

**THE
CONSPIRACY TRIAL
FOR THE MURDER OF
THE PRESIDENT,
AND THE ATTEMPT TO OVERTHROW
THE
THE GOVERNMENT BY THE
ASSASSINATION OF ITS PRINCIPAL
OFFICERS.**

**EDITED, WITH AN INTRODUCTION,
BY BEN: PERLEY POORE.**

VOL. III.

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THE TRIAL.

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THE TRIAL.

Cross-Examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You know the fact, I suppose, that the other boxes of that theatre were not occupied on the night of the assassination?

A. Yes, sir: none of the boxes were occupied, I think. I could tell by looking at my book. I am not certain of it.

Q. Have you not had particular attention called to that matter since the assassination?

A. Yes, sir: I do not remember of any boxes being taken on that night.

Q. Do you not remember the further fact that the boxes were applied for that evening, and the applicants were refused, and told that they had already been taken?

A. No, sir: I do not recollect it. The applicants did not apply to me.

Q. You sold all the tickets, did you not?

A. No, sir: there were four of us in the office who sold tickets.

Q. And you do not know who had applied for those other boxes?

A. No, sir.

Q. Are you willing to swear here that Booth did not?

A. To me? Yes, sir.

Q. To anybody, with your knowledge?

A. Yes, sir: I swear he did not.

Q. To you, according to your information?

A. According to my information, he did not.

Q. Nor anybody else for him?

A. Nor anybody else for him.

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Q. There were no applications of any kind for the other boxes to your knowledge?

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A. To my knowledge, no application was made for any box except the President's? [*stet*]

Q. I understand you to swear, however, that there may have been applications made, and you know nothing about them?

A. Yes, sir: there may have been.

Q. Now will you please tell the Court whether there was a mortice in the wall behind the entrance-door of the President's box when you up there decorating it?

A. I did not notice it.

Q. Will you swear whether there was or not a mortice there?

A. There was not, to my knowledge.

Q. You know there was one there when the President was murdered?

A. I do not know it: I heard so.

Q. Did you not see it afterwards?

A. No, sir.

Q. You did not see it afterwards?

A. No, sir: I have not been in the box since.

Q. Was there any bar there for the purpose of fastening the entrance-door of that box when you were there that afternoon?

A. I saw none.

Q. Was there ever such a contrivance attached to it before that day?

A. I never knew of any.

Q. Do you not know that there was a contrivance by which the door could be fastened at any time against its being opened from the outside by putting a bar in the mortice of the wall?

A. I know there was not.

Q. That is what I suppose,—before that day?

A. Yes, sir.

Q. Was there a hole bored through the first door that opens into the President's box from the entrance-passage before that day?

A. I never saw it, and do not of any being there.

Q. Do you not know now that there is one there?

A. I have heard so; but I have not been in the box since.

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Q. Have you not seen it since the assassination?

A. No, sir.

Q. Were the screws of the keepers of the locks of the doors to the President's box drawn before that day, so that the locks would not hold the door?

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A. I have heard that the lock was bursted some time previous to the President's visit there; but I do not know about that.

Q. I am not asking you about any bursting. I am asking you about the fact whether the screws were drawn so that the keepers of the lock would not hold the door at all, if there was a pressure against it, opening into the President's box before that day.

A. Not to my knowledge: I do not know.

Q. Do you swear that they were not so drawn when you were decorating the box that day?

A. To my knowledge, I swear they were not. They might have been drawn. I am not certain of that; but I did not notice it. I swear positively that I did not notice it.

Q. It was not done in your presence?

A. No, sir.

Q. Nor was it done with your knowledge?

A. No, sir.

Q. Had you a conversation with Mr. Ferguson before that about decorating the theatre with a flag in celebration of some of our victories?

A. I do not remember any.

Q. Or in regard to running up a flag on the theatre?

A. I do not remember ever having had any conversation with him on that subject: I may have had.

Q. Do you remember his asking you whether you had a flag to run up to celebrate a victory?

A. No, sir: I do not. I know that we borrowed a very large flag to run up in front of the theatre. My brother, James R. Ford, borrowed it.

By MR. AIKEN:

Q. I understand you to state that it was half-past eleven or twelve o'clock when you first saw Booth in the theatre, in the morning?

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A. It was about twelve o'clock, noon.

Q. How long did he remain there?

A. I suppose he remained there half an hour. I did not see him go. I staid around there for about half an hour, I think, and then went into the office; and when I came out Booth had gone.

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Q. Did Booth have this conversation and read this letter at that time?

A. Yes, sir.

Q. Did you see the letter?

A. Yes, sir.

Q. Was it a long, or a short one?

A. It was a very long letter: either four or eight pages; either two sheets or one, I am not certain which, all covered over.

Q. Large size?

A. Yes, sir: letter paper.

Q. Had it been made public, at the time Mr. Booth left the theatre, that the President would be there that night?

A. When I came to the theatre, my brother told me to wait there until he could go up and get the flags to decorate the box; and so put a little notice in the "Evening Star" and the other evening papers of the President's visit.

Q. But the fact had not been made public, then?

A. No, sir.

Q. Then could any one have had knowledge of that fact unless they did come to the theatre?

A. Unless they met my brother, I do not think they could have had.

Q. In what direction did Booth go after he left the theatre?

A. I did not see him.

Q. Did you see him again between that time and two o'clock?

A. No, sir.

Q. Have you any means of knowing whether he was at the theatre again or not during that time?

A. No, sir.

Q. Did Booth seem to be in a hurry to complete this conversation, read the letter, and get away from the theatre?

A. No, sir.

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Q. When he learned the fact that the President would be there that evening, did you notice any particular change in his manner or appearance?

A. No, sir: he appeared the same as ever. He sat on the step, opened his letter, and commenced to read it, looking up now and then, and laughing.

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By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Booth knew at noon that the President was to be there that evening?

A. Yes, sir.

By MR. AIKEN:

Q. At the time of his visit he learned that fact?

A. Yes, sir.

Q. Do you recollect the name of the messenger from the White House?

A. No, sir: I do not know his name.

Q. You think, then, that Booth could not have been at the theatre during that visit more than half an hour altogether in reading that letter, and this conversation, and every thing?

A. He might have been more: I am not positive. I think it was about half an hour, though, from the time he came until I found that he had gone. When he came, I went and spoke to him, and then went into the box-office; and when I came out again, in about a half an hour's time, he was gone.

Q. Did this conversation take place in the vestibule of the theatre?

A. No, sir: it was out in the front of the gallery-steps, the first door below the office-door.

Q. On the sidewalk?

A. Yes, sir: on the pavement.

Q. Where was he when he read the letter?

A. He walked up and sat on the step of the main entrance door of the theatre, and read his letter.

Q. Do you know of your own knowledge who was with Booth at the time he got through reading the letter and went away?

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A. There were men around there talking to him. Mr. Gifford was there, I think; and I think Mr. Evans and Mr. Grillot.

Q. Is Mr. Evans an attaché of the theatre?

A. Yes, sir; an actor there.

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By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You say Booth knew at noon that the President was to be in that theatre that night?

A. Yes, sir.

Q. You did not tell him, and you do not know what he knew about it before?

A. No, sir.

By MR. AIKEN:

Q. You said it would have been impossible for any one to have known it before, unless they were from the Executive Mansion or had been at the theatre?

A. Some one may have been at the theatre, and gone off and reported it between half-past ten and twelve o'clock. I think it was about half-past ten that the messenger came.

Q. The fact was not made known by parties and the newspapers until the evening?

A. No, sir: not until the "Star" came out.

By MR. EWING:

Q. Do you think, that, if there had been a hole in the wall in the little passage between the President's box and the wall,—say four or five inches one way, and two inches the other,—you would have noticed it that day?

A. No, sir: I would have noticed it if it stood out from the door; but, the door being thrown back against the wall, I would not notice it. The door was open, thrown back against the wall, on that day. If it came from the outside, I would not notice it; if it came inside, I certainly would have noticed it.

Q. Is not that passage-way pretty dark?

A. Yes, sir.

Q. Even when the door is open?

A. Yes, sir.

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Q. Did you observe the side of the wall to the right as you went in?

A. No, sir: I took no particular notice of it.

Q. You might or might not have noticed it, then?

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A. Yes, sir.

Q. If there had been an auger-hole through the side of the door would you be likely to have seen that?

A. No, sir: I do not think I would.

Q. If one or both of the screws fastening the keeper of the lock of the door leading into the President's box had been loose, do you think you would have noticed that?

A. No, sir: I do not think I would have noticed that.

Q. Was the door leading into the President's box, from that little passage, open, or shut, when you went into the President's box?

A. It was open.

Q. Did it remain open?

A. Yes, sir: I left it open when I came out.

Q. Did you notice any paper pasted on the wall to the right of that little passage, as you entered it?

A. No, sir.

Q. Would you have been likely to notice it if it had been there?

A. I do not think I would.

By MR. AIKEN:

Q. Were you acquainted with John H. Surratt?

A. No, sir.

Q. [Exhibiting to the witness the photograph of John H. Surratt.] State if you ever saw a gentleman about the theatre resembling that picture.

A. I do not remember of any. I never saw that face that I know of: it is not familiar to me at all.

By MR. EWING:

Q. Did you ever see the prisoner, Arnold, about the theatre?

A. No, sir.

Q. Or anywhere?

A. No, sir.

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By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You never saw him anywhere, in any place?

A. No, sir.

Q. You do not know him?

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A. I do not know him.

By the COURT:

Q. Do you not know that the intended visit of the President to the theatre was published in the morning papers on the 14th of April?

A. No, sir: it was not published in the morning papers.

By MR. COX:

Q. It was published in the "Evening Star"?

A. Yes, sir.

By the COURT:

Q. Did you state in the drinking-saloon on Tenth Street, during that day, that the President was to be there in the evening?

A. Yes, sir: I might have stated so.

Q. Then it was known before the "Evening Star" was published?

A. Yes, sir: around the vicinity of the theatre.

By MR. COX:

Q. Was it announced that General Grant was to attend the theatre in company with the President?

A. Yes, sir.

WILLIAM WITHERS, JR.,

recalled for the accused, Edward Spangler:—

By MR. EWING:

Q. In your previous examination you were unable to state definitely whether or not the door leading into the alley from the passage was shut when Booth rushed out. Can you now state definitely whether it was or not?

A. Yes, sir: the door was shut.

Q. Do you recollect that fact distinctly?

A. Yes, sir. After he made the spring, after he gave me the

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cut and knocked me down to the first entrance, I got a side view of him; and I saw that he made a plunge right at the door. The door was shut, but it opened very easily. I saw that distinctly. He made a rush at the knob of the door, and out he went, and pulled the door after him.

Q. He shut it after him?

A. Yes, sir: he swung it as he went out.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. It opened very easily when Booth went out?

A. It appeared so to me.

By MR. AIKEN:

Q. Were you at the theatre at twelve o'clock on that day?

A. I cannot recollect. I think I had a rehearsal at ten o'clock that day. There was not any music in the "American Cousin" that required my services; but I think I had a rehearsal with my whole orchestra for the song I had composed.

Q. Did you, or not, see Booth there during the day?

A. No, sir.

Q. You did not see him at all?

A. No, sir.

JAMES R. FORD,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. State what business you were engaged in at the time of and immediately preceding the assassination of the President.

A. I was business-manager of Ford's Theatre.

Q. Will you state when became apprised of the fact that the President intended to visit the theatre that night?

A. At half-past ten on Friday morning.

Q. How did you become apprised of the fact?

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A. The young man from the President's house that generally came for the box came on that occasion.

Q. Do you know who he was?

A. I do not know his name.

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Q. What business was he engaged in at the White House? Do you know?

A. He was a runner. He had been to the theatre half a dozen times for the box. I do not know in what capacity you would call him.

Q. Had the President been previously invited to the theatre for that night?

A. No, sir.

Q. State whether on that day—and, if so, how soon after you received this information—you saw John Wilkes Booth.

A. I saw John Wilkes Booth about half-past twelve on the same day,—about two hours after I received the information.

Q. Where did you see him?

A. At the corner of Tenth and E Streets.

Q. Where did he go?

A. He was going up E Street, towards Eleventh Street.

Q. Had he been at the theatre before?

A. He was coming from towards the theatre. I was coming from the Treasury Building myself.

Q. Had you any knowledge of the President's intention to visit the theatre that night prior to the receipt of this message?

A. No, sir.

Q. Did you have any thing to do with the decoration of the box that the President was to occupy? and, if so, what?

A. No, sir: I had nothing to with it.

Q. Did you not procure any thing to decorate it with?

A. I procured the flags from the Treasury Department.

Q. Were you able to get all the flags you wished for the decoration of the theatre?

A. No, sir: I was not. I wished to procure a thirty-six feet flag, which Captain Jones could not procure for me, he said.

Q. State whether, upon any occasion, you have had any conversation with Booth as to the purchase of lands, and, if so, where?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to the question.

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MR. EWING. Testimony has already been admitted on that point.

ASSISTANT JUDGE ADVOCATE BINGHAM. I know; but it is un

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important as to this man. There is no question about this man in the case.

MR. EWING. It is very important as to one of the prisoners.

ASSISTANT JUDGE ADVOCATE BINGHAM. It cannot be important. This man cannot be evidence for any human being on that subject, no matter what Booth said to him about it. I object to it on the ground that it is entirely incompetent, and has nothing in the world to do with the case. If this witness had been involved in it, I admit it might be asked with a view to exculpate him from any censure before the public.

MR. EWING. The Court will recollect that, in Mr. Weichmann's testimony, there was evidence introduced by the prosecution of an alleged interview between Dr. Mudd and Booth at the National Hotel, in the middle of January, which was introduced as a circumstance showing his connection with the conspiracy, which Booth is supposed to have then had on foot. The accused, Dr. Mudd, is represented to have stated that the conversation related to the purchase of his lands in Maryland. I wish to show by this witness that Booth spoke to him frequently, through the course of the winter, of his speculations,—of his former speculations in oil-lands, which are shown to have been actual speculations of the year before,—and of his contemplating the investment of money in cheap lands in Lower Maryland. The effect of the testimony is to show that the statement which has been introduced against the accused, Dr. Mudd, if it was made, was a *bona-fide* statement, and related to an actual pending offer, or talk about the sale of his farm to Booth.

ASSISTANT JUDGE ADVOCATE BINGHAM. The only way, if the Court please, in which they can do any thing in regard to this matter of the declaration of Mudd, if it was made [and, if it was not made, of course it does not concern anybody], is simply to show by legitimate evidence that there was such a negotiation going on between himself and Booth. The point I make is, that it is not legitimate evidence, or any evidence at all, to introduce a conversation between Booth and this witness at another time and place. It is no evidence at all: it is not colorable evidence; and the Court have nothing to do with it. It is utterly impossible to ask the wit-

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ness any conceivable question that would be more irrelevant or incompetent than the question that is now asked him.

MR. EWING. I will state to the Court further that it has already received testimony as explanatory of the presence of Booth in Charles County, of his avowed object in going there,—testimony to which the Judge Advocate made no objection, and which he must have then regarded as relevant. This testimony is clearly to that point of explanation of Booth's visit in Lower Maryland, as well as an explanation of the alleged conversation with Mudd in January.

ASSISTANT JUDGE ADVOCATE BINGHAM. The difference is this: The defence attempted to prove negotiations in Charles County, and we thought we would not object to that; but this is another thing altogether. It is an attempt to prove a talk, irrespective of time or place or any thing else.

The COMMISSION sustained the objection.

By MR. EWING:

Q. Do you know any thing of the visit made by Booth into Charles County last fall?

A. He told me—

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the witness giving the declarations of Booth.

The WITNESS. I have never known Booth to go there.

Q. [By MR. EWING.] Have you ever heard Booth say what the purpose of any visit which he may have made last fall to Charles County was?

ASSISTANT JUDGE ADVOCATE BINGHAM renewed his objection.
The COMMISSION sustained the objection.

Q. [By MR. EWING.] Do you know John McCullough, the actor?

A. Yes, sir.

Q. Do you know whether or not he was in the city of Washington on the 2d of April last?

A. I do not.

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Q. Do you know where he was then?

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A. No, sir.

By MR. COX:

Q. Did you send a notice of the President's intended visit that evening to the theatre to the "Evening Star"?

A. Yes, sir.

Q. Do you remember whether that notice announced that General Grant was to be there with him?

A. Yes, sir.

By MR. AIKEN:

Q. At what time in the afternoon did you send that notice?

A. I sent it about twelve o'clock in the morning, as near as I can recollect.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. In whose handwriting was that notice?

A. In my handwriting.

Q. Did you write it?

A. Yes, sir.

Q. About what time did the edition containing that notice first appear?

A. About two o'clock, I should think.

By Mr. AIKEN:

Q. I understand you to say that you sent that notice to the "Star" office before you met Booth coming up E Street towards Eleventh?

A. Yes, sir.

Q. Was any one in company with Booth?

A. No, sir.

Q. Did you have any conversation with Booth that day?

A. I had no conversation with him: I merely spoke to him and asked—

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ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing about it.

Q. [By MR. AIKEN.] Did you know John H. Surratt?

A. No, sir.

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Q. [Exhibiting to the witness a photograph of John H. Surratt.] Did you see a person of that description about the theatre that day?

A. No, sir; I never remember seeing him.

Q. At what time did John McCullough, the actor, leave the city?

A. He left when Mr. Forrest left. I believe that was the fourth week in January.

Q. Was he to play an engagement with him?

A. Yes, sir.

Q. Did Mr. McCullough return to this city in company with Mr. Forrest, on the first of March?

A. He did, on Mr. Forrest's last engagement. I do not know what time that was.

Q. Was it before the 1st of April?

A. I think it was.

Q. On what night was it that they played the "Apostate"?

A. It was on Saturday night.

Q. Do you know, of your own knowledge, whether McCullough had left the city or not, before the 1st of April?

A. I do not.

Q. What time did Mr. Forrest leave?

A. I do not recollect the time of his last engagement; but he left after his engagement was over.

Q. Have you the means at the theatre of verifying the facts as to when Mr. Forrest and Mr. McCullough did leave?

A. I have the means of verifying when Mr. Forrest left.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Where did you write that notice? Where were you when you wrote it?

A. In the office.

Q. In the office that you ordinarily occupy?

A. Yes, sir; the ticket-office of the theatre.

Q. Who was present?

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A. There was no one present when I wrote that.

Q. Had you had any consultation with any one about sending the notice to the papers?

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A. I spoke to Mr. Phillips about it.

Q. Who is Mr. Phillips?

A. Mr. Phillips was an actor in our establishment.

Q. Did you speak to him first about it?

A. I asked him to write me the notice.

Q. Did he write the notice, or decline?

A. He said he would after he had done writing the regular advertisement. He was on the stage at the time.

Q. Did you speak to any one else about it, or did any one speak to you?

A. I spoke to my younger brother about the propriety of writing it.

Q. Did you speak to any one else?

A. No, sir; not that I remember.

Q. Had you seen Booth previous to the writing of that notice?

A. No, sir.

Q. At what time did you write the notice?

A. Between half-past eleven and twelve o'clock, I should judge.

Q. Did you send it immediately to the office after writing it?

A. I sent it on to the "Star" immediately, and carried the other one to the "National Republican" myself.

J. L. DEBONAY,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you were on the night of the 14th of April.

A. I was at Mr. Ford's Theatre.

Q. What business were you engaged in there?

A. I was playing what is called "responsible utility" in the theatre.

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Q. State whether you knew of Booth's having rode up to the alley-door, and called for Spangler.

A. Yes, sir: he came to the alley-door, and called for Spangler. He called me first; but, whether he came on a horse or not, I do

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not know. He said to me, "Tell Spangler to come to the door, and hold my horse." I did not see a horse, though.

Q. What did you do?

A. I went over to where Mr. Spangler was, on the left-hand side, at his post, and called him from his post. Said I, "Mr. Booth wants you to hold his horse." He then went to the door, went outside, and was there about a minute, and Mr. Booth came in. He asked me if he could get across the stage. I told him no, the dairy-scene was on, and that he would have to go under the stage, and come up on the other side. About the time that he got upon the other side, Spangler called to me, "Tell Peanut John to come here and hold this horse; I have not time. Mr. Gifford is out in the front of the theatre, and all the responsibility of the scenes lies on me." I went on the other side and called John; and John went there and held the horse; and Spangler came in and returned to his post again.

Q. Did you see Spangler any more that evening?

A. I did; three or four times that evening.

Q. Where?

A. On the stage.

Q. In his proper position?

A. Yes, sir.

Q. At what times during the play?

A. I could not say for certain what times: it was between and during the acts.

Q. Did you see him about the time the shot was fired?

A. I saw him about two minutes before that, I think.

Q. Where was he then?

A. He was on the same side I was on,—the same side as the President's box.

Q. Did you see him after the shot was fired?

A. Yes, sir; about five minutes afterwards.

Q. Where?

A. Standing on the stage with a crowd of people. There was a big crowd collected on the stage then.

Q. What was he doing then?

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A. I did not take any notice of him at all.

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Q. Did you see Booth as he left?

A. I saw him when he made his exit. I was standing in the first entrance, left-hand side. When he came to the centre of the stage, I saw that he had a long knife in his hand. It seemed to me to be a double-edged knife, and looked like a new one. He paused about a second, I should think, and then went off, the first entrance, right-hand side.

Q. Did you see anybody follow him soon?

A. I think he had time to get out the back-door before any person was on the stage.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what you think; state what you saw.

The WITNESS. I did not see the man get on the stage until he made his exit.

Q. How long was it after he made his exit that you saw any man get on the stage?

A. I cannot say exactly; I should say about two or three seconds.

Q. After he had passed out?

A. After he had got off the stage.

Q. Who got on the stage first after Booth left?

A. A tall, stout gentleman, with gray clothes on. I think he had a mustache: I am not certain.

Q. What did he do?

A. He made the exit the same way Mr. Booth did.

Q. Do you think Booth had time to get out of the theatre before this other man got on the stage?

A. I cannot say for certain.

Q. State what you think about it.

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, and it was waived.

By MR. EWING:

Q. How rapidly did Booth move as he passed out?

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A. He did seem to run very fast. He seemed to be kind of stooping a little when he ran off.

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Q. Do you know the distance to the door leading into the alley?

A. From the “prompt-place” to the door, I think, is about forty feet, I should say,—very near between thirty-five and forty feet.

Q. How long do you think it was after he went out the first entrance before this man got on the stage?

A. I said about two or three seconds. I think it was about two or three seconds. I will not be certain about it. I think it was two or three seconds, though. I know he was out of my sight before this gentleman was on the stage.

Q. Do you think it was or was not long enough for Booth, moving at the rate he was going when you saw him, to get out of the back-door before this man got upon the stage?

A. I do not know.

Q. How long was it before this large man who jumped upon the stage followed Booth?

A. I do not know whether he followed him or not. He went out the same way Booth did.

Q. How long was it after Booth went out before he went out?

A. About two or three seconds.

Q. Was he running faster than Booth, or not?

A. He did not seem to run very fast. Between the speed of the two, I think Booth was running the fastest.

By MR. AIKEN:

Q. Where were you at twelve o’clock in the day on Friday the 14th of April last?

A. I think I was at the theatre: I am very sure I was; because there was a rehearsal there,—a rehearsal of the “American Cousin.”

Q. Do you know J. Wilkes Booth, the actor?

A. Yes, sir.

Q. Did you see him there at that time?

A. I did not.

JAMES J. GIFFORD

recalled for the accused, Edward Spangler:—

By MR. EWING:

Q. Do you know any thing of a horse and buggy belonging to Booth having been sold a week or so before the assassination?

A. I heard Mr. Booth tell Mr. Spangler to sell the horse and buggy on Monday evening, one week previous to the assassination; to take it down to the Tattersall and sell it.

Q. The Tattersall is a horse-market in the city?

A. Yes, sir.

Q. Who sold the horse and buggy?

A. Mr. Spangler, I presume.

Q. Who received the money from the sale?

A. Mr. Spangler brought the man up with him, and asked me to count the money and give him a receipt. Mr. Richard Ford wrote the receipt: I took the money and handed it over to Booth.

Q. Do you know Jacob Ritterspaugh, who was a witness called yesterday?

A. I know a man that works at the theatre of that name: I am not much acquainted with him. He was only there some four weeks.

Q. State whether or not, since the assassination and previous to his release from Carroll Prison, he told you at the prison that the prisoner, Edward Spangler, directly after the assassination of the President in the theatre, hit him in the face with the back of his hand, and said, "Don't say which way he went."

A. To the best of my knowledge, I never heard him say so. He asked me if he could amend the statement that he had made. He said he had not told all he knew, and he asked if he could amend it. I told him certainly; but he ought to be particular and state the truth of what he knew. That is all the conversation we ever had regarding it. He told me he had made a misstatement, and had not told all he knew.

Q. Did he say what he had omitted?

A. No, sir.

Q. Did he say that Spangler had slapped in on the face?

THE TRIAL.

[22]

A. No, sir; not to me.

Q. Did he say that Spangler had said, "Don't say which way he went"?

A. No, sir, not to my knowledge.

Q. Did he say any thing to that effect?

A. No, sir: nothing of that kind at all to me.

Q. If he had said it, you likely have recollected it?

A. I should recollect it, I think, from the short time that has elapsed, and my mind being placed on the thing altogether. I have had nothing else to think about but this case since I have been in the Old Capitol.

Q. You think you certainly would have recollected it if he had told you?

A. I think so. He seemed in a great deal of trouble about not making a full statement; and he asked me about it, and I told him certainly they would allow him to correct any thing he had done wrong.

Q. Did he make any allusion to the points that he had omitted?

A. No, sir: he did not,—not to me.

Q. State whose business it was at Ford's Theatre to see that the locks on the doors in and about the private boxes, if they became broken, were repaired.

A. It was the business of the usher to inform me of the fact, and for me to have them repaired.

Q. State whether, within your knowledge or information, any repairing was done to any lock on the door leading into the box which the President occupied within six weeks or two months previous to the assassination.

A. None to my knowledge since the lock has been put on.

Q. When was the lock put on?

A. We opened about August, and it was about the latter part of August or the first of September of the year before last.

Q. State whether you know any thing of the accused, Edward Spangler, being accustomed to crabbing and other fishing during the recesses of his engagement?

A. I never saw him at it; but I have known him to tell me that he went crabbing,—that he would go down to the Neck on

Saturday night and stay until Monday morning, and come home on Monday morning. I have never seen him at it myself; but I know that is what he told me, and I have seen others who said the same thing,—that they had been crabbing together.

Q. [Exhibiting to the witness the rope.] Will you state whether that rope is such a one as might be used in that sport?

A. They have a line something of this sort, and small lines tied on to it about that distance [three feet], with pieces of meat attached, and as they go along they trail it along. I have seen them at it, although I have never done any thing at it myself. They pull up the crabs as they go along, and let the line go down, and dip them up out of the boat.

Q. They have short lines attached to the long one?

A. Yes, sir: short ones attached about three feet apart. That is the way I have seen them.

Q. With hooks and bait?

A. Yes, sir: there is just a string on it, and the meat is tied to the end of the string; the crab catches the end, and they hook them on, and raise this line and get the crab from under it.

Q. Have you seen such ropes as that used in this sport?

A. Yes, sir: I have seen some similar, and some sometimes a little larger. It is not particular about the size. There is no strain on the rope.

By ASSISTANT JUDGE ADVOCATE BURNETT.

Q. At the places where they go crab-fishing they have lines there, have they not?

A. Sometimes they have on the shore, and sometimes persons carry them with them.

Q. There have to be little lines attached to the large line?

A. Yes, sir.

Q. And it requires considerable work to get the line into shape?

A. Yes, sir: they have to take and stretch it all out, and play it over the shore, and straighten it all out.

Q. They usually have them ready made?

A. Sometimes the people on the shore have them, and sometimes people going from Baltimore take them with them.

THE TRIAL.

[24]

Q. That rope is not ready for doing any fishing now, is it?

A. No, sir: it is not in condition.

By MR. AIKEN:

Q. Were you at the theatre at twelve o'clock on Friday, the 14th of April, when J. Wilkes Booth came there?

A. I saw Mr. Booth pass between half-past eleven and twelve o'clock. I do not know exactly the moment.

Q. Did you have any conversation with him?

A. No, sir: I saw him go past the stage-entrance and go to the front door. He bowed to me; but I did not have any conversation with him.

Q. Were you standing on the sidewalk at that time?

A. No, sir: I was standing in the alley gate, the entrance to the theater.

Q. Who else was there at that time?

A. I think one of the Mr. Fords was at the front door: I am not certain; perhaps both of them.

Q. Was Mr. Evans there?

A. I did not see him.

Q. Was Mr. Grillot there?

A. He might have been standing in his door for all I know. I did not see him: I was standing inside the alley gate.

Q. Did you hear any of the conversation going on at that time, if any, between Booth and the party with him?

A. No, sir: I heard none at all. He came up by himself.

Q. Do you know what time it was that John McCullough left the city last?

A. No, sir: I could not tell you.

Q. Have you any means of finding out?

A. I could tell you the last night he played if I was at the theatre; but I cannot tell you time he left the city.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You say that Jacob told you that he was greatly troubled because he had not made a full statement, and wanted to correct it?

A. He told me he was scared before, that he could not tell

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what he was doing; and he asked me if he could not make a correct statement, and I told him certainly.

Q. Did you not also state a minute ago that he seemed to be in great trouble?

A. He seemed to be troubled about it.

Q. How long ago was that?

A. I should judge it was about three weeks ago.

Q. He was in prison, was he not?

A. Yes, sir.

Q. It was long before he testified here the other day?

A. Yes, sir.

Q. Is it more than three weeks since Jacob made that statement to you?

A. It is fully three weeks.

Q. It is not four weeks?

A. I do not know: I am not certain of the time.

Q. Do you remember his exact words when he made the statement?

A. He said he was scared so bad that he did not know what he was saying.

Q. What other words did he use?

A. I do not recollect,—commonplace words.

Q. Did you not swear a little while ago that he said he had not told all he knew?

A. Yes, sir: I told you that.

Q. I know you told me that; but you do not seem to remember it.

A. I thought you asked me for something else.

Q. Now I want to know if you remember all the other words that he made use of when he made that statement.

A. No, sir: I do not.

ASSISTANT JUDGE ADVOCATE BINGHAM presented the following application, which he had received from one of the counsel for the accused:—

I have the honor to request that compulsory measures may be used to bring the following witnesses before the Court:

THE TRIAL.

[26]

In the case of Payne,—

Captain Darby Richards, Upperville, Loudoun County, Va.
Mrs. John Grant, Warrenton, Va. (on Waterloo Pike). Rev. George
Powell, Live Oak Station, on railroad between Tallahassee and
Jacksonville, Fla.

For Atzerodt,—

Governor Farwell, of Wisconsin, at “Kirkwood,” Charles Sul-
livan, clerk at “Oyster Bay,” Tenth Street and Pennsylvania Ave-
nue.

Col. Wells, provost-marshal, Alexandria.

Matthew J. Pope, livery-stable keeper, opposite Anacostia En-
gine-house, near Navy Yard.

Very respectfully,
W.E. DOSTER, Washington, D.C.,
May 31, 1865.

ASSISTANT JUDGE ADVOCATE BURNETT stated that those par-
ties named in this request, who resided in or near the city of Wash-
ington, had been served with process by the summons having been
left at their respective houses: sufficient time had not elapsed for
the service of process in Virginia and Florida, and its return,
though it had been forwarded immediately after the praecipe was
filed. Before an attachment issued, there should be some proof of
personal service. The facts in that respect could probably be ascer-
tained by Friday morning.

