

# *The Borden Case*

John Henry Wigmore

John Henry Wigmore (1863–1943), professor of law at Northwestern University, was a legal scholar who specialized in the law of evidence. In the following essay, Wigmore presents the facts of the famous Lizzie Borden murder case.

1

On the 4th of August, 1892, was committed in the city of Fall River, Massachusetts, the double murder for which Lizzie Andrew Borden was tried in the month of June, 1893, at New Bedford. Not since the trial of Professor Webster for the murder of Dr. Parkman has such widespread popular interest been aroused; but on this occasion the notoriety far exceeded that of the Webster case, and the report of the proceedings was daily telegraphed to all parts of the country. If we look for the circumstances which made the case such a special theme of discussion, they seem to be three: first, the particularly brutal mode in which the killing was done; next, the sex of the accused person and her standing in the community; but principally the fact that the evidence was purely circumstantial and was such as to afford singularly conflicting inferences.

2

In August, 1892, Andrew Jackson Borden was a retired merchant of Fall River, and lived in a house on the east side of Second Street in that city, an important thoroughfare running north and south and faced partly by dwelling houses, partly by business structures. South of the Borden house and closely adjoining was Dr. Kelly's; north of it Mrs. Churchill's; in the rear, but diagonally, Dr. Chagnon's. Mr. Borden was seventy years of age. He was reputed to be worth \$300,000 or more, but his family lived in the thrifty and unpretentious style characteristic of New England. The members of the household were Mr. Borden and four others: 1. Mrs. Borden, a short but heavy person, sixty-four years of age, formerly Abby Durfee Gray, now for twenty-five years the second wife of Mr. Borden; 2. Emma Borden, forty-one years of age, a daughter of Mr. Borden's first marriage, and unmarried; 3. Lizzie Andrew Borden, thirty-two years of age, the other child of the first marriage, also unmarried; 4. Bridget Sullivan, a servant who had been with the family nearly three years. Mr. Borden's first wife had died some twenty-eight years before; by the second marriage there was no issue living.

3

In the latter part of July Emma Borden went to visit friends in Fairhaven, an adjacent town. On Wednesday, August 3, however, the number in the household was restored by a brief visit from John V. Morse, a brother of the first wife. He came just after noon, left for a few hours, returned in the evening, sleeping in the house, and went out the next morning. On Tuesday night, August 2, Mr. and Mrs. Borden were taken suddenly ill with a violent vomiting illness; Lizzie Borden was also slightly affected; Bridget Sullivan was not. On Wednesday morning Mrs. Borden consulted a physician as to this illness. On Thursday morning, August 4, the only persons known to be in the house were Mr. and Mrs. Borden, Miss Borden, Mr. Morse, and the servant Bridget Sullivan. Before describing the occurrences of the morning it is necessary to explain the arrangement of the house.

4

The appended plan shows the situation of the rooms on the ground and upper floors.<sup>1</sup> As to the ground floor, it is enough to call attention to the fact that there were three doors only: the front door, the kitchen door, and the cellar door; that access from the back door to the front hall might be obtained through the kitchen only, and thence through the sitting-room, or through the dining-room and one or both other rooms, and that in the front hall were two small closets. On the upper floor a doorless partition divided into two small rooms the space over the dining-room. Mr. and Mrs. Borden occupied the room over the kitchen; Lizzie Borden the room over the sitting-room and the front half of the partitioned rooms; and the room over the parlor was used as a guest-room and sewing-room. The door between the rooms of Lizzie Borden and Mr. and Mrs. Borden was permanently locked on both sides (on one by a hook, on the other by a bolt); so that there was no access from the rear part of the upper floor to the front part. Furthermore, the door between the guest-room and Lizzie Borden's room was permanently locked on both sides, and in the latter room a desk stood against the door. In the upper hall over the front door was a clothes closet. As to the condition of the doors below, on August 3 and 4, (1) the front door was locked on Wednesday night by Lizzie Borden, the last one to enter it; the fastening being a spring latch, a bolt, and an ordinary lock; (2) the cellar door (opening into the yard) had been closed on Tuesday and was found locked on Thursday at noon; (3) the kitchen door was locked by Bridget Sullivan on Wednesday night, when she came in (and was found locked by her), but on Thursday morning there was passing in and out, and its condition was not beyond doubt, as we shall see; (4) the door from the bedroom of the Borden couple leading down-stairs was kept locked in their absence from the room. As to the disposition of the inmates of the house on Wednesday, Mr. Morse slept in the guest-chamber, Mr. and Mrs. Borden and Miss Borden in their respective rooms, Bridget Sullivan in the attic at the rear.

