the handle of the brush in the barn before I came in.

Q. What I mean is, that was after you got through outside?

A. Yes.

Q. You went to the barn again?

A. Yes.

Q. And put the handle in there?

A. Yes.

Q. And then when you came in you hooked that side door?

A. Yes, sir, I did.

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. Now, you say that you unlocked the bolts?

A. Yes, sir.

Q. You didn't open the parlor door, did you?

A. The parlor door?

Q. Yes.

A. No, sir. I didn't have nothing to do with it.

Q. You don't know anything about it?

A. No, sir, I don't...

Q. Whether there was anybody in there or not?

A. No, sir, I didn't.

Q. The door from the sitting-room into the parlor was closed, wasn't it?

A. Yes, sir.

Q. All the time the door from the hall into the parlor was closed?

A. Yes, sir.

Q. You had had no occasion up to that time to go to that front

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door that morning or anywhere in the front of the hall?

A. No, sir.

Q. Are you very certain about that?

A. Yes, sir.

Q. There is no mistake about that?

A. No, sir. I didn't go to that front door that morning until Mr. Borden came in.

Q. After you let Mr. Borden in you say you heard Miss Lizzie laugh?

A. Yes, sir.

Q. And you say she was up stairs 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. Now, after you let him in where did you go?

A. I went into the sitting-room.

Q. And then you say that you next saw her come from where?

A. From the hall, from the front entry into the sitting-room.

Q. You saw her come out of the front hall, as you recall it?

A. Yes, sir.

Q. And there was talk with her father about the mail?

A. Yes, sir.

Q. Well, it was all pleasant talk every way?

A. Yes, as far as I know.

Q. Everything was all right?

A. Yes, sir.

Q. No sort of scolding either side?

A. No, sir.

Q. And what did he say about the mail?

A. I don't know what he said. I remember she asked him was there any mail. I don't know what he said. I wasn't paying any attention.

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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.

Q. You went off about your work?

A. Yes, sir. I was washing my windows.

Q. You were not listening. It wasn't anything unusual to hear them talk?

A. No, sir.

Q. After you heard him say there was no mail for her do you remember what she said to him?

A. Yes, sir.

Q. But you don't remember any reply that he made?

A. No, sir. I heard the man talking, but I don't remember what he said.

Q. You heard him talking?

A. Yes, sir.

Q. What he said you don't know?

A. No, sir, I didn't.

Q. Then he sat down?

A. Sat down on his chair at the head of the lounge.

Q. In the dining-room?

A. Yes, sir.

Q. And you saw Miss Lizzie go to work and iron some handkerchiefs?

A. Yes, sir.

Q. Well, that was nothing unusual, was it?

A. No, sir, it was not.

Q. They used to wash their own handkerchiefs?

A. She always did.

Q. To that extent?

A. Only to that extent.

Q. And iron them?

A. Yes, sir.

Q. And she had the common iron board?

A. No, sir. Well,---

Q. I don't mean the large one, but a small ironing board?

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A. Yes, sir.

Q. And ironed on the dining-room table?

A. Yes, sir.

Q. You saw her about that?

A. Yes, sir.

Q. And you don't mean to say that you watched her movements at all that morning any more than any other morning?

A. Why, no, sir, I did not.

Q. Not at all?

A. No, sir, I did not.

Q. And you didn't even know about the fire in the stove?

A. No, sir. I didn't look at the fire at all.

Q. What kind of fire did you make in the morning?

A. I made a coal fire, not a very big fire.

Q. It was hot weather and you didn't need much fire after breakfast?

A. No, sir.

Q. You didn't look in the stove to see how it was?

A. No, sir, I did not.

Q. Were the flats on the stove?

A. Yes, sir.

Q. Who put them on?

A. Miss Lizzie, I suppose. I didn't put them on.

Q. You say that when she came down, that is, before you went out in the yard, she spoke about breakfast?

A. Yes, sir. I asked her what did she want for breakfast. She says she didn't think she wanted any breakfast, but she felt as if she should take something, she would have some coffee and cookies.

Q. I suppose the table wasn't set for breakfast, was it?

A. No, sir. I had all the things cleared off the table.

Q. So all she had was a cup of coffee?

A. That is what she said that she thought, some coffee and cookies.

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Q. Well, she didn't usually have but one, did she?

A. That is all, sir.

Q. So she had a cup of coffee and some cookies. Were those sugar or molasses cookies?

A. I don't know what they were.

Q. Some you made?

A. No, sir, they came from the bakery.

Q. You didn't, of course, stay to see her eat them?

A. No, sir.

Q. You didn't mind anything about it?

A. No, sir, I didn't.

Q. You were out in the yard ten or fifteen minutes, you say?

A. Yes, sir, I was about that much out in the yard.

Q. But it didn't take ten or fifteen minutes to drink that cup of coffee and eat those cookies, did it?

A. I don't know anything about it.

Q. What time did you first see the flats on the stove?

A. I don't remember anything about it when I seen them on there.

Q. Did you see them on before you went out into the yard?

A. No, sir, I did not.

Q. After you came in?

A. I don't remember to take any notice of the flats at all, only when I saw her ironing.

Q. Do you have the least idea whether while you were out she was reading or what?

A. No, sir, I don't know what she was doing. I can't tell you.

Q. Now, you went up stairs after you got through your work?

A. Yes, sir.

Q. And she was in the dining-room ironing handkerchiefs?

A. Yes, sir.

Q. The dining-room door from the sitting-room you think was open?

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A. Yes, sir, from the dining-room into the sitting-room was open.

Q. Perhaps I stated wrongly. From the dining-room into the kitchen?

A. Yes.

Q. You think that was open?

A. Yes, sir.

Q. Wasn't the kitchen warm that morning?

A. Why, I suppose so.

Q. Do you think you surely noticed that the door from the kitchen into the dining-room was open?

A. Yes, sir.

Q. Feel confident about that?

A. Yes, sir. I saw her going back into the dining-room. Whether she shut it after I had gone out of the kitchen or not, I can't tell.

Q. You went directly up stairs?

A. Yes, sir.

Q. And got up there, you think, about three or four minutes before 11 o'clock?

A. Yes, sir.

Q. And you heard no noise or any trouble, and you hadn't seen anybody about the house?

A. No, sir, I didn't.

Q. And where the different persons in the house were you didn't know?

A. No, sir, except Mr. Borden and Lizzie in the sitting-room.

Q. Then you heard Miss Lizzie call you?

A. Yes, sir.

Q. Up stairs?

A. Yes, sir.

Q. You were up there?

A. Yes, sir.

Q. Do you remember the exact words that she used?

A. She says, "Maggie, come down," and she hollered with such a voice that I says, "What is the matter?" She says, "Come down quick. Father is dead. Somebody came in and killed him."

Q. Now, when you gave it before to-day, did you give it just

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like that?

A. I think so.

Q. Did you say "Father is killed"?

A. "Father is killed" or "dead." I can't tell which of the two,---just the same any way.

Q. It means the same, but I am trying to see if you could remember the words. You don't quite, do you?

A. I think she said, "Father is killed; somebody came in."

Q. Other times you have said, haven't you, a little something different? It may mean the same.

A. I don't know. I think it is the words she said, either dead or killed. I can't tell which of them.

Q. Now, when you came down were you excited?

A. Why, yes, sir.

Q. You really were, weren't you?

A. Yes, sir.

Q. You found then that Mr. Borden was either very badly injured or else he was dead?

A. I didn't know what was the matter. She said he was either dead or killed. I couldn't tell which of the two words now, of course. She told me to go after the doctor, and so I did.

Q. You started right after Dr. Bowen?

A. Yes, sir.

Q. When you got over to Dr. Bowen's, going from there you left Miss Lizzie at the bottom of the stairs right at that side door?

A. Yes, sir.

Q. Of course, you went out, and as far as you know the screen door was not locked?

A. I couldn't tell whether it was locked or not.

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Q. You can't really tell very clearly about what things happened right afterwards, can you?

A. Well, as far as I remember. I can tell all I remember.

Q. A good deal of excitement?

A. Yes, sir.

Q. You went as fast as you could; you say you think you ran over to Mrs. Bowen's and learned that the doctor was away?

A. Yes.

Q. And then you came back to the house?

A. Yes.

Q. And then she asked you to go for Alice Russell?

A. She asked me if I knew where Alice Russell lived.

Q. And then did you go as fast as you could down there?

A. Yes, sir.

Q. When you came back to the house whom did you find there?

A. Miss Lizzie and Mrs. Churchill and Dr. Bowen.

Q. Do you know which one got there first, whether Mrs. Churchill or Dr. Bowen?

A. I don't know.

Q. You found them when you got there?

A. I know Dr. Bowen was stepping out of his carriage as I was coming up Second Street.

Q. Then Mrs. Churchill got there first, didn't she?

A. I don't know.

Q. Well, when you got into the house Mrs. Churchill was there?

A. Yes, sir.

Q. And when you got to the house Dr. Bowen was just getting out of his carriage?

A. No, sir. Dr. Bowen was in the house before I was. As I was coming down Second Street, I saw Dr.

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Bowen stepping out of his carriage.

Q. As you saw him down the street he was just stepping out of his carriage?

A. Yes, sir.

Q. And you saw him go into the house?

A. Yes, sir.

Q. Did you see Mrs. Churchill go into the house?

A. I don't remember.

Q. But she was in the house?

A. She was in the house when I went in there.

Q. There was a talk, and Miss Lizzie was upon the lounge in the dining-room, was she, part of the time?

A. She was in the kitchen when I came back.

Q. But after that?

A. Yes. When I came down stairs from being up she was in the dining-room on the lounge.

Q. And Miss Russell with her?

A. Yes, sir.

Q. And they fanning her, taking care of her?

A. I don't know. There was a crowd there, and I passed out in the kitchen.

Q. You didn't see any blood on her?

A. No, sir. I don't remember seeing any blood.

Q. Didn't see any blood, did you?

A. No, sir, I did not.

Q. You were round there all the forenoon?

A. Yes, sir.

Q. And she was about there, lying on the lounge?

A. Yes, sir.

Q. And walking about?

A. No, sir. I guess she went up stairs to her room.

Q. Do you know who went up with her?

A. I don't know.

Q. I think I asked you if you saw any blood upon her anywhere?

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A. No, sir.

Q. Face or hands or anywhere?

A. No, sir, I didn't.

Q. And her hair, was that all in order properly?

A. As far as I can remember I didn't see any difference.

Q. Didn't see any difference at all?

A. No, sir.

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.

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 any way, 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 11 o'clock. I know I noticed that.

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Q. Did you see anybody on Second street when you went out after Dr. Bowen?

A. I don't remember to see anybody the first time, but I remember I thought there was a man asked me some time---

Q. I don't care about the conversation. Did you see the man?

A. Yes, I think I did.

Q. And where was he?

A. I recollect his asking me if Mr. Borden was hurt.

Q. That was later. I mean when you went out the first time?

A. No, sir, I didn't see any man.

Q. When you went to go up stairs with Mrs. Churchill, did you pass through the sitting-room or pass through the dining-room and around to the right into the hall?

A. Yes. I went through the dining-room and into the door of the sitting-room out to the hall.

Q. That is what I want to know, as to whether you went from the kitchen door right straight through the sitting-room to the hall?

A. No, sir, I went from the kitchen to the dining-room.

Q. Went across the corner of the sitting-room into the hall?

A. Yes, sir.

Q. And at that time Mr. Borden was covered up with a sheet?

A. Yes, sir.

Q. And you hadn't been in to see him?

A. No, sir.

Q. Miss Lizzie was in the kitchen; you left her there when you and Mrs. Churchill started to go up stairs?

A. Yes, sir, I think so.

Q. So when Miss Lizzie went upstairs Mr. Borden was all covered up just as he was when you went, wasn't he?

A. Yes, must be.

Q. So when she went through the dining-room into the hall she had no more chance to see him than you had?

A. No, sir.

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Q. Now after you got through washing windows and washed up inside the sitting room and dining room, what next did you do before you went up stairs?

A. I washed out the cloths I had in washing the windows, hung them behind the stove, I think, and then I went up stairs.

Q. Have you any idea what time it was when Mr. Borden came into the house?

A. I cannot fix the time, but I think by my time then, the work I did, it must have been around half past ten.

Q. But you went up stairs after you got through and cleaned up your cloths, got the cloths cleaned up that you had, and put the things away?

A. That was after Mr. Borden came in.

Q. And when you got up; there it was three or four minutes before eleven?

A. Yes, sir.

Q. See if I understand you about another thing? On Wednesday morning it was that Miss Lizzie came down and complained and did not want much breakfast.

A. She did not say anything about breakfast, but she said she was sick all night.

Q. That she was sick all night?

A. Yes, sir.

Q. I think you said in answer to some question put to you by the other side, that night you did not hear any of them come up, you were up in your room, but did not hear them.

A. No, sir, I did not.

Q. Did you learn that Mrs. and Mrs. Borden were ill?

A. They told me that morning.

Q. You did not hear any one of the three?

A. No, sir, I did not.

Q. Miss Lizzie was about the house that forenoon not doing anything in particular?

A. I saw her around the house before dinner. I saw her down in the kitchen at breakfast time and

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before dinner was served on the table.

Q. That is the day you said she had on the light blue wrapper?

A. Yes, sir.

Q. Did she have that on when she came down in the morning?

A. Yes, sir.

Q. And kept it on during the forenoon and had it at the dinner table?

A. Yes, sir.

Q. And that day you remember it very clearly?

A. Yes, sir.

Q. And the dinner was at 12 o'clock?

A. Yes, sir.

Q. Do you remember seeing her about that same day again, later in the day, Wednesday?

A. No, sir, I don't remember.

Q. Don't quite remember whether you saw her in the afternoon or not?

A. No, sir, I did not see her.

Q. I used the word "wrapper".

A. It was a basque and skirt.

Q. If you will tell me what the dress was?

A. It was a basque and a skirt.

Q. It was a man's mistake. Was it a blouse, as some one at my right says?

A. Yes, sir, a loose blouse with a belt round it.

Q. To state it all right let me ask, what was it, a blouse and skirt?

A. I don't know the name,---a loose skirt with a belt round it.

Q. Was the skirt or waist or blouse of the same color?

A. Yes, sir.

Q. Do you know whether she had any ribbon about it or not?

A. No, sir.

Q. Can't remember the style?

A. I think it was a belt, I cannot tell. I don't know whether it was a belt or ribbon.

Q. (By Mr. Moody.) Is this dress that you are speaking of that she had on Wednesday the one you referred to as having been made in the spring?

A. Yes, sir.

Q. And with a dark blue figure in it?

A. Yes, sir.

Q. Between the breakfast hour on the Wednesday and the time you saw Miss Lizzie Borden at dinner, did you see her anywhere?

A. Between breakfast and dinner?

Q. Yes.

A. I don't remember of seeing her any more.

Q. Where she was in the mean time you don't know?

A. No, sir, I don't.

Q. When was this occasion when Mrs. Borden was sick and neither of the girls went into her room?

A. I was not long in the house then,---probably two or three months.

Q. How long was she ill at the time?

A. Only one day.

Q. A word or two about your present residence. You understand that you are detained as a witness by the Commonwealth in the place in which you now are?

A. Yes, sir.

Q. Have you been permitted to go in and out evenings?

A. I go in and out all I please.

Q. And live in the family of the sheriff, the keeper of the jail? And do the work in that household, do you?

A. I do the cooking up to this time.

Q. Did you remain at the house after the homicide any length of time?

A. I staid there. I went out Thursday night and slept out in Mrs. Miller's girl's house, and Friday night I slept in the house.

Q. You mean Mrs. Miller's house with the girl?

A. With the

servant. I slept with her Thursday night.

Q. On Thursday night?

A. Yes, sir, and I came back Friday morning, staid there all through the time and did the work and Friday night I went out and came back and slept in the house.

Q. In the Borden house?

A. Yes, sir, and Saturday night I left for good as I thought, and came back Monday and Mr. Miller said I should not leave the house until he came and took me out.

Q. You did not stay there Saturday night?

A. No, sir,---or Sunday night.

Q. You were not there Sunday morning?

A. No, sir.

Q. Were you there Sunday at all for any part of the day?

A. No, sir, I came there Monday morning.

Q. Did Mrs. Borden have any habit---you can answer this yes or no and nothing more---of telling you when she went out.

MR. ROBINSON. Wait a moment: I object to it. I simply did not want the witness to answer yet.

MR. MOODY. My question was objectionable even as a preliminary one. I will modify it. (After a short pause.) Well, it may raise the whole question. We will leave it there.

MASON, C. J. It is excluded.

MR. MOODY. Nothing further from this witness.

MASON, C. J. We will stop here and let the officers be sworn.

The Court at 4:55 P.M. adjourned until 9 o'clock, Thursday morning, June 8th.

Thursday, June 8, 1893

Court came in at 9 o'clock.

MR. KNOWLTON. If the Court please, one of the witnesses summoned by the Commonwealth is the stenographer of the County, Miss Annie M. White. Her testimony has no relation with the other facts in the case,---simply relating to notes that she took, and it is desired that she be present to assist the reporters, being an expert stenographer. The gentlemen of the defence say they have no objection. We desire that she may be excepted from the order of exclusion.

Mrs. Churchill was called for by Mr. Moody, and there being no response, Dr. Bowen took the stand.

SEABURY W. BOWEN, Sworn.

Q. (By Mr. Moody.) Your full name, sir?

A. Seabury W. Bowen

Q. You are a physician and surgeon practicing in Fall River?

A. Yes, sir.

Q. How long have you lived in Fall River and practiced your profession?

A. 26 years.

Q. During a large part of that time have you lived at your present residence?

A. Yes, sir

Q. How long at your present residence?

A. 21 years.

Q. And that is, I believe, diagonally opposite, to the northwest,

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from the Borden House?

A. Yes, sir.

Q. It is a double house?

A. Yes, sir.

Q. And you live on the northerly, or lower side of the house?

A. Northerly side, yes, sir.

Q. During the time that you have lived at that house Mr. Borden and his family lived in the house opposite you?

A. Yes, sir, most of the time.

Q. Substantially so?

A. Yes, sir.

Q. Have you been the family physician for some time?

A. Yes, sir.

Q. For how long, sir?

A. I should say a dozen years probably.

Q. During that time have you had social as well as business,---professional relations?

A. Yes, sir.

Q. Have you at all visited at the house?

A. Very seldom except on business.

Q. What has been your dealing with them largely,---professional or social?

A. About equal.

Q. About equal?

A. Yes, sir.

Q. Do you recall the morning of Aug. 4, 1892?

A. Yes, sir.

Q. On the day preceding Aug. 4 did you see Miss Lizzie Borden at any time on the street?

A. I saw her after six o'clock,---between six and seven o'clock.

Q. Going in which direction?

A. Going north, going down the street.

Q. Going down?

A. Yes, sir.

Q. Did you at any time see her coming up the street?

A. No, sir.

Q. By the street you mean Second street, I presume?

A. Yes, sir.

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Q. Doctor, you testified at the inquest, did you not, the private hearing?

A. Yes, sir.

Q. That time was very soon after these occurrences that are under inquiry?

A. Yes, sir.

Q. Do you recall whether you said anything at that inquest as to seeing Miss Lizzie Borden coming up the street on Wednesday?

A. No, sir; I did not.

Q. Perhaps I may aid you: Do you remember being asked this question and replying in the manner that I state, "Where did you afterwards see Mr. Borden? Did you see him Thursday? A. I don't remember of seeing him Thursday; I might possibly. I saw him Wednesday walking along between the side street and gate. Lizzie I saw walking up the street and I concluded they were all right, all of them."

A. Down the street it should have been. I made a mistake.

Q. It was a mistake then?

A. Yes, sir.

Q. You start out, I suppose, Doctor, in the morning on your professional calls?

A. Yes, sir.

Q. And did on the morning of Aug. 4th?

A. Yes, sir.

Q. Do you recall what time you returned to your house on the morning of Aug. 4th?

A. No, sir.

Q. Approximately, can you give us the time? If you cannot, I will not ask you to, sir.

A. I can tell within half an hour. That is as near as I can put it.

Q. Not nearer than half an hour?

A. No, sir, not nearer than half or quarter of an hour.

Q. I may assume it was after eleven and before twelve?

A. After

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eleven and before half past eleven.

Q. You had no occasion at the time to note the time of day?

A. No, sir.

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Q. When you came to your house you had some talk with Mrs. Bowen? I don't ask you for it.

A. Yes, sir. I didn't go into the house.

Q. But she said something to you as you came up to the house?

A. She came to the door. She was looking for me.

Q. In consequence of that where did you go?

A. I went across the street into the house of Mr. Borden.

Q. To which door did you go?

A. Side door.

Q. Did you see any one there when you arrived?

A. Yes, sir.

Q. Whom did you see?

A. Miss Lizzie Borden and Mrs. Churchill.

Q. Where were they?

A. They were in either---at the end of the hall, side hall or close to the kitchen door, that is, just at the end of the hall.

Q. The back entry?

A. Back entry.

Q. Or back hall?

A. Yes, sir.

Q. From which leads the door into the kitchen?

A. Kitchen, yes.

Q. Was there any one else there at that time? I mean any living person?

A. No, sir.

Q. Will you state what occurred, what talk there was between you and the prisoner at that time?

A. I said as soon as I entered the house, "Lizzie, what is the matter?"

Q. Her reply, if you please.

A. Her reply was, "Father has been killed" or "stabbed"; stabbed or killed. I wouldn't say which it was.

Q. Does anything else in that conversation occur to you?

A. I asked the question, "Where is your father?"

Q. Very well, sir. Go on.

A. She said, "In the sitting-room."

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Q. Do you recall anything else said in that connection?

A. No, sir, not then, not directly then.

Q. Let me ask you if anything was said with reference to any of her father's tenants at that time?

A. Not then; afterwards.

Q. What did you do then in consequence of the information that he was in the sitting-room?

A. I directly went into the dining-room and from there into the sitting-room.

Q. Will you describe what you saw as you came into the sitting-room?

A. I saw the form of Mr. Borden lying on the sofa or lounge at the left of the sitting-room door.

Q. Will you give further description, doctor, as far as you can, as to the injuries that appeared upon inspection?

A. Upon an inspection I found that his face was very badly cut with apparently a sharp instrument, and there was blood over his face; his face was covered with blood. I felt of his pulse and satisfied myself at once that he was dead, and I took a glance about the room and saw there was nothing disturbed at all.

Q. Any of the furniture or anything else disturbed about the room at all?

A. Not that I noticed.

Q. Will you describe the position on the sofa?

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A. He was lying with his face towards the south on his right side apparently at ease, as any one would if they were lying asleep.

Q. Was the face to be recognized by one who knew him?

A. Hardly, I should say.

Q. (Exhibiting photograph.) You have seen this photograph, doctor, have you?

A. Yes, sir, or one like it.

Q. Will you be kind enough to tell us in what respect Mr. Borden's position differed from that photograph, if it differed at all?

A. I don't think the photograph shows the ease that is natural to a person that is asleep or lying down. I think in this case the form has sunk down a little from what it was when I first saw it.

Q. Otherwise than the sinking down of the form is there any change in the position of the body upon the sofa, as far as you could observe?

A. No, sir, I don't think there is?

Q. And by sinking do you mean the general collapse that occurs?

A. Yes, sir. I think the head is lower here than it was.

MR. MOODY. Shall I show this to the jury? I haven't put it in yet.

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MR. ADAMS. Wouldn't it be a good idea for him to point it out?

MR. MOODY. I think it would perhaps. Doctor, if you will be so good as to step here and point it out.

THE WITNESS. The only change I see, the head is a little lower. That is the only change I can see.

Q. Is there any change in the position of the sofa from it's position as you saw it?

A. It shows here so it is out from the door. It was even with the door. It shows here, the way it was taken probably, in that direction.

Q. Now will you state the same thing so the gentlemen on this side of the panel can hear?

A. The sofa shows so it was out from the middle of the door here, and the head of the sofa was even with the door.

Q. (By Mr. Adams.) The door frame?

A. The door frame.

Q. (By Mr. Moody.) And how about the position of the body?

A. The position of the body seems settled a little more than it was when I saw it first.

Q. With reference to the back of the sofa, is the head the same as it was when you saw it or substantially the same?

A. I should think it was substantially the same; yes, sir.

(Photograph marked Ex. 17.)

Q. How did you ascertain that Mr. Borden was dead? You said you did so?

A. I felt of his pulse.

Q. Did you make any other examination at the time except to ascertain the question of life or death by examination of the pulse?

A. No, sir.

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Q. What did you then do, Doctor?

A. I went into the kitchen. No, before I went into the kitchen, Miss Lizzie Borden followed me part way through the dining-room, as I entered the sitting-room, when I found that he was dead--as I returned the same way I asked Miss Lizzie questions.

Q. Will you state them?

A. The first question I asked was if she had seen any one.

Q. You may state the reply without waiting for a question.

A. The reply was, "I have not." The second question was, "Where have you been?" The second reply was, "In the barn looking for some irons" or "iron."

Q. Was there any other conversation in that connection?

A. She then said that she was afraid her father had had trouble with the tenants, that she had overheard loud conversation several times recently. That was the extent of the conversation in the dining-room.

Q. Then what was done?

A. Then I asked for a sheet to cover up Mr. Borden.

Q. To whom did you address that request?

A. I addressed that to Mrs. Churchill and to Miss Lizzie Borden at the same time. They were both in the same room. And to Miss Russell. There were three there.

Q. What was done in consequence of your request? Describe everything that was done.

A. Bridget Sullivan brought me a sheet.

Q. Do you know whether any one went with her or not?

A. No, sir; I do not.

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Q. And I understand you, to be sure, that you do not know whether any one did or not?

A. No, sir. I do not know.

Q. Do you remember anything with reference to the key of Mr. Borden's room?

A. Not at that time; I knew afterwards.

Q. You remember how they got into Mr. Borden's room?

A. They got into Mr. Borden's room---the key was usually placed, they said, on the end of the mantel of the sitting-room.

Q. Did you notice anything with reference to it, that day?

A. With reference to--- ?

Q. With reference to the key that day?

A. No, sir.

Q. Did you get the key yourself, or did any one get it in your presence to give to those who were going for a sheet?

A. I don't know sir.

Q. You would not say, one way or the other?

A. No, sir.

Q. The sheet, you say, was brought back?

A. Yes, sir.

Q. In the meantime, had you had any conversation with the prisoner?

A. No, sir.

Q. What occurred after the sheet was brought back and was used upon the body?

A. Miss Lizzie Borden asked me if I would telegraph to her sister Emma.

Q. And in consequence of that, did you go to the telegraph office?

A. Yes, sir.

Q. How long had you been at the Borden house at the time you went to the office?

A. I could not say, sir.

Q. Have you stated all the conversation up to that time, Doctor?

A. All that I can think of now.

Q. Let me suggest, if anything up to that time had been said about Mrs. Borden?

A. Not at that time, no, sir.

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Q. Upon your return from the telegraph station, tell us what was said and done?

A. Up to that time there had been nothing said about Mrs. Borden. Directly after I took the address there was something said.

Q. Before you went to the telegraph office?

A. Before I went, yes, sir.

Q. That is what I intended to get at.

A. Yes, sir.

Q. State what was said before you went to the telegraph office?

A. The question was asked, "Where is Mrs. Borden?" The inquiry was made, "Where is Mrs. Borden." The answer I received was that---

Q. From whom?

A. Miss Lizzie Borden, I think: I am not certain about that.

Q. Tell us the answer, Doctor and speak so the jurymen can hear you without effort.

A. The answer was that Mrs. Borden had received a note that morning to visit a sick friend, and had gone out.

Q. Was anything else said in that connection by the prisoner in reference to Mrs. Borden going out, or in reference to the note?

A. I don't think of anything, no, sir.

Q. Now have you told us all that occurred up to the time of your return from telegraphing?

A. I wished to notify the officers and as I was going out Officer Allen,---supposed to be, I didn't know him at that time,---

Q. You know him now?

A. Yes, sir. I have seen him since to know him. He is a short, thickset man; I know that. I didn't know him at that time. He came in, and I satisfied myself

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that the officers knew of the affair.

Q. Where did you meet Officer Allen as you went out of the house?

A. In the kitchen: as I was going out, he was in.

Q. So that he had arrived and gone into the kitchen before you started to go to the telegraph office ?

A. Yes, sir.

Q. Now will you give us some estimate, if you can, Doctor, of the time that you were there before you met Officer Allen?

A. I could not say: it would only be guess work.

Q. Would not it be anything better than guess work?

A. No, sir.

Q. I won't ask it, then. Upon your return from sending the message will you tell us what occurred either by way of conversation with the prisoner, or by way of acts that were done in her presence?

A. On my return from the telegraph office I met at about the same place in the entry, or hallway---kitchen hallway---at the same point, Mrs. Churchill.

Q. That is, you had left Mrs. Churchill there when you went away?

A. Yes, sir.

Q. And you met her on your return?

A. Yes, sir.

Q. And what was said then?

A. She said, "They have found Mrs. Borden."

Q. What did you do?

A. I asked the question, "Where?" She said, "Upstairs in the front room."

Q. Proceed, sir, with what you did.

A. She said---shall I repeat the conversation?

Q. Yes.

A. She said I had better go up and see. I went directly through the dining room and the corner of the sitting

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room into the front hall, up the stairs---front stairs---and stopped a moment at the door of the front chamber---guest chamber, front bedroom. At that point I looked over the bed and saw the prostrate form of Mrs. Borden.

Q. Where were you standing, Doctor, when you saw the form of Mrs. Borden?

A. Directly in the door of the room.

Q. What did you do?

A. I went around the back of the bed---that is, the foot of the bed---and between the form and the bed, and placed my hand on her head. It was a little dark in the room, somewhat dark, not very light. I placed my hand on her head and found there were wounds in the head. Then I placed my---felt of her pulse---that is, felt of the wrist, and found she was dead.

Q. At the time when you first went to her, did you ascertain the cause of her death, or form an opinion as to it?

A. At the first time?

Q. Yes.

A. That was the first time.

Q. Yes, I understand that was the first time. You did so?

A. Certainly.

Q. Did you make any statement to any one that she had died of fright or in a faint?

A. No, sir.

Q. To no one?

A. No, sir. I will say this in explanation: My first thought, when I was standing in the door and saw the form over the bed,---my first thought was that she had fainted: but in a moment afterwards I convinced myself that she was dead.

Q. What did you do after that, Doctor?

A. I went down stairs

directly, and told the people in the kitchen that Mrs. Borden was dead: that she was killed, I thought, by the same instrument.

Q. By the same instrument?

A. I thought by the same instrument, yes, sir: and that I thought it was fortunate for Lizzie that she was out of the way, or else she would have been killed herself.

Q. Have you seen those two photographs? (Referring to Exhibits 15 and 16 for identification).

A. No, sir; I don't think I have seen these.

Q. Will you examine them and state in what respect, if any, the position of Mrs. Borden differed from that shown in the photograph?

A. This one differs (Ex. 15), this one differs by being nearer the bed. Mrs. Borden is lying nearer the bed in this picture than the dressing case, which is not a fact.

Q. Is there any other difference between your observation and the photograph?

A. I think not. I do not see any.

Q. Will you look at the photograph marked Ex. 16, where the bed is drawn away, and tell us in what respect the position of Mrs. Borden differs in that photograph, if it differs at all?

A. I think her arms were a little lower down than are represented here,---slightly lower, below the breast.

Q. About how much lower?

A. Six inches, I should say.

Q. They were lower at the time, or lower in the photograph?

A. Lower at the time.

Q. In other respects is her position upon the floor the same as it was when you first found her?

A. As far as I can see, yes, sir.

MR. ADAMS. We are not satisfied as to that. (Handing over exhibit.)

MR. ROBINSON. As to the positions, we are not satisfied as to that.

MR. MOODY. Very well, we will prove it later. We should assent to his difference of observation and take his view.

MR. ROBINSON. That will be offered at the proper time

MR. MOODY. Very well.

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.

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

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not describe it; it was a sort of drab, not much color to it to attract my attention,---a sort of morning calico dress, I should judge.

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?

MASON, C. J. 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

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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 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.

Q. Would a faded light blue dress appear to be drab to you?

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Q. (Exhibiting blue dress.) Does that appear to you, doctor, to be a sort of drab, or not much color to it, sort of morning calico dress?

MR. ADAMS. Wait a minute, doctor. We object.

MASON, C. J. 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 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.

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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.

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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.

Q. You drove there in your carriage?

A. Yes, sir.

Q. Did you have a boy who drove with you?

A. Yes, sir.

Q. And where was he left when you went into the house?

A. In my carriage.

Q. Out by the gate or in the street?

A. In the street; yes, sir; on my side of the street.

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. To Miss Emma. Then you came back to the house again, did you not?

A. I went to Mr. Baker's drug store first.

Q. That was on the way back?

A. Yes, sir; on the other side of the street.

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Q. And when you came back you went into the house again?

A. Yes, sir.

Q. Now when you started to go with this telegram, you have said you made some request or inquiry about the officers, and that you then discovered that an officer named Allen, or an officer whom you now know by the name of Allen was there?

A. Yes, sir.

Q. Was there any other officer there so far as you know at that time?

A. No, sir; not as far as I know.

Q. Don't you know that there was no other officer there then?

A. I didn't see any other.

Q. And you went out by way of the kitchen and this, what I should call, a back entry?

A. Yes, sir.

Q. When you returned the second time, after sending this telegram and after driving quickly to the telegraph office, you met Mrs. Churchill and she informed you about Mrs. Borden, and you went upstairs, going through the dining-room and across the corner made by going through the dining-room door into the sitting-room and from the sitting-room into the front hall. Was Mr. Borden then covered up with the sheet?

A. Yes, sir.

Q. And you went upstairs alone, I understand?

A. Yes, sir.

Q. And when you got upstairs to this front room, spare room, where Mrs. Borden was discovered, did you see anybody there in that room?

A. No, sir.

Q. There was nobody there then, was there?

A. No, sir.

Q. When you went upstairs did you get any view at all of this

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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 the 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. And her head, as I judge, was in the direction of what we call the east wall?

A. Yes, sir.

Q. And do you remember how her feet were with reference to the foot board of the bed?

A. Her feet were below the end of the bed. That is, further west than the end of the bed.

Q. And have you any idea how far? Do you see any space here in front of the jury that would indicate, without reference to feet and inches, the distance the feet projected?

A. I should merely guess; I didn't measure.

Q. Do you see any distance there or anything which indicates?

A. I should say a foot and a half or two feet.

Q. How did she then lie?

A. She lay directly on her face with her hands under her.

Q. Are you able to tell us how the hands were at that time? If you can, won't you illustrate it?

A. Her hands were about that way. (Illustrating)

Q. She was lying on her face and her hands were under her in the manner you describe?

A. Yes, sir.

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Q. That is, they were below a horizontal line drawn across the sheet. They would be below that, would they, on a person?

A. Yes, sir.

Q. I don't know that I get the line very exactly. At all events, below a horizontal line drawn across from one shoulder to another?

A. There was no particular angle of the arm up this way. The elbow was nearly at right angles.

Q. Now do you recall---of course you knew her well, and knew she was a stout woman --do you recall how much of that space between the bureau and the bed she filled up; whether she practically occupied, when lying on her face, the space between the bureau and the bed?

A. She filled it up very well, very thoroughly, very fully.

Q. And when you went to ascertain whether or not life was extinct, upon which side of her did you go?

A. On the right side, between the form and the bed.

Q. And were you able to get there easily, or did you have some difficulty on account of the narrowness of the space?

A. I had some difficulty on account of the space. I didn't wish to move the bed at all; I didn't wish to move anything.

Q. Then you had to sort of work your way in there to feel the injuries upon her head and to get at her pulse?

A. Yes, sir.

Q. To ascertain whether or not there was any pulse?

A. Yes, sir.

Q. And you have described the condition which you then found as being pulseless?

A. Yes, sir.

Q. That is to say, life was extinct?

A. Yes, sir.

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Q. Now then when you were making that examination, namely, the examination with reference to her pulse, which wrist did you take?

A. The right.

Q. The right wrist?

A. Yes, sir.

Q. That would be the wrist which would be next to you when you went in upon her right side, of course, between her and the bed?

A. Yes, sir.

Q. When you took the right wrist did you feel of the pulse of that, or the place where the pulse should be in that wrist, when it was under her, or did you have to draw it out slightly?

A. I had to draw it out slightly, I presume.

Q. Have you any doubt of that?

A. No, sir; no doubt of it.

Q. Then when you left her, after having ascertained that life was extinct by feeling of the wrist, didn't you leave one arm, namely, the right arm, drawn out from her side a little more than the left arm would appear to be upon the other side?

A. Yes, sir; I think I did.

Q. I understand you to say that when you first saw her, after you got to the upper landing, by looking over the bed, the room appeared to be dark?

A. Not very light.

Q. Do you recall that you made any observation about the shutters?

A. I don't remember about the shutters on the west side.

Q. That is the street side?

A. The street side; yes, sir. The inside shutters were partly closed on the north side.

Q. That is toward Mrs. Churchill's?

A. Yes, sir.

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Q. They were partly closed?

A. The inside shutters, I think, were.

Q. And there is only one window there, I believe, on that side?

A. No, sir; I think not.

Q. And that window is a window which is near the end of the bureau as it then stood?

A. Yes, sir.

Q. And when you speak of the shutters, I suppose there is no doubt that these shutters were the board shutters. They were not shutters like these in the court room, made of blinds, but they were board shutters?

A. Board shutters; yes, sir.

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Q. The inquiry is made upon the other side as to what you said about the shutters on the west side of the room, the street side of the room?

A. I don't know, I don't remember about that.

Q. Your answer was in reference to the south window or the window which is towards Mrs. Churchill's and the window at the end of the bureau is that the shutters of that window were partly closed?

A. Yes, sir,---the north window instead of the south.

Q. Yes, the north window; thank you. And are you able to recall now whether there is a shutter in the top part or the lower part that was open?

A. I think they were both thrown together loosely; shutters that fold the same as these do, only they were made of board, solid.

Q. Was there not an upper and under shutter?

A. Yes, sir.

Q. Now, you left Mrs. Borden and went down stairs, going by way of the front hall, I suppose?

A. Yes, sir.

Q. And no one at that time had been there with you to see her?

A. No, sir.

Q. Have you subsequently ascertained at what time you sent this telegram?

A. Yes, sir.

Q. What time was it?

A. 11.32

Q. 11.32?

A. Yes, sir.

Q. And you drove immediately back?

A. Yes, sir, stopping at Mr. Baker's store.

Q. I understand. I didn't mean to assume that you passed by

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there after you said that you drove back, stopping at Mr. Baker's drug store. In your opinion it took you how many minutes to drive back?

A. Not more than two minutes.

Q. Not more than two minutes. Then in round numbers it is safe to say you arrived back at the Borden house for your second visit, the visit at which you first saw Mrs. Borden, was about 11.35, isn't it?

A. I should say I spent four or five minutes in Mr. Baker's store.

Q. Then it would be 11.40 perhaps that you got back to the house?

A. Yes, sir.

Q. Do you remember after you went down stairs by way of the front hall how soon, if he had not come then, Dr. Dolan, the medical examiner, appeared at the house?

A. I think he was there in 10 or 15 minutes after that. I don't know. Of course, it is merely guess-work. I think within 10 minutes; probably 10 or 15 minutes.

Q. After you came down stairs from a view of Mrs. Borden?

A. Yes, sir.

Q. Did you then go up stairs with him?

A. Yes, sir. I went up first with another man.

Q. Yes, I understand, but I want to know when Dr. Dolan went up, and who was with him. I understand that you found him when you came down stairs; that is, that he came within 10 or 15 minutes after this first view of yours of Mrs. Borden, and that he went up stairs, you went with him?

A. Yes, sir.

Q. Did anybody else than you go with Dr. Dolan at that time?

A. I don't know, sir.

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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. Your answer is you don't think it had been interfered with?

A. No, sir.

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. I don't remember who the assistant was.

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.

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?

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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. Well, I ask if at any time?

A. Yes, sir.

Q. And you say you took notes in the morning, and 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. I had the telephone message to be there at 3 o'clock.

Q. Well, did you go?

A. I went a little late. It was a little after three when I went there.

Q. That same afternoon?

A. Same afternoon, yes, sir.

Q. Going back a little to the time when you went down stairs 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?

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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 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 up stairs.

Q. And at that time I suppose Mr. Borden's body was covered up with sheets?

A. Yes, sir.

Q. As it had been directed by you some time before or done by you?

A. Done by me.

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Q. Did you subsequently see her in her room up stairs?

A. Miss Lizzie?

Q. Yes.

A. Yes, sir.

Q. How long after was that, do you think?

A. Some time 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.

Q. What did you prescribe?

A. I did not prescribe.

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. To bring on quiet. to allay nervous excitement?

A. Yes, sir.

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 medical distress and nervous excitement after that?

A. Yes, sir.

MR. MOODY. I should like to know how far you are going on that?

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MR. ADAMS. I am going to the end.

Q. I understand you to say on Friday you directed that the bromo caffeine be given?

A. No, sir, Thursday.

Q. Not on Friday. You prescribed a second dose and took over from your office a bottle of it with directions how to be taken. I wish to know if, after that, you had occasion to prescribe for her on account of this mental distress and nervous excitement?

A. Yes, sir.

Q. When was it?

A. Friday.

Q. The next day?

A. Yes, sir.

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. You directed morphine to be taken?

A. Yes, sir.

Q. In what doses?

A. One-eighth of a grain.

Q. When?

A. Friday night, at bed-time.

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. Now something has been said about your being a witness at the secret hearing, this inquest at Fall River. Do you remember when you went or when you were summoned as a witness?

A. I don't remember what day.

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Q. Was it not in the early part of the week following this tragedy?

A. I think it was; I do not know.

Q. Don't you know that Miss Lizzie was there some days in attendance at the Court House?

A. She was called before I was.

Q. You know that as a matter of fact she was called before you and testified before her arrest?

A. I presume so; I suppose so.

Q. You know when she was arrested?

A. I know the date, but not the day.

Q. Was she not arrested Thursday, the week following, that is a week from the day of the tragedy?

A. I don't remember that.

Q. I ask you about the morphine that you were giving her and you tell me on Friday you gave one-eighth of a grain, which is the ordinary dose, I understand, mild dose, and on Saturday you doubled it, you gave it, sent it, and she had it on Monday and Tuesday, and 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. So that if before the arrest, she was one, two, or three days before the private inquest, she was there when she had been given for several days this double dose of morphine?

A. Yes, sir.

Q. I suppose physicians well understand the effect of morphine

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on the mind and on the recollection, don't they?

A. Supposed to, yes, sir.

Q. Is there any question about it?

A. No, sir.

Q. Do you know whether she had ever had occasion before to have morphine prescribed for her, as far as you know?

A. I don't remember that she had.

Q. Does not morphine given in double doses to allay mental distress and nervous excitement somewhat effect the memory and change and alter the view of things and give people hallucinations?

A. Yes, sir.

Q. There is no doubt about it, is there?

A. No, sir.

MR. ADAMS. I have no further question.

RE-DIRECT.

Q. (By Mr. Moody.) How many times did you personally see her take the medication?

A. Not more than twice, I think.

Q. When were those two times?

A. Between one and two in the afternoon, of Thursday.

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.

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Q. You have said that the time that you sent your telegram was eleven-thirty---

A. Eleven thirty-two.

Q. How did you ascertain that time? Of your own memory?

A. No, sir: I went to the office with State Detective Seaver the first day of the investigation---

Q. And what you---

MR. ADAMS. Well, have you finished your answer?

MR. MOODY. I beg your pardon.

MR. ADAMS. You were asked how you ascertained the time.

THE WITNESS. I went to the telegraph office and got a copy of the telegram that I sent, at the examination in the station house, with State Detective Seaver.

Q. Well, you had then the time which they had at the telegraph office, the time of sending the message?

A. I had a copy of the telegram; yes, sir.

Q. Do you know whether that contained the time of sending the message from the telegraph station, or the time at which they received it from you?

A. The telegram was marked "11.32". I got a copy of it two or three days ago.

Q. Well, that is all you know about it?

A. That is all I know about it; yes, sir.

Q. That telegram was marked "11.32"?

A. Yes, sir.

Q. And that is the only means you have of fixing the time as 11.32, is it?

A. Yes, sir, that is the only means.

Q. What that "11.32" means, whether it means the time the telegram is received from the sender, or the time it leaves the office, do you know?

A. I don't know sir. I merely told them to send it directly, send it at once.

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Q. When Dr. Dolan came and inspected the bodies, took the first view of the two bodies, were they in substantially the same condition as they were when you first saw them?

A. Yes, sir, substantially, of course.

Q. Is there any difference in their respective positions that you can point out at the present time?

A. Only those that I have pointed out.

Q. I mean difference between their positions when you first saw them and when Dr. Dolan first saw them?

A. No, sir.

Q. No difference?

A. No, sir.

RE-CROSS EXAMINATION.

Q. (By Mr. Adams.) May I ask one question which I forgot? It is this: the learned district attorney asked you if on Wednesday, the day before the tragedy, you saw Miss Lizzie and you said about six o'clock, going down the street?

A. Yes, sir.

Q. Now I want to know if that was six o'clock in the morning or six o'clock in the evening?

A. Six o'clock in the evening.

MR. ADAMS. That is all sir.

MR. MOODY. Mrs. Churchill.

MR. ROBINSON. We want Bridget Sullivan again.

MR. MOODY. Yes, Bridget Sullivan,---if she has come in.

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BRIDGET SULLIVAN, recalled

Q. (By Mr. Robinson.) Miss Sullivan, I forgot one or two subjects that I thought to ask you about until now. I think you said yesterday that you went down in the cellar with the officers after you found that Mr. and Mrs. Borden were killed.

A. Yes, sir.

Q. And how many officers went down with you?

A. I think there was three.

Q. Do you know who they were?

A. I didn't know then who they were, but I do now.

Q. And who were they?

A. There was officer Doherty and the assistant marshal and officer Medley.

Q. Now as I understand it, to be, officer Doherty and the assistant marshal,---is that Mr. Fleet?

A. Yes, sir.

Q. And the other one was Mr. Medley?

A. Yes, sir.

Q. Do you know whether anybody else went down?

A. I don't remember.

Q. Did they go down and look about in the cellar?

A. Yes, sir: I went with them: they asked me to go with them.

Q. Did you show them anything?

A. No, sir: I went down---I went in the rooms in the cellar with them, and in a box there was some hatchets, and they took them out of it.

Q. Where were those hatchets?

A. They were in the cellar, in the room where Mr. Borden kept the wood for the furnace.

Q. Was that in the same part of the cellar where the steam heater

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stands?

A. It was in the room alongside the heater.

Q. I understand you to say it was in the room alongside of that in which the steamheater was?

A. Yes, sir.

Q. Those three men, Mr. Doherty, Mr. Fleet and Mr. Medley, were the ones who went down with you?

A. I think they was. I didn't know them: I learned since that they were.

Q. You know now?

A. Yes, sir; I heard they were officers.

Q. Well, you have seen the same men again several times?

A. Yes, sir, but I wouldn't know them again, until I was told they were the men.

MR. KNOWLTON. What did you say?

THE WITNESS. I wouldn't know the men again, but I heard they were the officers that went down with me.

Q. And you subsequently found out who they were?

A. Yes, sir.

Q. Did you show them where the hatchets were?

A. Yes, sir.

Q. Where did you show them?

A. They was in a box in the cellar, in the room in there.

Q. And did you take them out?

A. No, sir; I did not.

Q. Are you sure about that?

A. No, sir; I didn't put my hands at all on them. I don't think I put my hand on the hatchets at all.

Q. Well, are you sure about that?

A. (Emphatically). Yes, sir, I am.

Q. Now, you say it was so?

A. Yes, sir.

Q. Who did take them out of the box?

A. I couldn't tell you who took them out.

Q. Did you see them taken out?

A. Yes, sir.

Q. How many?

A. Three, I guess. I don't know how many there

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was.

Q. What?

A. I think there was three.

Q. Did [you] have them in your hands at all?

A. No, sir, I did not.

Q. Those three men were there all the time?

A. Yes, sir.

Q. What was done with them?

A. I don't know.

Q. Well, now, don't you know?

A. No, sir; I don't.

Q. Didn't you stay there with the men?

A. Why, I didn't stay there all the afternoon.

Q. Well, I assumed not.

A. When I showed them the hatchets I went upstairs to the kitchen.

Q. What time in the afternoon was this that you showed them?

A. I couldn't tell you anything about the time.

Q. It was not in the afternoon at all, was it?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. Twelve o'clock, wasn't it?

A. I don't know what time it was: it was after the murders were discovered, sometime.

Q. What?

A. Some time after the murders were discovered.

Q. Well, wasn't it right after?

A. Not quite right after. I suppose it must be some time after.

Q. Wasn't it before twelve o'clock?

A. I couldn't tell you anything at all about the clock, what time it was or what it wasn't, but I know it was after the discovering of the murders.

Q. Was it after Dr. Bowen got back the second time?

A. I don't know when Dr. Bowen got back at all.

Q. I don't mean the clock as to the minute, but did it come after that?

A. I couldn't tell you anything about it.

Q. And you did not know what the officers did with those axes or hatchets---

A. No, sir, I did not.

Q. Listen a minute--- (completing question) right at that time?

A. No, sir: they took them out: what they did to them I don't know.

Q. Where did they carry them out, that you saw?

A. Well, I think they come up stairs; I don't know where they went to. I guess they went in the other rooms: I didn't notice.

Q. Into what they call the wash room?

A. Yes, sir.

Q. Did you see them laid out on the floor?

A. No, sir, I don't remember to see the hatchets again.

Q. Did you stay there as long as they did?

A. I don't remember whether I did or not.

Q. What dress did you have on that morning?

A. I had a calico dress.

Q. What color?

A. Blue calico.

Q. Blue calico?

A. Yes, sir.

Q. Did it have any figure in it?

A. Yes, sir.

Q. What kind of a figure?

A. Well, it is what I call a clover leaf

Q. Would you call it a light blue or a dark blue?

A. It was a dark blue, dark indigo blue.

Q. And was the clover leaf of white or dark color?

A. White.

Q. White clover leaf in a dark blue ground?

A. Yes, sir.

Q. Was it a dark blue ground or a light blue ground?

A. It was an indigo blue calico.

Q. Was the waist, or this portion, the upper portion of the dress, of the same material as the skirt?

A. Yes, sir.

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MR. MOODY. This is her dress you are speaking of, Miss Bridget's dress?

MR. ROBINSON. Yes.

Q. I am speaking about your own dress now: you understand me?

A. Yes, sir; I know what you are speaking about.

Q. Did you keep it on all day?

A. Yes, sir: until the afternoon.

Q. Well, that is not all day?

A. Well, I kept it on until I got a chance to change it, after all the fuss was over.

Q. When did you change it?

A. I couldn't tell what time it was.

Q. Well, was it in the afternoon?

A. Yes, sir.

Q. And what dress did you put on then?

A. I put a gingham dress on.

Q. Gingham?

A. Yes, sir.

Q. And what was the general color of that?

A. It was a blue gingham.

Q. Check---plaid?

A. Plain.

Q. Plain?

A. Yes, sir.

Q. What do you mean---all one color?

A. Yes, sir, with a white border on it.

Q. What is that?

A. Yes, sir, the gingham was plain, with a white border to it.

Q. Plain, with a white border?

A. Yes, sir.

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Q. Well, where was the border? I don't understand about it.

A. It was trimmed at the bottom with two borders.

Q. But the whole body of the dress was a bluish color?

A. Yes, sir.

Q. And the border, was that a part of the cloth itself or was it a braid that was put on?

A. Part of the cloth.

Q. And the waist of the same color?

A. Yes, sir.

Q. Was that a darker or lighter blue than you had on in the morning?

A. Lighter.

Q. Quite a good deal lighter?

A. Yes, sir.

Q. Did you keep that on the rest of the day?

A. Yes, sir.

Q. After that?

A. Yes, sir.

Q. Did you stay in all the afternoon, in the house?

A. Yes, sir.

Q. Well, I don't mean whether you were generally about the house, but did you go out of the house at all?

A. I don't remember. I went out on errands in the afternoon.

Q. Where did you go?

A. I went over to Mrs. Miller's.

Q. Which is just across the street?

A. Yes, sir.

Q. And of course you went over the street and then came back?

A. Yes, sir.

Q. And at that time you had on this lighter blue dress?

A. No, sir; I did not.

Q. Well, did you have on the morning dress?

A. Yes, sir.

Q. You had not changed it then?

A. No, sir.

Q. Do you know what time of the afternoon that was?

A. I don't know; I couldn't tell you.

Q. Do you think you went across the street more than once?

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A. Yes, sir; I went three times that day across the street.

Q. Well, I mean in the afternoon?

A. No, sir; only once.

Q. While you were at the house there, during the two years and nine months you lived there, was there some burglary there or robbery?

A. Yes, sir.

Q. When was that?

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment as to that question.

MASON, C. J. If it is preliminary it may be proper.

Q. When was it?

A. Twelve months before that time, I guess.

Q. Twelve months?

A. Yes, sir; I think it was; I am not sure.

Q. Did it occur in the day time or night?

A. In the daytime.

MR. KNOWLTON. I pray your Honor's judgment.

MASON, C. J. What is the question?

MR. ROBINSON. The question was, did it occur in the daytime or night.

MASON, C. J. The Court is of the opinion that it is too long before to be material. If it has occurred within a few days it would be a different matter.

MR. ROBINSON. In one phase of the question it seems to me it is material --- if the Court will allow me to state it. This house was robbed right in the middle of the day, when this woman and all the rest were in the house, three of them, three of the inmates of the family; and it was right in the middle of the day when this transpired.

MASON, C. J. The Court think it is not competent.

MR. ROBINSON. I want to save my rights on that point,

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if your Honors please; and I also now ask her in regard to any burglary at the barn, later than that.

Q. Any breaking and entering of the barn, do you know about that?

A. Yes, sir.

Q. How long was that after the other occurrence?

A. I think it was in the fall after the burglary was in the house. I don't know what time, I can't say what time of the year. I can't remember what time of the year it was about the barn.

Q. And how long was it before Mr. and Mrs. Borden were killed?

A. I can't remember. It may have been a few months, or five or six months; I don't know anything about it. I can't describe about any of the times.

Q. You cannot fix it?

A. No, sir.

Q. Did it occur in the daytime or night time?

A. Night time.

MR. KNOWLTON. I pray your Honors judgment as to that inquiry.

MASON, C. J. It is too long before the transaction.

MR. ROBINSON. I would like to save it, then. I believe I have stated fully enough the purpose of the inquiry. It sufficiently appears in the testimony (in order to make it clear) that this witness was in the house at the time. That is shown.

MR. KNOWLTON. I should not have objected, if it had appeared, to the question being put. I do not understand it has appeared except by your statement and your offer to show that.

MR. ROBINSON. Well, I would like to have the testimony

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read to see whether I am right or not.

(The testimony was read, beginning at the question: "While you were at the house there, etc." through the question, "Did it occur in the daytime or night?")

Q. Let me show you this cellar plan, the floor and the room in the cellar. Do you get the idea about it? There is the front end of the house over there, and this will be on the side towards Mrs. Churchill's, and that the side towards Mrs. Kelly's. Now will you look at that plan and see if you can tell in which of those rooms the axes or hatchets were found?

A. No, sir; I couldn't tell you anything about it.

Q. You cannot tell anything about the plan?

A. No, sir.

Q. It doesn't help you a bit?

A. No, sir; not at all.

Q. And I omitted yesterday to ask you about where you came down stairs, as Miss Lizzie had called you, as you were upstairs right after eleven o'clock---

A. Yes, sir.

Q. You came down stairs and found her standing at the wooden door leaning up against that?

A. Yes, sir.

Q. Now what was she doing?

A. She wasn't doing nothing.

Q. Was she excited?

A. She seemed excited to me more than I ever seen her before, but not crying.

Q. What do you say?

A. Yes, sir; she seemed excited to me more than I ever saw her before.

Q. Was she crying?

A. No, sir.

Q. Are you right about that?

A. Yes, sir; I am.

Q. Have you ever said differently about it?

A. No, sir; I never said no different.

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Q. I ask you again if you didn't testify before the inquest?

A. No, sir; I did not.

Q. No, you don't understand me. Didn't you testify at the inquest---give your testimony over there?

A. Yes, sir.

Q. I do not mean the second time when you went into the District Court. You know what I mean; I mean the very first time.

A. Yes, sir; I know what you mean.

Q. Now let me read and ask you if you didn't say this. The questions were asked you by Mr. Knowlton, weren't they?

A. Yes, sir.

Q. "Was the screen door open then?" "I don't know, I couldn't say. She was leaning against the inside door that locks, the large door." Is that right?

A. Yes, sir.

Q. "Not the screen door, but the regular door?" "Yes, sir." Is that right?

A. I said the inside door was open, but I didn't say anything about the screen door only I couldn't tell whether it was locked or not.

Q. Well, the question is that she was leaning against the regular door, and not against the screen door, and to that you said Yes. That is correct, isn't it?

A. Yes, sir.

Q. "How did she seem?" Answer: "She seemed to be excited more than I ever saw her." That is right, isn't it?

A. Yes, sir.

Q. "Was she crying?" "Yes, sir; she was crying."

A. Well, that must be wrong; I couldn't say that.

Q. That must be wrong?

A. Yes, sir; I didn't say that, for I couldn't.

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Q. So your memory is better today than it was then?

A. I don't care what my memory is, I didn't see the girl crying.

Q. You don't care anything about it?

A. No, sir.

Q. You don't care about your memory?

A. Yes, I care about that.

Q. Well, you want to be right, don't you, Miss Sullivan?

A. Yes, sir; I do.

Q. Do you say today that you did not testify so?

A. No, sir; I don't think I testified that, that she was crying.

Q. Will you swear you didn't say that?

A. I swear I didn't see her crying.

Q. You swear you didn't testify to that?

A. I am sure I didn't.

Q. Then that is not correct?

A. No, sir.

ADELAIDE B. CHURCHILL, Sworn.

Q. (By Mr. Moody.) Mrs. Churchill, will you give us your full name?

A. Adelaide B. Churchill.

Q. And are you unmarried at the present time?

A. I am a widow.

Q. How long have you been a resident of Fall River?

A. Forty-three years and some months.

Q. And you are the daughter of whom?

A. Edward P. Buffington.

Q. How long have you lived at your present residence?

A. With the exception of about six months, I have lived there

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Forty-three years and some months, all my life.

Q. It is the house you were born in?

A. Yes, sir.

Q. The Mayor Buffington house, as it is called?

A. Yes, sir.

Q. And is that the house next north of the Borden house?

A. Yes, sir.

Q. Do you occupy the whole house?

A. Yes, sir.

Q. And your household consists of whom, Mrs. Churchill?

A. My mother, sister, son, niece, and the man that works for us.

Q. During the last 20 years have you known the Borden family?

A. Yes, sir.

Q. Have you been on terms of social relations with them?

A. Yes, sir.

Q. Calling backwards and forwards?

A. Yes, sir.

Q. Perhaps you can describe to us as well as we shall get the description of it any other way---was Mr. Borden a slender man, a thin man, as we call it?

A. Yes, sir; tall and straight.

Q. A tall thin man?

A. A tall straight man.

Q. Mrs. Borden,---give the description of her in respect to size and weight?

A. Very fleshy. I don't think she was as tall as I am, not any taller.

Q. A short, heavy woman?

A. Yes, sir.

Q. Do you recall the morning of August 4, 1892?

A. Yes, sir.

Q. During that morning did you see Mr. Borden at any time?

A. Yes, sir.

Q. About what time did you first see him?

A. I should think about nine o'clock or so, somewhere along there.

Q. Somewhere about nine o'clock?

A. Yes, sir; I cannot tell just exactly.

Q. In what part of your house were you when you first saw him?

A. The kitchen.

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Q. What did you see him do?

A. He stood by the steps.

Q. Did you see him do anything else or walk anywhere?

A. No, sir. When I looked at him he was standing by the steps.

Q. Do you know whether he returned into the house again or went out of the yard?

A. No, sir.

Q. You know nothing about it?

A. No, sir.

Q. How was the screen door at the time you saw him standing on the steps?

A. I didn't notice. He wasn't on the steps. He was by the steps.

Q. Oh, on the walk by the steps, you mean?

A. Yes, sir.

Q. Was he in motion?

A. No, sir.

Q. Or standing?

A. Standing.

Q. Upon which side of those steps, the side towards the street or the side towards the barn?

A. The side towards the barn, coming down by the side.

Q. How far are your kitchen windows---we have seen them, but perhaps I will put that in the case,---about how far are your kitchen windows from this screen door?

A. I don't know.

Q. Can you give us an estimate with reference to some object in this room?

A. I shouldn't think they were much beyond that rail. (Indicating rail in front of the prisoner's dock.)

Q. The rail there?

A. Yes, sir.

Q. At any time in that morning did you leave your house and go upon some errand?

A. Yes, sir.

Q. About what time did you leave the house?

A. I don't know; somewhere near 11 o'clock, I should think.

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Q. Where did you go to?

A. I went to Mr. T. Hudner's market.

Q. On what street is that?

A. South Main street.

Q. How far from your house?

A. Just a little ways, nearly opposite our house, only a little north.

Q. Nearly opposite your house only on a parallel street?

A. Yes, sir.

Q. Did you do any business there?

A. Yes, sir.

Q. What was the general nature of it? I won't go into details.

A. I got three articles for dinner, something for dinner.

Q. Did you delay in the shop there after you bought the articles?

A. I asked my brother, who worked there, to send a telephone message for a woman who was at our house.

Q. Had some brief conversation?

A. Yes, sir.

Q. Then what did you do?

A. I went right home.

Q. In returning to your home did you walk southward and upward on Second street?

A. Yes, sir.

Q. That is, you walked from the direction of City Hall up towards your house?

A. Went through Borden street to Second and south.

Q. And in taking that journey you wouldn't pass the Borden house?

A. No, sir.

Q. Because you would reach your house first?

A. Yes, sir.

Q. When you reached the neighborhood of your house did you notice anything?

A. I saw Bridget Sullivan going across

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the street from Dr. Bowen's house to the Borden house.

Q. Was there anything in her appearance which attracted your attention or in her manner of going at the time?

A. Yes. She looked very white, and I thought some one was sick.

Q. Was she going slowly or rapidly?

A. Fast.

Q. As I understood you, she was going from Dr. Bowen's house?

A. Yes, sir.

Q. Back to the Borden house?

A. Yes, sir.

Q. About where were you with reference to your front door when you saw Bridget making this return journey?

A. I don't know. I was half-way, I think, between Mr. Burt's house and ours.

Q. And is Mr. Burt's house the next house?

A. North of ours, yes, sir.

Q. What did you then do, Mrs. Churchill?

A. I went right in the north side of our house, in the back door, into the house from the side door.

Q. Thence into what room in the house?

A. Passed through the dining-room into the kitchen.

Q. Will you describe what occurred in the kitchen?

A. I passed to the south side of the kitchen and laid my bundles on a long bench.

Q. Where is that bench with reference to the kitchen windows which look out toward the Borden house?

A. It is in front of one and extends nearly to the other window.

Q. Will you describe what occurred then?

A. And I looked out of the window, and I saw Miss Lizzie at the inside of the

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screen door.

Q. Will you describe how she was standing inside of the screen door?

A. Looked as if she was leaning up against the east casing of the door, and she seemed excited or agitated, to me, as if something had happened, and I stepped to the other window and asked her what was the matter.

Q. Which window did you step to?

A. The other kitchen window, the east window.

Q. Now will you state what conversation passed between you at the time?

A. I opened the window and said "Lizzie, what is the matter?" She said, "Oh, Mrs. Churchill, do come over. Some one has killed father."

Q. What did you do?

A. I shut down the window, passed right through the kitchen and dining-room into the front hall, turned to the door at the right of the hall and said to my mother---

Q. You said something to your mother, did you? I don't care about what it is, Mrs. Churchill. Pass that for the present. And thence you went where?

A. Went right out the front door over to Mr. Borden's.

Q. When you arrived at the screen door of Mr. Borden's house was Bridget still there or had she gone?

A. I didn't see Bridget.

Q. You didn't see Bridget there?

A. No, sir.

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Q. State if you please, anything that was said between Miss Lizzie Borden and yourself as soon as you reached the screen door?

A. 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." 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."

Q. Anything else at that time?

A. She said, "Father must have an enemy, for we have all been sick, and we think the milk has been poisoned."

Q. Anything else said?

A. She said, "Dr. Bowen is not at home and I must have a doctor." I said, "Lizzie, shall I go and try to get some one to get a doctor?" And she said "Yes," and I went out.

Q. Before that, in the sentence in which she said she went to get a piece of iron, was anything said about what brought her back again to the screen door?

A. I don't remember that she told me she heard anything at all.

Q. You don't remember that?

A. No, sir, I don't.

Q. Where did you go for the purpose of getting a doctor?

A. I went down Second street and crossed over to the left side to a sale stable kept by Mr. Hall and called for the man that worked for us. I knew he was there.

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Q. That is to say you went diagonally across from where you were?

A. A little to the north.

Q. How long did you stay there before you returned?

A. Only long enough to tell him to go and get a doctor.

Q. You did not know a man by the name of Cunningham?

A. I never knew him.

Q. Now, when you returned to the house had anyone got there?

A. No, sir.

Q. Had Bridget returned from Miss Russell's?

A. No, sir.

Q. Who came next?

A. Bridget came next.

Q. Who came after that?

A. Dr. Bowen.

Q. Will you state what occurred after Bridget and Dr. Bowen came?

A. Some one told him that Mr. Borden was in the sitting room and we followed him, Lizzie, myself and Bridget, into the dining room, and he passed from the dining room into the sitting room where Mr. Borden was.

Q. What occurred then? Go on and tell the story in your own way, Mrs. Churchill.

A. He came out shortly and made some exclamation, I do not remember what, 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. "

Q. Did you see the body at all?

A. I saw his feet after he was covered with the sheet.

Q. Later on?

A. Yes, sir.

Q. Did anything else occur after Dr. Bowen asked you to come in and see Mr. Borden?

A. I don't remember. I think Dr. Bowen

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went out to notify---I am not sure whether he asked for the sheet before he went out to notify the authorities or not.

Q. He did ask for a sheet, did he?

A. Yes, sir.

Q. In consequence of his asking for the sheet, what was done?

A. I think Dr. Bowen brought a key from the sitting room somewhere and gave it to Bridget and she and I went up the back stairs into Mrs. Borden's room.

Q. How did you find the door of that room when you got there?

A. I think she unlocked it with this key that Dr. Bowen gave to her.

Q. Bridget unlocked it?

A. Bridget, yes, sir.

Q. When you brought the key and the sheet down, what was the next thing that happened?

A. We handed the sheet to Dr. Bowen. He carried it into the sitting room and covered Mr. Borden up.

Q. Now proceed in the narrative as it comes to your mind, Mrs. Churchill.

A. Then at some time near that time Lizzie asked him if he would send a telegram to Emma, her sister, and put it as gently as he could, because there was an old person there and it would shock her.

Q. Anything else that you recall?

A. Not then. I think Miss Russell came soon after that.

Q. Was there any further suggestion about Mrs. Borden from anyone?

A. After Miss Russell came Lizzie said she wished some one would try to find Mrs. Borden for she thought she heard her come in. So Bridget and I started to go to find her, went through the dining room out of the sitting room at the head, or where Mr. Borden was sitting or lying, and up into the hall. Bridget was just ahead of me. She led the way, and as I went

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up stairs I turned my head to the left; and as I got up so that my eyes were on the level with the front hall, I could see across the front hall and across the floor of the spare room. At the far side or the north side of the room I saw something that looked like the form of a person.

Q. You had got to the level of the floor?

A. I had got up so I could see across the floor.

Q. Your head was on the level with the floor?

A. Yes, sir, so I could see across the floor.

Q. How was the door at that time?

A. Open.

Q. Did you pursue the journey any further when you saw this---

A. No, sir, I turned and went back.

Q. What did you do?

A. I don't know what I did. I went into the dining room and made some noise. Miss Russell said, "Is there another?" I said, "Yes, she is up there."

Q. Had you any information about that subject except what you saw yourself as your head rose above the level of the floor?

A. No, sir.

Q. You may go on and state anything else that you think of which was said that morning or done that morning.

A. Miss Lizzie said to me that she should have to go to the cemetery, and I said, "Oh, no, the undertaker will attend to everything for you."

Q. During any part of this morning after you came there, was the agitation and excitement manifested by tears?

A. No, sir, I never saw any tears.

Q. Recurring a moment to the first statement she made to you

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about her whereabouts I would like to refresh your memory. You have stated all you remember in that conversation, haven't you, where she said that she was in the barn?

A. Yes, sir.

Q. Do you recall that she said in addition to that that she heard a distressed noise and came in?

A. I don't remember whether she told me she heard a distressed noise or not.

Q. Well, I will not undertake to press it. Did you suggest any change of dress?

A. No, sir.

Q. Did any one in your presence or hearing?

A. No, sir.

Q. About what time did Miss Lizzie Borden go up to her room?

A. I don't know.

Q. Did she go up before you left or after?

A. Oh, after. I left her in the dining room when I went home.

Q. Will you describe the dress that she had on while you were there?

A. It looked like a light blue and white ground work; it seemed like calico or cambric, and it had a light blue and white ground work with a dark navy blue diamond printed on it.

Q. Was the whole dress alike, the skirt and waist?

A. It looked so to me.

Q. Was that the dress she had on this morning?

(Showing dark-blue dress.)

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.

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Q. Was there any white figure in the dress she had on that morning?

A. I don't remember. The ground work looked like blue and white mixed.

Q. Blended?

A. Yes, sir.

Q. How did the light blue compare with that piece of blotting paper (showing blotter) if you can tell?

A. The ground work that was mixed with the white was as light as that, I should judge.

Q. Do you recall whether it was fresh in color or had been faded somewhat?

A. I did not notice; it looked good to me.

Q. How long had she had that dress?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. Do you recall her wearing it before at any time?

A. Yes, sir.

Q. How long before had you seen her wear it?

A. I don't know.

Q. Can't tell?

A. No, sir.

Q. How frequently had you seen her wearing this same dress?

A. I cannot tell that.

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. Who are the members of your family, first?

A. My immediate family, my mother and sister and her daughter and my son and the man who works for us.

Q. I mean those that---

A. Then we let rooms to other people.

Q. I do not care for that. You live on the side of your house

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towards the Borden's?

A. Live all over the house.

Q. Oh, do you?

A. Yes.

Q. Well, your living side is on that side?

A. The kitchen and two lodging rooms are on the south side, down stairs.

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. You spoke of renting the rooms. Let me ask if you have the care of the rooms?

A. Yes, sir.

Q. And making them up in the morning?

A. Yes, sir.

Q. How many beds did you have to attend to at that time?

A. I did not have all that morning. My sister helps me some.

Q. I mean how many were there to be attended to that morning? I am not very particular about it.

A. I guess five that morning.

Q. Were these all on the side of the house towards the Borden house?

A. Yes, sir.

Q. When you were working in your kitchen you would not be looking towards the Borden house?

A. My sink is quite near one of the windows, and if I turned to the bench I should be near the window.

Q. Was I wrong in understanding that the kitchen is on the southerly side of the house?

A. On the south east side of the house.

Q. And it would be quite opposite the screen door of the Borden house?

A. Yes, sir.

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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.

Q. You saw her washing the parlor window?

A. Rinsing the parlor window.

Q. One window in the parlor?

A. Yes, sir, on the north side.

Q. Did you see her washing the dining room windows?

A. No, sir.

Q. You were not noticing her that morning?

A. No, sir.

Q. It was a casual glance, seeing her wash the parlor window, towards the street?

A. Yes, sir.

Q. Whether she washed the dining room window, you could not tell?

A. No, sir; I did not see.

Q. Nothing to call it to your attention?

A. No, sir.

Q. As to any people that passed along the street or about there that morning, you had no knowledge?

A. No, sir.

Q. Didn't take any notice?

A. No, sir.

Q. Heard no unusual noises?

A. No, sir.

Q. The street is one travelled a good deal by carriages, wagons and teams?

A. Yes, sir.

Q. And, speaking comparatively, it is quite a noisy street?

A. Yes, sir.

Q. So that when the windows were open you might not be able to hear noises in your own house?

A. No, sir, I should not think anything about it.

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Q. Are you able to tell us about what time you saw Mr. Borden there on the side of the steps?

A. I should think somewhere near nine o'clock.

Q. You said you didn't notice where he went?

A. No, sir.

Q. You had not seen him coming from the barn that morning?

A. No, sir.

Q. You had not seen him in the early morning at the barn?

A. No, sir.

Q. Was he standing against the broad stair of the steps,---you know there are steps going both ways?

A. No, he stood near the east post of the steps, towards the barn.

Q. Towards the barn?

A. Yes, sir.

Q. He was standing the furthest away from Second street?

A. Yes, sir.

Q. Where he went you don't know of your own observation?

A. No, sir.

Q. Did you see him afterward until the time he was killed?

A. No, sir.

Q. Didn't see him at all?

A. No, sir.

Q. Now the first thing after that that attracted your attention, was seeing Miss Lizzie at the door?

A. No, sir, Bridget Sullivan.

Q. While washing the windows?

A. No, sir, Bridget when I was coming up the street.

Q. You went to the market and as you were coming back you met Bridget Sullivan?

A. Yes, sir.

Q. And she said something to you?

A. No, sir, she said nothing.

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Q. You had no talk with her?

A. She was too far away to talk to.

Q. Then you went to your house and the first you saw of the occupants of the Borden house was seeing Miss Lizzie at the door?

A. Yes, sir.

Q. Her appearance was something very unusual?

A. Yes, sir, showed me something unusual was the matter.

Q. It was not anything in her dress, in the costume of dress, that attracted you?

A. No, sir.

Q. But something startled you?

A. Yes, sir.

Q. Was your window open?

A. That one I stood in front of had a screen blind closed. That was the kitchen, but I stepped to the other to speak to her. There are two on the south side of the kitchen.

Q. You spoke to her at the open window and no screen intervened, but you saw her first through a screen?

A. Yes, sir.

Q. And without a word from her at that time as you saw through the screen you passed right to the other window?

A. Yes, sir.

Q. And threw up the window, did you?

A. Yes, sir.

Q. As promptly as you could?

A. Yes, sir.

Q. What made you do that?

A. Because I thought something was the matter. I thought they were sick, some of them.

Q. You did not see anyone but Lizzie?

A. No, sir; I had seen Bridget.

Q. But she was not there at that time?

A. No.

Q. What made you think they were sick was Lizzie's appearance?

A. And Bridget's too.

Q. You saw her on the street?

A. Going to the doctor's. She was

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coming back when I saw her.

Q. But in Miss Lizzie's appearance what was the point that attracted your attention?

A. She seemed excited as if something was the matter.

Q. Appeared and looked distressed, didn't she, and frightened?

A. Yes, sir.

Q. It was a startling appearance on her part to you?

A. Yes, sir.

Q. While she stood there in that condition which excited you, you say you started for your window and threw it up?

A. Yes, sir.

Q. And you said, didn't you, "Oh, Lizzie, what is the matter?"

A. I said, "What is the matter, Lizzie?"

Q. Did you speak earnestly to her?

A. I don't know how particularly, now.

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Q. You spoke as you felt at the time, impressed with her appearance?

A. Yes, sir.

Q. Then, leaving out what you did in your house, you went over as promptly as you could,---and she replied to you "Somebody---

A. "Oh, Mrs. Churchill, do come over; somebody has killed father."

Q. And you went as soon as you could, over?

A. Yes, sir.

Q. When you got there whom did you find?

A. Lizzie.

Q. And was Bridget there?

A. No, sir.

Q. She had been, as I understand you, over to Dr. Bowen's and come back?

A. And gone of another errand.

Q. And gone again?

A. Yes, sir.

Q. Now I don't care to follow up what you said. You went in there and had the conversation as you have stated?

A. Yes, sir.

Q. With her: and she said she wanted the Doctor?

A. Yes, sir.

Q. And you then went out and went down to the stable and got the young man to go for the doctor?

A. Yes, sir.

Q. And how long were you gone, do you think?

A. I don't know.

Q. You went as soon as you could, I suppose?

A. Yes, sir, I shouldn't think five minutes.

Q. It seemed but a very short time. And when you got back there, whom did you find then?

A. Lizzie.

Q. Nobody else?

A. No, sir, they hadn't got back.

Q. Bridget had not returned?

A. No, sir.

Q. When did Dr. Bowen come?

A. Bridget came first, and in a few moments Dr. Bowen came.

Q. So, when Dr. Bowen came to the house, you and Bridget

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were both there with Lizzie?

A. Yes, sir.

Q. And how long did you remain, Mrs. Churchill, that morning?

A. I think that it was about 12 o'clock when I went home.

Q. All the time that Dr. Bowen was there that morning you were then present in the house?

A. Oh, he went in and out several times.

Q. Yes, but I say while he was there you were there?

A. I don't know but he was there after I went home.

Q. Well, I mean during the forenoon?

A. I was there till 12 o'clock.

Q. You were there continuously till 12 o'clock yourself?

A. Yes, sir.

Q. Did you go away before Lizzie went upstairs?

A. Yes, sir.

Q. So that Lizzie did not go upstairs until after 12 o'clock?

A. I don't know when she went up: she didn't go up while I was there.

Q. That is it: after 12. When you saw her standing at the door--- Before that, can you give any precise idea of the time you went over to the house?

A. No, sir, I cannot.

Q. Do you know what time you went down to Hudner's market?

A. I am not sure.

Q. As you recall the dress she had on, it was a blue dress, which you think was about the color of that piece of blotting paper,--- general color?

A. What was mixed in with white, or something of that kind: it didn't look as deep, of course, because there was white with it, I think.

Q. My friend the counsel said---you did not say it---he said the white and the blue were blended?

A. Well, that is what I

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mean,---woven in together.

Q. And there was a white thread and a blue thread mixed?

A. Well, I am not positive. I only looked at the general effect. It looked like blue and white groundwork to me, with this deep navy blue diamond printed on it.

Q. Was the groundwork in any stripes?

A. I don't know: I don't remember about that: I remember the diamond upon it.

Q. Can't you help us a little bit about that, because we are trying to get at it?

A. Well, the diamond is the most distinct thing in my mind. It had a navy blue---well, my dress is navy blue---similar to that.

Q. That was the figure?

A. The figure that was printed all over the goods.

Q. Was it a calico dress,---a print, as it is sometimes called?

A. A cotton dress, either calico or cambric. It was cotton: it was either calico or cambric, I think.

Q. I suppose you had not the least occasion to examine that dress that morning?

A. No, sir: only I had seen it before.

Q. Had you ever seen her have any other clothes than that one dress?

A. Oh, yes, indeed.

Q. She had more dresses than that one, and more than that one put in, I suppose?

A. Yes, sir.

Q. You had seen her with several dresses, different ones, hadn't you?

A. Yes, in my life.

Q. Well, in a good deal shorter than your life: within a month or two from that occurrence you had seen her in different dresses, hadn't you?

A. I don't remember when I had seen

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her before that morning around about there.

Q. That is, you do not recall?

A. No, sir.

Q. I don't suppose you do. You could not undertake to say when you saw her, until that day, within a week, or what dress she wore?

A. No, sir.

Q. You never took any notice?

A. No, sir.

Q. Now, was the waist and skirt of the same material?

A. I think it was, yes, sir.

Q. You think so?

A. Yes, sir.

Q. Well, was it a tight waist or a loose waist?

A. It was not tight.

Q. What is that?

A. It was not tight.

Q. What do you ladies call it? Do you have some name for it?

A. I don't know exactly, but it seems to me there was a box pleat or something down the front, like a blouse waist or something, loose, like that.

Q. Something loose?

A. Yes, it was not snug, like this dress I have on.

Q. Of course there was not a word said about the dress that day, that morning? You were not talking about dresses?

A. No, sir.

Q. Did you see her in the afternoon, when she had on a pink wrapper?

A. No, sir.

Q. What dress did Bridget have on that morning?

A. I don't know: a light calico, I think.

Q. Do you know anything about it?

A. No, sir.

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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 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 cannot tell that?

A. No, sir.

Q. Well, after you came in there, Lizzie was at the kitchen door or by the stairs--- sitting on the stairs, as I understand you, and then you passed where?

A. I stood there.

Q. What is that?

A. I stood by her side and she sat on the stair. She sat there until I went to find someone to go to get the doctor. When I came back she was sitting on that stair just the same.

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Q. You left her and were gone two or three minutes, you said, possibly?

A. I said I didn't think more than five minutes.

Q. Not more than five minutes: I beg your pardon. She was still there?

A. Yes, sir.

Q. Then what did you do as to your movements? Where did you and she go?

A. I think we went into the kitchen.

Q. Did you remain in there?

A. Yes, sir.

Q. Did you go into the dining room at all?

A. Not until Dr. Bowen came.

Q. And after that did you?

A. We followed him into the dining room.

Q. Did Lizzie go into that room?

A. Yes, sir.

Q. What was done in there,---in the dining room?

A. Lizzie sat down on the lounge and Bridget stood by---I stood quite near the dining room table, and Bridget stood near the kitchen door, I think, as near as I can remember.

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Q. Was either of you fanning her?

A. Not then.

Q. At any time?

A. I fanned her with a newspaper in the kitchen after Miss Russell came.

Q. Did Miss Russell also attend to her in any way, fan her?

A. Yes, Miss Russell sat down side of her, at her right side.

Q. Was there anything else done to quiet her excitement?

A. I don't remember; seems to me they gave her something to drink, I think so, and Miss Russell bathed her head.

Q. And rubbed her hands?

A. Yes, with water.

Q. Did you participate in that at all?

A. No, I don't remember. I think I might have put some water there for her to wet the rag once, or went near the sink, I think.

Q. You were faithful in attending her and taking care of her; no doubt about that. I don't mean to imply otherwise, but you are doing what you could to help her, weren't you, both of you?

A. Yes, sir.

Q. It was a trying spot, wasn't it?

A. Yes, sir.

Q. A pretty hard place. You were all feeling badly, weren't you?

A. Yes, I was.

Q. No doubt of that. Well, while she sat there and while you were there, you were round practically with her about all the time?

A. Yes, sir. She went into the dining-room, and the dining-room door was closed after we found Mrs. Borden and I stayed in the kitchen a while. Then I stepped to the dining-room door and said, "Lizzie, I am going home now."

Q. About what time should you say that was?

A. Somewhere

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about 12 o'clock.

Q. You had been there with her 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. On her hands?

A. No, sir.

Q. On 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.

Q. Did she have on more than one dress?

A. I don't know.

Q. Well, did you see anything of the kind?

A. No, sir.

Q. Anything that indicated to you that there was any double dress?

A. No, sir.

Q. You saw her lying down, didn't you, as a woman will lie right

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down on the lounge?

A. Yes, sir.

Q. Reclining and resting herself?

A. Yes, sir.

Q. And her feet and shoes right up on the lounge just the same as a person does?

A. Yes, sir.

Q. In all that time you were round there you saw nothing whatever of that kind?

A. No, sir.

Q. When you went up the front stairs to go up to see Mrs. Borden, Lizzie was remaining in the dining-room?

A. She was in the kitchen with Miss Russell.

Q. And she didn't go with you?

A. No, sir.

Q. And at that time when you passed right across the corner of the dining-room, as if the door of the dining-room was here (illustrating) an the door of the sitting-room into the hall there, you went right across that short corner?

A. Yes, sir.

Q. And Mr. Borden's body lay off here covered with a sheet?

A. Yes, sir.

Q. And you took no notice except, I suppose, what was necessary as you passed by it, and saw it placed there?

A. No, sir, I didn't take notice of it.

Q. Didn't see that?

A. Yes, sir. I knew he was covered with a sheet by Dr. Bowen.

Q. Because you helped get it?

A. Yes, sir.

Q. What did Bridget tell you about Mrs. Borden having a note?

A. She said Mrs. Borden had a note to go to see some one that was sick, and she was dusting the sitting-room, and she hurried

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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 some one 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."