MR. DOSTER thereupon waived his application for the present.

DR. SAMUEL A. H. MCKIM,

a witness called for the accused, David E. Herold, being duly
sworn, testified as follows:—

By MR. STONE:

Q. Where do you reside?

A. In Washington, in the eastern part of the city.

Q. Do you know the prisoner Herold?

A. I do.

[27]

Q. How long have you known him?

A. I scarcely know when I have not known him, as I have lived in this city for twenty-one years; but I have known him very well for the last six years.

Q. State to the Court, as near as you can come to it, what is his character for stability and firmness, or lightness.

A. He is a very light, trivial, unreliable boy,—in mind about eleven years of age.

Q. Is he more of the boy than the man?

A. Much more so, so much so, that I would never allow him to put up a prescription of mine if I could induce it to go elsewhere, feeling confident that he would tamper with it if he thought he could play a joke on anybody.

No other witnesses for the defence being present, and tomorrow being the day fixed by the President of the United States as a day of national fasting, humiliation, and prayer, by reason of the assassination of the late President,

It was, on motion,

Ordered, That the Commission adjourn until Friday, June 21, [*stet*; Transcriber's note: this should read Friday, June 2] at ten o'clock A.M.

FRIDAY, June 21, 1865 [*stet*].

The Court met at the usual hour, and took the following testimony:—

CHARLES A. BOIGI,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. State whether you know the accused, Edward Spangler.

A. Yes, sir; I know him: he has boarded at the same place I board at.

THE TRIAL.

Q. How long before the assassination did he board at the place you were boarding at?

A. I do not know: it has been a good while, five or six months, I presume.

[28]

Q. State whether or not he continued to board there after the assassination until his arrest.

A. He did.

Q. Did you see him at and about the house after the assassination, as usual?

A. Yes, sir; just as usual.

Q. Do you recollect the day of his final arrest?

A. No, sir; I do not.

Q. How long was it after the assassination before he was imprisoned?

A. They had him once or twice in the station-house, I believe. I do not recollect the date.

Q. But it was some days after the assassination before he left the boarding-house, was it not?

A. Yes, sir.

JOHN GOENTHER,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. Are you acquainted with the accused, Edward Spangler?

A. Yes, sir: I am.

Q. State whether or not you boarded with him previous to his arrest.

A. He boarded in the same house.

Q. How long had you boarded with him there?

A. I have boarded there, off and on, the last three years.

Q. How long has he boarded there?

A. To my certain knowledge, he has boarded there, off and on, for six or seven months, if not longer. I am not certain as to the time.

THE TRIAL.

Q. State whether or not, after the assassination, and up to the time of his arrest, you saw him about the boarding-house as usual.

A. To my certain knowledge, I saw him, some two or three days after the assassination, about the house. I will not be very certain about the time; but I think I saw him for two or three days.

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Q. Did you ever see him wear a mustache?

A. No, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. What time of day did you see him about the house?

A. I saw him in the mornings and evenings as I came from work. I work here, in the arsenal, and generally take my dinner with me.

Q. What days of the week did you see him?

A. I am not certain what days they were.

Q. He did not sleep at that house?

A. No, sir.

THOMAS J. RAYBOLD,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. How long have you lived in Washington? and what has lately been your employment here?

A. I have not lived permanently in Washington. On the first Monday of December, one year ago, the day Congress went in session,—I recollect it well,—I came to Washington to Mr. Ford. I was employed there rather to take charge of the house, see to all the front of the house, purchased every thing that was purchased for the house. If the repair of any thing was needed in the front of the house, it was done through my order. That was my business there; and in the absence of the Messrs. Ford, I was in the box-office at the theatre,—sold the tickets.

THE TRIAL.

Q. State whether or not you know any thing of any portion of the locks on the private-boxes being broken; and if so, state what you know.

A. I think it was during Mrs. Bowers's engagement in March—about the 7th,—Mr. Merrick, of the National Hotel, while I was at dinner that day, asked me to reserve him some seats in the orchestra for some company that night,—three, I think. I did so. He did not come up to the time the first act was over. It is customary, after the first act is over, for reserved seats which have not

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been occupied to be taken by any persons there wanting seats. That has been the general rule. He did not come up to the end of the first act, and those seats were occupied after the curtain fell at the end of the first act. Shortly after that, he came in with his wife, Mr. Bunker's wife, and a gentleman from New York, with a lady. They sent to me in the front office, saying that Mr. Merrick was there, and inquiring what did I do with those seats. I went in, and saw that the usher had filled them. I then took him up stairs to a private box,—box No. 6,—but it was locked, and I could not get in. I crossed over the lobby again to boxes 7 and 8, generally termed the President's box, and they were also locked. The house was pretty well filled, and, on going back, I could not find the keys. I had not the keys with me, and could not find where they were. I supposed the usher had them, because he has frequently left the theatre after the first act. I put my shoulder against the door to force the door open. It did not give to that, and I raised and put my foot against it, and gave it two or three kicks, and then it came open. That was the door to box 8, which is termed the President's box. I kicked that lock open on the evening of the 7th of March. There is another lock in the house to which I did the same thing when I could not find the key.

Q. State whether that door led into the box which the President occupied at the time of the assassination.

A. It did. That door led into the boxes which the President occupied,—7 and 8. Both doors led into the box. When he occupied it, both 7 and 8 were thrown into one box by taking down the partition between them. On no other occasions was that done, except by request. Then by request we would take out the partition and throw the box into one.

Q. When the two boxes were thrown together into one, which door was used to enter the double box?

THE TRIAL.

A. Always the door to No. 8,—the one I burst open.

Q. Do you know whether that was the door which was used on the night of the assassination?

A. It was: the other one could not be used.

Q. Do you know whether the lock was repaired after having been burst open?

[31]

A. I do not. I never examined it afterwards. I suppose it would have been my place to report it; but I never paid any attention at all to it afterwards,—never thought of it, in fact, after that night. I frequently entered the box afterwards: always passed in without a key into the box, and never thought of having the lock fixed.

Q. To whom would you have reported it for repairs?

A. To Mr. Gifford.

Q. And you made no report of it to him?

A. No, sir: I never said any thing about that,—never thought of it; in fact, never thought it worth while mentioning it.

Q. State whether the locks were of any use.

A. The locks were but used to keep persons out when the boxes were not engaged. I have had frequently to go and order persons out of the boxes when they were left open. That was merely why the locks were used. After persons entered the box, this door was mostly always left open. I have known it on several occasions to be left open.

Q. Can you say whether the door was locked at the time you burst it open?

A. Yes, sir: I know it was locked. I tried the door and could not open it. I forced with my shoulder against it. It was securely fastened. I stood from it with my back, and put my foot against it, right close to the lock, and the door flew open. I never examined it after I did that to know what condition it was in. I never thought of it afterwards to examine it.

Q. But you frequently entered the box afterwards?

A. I did on two or three occasions afterwards enter it, I know.

Q. And found no difficulty in entering it?

A. No difficulty at all.

Q. No necessity for using a key?

A. No, sir: there was no necessity for me to use a key after that; at least, I never took one with me. The keys generally were in the office during the day. During the night they were in possession of the usher.

THE TRIAL.

Q. State whether you have any knowledge of Booth having occupied either of those boxes shortly before the assassination.

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A. I cannot say precisely the time; but I think it was about two weeks prior to the 14th of April that Mr. J. Wilkes Booth engaged the private-box No. 4, and came to the office again in the afternoon (I was sitting in the vestibule at the time), and asked for an exchange of the box. I think the exchange was made, and he took box No. 7, one of the boxes used for the President. That is the one in the door of which the hole was bored. I think Booth occupied that night box 7, but I cannot positively say it was that box; but I think it was. I know it was one of the two, either 7 or 8; but I cannot swear positively whether it was box 7 or box 8.

Q. It is the door leading into box 7 that has the hole bored through it?

A. Yes, sir.

Q. State whether there were any box-tickets sold at the theatre up to the time of the opening on the night of the assassination.

A. To the best of my knowledge, there were not. I cannot say positively, for I do not know; but I know I sold none. I was not all the time in the office. I had been sick for three days with neuralgia, which I suffered from frequently, and I was not in the office all the time that day; but I was in the office during that afternoon, and I was there also in the morning when the tickets were obtained for the President by his messenger; but I do not know whether there were any sold, nor whether there were any applications made for them. Mr. Sessford is the best one to tell that: he knows it, I suppose.

Q. Would you have been likely to know if any of the tickets were sold?

A. Yes, sir: I would have seen in counting the house at night. I counted the tickets at the usual time, ten o'clock, on the night of the assassination.

Q. And you have no recollection of any of the box-tickets having been sold?

A. No recollection of it.

Q. State at what hour the President engaged the seats.

A. Between ten and eleven o'clock in the forenoon, I think.

Q. Had he been previously invited?

A. Not to my knowledge.

Q. Did you see the messenger?

A. I did, and was talking to him.

Q. State whether you saw any thing of Booth that morning after the President engaged the box.

A. I cannot say whether it was after the President engaged the box, or before it; but I saw him that morning. He got a letter from out of the office that morning; but I cannot say whether it was after the President's messenger was there, or prior to that. I know he got a letter. He generally came there every morning. His letters were directed to Mr. Ford's box in the Post-office; and when Mr. Ford came from breakfast in the morning, he would bring all the letters there; and what belonged to the stage would be sent back, and his would be called for by him.

Q. Did Booth get more than one letter that morning?

A. Not to my knowledge.

Q. State if you know any reason why the rocking-chair in which the President is said to have sat that night should have been in the position it was in.

A. I placed it in the position it was in on other occasions when the President occupied that box, simply because, if it had been in any other position in the box, the rockers would have been in the way. When the partition was taken down, it left a triangular corner, and the rockers went into that corner, at the left of the balustrade of the box. The rockers went into that corner, and were out of the way. I cannot say what other purpose there was: that was the only reason why I put it there. I put it there on two occasions when the President was there, or, at least, had it put there myself.

Q. When was that?

A. Last season, while Mr. Hackett was playing.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You mean last winter a year ago?

A. Yes, sir. It had not been used in there this last season up to this time, although the sofa and the other parts of the furniture had been.

[34]

By MR. EWING:

Q. State what you saw of Spangler, if any thing, for several days after the assassination.

A. I never saw him after the assassination, or, at least, I cannot recollect seeing him afterwards. I only know that he was arrested in the house on Saturday morning, the morning afterwards; but I did not see him, to the best of my knowledge.

Q. Was he not about the theatre that morning?

A. I cannot say: I do not know. I went home to Baltimore myself, where my family reside, on Saturday night. I have always been in the habit of going there on Saturday night or Sunday morning.

Q. When did you return?

A. I returned again on Monday morning.

Q. The theatre was shut up when you returned?

A. It was.

Q. [Exhibiting to the witness the coil of rope found in Spangler's carpet-bag.] Look at this rope, and state whether you know of such ropes being used about the theatre.

A. Yes, sir: I cannot swear that this is the rope, but we use such ropes as this. We used such ropes as this at the time of the Treasury-guards' ball to stretch from the lobby to the wings, to hang on it the colors of different nations. I cannot say that this is the rope, but this is the kind of rope we used.

Q. Examine this rope, and see whether it has probably been in use.

A. I cannot say: I cannot swear to it.

Q. Can you not say whether it has been probably in use at all?

A. This rope has been in use. That I know from its appearance. It would have been lighter than this in color if it had not been used. Using ropes colors them.

Q. Can you tell any thing as to whether this rope has been used or not by its flexibility?

A. I cannot: I have not sufficient acquaintance with ropes to tell any thing of the kind. This is like the kind of rope we generally use in the flies—the rope we use for drawing up the different borders—what are called borders—that go across from one side of

the wing to the other. It looks like a rope of that kind. This is a rope which has evidently been used from its color.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You say that this kind of rope was used in the theatre in fixing up the flies?

A. What we call the borders.

Q. Any rope that was employed in that way in the theatre belong there, did it not?

A. Yes, sir.

Q. And it ought to stay there, ought it not?

A. I should judge so.

Q. Its proper place would not be in a carpetsack half a mile off?

A. I do not think it would.

Q. Mr. Spangler would not supply the theatre with a rope to fix up its flies at his own expense?

A. Not at his own expense, I should not suppose. I do not know that he ever did.

Q. Your opinion is that this rope has been in use anyhow?

A. This rope has been in use, and it is the kind of rope we have used there.

Q. The rope that is used in the way you have described is permanently in its place, is it not?

A. Not at all times. We have to change it often, cut it off.

Q. It is comparatively permanent, but shifted from point to point?

A. Yes, sir: sometimes we use them and we use a great many of them, and then again we have to take them down, and they lie up there on the scene loft until we need them again.

Q. There are two doors that enter the box occupied by the President, 7 and 8, and out and an inner door. Are there not two doors to enter each of them?

A. Yes, sir; to enter from the corridor.

Q. There are two doors that have to be passed to enter either of those boxes?

A. Yes, sir.

THE TRIAL.

[36]

Q. Was it the inner or outer door of box 8 that you burst open?

A. The inner door; for the outer door has never had any lock on it.

Q. It has a latch on it, I believe, has it not?

A. I do not think it has.

Q. My impression was that it had. I have seen it myself.

A. To the best of my knowledge, I do not think there is any thing on the outer door. I suppose you mean by "the outer door" the door entering from the lobby to the little passage.

Q. Yes: the door leading into that box; and I ask you whether either can be entered without passing two doors.

A. The box cannot be entered without passing through two doors, both of which, I think, had locks on them; but I think the door that passed from the lobby into the passage had no latch on.

Q. You say neither of those boxes can be entered without passing through two doors. I want to know whether it was the outer door or the inner door you burst open.

A. I burst the door open entering to box 8.

Q. Was it the outer door, or the inner door?

A. The inner door.

Q. Is box 8 the one next the stage, or the one farthest from it?

A. The one next the stage.

Q. Do you know whether, by the power you employed to burst that door, you burst the lock off, or burst the keeper off?

A. I do not know.

Q. You do not know whether you burst either?

A. No, sir.

Q. Have you any idea that you could burst the door open there without either breaking the lock of the door, or bursting off the keeper, or bursting off the lock?

A. It started the keeper, as I supposed at the time.

Q. You state that you do not know?

A. The door came open when I struck it with my foot.

Q. Have you any idea that, by applying force to that door so as

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to burst it open when locked, you can draw the keeper without splitting the fastening of the door holding the screws?

A. No, sir.

THE TRIAL.

Q. Have you any idea that could be done at all?

A. No, sir: I do not have any idea of it any further than as I said to you. I did this, and I never examined it afterwards.

Q. Can you apply force to burst a door open that is locked, the keeper of which is fastened by screws, so as to draw the keeper without splitting the wood? do you think you can do that?

A. It would depend altogether, I suppose, on the kind of wood.

Q. Let us have your opinion about it. Do you think you can do it at all, if it is fastened by screws, without splitting the wood, by direct force, pounding and beating?

A. I do not know: I might start the keeper. It is according to the length of the screw. It might be, if the screw was long enough.

Q. If there is no screw there it will not amount to much?

A. No, sir.

Q. Is the fastening of that door of pine?

A. I believe it is.

Q. It is your opinion that the keeper of the lock could have been burst off by force from that pine fastening without splitting it. Is that your opinion?

A. Yes, sir: I think so.

Q. You think it could be so?

A. I think it could be so.

Q. You say you never examined it, and do not know?

A. I never examined it, and do not know now more than the other door is.

Q. You did not burst the other door?

A. I did not: I had no occasion for it.

Q. If it so happens that the screws are drawn in both, do you think that is the result of your pounding in either case?

A. No, sir: I did not pound it; I forced it.

Q. You mean forcing it, do you?

A. I did not touch box 7. The door of that box could not

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be in the least bit defaced by my action, but would still remain as it was.

Q. You think that there was no latch on the outer door?

A. I think not; but I am not positive. I never knew one on it.

Q. When were you in the box last?

A. The morning after the assassination my attention was called to a hole in the door, and I went up then to see. There were some gentlemen there.

THE TRIAL.

Q. When were you in it before the assassination?

A. I was in it about five minutes the afternoon of the day of the assassination.

Q. Did you see a mortice in the wall there about four or five inches long and two inches deep, and one-and-a-half or two inches wide?

A. I never saw that at all.

Q. Did you see any piece of wood there to fasten the door to with?

A. No, sir: the first I heard of that was from Mr. Hall.

Q. Did you see that mortice the next morning after the assassination?

A. No, sir: my attention was not called to it. I merely went into the box with those gentlemen, and came out with them. I never saw it.

Q. Did you see that the bolts of the two locks were drawn when you went into the box on Saturday morning?

A. No, sir: I did not notice it.

Q. Where you present when the rocking-chair was put in there?

A. I was not.

Q. Was it gone when you were there on Sunday morning?

A. No, sir: I believe it was there.

Q. Are you very sure of that?

A. I should not like to swear positively, because I paid no attention.

Q. You do not know who put it in there?

A. I know who was ordered to put it there.

Q. You do not know who put it there?

A. No, sir: I do not. I was not in there when it was done.

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Q. You do not know, therefore, how they did arrange it in the box?

A. No further than I tell you. I was there about five minutes when the flags were to be put up, because they could not be put without some one holding them, and I went up to hold on to them while he nailed a nail in the floor. I do not know who put the chair there. I know who was ordered to put it there.

Q. It was not there when they put up the flags, was it?

A. Yes, sir: it was in when I went into the box.

Q. Where was it?

THE TRIAL.

A. It was behind the door of box 7, with the rockers in the corner.

Q. Which corner?

A. On the corner towards the audience: it was in there when I went in.

Q. That would turn the President with his side to the audience?

A. Yes, sir: with his left side.

Q. His face to the stage?

A. Yes, sir: his side rather across the stage, and his back to the audience.

Q. With the rockers of the chair in the corner next to the audience?

A. Yes, sir: the rockers were turned into the triangular corner of which I before spoke. I did not see him in the box; but my opinion is, that, the way the chair was, the audience was rather behind him.

Q. Do you mean to say to the Court that the chair was so that the President sat with his face to the stage?

A. Yes, sir: with his face to the stage,—his face looking towards the stage.

Q. Now, in regard to the time Booth occupied that box, you say he occupied box 7 about two weeks before. I want you to refresh your recollection, and say to the Court whether it was not the 23d day of March he occupied it.

A. Indeed, that I cannot say: I cannot possibly say it.

Q. Can you tell us what day it was?

A. I cannot.

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Q. You have no means of knowing?

A. I can tell you that the only means you can find out is by asking those who gave him the box. Mr. Ford was the one who sold him the box, and exchanged it: I had very little to do with that part of the business.

Q. Your recollection is that it was about two weeks before the assassination?

A. I think, sometime about that: it might have been a little longer; but I cannot positively say.

Q. Do you know who attended him on that occasion?

A. I do not.

Q. There were persons with him, I suppose?

A. There were persons with him.

THE TRIAL.

Q. Ladies?

A. There were ladies with him.

Q. And men with him?

A. There were men with him, I think: that is my recollection.

By MR. EWING:

Q. What it after Booth played "Pescara" that he occupied this box?

A. I cannot state that: I cannot recollect whether it was after or before. He had the box on two occasions. On one of those occasions that he engaged the box he did not use it; for he told me in the evening he would not be able to use the box, as the ladies at the National Hotel had disappointed him. He came into the ticket office when I was standing there.

Q. To the best of your recollection, how long was it before the assassination that he did occupy it?

A. About two weeks: it might have been more.

Q. Are you the property-man of the theatre?

A. No, sir: I have nothing to do with the stage, further than furnishing any thing required. I buy for them what is wanted.

Q. Have you any reason to know whether Spangler got that rope from the theatre rightfully or not?

A. No, sir: I do not know any thing about it.

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By the COURT:

Q. Do you know of what material this rope is made of?

A. I think it is called Manilla rope, if I am not mistaken.

Q. Did you say that, from its color, you knew it had been used?

A. Yes: from its color, I think it has been used. When ropes come about first, they are of a light color. This, I think, is what is called Manilla rope, which is of a light color until it is used.

Q. Do you know that this is a rope of that kind?

A. I do not know positively.

Q. Then the color is no indication whether it was worn or not?

A. That is my impression.

Q. But you do not know?

A. I will not say positively; but it is my impression that that is the case.

THE TRIAL.

By the JUDGE ADVOCATE:

Q. Look at this rope closely, and see if it is not the ordinary hemp rope?

A. I cannot say any further than I judge only from what I have heard others say. I have heard Mr. Gifford speak of Manilla rope, and I think this is what they call a Manilla rope; but I do not know any further than that. I am not an expert in these matters, and cannot say positively.

Q. Do you know whether hemp rope is light or dark?

A. Light, I think.

By the JUDGE ADVOCATE:

Q. You have not much acquaintance with hemp, have you?

A. No, sir: I have not.

By the COURT:

Q. Do you or not know that the color of rope has nothing to do with its use?

A. I know from experience, that, if a rope is wet, it will turn in color.

Q. Do you know that the color of rope does not depend on its age or use?

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A. It does depend on its use.

Q. You say it does?

A. Yes: the color of a rope generally depends on its use, so far as my knowledge extends.

Q. But you do not know any thing about it?

A. I do not about this. I have no knowledge of what its quality is, or any thing about it.

HENRY E. MERRICK,

A witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

THE TRIAL.

By MR. EWING:

Q. State your business in Washington.

A. I am a clerk at the National Hotel.

Q. Will you state whether or not, some time before the assassination of the President, you went to Ford's Theatre, and Mr. Raybold showed you to a box.

A. Yes, sir: I have made that statement. I was there on the evening of the 7th of March.

Q. State what box he took you to.

A. The right-hand box as you pass from the dress-circle. I passed down the dress-circle on the right-hand side. It was the first box as you enter. There was a partition up at the time between the boxes. There were two boxes occupied at the time.

Q. Was it the box nearest the stage?

A. It was the box nearest the entrance to the entrance as you pass in,—the first box. I do not know the number. I do not know that they are numbered.

Q. Are you certain it was the box farthest from the stage?

A. It was the first box as you enter.

Q. Do you know any thing as to the door having been burst open?

A. The door was burst open by Mr. Raybold. I was there in company with my wife, Mr. Norton, Miss Engels, and Mrs. Bunker. They could not find the key that would unlock the door. Mr. Raybold, I think, went to the office, came back and said they had not

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any keys. He came then and placed his shoulder, I think, against the door, and burst it open. The keeper, I think, was bursted off; at least, the screw that held the upper part of the keeper, I think, came out, and it whirled around and hung by the lower screw. I made the remark at the time, that he had better not burst it open; that I would take seats in the dress-circle. He said, if they could not keep the keys where they could be found, he would break the doors open, and we went in, and remained there during the play.

Q. Do you know when John McCullough, the actor, was last at the National Hotel?

A. Our books show that he left there on the 26th of March. He paid his bill on the 26th of March; and since then I have not seen him.

THE TRIAL.

Q. Was he in the habit of stopping at your hotel when he came to the city?

A. I think he was, always. I have never known him to stop at any other hotel.

Q. Was he there on the 2d of April?

A. Not to my knowledge.

Q. Do your books show whether he was there or not?

A. Our books do not show that he was there after the 26th of March.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You do not know whether he was there or not on the 2d of April?

A. I did not see him there after the 26th of March.

Q. But a great many people come to that hotel transiently, and go away again without your knowing anything about it?

A. No, sir: no one stops there without registering his name.

Q. I am not asking you about persons stopping there. I ask whether or not a great many people do not go in the house transiently to visit persons in the house, and go away again without you knowing any thing about it?

A. He may have called on some friend. I did not see him.

Q. Who attended you to the theatre that evening?

A. Mr. Marcus P. Norton of Troy, New York; Miss Engels,

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from the same place; my wife, and Mrs. Bunker, from the National Hotel.

Q. And the first box you came to, upon passing the door of the entrance, you went into?

A. Passing down the dress-circle.

Q. I say, passing down the dress-circle, the very first box you came to you went into.

A. Yes, sir.

Q. There was a partition, then, between the box you occupied and another box to your right, farther on towards the stage?

A. There was.

Q. The box next to the stage you did not enter at all?

A. We entered the first box.

Q. But the box separated from that by a partition, the one next to the stage, you did not enter at all?

THE TRIAL.

A. I did not.

Q. Consequently it was the first door you came to after passing the entrance that he burst open?

A. Yes, sir.

Q. That door was on the left-hand as you passed along that entrance?

A. Yes, sir.

Q. And the first door you came to after passing the outer door?

A. Yes, sir.

Q. And that he burst open?

A. Yes, sir.

Q. And the upper screw came out entirely, and the lock swung around on the lower screw, and left the lock without a fastening at all?

A. I think it did.

JAMES LAMB,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. Will you state where you were employed at the time of the assassination of the President?

[45]

A. At Mr. Ford's Theatre.

Q. How long had you been employed there?

A. For the last two seasons,—over a year.

Q. In what capacity?

A. Artist and scene-painter.

Q. [Exhibiting to the witness the rope found in Spangler's bag.] Will you examine that rope, and state whether you have seen any rope like that used at the theatre?

A. Yes, sir: I have seen ropes like this; but I do not think that this is one that has been used there. In fact, all ropes of this description bear similarity.

Q. Examine that rope carefully, and give your opinion as to whether it was been used.

A. I should say that rope had been used.

THE TRIAL.

Q. What are ropes like that used for in the theatre?

A. For suspending the borders that hang across the top of the scenes.

Q. What are they called?

A. Borders.

Q. What are the ropes that are used called?

A. Border-ropes.

Q. What length of rope is used for that purpose in the theatre?

A. Seventy or eighty feet,—not less than eighty feet.

Q. State to the Court what they are used for, or how they are used.

A. These ropes are used for lowering and raising the borders, which borders are long strips of canvas. Some are painted to represent interiors, others exteriors; and as the scene that is on requires a change, these are raised or lowered for that purpose. Sometimes it is necessary to alter them, and they are lowered down on the stage for the purpose of painting them, &c.

Q. Are the ropes used there about the size of that one?

A. I should say this is about the sized rope.

Q. Examine it carefully, and say whether it has the appearance of having been passed through pulleys.

A. It has the appearance of having been chafed. That is why I said I thought it had been used. A new rope would be a little

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stiffer, it strikes me, in the texture than this. I should say this rope had been used. It is a new rope, but it has been in use.

Q. Does it look as if it had been used for that purpose, as a border-rope?

A. I cannot say that I can detect any thing that would lead me to form an opinion. It is the same kind of rope that is used for that purpose. If it had been used for that purpose, I think there would have been a knot fastening it at the end; that it would bear the appearance of having been tied some way or another.

Q. Examine both ends of the rope, and see whether it has such an appearance.

Q. I have. On the other end it appears to have been cut. I cannot say whether it has been used for that purpose. It is a rope very similar to those that are used in the theatre. There is a great number of them generally about this size.

Q. It bears the mark of use?

THE TRIAL.

A. Oh, yes: I have no doubt but what that rope has been used,—not a great deal, either.

Q. How many such ropes were employed about the theatre?

A. Probably about forty or fifty of them.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you not swear, a little while ago, that you did not think this was one of them?

A. It is very similar.

Q. Did you not swear, a little while ago, “I do not think this is one of them”?

A. I do not know, indeed.

Q. Did you not so swear a little while ago?

A. If you say I did, I believe it.

Q. I ask you whether you did not swear, a little while ago, “I do not think this is one of them.”

A. I do not recollect having said so.

Q. Have you changed your mind now?

A. No, sir.

Q. Do you think it is one of them now?

A. I think it is a rope very similar to the ones that are used.

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Q. Do you think it is one of them now?

A. I should be very sorry to say it was,—to swear to it.

Q. Were you acquainted with John Wilkes Booth?

A. I knew him by sight. I never spoke a word to him in my life.

Q. You never did?

A. No, sir.

Q. Did you not hear him say any thing at all about the President in March or April last?

A. No, sir.

Q. Not a word?

A. No, sir.

Q. I do not ask you whether he spoke it to you: I ask you whether you heard it.

A. No, sir: I was never in his company.

THE TRIAL.

By the COURT:

Q. What is the material of that rope?

A. I should say it is hemp.

By MR. EWING:

Q. Have you any reason to believe, from an examination of the rope, that it was not used as a border-rope?

A. No, sir.

Q. Did you see any thing of the prisoner, Edward Spangler, after the assassination?

A. I saw him on Saturday, the day after the President was assassinated.

Q. For how long a time, and how many times?

A. I saw him several times during the day. I was in the theatre the whole of the day, from ten o'clock until the military guard took possession. I went over the theatre, loitering about. It was a cold day, and my feelings were excited. I did not care about going out of doors, and I remained on the spot the whole day, in the theatre, and I saw Spangler several times during the day.

Q. Was he there about the theatre?

A. Yes, sir.

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By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Whereabouts did you see him on Saturday?

A. On the stage.

Q. Who was with him?

A. There were several there. Maddox was there.

Q. Who else?

A. A man by the name of Jake.

Q. Who else?

A. I saw Mr. Gifford there.

Q. Who else?

A. I saw Mr. Wright there, the stage manager.

Q. All at once?

A. They were in and out occasionally.

Q. But who was with Spangler?

A. Maddox was there at any time.

Q. Who else was with Spangler at the time?

THE TRIAL.

A. Carland was there.

Q. With Spangler?

A. No: in the theatre.

Q. I ask you, who was with Spangler when you were present with him?

A. Carland was, if I recollect rightly. He was in company with myself and Carland.

Q. Who was in company there with Spangler when you saw him there? I want their names, and want to know the time of day.

A. It was in the forenoon.

Q. Who was with Spangler?

A. I was with Spangler.

Q. Who else?

A. Mr. Maddox was with Spangler. We were in the theatre, in the building; we were in company, walking about, loitering about, and sitting down occasionally; there was no companionship particularly.

Q. What time of day was that?

A. Twelve or one o'clock, as near as I can recollect.

Q. When did you see him the next time?

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A. I have not seen Spangler, I believe, until I saw him this morning in the prisoner's dock.

WILLIAM R. SMITH,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. Will you state where you live, and your business?

A. I live in Washington: I am Superintendent of the Botanical Garden.

Q. Were you in Ford's Theatre at the time of the assassination of the President?

A. I was, sir.

Q. Did you see Booth pass off the stage?

A. Yes, sir.

Q. Did you see Mr. Stewart get on it?

THE TRIAL.

A. Yes, sir.

Q. State at what time he got on the stage.

A. Mr. Stewart was amongst the first that got on the stage; but my impression is that Booth was off the stage before Mr. Stewart got on it.

Q. What did Mr. Stewart do?

A. I did not watch what he did on the stage. I saw him on the stage. He turned around, and looked up at the box where the President had been murdered. I did not notice any more after that.

Q. But you think Booth had got off the stage before he got on it?

A. Before any one got on the stage, I think Booth was off the stage.

JACOB RITTERSPAUGH,

called for the accused, Edward Spangler.

By MR. EWING:

Q. When you were examined for the prosecution, the other day, you spoke of Spangler, on your return from running out after

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Booth, slapping you, and of his saying, "Shut up: don't say which way he went"?

A. Yes, sir.

Q. Did you not make the same statement the next day, when were in the theatre with Mr. Lamb, to Mr. Lamb?

A. Yes, sir.

Q. Did you not make the same statement, on the night of the assassination, up in Mr. Gifford's room, to Mr. Carland, when Carland came and woke you up?

A. Yes, sir: he came up and asked where Ned was; he woke me up. I told him I did not know; and then I told him that Ned had slapped me in the mouth, and said "Don't say which way he went."