5

On Thursday morning shortly after 6, Bridget Sullivan came down the back stairs, got fuel from the cellar, built the fire, and took in the milk. The kitchen door was thus unlocked, the wooden door being left open, the wire screen door fastened, as usual. Just before 7, Mrs. Borden came down. Then Mr. Borden came down, went out and emptied his slop-pail, and unlocked the barn door. Mr. Morse then came down, and shortly after 7 the three ate breakfast. Mr. Morse left the house at a quarter before 8, Mr. Borden letting him out and locking the door behind him. Lizzie Borden shortly afterwards came down and began her breakfast in the kitchen. At this point Mr. Borden went upstairs to his room, and Bridget went out in the yard, having an attack of vomiting. After a few minutes' absence she returned and found Lizzie Borden absent, Mrs. Borden dusting the dining-room, and Mr. Borden apparently gone down town. Mrs. Borden then directed Bridget to wash the windows on both sides, and left the kitchen, remarking that she had made the bed in the guestroom and was going up to put two pillow-cases on the pillows there. This was the last time that she was seen alive by any witness. Mr. Borden had left the house somewhere between 9 and 9:30.

6

Bridget then set to work at the windows, after getting her implements from the cellar, and here the kitchen door seems to have been unlocked and left so. In cleaning the windows of the sitting-room and the dining-room Bridget found nobody present, both Lizzie Borden and Mrs. Borden being elsewhere. As Bridget went out, Lizzie came to the back door, apparently to hook it; but Bridget seems to have dissuaded her. The washing began with the outside of the windows; Bridget proceeded from the two sitting-room windows (where the screen door, now unlocked, was out of sight) to the parlor-front windows, the parlor side window, and the dining-room windows; and during this time neither Lizzie Borden nor Mrs. Borden appeared on the lower floor. Then Bridget entered

by the screen door, hooking it behind her, and proceeded to the washing of the inside of the windows, following the same order as before. While washing the first, some one was heard at the front door. Mr. Borden had come home, and failing to enter the screen door, had come round to the front and was trying the door with his key, but the triple fastening prevented his entrance, and Bridget came and opened it before he was obliged to ring the bell. At this moment a laugh or other exclamation was heard from the daughter on the floor above. She came down shortly to the dining-room where Mr. Borden was, asked if there was any mail, and then volunteered the information, "Mrs. Borden has gone out; she had a note from somebody." It was now 10:45, though by a bare possibility 7 or 8 minutes earlier. Mr. Borden took his key, went up the back stairs (the only way to his room), and came down again just as Bridget had finished the second sitting-room window and was passing to the dining-room. Mr. Borden then sat down in the sitting-room; Bridget began on the dining-room windows; and Lizzie Borden put an ironing-board on the dining-room table and began to iron handkerchiefs. This conversation ensued:—

7

"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 on a sick call, and I might go out too.' Says I, 'Miss Lizzie, who is sick?' 'I don't know; she had a note this morning; it must be in town.'"

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Then Bridget, finishing the windows, washed out the cloths in the kitchen; and, while she was there, Lizzie Borden stopped her ironing, came into the kitchen and said:—

9

"There is a cheap sale of dress goods at Sargent's to-day at 8 cents a yard."

10

And Bridget said, "I am going to have one."

11

At this point Bridget went upstairs and lay down. In perhaps 3 or 4 minutes the City Hall clock struck, and Bridget's watch showed it to be 11 o'clock. Lizzie Borden never finished her ironing. Miss Russell testified (without contradiction) that she afterwards carried the handkerchiefs upstairs, and that there were 4 or 5 finished with 2 or 3 only sprinkled and ready to iron.

12

The next incident was a cry from below, coming 10 or 15 minutes later:—

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"Miss Lizzie hollered: 'Maggie, come down.' I said, 'What is the matter?' She says, 'Come down quick, father's dead. Somebody's come in and killed him.'"