Q. Did you hear any talk with Miss Lizzie or to her about any of the farm hands being connected with this crime?

A. I was in the dining-room when a policeman asked Lizzie about the man that worked for her father.

Q. Do you know who the policeman was?

A. No, sir, I don't know as I do.

Q. Do you know Mr. Doherty?

A. It wasn't him.

Q. Do you remember whether there was more than one of them present at that time?

A. I don't remember.

Q. I have forgotten whether you said it was in the dining-room?

A. Yes, sir.

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Q. Now will you tell us just that conversation?

A. They asked about a Portugese that worked for her father, and Lizzie said, "He isn't a Portugese, he is a Swede."

Q. She corrected that right on the spot?

A. Yes, sir.

Q. "He is not a Portugese; he is a Swede."?

A. Yes, sir.

Q. Did she speak positively about that?

A. Yes, she did.

Q. Right out?

A. Yes, sir.

Q. Promptly?

A. Yes, sir, and she said that he was not over to Fall River.

Q. Spoke right up, "He is not a Portugese; he is a Swede."?

A. Yes, sir.

Q. And what more did she say?

A. That he wasn't over to Fall River, that the head man was sick, and he had to do the work on the farm.

Q. What more did she say?

A. I don't remember what she said.

Q. Let me call your attention. Was there something said about whether she would suspect any man that worked on the farm?

A. She said she wouldn't suspect him.

Q. Said she wouldn't suspect him?

A. No, sir.

Q. Now, that was said right out promptly, wasn't it?

A. Yes, sir.

Q. With perfect sincerity, as far as you could see, wasn't it?

A. Yes, sir, as far as I could see.

Q. You hadn't any doubt of it when she spoke?

A. No, sir.

Q. Have you any knowledge of when the officers came to the house?

A. The first officer I saw came in with Dr.---after Dr. Bowen went out. I don't know but he came in with him. His name

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was Allen, and I remember seeing him.

Q. That was the first one you saw?

A. That is the first one I remember seeing.

Q. And he came in the house?

A. Yes, sir. Mr. Sawyer came at the same time,---not an officer.

Q. Mr. Sawyer came at the same time Mr. Allen did?

A. Yes, sir.

Q. Did he come in the house?

A. Mr. Allen told him to come in with him, and he came and stood and tended the door, the side door.

Q. Sort of guard to it?

A. Yes, sir.

Q. And there was at that time no other officer in the house?

A. Not that I know of.

Q. And at that time do you know whether there was any one outside or not?

A. I don't know.

Q. Didn't see anyone?

A. I didn't go to look outside.

Q. Did other officers come afterwards?

A. Oh, yes.

Q. There were several?

A. Yes, sir.

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.

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Q. Where were you when you happened to see Bridget washing one of the windows?

A. In the bedroom.

Q. On what side?

A. On the south side of the house, yes, sir.

Q. I don't know as it is of any consequence, but which window was it?

A. It was the southwest window.

Q. It was on your side, towards your house?

A. Yes, sir.

Q. Mrs. Churchill, was your attention called very soon after this to the question of what dress Miss Lizzie Borden had on on the morning of this homicide?

A. I was asked at the inquest what dress, and I described it.

Q. (Exhibiting blue dress.) Was this dress called to your attention soon after that, this particular dress?

MR. ROBINSON. Wait a moment.

Q. When did you first see this dress?

A. Mr. Jennings showed it to me the first time that I saw it.

Q. How soon after the homicide?

A. I don't know how soon, before the public hearing, I think.

Q. And after the inquest, do you mean?

A. Yes, sir, after the inquest.

Q. Mr. Jennings showed it to you?

A. Yes, sir.

Q. And did you have some talk with Mr. Jennings (I don't ask you what was said) with reference to this dress? Did some talk pass between him and you with reference to the dress?

A. Yes, sir.

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RE-CROSS.

Q. (By Mr. Robinson.) Let us see that we are quite right about this. Do you remember when the inquest was?

A. I went down there, I think, of a Wednesday afternoon.

Q. That would be the Wednesday following the deaths?

A. I am not positive whether it was the next week after or the week after that. I can't tell that.

Q. Was it after you went there to that inquest that Mr. Jennings showed you the dress?

A. I think it was, yes. I think so. That is my impression. I may be mistaken. I can't be positive, but I think it was after the inquest.

Q. Did you happen to know that all the dresses, this one included, were taken by the officers on Saturday, the day of the funeral?

A. No, sir, I didn't know anything about it.

Q. And had been kept in the possession of the government ever since; did you know that?

A. No, sir.

Q. Did you know it was produced by the officers at the inquest?

A. No, sir. I didn't see any dress at the inquest.

Q. Well, you don't know about that?

A. No, sir, I don't know.

MR. KNOWLTON. Do you mean to imply that was so?

MR. ROBINSON. I do not mean to imply anything. I ask the witness what she knows about it, and I am not testifying.

(Recess for five minutes.)

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ALICE M. RUSSELL, Sworn.

Q. (By Mr. Moody.) Your name is Alice M. Russell?

A. Yes, sir.

Q. And you live in Fall River, do you?

A. Yes, sir.

Q. How long have you lived in Fall River?

A. I don't know how long I have lived there.

Q. Well, a good many years?

A. Yes, sir.

Q. You are unmarried, I believe?

A. Yes, sir.

Q. At some time did you live in the house now occupied by Dr. Kelly?

A. Yes, sir.

Q. How long ago did you live there, about how long?

A. Two years ago last October.

Q. You moved away?

A. Yes, sir.

Q. How long had you lived there before that time?

A. Just eleven years.

Q. And of course during all that time the Bordens has occupied the house next north?

A. Yes, sir.

Q. You were acquainted with them well?

A. Yes, sir.

Q. All of the family?

A. Yes, sir.

Q. Mr. Borden, Mrs. Borden, Miss Emma Borden, and Miss Lizzie Borden?

A. Yes, sir.

Q. Now I will have to ask you to speak a little louder, Miss Russell. Where on the 4th of August, or on the first part of August of last year, did you live? On what street in Fall River?

A. Borden Street.

Q. The number of the house on Borden Street was what?

A. 33.

Q. Is that a house not far from the corner of Second Street?

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A. Yes, sir.

Q. The small house between the corner of Borden and Second Streets and the bake shop; is that it?

A. No, sir.

Q. Well, describe the house that you live in?

A. Between Third and Fourth Streets on Borden Street.

Q. And near by a bake shop?

A. Yes, sir.

Q. Do you occasionally have calls from the prisoner; did she come to your house?

A. Yes, sir.

Q. Did you go to her house?

A. Yes, sir.

Q. When you called at her house where did she receive you, in what part of the house?

A. Upstairs, in what is called the guest room.

Q. Did she use that for a sitting-room as you were there,---the guest room?

A. As I was there.

Q. Now I will call your attention, if you please, to a visit she made to you upon the Wednesday night of August 3 of last year. Did she make such a visit?

A. Yes, sir.

Q. About what time did she make it?

A. I am not sure; I think about seven.

Q. Some time in the evening, was it?

A. Yes, sir.

Q. Did she come alone or did some one else come with her?

A. Alone, as far as I saw.

Q. Now speak louder; I find difficulty in hearing you. About how long did she stay with you, Miss Russell, that night?

A. I think she went at nine, or five minutes after. That is as near as I know.

Q. And of course during the meantime you and she talked together

about various subjects?

A. Yes, sir.

Q. Was anything said in reference to going to Marion?

A. Yes, sir.

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.

Q. (By Mr. Robinson.) Be kind enough to speak a little louder, if you can.

A. Shall I repeat that?

Q. If you please, because I didn't hear it.

A. I said, "I am glad you are going." I had urged her before to go, and I didn't know that she had decided to go. I said, "I am glad you are going." 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 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?" I don't know what was said after that. I don't remember of any more conversation about Marion. Whether there was or not I don't remember.

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Q. (By Mr. Moody.) Well, then, go on and state how the conversation went on, taking your own method.

A. I suppose it was 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. They 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;

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but I heard them vomiting and stepped to the door and asked if I could do anything, and they said No."

Q. (By Mr. Robinson.) Will you please repeat that?

A. Lizzie said "I didn't vomit. I heard them vomit, but I didn't vomit; I wasn't sick enough to vomit, but they were. I heard them, and I stepped to the door and asked them if I could do anything, and they said No."

Q. (By Mr. Moody.) 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.

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." And she told me of a man that came 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

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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 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. Anything else in that connection?

A. She said that before this other.

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Q. What had she said just before the burning of the house?

A. I think that was the beginning of her telling me about her fears of somebody breaking in, before she told about the breaking into the barn, I think.

Q. Is there anything else that occurs to you in the conversation?

A. I don't think of anything.

Q. Anything about doing anything to any member of the household; not herself, but anyone else; anything to her father; she was afraid that some one would do anything?

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 was 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. Now have you stated substantially all you remember about that

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talk the night before?

A. Yes, all that I can remember.

Q. Upon the next morning, August 4th, did you receive a visit from Bridget Sullivan?

A. Yes, sir.

Q. About what time was it?

A. I don't know what time it was.

Q. Did you have any occasion to notice the time?

A. Not after eleven.

Q. Did you notice the eleven o'clock bell?

A. Yes, sir.

Q. Was it before or after that bell that Bridget came to you?

A. After.

Q. What were you doing when she came?

A. I was at my work.

Q. In consequence of anything that she said to you did you go anywhere? In consequence of what Bridget told you did you go somewhere?

A. Yes, sir.

Q. Where did you go?

A. I went upstairs.

Q. And what did you do upstairs?

A. Changed my dress.

Q. What did you do then?

A. I went over to Mr. Borden's.

Q. Speak up, please.

A. I went over to the Borden house.

Q. When you got to the Borden house do you recall who were there?

A. I only remember Lizzie.

Q. Where was she when you got there?

A. I am not positive.

Q. Was she down stairs or upstairs?

A. Down stairs.

Q. Did you have any talk with her or did she say anything to you?

A. When?

Q. When you got there, or any time before you went upstairs?

A. Yes, sir.

Q. Well, go on and tell us what it was.

A. I cannot tell it in order, for it is very disconnected. I remember very

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little of it.

Q. Well tell us that part which you do remember.

A. I think she was standing in the door, leaning against the door frame, as I went in, and I asked her to sit down in the rocking chair, which she did. There was somebody came around, I don't know who they were. There were people there, came in; either they were there or came right in or something. I don't know what followed.

Q. Now let me ask you if anything was said about her whereabouts when her father was killed?

A. That was some time later, in telling us, she told us about going to the barn.

Q. What did she say when she told you that?

A. I don't remember. She said she went to the barn. She told us when she came in ---she said that she saw her father, and that 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 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.

Q. Now was there anything else that was said that you recall while she was down stairs, anything about Mrs. Borden that you remember?

A. I know she asked for somebody to find Mrs. Borden.

Q. Had she told you anything about where Mrs. Borden was, whether

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she had gone out or not?

A. I don't remember.

Q. Anything about a note?

A. I heard the note talked over; I don't know who told it.

Q. You do not recall whether she told it or someone else did?

A. No, sir.

Q. Do you remember of someone's going for the sheet?

A. Yes, sir.

Q. Who went for the sheet?

A. Well, I don't remember. I remember their asking for one.

Q. But you don't remember who went for it?

A. No, I don't know for sure who went for it.

Q. How long do you think you remained down stairs before you went upstairs?

A. I don't know. I haven't any idea, anything definite.

Q. During the time that you was down stairs was there anything about loosening a dress, any one's dress?

A. Yes.

Q. Well, state what that was.

A. I will have to ask you your question again.

Q. About loosening anyone's dress.

A. Anything said, did you say?

Q. What I want to know is, was anything said or done about loosening anyone's dress?

A. I started to unloosen her dress, thinking she was faint, and she said, "I am not faint."

Q. Was her dress, the upper part of her dress, loose or tight?

A. Her dress was loose here, (indicating) where I started to unloosen it. It was loose here, so it pulled out.

Q. Are you able to give us any description of the dress she had

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on that morning?

A. None whatever, other than that.

Q. When she went up stairs did she go up alone or did anyone go with her?

A. I am not sure.

Q. Did you go with her?

A. I have always thought so; I am not sure.

Q. Were you in the room with her at any time upstairs before a change of dress?

A. Yes, sir.

Q. Was anyone else there besides you and Miss Borden at that time?

A. No, sir.

Q. Now was there some conversation there in consequence of which you left the room?

A. Yes, sir.

Q. Will you state what that conversation was?

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

Q. What did you do?

A. I went down stairs and waited in the hall to see Dr. Bowen.

Q. And did you see him?

A. After waiting some time, I sent for him. He didn't come through there, and I sent for him and he came.

Q. After you had an interview with him where did you go?

A. Upstairs again.

Q. Did you go to her room?

A. Yes, sir.

Q. What did you see when you went to the room?

A. She was coming out of Miss Emma's room, tying the ribbons of a wrapper.

Q. What sort of wrapper was it?

A. Pink and white stripe, I think.

Q. Was it a tight or loose wrapper, perhaps wrappers are always loose?

A. I couldn't tell you.

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Q. Did you at that time see her do anything with reference to the clothes closet door? That is, over the front hall. You know the room that I mean?

A. Yes, sir.

Q. The large closet with a window in it, facing out to the street. What did you see her do with reference to that door?

A. When?

Q. At any time while you were up in that room with her before the officers came?

A. I didn't see her do anything.

Q. Did you at any time during that day see her go to that door?

A. Yes, sir.

Q. When was that?

A. I don't remember just when.

Q. How many times did you see her go to that door?

A. I remember of her going twice.

Q. And what did she do when she went to the room to get into it?

A. She unlocked the door.

Q. Each time?

A. Yes, sir.

Q. Do you recall where she took the key from?

A. No, sir.

Q. Do you know Mr. Fleet; do you know him now?

A. Yes, sir.

Q. Assistant marshal of Fall River?

A. Yes, sir.

Q. Did you see anything between him and her with reference to that door? Did he go into that door?

A. I don't know.

Q. Did you see her give any key to Mr. Fleet?

A. No, sir.

Q. Did you see her unlock the door for Mr. Fleet?

A. No, sir. At least I don't remember.

Q. You don't remember it?

A. No, sir.

Q. Now did you have any occasion you see the door that leads from Miss Lizzie Borden's room into her father's and stepmother's

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room? Did you observe that door at any time while you were up there?

A. When?

Q. That morning.

A. Before this?

Q. At any time. Either by the officers calling your attention to it or by any observation of your own, did you see it on August 4th,---that door?

A. Yes, sir.

Q. Won't you state what you observed with reference to that door?

A. I was in Mr. and Mrs. Borden's room while the officers were searching the house ---as I understand, and did then---the first time. They went through that room, looked into the little room opening out of Mr. and Mrs. Borden's room, and they started to open that, and found it locked, and they pulled it open. There was a portiere hanging on the other side.

Q. That is, they pulled the door forcibly open from Mr. Borden's room side?

A. Yes, sir.

Q. Did you notice how it had been fastened on the other side?

A. On Miss Lizzie's side?

Q. Yes.

A. I didn't notice then.

Q. Did you afterwards notice?

A. Yes, sir.

Q. What did you notice about the fastening on Miss Lizzie Borden's side?

A. That it had a hook and a screw-eye.

Q. Did you notice anything else about the hook and the screw-eye?

A. No, sir.

Q. Whether it was pulled out or not, I mean?

A. It was pulled out.

Q. And what sort of a place---as the officers pulled that door

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open---what sort of a place did you observe afterwards it left in the wall where this screw was?

A. I didn't observe anything about it.

Q. You simply saw them pull it out?

A. I saw her screwing it in.

Q. You saw her screwing it in again?

A. Sometime during the day.

Q. After the officers had done this thing that you say?

A. Yes, sir; I think in the evening.

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Q. Did you remain there all day, Miss Russell?

A. Yes, sir.

Q. Did you remain there that night?

A. Yes, sir. I did not remain all day: I went home.

Q. But returned again?

A. Yes, sir.

Q. And remained there Thursday night?

A. Yes, sir.

Q. By the way, before passing away from it, had you suggested to Miss Lizzie Borden to change her dress?

A. No, sir.

Q. Had you heard any one else suggest it?

A. No, sir; I never remember of it.

Q. Upon the Thursday night, did you go into the cellar with any one?

A. Yes, sir.

Q. Was it after dark?

A. Yes, sir.

Q. Who went with you?

A. Miss Lizzie.

Q. Taking a slop pail, did she?

A. Yes, sir.

Q. And did you take anything?

A. Lamp.

MR. ROBINSON. Perhaps you will let her state what occurred; that would be proper.

MR. MOODY. I will.

Q. Did you have anything with you?

A. Yes, sir.

Q. What was it?

A. A lamp.

Q. Into what room in the cellar did you go?

A. Water closet.

Q. Was there anything in the cellar as you went down there at that time,---any object?

A. Where?

Q. Anywhere in the cellar. Any clothing I mean?

A. Yes, sir.

Q. And what were the clothing that were there?

A. The clothing taken from the bodies.

Q. And where were they?

A. In the wash room.

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Q. Did you go into the wash room at all at that time?

A. I did not go.

Q. Did Miss Lizzie Borden go into the wash room at that time?

A. Yes, sir.

Q. And go to what part of the wash room?

MR. ROBINSON. I reminded you a moment ago that the witness ought to be able to tell what was done, and you should not lead her.

MR. MOODY. I don't intend to.

Q. Tell us what she did.

A. She went to the sink and rinsed out the pail.

Q. Then what was done?

A. Then we went up stairs.

Q. Did you go down cellar again that night?

A. No, sir.

Q. Either alone or with her?

A. No, sir.

Q. Did you know whether any body else went down cellar later that night?

A. No, sir.

Q. Did you learn from Miss Lizzie Borden whether any one else went down cellar that night?

A. No, sir.

Q. When you went up stairs where did you go?

A. I don't know. I think right up stairs: I think the second story, but I don't know.

Q. Right up stairs: what do you mean by upstairs? On the dining room floor?

A. No, the second floor. Still, I don't know---

Q. Did any one go up with you?

A. I don't know that.

Q. What room did you sleep in that night?

A. What was Mr. and Mrs. Borden's room.

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Q. Do you remember when you parted after coming up from the cellar with Miss Lizzie Borden?

A. No, sir.

Q. Did you see her again that night?

A. Yes, sir.

Q. How soon after?

A. I don't know.

Q. Do you know where she had been in the meantime?

A. I think she had been in her room. Our doors were open.

Q. Were the doors open all the time?

A. Yes, sir, all the time up to that time.

Q. Up to that time.

A. Up to that time.

Q. Well, then, after that time were the doors open?

A. No, they were closed a short time.

Q. You said you slept in which room?

A. What was Mr. and Mrs. Borden's room.

Q. The doors were closed, were they?

A. Yes, sir.

Q. After the doors were closed did you see her again until morning?

A. Yes, sir.

Q. What time?

A. After I opened the door.

Q. How long was that after you closed the door?

A. I don't know for sure; I think fifteen or twenty minutes.

Q. How long after you came upstairs was it before you closed the door between the two rooms?

A. I don't know.

Q. Can't you give me any idea?

A. I cannot: I don't know whether we went right upstairs or not.

Q. You don't remember whether you did or not?

A. No, I did not: I can't tell anything about it.

Q. In any event, the doors were closed at the time you say?

A. Yes, sir.

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Q. What were you doing---that will measure the time, perhaps, as well as anything else --
-what were you doing while the doors were closed between the rooms?

A. I was getting ready for bed. I read an account of this affair in the News.

Q. Anything else?

A. I don't think I did anything else.

Q. Any toilet operation of any sort?

A. Bathing.

Q. How long did you remain at the Borden house after the day of the murder---
homicide?

A. I went there when I was called, and I came away the next Monday morning.

Q. Did you stay the intervening nights?

A. Yes, sir.

Q. Thursday, Friday, Saturday and Sunday nights?

A. Yes, sir.

Q. What room did you occupy during this time?

A. I occupied what was Mr. and Mrs. Borden's room Thursday and Friday nights:
Saturday and Sunday nights I occupied Miss Emma's room.

Q. Miss Emma's room?

A. Miss Emma's room.

Q. Do you remember the breakfast on Sunday morning?

A. No, I do not.

Q. Who got the breakfast Sunday morning?

A. I got the breakfast.

Q. After the breakfast had been got and the dishes had been cleared away, did you leave the lower part of the house at all?

A. Yes, sir.

Q. Afterward, did you return?

A. Yes, sir.

Q. About what time in the morning was it when you returned. Miss Russell?

A. I don't know.

Q. Was it before noon?

A. Yes, sir.

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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."

Q. "Covered in paint,"---is that the expression?

A. I don't know whether she said "covered in paint" or "covered with paint".

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

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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 any one 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. Before that?

A. Before that.

Q. Do you know Mr. Hanscom?

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. In what room?

A. The parlor.

Q. In consequence of that conversation, what did you do? What did you do after the conversation with Mr. Hanscom?

(No Answer)

Q. Did you see anyone after that conversation?

A. I saw Miss Lizzie and Miss Emma.

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Q. Where did you see them?

A. In the dining room.

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,

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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.

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. Bedford cord?

A. Yes, sir.

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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. Yes, at the time you first saw it, and by what?

A. She told me that she got her Bedford Cord and she has a dressmaker there, and I went there one evening and she had it on, in the very early part of the dressmaker's visit, and she called my attention to it, and I said, "Oh, you have got on your new Bedford Cord." That is the only time I saw it until this time.

Q. Until the time it was burned?

A. Yes, sir.

Q. Can you give us anything more about the figure---

MR. ROBINSON. You turned around and made some correction; I don't know whether it is a correction for the reporter or only for me. Perhaps you had better state it again.

MR. MOODY. I did not mean to put in the question, "the morning the dress was burned," but, "the Sunday morning following the homicide." That is the time I referred to.

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?

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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.

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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. And the other two vomited during the night, and she heard them from her room and was sick herself but did not vomit?

A. Yes, sir.

Q. Was called to them and asked if she could do anything for them and both said no?

A. Yes, sir.

Q. Now we will go right along to Thursday, the 4th of August. You were called up there and went as rapidly as you could to the house?

A. Yes, sir.

Q. When you got there, beside Miss Lizzie, who was there?

A. I don't know who was there.

Q. I infer from that there were others?

A. I don't know; I don't know whether anybody was in the room or not.

Q. Do you remember whether anyone was outside?

A. I think so, I don't know.

Q. Did you see Mrs. Churchill there?

A. When I went in?

Q. Yes.

A. I did not.

Q. You saw her there?

A. I saw her there soon after.

Q. Did you see Bridget there any time?

A. I don't know when I went in whether she was there or not.

Q. You certainly saw Lizzie?

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.

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Q. This was a warm day, as I remember it to have been testified to?

A. Yes, sir.

Q. Was the dining room door shut, leading into the sitting room?

A. Yes, sir.

Q. And the one from the kitchen in,---was that closed after you went in?

A. Yes, sir.

Q. So that you were in the dining room where it was a good deal cooler?

A. Yes, sir.

Q. What was done with reference to Miss Lizzie?

A. I think I fanned her. Is that what you mean?

Q. I mean tell about that, if it was so. What else did you see? I mean to have you tell me about that occurrence, whatever the fact is.

A. That is all I remember.

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.

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, she did not faint.

Q. Then there was talk going on, a portion of which you have given. Did that occur in the dining room or the kitchen?

A. I think in the kitchen; I know it was not in the dining-room.

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Q. At any time did she say anything about her head aching or feeling badly?

A. Up stairs? That was before---

Q. That was after you went up stairs?

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. There were some of both?

A. Yes, sir.

Q. Do you remember what became of them?

A. I took them upstairs and as I went in Miss Lizzie said, "Oh, yes, those are what I was ironing."

Q. What was done with them?

A. I said, "What shall I do with these?" and she said, "Lay them in this drawer," and I took those that were sprinkled and lay them over Miss Emma's towel rack to dry.

Q. When you say they were sprinkled, that is the ordinary process in house-keeping when getting ready to iron?

A. Yes, sir.

Q. You say you cannot tell us about a dress that she had on that morning?

A. No, sir.

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Q. Anything about it?

A. Except that it was loose here (indicating some part of the bosom) when I started to unloosen them. That is the only thing about the dress I notice.

Q. So far as you know she did not have on but one?

A. No, sir.

Q. Was she lying on the lounge any time that you saw her?

A. Yes, 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 any upon her hands?

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.

Q. As far as you saw. How long did you remain there at that time? All day?

A. Yes, sir.

Q. Then in the afternoon you were there when the officers came, as I understand you?

A. Yes, sir.

Q. Mr. Fleet, was one of them?

A. I am not sure. I know Mr. Fleet was there, but I don't know that he was there at the time you have reference to.

Q. In the afternoon there were a great many there?

A. There were a good many.

Q. Seemed to be a good many policemen?

A. I don't know whether there was a good many, or whether they kept coming.

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Q. Kept going round, but whether the same man or not, you don't remember?

A. I don't remember.

Q. Were they searching the house?

A. I have not any remembrances of their searching the house except that time I was with them.

Q. What did they do then,---where did they search?

A. First I remember being up in Mr. and Mrs. Borden's room and showing the two smaller rooms out of them, and then their coming into Miss Lizzie's room. I do not remember being there, but if course I was there and went down stairs with them, and I went into the parlor with them, and that is all I know about that search.

Q. In the afternoon were you up stairs in Miss Lizzie's room and did the officers come up there?

A. Yes, sir, there were officers up there that afternoon.

Q. Did Mr. Fleet come to her door?

A. I don't know.

Q. Do you know of his being in the clothes-room?

A. No, sir, I do not.

Q. You had been in the clothes-room yourself?

A. I don't think I was in there until late in the afternoon, when Mrs. Holmes and I went in there.

Q. Will you tell the jury how things were when you went into the clothes-room?

A. I don't know a thing about it.

Q. Were there any clothes there?

A. No, sir, there were boxes and trunks there,---I don't remember.

Q. Were clothes hanging on both sides of the room?

A. I think there were.

Q. Was there some sort of cloth hanging over them?

A. I don't know.

Q. Don't remember that at all?

A. No, sir.

Q. Were there a dozen or more dresses in the room both sides?

A. I don't know; the room seemed to be full of clothes and boxes or trunks on the floor.

Q. You remember there was a window there?

A. Yes, sir.

Q. And it was ordinarily light?

A. Yes, sir.

Q. In the day time?

A. The same as a room would be with the blinds closed, I think.

Q. It opened right out on the west side on the street?

A. Yes, sir.

Q. Now that Thursday night do you know whether there were officers about the house, policemen or persons in the yard?

A. Yes, sir.

Q. During the evening?

A. Yes, sir.

Q. You had the window open, I suppose?

A. I don't know.

Q. It was warm weather?

A. I should suppose so. You mean up stairs or down?

Q. Down stairs first?

A. I don't remember; I suppose so.

Q. Where were these officers, did you hear them about the yard?

A. Yes, sir.

Q. Whether you heard them talking and moving about?

A. Yes, sir.

Q. And that continued all the evening?

A. Yes, sir.

Q. Were they all round on the back side of the house, too?

A. Yes, sir.

Q. What time, as nearly as you recollect, did you go up stairs to go to bed?

A. I don't know; I think early.

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Q. Who were the persons that went up at that time or went up at the time to go to bed, - --you and Miss Lizzie? Was Miss Emma there?

A. I don't quite understand you. Do you mean that had not retired?

Q. Yes.

A. We were all up.

Q. When you went up to go to bed, did you three go up together?

A. I don't know.

Q. You went up there together some time?

A. Yes, sir.

Q. Miss Lizzie occupied her own room, as I understand it?

A. Yes, sir.

Q. Miss Emma hers, and you occupied the one that was formerly Mr. and Mrs. Borden's, right in the rear?

A. Yes, sir.

Q. Do you remember whether you sat down to talk there before you went to bed?

A. I don't remember.

Q. Or the hour you went off to bed?

A. I don't remember.

Q. You cannot tell a thing about the time?

A. No, sir.

Q. After being there awhile, you and she went down stairs?

A. From up stairs, yes, sir.

Q. Through what rooms did you pass in going down stairs?

A. Well, I am not positive; I can't remember our going. I can't remember after we started.

Q. You certainly went down the front stairs?

A. Well, I don't know whether we did or not.

Q. What is that?

A. I am not sure now whether we did or not. We could have gone down the back stairs.

Q. You could go either way?

A. Yes, sir.

Q. You took a light?

A. Yes, sir.

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Q. What did she carry?

A. A pail.

Q. A pail of slops, and you went down and emptied it in the cellar in the closet?

A. Yes, sir.

Q. You went down and had a light in your hands?

A. Yes, sir.

Q. She rinsing out the pail at the sink and then you went up stairs and went through the same rooms where you were before?

A. Yes, sir.

Q. There are cellar windows all round there above the ground?

A. Yes, sir.

Q. Leading out into the back yard and opening into the side yard, all round?

A. I don't know about the back yard, but the side yard I know there are windows.

Q. At the side next to Dr. Kelly's house?

A. Yes, sir.

Q. You don't remember the larger window beside the hatch-way door?

A. I don't remember.

Q. You don't recall that?

A. I do not.

Q. Did you go to sleep immediately after going to bed?

A. No, sir, I did not sleep at all.

Q. Did you hear any movements at all in the house?

A. No, sir.

Q. You could hear the movements out side and the policemen,---they were there and you could hear them talking?

A. I heard them whispering.

Q. They were out in the rear of the house beyond your room?

A. Yes, sir.

Q. Your windows open?

A. Yes, sir.

Q. You knew they were there on guard, to keep watch?

A. That is what I supposed.

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Q. So far as you know or heard, neither one of the other two persons went down stairs again, and you certainly did not go?

A. No, sir.

Q. And that's all you know about it?

A. Yes, sir.

Q. Now the next morning was Friday, and nothing particular occurred that day, I suppose, except some visitations of police?

A. Yes, sir.

Q. That was constant, was it?

A. Yes, sir.

Q. They were in and out of the house Friday?

A. I don't remember much of their being in the house.

Q. Saturday was the funeral?

A. Yes, sir.

Q. You spoke of the clothing that was torn off. You meant the clothing of the deceased?

A. Yes, sir.

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Q. You spoke of finding clothing down cellar which had been taken off; you mean clothing from the deceased persons?

A. Yes, sir.

Q. That was down stairs in the cellar?

A. Yes, sir.

Q. The bodies at that time were laid, do you not know, in the dining-room?

A. Yes, sir.

Q. The dining-room was closed up that night?

A. Yes, sir.

Q. So that you wouldn't pass through the dining-room if you were going down to the kitchen?

A. Yes, sir.

Q. You did not, at any rate. You either went down the back stairs directly in the kitchen or else you went down the front stairs and came in the kitchen?

A. Yes, sir.

Q. And neither of the bodies were in the sitting-room?

A. Yes, sir.

Q. You were up stairs when the officers pulled the door open?

A. Yes, sir.

Q. You were up in Miss Lizzie's room?

A. Yes, sir. ---No, not in Miss Lizzie's room; in Mr. Borden's room. We went up the back way.

Q. You were on the same side the officers were?

A. Yes, sir.

Q. Who was on the other side?

A. No one.

Q. Miss Lizzie was not there?

A. No, sir.

Q. So you had gone up with the officers, they to make the search while Miss Lizzie was down stairs?

A. Miss Lizzie was down stairs while we were up.

Q. And you went up at that time, and they went right through by pulling the door open?

A. Yes, sir.

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Q. She was not there then?

A. No, sir.

Q. And she didn't come up while they were there?

A. No, sir.

Q. And what did they do---they were in her room---after they had pulled the door open?

A. They searched around to see if there was any one there.

Q. What did they do? How did they search? Did you notice it?

A. I did not. I can't remember.

Q. Did they examine anything in the room? I mean the clothing or the bedding, disturbed. Do you know about that?

A. That, I don't think so, but I don't remember about their being in Miss Lizzie's room, but I think if they had I should have remembered it.

Q. Now, you spoke of the dress. Counsel asked you about a certain dress which he said she had made before,---you know the one to which I refer?

A. Yes, sir.

Q. You called it a Bedford cord; do I get it right?

A. Yes, sir.

Q. Is that what we call a calico?

A. No, sir.

Q. Quite different from a calico?

A. Yes, sir.

Q. And is it a cambric?

A. No, sir.

Q. So it is neither a calico nor a cambric?

A. No, sir.

Q. Very different material, isn't it?

A. Yes, sir.

Q. The dress that you saw Sunday morning was not a calico, was it?

A. I judged not.

Q. Well, I take your judgment. And it wasn't a cambric, was it?

A. No, sir.

Q. You are certain about that, neither a calico nor a cambric; no doubt about it, is there?

A. I didn't take hold of it

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to see and I didn't examine it.

Q. But you know what it was?

A. I know. I suppose it was the same dress that I have reference to her having made in the spring.

Q. And that was the Bedford cord?

A. Yes, sir.

Q. No doubt about that, and any woman knows or ought to know the difference between the two, doesn't she?

A. I don't know as they do.

Q. Well, you do. Now, you said that you got the breakfast; is that so?

A. Yes, I got the breakfast Sunday morning.

Q. Yes, Sunday morning I am talking about. Did you three sit down together?

A. Yes, sir.

Q. Maggie in the house at that time, or Bridget?

A. No, sir.

Q. Were you three the only persons in there at breakfast?

A. No, sir.

Q. Was Mr. Morse?

A. Yes, sir.

Q. That four made the whole?

A. Yes, sir.

Q. What time, as near as you can recollect, did you have breakfast?

A. I don't know. I think somewhere---I don't know what time it was.

Q. Well, was it anywhere from eight to ten o'clock or nine o'clock; somewhere along there to the best of your remembrance?

A. It would be purely guess-work for me to tell. I should suppose it was after eight.

Q. And did I understand you to say (I didn't quite hear your answer) that you went out; did you go out of the house after breakfast?

A. No, sir. I went out---no, sir, I didn't

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go out of the house.

Q. Did you go out in the kitchen?

A. Yes, sir.

Q. And where did you go, if I may ask?

A. I think I went my room or the room that I occupied the night before, and put it in order.

Q. Going up the back stairs or the front?

A. Well, I don't remember; most likely the front stairs. I am sure that I went the front stairs.

Q. Did you help in washing the dishes?

A. No, sir, not that morning.

Q. You left that to Miss Lizzie and Miss Emma to do?

A. Miss Emma. I can't say sure about Lizzie.

Q. You don't know whether she participated or not?

A. I don't know for sure.

Q. Now, do I understand that when you came down into the room again, as you came into the room, that you saw this dress which you spoke of, the Bedford cord?

A. May I ask you the question again?

Q. I say was it when you came back from your chamber that you came into the kitchen and saw Miss Lizzie with the Bedford cord dress?

A. I think it was at that time.

Q. At any rate, this was in bright day?

A. Yes, sir.

Q. Right in the kitchen?

A. Yes, sir.

Q. Policemen in the yard?

A. Yes, sir.

Q. And if I get it right, she had the skirt on her arm, something like that?

A. Yes, sir.

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Q. And some other part of the dress was over on the mantel or a chair, was it?

A. It was on the cupboard shelf.

Q. Out in the kitchen?

A. Yes, sir.

Q. And this conversation with Emma, you may state it again, if you please, so there will be no doubt about it.

A. Emma turned around from the sink and she says "What are you going to do?" and Lizzie says, "I am going to burn this old thing up. It is covered with paint."

Q. Did you see any blood on that dress?

A. No, sir.

Q. Not a drop?

A. No, sir.

Q. Did you see any blood on the remaining part of it?

A. No, sir.

Q. Did you see that it was a soiled dress?

A. The edge of it was soiled as she held it up. The edge she held towards me like this (illustrating), and this edge was soiled.

Q. As she stood there holding it you could see the soil on the dress, could you?

A. Yes, sir.

Q. I think you say that you did not actually see it put into the stove?

A. No, sir.

Q. Or any part of it?

A. No, sir.

Q. And that is all you know about whether she did or not except what she said she was going to do, and you made your remark. I want to get at that. You made a remark to her?

A. I said, "If I were you I wouldn't let anybody see me do that, Lizzie."

Q. This was on Sunday morning?

A. Yes, sir.

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Q. You were there Saturday when the officers went all over that house over and over again?

A. Yes, sir.

Q. Was there any part of it they didn't examine?

A. I don't know. I didn't go round with the officers.

Q. How long were they there on that business?

A. They were to come at three. I don't know what time they got through.

Q. Didn't they come just as soon as the funeral party went from the house?

A. There were some came.

Q. What hour was the funeral?

A. I don't remember.

Q. Wasn't the funeral in the forenoon?

A. Yes, I think so.

Q. 11 o'clock or so?

A. I think so. I am not sure, 11 or 12.

Q. You know the location of the cemetery where Mr. and Mrs. Borden were buried?

A. Yes, sir.

Q. About how far is that from the house?

A. I don't know.

Q. Did you go to the cemetery?

A. No, sir.

Q. You remained in the house?

A. Yes, sir.

Q. Who else remained there?

A. Well, I think the undertaker's assistants and Mrs. Holmes.

Q. Miss Lizzie went to the cemetery?

A. Yes, sir.

Q. Now, didn't the officers come right into the house as quick as the funeral party went and search everything about the house in her absence?

A. No, sir.

Q. Didn't they come in during that time?

A. Yes, sir.

Q. And they made searches?

A. They made a search, but they didn't search everywhere.

Q. Did they go into her room?

A. Yes, sir.

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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, I think so, 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 objection?

A. I never heard of any while I was there.

Q. At any of the times?

A. No, sir, not a word

Q. Now, nothing more occurred about this, but do I understand it

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was the following Monday morning that you had the talk with Lizzie and Emma about the dress?

A. Yes, sir.

Q. Were other searches made in the afternoon in the afternoon of Saturday?

A. Yes, sir.

Q. All over the house?

A. As I understand it.

Q. And again in Miss Lizzie's room?

A. I suppose so.

Q. And in the clothes room?

A. I don't know. The officers had the house. We left the rooms, and they took the floor. We went below.

Q. They had the whole premises?

A. Yes, sir, and what they searched I don't know. I didn't see.

Q. The city marshal was there?

A. I suppose so. I didn't know him.

Q. How many were there there?

A. I don't remember.

Q. More than one?

A. More than one officer?

Q. Yes.

A. Yes.

Q. Give me some idea?

A. I haven't any idea. There were several. There were more than one or two. There were several.

Q. Now, in the morning, Monday morning, you told Lizzie and Emma that Mr. Hanscom had asked you about their dresses, didn't you?

A. Yes, sir.

Q. And then you said, "I believe that the burning of that dress was the worst thing you could do," or something of that kind?

A. I said, "I am afraid the burning of that dress was the worst thing you could have done, Lizzie."

Q. And Lizzie said what?

A. "Oh, what made you let me do

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it? Why didn't you tell me?

Q. And that was all that was said?

A. That is all I remember that was said.

Q. You spoke about there being a number of people in the house on Thursday, and were there people coming in and asking her questions about the matter, and where she was, and so on? Did you hear that, a great many people questioning her?

A. Well, down stairs before she went up, yes, sir.

Q. I mean down stairs?

A. Not a great many people, but people that came in, officers.

Q. Officers and neighbors, and so on, and the others newspapermen?

A. Well, I don't know. I don't remember about that, but I know there were people talking with her, and I remember seeing her talking with officers once before she went upstairs.

Q. Did you see Mrs. Bowen there at any time?

A. Yes, sir.

Q. When did she come?

A. She came after I did.

Q. And came while Lizzie was down stairs?

A. Yes, sir

Q. While she was in the kitchen?

A. Yes, sir.

Q. This note you spoke about---what was said about the note,---that Dr. Bowen said he had made a search for it, or they had made a search for it and hadn't been able to find it?

A. Yes, sir.

Q. Searched in the waste-basket and searched in her dress, and hadn't been able to find it?

A. Yes, sir. I am not positive it was Dr. Bowen. I always thought it was Dr. Bowen.

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Q. At any rate, what was said, was said in the presence of Lizzie?

A. Yes, sir.

Q. And the same person said she must have burned it?

A. I think I answered that question.

Q. She said perhaps she did, or supposed she did, or must have?

A. I said that, and Lizzie said, "yes, she must have." I think that was the way it was.

RE-DIRECT.

Q. (By Mr. Moody.) With what officers did you go about the premises on the day of the homicide, Thursday?

A. I don't know.

Q. Do you know their names?

A. No, sir.

Q. Do you know Mr. Fleet?

A. I know him now.

Q. Was he one of them?

A. I am not sure. I always thought so.

Q. 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. There are different kinds of Bedford cord.

Q. While we are on it, what is that? (Exhibiting blue skirt.)

A. Well, I don't know what it is. It is silk, but I don't know what kind.

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Q. What is the waist?

A. I call it sateen.

Q. What is calico composed of?

A. Cotton.

Q. All cotton?

A. Yes, sir.

Q. Is a Bedford Cord an expensive dress, or a cheap dress?

MR. ROBINSON. I don't know that we care about that.

A. Different qualities: it is cheap.

MR. ROBINSON. Wait a moment, please.

Mr. MOODY. Possibly you had better object before you rule on it.

MR. ROBINSON. I don't rule on it. I want the witness to wait when I object.

Mr. MOODY. I don't care to press it against any impression of your Honors'. I thought it was competent. There is some testimony here that it was a cheap calico or cotton dress.

MASON, C. J. It may be answered.

Q. Was this Bedford Cord of which this dress was composed, cheap or otherwise?

A. Cheap.

Q. Cheap material. Which edge was it that you saw soiled as the skirt of the dress was exposed to your view on Sunday morning?

A. The bottom of it,---what touches the ground.

Q. The part that touches the ground, do you mean?

A. Yes, sir.

Q. Did you see soiling upon any other part than upon the bottom of the dress?

A. No, sir, I did not.

Q. Could you see sufficiently of the rest of the dress to see whether it was soiled or not, except the edges?

A. No, sir.

Q. It might have been soiled with a number of things without---

MR. ROBINSON. Well, wait.

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Q. Could it have been soiled with a number of things without your seeing it?

A. Yes, I think so.

Q. I wish you would look at that plan (Ex. 6), and if you can see it enough, tell me where the cupboard was in which the waist of the dress was lying? I will help you (pointing). That cupboard?

A. That is the cupboard.

Q. Was it near that cupboard or upon the other side of the stove that she was standing with the skirt?

A. I don't understand you?

Q. How near to that cupboard was she standing when the waist---

MR. ROBINSON. I don't want to interfere, but let Miss Russell point out where she stood.

Q. Where did she stand?

A. The stove was here, and she stood right here (pointing).

MR. JENNINGS. I would like to have that marked, if you please.

MR. MOODY. I will mark it, or let her mark it, rather.

Q. Now mark, if you please, on that plan, the place of the waist of that dress, where the stove is, and where she was standing.

A. Of course I can't tell accurately, but as near as I can remember, I would say the stove is here: the fire pot in the stove is here: here is where she stood, right here.

MR. JENNINGS. Put a cross here.

THE WITNESS. She stood right here. (marking).

MR. JENNINGS. Where that cross is?

THE WITNESS. Yes, sir; right at the corner.

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Q. And where was the waist in the closet?

A. Assuming these are the shelves?

MR. MOODY. Yes.

MR. JENNINGS. Put a round mark.

THE WITNESS. Half way up the shelves, I think, or a little more than half way up.

MR. JENNINGS. Where that round mark is?

THE WITNESS. Yes, sir.

MR. ROBINSON. The closet door was open?

THE WITNESS. Yes, sir.

MR. MOODY. (Showing plan to jury). She says the stove is the place she has indicated by the mark, with the fire part of the stove towards the closet; that the closet door was open: that she was standing between the stove and the closet door, and the point indicated by that cross: That half way up the shelves in this closet, the door of which was open, was the waist of the dress.

Q. What was that cupboard, as you call it, used for. What was it's use?

MR. ROBINSON. I don't suppose that is of any consequence.

MR. MOODY. I want to see whether it is a clothes closet or a food closet.

MR. ROBINSON. It does not make any difference, I submit. It was simply on a shelf there in the closet.

MASON, C. J. She may answer one way or the other.

MR. ROBINSON. Very well.

Q. What do you say Miss Russell? Was it a food closet or a

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clothes closet?

A. As near as I remember, there was coal and wood kept in the closet, and on the other shelves I remember seeing flat irons: that is all I remember: there were kitchen utensils.

JOHN CUNNINGHAM, Sworn.

Q. (By Mr. Moody.) What is your full name, sir?

A. J. Cunningham.

Q. Well, what does the J stand for?

A. John.

Q. You are a newsdealer in Fall River, are you?

A. Yes, sir.

Q. You recall the morning of August 4, 1892?

A. Yes, sir.

Q. On that morning had you any occasion to be on Second Street?

A. Yes, sir.

Q. What first attracted your attention to anything unusual on Second St.?

A. Well, as I was going up Second Street, what attracted my attention was Mrs. Churchill running across the street.

Q. From where to where did she run?

A. Well, I should think from where she started from was from the Borden residence. She run triangular across the street to---

Q. Diagonally, perhaps you mean?

A. Diagonally, yes---across the street to an office there of Mr. Hall's.

Q. To the place that is called Hall's stable?

A. Yes, sir.

Q. Well, then what happened when you saw her do that?

A. I continued on my walk up that side of the street of the Borden house.

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Q. How far were you from the Borden house when you saw Mrs. Churchill run across from the house to Hall's stable?

A. I was opposite Mr. Hall's stable, on the opposite side.

Q. On the same side as the Borden house, you were?

A. Yes, sir.

Q. How far did you go up?

A. As far as Varney Wade's store.

Q. And is that store the next building above Dr. Kelley's?

A. Yes, sir.

Q. That is, Dr. Kelley's house stands between the Borden house and this store that you spoke of?

A. Yes, sir.

Q. What did you do there?

A. Well, my business was collecting money for newspapers.

Q. And how much did you collect?

A. Twelve cents.

Q. Just the weekly payment?

A. Yes, sir.

Q. Did you delay there at all?

A. Oh, a few seconds.

Q. What did you then do?

A. I went on the opposite side of the street to Mr. Gray's paint shop.

Q. That is on the corner of Spring street?

A. Yes, sir, Spring and Second.

Q. Did you collect something there?

A. Yes, sir.

Q. How much?

A. Same amount.

Q. Did you delay there at all?

A. About the same time.

Q. Then where did you go?

A. Came down on the same side of the street as Mr. Gray's paint shop.

Q. Did you see anything before you reached Hall's stable again?

A. Well, I see Mrs. Churchill.

Q. Where was she?

A. She was standing on the sidewalk talking to two or three gentlemen that was in front of Mr. Hall's office.

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Q. Did she leave there before you came or not?

A. Before I came from where?

Q. Before you got back to Mr. Hall's had Mrs. Churchill turned and gone back again?

A. No, sir.

Q. She was still there when you got there?

A. Yes, sir.

Q. Now, without asking what she said in detail, did you learn from what she said that there was some trouble in the Borden house?

A. I learned it from another party; yes, sir.

Q. While she was there, was it?

A. Yes, sir.

Q. Some one else, in her presence?

A. Yes, sir.

Q. In consequence of learning that what did you do, or after learning it what did you do?

A. There is a paint shop on the corner of Borden and Second Streets, that is Mr. Gorman's paint shop. I went in there and asked for the use of his telephone.

Q. Did you telephone?

A. To the city marshal.

Q. Did you know the city marshal, know his voice?

A. Yes, sir.

Q. Do you know who responded to your telephone?

A. The marshal himself.

Q. Marshal Hilliard?

A. Yes, sir.

Q. What did you telephone to?

A. I telephoned to the Central Police Station.

Q. What information did you give him? This is simply to connect it.

MR. ROBINSON. I object to any communications; I don't know anything about them at all. It is foreign to us.

MR. MOODY. I don't care to press it.

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Q. I will ask you was it with reference to the Borden house---without asking you what?

A. That there had been a stabbing affair---

MR. ROBINSON. Wait.

Q. Was it with reference to some event at the Borden house?

A. Yes, sir.

Q. Did you look at the clock that was over the telephone at the paint shop?

A. I did, sir.

MR. ROBINSON. I submit that is very leading. You are trying to fix an important time, I suppose.

MR. MOODY. No, I don't expect to fix any time; I just want to show a fact.

Q. Will you state if you ascertained the time in any way as you telephoned?

A. I ascertained the time by the time the clock was over the telephone.

Q. What time did the clock over the telephone show?

A. It showed ten minutes to eleven.

Q. Ten minutes of eleven?

A. Yes, sir.

Q. You know nothing about that clock, I suppose?

A. Only that I have heard since.

Q. After telephoning to the marshal what did you do?

A. Went out and stood at the corner of the building, at the corner of Second and Borden Streets.

MR. MOODY. I would like to show these places on this plan that have been referred to.

(The places were pointed out to the jury.)

A recess was taken to 2.15 P.M.

The Court came in at 2.15 o'clock and Mr. John Cunningham was called to the stand and his direct examination was resumed by Mr. Moody.

JOHN CUNNINGHAM, (Continued)

Q. At the adjournment, Mr. Cunningham, you had told us that after telephoning, you went across on to the other corner of Borden street?

A. Yes, sir.

Q. The west corner of Borden and Second street?

A. The east.

Q. The corner towards Miss Russell's house?

A. Yes, sir.

Q. Did you do anything there before you saw anyone else? Did you see anyone?

A. Yes, sir.

Q. Whom did you see while standing at that door?

A. I saw Dr. Bowen.

Q. Where did he go? And where did you see him?

A. He drove up Second street in his team.

Q. Did you see anyone else?

A. Yes, sir.

Q. Whom?

A. Miss Russell and Miss Sullivan.

Q. Where were they and where did they go to?

A. Do you mean where were they coming from?

Q. Yes.

A. They were coming over Borden street from the house where Miss Russell was.

Q. And thence where did they go?

A. Went up Second street to the Borden house.

Q. What did you do then?

A. I crossed over to the west corner, to Gorman's paint shop.

Q. Telephoned to some other persons, did you?
A. Yes, sir, telephoned to the Fall River Daily Globe.

Q. Anyone else?
A. Telephoned to the Fall River Daily News.

Q. Whom did you next see?
A. Officer Allen.

Q. Where was he when you saw him?
A. Coming up Second street.

Q. From which direction?
A. The police station.

Q. Did you have any conversation with him,---I don't ask you what was said?
A. I did, yes, sir.

Q. After you had the conversation where did he go?
A. He went to the Borden house.

Q. At any time did you go to the Borden house?
A. Yes, sir.

Q. How soon after Officer Allen had gone?
A. Oh, a couple of minutes afterwards.

Q. Did you go in to the premises?
A. Yes, sir.

Q. Did anyone go in with you?
A. Yes, sir.

Q. Who went with you?
A. Mr. Manning and Mr. Stevens.

Q. Are they reporters of two different papers in Fall River?
A. Yes, sir, one from the Globe, the other from the News.

Q. Describe what you did after you got in to the Borden premises.
A. I walked up to the front of the house, passed the front gate, and jumped over the front fence, and the other two gentlemen followed me.

Q. Go on and describe what you did then.

A. We went round the south side of the house, that is near Dr. Kelly's,---went in between the Borden house and the doctor's house in the yard.

Q. What was the character of the ground there?

A. Well, before

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we stepped in we noticed that there were no foot-prints in the grass, and the grass was a little deep, and we looked round through the grass thinking we might find something, which we did not.

Q. Where did you then go?

A. Round the back part of the house.

Q. What did you do at the back part of the house?

A. Looked round the back part of the yard.

Q. Did you see anything?

A. Did not, no, sir.

Q. Did you do anything else?

A. In the back part of the house?

Q. Yes, what did you do?

A. Tried the cellar door.

Q. How was it?

A. It was locked.

Q. What did you then do?

A. Well, we continued looking through the yard there for a few minutes and did not see anything out of the way and went round the same way we started from.

Q. Did you go into the house at all?

A. No, sir, I did not.

Q. While you were there, did you see any officers come there?

A. Yes, sir.

Q. Now, independent of the clock that you saw in the paint shop, did you see any time piece at or about the time of this alarm, or before it?

A. No, sir.

Q. Did you try any other doors except the cellar door?

A. No, sir.

Q. I have not the picture here, but will you describe the cellar door that you tried? Where was it? From what part of the house did it lead?

A. It led into the cellar.

Q. From what side of the house?

A. The back part of the house.

Q. The back part of the house?

A. Yes, sir.

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CROSS-EXAMINATION.

Q. (By Mr. Robinson.) As I understand it, Mr. Cunningham, you came up on the east side of Second street on the walk in front of the Borden house, you said. Is that right?

A. Yes, sir, that is right.

Q. That is on the same side as the Borden house and the Churchill house,---walking on that sidewalk?

A. Yes, sir.

Q. Before that you had been over at Hall's stable, which is across the street a little lower down?

A. No, sir.

Q. You said you spoke to somebody. Where was it?

A. You mean when I first came up Second street?

Q. Yes.

A. I came from Borden street from the house where Miss Russell was. I came over Borden street and up Second street on the Borden house side.

Q. Where were you when you saw Dr. Bowen drive up and saw Miss Russell and Miss Sullivan?

A. Standing on the corner of Borden and Second streets.

Q. Borden street is down lower, down the hill?

A. Yes, sir.

Q. Next corner below the Borden house?

A. Yes, sir.

Q. And they three went on and turned into the Borden yard, didn't they?

A. Not together, they didn't.

Q. No, but at different times.

A. I couldn't say about Dr. Bowen going direct in the house when he got there, because I did not pay attention as to where his team stopped.

Q. Then you really don't know about that?

A. No, sir.

Q. Were you alone as you walked up that walk?

A. Yes, sir.

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Q. Where did you find Mr. Manning and Mr. Stevens?

A. They followed my message; they came from the different offices.

Q. They were not there at first?

A. No, sir.

Q. But came as soon as they could, probably in a few minutes and joined you where?

A. On Second street.

Q. I understood you to say you jumped over the fence?

A. Yes, sir.

Q. What fence?

A. The fence in front of the Borden house.

Q. What part of it?

A. The front gate led into the front door, on the other side of that.

Q. Did you try to get in through the gate?

A. In the front gate,---no, sir.

Q. You preferred to jump the fence?

A. So that if there was anyone on the side of the house, they could not see us.

Q. Could not they see you if you went in the front gate?

A. There was a gentleman standing along the side of the house, and we did not want to let him see us going over that way.

Q. Who was it?

A. Mr. Sawyer.

Q. Where did he stand?

A. On the side of the house, on the north side of the house.

Q. He stood by the side door?

A. Yes, sir.

Q. Now, Mr. Cunningham, if you walked on the Second street sidewalk and got to the front gate, you could have opened that and walked right in and Mr. Sawyer could not have seen you.

A. If we had the presence of mind to open that gate, we could; but in the hurry we did not think of it.

Q. You lost your presence of mind?

A. In the hurry to get in there.

Q. And the easiest way was not to open the gate, but to spring

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over the fence?

A. It was a low fence.

Q. Did the other gentleman follow with the same agility that you did?

A. I don't know.

Q. Did they get there the same time you did?

A. I could not say that; I did not notice.

Q. When did you next see them?

A. Well, three of us stood in the yard at the same time before we made the attempt to get into the side yard.

Q. Did you jump by putting you hand on the side of the fence and springing over?

A. Yes, sir.

Q. Right over with a sweep. Did not climb over?

A. No, sir.

Q. That is quite a hop. How high is the fence?

A. I could not say.

Q. That front fence?

A. Yes, sir.

Q. Jumped from the side-walk over into the yard?

A. Got hold of the fence this way (showing on the witness stand), and jumped right over.

Q. You did not have any difficulty?

A. No, sir. A man could jump from outside the fence about the same.

Q. You say that was a grass plot all round there running way back to the pear trees?

A. Yes, sir.

Q. You saw the pear trees?

A. Yes, sir.

Q. Did you see any marks of foot steps around the pear trees?

A. No, sir.

Q. Did not?

A. No, sir.

Q. Didn't look for any?

A. No, sir.

Q. Why not? Didn't see any marks of any one travelling there?

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A. No, sir.

Q. Not a bit?

A. No, sir.

Q. Did you look along in the grass by the Kelly fence to see if there were any marks of any passing through that grass?

A. Yes, sir.

Q. Did not see any?

A. No, sir.

Q. Did you know Bridget walked across that grass along that plot that morning to see if she could see anything there?

A. No, sir.

Q. Did not know anything of that?

A. No, sir.

Q. Did not know anything of her or the man, John Morse, being in that yard?

A. No, sir.

Q. You could not see anything in the grass which would indicate that any person had been through there?

A. No, sir.

Q. Did you look very carefully?

A. Yes, sir.

Q. You were really hunting for the criminal, weren't you?

A. Yes, sir.

Q. You say you saw officers coming there?

A. Yes, sir.

Q. Who, what officers, name them.

A. Officer Allen was one.

Q. Well?

A. Officer Mullaly was another.

Q. That's two.

A. Officer Doherty.

Q. Three, go on.

A. I don't remember of seeing any other,---officer Fleet.

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Q. Anybody else?

A. And I see Sheriff Wixon.

Q. Anybody else?

A. I don't remember anybody else.

Q. You went around to the back yard?

A. Yes, sir.

Q. Did you go in the barn?

A. No, sir.

Q. Was the barn door open?

A. I didn't notice.

Q. Couldn't say now whether it was or not?

A. No, sir.

Q. See anybody go in the barn?

A. Not while I was there, no, sir.

Q. How long did you stay on the premises?

A. Well, about eight or ten minutes.

Q. You didn't go in the house at all?

A. No, sir.

Q. And Mr. Sawyer was there at the side door?

A. Yes, sir.

Q. And did he remain there as long as you stayed or don't you know?

A. Yes, sir.

Q. You came out the same way you went in?

A. Yes, sir.

Q. Jumped the fence again?

A. Yes, sir.

GEORGE W. ALLEN, Sworn.

Q. (By Mr. Moody.) What is your full name sir?

A. George W. Allen.

Q. And you are a police officer in Fall River?

A. Yes, sir.

Q. And have been how many years?

A. Five years.

Q. On the regular force, are you?

A. Yes, sir.

Q. In 1892 and in August of that year what was your duty?

A. Committing officer.

Q. That is, you took those who had been committed by the District

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Court at Fall River and conveyed them to the place of confinement?

A. Yes, sir.

Q. Did you have a regular time each day for that duty?

A. Yes, sir.

Q. What time was that?

A. At half past eleven and at quarter past three.

Q. Do you remember August 4th, 1892, in the morning of that day?

A. Yes, sir.

Q. Where were you between eleven and quarter past eleven?

A. Quarter past eleven the marshal came to me and said there was a row up on Second street.

Q. Without stating what he said to you, did you receive a direction from Marshal Hilliard to go to the Borden house?

A. I did.

Q. Where did the Marshal come from?

A. Came from his office.

Q. And was his office at that time in the central police station?

A. Yes, sir.

Q. Where were you sitting when he came and addressed you?

A. At the guard room door.

Q. How is that situated with reference to the office?

A. Right in front of the office, at the side.

Q. In which room is the telephone?

A. In his office.

Q. Now, did you have any occasion to look at your watch?

A. Yes, sir, it being quarter past eleven, I looked at the clock so that I would see if I had time to commit my prisoners at half past eleven.

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Q. And what time was it when you received this direction?

A. Quarter past.

Q. And that was by what time, the clock?

A. The clock, yes, sir.

Q. The clock in the station?

A. The clock in the guard room.

Q. In consequence of that direction where did you go?

A. I went directly to Second street up to the Borden house.

Q. Do you recall whether you consulted anything else except a clock as to the time?

A. No, sir.

Q. You had a watch, did you?

A. I did.

Q. How far is it from the station or how many minutes' walk up to it?

A. Four minutes it took me, because I have tried it since.

Q. Did you walk or---

A. Went partly on the run.

Q. When you got to the Borden house did you see any one there?

A. I took Mr. Sawyer on the way to the Borden house, and told him to stand---after we went in and I saw Mr. Borden, I told him to stand at the door and not allow any one in or out but an officer.

Q. Well, which door did you enter?

A. Entered the side door.

Q. Whom did you see as you entered or after you entered?

A. After I went into the kitchen I saw Miss Lizzie Borden.

Q. And she was in the kitchen?

A. Sitting at the table, I think.

Q. Was any one else there at the time?

A. There was not.

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Q. Did you see any other persons there?

A. After I went into the sitting-room where Mr. Borden was there was two ladies came to the door that opens from the kitchen into the sitting-room.

Q. And who were those two ladies, if you know?

A. I think Mrs. Churchill and Miss Russell.

Q. Did you see any one else there at that time?

A. I saw at one time Miss Lizzie Borden and Miss Russell and Mrs. Churchill in the dining-room on the lounge.

Q. Did you see Dr. Bowen there at that time?

A. I did.

Q. Where was Dr. Bowen?

A. He met me at the door.

Q. As you came in, you mean?

A. Yes, sir.

Q. Did you go anywhere before you went back to the office?

A. Only into the front entry.

Q. Did you see Mr. Borden at that time?

A. Yes, I went in there.

Q. On the way to your front entry?

A. Yes, sir.

Q. Where was he then?

A. He was lying on the sofa side of the door that opens from the dining-room to the kitchen.

Q. Was there a sheet over him at that time or not?

A. No, sir.

Q. Did you see a sheet there?

A. I did not. Dr. Bowen said he had sent for one.

Q. Then where did you go as you went through the sitting room?

A. I went to the front door, front hall.

Q. Describe exactly what you did at the front hall.

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A. I looked at the door and the door was locked with a night lock and also with a bolt, bolted.

Q. In any other way, did you notice?

A. No, sir. There was a lock under the knob, but I don't know whether that was locked or not.

Q. But the night lock was locked?

A. Yes, sir.

Q. And the bolt was locked?

A. Yes, sir.

Q. Did you interfere with the door at all?

A. No, sir.

Q. After you had examined this front door what did you [do]?

A. I looked behind the door to see if any one was standing there, and then I came out and I told the doctor I would go down and get some officers up there to investigate the case.

Q. Well, did you go?

A. I did.

Q. Went where?

A. When I went out of the dining-room I saw a closet there, and I thought I would look into the closet, and then I looked into a clothes-press there was nigh the stove.

Q. In the dining-room?

A. No, in the kitchen.

Q. In the kitchen?

A. Yes, sir.

Q. Did you make any other investigation before you left the house?

A. No, sir. I started then and told Mr. Sawyer to stay there until I came back.

Q. At that time did you learn anything about Mrs. Borden, the first time?

A. No, sir.

Q. You say you went again to the station, did you?

A. I went to the station, direct.

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Q. And had some conversation with any one?

A. With the marshal.

Q. Where did you then go?

A. To the barn, the patrol barn for Mr. Mullaly.

Q. Did you find him?

A. Yes, sir.

Q. What did you do then?

A. I took him right up to the Borden house.

Q. Did any one else go with you?

A. No, sir.

Q. Where is this patrol house which you went to?

A. It is on Rock street. It is the second street from what we call Court Square.

Q. Well, how far from the central police station?

A. I should think it was about 800 feet. I don't know but it might be a little further.

Q. In going that 800 feet did you go further away from the Borden house than the police station?

A. Yes, sir.

Q. So that your journey was longer?

A. Yes, sir.

Q. Did you return to the Borden house?

A. I did.

Q. You and Mr. Mullaly?

A. Yes, sir.

Q. When you arrived there did you see any one?

A. I saw officer Doherty and Mr. Wixon there.

Q. Any one else?

A. That is all that I saw then.

Q. Where did you go, into what?

A. I went directly up in the room where Mrs. Borden lay.

Q. Did you go anywhere else before you went up there, up to Mrs. Borden's room?

A. I went through the dining-room, through the sitting-room and up the stairs.

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Q. Who went up with you?

A. I went up with Mr. Mullaly, up there.

Q. Did you see any one up there?

A. I saw Mrs. Borden before I got up the stairs, lying so you could look under the bed and see her.

Q. About how far up the stairs were you when you got sight of Mrs. Borden's body?

A. Well, just as quick as I could look on a level.

Q. Had you been informed that something had happened to her?

A. The doctor said how he thought she was up there dead by the looks of things.

Q. Did he go up?

A. Yes, he went up.

Q. Well, what occurred after you went up?

A. Mr. Morse came up there. The doctor, and Mr. Mullaly, and Mr. Doherty and Mr. Wixon and me was up there.

Q. Was anything said by Dr. Bowen there?

A. Dr. Bowen? No, I think not. He was taking hold of her when I saw her to turn her over.

MR. ROBINSON. I object to that.

Q. Now, did you make any observation at that time of Mrs. Borden, as to the condition of her blood or anything of that sort?

A. No, sir.

Q. Where did you then go?

A. I went down and I met Mr. Morse at the head of the stairs right in the---entering the room.

Q. Did you go anywhere else in the house while you were there?

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A. No, sir. I went down stairs, and Mr. Porter told me---

Q. Wait a minute. Don't tell us what any one said. Did you go into the cellar at any time?

A. Yes, sir, I went down cellar.

Q. When did you go into the cellar?

A. I went down cellar when they told me the marshal wanted me.

Q. Just before you left the second time, you mean?

A. Just before I left, yes, sir.

Q. What observation did you make in the cellar?

A. Well, I saw Mr. Mullaly pull some cloths out of a tub and looked at a door without a lock.

Q. The door was bolted then?

A. The door was bolted.

Q. You saw it?

A. Yes, sir, an iron bolt.

Q. This was the cellar door you are talking about?

A. Yes, sir.

Q. Tell us exactly which cellar door you mean?

A. It was back inside, the door just going to the side door. There is a door that goes up stairs, there is a door to go down cellar.

Q. (Exhibiting photograph.) Will you point out the door that you saw?

A. The door is in the house, as you go in the side door, you go down underneath the stairs that go up.

Q. Do you mean the door leading out inside the house?

A. Yes, sir.

Q. My question is intended to refer---did you take any notice of the door that led from the cellar out into the yard?

A. Yes, sir. It was bolted inside.

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Q. The door that led from the cellar out into the yard?

A. Yes, sir.

Q. Did you make any observation of either of the bodies, any except just to look at them?

A. Only to look at them, that is all.

Q. At this time did you see the prisoner at all there in the house?

A. Saw who?

Q. Miss Lizzie Borden?

A. Yes, I saw her in the house.

Q. What was her appearance and manner, as far as you saw? Were there any tears or anything of that sort?

A. No, sir.

Q. Did you notice anything about the sofa and the furniture about the sofa on the first time that you went into the sitting-room?

A. I noticed how Mr. Borden sat on the sofa, or laid on the sofa, at least.

Q. Will you take that photograph and tell me if you noticed anything else?

A. I noticed the shoes were on, and how small the ankles was for the shoes.

Q. Well, anything else?

A. I noticed the face was badly cut.

Q. I am not speaking now with reference to anything about him, but to any piece of furniture.

A. I noticed a stand with two books on it standing nigh the sofa.

Q. Describe where that was standing by the sofa?

A. I should think it was standing about three feet from Mr. Borden's sofa, where the head was.

Q. Three feet in which direction?

A. In front of him, and

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there was a table over across the room by the two windows.

Q. Can you see in that photograph that table that you saw standing there?

A. There was the table.

Q. Will you point out with that pen-holder where that table was?

A. About here.

(The witness indicated the location of the table, which was then shown to the jury.)

Q. Did you notice what the color of those books was?

A. No, sir, I do not.

Q. Did you notice whether there was anything on the books or on the table, any marks of any sort of fluid?

A. No, sir, there was not.

Q. Then I will ask you the direct question if there was any spattering of blood upon the books or table?

A. No, sir.

Q. Did you notice any article about the room anywhere near Mrs. Borden?

A. I noticed a handkerchief covered with blood.

Q. Can you tell us where that was?

A. It was lying from Mrs. Borden's feet toward the window.

Q. Could you identify it, do you think?

A. Yes, sir, the border is cut. (A ragged handkerchief was shown the witness.) Yes, that is the handkerchief.

MR. MOODY. We offer this, if your Honors please.

Q. State, if you can do so, the position of that handkerchief as it lay on the floor in reference to the window and the woman's feet, that is, which was the nearer?

A. It was lying about the same distance, I should think, from the windows as from

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her feet, about middle way.

Q. That is, about as far from the handkerchief to the window as from the handkerchief to the feet?

A. Yes, sir, it was wet in blood and lying in a---just as you have it now.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) There isn't much doubt but your time at the station was correct at that time?

A. It was correct, yes, sir.

Q. Of course, you are careful to keep your time correct?

A. Yes, sir.

Q. 11.15 you received the message?

A. Yes, sir.

Q. And how far is the police station where you started from to the Borden house?

A. Well, it is quite a little distance from the police station. It is about four minutes' walk, that is, going fast. I should think it would take any one five or six minutes to go up there.

Q. Probably then you got there somewhere between twenty and twenty-five minutes past eleven?

A. I got there about, I should think about less than twenty minutes past.

Q. Well, you didn't leave---

A. I left the police station at quarter past, just as I went out of the door.

Q. And you think you made the distance in about five minutes?

A. Four minutes.

Q. And where did you find Mr. Sawyer?

A. I found Mr. Sawyer

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about 400 feet from the Borden house.

Q. On Second street?

A. Yes, sir.

Q. And took him along with you?

A. Yes, sir.

Q. And when you got there you went right into the side door?

A. Yes, sir.

Q. And it wasn't locked?

A. It wasn't locked.

Q. Was any one on the outside of the door then?

A. No, sir.

Q. See anybody about the yard?

A. Never saw no one on the street nor near the yard but the man that sent the message down by telephone.

Q. That is Mr. Cunningham?

A. Yes, sir.

Q. And saw nobody as you went in that yard, the rear part of the yard?

A. No, sir.

Q. And then did you and Mr. Sawyer both go in together?

A. We went in, and I saw Mr. Borden, and then Mr. Sawyer was out on the door for guard.

Q. Did you go up stairs then?

A. I did not.

Q. You left Mr. Sawyer there and went back down to the station?

A. I went to the front door.

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Q. And then went down to the station?

A. Yes, sir.

Q. And then on, 800 feet further, to the patrol station?

A. Yes, sir.

Q. And then back again with Mr. Mullaly?

A. Yes, sir.

Q. Now how much time did that consume?

A. Well, the way we walked it didn't take us more than six or seven minutes probably.

Q. What, to do the whole of it?

A. Well, I think it was about half past or twenty-five minutes to twelve when Mr. Mullaly and me got there?

Q. And you found Mr. Sawyer at the side door?

A. Yes, sir.

Q. In the house, when you first went, you saw Miss Lizzie and nobody else?

A. I did not.

Q. When did you see the two ladies?

A. When I was in viewing Mr. Borden the first time, they came to the door that opens from the kitchen.

Q. Did you see Miss Sullivan at that time?

A. No, sir.

Q. At any time?

A. No, sir; the doctor says she had gone up---

Q. Hold on, wait a moment. I asked you if you saw her?

A. Yes.

Q. You and Mr. Mullaly came up alone?

A. Yes, sir.

Q. How soon before Mr. Doherty got there?

A. He got there just before we did.

Q. And Mr. Wixon?

A. Wixon was in the police station when I reported to the marshal, and he went right up there.

Q. You practically got there together?

A. Yes, sir.

Q. Who else were there when you arrived the second time?

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A. That is all.

Q. Nobody else there?

A. No, sir; but the doctor.

Q. And so far as you saw, nobody in the yard?

A. No, sir. There was some few people had gathered outside in the road.

Q. You spoke of seeing Mr. Cunningham. That was after this time of going there?

A. Mr. Cunningham had reported down and I met him when going up the first time.

Q. Did you see him over at the south side of the Borden house there?

A. No, sir.

Q. On the outside at all?

A. No, sir.

Q. And did you see anything of Mr. Manning or Mr. Stevens there?

A. I saw Mr. Manning. After I had been in there a few minutes Mr. Manning came in.

Q. Was that the second time?

A. Yes, sir.

Q. And Mr. Stevens?

A. Yes, sir.

Q. They were together?

A. Yes, sir.

Q. This table, was it a small stand?

A. Yes, sir.

Q. A marble top table?

A. No, sir; I think not.

Q. Did it have a cloth on it?

A. I think it did, some kind of cloth.

Q. And a few books?

A. Yes, sir.

Q. And you didn't notice anything about them?

A. No, sir.

Q. Was it near the middle of the room?

A. Not quite; nearer the sofa than it was nearer---

Q. Well, there was nothing unusual about that?

A. Oh no.

Q. And was it moved away from its place while you were there?

A. No, sir; there wasn't nothing out of place, as I should take it.

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Q. You don't get my idea. Was the table moved?

A. It was not.

Q. While you were there?

A. No, sir.

Q. And set aside?

A. No, sir.

Q. The photograph shown you, then---

A. It has been since I was there.

Q. The picture does not show the table in it's proper position?

A. No, sir.

Q. And what time was it when you went away from the house?

A. When, the first time?

Q. No, sir; finally.

A. Well, I went away about---I think it was somewhere in the neighborhood of fifteen minutes to twelve when I went away from there.

Q. The second time?

A. Yes, sir.

FRANCIS H. WIXON, Sworn.

Q. (By Mr. Moody.) Francis H. Wixon, is your name?

A. Yes, sir.

Q. You are a deputy sheriff?

A. Yes, sir.

Q. Of this county?

A. Yes, sir.

Q. And have been for some time?

A. Oh, 21 or 22 years.

Q. Do you recall Thursday, August 4th, 1892, the day of the homicide?

A. Yes, sir.

Q. On that day were you at the central police station?

A. I was.

Q. Can you tell me about what time you got to the station?

A. Very near it.

Q. Well, state about what time you got to the station.

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A. About one minute past eleven o'clock.

Q. Had you had to consult a timepiece before that, or had you seen a timepiece?

A. Oh, I heard the bell on the city building ringing as I was turning the corner going up to the marshal's office. I should judge the distance was about 80 feet.

Q. When you got to the marshal's office what did you go to doing? Did you go to doing anything when you got to the marshal's office?

A. I merely went in to make a friendly call, as I frequently did; no particular business.

Q. Where were you sitting?

A. Outside the rail in his office.

Q. In his office?

A. In his office; yes, sir.

Q. Do you recall his being called to the telephone at any time?

A. I do, very shortly after I went in.

Q. Could you give me an estimate of about how long it was after you went in?

A. Well, I shouldn't think it was more than ten or fifteen minutes.

Q. Did he go to the telephone?

A. I thought he did. He went somewhere and went to talking.

Q. I don't ask you what he said.

A. I don't know what he said; I didn't pay any attention.

Q. After he had been to the telephone what did you see him do?

A. He came out and went by me and gave some orders to somebody.

Q. Do you know who it was?

A. I didn't at the time.

Q. You didn't see who it was?

A. No, sir; I was back.

Q. Did you have any talk with him?

A. I did. A talk about what?

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Q. About any occurrence. After he got the telephone did he communicate anything to you?

A. Why yes, he said---

Q. He said something, did he?

A. Oh yes; he came back and resumed the conversation that we were talking on?

Q. How long after that did you remain at the station?

A. I remained until officer Allen came in.

Q. And was there any conversation between officer Allen and the marshal in your presence?

A. I don't know whether there was or not. If there was I didn't hear it. It wasn't any of my business to listen, and I didn't pay any attention. There was another man there at the time and I was talking to him.

Q. How long after that, after officer Allen came back, how long did you remain at the station?

A. Just long enough to learn what had taken place.

Q. Where did you go then?

A. I went out and stepped into Swift and Grime's office just a moment to impart the news, and then repaired to the Borden house.

Q. Where did officer Allen go as you went toward the Borden house?

A. I let him in the marshal's office.

Q. You don't know where he went?

A. No, sir; I do not.

Q. Did you walk to the Borden house?

A. I did.

Q. Alone or with some one?

A. I walked part way alone and was overtaken by Officer Doherty. He and I went to the house together, went in together.

Q. Did you mark the time when you arrived there?

A. I did not, only as best my memory serves.

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Q. Well, as your memory best serves, what time do you think it was that you and Officer Doherty arrived at the house?

A. I should think about 25 minutes of twelve. It might have been a trifle earlier or a trifle later.

Q. Had Officer Allen returned to the house at that time? Was he there when you and Doherty got there?

A. I didn't see him. I didn't see Officer Allen after I left the marshal's office, when he came and imparted the news.

Q. What did you do after you got to the Borden premises?

A. Went into the house.

Q. Which door?

A. The back door.

Q. Was there anyone there at the back door?

A. Yes, sir.

Q. Who?

A. Mr. Sawyer.

Q. What did you do then?

A. Went into the sitting-room. No---yes, I think it was the sitting-room, leading from the kitchen on the south side of the house, the room that Mr. Borden was in.

Q. At that time was there any covering over Mr. Borden?

A. There was, what I took to be a sheet, or white cloth, or something like that.

Q. Now go on and tell us all you did and all you observed with reference to Mr. Borden's body. Or, before that, I want to ask you, Mr. Wixon, have you been anywhere where you have had occasion to see wounds, fresh and otherwise?

A. I have seen some.

Q. Where was that experience gained?

A. Well, the most of them I saw on Roanoke Island in war times, right after the

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engagement of the armies there.

Q. Now will you go on and give a description of what you saw of Mr. Borden?

A. Mr. Borden?

Q. Yes.

A. I saw him lying upon the sofa with the wounds on his face, on the left side of the face; several, I don't know how many.

Q. Can you give any further description of his appearance, or of the appearance of the blood or anything about that?

A. Well, they looked to me like quite fresh wounds.

Q. Can you give any description of the blood besides saying that it looked fresh?

A. Bright color, the same as I had seen in army wounds.

Q. How was it with reference to thickness?

A. I didn't see any thick blood on his face. I only saw his face.

Q. Had it coagulated at all?

A. I didn't see any.

Q. After you had observed Mr. Borden and the blood upon his face, where did you go?

A. I went upstairs with Dr. Bowen.

Q. What examination, if any, did you make of the body of Mrs. Borden---of the wounds of Mrs. Borden?

A. Very slight. Officer Doherty and myself went up together on the invitation of Dr. Bowen.

Q. Did you notice anything with reference to the blood?

A. I did.

Q. If you examined that, state what the appearance of the blood was?

A. The blood was very dark and coagulated.

Q. Whereabouts was this blood which was dark and coagulated?

A. Under the face. She lay upon the floor face down.

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Q. How did its color in darkness or brightness compare with that of Mr. Borden's?

A. Oh, it was very dark. I should think---it looked to me as though it was dark maroon color.

Q. How did its thickness and clotting compare with that of Mr. Borden?

A. Well, I say, I didn't see any thick blood on Mr. Borden at all, but this, it seemed---well, it looked as though it was thick. I didn't test it. It looked as though there was considerable on the floor and it had thickened up.

Q. Was there anything else you observed at the time where there was a difference between the two? Anything with reference to color?

A. I didn't see much of the color. I didn't look long enough.

Q. You needn't answer this question, Mr. Wixon, if you please, until passed on by the Court. Did you form any opinion at the time as to which of the two had come to their death first?

MR. ROBINSON. I object to that.

MR. MOODY. I thought we would at least submit it to your Honors' consideration.

MR. ROBINSON. I think I won't insist upon the objection; he may answer it.

MASON, C. J. It is excluded.

MR. MOODY. I don't know that your Honor knew that the objection was withdrawn.

MASON, C. J. I understood it to be insisted upon.

MR. ROBINSON. Your Honor did not hear me. I said I

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would withdraw my objection and he might answer it.

MASON, C. J. If the objection is withdrawn it may be answered. I understood you to insist upon the objection.

MR. ROBINSON. No, your Honor misunderstood me; but I want to say that I do not suppose it will be followed up by any attempt at expert knowledge on the part of this witness.

MR. KNOWLTON. Not as to the relative length of time.

Q. Did you form such an opinion?

A. No, sir; I did not. I don't consider myself competent.

Q. (By Mr. Robinson.) You reached the house about 11.35?

A. I should think it was about 11.35; yes, sir; not far from that.

Q. (By Mr. Moody.) I forgot to ask you about going into the yard.

A. In the Borden yard?

Q. Yes.

A. At that time?

Q. Well, at any time in the morning.

A. I went from the house out into the yard, easterly, toward what I have learned since is known as Dr. Chagnon's fence. At the time I was asked before I didn't know whose fence it was.

Q. Tell us what you did out there?

A. I walked a considerable distance from the house out into the yard.

Q. This plan may aid you, or may not.

A. I am familiar with the places.

Q. Very well.

A. I walked in an easterly direction toward Dr. Chagnon's yard, and got a considerable distance, and for some reason, I don't know what, I looked south and saw

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the movement of a hat. Subsequently I learned that under that hat was a man. I went east and got on a pile of lumber that was near the fence dividing the Borden yard and the Dr. Chagnon's yard. I got on that fence from the lumber, stepped on the stringer of the fence, which was probably 18 inches below the top of the fence, and worked myself along, and got my hands considerably pricked from time to time with the barbed wire that was on the fence, and got on to the fence dividing the Crowe yard and the Borden yard, running on the south line of the Borden yard. I got on that fence, worked myself along a little to the west and got over on a pile of lumber in the Crowe yard.

Q. Got over the fence?

A. Yes, sir. Then I went to see this hat that I saw moving, and found a man.

Q. What was he doing?

A. Sawing wood.

Q. Now have you since learned what the man's name is?

A. I have heard the name but I cannot---

Q. Desrosiers, is it?

A. I couldn't say.

Q. Was he a Frenchman?

A. I should judge he was. I determined that at the time.

Q. Did you go anywhere else or see anyone else over in that Crowe yard at the time?

A. Over in the easterly part of that yard there were two men besides this man sawing wood.

Q. What were those two men doing?

A. Well, I don't know really. They were at work at something. They had working clothes on and they evidently had been doing something. I was trying to talk to this man sawing wood. He couldn't

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understand me nor I him. Finally one of the two men that was near the easterly end of the Crowe yard, on Third Street, that would be, came over and asked me what was the matter.

Q. Well, I don't care for the conversation. You had some talk with him?

A. Yes, sir.

Q. Do you know who that man was?

A. No, sir; I do not. I never saw him before to my knowledge.

Q. Do you think you could point out by that plan about where the man was that was sawing wood? (Plan of premises shown witness.)

A. Well, this man was very near on a line here. Possibly he may have been a trifle further. Possibly the man might have been a little off of the south line, a little further that way.

Q. Put the pencil about where you think it is; make a little mark.

A. I shouldn't think it was any more than that (indicating) where the man stood. He could look right out on Third Street.

Q. Where did you get over the fence?

A. Here is the lumber here. I should judge the south end of this lumber probably is four feet from the Kelly fence. There was a stringer on this fence and barbed wire on top, and I got on the lumber and on that fence and then worked my way step by step till I got here.

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(Mr. Moody, explaining to the jury.) The witness says that he came out into the Borden back yard to the fence running between the Chagnon yard and the Borden yard. He went along the fence, got to the corner, on the lumber pile there, went along here and saw a man sawing wood out at a place indicated by the mark of the pencil, a little to the south of the line of the shed.

A. I saw the man before I got on to that fence, though.

MR. MOODY. I understand that.

Q. Did you know either of the other two men you saw there?

A. Never saw them before to my knowledge.

Q. You told us you saw the wood sawyer afterwards, in court?

A. I saw him in court, yes, sir. I was not positive that he was the man, but he resembled him very much.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) I think I asked you some time ago if you got there about thirty five minutes past eleven to the house?

A. I said it might have been a trifle later or a trifle earlier. It was near that time, as my memory serves me.

Q. Will you tell me again: Mr. Sawyer was there?

A. I saw him.

Q. Was he there at the side door?

A. He was in the side entry.

Q. What other persons did you see?

A. In the yard?

Q. No, sir, in the house, first?

A. I saw Dr. Bowen and he went up stairs when I went in with officer Doherty.

Q. And then you went up stairs?

A. Yes, sir.

Q. Did you see any ladies at all?

A. I did when I came down.

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Q. Whom did you see then?

A. I saw Miss Bridget Sullivan. I was told that it was her afterwards, and Mrs. Churchill.

Q. Did you see Miss Lizzie?

A. I did not. I was informed by Dr. Bowen---

Q. No matter about that. Did you see Mrs. Dr. Bowen?

A. I don't remember whether I did or not.

Q. And Miss Russell?

A. I would not like to be positive, but I think I did.

Q. Did you see any other officers in the house?

A. When I came from up stairs, I did.

Q. Who were they?

A. I am sure I saw officer Mullally, because I spoke to him and another officer. I am not positive as to who he was.

Q. You think you saw Mr. Mullally in the house?

A. When I came from up stairs, yes, sir; not when I first went there.

Q. Refreshing your recollection, is it not a fact that when you came down, officer Doherty was the only one, but before you went away officer Mullally and officer Harrington came?