Q. Were you not on the stage with Spangler in the afternoon of the day of the assassination?

A. Yes, sir.

Q. State what you and Spangler saw there.

THE TRIAL.

A. I saw a man in the dress-circle, smoking a cigar; and I asked Spangler who that man was, smoking a cigar. He said he did not know. Then I said we ought to tell him to go out; but he said he had no charge on that side of the theatre, and no right to do so.

ASSISTANT JOHN ADVOCATE BINGHAM. You need not state what Spangler said.

The WITNESS. I did not take more notice of him then, and we commenced to work again. After a while I looked around, and saw him sitting in the lower private box on the right-hand side of the stage. I went to Ned and told him, and Ned said—

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what “Ned” said.

Q. [By MR. EWING.] State what the man did after Ned spoke.

A. He went out.

Q. Was the man near enough to hear what Ned said?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you know what man that was?

A. He had a mustache.

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Q. Did you know him?

A. No, sir: I never saw the man before.

By MR. EWING:

Q. At what time in the evening was that?

A. About six o'clock: just before we went home to our supper.

Q. That was at six o'clock in the evening of the day on which the President was assassinated?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Where did you say that man was in the theatre?

A. In the dress-circle I saw him first.

Q. Where else was he in the theatre?

A. Below in the private box.

THE TRIAL.

Q. What box?

A. The lower box on the right-hand side of the stage.

Q. That is, the far side from here?

A. It is the left-hand side when you come in from the front of the theatre.

Q. But it is the far side of the theatre from here, the north side, and the lower box at that?

A. Yes, sir.

By MR. EWING:

Q. Did you see which way the man was looking?

A. He was looking at us.

Q. Did he look towards any other part of the theatre?

A. I did not take notice.

LOUIS J. CARLAND,

a witness for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. State whether you are acquainted with Jacob Ritterspaugh.

A. Yes, sir.

Q. State whether you saw him in Mr. Gifford's room on the night of the assassination, after the assassination.

[52]

A. Yes, sir.

Q. Did you wake him up?

A. Yes, sir.

Q. What did Ritterspaugh say to you upon that occasion?

A. When I woke him up he was frightened, and thought I was Mr. Booth. I asked him Spangler was. He told me he did not know where he was now: the last he had seen of Mr. Spangler was when he was standing behind the scenes, and that he did not know where he had gone; that, when the man was running past, he had said that was Mr. Booth, and Spangler had slapped him in the mouth, and said to him, "You don't know who it is: it may be Mr. Booth, or it may be somebody else."

THE TRIAL.

Q. Did Mr. Ritterspaugh tell you then that Spangler slapped him on the face with the back of his hand, and said "Don't say which way he went"?

A. No, sir.

Q. Did he tell you any thing to that effect?

A. No, sir.

Q. Are you sure he did not say that to you?

A. I am certain.

Q. Whom did he represent as saying, when Booth passed, "That is Mr. Booth"?

A. Mr. Ritterspaugh himself made the remark to Spangler.

Q. And Spangler then said what?

A. He said Spangler smacked him the mouth, and told him to "Shut up: you don't know whether it was Mr. Booth, or any other man," or that effect.

Q. Do you know where Spangler was immediately after the assassination?

A. No, sir: I did not see him until the next day.

Q. Where did you see him then?

A. I saw him in the theatre, on the stage.

Q. Where did you see him for a day or two after that, if at all?

A. I was in his company up till Monday, when I was arrested, or up to Sunday night. I was not in his company on Sunday night after he retired. I went to the Herndon House, and he went to

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sleep in the theatre, I suppose: I do not know whether he did or not. He left me to go there to sleep.

Q. Whereabouts was he when in your company during those two days?

A. On Saturday night after the assassination, when he went up stairs to bed, he said there was some talk that the people were going to burn the theatre; and, as he is a man that sleeps very heavy, he was afraid to sleep up there.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing he said.

The WITNESS. I took him into my room, and told him to bring his bed in there; and he remained there all night. He was put under arrest when was in my room on Saturday night.

THE TRIAL.

Q. [By MR. EWING.] Then on Sunday, whereabouts was he with you?

A. At about half-past nine o'clock the guard came and relieved him, and some one came and discharged me, and we went out into the street. I went to church; and, after church was over, I met him again in the afternoon.

Q. Where?

A. In the street, near the theatre. We walked around that afternoon, and in the evening went down to Mr. Bennett's, and to Mr. Gurley's on C Street; and some one came and told him there that he was going to be arrested. I told him he had better go and see the detectives at once, and not have them coming after him when he was asleep, and taking him out of his bed; that he had better go and see about it. I went and asked Mr. Barry, one of the detectives, whether there was any such report at the police headquarters, and he said no.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state anything about that conversation.

Q. [By MR. EWING.] Do you know whether or not, during those two days you were with him, Spangler had money?

A. He had very little change. He wanted to see Mr. Gifford to get some.

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ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what he said.

By MR. EWING:

Q. Will you state whether Booth frequented the theatre familiarly before the assassination?

A. Yes, sir.

Q. Was he about there a great deal?

A. Yes, sir.

Q. On what terms was he with the employés of the theatre?

A. He was very intimate with all the employés; called them by name. He was a gentleman who would soon get acquainted, and get familiar with people on a very short acquaintance.

THE TRIAL.

Q. [Exhibiting to the witness the rope found in Spangler's bag.] Do you know whether such ropes as that are used about the theatre?

A. Yes, sir.

Q. What for?

A. They are used in a great many capacities in the theatre,—to pull up the borders, and to pull up the scenes, the drops that are taken up. They are also used for bringing up lumber to top dressing-rooms, because the stairs are so narrow it cannot be brought up that way. We used such a rope as that for that purpose about two weeks before the assassination took place. There was some shelving to be put up in my wardrobe; and, as we could not get it up any other way, we had to use a rope, and haul it up through the window to the fourth story. Mr. Spangler and Ritterspaugh brought it up.

Q. Was the one that you used then to bring up the lumber an extra rope?

A. I do not know that it was an extra rope. There were a great many ropes around the theatre.

Q. Will you examine that rope, and see whether it bears the marks of having been used?

A. It looks as if it had lain out in the rain or been in the water, or something of that sort. I am not qualified to judge about much a rope is worn.

Q. Can you tell whether it has probably been in use from an examination of it?

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A. I do not know. It may have been in use, or it may have been exposed out of doors. It does not look like an entirely new rope. I should not buy it if I went to buy a new one.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Spangler slept in the theatre before the assassination?

A. Yes, sir.

Q. He did not sleep in it the night of the assassination?

A. Yes, sir.

Q. He did not sleep in the theatre the night of the assassination?

A. He slept in the carpenter-shop attached to the theatre.

Q. He did not sleep in the theatre the night of the assassination, did he?

THE TRIAL.

- A. He did not sleep in the room he usually slept in.
Q. He did not sleep in the theatre the night of the assassination, did he?
A. No, sir.
Q. Did he sleep in the theatre on Sunday night?
A. I do not know.
Q. You do not know where he slept on Sunday night?
A. No, sir.
Q. You say you woke Ritterspaugh up: when did you do that?
A. About twelve o'clock.
Q. On what night?
A. On Friday night.
Q. The night of the assassination?
A. Yes, sir.
Q. Who was with you when you woke him up?
A. There was not any person with me. There was a policeman standing in the passage-way.
Q. Where was it?
A. It was in what is called the manager's office. Mr. Gifford's bed is in it. It is on the first floor, off the green-room.
Q. In the theatre?
A. Yes, sir; in the building attached to the theatre.

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- Q. That is where you found him and woke him up?
A. Yes, sir.
Q. He was frightened?
A. Yes, sir.
Q. He thought it was Booth?
A. Yes, sir.
Q. Did he say any thing about Booth drawing a knife on him?
A. No, sir.
Q. He did not say any thing about that?
A. No, sir.
Q. Do you remember the words that he did use?
A. Yes, sir.
Q. When did he use them?—immediately on being awakened out of his sleep?
A. When he stood up and saw who it was.
Q. Immediately on your waking him up?
A. Yes, sir; after I had asked him where Mr. Spangler was.
Q. You asked him where Spangler was?

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A. Yes, sir.

Q. What did you say to him?

A. I asked him, "Where is Ned?"

Q. What did he say?

A. He said he did not know where he was; that he supposed he was up. He evidently was drunk, from what he had done.

Q. What did you say?

A. I did not make any reply, and he went on talking.

Q. What did he tell you?

A. He said that when Booth ran out through the passage-way, while he and Ned were standing behind the scenes, he made the remark, "That is Mr. Booth;" and Ned slapped him in the mouth, and said, "You don't know whether it is Mr. Booth, or who it is."

Q. That is all you remember he said?

A. That is all.

Q. To whom did you tell that afterward?

A. Never to any person.

Q. Never did to anybody at all?

[57]

A. I told it to Mr. Withers once.

Q. Which Mr. Withers?

A. Mr. William Withers, Jr.

Q. You told him just those words you have told now?

A. Just precisely.

Q. When did you tell him?

A. The Sunday afternoon afterwards. I took dinner with him.

Q. The Sunday after the assassination?

A. Yes, sir.

By MR. EWING:

Q. Did this carpenter-shop belong to the theatre?

A. Yes, sir: it is attached to it just the same as my wardrobe. It is not in the theatre-building, but it is included in the theatre. You do not have to go into the street to get to it. You leave the theatre, and there is a passage-way to go up, the same as we have to go to the green-room and the dressing-rooms.

Q. Do you know whether the theatre was guarded or not on Sunday night?

A. Yes, sir; but any of the employés who slept there could get in. Mr. Spangler had a pass from the captain or officer of the guard

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to go in and out when he liked; and on Saturday I had a pass for that purpose.

Q. Had Ritterspaugh fully waked up when you had the conversation with him?

A. Yes, sir: he stood up.

Q. Had he fully waked up?

A. Yes, sir.

Q. Did he recognize you?

A. He recognized me. He knew who it was before he commenced to speak.

JAMES LAMB

recalled for the accused, Edward Spangler.

By MR. EWING:

Q. Are you acquainted with Jacob Ritterspaugh?

A. Yes, sir.

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Q. Did you see him on the stage of the theatre the day after the President's assassination?

A. Yes, sir: on Saturday.

Q. Did he say any thing to you as to a conversation that he had with Spangler directly after the assassination?

A. Yes, sir: he was grumbling, and saying that it was well for Ned that he had not something in his hand at the time. I asked him why. Said he, "He struck me last night a very hard blow."

Q. What else did he say?

A. He said, "Ned said at the same time, "Shut up: you know nothing about it."

Q. In what connection did he say that happened?

A. In connection with his having said that he was acquainted with the person,—that it was Mr. Booth. He said he called out, "I know him; I know who it was; I know that was Booth," or something of the kind; and then Ned struck him, and said, "Hush up; be quiet; what do you know about it?"

Q. When did he say that was?

A. That was while the party, I suppose Mr. Booth, or whoever it might have been, was leaving the stage, making his escape.

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Q. As he was making his escape?

A. Yes, sir: this man Jake rushed up, and was making this exclamation, "That was Booth; I know him; I know him; I will swear that was Booth," and Ned turned around, and struck him on the face with his hand. Ritterspaugh said, "It is well for him I had not something in my hand to return the blow."

Q. Then what did Ritterspaugh represent himself as saying just before Spangler slapped him?

A. He represented that he knew the party who had made his escape, who had shot the President.

Q. What did he represent Spangler as saying as he slapped him?

A. "Hush up; hush up: you know nothing about it; what do you know about it? Keep quiet;" hushing him up.

Q. Did or did not Jacob Ritterspaugh say to you then that Spangler, when he hit him on the fact, said, "Don't say which way he went"?

A. No, sir; he did not.

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Q. Are you certain of that?

A. I am sure of that.

Q. Nor any words to that effect?

A. Nor words to that effect.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Can you tell just exactly the words he did say, that you have sworn to already?

A. Yes, sir.

Q. State them.

A. "Shut up: what do you know about it? hold your tongue."

Q. That is what Jake said?

A. That is what Spangler said to Jake.

Q. Are you not reporting what Jake said, or reporting what Spangler said?

A. I am reporting what Spangler said and what Jake said.

Q. We are not asking you for what Spangler said: we are asking you what Jake said. State, if you please, what Jake said on that occasion, and exactly what you have sworn he said, and all he said.

A. I will, as near as I can recollect. As he told me, he said, "I followed out the party, was close at his heels, or near to him; and I

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said, "that is Booth; I know him; I know him;" or words to that effect, as near as can be.

Q. Jake said he followed out the party, close to his heels?

A. Near to him.

Q. And that he knew who that was?

A. He did not say that he followed the party.

Q. I am asking you what he said. Did you not swear just now that he said he followed the party close to his heels?

A. He was near him.

Q. Did you or did you not swear that he said he followed the party close to his heels?

A. You know whether I swore it or not.

Q. I ask you whether you did swear to it or not?

A. I say he did.

Q. Very well, then, stick to it. Then Jake said he followed the party close to his heels?

[60]

A. Yes, sir.

Q. And he knew who he was?

A. Yes, sir.

Q. What more did Jake say? Did he say he came back after following him close to his heels?

A. No: he received a blow from Spangler, and that shut him up.

Q. Do you swear now that Spangler followed the man close to his heels?

A. No, sir.

Q. Then how did they fix it?

A. Spangler was standing in the way.

Q. While Jake was following the man close to his heels?

A. No: not at all.

Q. How was that?

A. Spangler, I suppose—

Q. You need not state what suppose, state what Jake said; that the only question before the Court.

A. That is what I have stated.

G. W. BUNKER,

recalled for the accused, Edward Spangler.

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By MR. EWING:

Q. State your occupation.

A. I am a clerk at the National Hotel.

Q. State whether, after the assassination of the President, you found any articles in Booth's room at the National Hotel?

A. I packed Booth's baggage at the National, and had it moved into our baggage-room the day after the assassination.

Q. Did you find any carpenter's tools?

A. I found a gimlet in his trunk.

Q. What did you do with it?

A. I took it, and carried it to my room.

Q. How large a gimlet was it?

A. It was a rather large-sized iron gimlet, or rather a gimlet with an iron handle.

Q. Did you give it to any of the proper military authorities?

[61]

A. I gave it to Mr. Hall, who was attending to Mr. Ford's business, or doing business for him.

Q. What Mr. Hall?

A. I cannot tell you his first name.

Q. Do you know whether John McCullough, the actor, was in the city of Washington on the 2d of April?

A. I have examined our books to-day thoroughly, and find that the last time John McCullough registered was on the 11th of March, 1865; and he left the hotel on the 26th of March, 1865. His name is not on our books after the date of March 11.

Q. Where was he in the habit of stopping when he came to Washington?

A. He always made his home at the National. I have no knowledge of his ever stopping at any other place.

Q. Did you see him there after the 26th of March?

A. I have not seen him in the city since the 26th of March.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You say you went into Mr. Booth's room and removed his things after he left?

A. I packed them up.

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Q. Can you inform the Court what rooms Mr. Booth occupied there from the middle of December on?

A. I cannot without returning to the hotel.

Q. You say you cannot, without referring to your books, give the rooms occupied by Booth?

A. Not all of them.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. What size did you say that gimlet was? Was it a large or a small one?

A. I should judge from memory that it was about the size of that pen-holder (pointing to an ordinary-sized pen-holder on the table).

Q. Which part of the pen-holder,—the base of it?

A. The centre of it.

Q. The stem of the gimlet was about that size?

A. Yes, sir.

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Q. It was a gimlet with a metal handle?

A. Yes, sir.

Q. Was there only one?

A. Only one.

CHARLES B. HALL,

a witness called for the accused, Samuel Arnold, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you have been living for the past two months, and what has been your occupation.

A. I have been stopping at Mr. Wharton's. I was a clerk for Mr. Wharton.

Q. Where is that?

A. At Fortress Monroe.

Q. What is the business of Mr. Wharton?

A. He is a sutler.

Q. Is his store inside of the fortification, or outside?

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A. Outside.

Q. At what is called Old Point?

A. Yes, sir.

Q. State whether you are acquainted with the prisoner, Samuel Arnold.

A. I got acquainted with him at Mr. Wharton's store.

Q. State when he came there.

A. I do not know the exact time: he came there the latter part of March or the first of April; I cannot give the date.

Q. On what day of the week was it?

A. On Sunday.

Q. Sunday was the 2d of April; was that the Sunday he came there?

A. I would not say: it was the latter part of March, or the first of April; I could not say what date it was.

Q. Was it as early as the second of April?

A. I think it was.

Q. State how long he remained there, and what his business was.

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A. He assisted me in book-keeping. I think he staid about two weeks and one day.

Q. Employed by whom?

A. Mr. Wharton.

Q. Did you see him there constantly during that time?

A. No, sir: I was engaged in another place part of the time. Mr. Wharton has the contract for Fortress Monroe. I was engaged there from about seven o'clock until two. I had business then at the lower store; and at about five o'clock I would return.

Q. Did you see him every day?

A. Every day.

Q. Will you state whether or not, and if so, when, Arnold made any application for employment?

A. I think it was about the first of March that he made the application,—somewhere in March. I would not say positively; but I think it was in March.

Q. Was the application in writing?

A. Yes, sir.

Q. Do you know what became of Arnold's letters?

A. Major Stevens, a Government officer, has got them.

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Q. Will you state how many letters he wrote applying for the position?

A. I only know of that one. That's the only one I saw.

Q. Who answered it?

A. I did.

Q. At what time was the answer written?

A. I could not tell that.

Q. About how long was it before Arnold came?

A. I think it was about a week.

Q. Will you state what answer was made to that application?

A. I wrote for him to come.

Q. Did you see Arnold at night every night during the time of his employment?

A. Yes, sir; every night.

Q. Where did he stay?

A. At the lower store, Mr. Wharton's.

Q. Where did he sleep?

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A. At Mr. Wharton's.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You were not acquainted with him at all before he came there?

A. No, sir.

Q. And he opened the correspondence himself? As far as you know, he began the correspondence himself?

A. As far as I know, he did.

Q. In the month of March last?

A. Yes, sir.

GEORGE CRAIG,

a witness called for the accused, Samuel Arnold, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you live, and how you have been employed within two months past.

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A. I have lived at Old Point, and have been employed in Mr. Wharton's store as a salesman.

Q. Have you seen the prisoner, Samuel Arnold?

A. I have, sir.

Q. When.

A. I saw him about the month of April.

Q. State at what time you saw him first.

A. The latter part of March, or first of April.

Q. On what day of the week?

A. On Sunday.

Q. On what boat did he come?

A. I cannot tell: I do not know.

Q. How long did he remain there?

A. About two weeks, to the best of my knowledge.

Q. What was he doing?

A. He was a clerk in Mr. Wharton's establishment,—chief clerk, I believe.

Q. How often did you see him during his stay there?

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A. I saw him every day: I could not tell how many times a day I saw him.

Q. But you saw him every day during that time?

A. Yes, sir.

Q. Up to the time of his arrest?

A. Yes, sir.

JAMES LUSBY,

a witness called for the accused, Mrs. Mary B. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. Where do you reside?

A. Down in Prince George's

Q. Are you acquainted with John M. Lloyd?

A. I am not very much acquainted with him. I got acquainted with him since Christmas.

Q. State whether you were at Marlboro' in April last?

A. Yes, sir: I was.

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Q. On what day of the month was it?

A. I do not know exactly what day of the month it was. It was on Good Friday, if any of you know what day that was. It was the same day that Mr. Lincoln was killed.

Q. The 14th of April last?

A. Yes, sir.

Q. Did you meet Mr. Lloyd at Marlboro' on that day?

A. Yes, sir.

Q. Did you see Mr. Lloyd in the evening of that day at Surrattsville?

A. He and I went there together from Marlboro'.

Q. What was Mr. Lloyd's condition at the time?

A. He was very drunk, I think.

Q. Did you arrive at Surrattsville any time at all before he did?

A. About a minute and a half. I drove him to the bar-room door, and he went around to the front door.

Q. Which door did he go to?

A. He went up to the front door.

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Q. Did you see the prisoner at the bar, Mrs. Surratt, there that day?

A. Yes, sir: I saw her just as she was about to start to go home.

Q. State the circumstances in regard to her buggy; whether she was ready to go or not at the time Mr. Lloyd drove up.

A. The buggy was standing there at the gate, and she left in fifteen or twenty minutes after we drove up. That is all I know.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you drive, ride, or walk, on that day?

A. I was in a little wagon.

Q. You took your little wagon to one side of the house, and Lloyd took his to the other?

A. Yes, sir: I went to the place they called the bar-room front.

Q. You went to the side that led into the bar-room?

A. Yes, sir.

Q. And Lloyd went with his wagon to the other side?

A. Yes, sir; in his carriage.

Q. To the other side of the house?

A. Yes, sir.

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Q. On the other side of the house, to which Lloyd went, there is a yard?

A. Yes, sir; a front yard.

Q. And there is a kitchen back there?

A. The kitchen is on the other side.

Q. That opens into that yard?

A. No, sir; the kitchen does not.

Q. It stands in it?

A. It stands out back in the pines from the front.

Q. It is in the yard, anyhow?

A. No, sir; it is not in the yard.

Q. It connects with it somehow. Is it in the street?

A. The kitchen is joined on to the house; but the yard is paled in separate from the kitchen.

Q. But it is not paled between the yard and kitchen, is it?

A. Yes, sir.

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Q. Is there a door that opens from the kitchen out near the fence into that yard?

A. I was never around in the kitchen.

Q. Then you do not know?

A. I was never around there: I have seen it from the road.

Q. You do not know whether it has a door opening there or not?

A. No, sir.

Q. You do not know whether they get into that kitchen through a door, or go down the chimney?

A. No, sir.

Q. You do not know what Lloyd did around there?

A. Indeed I do not.

Q. When you came there first, where did you go?

A. I went into the bar-room to get a drink.

Q. Who did you see when you came first? You did not see Mrs. Surratt in there, did you?

A. No, sir.

Q. You did not see her in the buggy, did you, when you came first?

A. No, indeed, sir.

Q. You did not see her at all when you came first?

A. No, sir; not when we came first.

Q. Not until you got through with your drinking?

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A. I disremember whether I had got a drink before I saw her or not.

Q. And do you know what took place in the mean time, after Lloyd went around the house, while you were getting your drink?

A. No, sir.

Q. You say Lloyd was drunk?

A. I should call him drunk.

Q. How do you know he was drunk?

A. I have seen him before.

Q. How do you know he was drunk?

A. I thought so from his looks.

Q. Did you see him drink?

A. Yes, sir: I had taken drinks with him.

Q. Which drank the most?

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A. I never measured mine.

Q. Do you think you were as tight as he was, or not?

A. Not quite, I think: I do not know.

Q. Do you think you were even with Lloyd after got up there and got your drink?

A. I never try to keep even with any person when I am drinking.

Q. But you had the advantage: you drank by yourself while he went around by the kitchen.

A. Then I might.

Q. Do you think you got up with then?

A. I do not know.

Q. You do not know which then was best off?

A. No, sir.

Q. Are you not mistaken altogether as to the man that was drunk on that day?

A. I do not understand you.

Q. Are you sure you know which of you it was, you or Lloyd, that was drunk?

A. I think Lloyd was very drunk, myself.

Q. But you think you were drunk too?

A. No: I do not think I was drunk.

Q. I though you said you got drunk too?

A. I did not say I was drunk. I said I had been drinking, and that I had taken drinks with Lloyd.

Q. And drank without him?

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A. I reckon I drank right smart before I met him, in the course of the day. I was not with him all day long.

Q. You kept drinking all that day?

A. I was summoned on a trial; and, after the Court adjourned, I had taken one or two glasses.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Do you live at Surrattsville?

A. No, sir.

Q. Where do you live?

A. Below Surrattsville.

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Q. How far?

A. About a mile and a half.

Q. What has been your business for the last two or three years?

A. I have been farming.

Q. Have you been there all the time?

A. Yes, sir.

Q. Never been away from home during the war?

A. No, sir: I have never been away from home any farther than Washington in my life.

Q. You have been there all the time?

A. Yes, sir.

By MR. AIKEN:

Q. You are satisfied that Mr. Lloyd was drunk on that day?

A. Yes, sir: he was drunk, I am sure.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. He was not so drunk but what he could drive into the yard straight enough?

A. A man might be drunk, and his horse might carry him there.

Q. He drove his own horse?

A. Yes, sir: I believe he did.

Q. He drove around into the back yard with his fish: he knew where to go to the entrance to the kitchen?

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A. I suppose he knew where to go, or the horse did: one or the other did.

Q. He knew enough to take the fish up to the kitchen?

A. I never saw him take the fish out.

Q. You know that he went in that way?

A. He drove up to the front gate, I know.

Q. And drove through the gate into the yard?

A. No, sir: he did not drive into the yard; he drove up to the gate.

Q. And then he got out?

A. Yes, sir.

Q. Who was with him?

A. No one.

Q. Did you see him get out?

[70]

A. No, sir.

Q. Did you see him fix Mrs. Surratt's buggy?

A. No, sir.

Q. You do not know any thing about that?

A. No, sir.

Q. How long had you seen him before he arrived at the house?

A. I came with him all the way along from Marlboro', sometimes behind him, and sometimes in front on him.

Q. How far is it from Marlboro'?

A. Twelve miles, I believe.

Q. How many hours does it take to come from there?

A. With fast driving, you can come from there in two hours and a half, or maybe less time than that.

Q. Did you stop and get any drinks on the road?

A. No, sir.

Q. You came in two hours and a half, and the last drink he had was at Marlboro'?

A. We had a drink before we started.

Q. You did not have to help him into the buggy?

A. No, sir.

Q. He drove all the way home?

A. Yes, sir.

Q. And was two hours and a half coming?

A. I do not know exactly whether it took two hours and a half or not.

Q. That would be the ordinary drive?

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A. It is my belief that it would take a man that long.

Q. Driving at ordinary speed?

A. We drove along pretty brisk.

Q. At ordinary speed?

A. Yes, sir.

MATTHEW J. POPE,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Will you state where you live, and what your business is?

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A. I live at the Navy Yard, and keep a livery-stable.

Q. Do you not keep a restaurant also?

A. Yes, sir: I did for a while, but I do not now.

Q. Will you state whether or not, about the 12th of April, a person called at your house, and wanted to sell a dark-bay horse?

A. There was a gentleman called at my stable, I do not exactly know on what day, to sell a bay horse.

Q. What kind of a looking horse was that?

A. A large bay horse, blind of one eye.

Q. How old did the horse seem to be?

A. I do not know: I did not take any particular notice of his age.

Q. Did you examine the horse?

A. I do not know rightly whether I did or not: I did not take particular notice of him.

Q. Do you remember the person that brought the horse there?

A. I do not know whether I would know him again if I were to see him or not.

Q. Look at the prisoner Atzerodt, and say whether that is not the man that brought that horse there. [The prisoner, George A. Atzerodt, stood up for identification.]

A. I do not know: I do not recognize him. He has something of the same features; but, if that is the same man, he is not near as stout, as when he brought the horse to my stable. He was very much such a looking man. The features look like the same features;

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but his face is not familiar to me now. If that is the same man, he is not near as stout as he was then. I cannot tell positively whether he is the same man or not. I did not take much notice of him. He asked me if I wanted to buy a horse. I said no; that I had no use for him; that I had more horses than I had use for, and did not want it.

Q. You say you do not remember the date: do you remember the time of day it was?

A. It was some time in the afternoon. I do not know exactly what time; but I know it was after twelve or one o'clock,—between that and night.

Q. Did he stay there the rest of the afternoon?

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A. His horse stopped at my stable some two or three hours, I think. He went over to my restaurant, and took a drink there, and went away from there with a man by the name of John Barr. They came back together; and the gentleman that brought the horse—I do not know his name—took the horse out, and rode him away.

Q. He staid there, then, from about twelve o'clock until night?

A. It was near night. I do not know what time he came there: it was somewhere between twelve and two o'clock.—I do not know exactly.

Q. You say he went away with a man by the name of Barr?

A. Yes, sir.

Q. You do not remember that this man Barr was drunk at the time?

A. John had been drinking a little. I do not know whether he was drunk or not; he was not sober.

Q. Was not this man Barr one of the mechanics of the Navy Yard?

A. Yes, sir: he carried on wheelwrighting in the Navy Yard.

Q. Was not this the very day of the celebration that the mechanics had,—at the illumination?

A. That I do not know exactly. I did not take any notice of that. I do not know whether there was any holiday or not.

Q. You are very certain, however, that this was before the assassination of the President?

A. Oh, yes sir! it was several days before: I do not know exactly how many, though. I cannot tell much about it, because I took very little notice of it. There are so many who call at my stable to sell horses, that I did not take any notice of it then. I keep a public

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stable there, and there are a great many applications for buying and selling all the time.

Q. Have you or not since found an umbrella that belonged to the prisoner that he left there?

A. Yes, sir: an umbrella was left there that night. Whether he has got it since that, or not, I do not know.

Q. You are sure the prisoner left the umbrella there?

A. I did not hear the bar-tender say whether he got it or not.

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Q. Are you sure that was left by the prisoner?

A. It was left by the gentleman that brought the horse to my stable: whether it was the prisoner or not, I do not know; I could not swear to that.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. And at the same time he brought the horse, I suppose?

A. Yes, sir: I think it was raining the same day.

MARGARET BRANSON,

a witness called for the accused, Lewis Payne, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. State where you live.

A. At 16, North Eutaw Street, Baltimore.

Q. State whether or not you have ever seen the prisoner Payne.

A. Yes, sir: I have.

Q. Where did you first meet him?

A. At Gettysburg.

Q. When was it that you met him at Gettysburg? Do you remember the time?

A. I do not remember.

Q. Was it about the time of the battle of Gettysburg or not?

A. It was immediately after the battle of Gettysburg.

Q. What were the circumstances under which you met him?

A. I was there as a volunteer nurse.

THE TRIAL.

Q. What was the condition of Payne, and under what circumstances did you meet him?

A. He was in my ward, and was very kind to the sick and wounded.

Q. Was he or not a nurse at that time?

A. I do not know that he was.

Q. Was he or not a soldier?

A. I do not know that he was.

Q. Did he have on any uniform?

A. No, sir.

Q. Was he dressed as a citizen?

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A. As nearly as I can remember, he had on blue pants, no coat, and a dark slouch hat.

Q. What name did he go by there?

A. By the name of Powell and by the name of Doctor.

Q. How long did you know him there?

A. I do not know the length of time.

Q. How long did you stay there?

A. Six weeks.

Q. Was he there during the whole of the time you were there?

A. I do not remember.

Q. Was the hospital where he seemed to be attending the sick and wounded a hospital containing both Confederate and Union soldiers?

A. Yes, sir; both.

Q. About what time did you leave the hospital?

A. The first week in September.

Q. When did you meet the prisoner Payne again?

A. Some time that fall or winter: I do not remember.

Q. About how long after you had seen him the last time was it?

A. I cannot remember.

Q. You say it was about the fall of that same year?

A. I think it was.

Q. Where did you meet him the next time?

A. At my own home.

Q. How long did he stay?

A. A few hours,—a short time: I do not know exactly the length of time.

Q. Did you have any conversation with him?

THE TRIAL.

A. Very little.

Q. Did he say to you where he was going?

ASSISTANT JUDGE ADVOCATE BINGHAM. The witness need not state any thing that he said to her at that time.

MR. DOSTER. What is the objection?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object because what he said to her is altogether incompetent evidence.