14

Bridget hurried down-stairs and found the daughter at the back entrance, leaning against the open wooden door, with her back to the screen door. The daughter sent her for Dr. Bowen, and next, on returning, for her friend Miss Russell, Dr. Bowen being absent. While Miss Russell was being sought, Dr. Bowen and the neighbor, Mrs. Churchill, came, the latter first. Mrs. Churchill gave the alarm at a stable near by, and the telephone message reached police headquarters at 11:15. When Bridget came back and mutual suggestion began, as Bridget relates:—

15

"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 upstairs to see?' I said: 'I am not going upstairs alone.'"

16

Mrs. Churchill offered to go with her. They went upstairs, and as Mrs. Churchill passed up, the door of the guest-room being open, she saw the clothing of a woman on the floor, the line of sight running under the bed. She ran on into the room and, standing at the foot of the bed, saw the dead body of Mrs. Borden stretched on the floor.<sup>2</sup> It may here be mentioned that the medical testimony showed, from the temperature of the body, the color and consistency of the blood, and the condition of the stomach's contents, that Mrs. Borden's death had occurred between one and two hours earlier, probably one and one-half hours earlier, than Mr. Borden's,—or not much later or earlier than 9:30.

17

During this time the other neighbors were with Lizzie Borden, who had thrown herself on the lounge in the dining-room, not having been to see her father's or her stepmother's body at any time since the call for Bridget. At a neighbor's suggestion she went upstairs to her room, and here without suggestion she afterwards (within half an hour of the killing) changed her dress and put on a pink wrapper.

18

Something must now be said in brief description of the manner in which the two victims had met their death. Mr. Borden's head bore ten wounds from a cutting instrument wielded with a swing; the body bore no other injury. The shortest cut was one-half inch long, the longest was four and one-half inches. Four penetrated the brain, the skull at the points of penetration being about one-sixteenth inch thick. The body was found, lying on the right side on the sofa in the sitting-room, the head nearest the front door, and the wounds indicated that the assailant stood at or near the head of the couch and struck down vertically from that direction. Spots of blood were upon the wall over the sofa (30 to 100), on a picture on the same wall (40 to 50), on the kitchen door near his feet, and on the parlor door. On the carpet in front of the sofa, and on a small table near by, there was no blood. On Mrs. Borden's head and neck (and not elsewhere) were twenty-two injuries, three ordinary head contusions from falling and nineteen wounds from blows by a cutting instrument,—of these, one was on the back of the neck and eighteen on the head. The shortest was one-half inch, the longest three and one-half inches in length. Four were on the left half of the head, one being a flap wound made in the flesh by a badly-aimed cut from in front. Some thirteen of these made a hole in the top of the skull, crushing into the brain, this part of Mrs. Borden's skull being about one-eighth inch in thickness and the thinnest part of her skull. There were blood spots on the north wall, on the dressing-case (over 75), and on the east wall. The weapon or weapons employed were apparently hatchets or axes. Upon the premises that day were found two hatchets and two axes. Of these only one offered any opportunity for connection with the killings, for the others had handles so marked with ragged portions that they could not have been cleansed from the blood which they must have received. Of the fourth some mention will be made later.

19

On Tuesday, Wednesday and Thursday, August 9, 10 and 11, the inquest was held by Judge Blaisdell, and on Thursday evening Lizzie Borden was arrested on charge of committing the murders. The preliminary trial began before Judge Blaisdell, August 25, continuing until September 1, when she was found probably guilty and ordered to be held for the grand jury. The indictment was duly found, and on Monday, June 5, 1893, the trial began in the Superior Court of Bristol County, at the New Bedford Court House. In accord with the law of the State, the Court for such a trial was composed of three judges of the Superior Court of the Commonwealth. Those who officiated on this occasion were Mason, C. J., Blodgett, J., and Dewey, J.

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The case for the prosecution was conducted by Hosea M. Knowlton, District Attorney for the County,<sup>3</sup> and Wm. H. Moody, District Attorney of Essex County.<sup>4</sup> The case for the

defence was conducted by George D. Robinson,<sup>5</sup> Melvin O. Adams,<sup>6</sup> and Andrew J. Jennings.<sup>7</sup>

21

We now come to consider the question, what points did the prosecution attempt to make against Lizzie Borden in charging the crime upon her? It endeavored to show, first, prior indications, (a) Motive, (b) Design; second, concomitant indications, (a) Opportunity, (b) Means and Capacity; third, posterior indications, (a) Consciousness of Guilt. Let us take these in order very briefly.