A. I think I saw officer Harrington and Mullally.

Q. They came later?

A. They were not there when I went in, but when I came down stairs I saw officer Mullally and Bridget and Miss---

Q. Did you see any other officers?

A. I saw a policeman beside Mullally; I think it was Harrington. I would not be positive about it.

Q. Mr. Witness, did you testify at the other trial, over in the District Court?

A. I did.

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Q. Is this the testimony---"You have only spoken of one police officer being there?

A. Mr. Doherty was there when we went in. He was the only one there when we

came out. Q. There were other people who were in there when you came out? A.

Officer Mullally and officer Harrington,---I don't think they were there when I came out."

Is that correct?

A. I don't think I was positive about Harrington. I never was positive about that. I saw him in the afternoon. I saw him during the day.

Q. I do not insist on it. You say you saw other people there. Do you mean others besides those ladies and Mr. Sawyer? You say you saw other people there?

A. I don't know what you mean when you say "there".

Q. "Mr. Doherty was there when we went in. He was the only one there when we came out."

A. I said---

Q. I beg your pardon. I am reading your testimony at Fall River.

MR. MOODY. I don't think that is proper.

MR. ROBINSON. Oh, no. I was wrong about saying it was the testimony.

A. I did.

Q. Do you recall saying this: "Mr. Doherty was there when we went in. He was the only one there when we came out. There was other people there."

A. No, sir, I did not give such testimony as that.

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Q. Very well; we will pass on. You went out in the yard, did you?

A. I did, yes, sir.

Q. And did you go to the barn?

A. No, sir; I did not.

Q. Did you see anybody go to the barn?

A. I don't remember that I did.

Q. What time did you go over the fence after going up on the lumber? About what time was that after your first arrival at the house?

A. Over the fence? Which fence? Or on the fence?

Q. How many fences did you go over?

A. During the day?

Q. No, sir, right at that time.

A. I only went over one fence at a time.

Q. Well, what is that fence that you went over at that time? Let us go on in a---

A. Yes, sir, I am trying to.

Q. We are not having any unnecessary work here. I want to find out what time it was that you went over into the Crowe yard?

A. In the Crowe yard? Well, it was somewhat before 12 o'clock.

Q. You went down to the pile of lumber, if I understand you correctly, in the rear part of the Borden yard, east part.

A. Yes, sir.

Q. And went up on the lumber and walked along on the fence, the rail of the fence---

A. On the stringer of the fence.

Q. You call it stringer?

A. Yes, sir.

Q. And went around until you got about opposite somewhere where that man was at work?

A. I saw that man before I went there.

Q. I have not asked you that.

A. I don't want to---

Q. You went around on the stringer until you got about opposite where that man was, did you, before you got down?

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A. I don't know as it was opposite where he was. I went till I found a place where I could get over in safety.

Q. Before you had gone around on the stringer, you saw the man's hat, I understood you?

A. I saw the man's hat soon after I came out of the house, yes, sir.

Q. You could not see the man himself?

A. No, sir, not at that time.

Q. On account of the height of the fence?

A. Yes, sir, the fence, I should think, was some six feet high, probably.

Q. While you stood there, any time while you were on the level of the yard, on the ground, you could not see anything except his hat: do I understand that is so?

A. Well, I saw his head moving up and down.

Q. Did you notice whether, when you got down over into the Crowe yard, the man was standing with his back towards you, or facing you?

A. Well, he was---he didn't seem to be back to me or facing me, but he was rather sideways, in a diagonal position.

Q. Did he look up, if you noticed, before you reached him?

A. I don't know whether he did or not.

Q. You don't know, from anything that you could see, whether he saw you or not until you came up to him"

A. No, sir, I do not.

Q. Well, now, did you get back from the Crowe yard over into the Borden yard again?

A. I did after dinner. At that time I went soon after I got over there and was talking with these men, the 12 o'clock bell struck.

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Q. Were these other two men in the same yard as the man sawing the wood?

A. Yes, sir, but nearer Third street, further east.

Q. I think you did not point out on the plan where those two men were, did you?

A. When I got into the yard? I don't think I did.

Q. I don't want to take much time over this (showing plan to witness). That is the point you made as the place where the man was sawing wood. Now, can you put your finger on the---

A. Mr. Robinson, if you will just give me an idea where that pile of lumber was situated--

Q. Here is the back part of the Borden yard: the pile of lumber is right here. Here is the Borden barn.

A. This man was here. (pointing).

Q. Now put your finger on about where the two men were.

A. Well, I didn't see the two men till I got out here where I could see the street.

Q. Put your finger on where they were.

A. It was pretty well out towards this street. I didn't take particular notice.

Q. Well, here is the barn and here is a close board fence.

A. I should think they were somewhere out here. Possible they might have been further out.

Q. Shall I mark there?

A. I didn't take particular notice where they were.

Q. No, it is not very particular.

A. I didn't see those two men until after I saw this man that was sawing wood.

MR. ROBINSON. (To the jury). I think you can see, gentlemen, all I want to show you now. This is the place marked where the man was sawing wood, and that, somewhere

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about there, where the two men were, that being Third Street over there: here is Second Street.

MR. KNOWLTON. Here is where the jury went in. They went in through a gate there.

MR. ROBINSON. They will understand the locality.

Q. Then you saw the man: did you go out with those two men?

A. I started to go that way, yes, sir. One of them came towards me, or both of them--- I don't know---one of them did,---came to me and spoke to me.

Q. Then from that point where did you go?

A. I went home.

Q. And what time did you come back?

A. Oh, between half past three and four o'clock in the afternoon. I went into the Kelly yard and into the Borden yard, the same way that I got over into the Crowe yard in the morning.

Q. I think you told me that when you came out into the yard from the house you did not recall that anybody was there?

A. No, I did not say that.

Q. What was the fact?

A. I said that I didn't know who they were.

Q. In the yard?

A. In the yard, yes, sir.

Q. Were there any policemen?

A. I think there was; there was men there with blue clothes, but I was so absorbed in my thoughts that I didn't take particular notice who they were.

Q. And were they all policemen?

A. No, sir, I think not, unless they were in citizens' dress.

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JOHN FLEET, Sworn.

Q. (By Mr. Moody.) Your full name, sir?

A. John Fleet.

Q. And are you at present assistant city marshal of Fall River?

A. I am, sir.

Q. Were you last year?

A. I was, sir.

Q. How long have you been in any capacity connected with the police force of Fall River?

A. Between 16 and 17 years.

Q. And how long as an officer.

A. About 12 years.

Q. How long have you been assistant city marshal?

A. Between 6 and 7 years.

Q. Where were you on August 4, 1892, when you first obtained any news of trouble at the Borden house?

A. At my residence, No. 13 Park Street.

Q. What time was it when you got the information?

A. I should say about 25 minutes to 12.

Q. Who brought it?

A. A driver for Mr. Stone, stable keeper, Fall River.

Q. And after hearing what there was said to you, what did you do?

A. Put on my coat and hat, or cap, and went to 92 Second street.

Q. How did you get there, walking or driving?

A. In a buggy.

Q. Whose buggy: who took you?

A. Police departments'.

Q. Can you tell me about what time you arrived at the Borden house?

A. I should say about 15 minutes to 12.

Q. Whom did you first see as you approached the house?

A. Mr. Manning, reporter for the Fall River Globe.

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Q. And whom next on the journey in toward the house?

A. I saw Mr. Medley: he came up to me as I was going into the house.

Q. Was he inside or outside of the house?

A. He was outside of the house.

Q. Outside of the house,---on the street or in the yard?

A. In the yard, on the walk, between the fence, the street fence, and the side door.

Q. You had some words with him, did you?

A. I did.

Q. I do not ask you what they were. Where did you then go?

A. I then went into the house.

Q. Whom did you find in, down stairs?

A. I saw Mr. Morse, Bridget Sullivan in the kitchen, and I think Mrs. Churchill.

Q. Did you see anybody else on the lower floor of the house?

A. I did; I went through the kitchen to the sitting room, and saw Dr. Dolan standing or leaning over the body of Mr. Borden, Andrew J. Borden.

Q. Where did you then go, Mr. Fleet?

A. I then went up stairs to the front bedroom or spare bedroom, so called: saw Mrs. Borden laid dead between the bed and the dressing case.

Q. Thence where did you go?

A. I came out the head of the stairs, turned to the right to open the door, but found it was locked. I then asked if there was anybody in the house that knew anything about it. Dr. Bowen,---

Q. What door was this that you came out of the guest chamber and turned---

A. To the right.

Q. Where does that door lead to?

A. To a closet over the stairs.

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Q. Finding it locked, then, you had some talk with some one, and where did you go: what did you do?

A. I then went into the room where Miss Lizzie Borden was, sitting down on a lounge or sofa with Rev' Mr. Buck, Miss Russell being in the room.

Q. Was that a bedroom, or down stairs?

A. That was in Lizzie's bedroom, up stairs, at the head of the stairs.

Q. Did you have any talk with her at that time?

A. I did.

Q. Won't you state what it was? Take time and state it in detail.

A. I went in there and told her who I was---made known who I was (I was then in citizens' clothes, as I am now), 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, 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. 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

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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 (he lives opposite to Mr. Borden's): 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 that 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 this morning 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 up stairs previous to her father's lying down on the lounge, and when she came from the barn she called Maggie down stairs.

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Q. Anything else?

A. I then asked her if she had any idea who could have killed her 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 any one around this morning whom she would suspect of having done the killing of these people, and she said that she had not seen any one, 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. 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 down stairs.

Q. Is that all that you recall at that first interview with her?

A. I think it is.

Q. I am not quite sure, but was anything said about a note at that time?

A. Oh, yes.

Q. If you will state it, Mr. Fleet, if it comes to your mind?

A. She asked---oh no, it was not at that time. I

don't think it was. I think it was the second interview.

Q. Very well. From her room did you go anywhere?

A. I went down stairs, just glanced around the room as I was in it. I then went down stairs, went through the dining room and sitting room, then went up stairs, looking around the building---in the building.

Q. Up stairs in what part?

A. I went up stairs into Bridget's room.

Q. By the way, was any other officer with you during the whole or a part of this first interview with her?

A. No, sir.

Q. You had started to say something about the talk with Dr. Bowen about the locking of that closet door. Did you do anything more about that when you were up there that first time?

A. I did not speak to him or any one else about the door. I merely tried the door and asked if there was any one in the house, any of the family.

Q. Now you have told us that you went down stairs and up again into Lizzie's room. Go on and describe what you did from that time on.

A. I went up---that is, went down the stairs into the sitting room, and also into the dining room, back to the kitchen, again up stairs, trying the room, Mr. Borden's room, but found that locked. I then went up stairs---

Q. That was their sleeping room?

A. Their sleeping room.

Q. And the door leading back into the kitchen entry, you mean?

A. Yes, sir: went up stairs and found Bridget's room locked, and also a room next to it with a bed in it. I found the other rooms in the attic locked.

Q. Then where did you go, Mr. Fleet?

A. I then went down stairs in the cellar and looked around there.

Q. A little bit louder, Mr. Fleet: we have some little difficulty in hearing you.

A. I then went down stairs in the cellar and found officers Mullally and Devine there.

Q. Did you make any search in the cellar that time, or find anything?

A. When I got down there officer Mullally had two axes and two hatchets on the cellar floor.

Q. Where Mullally had got them from, of course you do not know except from what he told you?

A. Only as he told me afterwards.

Q. Then what did you do, Mr. Fleet?

A. Looked around in the cellar to see if we could find any other instrument that might have been used for the purpose of killing, but failed to find anything.

Q. Did you discover anything else there while you were down, in the shape of an instrument,---while you were down at that time?

A. Not at that time.

Q. What was done with the two hatchets and the two axes that Mullally had?

A. The two hatchets and axes was left there that day. The largest hatchet with the rust stain on it and the red spot upon the handle that apparently had been washed or wiped, was placed behind some boxes in the cellar adjoining the wash cellar.

Q. In the cellar adjoining the wash cellar?

A. Yes, sir.

Q. Did you say that you put that hatchet there or found it there?

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I did not quite catch it.

A. I put it there.

Q. You put in there, separating it from the other hatchets?

A. Yes, sir.

Q. (Showing two axes to witness). Are those the two axes to which you refer?

A. These seem to be.

Q. (Showing two hatchets to witness). Are those the two hatchets to which you refer?

A. They seem to be the two hatchets.

Q. Which of the two was the one that you put away, separated from the rest?

A. This one.

Q. The claw hammer hatchet?

A. Yes, sir.

Q. You spoke of a red stain on its handle: is it there now?

A. I don't see it as I did at that time: I don't see it.

Q. After you had separated that hatchet from the others, what did you do?

A. I went up stairs, out in the yard: instructed some of the men who had been sent by the marshal to me to cover the different highways and depots.

Q. At that time did you see Mr. Medley again ?

A. I did.

Q. What did you instruct him to cover?

A. I told him to go down to---

MR. ROBINSON. Wait a moment.

MR. MOODY. It is only for the purpose of fixing the time.

MR. ROBINSON. Well, fix the time, then.

MR. MOODY. I will waive that question, and make a preliminary question.

Q. Is there a train that goes to Providence at 12.30?

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A. 12.29.

Q. When you talked with Mr. Medley was it in time for him to go down before that train left?

A. He would have to hurry, to catch the train.

Q. You gave him some instructions about the train?

A. I did: I told him to try to catch the train if he could, if he could make it, with further instructions to---

Q. I don't care for this Mr. Fleet. Whether he did or not, you did not of course know.

A. Well, all I know is that he went away.

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 up stairs to make a search of Lizzie's room.

Q. Which way did you go up?

A. I went up the front stairs.

Q. There is a good many people here, and you will have to speak a little louder.

A. I went up the front stairs.

Q. Did any one go with you, Mr. Fleet?

A. Mr. Minnehan and Mr. Wilson.

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Q. Will you describe all that you did and said after you got up into the hallway up stairs--the front hallway up stairs?

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 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."

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I then asked her when was the last time that she saw her stepmother---when and where. She said that the last time she saw her step-mother was about nine o'clock and she was then in the room where she was found dead and was making the bed. That is to say, she was making the bed in the room where she was found dead, at 9 o'clock.

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 and had not known of her return. We searched the rooms, and as we came to the head of her bed, I found a door there and went to open it, and she said that that door was locked and bolted from the other side; that we could not go through there, and I found it was locked on her side.

Q. Will you point out on that plan. There is the bed-room.

A. The door is here (showing on plan) that is to the eastward, would be here.

Q. To the east of the bed?

A. To the east of the bed.

Q. How was that door hooked at that time?

A. With a common hook and staple.

MR. MOODY. That is a door leading from Miss Lizzie Borden's room to Mr. and Mrs. Borden's bed-room.

Q. How was the bed situated with reference to that door?

A. Well, the bed was running about, I should call it north-east---the head of the bed was north-east.

Q. Are the sides of the bed parallel to any side of the room, or was the bed cornerwise?

A. It was cornerwise.

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Q. Will you look at this plan and see how the bed was with reference to the bed indicated on the plan?

A. I should say that was about the way the bed was (showing on the plan) and it might not have been as close to this wall as it was there.

Q. Did anything else occur in and about her room before you went elsewhere?

A. She said she hoped we should get through with this quick, that she was getting tired, or words to that effect,---it was making her tired---and we told her we should get through as soon as we possibly could, it was an unpleasant duty, that is considering her father and step-mother were dead. That is all. We searched that room and then we went to the room where Mrs. Borden was found dead.

Q. Let me ask you in that connection if anything was said about the door of her room leading out?

A. Oh, yes.

Q. State that.

A. She said there was no use in searching that room, that nobody could get into her room, or throw anything in, that she always locked her door, even if she went down stairs, when she left the room or went down stairs.

Q. You said that you went into the guest chamber. Describe what you saw there.

A. I saw Mrs. Borden laid down between the bed and the dressing case, face downward, with her head all broke in or out, and she was dead.

Q. Did you see anything with reference to the door leading from the guest chamber to Miss Lizzie Borden's chamber?

A. I saw a door which would lead into Lizzie Borden's room and on Lizzie Borden's side was a book-case and, I think, desk combined.

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Q. Yes, how was that situated with reference to the door?

A. Directly in front of the door, or in back of the door leading from where Mrs. Borden was found dead.

Q. Did you notice anything with reference to any fastening of that door,---any lock or fastening of any kind?

A. The door was locked.

Q. How and on which side?

A. I would not be sure, but I think on Lizzie Borden's side.

Q. Did you observe anything else in the guest chamber? I don't care now for any observation of the body, but did you observe anything else?

A. I noticed blood spots, that is she laid in a pool of blood, and there was blood upon the pillow cases and also upon the dressing case.

Q. After you had completed observation in that room, where did you go, Mr. Fleet?

A. I got the keys, or asked Lizzie what was in this room, and she said that that was a clothes-press.

Q. Pointing to what room when you said that?

A. Pointing to the room directly in front of Lizzie's room, that is the door directly in front of Lizzie's as you come out, or directly over the stairs.

Q. Is that the door that you referred to before as having found locked?

A. Yes, sir.

Q. Now go on and say what was said and done in reference to that.

A. Lizzie got the keys and opened the door, unlocked the door.

Q. Do you know where she got the key from to unlock the door?

A. She got them from her room.

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Q. How much of an inspection or search did you make in that room at that time?

A. We just looked over the clothing, looked round the floor, and up on the shelf. We did not search very closely.

Q. Then where did you go, Mr. Fleet?

A. Then I asked how we could get into Mr. Borden's room and she said, "You must get the keys; Maggie will give you the keys."

Q. Did you get the keys?

A. I went down stairs, saw Maggie; Maggie showed us the room, unlocked the door, and we entered.

Q. You went up the back way?

A. Went down the front stairs, through the sitting room and kitchen and up the back stairs to get to it.

Q. When you got into that room, did you make any inspection of the door which you had seen hooked in Miss Lizzie Borden's room on her side?

A. I did.

Q. What did you discover, if anything, in reference to the fastening on Mr. and Mrs. Borden's side?

A. I found that it was bolted and locked.

Q. Did you unfasten those locks at that time?

A. No, sir.

Q. At any time did you open that passage-way yourself, or was it some one else?

A. I did not open it---not until the following Saturday.

Q. Now Mr. Fleet, after you had done that, what did you do?

A. Then went up in the attics, searched Bridget's room more closely, and the closet, together with the room adjoining and the other rooms, and the west end of the attics.

Q. What did you do then?

A. Came down stairs, went down in the

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cellar again, saw Dr Dolan, the officer still in the cellar, saw Officer Mullally, and I 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 Mullally?

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. (By Mr. Jennings.) How deep?

A. Four or five inches deep, perhaps.

Q. (By Mr. Moody.) 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. Will you tell me, taking this plan, what you mean by the middle cellar. Look at it long enough to tell about it?

A. This is the middle cellar. (Showing on the plan.) This is the chimney here, and upon the chimney, or a shelf there was placed this box, and in this box was the head of this hatchet. (Cellar marked on Exhibit No. 9, as wood cellar.)

Q. How high was the shelf, Mr. Fleet?

A. Perhaps six feet from the ground.

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MR. MOODY. Mr. Knowlton would like to have you mark with the pencil where that was found.

A. This is the chimney there, and I should say it is about here---somewhere about there, I should say.

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. Broken off close to the hatchet?

A. Very close to the hatchet.

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.

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.

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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.

MASON, C. J. 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?

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MR. ROBINSON. Wait a moment: I object.

MASON, C. J. 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.

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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.

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. That was the first time?

A. Yes, sir.

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. Point it out on the photograph.

A. This one here.

(Exhibited to jury.)

Q. How was it fastened?

A. By a bolt.

Q. The bolt upon which side?

A. Upon the inside.

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Q. How long did you stay about the premises, Mr. Fleet, upon the Thursday?

A. Until after six o'clock.

Q. Not leaving at all?

A. I left in the meantime.

Q. Coming back, and stayed until after six?

A. Yes, sir.

Q. I don't know whether you at any time had any occasion to observe the blood on these two bodies, to take any special notice of it, did you?

A. I did, yes, sir.

Q. Will you state what you saw with reference to blood upon the two bodies, beginning first with Mr. Borden?

A. I found that the blood was on his face and ran down on to his shirt, his clothing, and also went through the head of the lounge, and on the floor or carpet; that there was quite a little pool of blood there, and was much thinner than the blood which I found up stairs.

Q. At what time did you make those observations?

A. As soon as I went in there I noticed, and afterwards I noticed them more closely, the second time I went in there.

Q. Did you have occasion to notice or test the relative heat of the two bodies?

A. No, sir.

Q. Will you describe the blood on or about Mrs. Borden's head?

A. She was covered with blood, and there was considerable blood under her head, and the blood was congealed and black, that is, of a dark color.

Q. What was the color of the blood about Mr. Borden's head?

A. More of a reddish color and much thinner.

Q. Now, Mr. Fleet, did you take part in any search of the premises

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on some day later than Thursday?

A. I did. I took part in a search on the following Saturday, the 6th.

Q. What time in the day was that?

A. It was one o'clock or a little later; just after the funeral procession had left the house.

Q. Who was there besides yourself?

A. Marshal Hilliard, detective Seaver, that is, State police officer Seaver; Mr. Jennings, Mr. Desmond and myself.

Q. How long a time did your search occupy?

A. Pretty well up in the afternoon. I couldn't just say how long, but perhaps five o'clock.

Q. Upon the Saturday did you go into the clothes closet in the front hall up stairs?

A. We did.

Q. Did you examine all dresses that you found there?

A. We looked at them, yes, sir.

Q. 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?

A. No, sir.

Q. How critically, how carefully were you examining the dresses at that time on the Saturday?

A. Very closely.

Q. 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?

A. No, sir.

Q. Did you make or assist in another search upon Monday following?

A. I did not.

Q. Did you take the hatchet from the box again or did some one

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else take it?

A. Some one else.

Q. Did you receive the possession of it again from any one else?

A. No, sir.

Q. So that the dress to-day, if it is in custody, we shouldn't have to go through you. You have had it at no time?

A. I have had it at no time other than the time I saw it in the box and saw it before the grand jury.

Q. Now, I don't know as it is important, but I will ask you have you had anything to do with these axes or hatchets, the custody of them?

A. Yes, sir.

Q. Which?

A. All of them.

Q. Did you take them from the house, or were they given to you by some one else?

A. No, sir.

Q. By whom were they given to you?

A. Directly they were not in my custody, but I have seen them since.

Q. At any time on Thursday, the day of the homicide, did you have occasion to go into the barn?

A. I did.

Q. At what time in the day?

A. Soon after twelve.

Q. After twelve?

A. Yes, sir.

Q. Can you tell how much after twelve?

A. A very few moments. I couldn't say just how much after, but a few moments after twelve.

Q. Did you go up stairs in the loft at that time?

A. I did.

Q. Did any one go with you?

A. At that time there was others, but I can't recall them at that time.

Q. How long did you stay up in the loft at that time?

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A. Perhaps two minutes.

Q. What was the temperature in that loft?

MR. ROBINSON. Are you going to give it exactly?

MR. MOODY. No, but whether hot or cold.

A. Very hot and close.

Q. Did you go into the barn again in the day?

A. I did.

Q. What time the second time in the day?

A. It might be half past one or two.

Q. Did others go with you at that time?

A. Yes, sir.

Q. What did you find the condition of things there then? Describe everything that you saw.

A. Well, we saw down stairs---

Q. I don't care about down stairs, but up, Mr. Fleet.

A. Up stairs we found a lot of old boards and rubbish, and considerable hay. The hay covered nearly the north part of the barn, the north side of the barn?

Q. How was the temperature in the barn in the afternoon? How was it up there in the afternoon?

A. Very hot.

Q. What sort of a day generally was it in Fall River that day with respect to heat?

A. It was very hot, one of the hottest days, I think, we had had.

Q. How long did you stay up in the barn in the afternoon?

A. Long enough to feel under the hay for any person or instrument, that was all. We didn't overhaul the hay.

Q. Did you notice anything with reference to the hay on the first time that you went up, take any particular notice of it?

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A. Nothing more than the hay was piled up as hay should be in a barn, piled up on the north side of the barn.

Q. Did you happen to know or see the quantity of hay there was there the other day that the jury took a view?

A. I did, yes.

Q. How did the quantity of the hay that was in the barn the other day, the day of the view, compare with the quantity on August 4th?

A. Well, there might be half of the hay there.

Q. Did you see anything of a basket or a box of lead anywhere, and, if so, state where?

A. I saw a basket up stairs.

Q. Did you take them away, either of them?

A. I did not, no, sir.

Q. Then I won't ask you about that. I will ask some one else about that. When did you see the basket [and] where did you see it?

A. On a bench, that is, on a kind of a bench up stairs.

Q. The bench which runs along by the side of the barn?

A. Yes, sir.

Q. On the south side?

A. On the south side.

Q. Did you notice what there was in the basket?

A. Well, pieces of iron. I have a very faint recollection of what was in there.

Q. You took no particular notice of it?

A. Iron and lead, something of that kind.

Q. Did you notice anything with reference to a box of lead down stairs? If you did not, I will ask some one else.

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A. I did not. I saw a box, but I didn't examine it closely.

Q. Mr. Fleet, did you receive any clothing from any other person, a dress, stockings, shoes, or anything of that sort? Did you yourself receive it?

A. I believe not.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) Have you ever testified before in regard to these matters?

A. Yes, sir.

Q. Where?

A. Fall River.

Q. When?

A. Last August.

Q. Do you think you told the same story then that you tell now?

A. I think about the same. The words may be different; the same meaning, I think.

Q. You think you haven't testified any more than you did the other time?

A. I may.

Q. You may?

A. Yes.

Q. Well, you have, haven't you?

A. I may.

Q. You have?

A. I think like enough I have.

Q. Don't you know you have?

A. No, I don't

Q. Why do you hesitate?

A. I don't.

Q. Then tell my why you tell more this time than you did before?

A. I don't say that I tell more than I did before.

Q. Well, do you tell more?

A. I don't know.

Q. Do you mean to say you don't know?

A. I do, yes.

Q. Was your testimony taken at the District Court when you gave it?

A. It was, I suppose.

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Q. Taken by Miss White, the stenographer?

A. Yes, sir.

Q. Have you read it over since that time?

A. No, sir.

Q. Haven't you read any copy of it at all?

A. No, sir.

Q. Haven't seen any?

A. No, sir.

Q. So it is simply from your memory now, is it, that you are giving us?

A. Yes, and notes which I made.

Q. Notes? Now, the notes you made before the other hearing, didn't you?

A. I did, yes.

Q. Do you know what you added in your testimony this time?

MR. MOODY. You are assuming he has.

Q. Have you added to your testimony?

A. I don't know.

Q. You really say you don't know?

A. That is what I said, yes, sir.

Q. Do you mean it?

A. I do, yes.

Q. Do you think you have given us to-day the names of the same persons that were there when you arrived at the house that you gave at the District Court?

A. I don't think I have given you so many names as I did there.

Q. Well, I will hear you now give us the names, if you please.

A. What time?

Q. When you arrived at the Borden house first?

A. There was Mr. Manning, a reporter of the Globe; Mr. Medley; Mr. Sawyer; Mr. Mullaly; Mr. Doherty; Mr. Morse and Bridget Sullivan, and other officers who came there after I got there.

Q. Well, I asked you those that were there when you got there?

A. Well, I am giving them to you as I recollect.

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Q. Did you give any such statement as that in the other hearing, as you recall it?

A. Not that I know of. I don't recall it, no.

Q. The notes that you made were made before the other hearing, were they not?

A. Yes, sir.

Q. Did you look at them before the other hearing?

A. I think I did, yes.

Q. Did you look at them since?

A. I think I did, yes. In fact, I know I did.

Q. When did you last look at them?

A. Within a few days.

Q. Preparing for this testimony?

A. I just looked over them, yes, sir.

Q. Now, in answering the question, "Whom did you find there when you got there?" Was this your answer at the trial in the District Court, "I saw Officer Gillen at the front door, and I think Mr. Manning, the reporter, was there at the time. I went around to the back door, and saw Mr. Charles Sawyer, and went into the house."?

A. That is right, that is as I gave it down there. That is right.

Q. Is it any different now?

A. No, sir, it isn't any different.

Q. All those names that you have given me since, when did they get there?

A. They was there at the time when I got there.

Q. But you didn't think to give them before?

A. It wasn't necessary, and I wasn't called upon to give them.

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Q. I say you didn't think to give them before?

A. They were not asked me.

Q. You were asked, "Who did you find when you got there?"

A. Yes, sir. I mentioned some of the parties I found.

Q. Did you intend to leave the others out?

A. Why, I can add them now, if you like.

Q. Did you intend then to leave them out?

A. No, sir. I never gave it a thought; didn't think it was necessary.

Q. Then you went on and you told who were in the house; do you remember that?

A. Yes, sir.

Q. Did you see Miss Lizzie Borden when you got in the house?

A. I did not.

Q. Didn't see her at all?

A. Not at the beginning, no, sir.

Q. Where did you first see her?

A. In her room, up stairs.

Q. Where did you first see Mr. Buck?

A. In Lizzie's room up stairs.

Q. So you didn't see Miss Lizzie when you first got into the house?

A. No, sir.

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Q. Now you have told us that when Mr. Borden came back---she said that when her father came back into the house that she thought he looked rather feeble, and she advised him to lie down on the lounge or sofa.

A. And assisted him.

Q. Did you tell anything about that before?

A. I think I did.

Q. Do you have any recollection of it, the slightest?

A. I think I did, sir.

Q. Do you testify now that you did?

A. I do. I think it is just about the same, stands just about the same, as it was before.

Q. No, I don't care about the whole of the testimony the same as it was before. I want to know if you testified about that at the other hearing?

A. I did; yes, sir.

Q. You swear to that?

A. Yes, sir.

Q. Then after she told you that, you say you went out into the yard and up into the barn. Is that so?

A. After she told me that she had assisted her father to the lounge?

Q. Yes.

A. Yes, sir, she said that she was ironing and she left her ironing and went outside and up in the barn.

Q. No, you do not understand me. Did you go out to the barn?

A. No, sir; I did not; not at that time.

Q. Now was it at that time, when you were talking with her in her room that she said she did not believe that Maggie, or the servant, whatever she called her, had anything to do with it?

A. She did, yes.

Q. And Mr. Morse?

A. And Mr. Morse couldn't, she said.

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Q. Of them both she said she didn't have anything to do with it?

A. That is right.

Q. When was it your first went down cellar that day?

A. Immediately after I came down from the attics.

Q. And where had you been before you went to the attic?

A. I had been through the sitting-room in the spare room, and in Lizzie Borden's room.

Q. Do you know anything about how the hook on the door on the inside of Miss Lizzie's room came to be pulled off?

A. It wasn't pulled off.

Q. At any time?

A. Not that ever I saw.

Q. You didn't know anything about that, then?

A. No, sir.

Q. Do you know anything about any officer's pulling from the other side and pulling it open?

A. No, sir.

Q. Do you know anything about the officer's going up to Mr. Borden's room and pulling that open?

A. No, sir,

Q. You don't know about that?

A. No, sir.

Q. When you got there you saw it was hooked?

A. It was.

Q. Was it locked on the other side?

A. It was. When I got around to it, it was.

Q. Both sides you found locked?

A. Yes, sir.

Q. Your talk up there with her is about as you have given. She spoke of the man that came there, she saw about nine o'clock, or heard her father speaking with him?

A. Yes.

Q. And then about two weeks before?

A. Yes.

Q. And did she say anything about the conversation with the man two weeks before?

A. She said that the man was talking with

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her father, and I asked her what he was talking about, and she said that she thought that the man wanted to get a store from her father, and her father said that he wouldn't let him have the store for that purpose. What the purpose was of course I couldn't say; and the man seemed to be angry.

Q. Did she say that the man made any reply?

A. That is the way of talking. She said the man seemed to be angry.

Q. Well, did she tell you what the man said in reply?

A. No, sir.

Q. Do you remember anything like this, that the man said, "I thought you liked money so much you would let it for anything."

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. At that time what searches of the house did you make---that day?

A. That day?

Q. Yes, sir.

A. Or at the first time?

Q. That day.

A. I searched the room of Lizzie and of Emma Borden.

Q. I would like to have you begin in the order in which you made them?

A. Well, we will commence with Lizzie's room then. I searched Lizzie's room and Emma's room.

Q. Who were there?

A. Officers Wilson and Minnehan.

Q. And yourself?

A. Yes, sir.

Q. Who else were in the room?

A. At that time?

Q. Yes, sir.

A. Dr. Bowen, Mrs. Holmes, and Lizzie Borden.

Q. Was Mr. Buck there then?

A. No, sir.

Q. Mrs. Charles J. Holmes?

A. That is right.

Q. Now what did you three do, what did you look at in that room?

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A. We looked in the drawers.

Q. Well, go on.

A. Round the bed, under the bed, into Emma's bedroom. We didn't look as closely as we might have done.

Q. Well I would like to have you tell me what you did do. You looked into the bed, you said?

A. Yes, sir. We didn't look closely in the bed. We felt round the head of the bed, and didn't take things off as we should have done.

Q. Well, no matter about that, that is no part of the answer.

A. No, sir; we did not.

Q. Well, you had free liberty to do it after you went into the room?

A. Yes, we had, as officers, of course.

Q. Well, I don't ask about officers. Nobody interfered with you?

A. No.

Q. After you went into the room---

MR. MOODY. Let him finish the answer. (To the witness) Finish the answer.

THE WITNESS. I say that we didn't search the bed as thoroughly as we ought to.

Q. That you have said already.

A. Yes, sir.

Q. How much time did you spend there?

A. Oh, a very few minutes.

Q. Were you looking for the man that committed the murder in there?

A. Or any instrument.

Q. You didn't really expect to find the murderer in there?

A. Not at that time; no, sir.

Q. And you were looking for the instrument?

A. Yes, sir;

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or anything else which would indicate.

Q. You explained that. When you rapped at the door Dr. Bowen wanted to know if you must come in, or something of that kind?

A. He opened the door and wanted to know what was wanted.

Q. And stood at the door, as of course he would in opening the door and talking to you. There was nothing unusual about that?

A. No, no further than he seemed to be holding the fort; that is all.

Q. Is that an answer to my question?

A. I should think it about applied to the manner in which he was doing the business.

Q. You looked at it that way?

A. Yes, sir.

Q. Was he doing anything more than standing with his hand on the door?

A. Yes, sir; standing with his hand on the door and with the door ajar about eight inches, and as though there was somebody inside there. I didn't know but Lizzie might be sick, if you take it in that way, or something the matter, he was so afraid about it.

Q. She was in there, wasn't she?

A. She was.

Q. And Mrs. Holmes was there?

A. Yes, sir.

Q. Very well. And the conversation was had and then you were admitted?

A. We were, yes.

Q. And did she say she hoped you would get through soon because it would make her sick?

A. Words to that effect, yes.

Q. You remember that this time she said it would make her tired, and now do you remember at the former trial you said it would

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make her sick? Do you remember anything about the exact words that were used?

A. I think she said she wanted us to hurry up, that is, get out of there, this was making her sick. I think before that that she said she was getting tired of this, this was making her sick.

Q. Do you know whether Officer Harrington had talked with her before?

A. I had not.

Q. You didn't know it?

A. No, sir.

Q. And you know nothing about the time that he talked with her, if he did talk with her?

A. I do not; no, sir.

Q. You do not know about that. Is Officer Harrington a man on the force now?

A. He is.

Q. Do you know anything about any of the other officers talking with her?

A. No, sir.

Q. Before that, I mean.

A. No, sir; not personally.

Q. You examined the drawers, and those in Emma's room also?

A. Yes, sir.

Q. And searched the bed, did you not?

A. I said before not very closely.

Q. And Lizzie's bed?

A. Yes, sir; around it.

Q. Didn't you search all the other places that were available there?

A. That is what I said. We searched the room and searched the drawers and around the bed, but not very closely.

Q. Were you asked about that time to go to the clothes closet?

A. Yes.

Q. Who let you in there?

A. Lizzie Borden.

Q. She went and unlocked the door?

A. She did.

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Q. Did you three officers go in?

A. I think we did. I went in---looked in.

Q. Tell me what you found there?

A. We found some dresses, perhaps a dozen or more dresses, hanging up on the wall, and some hat boxes on a shelf, and other things.

Q. On both sides of the room?

A. No, sir; I think they were hung on one side of the room.

Q. You don't think there were any on two sides?

A. I don't think so, I don't recollect.

Q. You do not speak positively about that?

A. I do not.

Q. Were the dresses all exposed as they hung up there on the hooks?

A. I think they were.

Q. You are pretty certain about that?

A. I did have the impression that they were covered in the first place.

Q. What first place?

A. My first search.

Q. Well, are you going to change it now?

A. Yes, sir.

Q. Were they covered or not?

A. I think not.

Q. When did you think of that?

A. Since looking in that room again.

Q. Since you testified at the other hearing?

A. I don't know; I don't know whether it is since then or before.

Q. Well, when was it? I want to get at it. When did you change your recollection about it?

MR. KNOWLTON. Has he said he changed his recollection?

MR. ROBINSON. He said he thought he should change it. I thought I would like to know whether he was going to or not.

THE WITNESS. My impression was that there was a cover

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over the dresses, and since then my impression has been that the dresses having been turned inside out gave me the impression that there was a covering over the dresses.

Q. And you didn't look carefully enough then, when you were there to find whether they were dresses turned wrong side out or whether there was a cloth hung over them the first time?

A. I didn't look very carefully; no, sir.

Q. Do you know how you testified about that at the hearing?

A. Yes, sir.

Q. How did you testify?

A. I testified that there was a cloth hanging over the dresses.

Q. What kind of a cloth did you testify?

A. Well, a sheet.

Q. A white cloth?

A. A white cloth.

Q. Didn't you testify just this way: "Was there a cloth over them?" "Yes, sir." "What kind of a cloth?" "A white cloth." "Hung all over this clothing in this closet?" "Yes, sir." "A cheese cloth, or sheet, to keep the dust off?" "Like a sheet." "How was this cloth fixed up, how was it fastened up, or placed over them after they were hung there?" "Run from one end of the room to the door." "Tacked up?" "I do not know, so you could lift it up."

MR. MOODY. I don't know how much further you are going to read; there should certainly be a limit.

Q. "You lifted it up without its coming down?" "Yes." Is that so? Did you testify that way before?

A. I testified that there was a sheet there, yes.

Q. And how long was that after you had been there?

A. Perhaps

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two weeks.

Q. And you have not been there since you testified, have you?

A. I don't know whether I have or not.

Q. Well, have you been in the house at all since that Saturday, the day of the funeral?

A. Yes, sir.

Q. Have you been there since the preliminary hearing, have you been in the house?

A. I don't recollect, but I think I have.

Q. Have you been up there in that clothes room to look the situation over again since the District Court hearing?

A. No, sir.

Q. You have not?

A. No, sir.

Q. Did you look those dresses over thoroughly at the time?

A. No, sir.

Q. You did not?

A. No, sir.

Q. What did you do, what kind of a search did you make in there?

A. We just looked in behind the dresses. At that time we wasn't looking very closely, that is, for any dresses, especially in the manner in which those dresses were hanging up there.

Q. That was on Thursday?

A. That was on Thursday.

Q. Now do you remember anything of how you testified about that at the former trial?

A. Yes, just what I am testifying now, I believe.

Q. You think it was just the same?

A. Yes, pretty near.

Q. Wasn't this your testimony: "What did you look at?" "I did, I looked at the clothing, some of it."

A. Yes, sir.

Q. "What did you leave unlooked at, any portion of it?" "No,

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sir; I just merely looked at the clothing. I lifted up the cloth over them, and took each dress and looked at it." Is that so?

A. Well, that is just as I tell you. I didn't look at them very closely. I looked at the dresses, but not very closely.

Q. But you took each dress and looked at it, is that so?

A. Yes, sir; I think it is about so.

Q. "Were you looking to see if you could find any bloody garments?" "Not very closely, I was if----" "Did you have that in mind?" "Yes, sir" Is that so?

A. Yes, sir.

Q. Now did you say whether you did make any sort of search there in that clothes room?

A. I did.

Q. How many dresses were there?

A. I thought about a dozen or more.

Q. You didn't see any paint on them?

A. No, sir.

Q. (By Mr. Moody.) This was Saturday?

A. No, this was Thursday.

Q. (By Mr. Robinson.) This was Thursday?

A. Yes, sir.

Q. Would you have seen any paint the way you looked?

A. I don't think that I should.

Q. Would you have seen any blood the way you looked?

A. Not without it was on the outside, right before my eyes. I didn't look at them close enough to notice.

Q. Not withstanding you took each dress and looked at it?

A. I did, I took the dresses, moved them one side, that is about all, and went around the clothes press in that way. It didn't take us two minutes in there.

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Q. You were not expecting to find any man behind those women's dresses?

A. There was a possibility of a man being in that room.

Q. Really, were you looking for him there?

A. We were looking for a man, or any other instrument or clothing that might have been there.

Q. Were you looking for the man in that clothing?

A. If he was there, yes, we was.

Q. You really thought you were looking for him?

A. Yes.

Q. You thought you would find him?

A. We were looking there so there would be no excuse for anybody being in that room.

Q. The key was turned and it was locked when you went there?

A. Yes.

Q. And when you went in there you were looking for a man, and you did not examine the dresses to find any stains upon them?

A. I did, as I have told you.

(At 5.00 P.M. the court was adjourned to Friday, June 9th at 9.00 A.M.)

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F I F T H D A Y

Friday, June 9, 1893

Court came in at nine o'clock.

MR. KNOWLTON. If your Honors please, Mr. Everett M. Cook, after leaving the witness stand, went home and found that one his answers was incorrect, and has sent me a letter correcting it, which I have shown to counsel for the defence, and they agree with me that the substance of that letter may be treated as a correction of his answer provided, which I do not agree to, that the testimony is of material value. I will show it to your Honors without argument, and if your Honors think it is practically material in the case, I desire that the letter may be used as part of his testimony.

MR. JENNINGS. I was going to say that the question which was answered was asked by me, and was not objected to at the time. I asked if on the day of the murder she had a deposit in that bank subject to check, and he answered that she did not.

MASON, C. J. The Court thinks that it is important that the testimony should be corrected so as to tell the truth. The materiality of it is determined by its being passed without objection.

MR. KNOWLTON. I will read a portion of the letter.

MR. ROBINSON. Why not read the whole letter?

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MR. KNOWLTON. Oh, certainly. I was not going to read the "Dear Sir".

"First National Bank,

"Fall River, Mass. June 7th, 1893

"Hon. H. M. Knowlton,

"New Bedford, Mass.

"Dear Sir: ---

"I hasten to correct a statement made by me in Court this morning.

I was asked if Miss Lizzie A. Borden had any money on deposit in the 'Trust Co.', to which I replied, I did not think she had; but I find upon consulting Mr. Arthur W. Allen, Treas. of the B.M.C. Durfee Safe Deposit and Trust Co., that she had an account in said 'Trust Co.' Aug. 4th, 1892, and that her balance at close of business to-day"---meaning that day, I presume,---"is \$172.75.

"Should you desire my presence in Court to testify to the same, will come over.

"Very respectfully yours,

"Everett M. Cook

"Witness:

"Arthur W. Allen"

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JOHN FLEET, Resumed.

Q. (By Mr. Robinson.) You recall, Mr. Fleet, that yesterday I asked you about your testimony given on the former occasion in the preliminary hearing?

A. Yes, sir.

Q. When Miss Borden was committed to stand for trial in this cause?

A. I do.

Q. And you remember yourself the occasion?

A. I do; yes, sir.

Q. That was an open hearing in the District Court?

A. It was.

Q. And counsel were present for Miss Borden, to wit, Mr. Jennings and Mr. Adams?

A. Yes, sir.

Q. And that is the occasion you refer to?

A. I do; yes, sir.

Q. Have you since last night looked at the copy of your testimony at that examination?

A. No, sir.

Q. Have not revised at all?

A. No, sir.

Q. And therefore you do not propose to make any different statement as to whether you gave the testimony to which I referred, in that hearing? Perhaps my question is not plain; a little bit involved, I think. I ask you if in that hearing you stated that Miss Lizzie Borden told you that when her father came in he appeared feeble and she advised him to lie down on the sofa and assisted him to do it. Do you recall me asking you that?

A. I do.

Q. And you said you did testify so?

A. I did.

Q. And you now say so?

A. I say so; yes, sir.

Q. Now, briefly, I want to classify your movements on that day,

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August 4th. Is it a fact that you arrived at the house before twelve o'clock?

A. Yes, sir.

Q. And went there alone?

A. I did. That is, went in a carriage with another man.

Q. And any other officer with you?

A. Not at that time; no, sir.

Q. And do you know whether or not Mr. Allen had been there then---Officer Allen, I mean?

A. I did not, at that time.

Q. Now I want to know just where you went and just what you did, all where you went from the time you went into the house on that first visit?

A. I went to the front door, tried the door, and it was locked.

Q. Well, you went into the back door first?

A. Yes, sir.

Q. Begin there, please.

A. I went to the back door and went into the house through the back entrance, into the kitchen. From the kitchen to the sitting-room, looked in the dining room, went upstairs into the room where Mrs. Borden was dead. From there turned out, tried the door to the right---

Q. Which was the clothes room?

A. The clothes press, I found that it was afterwards. I didn't know what it was then. Then went to the door of Miss Lizzie Borden. After talking with her---

Q. Well, was the door open?

A. The door was closed.

Q. And was it locked or not?

A. I couldn't say that it was.

Q. And you went in there, if I recall it, and Mr. Buck was present?

A. Yes, sir.

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Q. And Miss Russell?

A. Yes, sir.

Q. And Miss Lizzie?

A. Yes, sir.

Q. Well, now, you had your first talk there with her?

A. I did.

Q. And no officer was present with you then?

A. No, sir.

Q. From that room where did you go?

A. I went from that room back again down stairs in the sitting room, in the dining room, the kitchen, went upstairs, tried the door of Mrs. Borden---

Q. You mean now you went up the back stairs?

A. The back stairs; went up in the attics.

Q. You say you tried the door?

A. It was locked.

Q. How did you find it?

A. It was locked.

Q. That door was locked?

A. Yes, sir.

Q. And that is the room of Mr. and Mrs. Borden, I understand?

A. Yes, sir.

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Q. Then what?

A. Then I went up in the attic, in Bridget's room.

Q. Was that door locked?

A. No, sir.

Q. You are sure about that?

A. I am pretty sure that it was not locked at that time.

Q. Well, are you sure?

A. Yes, sir.

Q. Then who went up stairs with you?

A. No one.

Q. Very well, go on.

A. I then tried the other doors and found them locked.

Q. What door?

A. The doors west of the house---west rooms in the attics.

Q. How did you find that?

A. Locked.

Q. Did you find any other doors which you tried?

A. Found the doors locked up there.

Q. All of them?

A. With the exception of Bridget's, and I think that room next to it, where there was a bed in it.

Q. Was that locked?

A. I think not.

Q. But you are very certain about Bridget's room, that that was not locked?

A. I feel very certain about that.

Q. Now what did you do?

A. I looked through there and came down and went in the cellar.

Q. And all the time you were alone?

A. At that time?

Q. Up to that time?

A. There were other officers going in and out and around the building.

Q. But not with you?

A. Not directly with me.

Q. You went to the cellar. Whom did you find in the cellar?

A. I found officers Mullally and Devine in the cellar.

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Q. Yes, anybody else?

A. Dr. Dolan was in the cellar at one time.

Q. I am not talking about that time. I am talking of this time. I want to get this just right.

A. As I recall it, officers Mullally and Devine were there.

Q. And no other officer?

A. There might have been.

Q. Well, I know that; Everybody can say that.

A. There was officers there, a good many officers in the cellar during the day, and I don't recollect.

Q. Then you don't recollect whether there was anybody else there or not?

MR. MOODY. In the cellar.

A. No, I do not, not at that time.

Q. What, sir?

A. Not at that time.

Q. Was officer Doherty there?

A. Yes, sir, he was in the cellar.

Q. He was?

A. At one time.

Q. I mean at that time.

A. I could not say.

Q. You did say before, didn't you?

A. Before when?

Q. At the District Court when you gave your other testimony.

A. If I did, I think that is about right.

Q. What, sir?

A. If I did, I think that it is about right.

Q. What is about right?

A. If I said he was there.

Q. He was there?

A. He was there once when I was there.

Q. If you said so once in the District Court he was there, he was there?

A. Yes, sir.

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Q. And do you recall whether you then stated, at the former hearing, that Mr. Devine was there?

A. I do not.

Q. And if you did not state it then, is it true that he was not there?

A. It is not.

Q. Not true. Well, I mean of your own recollection: not what he has told you.

A. I am not talking about what has been told me at all.

Q. In answer to the question "What did you find down cellar?" "I found Mr. Mullally, Mr. Doherty, and afterwards Dr. Dolan." Is that correct?

A. Yes, sir, together with other officers.

Q. Well, you did not say so at the time, did you?

A. I did not: no, sir. I don't think I mentioned half the officers that were there.

Q. That answers the question---you did not mention anybody else. Now you were there with, as you give it now, Mr. Mullally and Mr. Devine. Tell me just what was done there at that time?

A. Mr. Mullally had some axes on the floor in the wash room of the cellar, and we examined them.

MR. ROBINSON. (To Mr. Moody.) Will you bring those in, please, all of them,---all you have, everything, all the exhibits of that kind.

(An officer was sent out and subsequently returned with the axes and hatchets which had been identified previously.)

Q. And I think you told us yesterday that Mr. Mullally had the two axes and the two hatchets?

A. Yes, sir.

Q. Anything else?

A. Not at that time.

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Q. Did you see where those came from?

A. I did not.

Q. Where were they at the time that you saw them first?

A. In the cellar---wash cellar.

Q. Did you at that time learn from anybody where they were taken from?

A. I did, from Mr. Mullally.

Q. And I ask you to tell me where you told you he found them?

A. I don't know that I did at that time, but I did afterwards find where they were taken from.

Q. And where were they taken from?

A. The two small hatchets were taken from the middle cellar on the south side.

Q. When you say middle cellar, I suppose you mean the middle room?

A. The middle room, yes, sir; the middle room of the cellar.

Q. The two small hatchets were taken from there?

A. Yes, sir.

Q. Where were the axes found?

A. I could not say just where, but in the back part of the cellar: I could not tell just where they were.

Q. The back part of that same room?

A. Of the cellar. I think one was near a chopping block and the other I could not state just where he did say he found it.

Q. Well, was the chopping block in that middle room?

A. It was in a passageway near the furnace.

Q. And does the furnace stand---the furnace or steam heater,---you refer to the same thing, I suppose?

A. Yes, sir.

Q. Does that stand in that middle room of the cellar?

A. No, sir.

Q. Where is it?

A. It is in the passageway leading between the cellars.

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Q. And going on a little farther west?

A. Yes, sir.

Q. Toward the front of the house?

A. Yes, sir.

Q. Then, if I understand you, the two hatchets were found in the same room where you found this one without a handle?

A. Yes, sir.

Q. Do you know in what part of the room those two hatchets were found?

A. Near a chimney.

Q. Well, was it near the same chimney where you found that handleless hatchet?

A. In the same box.

Q. In the same box,---that you understood?

A. As I understood.

Q. That you understand to be the fact, that in the middle room of the cellar---can you see it from here? (Holding up blue print).

A. Yes, sir.

Q. Right in the same place or in the same box where you afterwards found them?

A. Yes, sir.

Q. These two hatchets were found by Mr. Mullally?

A. That is as I understood it.

Q. That is the way you understand it and at that time, did you understand it then?

A. I understood where he found the hatchets, as he showed them to me.

Q. Yes, you understood then. Of course at that season of the year there was no fire in the steam heater?

A. No, sir.

Q. And was there coal in the cellar?

A. There was.

Q. Where?

A. On the west side of the cellar.

Q. Were there any ashes there?

A. There was.

Q. Where?

A. In the middle cellar.

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Q. And that is the same one where you found this box?

A. The box with the hatchets in.

Q. And how many ashes---I don't mean exactly in quantity, but something in regard to the quantity?

A. There might be six bushels.

Q. Six bushels?

A. Yes, sir.

Q. Evidently quite a pile?

A. Yes, sir.

Q. And in what part of that middle room were those ashes?

A. On the southeast part of the room,---more to the east than it would be to the west.

Q. Would that be somewhere near the chimney?

A. Within a few feet.

Q. So that the pile of ashes was right near---within a few feet of that chimney where the box was in which these hatchets were found, and in which you found that one without a handle---is that right?

A. Yes, sir.

Q. Were those ashes all dry ashes, a fresh pile, or the accumulations, evidently, of considerable many months or days?

A. I could not say as to the months or days: there was an accumulation of ashes.

Q. And those were ordinary ashes from fuel?

A. Yes, sir.

Q. And did you notice whether they were coal or wood ashes?

A. Coal, I should say.

Q. And was there in the cellar in all the rooms in any other place an ashes pile that you saw?

A. I think there was.

Q. Where?

A. Near the furnace.

Q. Are you certain about that?

A. I am not.

Q. As you recall it then, you wouldn't be able to say to us this morning there were two different piles of ashes there?

A. No, sir. That is my impression as I look at it looking back only.

Q. Can you place that second pile, if there was one?

A. Yes, sir, it would be close to the coal bin.

Q. If it was there it would be---

A. It would be east of the coal bin and close to it.

Q. It would be very close then to this other little room?

A. Yes, sir.

Q. This opening to the furnace, the fire-pot, faced the north wall of the house?

A. I don't know whether it faces to the north or west.

Q. This furnace, you understood, was to warm the whole house; steam pipes connected with it running to the radiators generally in all the rooms through the floor?

A. Yes, sir.

Q. You saw the radiators in the rooms above?

A. I don't recollect that I did.

Q. You don't recollect?

A. No, sir.

Q. You said that you took one of the hatchets and put it away?

A. Yes, sir.

Q. And is this one with the claw head the one you put away?

A. It is, sir.

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Q. Where did you put it?

A. I put it in a cellar adjoining the wash cellar behind a box, boxes and a keg, I think was there too.

Q. That is, something that looked like vinegar barrels there?

A. There were on one side.

Q. It is that room right there underneath the cellar stairs as you come down right round to the left?

A. Yes, sir.

Q. And the water closet as you come down stairs is right along the front?

A. Yes, sir.

Q. And as you turn around to your left there is a room there in which several barrels were set up, containing liquids apparently, that kind of barrels?

A. Yes, sir.

Q. You put it in behind those barrels?

A. No, sir

Q. Tell me again just where you did put it?

A. I put it behind where there was some boxes and a keg.

Q. And that was on the---

A. On the south side of that cellar, southeast side of the cellar.

Q. The southeast side of the cellar; that would be the corner toward the barn on the outside?

A. Yes, sir. Towards the southeast wouldn't be---it would be going from the barn.

Q. Oh, yes. It is the southeast corner of that cellar, but the room is in that corner toward the barn, the cellar room?

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A. Yes, sir, the east side of it is.

Q. Yes, I understand. Now, did any one see you put it there?

A. Officer Harrington.

Q. Oh, he was there then?

A. Yes, sir.

Q. You didn't tell us about that.

A. No. There is a good many things I haven't told you about.

Q. There are?

A. Yes, as far as the officers are concerned.

Q. Now, Officer Harrington was there. Can you give me any more? Stop right here.

A. Yes, sir. Some of the time officer Devine.

Q. Well, you told me about that.

A. Officer Doherty, officer Hyde.

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Q. Hyde was there?

A. Yes, sir; some of the time.

Q. Have you ever mentioned him before?

A. Never that I know of.

Q. Well, go on. How many more?

A. Officer Wilson.

Q. You know I am talking about the first time now?

A. Oh, I am not talking about the first time. I am speaking of that afternoon. I was speaking about---

Q. Oh, no. Now let us go back. I am talking about the first time. I began with you this morning in that way, you understand. Now you are down stairs the first time, and you had no officer with you when you went down cellar the first time. Is that so?

A. That is right.

Q. And you found whom down there the first time in the cellar? Keep your mind right on that.

A. I found officer Mullaly, Doherty and I thought Devine, but I am not sure about that, at that time.

Q. You are not now sure about that, about Devine?

A. At that time; no, sir.

Q. Well, that is what I am meaning, that time. Did you find Officer Harrington there at that time?

A. No, sir.

Q. Did you move this hatchet at that time?

A. No, sir.

Q. Well, then, I do not ask about moving it at present. But you found this one with the handle gone at that time?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Then what did you do the first time in the cellar?

A. Went down there, and saw those, Mullaly, as stated before, and

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went out into the yard.

Q. Now that is all that was done the first time by you?

A. Yes, sir.

Q. Went out in the yard?

A. Out of the house in the yard.

Q. And how long were you out in the yard?

A. A few minutes.

Q. Was that when you had an interview with Mr. Medley?

A. Yes, sir; and other officers.

Q. Then what did you do?

A. I went in the barn.

Q. At that time, when you were out in the yard at that time?

A. Yes, sir.

Q. And did you go upstairs?

A. I did.

Q. And alone?

A. I did.

Q. Do you know whether anybody else had been in there before that or not, from your own knowledge?

A. I did not.

Q. How many persons did you then see in the yard?

A. I could not just state how many, there were quite a number of officers.

Q. And the barn door was unlocked at the time you went there?

A. It was. That is, on the south side.

Q. It would be impossible for you to tell all the officers that you saw there at that time I suppose?

A. Well, it would. They were coming and going.

Q. Now were there other individuals, not officers, there at that time?

A. There were, but I cannot recall them.

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Q. Well, do you recall Mr. Sawyer?

A. He was there at the back door.

Q. And some name, Mr. Manning, I believe, has been mentioned at the same time. Was he there then?

A. He was at the front door when I went in the house.

Q. I am now out in the yard, after you had been in the house and come out again. Was Mr. Manning there?

A. Yes, sir, and Mr. Porter.

Q. What Mr. Porter is that?

A. Reporter for the Fall River Globe.

Q. A Mr. Porter who is a reporter?

A. Yes, sir.

Q. Was Mr. Stevens or Stephenson there?

A. I don't recollect whether he was there at that time or not. He was there in the afternoon.

Q. That there may be no uncertainty, I am told this Mr. Stevens was a reporter on the News?

A. Yes, sir.

Q. Did you see Mr. Clarkson there at that time?

A. I did see Mr. Clarkson, but I thought it was later on in the day.

Q. But you are not certain of that?

A. No, sir.

Q. Did you see Mr. Donnelley, the hack man?

A. I saw him some part of that day.

Q. And it may have been that he was there; you don't say that he was not?

A. Might have been.

Q. You don't say that he was?

A. I don't recall that he was there at that time.

Q. Now have you substantially given all that you have done from the time you first entered the back door until you went out and had completed that tour in the yard and in the barn?

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A. Yes, sir.

Q. Now where did you go next?

A. In the yard.

Q. Finish up in the yard and then tell us where you went?

A. Had a conversation with the officers.

Q. That I don't care about.

A. Mr. Morse and Bridget Sullivan.

Q. Was that out in the yard?

A. No, sir, Mr. Morse I had some conversation with in the yard.

Q. Bridget Sullivan in the house?

A. Yes, sir.

Q. That is the second time you went in?

A. Yes, sir.

Q. Now will you go from that time to tell me just what you did in the house the second time?

A. Went in the house, in the dining room with the two officers and inspector Dexter.

Q. One of the State officers?

A. State officers.

Q. When did you first see Mr. Dexter?

A. After I had been through the house the first time.

Q. Now pass on from there.

A. We then went up stairs and into Lizzie Borden's room again.

Q. And then you had some officers with you, I think?

A. Two.

Q. Mr. Minnehan and Mr. Wilson?

A. Yes, he is dead.

Q. And Mr. Wilson is on the force yet?

A. Yes, sir.

Q. Then you had that second interview---and was Dr. Bowen there at that time, at the door?

A. Yes, sir.

Q. That is the time you spoke of?

A. Yes, sir.

Q. And at that time Mrs. Holmes and Lizzie were in the room?

A. Yes, sir.

Q. Anybody else?

A. Not that I recall.

Q. Now pass on: You need not state the conversation because that

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you have given already.

A. We came out of there and searched the closet, and also looked into the room where Mrs. Borden was dead.

Q. You searched the clothes-closet, Miss Lizzie bringing you the key and going to unlock it?

A. Yes, sir.

Q. Pass right on.

A. We then went down stairs and through the rooms down stairs, we glancing through them, and got Bridget to get the keys, and we went up stairs into Mr. and Mrs. Borden's room. From there we went in the attics and looked through the rooms in the attics.

Q. Bridget went with you with the keys to Mr. Borden's room, up the back stairs?

A. Yes, sir.

Q. And you went up again in the third story, the attic?

A. The attic, yes, sir.

Q. How were the doors when you got there that time, as to locks?

A. The doors were locked and Bridget unlocked the doors.

Q. Was Bridget's room locked?

A. I could not say as to that.

Q. Was the other sleeping room locked, up in the attic?

A. I don't recall whether it was or not.

Q. Did you go into the store room on the west end of the house?

A. I did.

Q. Was that locked before you went in?

A. Yes, sir.

Q. And do you now think as you looked it over, that Bridget's room was locked at that second visit up there?

A. It might have been; I don't recollect. She had the keys and went up stairs and unlocked the door at this time.

Q. Well, did you make searches in all these rooms?

A. Yes, sir.

Q. What did you do?

A. Just looked round the rooms and moved things a little one side to see if we could see anything.

Q. Did she have any trunk there?

A. Yes, sir.

Q. Did you examine that?

A. No, sir.

Q. Did not open it?

A. No, sir.

Q. Did not ask to have it opened?

A. Yes, there was a trunk that we opened, that was locked, I think. Bridget went and got the key.

Q. I want to get this right now, Mr. Fleet.

A. We did look in a trunk.

Q. Was it locked?

A. Yes, sir.

Q. Did you ask her to unlock it?

A. Yes, sir.

Q. Did you take out the things that were in the trunk?

A. I don't think we did.

Q. Did you disturb them at all?

A. We just looked in there.

Q. Well, looked in?

A. By lifting them up, that's all.

Q. You did not find anything?

A. Nothing that we wanted.

Q. Was there more than one trunk in the room?

A. I think there were.

Q. Well, did you look into them all?

A. We looked into everything that we could look into, that is, just glanced over them, that is all.

Q. You did not look very closely there, did you?

A. No, sir.

Q. Didn't. Didn't stay very many minutes in that room, did you?

A. No, sir.

Q. Did you see in that room any dresses?

A. I think there was some clothing in one of the rooms.

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Q. Did you examine it?

A. Just looked at it, that is all.

Q. Did you take it down to look at it?

A. No, sir.

Q. You didn't examine that clothing?

A. Not to take them down, but just looked at them.

Q. Not to take them down? And you three officers were there making a search, wasn't you?

A. Yes, sir.

Q. And you did not make a search up there?

A. Didn't we?

Q. Did you?

A. Yes, sir.

Q. Did? Such as you described?

A. Yes, sir.

Q. Was there any blood on Bridget's dresses?

A. On Bridget's?

Q. That is what I asked you.

A. Not that I discovered.

Q. You didn't discover at all.

A. I did not discover anything in the line of blood.

Q. You did not really look for blood, did you, on her dresses?

A. No more than I did on any others.

Q. That is not quite correct. Did you look for blood on Bridget's dresses?

A. I looked at Bridget's dresses.

Q. Just tell the jury how you looked.

A. Just looked at the dresses as they were,---some were thrown on the bed.

Q. Were they in the closet?

A. There were some in a closet.

Q. Did you take them down?

A. I threw them on the bed, that was all.

Q. Were there any grease spots on any of these dresses?

A. I can't say.

Q. You did not look to see, did you?

A. Not very closely.

Q. You could not tell to-day that there was or was not?

A. No.

Q. Now what did you really look at those dresses for?

A. To see

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if we could discover anything, or any blood, or anything on that.

Q. You did? And yet you say you did not see anything at all? You didn't make a very thorough examination, did you?

A. No, sir.

Q. How many dresses did she have?

A. Who?

Q. Bridget.

A. I don't know.

Q. Well, give us some kind of an idea.

A. I could not.

Q. Well, a dozen?

A. No, sir.

Q. Well, half a dozen?

A. She might have,---it seems to me two or three dresses.

Q. Well, you went down from the attic then?

A. Yes, sir.

Q. After you got through. Is there anything more you want to tell me about what occurred in the attic?

A. No, sir.

Q. Then we will go down stairs again to the next floor, and that will be to the room of Mr. and Mrs. Borden?

A. Yes, sir.

Q. Did you go in there?

A. I did.

Q. Tell me what you did in there? The other officers were with you?

A. We went in there and looked in his bed room and also the room adjoining.

Q. Which was the first room you went into?

A. The first room we went into was the bed-room.

Q. You say you looked: What did you find?

A. Didn't find anything.

Q. You found things in the room?

A. We found a bed in the room.

Q. Did you examine the bed?

A. Some.

Q. Tell us what that some is?

A. Looked on the top of the bed.

Q. You did not see anything on the top of the bed?

A. Did not see anything.

Q. Didn't see any hatchet on the top of the bed,---is that what you mean?

A. We did not see anything on the bed.

Q. I want to know in good faith if you saw anything at all?

A. That is all.

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Q. You were making a search, you three officers were making a search, and all you did on going in that bedroom was just to look on the top of the bed? Is that it?

A. On that bed, yes.

Q. Now how did you continue your search? What other active efforts did you make in the search of that room?

A. Looked under the bed.

Q. And I suppose you did not find a man there, did you?

A. No.

Q. Did you find any implements under there that could murder anybody?

A. No, sir.

Q. Well, go on with this search now, in Mr. Borden's room.

A. And we went into the other room.

Q. No, in this room. Is that all you did?

A. That is all we did.

Q. Looked on top of the bed? See if I get it just right now; I do not wish to mislead you at all. You looked on top of the bed, like that, (illustrating), and looked under the bed, like that? Is that so?

A. We looked on the bed and under the bed to satisfy---

Q. And all three of you looked?

A. I presume that they did.

Q. Well, now, go on, you three; what next did you do?

A. We looked around the room.

Q. Well, what was there in the room, what furniture?

A. Some chairs. I just don't recollect what there was in there.

Q. Wasn't there some bureau?

A. Might have been.

Q. Well, I know. That does not help us. Was there a bureau in the room or a dressing case, whatever it may be called?

A. I don't recollect.

Q. You don't recollect whether you opened any drawers of it or not?

A. If there is one there we did.

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Q. If there was one you did. Can you help us any about it? Can you tell us whether you did or not?

A. I told you I don't recollect whether there was one there or not.

Q. Then we will leave it right there. Well now, is there a closet in that room?

A. Yes, sir.

Q. Did you go into the closet?

A. We did.

Q. What did you find in it?

A. I couldn't just say what there was in it, numerous things.

Q. Any clothing?

A. I don't recollect.

Q. Well, you said you kept memoranda, I think you said?

A. Not of that, I didn't.

Q. So you haven't anything of that?

A. No, sir.

Q. You didn't find anything there, any blood, or anything whatever?

A. No, sir.

Q. Then you went into the little room that opens out where the safe is?

A. Yes, sir.

Q. And what did you find in there, anything but the safe?

A. Found the safe in there, and some clothes on the wall.

Q. The safe was locked, wasn't it?

A. Yes.

Q. Tried it?

A. I think we did.

Q. All three of you there?

A. Yes.

Q. Well now, what examination did you make of that row of dresses hung on the wall?

A. We looked at them as we had the others.

Q. Same way you did the others?

A. Yes, sir.

Q. You say you looked on the top of them and looked underneath

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them; is that all you did?

A. Just looked at them.

Q. The is all the examination you made?

A. In that room.

Q. Then you passed out. Was Bridget all the time there, or had she left you?

A. Bridget was somewhere round at that time, that is, was up on that floor.

Q. Well, did she stay there or had she gone down stairs?

A. She was up stairs.

Q. Now, she had the keys that let you into the attic rooms?

A. Yes.

Q. She had the key that let you into Mr. and Mrs. Borden's room?

A. Yes.

Q. And did she lock the door when she came down?

A. Yes, sir.

Q. Then you went on down the stairs after that, and where did you next go? You three, I mean now.

A. In the cellar.

Q. Then you went down cellar. Now, before we stop in the cellar I want to ask you to tell me if you didn't find the doors through the house very generally provided with locks?

A. Yes, sir.

Q. In all the parts of the house?

A. Yes, sir.

Q. Things were more than usual, I mean more than is usual in houses that you know, kept locked?

A. I think about all the rooms had locks.

Q. There was nothing extraordinary in the fact that Miss Lizzie's door leading out in the front hall had a lock on it?

A. No, sir.

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Q. Or that the door leading into the guest chamber from her room was locked?

A. Nothing extraordinary about that.

Q. And nothing in the fact that the door leading from her room into her father's room was locked?

A. I should say not.

Q. There was a hook on her side and a bolt on his side?

A. Yes.

Q. That is so?

A. A bolt and a lock.

Q. There was a bolt?

A. And lock.

Q. And that was on Mr. Borden's side?

A. Yes, sir.

Q. There was a hook on Miss Lizzie's side?

A. Yes, sir.

Q. And on the other side there was a bolt and a lock?

A. Yes, sir.

Q. So that by raising the hook on her side a person could not go into these rooms in the rear?

A. No, sir.

Q. And Mr. Borden's door had a lock to it, or a bolt, perhaps both?

A. That is the same door,---oh, the outside door?

Q. Leading out into the back stairs?

A. It was locked; yes, sir.

Q. Do you know whether there was a bolt and a lock too?

A. I could not say now.

Q. But wherever you went you found that all the rooms, all the doors, were very securely provided with locks?

A. Yes, sir.

Q. That was the character of the house, wasn't it?

A. It was.

Q. It even went up into Bridget's room?

A. Yes, sir.

Q. And touched all the rooms in the attic? What?

A. Yes, sir.

Q. Now we will go down cellar, if you please; and you three went together?

A. Yes, sir.

Q. Now tell us what you found down there this second time: whom did you see, and what?

A. Mr. Mullally, Officer Devine and Dr. Dolan.

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Q. Mullally, Devine and Dolan?

A. Yes, sir.

Q. Anybody else?

A. There might have been other officers down there: I don't recollect.

Q. And what were they doing when you got there---the second time, now?

A. Looking around in the cellar.

Q. Did you see the axes and the hatchets then?

A. I did.

Q. And were they doing anything with them?

A. No, sir, they were still on the cellar floor.

Q. They were standing down there on the bricks with the handles leaning up against the partition?

A. No, sir, they was on the floor.

Q. Lying right flat on the floor; and there were these four, the two axes and the two hatchets?

A. Yes, sir.

Q. Was there anything else there at the time,---any other things there at that time of this character?

A. That was all.

Q. Well, then what did you do?

A. Stayed down there a little while and looked around and talked, looked at the hatchets and axes again, then I asked Mr. Mullally where he found those axes and hatchets.

Q. I don't care to go into the full conversation, but you may state that, because I asked you about that before.

MR. MOODY. He stated that before.

Q. Yes, but I don't want you to go on to general conversation,---you stated that before, that is correct. What then did you do?

A. He showed me where Bridget got those.

Q. Yes, around in that middle room, just as you have said. What did you do then?

A. I went out and went around the

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building, outside, directing men where to go.

Q. This was the second time?

A. This was the second time.

Q. Not the first time?

A. No, sir.

Q. This was the second time?

A. This is the second time.

Q. Am I right in recalling that you said you went out in the yard after the first time and told the officers where to go?

A. Yes, sir.

Q. Then did you go out the second time and tell them where to go?

A. I told them where to go,---where they had been sent.

Q. The second time?

A. Yes, sir, the second time.

Q. After going down the second time in the cellar you went right out in the yard again to give directions to the officers?

A. Not to give directions to the officers.

Q. To receive reports?

A. As they came to me, yes, sir.

Q. Very well. Did you go back into the cellar again?

A. I was in the house and in the cellar at different times.

Q. No: after that did you go into the cellar again?

A. Yes, sir.

Q. What time?

A. It might have been nearly 4 o'clock.

Q. Well, you mean that it was near 4 o'clock to the best of your recollection?

A. Yes, sir.

Q. Who went with you that third time?

A. I could not recollect that anybody went with me.

Q. You went alone. Was anybody in the cellar when you went

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there the third time?

A. Yes, sir.

Q. Who?

A. Officers.

Q. Well, who?

A. I don't know.

Q. You have about 150 men on the police, I believe?

A. Yes---there were 125.

Q. One hundred and twenty-five, to be exact. Then it is necessary, rather, to limit the number. They were not all up there. Can you help us any. This is important. I want to know who were there?

A. There were so many officers there that I cannot think at the different times that I went into that place---cellar---who the officers were.

Q. Were there so many that third time, that afternoon of Thursday---you are now talking about Thursday afternoon, you understand me?

A. I understand what you say.

Q. On that Thursday afternoon, the third time, were there so many that you cannot tell me anything about them?

A. I don't say there was many officers in the cellar.

Q. Well, that is what I am after.

A. I say there were so many officers around about there and in the cellar and out, as I was, that I cannot tell who the officers were.

Q. No, and I do not ask you to now: but do you recall---can you help us at all--- whether there were any officers in the cellar that third time when you went down?

A. There were.

Q. And you cannot tell how many?

A. I could not.

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Q. Now what did you do that third time down there?

A. I do recollect now.

Q. Well, tell me.

A. Putting it in that way.

Q. Tell me.

A. We pulled over---

Q. Who is "we"?

A. The officers, Mr. Mullaly, Mr. Harrington. I couldn't go on and say any others.

Q. Those two. We'll take that. Now what did you do then? This is the third time?

A. Yes. We looked in back of the wood that was in the cellar piled up.

Q. Which room was that in?

A. That was in the middle cellar.

Q. That same one you have spoken of?

A. Yes, sir.

Q. Very well, what else?

A. And into the other cellars there to see if we could find any trace of any other axe or hatchet or instrument that might have been used in the murder of these two persons.

Q. Did you find any?

A. We did not.

Q. You did not?

A. No, sir.

Q. Did you make then, you three, a thorough search in that middle cellar then?

A. We searched satisfactorily to ourselves at that time.

Q. And didn't find any?

A. Didn't find any.

Q. Well, did you go out and then come into the cellar again?

A. I might have done so.

Q. Well, I know. But help us a little; help us all you can?

A. I think like enough I did, came in there with the marshal.

Q. Well, some part of that afternoon you found something else, you told us?

A. Yes, sir.

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Q. Well, that is so, isn't it?

A. Yes, sir.

Q. Now which time did you find that something else?

MR. MOODY. Well, hadn't we better know what it is?

MR. ROBINSON. Well, he seems to know.

MR. MOODY. Well, perhaps the rest of us would like to.

MR. ROBINSON. Is there any doubt about it? I am on cross-examination now.

MR. MOODY. I only suggested it.

MR. ROBINSON. Oh, I don't want to keep you in the dark at all. That is not my purpose.

Q. Where did you find that? (Hatchet without handle)

A. The afternoon of the 4th of August.

Q. Well, I know; but at which one of these visits in the cellar?

A. The second visit.

Q. Why didn't you tell me before when you went on to tell about the second visit, why didn't you tell me that you found this?

A. You didn't ask me.

Q. I didn't ask you! You didn't know that I was trying to find out all you did in the cellar at each of these times down there? You didn't understand that, did you?

A. I have already stated when and where I found that.

Q. Well, of course. You didn't understand, and we will leave it like that. Now you found this the second time?

A. Yes, sir.

Q. Who were there when you found this?

A. Officer Mullaly.

Q. Anybody else?

A. No, sir; not with me, at the time.

Q. And this you found in the middle room, as you told us, in the

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same box, near the chimney?

A. Yes, sir.

Q. And right very near this ash pile?

A. Some few feet from it.

Q. In the same room where you understood at that time that Mr. Mullaly had taken the other two hatchets from?

A. Yes, sir.

Q. In the same box?

A. In the same box.

Q. And this was in with other tools, I think you said?

A. Yes, sir.

Q. What sort of tools?

A. Pieces of iron, and I think a chisel and I don't just recollect what the things were.

Q. Speak a little plainer now, so we can hear you. Who took this out of the box?

A. At what time?

Q. I suppose when you found it.

A. I did.

Q. Mr. Mullaly, you say, stood right by?

MR. MOODY. He didn't say so.

A. I didn't say that.

Q. Well, do you say that?

A. He was there and showed me the box where the hatchets was taken from.

Q. Did you take it out in his presence?

A. I couldn't recollect whether he saw me take it out or not. He may have done so.

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Q. Now, this room was a very dusty ash room, wasn't it?

A. There was ashes in the room.

Q. I know that. There was a pile there?

A. Yes, sir.

Q. Of several bushels. Wasn't the room generally a dusty room like an ash room around an old chimney and around an old furnace?

A. The ashes was confined to just a certain space.

Q. What space was it?

A. Perhaps three or four feet.

Q. You are now speaking of the pile?

A. Of the pile, yes.

Q. What I mean is, wasn't the brick work on that chimney and the box and the things there generally covered with ashes?

A. There was dust on them.

Q. It was an ashy old place, wasn't it?

A. There was ashes or dust upon the chimney, yes.

Q. Well, a good deal of it, just like any ash cellar, wasn't it?

A. Yes, sir, there was an accumulation of dust.

Q. Really, the things in there were covered with ashes, generally speaking?

A. With dust.

Q. Well, ash dust and ashes?

A. Might have come from the ashes.

Q. You don't see anything improbable in things getting covered with ashes in that room where there was a pile where they were thrown down and dumped, do you?

A. No, sir, naturally the dust would fly.

Q. Had you noticed whether either of the other two hatchets were covered with ashes?

A. The smaller one was somewhat dusty.

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Q. It was dusty?

A. A little.

Q. When you saw it first?

A. Yes, sir.

Q. But you didn't see it until after the other officers had got that out, had that out in the wash-room on the brick floor?

A. I did not.

Q. Now about this one, the claw head.

A. That one apparently had been cleansed.

Q. And that you said before, did you?

A. I did.

Q. What did you see about it? Is it in the same condition now?

A. The hatchet?

Q. Yes.

A. No, sir.

Q. You have had, or some one connected with the government have had it all the time since, haven't you?

A. I presume they have. I haven't had it.

Q. Not in person?

A. I haven't seen it only in the examination.

Q. But Prof. Wood or the marshal or somebody connected with the government side?

A. Yes, I suppose so.

Q. Now, how is it different now?

A. A spot on the handle.

Q. The spot isn't there?

A. I don't see it.

Q. You thought you saw a spot there before or did see one?

A. When?

Q. At the other hearing before the District Court?

A. Yes, at the time I examined this at the house.

Q. You don't see the spot now?

A. I don't.

Q. Was it a large spot?

A. No, sir, it was a small spot.

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Q. Dirt or blood?

A. I couldn't say. It was a red spot.

Q. It was a red spot. Was it paint?

A. I can't say, sir.

Q. Did you form any opinion about it?

A. It looked to me as it might be blood or paint.

Q. Or anything else of that general color?

A. Yes.

Q. How large a spot was it?

A. Might be half an inch long.

Q. It isn't there now?

A. I don't see it.

Q. Was it on that side of the handle?

A. I couldn't say which side of the handle it was on, but it was on the handle.

Q. So far as you know, Miss Lizzie hasn't had any chance to take it off since you found it?

A. No, sir, she has not.

Q. You are sure of that?

A. Yes, sir.

Q. She hasn't had any chance to do it?

A. No, sir.

Q. Now, how else does it look different?

A. Not any further than this, that at the time when I saw it, it was damp.

Q. It was what?

A. Looked damp. The hatchet looked to me bluer than it does now, and there was one red spot upon the blade.

Q. Rust upon it?
A. I think it was.

Q. You think that was rust. Well, is it there now?
A. No, sir. What there is now is all of a darker color.

Q. Well, has anybody been scraping or washing that since you got it?
A. None that I know of.

Q. But the rust spot is gone, isn't it?
A. No, I think not. The color isn't the same.

Q. The color of the hatchet?
A. The color of the spot.

Q. Where is it? Point it out please.
A. I think it is

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about there. (Indicating.)

Q. Right about there. Do I do it right?
A. Yes, sir.

Q. Well there has apparently some little sharp mark been made there. Is that about where it is? You see a little mark as though somebody had taken a sharp tool and made a mark there?
A. Yes, I think---

Q. That has probably been made for that purpose?
A. I don't know. I never saw it before, the mark.

(The mark on the hatchet was shown to the jury.)

Q. Well, as you picked up these hatchets, did you get dust on your hands?
A. No, sir.

Q. It was all off, was it?
A. I didn't put my hands on the blades, that is, to find any dust, that is, to take it off.

Q. How were the handles?
A. The handles was clean.

Q. No dust on that?

A. Not on that one, no, sir.

Q. And this one?

A. None that I saw or noticed in particular.

Q. And about the other tools in the box?

A. There might have been a little dust, of course, on the handles, as I presume there would be, as there was dust upon the blades.

Q. Was there dust on the box around there where these were found?

A. I didn't notice any dust upon the box, any more than---

Q. I mean the fine ashes?

A. No, sir, not on the sides of the box.

Q. Did you notice any dust of ashes right around where the box stood?

A. No, sir.

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Q. Did you take out the other tools that were in that box?

A. I did not.

Q. Did you see whether they were dusty or not?

A. I did.

Q. Were they dusty?

A. They were.

Q. They were all dusty?

A. Some dust on them, yes.

Q. Was there any dust on this one, the one without a handle?

A. There was.

Q. Where? What part of it?

A. All over it.

Q. Quite a dusty old thing, wasn't it?

A. It was.

Q. You are sure about that?

A. Very sure.

Q. Ashes had been on both faces of it, what appeared to be ash dust or ash dirt?

A. Well, yes, sir.

Q. All over it?

A. It looked as if it might have fell into that ash barrel.

Q. It looked just as if this old hatchet without a handle had got into that ash pile?

A. It looked as if it might have been there, to me.

Q. Yes, exactly. And that little piece of the handle was on there at that time, wasn't it?

A. Yes.

Q. And that end there had ashes on it just the same way as it indicates now?

A. Not so much as it had on the other end there.

Q. Will you look and see? Which end do you mean?

A. On this end here.

Q. You mean the end outside or the broken end?

A. On the outside. This piece here was new, apparently a new break.

Q. Had ashes on it, hadn't it?

A. Not as it had on this end.

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Q. Had ashes on it, hadn't it?

A. I didn't notice any ashes, on the new break.

Q. Well, you didn't notice at all, did you?

A. I did, yes.

Q. Well, were there any ashes there?

A. I don't think there was.

Q. You don't think there were?

A. No, sir.

Q. And yet this whole thing looked as if it had been right down in the ash pile?

A. Yes, sir.

Q. And that piece was in there?

A. I don't think the ashes that was there, if ashes was there, was like the ashes that was on the blade of that hatchet.

Q. Well, there were two kinds of ashes there?

A. No, sir, there was one kind.

Q. Now, you say you don't think the ashes on there looked like the other kind of ashes. Now I want you to describe the ashes that were on that end.

A. I don't say there was any ashes there.

Q. Oh, well, do you say there were not?

MR. MOODY. By "there" do you mean on the broken end?

The WITNESS. On the broken end.

Q. You don't say there were?

A. I wouldn't say that, but I didn't notice it because it looked like a new break to me.

Q. Well, did it look as it does now?

A. No, sir.

Q. Well, who has changed it?

A. The age.

Q. Oh, it has grown old?

A. Yes, sir.

Q. Are the ashes there now, in your judgment?

A. I don't see

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any, no, sir.

Q. No ashes there?

A. No.

Q. That was the fourth day of last August, as I understand it?

A. Yes.

Q. And you can see some slivers that were split off on that side, can you?

A. I do, yes.

Q. Were those split off at the time?

A. I couldn't say. This was then in the hatchet head.

Q. So far as you know, of your own participation, that piece stayed in the head?

A. It did.

Q. And left your possession with the piece in it?

A. Yes.

Q. And you didn't chip this off?

A. No, sir.

Q. You don't know who did?

A. No, sir.

Q. And you don't think there is the slightest evidence of ashes in that end, do you,--- your judgment as a man, not as a police officer?