MR. DOSTER. May it please the Court, I intend to set up the plea of insanity, as I have already stated, in the case of the prisoner

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Payne. It is very true that, under all other pleas, declarations of this kind are not considered competent evidence for the defence; but the declaration of a person suspected of insanity is an act, and therefore admissible. If the plea were not insanity, I can conceive that the declaration would be out of order.

ASSISTANT JUDGE ADVOCATE BINGHAM. That is all very true; but the proper way to get at it is to lay some foundation for introduction the declarations in support of the allegation that the party was insane. In this case, there is no foundation laid here,—not the slightest indication of it from any quarter whatever; and I should like to know what right the gentleman has to begin, in this kind of style, with the declarations of the party. To illustrate the whole matter in a word, suppose that the gentleman does state that he proposes to set up the plea of insanity, and, instead of laying any foundation for it, he brings quite a number of witnesses, and proves the declarations of this man perfectly rational in themselves,—declarations in conflict, however, with all the evidence in the case, and with all his conduct,—what then? I suppose if the gentleman chooses to ask this lady whether she considered this man insane, and what reasons she had for that opinion, she can state, and we can go into that matter.

MR. DOSTER. I do not propose to ask this lady's opinion about the man's insanity. I claim that the foundation of the allegation of his insanity need not be laid by me. That foundation has been laid by the prosecution already.

ASSISTANT JUDGE ADVOCATE BINGHAM. How?

MR. DOSTER. I claim that the whole conduct of the alleged murderer, from beginning to end, is the work of an insane man, and that any further declarations I may prove are merely in support of that theory and of that foundation as laid by the prosecution.

THE TRIAL.

ASSISTANT JUDGE ADVOCATE BINGHAM. There need only be a word said about that. On that idea, the more atrocious a man's conduct is, the more he is to be permitted to make a case for himself by all his wild declarations of every sort and to everybody, at every time and at every place. If he only makes out to get out a knife with which he could sever the head of an ox as well as the head of a man, rushes past all the friends of the sick man into his

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chamber, stabs him first on one side of the throat and then on the other, and slashes him across the face, breaks the skull of his son who tries to rescue him, yelps "I am mad, I am mad!" and rushes to the door, and mounts a horse which he was careful to have tied there, he may thereupon prove all his declarations in his own defence to show he was not there at all.

MR. DOSTER. May it please the Court, I do not wish to protract this discussion; but it is claimed here that there is no foundation laid for the plea of insanity. I believe the Judge Advocate will withdraw his objection and allow this testimony to be admitted, provided I can lay a foundation for this man's insanity. If the Court will listen to me for five minutes, I think I can show them that there is a foundation laid.

In the first place, all the circumstances connected with the assassination show the work of insane men. The entrance into the house of Mr. Seward was by a stratagem which is peculiarly indicative of insane men. Then look at the conduct of the prisoner, Payne, after he entered the house, without the slightest particle of disguise, speaking to the negro for five minutes,—a person that he must know would be able to recognize him again thereafter; the ferocity of the crime, which is not indicative of human nature in its sane state; his leaving all the traces, which men usually close up, behind him: for instance, instead of taking away his pistol and his knife and his hat, he walks leisurely out of the room, having plenty of time to take these away, and abandons them; he takes his knife and deliberately throws it down in front of Mr. Seward's door, as though anxious to be detected; and then, instead of riding off quickly as a sane man would under the circumstances, he moves off so slowly that the negro tells you he followed him for a whole square on a walk; and afterwards, instead of escaping either to the north, on the side where there were no pickets at the time (for it was shown he had a sound horse), or instead of escaping over the river, as he had ample opportunity of doing, because, if he could

THE TRIAL.

not get across the Anacostia Bridge, he might have swam the river at any point, he wanders off into the woods, rides around like a maniac, abandons his horse, takes to the woods, and finally comes back to the very house, which, if he had any sense, he knew must

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be exactly the house where he would be arrested,—where there were guards at the time, and where he must have known, if he had been sane, that he would immediately walk into the arms of the military authorities. He goes to this house in a crazy disguise; because who in the world ever heard of a man disguising himself by using a piece of his drawers as a hat, supposing that a sane man would not discover the disguise. Finally, there is the conduct of this person since he has been here on trial,—the extraordinary stolidity of this man, as opposed to the rest of them: instead of showing the slightest feeling, he has displayed an indifference throughout this trial. You yourselves noticed that at the time of that solemn scene, when the negro identified him, he stood here and laughed at the moment when his life was trembling in the balance. I ask you, is that the conduct of a sane man? There are, besides, some physical reasons which go hand in hand with insanity, and corroborate it, of a character more delicate, and which I cannot mention now, but which I am prepared to prove before the Court at any time. I say that the most probable case of insanity that can be made out has been made out by the prosecution, in the conduct of this prisoner before the assassination, during the assassination, at the time of his arrest, and during the trial.

MR. CLAMPITT. May it please the Court, I do not rise for the purpose of denying to the counsel for the accused, Payne, the right to set up the plea of insanity, or any other plea that he thinks proper: but I do rise for the purpose of indignantly proclaiming that he has no right to endeavor to bring before this Court the house of Mrs. Surratt as a rendezvous to which Payne would naturally resort. There is no evidence which has shown that he would naturally go to her house for the purpose of hiding or for the purpose of screening himself from justice.

The COMMISSION sustained the objection of the JUDGE ADVOCATE.

Q. [By MR. DOSTER.] How long did he stay at your house during that visit?

A. A few hours.

THE TRIAL.

Q. Do you know where he went from there?

A. No, sir.

Q. When did you see him the third time?

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A. In January of this year.

Q. Where?

A. At my own home.

Q. Describe how he was dressed at the time.

A. He was dressed in black clothing,—citizen's dress.

Q. What did he represent himself to be, or say he was, at the time he came there?

A. A refugee.

Q. From where?

A. From Fauquier County, Va.

Q. What did he give his name to be then?

A. Payne.

Q. How long did he stay at your house then?

A. I think, six weeks and a few days: I cannot remember the exact time.

Q. Do you remember about the date at which he came in January?

A. No, sir.

Q. But he staid about six weeks?

A. Yes, sir; about that.

Q. That would make it to the beginning of March?

A. Yes, sir.

Q. Did he ever see any company while there?

A. Never, to my knowledge.

Q. Did you ever see Wilkes Booth?

A. No, sir.

Q. Do you know whether he was called upon at that time by Wilkes Booth?

A. No, sir.

Q. Did he or not take a room in your mother's house?

A. Yes, sir; he did.

Q. What were his habits? was he quiet, or did he go out a great deal?

A. He did not go out a great deal; he was remarkably quiet.

Q. In what way did this quietness show itself? Did he stay in his room?

THE TRIAL.

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A. He was a great deal in his room. His quietness sometimes amounted to forgetfulness: he seemed to be absorbed.

Q. Did he seem depressed in spirits?

A. I think he did.

Q. Was he or not exceedingly taciturn and reticent?

A. No, sir: I think not.

Q. Was he not remarkable for not saying any thing?

A. Yes, sir: he was very remarkable for not saying any thing.

Q. Have you or not a medical library in your father's house?

A. No, sir: we have a great many old books.

Q. Medical books?

A. Yes sir.

Q. Do you know whether the prisoner can read?

A. I do not know.

Q. Did he or not give himself up to the reading of medical works there?

A. He did.

Q. Was not his taciturnity so remarkable as to be commented upon by the rest of the boarders?

A. I think not.

Q. Do you know whether the prisoner at that time was in possession of a great deal of money?

A. I do not know.

Q. Do you not know whether he was exceedingly poor, or whether he had enough to pay his board?

A. He had enough to pay his board.

Q. Do you know how the prisoner happened to leave your house? In what way did it come about that he left the house?

A. He was arrested by the authorities of the city, and sent north of Philadelphia.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Arrested as a Southern refugee, and made to take the oath of allegiance?

A. I do not know what he was arrested as: I never heard why.

Q. Where was taken when he was arrested?

A. He was taken to the provost's.

THE TRIAL.

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Q. You do know whether he took the oath there or not?

A. He said that he did.

Q. He said to you afterwards that he had, and was released?

A. Yes, sir.

Q. Did he return to your house?

A. Yes, sir.

Q. What time did I understand you to say that he left your house?

A. Some time in March, I think.

Q. Do you know whether he came directly to Washington then?

A. I do not know.

Q. Did he make any trips to Washington while he was boarding at your house?

A. Not that I know of.

Q. Was he absent at any time while he was boarding there?

A. One night, to my knowledge.

Q. You do not know where he was then?

A. No, sir.

Q. How many persons were boarding at your house during that time?

A. I do not know.

Q. Can you give about the number?

A. I would not like to say.

Q. Were there many Southern refugees boarding there besides him?

A. None to my knowledge.

By MR. DOSTER:

Q. Was or was not the prisoner, during the month of February, away from your home long enough to have gone to Canada and return?

A. Not to my knowledge.

Q. If he had been away, you would have known it, would you not?

A. I certainly should.

THE TRIAL.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. What time do you he came to your house?

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A. In January? [*stet*]

Q. And staid how long?

A. Until March.

Q. He came in the latter part of January?

A. I think it was in the middle of January: I do not know the exact time.

Q. He staid about six weeks, you say?

A. Yes, sir.

Q. You saw him immediately after the battle of Gettysburg, when you were there nursing the wounded?

A. Yes, sir.

Q. What hospital did you see him in?

A. The general hospital.

Q. Who had charge of it then?

A. Dr. Chamberlain.

Q. Who were in that hospital? What class of wounded were there?

A. All kinds.

Q. Rebels and Union soldiers, both?

A. Yes, sir.

Q. Whom did he seem to be nursing?

A. He attended to different ones in my ward; and I had both in my ward.

Q. You nursed both the Rebel and Union soldiers?

A. Yes, sir.

Q. Was your mother with you there?

A. No, sir.

Q. How long was he there?

A. I do not know how long.

Q. You do not know whether he was employed there as an assistant or not?

A. I do not know.

MARGARET KAIGHN,

a witness called for the accused, Lewis Payne, being duly sworn,
testified as follows:—

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By MR. DOSTER:

Q. State whether or not you are a servant at the house of Mrs. Branson.

A. Yes, sir.

Q. Does Mrs. Branson keep a boarding-house?

A. Yes, sir.

Q. State whether you ever saw the prisoner, Payne, there.

A. I did.

Q. Do you remember the time when he came there?

A. Yes, sir.

Q. What time was it?

A. Either January or February.

Q. Do you remember how long he staid?

A. He staid there until the middle of March.

Q. What fixes that date in your memory? Are you sure it was the middle of March?

A. Yes, sir: I am sure of it.

Q. Do you remember at any time a controversy that Payne had with a negro servant there?

A. Yes, sir.

Q. Just state all the circumstances about it.

A. He asked her to clean up his room; and she gave him some impudence, and said she would not do it. He asked her, and she said she would not; and she called him some names, and then he slapped her and struck her.

Q. Did he or not throw her on the ground, and stamp on her body?

A. Yes, sir.

Q. And say he would kill her?

A. Yes, sir.

Q. Did he strike her on the forehead?

A. Yes, sir.

Q. What did this girl do in consequence of that?

A. She went to have him arrested.

Q. Did or did not the prisoner, at the time of this beating, say he was going to kill her?

A. He did, while he was striking her.

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FRIDAY, MAY 12, 1865 [*stet*].

RICHARD MONTGOMERY,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Are you a citizen of New York?

A. Yes, sir.

Q. State whether or not you visited Canada in the summer of 1864.

A. I did.

Q. How long did you remain there?

A. I remained there, going back and forth, ever since, until about within a week and a half or two weeks' time.

Q. Did you or not know, in Washington City, Jacob Thompson, formerly Secretary of the Interior, and Clement C. Clay, formerly of the United States Senate?

A. I did.

Q. Will you state whether you met those persons in Canada, and when?

A. I met them in Canada, at Niagara Falls, at Toronto, at St. Catharine's, and at Montreal, a number of times; and very frequently since the summer of 1864 up to this time.

Q. Did you or not meet George N. Sanders?

A. I did.

Q. And a man by the name of J. P. Holcomb?

A. Yes, sir: Professor Holcomb.

Q. Can you name any other rebel citizens of the United States in Canada, of note, that you met?

A. Yes, sir. I met Beverly Tucker, W. C. Cleary,—I think—are the initials,—and a great many others under fictitious names. There was another one by the name of Harrington. Those are the ones that I principally had communication with. I met another one

by the name of Clay—not Clement C. Clay. I met one Hicks up there also.

Q. Under how many different names did Jacob Thompson pass in Canada? Do you know?

[84]

A. It would be impossible for me to tell you. I knew him under three or four, and others knew him under other names. His principal name was Carson.

Q. Do you know under what name Clement C. Clay passed?

A. Yes, sir. One of them was Hope; another T. E. Lacey. I have forgotten the initials of his name as Hope. T. E. Lacey was the principal one; another one was Tracy.

Q. State any conversation you may have had with Jacob Thompson in Canada, in the summer of 1864, in regard to putting the President of the United States out of the way, or assassinating him.

A. During the conversation in 1864, Jacob Thompson said to me that he had his friends—confederates—all over the Northern States, who were ready and willing to go to any lengths for the good of the cause of the South, and he could at any time have the tyrant Lincoln, and any other of his advisers that he chose, put out of his way, that he would have but to point out the man that he considered in his way, and his friends, as he termed them, would put him out of it, and not let him know anything about it, if necessary; and that they would not consider it a crime when done for the cause of the Confederacy.

Q. Did you or not see Thompson sometime in the month of January, 1865? and where?

A. That was in Canada,—in Montreal.

Q. Will you state what he then said to you, if any thing, in regard to a proposition which had been made to him to rid the world of the tyrant Lincoln?

A. He said a proposition had been made to him to rid the world of the tyrant Lincoln, Stanton, Grant, and some others; that he knew the men who had made the proposition were bold, daring men, and able to execute any thing that they would undertake, without regard to the cost; that he himself was in favor of the proposition, but had determined to defer his answer until he had consulted his Government at Richmond; and that he was then only awaiting their approval. He said that he thought it would be a

blessing to the people, both North and South, to have these men killed.

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Q. This was in January?

A. That was in January last.

Q. What time in the month was it?

A. It was about the middle of the month. I saw him a number of times. I could not give the exact day of that conversation.

Q. Was it about that time that you saw Clement C. Clay, and had a conversation with him?

A. No, sir. In the summer of 1864, immediately after Mr. Thompson had told me what he was able to do, I repeated the conversation to Mr. Clay; and he said, "That is so: we are all devoted to our cause, and ready to go any lengths,—to do any thing under the sun" was his expression, I remember, to serve their cause.

Q. Look at these prisoners at the bar, and see if you recognize any of them as having been seen by you in Canada, and under what circumstances.

A. I have seen that one without his coat there [pointing to Lewis Payne, one of the accused]. I do not know his name.

Q. Will you state where, and under what circumstances, you saw him?

A. I have seen him a number of times in Canada. I saw him about the Falls in the summer of 1864; and I saw him again,—I guess it was the last time I saw him,—and had some words with him at the Queen's Hotel at Toronto City, Canada West.

Q. State all that occurred at that time.

A. I had an interview of some time with Mr. Thompson. Several others had sought an interview while I was closeted with him, and had been refused admittance. After I was through with Mr. Thompson, and in leaving the room, I saw this man [Payne] in the passage-way near his door. Mr. Clement C. Clay, Jr. was talking with him at the time. Mr. Clay stopped me and held my hand, finishing a conversation in an undertone with this man; and when he left me for a moment he said, "Wait for me: I will return." He then went and spoke to some other gentleman, who was entering Mr. Thompson's door, and then came back and bid me goodby, asking where he could see me in half an hour; and I told him, and made an appointment to meet Mr. Clay. While Mr. Clay was

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away from me, I spoke to this man, and asked him who he was. I commenced talking about some of the topics that were the usual topics of conversation among these men there, and he rather hesitated telling who he was. He [Payne] said, "Oh, I am a Canadian!" giving me to understand that I was not to ask any more.

Q. Did you not ask Thompson or Clay who he was?

A. Yes, sir: I made some mention in regard to this man to Mr. Clay, in an interview I had with him about half an hour after I saw him standing in the passage-way; and he said, "What did he say?" Said I, "He said he was a Canadian;" and he said, "That is so; he is a Canadian;" and laughed.

Q. Did he say he was one of their friends, or make any remarks of that sort?

A. He said, "We trust him."

Q. What was the idea conveyed by the term "Canadian," with his laugh?

A. That was a very common expression among the friends of theirs that were in the habit of visiting the States, and gave me to understand that I was not to ask any more questions; that their intercourse was of a very confidential nature, and that their business was of a very confidential nature.

Q. Have you been to Canada since the assassination of the President?

A. Yes, sir.

Q. State whether you met any of these men of whom you have spoken on your return to Canada; and, if so, what conversation you had with them there in regard to the assassination of the President.

A. I met Beverly Tucker a very few days after the assassination,—three, or four, or five.

Q. Where?

A. Montreal.

Q. What conversation had you?

A. He said a great deal in conversation about the wrongs that the South had received from the hands of Mr. Lincoln, and that he deserved his death long ago; that it was a pity that he did not have

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it long ago, and it was too bad that the boys had not been allowed to act when they wanted to.

THE TRIAL.

Q. Do you mean by "the boys" the men who were to assassinate him?

A. Yes, sir; the Confederate soldiers who were up there who had been engaged in their raids. They used the expression "their boys" in regard to their soldiers and the men in their employ. It is common among them.

Q. Did you meet with Booth there?

A. No, sir; I never saw Mr. Booth in Canada.

Q. Did any of these men of whom you have spoken say that Booth was one of the men referred to by Jacob Thompson, who was willing to assassinate the President?

A. Yes, sir; W. C. Cleary told me. I related to him the conversation I had had, or a portion of it, with Mr. Thompson, in January; and he said that Booth was one of the parties to whom Thompson had referred.

Q. Did he say, in that connection, any thing further in regard to him?

A. No, sir; he said in regard to the assassination, that it was too bad that the whole work had not been done.

Q. What did you understand by that expression, "the whole work"?

A. I inferred that they intended to assassinate a greater number than they succeeded in trying to.

Q. Do you know what relation this man Cleary sustained to Thompson?

A. Mr. Holcomb told me I would find Mr. Cleary to be the confidential,—a sort of secretary to Mr. Thompson. Mr. Thompson told me he was posted upon all of his affairs, and that if I sought him at any time that he might be away. I could state my business to Mr. Cleary, and it would be all the same; that I could have perfect confidence in him; that he was a very close-mouthed man.

Q. Did Cleary make any remark when speaking of his regret that the whole work had not been done? Was any threat made to the effect that it would yet be done?

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A. Yes, sir. He said, "They had better look out; we are not done yet;" and remarked that they never would be conquered,—never would give up.

Q. What statement did Cleary make to you, if any, in regard to Booth's having visited Thompson?

THE TRIAL.

A. He said that he had been there twice in the winter, that he thought the last time was in December. He had also been there in the summer. He said he had been there before December. He thought that that was the last time.

Q. On your return to Canada, did you learn from these parties that they supposed themselves to be suspected of this assassination, and were they taking any steps to conceal the evidence of their guilt?

A. Oh, yes, sir! they knew a very few days after the assassination that they were suspected of it.

Q. What did you learn they were doing, if any thing?

A. They were destroying a great many papers. They also knew that they were going to be indicted in Canada for a violation of the neutrality law a number of days before they were indicted.

Q. How did you learn they were destroying papers about that time?

A. They told me.

Q. Which one of them?

A. Each of them made mention of that. Tucker and Cleary both said that they were destroying their papers.

Q. Have you stated what Tucker said to you? You had an interview with him after you returned?

A. Yes, sir. He said it was too bad they had not been allowed to act when they wanted to.

Q. [Submitting to the witness a paper containing a secret cipher.] Will you look at that paper? Are you familiar with the cipher used by the Confederate authorities?

A. I am familiar with two of them.

Q. Is that one of them, or not?

A. Yes, sir.

Q. You recognize that as one of the ciphers in use among the Confederates?

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A. Yes, sir.

Q. During your stay in Canada, were you or not in the service of the Government, and seeking to acquire, for its use, information in regard to the plans and purposes of the rebels who were known to be assembled there?

A. I was.

THE TRIAL.

Q. To enable you to do this, did you or not deem it proper and necessary that you should assume a different name from your real name, and that under which you now appear before this Court?

A. Yes, sir; I did.

Q. What name did you assume in your intercourse with them?

A. I assumed, as my proper name, James Thompson; and then, leading them to suppose that that was my right name, and that I wished to conceal it there so as not to be identified by Federal spies, I adopted other names at any hotel I might be stopping. I never registered Thompson on the book. I led them to suppose that I wished to conceal that name; but James Thompson was the name that they supposed was my proper name.

Q. Your whole object in all this was simply to ascertain their plans against the Government of the United States?

A. Yes, sir: that was my whole object.

Q. Will you state how you became acquainted with this cipher which has just been shown to you?

A. I saw that cipher in Mr. Clay's house, the private house in which he was stopping in St. Catharine's.

Q. When was that?

A. That was in the summer of 1864.

Q. Have you not also been the bearer of despatches for these persons?

A. Yes, sir. I was intrusted with despatches to carry from Canada to Richmond.

Q. Did you carry them?

A. I carried some to Gordonsville, with instructions that I was to send them from there.

Q. Did you receive despatches in reply?

A. Once I did.

Q. Were they carried back?

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A. Yes, sir; they were carried back.

Q. Did you come through Washington? Did you make them known to the Government?

A. Yes, sir, each time. I delivered the despatches always to the Government of the United States. I passed nothing that I took, except by their permission.

Q. From whom was the dispatch at Gordonsville received?

THE TRIAL.

A. A gentleman who represented himself to me as being in their State Department, and sent with the answer by their Secretary of State.

Q. And you bore the despatch back to whom,—to Thompson or Clay?

A. I bore it back to Mr. Thompson.

Q. All of these men—Thompson, Clay, and Cleary—represented themselves as being in the service of the Confederate Government?

A. Yes, sir.

Q. When was it that you received that despatch at Gordonsville?

A. It was in the fall: I believe it was in October.

Q. Did you ever hear the subject of these raids from Canada upon our frontier, and of the burning of our cities, spoken of among these conspirators?

A. Yes, sir; many times.

Q. By Thompson, Clay, Cleary, Tucker, Sanders and those men?

A. Yes, sir: I knew that Mr. Clay was one of the prime movers in the matter before the raids were started.

Q. You understood in your conversations with them that all these men fully approved of these enterprises?

A. Yes, sir: they received the direct indorsement of Mr. Clement C. Clay, jun. He represented himself to me as being a sort of representative of their War Department.

Q. Do you not consider that you enjoyed fully the confidence of those men,—so as that they freely communicated to you?

A. I do. I do not think they would have intrusted those despatches to me, unless they had the fullest confidence in me.

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Q. Did they or not at all times represent themselves as acting under the sanction of their Government at Richmond?

A. They represented themselves as having full power to act, without reference to them. They repeatedly told me—both Mr. Clay and Mr. Thompson—that they had full power to act, by their Government, in any thing they deemed expedient and for the benefit of their cause.

Q. Were you in Canada at the time the attempt was made to fire the city of New York?

A. Yes, sir.

THE TRIAL.

Q. Was that the subject of much conversation among these people?

A. I left Canada with the news two days before the attempt was made, to bring it to the Department at Washington.

Q. That such a project was contemplated?

A. Yes, sir.

Q. You knew that it originated there, and had the full sanction of those men?

A. Yes, sir.

Q. Do you mean to say the same in regard to the St. Albans raid?

A. Yes, sir: I did not know the point where that raid was to be made; but I told the Government at Washington that they were about to set out on a raid of that kind before the St. Albans raid. I also told them of the intended raid upon Buffalo and Rochester, and by that means prevented those raids.

Q. Captain Beall, who was subsequently hanged at New York, was known there as leading in this enterprise, was he not?

A. I did not know him by that name.

Q. Was he spoken of among those men?

A. I never heard him spoken of. They were in the habit of using their fictitious names in conversation with each other.

Q. You say that you do not know any thing about Beall?

A. No, sir: I knew that the object of his mission was contemplated. I did not know who were to be the immediate executors of the plot. I knew of the plan at the time, and reported it.

Q. Did you hear the subject of the funds by which all these

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enterprises were carried on spoken of among these conspirators, as to who had the funds, or the amount they had, or any thing of that sort?

A. Yes, sir. In regard to the raiding, Mr. Clay had the funds.

Q. Did you ever hear the probable amount spoken of by any of them?

A. No, sir. He represented to me that he always had plenty of money to pay for any thing that was worth paying for. He told me he had money to pay any price for any thing that was worth paying for.

Q. Do you know in what bank in Montreal these rebels kept their accounts and funds?

A. No, sir; I do not.

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Q. You know that there was a Bank of Ontario in Montreal?

A. Yes, sir: I know that there is such a bank. I know that they deposited in several different banks. They transacted a good deal of business with one, which, I think, is called the Niagara District Bank. It was almost opposite where Mr. Clay's residence was, in St. Catharine's. During last summer, they transacted a great deal of business at that bank.

Q. What seemed to be George N. Sanders's position there, if he had a defined position?

A. Mr. Clay told me I had better not tell him the things that I was bent upon, nor the things that they intrusted to me; that he was a very good man to do their dirty work. That is just what Mr. Clay told me.

Q. He was then doing their work, but it was dirty work?

A. Mr. Clay said he associated with men that they could not associate with; that he was very useful in that way,—a very useful man to them indeed.

Cross-examined by MR. AIKEN:

Q. Where are you from?

A. New-York City, originally.

Q. What time in the year was it that you said Mr. Thompson told you a proposition had been made to him?

A. In the early part of the year.

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Q. In January?

A. In January.

Q. You stated, I think, that immediately after that you saw Mr. Clay?

A. No, sir; I did not.

Q. When did you see Mr. Clay?

A. Immediately after the conversation in the summer.

Q. The summer of 1864?

A. Yes, sir; in which he (Thompson) spoke of being able to put the President out of the way whenever he was ready.

Q. Did you ever hear any thing in Canada of Mr. Surratt as being connected with the plot?

A. I did not.

Q. Did you receive any pay from the Confederate Government for going to Gordonville with despatches?

A. I received for the services, to defray railroad expenses, the equivalent of \$150 in greenbacks. It was not \$150 in greenbacks. It was—I have forgotten the amount—in Canada money. Gold was about 2.60 odd at the time: I have forgotten exactly what it was. I received that, and reported the fact of having received it to the War Department at Washington, and applied it on my expense account as having been received from the Government.

Q. On your return with the Gordonsville despatches for the rebels in Canada, did you leave a copy of those despatches here?

A. I handed the original despatches over to the authorities; and those of them that they selected to go ahead I carried on, and those they did not they retained.

By the COURT:

Q. I want to ask an explanation of an answer you made. I understood you in your testimony to say, that, after the assassination of the President, some of those who had been engaged in it had returned to Canada, and you said they expressed regret that they had not been allowed to proceed earlier?

A. You misunderstood me. I did not say that any of those who had been engaged in the attempt at assassination, or in the assassination, had returned to Canada.

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Q. But those who directed it from Canada expressed regret that they had not been allowed to proceed sooner?

A. One of the parties, the one who represented himself as being a commercial agent, Mr. Beverly Tucker, said it was a pity that the boys had not been allowed to act when they first wanted to.

Q. Did you understand why they were prevented in not proceeding sooner?

A. I did not. I inferred though, from what I had heard from Mr. Thompson before that, that he had detained them in order that he might choose a fitting opportunity.

Q. Your impression was that they were detained up to that time by Mr. Jacob Thompson?

A. I inferred so, because when he spoke of the matter to me in his conversation of January, 1865, he said he was in favor of the proposition that had been made to him to put the President, Mr. Stanton, General Grant, and others out of the way, but had deferred

THE TRIAL.

giving his answer until he had consulted his Government at Richmond, and was then only waiting their approval.

Q. Did you understand that he had received the answer, and had given the direction following that?

A. I never understood so: I never asked the question, or received that reply.

Q. What was your impression?

A. My impression was that he had received the answer. I inferred that he had received that approval, and that they had been detained waiting for that, from what Beverly Tucker said.

Q. I understood you to mention the name of Professor Holcomb in connection with that of Sanders, Clay, and others. I would like to know how far you can identify him in these movements, plans, and operations of these men.

A. I made a proposition to Mr. Cleary to carry despatches for them, and to do their work, as a means of getting into their confidence; and Mr. Cleary told me, before Mr. Holcomb, that he had authority to sign his (Clay's) name by power of attorney, and his own, both of them being representatives of the Confederate States Government, as they called it.

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SATURDAY, MAY 13, 1865 [*stet*]

JAMES B. MERRITT,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Of what State are you a native?

A. I do not know whether I am a native of New York or Canada; but I have hailed always from New York.

Q. What is your profession?

A. Physician.

Q. Have you been residing, or not, for some time in Canada? and if so, in what part of Canada?

A. I have been in Canada about a year, or nearly a year; part of the time at Windsor,—part of the time at North Dumfries, Waterloo County.

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Q. Were you or not, in the month of October or November last, in Toronto, Canada?

A. I was.

Q. State whether you met there a man by the name of Young.

A. I met George Young there.

Q. Did Young profess to be from Kentucky?

A. I believe he did. I believe he was formerly of Morgan's command, Kentucky.

Q. Did you meet a man named Ford, also of Kentucky, a deserter?

A. Yes, sir.

Q. Did you meet a man named Graves, from Louisville?

A. Yes, sir.

Q. Did you have any conversation with Young in regard to public affairs at that time?

A. Yes, sir; some.

Q. Will you state what he said to you, if any thing, in regard to some very important matter being on the tapis in the interest of the Rebellion?

A. He asked me if I had seen Col. Steele before I left Windsor.

Q. Who was Col. Steele?

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A. Colonel Steele, I believe, is a Kentuckian: what his given name is I do not know.

Q. Was he a rebel in the rebel service?

A. He had been, as I understood, a rebel in the service.

Q. Proceed with what Young told you.

A. He asked me if Colonel Steele had said any thing to me in relation to the presidential election. I told him that he had not. Then he said, "We have something on the tapis of much more importance than any raids that we have made or can make," or something of that character.

Q. Did he proceed to state what it was?

A. I asked him what it was: he said it was determined that "Old Abe" should never be inaugurated. If I understood it right, that was his expression. I asked him how he knew. He said that he knew that he would not be inaugurated; they had plenty of friends, I think he said, in Washington: and he spoke in relation to Mr. Lincoln, and used some ungentlemanly terms; called him a damned old tyrant, or some thing like that.

Q. That was Young?

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A. Yes, sir.

Q. Did you afterwards see Steele and Sanders together?

A. Yes, sir.

Q. You mean George N. Sanders?

A. I do: I was introduced to George N. Sanders by Colonel Steele.

Q. Will you state what, if any thing, was said in relation to the same matter by either of them on that occasion?

A. I asked Colonel Steele what was going to be done, or how he liked the prospects of the presidential election. Colonel Steele's expression was, "The damned old tyrant never will serve another term, if he is elected." Mr. Sanders said, "He would keep himself mighty close if he did serve another term."

Q. Did Sanders say that at the same time that Steele said that the damned old tyrant never should serve another term?

A. Yes, sir.

Q. Were you afterwards in Montreal in the month of February last?

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A. I was.