22

1. (a) Motive. The family history was brought in to show that the accused was not on the best of terms with her stepmother. This was evidenced by the testimony of: (1) A dressmaker, who reported that in a conversation held some time previously, when her "mother" was mentioned, she answered: "Don't say 'mother' to me. She is a mean, good-for-nothing old thing. We do not have much to do with her; I stay in my room most of the time." "Why, you come down to your meals?" "Yes, sometimes; but we don't eat with them if we can help it." (2) The servant, who reported that, though she never saw any quarreling, "most of the time they did not eat with the father and mother." (3) The uncle, who did not see Lizzie Borden during the visit from Wednesday noon till Thursday noon: (4) the sister, Emma, who explained the ill-feeling partly on the ground of a small transfer of property by the father to his wife a few years before, and reported that since that time the accused had ceased saying "mother" and addressed her as "Mrs. Borden," and that a gift of other property to the daughters had only partially allayed the ill-feeling; (5) the police officer, who on asking Lizzie Borden on Thursday noon, "When did you last see your mother?" was answered, "She is not my mother. My mother is dead." The general effect of the motive testimony purported to be that the daughters were afraid of the property going to the second wife, to their exclusion, and that this fomented an ill-feeling existing on more or less general grounds of incompatibility.

23

(b) Design. No evidence was offered of a specific design to kill with the weapons used. But it was attempted to show a general intention to get rid of the victims: (1) Testimony of a druggist and of by-standers as to an attempted purchase of prussic acid in the forenoon of Wednesday, the day before the killing:—

24

"This party came in there and inquired if I kept prussic acid. I was standing out there; I walked in ahead. She asked me if we kept prussic acid. I informed her that we did. She asked me if she could buy ten cents' worth of me. I informed her that we did not sell prussic acid unless by a physician's prescription. She then said that she had bought this several times, I think; I think she said several times before. I says: 'Well, my good lady, it is something we don't sell unless by a prescription from the doctor, as it is a very dangerous thing to handle.' I understood her to say she wanted it to put on the edge of a seal-skin cape, if I remember rightly. She did not buy anything, no drug at all, no medicine? No, sir." This was excluded, for reasons to be mentioned later.

25

(2) Testimony of a conversation on the same Wednesday, during an evening call on Miss Russell, an intimate friend:—

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The prisoner said: "I have made up my mind, Alice, to take your advice and go to Marion, and I have written there to them that I shall go, but I cannot help feeling depressed; I cannot help feeling that something is going to happen to me; I cannot shake it off. Last night," she said, "we were all sick; Mr. and Mrs. Borden were quite sick and

vomited; I did not vomit, and we are afraid that we have been poisoned; the girl did not eat the baker's bread and we did, and we think it may have been the baker's bread."

27

"No," said Miss Russell, "if it had been that, some other people would have been sick in the same way."

28

"Well, it might have been the milk; our milk is left outside upon the steps."

29

"What time is your milk left?"

30

"At 4 o'clock in the morning."

31

"It is light then, and no one would dare to come in and touch it at that time."

32

"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 some of them will do something to him; I expect nothing but that the building will be burned down over our heads. The barn has been broken into twice."

33

"That," said Miss Russell, "was merely boys after pigeons."

34

"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 when 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."

35

(3) The suggestion to Bridget that she should go to town and purchase the dress-goods mentioned.

36

2. (a) Opportunity. One of the chief efforts of the prosecution was to prove an exclusive opportunity on the part of the accused. The essential result of the testimony bearing on this may be gleaned from what has already been noted. (b) Means and Capacity. The medical testimony showed that there was nothing in the assaults which a woman of her strength might not have accomplished. The lengthy testimony in regard to the fourth hatchet was directed to showing that it was not incapable of being the weapon used. The handle was broken off; but the presence of ashes on the handle in all other places but the broken end, as well as the appearance of the break, showed that it was a fresh one, and not impossibly one made after the killing; and if thus made, it was not impossible that the hatchet was used in killing, washed, rubbed in ashes, broken off, and the fragment burnt. A strong effort was made by the defense to discredit these results, which rested chiefly on the reports of police officers, but it had little effect.

37

3. (a) Consciousness of Guilt. This, with exclusive opportunity, were the main objects of the prosecution's attack. Much that was here offered was excluded, and this exclusion possibly affected the result of the case. The points attempted to be shown were: (1) Falsehoods to prevent detection of the first death; (2) falsehoods as to the doings of the accused; (3) knowledge of the first death; (4) concealment of knowledge of the first death; (5) destruction of suspicious materials.