MR. KNOWLTON. I do not think that is quite the proper way of addressing the witness.

MR. ROBINSON. I will withdraw it. I do not think it is. There will be no difference about our department here.

The WITNESS. I don't see any ashes here.

Q. Nothing there to indicate it?

A. No, sir.

Q. Now, what did you do with that after bringing it out of that box?

A. I didn't bring it out.

Q. What did you do with it?

A. I let it remain in the box after looking at it.

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Q. You didn't take it along with you?

A. I did not.

Q. And you didn't take it out and lay it down with these others?

A. No, sir.

Q. Did you show it to Mr. Mullaly? Was Mr. Mullaly there?

A. He was there.

Q. Did you show it to him?

A. I can't say that I did. I think I did. I think he saw it.

Q. Did he see you put it back in the box?

A. I presume that he did, sir.

Q. At that time the other four were standing out in the wash room?

A. Yes, sir.

Q. You went off and left this in that old ashy box just as you found it, did you?

A. Yes.

Q. And you didn't do anything to it?

A. I did not, no, sir.

Q. You said at the former hearing, perhaps you did here, that this one with the claw head looked as if it had been washed or scraped?

A. Yes.

Q. Well, show us how?

A. It looked damp, and had a kind of bluish cast, and looked as though it had been wiped.

Q. Well, was there anything else about it?

A. That was all.

Q. (Exhibiting another hatchet.) Well, did that one seem to have been washed too?

A. No, sir.

Q. That didn't appear to have been washed at all?

A. Oh, no.

Q. No signs of blueness about it?

A. No, sir.

Q. And no signs of scraping about it?

A. No, sir.

Q. You are positive about that?

A. Very.

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Q. You looked at it so that you are willing now to swear to this jury that that when you got it that did not show the slightest sign of washing?

A. No, sir.

Q. It did not; that is what you mean by "No, sir." And there was no sign of scraping it?

A. No, sir, it was covered as already stated.

Q. Covered with dirt and ashes?

A. Dirt.

Q. Now, you this morning, having it called to your attention, swear that there were no ashes on that broken end at that time?

A. Not that I discovered.

Q. Well, you looked, didn't you?

A. I looked, yes, and didn't see any.

Q. Will you swear that they were not there?

A. No, I couldn't really do that.

Q. You don't really do that?

A. No, sir.

Q. Well, do you really say there were?

A. No, sir.

Q. What did you say yesterday about it?

A. About what?

Q. What did you say yesterday about ashes on that end?

A. I don't know that I said anything about ashes on that end. I said that the hatchet was all covered with dust.

Q. Do you remember being asked by Mr. Moody yesterday, "At that time, Mr. Fleet, did you observe anything with reference to the point of the break of the hatchet? Ans.

The only thing that I recognized at the time was that this was apparently a new break."

Do you remember that? And the next question, "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? Ans. There seemed to be ashes there like the other." Did you swear to that yesterday?

A. I might have said that, yes, sir.

Q. Well, I know that. We can all guess. I want to know if you did?

A. I suppose I did.

Q. Which time is right?

A. How?

Q. Were you telling it as it was yesterday or as you tell it now this morning?

A. I tell it this morning just as I saw it.

Q. Then you didn't tell it yesterday as you saw it?

A. Well, I suppose I did yesterday as I thought. I may have misunderstood about the break. I understand this was a new break.

Q. I will read the question again, "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?" Didn't you understand that question?

A. No, not in that way. I understand that it was all covered with dust.

Q. What?

A. It was all covered with dust, the hatchet, and that part there was a new break. There might have been dust on it, but I didn't discover it because it seemed to be as if it had been newly broken.

Q. What did you say then, "There seemed to be ashes there like the other", meaning the hatchet, of course,---what did you say that for?

A. I don't know.

Q. You can't tell, can you?

A. No, sir.

Q. Can you tell any reason why you stated this in two directly different ways, once yesterday afternoon just before adjournment, and now this morning as quick as we can get it here?

A. No, sir, I can't.

Q. Can't tell what you told those two different statements for?

A. No, sir.

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Q. Were they both true?

A. They cannot both be true.

Q. Will you take your pick. Let us have the one you like best this morning?

A. Well, I will state just as I saw it, that the hatchet was covered with dust.

Q. Well, get down to the end of that piece of wood; that is what I am after.

A. Well, that was a new break, and I didn't discover any ashes, although there might have been ashes on to it, of course.

Q. You didn't discover any at that time, you said, or did you discover?

A. I don't want to say that I did or that I did not discover, because I am in doubt. This thing here looked like a new break to me.

Q. I know, you keep saying that, but I am after the ashes on the break. Now, which one of those two answers will you take, or do you want to make another one?

A. No, sir; I will take the answer---this answer: that I didn't discover or didn't notice any ashes upon the break.

Q. That is this morning's statement?

A. Yes; while there might have been ashes on there.

Q. Oh, are you going to put that in?

A. Well, of course I will. I don't want to make it any other way.

Q. Well, I want to know really which answer you want, or whether you want to kind of split it. Can I do anything to help you out?

A. I don't know---if that will do---whether there was ashes on there or not. I will take it that way.

Q. Now that is the way you will leave it?

A. Yes, sir. The rest part of it was covered with ashes, and that was a new

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break.

Q. Now I understand you leave it in this way: that yesterday you said there were ashes on there just like the other, and this morning you said there were not ashes on it just like

the other, and you do not want either one of those answers, and now you say you don't know whether you looked or not?

A. That is not what I said.

Q. Well, is that what you want to say?

A. I want to say that I don't know whether there was ashes on that broken part or not. There was ashes upon the blade.

Q. Well, we understand that.

A. And all over the hatchet.

Q. But you know I am talking entirely about that end, that break?

A. I do now.

Q. And I do not want you to tell me anything about the condition of the hatchet part, because we have talked about that. Now I want you to tell me again, and I will quit this at once, how you say that end which you call the broken end was, when you looked at it?

A. It was a new break apparently.

Q. I understand that. How was it in reference to ashes?

A. I didn't discover any ashes on it that I remember of.

Q. You put it back in the box?

A. Yes, sir.

Q. When next did you see it?

A. I think it was in Taunton.

Q. What?

A. In Taunton.

Q. You saw it in Taunton?

A. Yes, sir.

Q. Where?

A. Before the grand jury.

Q. Was it never down to the marshal's office to your knowledge?

A. Not to my knowledge.

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Q. Do you know who took it away from the place where you put it?

A. Only as I have heard.

Q. And who was that?

A. Officer Medley.

Q. Who is Mr. Medley?

A. An officer. That is, he is now an inspector at the police department of Fall River.

Q. Is that in the line of detective work?

A. Yes, sir.

Q. Working up cases?

A. Yes, sir.

Q. He is specially detailed to get proofs, look up proofs. Is that so?

A. To do special police work; yes, sir.

Q. He didn't testify at the preliminary hearing, did he, before the District Court?

A. I believe not.

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Q. You think not: you are pretty certain, aren't you?

A. Yes, sir, I think I am.

Q. Was this hatchet and that broken piece produced at the District Court in Fall River?

A. No, sir.

Q. Sure about that?

A. I never saw it: I never knew of its being produced.

Q. Did Mr. Medley have it at that time?

A. I could not say, sir.

Q. Don't you know where it was by information? Don't you know where it was from the fourth of August down to the time when the Grand Jury sat?

A. No, sir.

Q. Hadn't heard at all who had it?

A. I heard before the Grand Jury sat.

Q. That Mr. Medley had it?

A. That it was in the possession of the marshal.

Q. Of the marshal?

A. Of the city marshal, and brought to him by Officer Medley.

Q. In Fall River?

A. In Fall River.

Q. Do you know whether or not it was turned over to Professor Wood for examination?

A. I do not.

Q. Don't you know that it was there in Fall River before the hearing?

A. I know that it was not.

Q. You took this (holding up claw hammer hatchet) and put it away?

A. Yes, sir.

Q. Because you thought you might want it afterwards?

A. Yes, sir.

Q. You looked out for that?

A. I did.

Q. And you thought that looked---that is the claw hammer?

A. Yes, sir.

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Q. You thought that looked as if it had been scraped and washed?

A. Yes, sir, that is right.

Q. And you took that and put it away around behind the boxes?

A. Yes, sir.

Q. And you produced this with the others, or somebody did---produced this with the others at the District Court?

A. Yes, they were there.

Q. When you examined this (holding up hatchet head) without the handle, and the stub in it, on the fourth of August, you did not lay this aside anywhere, did you?

A. No, sir, only in the place where I found it.

Q. Well, you do not call that laying it aside?

A. No, sir.

Q. You put it right back?

A. Yes, sir.

Q. You testified, as you have said, at the District Court at the preliminary examination: you have said so?

A. Yes, sir.

Q. When Mr. Adams and Mr. Jennings were there of counsel for the defendant?

A. That is right.

Q. I will recall you to that particularly. Did you in your testimony there say one word about this handleless hatchet? (Holding up hatchet head).

A. No, sir.

Q. Did anybody tell you not to say anything about it?

A. No, sir.

Q. And when you were asked what you found down there of any implement that might have been used for the murderous purpose, did you say that you found anything else?

A. Other than those---

Q. Other than the four?

A. No, sir.

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Q. And didn't you say that you did not find anything else?

A. I did not find them.

Q. Didn't you say in that testimony that you did not find anything else?

A. No, sir.

Q. What?

A. No, sir.

Q. Are you right about that now?

A. Yes.

Q. No mistake about it? I want to have you be sure. Here are the four. (Holding up axes).

A. Yes.

Q. And you were asked in regard to them, and didn't you say you failed to find anything else there?

A. Oh, I might have said that, and at the same time---I had found that thing and put it back again.

Q. What did you say to that Court for, under oath, that you failed to find anything else, when you did find something else?

A. Yes, but I left it where I found it.

Q. You did not find it, then, simply because you did not carry it away?

A. I didn't take it away.

Q. Oh, you understood that question to be that if you didn't take it away you didn't find it?

A. I saw it as I saw other things.

Q. Well, I want to know now if you didn't tell that judge in that Court that you didn't find anything else in the cellar?

A. I might have done.

Q. I want to know if you did not?

A. I don't know. Perhaps you can show me.

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MR. ROBINSON. I can't tell you, but I am going to tell you what you said yourself.

THE WITNESS. Very well: let me have it.

MR. MOODY. I pray your Honors' judgment.

MR. ROBINSON. That won't do, I know: I agree. We get warm sometimes when we do not mean to, your Honors. I beg the Court's pardon, as well as the witness'. Let me read: (Reading from testimony of the witness before the District Court): "What did you find down in the cellar?" I want to see if this is correct: "A. I found Mr. Mullally, Mr. Doherty and afterwards Dr. Dolan. I found Mr. Mullally with a pair--- these same axes and hatchets on the floor in the wash room. We searched down in the cellar, we searched the cellar even after that, to see if we could find anything that might have been used, other than what was already on the floor: but failed to find anything." "Q. What was it that was already on the floor?"

MR. KNOWLTON. Wait a minute. I submit, if your Honors please, whether there should not be some more reasonable limit to the amount of reading before the question is answered.

MR. ROBINSON. I will take your suggestion for this time, to save time.

Q. You heard the first answer read. Did you make that answer?

A. Finding these on the floor?

Q. "We searched down the cellar, we searched the cellar even after that, to see if we could find anything that might have

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been used, other than what was already on the floor: but failed to find anything." Did you say so?

A. I might have said so.

Q. Did you?

A. Well, I will say yes.

Q. "What was is that was already on the floor?" "The two axes and the two hatchets." Did you so say?

A. Yes, sir.

Q. Now what reason had you for telling that Court that you did not find this hatchet? (Holding up hatchet head).

A. None other than the hatchet, as I found it in the box---placed it there again---being all covered with ashes, I didn't take it away. The handle having been broken at that time, I didn't think---if it is allowed to go in, that it was used for the purpose of killing.

Q. Notwithstanding it had a fresh break on the handle?

A. Exactly.

Q. Notwithstanding that?

A. Notwithstanding the fresh break.

Q. And notwithstanding the dust on it, as you have told us yesterday, looks different from the dust on all the rest?

A. Yes.

Q. Notwithstanding all there was about it, being different from the rest, you did not think it was worth talking about?

A. That is the way I looked at it. That is the reason I left it there.

Q. That is not what I asked you, why you left it, but why you did not testify about it?

A. Because I didn't think it come into play.

Q. You didn't think it did?

A. No, sir.

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Q. Do you know whether you went in or out the front door of that house that day?

A. I don't remember.

Q. Don't remember?

A. I know I didn't go in that way.

Q. And do you know whether you saw anybody else pass in or out that door, the front door?

A. Yes, sir.

Q. Who?

A. I think Miss Emma Borden, together with a trunk.

Q. That is when she arrived at night?

A. Yes.

Q. But I mean earlier in the day?

A. I don't remember that I did.

Q. Well, there were in and about the house there all along that forenoon or morning, there were people, quite a number of people, were there not?

A. That morning and afternoon.

Q. Yes, sir, and going up and down the front stairs?

A. Yes, sir.

Q. And whether or not the door was bolted, or whether anybody unbolted it or bolted it, you do not know---the front door?

A. Not that I saw. I examined it myself: that was all

MR. MOODY. I did not quite catch the last.

THE WITNESS. I examined it myself and found it locked and bolted.

Q. What time in the day was that?

A. It was very early in the day: that is, I should think noon time.

Q. But there had been other persons there before you, quite a number?

A. Oh, yes.

Q. So whether it was done by them or not is more than you can say?

A. I cannot say as to them.

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Q. You spoke of finding a pail near the foot of the stairs---I think you did, as you went down,---didn't you?

A. I did not. There was one there; I did not testify to that, I think.

Q. There was one there?

A. There was in the wash cellar.

Q. There was one there?

A. In the wash cellar.

Q. There were clothes in it?

A. There were.

MR. ROBINSON. It is agreed that that pail contained the napkins which had been worn within a day or two by the defendant,---the ordinary monthly sickness---and as to that fact that is all we propose to put in. We do not care to go into the details. It is also agreed that the sickness ended Wednesday night.

That is all, Mr. Fleet.

Q. (By Mr. Robinson.) Can you fix more definitely, Mr. Fleet, than you did yesterday, the minute when you arrived at the Borden house, the first thing in the morning?

A. Well, the only way that I can fix the time is this: That my wife was sick at the time of this murder and Dr. Tourtellott was attending her. When I got home the doctor was with my wife, and I took off my hat and coat, it being a warm day, was in the house a moment or two and asked the doctor how she was getting along.

Q. I believe that is not necessary.

A. After being there perhaps two or three minutes the doctor then looked at his watch and says "Twenty five minutes of twelve." He says, "It cannot be that time, can it?" I

says, "Yes, sir, that is about right," and immediately afterwards, within a minute or two, the door bell rang and I went and saw what was wanted, and

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Mr. Stone's man said that the marshal---

Q. Leave out the conversation: You had a call. Make it short.

A. Then I immediately put on my hat and coat and jumped into this team, or buggy, and went to No. 92 Second Street.

Q. Without going to the office?

A. Without going to the office.

Q. About how long after the doctor took out his watch and said it was 11.35 before you got away from the house?

A. Not more than two minutes.

Q. How long in your best judgment, would it take you to go from there up to the Borden house?

A. I should say about five minutes or less.

Q. So that you got there about a quarter to twelve?

A. I call it about that.

Q. This is as near as you can fix it?

A. That is as near as I could fix it,---looking at the time, twenty five minutes to twelve.

Q. Do you recall that you fixed it somewhat differently at the other hearing?

A. Yes, sir.

Q. What did you say then about the time?

A. I think I said between fifteen minutes of twelve or twenty minutes of twelve and twelve o'clock.

Q. Do you recollect it? May I ask whether this is it:

"Q. Have you any idea when you got there? A. Yes; I think somewhere between quarter to twelve and twelve o'clock,---perhaps ten minutes to twelve."

A. Yes, that is just what I gave it

Q. That is more likely to be right?
A. I should say ten minutes to twelve o'clock.

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Q. You would not then make any substantial change in that?
A. No, only it would not take me more than five minutes to get to the Borden house.

Q. You knew all about that last August, didn't you?
A. Yes, sir.

Q. It might have been then, according to your best recollection, not earlier than ten minutes to twelve?
A. It might have been, but I think fifteen would strike it right, as I look at it.

Q. We will leave it there. That is all, sir.

RE-DIRECT EXAMINATION.

Q. (By Mr. Moody.) You told us when you first went in and passed through the sitting room into the front hall, and tried the door, you found it locked. I wish you would describe how it was locked at that time?
A. I don't think I testified in that way.

Q. What did you say about the front door's being locked?
A. Not at that time; I did not examine the door.

Q. When did you examine the door?
A. After I came down stairs.

Q. After you came down---
A. From Lizzie's room, the first time.

Q. The first interview?
A. The first time.

Q. So that you first passed the front door, went to her room and then returned and then examined the door?
A. Yes, sir.

Q. Now will you state how it was locked?
A. Well, it was bolted and locked. That is about all that I can say about it.

Q. What was there in the claw-hammer-hatchet which led you to separate it from the others? What were the appearances that led you to separate it from the others?

A. It had apparently

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been washed.

Q. Yes.

A. And wiped.

Q. Yes.

A. And looked damp, and bluer than it looks now. That is, more blue, it seemed to me.

Q. Yes.

A. And there was a spot of rust upon it which was very red. To me it looked as if it might be blood at that time, and also a spot upon the handle,---a stain upon the handle, which looked like blood.

Q. Did you show it to Dr. Dolan the medical examiner at that time?

A. Yes, sir.

Q. At the preliminary hearing were you asked questions by counsel as you are here?

A. By Mr. Adams.

Q. And by Mr. Knowlton?

A. By Mr. Knowlton.

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Q. Did you testify in any other way than to reply to such questions as were asked of you by the respective counsel? Did you do anything except answer questions, in other words?

A. Yes, sir.

Q. What did you do?

A. Mr. Knowlton told me to state just what I did, and I went through with my statement as I recollected it.

RE-CROSS.

Q. (By Mr. Robinson.) On that last question, after you had given your testimony over there at the District Court in the way that I have read it to you, and the other also, didn't

Mr. Knowlton ask you, as the last question this: "Is there any other fact, Mr. Fleet, that I have not asked you with relation to this matter?" And didn't you say, "Not that I can think of."

A. It might have been so; yes, sir.

Q. That is so, is it?

A. Oh, yes; he asked questions other than my making a statement.

Q. And he gave you an opportunity to state anything else that you recollected. You understood it so?

A. Yes.

Q. How was the front door locked at the time you tried it?

A. The bolt, and locked.

Q. And two locks?

A. I wouldn't say whether there was two or one.

Q. Well, do you recollect that the bolt was slid, or did you simply find it out by trying the knob to open the door?

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A. No, it was bolted.

Q. You recollect that as an independent observation?

A. Yes, sir.

Q. But you did not observe whether the lower key under the knob was turned or not?

A. No, sir.

Q. And did you tell anything about this fact at the other examination?

A. I did not notice that the key was turned, you say?

Q. Yes. Did you or did you not?

A. I noticed that it was bolted and locked.

Q. You remember that there was a spring lock or latch lock on there?

A. Yes, sir.

Q. And also was there not another lock just below the knob, the ordinary door lock?

A. Yes.

Q. Did you try that to see whether that was locked or not?

A. The spring lock was locked, and it was bolted. Whether the other one was locked or not I don't recollect. There was three.

Q. Whether you found out about the locking by trying the knob? I think you said you looked directly at the bolt. Is that so?

A. The bolt---it was bolted

Q. Well, leave it right there. And I think you did not answer my question whether you testified about this bolting of the front door at the prior hearing?

A. I don't know whether I did or not.

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PHILIP HARRINGTON, Sworn.

Q. (By Mr. Moody.) Your name is Philip Harrington?

A. Yes, sir.

Q. 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.

Q. On the 4th day of August of last year was your attention called to anything on Second Street at any time?

A. It was, sir.

Q. Where were you?

A. I was at dinner, had just finished dinner.

Q. What was your dinner hour that day?

A. From half past eleven to quarter of one.

Q. That is, that is the time you were absent from duty?

A. Yes, sir.

Q. Of course you had to go at half past eleven to your house?

A. Yes, sir; that was the regular time to leave my route.

Q. Can you tell me about what time it was when your attention was called to the trouble on Second Street?

A. About twelve o'clock.

Q. By whom was it called?

A. A young man named Turner.

Q. After that what did you do?

A. I immediately put on my coat and hat and took a horse car.

Q. How far by horse car, how long by horse car, if I may put it

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that way, were you from Second Street?

A. Well, I should judge a little over a half a mile.

Q. Do you know what time you got there?

A. Between fifteen minutes and twenty minutes past twelve.

Q. Is that by your judgment or did you consult a timepiece?

A. Judgment. I was led to think so by the time the car arrived at City Hall.

Q. What time did the car arrive at City Hall?

A. It was what was known as the quarter past twelve car.

Q. To arrive there?

A. Yes, sir.

Q. On arriving there you walked, I suppose, from there to the Borden house?

A. I did not go to the City Hall. I stopped at the corner of Second and Rodman streets and walked down Second to the house.

Q. That is about how far?

A. Perhaps 250 or 300 feet.

Q. When you got there had any crowd collected about the premises?

A. Yes, sir.

Q. Where did you go first?

A. I went in the front gate, walked along the yard front of the house to the north side, along the north side to the north door on the side.

Q. Whom did you see at the north door?

A. Mr. Sawyer.

Q. Did you go into the house?

A. Yes, sir; I went into the house.

Q. Before going anywhere else?

A. Yes, sir.

Q. Whom did you see in the house on the ground floor?

A. I saw Officer Devine.

Q. I do not care to go into all the officers. Was Miss Lizzie

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Borden there?

A. No, sir.

Q. Did you see any of the ladies there?

A. I saw several ladies there, I didn't know who they were.

Q. Whom, you did not know?

A. I did not know them.

Q. And were there some officers? I do not care for their names.

A. Yes, sir.

Q. Where did you go after you first entered the house?

A. I asked a question or two, and I was directed to a door on the west side of the kitchen. It was closed. I opened it and went into a room which was called the sitting room.

Q. Yes. And you discovered Mr. Borden's body there?

A. Yes, sir; on a sofa which rested on the north side of the house was the form of a man partially covered with a sheet, going from the head, the west end of the lounge, down a little below the knees. Below that black pants and a pair of laced shoes.

Q. Did you do anything, or simply see the body covered with the sheet?

A. I raised the sheet from the face and looked at it.

Q. From the appearance could you recognize the person who was there?

A. I could not, sir.

Q. You had known Mr. Borden?

A. Yes, sir.

Q. How long?

A. Well, I had known Mr. Borden for twenty or twenty-five years. I had worked for him for over three years at one time.

Q. Can you give any further description about the part of Mr. Borden's body which had been wounded and the blood which was

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about it?

A. The face was all cut and covered with blood. The clothes were stained, the shirt front and part of the coat.

Q. Did you notice anything with reference to the condition of that blood? If you did tell us.

A. Yes, sir. There was some of it very dark as though it was from the veins, and there was more of it very bright, of an artery hue.

Q. At that time can you tell us anything with reference to its thickness; did you observe anything?

A. Yes, sir; it was quite fresh, and as I stood there, or just as I got there and took this sheet, there was a small drop trickled down the side of the face.

Q. Did you notice anything else with reference to the body---its temperature?

A. No, sir; I didn't touch the body.

Q. Is there anything else that occurred in that room before you left it?

A. There were one or two persons came in and stood by me. Who they were I don't know.

Q. Then where did you go?

A. I asked a question in regard to the other murder, and they told me she was upstairs.

Q. Then you went up?

A. I went out the front hall, up the stairs, and as I got part way up I looked toward a door on the north side of the hall. On the far side of the room, under the bed, I saw the form of a woman. I went up and entered the room.

Q. Describe a little more particularly where you were when you saw the form of the woman?

A. Well, I should say I was about midway on the stairs.

Q. And your head was where with reference to the hall floor?

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A. Just above the floor, sir.

Q. Was there any difficulty in seeing the body?

A. No, sir.

Q. Then where did you go?

A. I went upstairs, along the hall, into the room, around the foot of the bed, and stood a short distance from her body and looked at her.

Q. Did you notice anything? If you did you can state it?

A. I noticed that the head had been cut and there was blood around the floor, blood on the back of the dress. There was blood on the pillow sham nearest to her, and some on the spread.

Q. Did you observe anything with reference to the condition of the blood on or about Mrs. Borden's head?

A. Nothing more, sir, than it was quite dark.

Q. Thence where did you go?

A. I then turned around to come out, and on the threshold of the door stood Officers Cogswell and Riley. I stepped into the hall, turned toward these to go to the head of the stairs, and as I did so 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 the 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.

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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. That is, the head of the bed was up in the north-east corner, forming a triangle with the north and east sides of the wall. She stood at the foot of the bed on the north side.

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.

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?"

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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

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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.' "

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, 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

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appearance and manner during this conversation?

MR. ROBINSON. Wait a moment---what she did and what she said.

MASON, C. J. If the witness observes carefully the question 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.

MASON, C. J. 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.

Q. 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.

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

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the rule. "She was cool."

MASON, C. J. 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. Did you notice at that time what dress she had on---what sort of a dress she had on?

A. Yes, sir.

Q. Will you describe it?

A. It was a house wrap, a striped house wrap, with a pink and light stripe alternating; the pink the most prominent color. On the light ground stripe was a diamond figure formed by narrow stripes, some of which ran diagonally or bias to the stripe and others parallel with it.

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Q. It was a loose house wrapper?

A. Well, the sides were tailor fitting, or fitted to the form. The front from the waist to the neck was loose and in folds. The collar was standing, plaited on the sides and closely shirred in front. On either side, directly over the hips, was caught a narrow bright red ribbon, perhaps three-fourths of an inch or an inch in width. This was brought around front, tied in a bow, and allowed to drop, with the ends hanging a little below the bow. It was cut in semi-train or bell skirt, which the ladies were wearing that season.

Q. That finishes it, does it?

A. I think so.

Q. Then you went where?

A. I went out the door, down stairs, 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 note paper in his hand. I asked him what they were.

Q. You say you saw Dr. Bowen with some scraps of note paper in his hand?

A. Yes, sir.

Q. Where was he standing?

A. He was standing a little west of the door that led into the rear hall or entryway.

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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 fire box. 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.

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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.

(A recess of five minutes was taken.)

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Q. You had finished your description of the size of the burnt paper. Could you tell anything about what sort of paper it was from the embers? If you can, say so.

A. I can tell the impression I have.

Q. I don't think I will ask for that. What did you then do, Mr. Harrington?

A. Just about that time Dr. Dolan came into the kitchen.

Q. Did you have any talk with him---I don't ask you what it was?

A. I had a talk with him. He had two or three cans in his hand and one or two hatchets: I think three hatchets. He called me by name: I went to him.

Q. I don't care for the talk.

A. I am not going to tell, sir.

Q. Very well then. Did he give you anything?

A. I went to him: he told me certain things, and I complied with his request.

Q. What was that? What did you do?

A. Stood guard over these cans.

Q. How long did you stay there with the cans?

A. Perhaps five or seven minutes.

Q. Then what was done with them?

A. The assistant marshal gave me orders to do something else. I put the cans in his charge and left.

Q. Did you return to the house again that day?

A. Yes, sir.

Q. What time?

A. That I cannot say.

Q. Whether in the afternoon or---

A. Yes, sir, it was in the afternoon.

Q. What did you do after your return?

A. The marshal and I went there together: we entered the barn. In the barn was two or three officers. He gave orders and we set out to execute them. That was on the ground floor. When we got through there he ordered us upstairs. We went up, I just ahead of the marshal. When we got there, Officers Connors, Riley and Doherty, I think, were the men in the barn.

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Q. What did you do in the loft at the barn?

A. Received further orders there; went to work to execute them, threw over the hay from one side, or end of the barn to the other and examined it thoroughly, as I thought.

Q. At that time was the hay door of the barn open?

A. Not when we went in. It was open later.

Q. Was it open?

A. Yes, sir, one of the officers opened it.

Q. What was the temperature in that loft of the barn?

A. As to degrees, I cannot say, but it was extremely hot.

Q. Did you notice anything as to dust at that time?

A. Yes, sir, it was very dusty, very uninviting, the floor, bench and hay, an old fashioned fire-place which stood in the north-west corner of the barn, and some window screening and binding cords---things that were covered with dust.

Q. Did you notice with reference to the window, whether any covering on the inside or outside?

A. I think on the west window a curtain, but about that I am not positive.

Q. How were the windows, opened or closed?

A. They were closed when we went in, covered with cob-webs, and I should say, if there was a curtain on this window, about which I am not positive, it was rolled up, because I recollect distinctly seeing the bottom of the window.

Q. You say the windows were covered with cob-webs and clothes?

A. Yes, sir.

Q. Now, can you give any other description of the atmosphere, except that it was very hot?

A. Not until the pitching of the hay around. I noticed then it contained considerable dust,

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very disagreeable breathing there.

Q. After you began to pitch the hay around?

A. Yes, sir.

Q. In addition to heat I will ask you the direct question,---Was it what was called close?

A. Yes, sir, suffocating, you might say.

Q. Was it before or after you began to pitch the hay that it was suffocating?

A. Yes, I noticed that it was so before we touched anything.

Q. How long do you think you stayed in the loft of the barn?

A. I think I stayed there about twenty minutes or a half hour.

Q. Were you doing these things which you described, or did you do anything else there?

A. That was all, sir.

Q. Did you see anything of a basket or box containing anything?

A. I saw a basket on this table, work-table I call it.

Q. What did it contain?

A. That I don't know.

Q. Do you know whether it was brought away at that time?

A. It was not as far as I know.

Q. Down stairs did you notice anything with reference to any box?

A. No, sir, I can't say.

Q. After you completed the work in the barn, Mr. Harrington, where did you go?

A. I went into the house, through the kitchen, opened the dining-room door, spoke to the Marshal, received orders, went down to the cellar.

Q. Did you take anything from the cellar?

A. No, sir, I did not take anything.

Q. You made some search there?

A. Yes, sir.

Q. Found nothing?

A. Yes, sir.

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Q. What did you find?

A. Together with the assistant Marshal and Dr. Dutra, and I think officer Riley and officer Mullally---about that I am not positive now---but Dr. Dutra and the assistant Marshal and I went there. Lying on the floor in what was called the wash-room was an axe and two hatchets. About that I am not certain, I am not positive about one axe and one hatchet, but I think two.

Q. Did you take them away?

A. No, sir. There was one I saw earlier in the day in Dr. Dolan's hands, which was not very different.

Q. Do you recognize that as between the two hatchets?

A. I can tell which it resembled. (indicating one in the hand.)

Q. That one?

A. Yes, sir.

Q. The claw-hammered one?

A. Yes, sir.

Q. Were the others taken away at that time?

A. No, sir, that was missing. I went and searched for it. I found it in the west end of the house, in one of the cellars, or one apartment of the cellar, on a chopping block.

I took it back to the wash-room. Assistant Marshal Fleet, and I had some talk about it. He took it and brought it into the cellar north of the wash-room and placed it on a shelf attached to the south partition of that room, behind a box and a keg.

Q. Were any of these hatchets or axes taken away at the time you were in the cellar in the afternoon?

A. They were not.

Q. But were left there?

A. Yes, sir.

Q. Was there anything else you discovered in the cellar?

A. No, sir.

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Q. Now did you go anywhere else after that?

A. I came up stairs and went out in the yard, met the Marshal and he gave further orders and I proceeded to do what he ordered,

Q. What did you do in the yard and about the premises?

A. I assisted in the search of the woodpile. I climbed over the fence into the Chagnon yard, went to the Chagnon house, had a talk with some people there, left there, went through the Crowe yard, searched all through that under the lumber and round the barn, shed, stone,---left there, went through into Dr. Kelly's yard and looked there for awhile; went from there to Mrs. Crapo's, searched round there, spoke to her and what I supposed to be the servant girl, left there and went into the Fall River Ice Company's yard, spoke to

several men there, went through there up to the corner of Third and Rodman street, down Rodman to Second street and back to the Borden house.

Q. In all that search about the yard, barn,---all these adjoining premises, did you find any weapon of any kind or any marks of blood of any kind?

A. No, sir.

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CROSS-EXAMINATION.

Q. (By Mr. Robinson.) You got there about 12.20?

A. About that, yes, sir.

Q. How long did you stay before leaving the premises entirely?

MR. MOODY. By "entirely", you mean the first time, of course?

Q. Did you go there to the house more than once that day?

A. Yes, I went in the afternoon; later in the afternoon I went there.

Q. You went there at 12.20, and how long did you stay at that time?

A. Well, about that I can't say.

Q. Well, can't you give the jury some idea?

A. Well, possibly twenty minutes or half an hour.

Q. Was it during that time that you had the talk with Miss Lizzie?

A. Yes.

Q. You went later in the afternoon about what time?

A. I couldn't say about what time, but I should think about half past two or three o'clock.

Q. How long did you stay then?

A. I stayed then until close to six.

Q. And during that second visit did you have any more talk with Miss Lizzie?

A. No, sir.

Q. Well, your talk with her then was right after 12 o'clock, or between twelve and one?

A. Yes, sir.

Q. A good many people about there at that time?

A. There were.

Q. A good deal of excitement?

A. Well, it wasn't demonstrated.

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Q. What?

A. I didn't see any demonstration of excitement. Everybody was quiet and peaceable.

Q. You think that everybody was perfectly collected and calm, all the people around the house there outside?

A. Well, they didn't show any indications of being otherwise, more than walking round and talking casually.

Q. Well, I don't mean there was any riot, but whether there was any excitement such as there would be? You don't know about that?

A. No, sir.

Q. Do you recall your asking her at that interview whether she had any suspicion of any of the farm help?

A. I did not, sir.

Q. You think so?

A. No, sir.

Q. You testified over in the District Court?

A. Yes, sir.

Q. May I read you something and see if you recollect? "She said she could tell me nothing at all." At the time you were asking her what account she could give.

A. Yes, sir.

Q. You remember that question?

A. Yes, sir.

Q. I will read right along until I come to the part which I want you particularly to notice. "I asked her if she could tell me anything about this. She said she could tell me nothing at all. I then asked her when she last saw her father. She

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said when he returned from the post office he had some mail." ' Now this is in quotations as her statement: 'I asked him had he any mail for me, and he said no.' Then I asked her who was in the house at the time she saw him murdered. She said there was nobody there that she knew of but the girl, Maggie, and herself. She called her Maggie. I asked her where she was at the time the murder was committed. She said in the barn." Now I call your attention to what I read next. "I then asked her if she had any suspicion of the farm help. That was owing to what I had heard. The reason I asked that was from something I had heard. She said, "No, they are reliable men and have been in our employ for several years." Do you recall that?

A. Yes, I do now.

Q. That is so, isn't it, Mr. Harrington?

A. Yes, sir.

Q. And that was said at the time?

A. Yes, sir.

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Q. This interview that you had with her was somewhere between 12 and 1 o'clock?

A. Yes, sir.

Q. Did you see Mr. Fleet there during that time?

A. At the conversation, the interview?

Q. No, not in the room, but did you see him on the premises---

A. Afterwards.

Q. Didn't you see him before?

A. I think not, sir.

Q. Do you know whether or not he had any interview with her?

A. No, sir.

Q. Do you know whether any one had?

A. No, sir.

Q. You advised her not to be interviewed any more that day, didn't you?

A. Yes, sir.

Q. Did she know that you were one of the police?

A. I should think so. I was dressed in uniform.

Q. Dressed in uniform; and you told her that she had better not be interviewed by anybody any more that day?

A. Yes, sir.

Q. Do you know whether she was interviewed by Mr. Fleet after that?

A. No, sir.

Q. You do not know about that?

A. No, sir.

Q. Nor how many times he went there?

A. No, sir.

Q. Nor any other of the officers?

A. No, sir.

Q. You were then a patrolman?

A. I was, sir.

Q. And promoted when?

A. The tenth day of February last.

Q. You are now captain?

A. Yes, sir.

Q. You said, speaking of Mr. Borden as he was laid upon the sofa---did he have slippers on?

A. No, sir.

Q. What kind of boots did he have on?

A. He had a laced shoe.

Q. Do you mean a low shoe?

A. No, sir.

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Q. A laced high shoe?

A. Yes, sir.

Q. You are pretty certain about that?

A. Yes, sir.

Q. It was not a congress boot?

A. No, sir.

Q. You know what I mean?

A. Yes, sir.

Q. You are certain about that. Have you ever seen the photograph of the body as it is presented here?

A. Not the photograph, no, sir.

Q. (Showing photograph to witness). Will you look at those shoes---your eyes are better than mine, but will you kindly tell us whether those are a correct representation?

A. Not as they impressed me, sir.

Q. Then, as you recall it, this is not correct?

A. As I recall it.

Q. Then seeing this, having this to refresh your recollection, do you change your statement?

A. No, sir.

Q. You leave it that he had on laced boots?

A. My impression was laced boots.

(Photograph shown to the jury).

Q. Well, that is merely a matter of recollection, I suppose on your part. You were not excited at that time?

A. Well, no, sir, I don't think I was.

Q. You had full possession of all your faculties?

A. Well, I thought so.

Q. All the time you were there, notwithstanding you had seen these horrible sights?

A. Yes, sir.

Q. Did you ever see worse ones in your life?

A. No, sir.

Q. That did not shake you a particle?

A. Well, it disturbed me some, but I don't think I lost my reasoning faculties.

Q. Or your perceptive faculties?

A. No, sir, I don't think I did.

Q. Well, now, you think you got that dress that Miss Lizzie had on all right?

A. I do think so, yes.

Q. Did you make any memoranda at the time of her dress?

A. I think I did, sir.

Q. Have you got it with you?

A. No, sir.

Q. Do you think you could state it again to me---all the details of that pink wrapper?

A. I can try.

Q. I would like to have you. Begin at the beginning and give it all. Have you seen it since, let me ask you?

A. Yes.

Q. Oh, you have?

A. Yes, sir.

Q. Did that refresh your recollection?

A. Yes, sir.

Q. When did you see it?

A. Tuesday, the ninth of August.

Q. You would not have remembered it then, would you, unless you had gone to work and looked it all over?

A. I think I would, sir.

Q. Did you take the description, or did some lady?

A. I took it myself, sir.

Q. If you had not examined it for that special purpose---

A. I wrote it down from my recollection.

Q. When did you write it?

A. I think it was the Sunday following.

Q. That is before you had a chance to look at it again?

A. Yes, sir.

Q. You have not the paper with you?

A. No, sir.

Q. Now are you going to give it to us as the result of your recollection of what you saw on the fourth of August?

A. Well,

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I am going to give it to you from my recollection, and the assistance of the notes that I took, in reading them---I read them, of course.

Q. Yes, but the notes you took on what day?

A. I think it was a Sunday: the Sunday following.

Q. You had not seen the dress between the fourth and Sunday?

A. No, sir.

Q. Now you are going to give me just what you recollect on Thursday afternoon?

A. Yes, sir.

Q. I will hear it.

A. She was dressed in a plain---or in a house wrap, striped in pattern, a pink and light stripe alternating,---pink the most prominent color or shade. On the light stripe was a diamond figure formed by small bars or stripes, some of which ran parallel with the stripe and others biased to it, or diagonally. It was fitted to the form on the sides; stand up collar, plaited on the sides and closely shirred in front.

Q. Closely what?

A. Shirred---gathered closely; smaller plaits in front.

Q. Well, go on, explain it to these gentlemen here.

A. Yes, sir. From the waist to the neck it was puffed, quite a number of folds in it. On either side, directly over the hip, was caught a small, narrow, bright red ribbon about three quarters of an inch or an inch in width.

Q. This was a pink dress?

A. Yes, sir---not altogether pink---

Q. And it had a red ribbon---

A. Pink was the predominating color, I say.

Q. What other color was there in it?

A. A light ground.

MR. KNOWLTON. Did you intend to interrupt him, Governor? You asked him to describe the dress, and he had not quite finished.

MR. ROBINSON. I did not intend to interfere. I asked as we often do in the course of a long description, so as to make it plain. Go on with your description, sir.

THE WITNESS. This ribbon was brought around in front and tied in a bow and allowed to droop. The dress was cut in a semi train or bell skirt, as was worn by ladies that season.

Q. Don't go quite so fast. Cut in what?

A. A bell skirt.

Q. Bell skirt?

A. Yes, sir.

Q. Have you got through? I don't want to interrupt you.

A. I think that completes the dress, sir.

Q. You usually called that kind of dress a bell skirt, did you?

A. The cut of the dress: not that kind of dress.

Q. That was your description of it, as you spoke in conversation about it?

A. Yes, sir.

Q. Nobody told you that?

A. No, sir.

Q. What has been your business before you became a policeman?

A. Directly before, sir?

Q. Yes, sir, I would like that first.

A. I was in the painting business.

Q. Painting?

A. Yes, sir.

Q. What before that?

A. I was in the book business before that. Prior to that?

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Q. Yes.

A. Wood business.

Q. Were you ever in the dressmaking business?

A. No, sir.

Q. Were you ever in the dry goods business?

A. No, sir.

Q. Did you ever have anything to do with colors except as a painter? Did you say you were a painter?

A. Yes, sir.

Q. Did you ever have anything to do with colors except as a painter?

A. Nothing any more than to admire them.

Q. You admire them. But did you admire a red ribbon on a pink wrapper?

A. Well, I am not speaking of my taste, sir.

Q. It was so, was it?

A. Yes, sir.

Q. You speak of seeing Dr. Bowen about ready to throw some pieces of paper, odds and ends, into the stove?

A. No, sir, I didn't say that. I said he held some scraps of note paper in his hand as I entered the kitchen.

Q. And which he did on raising the cover put right in?

A. Afterwards, yes, sir.

Q. It is admitted that it is nothing to do with the case, but there was no withholding it from you?

A. No, sir.

Q. You saw the word "Emma" written in pencil on one part of it?

A. I did, sir.

Q. And Dr. Bowen said it had something to do about some reference to his daughter?

A. Going through somewhere.

Q. I beg pardon?

A. His daughter going through somewhere,---he thought that.

Q. It referred to their affairs. Had you paid any attention to the stove before that?

A. No, sir, any more than to see it as I passed by.

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Q. You saw it? And then you took off the cover in the ordinary way?

A. Yes, sir.

Q. And put these papers in?

A. Yes, sir.

Q. Did he take off the cover over the little spot of coal you said there was there?

A. No, sir.

Q. Took it off at the other end?

A. At the other end.

Q. So he threw it right down in where there wasn't any fire?

A. Yes, sir.

Q. And upon some embers of burnt paper?

A. No, sir, it went down between that burnt paper and the front part of the fire-box.

Q. That is, this lay a little to the back, and that was a piece of burnt paper?

A. Yes, sir.

Q. Rolled up?

A. Completely carbonized.

Q. About a foot long?

A. Yes, sir.

Q. And I think you said about an inch or two inches?

A. I thought about two.

Q. Lying there all charred and burned?

A. Yes, sir.

Q. What time did Dr. Dolan come? You said after that time or at that time Dr. Dolan came in, and did you mean came in from outdoors?

A. No, sir, I thought he came from the cellar door into the entry.

Q. I don't care to go out to the barn, except that you are not very clear about the curtain, are you?

A. I am not, sir.

Q. And when you say that it was probably rolled up, that is indistinct in your memory?

A. No, sir, that is not indistinct.

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I said if it were there.

Q. I know, but if you do not know it was there, you cannot be very certain?

A. I say that because I recollect distinctly of seeing the lower part of the window.

Q. Don't you remember now, when you come to think it over, there was an old curtain there which was quite ragged or dilapidated and kind of pulled one side? Isn't that the way it strikes you?

A. I am not clear on that, sir.

Q. Kind of yellowish?

A. I am not clear on that.

Q. You cannot place that. And about the window, the west window, whether that was open or shut?

A. It was not when we entered.

MR. MOODY. Not which?

THE WITNESS. Sir?

MR. MOODY. Not open, or not shut?

THE WITNESS. It was not open when we entered.

Q. It was not open when you got there?

A. Yes, sir.

Q. It was not open when you got there. Well, is that pretty clear in your mind?

A. I think it is. The reason I say that, one of the officers---

Q. No matter about the reason. Recalling you again to the testimony at Fall River, let me read a question: "Q. What windows are there?" "A. On the east, and one on the west, and in the middle of the barn facing the south there is a door. That was open when I got there." Is that correct?

A. No, sir.

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Q. That is not so, then?

A. No, sir.

Q. Is that the way you testified before?

A. Well, you say it is there, but that door was shut, sir.

Q. The door down on the level with yard?

A. Oh, no, sir, no: the door in the loft: the door on the level with the yard was open.

Q. The door in the loft was not?

A. Yes, sir.

Q. Well, perhaps that is what it means. (Reading). "On the east"---speaking of the windows---"and one on the west, and in the middle of the barn facing the south there is a door."

A. Yes, sir.

Q. You understand that is referring to a door in the loft?

A. On the loft, yes, sir.

Q. That door was open when you got there?

A. No, sir.

Q. Well now, were you in error or did you testify correctly at that time? Is that a correct statement of your testimony?

A. As I recollect it,---no, sir, that door was closed, and if I stated so at the time it must have been an error.

Q. Then I will read on: "How were the windows, shut or open?" A. "The windows on the west was open." Is that correct?

A. I am not clear, sir. I feel now, or think now, rather, that it was closed when we went there---I am almost sure of that: but it is possible to be mistaken in all this long time. I have not read those notes or reread them since, sir.

Q. And in justice to you I will read what follows, so you can have the benefit of it: "The window on the west was open." This was your answer: (Reading). "Q. Towards

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the front?" "A. Yes, I think, but I am not certain, that some of the men opened the window on the east to get air; it was very warm upstairs." Now does the reading of what follows help you to remember about the west window?

A. It does not.

Q. And you do not now say you know how it was, do you?

A. Well, I am speaking as I see it now, as I think it now.

Q. As you see it now: but as you saw it then, it was the other way, was it?---as you saw it in the District Court, I mean?

A. Well, about that I cannot say now, sir.

Q. Down cellar you found, you will please state, what of the implements that are produced here?

A. There was an axe and one or two hatchets lying on the floor of the wash room.

Q. Do you remember whether the one with the claw head was there?

A. It was not, sir. That is, the one that resembles the one that is just shown me was not there.

Q. There was one axe?

A. Yes, sir, that I thought was missing,---an axe that I had seen earlier in the day with Dr. Dolan.

Q. Two hatchets?

A. One, sir, I said was missing.

Q. One hatchet was missing?

A. Yes, sir.

Q. I do not quite get it: excuse me. You found down there on the wash room floor, what, if you please?

A. One axe and either one or two hatchets; I think two.

Q. Well, was one of those two hatchets the one with the claw head?

A. Well, I don't distinctly recollect whether they had claw heads or not.

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Q. Well, you spoke of finding some other implements?

A. That is the one that I said was missing.

Q. And what was that when you found it?

A. It had a claw head on it and broad blade.

Q. You think there were two hatchets besides that?

A. I think so.

Q. Is this the one? (Showing claw hammer hatchet).

A. I can't say, sir. It resembles that.

Q. Did you say that you assisted in finding it?

A. I found it.

Q. And where did you find it?

A. On a chopping block in the west end of the cellar.

Q. That is, towards the street?

A. Yes, sir.

Q. You did not find it in that room where there are barrels?

A. No, sir.

Q. Vinegar barrels, or something of that kind?

A. No, sir.

Q. Around behind a box?

A. No, sir; I found it on a chopping block.

Q. Oh, on a chopping block. Did you say anything about finding some of these things behind a box?

A. No, sir.

MR. MOODY. That was earlier, by some other witnesses.

MR. ROBINSON. Well, that is all, Mr. Harrington.

Q. (By Mr. Moody.) I will ask you, was this upon the block, or sticking into it?

A. Lying on the block.

Q. Side down?

A. Yes, sir, as it is now.

Q. (By Mr. Robinson.) Was that in the afternoon, late?

A. About---Well, I can't tell the time on that, but it was after we had searched the barn.

MR. MOODY. That was late in the afternoon.

Q. Yes, late in the afternoon; then it must have been if you think so?

A. Yes, sir.

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PATRICK H. DOHERTY, Sworn

Q. (By Mr. Moody.) Patrick H. Doherty?

A. Yes, sir.

Q. You are a member of the police force at Fall River?

A. Yes, sir.

Q. And have been so for how long?

A. A little over seven years.

Q. What is your present position upon the force?

A. Captain.

Q. In August of last year what was your position?

A. Special officer.

Q. Detailed for special work?

A. Yes, sir.

Q. What sometimes is called inspector?

A. Yes, sir.

Q. And you had no regular patrol duty to do at that time?

A. No, sir.

Q. Where were you on August 4th last when you first obtained knowledge of the homicide?

A. In the station house.

Q. From whom did you receive your information?

A. From City Marshal Hilliard.

Q. That was the central police station, I suppose you mean?

A. Yes, sir.

Q. Had you been sent for or were you there?

A. I was there.

Q. Before or after Mr. Allen had first gone?

A. After Mr. Allen.

Q. Do you know the time when the marshal made any communication to you with reference to Second street? Did you observe the time?

A. I observed the time about seven or eight minutes before he spoke to me.

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Q. When had you last observed the time before the talk with the marshal?

A. 11.25

Q. Where were you then and what did you look at?

A. I was on the corner of Bedford and Second street, City Hall clock.

Q. And from Bedford and Second streets where did you go?

A. To the station.

Q. About how far is it from the place where you saw the clock to the station?

A. Oh, it is not a hundred feet.

Q. Did you receive this communication as soon as you got to the station or after you had been there?

A. I had been there two or three minutes.

Q. After you had the talk with the marshal, what did you do?

A. I started for 92 Second street.

Q. What rate of speed?

A. Well, I walked at a rapid gait until I got to the post office, and then I ran.

Q. Was any one with you?

A. Not at that time, no, sir.

Q. Did you overtake any one of any consequence in this case on the way up?

A. I did, yes, sir.

Q. Whom did you overtake?

A. Mr. Wixon.

Q. Deputy Sheriff?

A. Yes, sir.

Q. Did you go together or did you go ahead of Mr. Wixon?

A. We went together after I had met Mr. Wixon. We went together. I went into the yard ahead.

Q. When you got to the yard had a crowd collected about the house?

A. No, very few there when I got there first.

Q. Was there any one in the yard at that time?

A. Yes, sir.

Q. Who was in the yard at that time?

A. Mr. Manning.

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Q. The reporter?

A. Yes, sir.

Q. And he was at what part of the yard?

A. He was sitting on the steps.

Q. Front or rear?

A. Rear.

Q. You went into the house, I take it?

A. Yes, sir.

Q. Tell us whom you found there after you got in?

A. Dr. Bowen met me at the screen door, and he said, "I am glad to see you." I said, "Doctor, what is the matter?"

Q. I don't care for that Mr. Doherty. You had some talk with Dr. Bowen, and thence you went where?

A. I went into the sitting room where Mr. Borden was.

Q. At that time had Mr. Borden's body been covered by anything?

A. Yes, sir.

Q. Covered with a sheet?

A. With a sheet.

Q. Did you make any observation at all or simply look at him? Tell us what you did in respect to the body?

A. Dr. Bowen removed the sheet and I looked at the body, and we had some conversation, Dr. Bowen and I.

Q. Did you make any special observation of the blood or any notes of the blood at that time?

A. I looked at it carefully, I thought.

Q. Well, tell us what you observed with reference to it?

A. Well, the blood was fresh, in my estimation. I think it was fresh, what I saw.

Q. Where did you go then?

A. I went up stairs.

Q. Tell us into which chamber or which room you went?

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A. Went into the front chamber on the north side of the building where Mrs. Borden was lying.

Q. Tell us what occurred in there?

A. Dr. Bowen pointed out the body and I went over, and the body was between the dressing case and the bed, and I wanted to see the head, and there was no room for me to go between the body and the bed or body and dressing-case, and I pulled the bed one side and walked up, and I stooped down and looked at the head, moved one of the hands to look at the head, and she was cut. I told Dr. Bowen that she had been murdered too.

Q. Had Dr. Bowen said anything to you as to the cause of her death before that?

A. Yes, sir.

MR. ROBINSON. Wait a moment. How is it competent?

MR. MOODY. Possibly not very material. I do not know but what it is competent. The only reason is, I asked him if he hadn't told Mr. Doherty she had died of

fright. I only stated what had already appeared before the jury, that he had made that statement in reply.

MR. ROBINSON. There is no proof of that. He only said so.

MR. MOODY. I know it, and I have a right to contradict him. It is not of very much importance to make any trouble about it. Of course, I suggest this to your Honors under the statute.

MASON, C. J. It does not seem to be important.

MR. MOODY. It does not seem to be important, but only

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because I have said so to the jury it perhaps seems to me more important than it is, and I do not think I am of very much importance in this matter. I will not press it any farther.

Q. Now, did you observe anything with reference to Mr. Borden's head?

A. Yes, sir. I saw it was cut and hacked, and was lying in a pool of blood.

Q. Did you observe anything with reference to the blood?

A. Yes, sir. It seemed to be hard, seemed as if it had been there some time.

Q. Did you observe anything else about those premises?

A. Yes, sir.

Q. What?

A. I saw blood spots on the pillow shams and a bunch of hair on the bed, black hair.

Q. Well, describe that hair, and tell upon what part of the bed it was.

A. I think it was about on the middle of the bed, right on the spread.

Q. I don't know, I ask for information, was that a piece of hair that appeared to have been severed or a piece of hair that ladies sometimes use which is not their own?

A. It appeared to be a piece of hair which had been severed, I think.

Q. Then how large a piece of hair was it?

A. Well, it was half as large as my fist, I should think.

Q. Did you take that piece of hair away?

A. I did not.

Q. Left it there?

A. I left it right there.

Q. Have you seen it since?

A. I have not.

Q. You know nothing about where it went?

A. No, sir.

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Q. Did you observe anything else in the room?

A. I can't remember anything,---people there.

Q. I don't remember whether you saw the handkerchief or not. Did you, Mr. Doherty?

A. No, sir, I did not.

Q. Did you observe a sewing machine or chair anywhere in the room?

A. I did not observe a sewing machine; it seems that I saw a chair. I think I did.

Q. Now was there any disturbance of the furniture in the room? Had anything been turned upside down? Was the chair upright?

A. When I went there?

Q. Yes.

A. I think it was; the chair was in position.

Q. Was there any piece of furniture that had apparently been disturbed or knocked over?

A. I don't think there was.

Q. Did you observe anything of that sort?

A. I did not.

Q. Will you describe more particularly in what position you saw Mrs. Borden when you first saw her?

A. She was lying face downward, her head to the east, with her hands something like in this position. (Clasping hands above the head.)

Q. What else? How was she with reference to the bed?

A. She was close to the bed. I think her feet projected a little below the foot of the bed.

Q. About how far was her head from the wall?

A. It was, I thought, pretty close, probably six or seven inches, it seems to me now. I moved one of the hands to look at the head and I had room to put my hands between hers and the wall.

Q. Her hand was then outstretched?

A. Yes, sir. It seemed to be this way. (Indicating)

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Q. Then what did you do, Mr. Doherty? Do I understand---that is, as you remember it now (Referring to the distance of Mrs. Borden's head from the wall, as covered by the question above.)

A. Yes, sir.

Q. You have spoken of lifting the head. Did you move the body in any other way at that time?

A. No, sir.

Q. Neither toward the wall or from the wall?

A. No, sir.

Q. Did you turn the body over?

A. I did not.

Q. After that was done, what did you do?

A. I went to notify the Marshal.

Q. That is, you did nothing else in the house at that time?

A. Not at that time, no, sir.

Q. Did you go to the police station?

A. I did not; I went to the nearest telephone that I could get.

Q. Perhaps you will tell us where that telephone was?

A. Mr. Gorman's or Mr. McDermott's undertaking rooms, I don't know which.

Q. That was not far from the house?

A. No, sir, that was round the corner of Spring street.

Q. After you had telephoned, did you return to the house?

A. I did.

Q. By the way, I did not ask you who was there when you first got there. I do not know that it is of importance, but I will ask you,---Who beside Dr. Bowen, in the house, I mean?

A. Miss Sullivan. That was all I saw in the kitchen when I first went there.

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Q. Well, did you see Miss Lizzie Borden at any time the first time you went?

A. No, sir.

Q. Or Miss Russell?

A. No, sir.

Q. Or Mrs. Churchill?

A. No, sir.

Q. Did you go into the dining-room at all at that time?

A. Not the first time, no, sir.

Q. Coming then to the second return to the house: You returned after you had telephoned?

A. Yes, sir.

Q. When you returned the second time, did you see anybody you had not seen before?

A. Yes, sir, Miss Borden and Mrs. Churchill.

Q. Where did you see her?

A. In the kitchen, I think.

Q. Was anyone with her?

A. Yes, sir.

Q. Who?

A. Miss Russell and Mrs. Churchill.

Q. Did you have any talk with her at that time?

A. Yes, sir.

Q. Will you be kind enough to state what it was?

A. Yes, sir. I said, "Miss Borden, where were you when this was done?" She said, "It must have been done while I was in the barn." "Was there a Portuguese working for your father over the river?" She said, "No, sir, Mr. Johnson and Mr. Eddy worked for my father." "Were they here this morning?" "No, sir, Mr. Eddy is sick. They would not hurt

my father anyhow." I asked her if she had heard any noise or outcries, or screams and she said, "No, sir. I heard a peculiar noise." "What kind of a noise, Miss Borden?" "I think it was something like scraping, scraping noise."

Q. Did you have any further talk with her?

A. I don't think I did.

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Q. What did you do then?

A. I asked the work-girl then.

Q. You had some conversation with her which I do not care to go in?

A. Yes, sir.

Q. After talking with Bridget, what did you do?

A. Mr. Mullally came into the room and he commented on Mr. Borden and I told him Mrs. Borden was dead up stairs.

Q. After talking with Mullally you did something,---what did you do?

A. We went up and looked at Mrs. Borden.

Q. Did you do something,---did you go through the house?

A. Yes, sir.

Q. Describe your journey through the house.

A. I went up the back stairs to the attic. The work-girl was with us. She showed us her room and a couple of other rooms,---one had a bed in it. We looked round there, and we worked our way down, every room that was opened we looked in, and we got down into the cellar.

Q. Did Bridget have any keys with her, do you know?

A. She had keys of the spare room up stairs where she slept herself, that is all.

Q. You went into all the rooms you could get into and went down cellar?

A. Yes.

Q. You found nothing or nobody?

A. We found nothing or nobody.

Q. You went down cellar: Tell us what you did down there.

A. We went down cellar, we went into two or three dark places, wood or coal rooms or something. We separated. I got over near the sink and I noticed a pail and some towels.

Q. Pass from those.

A. Mr. Mullally was looking at something; I

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came and looked over his shoulder; he had a hatchet in his hands.

Q. Do you recall what the hatchet was?

A. I thought it was one with a wide blade.

Q. Do you mean anyone of these four instruments? (Showing them)

A. Looks something like that large or small one; I thought the blade---

Q. The claw-hammered hatchet?

A. I could not say the claw hammered.

Q. You saw him with a hatchet?

A. Yes, sir.

MR. KNOWLTON. The witness designates the claw-hammered hatchet.

MR. ROBINSON. Let it remain as it is.

Q. Now I don't care about any sort of detail in going into these hatchets and axes, these four, but did you find anything else, except that hatchet that Mr. Mullally had in his hand?

A. No, sir.

Q. At that time did you find these axes or the other hatchets?

A. I did not see but one.

Q. And that is the one you described as a hatchet?

A. Yes, sir.

Q. Anything else occur down at that time in the cellar?

A. No, sir.

Q. After that, where did you go?

A. I came up the stairs and out in the yard again.

Q. Did you look about the yard at all?

A. No, sir, not then.

Q. What did you do after you went to the yard?

A. I went right down to the office. There was a messenger came for me from

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the Marshal to report at his office.

Q. Did you do so?

A. I did.

Q. Did you see Miss Borden again at all? Did you go to her room?

A. I did.

Q. Before you went to the Marshal or after?

A. Before.

Q. Before you went to the Marshal?

A. Yes.

Q. Do you know when she had gone up to her room?

A. No, sir, I do not.

Q. Was it while you were down cellar, or before you went down cellar, or don't you know?

A. I don't know.

Q. But as I understand you first saw her and had the conversation you told, down stairs?

A. I did, yes, sir, on the first floor.

Q. Then later you saw her in her room?

A. Yes, sir.

Q. Tell us what occurred in the room.

A. I looked round,---after she concluded to open the door I went just beyond the threshold and looked round and out again.

Q. You spoke something about "After she had concluded",---Describe what occurred at the door.

A. I went to the door, went to open it. I opened it two or three inches, and she said "One minute", and shut the door on me, and it was a minute, I should think, before she opened the door for me, fully a minute.

Q. Did you go in?

A. I did.

Q. Anyone with you then?

A. Mr. Mullally was behind me.

Q. Who else was in the room beside Miss Borden?

A. I think Miss Russell; I am not positive on that point.

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Q. Did you have any talk with her at that time, or not?

A. No, sir, I did not.

Q. What did you do in the room at that time?

A. Just glanced around, that's all.

Q. Now if you please, return to the time you saw Miss Borden in the kitchen. Can you give any description, and if so do it the best you can,---of the dress that she had on when she was down stairs in the kitchen?

A. I thought she had a light blue dress with a bosom in the waist, or something like a bosom. I have a faint recollection; that is all I can say about it. I thought she had a light blue dress with a bosom in the waist or something like a bosom, and that is about all the description I can give.

Q. Do you remember anything else about it?

A. I don't.

Q. Any figure,---do you remember any figure?

A. I thought there was a small figure on the dress, a little spot like.

Q. What color was the figure?

A. Something---I can't tell exactly.

Q. Well, if that is the best you can do, I will ask you if it was that dress? (Showing witness a dress)

A. No, I don't think so.

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Q. Did you return again after going to the marshal's that morning?

A. I came as far as the door.

Q. Did you go in again?

A. I did not at that time.

Q. Now you made some search in the barn that afternoon, did you?

A. Yes, sir.

Q. Were you up with the squad of officers who pitched the hay over?

A. Yes, sir.

Q. I will ask you what the temperature was up in that loft in the barn?

A. It was very warm.

Q. How was the air for breathing?

A. Very bad. It was stifling hot there: very bad.

Q. Did you notice anything about whether the barn was dusty or otherwise?

A. I couldn't say.

Q. How long did you stay in the barn?

A. I stayed an hour, fully.

Q. Now at some time, and I don't know whether it was this day or not, so I ask it now--- did you have a talk with Bridget, or rather, did Miss Borden, have a talk with Bridget about the back cellar door?

A. Yes, sir.

Q. When was that, as we are on that subject?

A. Friday morning, the fifth of August, at seven o'clock---about seven o'clock.

Q. And where were you when you had the talk? Describe it: describe what was said.

A. Friday morning Lieut. Edson and myself went in the kitchen. Miss Borden came out from the sitting room, and she said "Maggie, are you sure the cellar door was fastened?" and Maggie made a reply "Yes, marm."

Q. Did you go into the house at all again on the Thursday after

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you left it the first time?

A. Thursday evening about nine o'clock.

Q. You took part in some searches, did you, Saturday?

A. No, sir.

Q. Did you search there at all after that, Mr. Doherty?

A. Never after Thursday.

Q. That closed your connection with the matter?

A. With the house.

Q. Had you ever been in that house before?

A. Never.

Q. Or did you ever go about it after this morning?

A. Never, no, sir.

CROSS EXAMINATION.

Q. (By Mr. Robinson.) Will you give the time that you arrived there, Mr. Doherty, the first time?

A. Eleven thirty-five, twenty-five minutes of twelve, I say.

Q. And do you remember who were there at the time?

A. I do.

Q. Who were they?

A. Dr. Bowen, Bridget Sullivan, Mr. Sawyer, Mr. Manning.

Q. And any others outside?

A. A few outside.

Q. Do you know them?

A. I know one.

Q. Who was that?

A. Mr. Rich---I believe his name is Rich---in side the gate in the yard.

Q. (By Mr. Moody.) In side the gate, did you say?

A. Inside the gate in the yard, or at the gate.

Q. (By Mr. Robinson.) Did you see Mr. Donnelly?

A. I did not.

Q. Or Mr. Stevens?

A. Mr. Stevens, the reporter?

Q. Yes.

A. I don't want to be sure; I think there was another reporter talking to the work girl, but I can't say that I saw Mr. Stevens.

Q. Well, Mr. Harrington?

A. No, sir.

MR. MOODY. Mr. Harrington, the officer?

MR. ROBINSON. Yes, Mr. Harrington the officer.

Q. Mr. Medley, the officer?

A. No, sir.

Q. And Mr. Rich---do you know his full name?

A. I do not. I am under the impression it is Augustus.

Q. He is a resident of the city there?

A. Yes, sir: he has got a small place of business just below the house.

Q. How large was that space, to the best of your judgment, between the bureau and the bed in the spare chamber?

A. I should say it was two or three feet.

Q. Well you called it about a couple of feet before, when you told about it before?

A. Probably I did.

Q. At any rate, the space was so well filled up that you could not get in on either side very well?

A. Exactly.

Q. The bed on one side and the bureau on the other, and Mrs. Borden's body about filled it?

A. Yes, sir.

Q. And as you describe it, the arms were up over the head?

A. Yes, sir.

Q. Now you know that Dr. Bowen was in the house before that, and do you know whether Dr. Bowen had been there at that time?

A. I don't think he was.

Q. You did not see him? Did you see Mr. Harrington there at any time afterwards, the officer?

A. I didn't see him there

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till four o'clock in the afternoon.

Q. And did you see Mr. Medley there at any time?

A. I did.

Q. When?

A. About 12: just before 12, I think.

Q. Was he in the house or out?

A. He was in the entry, at the screen door.

Q. You have spoken about going into Miss Lizzie's room and just glancing around. That was all you did, wasn't it?

A. That was all, sir.

Q. And did you go into any other rooms above the stairs,---I mean on the second floor?

A. I don't think I did; they were locked.

Q. Did you go around up the back stairs and go into Mr. Borden's room?

A. I did not.

Q. Did you go up to the attic?

A. I did sir.

Q. Wasn't that door of Mr. Borden's room unlocked for you by Bridget?

A. I don't remember, sir, as it was. I went into all the rooms that we found unlocked.

Q. Did you make any examination of the dresses?

A. I did not.

Q. Or look for any marks on them?

A. No, sir.

Q. Or anybody's clothes?

A. No, sir.

Q. You were not one of the officers, if there were any, that pulled open the door between Miss Lizzie's room and Mr. Borden's room?

A. No, sir.

Q. You did not see that done?

A. No, sir.

Q. That Second street you were quite familiar with, I suppose?

A. Yes, sir.

Q. It is a street of great thoroughfare, heavy teams and carriages and persons passing through constantly?

A. Yes, sir, I should say so.

Q. Where was Mr. Sawyer when you arrived there at first?

A. Just inside the screen door, with his hand on the latch.

Q. And Mr. Manning?

A. Sitting on the steps.

Q. Outside?

A. Outside.

Q. Did you see Mr. Allen, the officer?

A. I did not at that time.

Q. Did you see while you were there Miss Russell or Mrs. Churchill fanning Miss Lizzie?

A. Yes, sir.

Q. When was that?

A. When I spoke to Miss Lizzie.

Q. That was during that conversation?

A. Miss Russell was standing there with a paper or fan, I won't be positive which.

Q. Are you very clear about the dress---the description of her dress?

A. I have a faint recollection of it, that it was a light blue dress.

Q. But it is only a faint recollection?

A. Well, I am confident it is not as dark nor as full a blue as

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that.

Q. You think not?

MR. MOODY. As this dress that has been produced?

THE WITNESS. Yes, sir.

Q. The one there on the table. And last August you were somewhat doubtful about it, were you not---whether it was a light blue or a dark blue?

A. I don't think it was.

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Q. You don't remember about that? You didn't see her with the pink wrapper on later, did you?

A. No, sir; I didn't. I didn't see her but once after that, and that was in the evening.

Q. Then you went there on Friday, also, I think you said?

A. I was there all the morning, from one o'clock Friday morning till half past eight, in the yard.

Q. Do you know what dress she had on that morning?

A. I thought she had the same one on.

Q. Which one?

A. The light blue.

Q. You think that is so, do you?

A. I think so. I can't say so positively.

Q. You didn't really notice much about it, did you?

A. No, sir; not a great deal.

Q. What?

A. Not any more than I did the first time; a very short interview there.

Q. You went down cellar and saw what, of these tools?

A. I saw Mr. Mullaly with the short-handled hatchet in his hand.

Q. Did you see anything wrong about that hatchet in any way?

A. I did not,---hardly look at it; I spoke to him about it.

Q. You think it is the one with the claw head?

A. I think it is.

Q. Did you see this at any time? (Hatchet without handle)

A. No, sir.

Q. You don't know anything about that?

A. I do not.

Q. Were you there in the cellar with Mr. Fleet?

A. No, sir.

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Q. And you don't know anything about that?

A. I do not.

Q. When did you first see it?

A. I think this is the first I see of that, as far as I know. I don't know as I ever saw it before today.

Q. Did you go to the house to bring away the hatchets and the axes?

A. No, sir; I didn't go there for that purpose.

Q. Did you bring them away?

A. No, sir.

Q. Do you know who did?

A. I do. Lieut. Edson, Francis L. Edson.

Q. Do you know what he brought?

A. I do.

Q. And what?

A. Brought two axes and two hatchets.

Q. And he did not bring this, the hatchet without a handle?

A. I don't think he did. He showed me what he had. He called my attention to what he had.

Q. And you didn't see any such thing as that there?

A. No, sir.

Q. What day was it he showed you what he had?

A. Friday morning, at six o'clock.

Q. Was that the time he brought them away?

A. Shortly after six, before half past six, in the morning. Between six and half past, at the time he brought them away.

Q. He showed them to you, as I understand, at the station?

A. No, sir; coming out. I was at the front gate, stationed at the front gate.

Q. The front gate of the station?

A. The residence, 92 Second Street.

Q. You were up there quite early Friday morning?

A. I went there at one o'clock.

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Q. One o'clock at night?

A. Yes, sir.

Q. Were there persons around the house that night?

A. There were.

Q. How many inside the yard?

A. Only the officers inside.

Q. There were officers there on duty?

A. There were four of us, I think.

Q. All the time?

A. All the time.

Q. Those were inside the yard, and how many on the outside?

A. I think there was one patrolling up and down in front of the house, and there were four of us inside of the premises.

Q. You stayed there all night?

A. Yes, sir.

Q. Do you remember what dress Bridget had on that morning?

A. She had a calico dress I think. I don't remember fully.

Q. Well, what was its color?

A. I can't say. It thought it was kind of a brown calico dress.

Q. A brown, dark dress?

A. Yes, sir.

Q. That is your recollection of it?

A. That is my recollection of it.

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MICHAEL MULLALY, Sworn.

Q. (By Mr. Moody.) Your name is Michael Mullaly?

A. Yes, sir.

Q. You are a police officer of Fall River, are you?

A. Yes, sir.

Q. And have been how long?

A. Something over fifteen years.

Q. And your position in the force is what?

A. Patrolman.

Q. It was last August, was it?

A. Yes, sir.

Q. Now were you summoned to the Borden house on Second Street on August 4th of last year?

A. I was.

Q. From whom did you receive the first news?

A. From Officer Allen.

Q. Where were you when you saw him?

A. I was at the patrol wagon house on the corner of Rock and Franklin Streets.

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Q. From there did you go to the house?

A. I went to the station.

Q. From the station where?

A. To the house.

Q. Do you know about what time you arrived at the house?

A. 23 minutes to twelve.

Q. How do you fix it so accurately?

A. By looking at my watch.

Q. As you got to the house or where?

A. As I got at the house.

Q. Did you go alone or with some one?

A. I went with officer Allen.

Q. Which way did you go in, which door?

A. Went in the door on the north side of the house.

Q. Did you go through the front door at that time?

A. I did not.

Q. Whom did you see upon the premises outside the house when you first got there?

A. Well, there was quite a number around the house, out at the gate.

Q. Inside the fence or outside?

A. Outside.

Q. Was there any one inside that fence that you saw?

A. I didn't notice.

Q. Whom did you find at the door?

A. I didn't notice anybody at the door when I went in.

Q. Was it unlocked at that time?

A. It was, yes. I went in.

Q. This was the back door?

A. The door on the north side.

Q. When you went in whom did you first see?

A. Mrs. Churchill.

Q. And Miss Russell?

A. Mrs. Churchill was the first person.

Q. Then did you see any one else immediately?

A. There was Bridget Sullivan and Miss Russell, Dr. Bowen and Miss Lizzie Borden.

Q. Where were they, in the lower part of the house, all of them?

A. On the first floor.

Q. And in which room was Miss Lizzie Borden?

A. Miss Borden was in the room north of where her father laid on the sofa.

Q. That is the dining-room?

A. I don't know what the name of it is.

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. Yes. She told me that I would have to see Miss Lizzie Borden.

Q. Then did you have any talk. If so, tell what it was.

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. She told me that she was out in the yard, and when she came in she found him dead on the sofa. 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 pocket book with money in, and a gold ring on his little finger.

Q. Well, state what occurred then.

A. I then inquired of her

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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.

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. Was anything said about the pocket book at that time?

A. Nothing.

Q. Well, what did you do then Mr. Mullaly, after the talk about the hatchet or axe?

A. I had some conversation with her, but it was later; not then.

Q. Perhaps we will reserve it until we get it in the order of events. What did you do after this talk about the axe?

A. I went from there to the room where Mrs. Borden was found dead. She laid then in a pool of blood.

Q. Did you observe anything at all about the blood either of these times?

A. She laid in it.

Q. As to any difference of appearance; did you make any observation at all in that respect, Mr. Mullaly?

A. It looked rather thick and clotted.

Q. That refers to which body?

A. To Mrs. Borden.

Q. While I am upon the subject, did you notice in respect to the blood of Mr. Borden?

A. He was pretty well cut up about

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the head, and where the wounds was on his face I saw blood.

Q. Did you observe anything more than that it was blood?

A. No, cuts.

Q. Well, what did you do then?

A. I came from that room, and I went to the east end of the house, and there I went up into the attics. Bridget Sullivan went with me and officer Doherty, and we searched those rooms; that is, Bridget had the keys and opened the door for us, and we looked into all those rooms.

Q. Did you find anything or anybody there?

A. Found nothing, or didn't find anybody there.

Q. Well, when you came down stairs 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. Would the plan help you at all in fixing that?

A. I think if I see it, it will. (Witness examined plan.) Yes, sir. It was in here (indicating), but then it looked different to me. It was in here. Here is what is called the wash room, that is, looking at it in there, and up here this box was, and from there--- well, it looked so to me as if there was a bulk head across there. That is the way it looked. I

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am telling from memory, and I saw a box, and from there saw where Bridget took those hatchets. (Witness indicated wood cellar near the chimney.) I won't say whether it was here or along there I took the axe down, but on the south wall.

Q. Of the same room?

A. I wouldn't say whether it was the same room or the other one.

Q. About how high was this shelf upon which this box containing the hatchets was?

A. Well, she reached up.

Q. How high was this shelf? I don't know that you answered.

A. I couldn't tell the distance, but Bridget Sullivan went over and reached up and took them out and gave them to me.

Q. So that it was so high that she had to reach up?

A. Yes, she had to reach up, and didn't have to stand on anything to get it.

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 wash room and laid them on the floor, and I stayed there with them until Mr. Fleet came, and when Mr. Fleet came---

Q. Excuse me a moment. Before Mr. Fleet came had you found any other?

A. Those axes I carried from the south wall. I

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wouldn't say whether it was in that cellar or the cellar adjoining, but I took them down from the south wall of the house and put them on the floor with it, that is, four in all.

Q. And these appear to be the axes, do they?

A. Their axe handles was covered with ashes at the time.

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. Do you know whether he did anything with either one of the four hatchets?

A. I didn't take notice what he did do with them. He looked at them. I know that.

Q. What else was done while Mr. Fleet was in the cellar?

A. Well, I don't know what he did do.

Q. What did you do, that is the only thing?

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 am getting a little ahead. I have got to straighten that. I went into the yard and into the barn and made a search of the premises all around.

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Q. Do you mean the yard and premises, or refer to the barn?

A. The yard, barn and fences, all round and back into the house again.

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.

Q. Into what part of the barn did you go?

A. I went into the lower and the upper part.

Q. Then where did you go?

A. Came from there and went into the yard, looked around the wood pile. There is a wood pile towards the fence. I looked round that and all round the yard.

Q. Did you find anything there, either by way of blood or weapon?

A. I did not.

Q. Do you know about what time it had got to be then?

A. No, sir.

Q. What did you do after that?

A. I went to the west end of the house and I went into Mrs. Borden's room. Officer Hyde was with me, where Mrs. Borden was found dead.

Q. Yes, that is the room.

A. And I searched there with officer Hyde.

Q. Did you find anything?

A. I did not.

Q. Was any furniture disturbed or overturned in that room,---I mean before you began to search?

A. I ain't certain about that.

Q. Well, what did you do next?

A. I came from there and went into the cellar again.

Q. Whom did you find in the cellar,---anyone when you first went down there?

A. The first time?

Q. No, I mean the time you are speaking of now. Did you go down

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alone?

A. I think officer Hyde went with me.

Q. Did you find anyone down there after you got down there, this second time?

A. I did not.

Q. What did you do down there?

A. Well, I searched round again.

Q. Found nothing, did you?

A. I did not find anything.

Q. Did anyone else come in while you and officer Hyde were there or after you came there on this second visit?

A. Officer Fleet came down there again.

Q. Yes. Now what did he do? What did you see him do?

A. He said to me---

Q. No, not what he said to you. But he said something to you, did he?

A. Yes, sir, he did.

Q. Then after that, what did you do? What did you do after Mr. Fleet had said something to you?

A. I showed him where them hatchets were taken from.

Q. What did you show?

A. I showed him a box where Bridget had taken them from.

Q. What did you do after you showed him the box?

A. He took a hatchet out of there.

Q. Can you tell what sort of hatchet he took out?

A. It looked to me as if smaller than one of them. The handle was broken and he put it back, and it was covered with dust or ashes, or something like that. It looked to me---

Q. In the first place, I will ask you if that, with the wood put in, appears to be the hatchet that Mr. Fleet found in the box?

A. It looks very much like it, only a cleaner break.

Q. What do you mean by cleaner?

A. It looked fresh, as if just broken.

Q. I wish you would describe more particularly the ashes or dust that you observed on the hatchet. Take it and point out yourself where it was.

A. Across here (showing) and on that side. It looked so as if it was kind of covered with it, on the side.

Q. Did you observe anything with reference to the break of the wood?

A. Nothing more than it looked as though it was a fresh break.

Q. How did that, in respect of dust and ashes, compare with the sides of the hatchet?
How did the freshly broken wood in respect of dust and ashes, compare with the sides of the hatchet?

A. It was cleaner, the hatchet.

(Noon Recess)

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AFTERNOON SESSION

The Court came in at 2.15.

DIRECT EXAMINATION OF MICHAEL MULLALY RESUMED.

Q. (By Mr. Moody.) Mr. Mullaly, you had been describing the appearance of the hatchet without the handle. Was there anything else you noticed with reference to it?

A. The handle was broken, fresh.

Q. You told us that?

A. And both sides of it was covered with what I call ashes.

Q. Both sides of what?

A. Of the blade.

Q. Can you give any further description of how it was covered?

A. Well, it looked so as though it was rubbed on there, wiped on, would be my way of expressing it.

Q. What did Mr. Fleet do with it after each of you had observed it?

A. I believe he put it back.

Q. Did you see that hatchet again afterwards?

A. Not in the house.

Q. Wherever you saw it, if you saw it at all, you saw it after it was taken away from the house?

A. Yes, sir.

Q. Where did you go then?

A. I remained in the cellar a while.

Q. Did you discover anything else?

A. No. I was looking around from one part to the other of the cellar.

Q. After you had completed what you had to do in the cellar, where did you go?

A. I looked in the hot-water heater

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there and in a coal bin, and in a place to the north side of the wash cellar, and through what I call a walk-way, a way up and down the cellar.

Q. Well, I don't care to delay longer down cellar. I don't now whether I asked you as to that hatchet (i.e., the handleless hatchet), whether it has the general appearance of the one which you saw?

A. It has the appearance of the one I saw Mr. Fleet have.

Q. From the cellar where did you go, Mr. Mullaly?

A. I then went up on the first floor.

Q. What did you do on the first floor, if anything?

A. Stayed around there a while.

Q. Go anywhere else?

A. Then went up stairs to this room where Mrs. Borden lay; officer Hyde and myself searched it, and there I saw Miss Borden, and I had some conversation with her there.

Q. Tell us what it was?

A. I inquired of her whether she saw anybody around the premises, and she told me she did. She said she saw a man around there with dark clothes on. She said he was a man about the size of officer Hyde, or about as large as officer Hyde.

Q. Anything further at that time, was there, that you recall?

A. After that I had a search with Mr. Fleet. We went back to the east end of the house and searched those attics over again, and some place on the first floor, what I called a cupboard to the right.

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Q. Did you go into a yard?

A. I did go into a yard.

Q. And what did you do in the yard?

A. I looked all around there.

Q. Did you go to any of the adjoining premises?

A. I got over the fence on the south side.

Q. That is, over into Mrs. Churchill's yard, do you mean?

A. No. Mrs. Churchill's, I call it on the north side.

Q. Oh, yes.

A. Dr. Kelly's is on the south side.

Q. Did you find any weapon or stain or appearance of blood on those premises?

A. I did not.

Q. Did you at any time, Mr. Mullaly, on your search outside of the house, either upon the Borden land or buildings or upon any adjoining land or fences, find any weapon or any appearance of blood?

A. I did not.

CROSS EXAMINATION.

Q. (By Mr. Robinson.) Do I understand that you went up there 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 pocket-book with some money in it, and a gold ring on his little finger.

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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 pocket book?

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 what you witnessed, pretty thorough searches through that house, did you?

A. As far as I know, I did, and as I went down into---

Q. Well, you went up in the attic?

A. I went into the attic, yes.

Q. Who went with you?

A. Officer Doherty went with me on the first time, and Bridget Sullivan.

Q. Officer Doherty, who has been here and testified?

A. He has been here to-day, yes.

Q. And Bridget Sullivan went up, nobody else, you two and Bridget?

A. Not at that time.

Q. Well now, you went into her room?

A. Into whose room?

Q. Bridget's?

A. She pointed out a room there. I believe she told me it was hers.

Q. Well, did you go in?

A. I did.

Q. What did you do in there?

A. I looked all around.

Q. Well, can you be a little more definite than that?

A. Well, I went in there and looked around under the bed and

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around the room.

Q. Did you disturb the bed in any way?

A. I did not that I remember of.

Q. You didn't remove the clothing or lift up the mattress or spring bed?

A. I don't think I did.

Q. Did you examine the closet?

A. I didn't know she had a closet in her room?

Q. Well, I don't know, but did she have a closet there?

A. I don't remember searching any closet in her room.

Q. Did she have any trunks in her room?

A. I would not say.

Q. Do you recall searching any trunks there?

A. I didn't search no trunks that time.

Q. Do you recall searching any dresses, examining any dresses?

A. Not at that time.

Q. I mean up in her room.

A. Up in her room.

Q. And did you at any time later in the day in her room?

A. I did not.

Q. Then you went some time, if I am not mistaken, down into the room that Mr. and Mrs. Borden had occupied, the bed-room?

A. Will you please state to me what part of the building that is?

Q. Well, I understand it to be over the kitchen, up the back stairs.

A. I don't remember going into that room, no room over the kitchen.

Q. No one, so far as you know, unlocked it for you?

A. Not as I know of, not as I remember.

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Q. Did Mr. Doherty continue around with you where you went in making the searches?