Q. Did you, or not, hear among the rebels there the subject of the assassination of the President freely spoken of?

A. Yes, sir.

Q. Did you, or not, hear mentioned the names of persons who were willing to assassinate him?

A. I heard Mr. Sanders name over a number of persons that were ready and willing, as he said, to engage in the undertaking to remove the President, Vice-President, Cabinet, and some of the leading generals.

Q. What, if any thing, did George N. Sanders say in relation to their having plenty of money to accomplish these assassinations?

A. Mr. Sanders said that there was any amount of money to accomplish the purpose. I think that was the expression used.

Q. That was the assassination?

A. Yes, sir. Then he read a letter, which he said he had received from "the President of our Confederacy."

Q. Meaning Jefferson Davis?

A. Yes, sir: which letter justified him in making any arrangements that he could to accomplish the object.

Q. Was there not a meeting of those rebels at that time in Montreal, where Sanders was, and where you were also?

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A. Yes, sir.

Q. Was it at this meeting that Sanders read that letter from Jefferson Davis?

A. Yes, sir.

Q. Will you state some of the language of that letter,—the strong language which he used, if the tyranny of Mr. Lincoln was submitted to?

A. I do not know as I can use the exact language.

Q. The substance of it.

A. The letter was in substance, that, if the people in Canada and the Southerners in the States were willing to submit to be governed by such a tyrant as Lincoln, he did not wish to recognize them as friends or associates, or something like that.

Q. And you say that in that letter he expressed his approbation of whatever measures they might take to accomplish this object?

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A. Yes, sir.

Q. Was that letter read openly in this meeting by Sanders?

A. Yes, sir.

Q. After it was read, was it, or not, handed to members of the meeting, and read by them, one after another?

A. Colonel Steele read it. I think Captain Scott read it, and Young and Hill.

Q. These were all known as rebels, were they not?

A. I believe they were.

Q. Did they, or not, all acquiesce, after reading it, in the correctness with which Sanders had read it openly to the meeting?

A. There was no remark made as to any misstatement of the letter by Sanders.

Q. As far as you could judge, did it seem to be the sense of that meeting that it was proper to have the object accomplished?

A. I did not hear any objection raised.

Q. You said that it was in the month of February: can you say at what time of the month that meeting was held?

A. I should think it was somewhere about the middle of February.

Q. By whom were you invited to attend the meeting?

A. Captain Scott invited me to attend the meeting.

Q. Was it on that occasion, or on some other, that Sanders named over the persons who were willing to accomplish the assassination?

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A. At that time.

Q. Will you state whether, among the persons thus named, John Wilkes Booth was mentioned?

A. Booth's name was mentioned. I do not remember that the John Wilkes was added to it.

Q. Did you see Booth yourself in Canada?

A. Not then. I saw Booth in October, 1864.

Q. Can you recall now other names that were mentioned besides Booth's?

A. Yes, sir: George Harper was one; Charles Caldwell, one Randall, and Harrison.

Q. Did you hear that person Harrison spoken of by any other name? Did you hear the name Surratt mentioned?

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A. I heard the name Surratt mentioned.

Q. Do you know whether he was the same person or not?

A. I did not think it was? [*stet*]

Q. His name is John Harrison Surratt.

A. Surratt's name was not mentioned.

Q. Did you see the prisoner Herold in Canada at that time?

A. I say I saw Herold. I saw the one who was called Harrison in Toronto.

Q. Would you recognize him? Look at these prisoners, and see if you recognize any of them.

A. [After looking at the prisoners.] I should say that third one on the bench there was the man [pointing to D. E. Herold].

Q. He was spoken of as one who was ready to accomplish assassination?

A. I understood Mr. Sanders to say he was ready to accomplish it, or assist in it. His name was mentioned in connection with the others. He went there by the name of Harrison.

Q. Look at the remainder of the prisoners, and see if you recognize any of them. Do you remember to have seen the prisoner, Payne, in Canada?

A. I do not: I do not see any other that I should recognize as ever having met in Canada, except Herold.

Q. Did I understand you to say, that, in the conversation occurring between these rebels and their friends, there was no reserve at all in discussing the question of the assassination of the President and his Cabinet?

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A. I do not think you understood me correctly if you understood me that there was no reserve. There was not a great amount of reserve.

Q. It was discussed freely among themselves, then?

A. Yes, sir.

Q. Among the persons named, was there not one who bore the nickname, probably it was, of "Plug Tobacco," or "Port Tobacco"?

A. "Plug Tobacco." I never saw him, that I know of; but I heard the name.

Q. Was he in this list that Sanders spoke of?

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A. I am not positive whether Sanders used his name or not, but I think he did.

Q. Do you remember that Sanders, in speaking of Booth as one who was willing to assassinate the President and Cabinet, mentioned, as among the reasons for it, that he was related to Beall, who had been recently hanged in New York?

A. He said that Booth was heart and soul in this matter, and felt as much as any person could feel, for the reason that he was a cousin to Beall, who was hung in New York. Whether he was a cousin or not, I do not know.

Q. What did he say, if any thing, in regard to the assassination of the Vice-President, now President, of the United States?

A. He said, that, if they could dispose of Mr. Lincoln, it would be an easy matter to dispose of Mr. Johnson, as he was such a drunken sot, it would be an easy matter to dispose of him in some of his drunken revelries.

Q. Did he say any thing in regard to Mr. Seward, the Secretary of State?

A. When he read the letter, he spoke of Mr. Seward; and I inferred that that was partially the language of the letter. I think it was, that if those parties, the President, the Vice-President, and Cabinet, or Mr. Seward, could be disposed of, it would satisfy the people of the North that they (the Southerners) had friends in the North, and that a peace could be obtained on better terms than it could otherwise be obtained; that they (the rebels) had endeavored to bring about a war between the United States and England, and that Mr. Seward, through his energy and sagacity, had thwarted all their efforts.

Q. That was suggested as one of the reasons for getting rid of him?

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A. Yes, sir; for removing him.

Q. At a later period,—say early in April,—did you meet any of these parties?

A. Yes, sir.

Q. State who they were, and what conversation occurred between you and them.

A. I was in Toronto on Wednesday and Thursday, the 5th and

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6th of April last; and, in the evening of Wednesday, I was on my way going to the theatre, when I met Harper and Ford. They asked me to go with them, and spend the evening; and I declined, as I was going to the theatre. The next morning I was around by the Queen's Hotel, and I saw Harper, Caldwell, Randall, Ford, and one Charles Holt.

Q. Did you see a man called Texas?

A. Yes, sir.

Q. State the conversation which occurred then between you.

A. Harper said that they were going to the States, and they were going to kick up the damndest row that had ever been heard of yet. There was some other conversation passed among us: I do not remember what it was; nothing of any importance, till in the course of an hour or two afterwards I met Harper, and he said if I did not hear of the death of old Abe, of the Vice-President, and of General Dix, in less than ten days, I might put him down as a damned fool. This was the 6th of April. Wednesday was the 5th, as I find on looking at my visiting-list; and this was on the 6th.

Q. Did Harper at the time or not, speak of Booth and Surratt as being at Washington?

A. I think that Booth's name was mentioned as being in Washington; but I do not remember Surratt's at that time.

Q. Was any thing said in regard to their having friends in Washington?

A. They said they had plenty of friends here, and that there were some fifteen or twenty going to Washington.

Q. Did you, or not, call afterwards, and ascertain that Harper had in fact left on the 8th of April?

A. On the Saturday afterwards, I was at Galt. Harper's mother is living some four or five miles from Galt, between that and Paris. I ascertained that he had been to the place where he had been stopping, and Caldwell too, and had started for the States.

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Q. After you had ascertained this information that they had left for Washington, probably for the purpose of assassinating the President, what steps, if any, did you take in the matter?

A. I went to a justice of the peace there for the purpose of

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giving information to have them stopped. His name was Davison.

Q. State what occurred on your application.

A. When I gave him the information, he said that the thing was too ridiculously absurd or supremely absurd to take any notice of it: it would only make me appear very foolish to give such information, and cause arrests to be made on those grounds, as it was so inconsistent, that no person would believe it.

Q. And therefore did he, or not, decline issuing any process?

A. He declined to issue process.

Q. Do you, or not, know at what time this man Harper returned from the States to Canada?

A. I have no personal knowledge that he returned at all.

Q. What knowledge have you on the subject?

A. I was in Galt on Friday again; and I found then, from Mr. Ford, that he had been home on Thursday, and had started to go back to the States again. That was the Thursday after the assassination.

Q. Did you know while there one Colonel Ashley, a rebel officer?

A. I do not know that he was a rebel officer. I know that he was a rebel sympathizer. He was a broker at Windsor, opposite Detroit.

Q. Did you ever see a letter from Jacob Thompson, formerly Secretary of the Interior, to him?

A. Some time last fall, I cannot tell exactly what time, Colonel Ashley handed me a letter, which he said he had received from Jacob Thompson, asking him for funds for the benefit of the rebels to carry out their objects in Canada; and he asked me if I could not contribute. He read me the letter.

Q. What did you understand from him and from that letter to be those objects?

A. My understanding was that the purpose was to raise means to pay the expenses of those who were unable to pay their own expenses to go to the States and make raids. I so understood the meaning of the letter: I may have misinterpreted it.

Q. Did you have any conversation with Jacob Thompson or Clement C. Clay?

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A. I had a conversation with Mr. Clay.

Q. At what time?

A. In February.

Q. State what it was.

A. I spoke to him in Toronto about the letter that Mr. Sanders had exhibited in Montreal,—the letter of Jefferson Davis.

Q. Did you state to him what that letter was?

A. He seemed to understand the nature and character of the letter perfectly. I asked him what he thought about it and he said he thought the end would justify the means. That, was his expression.

Q. Justify the assassination?

A. That the end would justify the means.

Q. You say that when you mentioned to him the letter from Jefferson Davis, approving of this plan of assassination, he seemed to understand it perfectly?

A. Yes, sir: he seemed to understand it.

Q. You spoke of having heard the name of Surratt: do you remember that he was at any time pointed out to you while you were in Canada?

A. He was pointed out to me once.

Q. At what time was that? and where?

A. It was in February, and, I think, in Toronto.

Q. With whom was he there, did you observe?

A. I did not see him with any one. He was walking on the other side of the street, and was pointed out to me as being Surratt; and I am inclined to think it was Scott who pointed him out. When he was pointed out, Scott, Ford, and myself were standing on the sidewalk.

Q. How often did you see Booth there?

A. I saw Booth there two or three times.

Q. With whom did you generally see him associating?

A. I do not know that I could tell. I sat at the table with him once at the St. Lawrence. Sanders was at the same table, and Scott, and Steele, and myself.

Q. Did you see Sanders and Booth together?

A. I do not know that I did, any more than at the table.

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They were conversing with each other at the table. We all drank some wine at Mr. Sanders's expense.

Q. Was not Booth recognized by them all as their friend, and as fully committed to any enterprise they were engaged in?

A. I cannot answer that question, for I do not know.

Q. Did you hear what Sanders said of Booth?

A. I know what was said in the meeting. Outside of that, I do not know that I heard any person speak particularly in relation to Booth.

Q. Did you have personal acquaintance with Booth yourself?

A. No, sir: I had seen him a good many times on the stage, and knew him very well by sight.

Q. [Exhibiting to the witness the photograph of J. Wilkes Booth,—Exhibit No. 1.] Is that a correct representation of him?

A. I should think that was the man.

Q. What is the full name of Harper, of whom you have spoken?

A. George Harper.

Cross-examined by MR. STONE:

Q. Did you see the man who was called Harrison, and whom you now think is Herold, more than once in Canada?

A. I think I saw him two or three times.

Q. At what time did you see him?

A. In February.

Q. What time in February?

A. About the middle, or somewhere about the 15th or 20th, of the month.

Q. Did you make his acquaintance?

A. I did not.

Q. Do you remember who pointed him out to you?

A. I think it was a Mr. Brown. Brown and Ford and Holt were together.

Q. Was it in a street?

A. In a saloon.

Q. Night, or day?

A. In the evening.

Q. Did you notice him more particularly than the generality of persons in the saloon?

A. I noticed him a little more particularly, on account of his name having been mentioned in connection with others at Montreal.

Q. Was this in Montreal?

A. No: this was in Toronto.

Q. Was Booth in the saloon?

A. No.

Q. After he was pointed out, you saw him once or twice, and he then went by the name of Harrison, you say?

A. It is my impression that he went by that name. I do not remember having heard the name of Herold mentioned at all.

Q. Did you see him after that at any time till now?

A. No, sir; I did not.

Q. And you saw him to-day for the first time since then?

A. Yes, sir.

Q. How was he dressed then? Do you remember?

A. I do not know that I do.

Q. I mean the general style of his dress: was he dressed well or not?

A. I did not see any thing about this dress that particularly attracted my attention.

Q. I do not mean the color of the clothes; but was he genteelly dressed?

A. I should think he was comfortably dressed. Some people's ideas of gentility differ from those of others.

The hour fixed by the rules for that purpose having arrived, the Commission took a recess till two o'clock, P.M.

After recess, the cross-examination was continued as follows:—

By MR. AIKEN:

Q. Where were you born?

A. I was born in Canada.

Q. Then you are a native of Canada?

A. The first question asked me by the Judge Advocate was, What State are you a native of? My answer was that I could not tell. I can explain that: My people lived at Rome, Oneida County,

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New York. Father and mother were in Canada, visiting and taking care of some of their friends, at the time I was born. The

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question was raised the first time I offered to vote, whether I was a native of New York or Canada; and it was undecided.

By the JUDGE ADVOCATE:

Q. That is what you meant by your answer?

A. Yes, sir.

By MR. AIKEN:

Q. What is your age?

A. Nearly forty.

Q. How often did you visit Canada last summer and fall?

A. I have been there all the time since May last, pretty much, with the exception of a few days in December that I occasionally went back and forth to Detroit.

Q. What was your business in Canada?

A. Practising medicine.

Q. When did you first meet any of the parties you have named in Canada?

A. Some of them I met the first day I was there.

Q. You went in May?

A. Yes, sir; I went in May.

Q. Where were they?

A. Ford was there in May.

Q. By whom were you introduced to those parties?

A. Some of them introduced themselves.

Q. Were you introduced to any of them?

A. Then I was introduced afterwards to some. Colonel Ashley introduced me to Mr. Clay.

Q. Was that the first introduction you had to those parties?

A. That was the first introduction I had to Mr. Clay.

Q. To any of them?

A. Oh, no! I think Colonel Ashley introduced me to two or three others there: among the rest was Captain Scott.

Q. How was it that you on such confidential terms with these gentlemen?

A. Because I was a good Southerner,—represented myself as such.

Q. Is that the reason why you were asked to contribute?

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A. Yes, sir.

Q. On account of your known status there as a Southerner?

A. They supposed I was a good Southerner, and I presume that was the reason Mr. Ashley asked me to contribute.

Q. You spoke of drinking wine with Mr. Sanders: was that before or after the meeting at which the letter was read to which you referred?

A. That was after the interview we had in October, but before the meeting at which the letter of Davis was read.

Q. Where was that meeting held?

A. In Mr. Sanders's room.

Q. Who invited you to be present at that meeting?

A. Captain Scott.

Q. It is possible that a portion of that letter has been misapprehended. I would like to have you state the main points in it again.

A. Mr. Sanders read the letter aloud. Did not read the letter myself: I think I stated that in the commencement. The purport of the letter was that Mr. Davis did not wish to recognize any persons as his friends who were willing to submit to be governed by Mr. Lincoln,—conveying that sentiment, the language might be varied a good deal,—and that if the President and Vice-President, and some of the Cabinet and leading generals, could be disposed of, it would satisfy the people of the North that they (the rebels) had friends here.

Q. That was stated in the letter?

A. That was stated in the letter, I think. That was the meaning of the letter. The phraseology I perhaps do not exactly remember.

Q. We want to know what was actually said in the letter.

A. I say that that was the substance. I do not say that was the exact phraseology.

Q. Was there any thing more in the letter?

A. There was considerable. It was quite a lengthy letter.

Q. Did you make any expressions at the time in that meeting?

A. No, sir.

Q. Did you go to see the justice of the peace to whom you referred immediately after that meeting?

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A. No, sir.

Q. How long was it afterwards?

A. It was over a month.

Q. What time was the letter read?

A. The letter was read in February, and I went on the 10th of April to see the justice of the peace.

Q. After the justice of the peace refused to accede to your request, what did you do then?

A. I then called upon a judge of the court of assizes, and made my statement to him; and he said I should have to go to the grand jury.

Q. What did you do then?

A. I did not do any thing. I went home.

Q. When did you first communicate to the Government this information that you have detailed here?

A. I think it was two weeks ago to-day.

Q. Since the assassination of the President?

A. Yes, sir.

Q. What was your object in keeping this information so long to yourself?

A. There was no authority to communicate it to.

Q. But, as a good citizen, you were bound to communicate it. Why did you not do it?

A. In the first place, I was not here where I could communicate it. I am a practicing physician in North Dumfries, Canada: it is some five hundred or six hundred miles from here.

Q. There is a post-office at Dumfries?

A. Yes, sir: there is one.

Q. There is one at Toronto, and one at Montreal?

A. Yes, sir.

Q. Is that the only reason that you have?

A. No, sir: I cannot assign any particular reason why I did not communicate it. The Government, though, was in possession of the information without my communicating it, I understand.

Q. Was it not owing to the fact that you are a Southerner in your feelings and affiliations?

A. No, sir.

Q. Where were you when Mr. Surratt was pointed out to you, as you state?

A. In Toronto, I think.

Q. At what time in the year was that?

A. That was in February.

Q. In February, 1865?

A. Yes, sir: last February.

Q. Did you have a good view of the gentleman?

A. I saw him on the street.

Q. Were you on the same side of the street with him, or across?

A. On the same side. He was pointed out coming towards me, and on the opposite side. He crossed on the same crossing, and passed down by me.

Q. What sort of a looking man was he?

A. I never saw him but once. He is a man, I should think, as tall as I am,—nearly five feet and six or seven or eight inches; rather slim; and he wore a mustache.

Q. What was the color of that mustache?

A. Dark.

Q. What was the color of his hair?

A. I did not notice his hair particularly. I noticed that he had a mustache.

Q. What was the color of his eyes?

A. I do not know that I noticed.

Q. How was he dressed?

A. Dressed in ordinary clothes, like any gentleman would be.

Q. Dark-colored clothes?

A. I should think they were, but I might be mistaken.

Q. Are you pretty positive they were dark-colored clothes?

A. I would be positive they were. I would not be positive that it was Surratt either, because I do not know the man.

Q. What day of the month was that, as near as you can recollect?

A. I should think it was somewhere in the neighborhood of the 20th, perhaps. It was after the middle, I should judge.

Q. Who was the American consul at Toronto?

A. I do not know. I do not know an American consul in the Province.

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Q. Did you ever meet him?

A. Not that I know of.

Q. There was one there?

A. I do not know that I ever met him.

Q. When you were drinking wine at Mr. Sanders's expense, and in convivial conversation with him, did he disclose to you freely any of the plans and purposes of the Southern men in Canada?

A. Not at the table.

Q. Did he privately in his room?

A. I had no conversation with Mr. Sanders, except what I had at those interviews, in relation to any conduct of the Southerners in Canada. That was in his room, at the time I was introduced to him by Colonel Steele.

Q. Go back again. Under what circumstances was the gentleman whom you think was Surratt pointed out to you?

A. I do not know that it was under any particular circumstances. A man by the name of Ford, who was present at the meeting held in Montreal, said "Doctor, that's Surratt."

Q. Was Surratt mentioned in that meeting?

A. Surratt's name was.

Q. Were you talking with Ford at that time in regard to any of the plans and purposes divulged in that meeting?

A. Yes, sir.

Q. Was that the occasion?

A. That is how he happened to speak of this man.

Q. You think he was a man about five feet six inches high?

A. Five feet six or eight inches, I should judge.

Q. Your first impression is that he was dressed in dark clothes?

A. I could not say what his clothes were. He might have been dressed in dark clothes, or dark gray, or gray. I could not tell now, for the life of me, what he was dressed in.

Q. You think he had a dark mustache?

A. I think his mustache was dark. It was not red; at least, I think it was not.

By the JUDGE ADVOCATE:

Q. I understand you to say that the occasion of Surratt's being

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pointed out to you was because he was one of the men spoken of in this meeting who were willing to accomplish the assassination of the President?

A. He was one of the men spoken of by Mr. Sanders. Mr. Ford was present at the time Mr. Sanders mentioned it.

Q. How many were present at that meeting?

A. I should think there were ten or fifteen.

Q. How many can you name? Name as many as you can.

A. There were Mr. Sanders, Colonel Steele, Captain Scott, George Harper, Caldwell, Ford, Kirk, Benedict, George Young and Byron Hill.

Q. Do you know whether this Harper was or was not from Richmond, Va.?

A. I believe that Harper and Caldwell were both residents of Richmond, Va.; at least, they represented themselves as such.

Q. Did they represent themselves to have been in the rebel service?

A. I believe they had been. I think they said they had been in the rebel service. Whether they were commissioned officers or privates, I cannot say.

Q. The Clay of whom you have spoken is Clement C. Clay of Alabama, formerly of the United States Senate, is it not?

A. Yes, sir: C. C. Clay, a tall, thin man.

By MR. AIKEN:

Q. From what point did you communicate this information to the Government?

A. In the War Department.

Q. Did you come directly here?

A. Yes, sir. I have in my pocket a letter from the Provost Marshal General stating that he had received a letter (which proves to have been written by Squire Davison) giving information of my visit to him when I wished to have Harper and Caldwell arrested; and, upon the receipt of that letter, they sent to Canada for me. If you wish to see the letter, I can produce it.

By the JUDGE ADVOCATE:

Q. By whom was that letter written?

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A. By General Fry.

The JUDGE ADVOCATE, without objection, offered the letter in evidence. It is as follows:—

“WAR DEPARTMENT,
PROVOST-MARSHAL GENERAL’S BUREAU,
WASHINGTON, D.C., April 20, 1865.

“DR. J. B. MERRITT, Ayr, Canada West.

“SIR,—I have been informed that you possess information connected with a plot to assassinate the President of the United States and other prominent men of this Government. The bearer has been sent to present this letter to you, and to accompany you to this city if you will come. The Secretary of War authorizes me to pledge your protection and security, and to pay all expenses connected with your journey both ways, and in addition to promise a suitable reward if reliable and useful information is furnished. Independent of these considerations, it is hoped that the cause of humanity and justice will induce you to act promptly in divulging any thing you may know connected with the recent tragedy in this city, or with any plots yet in preparation. The bearer is directed to pay all expenses connected with your trip.

“I am, &c., very respectfully,

“Your obedient servant,

“JAMES B. FRY,
“Provost-Marshal General.”

The original of the foregoing is annexed to this record, and marked Exhibit No. 5.

Q. [By the JUDGE ADVOCATE.] It was under that letter you came?

A. Yes, sir.

By the COURT:

Q. The witness, in giving the reason for his admission to the meeting of the conspirators in Canada, said it was because he was a good Southern man; and then, in giving a reason for not communicating this information to the Government, he said emphatically that he was not a good Southern man. How is that discrepancy explained?

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A. I said they admitted me because I was a good Southern man; and I said it in such a way I thought it would be understood that I had made the impression on their minds that I was a good Southern man. God knows that I am not a Southern man in sentiment, because I have taken the oath of allegiance too often.

By MR. AIKEN:

Q. Where were you at the time Mr. Ashley asked you to contribute?

A. In Windsor, opposite Detroit.

Q. You stated that you did not contribute any thing at that time?

A. I did not.

Q. Did you ever contribute any thing for that specific purpose?

A. No, sir.

Q. Either in money, or services, or advice?

A. No, sir.

Q. When did you leave New York?

A. Four, or five, or six years ago,—more than that.

Q. When were you last in New-York City?

A. I have not been there, I think, since 1858 or 1859.

Q. Did you know any thing of the plot to burn that city?

A. I did.

Q. Did you communicate that to any one?

A. I did.

Q. To whom?

A. To Colonel Hill of Detroit.

Q. How did you come to find out any thing about that?

A. I heard it talked of at Windsor.

Q. Did you communicate your knowledge before or after the attempt to burn that city?

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A. Before the attempt.

Q. Were you acquainted with Robert Kimball of Toronto?

A. No, sir.

Q. Did you ever see him?

A. Not that I know of.

Q. He is the consul there?

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A. I do not know him.

Q. Who of the Southerners communicated to you their intention to burn New-York City, at Windsor?

A. Robert Drake, formerly of Morgan's command.

Q. Was he the only one?

A. Another by the name of Smith. I do not know Smith's first name; but they were both of Morgan's command; and they both had been to Chicago to attend the Presidential Convention there, and went there for the purpose of disturbing the public, and releasing the rebel prisoners at Camp Douglas. At least, they told me that was their object in going, after they returned.

Q. After you had been thus made aware of the plot to burn the city of New York, and commit that depredation in Chicago, why did you continue your friendly relations with that class of men?

A. For the purpose of giving information, when I should find it of importance. Another thing, my practice was mostly among that class of men, among Southerners. If you go to Canada, you will find that nine-tenths of the people are rank rebel sympathizers.

Q. Did you continue your friendly and confidential relations with them after that?

A. I did.

Q. By whom were you paid for communicating that information?

A. I never have received a dollar from the Government for furnishing any information from Canada.

Q. Have you ever received any thing from the rebels for any services rendered to them?

A. No, sir: I say I never received a dollar. The Government did advance me money here the other day, to pay my expenses. I have proof in my pocket, which I can show if it is necessary, from the provost-marshal at Detroit, that I furnished valuable information without any remuneration.

Q. Why, after this, and you were continuing your relations with them, should they continue to think you a good Southerner?

THE TRIAL.

A. You must ask them. They can give you more information on that point than I can.

Q. Did you intentionally deceive them?

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A. My intention was to get all the information I could from them.

Q. At the same time, pretending to be their friend?

A. Yes, sir.

SATURDAY, MAY 20, 1865. [*stet*]

SANFORD CONOVER,

a witness called for the prosecution, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. State your full name and your present place of residence.

A. Sandford Conover, Montreal, Canada.

Q. How long have you resided in Montreal?

A. Since October last.

Q. State where you resided previous to going to Canada.

A. I resided for a short time in Baltimore.

Q. State whether you resided farther south before that.

A. Yes, sir: at Richmond.

Q. State what you were doing at Richmond when you were there.

A. I was a clerk in the War Department for a time.

Q. How long?

A. Upwards of six months.

Q. Do you mean the War Department of the Confederate States Government, as it was called?

A. Yes, sir: the rebel War Department.

Q. Who was at that time Secretary of War for that organization?

A. Mr. James A. Seddon.

Q. How did you come to be in the rebel service?

A. I was conscripted, and detailed for a clerkship. It was a cheap way of getting clerks.

Q. State to the Court whether, when you were in Canada, you made the acquaintance of any of the persons connected with the

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Confederate Organization, as it was called,—rebels from Southern States.

A. I did; and have since been quite intimately associated with them.

Q. State the names of those with whom you were so acquainted in Canada.

A. George N. Sanders, Jacob Thompson, Dr. Blackburn, Beverly Tucker, William C. Cleary, Lewis Castleman, the Rev. M. Cameron, Mr. Potterfield, Captain Magruder, and a number of others of less note.

Q. Did you know Mr. Clement C. Clay?

A. I knew him. I may also include Generals Frost of Missouri, and Carroll of Tennessee.

Q. Were you also acquainted with any persons who occasionally visited the persons named, in Canada, from the United States?

A. I knew some.

Q. What were their names?

A. I knew Mr. Surratt; I knew Booth.

Q. John Wilkes Booth?

A. Yes, sir.

Q. State whether you saw either of those persons last named—Booth or Surratt—in Canada more than once.

A. I never saw Booth more than once; I saw Surratt on several successive days.

Q. With whom did you see them when they were there?

A. I saw Mr. Surratt on a number of days in April last. I saw him in Mr. Jacob Thompson's room, and I also saw him in company with Mr. George N. Sanders at two or three places.

Q. Did he pass by the name of John H. Surratt?

A. Surratt: I am not positive about his first name; I heard him called Jack by some,—by Mr. Castleman.

Q. Describe the personal appearance of this Mr. Surratt.

A. He is a man about five feet nine, ten, or eleven inches,—somewhere in that neighborhood, I should judge; a spare man, light complected, and light hair.

Q. You say you saw him in Montreal in April last?

A. Yes, sir.

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Q. About what time in April?

A. It was within a week before the President's assassination: I think about the 6th or 7th of April,—somewhere in that vicinity.

Q. In whose company was he at the time you saw him there?

A. I saw him in Mr. Thompson's company and in Mr. Sanders's.

Q. In whose company was he at the time you saw him there?

A. I saw him in Mr. Thompson's company and in Mr. Sanders's.

Q. You say you saw him in Thompson's room?

A. I saw him in Mr. Thompson's room.

Q. State whether he gave any communication to Mr. Thompson in his room, in your presence, and what that communication was.

A. There was a conversation there at that time, from which it appeared that Mr. Surratt had brought despatches from Richmond to Mr. Thompson. Those despatches were the subject of the conversation.

Q. From whom in Richmond were the despatches brought?

A. From Mr. Benjamin; and I think there was also a letter in cipher from Mr. Davis. I am not so positive as to the letter; but there was a letter from him, whether it was in cipher or not.

Q. Do you mean Judah P. Benjamin, Secretary of State of the so-called Confederacy?

A. Yes, sir.

Q. You say the despatches were the subject of conversation. What did they say was the substance of the despatches, or what did they purport to be?

A. I had some conversation with Mr. Thompson previously on the subject of a plot to assassinate Mr. Lincoln and his Cabinet, of which I had informed the paper for which I was correspondent; and had been invited to participate in that enterprise.

Q. By whom had you been so invited?

A. By Mr. Thompson; and on this occasion he laid his hand on the papers or despatches there, and said, "This makes the thing all right,"—referring to the assent of the rebel authorities.

Q. Did they speak of the persons that the rebel authorities had consented might be the victims of this plot?

A. Yes, sir; Mr. Lincoln, Mr. Johnson, the Secretary of War, the Secretary of State, and Judge Chase.

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Q. Did they say any thing about any of the generals?

A. And General Grant.

Q. In that connection was any thing said, and, if so, what was said, by Thompson and Surratt, or either of them, touching the effect the assassination of these officers named would have upon the people of the United States and their power to elect a President?

A. Mr. Thompson said on that occasion, I think,—I am not positive that it was on that occasion, but he did say on the day before the interview of which I speak,—that it would leave the Government entirely without a head; that there was no provision in the Constitution of the United States by which they could elect another President.

Q. If these men were put out of the way?

A. If these men were “removed”.

Q. State whether any other member of the Cabinet was named in that connection, touching the despatches and the approval from Richmond.

A. No, sir; no further than this. Mr. Welles was named: but Mr. Thompson said it was not worth while to kill him; he was of no consequence. That was the remark that was made at the time.