38

(1) To Bridget and to her father the accused said, as already related, that her mother had received a note and gone out. The same statement she made to Mrs. Churchill and to

Marshal Fleet. No note, however, was found; no one who brought a note or sent a note came forward or was heard of; no sound or sight of the sort was perceived by Bridget or any others. The only blot upon an almost perfectly conducted trial was the attempt of the counsel for the defense in argument to show that the information as to the note emanated originally from Bridget and that the accused merely repeated it. This was decidedly a breach of propriety, because it was not merely an argument suggesting the fair possibility of that explanation, but a distinct assertion that the testimony was of that purport, and, therefore, in effect, a false quotation of the testimony. In truth the accused's statement about the note was her own alone and was one of the facts to be explained.

39

(2) Here were charged three falsehoods: (a) When the accused was asked where she was at the time of the killing of Mr. Borden, she said that she went out to the barn (to Dr. Bowen) "looking for some iron or irons," (to Miss Russell) "for a piece of iron or tin to fix a screen," (to the mayor and an officer and at the coroner's inquest)<sup>8</sup> in the barn loft, eating some pears and "looking over lead for sinkers." The inconsistency of the explanations was offered as very suggestive. The day was shown to be a very hot one, and the loft was argued to be too hot for such a sojourn. Moreover Officer Medley testified to going into the barn, in the loft, and finding the floor covered with dust, easily taking an impression from his hand or foot, but on his arrival quite devoid of any traces of the previous presence of another. The trustworthiness of his statements was attacked by witnesses who said that they and others had been there before the officer. The priority of their visits was not placed beyond doubt; but the effect of the officer's statement of course fell from practical proof to a merely probative circumstance.

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(b) When the accused was describing her discovery of the father's death, she said (to Officer Mullaly) that she heard "a peculiar noise, something like a scraping noise, and came in and found the door open;" (to the servant) that she heard a groan and rushed in and found her father; (to Mrs. Churchill) that she heard a distress noise, came in, and found her father; (at the inquest) that after eating pears in the loft and looking over lead, she came down, returned to the kitchen, looked in the stove to see if the fire was hot enough for her ironing, found that it was not, put her hat down, started to go upstairs and wait for Bridget's noon-day fire, and thus discovered her father; (to Officer Harrington) that she was up in the loft of the barn and thus did not hear any outcry or noise of any kind; (to Marshal Hilliard) that after half an hour up in the barn, she came in and found her father. Here, again, a substantial inconsistency was charged.

41

(c) Mr. Borden had on, when found, a pair of congress boots or gaiters; but at the inquest the accused, before this was pointed out, testified that when he came home about 10:45, she assisted him to lie down on the sofa, took off his boots, and put on his slippers.

42

(3) Her knowledge of the first death was said to have been indicated: (a) By the inevitable discovery of the body in the guest-room through the open door, or of the murderer either in passing about or in going up and down the stairs; (b) by the noise of the scuffle, if another had done it, and by the thud of the heavy woman's fall; (c) by the readiness with which the accused suggested that Mrs. Borden must have returned;<sup>9</sup> (1) for as her father had been in the room off the hall from 10:45 to, say, 11, and as she had been out in the barn from 11 till the killing was discovered and others came in, there was no time when the mother could have returned since the father's return, and up to that time the accused herself predicated her absence.

43

(4) If this knowledge existed, then beyond doubt the concealment of it and the pretense of ignorance involved in sending Bridget to get the step-mother was strongly indicative of guilt.

44

(5) Some attempt was made to show a degree of secrecy and obstruction to official investigation of the rooms; but with little or no result. On Sunday morning, however (the officers having informed her on Saturday that she was suspected of the crime), when Emma Borden and Lizzie Borden were in the kitchen and officers were in the yard, Alice Russell came in:—

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“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.’ I left the room then, and on coming back, Miss Lizzie stood up toward the cupboard door, and she appeared to be either ripping something down or tearing part of this garment. I said to her: ‘I wouldn’t let anybody see me do that, Lizzie.’ She didn’t make any answer, but just stepped one step farther back, up toward the cupboard door. . . . Afterwards, I said to them, ‘I am afraid, Lizzie, the worst thing you could have done was to burn that dress. I have been asked about your dress.’ She said: ‘Oh, what made you let me do it? Why didn’t you tell me?’”