A. I think he went up in the room where Mrs. Borden laid with me, and from there he went into the cellar with me.

Q. That is, the guest chamber, the spare chamber in the corner?

A. It is in the north end of the building.

Q. The north side and west end towards the street?

A. Yes, sir.

Q. And did you go into that clothes room alone by that spare room door?

A. In the west side of the building?

Q. Yes, sir.

A. I did not.

Q. You didn't go into Miss Lizzie's room?

A. I went into a room at the east, I should call it, of the room where Mrs. Borden's body was, and found Lizzie was there. That was the time that I had the conversation with her, the second conversation.

Q. The conversation you have referred to, was that?

A. Yes, sir.

Q. Now, will you tell us again who went with you down into the cellar?

A. There was officer Allen, and officer Doherty, and Bridget Sullivan and myself the first time.

Q. That is the first time. Do you wish to say anything more about that? If you do, do so.

A. Nothing more about the first time.

Q. And what did Bridget Sullivan do down there?

A. She went

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to where the hatchets was.

Q. What led her to go where the hatchets were?

A. Miss Borden told me that Bridget would show me where the axes was, and when we got through searching in the attics we went from there into the cellar, and from there we went to where the hatchets was.

Q. Then I understand, see if I am right, that you had asked Miss Lizzie up in the room something about hatchets or axes?

A. This was on the first floor in the room north or where her father lay.

Q. Which has been called the dining-room?

A. I don't know what the name of it is.

Q. It was a door that led out of the sitting-room and out of the kitchen?

A. It was a door north of where I stood.

Q. And you had asked her something about axes and hatchets, had you not?

A. I did, yes.

Q. And she referred you to Bridget?

A. Yes, sir.

Q. Saying that Bridget would show you?

A. Yes, sir.

Q. Did she call Bridget or did you go for Bridget?

A. When we got through searching the attics, we went from there direct into the cellar, and Bridget went to this place where the hatchets were.

Q. Did she go searching for them, trying to find where they were?

A. No. She seemed to know. She went right where they were, and I followed along.

Q. When you started to go down stairs you had told her what you

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wanted to find?

A. I told her.

Q. That you were going for axes and hatchets in the cellar?

A. I think I did. That is why we went there.

Q. And she led the way right off promptly, didn't she?

A. She did.

Q. No hesitation about finding these, as far as you could see?

A. No, sir.

Q. Who went first?

A. She led the way first.

Q. Into this middle room on the south side of the house, of the cellar?

A. Yes, sir.

Q. And that was the room where that chimney came down?

A. Well, I couldn't say about the chimney.

Q. And do you remember about the pile of ashes?

A. I remember about the pile of ashes.

Q. Well, it was that room, wasn't it?

A. Well, I wouldn't say. It was on the south side of the wall. There was wood piled up in the cellar. Whether there was a bulk-head of wood or what, I don't know.

Q. Now what did she do or show you in there?

A. She went where these hatchets was, and she took them out of a box.

Q. She went right to them as she came into the door of that part of the cellar; she went right up to them, didn't she, promptly?

A. She did.

Q. She didn't even look around the room to find them?

A. Well, I don't know about her looking around.

Q. But she didn't step up on anything?

A. She did not.

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Q. You said they were where she could stand on the floor and reach and take them?

A. Yes, sir.

Q. And it was a box they were in?

A. It was a box.

Q. How large a box?

A. Well, I didn't measure it.

Q. No, but I am not particular about the exact measurement.

A. I can give you my dimensions as nigh as I can call it.

Q. What was it?

A. It was a box about 14 to 16 inches long, that is, by looking at it, and I should judge it was about four inches deep, and it might possible be a little wider.

Q. Did it have a cover?

A. It did have no cover.

Q. It had no cover?

A. No cover as I know of.

Q. Were things about there pretty well covered with ashes and dust?

A. Them axe handles was covered with ashes.

Q. Did you look in the box?

A. I did not look in the box.

Q. Did you see anybody look in the box while you were there at that time?

A. Not at that time.

Q. So you don't know what was in there?

A. No, I do not.

Q. How many things did she take out?

A. She took out two hatchets then.

Q. And did she hand them into your hands?

A. She did.

Q. And one of them was a little larger than the other?

A. One of them was larger than the other.

Q. And these two that are here you think are the ones?

A. They look very much like the ones.

Q. Do they look now about as they did at that time?

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A. There was a rust spot on the large one that I can't see on it now.

Q. And was it located about where that mark is on the blade?

A. Well, the best way I can describe that is to take it and point it out, the way it looked to me.

Q. Perhaps you can by looking at it.

A. (Illustrating with the hatchet.) If I remember right, I held this hatchet in this position when I looked at it, and here somewheres on the blade, I wouldn't say whether I had the

handle that way or this way, but I had, to the best of my recollection, I held it that way. There was a little round spot of rust on this blade, as I take it to be.

Q. And isn't there now?

A. It isn't there now.

Q. Do you see a bright mark there as if some one had scratched the blade on one side or the other?

A. I see a mark here, but it is not bright. There is the rust place.

Q. I will call your attention to something. See if you see anything marked there; whether that was about the location of that little spot?

A. I wouldn't say. I thought it was more in the centre of the blade. I think it was more there. There is about where, if I remember right, about there in the centre like.

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Q. You saw that the handle of this hatchet was all covered with ashes?

A. Not the handle of that.

Q. Were there any ashes or dust on this?

A. No, sir.

Q. Perfectly clean?

A. There was no dust on that, that was clean.

Q. That whole hatchet was perfectly clean?

A. But that rust spot.

Q. All except that rust spot?

A. As far as I know.

Q. Was there any dust or ashes on the other?

A. I think this hatchet had about the same, pretty nigh the same appearance as it has now, as far as I know.

Q. There is no dust or ashes on it now?

A. No dust or ashes on it that I noticed.

Q. Then anything that you found at that time was not covered with dust or ashes?

A. No, sir; not at that time, not of them two. The two axes was, the handles.

Q. I call your attention to these, these are the two you refer to? (Producing axes.)

A. As far as I know they are.

Q. Well similar to these?

A. Yes, sir.

Q. And those were very dusty?

A. Those were very dusty.

Q. Where were those found?

A. They were on the south side of the cellar.

Q. Did you find them?

A. I wouldn't say whether I found them or whether Miss Sullivan pointed them out to me, but I took them down.

Q. (By Mr. Moody.) Took the hatchets down?

A. Took down the axes.

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Q. (By Mr. Robinson.) You discovered nothing else on either one of those hatchets or handles except this spot of rust?

A. That is all.

Q. And they looked then about as they look now?

A. I believe the handle of the big axe was much cleaner---the wide one.

Q. You mean the hatchet?

A. The big hatchet; cleaner than the other one, than the smaller one.

Q. Do you know when they were taken away from the house?

A. I do not.

Q. Did you see them afterwards at the police station?

A. I don't remember of seeing them in the police station.

Q. Well anywhere in the custody of the police?

A. I do not.

Q. Now when did you see the other one that has no handle?

A. I saw the other one later, when Mr. Fleet came in the cellar and asked me---

Q. I suppose we should leave out the conversation.

A. Well, when Mr. Fleet called my attention.

Q. Were you and he alone?

A. When he took the hatchet out I believe we were.

Q. Well, how was that? What was the condition of that?

A. That had ashes on, what I call ashes, on each side of it.

Q. Didn't it look about as it does today?

A. That is, the handle was broken and it looked fresh, fresh broken.

Q. I haven't asked you about that just now. I am asking you about the hatchet part, the metal. How did that look as compared with today?

MR. MOODY. You mean in respect to ashes or what?

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A. What do you mean?

Q. Now let me see if you don't know what I mean. Won't you state whether it looked as it does today or different?

A. It looked different.

Q. How?

A. That is it was covered with ashes.

Q. And those have been removed since that time?

A. There is none on there now that I can see.

Q. And do you know where that has been since?

A. I do not.

Q. And that piece of the handle which is now out of the eye of the hatchet you think does not look so new as it did at that time?

A. It don't to me, not now.

Q. And did Mr. Fleet put it back into the box again?

A. If I remember right he put it back into the box.

Q. Had you learned in any way, without giving the conversation, had you learned that that hatchet head had been seen before by any one?

A. No, sir.

Q. You didn't know that Mr. Fleet had seen it before?

A. No, sir.

Q. Were you looking yourself, helping him to investigate to find anything?

A. Sometimes I worked with him.

Q. I mean particularly when this head of the hatchet was found in that box.

A. He came down in the cellar and asked me where Miss Sullivan got those hatchets from, and I showed him.

Q. In that same box?

A. In that same box.

Q. And then he looked in the box?

A. He went there and he took it out.

Q. And you had not been there to look before?

A. No; I had

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not been there to look in the box.

Q. Did you afterwards look in the box?

A. I did not. As I remember of I didn't look in it.

Q. Do you know anything of what became of the box?

A. No, sir.

Q. Nothing else was taken out of it while you were there?

A. Nothing but the hatchet and parts of the handle.

Q. Well, parts. That piece?

A. That piece, yes.

Q. Well, that was in the eye, wasn't it?

A. Yes; then there was another piece.

Q. Another piece of what?

A. Handle.

Q. Where is it?

A. I don't know.

Q. Don't you know where it is?

A. No, sir.

Q. Was it a piece of that same handle?

A. It was a piece that corresponded with that.

Q. The rest of the handle?

A. It was a piece with a fresh break in it.

Q. The other piece?

A. Yes, sir.

Q. Well, where is it?

A. I don't know.

Q. Did you see it after that?

A. I did not.

Q. Was it a handle to a hatchet?

A. It was what I call a hatchet handle.

Q. I want to know about how long it was?

A. Well, I couldn't tell you how long it was. I didn't measure it.

Q. No, I understand, but I mean about. Give your best judgment?

A. I don't think it was as long as the handle in them hatchets there.

Q. Shorter than that?

A. It was shorter than them, if I remember right.

Q. Well, did you take it out of the box?

A. I did not.

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Q. Did you see it taken out?

A. I did.

Q. Who took it out?

A. Mr. Fleet took it out.

Q. Mr. Fleet took it out?

A. Yes, sir.

Q. You were there?

A. I was there.

Q. Anybody else?

A. Not as I know of.

Q. Did Mr. Fleet put that back too?

A. He did.

MR. ROBINSON. (To opposing counsel) Have you that handle here, gentlemen?

MR. KNOWLTON. No.

MR. ROBINSON. You haven't it in your possession, may I ask?

MR. KNOWLTON. Never had it

MR. ROBINSON. The government does not know where it is?

MR. KNOWLTON. I don't know where it is. This is the first time I ever heard of it.

Q. Did you ever tell anybody about this before?

A. No, sir, never did.

Q. Did you at any time later in the afternoon go into that clothes-closet up stairs?

A. Which part of the house?

Q. That is in the west end, you know, right over the front door.

A. I don't remember of going in any closet in the west side of the house.

Q. Perhaps I may describe it to you as rather more of a room than a closet,---having a window opening out of it.

A. I don't remember.

Q. It is up on the first landing, right round to the right of the guest room door. Do you now place it?

A. No, sir.

Q. Did you on any other day join in any searches there?

A. That is the only day I was there.

Q. Do you know where Mr. Fleet is now, this minute?

A. I do not.

Q. Is he below?

A. I don't know.

Q. Have you seen him since morning?

A. I saw him down stairs.

Q. You mean before the adjournment?

A. Yes, sir.

MR. ROBINSON. That is all.

I would like to have Mr. Fleet come in. I would like to have him sent for.

MR. KNOWLTON. We were proposing to do it.

RE-DIRECT EXAMINATION.

Q. (By Mr. Moody.) Were these axes found in the same place with the hatchets?

A. They were found on the south side of the cellar.

Q. Of the same compartment in the cellar or another one?

A. I would not say that.

Q. Don't know whether they were or not?

A. I think if I remember right, they were found along in range of where the hot water heater is.

Q. Now the handle that has been spoken of: Did you say it fitted into these breaks?

A. I did not try to fit it in.

Q. You did not try to fit it in?

A. No, sir.

Q. Did you notice anything in reference to the handle of the hatchet?

A. They were fresh broken.

Q. Did you notice anything in respect to the ashes upon the handle?

A. It was on both sides of it.

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Q. Of the handle of the hatchet?

A. Oh, the handle? I did not notice no ashes on the handle.

MR. MOODY. That is all.

Mr. Officer, call Mr. Fleet.

MR. ROBINSON. I would like to have this witness in the room until Mr. Fleet comes. He need not stay on the stand.

MR. MOODY. You may take a seat in that room. (Pointing to the rear.) Do not leave that room or that seat until Mr. Mullally comes.

JOHN FLEET, Recalled.

When Mr. Fleet had taken his position on the witness stand, a discussion ensued.

MR. ROBINSON. I called for him and I wish to cross-examine him a little further now, in view of the position of matters. I ask to examine him further on this question.

MR. MOODY. It is of course with the Court to say as to which has the right to go ahead on this subject. It is for your Honors to say.

MASON, C. J. The cross-examination may go forward.

Q. (By Mr. Robinson.) Mr. Fleet, returning to the subject we had under discussion this morning, about what you found in that box down stairs: You know the box by the chimney?

A. Yes, sir.

Q. Will you state again what you found there at the time you looked in?

A. I found a hatchet head, the handle broken off, together with some other tools in there and the iron that was inside there. I don't know just what it was.

Q. (Showing hatchet.) Was this what you found?

A. Yes, sir.

Q. Did you find anything else, except old tools?

A. No, sir.

Q. Sure about that?

A. Yes, sir.

Q. Who was with you at that time?

A. Michael Mullally.

Q. Anybody else?

A. Not that I recall.

Q. Did you take this out of the box yourself?

A. At the time?

Q. Yes.

A. Yes, sir.

Q. He didn't?

A. Mullally?

Q. Yes.

A. No, I don't think he did.

Q. Now, if I understand you, this piece was in the eye of the hatchet?

A. Yes, sir.

Q. That has been driven out since?

A. By somebody.

Q. Yes, not by you. And taking these two together, that was all you found in the box, except some old tools which you did not take out at all. Is that right?

A. That is all we found in connection with that hatchet.

Q. You did not find the handle, the broken piece, not at all?

A. No, sir.

Q. You did not see it, did you?

A. No, sir.

Q. Did Mr. Mullally take it out of the box?

A. Not that I know of.

Q. It was not there?

A. Not that I know of.

Q. You looked in so that you could have seen it if it was in there?

A. Yes, sir.

Q. You have no doubt about that, have you at all?

A. What?

Q. That you did not find the other piece of the handle that fitted on there?

A. No, sir.

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Q. You would have seen it if it had been, wouldn't you?

A. Yes, sir, it seems to me I should.

RE-DIRECT EXAMINATION.

Q. (By Mr. Moody.) A single question has been suggested: Did you see anything other than metallic substances, except this piece of wood which was driven into the eye of the hatchet in that box, or about that box?

A. I don't recollect that I did.

Q. (By Mr. Robinson.) There was no hatchet handle belonging to that picked up right there?

A. No, sir.

Q. Or anywhere round there?

A. No, sir.

Q. Or any piece of wood beside that that had any fresh break in it?

A. Not that came from the hatchet.

Q. Or in that box anyway?

A. No, sir, not in the box.

Q. Or round there anywhere?

A. No, sir, not that I am aware of; I did not see any of it.

CHARLES H. WILSON, Sworn.

Q. (By Mr. Moody.) Charles H. Wilson is the name?

A. Yes, sir.

Q. You are a member of the police force at Fall River?

A. Yes, sir.

Q. And were last year?

A. Yes, sir.

Q. Upon the 4th day of August, 1892, did you go to the Borden house?

A. Yes, sir.

Q. About what time did you go there?

A. About one o'clock.

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Q. Was any officer with you?

A. No, sir, I went alone at the time.

Q. Did you meet Mr. Fleet there?

A. Yes, sir.

Q. And Mr. Minnehan?

A. Yes, sir.

Q. Mr. Minnehan is now dead, is he?

A. Yes, sir.

Q. I only want to call your attention Mr. Wilson, to anything that you saw up in Miss Lizzie Borden's room, any talk that you heard. In the first place, did you hear any talk between her and Mr. Fleet?

A. Yes, sir.

Q. Did you hear the whole of it?

A. I think I heard most of it.

Q. Will you state as well as you remember now what was said between them?

A. We went into the room to search it, Mr. Fleet, Mr. Minnehan and myself, and Mr. Fleet asked Miss Borden, Miss Lizzie, where her mother,---when she saw her mother last, and she said she saw her about nine o'clock in the guest chamber, making the bed, but that she had received a note and she thought she had gone out. And he asked---he asked her how long she was out in the barn and she said she was out there half an hour in the morning. He said, "What do you say now?" She says, "From twenty minutes to half an hour." He says, "We will call it twenty minutes, then." She said, "No, sir, from twenty minutes to half an hour."

Q. Anything further you recall at that time?

A. When we went into the room she said it was not necessary to search one room because it was locked, as no one could go in and throw anything in there, as if she ever went out, even down stairs, she always locked the door after her.

Q. Anything else that occurs to you at the present time that she

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said?

A. She asked if it was absolutely necessary to search the room,---no; the doctor asked that at the door before we were admitted.

Q. Will you describe what occurred at the door?

A. Mr. Fleet knocked at the door and Dr. Bowen came to it, and he says, "Wait a minute," and he went back and then came to the door and asked if it was absolutely necessary to search the room. Mr. Fleet said it was, and we went in, and she said if it was---let me see---that if it was, to search the room and she hoped we would be as quick as we could about it, that she could not stand it much longer, that she was sick. That is as near as I recollect the words.

Q. Did you notice anything at that time relative to the closet over the front door?

A. I went into that room to search it.

Q. How did you get in?

A. Miss Lizzie opened it with a key.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) There was no objection made to your search except "Wait a minute" and then you went right in, didn't you?

A. Yes, sir.

Q. It was all pleasantly done, was it not, Mr. Wilson?

A. It appeared to be. Well, first along she seemed to object.

Q. You knew that the other officers had been in there before?

A. No, sir, I did not.

Q. You had not learned of that?

A. No, sir.

Q. But Dr. Bowen came to the door, somebody had rapped, and politely enough said, "Wait a minute."

A. Yes, sir.

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Q. There was nothing about his behavior that was impolite, or discourteous, was there?

A. I don't think so.

Q. There was no resistance offered?

A. No, sir, only we were not admitted as soon as we knocked.

Q. He opened the door and you made known your errand, or Mr. Fleet did, and then he says, "Wait a minute."

A. Yes, sir.

Q. And in less than a minute, probably, you were ushered in?

A. Yes, sir.

Q. And she said she hoped you would get through soon because it was making her sick, or something of that kind?

A. Yes, sir.

Q. Got very tired, did she say?

A. She said she could not stand it much longer.

Q. Do you remember who was in there at that time?

A. Dr. Bowen and Mrs. Holmes.

Q. You three looked about as you wanted to?

A. Yes, sir.

Q. And none of the three interfered with you or tried to get you out of the room in any way?

A. No, sir.

Q. Was there anything done that was not just right in the treatment towards you officers?

A. No, sir.

Q. Now Mr. Wilson, did you go with Mr. Minnehan and Mr. Fleet into other parts of the house to make examinations?

A. Yes, sir.

Q. Will you please tell the jury where you went?

A. We went into the closet at the head of the stairs, and then we went into the guest chamber. And from there to the rear of the house up into Mr. Borden's room and into the attics and searched, not very closely.

Q. Searched round?

A. Yes, sir.

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Q. And wherever you wanted to go you went?

A. Yes, sir.

Q. Nobody stood in your way?

A. No, sir.

Q. Found locks on pretty nearly all the doors, I believe?

A. Yes, sir.

Q. And sometimes they were locked on both sides, or provided with locks, hooks, or something like that?

A. There was one door that was, I recollect.

MR. ROBINSON. I don't think I will trouble you any further.

MR. KNOWLTON. If your Honors please, I think that it is important that an investigation should be had to see whether the piece of wood that had been described by Mr. Mullally is still in that box. In order that it be done with entire fairness, I ask that somebody be designated to go over with an officer to do it. I know of no other way to have it done promptly. I make this motion with no other interest than that of justice.

MR. ROBINSON. Justice is what we want.

MR. KNOWLTON. Do you object to the appointment of an officer for that purpose?

MR. ROBINSON. That is not a matter for consideration now.

MASON, C. J. The Court cannot interfere with the preparation of the case.

MR. MOODY. Miss Annie M. White will take the stand.

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ANNIE M. WHITE, Sworn

Q. (By Mr. Moody.) What is your full name?

A. Annie M. White.

MR. ROBINSON. I have a request to make of the Court and I am perfectly willing that the preliminary request should be made now and I will add what I have to say afterwards.

Q. (By Mr. Moody.) You are the official stenographer for Bristol County, are you?

A. Yes, sir.

Q. Were you present at a proceeding at Fall River some time in August of last year?

A. Yes.

Q. Do you recall the date of it?

A. The inquest was August 9 and the preliminary hearing, I think, was August 25.

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Q. I am referring now to August 9th. Did you see Miss Lizzie Borden?

A. I did.

Q. And Mr. Knowlton?

A. Yes.

Q. In what room were you present?

A. In the district court room in Fall River.

Q. Who was there besides those whom you have named?

A. Judge Blaisdell, Mr. Leonard, the clerk of the court, and Dr. Dolan, and Mr. Seaver was there part of the time, and Marshal Hilliard was there all of the time, and there was one or two persons came in there I didn't know---strangers.

Q. Did they stay, or come in and go out?

A. No, I think they were there only one forenoon; one gentleman or two that I was not acquainted with.

Q. Now was there some conversation between Mr. Knowlton and Miss Borden at that time?

A. Yes.

MR. ROBINSON. Wait right there; that is where the point should come. This, may it please your Honors, brings us to an important consideration which must be addressed to the Court, and I take it that your Honors will desire to hear us in the absence of the jury, as is usual in matters of this importance, and I ask that the further hearing of this witness be suspended at this point. Hoping that the Government would have work enough for this afternoon without going upon that, I should like very much that the discussion of this question be deferred until the morning, for the reason that some of the authorities which I want to cite and refer to I do not find in the city. We made search, and

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sent to Fall River, and obtained some but not all. I do not know whether we can get them, but we supposed we could here in the court house or in the offices in the city. Now, the Court, I have no doubt, have anticipated this question, which was likely to arise. It cannot have been otherwise. I am perfectly willing to make my statement, but I wish to do it with some care. Of course your Honors full well understand the nature of the question, without going into it at length, and I want to have it presented at the time when it will be in the best form.

(After consultation between Court and counsel the examination of the witness was suspended.)

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GEORGE A. PETTEE, Sworn.

Q. (By Mr. Moody.) George A. Pettee, is it?

A. Yes, sir.

Q. You live in Fall River, Mr. Pettee?

A. I do.

Q. How long have you lived there?

A. 54 years.

Q. How long did you know Mr. Borden before his death---Andrew Borden?

A. Since I was a young boy.

Q. Had you ever lived in the Borden house---what we have called the Borden house?

A. I have, yes, sir.

Q. When did you cease to live there?

A. 22 years ago last March.

Q. Were you the tenant preceding Mr. Borden, or one of them?

A. One of them: yes, sir.

Q. In what part of the house did you live, the upper or lower?

A. The upper part.

Q. Did you have any occasion on the fourth of August of last year, in the morning, before the homicide, to pass the Borden house?

A. I did.

Q. About what time?

A. Between 9 and 10.

Q. Did you see any one, any one of the inmates of the house, about there?

A. I did not.

Q. Perhaps my word was misleading. Did you see either the servant or anybody who lived in the house?

A. Not when I went down; no, sir.

Q. Did you at any time in the morning see Bridget anywhere?

A. I did.

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Q. About what time?

A. I should think about ten o'clock.

Q. What was she then doing?

A. She stood in front of the house, nearly opposite the front door.

Q. Did she appear to have anything with her, any implements of any kind?

A. Well, I saw the pail and dipper and brush. I thought she had been washing windows.

Q. Was she stationary at the time you saw her, or moving?

A. She was stationary.

Q. Talking with any one, or not?

A. No, sir.

Q. Now, Mr. Pettee, where were you when you first learned that there had been trouble at the Borden house?

A. I was in Varnum Wade's store.

Q. About what time was that?

A. Well, I can't say: I think it was after eleven o'clock.

Q. At what time?

A. It was after eleven o'clock: I couldn't say exactly at what time.

Q. When you got there, who was there, Mr. Pettee?

A. I saw Mrs. Churchill and Bridget, Frank Wixon and Dr. Bowen. I may have seen others: I don't remember of others.

Q. Those are all that you recall?

A. Yes, sir.

Q. Had a crowd collected at that time?

A. No, sir.

Q. Outside or in the yard?

A. No, sir. There was nobody outside at all.

Q. Now, then, what did you do?

A. Well, I passed right into the room where Mr. Borden was. Dr. Bowen was in the act of covering him with a sheet when I went in. When he saw me approaching he took the sheet away and gave me an opportunity

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to look at him. After I had looked at him what time I thought was necessary, I stood back and he covered him up.

Q. Now will you tell us anything that you observed with reference to Mr. Borden's body, or the blood upon it?

A. Well, I noticed the position that he laid in. He was lying on his right side, with the left side exposed. His feet was crossed, and one of them rested on the floor. I noticed the condition of his head,---the condition of the blood that came from it.

Q. Now, state that carefully, if you please, Mr. Pettee.

A. It seemed to me that the blood was quite fresh. I think that I could detect movement in the blood as it passed from his head down under his collar. I don't know that I could explain it any better than I have.

Q. Where did you go then?

A. Then I inquired of Dr. Bowen if Mrs. Borden was dead too, and he said she was. He invited me to go right up stairs with him and look at her, and I did so. I found Mrs. Borden lying in the northeast corner of the room: I should think that she lay on her face; that her head was within perhaps 18 inches of the wall; that she was nearly in the centre of the space between the bed and the dresser. It was quite dark in there, so much so that I could not see very well, and I passed in to her head and got down on my knees and put my hand on her head in order that I might see and feel what the condition of her head was in. As soon as my hand touched her head I noticed that the hair was dry, that it was matted, that it seemed to be very rough

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on the palm of my hand, and that there was no moisture adhered to my hand when I took it away.

Q. Was that upon the bloody part of the head, do you mean?

A. It was right on the back of her head: and I said to Dr. Bowen---

MR. ROBINSON. Never mind about that.

Q. I don't care for that. You said on the back of the head. I want to make it quite clear whether this dry hair on which you put your hand was covered with blood or not?

A. I should judge it was.

Q. Go on, sir: anything else?

A. Then I noticed the condition of the blood on the floor around her head, which appeared to have a shiny surface, as though it was skimmed over, as though it was dry. I noticed the condition of the blood on the pillow shams, and I don't know of anything else in particular.

Q. About Mrs. Borden's head, or on the floor beside her, or upon any part of the room, did you see any fresh blood?

A. No, sir.

Q. Or any blood which was in motion at all?

A. No, sir.

Q. Did you have any occasion to notice anything with respect to the warmth of the body, or did you take any notice?

A. I don't think that I noticed it at all.

Q. Now be careful to answer this question yes or no, and no further. Did you form an opinion at that time as to the priority of the death,---as to which died first?

A. I did.

MR. MOODY. We were not quite certain on what ground your Honors' ruling proceeded the other day, whether it was

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upon the insufficient observation, or whether it was upon a subject which required expert knowledge. We offer to show what that opinion was. It was one of those circumstances which are discussed in Commonwealth v. Sturtevant. (Turning to Mr. Robinson). It is possible you do not object to it.

MR. ROBINSON. I do not see any occasion for using this gentleman as an expert: you have others here who are quite as competent.

MASON, C. J. Do counsel desire to present any further grounds on which it is competent.

MR. MOODY. No, your Honor. It seemed to be one of those questions which in our mind was very near upon the debatable line. Of course it is quite clear that a witness could testify whether a person was alive or dead. It is quite clear that he may testify that they appeared to have been dead a week: it is quite clear that he might testify that they appeared to be recently killed. Now here the interval claimed by the Commonwealth is so much between those limits that the difficulty arises in our mind, and we submit it to your Honors on the ground that was so extensively discussed in Commonwealth v. Sturtevant, (which I need not refer to in detail,) on the ground that there are appearances which the witness cannot reproduce to the jury. I quite know that that is a ground which goes a good way, and perhaps without limitations would carry further than the Court would ordinarily go. I have nothing further to present to your Honors.

MASON, C. J. The question is excluded.

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Q. Did you leave the house after completing this examination, Mr. Pettee?

A. Yes, sir.

Q. Where did you go before you heard any bells strike, any bell of any clock?

A. I passed up to Mr. Wade's store.

Q. That is a short distance?

A. It is the next building but one.

Q. To the south?

A. Yes, sir.

Q. And as you got up there what time did you hear strike?

A. I heard the bell strike for twelve o'clock.

(No cross-examination.)

AUGUSTUS P. GORMAN, Sworn.

Q. (By Mr. Moody.) Mr. Gorman, what is your full name?

A. Augustus P. Gorman.

Q. And you are the proprietor of the paint shop at the corner of Borden and Second Streets?

A. Yes, sir.

Q. And in your shop is a telephone?

A. Yes, sir.

Q. You were not there in your shop between eleven and twelve on August 4th last, I believe?

A. No, sir.

Q. You had a clock there, did you?

A. Yes, sir.

Q. Where was its situation with reference to your telephone box?

A. Well, it was right over the telephone.

Q. What sort of clock was it? Describe it.

A. Well, it was one of those clocks that had a round face, a very large round face, and a small box beneath for the pendulum; a regular store clock.

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Q. Was it an old or a new clock?

A. It was quite an old clock.

Q. Was it a clock which kept good time or otherwise?

A. No, it didn't keep very good time; no.

Q. Is it a clock that at that time could have been depended upon at all?

A. No, sir.

ADELAIDE B. CHURCHILL, Re-called.

Q. (By Mr. Moody.) Mrs. Churchill, do you know what a Bedford cord dress is?

A. No, sir.

Q. Then I suppose you could not tell whether this one that you said Miss Borden had on that morning was a Bedford cord or not?

A. I never noticed.

Q. You didn't know what the material was---Bedford cord?

A. No, sir; I thought it was a cotton dress of some kind.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) May I ask what sort of a dress Bridget had on that morning?

A. I think a light calico or gingham.

Q. And was there any prevailing color in it?

A. I don't remember. It looked as if it might be faded some. It was light calico.

Q. A light faded color?

A. Yes, sir.

Q. You certainly would not call it an indigo blue?

A. No, sir.

Q. Or anything like that?

A. No, sir.

Q. And a very much lighter colored dress than this one that has

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been produced here as belonging to Miss Lizzie Borden?

A. Yes, sir.

Q. Very much lighter?

A. Yes, sir.

Q. Quite a faded-out dress?

A. Yes, sir; a light summer dress.

Q. (By Mr. Moody.) Had it any blue in it at all?

A. I don't remember.

MR. KNOWLTON. We expected to fill the afternoon, if your Honor pleases, with the testimony of Miss White, which I understand my friend wants to have a conference about, so we have no other witness to call at this time. Miss White's testimony would occupy more than two hours if she was called.

MASON, C. J. Before having the jury withdraw I desire to say to them that, as the case progresses, the Court desires to caution them against allowing their minds to reach any conclusion or form any opinions with reference to the case, upon its partial presentation. You must keep in mind that you can hear but a part of the case at one time. To facilitate that the Court would caution you that you should not converse about the case until it is finally committed to you and all of the evidence that bears upon it is before you.

(At 3.40 P.M. the court was adjourned to Saturday, June 10th, at 9.00 A.M.)

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SIXTH DAY

Saturday, June 10th, 1893

The Court came in at 9.02 A.M.

FRANCIS L. EDSON, Sworn.

Q. (By Mr. Moody.) What is your full name, sir?

A. Francis L. Edson.

Q. And are you of the Fall River police?

A. I am.

Q. What is your present position in it?

A. Lieutenant of police.

Q. In August of last year what was your position?

A. Acting sergeant of police.

Q. Mr. Edson, did you go last night to the house that was occupied in his lifetime by Andrew J. Borden?

A. Yesterday afternoon, sir.

Q. About what time?

A. Twenty minutes of four.

Q. And in consequence of some instructions?

A. Yes, sir.

Q. Did anyone go with you?

A. Yes, sir.

Q. Who went with you?

A. Officer Mahoney.

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Q. Did you obtain admittance?

A. No, sir.

Q. Did you go to the door and make yourself known?

A. Yes, sir.

Q. Did any one come to the door?

A. Yes, sir.

Q. Who came to the door?

A. The servant girl.

Q. Of course you effected no entrance, you made no entrance?

A. No, sir.

Q. Did you try to? I do not mean by forcible means, but by persuasion?

A. I sent word to Miss Emma Borden through the servant girl.

MR. ROBINSON. You do not want the conversation?

MR. MOODY. No, I do not care for it.

Q. And you failed to get admittance?

A. Yes, sir.

Q. You had tried to get admittance, did you?

MR. ROBINSON. I do not want the conversation. Let him state what he did.

A. I requested to be admitted; that is all.

Q. On the day of the homicide did you go to the Borden house?

A. Not in the daytime. I did at night.

Q. At any time did you take any hatchets or axes away from there?

A. I did.

Q. When?

A. The morning of the 5th of August.

Q. That was Friday morning?

A. Yes, sir.

Q. What did you take?

A. Two wood axes, a hand axe, and a small shingle hatchet.

Q. Where did you take them?

A. From the cellar.

Q. Where were they in the cellar?

A. Three of them were in the

wash room on the floor.

Q. Which three?

A. The small shingle hatchet and the two wood axes.

Q. Where was the other one?

A. In the vegetable cellar on a scaffold or shelf.

Q. What did you do with those axes and hatchets?

A. Carried them to the central police station.

Q. Into whose custody did you give them?

A. Marshal Hilliard's, when he came in the morning.

Q. Have you had any possession of them since that time?

A. I have not.

Q. Have you had anything to do with the handle-less hatchet, any possession of that at any time?

A. I have not.

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Q. Did you hear any conversation between Miss Lizzie Borden and Bridget Sullivan in reference to the cellar door?

A. I did.

Q. You may state it.

A. The morning of the fifth, about quarter past seven, I was at the Borden house having conversation with Miss Emma Borden, and Miss Lizzie came in and asked Bridget, the servant girl, if she was sure that the back cellar door was fastened, and the answer was that she was,---"Yes, ma'am."

Q. Will you tell me whether those are the axes (showing axes to witness), to which you referred, or resemble them?

A. They resemble them, sir. That was in the vegetable cellar.

Q. What do you call that?

A. Hand-axe,---hatchet or axe. (Referring to the claw hammer hatchet.)

Q. And that you call the shingling hatchet?

A. Yes, sir. These three were together in the wash room, on the floor.

Q. And the claw hammer hatchet was---

A. In the vegetable cellar, on a shelf or scaffold.

Q. Did you take any part in a search of the premises at any time?

A. I did.

Q. When was it?

A. Monday, the eighth of August.

Q. What officers were present?

A. Captain Desmond, Connors, Inspector Medley, Officer Quigley, myself, and an outsider by the name of Charles H. Bryant, a mason.

Q. Was any one else present during the search except yourself?

A. Yes, sir.

Q. I mean yourselves, the officers?

A. Yes, sir.

Q. Who?

A. Andrew J. Jennings, and Hanscom, the superintendent

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of Pinkerton's detective agency in Boston. They came in after we had been there a few minutes.

Q. Was Hanscom, the Pinkerton detective, associated with you in the matter?

A. No, sir, he was not, nor Mr. Jennings. They merely came there when we were searching.

Q. Mr. Jennings was not associated with you in any way?

A. No, sir, he was not associated with me.

Q. So far as you know, was the detective at any time associated with the police in the investigation of this matter?

A. Not that I know of.

CROSS EXAMINATION.

Q. (By Mr. Robinson.) I did not take all the names: I should think six or eight?

A. About six.

Q. Were present at that time, I mean?

A. Yes, sir, outside of Mr. Jennings and Mr. Hanscom.

Q. And the six, beside them, were the only ones that participated in the search?

A. Yes, sir, at that time.

Q. This was Monday?

A. Yes, sir.

Q. And what time in the day?

A. We arrived at the house about ten o'clock.

Q. Well, now, will you be kind enough to tell us just what you did?

A. Captain Desmond had charge of the party, and we went into the house and he asked permission of some one---who I don't know,

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I didn't see them---and permission was granted. And then we went into the cellar and searched the cellar. We searched all the boxes and barrels.

Q. Did you say "he" or "we" went into the cellar?

A. We, the party.

Q. I misunderstood you. You all went. I wish you would be very careful and detail just the manner and thoroughness of your search.

A. Well, each one was assigned a certain thing to do, and searched for himself.

Q. Well, you can do perhaps a little more in detail than that.

A. Well, that part I took in it, I searched in the vegetable cellar, removed all the barrels, boxes and shingles underneath the stairs. I also searched the coal pile, and in the wood cellar: around the furnace.

Q. What do you call the wood cellar?

A. The cellar in the southwest corner of the house.

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Q. That would be the corner toward Second street and towards Mrs. Kelly's?

A. Yes, sir.

Q. Does the steam heater stand in that room?

A. Near by.

Q. Did you notice anything about any boxes in there?

A. I don't remember particularly, in that room. There was in the cellar adjoining there boxes containing cinders and ashes.

Q. Were boxes there?

A. Yes, sir, there were.

Q. Where were they?

A. Those that I noticed were on the ground, sitting on the ground of the cellar.

Q. Did you see any up on a shelf?

A. Not to my recollection, no, sir.

Q. Was there a chimney in that cellar?

MR. MOODY. Which cellar is this?

MR. ROBINSON. The middle one?

A. Yes, sir, that is the back of the chimney, yes, sir.

Q. Base of the chimney?

A. Yes, sir, the base of the chimney.

Q. Were there any boxes around that chimney?

A. Yes, sir.

Q. Did you examine those?

A. Only those that contained ashes and cinders, sifted coals.

Q. (By Mr. Moody.) You are speaking of what you did yourself, Mr. Edson?

A. Yes, sir.

Q. (By Mr. Robinson.) And what you saw?

A. Yes, sir.

Q. I do not understand what you say you examined, whether the boxes or not.

A. Those containing cinders or ashes.

Q. Where did they stand?

A. One was next to the wall on the south side of the cellar or the room.

Q. Were they boxes containing ashes?

A. There were ashes with

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the cinders sifted off.

Q. Where was the ashes?

A. There was a niche in the chimney and some ashes in there.

Q. Did you notice any boxes around on the chimney up a little higher from the floor?

A. I did not, no, sir.

Q. Didn't see one taken from there?

A. I did not, no, sir.

Q. Were things in there very carefully examined?

A. What I examined was examined carefully.

Q. I assume so. You were very thorough about your work?

A. What I done.

Q. Didn't anything escape you, captain, did there?

A. Might have been.

Q. You don't have much doubt there did, have you?

A. There is a possibility of it.

Q. That is about all you can say?

A. Yes, sir.

Q. You were there to look,---your business, was it not?

A. Yes, sir.

Q. These other gentlemen of the police are pretty competent, vigorous men, all of them?

A. Yes, sir.

Q. And somewhat experienced in police work?

A. Yes, sir.

Q. You did not see any slighting of the work by any of them?

A. Well, sir, none that came to my knowledge. Of course I did not watch them all the time. I was looking after my part of it.

Q. You searched those boxes of cinders and didn't find anything there?

A. No, sir, I did not.

Q. Did you find anything anywhere during your search in the cellar that you thought was worthy of notice at all?

A. No, sir, I did not.

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Q. You saw these two axes and the small hatchet in the wash room, I think?

A. The next day, on the morning of the 5th.

Q. They were not there on Monday?

A. No, sir.

Q. The whole four were gone at that time,---they were down to the station?

A. Yes, sir, I suppose so.

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Q. Did you or any other of the party to your knowledge on that Monday take away anything from the house?

A. Yes, sir.

Q. What did you take?

A. Officer Medley had a hatchet head in his pocket.

Q. Did you see it?

A. He showed it to me partly.

Q. Do you know where he got it?

A. I do not.

Q. When did he show it to you?

A. Just as he was about to leave he came to me and pulled it out of his pocket, and it was in a paper, and says, "I am going down street---"

Q. I needn't say what he said. He took it out of his pocket?

A. Yes, sir.

Q. It was wrapped in a paper?

A. Yes, sir.

Q. You didn't see it before that?

A. No, sir.

Q. Did you examine it?

A. No, sir,---glanced at it, that is all.

Q. What did he do with it?

A. Went off with it, or away from the building.

Q. Did he go away before the rest of you?

A. Yes, sir.

Q. How soon after you arrived there?

A. Not a great while after.

Q. It was only the small hatchet---had no handle?

A. No handle.

Q. And he didn't have any handle in his possession, did he, that he showed to you?

A. No, sir.

Q. You didn't see any loose handle around there?

A. No, sir.

Q. And you didn't find one yourself?

A. No, sir.

Q. And I think you say you don't know where Mr. Medley got it?

A. I don't know.

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Q. And you went into the front cellar, in the front corner, the northwest corner?

A. Yes, sir.

Q. And searched there?

A. Yes, sir.

Q. Well, did you find anything at all to help us in this case?

A. Nothing.

Q. Did you find anything in that cellar in any way that will help us at all in this case?

A. Outside of those hatchets and axes?

Q. Yes, sir.

A. No, sir.

Q. You were entirely satisfied, in your judgment, that there wasn't anything there, weren't you?

A. At that time, yes, sir.

Q. I think you said you had a mason there?

A. Yes, sir.

Q. What did you have him for?

A. He was to open a chimney, if necessary.

Q. Did he open it?

A. I believe that he did, though I didn't see him.

Q. Where was the chimney?

A. It was nearly opposite, as I remember, from the furnace or boiler.

Q. That was in the cellar?

A. Yes, sir.

Q. He opened it while you were there?

A. No, sir. I was searching another part of the cellar.

Q. You saw that it had been opened, I suppose?

A. I am quite sure that I did. I am not positive of that.

Q. You didn't see anything taken from there?

A. No, sir, I didn't.

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Q. Or see anything that you learned had been taken from there?

A. No, sir.

Q. What is his name?

A. Charles H. Bryant.

Q. And is he here now?

A. I saw him this morning in Fall River.

Q. He is still living?

A. Yes, sir.

Q. Did he open any other chimney to your knowledge?

A. No, sir.

Q. Well, did you look around under the stairs?

A. Yes, sir.

Q. Did you look into the water closet?

A. Yes, sir.

Q. Nothing there?

A. No, sir.

Q. Looked all around all of the rooms in the cellar?

A. I went into all of them. I searched part of them and part I did not. There were other officers.

Q. There were six of you working, were there?

A. Five, with Mr. Bryant.

Q. Making six in all?

A. Yes, sir.

Q. You were around there as long as you wanted to be?

A. There until half past one in the afternoon.

Q. You don't mean down cellar?

A. All around the premises, most of the time in the cellar.

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Q. Now, you had every search that you wanted to make, didn't you?

A. I did, yes, sir.

Q. Well, you didn't see anything interfering with the examination by anybody?

A. I did not, no, sir.

Q. You said Mr. Jennings was there?

A. Yes, sir.

Q. He didn't interfere?

A. No, sir. He said it was perfectly proper.

Q. Perfectly willing you should look all you wanted to, wasn't he?

A. Yes, sir.

Q. Said so in regard to the whole house?

A. I didn't hear him say that.

Q. At any rate, you didn't have any objections made in any part of the house?

A. I did not, no, sir.

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Q. Well, I don't understand that Mr. Hanscom interfered at all?

A. Not at all; no, sir.

Q. He didn't take any part in the search?

A. Oh no, sir.

Q. Stood by, looked on?

A. Stood by a few minutes and then went away.

Q. Went away while you were in the cellar?

A. Yes, sir. Where, I don't know.

Q. You didn't see him again that day, that is, down at that house?

A. I haven't seen him since.

Q. You carried the two axes and two hatchets in a bag down to the police station on the morning of the 5th?

A. No, sir.

Q. I beg pardon, I thought you said so?

A. No, sir. I carried them to the station.

Q. What did I say?

A. In a bag.

Q. Did you see anybody carry them in a bag?

A. No, sir.

Q. How were they carried?

A. In my hands, openly.

Q. You didn't see anybody around there with a bag putting anything in?

A. No, sir.

Q. Was Dr. Dolan there at the time?

A. No, sir.

Q. And who were present with you at the time you carried them away?

A. Capt. Harrington, and Doherty, Officer McCarty, Reagan, J. Linnehan, and J. Minnehan.

Q. Do you remember whether there were any shelves in that southwest wood cellar?

A. I don't remember.

Q. You really can not say?

A. No, I cannot say.

Q. Do you know whether there were any shelves on the wall in the wood cellar, the next one to it, the middle cellar?

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A. There might have been.

Q. I mean the middle cellar now where the chimney comes in?

A. I am not so sure. My impression is there was a shelf near the heating apparatus inside. That is my impression.

Q. That would be where---

A. The boxes of cinders were. That is my impression; I am not positive about it.

Q. See if you can help us a little. Let me get the situation before you. The front cellar in the corner is not where the steam heater is?

A. No, sir.

Q. And the middle cellar room is not where the steam heater is?

A. No, sir. The door leading into the cellar is close by.

Q. Now in which of those two rooms is it in your mind that there was a shelf?

A. In the middle one. That is my impression.

Q. And on which side of that room?

A. It would be the north side of the room and back of the steam heating apparatus. That is the impression that I have.

Q. Yes, I understand that perfectly. I don't know but you might be able to assist us. Will you look at that, which is given to us as the ground plan of the cellar and the rooms there. Now when you get that clearly in your mind I would like to have you just put your finger on, so I can see it, about where you think that shelf is or was?

A. Well, now, by looking at this plan it seems some different, as I see the plan of the cellar. My impression was on the north side of either that room, or in here, but it is my impression it is in the rear of the heater. That is the impression I

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have, although I am not positive of it.

Q. You mean in the front room?

A. Yes, sir.

Q. That is, as you recall it the shelf would be right along there?

A. There was a shelf in one of those cellars, I think up from the ground a little ways.

Q. It might be there or there?

A. Yes, sir; I am not positive as to that.

(Pointed out to jury on plan.)

Q. I will point it so you and the jury can see it together. As you recall it, the shelf would be either there or there?

A. Yes, sir; and I have the impression of another one that was on the other side of this corridor here.

Q. Will you point that out?

A. It was along on this side here somewhere near this coal bin here. There was two coal bins, one of which had finer coal and one coarser.

Q. And when you spoke of examining the coal bin did you mean both?

A. I examined one---the larger bin.

Q. You spoke of a vegetable room. Do you mean the one---

A. In the north-east corner.

Q. The one where there [were] barrels?

A. Yes, sir.

Q. Standing up?

A. Yes, sir.

Q. And did you find that claw hammer hatchet in that place?

A. Yes, sir.

Q. Behind something?

A. It was on a shelf or scaffold about six feet from the ground.

Q. Had anybody directed your attention to it?

A. Yes, sir.

Q. May I ask who that was?

A. Yes, sir.

Q. And will you tell me?

A. Capt. Harrington.

Q. The same gentleman that was here yesterday?

A. Yes, sir.

Q. Capt. Philip?

A. Yes, sir.

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Q. Well, I wanted to know if it was the same man. He was there participating in the search?

A. That was the morning of the fifth.

Q. Oh, were you looking about then?

A. I went there to get the axes and hatchets.

Q. Yes, and he pointed that one out to you?

A. Yes, sir.

Q. Have you finished the cellar now---all you care to say about it?

A. Yes, sir.

Q. And where will you go next with us?

A. To the barn.

Q. Then go: tell me about it.

A. We went into the barn next. I searched the lower part of the barn---that is, the horse stalls: removed some of the sheathing at the bottom: and after I had completed that I went into the haymow.

Q. I take it that the other gentlemen were along with you, or some of them?

A. Yes, sir.

Q. Well, go on.

A. I pitched the hay over from one end of the barn to the other; that was my part of it.

Q. That you did?

A. Yes, sir.

Q. Were the rest of them doing anything?

A. Yes, sir, all of them.

Q. What were they busy at?

A. Searching.

Q. What did they search?

A. Some were in the room on the first floor where the carriages were: some were searching around the carpenter's bench in the loft.

Q. Did they find anything?

A. They took away some lead, I believe: or,---I am not sure of that: they were looking at some. Whether it was taken away at that time or not I don't

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know.

Q. Where was it?

A. There was some in the box on the first floor in the carriage room, close by the door--- not a great ways from the door: pieces of lead.

Q. What character of lead?

A. Pieces of sheet lead. And while I was looking, this Detective McHenry and Officer Seaver came.

Q. Who?

A. McHenry and Seaver came while we were looking in the carriage shed.

Q. Well, Mr. Seaver is a state detective?

A. Yes, sir.

Q. Who is McHenry, one of your Fall River police?

A. No, sir.

Q. What was he there for?

A. I couldn't tell you, sir.

Q. Who got him there?

A. I don't know that, sir.

Q. How did he get there?

A. Walked, I suppose.

Q. What did he go there for?

A. I don't know, sir.

Q. Why didn't you send him out?

A. He came with Mr. Seaver.

Q. Oh, he was Mr. Seaver's friend?

A. I suppose so.

Q. Had he ever been around your police headquarters before that?

A. I have seen him so many times that I couldn't tell whether he had or not.

Q. Is he a resident of Fall River?

A. He is not.

Q. Where does he belong?

A. At that time he hailed from Providence.

Q. Where does he hail from now?

A. The last I knew, New York.

Q. Is he still travelling?

A. He might be.

Q. And still detecting?

A. That I don't know.

Q. He didn't have anything to do with your people, did he, your police force?

A. Not as I know of.

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Q. Well, he was not in the cellar, I understand it?

A. I didn't see him, no, sir.

Q. But he joined you in the barn?

A. He came there at the door, the outer door of the barn.

Q. Well, wasn't he helping, looking around to find something?

A. He might have done, but I didn't see him.

Q. What is his whole name?

A. I don't know; I don't recall it now?

Q. Has he been around the police headquarters since that day?

A. Yes, sir.

Q. Has he? How long has he been there?

MR. KNOWLTON. I pray your Honors' judgment.

(The Court consulted together.)

MR. ROBINSON. It would seem to me---I don't want to interrupt; do the court desire to hear me.

MASON, C. J. Yes.

MR. ROBINSON. It would seem to me in a matter of this kind, where there was an attempt to find anything that there might be upon the premises---it was a critical occasion: these officers were making a thorough search: and this McHenry--- (to the witness) I think you said he was a detective: you know him as such?

THE WITNESS. So I was informed.

MR. ROBINSON. If he had any connection in any way with that matter, or with the government's side of this matter, we want to know it: and if we cannot show it in a minute or two or less than that, probably, we will drop it here with this witness. I don't

want to take any time, but it seems to me it is not too remote on cross examination to find out who

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was there and what part they had in it.

MASON, C. J. Well, there is no objection interposed to that line of inquiry, but the present inquiry is in a different direction. I do not see the materiality of it.

MR. ROBINSON. It relates back, that is all. My question pending is whether he had seen him at the police headquarters after that day.

MASON, C. J. That went in without objection. You had asked another question.

MR. ROBINSON. Well, let us have it read. I may have forgotten my own question.

(The stenographer read: "Q. Has he been around the police headquarters since that day? A. Yes, sir. Q. Has he? How long has he been there?")

MR. KNOWLTON. Your Honors will observe that I did not object as long as the exact thing my brother wanted to show was being shown. I think he has opened a line of inquiry---

MR. ROBINSON. I want to say it will be material in my mind not only to show that he has been there since, as this gentleman has now testified, but if he was there only once it would be a trivial matter: if he were there in connection with the police, investigating this matter afterwards, and giving them information and assisting in the preparation of the government's case, we, I think, are entitled to know it. That is all there is about it.

MASON, C. J. The Court does not see the importance of it.

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If it will only occupy the time indicated, the Court will not interpose any objection.

MR. ROBINSON. I give my promise to the Court I will not weary anybody. Will you be kind enough to read the question, Mr. Burt.

(The stenographer read: "How long has he been there?")

Q. That would be since the day of investigation?

A. I saw him a great many times after.

Q. I am speaking now of the police headquarters?

A. I mean the police headquarters.

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MR. ROBINSON. Well, I will follow that line a little more. Had you before that day of the search in the barn seen him at police headquarters, and after this tragedy?

A. I am not positive. I saw him a great many times, and I might have seen him and might not.

Q. Whether you recall his being round the police headquarters prior to the tragedy?

A. I could not say whether he was or not.

Q. No recollection of it?

A. No, sir, not positive.

Q. Do you know anything how he happened to go in there any more than that he was there?

A. No, sir, I do not.

Q. No idea at all about it?

A. No, sir.

Q. Do you know whether he was paid by the city for his services?

A. I do not know from my own knowledge.

Q. Don't know from your own knowledge?

A. No, sir.

Q. Do you know whether he was allowed on the police roll to have pay?

A. I never saw his name there.

Q. You have the making up of the pay roll?

A. I do not.

Q. Who does?

A. The clerk of the police, Stephen B. Gardner.

Q. Is he still clerk?

A. He was yesterday.

Q. Is there anything more you wish to say about the barn?

A. We searched the out-house in the barn, the vault underneath the out-house.

Q. Anything more?

A. No, sir, we completed the barn.

Q. You said you saw some lead?

A. Yes.

Q. And that was in the box?

A. If I remember rightly there was a piece of pipe there in the box.

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Q. In the box?

A. Beside it.

Q. That was below stairs?

A. Yes, sir, in the carriage room.

Q. Did you see anything up stairs of that description?

A. Not to my recollection.

Q. Did you see any box or basket having old things in it?

A. My impression is that there was a willow basket on the carpenter's bench at the head of the stairs.

Q. Did you look in that?

A. I did not.

Q. Do you know what became of it?

A. I have seen one like it once.

Q. Where?

A. In the central police station, Fall River.

Q. Have you it now?

MR. MOODY. I think it is here. It is or will be.

MR. ROBINSON. Is the box here?

MR. MOODY. I think so.

MR. ROBINSON. Have it here.

Q. You would undoubtedly recognize either of those two if you saw them again?

A. From their general appearance,---no marks that I know of.

MR. ROBINSON. Will you be kind enough to bring them in, Mr. Moody?

MR. KNOWLTON. The Officer here has charge of them.

MR. ROBINSON. I will pass on.

Q. What next did you do?

A. Searched the lumber pile in the yard.

Q. All together practically?

A. Yes, sir.

Q. Tell us how much of a search you made there.

A. We opened

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the top of the pile and opened down a foot or more into the centre of it, and we saw through the boards where space had been made and strips laid to allow the air to circulate, and we could see through the pile, if anything should be seen there. We were satisfied there was nothing there.

Q. Anywhere else you went in the yard?

A. Yes, sir, an old well.

Q. What did you see there?

A. Searched round in there as fully as we could.

Q. That was all filled up?

A. Yes, sir, practically

Q. Nothing in there but dirt?

A. Nothing but dirt.

Q. And that well stands westerly behind the barn?

A. Yes, sir.

Q. Where else did you go?

A. We searched round the barn to see if any sod had been turned.

Q. Find any?

A. No, sir, only where the clothes had been buried.

Q. That you did not unearth?

A. No, sir.

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Q. Where next?

A. We scaled the fence into the clothes yard. (Crowe's yard?)

Q. You scaled the fence?

A. Yes, sir.

Q. What do you mean by scaling?

A. Got over the top of the fence.

Q. You?

A. Yes, sir.

Q. Was the barbed wire on there?

A. Yes, sir.

Q. How did you get over?

A. Why, stepped over.

Q. You couldn't step right over, one step?

A. I stepped over the lumber pile, stepped on a stringer of the fence, and then by using some care I landed on some rubbish or benches in the next yard.

Q. Well, you didn't land severely?

A. Oh, no.

Q. Tear your clothes?

A. No, I was careful about that.

Q. Well, did they all go over in the same way?

A. I think that they did. I am not sure that all went over the fence.

Q. They will all be here, will they, this morning, as far as you know?

A. I don't know.

Q. I want to get at the size of these men. Were they all as large as you?

A. No, sir.

Q. Now, when you got over there what did you find?

A. A lot of rubbish.

Q. You didn't find anything that will help us?

A. No, sir.

Q. Where next did you go?

A. Back into the Borden yard and then the station house.

Q. How did you get back?

A. I don't remember whether we

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went through the Dr. Kelly yard or back over the fence again. I am not sure of that.

Q. You think you may have come back over the fence?

A. Possibly. I don't recollect. I remember going over the fence, but whether I came back that way or not I don't remember.

Q. There were no stringers on that side of the fence?

A. No, sir, but a lot of wooden horses, masons' horses.

Q. Did you go into the Borden house again?

A. No, sir.

Q. Did you make any search above the cellar?

A. I did not, no, sir.

Q. Well, did you see any others making?

A. I think that Mr. Bryant and Capt. Desmond---I think Capt. Desmond and Mr. Bryant, the mason, went in on the first floor somewhere.

Q. Is Capt. Desmond here to-day?

A. I haven't seen him.

MR. KNOWLTON. He is.

Q. And you didn't go into the house, the upper part?

A. Only in the kitchen where they were asking permission to search, that was all.

Q. Did you make a search in the kitchen?

A. No, sir.

Q. And were you there on the Saturday before when the search was made?

A. No, sir.

Q. Then you don't know anything at all about any previous search?

A. Not of my own knowledge, no, sir.

Q. Well, I don't care for anything else. And you spoke of now being lieutenant of police and last August sergeant of police?

A. Yes, sir.

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Q. That is a promotion, I take it?

A. Yes, sir.

Q. When were you promoted?

A. February, this year.

Q. Has Capt. Harrington been promoted?

A. Yes, sir.

Q. Has Mr. Mullaly?

A. No, sir.

Q. Mr. Doherty?

A. Yes, sir.

Q. What is Mr. Medley's capacity now?

A. Inspector with rank of lieutenant.

Q. Was he the same last year?

A. No, sir.

Q. What was he last year?

A. Patrolman.

Q. Anybody else of those that were around the house that have been promoted?

A. Connors.

Q. What was he and what is he?

A. At the time he was acting sergeant.

Q. Now lieutenant?

A. Captain.

Q. Go clear up by one promotion?

A. Yes, sir.

Q. Any of the others that you recall?

A. Desmond, captain.

Q. What was he last year?

A. At that time he was acting captain.

Q. Now he is captain?

A. Yes, sir.

Q. Anybody else?

A. No, sir.

Q. (Exhibiting box and basket.) Is this the box and this the basket?

A. I should say so from the general appearance.

Q. You haven't had the care of them?

A. No, sir.

Q. And whether or not they are the same thing exactly as before you don't know?

A. They look so generally, that is all.

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Q. I don't mean the basket, but what is inside of it?

A. The box looks about the same.

Q. Well, you think it is about the same as it was then? This old lead?

A. I couldn't say. It looks so generally.

Q. And this paper of nails and so on, those things were there about as they are now, and some old papers in them?

A. As I recollect it, yes, sir.

Q. (Exhibiting narrow and thin piece of wood.) You don't remember that?

A. No, sir.

Q. Do you know anything more that will help us, either side of this case?

A. I don't recall it just now.

MR. ROBINSON. That is all then.

RE-DIRECT.

Q. (By Mr. Moody.) I wish you would describe the water-closet. We have all seen it, but I would like to have it in the record. What sort of water-closet is it?

A. When you go down the cellar stairs, it is facing the cellar stairs.

Q. I don't care about its position, but what sort of water-closet was this? How is it operated?

A. I am not sure whether it has a hopper or not in there. It is a common water-closet.

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Q. If you are not sure, I don't care to pursue it any farther.

A. An ordinary closet.

Q. (By Mr. Robinson.) Having a pull?

A. I am not so sure about that, sir.

Q. (By Mr. Moody.) Where was this box that was filled with lead found?

A. When we went into the south door of the barn, the south side of the barn---

Q. That is the door that was used to go into the barn?

A. Yes, sir---you came to an opening or door on the left towards the street, and that box was two or three feet from that door in the carriage room.

Q. Could you see where it was as you entered the barn?

A. You could see it after you passed that opening or door.

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Q. Now where was the basket that contained the nails, paper, and pieces of lead? Where was that?

A. As I remember it, it was on the carpenter's bench in the loft of the barn.

MR. MOODY. I would like to show these two boxes to the jury so they can see what is in them, and the basket found upstairs, containing the nails mixed with a few screws, paper, underneath two pieces of lead pipe, and three pieces of sheet lead.

(Boxes and basket shown to jury.)

MR. MOODY. If your Honors' please, we would like to offer the box and the basket and have them in evidence in the case.

MR. ROBINSON. There is no objection.

RE-CROSS.

Q. (By Mr. Robinson.) One question. Can you tell me into which room you went after going into the vegetable room down cellar?

A. Into which room I went afterwards?

Q. Yes, sir; the first room you went into after leaving the vegetable cellar.

A. Into the wash room. One leads into the other.

Q. Did you stop there to examine?

A. Yes, sir.

Q. And who were in the vegetable cellar examining with you?

A. Officer Quigley.

Q. Do you know where the others were at that time; what parts of the cellar?

A. No, sir; I do not. They were in the cellar, I know. In what parts I don't know.

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Q. And when you went into the middle wood room, as it is called, do you know who were in there?

A. Well, I don't recall. There was so much running around I couldn't say.

Q. You couldn't place them?

A. No, sir; I couldn't.

Q. You couldn't place Capt. Desmond?

A. No, sir; he was superintending the search. After we left the wash room I went into the coal bin, shovelling that coal pile. They were searching elsewhere.

Q. Can you tell where Mr. Quigley went after you and he left the vegetable cellar?

A. I looked there, and he remained to return some of the stuff into its proper place. Connors, he was shovelling in the fine coal pile.

Q. Anybody else?

A. No, sir. We searched those two places and the rest of them were around the cellar. Mr. Medley left us shortly after that.

Q. Where did he leave you?

A. In the cellar. He went out.

Q. You say soon after that; I don't quite understand you.

A. After I left the wash room, then I saw Mr. Medley.

Q. Had you not seen him before?

A. Not in the search. He was in the cellar but I didn't see what he was doing.

Q. And was that when he showed you the little hatchet head with the newspaper around it?

A. Yes, sir.

Q. How long do you think that would be after you commenced the search in the cellar?

A. Possibly an hour.

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BENJAMIN F. MAHONEY, Sworn.

Q. (By Mr. Moody.) What is your full name?

A. Benjamin F. Mahoney.

Q. You are a police officer in Fall River?

A. Yes, sir.

Q. Did you go yesterday afternoon with Mr. Edson anywhere?

A. Yes, sir.

Q. Where?

A. Went up to the Borden house on Second Street.

Q. About what time?

A. I should think it would be about quarter of four when we got there.

Q. Did you make any effort to get in?

A. Yes, sir.

Q. Did you succeed in so doing?

A. No, sir.

Q. Did anyone come to the door?

A. Yes, sir. I should think it was a servant girl.

Q. Now, as you are here, Mr. Mahoney, at any time did you take a dress from the custody of Prof. Wood?

A. I did.

Q. Can you tell us the day and date?

A. The 30th of May I get the package, and came back to Fall River on the 31st.

Q. The 30th of May?

A. Yes, sir.

Q. Of this year?

A. Yes, sir.

Q. Acting under whose instructions?

A. The District Attorney and City Marshal; the District Attorney directly.

Q. Do you know the dress that you got? (Producing blue clothing)

A. I should think that was the dress; yes, sir. A dress and waist, or skirt and waist.

Q. And that was delivered to you by whom?

A. Prof. Wood.

Q. Did you at any time return it?

A. I did, the second of June.

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Q. And returned it to whom?

A. Prof. Wood.

Q. Between the time you took it from Prof. Wood and the time you returned it had there been any change in its possession?

A. No, sir.

Q. You kept it yourself all the time, did you?

A. Yes, sir.

Q. Or under your immediate supervision?

A. Yes, sir.

Q. You have not had the custody of any other property?

A. No, sir.

(No cross examination.)

WILLIAM H. MEDLEY, Sworn.

Q. (By Mr. Moody.) Your name is William H. Medley?

A. Yes, sir.

Q. You are at present doing special work on the Fall River police force?

A. Yes, sir.

Q. Under the title of what is called inspector?

A. Inspector.

Q. And last year you were a patrolman?

A. Patrolman.

Q. Did you act in any special capacity last year?

A. From the 4th day of August afterwards. I have not returned to patrol duty since.

Q. Upon the 4th day of August did you obtain any knowledge of a homicide at the Borden house?

A. Yes, sir.

Q. Where were you when you obtained it?

A. Near the north police station---or rather in the north police station.

Q. From whom did you obtain the information?

A. The city marshal, by telephone.

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Q. What time was it at that time?

A. About twenty-five minutes after eleven o'clock.

Q. How do you fix that time?

A. I went from the depot, the Old Colony depot, to the police station. I made it a practice always after---

MR. ROBINSON. Never mind the practice.

Q. What you did this day?

A. I went from the depot that day after the Boston train left, and went part of the way down to the police station with a friend of mine, and left him, met another man, and went with him further along, and went into the police station, and while in the police station this friend of mine got up to go, and I said, "Don't hurry"---

Q. Not the conversation.

A. "I will go with you to dinner."

Q. Not the conversation; just what you did.

A. I said---

Q. No, not what you said.

A. Oh, he got up to go and I got up with him, and I started over towards my house calculating to get there in three or four or five minutes---I was due at dinner at half past eleven---and as soon as I got outside, perhaps 50 yards or so from the door, the janitor called me back and said---

Q. Never mind what he said.

A. I went to the telephone.

Q. And is it at that time that you got the information that you have told of?

A. Yes, sir.

Q. And that, you say, was 25 minutes past eleven or thereabouts?

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A. Or thereabouts.

Q. What time did the Boston train leave that you have spoken of as having seen off?

A. About four minutes after eleven, according to my recollection.

Q. Speak a little louder, Mr. Medley. Which depot were you at to see the train off?

A. The Fall River depot, Bowenville, that is in the northern part of the city.

Q. (By Mr. Robinson.) Is that the large station?

A. Yes, sir.

Q. (By Mr. Moody.) How far is it from that depot to the northern police station?

A. Well, I can't tell by measurement. I can tell better by the length of time required to walk it.

Q. I would prefer that. Give us that.

A. About five minutes.

Q. Did you delay on your way to the station or did you go immediately there?

A. I delayed some.

Q. How long had you been at the station before you turned to go away with the friend that you spoke of?

A. Perhaps five minutes.

Q. Did you consult any timepiece at or about the time when you received the message from the telephone?

A. Not then.

Q. How soon after did you?

A. I didn't after for some time.

Q. You didn't after?

A. Not after for some time. Before.

Q. When last before had you seen a timepiece?

A. When my friend got up to go I looked at the clock to guide myself as to my dinner hour.

Q. And what time was it by the station clock at that time?

A. Twenty-three minutes past eleven, about.

Q. Do you know whether your friend looked at anything?

A. He did.

Q. What did he look at?

A. At the clock.

Q. Who is who was there?

A. Thomas King, the man who has charge of the street lights in the northern district.

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Q. After getting this message where did you go, Mr. Medley?

A. To the City Marshal's office.

Q. How did you get there?

A. I stopped a team that was going by the police station and rode in the team to the office.

Q. Whose team was it?

A. I don't know whose team it was.

Q. At what pace did you go to the central police station from the northern police station?

A. As fast as I could get the man to urge the horse.

Q. How long did it take you to go?

A. Six or seven minutes.

Q. Did you go on a trot, or what?

A. It was sort of a grocery order wagon with a cover on it.

Q. No, I don't mean that: What was the gait of the horse?

A. I could not say as to that; it was quite fast.

Q. When you got to the station house did you see anyone?

A. The City Marshal.

Q. How long did you delay at the station house?

A. Long enough for him to tell me to go to 92 Second street and there---

MR. ROBINSON. (To counsel on the other side) For the conversation you do not care?

MR. MOODY. Simply that he got a message.

Q. Long enough to get a message from the Marshal?

A. Marshal Hilliard.

Q. Then where did you go?

A. 92 Second street.

Q. How did you go?

A. I walked.

Q. Do you know what time you arrived there?

A. About twenty or nineteen minutes of twelve.

Q. Did you have any occasion, or did you in point of fact, look

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at any timepiece later than the clock in the northern police station?

A. Yes, sir.

Q. When and where?

A. When I was passing the City Hall.

Q. What time was it as you passed the City Hall?

A. I saw nineteen or twenty minutes of twelve.

Q. From the City Hall or from the point next to City Hall where you observed this clock, did you go directly to the Borden house?

A. Yes, sir.

Q. Whom did you see there when you first got there?

A. Mr. Sawyer was the first one, a man at the door.

Q. What did you do after you got there?

A. Inquired for Mr. Fleet.

Q. Did you see Mr. Fleet there when you got there?

A. No, sir.

Q. Did you see him at any later time than that?

A. Yes, sir.

Q. Can you tell us about how long after you got there it was before Mr. Fleet got there?

A. My best recollection would be a minute or two.

Q. Had you been in the house before Mr. Fleet came?

A. No, sir.

Q. After Mr. Fleet came, what did you do?

A. I went round the house and walked round part of the way to the back door and tried a cellar door, a porch, and looked around generally and went in the house.

Q. How did you find the cellar door?

A. I say I went in the rear of the house and while there tried this cellar door. The cellar door was fast.

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Q. Whom did you see as or after you went into the house?

A. I saw Mr. Fleet again, and Mr. Mullally, Miss Russell, Mrs. Churchill, and one or two doctors, and Miss Lizzie Borden.

Q. Did you have any talk with Miss Lizzie Borden?

A. Yes, sir.

Q. What talk did you have with her?

A. I asked her where she was when this thing occurred, and she told me that she was up stairs in the barn.

Q. Is that in substance all the talk that you had with her?

A. No, I asked her before that if she had any idea as to who committed the crimes, and she didn't have the remotest idea.

Q. That is, she said so?

A. Yes, sir.

MR. ROBINSON. Give the conversation as near as you can,---what you said and what she said.

THE WITNESS. Yes, sir. And I asked her where Bridget was, and she told me that Bridget was up stairs in her room: and I said, "Where were you?" and she said that she was up stairs in the barn, or "up in the barn",---I am not positive as to the "stairs" part. She said she was up in the barn.

Q. Is that substantially all the talk with her?

A. With her, yes. I talked with her only that one time.

Q. Where was she when you had this talk with her?

A. She was up stairs in her room, at the head of the front hallway stairs.

Q. Did you make any search about the house at that time before going out doors?

A. No. There were quite a number of officers there,---seemed to come very rapidly, and they were searching everywhere:

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and I came down stairs from there and went through the room where Mr. Borden lay, and went out of the house into the barn and up stairs. I did that: the thought came to me---

MR. ROBINSON. Well, never mind.

Q. Perhaps that won't do, Mr. Medley. When you got to the barn, how did you find the door?

A. The door was fast with a hasp over a staple and an iron pin in it.

Q. I think I know just what you mean, but won't you draw it, and then I shall not lead you: just make a rough diagram of what you mean by a hasp.

(The witness drew the outline of the hasp).

MR. ROBINSON. Let him state what he means.

Q. Tell what you mean by a hasp.

A. Well, this is the piece of metal that goes over the staple, and it is held in place by a pin.

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Q. When you went out into the yard and to this door, did you see any one else out or about there?

A. Yes, sir. There were quite a number outside and in the yard, one or two officers, Mr. Sawyer and Mr. Wixon and some one else. I couldn't recall them all.

Q. And Mr. Sawyer in the yard, you mean?

A. Mr. Sawyer was outside of the door, outside of the house, standing on the step, as I recollect it.

Q. After you went into the barn what did you do? Describe in detail.

A. I went up stairs 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 (illustrating), 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

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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, they 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.

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 down stairs 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.

Q. Will you say which of the three, door and two windows, were closed?

A. There is a little door on the side of the barn up stairs. I think it was on the south side of the barn, which they used for putting in hay. There was two windows,

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one on each end of the barn. The door and the windows were closed.

Q. You have told us then that you searched about the yard. Did you find anything?

A. No, sir.

Q. Did you receive any instructions after you came down from the barn into the yard?

A. Yes, sir.

Q. Tell us about how soon after?

A. My recollection of it is that it would be perhaps ten or twelve or fifteen minutes, some little time after that.

Q. Can you give me your best judgment how long after you came to the premises it was before you went up into the barn and made this examination?

A. That would be within about ten minutes, perhaps eight minutes; eight or ten minutes.

Q. Where did you go from the premises?

A. To the Bowenville depot.

Q. What depot is that?

A. That is the main depot, the Fall River depot of the Old Colony Railroad.

Q. The stone station we have spoken of?

A. The station.

Q. (By Mr. Robinson.) The same one you spoke of before?

A. Yes, sir.

Q. (By Mr. Moody.) How did you get to that station?

A. I went in a street car.

Q. Do you know how soon or about how soon you arrived at the station?

A. Yes, sir.

Q. Tell us.

A. About half past twelve.

Q. Is there a train that leaves there about that time?

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A. One leaves there at 12.29.

Q. With reference to the departure of that train when did you arrive at the station?

A. Just as the train was leaving.

Q. That is the train that goes to Providence?

A. Yes, sir.

Q. Did you come back again to the house on Thursday?

A. Yes, sir.

Q. About what time?

A. About three o'clock or thereabouts. I am not exactly sure as to that time.

Q. Did you stay about there any after you came?

A. I stayed there until about half past five.

Q. Is there anything of importance that occurred during that time?

A. Not that I know of.

Q. When did you next return to the house?

A. That evening about 8 o'clock.

Q. Stay about the house any that evening?

A. I did stay a little while.

Q. When next did you go to the house?

A. I said---I beg your pardon: My answer to that other question as to the time that I returned in the evening---

Q. Yes.

A. After I went away at half past five, I am not certain about that being 8 o'clock. I think it was a little earlier. I am not sure about the time that I was there the second time in the evening. It might be earlier than 8 o'clock.

Q. Did you take part in any search about the house at any time?

A. Yes, sir. I took part in the search on the following Monday, the Monday following the murder.

Q. What time did you go to the house on the following Monday?

A. Some time after 10 o'clock, I think it was. I am not sure as to that exact time. It was before the noon.

Q. And were there other officers with you?

A. Yes, sir.

Q. And among others was Mr. Desmond?

A. Yes, sir.

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Q. He is said to have been captain of the squad that was searching, is that so?

A. Yes, sir, that was so.

Q. What was his rank at that time?

A. Well, he was acting captain by appointment of the mayor.

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Q. When you went to the house where did you first go, Mr. Medley? What part of the house?

A. On the Monday?

Q. Yes, on the Monday.

A. Down in the cellar. We all went in the cellar.

Q. Describe exactly what you did until you found something.

A. We started to examine---

Q. I want your own personal movements.

A. Well, I examined all that I could in the wash cellar, then I helped to put out some barrels and things that were in a corner off of the wash cellar in another little cellar, and after putting part of those back in place I think there was a large pile of wood in that particular corner of the cellar, and after working on that awhile I came out and went into another cellar next to the wash cellar, and in there while searching I found a small hatchet head.

Q. Will you tell us where that was?

A. It was in a box.

Q. What sort of a box?

A. Well, a box perhaps fifteen or sixteen inches long and four or five inches deep.

Q. Do you recall where this box was?

A. Yes.

Q. Where was it?

A. The box was on a block---I am not sure whether it is a chopping block or a block made from a box, but it was some piece that rested above the level of the cellar floor, perhaps about a foot and a half high, and this box was on top of that.

Q. What was there in that box beside the handleless hatchet?

A. It seemed to me like old rubbish,---irons of different kinds, and one or two tools, I have forgotten just what they were;

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and some nails, I think.

Q. Was anybody in the cellar with you when you found this hatchet, or the head of the hatchet?

A. I don't think I quite understand that question, Mr. Moody.

Q. Was there any other officer in the same cellar when you found the head of this hatchet?

A. No, sir.

Q. Where was Captain Desmond at that time?

A. In the passage way in the cellar.

Q. How far from you when you found this weapon?

A. Two or three feet, perhaps.

Q. Did you take it from the box?

A. I did.

Q. What did you do with it?

A. I showed it to Captain Desmond.

Q. How soon after you took it up did you show it to him?

A. Right away.

Q. Did you receive any instructions from him?

MR. ROBINSON. Well, not what they were.

Mr. MOODY. No, not what they were.

Q. Was there any talk between you and him about the hatchet?

A. Yes, sir.

Q. I don't ask what was said. What did you then do after you found the hatchet and has reported to Mr. Desmond?

A. Put it in a paper and wrapped it up---put it in a paper and showed it, I think, to some other officer, I cannot say just now who, and carried it immediately to the City Marshal's office.

Q. To whom did you deliver it at the City Marshal's office?

A. The City Marshal.

Q. Have you had any possession of it since that time?

A. No, sir.

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Q. Did you find any handle or anything having the appearance of a handle to this hatchet, except the piece that was in the eye of the hatchet?

A. No, sir.

Q. Is that the hatchet head which you found? (Showing hatchet head to witness)

A. Yes, sir.

Q. How did it differ at that time from its present condition?

MR. ROBINSON. I object to that.

Mr. MOODY. Well, I will put it in a leading form then, if you do not want it that way.

Q. Was this piece of wood then separate from the hatchet or not?

MR. ROBINSON. Mr. Moody, I beg pardon; I may not have understood your question. When you asked how it differed, were you inquiring about that piece of wood?

Mr. MOODY. That is what I had in mind.

MR. ROBINSON. I beg pardon; I thought you were referring to the whole blade.

Q. Referring to the eye of the hatchet and that piece of wood, is there any difference now from what it was when you found it?

A. Yes, sir.

Q. What was the difference?

A. This was in the hatchet.

Q. The wood was in the hatchet?

A. Yes, sir.

Q. Now, sir, I wish you would describe without any further question the appearance of that hatchet as you found it?

A. I found it in the box, as I have already stated, and it was covered over with dust. I rubbed it on the edge, and the rusty appearance gave me the impression that perhaps --

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Q. I don't think you ought to give your impression; just state what you observed.

A. Well, I observed it was all covered over with dust, and there were some dark spots here that resembled blood on the blade. Whether rust or blood of course I didn't know, and they were on the hatchet in that respect something as it is now, only there seemed to be more brightness on the hatchet at that time, but about the same color as I observe now on the hatchet.

Q. That is, at the cutting edge of the hatchet?

A. Yes, sir, just there,---as that appears rusty, so it seemed then. Then it was all covered with dust, as I took it from the box---coarse dust.

Q. Can you describe the kind of dust that there was upon it and its appearance: describe it as carefully as you can?

A. Well, it was a coarse dust and seemed to me like the dust of ashes, such as would accumulate from a large blow of ashes,---in emptying an ash pan, for instance, there would be quite a spread in a wind of dust,---and such as would accumulate in that manner.

Q. Upon what parts of the hatchet was this dust?

A. On about the whole of it.

Q. Take the sides, the two sides of the hatchet?

A. I didn't observe any difference.

Q. Now did you notice anything with reference to the wood?

A. I noticed that that was a new break.

Q. Did you notice anything with respect to the ashes or dust upon

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the point of breaking? I mean this part here (pointing).

A. I cannot say that I did; no, sir, I don't know that I did that.

MR. KNOWLTON. I don't hear the answer.

THE WITNESS. I don't know that I observed anything of that kind on the break.

Q. Will you explain fully the last part of your answer,---that you did not observe anything of that kind on the break. What do you mean by that?

A. I mean that I did not observe any dust on this break.

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Q. What is the color of that break now compared with what it was at that time?

A. It is darker now.

Q. Did you make any change in the condition of the hatchet before you carried it and delivered it to the City Marshal?

A. None other than when I rubbed this particular point that I speak about.

Q. Describe the point so that the stenographer will get it?

A. Near the edge of the blade and on the bevel of the hatchet.

Q. Could you tell whether the dust adhered or was loose?

A. I did not observe that close enough to say.

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. If I understand you correctly, there were several officers in uniform and Mr. Doherty in citizen's clothes?

A. Yes, sir.

Q. Did you notice any one who was not a policeman beside Mr. Sawyer?

A. There were several there not policemen.

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Q. And now speaking of the time you first got there?

A. Yes, sir, I understand.

Q. How many were there who were not policemen?

A. I should think three or four, surely.

Q. Of course anyone who was a policeman, you undoubtedly knew?

A. Yes, sir.

Q. Now Mr. Sawyer stood out on the side steps, on the outside?

A. Yes, sir,---I beg your pardon about that. I won't swear about this being outside or in, Sawyer, when I got there.

Q. Right near the screen door?

A. Yes, sir, but whether inside or out, I cannot say.

Q. Did you remain between the street and the outside door till Mr. Fleet came?

A. Yes, sir, there was only a short time till he came.

Q. Did you fix the time of his arriving there at the Borden house?

A. Yes, sir.

Q. Will you tell it again?

A. I think it was about from fifteen minutes to twelve to twelve o'clock.

Q. That is between 11.30 and 11.45?

A. Yes, sir.

Q. And which one it was you are not quite sure? It might be either?

A. Yes, sir.

Q. It might be as late as quarter to twelve, considering the distance?

A. It ought not to be more than that.

Q. Then after Mr. Fleet came, after remaining a minute and a half, you went in the house?

A. Yes, sir.

Q. You went in where?

A. In the back door, where Mr. Sawyer stood.

Q. Now, tell me just what your movements were.

A. I went into the

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room where Mr. Borden lay dead, and from there I went up stairs in the room where Mrs. Borden lay dead, and then I came out from there and spoke to an officer in the front hall way up stairs and wrapped on the door occupied by Miss Borden.

Q. Was anyone with you as you walked round the house?

A. I don't think there was at that time, no, sir.

Q. Was Mr. Fleet with you?

A. No, sir, he went in the house I should think a minute ahead of me.

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.

Q. And there was nothing more said: you have given it all?

A. As near as I can recall.

Q. Have any talk with the other people in the room? Exchange any words about affairs?

A. I could not say as to that; I don't remember.

Q. It is not unlikely that you did say something about it, expressed your feelings about it?

A. It would not be unlikely, no, sir.

Q. You had seen both bodies then?

A. Yes, sir.

Q. Up to that time, as I understand you, Mr. Fleet had not come

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into your presence in that room?

A. No, sir.

Q. Where did you go then?

A. I came down stairs and went out and up stairs in the barn, as I described, to the head of the stairs

Q. How many people were there in the yard at that time?

A. Well, there were more people then than when I first arrived, but I could not say how many.

Q. More officers, I presume?

A. No, sir.

Q. No, but more citizens?

A. Yes, sir.

Q. Now I am speaking of the yard behind the house, around off south of the barn and all round there?

A. Yes, sir.

Q. A dozen, fifteen or twenty people all together, then?

A. I don't think there was so many as that, as twenty---perhaps a dozen.

Q. They were all freely moving about there and people freely coming and going in the yard, were there not?

A. Yes, sir.

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. Did you have any conversation with any of the ladies in the kitchen below?

A. Not at that time.

Q. Then you went in the barn and looked about, as you said?

A. Yes, sir.

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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 half way 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

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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.

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.

Q. And went out in the yard, and went immediately to the railroad station?

A. Not at that time.

Q. I thought you received instructions?

A. I did, but that was after waiting round the house.

Q. Did you go in the house?

A. I did. I forgot to tell Mr. Moody that.

Q. Then I am not at fault?

A. No.

Q. You went in the house?

A. Yes, sir, after going in the back entry I went to go down in the cellar, and while going down in the cellar officer Mullaly, I think, was on the back cellar stairs, or near there, and I saw this pail, in the wash cellar and called his attention to it, and that is all I did there.

Q. You did not continue down in the cellar?

A. No, sir.

Q. You went out in the yard and then you got your instructions?

A. Yes, sir.

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Q. You went on the 12.29 train?

A. Yes, sir.

Q. Did you go away on the train?

A. No, sir, I did not get there in time. I thought I would ride to the other side of the bridge. There is a stopping station and I could get off there and walk over the bridge.

Q. Then you did not get back to the Borden premises until about three o'clock in the afternoon?

A. About that.

Q. You were round there until somewhere about 5.30?

A. Yes, sir.

Q. Was that on the outside of the house?

A. Yes.

Q. There were still officers in the yard and all round there?

A. Yes, sir.

Q. And people?

A. Yes, sir.

Q. And people in the front of the house on the street, and in the house?

A. Yes, sir.

Q. There were a great many attracted there?

A. Yes, sir.

Q. Now we will pass on to Monday: How long do you think you were in the cellar before you left with this hatchet wrapped up in a paper?