Q. You stated that there was a letter in cipher from Davis, as well as the despatch of Secretary Benjamin?

A. Yes, sir.

Q. Was the substance of the letter of Davis also spoken of?

A. No; only generally.

Q. In connection with the despatch?

A. Yes.

Q. Was any other subject mentioned?

A. Yes. If I may be allowed, I will state my first interview on that subject.

Q. When was your first interview with him on that subject?

A. In February last.

Q. About what time in February?

A. In the early part of February.

Q. That was where?

A. That was in Mr. Thompson's room, in the St. Lawrence Hotel.

Q. State, if you please, what was said at that time by Mr. Thompson, on that subject, in your presence.

A. I had called on Mr. Thompson to make some inquiry about a raid which had been contemplated on Ogdensburg, New York, which had failed because the United-States Government had received some intimation of the intentions of the rebels there, and were prepared for it; and I called to see what was to be done next, seeking items for my newspaper; and, being supposed by Mr. Thompson to be a good rebel, he said, "We shall have to drop it for a time, but we will catch them asleep yet;" and he observed, "There is a better opportunity, a better chance to immortalize yourself and save your country.: I told him I was ready to do any thing to save the country, and asked what was to be done. He said, "Some of our boys are going to play a grand joke on Abe and Andy." That was his expression. This led to explanations; when he informed me it was to kill them, or rather to "remove them from office," to use his own expression. He said it was only removing them from office,—that the killing of a tyrant was no murder.

Q. State whether any thing was said at that time on the subject of commissions from the rebel authorities, in his hands in blank?

A. He had commissions, and conferred one on Booth. I am not so positive whether he had conferred it on Booth then or not; but he told me, either then or subsequently, that Booth had been commissioned, and that everybody engaged in the enterprise would be commissioned; and if it succeeded or failed, and they escaped to Canada, they could not be successfully claimed under the extradition treaty.

Q. State whether you have any personal knowledge of their holding these commissions in blank from the Confederate States.

A. Yes, sir. The commission conferred on Bennett H. Young, the St. Albans raider, was given to him in blank.

Q. By whom?

A. It was a blank commission filled up and conferred by Mr. Clay.

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Q. What name was attached to it as it came into the hands of these men from Richmond, if any?

A. James A. Seddon, Secretary of War.

Q. State to the Court whether you saw the commission yourself.

A. I did.

Q. At whose instance were you called to see it?

A. Mr. Thompson's.

Q. State whether you were asked to testify about the genuineness of Seddon's signature, you having been a clerk in his department.

A. I was.

Q. By whom were you asked?

A. By Mr. Thompson and Mr. Abbott, the counsel in the case, and also by Sanders and Young himself.

Q. State whether you did testify on the question of the genuineness of that signature of Seddon?

A. I did.

Q. In that Court?

A. I testified before Judge Smith that the signature was genuine.

Q. State to the Court whether you were acquainted and familiar with the handwriting of James A. Seddon, the rebel Secretary of War.

A. Yes, sir.

Q. State now to the Court upon your oath here whether the signature to the blank commission you saw was his genuine signature or not.

A. It was his genuine signature.

Q. You say you had a subsequent conversation with Thompson after the one you have spoken of as early as February, before the time you met him with Surratt: what time in February was it that you had that subsequent conversation?

A. I had conversations with him from day to day, almost every day during the whole of February, for that matter.

Q. State to the Court whether or not on any of these occasions

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he offered you one of these commissions in this work of the assassination of the President.

A. Nothing further than this, that he suggested that I might immortalize myself and save the country, and in that same connection said that Booth had been commissioned, and every man who would engage in the enterprise would be.

Q. In those subsequent conversations, state any thing that was said about the extent to which this plot was to be carried,—what language he used.

A. At another time I had a conversation with Mr. William O. Cleary. That was the day before, or the same day of, the assassination.

Q. Whereat?

A. At St. Lawrence Hall. We were speaking of the rejoicings in the States over the surrender of Lee and the capture of Richmond, and so on; and Cleary remarked, that they would put the laugh on the other side of their mouth in a day or two. I think that was the day before the assassination took place.

Q. How did he say they would do it?

A. There was nothing further than that said. It was known that I was in the secret of the conspiracy, and it was that he had reference to. It was talked about as commonly as one would speak of the weather.

Q. Did you have any conversation with Sanders about that time about it?

A. One time before that I had a conversation with Sanders, and he asked me if I knew Booth very well. He expressed some apprehension that Booth would make a fizzle of it; that he was dissipated and reckless, and was afraid the whole thing would prove a failure.

Q. What business were you engaged in, in fact, during your stay in Canada, while you were ostensibly a rebel?

A. I was a correspondent of the "New-York Tribune."

Q. State to the Court whether before the assassination of the President you communicated to any person in the United States the information you had received about their intended raid on Ogdensburg, or the assassination of the President and his Cabinet.

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A. I did to the "New-York Tribune;" and they declined to publish it, because they had been accused of publishing sensation stories of that kind before, and they feared there might be nothing in it, and did not wish to be accused of publishing sensation stories.

Q. State whether you mean to be understood as saying that you communicated both the plot to make a raid on Ogdensburg, and the other in regard to the assassination of the President, or only one.

A. Both.

Q. About how long before the President's assassination did you make the communication?

A. I did it in March last, and also in February, I think. I gave them a paragraph on the subject before the 4th of March.

Q. In order that we may be certain about it, I ask you again, without indicating myself the date, about what time was it that you saw this Surratt, whom you have described, in the room of Thompson in Montreal, as the bearer of despatches from Richmond?

A. I think it was about the 7th or 8th of April last,—somewhere in that neighborhood,—I could not state it to a day: it might have been the 8th or 9th; but it was without four or five days preceding the assassination of the President.

Q. State what was said by Surratt, if any thing, indicating his connection with the plot.

A. There was considerable conversation on the subject. I am unable to remember any thing Surratt said in particular; but, from the whole conversation, I inferred that he was to take his part, whatever it might be.

Q. State whether the substance of his conversation was that he was one of the persons in the plot to execute the conspiracy on the President and his Cabinet.

A. That was the understanding.

Q. Was that the substance of his conversation, or not?

A. That was the substance of the conversation.

Q. I should like to know whether any thing was said, in the several conversations you had with Thompson, Clay, and Sanders, about the use of money in this business, or not.

A. I do not think there was; but it was always well understood

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that there was plenty of money where there was any thing to be done. I do not think I ever heard any thing said about money or compensation at all.

Q. When you say it was always understood, do you mean it was so stated in general terms by these men, or not?

A. I do not think there was any thing said on the subject. There may have been, but not in my presence. I think there was nothing said on the subject of money.

Q. Did Surratt state at that time at what time he had left Richmond, or not?

A. I do not remember that he did; but it was a very few days before. I do not know whether he stated it, or whether I understood it from Mr. Thompson, or how; but the understanding was that it was a very short time before. He was just from Richmond, as I understood.

Cross-examined by MR. DOSTER:

Q. Did you ever see the prisoners, Payne or Atzerodt, in Canada?

A. No, sir: I do not think I ever saw any of them anywhere [the prisoner George A. Atzerodt stood up for identification]. No, sir: I have no recollection of ever seeing him: I think not.

Q. You state that you have never seen the prisoner Payne in Canada? [the prisoner Lewis Payne stood up for identification].

A. I have no recollection of it.

Q. When did you leave Richmond to go North?

A. In December, 1863.

Q. Did you go immediately to New York?

A. Yes, sir.

Q. Did you, in New York, make an arrangement to become the correspondent of the "Tribune"?

A. No, sir: I contributed articles which were published; and my arrangement was made in writing afterwards. The first article I contributed was from this city.

Q. Was the arrangement made in New York?

A. No, sir: it was made by letter.

Q. Where was it made?

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A. It was made in answer to my first communication. I enclosed the letter for publication to the editor of the "New-York Tribune," which was put out; and I was requested to continue my correspondence, and did so, and received compensation from time to time.

Q. What I want to get at is, where you were at the time you were engaged as a correspondent of the "Tribune." Were you in Washington at the time you made a regular connection with the "Tribune" as a correspondent?

A. Yes, sir.

Q. Then how soon did you go to Canada?

A. I went to Canada last October.

Q. In addition to being a correspondent of the "Tribune," were you in the service and pay of our Government?

A. No, sir.

Q. Have you ever received compensation or pay from our Government for services rendered?

A. Not one cent, nor promise.

Q. Did you give out while in Canada—was it generally understood—that you were a correspondent of the "Tribune"?

A. No, sir: it was understood that I was a rebel.

Q. When you asked these gentlemen whom you have named if they had items that would be fit for publication, what paper did they suppose you were in correspondence with?

A. I never asked them for any items. They never supposed I was a correspondent for any paper.

Q. You said something about items for a paper.

A. I was seeking items; but I did not ask for them. What I learned I learned in conversation, and drew from these parties, because they supposed that I was a rebel; and I was in their confidence.

Q. Then they never had any means of knowing that you were a correspondent of the "Tribune"?

A. No, sir.

Q. Were you admitted freely to their meetings?

A. Yes, sir; quite so.

Q. And to their confidence too?

A. I think so, sir. They may have had secrets that I am not

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aware of; but I certainly knew of a great many of their matters that they intended to keep secret from the public.

Q. Was the disclosure of the intended raid upon Ogdensburg published in the "Tribune"?

A. I think it was. I contributed a letter with information of that kind in it.

Q. Did I understand you as stating to the Court that you also communicated to the "Tribune" something of the plot about the assassination?

A. Yes, sir: I wrote them on that subject.

Q. Did you communicate it to any one else?

A. No one but the "Tribune" and my own family.

Q. What was your idea in not communicating the important intelligence at once to the Government, instead of to the "Tribune"?

A. I supposed in giving it to the "Tribune" that it amounted to the same thing as giving it to the Government. I supposed the relations between the editor and proprietors of the "Tribune" and the Government were such that they would lose no time in giving them information on the subject; and I did not choose to have the information go to the Government directly from me. In regard to this, as in regard to some other secrets of the rebels in Canada that I have exposed, I requested Mr. Gay, of the "Tribune," to give information to the Government; and I believe he has formerly done so.

Q. You must have been aware, as a newspaper-man, that, if the fact was published in the newspapers, it would defeat the opportunity of capturing these parties.

A. Certainly so, sir.

Q. How many times did you see Surratt in Canada?

A. I saw him for three or four days in succession, I think, in April last.

Q. In whose room did you meet him?

A. I saw in Mr. Jacob Thompson's room: I also saw him in Mr. Sanders's room once.

Q. Had you any conversation with him personally?

A. I had.

Q. What did he say to you?

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A. Nothing more than speaking about Richmond. I asked him how it looked, and what changes there were in it.

Q. He never said any thing to you personally himself about the intended assassination?

A. No, sir; only what was said in Mr. Thompson's room. I was introduced to him by Mr. Sanders. That was the first I had seen of him.

Q. Since you learned of the assassination, to whom did you communicate your previous knowledge of it?

A. To the "Tribune" people.

Q. Did you go in Canada by the name of Sanford Conover?

A. No, sir.

Q. What name did you go by there?

A. James Watson Wallace.

Q. Fix the precise date, as near as you can, when you met Mr. Surratt at Mr. Thompson's rooms.

A. I could not say within two or three days: I think it might have been the 7th, or 8th, or 9th of April.

Q. On or about that time?

A. Yes, sir: it was near that time.

Q. Did you learn any thing while in Canada of the attempt to fire the city of New York?

A. Yes, sir: I heard the matter discussed.

Q. Did you communicate that intelligence to any one?

A. I knew nothing of it until after the attempt had been made.

Q. In representing yourself to these parties as being a good rebel, and being in their confidence, were you ever charged with the execution of any plan or project of theirs?

A. No, sir.

Q. Of any description?

A. Yes: I was expected to participate with them in the raid upon Ogdensburg.

Q. Did you ever receive any money from them for any specific purpose?

A. No, sir.

Q. Or any pay for any service?

A. No, sir.

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Q. You never received any pay from our Government, or from the so-called Confederate Government, since you have been in Canada?

A. No, sir; from no one except the "New-York Tribune."

Q. Did you sign your name to your articles in the "Tribune" that were published?

A. No, sir.

Q. Gave no signature?

A. No, sir; none at all: it was not desirable to the publisher.

Cross-examined by MR. COX:

Q. Did you hear discussed among those individuals the project of the capture of the President, and carrying off to Richmond?

A. Yes: I think I heard that talked of in February.

Q. Did you ever attend a meeting of all those persons,—Thompson, Clay, and others?

A. I have been with Mr. Thompson, Sanders, Tucker, Cleary, and General Carroll, at the same time.

Q. Have you ever attended a meeting for the purpose of considering any plans, of hearing among themselves any advices from Richmond?

A. Not for the purpose of considering any plans.

Q. Were you present at any meeting in which a letter from Mr. Davis was read?

A. No; not when it was read. Those letters were all in cipher; and I merely heard the substance of them repeated.

Q. You spoke of Mr. Thompson laying his hand upon some letters, and saying that made it all right?

A. That referred to the despatches from Richmond brought by Surratt.

Q. That was in April, was it not?

A. Yes, sir; it was in April. I had previously asked Mr. Thompson, when he first suggested that I should participate in this affair, if it would meet the approbation of the Government at Richmond. He said he thought it would; but he should know in a few days. That was early in February.

Q. I thought I understood you to state that he said the authority was given in February?

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A. No, sir; in April, in Surratt's presence.

Q. And he then referred to those papers as having furnished the assent?

A. Yes, sir.

Q. The first statement in February was, that he was expecting despatches from Richmond, and expected them in a few days?

A. Yes; to know whether the affair would receive the approbation of the Government or not.

Q. Did you understand that that communication in April was the first official approval that they had received from Richmond of this plan to assassinate the President?

A. I understood that. It was not said that it was the first; but I knew of no others.

Q. You understood that was the first?

A. Yes, sir: I inferred that.

By MR. AIKEN:

Q. In all your conferences and familiar interviews with those rebels in Canada, did you ever hear the name of Mary E. Surratt mentioned as a friend of theirs?

A. I never did.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you state, in answer to one of the questions put to you on the examination, any thing about a remark of Mr. Jacob Thompson, that it was not murder to kill a tyrant?

A. Yes, sir: he said that killing a tyrant in such a case was no murder; and he asked me at the same time if I had ever read the work entitled "Killing no Murder," a letter addressed by Colonel Titus to Oliver Cromwell.

Q. In what conversation was it that Jacob Thompson made use of that expression?

A. That was in the conversation in February.

Q. Was it in that conversation he named the Cabinet officers and others that were to be the victims of this conspiracy?

A. Yes, sir: it was at that time. Mr. Hamlin was also to have been included, had the scheme been carried out before the 4th of March.

THE TRIAL.

Q. Was he named especially?

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A. Yes, sir, with the rest.

Q. Were the other parties that you have enumerated named also in February?

A. Yes, sir.

Q. What members of the Cabinet?

A. The Secretary of War, the Secretary of State, General Grant, Judge Chase, the Vice-President, and President Lincoln.

Q. In April, who else was named?

A. The same persons, with the exception that Mr. Hamlin was omitted, and Vice-President Johnson put in his place.

By the COURT:

Q. You have stated that you were a conscript in the rebel service. In what State was you conscripted?

A. South Carolina.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Of what State are you a native?

A. New York.

Q. Where were you residing when you were conscripted?

A. Near Columbia, S. C.

By the COURT:

Q. How did you come to Richmond?

A. I "ran the blockade." I walked it most of the way. I rode on the cars to Hanover Junction, and from there walked.

Q. By the way of the Potomac?

A. I came up through Snickersville to Charlestown, Va., and from there to Harper's Ferry, and so on.

Q. As I understood you, you said you saw those blank commissions that were signed by Seddon, Secretary of War, to be given to the persons that were engaged in the assassination of the President and Cabinet, and so on?

A. I saw commissions after they had been filled, which I was told had been filled there.

Q. In Canada?

A. Yes, sir.

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Q. Did you see how much of them was blank when they came there from Richmond?

A. They were all blank but the signature.

Q. Was there no grade of rank in them?

A. No, sir: that was put by the agents themselves. They conferred these commissions at pleasure.

Q. Did you understand that these commissions were to be given upon their engaging in this affair as a sort of cover in case they were taken, or that they were to go into the army following it?

A. It was a cover, so that, in case they were detected, they could claim that they were rebel soldiers, and would therefore claim to be treated as prisoners of war; and it was understood that they would be protected as such.

Q. These commissions, you have said, were to be given to them as soon as they engaged in this enterprise. Was that engagement to be given by an oath, or by the obligation of a contract? Did you understand that?

A. That I do not know; but they took the oath of office, I suppose, or whatever it might be called.

By MR. STONE:

Q. Were these commissions to be conferred principally as a reward for carrying out this assassination project, or for any of those enterprises which were prosecuted on the Border?

A. It was to enable the parties upon whom they were conferred to act officially, and act as rebel soldiers, and be protected as such in case they were detected. Mr. Thompson said, that, in case the men engaged in the enterprise were detected and executed, the Confederate Government would retaliate.

Q. Could that apply to any thing but raids on the border? They could not expect an assassin to be protected by a commission, I suppose?

A. It was no murder, Mr. Thompson said,—mere killing.

Q. Did the giving of these commissions have reference to the assassination project, or embrace all enterprises on the border?

A. It embraced the whole of them; but I think Booth was specially commissioned for this purpose.

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Q. How early was it that you saw those commissions?

A. I saw some commissions as early as December.

Q. They, of course, did not indicate what they were: they were all blank?

A. No, sir; they did not: they were all blank. The commission of Bennett H. Young was a commission of the same sort, and was filled up and conferred by Mr. Clay. He never was in Richmond at all.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. I forgot to ask you what time it was that you saw John Wilkes Booth in Canada.

A. I saw him in the latter part of October last, I think.

Q. With whom was he?

A. I saw him with Sanders. I saw him at Mr. Thompson's. I saw him more about the St. Lawrence Hall. He was strutting about the hall generally, dissipating, playing billiards, &c., &c.

By MR. COX:

Q. Was it in February that Mr. Thompson said he had conferred one commission on Booth?

A. It was in February.

Q. Can you tell what part of February?

A. It was in the early part of February, or it might have been the latter part of January; but I think it was the early part of February.

By the COURT:

Q. Did the same party that planned this assassination plan the burning of New York and other cities?

A. That I do not know. I do not know any thing further than that I have an opinion on the subject. I presume they did.

Q. Is it your belief that they did?

A. Yes, sir.

Q. This same party?

THE TRIAL.

A. I have heard them talk of it. I have heard them talk of some other enterprises of the same character; some they have under consideration now.

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Q. You have a knowledge about the St. Albans raid?

A. Yes, sir.

Q. Did they plan it?

A. The same men planned it.

Q. Were the commissions that you speak of similar to the commissions issued by this Government to army offices, or have you seen them?

A. I have never seen them.

Q. Were they signed by their President as well as the Secretary of War?

A. No: merely by the Secretary of War.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. When you say you have never seen them, what commissions do you refer to?

A. United-States army commissions. I was asked if these commissions were similar to United-States army commissions.

By MR. AIKEN:

Q. You referred to the "same party" in speaking of the St. Albans raid. What "party" did you mean?

A. Mr. Thompson and Sanders.

Q. You do not mean Surratt and Booth?

A. No, sir.

Q. Were those commissions signed by Jefferson Davis in blank?

A. No, sir: by James A. Seddon, Secretary of War.

Q. Is it not the custom for the President to sign them also?

(ASSISTANT JUDGE ADVOCATE BINGHAM. They have not *lived* long enough to have a *custom*.)

A. On the trial of the St. Albans raiders, General Carroll and a number of other officers of the Confederate army testified that the

custom was that the rebel officers had their commissions signed only by the Secretary of War.

By the COURT:

Q. Are you familiar with the cipher which they had in the rebel War Department?

A. No, sir: I am not.

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Q. You could not tell one if you should see it?

A. I could not.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. I am instructed to make an inquiry of you, in consequence of a question asked you by the Court. What conversation, if any, did you hear among these rebel refugees in Canada about the burning of New-York City and other Northern cities?

A. There was a proposition before their council—their junta—to destroy the Croton dam, by which the city of New York is supplied with water; and it was supposed it would not only damage the manufactories, but distress the people generally very much: but Mr. Thompson remarked that they would have plenty of fires, and the whole city would soon be destroyed by a general conflagration, and without sending any Kennedy or anybody else there; and, if they had thought of this scheme before, they might have saved some necks.

Q. When did he say that?

A. That was a few weeks ago.

Q. Who was present when he said that?

A. Mr. Thompson, myself, Mr. Sanders, Mr. Castleman, and General Carroll.

Q. Do you know of any thing being said between those parties, or any others of the same men you have named, in regard to the descent upon Chicago last year?

A. I heard a very great deal of talk about it, and knew that had arms concealed there, and that they had a large number of men concealed away at Chicago,—some eight hundred men there.

Q. Did Thompson and others state for what purpose?

A. Releasing their prisoners, it was understood.

Q. What prisoners?

THE TRIAL.

A. At Camp Douglas, I think they called it, or Camp Chase, or whatever camp it may be in which they were confined.

Q. You mean rebel prisoners?

A. Yes, sir: I think they called it Camp Douglas.

The Commission then adjourned until Monday morning, May 22, at ten o'clock.

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MONDAY, MAY 22, 1865. [*stet*]

SANFORD CONOVER

recalled for the prosecution.

By the JUDGE ADVOCATE:

Q. You have probably observed, that, in some judicial proceedings which have recently taken place at Nassau, it has been made to appear that a certain Dr. Blackburn packed a number of trunks with clothes infected with the yellow-fever, for the purpose, through them, of introducing the pestilence into the city of New York. I wish you to state whether or not the Dr. Blackburn referred to in those proceedings is, or is not the same person to whom you referred, in your testimony on Saturday, as being in intimate association with Jacob Thompson, Clay, and others?

A. It is the same person; but I never saw him with Clay.

Q. Will you state the persons whom you saw associating with Dr. Blackburn in Canada?

A. Jacob Thompson, George N. Sanders, Lewis Sanders, son of George N. Sanders, Ex-Governor Westcott of Florida, Lewis Castleman, William C. Cleary.

Q. Was Clay among them?

A. No, sir: I never saw Clay with him. Also Mr. Porterfield, Captain Magruder, and a number of rebels of lesser note.

Q. State whether or not this Dr. Blackburn was recognized there and known as an agent of the so-called Confederate States.

A. Yes, sir: he was said to be an agent, and represented himself as an agent.

Q. Just as Jacob Thompson was an agent?

A. Yes, sir.

Q. Will you state whether or not you heard any consultations among these men upon the subject of introducing the pestilence into the cities of the United States, and what was said, and when?

A. In January last, I knew of Dr. Blackburn's employing a person to accompany him for that purpose.

Q. Name the party.

A. Mr. John Cameron, for the purpose of taking charge of goods,

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and bringing them to the cities of New York, Philadelphia, and Washington, as I understood.

Q. You mean goods infected with yellow-fever?

A. Yes, sir. I heard Dr. Blackburn say that about a year before that time he had endeavored to introduce the yellow-fever into New York, but, for some reason which I do not remember, failed. He went from Montreal about a year ago last January to Bermuda, or some of the West-India Islands, for the express purpose of attending cases of yellow-fever, collecting infected clothing, and so on, and forwarding it to New York; but for some reason the scheme failed.

Q. Did you learn on his return, in the course of those consultations, what he had done, and what had interfered, if any thing had, to lead to a failure of the enterprise?

A. I have seen him, but not to speak to him, since his return.

Q. Was Jacob Thompson present at those consultations?

A. On one occasion I remember Jacob Thompson and Mr. Cleary, and, I think, also Lewis Sanders.

Q. Will you state whether or not they concurred in the enterprise of Dr. Blackburn introducing the pestilence in the manner mentioned?

A. Yes, sir: they all favored it, and were all very much interested in it; and this time it was proposed to destroy the Croton dam; and Dr. Blackburn proposed to poison the reservoirs, and made a calculation of the amount of poisonous matter it would require to impregnate the water so far as to render an ordinary draught poisonous and deadly.

Q. Had he taken the measure of the aqueduct, so as to ascertain what amount would be required?

A. He had the capacity of the reservoirs,—the amount of water that was generally kept in them.

Q. Was the kind of poison which he proposed to use mentioned?

A. Strychnine, arsenic, and acids—prussic acid,—and a number of others which I do not remember.

Q. Did he, or not, regard the scheme as a feasible one?

A. Yes: Mr. Thompson, however, feared it would be impossible to collect so large a quantity of poisonous matter without excit-

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ing suspicion and leading to the detection of the parties; but whether the scheme has been entirely abandoned or not, I do not know. So far as the blowing up of the dam is concerned, it has not been.

Q. Will you state whether or not Jacob Thompson fully appropriated the enterprise, if practicable?

A. Yes, sir.

Q. Discussed it freely?

A. Yes, sir.

Q. Did the other persons whom you have named also discuss it and approve it?

A. Mr. Lewis Sanders and Mr. Cleary I remember very well did.

Q. When was this matter discussed?

A. In January last. I have heard it spoken of since.

Q. Among the same persons?

A. With the exception of Dr. Blackburn. It was spoken of by a Mr. Montross A. Pallin of Mississippi, also a rebel, who had been a medical purveyor in the rebel army.

Q. Where does the agent, John Cameron, of whom you speak as having been employed by Dr. Blackburn for this purpose, live?

A. He has lived in Montreal: he declined to go, being fearful of taking the yellow-fever and dying himself.

Q. Do you know whether a large compensation was offered him?

A. Yes, sir; to the extent of several thousand dollars, he told me.

Q. Did you understand whether this was to be paid by Jacob Thompson?

A. I understood by Dr. Blackburn or by the agents. I think Mr. Thompson was the moneyed agent for all the other agents. I think they all drew on him for what money they required. I know that some of them did.

Q. You say that up to the time when you left Canada, or at the assassination of the President, you did not know whether this enterprise for poisoning the people of the city of New York had been abandoned or not by these conspirators?

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A. No, sir: I did not know whether it had been abandoned. So far as the destruction of the dam is concerned, that part of the scheme had not been abandoned.

Q. The only difficulty which Jacob Thompson suggested, I understand you, was that the collection of so large an amount of poison might attract attention to the operation?

A. Yes, sir. Mr. Thompson made a suggestion of that kind; but Mr. Pallin and others thought it could be managed, and managed in Europe.

Q. Pallin himself is a physician, is he not?

A. Yes, sir.

Q. State whether, in connection with this enterprise for introducing pestilence to our cities, you have heard mentioned the name of Harris as an agent in any way.

A. I do not distinctly remember that I have. I think I have heard him mentioned, but I have never seen the person.

Q. Have you any recollection as to where he probably resided at that time?

A. Toronto, I think.

Q. You have no knowledge of any part that he actually performed, or undertook to perform?

A. No, sir. There were other parties in Montreal that Dr. Blackburn had also employed, or endeavored to employ; but I do not remember their names at the present time. I know the parties very well by sight when I see them. There were two medical students.

Q. Do you know whether any of those persons accompanied him when he went to Bermuda for the purpose of carrying out his plan?

A. I do not know. I think one of them did. I have seen him since, however: I saw him with Dr. Blackburn two or three days before I left for New York.

Q. Did you, or not, while in Canada, make the acquaintance of a Dr. Stuart Robinson, a doctor of divinity, who was a refugee from Kentucky?

A. Yes, sir; residing in Toronto. He had been editor of a paper in Kentucky, which, I think, has recently been suppressed.

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Q. Did you see this doctor of divinity in association with these men of whom you have spoken?

A. I have seen him with Thompson and with Blackburn.

Q. Was he, or not, present at any of these conversations of which you have spoken?

A. He has been present when some of their schemes were being discussed. I do not remember whether he was present when the project for introducing yellow-fever was discussed, or not, or whether it was when it was proposed to poison the Croton water; but on one or other of those occasions he was present.

Q. Will you state whether, on that occasion, he approbated the scheme?

A. He approved of it. He approved any thing. He say any thing that could be done under heaven would be justifiable under the circumstances. That was his expression.

Q. He pronounced that as an exponent of divinity?

A. Yes, sir. He is related to the Breckinridges of Kentucky, I think.

Q. Is he not regarded as one of the most intense of all the traitors who have taken refuge in Canada?

A. Yes, sir.

Q. You speak of having seen Dr. Robinson with Dr. Blackburn and Jacob Thompson. I ask you to state whether his association did not seem to be, with them, of the same intimate and confidential character which was had by these men with each other?

A. They appeared to be on very intimate terms.

Q. Have you seen John H. Surratt in Canada since the assassination of the President?

A. Yes, sir.

Q. On what day did you see him, do you remember?

A. I think it was three or four days after the assassination.

Q. Where at?

A. I saw him in the street with Mr. Porterfield.

Q. Who is Mr. Porterfield?

A. Mr. Porterfield is a Southern gentleman, now a British subject. He was made a British subject, I believe, by special act of the Canadian Parliament.

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Q. He is from the South?

A. Yes, sir: he has been for some time broker or banker there. He is the gentleman who took charge of the St. Albans plunder for the Ontario Bank, when prematurely given up by Judge Coursol.

Q. He is one of the intimate associates of the Southern traitors of whom you have spoken?

A. Very intimate; on the most intimate terms with Thompson and Sanders.

Q. You think it was three or four days after the assassination that you saw Surratt there?

A. Yes, sir; it might have been three days; it was very soon after.

Q. Did you learn from any source there when he had arrived in Canada?

A. I did not; but I learned immediately after that he was suspected, and that officers were on his track, and that he had decamped.

By MR. AIKEN:

Q. At what time did you say you saw Mr. Surratt in Canada after the assassination?

A. I think it might have been three or four days. I might have been a day more or less either way.

By the COURT:

Q. The witness has mentioned in his testimony Captain Magruder's name two or three times. Is that the Captain Magruder who was formerly in the United-States navy?

A. Yes, sir; a brother of General Magruder of the rebel army.

Q. Can you state the full name of this Dr. Blackburn you referred to, and what State he is from?

A. I do not know. I think he is from Mississippi; but I am not sure. I do not remember his full name. I do not think I ever heard it.

Q. Was there only one Dr. Blackburn about there?

A. That is all. It is the same party who was connected with

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the yellow-fever project. There is no doubt about its being one and the same person.

By the JUDGE ADVOCATE:

Q. Will you state your age, and where you were born and educated?

A. I am twenty-eight years old; born in New York, and educated there.

Q. I understood you to state the other day that you were conscripted, and forced into the rebel service?

A. Yes, sir.

Q. And you escaped on the first moment you had an opportunity?

A. Yes, sir; after being detailed as clerk in the War Department.

Q. Will you state whether or not throughout you have not been in your convictions and feelings loyal to the Government of the United States?

A. I have always been so.

Q. Have you, or not, personal knowledge that Jefferson Davis was the head of the so-called Confederate States, and was called its President, and acted as such, controlling its armies and civil administrations?

A. It was a matter of public notoriety in the offices controlled by him; and I also saw him act as such.

Q. In the War Department, where you were detailed as an officer, he was fully recognized as such?

A. Yes, sir.

Q. I am not sure whether you have stated precisely (if you have not done it, I wish you would now) who were present at the conversation which you had with Jacob Thompson early in April, when he laid his hand on the despatches.

A. Mr. Surratt, General Carroll, I think, myself, and, I think, Mr. Castleman, and I believe there were one or two others in the room, sitting farther back.

Q. Can you state whether any of those persons participated in the conversation?

A. General Carroll of Tennessee did. He was more anxious that Mr. Johnson should be killed than anybody else.

Q. Did he so express himself?

A. He did. He said, that, if the damned prick-louse were not killed by somebody, he would kill him himself.

Q. Did he refer by that expression to the then Vice-President Johnson?

A. Yes, sir; that was his expression.

Q. What did that expression mean?

A. A word of contempt for a tailor: it is a tailor's louse,—a word of contempt for a tailor. I always understood it so. So Webster defines it, I believe. That was the sense in which General Carroll used it.

Q. Was it or not the sense of those present, as you gathered it from the conversation, that they regarded the enterprise of assassinating the President fully confirmed by the rebel authorities at Richmond?