46

The prosecution naturally attempted, first, to identify this dress as the one worn on the morning of the killing; in this they failed; second, to show at least that the dress worn on that day was missing, and was not the one handed over by the accused, as the dress of that morning. On this point they made out a very strong case. The dress handed over by the accused to the officers as the one worn on Thursday morning, while ironing, and afterwards, was a silk dress, of a dark blue effect; the testimony, however, pointed strongly to the wearing of a cotton dress, light blue with a dark figure. Such a dress existed, and had been worn on the day before, but not on Friday or Saturday.

47

Thus far the prosecution. The defense began with character evidence based on the accused’s cooperation in Sunday-school and charitable work and her good standing as a church member. The motive-evidence was not shaken; though the sister of the accused represented the ill-feeling to be of minimum intensity. The design-evidence of prussic acid did not come to the jury. In regard to exclusive opportunity, the defense made no break in the chain of the prosecution, except in showing that the screen door was not closed at all moments during the morning. The evidence as to the possibility of an unseen escape from the house was not potent on either side. But no traces of another person were shown within the house; and no suspicious person was located in the vicinity of the house—if we except some vague reports of a tramp, of a pale, excited young man, and the like, being seen on the street, near by, within a day or an hour of the killing. The attempt failed to show the impossibility of the handleless hatchet having been used—unless we assume (what the defense desired to suggest) that the testimony of all the officers was wilfully false. Coming to the evidence of consciousness of guilt,—the defense could not shake the story of the note; they merely suggested that it might have been a part of the scheme of the murderer to divert suspicion. They searched for the note and they advertised for the sender or carrier, but nothing appeared. The inconsistent stories about going to the barn were explained by the excitement of the moment; the inquest-story—with the most marked divergence—was excluded. Lead was found in the loft; but no fish-line was shown<sup>10</sup> and no screen was identified. It was suggested that perhaps both explanations were true, that both



purposes co-existed. The inconsistent stories as to her return and discovery of the murder were in part slid over, in part ignored, and in part discredited.<sup>11</sup>

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The discrepancy between the statement about the slippers and the actual foot-coverings did not get to the jury. As to the circumstances indicating knowledge, their force was a matter of argument and probability merely; the defense urged the contrary hypotheses which suggest themselves to all. The dress burning was explained by the sister to have taken place in consequence of a suggestion of hers; but Miss Russell's testimony contradicted this. The defense offered to show a custom in the family of burning all old dresses, but this was rejected. Another offer, also rejected, was to show the conduct of a demented-looking man, seen in the woods near the town, a few days after the murder, carrying an axe, and exclaiming "Poor Mrs. Borden!"

49

The stronghold of the defense was the utter absence of all such traces or marks as would presumably be found upon the murderer. No blood was seen upon her by the five or six persons who came in within ten minutes and before she donned the pink wrapper. No garment was found with blood or other traces upon it.<sup>12</sup> No weapon bearing blood or other traces was found within or without the house. One or two of the experts were willing to say that it was practically impossible to deal the twenty-nine blows without receiving more or less blood on the garments and perhaps in the hair (though it does not appear that her head was examined for blood). It is safe to say that this was the decisive fact of the case.

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It is, of course, impossible to rehearse here all the minor details of evidence and argument offered on either side. It has been necessary to make a summary estimate of the force of certain evidence mentioned.

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On Tuesday, June 20, at 4:32 in the afternoon, after less than an hour and a half of deliberation, the jury returned a verdict of "not guilty."<sup>13</sup>

## References

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<sup>1</sup>. See pp. 37–38—Eds.

<sup>2</sup>. See plan, p. 38.

<sup>3</sup>. Afterwards Justice of the Massachusetts Supreme Court.

<sup>8</sup>. Her inquest testimony was excluded, for reasons to be considered later.

<sup>9</sup>. This, however, was not argued at the trial. Moreover, no attempt was made to show that Mrs. Borden had no latch-key to the knowledge of the accused.

<sup>10</sup>. The lead-for-sinkers statement had not been admitted, but the counsel for the defense took it up in his argument.

<sup>11</sup>. The inquest-story, going into particulars, had never been admitted; but there were still at least two distinct statements.

<sup>12</sup>. Except a white skirt having at the back and below a spot of blood as large as a pinhead, the spot being otherwise explainable.

<sup>13</sup>. It was reported that they were of one mind on the first ballot, and remained an hour in general conversation, at the suggestion of one member, merely to avoid letting the counsel for the Commonwealth suppose that his argument did not receive consideration.

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