A. I don't think over a half hour.

Q. You went right off after showing it to Captain Desmond?

A. Yes, sir.

Q. This you found in the shape it is now, except the piece of wood was in the eye?

A. Yes, sir.

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Q. Will you show the jury about how it was put into the eye? Lay it on the outside to correspond to its position inside.

A. (Illustrating) So, I should think. I won't say with relation to this which was on the inside, but you mean generally how it was.

Q. What did you say about that notch; it was on the inside or outside?

A. I say I won't say as to that because I didn't observe it close enough.

Q. You don't really know whether that slot was on---

A. I don't know which side of the slot was with relation to that broken piece.

Q. That is, you can't say whether the handle was in the eye in that way, or whether it was in the eye in that way? (Illustrating)

A. No, sir.

MR. MOODY. Not from memory he says.

MR. ROBINSON. Well, wait.

The WITNESS. I can't say that, to swear to that.

Q. You can't really tell which way it was?

A. No, I can't, not to swear to that positively.

Q. But it was in one way or the other?

A. Yes, sir.

Q. Did you take it out of the eye---the piece?

A. No, sir.

Q. You didn't change it at all about that?

A. No, sir.

Q. And were these slivers broken off at that time?

A. If they were I didn't notice them.

Q. You would not, perhaps, when it was in the eye?

A. No.

Q. And there was no one right with you when you put your hand in

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the box?

A. No, sir.

Q. The box, as I understand you, was about a foot and a half from the ground?

A. Yes, resting on something.

Q. Standing on some sort of block. But you wouldn't put it up as high, even, as the chair seat?

A. I couldn't say as to that. It seemed to me it was a little higher than the chair seat, about a foot and a half I thought.

Q. A foot and a half from the ground?

A. Yes, sir. That would be a little higher, perhaps, than the chair seat.

Q. Well, perhaps so. But about a foot and a half, you think?

A. I think so, yes.

Q. Well, we will assume that is a foot?

A. Yes.

Q. And it would be about so much more?

A. Yes. And now that you illustrate it I should think a little higher than that.

Q. That? (Indicating)

A. About that, perhaps.

Q. Was there any difficulty as you stood on the floor in looking right into the open box?

A. Not a thing.

Q. You didn't have to get up and look over in, or reach over in to pull out?

A. No, sir.

Q. It was perfectly clear to your sight?

A. It was.

Q. Where did that box stand---the block, or whatever it rested on?

A. Perhaps three feet from the entrance to the cellar; might possibly be four feet from the entrance to the cellar; a short distance.

Q. Did you notice an old chimney there?

A. Yes, sir.

Q. Now can you locate it with reference to that?

A. Well, I cannot. That was the only time, you see, that I was down

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in that particular cellar, and I am not familiar with the basement. There was a mason there to work, I think, taking out some brick or something.

Q. Digging out, wasn't he?

A. Yes. Mr. Jennings, I think, was near by at one time when I saw him, and I think he afterwards came up, but I am not sure as to that. They were pulling some brick out of a chimney or something. I didn't stay to see what they were doing.

Q. And you said when that was in the box you could see that that was in the box just as quick as you looked there?

A. Yes, sir.

Q. Looked right down at it. And this hatchet head, in that shape, was lying right there in plain sight?

A. It was.

Q. And was it on the top of the other things?

A. It was on the top of the other things.

Q. Now what were the other things underneath?

A. I can't think what they were. They seemed to me, as I say, old rubbish, perhaps nails, and there might have been a bolt, an old bolt or two.

Q. Some old tools?

A. I think likely. My recollection seems to be so, yes.

Q. An old cast off box, wasn't it?

A. Yes, sir; that is what I call it.

Q. A common thing to see around the house?

A. Just the same as I have got in my cellar.

Q. You put your old broken hatchets in there, don't you?

A. Well, I don't know about that, I haven't got any of those.

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Q. All old duds get in such places?

A. Yes, sir.

Q. Where they get all covered up with dust, don't they?

MR. KNOWLTON. Wait.

MR. ROBINSON. Well, I will withdraw it.

Q. These were all covered up with dust?

A. In the box?

Q. Yes.

A. Well, I don't know about that; I only know about the hatchet.

Q. Well, that was?

A. Yes. I didn't notice anything else because I wasn't interested, you know, in anything but that.

Q. You saw that and thought that might be of some consequence?

A. I did.

Q. And you took it out?

A. I did.

Q. You didn't know whether anybody else had taken it out before or not?

A. I did not.

Q. You hadn't heard anything about it?

A. Not a word about that.

Q. You discovered that and took it right along?

A. Yes, sir.

Q. And it was covered with ashes, dust, you say?

A. Yes, sir.

Q. And you described it, I think, by saying it was just the same as it would be when a piece like that stood somewhere near an ash pile, and as you dumped your ashes the dirt went over it?

A. Yes, sir; coarse dust of some sort.

Q. Coal ashes. It wasn't wood ashes?

A. No; I shouldn't think that, but still I don't know. It was coarse ash dust of some kind.

Q. You know the difference between the feeling and looks of coal and wood ashes. of course?

A. Yes, I think I do,

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but I am not familiar enough to express myself in this particular case.

Q. Then your opinion of the fineness and coarseness of the quality of ashes wouldn't be much use to us?

A. Only I know it was a coarse dust.

Q. That is, you know it wasn't fine dust?

A. Yes.

Q. But it was a coal ash dust, as you think?

A. I say I am not sure as to that, because I am not enough familiar with it to know.

Q. Did you see some ashes close by?

A. I did. My recollection seems to be that there was a pile of ashes there.

Q. Quite a pile, wasn't there?

A. I think so.

Q. And you didn't look to see whether the other contents of the box were about in the same condition?

A. I did not. In fact, I didn't go back there after showing it to the Captain. Immediately after finding it I showed it to him.

Q. It was about the same as putting it down in there---your action---and that was lying somewhere on the top right in plain sight?

A. Yes, sir.

Q. And you reached over and took it out into your hand?

A. I did.

Q. Looked at it both sides?

A. I won't just say to that.

Q. Pick it up and tell the jury just about what you did with it in your hands. Go right through in the same way as you would.

A. Well, it lay, say, on that desk, in the box, as it lays there now. (Puts hatchet on reporter's desk.) I was near by it, I saw that, and my attention was attracted at once,

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and I picked it up and looked at it, just like that, and then I sung out to Capt. Desmond.

Q. No matter what you said.

A. And showed it to him, and he says---

Q. No.

A. Then we took it into the water closet. There is a little water closet in the basement, at any rate, a small room there.

Q. You said "we" took it?

A. Yes, Capt. Desmond and I.

Q. Well, you didn't both get hold of it?

A. No, he went with me.

Q. Who carried it?

A. I did, and gave it to him there, and he says----

Q. No matter.

A. Yes. Then I was---anyway, I handled it very carefully, at his suggestion---if that is right.

Q. No.

A. I handled it carefully and we looked it all over, and then I rubbed something off there, like that. It seemed to me---

Q. No; you rubbed something off?

A. Yes.

Q. Very well.

A. And the he says---

Q. No.

A. Then I took it down to the city marshal's office.

Q. You did something else with it before?

A. I wrapped it in a paper.

Q. Where did you get your paper?

A. In the basement.

Q. A piece of newspaper?

A. I think it was a piece of brown paper. I wouldn't be sure as to that. It was a piece of a paper, and that was all I remember surely.

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Q. Did you show it to any other officer?

A. Yes, I showed it to one officer as I was passing out. I cannot think now who it was. I had it in my pocket.

Q. Side pocket?

A. Yes.

Q. Did you wear a sack coat at that time?

A. Yes, sir; a common summer sack coat. Not like this one. It was a light colored coat; and I showed him that, and I think tore enough of the paper off or something to let him see what it was.

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Q. (By Mr. Moody.) Who was that?

A. I can't think who the officer was. I remember showing it to this officer, but I can't think now who it was. It was one of the officers. I don't think it was Mullaly. Anyway I can't be sure about that. I showed it to one officer.

Q. (By Mr. Robinson.) There wasn't any handle in that box?

A. In the box?

Q. Yes.

A. No, sir, not that I saw.

Q. Well, you don't believe there was, do you, from your investigation?

A. No, sir, I do not.

Q. You do not. If you had picked that hatchet head out of a box in plain sight, having no handle to it, and there had been a handle there, you would have probably seen it, wouldn't you?

A. Yes, sir, I think I should probably have seen it.

Q. You cannot tell us much about the end, the broken end of this piece, can you, except you say it looks dark?

A. That is all I can tell you.

Q. You wrapped it up in a paper and folded it up. Perhaps you will illustrate how you folded it up in the paper. The piece you won't need.

A. (Folding hatchet head in piece of newspaper). This is only as near as I can remember doing it.

Q. Well, that is quite right: that is all I have a right to ask you.

A. I am not very tidy at such things. (Handing parcel to counsel) Now that, as near as I can think, is about how I did it.

Q. And then you put it in your pocket?

A. I put it in my

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pocket. Nothing stylish about the manner of wrapping it up.

Q. Well, I am glad to find a man that is not on style. Then you carried that off down to the police station?

A. Yes, sir.

Q. And from that time on you did not have any charge of it?

A. No, sir.

Q. And I do not know whether you saw it afterward?

A. I did see it afterwards.

Q. Down there?

A. In the grand jury room.

Q. Oh yes. But you had nothing to do with it in any way?

A. No, sir.

Q. Did you state that you were a patrolman last year?

A. Yes, sir.

Q. And are you now?

A. No, sir.

Q. You have been promoted?

A. Yes, sir.

Q. When?

A. In December.

Q. Did you know a man by the name of McHenry?

A. Yes, sir.

Q. Did you see him about those premises near the time of the tragedy?

A. I don't remember to have seen McHenry there for some days after.

Q. And was he ever engaged with you upon this case?

A. Yes.

Q. When?

A. I cannot say as to the dates. It was after that,---it was after the finding of the hatchet,---one day I went to the house with him to measure the distance from the barn to the house, or something that he wanted.

Q. You and he went together to measure the distance?

A. Yes, sir, he wanted to get something about distances, about the barn and the fence.

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Q. Was he working with you?

A. Yes, sir. I suppose he must have been.

Q. Under whose direction did you go at that time?

A. Under his, his suggestion, I guess.

Q. Under the suggestion of McHenry?

A. Yes, sir. He wanted to go to measure the distance.

Q. You were under his control?

A. No, sir.

Q. He was an associate officer, was he?

A. Yes, sir, he was.

Q. On the police force?

A. Yes, sir; went with any officer whenever he chose.

Q. Perhaps you may not understand me correctly.

A. Perhaps not.

Q. Was he an associate officer on the force?

A. Oh, no, sir.

Q. Do you know whether he was engaged to assist or not in the search, the investigation?

A. I don't know as to that. I had nothing to do with his employment. But I presumed that he was.

Q. Well, perhaps that is not competent. You didn't know of your own knowledge?

A. No, sir, I did not.

Q. Did you ever have consultation with the marshal in regard to this case when McHenry was present?

A. I don't know about that. I can't remember, and yet it is more than likely that I did.

Q. When you came out of the barn the time of that investigation about noon of Thursday, August 4th, do you know how you left the door?

A. Yes.

Q. And you may tell us.

A. I closed the door and left it

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just as I had found it.

Q. That is, the hasp on?

A. Yes, sir.

Q. Was it a little piece of iron or something that went through the staple?

A. Yes, hung from a chain or rope or something just to keep the hasp on the staple.

Q. Well, the hasp was a flat piece of iron that had a hole in it and went over the staple?

A. Yes, sir.

Q. A common thing on a barn?

A. Yes, sir.

Q. You didn't testify at the preliminary examination, did you?

A. No, sir.

Q. (By Mr. Moody.) Mr. Medley, was this box in which you found the hatchet a box that was attached to anything or a movable box?

A. Movable.

(Recess for five minutes.)

DENNIS DESMOND, Jr., Sworn

Q. (By Mr. Moody.) What is the full name, sir?

A. Dennis Desmond, Jr.

Q. And you are a member of the police force in Fall River?

A. Yes, sir.

Q. Holding what rank in it?

A. Captain.

Q. What were you last year in August?

A. Acting Captain.

Q. Upon Saturday following the 4th of August, did you take part in any search in the Borden house?

A. I did, yes, sir.

Q. The only thing I desire to call your attention to is the dresses. Did you make any examination of the dresses in the

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house?

A. Yes, sir.

Q. Or any part of the house?

A. Yes, I think we handled most every article there was that was not too heavy?

Q. Did you see any dress that was soiled with paint or with spots of any sort?

MR. ROBINSON. Wait a moment. I object. This is a very leading question to your own witness.

Q. Did you see anything that attracted your attention with reference to any dress?

A. No, sir.

Q. Now I will follow it by the preceding question.

A. I shall have to answer it the same way. I think we handled most every thing.

Q. Did you see any dress that was soiled with paint or with spots of any sort?

A. No, sir.

Q. Upon the Monday following did you take part in any search?

A. I did, yes, sir.

Q. Were you in command of the squad that went there to search?

A. I was, yes, sir.

Q. Among others was officer Medley there?

A. He was.

Q. I will call your attention to anything that Mr. Medley showed you during the progress of the search in the cellar?

A. A small hatchet.

Q. From what room did he bring the hatchet?

A. A room in the cellar of the building just west of the kitchen cellar on the south side of the building, the room where a lot of ashes was strewn about, and many other things. I should call it an ash cellar.

Q. Where were you standing when he brought that hatchet from the cellar that you have described?

A. Well, that I couldn't

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tell you. He called me from doing what I was doing, and I can't say what that was.

Q. Did the hatchet which he brought you have any handle?

A. It had a small part in the iron: that is, it had been broken and the wooden part had been left.

Q. What do you say as to that piece of iron and piece of wood? (Showing hatchet head and piece of wood to witness).

A. I should say that it was the same thing that he showed me.

Q. What did you do, Mr. Desmond, after he showed you this hatchet?

A. I looked it over; examined it quite closely.

Q. Do you recall where you took it to examine it?

A. Yes, sir.

Q. Where?

A. To the north side of the building, directly opposite to where he said he found it.

Q. Now will you describe everything about the hatchet? Take your own way of doing it, sir: describe it as carefully as you can, as you saw it at that time.

A. Well, it had been in some place which was not very clean. It was all dirty: that is, it was covered with a dust which was not of a fine nature, that is, it was too coarse to be called a fine---what I mean is, it wasn't any sediment that might have collected on it from standing there any length of time: it was a loose, rough matter, which might be readily pushed off or moved by pushing your finger on it. There was, I think, some more colored surface there than is there at present; many more spots. Whether they were rust, or what they were, I was unable to decide: a colored substance of some kind.

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Q. Upon what parts of the metallic part of the hatchet, the head of the hatchet, was this coarse dust that you have spoken of?

A. Here, on the sides here.

Q. On both sides?

A. Yes, sir. I might say in connection with this that it had the appearance of being a very fresh break, and its appearance then and now are very much different.

Q. The appearance of the broken part, you mean?

A. Yes, sir, and the coloring of this wood here: the surface of the broken wood.

Q. Did you observe with reference to those coarse ashes, anything about the broken part of the hatchet, the broken part of the wood? Did you make any observation in that respect?

A. No, sir, I did not---I cannot say that I did.

Q. Now Mr. Desmond, did you look at the box?

A. Yes, sir, I handled the box which this hatchet was taken out of.

Q. It was a movable box?

A. Yes, sir.

Q. Where did that box happen to be when you saw it?

A. Well, it seems to me that it sat on a larger one, something about two foot and a half high,---an old box which contained many pieces of old wood and lots of stuff, on the left of the entrance to this place where the hatchet was found: it sat on the corner of that. I took it up. It was a box somewhat larger than an ordinary salt box and I think not as large as a large salt box would be: something about, I think perhaps that length (illustrating) and may be that width. (illustrating).

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MR. ROBINSON. Perhaps he had better give his estimate in size rather than by holding his hands up.

MR. MOODY. Yes, so that the stenographer can get it; about the size and length of the box,---only approximately, I suppose that is all we care for.

A. I should think it may be fourteen or fifteen inches in length,---and perhaps four inches in width: maybe a little more.

Q. Can you tell us what it had been used for? I do not mean what it was being used for at that time.

A. Well, it contained some old pieces of iron, and I think an old bolt and some nails and other things which might be stowed away in such a thing as that---

Q. A little louder.

A. Mostly old iron of some kind: nails and bolts, I think.

Q. Did you observe the other things that were in this box in respect of the dust that was upon them? You can answer that yes or no, in the first place, sir, if you please?

A. I cannot say that I handled anything that was in the box.

Q. No, but I mean to look at it?

A. No, sir, I cannot say that. I never took anything from the box at all. I handled it and looked in it.

Q. Well, that is what I mean.

A. Yes, sir.

Q. Now did you notice whether there was any dust upon the other things in the box?

A. I think there was.

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Q. How did the dust that was upon the other things in the box compare with the dust that you have described upon the hatchet?

A. The dust that we found in general throughout the cellar was nothing at all such as was on the hatchet. It was of a much finer nature, such as any sediment that would form in any cellar,---not the kind of dirt that was on that. This was a much coarser nature. This was a rough dirt here.

Q. Did you give any instructions to Officer Medley,---I don't ask you what it was---with reference to the hatchet?

A. Yes, I did.

Q. Did he remain or go away from the premises?

A. He went away.

Q. What was done with the hatchet as Mr. Medley went away?

A. He carried it with him.

Q. Did you notice how he carried it, or what he did, where he put it?

A. I could only say as to how I gave it to him.

Q. Well, tell us how you gave it to him.

A. I gave it to him wrapped up in a newspaper; I suppose he carried it away in that condition; I don't know.

Q. Did you go there at all on August 4, to the house?

A. No, sir.

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CROSS EXAMINATION.

Q. (By Mr. Robinson.) You were not at the house on Thursday at all?

A. No, sir, I was not.

Q. And on Friday?

A. No, sir.

Q. And on Saturday?

A. Yes, sir.

Q. Now tell me what you did on Saturday?

A. I went there in company with Marshal Hilliard, Assistant Marshal Fleet, Mr. Jennings, Medical Examiner Dr. Dolan, Mr. Seaver of Taunton, and myself,---were the parties.

Q. What did you do while you were there?

A. We started in the attics of the house---

Q. Mr. Seaver is the state detective?

A. Yes, sir, he is.

Q. Very well: started in the attics?

A. Yes, sir, and searched it.

Q. What did you do up there?

A. We searched it thoroughly, I thought.

Q. Well, tell us what you did, rather than to give your opinion of your work?

A. We handled most everything that was movable.

Q. Were there any trunks in that room?

A. Well, there were more than one room in the attics.

Q. I beg pardon?

A. There were more than one room in the top part of the building.

Q. Well, begin in Bridget's room.

A. Yes, sir, there was.

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Q. How many?

A. There was certainly one.

MR. MOODY. I forgot to ask a single question---whether he found the rest of the handle of that hatchet.

MR. ROBINSON. I will ask him bye and bye.

Q. I beg pardon: did I---

A. There was certainly one trunk there which Bridget claimed.

Q. Was there a closet in the room?

A. I think so.

Q. Did you go into the closet?

A. Well, there is a small wardrobe there, a small clothes closet.

Q. Did you see any dresses there?

A. Yes, sir.

Q. How many?

A. That I cannot tell.

Q. Was Bridget up there?

A. She was.

Q. Did you examine her dresses?

A. We examined everything that she had.

Q. Well, did you find any spots on her dresses?

A. Nothing such as we were looking for.

Q. Well, I want to know if you found any spots?

A. Well, I couldn't tell what we found, but I certainly didn't see anything---

Q. Then, if you cannot tell me what you found, you needn't tell me anything.

A. I can only answer it in that way, that I didn't find what I was looking for.

Q. You did not find anything that you were looking for?

A. No, sir.

Q. You do not remember exactly, then, in what condition those dresses were?

A. I do not.

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Q. If you saw any spots except those that you thought were blood, you did not pay any attention to them---is that it?

A. Well, I can not answer that.

Q. Can't you?

A. No, sir.

Q. Were you looking for anything but blood spots?

A. I was looking for anything which might have a tendency to solve what we were after.

Q. Well, that is pretty indefinite, if you please. Were you looking for any spots except blood spots---on the dresses, I mean?

A. I cannot answer that.

Q. For what purpose did you examine Bridget's dresses?

A. I suppose the blood spots was one of the important things.

Q. What is it?

A. The blood spots, I suppose, was one of the important things

Q. Well, what was another important thing about her dresses?

A. I can't tell you.

Q. Can you think of anything?

A. No, sir, I cannot.

Q. Well, then, that is the only thing you looked for, wasn't it.

A. I cannot say.

Q. Well, tell me?

A. Something might appear as we went along through the search which might draw me to something else.

Q. Well, did they?

A. I cannot tell you what I was looking for. I was looking for anything that would throw any light.

Q. In the first place, you were looking for the man that did the deed, I suppose?

MR. MOODY. This was Monday?

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MR. ROBINSON. I was going to find out.

A. We were looking for whoever committed it; yes, sir.

Q. You were? What day was that?

A. This was Saturday that you speak of.

Q. Saturday, the day of the funeral?

A. I don't know anything about that. I wasn't there, sir, the day of the funeral.

Q. You were at the house on Saturday?

A. Saturday, yes, sir.

Q. You don't know when the funeral was?

A. Well, I recall it, but I can't date it for you.

Q. Now don't you remember that you officers, marshal and everybody else, waited until after the funeral procession had passed away from the house, and then went right in?

A. I don't remember it, no, sir: I was not there.

Q. What part of the day was it?

A. I could not tell you that.

Q. Can't tell me what part of the day you went there to the house?

A. I was not there at that day.

Q. Oh. Well, I am talking about the day when you were there, if you ever were there.

A. I understood you to say---you asked me what time in the day that funeral was.

Q. That is true.

A. I wasn't there that day, sir.

Q. Was not there on Saturday at all?

A. Saturday, yes: I was there Saturday.

Q. You are talking about Saturday, aren't you?

A. I said so far as the funeral was concerned, I could not place the date of the funeral.

Q. Then we will disregard the funeral.

A. I was there Saturday, yes, sir.

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Q. Now what part of the day on Saturday?

A. We went there about three o'clock, after dinner.

Q. You were looking for anything you could find on Bridget's dresses, as I understand you?

A. Yes, sir.

Q. Did you find anything?

A. We did not, that I recall.

Q. Well, you did not find any blood?

A. No, sir, not that I am aware of.

Q. Well, I want to know if you found any blood?

A. I cannot tell you that.

Q. Didn't you look at the dresses?

A. I did. I suppose I looked at most everything that there was in the room and handled it over, piece after piece.

Q. And they all did?

A. I think so.

Q. Dr. Dolan was with you?

A. He was there: Mr. Jennings was there.

Q. Yes, and Miss Bridget was there?

A. Bridget was there, yes, sir.

Q. And three or four others of the officers?

A. Yes, sir.

Q. And you do not remember whether there were any other spots on the dresses at all?

A. No, sir.

Q. You did not find any blood?

A. I could not describe a dress if you asked me to: I don't know anything about it.

Q. As I understand, you can not tell now what you did find, if you found anything?

A. I don't know how you understand it.

Q. Well, I presume it is a difficulty with me. Can't you help me out? What did you find?

A. I didn't find anything that in my opinion was what we were after.

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Q. I don't care about your opinion. What did you find on Bridget's dresses, if anything?

A. I didn't find anything at all; no, sir.

Q. Now leave it right there. Did you go into the other rooms in the attic?

A. Yes, sir.

Q. And searched them all thoroughly?

A. Yes, sir.

Q. Everything?

A. Yes, sir.

Q. Opened boxes and trunks?

A. Yes, sir.

Q. And you were given every facility were you not?

A. We were.

Q. The doors were all opened at your request?

A. Yes, sir, they were.

Q. Not the slightest hindrance anywhere in the whole house?

A. Not that I found.

Q. Mr. Jennings, who is here present went around with you?

A. Yes, sir, Mr. Jennings was there.

Q. And do you remember that there was some box locked in the attic which you had to send down stairs to get the key for?

A. Well, I remember we had quite a time trying to open a trunk that was there.

Q. Well, you got it open finally?

A. We finally got it open, yes, sir.

Q. What was there---some extra kink about it?

A. Well, yes, it was something that I had never run across before, certainly.

Q. Too much for you?

A. Mr. Jennings also tried to solve it: he didn't seem able to.

Q. Well, there were two nonplussed. How did you get in there?

A. I couldn't tell you who discovered the way to open the trunk,

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but it was finally found and opened.

Q. Well, it was sort of a secret catch, was it?

A. Yes.

Q. A large trunk?

A. Yes, quite a good sized trunk.

Q. Now, didn't Miss Lizzie come up and show you how to get it open?

A. I can't tell you who showed.

Q. But didn't she come up there?

A. I don't recall Lizzie being there.

Q. Weren't the whole crowd of you all puzzled, Jennings and all, so that you could not get that trunk open?

A. Her sister was there.

Q. Was she up in that room?

A. Her sister Emma was there.

Q. I mean up in that room?

A. Yes, sir.

Q. Was she the one that showed you?

A. I can't tell you who it was.

Q. Did Lizzie come up there?

A. I don't recall seeing her in the attics.

Q. Do you say positively, she was not?

A. I don't say positively, no, sir.

Q. At any rate, you didn't know anything how to get that open until one of the sisters came there and showed you?

A. I don't know who it was, whether it was a sister or not. Somebody solved the mystery.

Q. It was a woman?

A. I don't know.

Q. You do not?

A. No, sir.

Q. Well, you mean to say that you did not take notice whether it was a man or a woman?

A. I mean to say that it was opened and who furnished the information how to open it is more than

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I can answer.

Q. Well, you got the information?

A. Yes, sir.

Q. You did not find anything in there?

A. I could not tell you. There was something in the trunk but I couldn't give you the contents of it.

Q. I mean anything that indicated any spots of blood, or any tools, or anything of that kind?

A. No, sir.

Q. Nothing that you cared to take out?

A. No, sir.

Q. Well, do you wish to say anything more about any other parts of the attic?

A. I couldn't go into any further discourse as to how we searched the attic. We did it.

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Q. You searched them all---

A. We gave the whole building---

Q. No, I don't want the whole building.

A. Well, we gave the upper part of the building, the entire attics, a good thorough search.

Q. Did you go up on the roof?

A. It seems to me the assistant marshal did go up there and look out there once or twice.

Q. So you did go to the top of the house?

A. Yes, sir.

Q. Clear up to the ridge-pole?

A. Yes, sir.

Q. You did not find anything at all?

A. No, sir.

Q. You went down stairs? Where did you go then?

A. The next floor.

Q. Which room?

A. I think we entered Mr. and Mrs. Borden's room on the next floor.

Q. Who opened the door?

A. That I could not tell you; the whole house was opened to us.

Q. You had liberty in the whole house?

A. Yes, sir.

Q. But were not some of the doors locked and obliged to be opened by a key?

(No answer.)

Q. Well, if you don't remember?

A. I was trying to recall that; there was some door open; whether it was in the attic or where it was, I don't recollect, but there was some key that had to be called for, and I think it was in one of the attics, too.

Q. Very well. Now how thorough was your search in Mr. and Mrs. Borden's room?

A. I considered we gave it a thorough search.

Q. Pulled the beds to pieces?

A. Not exactly pulled them

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apart, but we gave them a thorough looking over.

Q. Well, you looked on top of the bed and underneath?

A. Yes, sir.

Q. Is that what you mean?

A. Turned up the mattresses, &c.

Q. Well, you found there wasn't anything in between?

A. Yes, sir.

Q. And the room there where the sofa was---Did you look in that?

A. Yes, sir.

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Q. Were there any dresses in that room?

A. It seems to me there was, both ladies and gents clothes hanging up in that room covered with a sheet.

Q. Did you examine those?

A. Yes, sir.

Q. Thoroughly?

A. Yes, sir.

Q. Could you form any opinion whose clothes the ladies clothes were,---whether those of a stout woman or a slender woman?

A. No, sir, I could not.

Q. Were the dresses turned wrong side out?

A. I could not say that.

Q. I mean during your examination?

A. I could only answer as far as my examination was concerned. I did all I could.

Q. To find everything?

A. Yes, sir.

Q. But you did not find anything, did you?

A. I did not bring anything away from there.

Q. Did you find anything that would assist us in this inquiry?

A. I don't know that.

Q. Did you find any blood on any of those dresses?

A. I did not find any.

Q. Did anybody while you were there to your knowledge?

A. Not that I am aware of.

Q. Did you find any grease spots or paint spots on any of these dresses?

A. No, sir, I think not.

Q. Then where did you go next?

A. On the next lower floor.

Q. You did not go through into Miss Lizzie's room?

A. Oh, yes.

Q. What?

A. We searched that entire floor.

Q. Went into that next room?

A. Yes, sir.

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Q. You searched that room?

A. Yes, sir.

Q. You understood that was Miss Lizzie's?

A. Yes, sir.

Q. You searched that bed in the same thorough manner?

A. Yes, sir.

Q. And the little alcove?

A. Yes, sir.

Q. With the portiere over it?

A. Yes, sir.

Q. And the book-case or desk and the closet?

A. Yes, sir.

Q. Everything done?

A. Yes, sir.

Q. Thoroughly?

A. Yes, sir.

Q. Looked at the carpets to see if there was anything under them?

A. Yes, sir.

Q. Moved things just as you wished to?

A. Yes, sir, gave it a thorough search.

Q. Did you find a couch or lounge in that room or something like that?

A. Yes, sir.

Q. Turned it over, bottom side up, didn't you?

A. Yes, sir.

Q. Did not leave anything untouched?

A. Tried not to.

Q. You went into the other room then, or Miss Emma's?

A. Miss Emma's.

Q. And went through the same process there?

A. Yes, sir.

Q. And in the spare room?

A. Yes, sir.

Q. And in the same way?

A. Yes, sir.

Q. You went into the closet room?

A. No, sir, not me.

Q. Somebody? You did not go in there at all?

A. No, sir.

Q. Somebody else did?

A. Yes, sir.

Q. You examined then, I suppose, the first floor of the house in the same thorough manner?

A. Yes, sir.

Q. And you made an absolute, unrestrained and complete search

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of everything about the house, didn't you?

A. I didn't go into the cellar that day.

Q. You think you did, leaving that out?

A. Yes, sir, I think we did.

Q. What day was it Mr. Medley handed you that head?

A. That was the Monday following.

Q. Do you recall whether you went into the cellar on Saturday?

A. I did not.

Q. Yourself?

A. I did not go down cellar at all.

Q. Do you remember seeing the others go?

A. I think they all went down but myself. I had to make preparations for six o'clock that evening and left there at that time.

Q. On Monday you were there and you told us how it was Mr. Medley brought you the hatchet head with the piece of handle in it?

A. Yes, sir.

Q. What were you doing?

A. I cannot say, but he called me and handed it to me.

Q. You looked it over?

A. Yes, sir.

Q. Took it into your hands?

A. Yes, sir.

Q. He had it in his, of course, when he brought it to you?

A. Yes, sir.

Q. Handed it to you and you passed it back to him wrapped in a newspaper?

A. No, sir, I did not hand it in a newspaper to him.

Q. You passed it back to him and he put it in his pocket.

A. Yes, sir.

Q. And he carried it off?

A. I guess so.

Q. Did he point out to you where he found it?

A. I think he did.

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Q. What did you see in the box?

A. The contents of the box was iron matter of some sort---bolts and nails.

Q. Some old tools and an iron chisel?

A. Yes, sir.

Q. Did you take out any other things?

A. No, sir.

Q. Did you see a hatchet handle in there?

A. There was nothing but iron in the box.

Q. You know there was not a hatchet handle in there, don't you?

A. There was nothing but iron in the box.

Q. What became of the hatchet head after it left there? (To Mr. Moody) That is the form you desire?

Mr. Moody assented.

A. I supposed it was delivered to the City Marshal.

Q. Been there ever since or in his custody or that of some one connected with the prosecution?

A. I think it has.

Q. That was on Monday?

A. Yes, sir.

Q. Before the preliminary hearing did you testify?

A. No, sir, I did not.

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Q. You didn't take out anything that was in the box at all yourself?

A. No, sir.

Q. You looked in?

A. I took the box and handled it, looked it over.

Q. And you took this hatchet head in your hand?

A. Yes, I did.

Q. And it was all covered with dust?

A. Dirt rather than dust.

Q. Dirt?

A. It was so much coarser.

Q. Soiled? You said dirt?

A. Yes, rather than dust.

Q. Well, there are various kinds of dirt.

A. Well, what I mean is, it was not a fine substance that it collected there. It was a much coarser substance than that fine fibre which generally settles down in cellars.

Q. Was it coarser than what was on the other tools in the box?

A. I didn't take anything from the box.

Q. So, you don't know?

A. No, I don't know. I know that the dirt which was on that hatchet was not such dirt as we found throughout the cellar.

Q. But whether it was the same kind of dirt that was on the other things in that box, you don't know, do you?

A. Same kind of dirt?

Q. Yes.

A. I know that it was a much coarser substance.

Q. I thought you said you didn't take up what was in the box?

A. I told you I took the box when I looked it over.

Q. But you didn't take the things up that were in it?

A. No, sir.

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Q. You didn't handle things in the box at all?

A. No, sir, didn't take anything from the box.

Q. But you did handle the hatchet?

A. I did handle the hatchet.

Q. And all you know about what was in the box and the condition it was in was simply by looking in?

A. Yes, sir.

Q. It was a dusty place around there, was it not?

A. Some dusty.

Q. It was a cellar room where ashes were kept?

A. Yes, sir.

Q. And this was about how far from the floor?

A. I think about two feet and a half.

Q. You saw the pile of ashes there?

A. Yes, sir. I shovelled them over.

Q. Several bushels. You know more about it than any one, if you shovelled them?

A. Yes, sir.

Q. Several bushels?

A. Yes, sir.

Q. Did you stir up any dust?

A. I suppose I did.

Q. The ashes flew around the room, didn't they?

A. Yes, but the ashes were shovelled after---

Q. Well, I am not inquiring about that particularly as to time, but in shovelling it made the ordinary dirt of ashes, didn't it?

A. Yes, sir.

Q. Would you be able to tell us whether those were coal ashes or wood ashes or both?

A. I should call them coal ashes.

Q. Such as would come from the coal used in the steam heater?

A. Yes, sir.

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Q. Did you see any other ash pile in the cellar?

A. No, sir.

Q. You haven't attended the hearing that had been going on here in court?

A. No, sir, I came here to-day for the first time.

Q. You have read the newspapers, I suppose?

A. Not a single word of the Borden matter since it started.

Q. Haven't read any of it?

A. No, sir.

Q. Papers are supplied to the police headquarters over there?

A. Yes, sir, they are.

Q. All published over there in full, questions and answers?

A. Yes, sir, I have it to read it.

Q. Did I understand you that whatever there was on this hatchet pushed off easily?

A. Yes, sir.

Q. In handling in your hand it rubbed off?

A. That is it. I could take my finger and rub it off.

Q. That was what day?

A. That was Monday.

Q. Are you certain about your taking it up?

A. Positive. I got the paper from the water-closet there to do it up with .

Q. (Handing witness the handleless hatchet.) Well, won't you wrap it up in about as large a piece of paper?

A. I shall have to get a full-sized newspaper to do it, much larger than that, sir. (Referring to a piece of paper handed witness by counsel.)

Q. You got a piece out of the water-closet?

A. Yes, sir.

Q. Brown paper?

A. No, sir, regular newspaper, but a larger paper than that.

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Q. You wrapped it in a newspaper?

A. Yes, sir.

Q. You are sure about that?

A. Positive.

Q. A very large newspaper?

A. Yes, quite a big newspaper.

Q. Well, we won't explore for a big one, but as large as that?

A. I think larger.

Q. Larger than that? (Exhibiting a Boston Globe.)

A. Yes.

Q. Well, take that and give us the way you wrapped it up.

A. (Witness did so.) I wrapped it up in such form as that, and passed it to him.

Q. That is the way you did it?

A. Yes, sir.

Q. Rolled it up like that and passed it to him?

A. Yes, sir.

Q. Made as big a bundle as that, did it?

A. No, sir, not so large as that.

Q. It was a bigger newspaper?

A. Yes, it was larger. I don't think there was two sheets.

Q. Oh, a single folio paper?

A. Yes, sir.

Q. You don't remember what the newspaper was?

A. No, I don't.

RE-DIRECT.

Q. (By Mr. Moody.) You were about to state when the ashes were shovelled, and you were interrupted. Tell us when they were shoveled?

A. The ashes were shovelled immediately after he showed me this hatchet or within a short while afterward.

Q. Had they been shovelled before that that you saw?

A. No, sir, they were not touched that I know of.

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GEORGE F. SEAVER, Sworn.

Q. (By Mr. Moody.) George F. Seaver, is it?

A. Yes, sir.

Q. You are a member of the State District Police force?

A. I am.

Q. Living where, Mr. Seaver?

A. At Taunton.

Q. How long have you been a member of the force?

A. Between 14 and 15 years, about 14 years.

Q. Did you go to Fall River at any time subsequent to this homicide?

A. I did.

Q. When did you go?

A. I went August 4th, in the afternoon, arriving there about ??? o'clock.

Q. Did you go to the house on that day?

A. I did.

Q. Did you make any observations of any sort upon that day?

A. I went through the house, the cellar, and about the premises that day, nothing but general observations.

Q. Did you make some observations and measurements with reference to blood spots at any time?

A. I did.

Q. Where was that, Mr. Seaver?

A. That was later on. My impression is it was the 13th.

Q. I will pass from that for the moment and come in the order of time. Now, Saturday, were you at the Borden house?

A. I was.

Q. Were you there during the search that was being made by Capt. Desmond and the officers under his control?

A. I was.

Q. At any time in the Saturday did you see a hatchet without a handle?

A. I did.

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Q. Who was present when you saw it?

A. Capt. Fleet.

Q. Did anyone point it out to you or did you see it without its being pointed out?

A. Capt. Fleet pointed it out to me.

Q. Where was the hatchet then?

A. It was in the box in the cellar.

Q. Could you tell anything about where it was in the cellar, where this box was then in?

A. The box was lying at that time at or near the floor, I think it was on some wood within perhaps a foot of the floor.

Q. Did Mr. Fleet point out any shelf to you at that time?

A. He pointed up the side of the wall, and says---

(Objected to.)

Q. Did he point out where it was when he first saw the box?

(Objected to.)

Q. Will you tell me where the shelf was that he pointed out?

A. I should say about six foot, between five and six feet, from the floor.

Q. Do you know in which cellar? Do you recall in which cellar?

A. Yes, sir; the cellar behind the furnace.

Q. Was that the same cellar in which the box was at the time you saw it, or in another cellar? Was the shelf in the same cellar?

A. It laid directly under. He just pointed above.

Q. What did you do when you saw this hatchet head?

A. I took hold of it and laid it back in the box, looking in the box to see if there was any handle to it.

Q. Did you find any handle?

A. I did not.

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Q. Can you describe the appearance of the hatchet at the time you saw it on the Saturday? If so, will you please do so?

A. It appeared to be covered with a coarse dust or ashes. I should call it more of ashes than of dust, it being a coarser dust than the dust on the box and other things.

Q. And other things in the box, do you mean?

A. I think things in and about the box.

Q. What parts of the hatchet were covered with that coarse dust?

A. The sides of the hatchet were covered with dust.

Q. Did you notice anything with reference to whether there was anything at that time in the eye of the hatchet?

A. Yes, sir; I presume that may be the one. That was in the eye of the hatchet.

(Indicating.)

Q. Can you give any description of the break of the wood?

A. The break apparently was a new break, a very bright break, that is, as though it had not been done very long.

Q. How does its appearance in respect of color compare with its present appearance?

A. The color has changed very much, it is very much darker now.

Q. After you took up the hatchet and looked at it what did you do with it?

A. Laid it back in the box.

Q. Now, Mr. Seaver, on the Saturday you made some search with reference to dresses, did you?

A. Yes, sir.

Q. Or examination of dresses, I ought to put it?

A. Yes, sir; in one clothes press.

Q. You were with Mr. Desmond at that time, or with the party?

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A. I was with Capt. Desmond up in the garret in the first place, part of the time; in fact, most of the time that we were up there.

Q. Where were the dresses that you examined, for that is all I care to call attention to?

A. They were in the large closet over the front hall.

Q. Won't you describe the character of your examination of those dresses on the Saturday?

A. I first went into the closet and the closet blinds were shut, that is, the outside blinds. I opened the blinds---there were clothes around the window---hoisted the window and took the cloth down and opened the blinds, and then I went to the hooks. Capt. Fleet was there with me. He had gone in two or three minutes before me.

Q. (By Mr. Robinson.) A little louder, please?

A. Capt. Fleet was there 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 Capt. Fleet, he being near the window, and he examined them as well as myself, he more thoroughly than myself, and I took each garment then and hung it back as I found them; all with the exception of two or three which were heavy or silk dresses, in the corner. I didn't pass those down. I just looked at them and let them remain as they were.

Q. (By Mr. Moody.) Those were silk dresses?

A. Those were silk dresses, I am very sure, heavy dresses, and they hung there, and I didn't disturb them at all.

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Q. Did you discover anything upon any of those dresses?

A. I did not.

Q. Did you see a light blue dress, diamond spots upon it, and paint around the bottom of the dress and on its front?

A. I did not.

Q. Did you make a sufficiently careful examination to have discovered such a dress, so marked with paint, if it had been there?

A. I did.

MR. ROBINSON. Wait a moment. That should be stricken out. I don't think that is a proper question. The answer came before we could object. I object to it and ask that that question be excluded, and the answer with it.

MR. KNOWLTON. We will not take any advantage of the lateness of the objection.

MR. MOODY. I don't suppose you object to the form of it.

MR. ROBINSON. No, to the substance of it.

MASON, C. J. The Court are of the opinion that it is for the witness to say what he did and for the jury to draw the inference.

MR. ROBINSON. The question and answer may be excluded then, I suppose?

MASON, C. J. The answer may be stricken out.

MR. ROBINSON. Very well; that is all that is necessary.

Q. Did you search or examine any other dresses in any part of the house except in the front clothes closet?

A. No, sir.

Q. At some time, you have told us, you made some examination and measurements of blood spots?

A. Yes, sir; later. I

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went with Dr. Dolan the medical examiner.

Q. When was that Mr. Seaver---again?

A. My impression was it was the 13th. I may possibly be mistaken about the date. My impression is it was the 13th.

Q. Have you a memorandum of the result of your observations?

A. Yes, sir.

Q. When was it made, sir?

A. It was made at that time. I made it on a paper at that house, at that day, and afterwards copied it on to a book.

Q. Would the memorandum assist you upon a matter of this sort?

A. Yes, sir.

Q. Please consult it, and then state in your own way, without any questioning, what you found with reference to blood spots?

A. We found on the mop board behind the head of the lounge---

Q. (By Mr. Jennings.) You said we found?

A. I found. We both saw them.

Q. (By Mr. Moody.) Well, put it in this way, that there were, if there were?

A. There were on the mop board, behind the head of the lounge, five small spots of blood.

Q. This of course was down in the sitting room, you are referring to now?

A. Yes, sir.

Q. Now on the wall just above the head of the lounge what did you find?

A. The head of the lounge, a little towards the kitchen door, we found a cluster of small blood spots, 86 in all, within a radius of 18 inches in length by about ten inches in width.

Q. Will you take that photograph, and, if you can, indicate

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where the cluster of spots began and ended?

A. I should say they commenced not far from there, and I guess about there.

MR. MOODY. I should like to point this out, Mr. Jennings, if you will come and see where he points it. Now do that again, Mr. Seaver.

The WITNESS. I should say they were right there, as I recollect them.

(Pointed out to jury.)

Q. Did you take any measurements, Mr. Seaver, of the space within which that cluster of spots was included?

A. Yes, sir.

Q. State that, if you please?

A. 18 inches in length by 10 inches in width.

Q. Now did you find any other blood spots in that room? I will call your attention to the frame and glass of the picture.

A. Yes, sir.

Q. Where were they there?

A. On the frame and glass of a picture that hung over the lounge there were 40 blood spots.

Q. How high was the highest one?

A. The highest spot being four feet and ten inches from the floor.

Q. Where was the highest spot that you found in the room, and what was its height?

A. It was on the wall. It was six feet one inch from the floor, one foot one inch from the door jamb, toward the kitchen door, the door jamb that goes into the dining room from the sitting room.

Q. Did you find any blood on the door leading from the sitting

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room into the parlor?

A. Yes, sir.

MR. MOODY. I am informed that door had been washed, and I withdraw that question.

Q. You understood that door had been washed?

A. Yes, sir.

Q. How far was it from the door jamb or the head of the lounge to the blood spot on the kitchen door in a straight line?

A. Nine feet, seven and a half inches.

Q. How much blood was there upon that kitchen door, or on its frame?

A. I think there was but one spot that I discovered.

Q. And where was that, on the frame or on the door?

A. That was on the door frame, three feet one inch from the floor, the right side.

Q. You said the door frame?

A. The door frame; yes, sir.

Q. How far was it from the head of the lounge to the dining room table?

A. I have got it just five feet. I think it was just five feet, where the table stood at that time.

Q. (By Mr. Robinson.) From the head of the lounge to the dining room table?

A. Yes, sir.

MR. JENNINGS. There is nothing here to show the position of the dining room table was the same as it was on the day of the murder.

Q. State how the dining room table was at the time you made this measurement? There is some evidence as to how it was on August fourth.

A. The end of the table was very near even or flush with the right side of the door going in from

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the sitting room to the table, that day that I took the measurement.

Q. Did you find any further blood spots in the room down stairs?

A. I have, one spot on the kitchen door, a quarter of an inch from the south side of the frame, the door frame, on the door; one small spot.

Q. Is that the one you referred to?

A. No, sir; the other one was on the frame.

Q. This is on the door?

A. This is on the door.

Q. Were there any other blood spots below?

A. No, sir.

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Q. Did you go up stairs?

A. I did.

Q. Did you make any observations and measurements up stairs?

A. Yes, sir.

Q. Will you state what you measured up stairs?

A. I found seven blood spots on the mop-board on the east side of the room between the bed and dressing case, three feet, five inches from the bed.

Q. Well, did you find any other blood spots. Did you find any on the marble slab?

A. Yes, sir, on the marble slab and dressing case there were fifteen blood spots.

Q. Did you find on the edge of the upper, larger drawer of the dressing case any spots?

A. Yes, sir, we found four blood spots.

Q. On the lower drawer of the dressing case, what did you find?

A. Thirteen blood spots.

Q. On the face board of the bed towards the dressing case?

A. It was besmeared with blood, the space---so many spots were found I did not attempt to count them,---very many of them.

Q. What did you find on the lower face board of the dressing case, next to the floor?

A. We found that lower board besmeared with blood spots, very thick, and also some matted hair.

Q. Some what?

A. Some matted hair.

Q. Was that attached to the---

A. Stuck on to the blood. That was very near the floor.

Q. Now will you take that photograph (passing picture) and point out on what part of the lower part of the dressing case, and what part of the lower bed frame the besmearing with blood was?

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A. It was clear at the bottom, within six inches of the floor, I should say.

Q. How far did it extend along the width of the dressing case?

A. I should say half way.

Q. Beginning at which end?

A. Beginning on the west end of the dressing case.

Q. Now take the bed.

A. The bed was about the same, commencing on the west end. I don't think it extended so far quite, as on the dressing case. Perhaps it covered two feet.

Q. Where was its westerly beginning? Opposite the end of the dressing case, do you mean?

A. About opposite the dressing case, directly opposite.

MR. MOODY. Now I should like to point this out to the jury. (Standing directly in front of the jury) He says that the besmearing that he spoke of began at the corner of this dressing case and ran about half way, gentlemen; that it began on the bed at the point opposite the dressing case and ran down a little less distance. (Repeating at the other end of the jury) That the besmearing of this blood began at the corner of this dressing case and ran about half way,---that at that point, that corner of the dressing case the besmearing began and went easterly, not so far as it did on the dressing case side.

Q. Did you notice anything on the glass of the dressing case?

A. Yes, sir, on the glass of the dressing case there was fifteen blood spots.

Q. You may tell me what the appearance was of those blood spots

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without saying which way they appeared to be directed. What did they look like?

A. They were not round; they looked like---

Q. Where were the heavier parts of each spot?

A. The heavier parts of each spot were at the bottom.

Q. Do you mean that in extent of surface or in amount of blood?

A. In the amount of blood the heaviest part was above.

Q. And in extent of smearing, the heaviest or largest part was below: Am I right?

A. Yes, sir.

Q. Now, did you see a spot of blood on the north side, on the wall next to the dressing case?

A. Yes, sir.

Q. Do you happen to know whether it is a place out of which now the wood is taken?

A. Yes, sir, I was there when it was cut out.

Q. You were there when it was cut out?

A. Yes, sir.

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Q. Won't you tell us the distance of that spot of blood on the north side next to the dressing-case from the window casing?

A. That was nine inches from the window casing and two and one half feet from the floor.

Q. Did you notice any other blood spots upon any other part of the wood?

A. No, sir.

Q. Or either the furniture or about the walls?

A. Yes, sir, I have one other that I think I didn't copy on that paper. I am not sure.

Q. Well, state it, please.

A. There were two blood spots upon the dressing-case and the window.

Q. Between the dressing-case and the window?

A. Yes, sir.

Q. Won't you describe their position a little more accurately, if you can?

A. I am very sure that one of them was one that we cut out and the other one was very small, ten inches and a quarter from the casing.

Q. With the dressing-case in its position could a line be drawn from those spots upon the wall to a point on the floor from 25 to 30 inches distance from the mop-board on the east without going through a part of the dressing-case?

MR. ROBINSON. Wait a moment. I object to that, because it does not appear that things were as at that time he made the examination.

MR. MOODY. You did not understand my question. I assume the dressing-case was in position next the wall.--I will withdraw the question. The jury have seen it.

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MR. ROBINSON. That is what I thought.

Q. Have you ever had any of these axes or hatchets in your possession, Mr. Seaver?

A. Yes, sir.

Q. Which one?

A. I have had the two hatchets there.

Q. That is, the hatchets with the handles on?

A. Yes, and also that one. (i.e., handleless one.)

Q. From whom did you obtain them?

A. From Prof. Wood.

Q. Take them to the grand jury?

A. Yes, sir, I did.

Q. And returned them to him?

A. I think I took them November 15th and returned them December 3d, if I recollect right.

Q. Did you have the axes?

A. No, sir.

Q. Or did you have anything to do with the handleless hatchet?

A. That was there with the other two hatchets.

Q. At the time you took it from Prof. Wood did it have a piece of wood separate from the eye or not?

A. Yes, sir, just as I see it now. It was enveloped when I took it from him separate.

Q. Did you make any change in the condition of the hatchet or of this loose piece of wood?

A. I did not touch it at all.

Q. You didn't touch it at all?

A. No, sir, until after I saw at the grand jury on the table there. I did take it up at the grand jury.

Q. You didn't break off any piece of wood here?

A. No, sir, I didn't disturb it at all.

Q. It was taken into the grand jury room, and what was done in

there you don't know?

A. I don't know.

CROSS-EXAMINATION.

Q. (By Mr. Robinson.) When you looked down in the box that day down cellar you found this or saw this hatchet head, did you?

A. Yes, sir.

Q. Saw it in the box?

A. In the box. No, sir. At the time I first saw it, Mr. Fleet took it out of the box. I saw him take it out of the box, and I looked at it.

Q. What day was this, Mr. Seaver?

A. This was Saturday afternoon right after we got through the search up stairs.

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Q. And you and Mr. Fleet---when you say you got through you mean Mr. Fleet and yourself?

A. Yes, sir. After we left the closet we went directly down stairs, or very soon after.

Q. At that time this piece was in the head of the hatchet?

A. Yes, sir.

Q. And you don't know anything about how those chips were taken off there?

A. No, sir.

Q. You know nothing about that at all?

A. No, sir.

Q. Were they off when you saw it?

A. At that time?

Q. Yes.

A. I couldn't say. The hatchet---I should judge they couldn't be there, because I should judge that was in the hatchet.

Q. You think that would be in the hatchet?

A. Yes, sir.

Q. You don't recall then?

A. I don't recall.

Q. Did you look at it at all?

A. No, sir; only the end, as the break was on the end, the sliver sticking out.

Q. You don't remember about that at all?

A. No, sir.

Q. And do you know when those were taken off?

A. No, sir.

Q. Anything about it?

A. No, sir.

Q. Do those look now like new slivers?

A. They look newer than the end does now.

Q. Well, do you call them now new?

A. I should call them quite fresh now.

Q. Those are quite fresh?

A. Yes, sir.

Q. Well, you would call those---they are certainly newer to your judgment than on the end?

A. Yes, sir; very much.

Q. And if you were called upon to describe these on the side

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today, you would call those very fresh?

A. I should call those quite fresh. I don't think they look quite as bright as the break did on the end when I first looked at it.

Q. Well, are you really going to put it down as close as that?

A. Well, it seems to me as though it has been handled so it doesn't look so.

Q. Looks a little dirty?

A. Yes, sir.

Q. Have you had much experience with wood?

A. Yes, sir.

Q. What was your occupation before your present one?

A. I was originally a carpenter.

Q. What kind of wood is that?

A. I couldn't tell you, sir.

Q. Well, look,---a carpenter!

A. I couldn't tell you, sir. It might be ash; I wouldn't say it was. It might be oak. I wouldn't say what it was.

Q. Really, can't you tell what that wood is?

A. No, sir.

Q. Haven't any judgment about it?

A. No, sir.

Q. Does it seem to you that it is a sound piece of wood or not?

A. Judging from the looks of the end now I shouldn't say it was.

Q. You should think it was a rather rotten piece?

A. Yes, sir; a rather delicate piece.

Q. It hasn't grown rotten, I suppose, since last August?

A. No, sir; it looks different, that is all.

Q. Grown a little darker?

A. Yes, sir. I should think by the looks of it, it might have been in water.

Q. You didn't put it in water?

A. No, sir.

Q. You said you thought it looked as if it had been in water?

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A. Yes, sir.

Q. And did it look as if it had been in water when you first saw it?

A. No, sir.

Q. No sign of any water about it when you saw it?

A. Well, I shouldn't suppose by the looks of the end---it was very fresh, and I shouldn't suppose then it had been in water a great deal.

Q. It looked all free from any effect of water when you first saw it? I am talking about this piece of wood I hold in my hand.

A. I didn't see the piece of wood, sir, at that time. I didn't see the piece of wood only as in the hatchet handle.

Q. Did the piece of wood as in the handle look to you as if it had been in water?

A. No, sir.

Q. Your judgment was at that time that it did not?

A. It didn't look to me so then.

Q. And when I say "it" I mean the piece of wood.

A. I understand.

Q. And now it looks as if it had been in water?

A. It looks so now, yes, sir.

Q. Do the side slivers look as if they had been in water?

A. I shouldn't say so, so much so. It may have been.

Q. What is your judgment? I don't know but you know when those slivers were made so?

A. No, sir; I do not.

Q. Give us your testimony as to how long those slivers have been off there?

A. I couldn't tell you, sir.

Q. You won't give your judgment as a carpenter?

A. I couldn't

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tell. They may have been off a month.

Q. A wood workman! Can't you tell me?

A. No, sir.

Q. They may have been off a year?

A. I shouldn't say they were so long as that, but they may have been.

Q. Is it your best judgment they were?

A. I shouldn't say they were.

Q. When was the grand jury held?

A. It was held in November.

Q. Last year?

A. Yes, sir.

Q. Have those got off since that?

A. It may have been.

Q. Well, your judgment about it, now?

A. I couldn't tell, They may have been.

Q. Could you tell, by looking at a piece of wood like that, that end that you saw, can you swear that you could judge within six months of the time it came off?

A. Well, yes, sir; I think I could.

Q. Well, won't you swear, then, in regard to those slivers?

A. No, sir.

Q. Within six months?

A. I shouldn't say they had been off as long as that.

Q. Your best judgment under oath is that those have not been off six months?

A. I shouldn't say so, but they may have been.

Q. Well, how many months?

A. I don't know sir.

Q. Three months?

A. It may have been.

Q. Your best judgment?

A. I should think likely they might be.

Q. They have been off about three months?

A. I wouldn't swear to it or anything of that kind.

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Q. Your best judgment?

A. Possibly.

Q. Would you, from your knowledge of a piece of wood, your experience with woods of various kinds, would you undertake to tell from the inspection of a break of that kind within three months as to the time when the break occurred?

A. No, sir.

Q. Then when you say that it appeared to be a fresh break you won't say to this jury that you would swear it was within three months of the time you saw it?

A. No, sir.

Q. Now in regard to the examination of the dresses on Saturday. You and Mr. Fleet were the only ones that examined the clothes closet, if I understand you?

A. At that time. I don't know what was done afterwards or before. At the time we were there we was the only ones there that time.

Q. Now will you tell me what were in the room besides the rows of dresses?

A. I couldn't tell you all that was in there. There were trunks in there and some boxes.

Q. How many?

A. We examined a trunk. A trunk was there that was open. We looked into that, and I think two or three boxes, small boxes.

Q. Was there any bureau or chest there?

A. I think there was a small box or chest. There was no bureau.

Q. Nothing with any drawers?

A. No, sir.

Q. Are you sure?

A. I think not.

Q. How many dresses were there in the room?

A. I didn't count them, but I should think there were a dozen or fifteen.

Q. You were not looking after any particular dress at that time?

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A. No, sir.

Q. You didn't have any pattern or color or style in your mind?

A. No, sir.

Q. Whether it was a bell skirt or something else?

A. No, sir.

Q. You didn't care anything about that, whether a blouse, a waist, or a tight waist?

A. No, sir.

Q. You were not after any color at all?

A. No, sir.

Q. Did you see the pink dress?

A. I wouldn't swear that I didn't see the pink dress.

Q. Did you see that green silk there?

A. I wouldn't say that I see a green silk there or that I didn't.

Q. Did you see any woolen dresses?

A. Yes, sir.

Q. Black ones?

A. I think so.

Q. How many?

A. Oh, I think I saw one or two.

Q. Give us your judgment of the different dresses. Begin at the first hook. Let us go up in the corner and take them right down.

A. I couldn't tell you.

Q. Was it a challie?

A. I couldn't tell you.

Q. Delaine?

A. I couldn't tell you.

Q. Alpaca?

A. I couldn't tell you.

Q. Bedford cord? Do you know any of them?

A. No, sir.

Q. You were not in that business?

A. I am not in that business.

Q. Can you help me at all about the style or color of any of those dresses?

A. I don't think I can.

Q. Was you actually looking after that blue dress at all?

A. No, sir.

Q. Do you swear to this jury that there was no blue dress there?

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A. I didn't see any there.

Q. Do you swear to them there was not?

A. No, sir; I wouldn't swear positively there was no blue dress there.

Q. You wouldn't swear whether there was a light or dark blue?

A. I don't recollect any that was there.

Q. Have you seen the one that has been brought in here?

A. No, sir; not the one that has been brought in here. I have seen a blue dress.

Q. Did you see such a dress in there?

A. I don't recollect of seeing such a dress in there.

Q. Will you swear you did not?

A. No, sir; I won't.

Q. Did you see Miss Lizzie that day?

A. I did.

Q. Did she have that dress on?

A. I think she did.

Q. That afternoon?

A. Yes, sir; I think she did.

Q. Well, that was when she was gone to the funeral, wasn't it?

A. Well, I won't say about that; no, sir; that afternoon---she got home at the time.

Q. Did she have that dress on that afternoon?

A. No, sir; I don't think she did.

Q. I thought you said she did?
A. No, sir; I didn't mean to say that.

Q. You have changed your mind?
A. I have changed my mind.

Q. Why?
A. Because I was mistaken.

Q. What dress did she have on that afternoon?
A. I couldn't say. I just got a glimpse at her. I didn't speak to her that afternoon.

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Q. Didn't she have that Bedford cord on that afternoon?
A. No, sir. I couldn't tell you; I don't think she did. I couldn't tell you what she had on.

Q. Then you cannot help us about that?
A. No, sir.

Q. You were examining dresses for blood?
A. Yes, sir.

Q. You didn't examine the one she had on?
A. No, sir.

Q. And you don't know what she did have on?
A. No, sir.

Q. And you didn't ask to see it--have her change it?
A. I did not.

Q. You don't know if anybody did?
A. Not that I know of; I didn't.

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Q. Can you tell me, beginning in the corner and taking the first dress down, what it was?
A. No, sir.

Q. Can't you tell what it was?
A. My impression is that it was silk, a silk dress.

Q. What color?

A. Black silk, I think.

Q. Did you turn these dresses wrong side out?

A. I did not; I turned them on both sides, those that I took down.

Q. So you could see inside and out?

A. Yes, sir.

Q. And handed them to Mr. Fleet who took them to the window, with the blind open?

A. He searched them more particularly than I did and passed them back just as I found them.

Q. And you put the things back just as you found them?

A. Yes, sir.

Q. What was the second dress,---the first one you say was black silk, you think?

A. Both,---my impression is that both were black silk dresses, the second too.

Q. You mean to the left or right?

A. I mean at the left as we went into the room.

Q. Right round that way, then? (Indicating)

A. Yes.

Q. You began on that side, towards the front hall, did you?

A. No, sir, on the south east wall.

Q. That would be right round to the right, would it not?

A. Not as we went in. We went in directly towards the street and turned to where the dresses were hung.

Q. The dresses were hung on the street side,---that is the west end of the house, is it not?

A. Well, perhaps I am mistaken.

Q. You are mistaken on that, are you not?

A. I think not.

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Q. Is there not a row of dresses on the front end of the house?

A. No, sir, the window was on the front side of the house.

Q. Yes, but the window would not cover the whole side?

A. There may have been one or two dresses on the front.

Q. Only one or two?

A. That is my impression.

Q. And the dresses were over on the east wall?

A. Most of them, what I should call the east wall.

Q. Did you begin at the door and take down the black dresses?

A. Yes.

Q. You took one, did you take the next?

A. No, sir, in the corner, the south east corner.

Q. Was Dr. Dolan there when you were making these searches?

A. When we were up stairs Dr. Dolan and Mr. Jennings were there and Marshal Hilliard.

Q. Dr. Dolan examined the blue dress that is right here?

A. Not while I was there.

Q. Did you see any blue dress at all?

A. I saw Dr. Dolan examine that in the station.

Q. Any other dresses that were blue in color?

A. No, sir, I don't recollect any.

Q. You don't recollect much about the color?

A. No, sir, I am a very poor hand about it.

Q. When you undertake to say about the dresses, you did not see the blue dress there---

MR. MOODY. That is not the question and answer. The question was, "Did you see a blue dress with dark blue figure in it, covered with paint on the front, and with paint along

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on the bottom of the dress?" That is the question he answered.

Q. (By Mr. Robinson.) How did you understand the question?

A. The first question I understood in that way,---if I discovered any such dress as that.

Q. Did you see any blue dress there? I will get it separated.

A. I don't think I did.

Q. Will you swear you did not?

A. I said before I would not swear there was.

Q. You would not?

A. No, sir.

Q. What you say is if there was a blue dress there, you did not discover any blood or paint on it?

A. I did not discover any blood or paint.

Q. You did not discover any blood or paint on any dress?

A. No, sir, not in there.

Q. As to the number of dresses, the kinds and colors, you don't undertake to tell me what they were?

A. No, sir.

Q. You fully examined at that time?

A. Yes, sir.

Q. At the time you went there, was the family away from the house?

A. I was there twice that day. I went the first time while the family were at the funeral and went in a little while again.

Q. Did you go up into that room?

A. No, sir, not that room. I went into Mr. and Mrs. Borden's room,---the back room or east room up stairs; also into Miss Lizzie's room and Miss Emma's.

Q. Do you remember whether there were any umbrellas, parasols or sun-shades in the clothes closet?

A. My impression is that

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there was an umbrella there.

Q. What makes your impression,---because you think there ought to be an umbrella there?

A. No, sir, I think there was one out of order there.

Q. Was there one in order?

A. There was one somewhere about there that day.

Q. Was it not in the back hall way?

A. I do not know.

Q. It was Bridget's, wasn't it?

A. I could not say.

Q. You would not say there was one any way?

A. I think I saw one there, but I would not say in that closet.

Q. Did you see any waterproof there?

A. Not in that closet.

Q. Anywhere?

A. I would not say; I don't recollect any now.

Q. You know what I mean by water-proof?

A. Yes, sir.

Q. Whether it was a gossamer rubber, or anything of that kind.

A. I don't recollect that I saw any, myself.

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Q. You know what a lady's waterproof is?

A. Yes, sir.

Q. You didn't see one?

A. I wouldn't say I didn't see one. I don't recollect it now.

Q. Wouldn't you have remembered that if there had been one there?

A. I might have not,---quite a while ago.

Q. What?

A. It was quite a while ago. I don't recollect it.

Q. Have you a memorandum of those different dresses?

A. No, sir.

Q. Did you ever have an inventory of them afterwards?

A. I did make a memorandum of them at the time.

Q. Where is it?

A. But unfortunately I mislaid it or lost it, so I haven't seen it since I was at Fall River at the time the hearing was.

Q. Oh, do you know Mr. McHenry?

A. I have seen the gentleman.

Q. Well, that don't quite answer the question.

A. I don't know him very much, no, sir.

Q. Has he been in service with you at all?

A. He was at Fall River there a few days.

Q. With you?

A. No, sir, he was not with me at all.

Q. Where does he belong?

A. I couldn't tell you. He came from Providence there.

Q. What did he do while there?

A. I don't know, sir.

Q. Well, you didn't go to the house with him or around anywhere?

A. No, sir, I did not.

Q. See him anywhere?

A. Yes, sir.

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Q. Where?

A. I saw him at the station house several times.

Q. He was in and out there with the officers, wasn't he?

A. Yes, sir.

Q. The marshal's office?

A. I saw him talking with the marshal several times, and I think I saw him talking or around with other officers. I spoke with him myself at the station.

Q. Do you know where he is now?

A. Only by hearsay.

Q. Did you discover in the dining-room that spot of blood on the inside of the door post near the bottom?

A. At the head of the lounge, do you mean, sir?

Q. Inside the dining-room right down at the bottom of the inside of the door post there, --the dining-room door leading into the sitting-room?

A. Yes, sir. On the jam of the door, do you mean, sir?

Q. I think you call it that.

A. I saw a piece.

Q. Have you a memorandum of that?

A. No, sir.

Q. Didn't you make a memorandum of that at the time?

A. I think I did.

Q. Where is it now?

A. I don't know, sir. I have lost it.

Q. Well, where did you get this one which you have?

A. Well, this, I made it out later.

Q. So you made a memorandum after this was all over?

A. No, sir. I had the memorandum on a piece of paper at the time I went with the doctor to make those spots, but I mislaid the book that I had at the first of it. I mislaid it or lost it.

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I haven't seen it.

Q. When did you lose it?

A. I lost it, I suppose, at the time of the hearing at Fall River. I had it in my other coat at home. When I went there later I found that I had lost it.

Q. In that original memorandum did you have a note of the blood spot on the inside of that jam of that door, the stringy spot?

A. I don't know,---the jam of the door? I was with Mr. Hilliard and a carpenter, and cut out a piece of the jam, if that is the piece you mean?

Q. I will assume that is the piece.

A. I saw that.

Q. Didn't you make a memorandum of that place?

A. I think not, sir, a blood spot, I think not.

Q. Wasn't it the biggest spot there was there anywhere to measure?

A. The reason why, we took the casing, the spot, and carried it to the station.

Q. Didn't you examine it and measure the distance of that place?

A. I wouldn't swear that I didn't. I wouldn't say positive about that. I have no memorandum.

Q. Do you tell us that you didn't have a memorandum from that original one?

A. The original book?

Q. Yes.

A. I think not, but I couldn't swear positively.

Q. Isn't it a fact that you left it off of this memorandum because you know it wasn't blood?

A. No, sir, and if I had it I should have brought it.

Q. You have been informed, haven't you, that is wasn't blood?

A. No, sir.

Q. Haven't you learned that fact?

A. I don't know whether

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it was blood or not.

Q. That memorandum that you have in your hand, Mr. Seaver, wasn't a copy from the other?

A. No, sir.

Q. You made it up from your recollection later?

A. Yes, sir.

Q. Did you leave anything else off, do you think?

A. I might.

Q. Anything off your second memorandum?

A. Quite likely I did, sir.

Q. What?

A. I don't know; some of my movements in Fall River at the time.

Q. Did you talk it over with Dr. Dolan?

A. Talk about the blood spots?

Q. About you memorandum?

A. No, sir.

Q. Or about blood spots?

A. I might have mentioned that I had lost or mislaid the memorandum.

Q. Did he tell you where they were?

A. No, sir.

Q. When did you last talk with him about blood spots?

A. Well, I couldn't tell you. I might have said something to him since we have been here to New Bedford, in a general way, but not anything particular about them.

Q. Only one thing more. Where did you say you saw that box which had that hatchet in it?

A. In the cellar, sir?

Q. Yes.

A. In the cellar. It wasn't a great ways from the chimney of the cellar, and was pretty near the fire. I should think it was on some pieces of wood. It may have been six or eight inches from the floor. It was so I could stand and look into it.

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Q. Was it in the same room as the furnace?

A. My impression is it was in the next room to the furnace.

Q. To the west or east?

A. To the west.

Q. That is where the pile of ashes was?

A. Yes, sir; there was some ashes on the floor.

Q. Were you there at the clothes room when the city marshal made a request for the production of the dress Miss Lizzie had on Thursday morning?

A. I was down stairs at the time, not at the clothes room.

Q. Wasn't it brought to you while---

A. It was brought to Mr. Hilliard by some person, I think.

Q. Right in your presence?

A. Yes, sir.

Q. Do you know where it was got?

A. No, sir.

Q. Did you go with him?

A. No, sir.

Q. You heard the request made, and it was brought immediately, wasn't it?

A. I think it was, yes.

Q. Don't you know it was brought right out of that clothes room?

A. No, sir, I don't know where they came from.

Q. That was right after the search, wasn't it?

A. I think it was.

Q. Didn't that blue dress hang right up on the second hook from the window?

A. I wouldn't swear. I don't remember it.

Q. Well, you don't recollect whether it was there or not, do you, Mr. Seaver?

A. I don't recollect seeing it.

Q. Well, you were present when Dr. Dolan examined it?

A. At the station?

Q. No, but in the house?

A. No, sir.

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Q. In the next room of the house right next to that clothes room?

A. No, sir, I did not.

Q. So you don't know?

A. I don't know about his examining it. I don't recollect it excepting at the station.

(Adjourned to Monday, June 12th, at 9 A.M.)

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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.

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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 Court House, and was about two hours afterward 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

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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

Monday, June 12, 1893

The Court came in at 9.10 A.M., and after being opened in due form, the Chief Justice said:

MASON, C. J. 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, 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

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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 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.

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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., p. 185.

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The official report of the trial, published by the Attorney General, which I do not happen to have here, perhaps will illustrate the exact testimony which was offered and considered in that case. 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 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 was 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 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

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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."

There is a declaration of the law, and then there is the following explanation by the Court that the question perhaps does not arise whether it was a confession or not, because subsequent developments in the case would show that the court was mistaken in saying that the inducement was operative on the defendant's mind.

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As I said before, the bearing of that, according to my view of this question, is not important, but it may be during the discussion.

The precise question, then, is, is there anything in the stipulation of fact that takes this case out of the rule that declarations of the defendant are admissible against him? This is unquestionably the general rule of law, and that I may assume it will be conceded.

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

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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 do not speak of that as a reason why any well defined rule should be disregarded by the counsel or by the Court, but I speak of it as an important fact when

we come to consider a rule which is not well defined and about which there is some difference of opinion.

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 Philip 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, *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.

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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.

The question next arose in 1857, and was discussed by the New York Court of Appeals in the case of *People v. McMahon*,

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15 N.Y. 384. In that case, which was an indictment for murder, the defendant was arrested without a warrant upon the very day of the murder, was taken in the custody of the officer to the coroner's inquest, and sworn and examined. It was held that the testimony was wrongly admitted against him. The grounds upon which the Court granted a new trial in that case, holding that the testimony of his declarations at the inquest was not admissible against him, are probably, now, it is fair to say, exploded grounds,---at least in this Commonwealth and I think fairly so in New York, because, apparently, the ground there relied upon for the exclusion of the testimony was the danger of confusion on the part of the witness.

The next case which arose was the case of Teachout v. People, 41 N.Y. 7. That was also an indictment for murder. The defendant in that case was informed that he was under suspicion, and that he would be arrested. He was cautioned by the magistrate in respect to his rights,---told that he was not bound to criminate himself. He appeared at the inquest and there testified. And it was held by the Court of Appeals, discussing the two previous cases, that what he said at that inquest was admissible against him at his trial.

The last New York case which I desire to say anything about is the case of People v. Mondon. 103 N.Y. 211, where, apparently, the line is drawn and the law is intelligibly settled in New York. In that case, the Court of Appeals

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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 suspected and that he was suspected of being the criminal, will not prevent his being regarded as a mere witness whose testimony may be afterward 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 has been committed and that he is in custody as the supposed criminal,

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he is not regarded merely as a witness by 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."

The 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. All talk about the caution is eliminated in this final summing up of the law in the state of New York by its Court of final resort. And I suppose it would not be in dispute that if this question arose in the state of New York, the testimony offered here would be admissible.

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Now the question has arisen in other States. It has arisen in the State of Maine in the case of *State v. Gilman*, 51 Maine, 294 in 1862.

(At this point the defendant was removed from the room by an officer.)

There is a valuable discussion in this case also of the principles which govern an inquiry of this sort. The facts of the case were that the prisoner resided in the family of the deceased, and upon the very day of the homicide was accused by the daughter of the deceased of the murder. The coroner inquest was held upon the same day. The defendant was called, sworn and testified. He received the ordinary instruction in relation to his rights as to criminating himself. The Court pointed out very clearly in discussing that question that the English cases were of no service, largely upon the ground that they were based on statutory consideration, appeared to consider the caution given to be a question of fact of importance in the case, and used some language which I have selected from the decision to call your Honors' attention to.

"The general rule is that all a party has said which is relevant to the question involved is admissible in evidence against him. The exceptions to this rule are where the confessions have been drawn from the prisoner by means of threats or promises, or where it is not voluntary because obtained compulsorily or improper influence. The true test of admissibility

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in this class of cases is, Was the statement offered in evidence made voluntarily, without compulsion? If this proposition be answered in the affirmative, then the statement is clearly admissible in principle; But if not voluntary, if obtained by any degree of coercion, then it must be rejected, as well by the rules of the common law as by positive constitutional provision. Does it follow that because a statement is made upon oath, in a proceeding where the circumstances of the commission of the crime are being investigated, and the person making such statements is a suspected or accused person, that it must necessarily be involuntarily made? May not a man depose on oath as freely as he may speak when unsworn?---and if so, do his statements become any less reliable then when made without the sanction of an oath?

"Declarations of accused persons are not necessarily confessions, but generally, on the other hand, they are denials of guilt, and assist in attempts to explain circumstances calculated to excite suspicion, and those denials are generally volunteered. Shall they, when thus made, under oath or otherwise, be excluded from consideration? To do so would be manifestly to close the eyes of the ministers of justice to one of the most effectual means of detecting guilt."

The question again arose in a recent case in the State of Wisconsin. I do not know whether it is a case that is familiar to your Honors or not, but it goes farther than any other case; its discussion, to my mind, is more intelligent; it

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follows the principle laid down in the Maine case and its language, namely, that the only test is whether the declarations were made voluntarily or not.

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."

That was the case of Dickerson v. State, 48 Wis. 288, a case in which all previous authorities, with one exception, I think, were under discussion, and the case was decided in the year 1880.

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BLODGETT, J. Have you that volume here?

MR. MOODY. We have not, sir; it is not in this county.

MR. KNOWLTON. It is not in the county library.

MR. MOODY. It had been held some time before (I am not going to discuss this case) in the case of State v. Vaigneur, 5 Rich. South Carolina, page 391, that testimony of this sort was competent. The full facts were not given, and about all the case decides is that the testimony given at an inquest by a person thereafter accused of murder is admissible against him upon his trial.

MASON, C. J. Does the Wisconsin case disclose whether the witness testified at his own request?

MR. MOODY. It does not, sir, as I recall the case, and I examined it with as much care as I was capable of, Saturday afternoon. I do not think it discloses one way or the other.

BLODGETT, J. Well, it does not show, I suppose, that he was put upon the stand by the Government and requested to testify?

MR. MOODY. No, sir, it does not show that. It is silent upon the question.

The law, then, outside of Massachusetts at least, is clearly this:---some of these propositions I have not sustained by authority, but I think they cannot be in dispute. In the first place, where one testifies upon some collateral proceeding as a witness under subpoena and under oath, that

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whatever he says at that time is admissible in evidence against him if it become material later when he is charged with a crime.

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.

There is at least some law, and it seems to me a good deal of principle, which carries the rule further, and says that if a person is under arrest and voluntarily testifies at a subsequent inquiry in relation to the death of the persons of whose death he is accused, that may be admissible against him. But I speak of this simply because it is a discussion of principle, not because it is at all necessary for us to resort to such an extension of the rule in order to sustain the admission of the declarations that are offered in this case.

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Now coming to the decisions of our own State, they are *Com. v. King*, 8 Gray 501; *Com. v. Bradford*, 126 Mass. 42. Of course I do not propose to discuss or read from those cases to your Honors. They may be briefly stated to be cases where a fire inquest was holden, the person not then under arrest, being examined as a witness, in writing, subsequently was arrested; and upon his trial it was held that the declarations made at the fire inquest and signed by him was evidence competent against him. And in the case in the 8th of Gray the Court certainly have made a statement which I suppose your Honors would consider, for the purpose of a nisi prius decision, binding upon this Court. They have intimated as strongly as they could that the question of whether the witness was cautioned as to his rights or not is a matter not of importance. They have not so decided, but they have said that "we do not wish to be understood as deciding that a caution is necessary."

There is one other thing that I think I ought to refer to, and that is the common practices in this jurisdiction. It is a matter within the knowledge of your Honors, certainly within a knowledge of my Brother Adams, within knowledge of both the counsel for the prosecution, that hardly a term of the court holden for the transaction of criminal business passes, without the admission of precisely the kind of testimony which is offered in this case.

I recall a case in Norfolk, which may be familiar to his Honor the Chief Justice, where a woman was tried, to one

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jury, for burning a building. The jury disagreed. She was tried, I think at the same term of court, on the other side of the court, to the other jury, for perjury committed at the fire

inquest which had been holden over the building which was the subject of the inquiry, and the testimony that she gave at the inquest not only was used upon her trial for the burning, but it was made the foundation for the indictment for perjury. And that woman today is under sentence in the State Prison, or at some place of confinement in the Commonwealth.

His Honor, Mr. Justice Dewey, will recall a case tried some years ago, (your Honor will remember perhaps who tried it), the case of a young man indicted for burning a building in the night time, which was tried by the then assistant district attorney in Essex County at the November term of 1890. The important and essential testimony upon which that young man is now serving his sentence of five years in the State prison is the testimony he gave without caution at a fire inquest holden upon the burning of the building in question.

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

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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.

1st. These homicides were committed August 4, 1892. The evidence thus far disclosed shows that the medical examiner, Dr. Dolan, took immediate possession of the bodies for the purpose of performing his duties as required under the statute, and proceeded to make the autopsy and the determination as to their deaths.

2nd. The testimony of the defendant begins August 9th, 1892, and continues during August 10th and 11th, 1892

That appears from the evidence which it is proposed to offer; and as there is a stipulation at the end that the Court may look into that to find the facts. I stated the fact as it is there.

THIRD: The accusation of these crimes against the defendant was made by the Mayor and the City Marshal, August 6th, 1892, which was Saturday, the second day after the crimes were committed.

FOURTH: The defendant was kept under the constant observation of the police during August 5th, 1892 and all days following until the conclusion of defendant's testimony and arrest.

And there I wish to amplify a little to say that which appears by the statement, that the house was surrounded by the police of the city, we must assume, under the direction of the Chief officer of the police force, and it appears also by the evidence that there was no time, day or night, when the eye of the police department was not on this defendant and on all other inmates of the house; that this fact was known to the inmates of the house is proved by the evidence, that in the night as well as the day the movements of the police were heard and their conferences in whispers was heard by the ears of the defendant. and that so far as the effect was concerned, she knew the police were around her and she was under their uninterrupted surveillance.

FIFTH: The defendant was summoned on or before August 9th, 1892, by subpoena to appear and testify at the inquest.

SIXTH: Before testifying defendant made request for counsel at the inquest and said request was denied and counsel were not present. Counsel for the Commonwealth, the District Attorney, conducted her examination before the inquest. She

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alone,---a woman three days unguided by her counsel, confronted with the District Attorney, watched by the City Marshal, at all times surrounded by the police.

EIGHTH: The defendant before testifying was not properly cautioned. That is agreed to.

NINTH: Complaint was made and warrant placed in the hands of the City Marshal on or before August 8th, 1892. Your Honors will bear in mind that she was summoned to appear and testify as a witness on or before August 9th, 1892. Your Honors will see by the agreed statement of facts that complaint was duly made, charging her with the murder of these people on the 8th of August, which was before she testified. That complaint was in due form, made to the proper officer, and upon that complaint a warrant was issued for her arrest, and this done when she had been told on Saturday night, August 6th, by the Mayor and City Marshal that she was to be charged with the crime or was suspected of it; this was done when she, night and day, as every one else of the inmates of that house and the premises themselves were under the constant observation, and we may say control, of the police department, complaint was made and warrant issued for her arrest, and it was put into the holding of the City Marshal. You have then, the entire power of the Commonwealth over this woman. You have it expressed in the official mandate when he escorts that woman to the inquest. The City Marshal held that warrant during all the time that she testified. Can any one say that

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she had no then been proceeded against? She had not been formally arrested upon that warrant, but it was within the power of the Commonwealth, nay more, the Commonwealth had exercised its power to the extent that the City Marshal stood at her shoulder, authorized and directed to lay his hand upon her at any instant and make her a prisoner. We must assume in common sense that that was under the direction of the District Attorney. It was not at random that that was done. Somebody in authority asked it.

ELEVENTH: When the testimony of the defendant was concluded, she was held, never allowed to depart, never free, always in fact a prisoner, and then arrested two hours later on a similar warrant. For convenience somebody took care of the prior warrant and perhaps for the purpose of being able to say that she went later before the District Court upon a warrant which was issued subsequent to her testimony, superceded or attempted

to supercede the former warrant by the substitution of another; and I am bound to say, I hope with no unnecessary reflection, that this must have been done with the knowledge of the law officer of the Commonwealth at that time in charge of the case. At all events, we must reasonably know that, had the law officer advised against it, or directed otherwise, it would never have been done. So that, without its purpose being intended it was in fact a colorable evasion of the law, and it may operate, or might operate to deprive this defendant of the rights that are sacredly guaranteed to her in the constitution of the Commonwealth. In other words, the practice

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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! If anything that a defendant does under circumstances like that is voluntary, then compulsory must hereafter be known as voluntary.

TWELFTH: Before the defendant testified it had been duly determined by complaint made and warrant issued that defendant had committed the crime of killing the two persons, the cause of whose death said inquest was held to ascertain.

The significance of that is prior to her testifying the fact was ascertained that a crime had been committed, in truth that two crimes had been committed, so that the inquest was not to discover whether a crime had been committed or not, and its purpose was not to determine the fact of crime, but its

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use and power were devoted to extorting from this defendant something that could be used against her. So that as to the prime fact for which an inquest was held that knowledge was all within the possession of the court and prosecuting officers, the deaths of Mr. and Mrs. Borden. Dr. Dolan, the Commonwealth's officer, had as I have said, made his examination. There could not have been in the mind of the District Attorney or of the court the least doubt that murders had been committed---murders by somebody, murders possibly by the defendant, murders possibly by some one else. He [is] to inquire by whom the murders were committed. Yes, perhaps but not by compulsorily dragging out

of one person whom he suspected any facts which could be used to criminate her thereafter, and it is not to be lost sight of as the agreed fact in this case that at that time she had been formally charged with the commission of these murders. See to what extent the Commonwealth under the direction of the District Attorney, had gone. She was not examined to find out whether she had done the murders. They had under oath sworn that she had done it and issued warrants for her arrest to the City Marshal, and then rather than serve it and put her under the protection of the Constitution, they said, we will take care of this in our pockets, and we will find out what we can from this woman whom we have charged with committing murder, and if we can get anything from her we will then put away that paper. Worse than burning a dress,---put it away and we will make up another paper later against which proceeding the constitutional objection will not lie.