A. That was distinctly said.

Q. Will you state whether or not you saw J. Wilkes Booth associating at any time with George N. Sanders?

A. I never saw Booth except on one day and evening. Then he was strutting about the St. Lawrence Hall, as I have already said; and he was in conversation with Sanders and Thompson. I saw him talking with both; but I was not present at any conversation with either.

Q. State whether or not J. Wilkes Booth had in Canada, in association with these men, any nickname; and if so, what was it?

A. I have heard him called "pet."

Q. By whom?

A. I do not distinctly remember; by several, I think, by Thompson; by Cleary, I am sure.

Q. In that circle of men you have mentioned, you found him so-called?

A. Yes, sir: I can speak positively as to Cleary, and I think, also Mr. Thompson.

Q. This Stuart Robinson, doctor of divinity, of whom you have

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spoken, is, or is he not, the editor of a theological journal called the "True Presbyterian," in Kentucky?

A. He was the editor, but the paper has been suppressed by order of the commanding general in that department, I believe.

Q. You have heard so?

A. I was told so.

Q. Were you in Canada at the time Kennedy was executed in New York for having fired the city?

A. I was.

Q. Was his execution the subject of conversation among the men of whom you have spoken?

A. Oh, yes, sir! a great deal.

Q. Will you state whether or not, in these conversations, the crime for which he was executed—firing the city of New York—was recognized as having been performed by the authority of the Rebel Government?

A. It was by the direction of Mr. Thompson.

Q. Did you learn that much from Mr. Thompson himself?

A. Yes: I think I may say I learned it from Mr. Thompson, or at least by conversation in his presence.

Q. Kennedy was spoken of and recognized as an agent of the Rebel Government?

A. Yes, sir: Thompson said Kennedy deserved to be hanged, and was devilish glad he had been hanged, because he was a stupid fellow, and had managed things very badly.

Q. On the ground of his being a bungler?

A. Yes, sir.

By MR. AIKEN:

Q. Did you ever meet more than one Surratt in Canada?

A. No, sir.

Q. Was Surratt introduced to you as coming from Mississippi?

A. No, sir.

Q. Was the place mentioned where he came from?

A. I do not remember that it was; but I was left with the impression, I know, Surratt was from Baltimore. I never heard that,

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and I do not know how I gained the impression: but I had an impression of that kind.

Q. Did you ever hear of any Surratts from Mississippi while you were there?

A. No.

Q. Did you have a regular weekly salary from the "Tribune," or were you paid by the letter?

A. Paid by the letter.

Q. Where did you board in Montreal?

A. I boarded in two or three places. I boarded in Craig Street and in Monica Street.

Q. You did not board at the St. Lawrence Hall?

A. No, sir: all these parties I have named did not board there. Some did; Mr. Sanders did not; Mr. Tucker only part of the time.

Q. Where did Jacob Thompson board?

A. At the St. Lawrence Hall.

[FRIDAY, June 2, 1865.]

DR. CHARLES H. NICHOLS,

a witness called for the accused, Lewis Payne, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Have I at any time given you any indication of the answers I expect you to give before this Court?

A. You have not.

Q. State what your official position is, and your profession.

A. I am a doctor of medicine, and superintendent of the Government Hospital for the Insane.

Q. How long have you occupied the position of superintendent of that hospital?

A. Thirteen years.

Q. What class of persons do you treat in your hospital?

A. Insane persons exclusively.

Q. Are they, or not, exclusively employés of or persons who have been in the service of the Government?

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A. No, sir: my patients include the insane of this district, and occasionally private patients from other parts of the country.

Q. Is, or is not, the bulk of the patients that you treat composed of sailors and soldiers?

A. They are.

Q. Please define moral insanity.

A. When the moral or affective faculties seem to be exclusively affected by disease of the brain, I call that a case of moral insanity.

Q. What are some of the principal leading causes that produce moral insanity?

A. My impression is that insanity is oftener caused by physical disease than moral causes, and that the fact that insanity takes the form of moral insanity is apt to depend on the character of the individual before he becomes deranged.

Q. Is active service in the field, amongst soldiers, at any time a cause of moral insanity?

A. It is: not a frequent cause, however. In other words, I have known cases of moral insanity occur among soldiers.

Q. Has, or has not, insanity increased very much in the country, and in your hospital, during the present war?

A. It has.

Q. Has it not increased much more, proportionately, than the increase in the army?

A. It has.

Q. How is the increase accounted for?

A. By the diseases, hardships, and fatigues of a soldier's life, to which the men were not accustomed until they entered the service, I think.

Q. Are young men who enlist more exposed to insanity than men who enlist in middle life?

A. I am not sure that they are. My impression is that young men accommodate themselves to a change in their manner of life rather more readily than men of middle age.

Q. What are some of the leading symptoms of moral insanity?

A. The cases are as diverse as the individuals affected. If a man, for example, believes an act to be right which he did not believe to be right when in health, and which people generally do

not believe to be right, I regard that as a symptom of moral insanity.

Q. Is depression of spirits at any time considered a symptom of insanity?

A. It is.

Q. Is great taciturnity considered a symptom?

A. It is a frequent symptom of insanity; but I can conceive that great taciturnity might exist without insanity.

Q. Is a disposition to commit suicide, and an indifference to life, considered a symptom?

A. It is.

Q. Is great cunning and subtlety in making plans a concomitant of insanity?

A. The insane frequently exhibit extraordinary cunning in their plans to effect an object.

Q. Is, or is it not, possible for a madman to confederate with other madmen or sane men in plans?

A. I would say that it is not impossible; but is infrequent for madmen to confederate in effecting their plans.

Q. Do madmen at no time confederate together in plans?

A. Very seldom.

Q. Is, or is not, a morbid propensity to destroy proof of insanity?

A. Not a proof; but it is a very command attendant upon insanity.

Q. Is it not a symptom of insanity if one apparently sane, and without provocation or cause, commits a crime?

A. I should regard it as giving rise to a suspicion of insanity, but not proof of it; not in itself a proof of it.

Q. Is not all conduct different from the usual modes of the world the best proof of insanity?

A. I will answer that by saying that no single condition is a proof of insanity in every instance, but that an entire departure from the usual conduct of men would be considered as affording strong ground to suspend the existence of insanity.

Q. Are madmen not remarkable for great cruelty?

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A. My impression is that madmen exhibit about the same disposition in that respect that men generally do.

Q. Do, or do not, madmen, in committing crimes, seem to act without pity?

A. They frequently do,—those who commit criminal acts.

Q. If one should try to murder a sick man in his bed, without ever having seen him before, would it not be presumptive proof of insanity?

A. It would give rise in my mind to the suspicion that a man was insane. I should not regard it as proof.

Q. If the same person should, besides, try to murder four other persons in the house without having seen them before, would it not strengthen that suspicion of insanity?

A. I think it would.

Q. If the same person should make no attempt to disguise himself, but should converse for five minutes with a negro servant, walk away leisurely, leave his hat and pistol behind, throw away his knife before the door, and ride away so slowly that he could be followed for a square by a man on foot, would not such conduct further corroborate the suspicion of insanity?

A. I think it would. It is a peculiarity of the insane, when they commit criminal acts, that they make little or no attempt to conceal them; but that is not always the case.

Q. If the same person should cry out, whilst stabbing one of the attendants, "I am mad! I am mad!" would it not be further ground for suspicion that he was insane?

A. Such an exclamation would give rise, in my mind, to an impression that the man was feigning insanity.

Q. What would be the ground for that supposition?

A. The ground is, that insane men rarely make such an exclamation, or a similar one; and they rarely excuse themselves for a criminal act on the ground that they are insane.

Q. Do not madmen sometimes unconsciously state that they are mad?

A. They do sometimes; but it is not frequent that they do.

Q. Do you not remember cases in your experience where madmen have told you they were mad?

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A. They frequently do it in this way: An individual knows that he is regarded as insane; and, if taken to task for any improper act, a shrewd man will excuse himself on the ground that he is an insane man, and therefore not responsible.

Q. If the same person that I have mentioned should, although in the possession of a sound horse, make no effort to escape, but should abandon his horse, wander off into the woods, and come back to a household surrounded with soldiers, and where he might expect to be arrested, would that not be additional grounds for the suspicion that he was insane?

A. I should regard every act of a man who had committed a crime, indicating that he was indifferent to the consequences, as a ground for suspecting that he was insane.

Q. If the same person should return to this house I have spoken of, with a piece of drawers for his hat, at a time when he saw the soldiers in its possession, would that not be additional proof of insanity?

A. I can hardly see what bearing that would have upon the question of insanity.

Q. I understood you to say before, that madmen seldom disguise themselves. The disguise in question consisted of a piece of drawers being taken for a hat. I ask whether that disguise may properly be presumed to be the disguise of a sane man or an insane man.

A. It would depend upon circumstances. It is a common peculiarity of insane men, that they dress themselves in a fantastic manner; for example, make head-dresses out of pieces of old garments. They do it, however, apparently from a childish fancy or something that is fantastic and attracts attention; and I do not recollect a case of an insane person dressing himself in a garment or garments of that kind for the sake of disguising himself.

Q. If this same person, after his arrest, should express a strong desire to be hanged, and express great indifference of life, would that be additional ground for suspicion of insanity?

A. I think it would.

Q. Would it be further ground of suspicion if he seemed totally indifferent to the conduct of his trial, laughed when he was identi-

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fied, and betrayed a stolidity of manner different from his associates?

A. I think it would.

Q. Please state to the Court what physical sickness generally accompanies insanity, if any there is.

A. I believe that disease, either functional or organic, of the brain, always accompanies insanity. No other physical disease necessarily, or perhaps usually, accompanies it.

Q. Is long-continued constipation one of the physical conditions that accompany insanity?

A. Long-continued constipation frequently precedes insanity. Constipation is not very frequent among the actual insane.

Q. If this same person that I have described to you had been suffering from constipation for four weeks, would that be considered additional ground for believing in his insanity?

A. I think it would. I think some weight might be given to that circumstance.

Q. If the same person, during his trial and during his confinement, never spoke until spoken to, at a time when all his companions were peevish and clamorous; if he never expressed a want when all the rest expressed many, remained in the same spirits when the rest were depressed, retained the same expression of indifference when the rest were nervous and anxious, and continued immovable except a certain wildness in his eyes,—would it not be considered an additional ground for believing in his insanity?

A. I think it would.

Q. If this same person, after committing the crime, should, on being questioned as to the cause, say he remembered nothing distinctly, but only a struggle with persons whom he had no desire whatever to kill, would not be additional ground for suspicion of insanity?

A. I think it would.

Q. What are the qualities of mind and person needed by a keeper to secure control over a madman?

A. Self-control.

Q. Are not madmen easily managed by persons of strong and resolute character?

A. Yes, sir; they are.

Q. Are there not instances on record of madmen who towards others were wild, while towards their keepers, or certain persons whom they held to be superiors, they were docile and obedient in the manner of dogs toward their masters?

A. I think the servile obedience which a dog exhibits to his master is rarely exhibited by the insane. It is true that the insane are comparatively mild and obedient to certain persons, when they are more or less turbulent and violent towards other persons.

Q. Would it not be possible for such a keeper, exercising supreme control over a madman, to direct him to the commission of a crime, and secure that commission?

A. I should say that would be very difficult, unless it was done in the course of a few minutes after the plan was laid and the direction given. I should say, generally, it would be very difficult.

Q. Is not the influence of some persons over madmen so great, that their will seems to take the place of the will of the mad?

A. There is a great difference in the control that different individuals have over insane persons; but I think it an error that that control reaches the extent you have described, or the extent, I may add, that is popularly supposed.

Q. Do you, or not, recognize a distinction between mania and delusion?

A. A certain distinction, inasmuch as delusion may accompany any form and every form of insanity; and mania is the name given to a particular form, which may or may not be accompanied by delusion.

Q. Are not instances of insane delusion more frequent during civil war than any other kind of insanity?

A. My impression is that cases in which delusions are entertained are not as frequent. Insanity is of a more general character—so far as my experience goes, has been during the war, among soldiers—than it usually is.

Q. Does, or does not, constant dwelling on the same subject lead to an insane delusion?

A. It frequently does, I think.

Q. For instance, if a body of men who owned slaves were con-

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stantly hearing speeches and sermons vindicating the divine right of slavery, burned men at the stake for attempting to abolish slavery, and finally took up arms to defend slavery when no man was really attacking it, would not that be evidence that some of these men were actually deluded?

A. I think it would; but it does not follow that the delusion is what I technically denominate an insane delusion, arising from disease of the brain, and for which a man is not responsible.

Q. If one of those same men who owned slaves, and believed in the divine origin of slavery, and had fought in its defence, and believed that he had also fought in defence of his home and his friends, should attempt on his own motion to kill the leaders of the people who he believed were killing his friends, would not that conduct be esteemed a fanatical delusion?

ASSISTANT JUDGE ADVOCATE BURNETT. Unless Mr. Doster can give us some idea when this species of examination will be brought to a close, we must here interpose objection. It certainly has nothing whatever to do with the case. He is imagining facts that do not exist, and he is examining upon a basis that he has not laid, and it is certainly irrelevant and foreign to the issue. If the gentleman says it will be quicker through with it by the going forward than by raising the question, we will waive it; but unless that assurance is given, we want the objection passed upon. It is using the time of the Court to no purpose. How much longer is this course of examination to take? Can you give us an idea from your notes, Mr. Doster?

MR. DOSTER. The course of examination that I propose is not a great deal longer. If it is the length of this examination which is the objection, I will say that I shall ask the doctor only about a dozen more questions.

ASSISTANT JUDGE ADVOCATE BINGHAM. And they will occupy forty pages of manuscript, perhaps.

ASSISTANT JUDGE ADVOCATE BURNETT. Then let the objection be passed upon.

MR. DOSTER. Before the question is voted upon, I beg the ear of the Court for a single moment. I mentioned the other day that it was impossible for me to secure the attendance of witnesses from

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Florida. Regularly, I ought not to have called Dr. Nichols before these witnesses had been here and had been examined. I have been unwilling to detain Dr. Nichols here, and have endeavored to go over the whole ground with him, so that I need not call him twice, as I would have to do if I were to call those witnesses from Florida first. My object in examining the doctor on these points now is to prevent the necessity of calling him again.

The COMMISSION sustained the objection.

Q. [By MR. DOSTER.] Is it your opinion that the person I have spoken of in committing the crime alleged, under the circumstances, was conscious at the time of doing the act that he was acting contrary to law, or whether he was laboring under any and what delusion?

ASSISTANT JUDGE ADVOCATE BINGHAM. The doctor has not qualified himself by stating any thing about it, and it is not competent for a party to give an opinion about it that is not advised either by the testimony of others or his own testimony about the facts. We do not want to inquire here about an unknown gentleman.

ASSISTANT JUDGE ADVOCATE BURNETT. We have not been told yet about whom Mr. Doster was inquiring. It certainly has no application to any person at the bar.

MR. DOSTER. It is not necessary that I should tell the doctor, and I believe I am not entitled to tell. I am only speaking of a certain person. It is only a case stated.

ASSISTANT JUDGE ADVOCATE BURNETT. And asking the doctor for his conclusions of law, which he cannot give.

MR. DOSTER. I am asking the doctor for his conclusions concerning a case which I have stated to him. That case is specially alluded to in the books. I have copied the question out of the books in a case where it was decided that it could be asked. It is not at all a novel question that I am asking. I have copied it literally from the books. It is not my question. It is just as much law as Roscoe's "Criminal Evidence."

ASSISTANT JUDGE ADVOCATE BURNETT. Will the gentleman submit the book that has that question in it? We should like to see it.

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MR. DOSTER. It is in the first volume of Wharton's "Criminal Law."

ASSISTANT JUDGE ADVOCATE BURNETT. Perhaps the shortest way will be to let the doctor answer the question.

ASSISTANT JUDGE ADVOCATE BINGHAM. No: I insist on not disgracing this record with the opinion of a witness in regard to an unknown person upon a hypothetical case, and I deny that there is any authority in any book on the subject for any such question.

MR. DOSTER. The case to which I allude will be found in a note to the forty-seventh page of the first volume of Wharton's "American Criminal Laws," where it is said, "In answer to an inquiry by the House of Lords, whether a medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole of the trial and examination of all the witnesses, can be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act," the judges replied in substance, that he could not, for the simple reason that the medical man was present during the whole of the trial, and during the examination of the witnesses.

The doctor has not been present during this trial, or during the examination of the witnesses.

ASSISTANT JUDGE ADVOCATE BURNETT. I understood Mr. Doster to say that he could show us his exact question, copied literally from the books. I should like to see it. I say, no such question was ever written in any book.

MR. DOSTER. I have adapted it, of course, to the circumstances of the case.

ASSISTANT JUDGE ADVOCATE BURNETT. Not at all. The rule of the law in proving insanity is this: The defendant may bring his witnesses into court and prove a state of facts; for instance, taciturnity, peculiarities, eccentricities, all those things which go to make up insanity; and then putting the facts to an expert—to a physician—exactly as proven to the Court, the foundation being already laid, upon that state of facts fairly presented to the expert, he may then give his opinion. But here we have had no proof of

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any of this set of facts supposed. Not one case, as submitted to the witness for his opinion, is in accordance with the facts. Then, upon that, to ask for a final conclusion of law in regard to a person who exists only in the counsel's mind, and not in fact, is a legal monstrosity,—it is simply an absurdity; and as my associate, Judge Bingham, well remarked, is certainly something that would make our record ridiculous. I proposed to withdraw the objection only as a matter of time; but, while we have been instructed by our chief here [Judge Advocate Holt] to allow on all occasions the utmost liberality, we certainly must guard, on the other hand, against that extreme of liberality which would make our proceedings ridiculous.

MR. DOSTER. In reply to the Judge Advocate, I have to say that it is something novel in my experience to be told that conduct is absurd. At the same time, I have further to say that I am willing to waive that question before this tribunal, because I am well aware which way it will be decided, and to substitute with the permission of the Court this other question:—

Q. Under this state of facts, would, or would not, the inference of insanity result therefrom?

ASSISTANT JUDGE ADVOCATE BURNETT. What state of facts?

MR. DOSTER. The state of facts I have submitted to the doctor.

The WITNESS. If I may be allowed, I would like to give an explanatory answer. I have given just a categorical one to all the questions that have been asked me, I believe. I am personally, and as an expert, very much opposed to giving an opinion in respect to hypothetical cases, for the simple and best of reasons, as I conceive,—that I have none; and I could give no definite opinion upon the facts implied in the questions submitted to me. Every case of insanity is a case of itself, and has to be studied with all the light than can be thrown upon it; and it is impossible for me to give an opinion upon a hypothetical case.

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CHARLES DAWSON,

recalled for the prosecution.

THE TRIAL.

By the JUDGE ADVOCATE:

Q. Are you a clerk at the National Hotel in this city?

A. Yes, sir.

Q. [Exhibiting a letter to the witness.] Look at that letter, and see whether it was received at the hotel, and under what circumstances.

A. That letter was found amongst the initial letters, the letter B, about a couple of days before I was here last week: that would be about last Wednesday. I noticed it in looking for a letter for a gentleman whose name commences with B. The initial rather struck me as being peculiar.

Q. You do not know when it was received?

A. No, sir: I do not. That was the first I saw of it, and I brought it down here.

Q. It is now in the envelope in which you brought it here?

A. Yes, sir: that is the envelope. I do not know any thing about the contents.

ASSISTANT JUDGE ADVOCATE BINGHAM. I will state that I opened it myself: it was not opened when it was handed to me.

A. It was not.

The letter was read as follows:—

Envelope.

J. W. B.

Washington,

D.C.

P. O. Stamp.

Cumberland,
May 8.

SOUTH BRANCH BRIDGE,
April 6, 1865.

FRIEND WILKES,—I received yours of March 12, and reply as soon as practicable. I saw French, Brady, and others about the *oil* speculation. The subscription to the stock amounts to \$8,000;

and I add \$1,000 myself, which is about all I can stand. Now, when you *sink* your well, go DEEP enough. Don't fail: every thing depends on you and your *helpers*. If you can't get through on your *trip* after you *strike ile*, strike through Thornton Gap, and cross by Capon, Romney's and down the branch; and I can you safe from all hardships for a year. I am clear of all surveillance, now that infernal Purdy is beat. I hired that girl to charge him with an outrage, and reported him to old Kelly, which sent him in *shade*; but he suspects to (too) damn much now. Had he better be *silenced for good*? I send this up by Tom; and if he don't get drunk, you will get it the 9th: at all events, it can't be understood if lost. I can't half write. I have been drunk for two days. Don't write so much highfalutin next time. No more, only Jake will be at Green's with the funds. Burn this.

Truly yours,

Lon.

Sue Guthrie sends much love.

Q. To which of the guests of the National do these initials seem to belong?

A. The only that I can remember at present is J. Wilkes Booth. I do not know of anybody else now to my knowledge.

Q. There was no other Wilkes in the house that you know of last spring?

A. No, sir.

By the COURT:

Q. Suppose Mr. Booth had been at the hotel, and inquired for a letter, would you have handed him that one?

A. Hardly. Mr. Booth, having a room at the hotel at the time, his letters, if addressed to his name in full, would have been put in his box. These being mere initials, the letter was put in with sundry letters,—those that have no rooms in the house. It was not till a few days before I came down here, that a gentleman, whose name began with a B, asked me for a letter; and, looking over them, I saw that, and the initials struck me as rather singular.

THE TRIAL.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You mean you would not have thought of looking in the initial letter B for a letter for Booth, under the circumstances?

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A. That is what I mean.

JOSEPH T. NOTT

recalled by consent for cross-examination.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. I believe you were the bar-keeper or one of the attendants at the hotel at Surrattsville?

A. Yes, sir; part of the time.

Q. How long was that your employment?

A. I was there from some in January, I think, until I was arrested on the 16th of April, I believe. I was away, though, sometimes. I was away a week at one time: sometimes I would be away a day or two together.

Q. I believe you were called the other day as a witness on the part of Mrs. Surratt, in reference to Mr. Lloyd?

A. Yes, sir.

Q. I desired to ask you then, but omitted to do so, what your attitude has been towards the Government, whether friendly or otherwise, during this struggle.

A. I have never done any thing against it.

Q. Have you ever said any thing against the Government?

A. Not to my knowledge.

Q. Or against the Union party in Maryland?

A. No, sir.

Q. Have you never taken sides with the secession element there?

A. No, sir.

Q. Never said any thing against the officers of the Government, or the Executive?

A. No, sir.

Q. Do you recollect having had a conversation with a man named Smoot, the next day after the murder of the President?

THE TRIAL.

A. Mr. Smoot was very often there.

Q. Do you know Mr. Smoot?

A. I do.

Q. What is his first name?

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A. Edward, I think.

Q. Do you recollect any of the conversation you had with him on the 15th April last?

A. Indeed I do not. I do not recollect even seeing him on the 15th, but it might have been.

Q. Do you remember Mr. Smoot coming to the bar-room, and saying to you that it was supposed John H. Surratt was one of the murderers?

A. Indeed I do not recollect that.

Q. Do you remember saying to him that John H. Surratt was undoubtedly in New York by that time?

A. Indeed I do not.

Q. Did you or did you not, make such a statement to him?

A. I may, or may not, have done so. I do not recollect any thing of the kind.

Q. Did you, or did you not, at that time, state to him, "John knows all about this matter"?

A. I might have done so; but I do not recollect it.

Q. Did you, or did you not? Can you remember whether you had any conversation about John H. Surratt?

A. I do not recollect seeing Mr. Smoot on that day at all. I do not recollect when as the last time he was there. He may have been there that day; but I do not recollect.

Q. Did you, or not, on that occasion say that you could have told all about this matter, and it would occur, six months ago?

A. I have no recollection on God's earth of it.

Q. Could you not remember it if you had said any thing of that kind to Mr. Smoot?

A. I think I should.

Q. Did you, or did you not, say so?

A. I do not think I did.

Q. Did you not say to him that you could have told this thing six months ago?

A. I have no recollection on God's earth of having said it.

Q. Did you at that time tell him not to mention any thing about the conversation you had with him?

THE TRIAL.

A. Indeed I do not know that.

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Q. Now state to the Court why it is that can remember so well all that occurred on the day previous, on Friday, all the particulars about Mr. Lloyd, and yet cannot remember a word that occurred on Saturday?

A. I do not recollect seeing Mr. Smoot. It might have been, though.

Q. You say you did not, to the best of your recollection, state any thing of this kind to Mr. Smoot?

A. I do not recollect it.

Q. To the best of your recollection at this time, did you, or did you not, state any thing of the kind, that you could have told all about this murder, and that it would take place, six months ago?

A. I never heard of such a thing as that.

Q. Did you say any thing of the kind?

A. I do not think I could have said any such thing.

Q. You have never said any thing against the Government?

A. No, sir.

Q. Never been in hostility to it?

A. No, sir.

Q. Never taken the side of the rebels in any way?

A. No, sir: I never have.

By MR. AIKEN:

Q. I understand you to state that you did not see Mr. Smoot on Saturday, the 15th of April last.

A. I say I have no recollection of it.

Q. And you have no recollection of having had any such conversation with him?

A. I have no recollection of it on God's earth.

Q. Where were you six months ago?

A. I was living at Mrs. Ward's.

Q. In what county is that?

A. The same county,—Prince George's.

By the COURT:

Q. Where were you at the first battle of Bull Run?

A. I have had no particular home since the death of my wife,

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eight years ago. I have been working about in the country. I think I was at Mr. Hill's place, in Prince George's at that time.

Q. Did you not rejoice at the success of the rebels at the first battle of Bull Run?

A. I do not think I did.

Q. Do you not know that you did?

A. I do not.

Q. What church do you belong to?

A. When I belong to any church at all, I belong to the Catholic Church.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. What portion of the time do you belong to any at all?

A. I have not belonged to church for about seven years.

Q. It is only occasionally that you belong to church at all?

A. I have not belonged for seven years.

THOMAS J. RAYBOLD

recalled for the accused, Edward Spangler.

By MR. EWING:

Q. Have you, since you were upon the stand to-day, visited Ford's Theatre?

A. I have.

Q. Have you examined the keepers of the locks of boxes 7 and 8?

A. Yes, sir.

Q. State the condition in which you found the locks of those boxes.

A. Box 8—the box that this morning I testified to forcing—is in the condition that I stated. It has been forced, and the wood has been split by forcing the lock. Box 7 has been forced; and you can take the screw out with your finger, and push it in and out. Both have been forced; but I was not aware of it. I knew nothing about them, except the one I testified to, until I saw them there now.

THE TRIAL.

Q. Did you ascertain the condition of the screws in the keeper in box 8?

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A. Only from what I saw when I was there to-day. The screw in the keeper of box 8 is tight: the keeper has been drawn around, and you have to twist it to get it around. But in the other box the keeper has been forced, and the upper screw can be drawn out without any difficulty: you can put your thumb against it, and push it to the full extent of the screw.

Q. But the wood into which the screws of the keeper of box 8 were screwed is split?

A. Yes, sir; that is split: the screw is not drawn; the keeper is forced aside,—a thing that would be done by force. It is forced aside: it is not completely pushed out.

Q. Could you say, from your examination, whether or not that had been done by any instrument?

A. I cannot say as to an instrument. It must have been done by force: I know that one was, and the other has every appearance of it.

Q. By force applied to the outside of the door?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You say the wood in box 7 is not split?

A. Not a particle.

Q. What is the reason you say it has every appearance of having been forced from the outside?

A. If a screw was drawn by a screw-driver, when it went back again it would have to be put pack by a driver; but when force has been used, you can put it in or out.

Q. If an instrument had been used, would it not probably have left it so that it would work just as it does work?

A. Yes, sir: anybody could draw a screw out, and put any thing else in; but then it would make a hole much larger.

By MR. EWING:

Q. In forcing the lock, if the screws were forced out straight, they would tear the wood, would they not?

A. Yes, sir.

Q. It would enlarge the hole?

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A. They would not be so apt to come all the way out: you could pull them out, but they would still be fast.

By MR. AIKEN:

Q. Do you know John H. Surratt?

A. No, sir: I do not know any of them [pointing to the prisoners] except Spangler: he is the only one of them I ever saw, that I know of, except one, whom I knew when he was quite a boy.

JOSEPH P. K. PLANT,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. State your residence and occupation.

A. My occupation is that of a dealer in furniture, at present. My trade is that of a paper-hanger. My residence is 350, D Street, between Ninth and Tenth Streets, in Washington.

Q. Have you been engaged at any time in cabinet-work?

A. Ever since I was about fourteen years old, more or less.

Q. State whether or not you have visited Ford's Theatre today.

A. I have.

Q. State whether you examined the keepers of the locks on any of the private boxes; if so, which ones, and what condition you found them in.

A. I examined the keepers on boxes 7 and 8. To all appearances, they had both been forced. The woodwork in box 8 is shivered and splintered by the screws. In box 7, I could pull the screw with my thumb and finger; the tap was gone clear to the point. I could force it back with my thumb. In box 4, which is directly under box 8, the keeper is gone entirely.

Q. State whether or not, according to your professional opinion, the keepers of the locks in boxes 7 and 8 were made loose by an instrument, or by force applied to the outside of the doors.

A. I should judge, by force.

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Q. Is there any appearance of an instrument having been used to draw the screws in any of those boxes?

A. I could see no such evidence.

Q. You say the wood into which the screw of box 8 goes is splintered?

A. Yes, sir.

Q. Apparently by pressure from without against the door?

A. I should so suppose. According to my judgment, it was done by that means.

Q. State whether you noticed a hole in the wall in the passage which leads behind the boxes.

A. Yes, sir.

Q. State whether that hole has any appearance of having been covered.

A. It certainly has been covered with a piece of something, I could not say what, because there has been no remnant of it left.

Q. How large a piece?

A. I did not charge my memory exactly with that, but I should suppose about five by seven and half or eight inches in size,—an oblong piece.

Q. Did you notice a hole in the door of either of those two boxes?

A. There is a hole in the door of box 7.

Q. What sized hole?

A. A little more than a quarter of an inch in diameter. It is larger on the outside, I think, than it is on the inside,—a sort of wedge-shaped.

Q. Could you tell how that had been made?

A. I should judge it was with some instrument. One part of it felt to me as if shaved by a knife.

Q. Which side was that?

A. At the right hand of the door, and at the bottom of the hole, on the outside of the moulding.

Q. Did any part of it look as if it had been made by a gimlet?

A. That is a hard question to answer. There is one part of the hole, to the left, which feels rough, as if cut by a gimlet, or caused,

by the working of a gimlet after the hole was bored; but this lower part of it, on the right-hand side, appears to have been trimmed with a penknife, or some sharp instrument of that kind.

Q. Do you think, then, a gimlet was used in making the hole?

A. Something of that sort; or it might have been made by a penknife, and the roughness might have been caused by the back of the knife.

No other witnesses being in attendance for any of the accused, the prosecution proceeded at this time, by the consent of the counsel for the accused, to introduce rebutting testimony.

E. L. SMOOT,

a witness called for the prosecution, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Where do you reside?

A. I live in Prince George's County, Md.

Q. How near to Surrattsville?

A. About a mile.

Q. Are you acquainted with a man who resides there by the name of Jenkins, a brother of Mrs. Surratt?

A. Yes, sir; I know two of her brothers.

Q. I speak of the one who testified here the other day, and who is under arrest.

A. Yes, sir; John Zadock Jenkins.

Q. State to the Court what position he has occupied towards the Government during this Rebellion,—whether friendly or otherwise.