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Now I am aware that I am discussing a question of law, and I am not talking to the jury. I trust that I may not have said more than I ought to say. If I do, it is the defendant that speaks to you, your Honors, out of the fullness of her recognition and remembrance of what happened there in Fall River, out of a jealous regard for her rights into which she was born.

Now we discuss the law on those facts. If I have overstated or misrepresented, I am sure it has been unwittingly, and certainly unintentionally. Passing to the legal questions involved upon these facts, because we all so thoroughly understand by our experience, sometimes agreeable and other times not so pleasant, when we deal with questions of law that the Court decides them on the facts as they stand, and not from head notes form a decision, nor upon facts in other cases, unless they tally with these. I have not claimed that the rule of law applicable to confessions is of material consequence here. Whether, as touching that question, and 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 or themselves against a possible argument that I might make, it was agreeable to hear him, but unnecessary on this discussion.

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So that the Piper case has 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 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 50 years ago, when she could not have taken the stand. It is utterly irrelevant to say that because she can today testify, therefore there is a different rule of law that would nullify the privilege that is accorded to her in the statute the protection. As your Honors well know, that has lately been elaborated with great force and clearness by the United States Supreme Court, in which the position is maintained with great strictness and jealousy that no sort of an inference against a defendant is to be indulged because he did not choose to take the witness stand. The argument is, the rules were right when the defendant could not

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testify: the rules must be changed because now the defendant can testify,---ignoring the right of the defendant to say whether he will or will not testify, and his protection under that. Therefore all the light that comes down from England, all illumination that can be gathered anywhere upon this great question for the maintenance of personal right, is helpful.

We hear the Constitution of Massachusetts read, and it passes glibly over the tongue and in and out of the ear, and until somebody finds necessity to plant his feet upon that constitution, he fails, perhaps, to recognize its strength and safety. She stands upon that venerable instrument today, as she reads in it, in the Bill of Rights, "No subject shall be compelled to accuse or furnish evidence against himself." That was written when Massachusetts was born; that was the instinct of the hour: that has been the spirit of our Commonwealth's liberty ever since. Shall it be attempted by evasion to circumvent it or to overreach a defendant? And when the Constitution of the United States was drawn it ran in similar phrase upon this point: "No person shall be compelled in any criminal case to be a witness against himself." The shield of the state and the shield of the nation are her protection in this hour. I shall have occasion later to speak, so far as it may be important, upon the meaning of the words "in any criminal case" as applied to the United States Constitution: because the Court has held, reasoning

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from the Massachusetts constitution and from the New Hampshire Constitution and others, that those expressions are practically tantamount to each other.

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

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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. So that if the Court go farther or make any remark in that case not called for by the proper consideration and determination of the questions then involved, it is, of course, superfluous to add that such remarks can have no weight, and they certainly cannot have weight against the defendant under the present circumstances. See in the opinion written by Justice Thomas that he proceeds to say:

"The only objection relied upon in the argument is that the witness was not cautioned that he need not criminate himself. This objection," his Honor goes on to write, "is not sustained as matter of fact. Whether or not the magistrate gave such caution to the witnesses would constitute no part of his record. If it was his duty to give such caution we may not presume that he omitted to give it. Full opportunity was given to the defendant to object, but he declined to use it."

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See how plainly the Court set it out, in the first place, that it is not the fact, as appears by the record, that he was or was not cautioned, but the Court say in the absence of any appearance of fact, that the magistrate did as ought to do. See in that early time, in 1857,---and that seems early to some people,---at that time see how careful the Court were to say that it was the duty of that magistrate to give the caution: and the Supreme

Judicial Court went so far as to presume that the magistrate up in Franklin County did his duty, to wit, cautioned the defendant. And what more pregnant suggestion is there in that case than that, that that is of essential importance? (Reading), "This ground disposes of the case," Now I have read all that disposes of the case, and then the Judge indulged in a little indefinite talk, but no expression of authority. "But we do not wish to be understood as expressing an opinion that such caution to the defendant was necessary, so that the failure to give it would render his statement incompetent evidence against him."

How many times we have all had experience with that sort of statement in opinions, and taken another case and found ourselves confronted by the remark of the Supreme Court, "That means nothing. We do not feel called upon to express an opinion at this time upon something that is not before us." Is that an authority?

You can see upon the head note thereof, which the learned

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reporter undoubtedly made with the best intention, that that was many years, many, many years ago, when he said "The testimony of a witness summoned before a fire inquest reduced to writing and signed by him is inadmissible against him on the trial for setting the fire, without showing that he was first cautioned that he need not criminate himself." That does not correctly state the case. The Court said it did show by necessary presumption that the magistrate did his duty, and did caution him.

Now anybody reading the head notes there would think he had an authority upon the case here, and although the reporter's name is Gray, and he has become of high judicial station later, and very highly honored and is now, still we see at a glance that he did not cover the case; he covered more than was in the case; that is *Commonwealth v. King*. And in that case, as I have said, no suspicion attached to him at that time. He was not implicated in it, and no prosecution had been initiated.

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

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of that court to choose whether he would execute it or not, and it was not in the power of the district 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. (Page 42.)

Now I look at the State v. Gilman, 51 Maine. There the

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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. No officious party should be permitted to extract confessions from him by operating upon his hopes or fears, but his voluntary statements, declarations or confessions like his voluntary actions, wherever or whenever given, are legitimate and proper matters of judicial consideration so far as they bear upon and tend to illustrate the question of guilt or innocence," and to make that quotation more emphatic, my eye discovers that underneath the word "voluntary" wherever it occurs the justice writing the opinion himself underscored it, because that word stands in italics. I think, your Honors, if that clause had been read in the hearing of that defendant

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by the magistrate presiding at that inquest, and she had been told that she must not testify, that she ought not to testify to anything that would criminate herself, she would not be here to-day to object that her testimony was not voluntary.

The Court even in this case I have cited as an authority, and it is in our daughter State too, takes great caution to push out of the way any officious person who would extract confessions from her, and to decline the right of anybody to exercise inquisitional power, and then, with the utmost emphasis, says "Considering all these things, if there is a voluntary statement made, it may be admitted." That is the 51 Maine.

Now, we shall have to go a good way from New England to find any authority that will be inconsistent with the cases that I have referred to, and indeed I quite believe that we shall have to go out of the United States of America.

Let us look now at the Mondon case, 103 New York; 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 him with the crime." There had been then no complaint made; there had

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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. Then you stop. And then the Commonwealth was bound to stop, and should have said to

that woman, "We ask you nothing. We will not try to get you on the rack, question you by the prosecuting officer, exclude your

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counsel, prevent you from having advice during the examination, without any caution by the Court. We will not do that, because we now know before you step on the witness stand that a felonious homicide has been committed by somebody. We have charged you with it in speech. We have accused you with it in court. We have put the warrant for your arrest in the city marshal's hands, and we will not ask you a question under the protection of your liberty. You shall determine when you are called to answer this indictment whether you will speak or not, and the twelve men who shall hear shall not infer against you because you prefer to remain silent." That is what our Massachusetts wanted to speak in the ear of that woman that day, but the Commonwealth did not have that voice.

Now, let me read on. "It became the duty of the jury," says the New York court, "if the death was occasioned by criminal means, to find who was guilty thereof, and on such finding the coroner was empowered to issue his warrant for the arrest of the guilty party, if not already in custody. From that time the prisoner occupied the position of a person accused of crime, and his situation was similar to that of such a person before an examining magistrate, 'and although the tribunal might be different, yet, upon principle, his rights would be the same in both cases'".

What did they want this woman for? To find out if there had been a felonious homicide? No. To find out something, to see if they could not catch her in some way and put

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her under extortion for facts which they had no right to wring out of her. They knew then everything that they had a right to ask her about, and so, says this Court, when they reached that point, "Stop, because then you are in a judicial investigation, and then the defendant's right is most sacred." And that, of course, is to be borne in mind and weighed in connection with what they had done to her from the time down from 11 o'clock or thereabouts on Thursday until policemen had gone there, not inadvertently, but under direction, to quiz her and to question her, to interrogate her and to tangle her, and to do her up as a possible witness. And they do all that. Some time for heaven's sake let her alone and let her stand as a defendant.

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 McMahon 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

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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. Common sense comes in there, and that is greater than law always, because the fact was that he did not say that he was perfectly willing to testify to all he knew. It was not a matter of inference. You are not called to give a reason for that; it was voluntary; he said it was.

Now I read from the Mondon case again. "To take a prisoner before a magistrate, swear him, subject him to a minute interrogation as to the circumstances relied upon as evidence of his guilt, and then use such an examination on his trial, would be a departure from our system of criminal jurisprudence which should not be tolerated, and whether the investigations were conducted before a committing magistrate, or before a coroner's jury, could make no substantial difference, provided it appeared that a homicide had been committed, and the prisoner was brought before the inquest as an accused person, and the object of the inquisition was to ascertain his guilt."

How did Miss Borden stand that day? Was it not shown

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that a homicide had been committed? Did not the Commonwealth know that she should not appear before the inquest as an accused person, and was not the only possible object of the inquisition to ascertain her guilt? It will take great ingenuity of the human mind to

meet that, and then the Court say upon that, that "would be a departure from our system of criminal jurisprudence which should not be tolerated."

Then the Court proceed to discuss, anticipating what my learned friend would undoubtedly say in this case, that this was not a confession but a denial. They proceed to discuss that phase of the question. "The evidence sought to be excluded is not a confession, certainly not a voluntary confession, but an official examination on oath, of the prisoner while in custody, in which, although he admits some facts in regard to the relations between him and the deceased, he denies all knowledge of the crime, he denies having seen the deceased after he saw him on the railroad track on the day when he left his home, and he denies ever having been on the ground where the body was found. The denials were much more important to the prosecution than any of the admissions contained in the examination."

Now, the argument is here that although she in some form or other denied some of these things, as this report very properly says, those denials were more important to the prosecution than if she had actually confessed, and they said, you cannot under the guise of saying that the defendant admitted

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nothing put in her own contradictions to show that she committed the act. And then the court lays down---drawing up the three cases together, with this one, the Hendrickson case, the McMahon case, and the Teachout case,---lays down what may be assumed to be, as this was, a general rule, and that is this, as was read: "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."--- that is, he may be called,---his testimony may be afterwards given in against him. Note the distinction. When the inquest is held before it has been ascertained that a crime has been committed,---that is not the present inquiry. "But if, at the time of his examination it appears that a crime has 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 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."

Now, take either one of those statements, and they unmistakably line out the course in the present case. In the case of *State v. Coffey*, 56 Connecticut, 399, it has been held that evidence voluntarily given after a caution that he was not obliged to testify to anything that would criminate himself, was admissible. That is much like *State V. Gilman* in Maine, so we thus far have found out what the law is in New England, and pretty well we have got Massachusetts and Maine and Connecticut together.

And Abbot, in his "Trial Brief", (and I believe that is an authority, it certainly is a very excellent guide to us all in practice), says that testimony given by the accused on a judicial investigation, either when charged before the examining magistrate or under arrest on suspicion at a Coroner's inquest, is not competent against him at the trial, unless it appears that before it was given he was duly cautioned that it might be used against him. There are a great many cases cited in this connection, to which I have referred, and they are pertinent to the discussion.

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. 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. We do not know upon which side he did testify, or who called him; whether he wanted to be called and told his story, or whether the Government said, "Come upon the stand and tell us what you know."

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., page 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, page 427. I also refer to the case of Counselman v. Hitchcock, 142 U. S. 547.

In the Emery case in this state your Honors well know, and possibly in your legislative career you may have had something to do with it---I don't know about that---but that was an attempt to bring out testimony from one Emery of Lowell in regard to his dealings with the state constabulary, an effort being made to show that they were corrupt. The appointment was made by the proper officials of the State Government, and the question got up before the Supreme Court on habeas corpus, and the late Chief Justice Wells wrote an opinion upon it that was not only enough for Massachusetts on that question, but has become authority entitled even to consideration by the United States Supreme Court, 140 United States, in which he emphasizes the importance of securing to a defendant all his

rights under that clause of the constitution of Massachusetts to which I have referred, and so clearly does he express it that Mr. Justice Blatchford of the United States Supreme Court in this last opinion, reviews that Emery case at great length, commends its point, its firmness and clearness, and puts it at the foundation of this last declaration of the highest court of the land. 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 that right 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

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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 counsel means, and so far as I can understand his position, it is that this testimony is not admissible

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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. I hesitated to state that there was not a single case in the books of such an exclusion except under the condition in which the witness was actually at the time, under arrest, but I think now we have heard all that is to be said on the other side and they have failed to cite any case in point and we may safely assume that there is not any case in point which justifies the exclusion of this testimony.

Now I have very little to reply except to correct a good many mis-statements 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 decided 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

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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.

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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 doing that very thing it was performing the duty which was imposed upon it by the laws of this Commonwealth.

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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

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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 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

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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 some one, that she was under the charge of some one, that she was under the constant watch of some one---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

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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.

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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 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.

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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 Honor. There is no evidence of it, and I say that it is not true, as I have not the right to say that it is not true upon this testimony, 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 type-written 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,

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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. The citation from Abbot's "Trial Brief", it

seems to me, states the law accurately, and states the law in a way that would admit the testimony in this case.

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.

MASON, C. J. The Justices will withdraw for consultation upon the question raised.

(At 11.16 A.M. the Court withdrew, and the prisoner was returned to the court room.)

(The Court returned to the bench at 12.38 P.M.)

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MASON, C. J. 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,

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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.

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DR. ALBERT C. DEDRICK, Sworn.

Q. (By Mr. Moody.) Albert C. Dedrick?

A. Yes, sir.

Q. You are a physician practicing in Fall River?

A. Yes, sir.

Q. How long have you been there, Doctor?

A. Five years.

Q. Prior to that time had you had some hospital experience?

A. Yes, sir.

Q. What was it?

A. Bellvue Hospital, New York.

Q. How long there?

A. 2 years.

Q. That has been the extent of your experience in the profession?

A. Yes, sir.

Q. Except the preliminary study?

A. Yes, sir.

Q. On the fourth of August of last year did you go to the Borden house at any time?

A. Yes, sir.

Q. What time did you go?

A. After 2 o'clock.

Q. About how long after 2 o'clock, can you tell me?

A. No, sir, I cannot.

Q. When you got there who was there?

A. A number of officers, Dr. Dolan, Dr. Tourtellotte, Dr. Coughlin and quite a number of people whom I cannot recall.

Q. Did you make any examination of the two bodies?

A. Yes, sir.

Q. What examination did you make?

A. Well, the cuts on Mr. Borden's face and the cuts on Mrs. Borden's head.

Q. Did you make any examination or observation of the blood in the two cases?

A. It was in a further advanced stage of

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coagulation on Mrs. Borden than on Mr. Borden.

Q. Will you give us a description of its condition?

A. On Mrs. Borden it was more of a ropy consistency and had coagulated so it would not run. On Mr. Borden it was more of an cozy character.

Q. Did you notice anything else in reference to the bodies, with reference to their temperature?

A. I noticed Mrs. Borden's body felt colder and was stiffer.

Q. Did you form any opinion at the time from observation of the bodies upon the question of priority of death?

A. Yes, sir, I formed an opinion that Mrs. Borden died first.

Q. Did you form any opinion approximately as to time of priority?

A. No, sir: I should judge several hours.

MR. MOODY. The witness is yours, Mr. Robinson.

MR. ROBINSON. I will not ask you any questions, sir.

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JOSEPH HYDE, Sworn.

Q. (By Mr. Moody.) What is the full name?

A. Joseph Hyde.

Q. And you are a policeman in Fall River?

A. Yes, sir.

Q. Patrolman?

Y. Yes, sir.

Q. What were you last year?

A. Patrolman.

Q. Were you stationed about the Borden house on the night of the homicide?

A. Yes, sir.

Q. What time were you there?

A. I was there from one o'clock up to eleven that night.

Q. At any time during that night did you observe Miss Russell anywhere in the house?

A. Yes, sir.

Q. And any one with her?

A. Yes, sir.

Q. Whom did you observe with her?

A. Miss Lizzie Borden.

Q. Where were you standing when you saw her?

A. I was standing on the east end of the house.

Q. Will you describe what you saw them do?

A. Miss Lizzie and Miss Russell came out of the sitting room. Miss Russell was carrying a small hand lamp. Miss Lizzie had a toilet pail. They came through the kitchen into the entryway, down the cellar stairs, into the cellar. Miss Russell, she stood at the foot of the steps with a lamp. Miss Lizzie went along the north side of the cellar to the water closet. She came from the water closet into the wash cellar, to the sink, and I heard something that sounded like water when she got there. She returned from there to where Miss

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Russell stood and they came upstairs, went back through the sitting room---through the kitchen into the sitting room.

Q. About what time in the evening was that?

A. That would be about fifteen minutes of nine.

Q. Did you see either of those persons later than that?

A. In a few minutes after, perhaps ten or fifteen minutes, Miss Lizzie came out of the same door, of the sitting room door, into the kitchen, in the same way, down into the cellar. She came into the wash cellar, and she puts her lamp on to a table on the west end of the cellar. She comes over to the east end of the house, where the sink is, and stooped down opposite to the sink. What she did I don't know.

Q. Was any one with her at that time?

A. She was all alone.

Q. How long did she stay in the cellar at that time?

A. It didn't take her above two minutes before she went upstairs again.

Q. At that time was there anything else in that wash cellar?

A. Yes, sir.

Q. What?

A. There was the clothes that had come off Mr. Borden and Mrs. Borden.

Q. You stayed there all night, did you?

A. I stayed there till about eleven o'clock.

Q. About how long was this second visit to the cellar after the visit in company with Miss Russell?

A. I should say about ten or fifteen minutes.

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CROSS EXAMINATION.

Q. (By Mr. Robinson.) How long had you been about the premises before evening?

A. I got there about one o'clock in the afternoon, and about eleven, or a little after at night---

Q. You went away?

A. Yes, sir.

Q. Not on again after that?

A. Not until the next morning, not until fifteen minutes after eight.

Q. You went on about one o'clock and then went off about eleven?

A. About eleven.

Q. Had you been on all that time?

A. All that time, just with the exception of when I went to dinner.

Q. What time did you go? About twelve o'clock?

A. I went to dinner---excepting supper, I should say.

Q. You had your dinner before you went there?

A. Yes, sir.

Q. Go there after dinner? You went home an hour or so?

A. I went home and I was there perhaps an hour.

Q. Now were there any other officers in the yard that evening?

A. Yes, sir, that evening.

Q. I mean the same evening?

A. Yes, sir.

Q. Who were they, please?

A. Mr. Ferguson and Officer Minnehan.

Q. Three of them?

A. Yes.

Q. You were on the east end of the house, you say, on the outside?

A. I was on the east end of the house.

Q. That is, on the same end as that cellar door comes up from the cellar?

A. Yes, sir.

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Q. Where were the other two officers?

A. One was on the north side and one was on the south-west corner.

Q. Were those officers with you when Miss Russell and Miss Lizzie came down stairs?

A. No, sir.

Q. Either one of them?

A. No, sir.

Q. Which one was on the west end of the house?

A. John Minnehan was on the west end.

Q. That would be the street end?

A. Yes, sir.

Q. He could not see anything, of course?

A. I don't know what he saw.

Q. He was in such a position that he could not have seen, was he not?

A. If he stayed there he could not see.

Q. And as far as you know, he did stay there?

A. Yes, sir.

Q. He did not come where you were at that time?

A. I don't remember him.

Q. The other one was Mr. Ferguson?

A. Mr. Ferguson.

Q. Where did you say he was standing?

A. He was standing around on the steps, on the north side of the steps, the front door.

Q. He was not with you?

A. He was not.

Q. He was not with you at the time you saw Miss Lizzie and Miss Russell come down?

A. No, sir.

Q. Was there anybody with you?

A. I don't remember anyone being with me then, when I saw her come down.

Q. You could see into that cellar perfectly well, couldn't you?

A. Yes, sir.

Q. How could you see?

A. I could see through the window, the east

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window; I could see through the window on the south-east end or on the corner.

Q. You could see through the window on the east end, the window next to the cellar door?

A. Yes, sir.

Q. That is a double window, is it not, about as high as that? (showing from the floor)

A. About as high as that I should think.

Q. A good large window and as wide as that?

A. Yes, sir.

Q. That was all open, where you could see and look right in?

A. Yes, sir.

Q. You were there to see what you could see,---that was your business?

A. Yes, sir.

Q. You had your eyes open, didn't you?

A. At that time.

Q. You saw all you could?

A. Yes, sir.

Q. You didn't cover anything up? You were not trying to shield these people in any way?

A. No, sir.

Q. There where you were, out in the end, you could see the lights passing from the stairs and coming down towards the cellar?

A. Yes, sir, when she came out of the sitting room.

Q. You could look up and see the lights flashing, could you not?

A. I could see her coming through the kitchen.

Q. You could see them as plainly as you see me now?

A. Yes, sir.

Q. They walked all right straight and of course when they went to the cellar door you could not see them?

A. No, sir.

Q. Which one came down first?

A. Miss Russell.

Q. The light came first?

A. Yes, sir.

Q. She was carrying the light?

A. Yes, sir.

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Q. And Miss Lizzie was carrying the slop pail?

A. Yes, sir.

Q. Did they come down in a perfectly natural way into that room?

A. A perfectly natural way.

Q. Nothing suspicious about that?

A. No, sir.

Q. You know how folks do those things. What did Miss Russell do with the light?

A. When Miss Lizzie came across from the water closet to the sink, Miss Russell was nervous then.

Q. Miss Russell was nervous: Tell us what she did. Will you act here as Miss Russell acted?

A. Here was Miss Russell coming this way (indicating) and kept hanging back over there with the lamp, as though she would not go.

Q. I thought you said Miss Russell came down first?

A. After she came down into the cellar. She stood right in the cellar and Miss Lizzie was in the wash cellar.

Q. The stairs then, did not go down into the wash cellar?

A. No, sir.

Q. What you mean is that Miss Russell stood at the foot of the stairs?

A. Perhaps three or four feet from the foot of the stairs.

Q. Could you see her as you stood against the east window?

A. No, sir.

Q. What did you do?

A. I got round to the other window.

Q. There are two openings to the cellar wash room on the south side?

A. Two windows on the south side, small windows.

Q. You could look right straight into the cellar from the south side?

A. Yes, sir.

Q. And there were those two women with a light in their hands, doing what they were doing?

A. Yes, sir.

Q. With light all round the cellar?

A. Yes, sir.

Q. You said Miss Russell was nervous?

A. I said she looked nervous and acted nervous.

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AFTERNOON SESSION

The Court came in at 2.15 P.M.

JOSEPH HYDE, Resumed.

Q. (By Mr. Robinson.) I think you said that on coming down stairs, these two ladies, together, Miss Russell stood just inside, three or four feet from the bottom of the steps?

A. Yes, sir.

Q. And Miss Borden passed right into the wash room cellar?

A. Into the water closet.

Q. In the first place she came into the cellar, you said, and then went into what?

A. The water closet, before she went into the wash cellar.

Q. That is, she kept right along in the track of the staircase?

A. On the north side of the cellar.

Q. Could you see her as she went in there?

A. Yes, sir.

Q. And you were then on the east side of the house looking in at that window there, or had you gone around?

A. I was on the east end then.

Q. You could see right across through the doorway, right in?

A. Right in to the water closet.

Q. And you said what she did, which was to empty the slops?

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A. Yes, sir.

Q. Then she came out?

A. Yes, sir.

Q. Came along toward the wash cellar door?

A. Yes, sir.

Q. And passed Miss Russell?

A. Yes, sir.

Q. Miss Russell stood there holding the light. She went over to the sink in the corner?

A. Yes, sir.

Q. That would be the southeast corner?

A. Yes, sir.

Q. And there rinsed the pail and put in some water. You heard the water?

A. I heard the water.

Q. Then did she go back to the closet again with it?

A. She went back upstairs then with Miss Russell.

Q. Didn't go back to the water closet with it again?

A. No, sir.

Q. Was anything else done at that time?

A. No, sir.

Q. And while she was rinsing the pail were you still standing at the east window?

A. When she rinsed the pail I was on the southeast corner.

Q. Those windows there---from where you stood there you had a perfectly clear view, right into the washroom?

A. Yes, sir.

Q. And you could see both of them and see everything they did?

A. Yes, sir.

Q. I think you said that Miss Russell appeared to be nervous?

A. She appeared to be nervous.

Q. You were about to tell us, when we adjourned, what she did. You said "in her actions." What did she do in her actions?

A. She seemed to be frightened of going into the wash cellar.

Q. I know you said she seemed to be frightened. I want to know what she did. You didn't hear her say anything?

A. She

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acted as though she didn't want to go in there, kind of nervous, kind of shaking.

Q. You didn't hear her say anything?

A. No, sir.

Q. Did you hear any talk between them?

A. No, sir.

Q. She didn't shriek and say she wouldn't go in there?

A. No, sir.

Q. "Oh, dear!?"

A. No, sir.

Q. There wasn't a word said, so far as you know?

A. I never heard a word spoken.

Q. Those windows were open, weren't they?

A. No. The one on the east end, it was a little might down, if anything, perhaps a half an inch---the upper.

Q. Haven't those two on the south side screens over them and bars?

A. They have bars up, but the windows was in.

Q. Are you positive about that?

A. The bars are there. They had bars in all the windows but two, in the one on the east end and one on the northwest corner.

Q. Well, I want to keep right to those there, those three. Do you recollect so as to state positively whether those windows were open?

A. Well, I wouldn't state positively.

Q. That was in the summer time?

A. It was in the summer time.

Q. Now just think a minute?

A. There are screens in the windows.

Q. I know that. Excuse me; I won't say that. You know that, don't you?

A. Yes; I know there was screens there.

Q. I know you say so; that is what I mean.

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Now you are not able to tell the jury from positive recollection whether the windows were really open or not?

A. No, I wouldn't swear.

Q. Have you been there since, to know that the windows are swung up and hitched up?

A. I have never noticed that, sir.

Q. Well, I haven't learned anything yet that Miss Russell did.

A. Well, she brought the lamp down there and stood round there.

Q. Well, I know that, but I want to get at what she did to show you she was frightened.

A. Well, I don't know hardly how to explain that any further than this, by the appearance.

Q. You saw something, didn't you?

A. I see her shake and look---

Q. What part of her shook? That is what I want to get at.

A. Her whole body?

Q. Her arms?

A. Yes, sir.

Q. Like that? (Indicating)

A. Not so much as that. Kind of a---

Q. Which hand did she have her light in?

A. She had her lamp in her right hand.

Q. Did she keep it in her right hand?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. Did the lamp keep going?

A. It moved a little.

Q. Was it a kerosene lamp?

A. A kerosene lamp.

Q. Did it smoke, then, when she shook so?

A. I never noticed.

Q. It had a chimney on it?

A. It had a chimney on it.

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Q. It didn't shake the chimney off?

A. No, sir.

Q. She wasn't much agitated, was she?

A. She was a little nervous.

Q. She wasn't a particle more nervous than you, was she?

A. Well, I don't think I was very nervous.

Q. Weren't you?

A. No, sir.

Q. Then they went upstairs as any two people would, I suppose?

A. Yes, sir.

Q. And disappeared?

A. Yes, sir.

Q. Now about fifteen minutes after you say you saw Miss Lizzie come into the room?

A. About fifteen minutes after that I see Miss Lizzie come the same way.

Q. And she had a light with her?

A. Yes, sir.

Q. The same lamp?

A. The same lamp, I believe. It looked like the same lamp.

Q. A good clear nice oil lamp?

A. Yes, sir.

Q. Giving a nice light?

A. It gave a good light.

Q. She didn't come down there in the dark, did she?

A. No, sir.

Q. Where were those clothes you spoke about?

A. They were on the south side of the wash cellar.

Q. Right about where you were then?

A. Almost opposite to where I stood. Saying the window was there, the clothes was right in the cellar, right where that radiator is there. (Indicating.)

Q. When you say "opposite", you mean down against the very wall where you were standing?

A. Yes, pretty near the wall, not exactly to the wall.

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Q. Right down in one pile---these clothes?

A. One pile; yes, sir.

Q. How far were they from the sink?

A. Quite a ways; I should think five or six feet.

Q. Back from the sink?

A. Back from the sink.

Q. Which corner did the sink stand in?

A. The sink stands in the southeast corner.

Q. You stood right on the south side?

A. I stood at the southeast corner window.

Q. The very first window?

A. The very first window.

Q. You were looking right in onto that sink?

A. No, sir; you couldn't see on to the sink exactly. You can't see right on to the sink through that window. You can see anyone standing front of the sink. Saying that was the sink (indicating) you could see anyone standing there, but you couldn't see the sink. You could see the person standing there.

Q. What did she do with her light when she came in?

A. She went on the west side of the wash cellar and put it on to a stand.

Q. The west?

A. The west.

Q. The opposite side, towards Second Street?

A. Yes, sir.

Q. And sat it right down there?

A. And put it down there.

Q. The lamp didn't go out, did it?

A. No, sir.

Q. A good light all the time?

A. Yes, sir.

Q. She went over to the sink?

A. Yes, sir.

Q. And you didn't see her do anything?

A. Only I see her stoop down by the sink, stoop right over by the sink.

Q. Those clothes were back quite a distance?

A. Yes, sir.

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Q. Did you see her open the door under the sink?

A. No, sir.

Q. Are you sure about that?

A. Yes, sir.

Q. Do you recollect about that now?

A. Yes, sir; I never see her open any door.

Q. You didn't see her do anything, did you?

A. No, sir; only stoop down.

Q. Do you know whether there is a door under it or not?

A. I wouldn't swear but I believe there is. I was in that cellar once and I believe there is a door to the sink.

Q. A door that opens and swings around?

A. Yes, sir.

Q. Which way does it swing?

A. I wouldn't swear.

Q. Don't you remember taking hold of the door and opening it?

A. No, sir.

Q. You stood right there at that window so you could look right down, and you couldn't see the sink quite?

A. Yes, sir.

Q. The same as looking in that window? (Indicating)

A. Yes, sir; the sink was right there.

Q. You could see her just as well---you were not more than four, or five feet from her?

A. Perhaps four or five feet from her.

Q. Right there; and you wouldn't tell me but what the window was open all the time?

A. I couldn't swear.

Q. You couldn't swear to that?

A. No, sir.

Q. And there was nothing in your way from seeing everything, was there?

A. Nothing in my way. I couldn't see the sink; I could see her.

Q. You didn't see her do anything except you say she stooped

down?

A. No, sir; that is all I see.

Q. How long did she stay there?

A. Oh, she wasn't there a minute.

Q. Half a minute, was she?

A. She wasn't there a minute, anyhow.

Q. Had you been in the house before?

A. Yes, sir.

Q. That day?

A. Yes, sir.

Q. Had you seen that pail there with the cloths in it?

A. Yes, sir.

Q. Where was that standing?

A. That pail, when I see it, it was standing on the south side of the wash cellar.

Q. Well, that is pretty near where you were?

A. Pretty near where I was.

Q. And that pail was pretty near the sink, wasn't it?

A. Yes, sir.

Q. And you saw what was in that pail, didn't you?

A. Yes, sir.

Q. I don't mean to go into it. You saw it?

A. Yes, sir; that was my impression.

Q. Well, then she took the light and went upstairs?

A. Yes, sir.

Q. Who was there with you at that exact time when you were looking into the window?

A. There wasn't anyone, as I remember, looking in at that time when I was there. There was Minnehan, John Minnehan, Officer Minnehan.

Q. Where was he?

A. He was taking care of the southwest corner, right by the front door there, and the other man was on the north side by the steps.

Q. Well, Mr. Minnehan couldn't see anything in there, could

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he?

A. No, sir; not from there.

Q. And the other man over there couldn't see anything?

A. Well, I think he could.

Q. Who was that man?

A. Ferguson, George Ferguson.

Q. Mr. Ferguson was over on the north side?

A. The north side.

Q. Minnehan couldn't see anything?

A. No, he couldn't from there.

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Q. You think Ferguson could?

A. Well, he could by stooping down to those windows on the north side.

Q. Well, you didn't go into the house that night, at that time?

A. No, sir.

Q. Didn't ask to, did you?

A. No, sir.

Q. Wrap at the door to see if you could get in?

A. No, sir.

Q. Well, you didn't do anything more about it in any way?

A. No, sir.

Q. Continued your patrol around the yard just the same as if nothing had happened?

A. Yes.

Q. That was all there was about it, wasn't it, Mr. Hyde?

A. That is all that I remember.

Q. (By Mr. Moody.) Your directions were to stay where, Mr. Hyde?

A. My direction was to stay on those steps on the north side until I was relieved.

Q. (By Mr. Robinson.) North side or south side?

A. On the north side, the steps on the north side.

Q. I understood you that you were on the south side of the house?

A. No, sir. My place, before I was relieved, was on the north steps, on the north back door, what you call the back door; the side door, I should call it.

Q. But you were on duty when you saw Lizzie come down into the wash room?

A. I was on duty then in the yard.

Q. That was on the south side?

A. That was on the east end, where I was stationed, on the east end.

Q. And south side too?

A. The south corner. I ain't sure,

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but I could see what was going on on that side of the house.

Q. You were on the south corner when you saw these transactions?

A. Yes, sir. I was on the east end.

Q. (By Mr. Moody.) But where you stood you could see into the sitting room?

A. I was looking through the kitchen window on the east end.

Q. Then you could only see when the door was open?

A. I could see only when the door was open.

MR. KNOWLTON. The city clerk of Fall River has sent an unofficial copy of his records which my friends agree may be used instead of the ordinary attested copy. He certifies that, "The above dates are from Records in City Clerk's office, Fall River, Mass. George A. Ballard, City Clerk." "Sarah Anthony Borden," who, it will be remembered was the first wife of Mr. Borden, "died March 26, 1863. Andrew J. Borden and Abby D. Gray, married June 6, 1865. Lizzie A. Borden, born July 19, 1860."

DR. WILLIAM A. DOLAN, Sworn.

Q. (By Mr. Knowlton.) Your name is William A. Dolan?

A. Yes, sir.

Q. You are a physician?

A. Yes, sir.

Q. How long have you been in practice?

A. 11 years.

Q. Where?

A. Fall River, in the hospital.

Q. Where were you educated, doctor?

A. University of Pennsylvania, medical department.

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Q. And what sort of practice have you been engaged in?

A. General practice.

Q. Has that included surgery as well as the practice of medicine?

A. Yes, sir.

Q. To what extent?

A. Probably more than anything else.

Q. More surgery?

A. More surgery than anything else.

Q. And among other things have you had to do with breakings, fractures of the skull?

A. I have, yes, sir.

Q. To what extent in that direction?

A. I couldn't tell you the number. I have had several cases.

Q. You are also the medical examiner for the County of Bristol, one of them?

A. Yes, sir.

Q. And have held that office how long?

A. Two years next month.

Q. You were in office then a year when this thing happened?

A. Yes, sir.

Q. When did you first go to the house, doctor, of Mr. and Mrs. Borden that day?

A. About a quarter to twelve.

Q. Where were you when you first knew of the occurrence or first heard of it?

A. I was passing by the house.

Q. You happened to be going by the house?

A. Yes.

Q. And how do you fix that time?

A. Because I was in there about from ten to fifteen minutes when I heard the city hall bell strike twelve.

Q. You took note of that fact?

A. Yes, sir.

Q. When you went into the house whom did you see there?

A. The first person I saw was Charles Sawyer. He was at the

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door, the screen door, and the next person I saw, I think, was Dr. Bowen, who met me at the kitchen door. I saw also, I think, in the kitchen Bridget Sullivan and Mr. Morse. I am not sure about Mr. Morse, but I think so.

Q. And anyone else?

A. Not at that particular time.

Q. Did you see either Mrs. Churchill or Alice Russell at any time?

A. Yes, sir.

Q. When you first went in or afterwards?

A. Yes, when I first went in.

Q. Where were they?

A. They were in the dining room.

Q. Did you also see some officers there?

A. Yes, sir.

Q. Whom did you see?

A. I saw Mr. Allen, and officer Mullaly and officer Doherty.

Q. Mullaly, Doherty and Allen?

A. Yes, sir.

Q. Where were they?

A. Mr. Allen was in the entry-way leading from the outside door to the kitchen and Messrs. Mullaly and Doherty were in the sitting-room.

Q. Before I go to your examination in respect to the duties of your office, did you have any talk with Lizzie Borden, the defendant?

A. I had a little talk, yes, sir.

Q. When was that?

A. I couldn't tell you just the hour. It was whilst I was there in the morning.

Q. Where was she when you talked with her?

A. In her room.

Q. And what was the talk, if you remember?

A. I asked her what it was about that note that Mrs. Borden was said to have received, and she said that Mrs. Borden had received a note to

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go and see somebody that was sick. I 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.

Q. The kitchen stove?

A. Yes, sir.

Q. Anything further?

A. No, sir. That is all I remember.

Q. Now, going back to your entrance to the house, where did you go?

A. I went first into the kitchen and then into the sitting-room.

Q. That is where the body of Mr. Borden lay?

A. Yes, sir.

Q. Won't you describe what you found when you went in there?

A. I went in and saw the form lying upon the sofa. The sofa was placed against the north wall of the room, running east and west with the head towards the parlor, that is, towards the east and the feet towards the east, the kitchen.

Q. (Plan Exhibit 6 handed to witness.) Look at that plan, and see if that designates the position of the sofa as you remember it?

A. Yes, sir.

Q. Did you either then or afterwards notice what the position of the sofa was with reference to the door that goes from the sitting-room into the dining-room?

A. It was up against the jam of the door, the dining-room door.

Q. How was it with reference to the distance east and west, with reference to the dining-room door? Was the end of the sofa flush with the door, by it or---

A. I think it was flush with the jam.

Q. The end of the sofa?

A. Yes, sir.

Q. And by the way, you have the sofa here?

A. Yes, sir.

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Q. Was the body when you saw it covered?

A. Covered with a sheet.

Q. Did any one go in with you when you looked at the body at that time?

A. Yes, sir.

Q. Who?

A. Dr. Bowen.

Q. And what did you do at that time?

A. I looked at the body and saw the position in which it was lying. I also took hold of the hand of the body and found it was warm, and also noticed that the blood was still oozing from the wounds in the head, and that it was of a bright red color.

Q. Now as to the position of the body when you saw it, looking at exhibit 17 (photograph), how does that correspond with your remembrance of the position of the body when you saw it?

A. That is right. The only difference possible, the only thing that I am not quite sure of, is that possibly I may have pulled that coat up a little to get to his inside pocket. I am not quite sure of it.

Q. Which is the coat, sir?

A. This is it: His Prince Albert coat.

MR. KNOWLTON. (To the jury) That is the coat, he says, right over there, --- over the head of the body.

Q. You pulled that up a little, did you: otherwise is the position the same as you found it?

A. Yes, sir.

MR. KNOWLTON. (To the jury). That is the picture that you have already seen, gentlemen.

Q. What was the head resting on?

A. The head was resting upon a small sofa cushion that had a little white tidy on it. The cushion in turn, I think, rested on his coat, which had

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been doubled up and put under there, and that, I think, rested upon an afghan or sofa cover,---a knitted affair.

Q. The lowest of the three was the doubled up coat?

A. No, sir.

Q. Was the---

A. Afghan.

Q. Then came the coat?

A. Yes, sir.

Q. And then the sofa cushion?

A. Yes, sir.

Q. At that time did you make any particular examination of the wounds in the head?

A. No sir, I did not.

Q. You saw them, of course?

A. Yes, sir.

Q. How long did you remain with the body at that time?

A. Possibly not over two minutes; two or three minutes.

Q. Then what did you do?

A. On account of what Dr. Bowen told me, I went upstairs to see Mrs. Borden.

Q. With Dr. Bowen?

A. I am not sure whether he accompanied me or not.

Q. And you found Mrs. Borden in the guest chamber?

A. Yes, sir.

Q. As has been described?

A. Yes, sir.

Q. Where did you find that body?

A. She was lying between the dressing case, which was on the north side of the building, and the bed.

Q. Did you at that time take or have taken any measurements of the position of her body as it was then?

A. I do not recollect, sir.

Q. Did you afterwards have measurements taken?

A. Yes, sir.

Q. Who by?

A. Mr. Kieran, the civil engineer.

Q. When were these taken?

A. I think not until a week or ten days afterwards.

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Q. And what examination did you make of the body of Mrs. Borden at that time?

A. I simply touched the body and saw the wounds upon the back of her head, but did not examine them minutely: noted also that her blood was coagulated and was of a dark color.

Q. Will you describe the position of the body of Mrs. Borden as accurately as you can?

A. She was lying with her back exposed, and also the right back of the head exposed, and her hands were something in this position (illustrating), that is, just around her head: her head was not resting upon them.

Q. That is, the hands were further to the west---

A. Towards the wall.

Q. Nearer the wall than her head?

A. Yes, sir.

Q. How near her head were her hands?

A. Almost touching.

Q. Were they clasped together?

A. No, sir.

Q. And were the position of the two arms and hands relatively--that is, right and left--the same?

A. They were, yes, sir.

Q. They had the same curve?

A. Yes, sir.

Q. How near did they meet? Did they come together?

A. No, sir: they didn't touch. They came very near to each other.

Q. How near?

A. I should judge within an inch or two inches.

Q. You say the head was resting somewhat upon---

A. The face; the face was resting in such a position that the right back of the head was exposed.

Q. Not directly, then, face downwards?

A. No, sir.

Q. But with the head turned somewhat to the left?

A. The

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left: yes, sir.

Q. Can you tell about how much it was turned to the left? That is, if the face was so far downward, it would be 90 degrees angle to the floor: whether that is a convenient way for you to express it, I don't know.

A. Probably a more convenient way to express it would be to say that she was lying on the left side of her face; that is, the left side of her nose and eye were resting upon the floor.

Q. Did you notice at that time anything about her clothing?

A. Yes, sir: I noticed that it was bloody---the back of her clothing: that is, the upper part of it; her waist.

Q. Did you find any article of clothing there that you took away?

A. Yes, sir; I found a handkerchief, and old silk handkerchief.

Q. Where is that? Is it here?

A. Yes, sir: it is down stairs in the satchel.

Q. Well, I want it, if you have got the key?

A. It is not locked, sir: it is right on the desk in your room.

(Mr. Moody went for the satchel)

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Q. For convenience of talking new, it is the handkerchief that has already been introduced in the case?

A. Yes, sir.

Q. You sent it up once to be looked at anyhow?

A. Yes, sir.

Q. Where did you find the handkerchief, near the head?

A. Almost touching it, nearer the wall than the head.

Q. Was it knotted or loose?

A. Loose.

Q. Describe the handkerchief?

A. It seemed to be an old silk handkerchief, in some places shredded from wear.

Q. Did you notice whether the handkerchief was cut or not?

A. I did not see that it was cut.

Q. It was a dark colored handkerchief?

A. Yes, sir.

Q. Was there blood on the handkerchief?

A. Yes, sir.

Q. How near her head was the handkerchief? Perhaps I have already asked that.

A. It was quite near. The hands were in there between the head and the handkerchief.

Q. I will ask now before I come to the measurements, how far in your estimation, if you observed it, was the head of Mrs. Borden from the west wall. That would be the west wall, would it not?

A. The east wall.

Q. Is that the handkerchief? (Showing dark tattered handkerchief)

A. Yes, sir.

Q. Is that in the condition so far as the entirety of it is concerned, as it was then?

A. Yes, sir, I think so.

Q. Did you take charge of it then?

A. No, sir, not at that particular time.

Q. When did you take it, if you took it, that day?

A. No, sir, I

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didn't take it that day.

Q. Was anything done with it that day, if you know?

A. Yes, sir, buried it with the rest of the clothing.

Q. Is it now in your custody?

A. Yes, sir.

Q. Oh, it was buried at the time?

A. Yes, sir.

Q. The clothing was afterwards dug up?

A. Yes, sir, it was dug up with parts of the clothing.

Q. Do you know what date?

A. I can tell you by referring to the notes.

Q. I don't care about it. Was it dug up within a week or ten days?

A. Yes, sir.

Q. Were you present at the digging up?

A. Yes, sir.

Q. Did you take the handkerchief?

A. No, sir, they were re-buried after being dug up to get some things and finally taken and carried up to the Marshal's office.

Q. You received it from the Marshal?

A. Yes, sir.

Q. You identify that, you say, as the handkerchief?

A. Yes, sir.

Q. How long were you engaged in examining the body of Mrs. Borden at that time?

A. Two or three moments, that is all.

Q. Now, going back for a moment to the body of Mr. Borden: Did you have with you a clinical thermometer?

A. I had, yes, sir.

Q. Did you use it?

A. No, sir.

Q. Did you make any examination of the bodily heat of Mr. Borden?

A. I did that when I first went in. I took hold of the hand.

Q. What did you find it to be?

A. I found it was warm; I could not just say the temperature, but a warm body.

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Q. When you say warm, do you mean the warmth of life?

A. Not quite that, no, sir.

Q. When you use the word warm, are you referring to the warmth as distinguished between the warmth of life and the coldness of death?

A. Yes, sir.

Q. You are using it in the medical sense, the word warmth?

A. Yes, sir.

Q. Did you ascertain that warmth from anything beside the hands at that time?

A. No, sir, I did not.

Q. Did you notice at the time when you examined the body of Mr. Borden at that time, anything of the condition of the blood?

A. Yes, sir.

Q. Will you not describe that as fully and as particularly as you can?

A. It was practically in the same condition as it was when I came in there.

Q. I am now asking you about the time you came in. Did you understand my question as to the warmth to refer to the time when you came in?

A. Yes, sir,---I came in a second time soon after the first time. The time between the two would be about five minutes.

Q. You may answer indiscriminately as to these times in that connection: What was the condition, referring to either one or both of these inspections---either the one you made before going up to Mrs. Borden, as you say they were not five minutes apart, according to your recollection, what was the condition---describe minutely, of the blood on the body and about it?

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A. The blood was of a bright red color and still oozing from the head. At the head it was dripping on the carpet underneath, between the wood work, the head of the sofa and the sofa body. It was not coagulated.

Q. How was the body? Was there any blood underneath the sofa?

A. Yes, sir, on the carpet.

Q. Describe the blood you saw there?

A. The blood had been soaked in that was on the carpet. There was no blood really on top of the carpet.

Q. How large a space was soaked with blood?

A. I should think---they were in two spots,---I should judge eight or ten inches in diameter.

Q. Where were those spots?

A. Right under the head of the sofa, that is practically underneath where the head of the sofa joins the body of the sofa.

Q. You say that they were practically soaked into the carpet?

A. Yes, sir.

Q. I was going to ask you, perhaps you have answered already without being asked, as to whether the blood on the body of Mr. Borden or any of the blood flowing from him was coagulated?

A. No, sir, I saw none.

Q. With that you did see, was it or not coagulated?

A. It was not.

Q. Now turning back again to the body of Mrs. Borden. Did you make any examination as to the bodily heat of that?

A. Yes, sir.

Q. What, and what was the result?

A. I felt the body with my hand and it was much colder than that of Mr. Borden.

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Q. What part of the body did you touch?

A. Touched her head and hand.

Q. You did not use the clinical thermometer in either case?

A. No, sir.

Q. Did you take any notice of the condition of the blood of Mrs. Borden?

A. I did.

Q. Describe as minutely as you please the condition of the blood on or about her body.

A. It was coagulated and of dark color; the blood on the head was matted and practically dry. There was no oozing from it as in Mr. Borden's

Q. How was it as to whether coagulated?

A. It was coagulated.

Q. Did you at that time observe any other facts in relation to the heat of the body or heat of the blood that I have not asked you about?

A. No, sir.

Q. Did you afterwards remove any of the carpet underneath either body?

A. Yes, sir.

Q. What is that? (Showing piece of carpet designated as Ex. ???)

A. That is the one I removed from Mr. Borden.

MR. KNOWLTON. We have but two pieces of carpet, Gentlemen.

WITNESS. Under Mr. Borden's head. This part (showing edge) was up against the wall.

MR. KNOWLTON. That is quite obvious, Gentlemen, because that is the salvage.

Q. The part not out was up against the wall?

A. Yes, sir, turned under.

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Q. Where were the two pools of blood you spoke of?

A. These are they. (Showing on the piece of carpet).

Q. That one there and that there? (Indicating)

A. Yes, sir.

Q. Did they present the appearance before that they do now?

A. No, sir.

Q. In what respect did they differ?

A. They were bright red in color and there was no coagulation.

Q. Then your answer in reference to coagulation had in mind not only the blood that Mr. Borden's body bore, but the blood on the carpet?

A. Yes, sir.

Q. Notwithstanding it was soaked in, you could ascertain it was coagulated?

A. Yes, sir.

Q. And did the power of soaking in have anything to do with the coagulating?

A. Yes, sir.

Q. Did you take a piece of carpet from under Mrs. Borden's body?

A. I took a piece of the carpet although I did not remove it myself.

Q. Who did?

A. I could not tell you, sir?

Q. Do you recognize that piece of carpet? (Showing a second and a smaller piece of a lighter color than the first)

A. Yes, sir.

Q. What is that?

A. That is the piece that was under Mrs. Borden's body.

Q. Does it present the appearance now as when you first saw it?

A. Of course it is older and all dried up now and dirtier than it was.

Q. When speaking of the coagulation of blood in Mrs. Borden's case, did you also intend to include the blood on the carpet?

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A. Yes, sir.

Q. So your answer in reference to the coagulation of the blood in one case and the non-coagulation of it in another, includes both,---the blood of both the bodies and not the blood on the carpet?

A. Yes, sir.

Q. What did you do then?

A. After I seen Mr. and Mrs. Borden the first time I returned to Mr. Borden's body and made a more minute examination of the wounds.

Q. What examination did you make at that time?

A. At that time I made an examination and found that there were from eight to ten wounds---I was not positive just at that time---on his face and---

Q. You afterwards made a more accurate examination?

A. Yes, sir.

Q. Did you make any other observation at that time than to count them?

A. Yes, sir, I observed the position of the body, lying.

Q. Did you notice anything else?

A. No, sir, except as to clothing.

Q. What did the body of Mr. Borden have on?

A. On the outside, a cardigan jacket, that is a woolen jacket, black vest and black trousers, and a pair of Congress shoes.

Q. Did you at that time notice anything about what we commonly call his "valuables"?

A. Yes, sir, he had a watch and pocketbook.

Q. Did you examine the pocket book?

A. Yes, sir.

Q. Did you see what there was in the pocketbook?

A. Yes, sir.

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Q. What did you find in the pocketbook?

A. Found some money in bills and some in specie.

Q. Do you remember how much money?

A. I could not tell the exact figure; I have it here in my notes.

Q. Refer to them.

A. He had \$81.65.

Q. Was that all in the pocketbook?

A. I think it was,---possibly some specie in his pocket. I think it was all in his pocket, as far as I recollect.

Q. The largest portion of that bills?

A. Yes, sir.

Q. The 65 cents only in change, or some change?

A. 65 cents in change. I have the denomination of the bills and the money if you like?

Q. You may give them if you please.

A. He had four ten dollar bills, five fives, one two dollar bill, eleven ones, two fifty cent pieces, three twenty-five cent pieces, six tens, five five-cent pieces, and five one cent pieces.

Q. Did you find anything else in his pocketbook?

A. No, sir, not in his pocketbook.

Q. And the watch and chain were on his person in the usual place?

A. Yes, sir.

Q. That is on his vest?

A. In his upper vest pocket, the watch.

Q. Did you find any other articles of jewelry?

A. He had a ring on his left hand,---I am not quite positive as to that.

Q. What kind of ring, apparently?

A. I forget, really.

Q. Do you remember whether it was silver or gold?

A. Gold, if I remember correctly.

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Q. Did you take any other observation of Mr. Borden's body then?

A. No, sir.

Q. Where did you go then?

A. Upstairs.

Q. Where upstairs?

A. I went in to the room where the body of Mrs. Borden lay.

Q. Did you make any further observation of that at that time?

A. I did.

Q. Did you observe anything else than you have already testified to?

A. Simply that I counted the wounds, and lifted the body with Dr. Bowen's assistance, in order to get at the wounds more quickly. That is all.

Q. I will not trouble you for the number because, you soon afterwards made a more accurate estimation

A. Yes, sir.

Q. What did you do then?

A. Then in consequence of what had been told me, I collected a sample of that morning's milk and a sample of the milk of the previous day.

Q. From whom did receive those samples?

A. Bridget Sullivan.

Q. What did you do with those samples?

A. I sent them to Professor Wood.

Q. Before you did that?

A. I put them in charge of a policeman to keep.

Q. Seal them up?

A. Yes, sir.

Q. Hermetically sealed them up?

A. Yes, sir.

Q. And you sealed them up in separate jars?

A. Yes, sir.

Q. Do you remember how they were marked?

A. I marked them according to the day on which the milk was sampled.

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Q. Do you remember what you said on the marks?

A. I think I put something like this 'sample of milk August 4th', 'sample of milk August 3rd'.

Q. Are those the marks you put on the milk samples? (Showing two tags)

A. Yes, sir. (Marked Exhibits 20 and 21 respectively)

Q. Did you also seal them?

A. Yes, sir.

Q. Is that all is left of the seal with which you sealed them?

A. Yes, sir. (Identifying seal on the tags).

Q. Then what did you do?

A. I think then I went with the officers, that is, through the lower floor and through the cellar.

Q. Did you take notice of anything in either the lower floor or cellar?

A. In the cellar we saw some axes and hatchets that were there.

Q. How many axes and how many hatchets?

A. I think there were two axes and two hatchets.

Q. Did you do anything with them?

A. I took one of them upstairs and put it with the cans of milk.

Q. Did you make at that time any examination of either of them?

A. No, sir, other than just to look at them. I used no glass or anything of that sort.

Q. What did you notice by looking without the glass?

A. I noticed the one I took---the heavy claw hammered hatchet---looked as if it had been scraped.

Q. Anything else?

A. No, sir.

Q. Who had those hatchets when you looked at them?

A. I think

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Officer Mullally handed me this hatchet of which I speak.

Q. Who had the others?

A. They were lying on the floor as we went down cellar.

Q. Do you know whether these are the hatchets and axes (showing instruments) that you saw at that time?

A. That is one. That I am not sure of,---the claw hammered hatchet, and that one looks like it. I would not say it is or is not.

Q. That is the one you are not sure of?

A. Yes, sir.

Q. Does that (showing another one) resemble the other one?

A. Yes, sir.

Q. You have no reason to suppose it is not the other one?

A. No, though I have no mark on it, no, sir.

Q. What time of day did you first see this?

A. I first saw this between half past twelve and one o'clock.

Q. What was the next event you were concerned in?

A. I don't think I did anything else that morning, just then.

Q. You went off?

A. Yes, sir, but not until half past one.

Q. Did you return that day?

A. Yes, sir.

Q. What time did you get back to the house that day?

A. Somewhere between three and half past o'clock.

Q. Did you go into the house again?

A. Yes, sir.

Q. Did you further examine the bodies of Mr. and Mrs. Borden?

A. Yes, sir, but I had the rooms photographed before anything was done with the bodies.

Q. Before you had the photograph of Andrew Borden taken, had any change been made in the position of his body so that you had

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to restore it?

A. No, sir, not that I am aware of.

Q. Andrew Borden's body had not been changed or disturbed and that is as it appeared there?

A. Yes, sir.

Q. Did you have a photograph taken of Mrs. Borden's body?

A. I did.

Q. Meanwhile had the body of Mrs. Borden been disturbed?

A. No, sir, not that I am aware of.

Q. And what do you say as to whether the body of Mrs. Borden was in the same position as it was when you first saw it when the photographs were taken?

A. It was, sir, except that I think the hands had been changed by someone.

Q. Otherwise than that, were they in the same position?

A. They were, yes, sir.

Q. Look at that photograph and see whether that indicates the position of the body as you first saw it?

A. It does with the exception of the hands.

Q. What is the difference with the hands?

A. The hands are up under the chest. As I remember the hands were round the head.

Q. As you previously described it?

A. Yes, sir.

Q. Will you look at the photographs there from that point of view to see if that correctly indicates the position of the body as you first saw it? (showing picture)

A. Yes.

Q. Had the bed been disturbed before you took these photographs?

A. Yes, sir.

Q. You did not see that done?

A. No, sir, the bed was in perfect

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condition as I first saw it.

Q. Was it made when you first saw it?

A. Yes, sir.

Q. What was on the bed in the way of covering?

A. A white bed spread and pillow shams.

Q. Did you see the bed moved?

A. No, sir, I did not.

Q. Was the position of the bed as indicated in that picture the same as when you first [saw] the body?

A. As far as I see it was, yes.

Q. Coming back (to Exhibit 16 for identification, being the first one and second one Exhibit for identification) and looking at exhibit 16 for identification, you say in that case it hadn't been moved?

A. No, sir.

Q. You had it done?

A. No, sir, I did not have it done.

Q. Where these taken at the same time?

A. Yes, sir, both at the same time. I think how that happened was that someone called me down stairs and I told the photographer---

Q. Never mind what you told him---

A. The body is the same, but the head is moved.

Q. Do you at that time do anything with the bed covering or any part of it?

A. No, sir.

Q. Did you then make or have you made any measurements?

A. I don't remember having made any accurate measurements that day myself. I had the measurements taken some time previously, or at least afterwards by Mr. Kieran.

Q. I don't recollect whether any such measurement has been given. I will ask you if from any measurement you saw or made you

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can tell us the distance of the head of Mrs. Borden from the east wall?

A. Not accurately, no, sir.

Q. Do it to the best of your estimation, if you have an opinion on it.

A. I think it was between two or three feet.

Q. What did you do then, Doctor?

A. I then opened the body of Mr. Borden.

Q. Mr. Borden?

A. Yes, sir.

Q. While lying on the sofa?

A. No, sir.

Q. What did you do with the body first?

A. Undressed it and laid it on the undertaker's board.

Q. In the same room?

A. Yes, sir.

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Q. Tell in detail what you did at that time.

A. We opened the body and removed the stomach, tying it at both ends, and put it into a perfectly clean jar and sealed it up.

Q. Did you do anything else to the body of Mr. Borden at that time?

A. No, sir.

Q. Did you make any further examination of the wounds at that time?

A. No, sir.

Q. Did you do anything to the body of Mrs. Borden?

A. Yes, sir, we went through the same with hers.

Q. Well, what did you do with the body of Mrs. Borden?

A. That is, opened her body, removed the stomach, tying it at both ends, put it into a perfectly clean jar and sealed it up.

Q. Did you mark those jars in any way?

A. Yes, sir.

Q. Did you put labels on them?

A. Yes, sir.

Q. See if those are the labels?

A. Those are they: yes, sir. (Labels marked Ex. 22 and Ex. 23.)

Q. That is, the one marked Ex. 22 says "Stomach of Andrew J. Borden"?

A. Yes, sir.

Q. Which did you put that on? On the jar containing the stomach of Andrew J. Borden?
I suppose the question is obvious?

A. Yes, sir.

Q. And the one marked "Stomach of Mrs. Andrew J. Borden." (Ex. 23)?

A. I put upon the one containing her stomach.

Q. Did you further seal the jars?

A. Yes, sir.

Q. And are those the seals which you put on?

A. Yes, sir.

Q. Those as they are now?

A. Yes, sir.

Q. What did you do then with the two jars?

A. I packed them along with the two jars containing the milk.

Q. That made four jars?

A. Yes, sir.

Q. What did you do with the whole package?

A. Enclosed them in a box and sent them to Prof. Wood.

Q. By express?

A. Yes, sir.

MR. KNOWLTON. I understand that my friends do not require us to produce the several expressmen through whom they were sent. We have them under subpoena, but it will save their time.

MR. ROBINSON. Not at all. We won't spend any time over that. We understand simply they were received by express by Prof. Wood.

MR. KNOWLTON. He will say so---under seal with the seal untouched.

Q. Did you at that time take anything else away from the house?

A. No, sir, not that I remember.

Q. Did you do anything further or make any further examination of the bodies at that time?

A. No, sir, I did not.

Q. Is there any other event of that day that I haven't called your attention to that you can testify to concerning this matter?

A. I don't remember, sir, at the present time.

Q. When did you go to the house again?

A. I went that evening.

Q. What did you do then?

A. I think the only thing I did that evening was to look at the head of Mrs. Borden.

Q. Make any further observations in addition to what you have already told us?

A. I simply looked at one of her wounds, on the head more particularly. That was all.

Q. Did anything else happen that night?

A. Not that I know of, no, sir.

Q. When did you go to the house again?

A. I think I went the next day. I went to the house several times.

Q. What did you do with the hatchet that you took up stairs and put with the milk jars?

A. I think I told one of the officers---

Q. Well, you gave some directions to an officer about it?

A. Yes, sir.

Q. Do you remember which officer?

A. I couldn't tell you.

Q. You didn't take it away at that time?

A. No, sir.

Q. Did you see the hatchets again the next day?

A. Yes, sir.

Q. Where?

A. At the city marshal's office.

Q. The same hatchets that you had seen at the house the day before?

A. Yes, sir.

Q. And the hatchets that are now here?

A. Yes, sir.

Q. Did you then make any examination of those hatchets or any of them, or the axes?

A. I couldn't tell you whether it was that day or the next day that I examined them with a magnifying glass.

Q. But you did on one of the two days do that?

A. Yes, sir.

Q. Taking the claw hammer hatchet; that is the one, is it?

A. Yes, sir.

Q. What did you find as the result of your examination with the

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microscope?

A. It wasn't a microscope, sir. It was simply a magnifying glass. I found two hairs, one on the blade of the hatchet and one, I think, in here in the woodwork, caught in the fibres of the wood.

Q. Whereabouts on the blade was the hair that you found on the blade?

A. It would be about in this position. I don't know which side it was. I think this side.

Q. Won't you point your finger to it? (The witness did so.) You point nearly midway between the two ends of the hatchet, perhaps an inch from the cutting edge?

A. Yes, sir.

Q. And the other hair you found on there?

A. Right in here in the fibre.

Q. In the fibre of the wood near where it goes into the eye of the hatchet on the side towards which the handle is?

A. Yes, sir.

Q. What did you do with those hairs?

A. I removed them and put them on a piece of paper, put them in an envelope, and delivered them personally to Prof. Wood.

Q. Prof. E. S. Wood?

A. Yes, sir.

Q. Did you make any further observations of the hatchet at that time?

A. Yes, sir. There were several spots upon it that looked like blood which I couldn't say was blood or was not blood.

Q. They looked like blood as you saw them?

A. Yes, sir.

Q. Did you look at them by the magnifying glass?

A. Yes, sir.

Q. And under the magnifying glass did they look like blood?

A. Yes, sir. Well, I couldn't tell whether it was blood or rust.

Q. Where were they?

A. They were all over the handle here; that is, I mean, all over the cutting part of the---over the head of the axe along here, and just about where that rust is, and some on the other side.

Q. Was there any on the handle?

A. I believe there were, yes, some two or three spots.

Q. Are those the ones up here?

A. Yes, sir, also the end of it.

Q. They looked to you, did they, like blood?

A. Yes, sir, the wood end.

Q. You mean the outside end furthest away from the hand?

A. Yes, sir.

Q. Did you do anything with the hatchet?

A. I looked at this the same way. There is only one there. I looked at the other one the same way.

Q. Which one?

A. The hatchet. Oh, did you say axes? I beg your pardon.

Q. I am speaking of the hatchets. Did you find anything on the hatchet?

A. No, sir.

Q. Did you see anything out of the way on the axe that attracted your attention?

A. There is one that had an end that looked to be bloody when I saw it first all along there.

Q. Did you do anything with the hatchets?

A. I gave them to Prof. Wood.

Q. Personally?

A. Yes, sir.

Q. Do you recall the date when you gave them to him?

A. I think it was the evening of the 9th of August.

Q. That would be a Tuesday?

A. Yes, sir.

Q. The hairs at the same time?

A. Yes, sir.

Q. Did you at any time see the hatchet that has been spoken of as the handleless hatchet?

A. Yes, sir.

Q. Where did you first see that?

A. Saw it at the marshal's office.

Q. Did you have anything to do with that yourself?

A. No, sir.

Q. When did you see it at the marshal's office?

A. I couldn't tell you the date.

Q. Was it that week?

A. I wouldn't be certain.

Q. You had nothing to do with the delivering of that to anybody?

A. No, sir.

Q. While I am on these matters, did you at any time remove the bed clothing from the bed in the guest chamber?

A. No, sir. The officer did that. I did not.

Q. In your presence or under your direction?

A. I couldn't tell you that.

Q. Have you them?

A. No, sir. The marshal has. I have not.

Q. You saw them?

A. Yes, sir.

Q. Did you afterwards see them in the marshal's office?

A. Yes.

Q. Marshal Hilliard's, I mean?

A. Yes, sir.

Q. When was that, if you remember?

A. I could not give you the date when it was. I think it was on the---I don't know whether it was on the 9th or not. I saw them that day. I don't know whether I saw them before that or not.

Q. Do you recall anything else you took away from the house?

A. Yes, sir, two pieces of carpet.

Q. That you testified to?

A. Yes. That is all I think I took personally.

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Q. Was it under your directions that any part of the mop boards or casings were taken away?

A. Yes, sir.

Q. Have you them?

A. Yes, sir: they are not in my possession: they are here.

Q. What did you do with them?

A. Gave them to Professor Wood.

Q. Where did you take the pieces from?

A. There was a blood spot on the west side of the dressing case in the guest chamber. That was removed with a little piece of plaster.

MR. KNOWLTON. Somebody under the directions of Mr. Jennings has had a number of photographs taken, which he has shown to me and which we agree may go into the case as exhibits. There are 20 of them.

(Photographs marked Exhibits 24 to 43 inclusive).

Q. Can't you tell from that (Ex. 16) where that piece of mop board was taken away?

A. Yes, sir, about there.

Q. Right behind the bureau?

A. Yes, sir.

MR. KNOWLTON. (To the jury). Gentlemen [you] will remember, if you will allow me to say so, that a piece of mopboard was taken away, down there, right behind the bureau. You saw where it was gone.

Q. (Showing piece of mopboard to witness). Is that the piece of mopboard that was taken away from that place?

A. I think it is; yes, sir.

Q. And what was there on it that led you to take it away?

A. There were two or three blood spots on it.

Q. Won't you point them out now, as long as you have it in your hand?

A. That is one.

Q. Speak louder, Doctor.

A. I see but one at all distinctly, now. I could give you the measurements by referring to my notes.

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Q. Refer to them.

A. (Referring) I have two spots.

Q. Let me call your attention to that up there?

A. Yes, sir.

Q. Is that the other one?

A. Yes, sir; it must be.

Q. Before I show this to the jury, which side is up as it stood?

A. That one.

Q. As it is now?

A. Yes, sir.

(Shown to Court and jury.)

MR. ADAMS. How many are you pointing out?

MR. KNOWLTON. Two. I put that into the case too.

Q. Did you take anything away from that room beside that?

A. That is all, sir, except the piece of plaster, and I think one of the marbles of the dressing case---marble slabs.

Q. The piece of plaster, have you it?

A. No, sir; I have not.

Q. Do you know where it is?

A. The last time I saw it was in the custody of the Court at Fall River.

Q. Well, I will try and get it. Was there anything on that that caused you to remove it?

A. A spot of blood.

MR. KNOWLTON. Probably we will agree on what the piece is, if we find it.

MR. ADAMS. We agreed at the time, if you remember.

Q. Did you say you took away a piece of marble also?

A. Yes, sir.

Q. Have you that?

A. Down stairs, I presume. I don't know whether it is here or not. It is, in the marshal's possession at the present time.

Q. I will suspend the examination of that for a moment or two and ask you if those are the clothes that came from the bed? We will take it one at a time. What is that?

A. It is a

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pillow sham.

Q. Where was that pillow sham on the bed?

A. I don't see any blood on that. That must have been the right hand one.

Q. The one farthest away from Mrs. Borden's body?

A. Yes, sir.

Q. What is that? That you found no blood on at all?

A. I didn't see any; no, sir.

MR. KNOWLTON. He can remember which one he calls the right hand one and which the left without having any marks put on them, I suppose.

The WITNESS. This is the left hand one. I am looking for the pin holes. I am not sure which way. There, this is the top.

Q. Which is the top?

A. That way.

MR. KNOWLTON. Can't we mark that some way with a pencil so we will know it is the top? I have written "top" there.

Q. And is the side on which I have written the word "top" the outside, that is, the side that was not against the pillow?

A. No, sir; that was up above.

Q. That is, the pillow sham rested on the pillow that way, not so?

A. Yes, sir.

Q. The side on which I have written the word "top" is the outside?

A. Yes, sir.

Q. And is that the upper left hand corner of the pillow sham as it stood?

A. Yes, sir; as I remember it.

Q. How did that stand, nearly perpendicular or nearly flat or neither?

A. It was neither. It was slanting as I remember it.

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Q. Half way between the two?

A. Yes, sir.

Q. And does that present the same appearance as to blood spots as it did at that time?

A. Yes, sir.

Q. As it does now?

A. Yes, sir.

Q. The one on which I have written the word "top" was the pillow sham nearest to Mrs. Borden?

A. Yes, sir.

Q. What is that?

A. That is the bedspread.

Q. Now will you find the part of that that contains anything that you desire to call attention to. I think you have got it wrong side out, sir, if you will permit me to make a suggestion.

A. I think I had it right. I think this is the side that was down on the side of the bed next to Mrs. Borden's body, as I remember it.

Q. Right here?

A. Yes, sir.

Q. That is, so? That is the side next to her?

A. Yes, sir; as I remember.

Q. And is that in the same condition now as to blood spots, if they are blood spots, as it was at the time when you saw it on the bed?

A. Yes, sir.

Q. And are there any other blood spots besides what are shown by this part of it?

A. I don't see any.

MR. KNOWLTON. Hold it up so the jury can get a little idea of it. My friend suggests that I indicate also on that picture. (Exhibit 24.)

Q. Taking Ex. 24 can you indicate where they are on that?

A. No, sir; it is the wrong side to.

Q. Yes, that is so. Looking at Ex. 15 will that assist you in

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pointing out to the jury where the blood spots were that you have spoken of?

A. Yes, sir; right along here.

Q. Won't you point again, sir?

A. Right along there. That, I don't think, was down. I think the fringe was tucked under as I remember it. It was just along there where those spots were.

Q. I don't think that is going to help us very much; I won't bother to show that to the jury. Were the blood spots that you saw more on the top of the bed or more on the side of the bed near the body?

A. More on the side.

Q. Were they more near the head of the bed or more near the foot or equally distributed or how?

A. Nearer the head.

Q. And can you tell which part of this coverlid was nearest the head?

A. Only by the condition of those spots.

Q. From the condition of the spots can you tell?

A. Yes, sir; by their position, I should say that was the head.

Q. That was nearer the head?

A. Yes, sir. That is what makes me think it was tucked under. There are no spots there.

MR. KNOWLTON. I will say "head" on it.

Q. Where I have written the word "head" is the corner of the spread?

A. The left hand upper corner.

Q. That is so, something that way. Supposing I am at the head of the bed and you are at the foot, that is where the top corner would come?

A. Yes, sir; so far as I recollect.

Q. Did you take away the whole marble?

A. Just one, that is all.

Q. This piece?

A. Yes, sir.

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Q. And is that the piece of marble you took away?

A. Yes, sir; looks like it.

Q. What was there on this that caused you to take it away?

A. Two or three blood spots.

Q. Won't you indicate them. Where were they?

A. I wouldn't say positively where they were.

Q. What did you do with the piece of marble?

A. Gave it into the possession of the marshal.

Q. You didn't have possession of the bed spread at all?

A. No, sir.

Q. And did you also take away another piece of the casing in any part of the house?

A. I caused it to be taken away; didn't take it away personally.

Q. Where did you take it from?

A. From the dining room door down stairs.

Q. And is that the piece?

A. Yes, sir; I think it is.

Q. And why did you take that away?

A. On account of this stain.

Q. At that time what did it look like to you?

A. Blood.

(The piece was shown to the jury.)

Q. While I am on this subject, are there any other things that you yourself passed through your hands that I have not asked about, disassociated from the bodies. I will come to them by and by.

A. Well, there was some clothing---not this particular item.

Q. You have the clothing that was taken from the deceased?

A. Yes, sir.

Q. In your possession?

MR. KNOWLTON. It is at the disposal of the defence. I

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should not produce it unless you call for it. It is for anybody's use that wants it, but we shall have no occasion to produce it ourselves. If for any purpose hereafter the defence want it, it can be sent for immediately.

Q. Any other clothing besides that did you have anything to do with?

A. Yes, sir.

Q. What?

A. A dress waist, a dress skirt and an under white skirt.

Q. And where did you first see them?

A. During the search of the house the Saturday following the tragedy; that would be the 6th.

Q. Where were they when you first saw them?

A. Mr. Jennings handed them to me.

Q. Where?

A. At the house, in the guest chamber.

Q. Do you recall whether the defendant was there or in the vicinity at the time?

A. I think she was in the vicinity; yes, sir.

Q. And while I am waiting for that, did you also take a lounge cover?

A. I didn't take it myself, I told them to take it with the rest of the clothing.

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Q. I won't trouble to produce the lounge cover; at present I do not care for it. It was the cover under his head?

A. Yes, sir. (Correcting himself). No, sir, I don't think the cover was on the lounge at that particular time. I think the sofa was without any cover.

MR. KNOWLTON. Very good. I will examine it myself and if I see anything hereafter that makes it look as if we wanted it---

THE WITNESS. I should also say that I had the shoes and the stockings.

Q. When were those given to you?

A. Those were given to me during the inquest by the city marshal, and afterwards returned to him to give to Professor Wood.

Q. You did not give them to Professor Wood yourself?

A. No, sir.

Q. (Exhibiting blue dress and waist and white skirt to witness). Were those the articles that were handed to you by Mr. Jennings?

A. That is the dress and skirt.

Q. Dress and waist?

A. Dress and waist. (Examining white skirt). There is a minute pin spot of blood on the skirt: I cannot find it now.

Q. I won't trouble you to look for it now. Was that the skirt and dress?

A. It looks like it. That is the skirt and the dress: I don't know whether that is the white skirt or not.

Q. We will come back to that later. Did you further see the bodies of Mr. and Mrs. Borden?

A. Yes, sir.

Q. And make a further examination of them?

A. Yes, sir, I made a thorough autopsy.

Q. When was that?

A. That was on the 11th of August.

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Q. And where?

A. At the Oak Grove Cemetery.

Q. Who was present at that time?

A. Dr. Draper, Dr. Cone and Dr. Leary.

Q. Dr. Francis W. Draper of Boston?

A. Yes, sir.

Q. The other two gentlemen belong in Fall River?

A. Yes, sir.

Q. And which body did you examine first?

A. We examined the body of Mr. Borden, I think, first.

Q. Andrew J. Borden?

A. Yes, sir.

Q. State what you did at that examination in detail, Doctor. (Pausing and consulting with Prof. Wood a moment.) I withdraw that question for a moment. I will ask you before I go on to the examination at the Oak Grove Cemetery, what did you do with the dresswaist, skirt and petticoat that you received from Mr. Jennings?

A. Gave it to Prof. Wood.

Q. The same that you received it?

A. Yes, sir.

Q. (Referring to white skirt). Was that hole cut---assuming for the moment that to be the skirt---was that hole now there that you see in it, at that time?

A. No, sir.

Q. Was that hole in about the position where the spot of blood was that you have described?

A. Yes, sir.

Q. Won't you give the size and appearance of that spot of blood as you saw it?

A. About the size of a pin head, an ordinary pinhead.

Q. And about where that present hole is cut out?

A. Yes, sir.

Q. Now I come back to the question that I put awhile ago, or proposed to put. State what you did as to the body of Andrew J. Borden on Monday, did you say---August 11th.

A. Thursday?

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Q. Thursday, August 11, at the Oak Grove Cemetery.

A. We made a thorough autopsy of the body: examined every organ of the body and found them in healthy condition. We also counted very accurately the number of wounds upon the head.

Q. I will ask you just one general question as to everything else. Did you find anything that would be a cause of death, apart from what you found on the head?

A. No, sir.

Q. I won't spend any time on the rest of the body at all. I will ask you, now I think of it, what was the apparent size and weight of the body of Andrew J. Borden. Perhaps you measured it?

A. I did measure it, yes, sir.

Q. Give us the measurements.

A. May I refer to notes?

Q. You may refer to your notes as much as you please.

A. (Referring to notes). Five feet 11 inches.

Q. In length?

A. Yes, sir. Its weight I do not know; we did not have any way of approximating it.

Q. Was it the body of a stout man or a thin man?

A. Thin.

Q. For fear I may forget it, did you measure the body of Mrs. Borden?

A. Yes, sir.

Q. What was the size of that?

A. Five feet 3 inches.

Q. And what as to the condition of that, as to weight?

A. I don't know positively. I should think she was quite a heavy woman.

Q. You can give an estimation of the weight.

A. I should think she weighed about 200 pounds.

Q. And that comes right in connection with this same subject---was it a body containing considerable fat?

A. Yes, sir, a

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very fat body.

Q. And how was it as to the body of Mr. Borden?

A. Just the reverse. Mr. Borden was lean: Mrs. Borden was quite fat, fleshy.

Q. Did you at that time make any examination of the wounds in the head of Mr. Borden?

A. Yes, sir.

Q. Have you attempted to describe the position of those by means of a plaster cast?

A. Yes, sir.

(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.

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 on the left side---

Q. Won't you illustrate on that cast, but keeping your description in the same form so that it will go into the record all right; beginning in front of the ear.

A. From in front of the ear, commencing about an inch and a half in front of the ear, to probably an inch and a half behind the ear, the bone was all crushed in.

MR. KNOWLTON. It would be convenient if you could rest this on a shelf, but I believe there is no shelf to this witness stand. I suppose you will have to refer to your

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notes.

THE WITNESS. Yes, sir.

MR. KNOWLTON. I will hold the cast for you,---unless you object to my standing so near the witness, Mr. Jennings?

MR. JENNINGS. No, sir.

Q. (Holding cast on one side). Does that represent something the position of his head as he lay,---as that is now?

A. Certainly. That is about the position in which he lay upon the lounge.

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 four 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 four and a half inches long. That wound here over the eye---over the left eye, two 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 cheek bone, severing it, and ended just below the cheek bone. That wound was four and a half inches long.

Q. You mean by long, this way?

A. Yes, sir, up and down. The next wound commenced about two and a half inches above the eyebrow and to the outside of it. That one was two inches---I can get those without referring to my notes, probably.

Q. How deep did that go?

A. That cut into the skull.

Q. Into the skull?

A. Yes, sir: not through it but into it.

Q. None, so far, cut through the skull?

A. Yes, sir, this one cut through the eye cutting the eye in half, and into the cavity of the brain.

The next wound was about an inch to the left of this previous one, and about half an inch long. That had simply left its mark in the bone.

Q. Didn't go through the bone?

A. Didn't go through the bone. The other went through into the brain. All those went through into the brain. This one was three inches long. These two right directly in front of the ear and separated by about half an inch were four and four and a half inches respectively, or two inches. One was two inches and the other was four inches. The last one here was two inches. That is directly above the ear.

Q. All these went into the substance of the brain?

A. All those went into the substance of the brain. And in examining the skull, there was also some that showed in the skull that did not show in the fleshy part.

Q. How?

A. Possibly by the hatchet going into the same cuts, but not exactly underneath on the bone.

Q. On counting them how many wounds did you make there?

A. Ten.

Q. You have described the ten and testified about them as relatively illustrated on this plaster cast?

A. Yes, sir.

Q. Does that marking undertake to give the accurate size of the wounds?

A. Approximately, yes. It is not drawn to a scale.

Q. Didn't you state, for example, the shortest one was half an inch?

A. Yes, sir.

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Q. Obviously it is not there. Do you undertake to say that those are accurate representations of the length of the different wounds?

A. Yes, sir. Well, no, sir, they are not. Some of those that are four and four and one-half inches are not four and one-half inches on the cast.

Q. Did you find any other wounds on the body of Andrew Borden at all?

A. No, sir.

Q. Did you determine by your examination at that time the direction of the wounds?

A. Yes, sir, mostly all vertical; in fact, they were all vertical.

Q. That is, assuming for a moment or two that the hatchet was which way?

A. You mean as regards horizontal?

Q. Well, that is what I am asking now.

A. No, sir. They are more from the---well, supposing that the other end of the hatchet there more from the left to the right.

Q. That is the way (illustrating)?

A. No, sir, this way.

Q. From just about here down to here?

A. That was the way that one was.

Q. How about that?

A. That is more directly in.

Q. Perhaps you can tell that better than I can using that merely as a chalk. Give as near as you can approximate at this time the direction of the several wounds?

A. That wound was straight in.

Q. Where you have the hatchet now?

A. Yes, sir. That was struck probably at that angle, not any more.

Q. That is, assuming it was a hatchet for a minute or two, the hatchet was so?

A. Yes, sir. This one was just about

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the same. This one was this way, going in that way and taking this piece of bone out with it. The others were mostly straight in with a little bend towards the left.

Q. Which of them crushed the skull?

A. All of these.

Q. All of which?

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. And what is the thickness of that part of the skull as compared with other portions of the skull?

A. It is extremely thin.

Q. Well, I repeat the question. 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.

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Q. Did you at that time make any examination of the intestines?

A. At the autopsy, yes, examined everything.

Q. And what did you find to be the condition of the intestines of Mr. Borden?

A. The upper part of Mr. Borden's intestines was comparatively empty. The lower part were filled with feces, solid feces.

Q. The upper part means the part nearer the stomach?

A. Yes, sir.

Q. Into which the food goes first after it leaves the stomach?

A. Yes, sir.

Q. That was comparatively empty?

A. Yes, sir.

Q. And the lower part was filled with feces?

A. Yes, sir.

Q. That is, the digested food with the nutriment extracted?

A. Yes, sir.

Q. The remains after all the good has been taken out?

A. Yes, sir.

Q. I pass now to the body of Mrs. Borden. Did you make an examination of that?

A. Yes, sir.

Q. I will ask you as I did before the general question, whether you found any other cause of death than the wounds in the head and perhaps one in the neck?

A. No, sir.

Q. No other vital organ was affected in any way?

A. No, sir.

Q. And lest I forget it, I will ask you now if you examined the intestines of that body?

A. I did, yes, sir.

Q. And what did you find the condition of the intestines of the body to be?

A. I found the lower part of those intestines empty; in the upper part there was some undigested food.

Q. The upper part means the part nearest the stomach, as before?

A. Yes, sir.

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Q. When you are speaking of the upper part and lower part of the intestines, that is a separate department of the intestinal system?

A. One is the large bowel and the other is the small.

Q. When you describe the lower, you mean the large?

A. Yes, sir.

Q. And the upper is the small?

A. The upper part is the small.

Q. And going back a moment to the intestines of the body of Mr. Borden, when you speak of the feces, were they in the large intestines?

A. Yes, sir.

Q. And the smaller intestines were empty?

A. Yes, sir.

Q. In the case of Mrs. Borden's body the small intestines had undigested food in them?

A. Yes, sir.

Q. What do you call that exactly in physiology?

A. Well, I don't know any other name except undigested food.

Q. Doctor, what is chyle?

A. Well, chyle---it might be called chyme, but chyme is more digested food.

Q. I won't trouble you for an essay upon it: but the lower part was empty; you mean the large intestines?

A. Yes, sir.

Q. Now, among the wounds on the body of Mrs. Borden did you find any except on the head?

A. Yes, sir. I found one on the back?

Q. Whereabouts on the back was that? I will use this (small cast) for convenience, with the permission of the Court and counsel?

A. It was just at the junction of the neck with the body, the lower part over the spine, and the upper part running upwards and downwards two and one half inches long.

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Q. I think, if it is not going too far, you can illustrate to the jury the position better by my own back than any other way.

MR. ADAMS. I have a piece of chalk here you can have.

MR. KNOWLTON. I don't want to chalk my coat.

Q. Will you point with your pencil exactly on my back where that was, for illustration?

A. It started from about there, and went up in that direction about two and one half inches.

Q. You have attempted to mark it on this mannikin here?

A. Yes, sir.

Q. That was in the flesh?

A. Yes, sir.

Q. Not in the bone at all?

A. No, sir.

Q. Now, all the other wounds were on the head?

A. Yes, sir.

Q. Were there any other wounds on the head excepting the cuts?

A. Yes, sir.

Q. What were they?

A. There were three, what we call, contusions on the front of the face.

Q. Where were they?

A. Two of them over the left eye and one on the bridge of the nose, just over the bridge of the nose.

Q. I will ask you to go back again a moment. Did you notice those contusions on Thursday?

A. Yes, sir.

Q. They were there then?

A. Yes, sir.

Q. Were they at that time fresh?

A. Yes, sir.

Q. And so, to leave that subject once for all, those three blue marks indicate those contusions?

A. They do, yes, sir.

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Q. Was there any cutting about them?

A. No, sir.

Q. Were they, if I may ask, what we sometimes call black-and-blue marks?

A. Yes, sir, bruises.

Q. How were they in reference to the position of the face, assuming that the person in life fell on her face?

A. They were on that side, on the left side, the side she was lying on.

Q. Were they where the face would strike assuming it fell in life?

A. Yes, sir.

Q. How severe were they?

A. Well, it was an ordinary bruise, I wouldn't undertake to---

Q. Three of them?

A. Yes.

Q. Now then, have you made that to indicate the position of the wounds upon the head of Mrs. Borden?

A. Yes, sir.

Q. And I will use it then for that purpose. Will you describe the wounds as you found them on the head of Mrs. Borden?

A. Yes, sir.

Q. Was any part of the skull of Mrs. Borden crushed in?

A. Yes, sir.

Q. What part?

A. The right side of the head.

Q. Can you describe it on your own head, what part of it it was?

A. Yes, sir. I can describe it on you better.

Q. Well, perhaps you can describe it by reference to the ear or eye or something?

A. It commenced about there.

Q. Near the ear?

A. Yes, sir; went zig-zag, and took in a space of that size. I have an exact measurement of it here somewhere.

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Q. Give them, if you please.

A. There was a hole in the right side of the skull an inch and a half by five and one-half inches.

Q. That was where it was crushed in?

A. Yes, sir.

Q. Now won't you describe in detail the wounds upon the head of Mrs. Borden?

A. Yes, sir. On the---

Q. Perhaps here again you may come around, if you please. Is that somewhat the position?

A. Yes, sir.

Q. Now then, describe the wounds in detail.

A. Well, taking the left side of the face, there is this scalp wound. That is where the flesh was cut off, but not separated from the head, in other words, making a flap wound, that is, hinge, so that when it fell there it would fall down here. In other words, it was severed from the front backwards.

Q. Is that the approximate shape of it?

A. Yes, sir.

Q. That is, merely a slit in the skin?

A. Yes, not touching the skull. That was two inches in length by one and one-half in width.

Q. That is all there was on that left side?

A. Yes, sir, on the perfect left side, but on the left side of this middle line at the ending of the head there were four wounds like those, that is, on the left side, dividing the head in halves. These four were on the left half of the head.

Q. Describe those wounds separately or together, as you please.

A. Well, all of these three went into the skull, particularly this one, taking a piece right out of the skull. This one went into it, and that one went into it. These two simply

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marked the skull, those two there, the two lower ones.

Q. And these went into the skull; did they go through it?

A. Yes, went through it, this one taking a piece out about an inch and a quarter long, right out of the skull.

Q. The one that went there was the one nearest the top of the head?

A. Yes, sir. That one there and this went through.

Q. The one next it went through?

A. Yes, sir.

Q. Crushing the bone?

A. No, sir, just making a hole. These two simply left their imprint on the skull.

Q. The lower two and those on the inner medium line of the head?

A. Yes, sir.

Q. Simply left their imprint?

A. Yes, sir.

Q. That is to say, didn't go through, but cut in?

A. Yes, sir. In other words there were 18 wounds on the head. Taking those out there were 14.

Q. There were 14?

A. Thirteen there are there, all went through, crushed into the skull, and made that hole of which I have spoken, four and a half by five and a quarter inches.

Q. Give the length of those various wounds?

A. Well, taking that as the fifth one, that was one and one-half inches long. Then the next one was one and one-quarter inches long.

Q. What was that?

A. That was two inches. Then I have them all grouped after the seventh wound. All the wounds of the head following the No. 7 crushed through into the brain. One was two and one-half inches; the other was 2-3/4; another 1-3/4; one-half; 2-1/4; 1-3/4; 2-1/2. The next one reached from the middle line of the head toward the ear, 5 inches long.

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The next one was one inch; the next was half an inch, and the last one 3-1/2 inches. The same with those as with Mr. Borden. There were some marks on the skull that didn't show any flesh.

Q. What do you mean by that? Explain that a little more if you please.

A. Well, it was one week after the death that we had this autopsy, and took the accurate measures of these wounds, and the possibility is that the instrument in going into the head so frequently may have gone once or twice into the same cut, simply removing it, that is, pushing it aside and making a mark in the skull where there was none in the flesh.

Q. At any time, doctor, did you take an observation of the blood spots in any part of the house?

A. Yes, sir.

Q. Who was with you at that time?

A. Mr. Seaver.

Q. And did Mr. Seaver act under your directions at that time?

A. Yes, sir.

Q. Did he make a record or a memorandum of the blood spots?

A. He did, yes, sir.

Q. Did you also?

A. Yes, sir.

MR. KNOWLTON. I think, if the Court please, that I won't ask him to go over in detail those blood spots at present. If any controversy should arise as to the number or position of the blood spots, I should crave leave to recall Dr. Dolan to go over them. It will save a tedious repetition of the figures at this time.

MR. ROBINSON. I think we ought to have it now. We

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should not wish to develop the defence.

MR. KNOWLTON. Then in that case we will do it now.

Q. If you will give your estimate of them in your own way.

A. Beginning with up stairs 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 16-1/2 inches from the floor. There were two spots between the dressing case and the window, one 10-1/4 inches, the other 8-1/4 inches from the case. There were about fifteen spots on the marble, one of the marbles of the dressing case. I think it was the only one. I haven't got it noted. The drawers did not fit in closely on account probably of swelling, and on the lips of those drawers as exposed on the first one there were four spots, and on the second one 13 spots. On the lower part of the dressing-case, that is, the moulding and the bead work, there were about 50 spots, and there were also about 15 spots upon the glass, the looking glass of the dressing-case. On the east wall there were 7 spots, the farthest being 3 feet and 5 inches from the head of the bed. That was on the mopboard of the east wall. It is all I have for up stairs. For down stairs I have the farthest east on the wall three feet and two inches from the jamb of the dining-room, the highest on the wall is six feet and 1-3/4 inches. That is directly above the centre of the jamb of the dining-room door. The next highest is 6-1/2 inches. Now, the back of the lounge I have measured from the floor 3-1/4 inches to the west of the back of the

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lounge, that is, of the centre of the lounge, in a space 18 by 10 inches there were 86 spots describing the arc of a circle. There were about 7 spots on the parlor door, and 3 on the parlor door jamb. From the dining-room door to the jamb of which door, that is, the dining-room and kitchen, diagonally, the distance was 9 feet 7-1/2 inches. There were 6 spots on the moulding behind the lounge, 3-3/4 inches on the jamb. There were 40 spots

on the picture and frame that hung over the lounge, sofa, the highest one being 58 inches. On the jamb of the kitchen door there was one spot 3 feet and 7 inches high, and on the door itself 13 inches from the bottom there was one 1-1/4 inches from the side.

Q. The other, of course, on the sitting-room side of the kitchen door?

A. On the sitting-room side, yes, sir. That is all I have for blood spots.

Q. You have taken those up stairs too? I wasn't paying attention to your answer.

A. Yes, sir. I have given them all.

Q. What was the position of the head of the body of Mr. Borden as it lay on the sofa when you saw it with reference to its being near the front of the sofa or near the back of the sofa?

A. I should think it was about midway.

Q. What was its position as to its being up towards the top of the arm or down towards the bottom of the sofa?

A. I think by looking at that photograph that it was up a little bit higher; that is, I think that I took hold of that coat, as I said before, although I am not positive of it.

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Q. A little higher than half way up, I understood you?

A. No. The body was a little lower, I think.

Q. The head a little lower than half way up. My question was the position of the head, whether it was nearer the top of the arm or nearer down to the bottom?

A. I think that was practically midway.

Q. So that as to the four points of the compass, to proceed out into a geographical question, that was midway?

A. Yes, sir.

Q. And that exposed the side of the head?

A. Yes, sir.

Q. The side where the principal wounds were?

A. Yes, sir.

Q. Can you give the direction of the wounds that went into the head of Mrs. Borden, that is, as to whether they went in perpendicularly or at an angle?

A. You mean all of them?

Q. Yes, sir, taking first that in the neck. Did that go in perpendicularly to the surface of the flesh or at an angle?

A. No, sir, they were all angular wounds.

Q. What I mean is this. Assuming for a moment that those were blows of a hatchet, that is only for the purpose of this question at the present time, whether the direction of the hatchet was from directly above the head down on it or from the right-hand side of the head on to the left-hand side of the head on to it, if I make myself plain?

A. They are more from the left to right, though some of them were vertical wounds, that is, right down into it. I don't know that I could say exactly they were left to right.

Q. Did you also remove the skull of Mrs. Borden?

A. I did, yes, sir.

Q. And prepare it the same as you did his?

A. Yes, sir.

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Q. And have it now in your possession?

A. Yes, sir.

Q. And prepared it without interfering with the integrity of the bone surface of the skull?

A. Yes, sir.

Q. What is the thickness of the skull of Mrs. Borden where the wounds went through into the brain?

A. I don't know that I have an accurate measurement. It is little thicker than Mr. Borden's.

Q. Is there not a part of the skull which relatively is a thin part or relatively a thick part?

A. The one on the top that takes a piece out is pretty near the thickest part of the skull. That on there is the weakest part of the skull.

Q. My question was limited to this place that went through into the brain.

A. That was my question, sir. The top one went through into the brain.

Q. Well, where the skull was crushed in, what is the relative thickness of the skull there?

A. It is not over an eighth of an inch.

Q. What is the relative thickness comparing it with other parts of the skull?

A. Mr. Borden's is much thinner than this one.

Q. What is the relative thickness of that part of the skull of Mrs. Borden compared with the other parts of her skull?

A. Thinner.

Q. And whether there is any part of the skull that is thinner than the part that was crushed in, of Mrs. Borden?

A. No, sir.

Q. That is the thinnest part of the skull?

A. Yes, sir.

Q. What, in your opinion, caused these wounds?

A. I should think some sharp cutting instrument, possibly a hatchet.

Q. And this sharp cutting instrument would be with or without the leverage of a handle?

A. It must have a leverage.

Q. Of a handle?

A. Yes, sir.

Q. So you qualify your answer by saying it must be some sharp cutting instrument with a handle?

A. Yes, sir.

Q. Would a hatchet be consistent with the nature of the wounds that you found there?

A. Yes, sir.

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.

MR. ADAMS. Well, wait a moment. Do you want that?

MR. KNOWLTON. (After a pause) You asked me to wait, so I am waiting.

MR. ROBINSON. We objected to it.

MR. KNOWLTON. I didn't hear you object.

MR. ADAMS. We do not insist upon the objection.

(The question was read.)

A. Yes, sir.

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Q. In your opinion were the wounds which you found upon the head of Mr. Borden such as could have been inflicted with a hatchet by a woman of ordinary strength?

A. They were; yes, sir.

Q. Taking all the circumstances that came to your attention at the time of your examination on Thursday, including the condition of the blood and the heat of the body, did you form an opinion as to the question of which died first?

A. I did; yes, sir.

Q. And what was your opinion as to that matter?

A. Mrs. Borden had died first.

Q. Did you form an opinion as to how long before?

A. I thought it was from an hour and a half to two hours---or from an hour to a hour and a half, I should say.

Q. Taking all the appearances you observed?

A. Yes, sir.

Q. And looking at them as a physician and from your experience?

A. Yes, sir.

Q. What would be the effect upon that opinion derived from what you observed as to the condition of the intestines? Would that circumstance alone help you any further?

A. Yes, sir; it would show---

Q. Assuming, I beg your pardon, assuming that the two people ate at the same time before they were killed.

A. Yes, sir.

Q. How would it, and what would be the effect of that circumstance as you found it and have described it upon your opinion as to the question of which died first and the time of

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priority?

A. That the upper part of the bowel of Mrs. Borden contained some undigested food.

Q. No, my question was whether---you have stated one only of the several facts that you have already given as to the condition of the intestines of the two people. Taking all the circumstances of the conditions of the intestines of the two people as you have detailed them before, and which I need not repeat therefore, would those circumstances aid you in coming to a conclusion as to the question of which died first, and how long?

A. Yes, sir; they would as to which had died first.

Q. And what would they lead to, what would they point to as to that?

A. They would point that digestion in Mrs. Borden's body was going on.

Q. Assuming, of course---

A. That both had eaten at the same time.

Q. As I did before. And what?

A. That digestion was going on in Mrs. Borden

Q. That is not quite up to my question. The question was what those circumstances pointed to as to the question of which died first, and how long. You have got part way, perhaps, but I want the result of that fact, if it leads to a result in your mind?

A. I don't know that your question was quite clear.

Q. Very likely not.

A. That is, to me.

Q. Taking the circumstances as to the conditions of the intestines that you have described---

A. Yes, sir.

Q. Namely, the feces in the large intestines of Mr. Borden, and the large

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intestines of Mrs. Borden empty; the small intestines of Mr. Borden empty, and the small intestines of Mrs. Borden with undigested food.

A. Yes.

Q. Do those indicate anything as to which died first?

A. Yes, sir.

Q. What do they indicate?

A. Well, they indicate that digestion was going on in Mrs. Borden and had ceased in Mr. Borden.

Q. Now do they indicate anything as to which died first?

A. Yes, sir.

Q. What do they indicate as to which died first? You have come just short of the conclusion. I want you to state it if there is any. What do they indicate as to which died first?

A. Well, they indicate that digestion was concluded in one and going on in the other.

Q. Does that fact indicate anything, assuming they ate together, as to which died first?

A. Yes, sir.

Q. Well, which died first?

A. Oh, Mrs. Borden.

Q. Thank you. Does that of itself, independent of the other things you have seen, or with them, assist your conclusion as to the time at which she died first, taking them in connection with the other circumstances that you observed at that time? Would they modify the opinion you have already given?

A. No, sir; they would not.

Q. Would they support it?

A. Yes, sir.

MR. KNOWLTON. I do not find anything further. If I should look over my notes and find anything that I have omitted I should beg leave to ask it.

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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.

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.

Q. Well, I only want to know if you are specially sure of the exact time when you arrived there?

A. I don't think it was. I feel confident that it was not as late as ten minutes of twelve.

Q. Then we may assume that it was about a quarter of twelve?

A. Yes, sir.

Q. Now when you got there this Mr. Charles Sawyer who has been spoken of was on guard at the side door?

A. Yes, sir.

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Q. And you found in the house four ladies, besides the defendant, Miss Russell?

A. Yes, sir.

Q. And Mrs. Churchill?

A. Yes, sir.

Q. And Mrs. Bowen?

A. No, sir; I don't think at that time.

Q. You don't recall her?

A. No, sir.

Q. You found also Dr. Bowen, didn't you?

A. Yes, sir.

Q. And it was he who showed you upstairs?

A. He showed me upstairs, whether---

Q. And went with you?

A. I am not sure of that.

Q. Don't you recall when you first had a view of Mrs. Borden that he was with you in that front chamber?

A. I wouldn't be positive, sir.

Q. Before you went upstairs you saw that Mr. Borden was lying in the dining room and his body was covered with a sheet?

A. Yes, sir.

Q. And you just lifted the sheet and saw the injuries and then passed on. Is that right?

A. Yes, sir; I felt of his hand. I took hold of his hand.

Q. You hastily took the temperature?

A. Yes, sir.

Q. And saw that he had died. Now when you got upstairs with Dr. Bowen are you able to recall what the light in the room was? And I mean by that the condition of the light, whether it was very light or somewhat dark?

A. It surely was not dark. I don't know whether the blinds was thrown open or not?

Q. You speak of them as blinds. Do you mean the shutters, the board shutters?

A. The inside shutters.

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Q. Of course if they were closed they would effectually exclude the light?

A. Yes, sir. That is, it wouldn't be a light room.

Q. Now do you remember about those shutters, whether they were open or partly closed?

A. I feel confident that the north one was open.

Q. Did you know that Patrolman Doherty, now Capt. Doherty, had been there ahead of you and had lifted up this woman?

A. Not at that time, I did not.

Q. You now know it, don't you?

A. Yes, sir.

Q. Did you know at the time that Dr. Bowen had been there and had pulled out the right hand of Mrs. Borden and felt of the wrist?

A. I didn't know; no, sir.

Q. So that when you say that the first time that you saw her the arms were up over the head, you do not mean to have us understand that that was the position she was first found in, but only that is the way in which she was when you first saw her?

A. That is all; yes, sir.

Q. And you now know that other people had seen her and touched her before you got there?

A. Yes, sir.

Q. Did you know that Capt. Doherty had moved the bed?

A. At the time I had seen her?

Q. Yes.

A. No, sir; I didn't.

Q. You now know that he had moved the bed, don't you?

A. I don't know; no, sir.

Q. At the time that you first saw her did you take notice so that you could give us a fairly good judgment of the space

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between the side of the bed and the bureau?

A. I think so.

Q. And won't you tell me again, if you have already stated it, how much you think it was, in feet and inches?

A. I would say that I measured it afterwards, if that will answer it.

Q. Well, you mean you measured between the objects afterwards as you found them?

A. Yes, sir.

Q. You do not know at the time when you measured them afterwards that they were exactly in the same position that you saw them at the time you were there?

A. I couldn't say positively; they appeared to be.

Q. Then I want to know, as well as you can tell, what the distance was between the bureau and the bed at that time when you first saw her?

A. Well, having the other measurement in my mind I cannot very well give you that.

Q. Tell me what it was when you measured it subsequently?

A. 37 inches.

Q. One inch over three feet?

A. Yes, sir.

Q. Don't you recall telling me that, in your opinion, it was about two feet or two feet and ten inches?

A. No, sir; that was not the question. You asked me how much there was on either side of the body. I said about a foot on either side if I recollect properly.

Q. At the time when you saw her did she fill up well the space between the bureau and the bed?

A. She did not; no, sir.

Q. So that when you looked at her there was room enough to go

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between her and the bed?

A. Yes, sir; not to walk much in between her and the bed.

Q. But one could get along readily?

A. Yes, sir.

Q. Was there room between her and the bureau for one to go?

A. Yes, sir; more room than on the other side.

Q. Will you be good enough to measure off a space of three feet there, between that end of the rail and the side of the wall, that white post, if there is room enough for it?

A. You mean on the floor?

Q. Yes, anywhere. Give us an idea.

A. (Measuring) Three feet comes to there.

Q. It comes just outside of the post, of the rail?

A. Yes, sir; that second line.

Q. So that when you saw her and took your measurements afterwards she was lying in a space somewhat like that?

A. Yes, sir.

Q. That is, the space between the post, I mean the wall post, and the post of the rail in front of the jury. What you did then was merely to take a view, a look?

A. Yes, sir.

Q. The autopsy, or the professional view for getting at the appearances after death, was performed later?

A. No, sir; that was the view in the morning.

Q. That was the view in reference to the autopsy. But the autopsy---perhaps that is an equivalent word, a view---but the examination which you made to get at the appearances was made later?

A. Yes, sir.

Q. And that of Mr. Borden perhaps three o'clock in the afternoon?

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A. Yes, sir.

Q. You went, after you had been upstairs to see her, down stairs, and then you went into the cellar, didn't you?

A. Yes, sir.

Q. And you received there some hatchets?

A. Yes, sir.

Q. And two axes?

A. Yes, sir.

Q. And that was all that you saw or received?

A. Yes, sir.

Q. You have testified very fully in reference to them before, haven't you?

A. Yes, sir.

Q. And you have before very fully expressed your opinions in reference to this case, haven't you?

A. Opinions?

Q. I mean upon the witness stand?

A. Yes, sir.

Q. As to any of those views have you made any change, or is your opinion today the same as it was when you testified before in the trial at Fall River?

A. In regard to what, sir?

Q. As to any of the matters or things upon which you then expressed an opinion?

A. I do not recall any at the present time, sir.

Q. Did you entertain the opinion at that time that the hatchet which has the claw head was a hatchet that could adequately cause all the injuries, with the exception of the bruises and contusions that you found upon the heads of Mr. and Mrs. Borden?

A. Did I have the opinion that it could have done so?

Q. That it adequately could.

A. You mean at the trial in the

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trial court?

Q. I understand you to say that the opinions you expressed there you still hold, and now I ask you if you didn't express that opinion there?

A. I expressed the opinion---

Q. I beg your pardon; I am asking you with reference to a specific question.

MR. KNOWLTON. I pray your Honors' judgment. The witness should be allowed to finish his answer.

Q. Whether you did express the opinion that that hatchet could adequately cause the injuries upon the heads of Mr. and Mrs. Borden, with the exception of the bruises and contusions which you found?

MR. KNOWLTON. I submit whether he should have been interrupted.

A. I don't recall, sir, whether I did or whether I didn't.

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(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. Where 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.

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. It could?

A. Yes, sir.

Q. Do you remember that at the former trial I presented for your inspection the head of a china doll?

A. Yes, sir.

Q. And that you marked upon it the location of the injuries upon Mr. Borden's head?

A. Yes, sir.

Q. And do you recall describing upon the left side of Mr. Borden's head, above the ear, in what we call the temple region, a crushed place?

A. Yes, sir.

Q. And do you remember the dimensions you gave?

A. I think it was something like four by two, if I recollect correctly.

Q. And didn't you call attention to the claw head of this hatchet and say that it was a rectangular injury that could have adequately been caused by the head of that?

A. Yes, sir.

Q. Do you desire to change that opinion?

A. Yes, sir.

Q. In what respect?

A. Because I know that they were not done by one blow: I know that now.

Q. But you had performed an autopsy then, hadn't you, or had made a report?

A. Yes, sir, but I had not prepared the skulls at that time, sir.

Q. You had not prepared the skulls?

A. No, sir.

Q. When were they prepared?

A. I could not tell you, sir, the date.

Q. About when?

A. I don't think I had them ready before the first week or two in September: I don't think so.

Q. Didn't you have them ready to bring into Court at the time of the hearing there?

A. I do not recollect that I had.

Q. Wasn't that hearing in August of last year, on a very hot day, when you testified and I asked you questions?

A. It was very hot, I know.

Q. Now didn't you have them at that time?

A. I won't say that I did not. That was towards the end of August.

Q. And before you went on to the witness stand, hadn't you examined them?

A. No, sir: I hadn't examined them: I will state that positively.

Q. Hadn't they been prepared, and weren't they in your possession at that time?

A. They were certainly in my possession.

Q. Hadn't they been prepared, didn't you say so?

A. If I said so then, certainly they were: but at the present time I do not recollect.

Q. What I am getting at is this---whether when you testified at the trial in the District Court in Fall River, you had not had those skulls in your possession with an opportunity to examine them, and, notwithstanding that, expressed the opinion at that time that the claw head of this hammer would adequately cause the injuries which you described as a crushing blow upon the head of Mr. Borden?

A. Whether I had them prepared then or not, I cannot say. I can say positively that I had not examined them.

Q. And therefore you have since changed your opinion?

A. Yes, sir, by the examination of the skulls.

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Q. Don't you remember, coming back again to this hatchet, that you described in that court the length of its cutting edge?

A. Approximately, yes, sir; I did not measure it.

Q. Let us see if I can refresh your recollection, p. 107.

"Q. How large a hatchet was it? A. I think it had a cutting surface of about five inches, possibly more.

Q. How much would that hatchet weigh?"

I have no business to read that, because I did not ask the question. Then what you said, was an expression of opinion as to its length?

A. Yes, sir, not accurate measurements.

Q. There had to be two meetings, had there not, to complete the autopsies on the bodies of these deceased people?

A. Yes, sir, calling that one at the house a partial autopsy.

Q. At all events, you made a written report on it?

A. Yes, sir.

Q. Did you have authority to make that autopsy, from the Mayor of Fall River?

A. Yes, sir.

Q. Did you have it there at the house that day?

A. Yes, sir.

Q. Was it verbal?

A. Yes, sir.

Q. Did you subsequently have authoirty [sic] 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 by "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

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arrested, was it not?

A. I could not say as to the arrest.

Q. At all events, it was on the 11th 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 any one 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.

Q. It revealed among other things, the blow in the back of Mrs. Borden?

A. Yes, sir.

Q. How long was that?

A. Two and a half inches.

Q. And which way?---which was the highest side of the wound?

A. The one on the outside?

Q. The left, yes, sir.

A. On the left, yes, sir.

Q. I have no objection to you marking my coat, and you may do it with a piece of chalk, so that we may see the

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location and extent of that injury. I hope that I shall not be numbered as an exhibit.

A. About that, sir. (Marking place on the back of Mr. Adams' coat).

Q. Have you given now the location and the length?

A. Yes, sir.

Q. (To the Jury) You will excuse me, gentlemen. (Mr. Adams turning his back to show the chalk mark to the jury.) Now that was the injury you found at the Oak Grove autopsy?

A. Yes, sir.

Q. And that was a wound how deep?

A. Two and a half inches deep at that time.

Q. An incised wound?

A. Yes, sir.

Q. And could adequately have been caused by the hatchet with the claw head?

A. Yes, sir.

Q. Where was the assailant standing in your opinion, when that blow was given?

A. In the rear.

Q. In the rear?

A. Yes, so.

Q. How was the assailant's face,---towards the rear of the assaulted or the back of the person assaulted,---facing the back of the person assaulted?

A. I should say so. Yes, you mean the assailant stood?

Q. Yes.

A. Yes, sir.

Q. Was there any other injury that you discovered at the Oak Grove view that you did not find at the house?

A. I do not think so, sir.

Q. Have you told us about the injury upon the left temple of Mrs. Borden?

A. The scalp wound?

Q. Yes.

A. Yes, sir.

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Q. There was a flap cut here? (Indicating on forehead)

A. Yes, sir.

Q. Cut so it came forward like that (I am pointing to the right, because that is before the Jury, but really on the left side of the head)?

A. Yes, sir.

Q. And it was cut from the front towards the rear?

A. Yes, sir.

Q. With the hinge on the back part of the cut so that it would lift up in this way, as on a hinge?

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. They were probably and could adequately have been so caused?

A. Yes, 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. Did he take notes or cause notes to be taken of the appearances there disclosed?

A. Yes, sir.

Q. You don't recall that there were but eighteen on the head?

A. No, sir. You don't mean the contusions?

Q. No.

A. With the contusions, eighteen.

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Q. With the wound on the back there would be nineteen cutting injuries which indicated so many separate blows?

A. Yes, sir.

Q. Upon the head of Mr. Borden there were how many?

A. Ten, with his face and head.

Q. Excuse me.

A. Face and head.

Q. There were ten in all?

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. On the blade of any of them?

A. No, sir.

Q. On the handle of any of 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

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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. You know it is not a fact?

A. Yes, 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?

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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E I G H T H D A Y

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)

MR. ADAMS. Let me have those casts.

MR. KNOWLTON. (To Dr. Dolan) Where are those casts?

DR. DOLAN. Down stairs.

Q. (By Mr. Adams.) These images or casts that were used yesterday appear to have certain marks upon them. My question is, do you know who made them?

A. Yes, sir.

Q. Who did?

A. Dr. Draper.

Q. Dr. Frank W. Draper, of Boston?

A. Yes, sir, he marked them. We were both together.

Q. When was that done?

A. It was done, I should judge last Friday or Saturday, here in New Bedford.

Q. Last Friday here in New Bedford?

A. I would not say positively Friday.

Q. Were those blue marks which appear on the casts put on when you had before you the notes taken at the Oak Grove examination or autopsy?

A. Yes, sir.

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Q. The actual marking was done by Dr. Draper, was it not?

A. Yes, sir.

Q. I think I left you last night substantially in the sitting room after you had been up stairs to see Mrs. Borden. Did you then make a more extended examination of Mr. Borden's body?

A. Yes, sir, the second time I saw it, I did.

Q. And that was shortly after twelve o'clock,---between 12 and 1?

A. I hardly think it was twelve.

Q. About twelve o'clock?

A. Yes, sir.

Q. The photograph which is marked Ex. 5 and is the representation of Mr. Borden lying on the sofa, I understand you to say, is a correct representation of the way he looked to you when you saw him?

A. Yes, sir.

Q. With the exception that the head is lower down?

A. Yes, sir.

Q. In this photograph there appears to be on the arm of the sofa near the dining room, something folded up which is not clear or distinct. Was that the coat?

A. No, sir, not the very bottom.

Q. No, I mean, on the upper arm of the sofa?

A. That is the Prince Albert coat.

Q. When you saw him, was his head upon that?

A. No, sir.

Q. Did it touch it at all?

A. No, sir.

Q. How much did it settle, in your opinion, from the time you saw it?

A. I could not really say that it had settled at all. My impression is that I lifted that somewhat; I am not sure. If I did, of course I lifted the head some.

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Q. Have you any opinion as to the effect that these blows would have on the head with reference to its settling on the arm of the sofa?

A. I have not thought of one before. I should think possibly repeated blows would cause it to sink some from its natural position.

Q. So that when Mr. Borden first lay down on the sofa, you would judge that possibly his head might have been up touching his Prince Albert coat?

A. I would not say that; I should say that the cushion would slide with his head.

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Q. This larger cast, I believe, is the representation of Mr. Borden?

A. Yes, sir.

Q. Did you take or cause to be taken any measurement there of the height of the sofa from the floor?

A. Yes, sir.

Q. Do you remember what it was?

A. I think I gave it yesterday: three feet one, the back.

Q. That is, to the back?

A. Yes, sir.

Q. How high was the top of the seat from the floor, if you remember?

A. I don't think I measured that, sir.

MR. MOODY. It is in the case, Mr. Adams, in Mr. Kieran's testimony.

MR. ADAMS. Yes, I think so.

(Mr. Adams placed an arm chair with a cushion on it against the wall at the foreman's right hand, the left arm of the chair toward the wall and the back toward the witness stand.)

Q. Will you measure the height of that chair---the back of the chair?

A. The back, here?

Q. Yes.

A. (Measuring) That is two feet five and a half inches.

Q. To the top of the back of the chair it is two feet and a half?

A. Two feet five and a half.

Q. Won't you give us the measurement of the top of the seat as it is now, from the floor, with the cushion in it?

A. (Measuring). A foot and a half.

Q. Eighteen inches?

A. Yes, sir.

Q. Then the top of the seat of that chair, with the cushion in it, is substantially the same height as the top of the seat of

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the sofa, isn't it?

A. I don't know sir: I didn't hear it stated.

Q. Don't you recall that it was given by Mr. Kieran as being about 18 inches?

A. I didn't hear it, sir.

Q. (Placing lawyer's bag in chair, resting against the back). Is the chair now substantially, with reference to the wall of the Court room in about the same position that the sofa was as you saw it?

A. Well, this back would have to be up against the wall.

Q. Well, I am using the back of the chair as the head or arm of the sofa upon which Mr. Borden's head lay?

A. I see.

Q. Now will you answer the question whether or not it is substantially in the same position relatively that the sofa was to the wall of that dining room?

A. Oh, his head was the other way; his head was at the other end.

Q. Well, assume that his head was at this end?

A. Yes, sir.

Q. There is no difficulty, is there, in assuming that his head was at this end?

A. No, sir, not at all.

Q. And for convenience of examination by yourself and the jury, we will put the head there. Then that would leave the door opening into the anteroom of the Court room in substantially the same position that the dining room door was opening out of the sitting room?

A. Yes, sir.

Q. (Placing cast in chair.) Will you alter the position of the cast there so that it will substantially resemble the attitude of Mr. Borden as you saw him, if you can?

(Witness laid the cast on its right side on the lawyer's bag in the chair, the top of the head resting against back of the chair)

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Q. (Placing overcoat in the back part of the seat of the chair over the bag.) Now you may arrange that coat, doctor, as you like.

A. (The witness placed the cast upon the coat.) It was on top of that---that, sir, I should take to be the position. (A portion of newspaper was placed under the cast.) I think that is about the position.

Q. How does the distance that the cast is from the post in the court room compare with the distance of Mr. Borden's head from the wall of the dining-room as he lay upon the sofa?

A. Granting that this is up against the wall, it is relatively in the same position.

Q. Then that is a little further from the post than Mr. Borden's head was from the wall?

A. Yes, sir, it touched.

Q. (Further adjusting the cast.) How does it appear to you now?

A. That appears about right. Possibly the head is not exactly in the centre, but it appears to me about the way it was.

Q. Then the place in the court room marked by the register would be in the general direction as the head now is of the kitchen door?

A. Yes, sir.

Q. And the door leading upon the bench would be substantially in the position that the parlor door was leading into the parlor from the sitting-room?

A. Yes, sir.

Q. I think you told me that there were in all ten blows?

A. Yes, sir.

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Q. And that those ten blows appeared between the line of the opening in the ear?

A. Yes, sir.

Q. And the fleshy part of the left nostril?

A. Yes, sir.

Q. And all upon the left side of the head?

A. Yes, sir.

Q. How many of those blows went through the bone of the skull? I don't ask you to point them out, but how many in number?

A. You mean went into the cavity of the skull?

Q. Yes.

MR. MOODY. That is a little different from your first question, going through the skull.

MR. ADAMS. Well, there is an outer and inner tablet of the skull.

The WITNESS. You mean penetrating right into the cavity?

Q. Yes.

A. Four.

Q. What mark upon that cast represents the cut four and one-half inches long?

A. This is the one.

Q. That is the second one then beginning with the nose?

A. Yes, sir, beginning with the nose.

Q. Beginning at the nose as No. 1?

A. Yes, sir.

Q. The second one, which was four and one-half inches long?

A. Yes, sir.

Q. Did that penetrate into the skull?

A. Yes, sir.

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Q. Did it cut through any of the bony formation of the head?

A. Yes, sir

Q. What portion of the bony formation?

A. It cut through the face bones.

Q. Won't you point it out, because we want this in plain and simple language?

A. It cut through the bone that lies underneath this flesh.

Q. You are pointing now beneath your eye?

A. Yes, sir.

Q. And the bone that is underneath the eye?

A. Yes, sir.

Q. Well, any other bone?

A. It cut slightly, I think, into the upper jaw bone and the lower jaw bone, very slightly, not markedly.

Q. Are the bones that this blow encountered hard and strong bones?

A. No, sir; comparatively; they are not as the skull.

Q. Isn't the jaw bone a strong bone?

A. Yes, sir; in the entirety.

Q. And how about the bone under the eye?

A. The table is not as thick as the table of the skull.

Q. This portion of the skull which is immediately in front of the ear where the temple is, is not so strong as some portions, is it?

A. No, sir.

Q. Is there any portion of that area which is made by the ear on the one hand and the bone of the eyebrow on the other---any portion of that stronger than some other portion of that area, and if so, point it out?

A. I do not think so.

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Q. It is all about the same?

A. Yes, sir.

Q. This four and a half inch cut bisected the eye, didn't it?

A. No, sir; not that one.

Q. Which one was it that cut the eye?

A. This one; the one that cut through the cheek bone.

Q. Which appears to be No. 3, beginning with the nose?

A. Yes, sir. That is in reality No. 4.

Q. Did that cut through the eye?

A. Yes, sir.

Q. To what extent?

A. It bisected the eye, that is, cut it completely in half.

Q. What is the character of the cut?

A. Clean.

Q. Indicating what kind of an edge?

A. Sharp.

Q. A sharp edge?

A. Yes, sir.

Q. In your opinion would this claw-headed hatchet accomplish that?

A. I should like to see the edge of it.

Q. Haven't you seen the edge of it and already given an opinion upon it?

A. I have; yes, sir;

Q. Is this any new subject with you?

A. I want to see it as regards the eye.

Q. Very well. I now show you the hatchet upon which I asked your opinion. Have you an answer ready?

A. Yes, sir; I think it could.

Q. It could?

A. Yes, sir.

Q. Will you indicate upon the cast as it now lies the angle which that hatchet would have taken in making that injury?

A. You mean this one that bisects the eye?

Q. Yes.

(Witness indicates.)

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Q. Was that from left to right?

A. Yes, sir.

Q. And at a good deal of an angle?

A. No, sir; not markedly so. About the position I have it.

Q. What other injury there was from left to right?

A. This one over the eye.

Q. And that is made by a larger mark and a continuation of No. 3?

A. Yes, sir.

Q. What was the angle at which that was made?

A. I think that was more markedly so than this one. About that position, I should say.

Q. More markedly from left to right?

A. Yes, sir.

Q. Was it a glancing blow which shaved off a piece of the eyebrow?

A. Yes, sir

Q. Was there any other injury there which you discovered that had a left to right tendency?

A. Not that I recollect, sir, at the present time.

Q. Have you ever seen this before, the handleless hatchet?

A. Yes, sir.

Q. Where did you first see it?

A. At the court house at Fall River.

Q. And when in the court house at Fall River?

A. I couldn't tell you just the date, sir.

Q. Was it the day of the trial?

A. I saw it before then.

Q. Saw it before the trial?

A. Yes, sir.

Q. And before you testified?

A. I think so; yes, sir.

Q. And you knew about it, then, when you testified?

A. Yes, sir.

Q. Did you refer to it in any way in your testimony?

A. Not

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that I am aware of.

Q. Were you asked any question about it by the district attorney?

A. I don't think so, sir.

Q. Where were you when you first saw it?

A. In the marshal's office.

Q. Whereabouts in the marshal's office?

A. I couldn't tell you that, sir. I think it was at the window where we examined them.

Q. "We examined them." Who?

A. The marshal and myself.

Q. Anybody else?

A. I don't remember; there may have been.

Q. Well, was it lying on the window at that time?

A. No, sir; the marshal took it from his cupboard, his locked cupboard.

Q. Did you see what it was in then?

A. No, sir; I didn't notice.

Q. Did he take it in connection with the other hatches and axes?

A. I think he did.

Q. Was it done up?

A. I couldn't tell you.

Q. Do you remember whether there was a newspaper around it?

A. I don't know.

Q. Did he have the other hatchets and axes on the window at or about the same time?

A. Yes, sir.

Q. Was something said about it? I don't ask you what was said, but was something said about it?

A. About this?

Q. Yes.

A. I couldn't tell you, sir; I don't remember.

Q. When you and Marshal Hilliard were looking at it at the window do you remember whether there was any conversation?

A. There was certainly some conversation.

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Q. Do you remember what it was?

A. I do not; no, sir.

Q. But, at all events, having seen it and examined it before you testified, you didn't mention it, and were asked no question about it either, in your testimony, by the district attorney?

A. Not that I am aware of.

Q. Did you see the district attorney examine it?

A. I couldn't tell you?

Q. Don't you remember he was there some of the time?

A. Yes, sir; he was.

Q. Don't you remember he was there in the marshal's room when these hatchets and axes were being looked at?

A. I don't know whether he was there at this particular time, I couldn't tell you.

Q. Well, at any time when you were there examining it did you see the district attorney there?

A. When I was examining this particular one?

Q. Yes.

A. I couldn't tell you, sir.

Q. You don't remember?

A. No, sir.

Q. How since that day in the marshal's room, which was before the trial in the Fall River court, have you seen it again?

A. Since that day?

Q. Yes.

A. Yes, sir.

Q. When first after that?

A. I think I saw it at the grand jury.

Q. Then from the time you saw it in the marshal's room before the trial in the Fall River court, up to the time of its going to the grand jury, which was in November, I believe, you

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didn't see this handleless hatchet?

A. I don't think so, sir; I can't recall it.

Q. You examined the hatchet?

A. Yes, sir.

Q. Do you consider it has a good edge, a sharp cutting edge?

A. I do.

MR. KNOWLTON. Wait a minute. I pray your Honors' judgment.

MR. ADAMS. He has already testified as to the others without objection.

Q. Does it appear now as then?

A. Yes, sir.

Q. When you first saw it?

A. Yes, sir; except the wood is out of it.

Q. What do you say of the edge of the handleless hatchet as to its sharpness?

MR. KNOWLTON. I pray your Honors' judgment.

MR. ADAMS. This is cross-examination, for the purpose of testing the witness.

MASON, C. J. He may answer.

A. I should call it sharp.

Q. Did you observe that the edge is turned?

A. No, sir.

Q. It seems in your opinion a clean cutting edge, does it?

A. Yes, sir.

Q. The edge of the blade of the hatchet appears now as it was when you first saw it?

A. As far as I recollect, yes, sir; except it don't appear to be as white as it did. I don't mean colored white, but white particles of ash on it.

Q. Whereabouts on it?

A. On the blade, both sides of the blade.

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uniformly.

Q. Now coming back again to the position of Mr. Borden as he lay upon that sofa, you have described with reference to his body the position of certain blood spots?

A. Yes, sir.

Q. Where would they be relatively upon the wall of the court room?

A. The highest ones were immediately above the head.

Q. Can you point out substantially where they would come upon the wall of the court room?

A. Well, they were both about six feet, only half an inch difference.

Q. How many of those were there?

A. Two.

Q. Where was the greatest part of the spots?

A. The greater part of the spots were against this wall.

Q. And how high above the head relatively, using that wall as an illustration?

A. I should say relatively the greater number, the 86 spots, were relatively about there.

Q. And in a circle?

A. Describing a circle, yes, sir.

Q. And how would they be upon the wall of the court room, assuming that the head is now in the same position that Mr. Borden's head was, point out about where these would be on the wall of the court room---where they were on the wall paper?

A. Just about here, I should say.

Q. Where would the other end of the arc of the semi-circle be?

A. Commencing here, the other would be about here.

Q. And there were 86 there?

A. Yes, sir.

Q. Was there a picture on the wall?

A. Yes, sir.

Q. Where would that picture be?

A. The picture wasn't exactly over the center of the lounge; I should say it would be about here, relatively.

Q. Was the lower part of the picture or the frame of the picture where your hand now is?

A. I couldn't tell you as to the height of it?

Q. Speaking generally, as you recollect it?

A. Speaking generally, I should say the lower frame would be about here.

Q. How many spots upon that?

A. I think there were 40.

Q. Won't you describe where you saw some spots on the kitchen door, over where the register was?

A. You have to imagine a door there.

Q. Take the register as indicating the general location in the dining room and describe it.

A. Taking this (illustrating on the wall) as the jam of the door, there was one spot on the jam. There was also one spot just here on the door.

Q. What part of the door,---whether the upper or the lower part?

A. The lower part of the door, so that when it was closed it was just a quarter of an inch from the side of the jam.

Q. What part of the door as to represent that left hand when you are looking in the kitchen door and being in the dining room?

A. The right hand.

Q. You saw the spot on the right hand jam of the door?

A. Yes, sir.

Q. Was that higher than the spot on the door itself? Generally how high was that in feet and inches?

A. I can tell you by referring to my notes.

Q. You may, if you please. I think you have given it.

A. I gave it yesterday. (After consulting notes) The spot on the south jam of the kitchen door was three feet seven inches high.

Q. Three feet, seven inches?

A. Yes, sir.

Q. And the one on the door itself?

A. Thirteen inches.

Q. About a foot?

A. Yes, sir.

Q. What other objects did you see in the sitting room at the time when you made this examination, or when you first arrived there, Doctor, to see and did see what was in the sitting room?

A. I could not describe accurately what I saw.

There was the usual furniture of a sitting room.

Q. There were chairs?

A. Yes, sir.

Q. A mirror?

A. Yes, sir.

Q. A table?

A. There were two tables, one against the south wall between the two windows, and a small centre table pretty near the sofa, about the centre of the room.

Q. How far from the sofa?

A. I could not tell you, sir.

Q. Point out some distance in the room which represents the distance from the small table to the sofa?

A. Relative to the sofa, not as far as that table (pointing to table near by) from the rail.

Q. Which rail?

A. This rail, to this table.

Q. From the rail in front of the jury to the rail inside the bar?

A. Yes, sir.

Q. It was near the sofa as that?

A. Yes, sir, I think so.

Q. Was it that little three legged table?

A. I would not say that.

Q. Is that in the picture I show you like the table you saw?

A. Yes, sir.

Q. Did it have something on it?

A. Books.

Q. Did you examine those at the time?

A. No, sir.

Q. Did you subsequently examine them?

A. I don't think I did.

Q. At all events, you saw no spots on the books or on that table which stood substantially near the front edge of that sofa?

A. No, sir, I did not.

Q. Now was there a blood spot or more on the ceiling?

A. Yes, sir, one, I believe.

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Q. Where was it on the ceiling relatively to the position of the head of Mr. Borden?

A. It was six or seven inches behind.

Q. That is, towards the parlor door?

A. Yes, sir.

Q. Whereabouts on the ceiling, whether directly overhead, I mean right overhead, or not?

A. I should say practically overhead.

Q. Did you in the catalogue of the spots you gave, refer to any spot on the jamb of the dining room door?

A. No, sir, I don't think I did.

Q. Why didn't you do that?

A. Because when I took these measurements, that had been removed. That is the only reason,---the piece of wood had been removed.

Q. You mean taken out of the door?

A. Yes, sir.

MR. KNOWLTON. We will want that now.

MR. ADAMS. I think I have it here, Mr. Knowlton.

Q. Will you examine this piece of wood which I hand you and say whether or not that is the spot which appeared on the jamb of the dining room door?

A. It is, yes.

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Q. Now using the door of the court room into the ante-room, is that relatively in the position of the sofa?

A. Only it is upside down.

Q. (Placing the piece of wood in a different position.)

A. Yes, sir.

Q. Was it on the inner side, the dining-room side of the jamb or the sitting-room side?

A. The dining-room side.

Q. I mean in the ante-room as the dining-room and this room as the sitting-room. Did you express the opinion that that was blood at the time you saw it?

A. Yes, sir.

Q. Did you express the opinion based upon that's being blood as to the position of the assailant of Mr. Borden?

A. To a certain extent I did, yes, sir.

Q. Do you desire now to change that opinion?

A. I don't think so.

Q. Don't you know that that is not blood?

A. I have been told that it is not blood.

Q. Well you have no reason to believe that it is blood, have you?

A. Not after the gentleman who has told me it is not.

Q. Then with this out of the way, namely, this stringy spot upon the inside of the jamb of the dining-room door, which was that jamb farthest away from the head of the sofa towards the parlor door, there was no blood spot of any sort or kind in the dining-room, was there?

A. Not that I saw.

Q. You examined carefully?

A. Yes, sir.

Q. Then any opinion that you expressed with reference to that

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spot coming into it would have to be changed, now it is no longer blood, wouldn't it?

A. Yes, sir.

Q. Well, didn't you say this would be caused by the assailant of Mr. Borden standing inside the dining-room door and reaching around the jamb of the dining-room door with his head there?

A. No, sir.

Q. Or anything like that?

A. No, sir.

Q. Did you observe the position of things behind the sofa and toward the parlor door at the time you were there?

A. The position of what, do you say?

Q. Did you observe the position of things in the sitting-room behind the sofa and in the direction of the parlor door?

A. You mean in reference to a blood spot?

Q. Yes, sir.

A. Yes, sir.

Q. Did you find any blood upon the carpet of the sitting-room between the head of the sofa and the parlor door?

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

Q. Where first did you see any evidence of blood behind the sofa?

A. On the parlor door and jamb.

Q. There was no blood, now you say, upon any part of the jamb of the dining-room door; there was no blood upon the carpet, but the first blood that appeared was upon that door leading into the parlor?

A. Yes, sir.

Q. How many feet was that from the head of the sofa, that part of the sofa where Mr. Borden's head was?

A. I should think between five and six feet.

Q. What part of the door did you discover the spots on there?

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A. Well, both on the panels and on the division of the panels.

Q. When you speak of the division of the panels, what panels of the door do you mean?

A. Well, I think they were on the four panels. I think there were spots. I don't recollect accurately, but I think there were some on the four panels.

Q. How high above the floor?

A. I couldn't tell you. I have no measurement.

Q. Well, relatively, substantially how high?

A. I should say some of them six feet---at least, five feet.

Q. Taking all these spots now which you have described, those upon the wall, those upon the picture, those upon the kitchen door and those upon the parlor door, in what direction did you think they came?

A. They came in different directions.

Q. Take those then on the wall over the sofa. How did they come?

A. They went from before forward.

Q. And when you use the word "before", do you mean before the head of Mr. Borden?

A. From the head.

Q. And before the head?

A. Yes, sir. You are referring to those behind the sofa?

Q. Yes. What was their shape upon the wall?

A. Pear shape.

Q. Where was the point or smaller end of the pear?

A. Farther away.

Q. Farther away from Mr. Borden's head?

A. Yes, sir.

Q. That indicated to you the direction in which they came?

A. Yes, sir.

Q. Take the spot upon the kitchen door. Where was the pear end

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of the spot, this small pear end?

A. Down.

Q. What did that indicate to you?

A. Indicated that the direction was down.

Q. That is, that it went over in a circle, if you please, and struck the door upon a slant?

A. Yes, sir.

Q. The spot upon the ceiling, how was it shaped?

A. I couldn't tell you.

Q. You were not able to discover?

A. No, sir.

Q. The pear spot on the parlor---

A. Was down.

Q. The small end of the pear was down?

A. Yes, sir.

Q. Indicating the spots came in a circle, if you please, striking the door coming down?

A. Yes, sir.

Q. And this stringy spot in the dining-room you no longer contend was blood?

A. No, sir.

Q. And that therefore enters no longer into any opinion you may have?

A. No, sir.

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.

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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. I asked you if you ever had that opinion?

A. No, sir, I never had.

Q. Did the stringy spot enter at all into your theories of the position of the assailant?

A. It did at that time, yes, sir.

Q. How do you account for the fact, if it be a fact, that there are no spots upon that small table that stood very near the front of the sofa and had books and other objects upon it?

A. In the first place, I don't think the assailant swung the instrument in that direction.

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 left-handed: 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.

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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.

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

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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. Speak a little louder.

A. It would not necessarily 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.

Q. Now take the position of Mrs. Borden that you found in the bedroom chamber, and using the chair---it is higher---as an illustration of the way she lay, will you put your head upon the coat by this cast in about the same position that you think

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you saw it, and I will ask you to put the head the other way?

A. This way? (illustrating).

Q. Yes, because if Mr. Borden's head was one way, hers was found the other, I believe?

A. (Placing small cast on the chair). That I think is relatively the position.

Q. Assuming that the wall of the room is where the bureau stood, then where the jury sit would be the position of the bed?

A. Yes, sir.

Q. Her head when you saw it was about how far from the east wall of the room, which I will now say is the same wall as the wall where the register is?

A. I don't know positively; I should think between two and three feet.

Q. Between two and three feet?

A. Yes, sir.

Q. Then she lay in about that position?

A. Yes, sir.

Q. On the left side, a little, of her head?

A. Yes, sir.

Q. And all the injuries presented to your view at that time, with the exception of the bruises upon the face?

A. Yes, sir.

Q. Did Mrs. Borden have considerable natural hair?

A. Yes, sir, she had a natural amount for a lady of her age.

Q. Well, that is relative. Whether or not she did have considerable natural hair?

A. I wouldn't say she had considerable.

Q. What part of the head was the hair the thickest?

A. I couldn't tell you that, sir, I didn't examine it.

Q. Will this photograph help you to observe and state? Upon an examination of the photograph, which is marked Ex. 16, are you now able to state whether she did or did not have

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considerable natural hair?

A. I should say that she had about the natural amount; I wouldn't say---

Q. A full head of hair?

A. Yes, sir.

Q. Where was it thickest?

A. Well, naturally, where it was knotted. I presume, behind.

Q. In the back?

A. Yes, sir, right on the poll.

Q. Over the back portion and top of the head?

A. Yes, sir.

Q. Now when you first saw her, did these injuries which appear upon the left side of the head, over the ear and toward the back---did they appear to be open and gaping wounds?

Q. Yes, sir.

Q. And were they distinct?

A. Yes, sir. That is, they---

Q. What is the thickness of the skull of the human head upon that portion of it as compared with the temporal region?

A. It is thicker.

Q. One of the strongest places on the skull, isn't it?

A. Approaching the strongest.

Q. Where is the strongest place?

A. The strongest is immediately behind and on top.

Q. Immediately behind, and on top?

A. Yes, sir.

Q. That is to say, if a line is drawn about just above the ear, it would strike the very strongest place in the skull?

A. Yes, sir.

Q. And immediately on top of the head would be a very strong place upon the skull?

A. Yes.

Q. Would not this hair which you say she had in large quantities, and which was matted there furnish a cushion of resistance to any blow that might be given?

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A. It could, yes, sir; but---

Q. Would not it naturally?

A. Yes, sir.

Q. How was that hair cut, as to its being clean or ragged?

A. Clean.

Q. Clean, sharp cut?

A. Yes, sir.

Q. In every instance?

A. Yes, sir.

Q. Cut like a razor, you have said, I believe?

A. I don't know that I used---

Q. Well, was it cut as a sharp razor would cut?

A. Well, it was cut more like a sharp shears.

Q. More like sharp shears?

A. Yes, sir.

Q. But there was no question about its being a very clean, sharp, distinct cut?

A. No, sir.

Q. And were all those injuries, injuries left to right, or indicating left-to-right blows?

A. Yes, sir, just as you see them there.

Q. I am reminded of your opinion expressed, as I think, in the former trial, as to the character of the cutting. You will recall that just now I asked you if it was cut like a razor?

A. Yes, sir.

Q. Do you remember that you have ever characterized it in that way,---that the cut of the hair was as clean and sharp and distinct as if by a razor?

A. Probably I have: yes, sir.

Q. When it was fresh in your mind, and you were describing the things you had recently seen, do you think you used that expression?

A. If it is there, of course I used it.

Q. Well, I will refresh your recollection by reading this:

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"Q. Was it a clean, incised cut of the hair? A. Some of it was so matted you could not tell. There was one large one on top that was cut as though you had cut it with shears. It was the wound that took out the piece of skull on the left side. It was not glancing, but neat and clean." "Q. As though done with a razor?

A. Yes, sir."

Q. You recall that, do you?

A. Yes, sir.

Q. And that is an accurate description?

A. Yes, sir.

Q. Of the injuries as they appeared to you?

A. Yes, sir.

Q. Now that injury that you were then describing was an injury on top of the head here, wasn't it?

A. Yes, sir.

Q. And it went through the hardest part of the skull?

A. Yes, sir.

Q. Making a hole right straight through the skull?

A. Yes, sir, taking a piece out of it.

Q. And taking a piece out of it?

A. Yes, sir.

Q. And it was a left to right blow, wasn't it?

A. I wouldn't be sure about that, whether it was left to right or right to left, that particular one.

Q. Don't you recall that it was upon the left side of the head, and there was a little scarfing, as if the instrument, whatever it was that struck it, chipped it in the direction of left to right?

A. I think it was chipped in the direction of right to left, if I remember correctly.

Q. Right to left?

A. Yes, sir, I think it is: in fact, I am sure it is.

Q. You are sure of it? That is, in the skull, it is chipped---

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Q. I mean the one on top of the head and in the thickest portion of the skull?

A. Yes, sir, I think it is right to left.

Q. Do you think that the injury occasioned by that blow could have been given by light force in the blow?

A. No, sir.

Q. Did not that require a great deal of force and strength?

A. It required---it was taken with the edge, I think, of the instrument: I don't think it required more than the ordinary strength.

Q. The ordinary strength of a person?

A. No, sir.

Q. These injuries upon the right side of the head---did they penetrate into the cavity of the skull, or through the bones of the skull?

A. Yes, sir, they went through into the brain.

Q. And that was the thick portion of the skull?

A. On top it is thick, here.

Q. And that was a portion of the head protected by hair?

A. Yes, sir: not the thickest part of the hair. The thickest part was behind, here.

Q. But the hair was reasonably thick there, wasn't it?

A. I wouldn't call it thick hair, no, sir.

Q. Was there considerable hair there?

A. I don't know how much hair there was there.

Q. You don't remember?

A. No, sir, it didn't strike me as being a very great amount, or a very little amount.

Q. What was the character of those blows, in your opinion, as to force?

A. You mean as to a great deal or a little?

Q. Yes, sir.

A. I think moderate force.

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Q. More than a little?

A. Yes, sir.

Q. A good deal?

A. Well, moderate I think covers it.

Q. Moderate?

A. Yes, sir.

Q. Were there any blows upon that head as indicated by the injuries that you saw, which required more than moderate force to give them?

A. I don't think so.

Q. Take the blood spots that you saw there? (Showing pillow sham to witness). Assuming that her head lay in the direction toward the register in the room, and that the bed was where the jury now sit, how was her head with reference to the pillow shams on the bed?

A. You are taking that as which wall, do you say?

Q. Taking that as the east wall of the room: that is to say, the wall nearest which her head was.

A. Which side of the sham?

Q. No, how was her head with reference to the pillow shams on the bed?

A. You mean whether it was pointing to?

Q. Well, you may answer that question. Was it pointing toward the pillow sham?

A. Yes, sir.

Q. Did it come as far up on the bed as the pillow shams? the lowest line of the pillow shams?

A. I don't think it did.

Q. Here is the top of the pillow sham, I believe which was nearest her body: is that correct?

A. Yes, sir.

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(Counsel stood by the side of the foreman, holding the pillow sham over the latter's knee).

Q. This is the top: now, turning it around relatively, how would it be? Would her head be about this distance from the pillow sham?

A. I should say about that.

Q. And the part marked "top?" would be up at the head of the bed, and this would be at the bottom of the pillow?

A. Yes, sir.

Q. And it would be the sham which was on the side of the bed nearest her head?

A. It would.

Q. Then this was the appearance of the spots?

A. Yes, sir, just as they are.

Q. Are you quite sure that you have got that sham marked right?

A. Yes, sir.

Q. Taking into account the size and shape of the spots?

A. Yes, sir.

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Q. Observing these spots as they appear on the pillow sham, in what direction did they come from?

A. I should say they came from left to right.

Q. That is, in this direction, from so? (indicating)

A. Yes, sir.

Q. The other pillow sham which would lie in the bed in this direction had no spots on it?

A. No, sir, not that I saw.

Q. Now take the bed spread which lay on the bed below the pillow shams,---that is the top, is it (showing) ?

A. Yes, sir.

Q. Where does the frame go, on the side or top?

A. On the side.

Q. That is marked here,---does it mean that this hem is the head?

MR. KNOWLTON. I think so.

Q. If this is the head of the bed spread, these spots, then, that are observed on it, are on the side nearest where she lay?

A. Yes, sir.

Q. Assuming that this is the head of the bed, where was the pillow sham,---how far down did it go?

A. I could not tell you that.

Q. I understood you to say one corner of the pillow sham was turned under?

A. No, I said the fringe was turned under.

Q. Then these spots which are seen here were on the side of the bed nearest where she lay?

A. Yes, sir.

Q. There Doctor, will you look at that and see if substantially that is in the position of the sham and bed spread at the time?

A. No, sir, that is. (Showing)

Q. She lay upon this side, as where I am standing?

A. Yes, sir.

Q. With her hand in the direction of the sham?

A. Yes, sir.

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Q. And not quite so far up on the bed as the lower line of this fringe hem would come?

A. I could not tell that.

Q. That is your recollection?

A. I could not say exactly.

Q. These are all the spots you saw?

A. Yes, sir, on the spread.

Q. On the opposite side of the bed I find one blood spot near the foot?

A. Yes.

Q. But the majority of them were upon the upper part of the spread and that portion up nearest where she lay?

A. Yes, sir.

Q. Examining the spots on the bed spread, in what direction do you think they came?

A. I think most of those were direct and from left to right.

Q. From left to right?

A. Yes.

Q. Now on the bureau drawers, they are relatively here as to the rest of the room,--- you found a good many blood spots?

A. Yes, sir.

Q. You also found on the bottom of the bureau, the finishing board or moulding of the bottom of the bureau, a number of spots?

A. Yes, sir.

Q. About how many?

A. About fifty, I think.

Q. All along upon the bottom?

A. Yes, sir.

Q. Then on this marble you say you found a few spots?

A. Yes, sir.

Q. Was that the marble on the bureau immediately in front of the mirror?

A. Yes, sir, there were three marbles.

Q. But one was introduced here yesterday,---which one was that?

A. That is the left side one, I think.

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Q. That would be nearest to the north window?

A. Yes, sir.

Q. And the window which would be west of the bureau?

A. Yes, sir.

Q. How many spots had that?

A. I don't know how many spots on that particular one,---two or three.

Q. Didn't you say fifteen?

A. No, sir, not on that one.

Q. Which one?

A. The centre one, I think.

Q. That is the one which was not produced. Didn't you examine that yesterday?

A. Yes, sir.

Q. There were spots on the baseboard?

A. Yes, sir.

Q. Assuming that she lies in the direction now shown---running over that way, from the bureau?

A. No, taking the head as it lies relatively now, they were found on the skirting of the east wall.

Q. Or that portion underneath where the register was,---keeping your objects in mind?

A. Yes, sir.

Q. How many of those were there?

A. I think there were seven.

Q. Were they small or large?

A. I don't know.

Q. Did you examine them with reference to their shape to determine the direction from which they came?

A. I don't think I did, sir.

Q. Now coming back to the bureau, I believe we finish that with the exception of a lot of spots on the glass mirror, and there were a good many there,---I don't remember how many you said. Quite a number?

A. Yes, sir.

Q. What part were they on, the upper, middle or lower portion?

A. I don't remember; I think about the middle, in here, all over the glass.

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Q. That is a fair representation of the dressing case (showing picture) ?

A. Yes, sir.

Q. Probably the jury will remember it. Beyond the bureau and near the north window in the parlor chamber were there some spots on the moulding or baseboard?

A. Yes, sir.

Q. Which part?

A. Both, I think, one on each, I think.

Q. How many on the moulding?

A. I think but one and one on the mop board.

Q. Was there a spot on the plastering or that wall paper?

A. Yes, sir.

Q. That is about how high up from the floor?

A. I could tell you by referring to my notes.

Q. In general?

A. About three feet.

Q. Were there any spots on the window glass?

A. No, sir, the spots there were doubtful to us and we concluded they were not blood.

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.

Q. And over it?

A. Yes, sir.

Q. How did the assailant face?

A. Faced the east wall.

Q. The east wall? And those blows you say had a general left and right direction?

A. Yes, sir.

Q. Was the blow in the back a left to right blow?

A. Could not determine that.

Q. Let me ask you if you do not recall what you said yesterday, the assailant stood behind and faced her back?

A. Yes, sir.

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Q. And that the highest part of that wound was on the left side?

A. Yes, sir.

Q. Does not that indicate to you that it must have been a left to right blow?

A. No, sir.

Q. How otherwise could it have been given?

A. Let me understand you. You mean left to right as regards the body of the deceased?

Q. The direction of the blow?

A. No, sir, I think it was a straight blow.

Q. What do you mean by a straight blow?

A. I mean the force was given directly. I did not quite understand,---do you mean the direction?

Q. I mean a blow struck from left to right. Was it not that kind?

A. No, sir, I think not. I think it was struck in a vertical direction, not left to right, but a straight blow.

Q. Was not one part of that wound higher than the other?

A. Yes, sir.

Q. Was it not a slanting injury on the back? And did not one end stand higher than the other?

A. Yes, sir.

Q. And that the left end was higher than the right end?

A. Yes, sir.

Q. How would that blow be made by a person standing behind in any other way than striking from left to right?

A. The question,---the way you put it, a person behind,---you are granting in putting it that way that the person would be, would have to be exactly behind, that is, side to side. I don't say necessarily that would be so.

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Q. How would you put the person to strike such a blow as that so that it may be delivered by the right hand?

A. If you will pardon me, I can very easily give the stenographer that blow.

Q. That is because he is underneath you?

A. But I could if he was standing up. I think it would be the same way. I don't think there is necessity to put it either way.

Q. That finishes the position of the bodies, the blood spots, I believe. Were there other physicians present with you at the time that this examination was made of Mrs. Borden's injury in the back?

A. Yes, sir.

Q. Who were those physicians?

A. Dr. Draper of Boston, Dr. Cone and Dr. Leary of Fall River.

Q. Any other person present?

A. No.

Q. Were you present at any time with Dr. Dwelley?

A. No, sir.

Q. When these gentlemen were present with you was there ever any discussion as to the character of the instrument that must have caused that injury in the back?

A. No, sir.

Q. Was not there a discussion of it at the autopsy at the Oak Grove Cemetery?

A. As to this instrument?

Q. As to the kind of instrument, the edge the instrument had?

A. Sharp edge?

Q. As to whether it was an edge like a hatchet, or had an edge, had three sharp edges, --- like an instrument which had three sharp edges? Three sharp edges?

A. In other words, you mean triangular?

Q. Yes.

A. I don't recollect so.

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Q. Don't you remember that the wound appeared very deep in the centre of it and shallower at each end?

A. Yes, sir.

Q. And don't you recall that there was a discussion between you doctors there that this must have been caused by an instrument having three edges, a triangular shape?

A. No, sir.

Q. Don't recall any such discussion?

A. No, sir.

Q. And you say there were present Dr. Cone, Dr. Leary and Dr. Draper?

A. Yes, sir.

Q. This was on Thursday. On Friday did you go to the house?

A. I could not tell you the dates of my visits to the house; I was there frequently.

Q. Were you present when there was a search made?

A. Yes, sir.

Q. When was that?

A. That was on Saturday.

Q. Is that when the other officers were there?

A. That was when the City Marshal and other officers were there,---Capt. Desmond, Assistant Marshal Fleet, his officers and Mr. Jennings.

Q. Were you given a dress at some time?

A. I was.

Q. When was that, on Friday?

A. On Saturday.

Q. Weren't you there on Friday and didn't you direct the breaking in of the chimney in order to have a search made there?

A. No, sir.

Q. Don't remember anything of that kind?

A. No, sir.

Q. Was that dress given you by Mr. Jennings?

A. It was.

Q. Where did he go to get it?

A. He went out of the guest chamber, I don't know where.

Q. Did he go down stairs?

A. I don't remember that.

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Q. Well, did you go down stairs?

A. I couldn't tell you that.

Q. Was this the dress that was given to you at the time?

A. Yes, sir.

Q. And did you examine it then before you left the house?

A. I did.

Q. And did you express an opinion as to something you saw upon the pocket?

A. Yes, sir.

Q. Won't you find the pocket?

A. There is the pocket.

Q. Now, did you point out at that time a place upon the pocket which you said looked like blood?

A. I don't know that I said it---

(At this point Juror Hodges became faint, and the jury were allowed to retire to their room. After a short time the jury returned to the court room. The last question and unfinished answer were read by the stenographer.)

Q. Will you complete your answer?

A. Looked like blood.

Q. Did you say in appearance that it had the appearance of blood and called the attention of Mr. Jennings and others there at the time to it?

A. Yes, sir.

Q. You now understand that it is not blood don't you?

A. I don't know that I have heard any report that it was not. I don't think it was. In fact, I didn't really think it was there at that time. I said it looked as if it might be.

Q. You don't think it was blood now?

A. No, sir, I don't.

Q. This was on Saturday?

A. Yes, sir.

Q. Subsequently in the early part of the following week did you send for anything else of Miss Borden's wearing apparel?

A. Yes, sir.

Q. What?

A. Shoes and stockings.

Q. By whom did you send?

A. The marshal.

Q. Did he bring them to you?

A. Yes, sir.

Q. What did he bring?

A. Shoes and stocking.

Q. More than one pair of shoes?

A. No, sir.

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Q. What sort of shoes?

A. I think they were low shoes, laced, I think.

Q. Did you examine them at the time?

A. Yes, sir.

Q. Did you find upon one what you said was blood?

A. Yes, sir.

Q. Whereabouts upon it did you find it?

A. On the sole.

Q. Do you now claim that that was blood?

A. I think it was; yes, sir.

Q. You claim that it was blood?

A. Not human blood.

Q. I didn't ask you the variety of blood. Do you claim it was any kind of blood?

A. No, I don't claim it is.

Q. Don't you understand that it was no form or kind of blood?

A. I haven't heard anything of it.

Q. Did you find anything on the stockings?

A. No, sir.

Q. At the time this dress was given to you, which was on Saturday, you received that white skirt?

A. Yes, sir.

Q. And you found upon it a pin head spot, and on the front of it, which looked like blood, did you?

A. Yes, sir.

Q. Do you claim that is human blood?

A. I don't know whether human blood or not. It is blood.

Q. That is all you know about it?

A. Yes, sir.

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

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hour and a half before the time you saw her?

A. An hour and a half before the time I saw her?

Q. Yes.

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

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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 have you seen since that alters your opinion?

A. I don't know anything in particular that I have seen except that I have studied the subject up, have thought the matter over. Though I had performed the autopsy at the time, I had not thought so much of it as I have since. But taking everything into consideration from the day of the tragedy, all that has taken place since and all I have studied, that is my conclusion at the present time.

Q. Does the coagulation of the blood which you speak of have any bearing upon the opinion which you have expressed?

A. It has; yes, sir.

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Q. How soon, taking the warm season of the year into account, does blood that is separated from the body begin to coagulate?

A. Various authors differ on that. The time is generally put down from three to ten minutes.

Q. Is it safe after fifteen minutes, assuming that you find a body, the warm season of the year, and blood which has come from the body and coagulated, is it safe to express any opinion after fifteen minutes upon the coagulation of the blood?

A. Of itself I don't think it would be very safe; no, sir.

Q. Would the blood then become darker in color?

A. Yes, I think it would become darker.

Q. I observe that you have spoken of the blood of Mrs. Borden appearing darker in color than that of Mr. Borden?

A. Yes, sir.

Q. You do not mean to say that the blood in the bodies when alive had any appreciable difference in color?

A. I never saw it; no, sir.

Q. Well, you don't mean to indicate that?

A. No, sir.

Q. What you do mean is, I suppose, that the coagulation of the blood caused that of Mrs. Borden to appear darker than that of Mr. Borden?

A. Yes, sir.

Q. But after fifteen minutes you wouldn't dare express any opinion as to the exact, or relatively exact periods of time that the person had been dead, based upon the appearance of the blood?

A. Solely; no, sir.

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Q. What other factor comes into your opinion?

A. The difference in the warmth of the bodies.

Q. Well, as has been asked you, you didn't take the difference in the temperature of these bodies by any thermometer, but it was only your opinion by touch?

A. Yes, sir.

Q. And you don't feel very well satisfied of your opinion upon that, do you?

A. I do.

Q. You do?

A. Yes, sir.

Q. Are you able to express a positive opinion about the time of priority based simply upon your knowledge of the bodies?

A. I think so; yes, sir.

Q. And you fix that, then, at an hour or an hour and a half?

A. I think that is a very safe limit, under those conditions.

Q. How long would it take a body at that season of the year, a normal body, to cool?

A. Well, normal bodies differ very much. I wouldn't want to answer that question.

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?

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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. Was that based upon normal digestion?

A. Yes, sir; I didn't see the inside of the stomach.

Q. Then you have no opinion?

A. As far as the stomach is concerned; no, sir.

Q. You don't know anything about, then, the condition of the stomach, the appearance of the stomach?

A. No, sir.

Q. And such opinion as you have formed about priority of death is based upon the temperature of the bodies and the coagulation of the blood?

A. And what we found in the intestines.

Q. And you say in the upper intestines of Mrs. Borden there was some food?

A. Undigested; 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

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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.

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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.

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 or 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

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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. You wouldn't dare to do it?

A. No, sir.

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.

Q. Didn't the injuries on Mrs. Borden's head bleed a good deal?

A. Very much, yes, sir.

Q. And saturated the carpet and came entirely through it, and formed a large pool of blood?

A. Yes, sir.

Q. If the assailant was spattered, what portion of the body of

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the assailant, standing in the position you have described, would receive these spatters?

A. Most of them, I think, would be on the lower part.

Q. Then the lower part of the assailant, assuming that the same person committed both assaults, would be the one in your opinion that received the spots, and not the upper part?

A. On Mrs. Borden, yes, sir.

Q. Well, I said both persons.

A. Well, probably the top.

Q. Didn't you tell me that in respect to Mr. Borden the top of the assailant had been spattered, the upper portion of the body?

A. Yes, sir.

RE-DIRECT.

Q. (By Mr. Knowlton.) As it is particularly important, this piece of door jamb was placed by the counsel against the side of the door and up. Was it in that position?

A. That end up?

Q. No, the whole piece. Was it near the floor or---

A. Yes, near the floor.

Q. It wasn't up as it was put there?

A. No, sir.

Q. And it was in fact round on the dining-room side?

A. Yes, sir.

Q. That is, it wasn't here (placing it in position) at all; it was round here?

A. In the dining-room, yes, sir.

MR. KNOWLTON. Supposing the ante-room to be the dining-room for the purpose of that question.

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MR. ADAMS. Well, I did that inadvertently because I wanted the jury to see.

Q. Did you take away any portion of the hair? I omitted that question. It was suggested by some question on cross-examination. Did you take away any portion of the hair of Mrs. Borden?

A. I think there was some artificial---at least, some false hair that she had in with the clothing.

Q. And is your answer in reference to the cutting of the hair concerning the false hair or the natural hair?

A. Natural.

Q. The false hair wouldn't assist the jury any about that part of the answer?

A. I don't think so.

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. That is correct, is it?

A. 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. Then if a blow was struck, not vertically but at an angle, would that make a slash?

A. Yes, sir.

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Q. So that the length of the wounds, looking at them on the scalp, as I understand you to say, would afford no indication of the length of the weapon?

A. Not necessarily, no, sir.

Q. There is nothing in the length of the wounds,---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. When I speak of three and one-half inches, I refer to the cutting edge of course, you understand?

A. Exactly.

Q. And is that also true of those that are less than three and one-half inches?

A. Yes, 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.

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. Where were the bodies when the skulls were removed?

A. Oak Grove Cemetery.

Q. And was it before or after the funeral services?

A. After.

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Q. Do you remember what day?

A. On the 11th of August.

Q. A week afterwards?

A. Yes, sir.

Q. The week after the death?

A. Yes, sir.

Q. The funeral being Saturday, it was five days after the funeral?

A. Yes, sir.

Q. They hadn't been interred at that time?

A. No, sir.

Q. Did you make any examination of the part of the house---something I also omitted --- between the place where Mrs. Borden's body was found and where Mr. Borden's body was found? For example, stairs or hallway, or the route that would be taken in going from one place to the other?

A. Yes, sir.

Q. When did you make that examination?

A. That day, the day of the tragedy.

Q. Between the vicinity of the body of Mrs. Borden and the vicinity of the body of Mr. Borden, did you find any traces of blood?

A. I did not.

Q. When I say vicinity I refer, of course, to blood spots that you have already testified to?

A. Yes.

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

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whether or not the digestion had been normal?

A. It indicated nothing abnormal, no, sir.

Q. Have you said in your direct examination, the notes of which I have not with me, at any time the direction, whether from left to right or from right to left, of the wounds upon the head of Mr. Borden, the direction of the blow?

A. I don't recall that I have. I don't know.

Q. Have you said that they were swinging blows from left to right or have you said they were swinging blows from right to left?

A. I surely have not said that.

Q. Surely have not said what, sir?

A. That they were from either side.

Q. And if you found, I think I may ask you, if you made any determination of that question in reference,---assuming, of course, in the question that the blows were inflicted with a hatchet held in the hand of an assailant standing, as you say, in your opinion, behind the head of the lounge, behind the body,---whether you made any determination as to whether those blows were blows that came down vertically or swinging from left to right or from right to left?

A. I have said that, talking of Mr. Borden, that this wound here that took out a piece was from left to right, but I explained that by the position in which the head rested. That it is a vertical blow or anything like it from left to right on the head, I wouldn't say that. My impression is that the blows were mostly made vertically.

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Q. When you first saw the wound in the neck where was it?

A. At the autopsy at Oak Grove.

Q. That was on Monday?

A. Thursday.

Q. Thursday, yes. A week after the death?

A. Yes, sir.

Q. Was the flesh then changed in any respect?

A. It was, yes, sir.

Q. How?

A. As it was inflamed, and, of course, was the subject of decomposition.

Q. Was it then possible to obtain accurate measurements of the depth or width of that wound?

A. No, sir, certainly not the depth or width.

Q. Why?

A. On account of the decomposed condition of the flesh.

Q. I omitted to ask you yesterday to give any description of the size of any of those blood spots. There are some that I would like to call your attention to. You said in the guest room there was one spot on the north wall nine inches from the window and two and one-half inches from the floor. What was the size of that spot?

A. I don't recollect accurately the size. It was a medium; it was neither small nor large.

Q. In the guest chamber nine inches from the window and two and one-half inches from the floor, that is the one that is quite near the bureau?

A. Yes, sir.

Q. That is the one on the piece of wood that was taken away?

A. Yes, sir.

Q. Well then that shows for itself. Perhaps that answers what I was going to ask you. (Exhibiting piece of wood) That is the

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spot you refer to?

A. Yes, sir.

Q. That is what you describe as medium, neither large nor small?

A. Yes, sir.

Q. Perhaps that will answer what I was trying to get at. Was that spot of blood in a position in which a straight line from it to the wounds of Mrs. Borden would be uninterrupted?

A. No, sir.

Q. What would interrupt it?

A. The corner of the dressing-case.

Q. In other words, to put that into plainer language, if I may be permitted to, that spot of blood couldn't have gone directly from the wounds of Mrs. Borden to where it was found?

A. No, sir.

Q. The blood that made the spots?

A. No, sir.

Q. It would have to go round the corner of the dressing-case if it went that way?

A. Yes, sir.

Q. Now, you said that there were back of the lounge 86 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. And did you see them afterwards?

A. I think I saw them afterwards. I am pretty sure I did, but I can't tell you the day.

Q. Was there any change in their appearance at any time that you

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saw them?

A. Not that I noted.

Q. That is, you say, 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. That in your opinion, was a spurt?

A. Yes, sir.

Q. And as to the size of those 86 spots, were they larger or smaller than this spot that I use here for a sample?

A. Some larger and some about the same.

Q. And some smaller?

A. Yes, sir.

Q. Average the same or average larger or smaller?

A. I think they would average about the same.

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Q. You also said that on the dressing case, where the drawers of the dressing case would not fit in accurately, there were---do you remember how many you said?

A. Four on the lip of the drawer.

Q. 50 --- (reading from Dr. Dolan's testimony of the previous day, page 901): "On the lower part of the dressing case, that is the moulding and the bead work, there were 50 spots." What was the size of those spots?

A. Those were very large ones.

Q. Larger than those that are shown here?

A. Yes, sir.

Q. Where were they on the dressing case?

A. Taking that as just a little bit higher than the skirting board of this platform.

Q. What say?

A. Just a little bit higher from the foot castors, under the skirting board of that platform,-
--that will give you just about that height.

Q. And they were on the edge of the drawers, you say?

A. No, sir, not those.

Q. Where were they?

A. Those were on the bottom of the dressing case, those 50 spots.

Q. Oh, away down below all the drawers?

A. Yes, sir.

Q. Right next to the floor?

A. Yes, sir.

Q. Were those spurts or spatters?

A. Those were spatters.

Q. Did you find any other spurts besides those there that in your opinion formed that arch?

A. I did not.

MR. ADAMS. These are things which you forgot?

MR. KNOWLTON. Yes. I was inquiring about the blood spots near the close of my examination. I am almost through

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with it.

Q. Did those, during the time that you saw them, the different times that you saw those different spots,---did they change in their appearance any?

A. Only that they became more faded; not in their shape.

Q. It has been said by some one, I don't know who---Mr. Morse---that some of the spots on the parlor door were removed?

A. Yes, sir.

Q. That was before you made your examination?

A. Yes, sir.

Q. Do you know of any other spots being removed?

A. No, sir.

Q. During the time that you had anything to do with the house?

A. No, sir, other than what I ordered.

Q. So that up to the last time that you had anything to do with it, all the spots which you described were visible as they were in the first place?

A. As far as I know.

Q. As far as you know?

A. Yes, sir.

RE-CROSS EXAMINATION.

Q. (By Mr. Adams.) Do you fix the time when those spots were removed from the parlor door?

A. I could not, no, sir.

Q. Well, they had been there several days, hadn't they, and you had had a chance to examine?

A. Yes, sir.

Q. And the officers had been there and made searches, and the

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engineer had been there and made measurements?

A. Not at that time, no, sir.

Q. Weren't there some measurements made on the very day of the tragedy?

A. Not by the engineer, were they?

Q. Didn't you have them made?

A. I don't think so; I don't recollect.

Q. The photographer was there?

A. Yes, sir.

Q. At all events, every body had an opportunity to make an examination of that house before anything was inadvertently done to those spots on the parlor door?

A. As far as I am aware: yes, sir.

Q. You don't think anybody intentionally removed them to deprive you of a chance of examining them, do you?

A. I don't think so.

MR. KNOWLTON. Wait a moment.

Q. Is there anything unreasonable---

MR. KNOWLTON. I objected to the question. Does the answer stand?

MASON, C. J. The answer stands.

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Q. Is there anything unreasonable in a cutting edge four and a half inches in length making a wound on the head or face four and a half inches in length?

A. No, sir.

Q. It is a natural and probable result of a blow with such an instrument, is it not?

A. Yes, sir.

Q. And an injury of five inches in length is the natural and probable result of a blow with an instrument with a cutting edge of four and one half inches in length?

A. State that again?

Q. I say an injury or wound four and a half or five inches in length is the natural result of a blow from an instrument of four and a half or five inches in length?

A. I would not say natural.

Q. It is a probable result, is it not?

A. Yes, sir.

Q. And with an instrument having a cutting edge of four or five inches, injuries very much greater in length, due to the angle with which the instrument strikes the object, may be made, may there not?

A. Yes, sir.

Q. So that 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. You do not call the surface of the human head a hard body, do you? with the flesh on, and in life?

A. I do, yes, sir.

Q. Is there not a medium that you reach before you reach the skull which may be said to be soft?

A. It is comparatively

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soft.

Q. In life what is the consistency of the human skull? Is it brittle or does scarf up?

A. It is brittle.

Q. Doesn't it scarf up as we say when it is struck as when you cut wood across the grain?

A. I don't catch your meaning.

Q. When you strike wood from the left to the right, you make it scarf up in shreds?

A. You mean cutting it in the longitudinal length?

Q. Yes. And you would have the same result in a lesser degree, if you struck the human skull, wouldn't you?

A. Yes, sir.

Q. As to the construction of the anatomy of the human eye, will you tell us about that?

A. It has three outside coats and two what we call humors, that is water.

Q. Water?

A. Yes.

Q. How is that water held?

A. Held in a sac.

Q. In a sac?

A. Yes.

Q. Now when you saw Mr. Borden on the day of the tragedy, was not the left eyeball cut entirely through, clean through those three outer sections and the sac itself?

A. Yes, sir.

Q. Just as you would cut it with a razor?

A. Yes, sir.

Q. Do you think that a hatchet could have made such a blow as that?

A. I do.

Q. Even through this humor which is on the inside?

A. Yes, sir.

Q. Assuming that the head is on a cushion, or a substance soft and yielding?

A. Yes, sir.

Q. And the eye ball then, in its turn, rests upon a sort of cushion behind it?

A. It does, yes, sir.

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Q. When one feels the eye in life, there is a sort of cushion or elasticity behind the eye?

A. Yes, sir.

Q. Notwithstanding the anatomy of the eye and its situation and its action in life, and that head upon a yielding cushion, you think a blow which cuts through these three outer coverings and the humor inside,---that this injury could have been done by a hatchet?

A. I do, yes, sir.

Q. And did it in reference to Mr. Borden, have to go through the bone over the eye?

A. That is not the one that did it; that is the glancing blow. That was done first and chipped out the bone, which left the second blow that came down into the eye free from this bony contact.

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.

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.

MR. KNOWLTON. We have agreed that Dr. Dolan shall not be further excluded.

**** END OF VOLUME ONE ****