A. In the beginning of the war, he was represented as a Union man,—the first year.

Q. After that, how was it?

A. He was looked upon by a good many as a Southern sympathizer.

Q. Were there any exceptions to that among the undoubtedly loyal men? How was he regarded in that respect?

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A. A good many, the most of persons, looked upon him as a Southern man in feeling.

Q. Did you know any exception to that among the Union men?

A. I do not.

Q. Was he, or not, a friend to the South, and an enemy to the Government, during the struggle?

A. I think he was, from what I heard him say.

Q. What was his reputation throughout the neighborhood in that regard?

A. I never heard many say any thing about it. I have talked with him myself.

Q. From your own knowledge of him, what was he?

A. I think he was a Southern sympathizer.

Q. Do you know a man by the name of Nott who resided there?

A. I know Joseph T. Nott.

Q. Had you any conversation with him on the Saturday succeeding the President's murder?

A. I had.

Q. State to the Court what that conversation was.

A. I met two young men connected with General Augur's department, one of whom told me that John H. Surratt was supposed to be the man who had cut Mr. Seward. I asked Mr. Nott if he could tell where John Surratt was. He said he reckoned he was in New York by that time. That was on Saturday evening, after the assassination.

Q. Was there any conversation preceding that?

A. I saw Mr. Nott in the morning, and do not think he mentioned the subject to me at all.

Q. Give all the conversation that occurred at that time.

A. Mr. Nott told me that he reckoned John was in New York by that time. I asked him why he thought so. "My God," said he, "John knows all about this murder: do you suppose he is going to stay in Washington, and let them catch him?" I pretended to be very much surprised, and said, "Is that so?" He replied, "It is so, by God! I could have told you this thing was going to happen six months ago." Then he put his hand on my shoulder

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and said, "Keep that to your skin, my boy. Don't mention that: if you do, it will ruin me forever."

Q. Is that the Mr. Nott who was here a few moments ago on the witness stand?

A. Yes; the gentleman who was here a few minutes ago.

Q. What has been Nott's attitude towards the Government during this struggle,—friendly or otherwise?

A. I have heard him speak frequently against the Government; denounce the Administration in every manner and form.

Q. And how in reference to the rebels and the Rebellion?

A. I heard him say that if the South did not succeed he did not want to live another day.

Cross examined by MR. AIKEN:

Q. Where do you reside?

A. In Prince George's County, Md.

Q. Who are some of your immediate neighbors?

A. Mr. David Barry, Mr. Dangerfield, Mr. George Tenally, and Mr. Lloyd, who has been arrested.

Q. Have you a brother-in-law of the name of William Ward?

A. I have.

Q. Was he in the Southern army?

A. He was.

Q. What did you say to Mr. Ward when he came back from the South.

A. I do not recollect what I said to him. He was brought borne under a guard of soldiers.

Q. Did you not tell him on that occasion that he done just right, and that you wished you had been there to help him?

A. I did not.

Q. Did you not on that occasion express sentiments against the Government, and friendly to the South?

A. I did not.

Q. Where were you in 1861, at the breaking-out of the Rebellion?

A. I resided in Charles County.

Q. Were you a member of any military company at that time?

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A. I belonged to Captain Cox's company: that was before the war.

Q. When did that company disband?

A. It disbanded in the spring of 1861.

Q. What was that company brought together for?

A. I do not know; more for show than any thing else, I suppose. As soon as they had a rebel flag there, I withdrew.

Q. The company had a rebel flag?

A. Yes, sir.

Q. And you were a member of it?

A. I withdrew as soon as that flag was brought and presented to the company.

Q. How long have you been acquainted with Mr. Jenkins?

A. About five years, I think.

Q. When did you have any conversation with him of a political character?

A. Really I do not recollect exactly when.

Q. What was the time when you speak of his having made remarks unfriendly to the Government?

A. The last time I talked with Mr. Jenkins was about the first of April last, in Upper Marlboro'.

Q. What did you say to Mr. Jenkins?

A. Mr. Jenkins came to me, and said that Mr. Roby was applying for a position in the county as a constable, which was given by the county commissioners. Mr. Jenkins asked me why I did not go and apply for it myself. I told him I did not wish it. He said, "You ought to take it to keep Roby from getting it;" and he said, also, that he had told the county commissioners, that if they appointed Mr. Roby, or any other man who belonged to his party, he would spend every dollar he had against them to defeat them if they should ever become candidates for any other office.

Q. For whom did you vote at the last Congressional election?

A. I did not vote at all.

Q. Which of the Congressional candidates in your district did you favor?

A. I did not know either of the gentlemen: I did not know any thing about either one.

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Q. Have you been an active Union man yourself all the time?

A. I have not. I have never meddled either way.

Q. Where did this conversation with Mr. Nott occur?

A. At Surrattsville, in the bar-room.

Q. What day was that?

A. The 15th of April, the day after the assassination.

Q. What conversation had you with him, previously, in reference to any thing?

A. I do not recollect: I have talked with him a good many times on different subjects.

Q. Was this all the conversation you had?

A. It was, at that time.

Q. You do not recollect expressing to Mr. Nott, at that time, any other sentiments?

A. I do not.

Q. Did you not tell him, on that occasion, that you were glad Mr. Lincoln had been murdered?

A. I did not, I assure you.

Q. What was the exact language Mr. Nott used to you?

A. I asked Mr. Nott if he knew where John Surratt was. He smiled and said, "John is in New York by this time, I reckon." I asked him why he thought so. "Why, my God!" said he. "John knows all about this thing: do you suppose he is going to stay in Washington, and let them catch him?"

Q. Did he state to you when he last saw John Surratt?

A. He did not. I do not recollect asking him that question.

Q. Did he give you any reason for believing that Surratt had any connection with the affair?

A. No, sir; he did not. He was busy: some gentlemen came in while he was talking with me, and he had to wait on the bar. He was standing on one side of the counter and I on the other when he told me this.

Q. When did you first communicate this remark to the Government?

A. The next day,—Sunday, April 16.

Q. To whom?

A. To General Augur and Colonel Wells.

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Q. Did you state to General Augur the same language you have used here?

A. I think I did.

Q. Did you do it in writing?

A. No, sir.

Q. You made a verbal statement?

A. I did to General Augur, Colonel Baker, and Colonel Wells. I told them all.

Q. Did Mr. Nott give you any information as to how he knew any thing about it?

A. No, sir; he did not tell me how he knew it, and I did not ask him.

Q. Did he express in any of his language, in the conversation he had with you, any real knowledge on the subject?

A. He only said he could have told me this thing was going to happen, six months ago.

Q. Then, as I understand you, it was simply an expression of Nott's opinion to you that John H. Surratt knew all about it?

A. He said he knew he did.

Q. How did he know?

A. I did not ask him how he knew.

Q. Have you heard or do you know of any overt part on the part of Mr. Jenkins against the Government?

A. I do not.

Q. Then, from what you know of his reputation, you are not able to swear but what he is a loyal man, are you?

A. I have never known him to do any thing disloyal. He was talked with me and denounced the Administration, frequently.

Q. What did he say?

A. I do not recollect.

Q. How did he denounce it? A good many people have denounced certain acts of the Administration. To what particular act did he refer?

A. I do not recollect now.

Q. You cannot specify any thing he referred to?

A. I cannot.

Q. He simply denounced the Administration?

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A. Yes: as I have heard many do so frequently, that I do not recollect exactly what Mr. Jenkins said on any particular occasion.

Q. Have you not often heard loyal men denounce the Administration?

A. I do not know that I ever did,—not a man that I regarded as a loyal man.

Q. On the occasion to which I alluded, did you not tell your brother-in-law, Ward, that he never ought to have come back?

A. I did not.

Q. Did you not express to him your opposition to his coming back in any way or shape?

A. I did not. I begged him to take the oath, and remain at home.

A. V. ROBY,

a witness called for the prosecution, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Where do you reside?

A. In Prince George's County, Md.

Q. How far from Surrattsville?

A. Three or four hundred yards.

Q. Are you acquainted with Mr. J. Z. Jenkins?

A. I am.

Q. How long have you known him?

A. I have known him since 1861.

Q. Have you known him intimately?

A. Not very intimately till since 1863.

Q. Have you held any position down there under the Government?

A. I was appointed enrolling officer on the 12th of June, 1863.

Q. What has been the reputation of Mr. Jenkins in that community, since 1861, with reference to loyalty, and his sentiments with regard to this Rebellion?

A. I have never heard but one opinion expressed about him, and that was, that for one year, the year 1861, Mr. Jenkins was

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looked upon as a Union man; but since that time he has been looked upon as a sympathizer with the South.

Q. Has he, or has he not, been in the attitude of an enemy in talking against the Government, and opposing it in all its measures?

A. Yes, sir.

Q. That has been his attitude towards the Government since 1861?

A. No, not since 1861, but since 1862.

Cross-examined by MR. AIKEN:

Q. Were you a member of Captain Cox's company in 1861?

A. No, sir: I was a member of Captain S. A. H. Mark's company, in Washington, in 1861.

Q. You say, that up to 1862, Mr. Jenkins was regarded as a Union man by his neighbors.

Q. Yes, sir: so I have understood. I saw Mr. Jenkins, I think, some time between the 19th of April and the 10th of July, 1861. I saw him at our armory, which was at the navy-yard: he came there begging money for some Union men who had been killed. That was the first time I ever saw him to know him or speak to him. The next time I saw him, he came to my house: I think that was in 1862. He was then opposing the nominees of the Union party, Dr. Bayne among the rest, for office.

Q. Who were the nominees of the Union party?

A. Dr. Bayne was the candidate for senator, Mr. Sasser was the candidate for clerk of the county; Mr. Grimes was the candidate for sheriff. The other candidates I do not recollect now.

Q. Who were the disunion candidates then?

A. I do not recollect who they were.

Q. Were there any.

A. Yes, sir: Mr. John B. Brooke, if I am not mistaken, was the candidate for senator; but I am not certain about that.

Q. Was Jenkins a supporter of Mr. Brooke?

A. I think so: that is what I have understood. I was not there at the time; did not live in the country then. I have understood

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that from him in my house. I was living here at Washington at that time: I understood that from him here.

Q. Even if he was, what evidence does that afford you that he was any way disloyal, by giving Mr. Brooke his support? In other words, why is not Mr. Brooke's loyalty just as good as that of Dr. Bayne?

A. I do not know. Mr. Brooke has been South, and Dr. Bayne has not been.

Q. Was Mr. Brooke in the rebel army?

A. I do not know. I know he was South.

Q. How long South?

A. He staid there, and came home under the President's Amnesty Proclamation.

Q. He was there until that time?

A. Yes, sir.

Q. Have you not known some of the most illustrious of Union men who back here under those circumstances?

A. No, sir: I do not know of any.

Q. What have you heard of Mr. Jenkins since 1862?

A. I have been living near Surrattsville since September, 1863; and I have seen Mr. Jenkins nearly every day, on the road or somewhere, when I was passing about. I was all the time away from home, pretty much, looking around. Mr. Jenkins has always been talking against the Government. At the April election in 1864, when we voted for a convention to make a new constitution, he said that he had been offered office under the damned Government; but he would not hold office under any such damned Government.

Q. Did you understand at the time that he referred to the Government?

A. The Government of the United States. I was an officer of the Government of the United States, and that is what he referred to and said there.

Q. Did you understand him to refer to the Government or the Administration?

A. He said "the Government."

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Q. What did you mean by “the Government” at that time? Did you mean the administration of the Government.

A. I meant the Government.

Q. What is the Government?

A. My idea of the Government is its Constitution and laws, and the enforcement of them.

Q. If a man did not support the candidates of the Administration, but on the other hand supporter the Democratic candidate, would you call his a disloyal man on that account?

A. I judge a man by his acts. I asked Mr. Jenkins if he would vote for such a man as Harris, who said he wanted the South to succeed; and he said he would vote for Mr. Harris against anybody.

Q. Do you characterize as disloyal men who oppose the candidates of the Administration?

A. Yes, sir.

Q. Then your test of a loyal or disloyal man is whether he votes for or against the Administration?

A. I judge a man by his acts.

Q. What did Mr. Jenkins ever do against the Government? What single act can you mention in all your intercourse with him?

Q. I never knew of his doing any thing else but abuse it.

A. Did you understand that abuse to be against the Government itself, or the administration of the Government?

A. I understood it to be against the Government itself.

Q. In his talking with you, what did he say that was treasonable?

A. He abused the Government, damned the Government, said he would not hold an office under any such damned Government, he did not address this to me: he said it before probably a hundred people at the polls,—perhaps not a hundred, but a crowd there.

Q. Did he say it to you?

A. It was intended for my ears.

Q. Did he say it to you?

A. He intended it for me.

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Q. Were you having a personal conversation with him at the time?

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A. I had just objected to his vote before that.

Q. But his remark was not addressed to you in reply to any of your interrogatories to him?

A. I do not know that it was. He went off talking.

Q. Can you mention any other instances of kindness to Union soldiers by Mr. Jenkins?

A. I do not know of any.

Q. Do you, or not, know the fact, that out of his limited means he has spent over three thousand dollars in sustaining the Union and the Government?

A. I do not believe he ever had it to spend.

Q. I am not asking you for your belief whether he had it or not. I asked you whether or not you knew the fact that he had done so.

A. I do not know any thing about the fact. I was not there at the time he spent three thousand dollars. I only know about it from what I have heard.

Q. You never heard of that fact?

A. I never heard of his spending any thing, only from his own lip: I have heard him say so.

Q. You state that you were appointed an enrolling officer.

A. Yes, sir.

Q. For whom did you vote as a member of Congress of 1862?

A. I did not vote at all in 1862: I had not acquired a residence in Prince George's County then.

Q. With what political party did you act before you got this office?

A. I always acted with the Union party.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Did, or did not, Mr. Jenkins refuse to take the oath prescribed by the legislature of Maryland before voting?

A. He did not refuse, to my knowledge.

Q. Do you mean to say that he did not refuse, or that you do not know any thing about it?

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A. I do not think he refused.

Q. Did you see him vote?

A. I saw him vote, and he took the oath.

Q. Did he ever refuse to take any of the oaths prescribed by the Government?

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A. Not to my knowledge.

Q. Do you know whether he was one of that class in Maryland who did not consider the oath binding?

A. I do not know.

The Commission then adjourned until to-morrow, Saturday, June 3, at ten o'clock A.M.

SATURDAY, JUNE 3, 1865.

The Court met at the usual hour, and took the following testimony:—

LEONARD J. FARWELL,

a witness for the accused, George A. Atzerodt, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. State to the Court whether or not you went to the room of the then Vice-President Johnson on the evening of the 14th of April last.

A. I did go to his room.

Q. What time was that?

A. I should think, between ten and half-past ten o'clock.

Q. Did you look at your watch at that time?

A. I did.

Q. Can you fix the minute?

A. No, sir.

Q. Did you, or not, go directly to the room of the Vice-President from the theatre?

A. Yes, sir: as soon as I got out of the theatre, I went immediately to his room.

Q. Had you not been to Ford's Theatre?

A. Yes, sir.

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Q. How did you find the room, locked or open?

THE TRIAL.

A. It was locked.

Q. Did you find anybody apparently lying in wait about the room?

A. I did not discover any one at the door.

Q. If anybody had been lying in wait near the room, would you have been able to see him?

A. I did not look for any thing but the door. I ran as soon as possible for the door. I did not look anywhere else.

Q. If anybody had been laying in wait near the room, were you in a position to have seen him?

A. That would depend on how near he was. I did not look for any thing else but the door. I did not see any one at the door.

Q. What did you do after you came to the door?

A. I rapped, and received no answer. I then rapped again, and said in a loud voice, "Governor Johnson, if you are in the room, I must see you." Those were the words.

Q. Did you examine the lock at that time to find whether it had been tampered with?

A. I think the door was locked. It was dark. I looked over the skylight.

Q. You are not certain whether the door was locked or not?

A. I suppose it was locked; but I am not certain about it.

Q. It might have been open, for all you know?

A. I cannot tell. It was dark, and I thought at that time that the door was locked. I am pretty certain I took hold of the latch.

Q. Did you, or not, then enter the room?

A. Yes, sir: I went into the room.

Q. How long did you remain in the room?

A. About half an hour.

Q. While you were in the room, was the room visited by any stranger?

A. A number of persons came to the door, and I took charge of it,—locked and bolted it after I got on the inside; but I did not allow any one to come in, unless he was some gentleman personally

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known to the Vice-President or to myself. I rang the bell for the servants after I put a guard at the door.

Q. Be kind enough to look at the prisoner, Atzerodt, and state whether you have seen him before.

A. No, sir: not to my knowledge.

Q. Do you, or not, take your meals at the Kirkwood House?

THE TRIAL.

A. I do: I board there.

Q. Have you, or not, observed persons in the habit of asking for the Vice-President, to see him, while he was taking his meals?

A. No, sir.

Q. You have not observed it?

A. No, sir; only as I have been at the table sometimes, and gentlemen would ask me at the table if the Vice-President was in his room. No more than that.

Q. Then you have no knowledge that any attempt was made, during the time you were there, to enter his room by the prisoner Atzerodt?

A. I have no knowledge of any one attempting to enter by force.

JOHN B. HUBBARD,

a witness for the accused, Lewis Payne, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Please state to the Court whether or not you are in charge, at times, of the prisoner.

A. Yes, sir: I am at times.

Q. Have you at any time had any conversation with him during his confinement?

A. I have, occasionally.

Q. Please state what the substance of that conversation was.

ASSISTANT JUDGE ADVOCATE BINGHAM. That I object to.

The JUDGE ADVOCATE. Is this conversation offered as a confession, or as evidence of insanity?

MR. DOSTER. As evidence of insanity. I believe it is a settled principle law, that all declarations are admissible under the plea of insanity.

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ASSISTANT JUDGE ADVOCATE BINGHAM. There is no such principle of the law, that all declarations are admissible on the part of the accused for any purpose. I object to the declarations of the prisoner made on his own motion.

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THE JUDGE ADVOCATE. If the Court please, as a confession, of course this declaration is not at all competent; but, if it is relied upon as indicating an insane condition of mind, I think it would be better for the Court to consider it. We shall be careful, however, to exclude from its consideration these statements so far as the question of the guilt or innocence of the prisoner of the particular crime is concerned, and to admit them only so far as they may aid in solving the question of insanity raised by the counsel.

ASSISTANT JUDGE ADVOCATE BURNETT. On the suggestion of the Judge Advocate General, which is entered of record, I beg leave to state to the Court that I shall not insist upon my objection.

The question being repeated to the witness, he answered as follows:—

A. I was taking him out of the Court-room, about the third or fourth day of the trial, and he said he wished they would make haste and hang him; he was tired of life. He would rather be hung that come back here in the Court-room. That is all he ever said to me.

Q. Did he ever have any conversation with you in reference to the subject of his constipation?

A. Yes: about a week ago.

Q. What did he say?

A. He said that he been so ever since had head been here.

Q. What had been so?

A. He had been constipated.

Q. Have you any personal knowledge as to the truth of that fact?

A. No, sir: I have not.

By the JUDGE ADVOCATE:

Q. To whom did you first communicate this statement of his?

A. To the officers.

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Q. What officers?

A. Colonel Dodd, I think, or Colonel McCall, and, I believe, to General Hartranft.

Q. Nobody else?

A. No, sir.

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By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. What else did he say in his talk the third or fourth day of his trial?

A. I have given all he said going down stairs.

COLONEL W. H. H. MCCALL,

a witness called for the accused, Lewis Payne, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Have you at any time had charge of the prisoner Payne?

A. I have.

Q. Are you now in charge of him?

A. No, sir.

Q. Who else has charge of him?

A. Colonel Frederick, Colonel Dodd, and myself.

Q. How is the duty divided between you?

A. We have eight hours each out of the twenty-four.

Q. Does your duty lead you to be cognizant of the conduct of the prisoner in his cell during that term?

A. Yes, sir.

Q. Do you know, by actual knowledge, any thing in reference to the constipation of the prisoner during your term?

A. To the best of my knowledge, he has been so from the 29th of April until last evening; and that was the first passage.

Q. Have you ever had any conversation with the prisoner on the subject of his own death?

A. No, sir.

JOHN E. ROBERTS,

a witness called for the accused, Lewis Payne, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Does your duty call you to have charge of the prisoner Payne?

A. I am not in charge of him more than the others. I am around the prisoner. I have not orders to be in charge of him.

Q. Have you at any time had conversation with him?

A. Yes, sir.

Q. Have you ever spoken to him on the subject of his own death?

A. The day that Major Seward was examined here, when the clothes were put on him,—the coat and the hat,—I had to put the irons back on him; and he told me then that they were tracing him pretty close, and that he wanted to die.

Q. Did he say that he was tired of life to you at any time?

A. I have told you all he said.

Q. You have never had any other conversation with him?

A. Not at all; not on the subject of death. We pass words now and then when he passes me on the stairway.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. He coupled it with the fact that they were tracing him very close, finding him out, in other words?

A. The words came in as I said, that he wanted to die.

Q. Because they were tracing him pretty close?

A. Those were the words.

LIEUTENANT JOHN W. DEMPSEY

recalled for the prosecution.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Where are you on duty?

A. At No. 451, H. Street, at the house of Mrs. Surratt.

Q. You were in charge of the guard there?

A. Yes, sir.

THE TRIAL.

Q. State whether you were in charge of the party or were with the party, that made the examination of that house at the time the house was searched.

A. Yes, sir. There was a party came to the house about the

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19th or 20th of April, and I was present at that time. The house had been searched, I believe, twice before that. I was not in command of the first guard that went to the house.

Q. State what occurred on the 19th of April, when were there; whether you remember the finding of a photograph of J. Wilkes Booth there.

A. Yes, sir: I recollect finding such a photograph. It was after the examination of the parlors that I found it after those gentlemen had gone out.

Q. The same morning?

A. Yes, sir.

Q. [Exhibiting to the witness the picture of "Morning, Noon, and Night" found in Mrs. Surratt's house.] State whether you remember that.

A. Yes, sir: that is the photograph I found on the mantle-piece in the back room of the first door, which was known, I believe, as Mrs. Surratt's room.

Q. What did you find in that?

A. I found in it the photograph of J. Wilkes Booth.

Q. [Exhibiting to the witness a photograph of J. Wilkes Booth.] State whether that is the photograph.

A. Yes, sir: that is the same photograph. I indorsed it myself.

[The photograph above referred to was offered in evidence without objection.]

Q. State to the Court how the photograph was placed in that frame.

A. At the time I found it, this back was entirely pasted on. My curiosity was excited by seeing a piece that seemed to be torn off. I lifted up this back, and saw that this photograph of Booth was placed behind the likeness of "Morning, Noon, and Night," as it is commonly called. I then showed it, by request, to an officer in the house, and turned it over to Colonel Ingraham.

Q. The marks were upon the back of it at time you found it?

THE TRIAL.

A. It was marked in pencil, "Booth." I marked it, in my writing, "J. Wilkes Booth," written in pencil. I think you find

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in the indorsement on the back that the marks in pencil were on it when found,—J. Wilkes Booth.

By MR. AIKEN:

Q. Was "J. Wilkes Booth" on the photograph when you found it, as it is now?

A. I will not swear that "J. W." was there. The word "Booth" was there, I am positive, at the time; and I think "J. W. Booth" was there. In indorsing it at the time, I put on the indorsement that the word or name, I am not positive which, was written in pencil as now found.

Q. That is the same picture?

A. Yes, sir.

JAMES R. O'BRYON.*

a witness for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you were employed on the 14th of April and for some months preceding.

A. In the Quartermaster-General's office. I was a clerk there.

Q. Had you any engaged with Mr. Ford?

A. Yes, sir.

Q. As what?

A. As usher.

Q. You were there at night?

A. Yes, sir; only at night.

Q. Do you know any thing as to the condition of the keepers of the locks of boxes 7 and 8 in the theatre?

A. In box 8, the keeper was wrenched off, broken off, in some way; I do not know how. I was absent one evening; I was at home

* Name shown as James R. O'Brien in the official record.

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sick; and, when I came again, I found that it was broken off: but the door itself was pretty tight at the top, and I never thought of speaking about it. All I had to do was to close the door, and the door itself would shut tight; and I do not know that I ever said any thing about it.

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Q. When did you first notice that the keeper of the door of box 8 was broken?

A. On the first occasion that I went into the box afterwards: I cannot tell when that was.

Q. Was it before the assassination?

A. Oh, yes sir! some time.

Q. About how long before?

A. That I could not say.

Q. Do you know whether the door could be fastened after that by locking?

A. You could lock it; but I imagine, if you should shove it, it would come open. It would always fit, and I had no occasion to lock it.

Q. How was the keeper of the door of box 7?

A. It appeared to be all right; I never noticed it: I always locked that box.

Q. Which door was used when the presidential party was occupying the two boxes?

A. The door of box 8.

Q. How was it generally left after the party entered?

A. Always open.

Q. Do you know as to whether the door leading into the passage which separates the two boxes from the wall had a lock upon it?

A. No, sir: it had no lock.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. The outer door had a hitch, had it not?

A. No, sir.

Q. It did not fasten at all?

A. No, sir; did not fasten at all.

Q. Box 8 is nearest to the stage, is it not?

Q. Yes, sir.

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Q. By pressing the door of box 8 down, on the handle, it will very easily and readily open, will it not?

A. No, sir: it fits rather close.

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Q. I understand; I have seen it: but I ask you whether, pressing it down, on the handle it will very easily open.

A. No, sir.

Q. Did you ever try that?

A. No, sir; I never did.

DR. JOSEPH H. BLANFORD

recalled for the accused, Samuel A. Mudd.

By MR. EWING:

Q. Will you state whether you are acquainted with the country in Prince George's and Charles Counties?

A. Partially so: some parts of the counties I am pretty well acquainted with.

Q. The country on the routes from here through Surrattsville to Bryantown, and through Surrattsville to Port Tobacco and Pope's Creek?

A. As far as Bryantown and Port Tobacco, I am acquainted with the roads: I have travelled them several times.

Q. Are you acquainted with the locality of Dr. Mudd's house?

A. I am.

Q. [Exhibiting a map to the witness.] Will you examine this map, and state to the Court whether the several localities that I have spoken of, and the roads, are properly marked upon it?

A. I think they are, as nearly as can be ascertained from this map; the roads not having been drawn upon it originally. The roads here, as drawn in ink, to the best of my knowledge, are the proper roads; and they would those places in their route.

Q. Will you state whether you have examined that map before, and indicated the lines and points marked in ink upon it?

A. Yes, sir.

Q. Show to the Court, on the map, where Surrattsville, Dr. Mudd's house, and Pope's Creek, are.

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ASSISTANT JUDGE ADVOCATE BINGHAM. If he is going to do that, let him write them down at once on the map.

The WITNESS. They are already written here. Dr. Mudd's house, T. B., and other points on the road, are correctly stated.

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[The map referred to was offered in evidence without objection.]

By MR. EWING:

Q. Will you stated whether you are acquainted with the road from Dr. Mudd's house to Bryantown?

A. Yes, sir: I am acquainted with these roads.

Q. State to the Court whether you have this morning prepared a map or plat of portion of the road near the town of Bryantown.

A. I did.

Q. [Handing a paper to the witness.] See if that is it.

A. Yes, sir: that is the plat I prepared this morning.

Q. Will you state whether, on this plat, the bridge between John McPherson's and Bryantown, and the house of John McPherson, and the house of William L. McPherson, and the house of John Murray and Booz and the branch near McPherson's house, are properly indicated in their relative positions?

A. I think they are.

Q. Will you state whether the farm-road branching off from the main road, and running through the farm on which Booz, the colored man, lives, is properly indicated with reference to the other road?

A. It is, sir.

Q. Will you state to the Court how much of the main road is visible from the house of Murray and the house of Booz?

A. That road is visible from that house, with a very small exception, from the elm-tree here indicated on the road to Bryantown. There is an exception made in the bend of this road in the swamp, and part of it along beyond the road between that and Bryantown, next to McPherson's house. That cannot be seen from Booz's house.

Q. Will you state whether that portion of the road between the elm tree and the swamp, as indicated upon that map, is visible from the house of Booz and the house of Murray?

A. It is.

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Q. Will you state the distance from the elm-tree to the swamp?

A. It is nearly a half a mile to the swamp.

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Q. Will you state whether the whole of the road, branching off from the main road, and running by the Murray and Booz houses, is, or is not, visible from those houses?

A. All of it; every foot of it.

Q. Does the barn that is indicated upon the road obstruct the view of any portion of the main road or the cut-off?

A. It obstructs a small portion of the main road just before turning into the farm.

Q. How far is it from Murray's house down to the main road?

A. By the farm-road from Murray's house, it is about a quarter of a mile, I suppose.

[The plat above referred to was offered in evidence without objection.]

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. When have you made the examination of the road to Bryantown, of which you have testified, and of which you made a plat?

A. I have known it for years.

Q. When did you make the examination?

A. A couple of weeks ago, I suppose, I examined it.

Q. With a view to ascertain what?

A. I do not know that I had any particular view in ascertaining it further than to ascertain the points upon the road visible, if they were visible from this point.

Q. From what point?

A. From the houses occupied by Booz and Murray.

Q. Any other house?

A. No, sir.

Q. Any house occupied by some servants there or colored people?

A. No: these are the only two houses on the farm that are occupied, I believe.

Q. I do not care whether it is on the farm, or adjoining the farm: whose farm do you mean?

A. It belongs to Mr. Mudd.

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Q. And whose houses do you refer to?

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A. The houses on this farm are owned by Mr. Mudd.

Q. Who occupies those houses?

A. A man by the name of John Murray, I believe, occupies the dwelling, and Booz occupied one of the outhouses.

Q. What is the scale of this plat?

A. It was not made with reference to any scale. It is a rough sketch of the road.

Q. How far is it from Murray's house to the bridge?

A. About three-quarters of a mile.

Q. By coming out from Murray's house to the fence on the road, can you see the bridge?

A. Yes, sir.

Q. You can see the bridge?

A. Not when you first enter the road coming out from the farm. From that point, I do not think the bridge is visible.

Q. But from Murray's house you can see the bridge?

A. Yes, sir.

Q. Can you see the bridge from McPherson's house?

A. Yes, sir.

Q. Are there any other houses about there that are occupied by anybody?

A. Oh, yes! there are adjoining farms in the neighborhood.

Q. I mean on that particular line?

A. There is one of the McPhersons living opposite, his brother.

Q. There are two McPhersons there?

A. Yes, sir: one lives to the right of the road going to Bryantown.

Q. Can you see the bridge from the house of each of them?

A. Both of them.

Q. Do you know any colored people by the name of Bloyce there?

A. I knew some colored people by that name.

Q. Where do they live?

A. They live near Bryantown, at Mr. Ward's, I believe.

Q. Do you know how far they could see along that road leading to Bryantown that you have mapped here?

A. I hardly think—

Q. Do you know any thing about that?

A. I have been to the house once. The cluster of trees around the house would obstruct the view of this road, I think.

Q. Do you know whether any person can see along the road any distance from there, or not?

A. I think not.

Q. I ask you what you know, not what you think.

Q. I can only speak from the best of my knowledge. I cannot speak positively.

Q. You have no knowledge on the subject?

A. I have travelled the road from Bryantown to Mr. J. Ward's house once, and returned once; but I have not noticed the road particularly. I think the road cannot be seen from there, because there is an orchard around the house.

By MR. EWING:

Q. From the bridge, as indicated here, can you see into Bryantown?

A. Yes, sir.

Q. How far is it from the bridge into town?

A. Not more than a quarter of a mile; scarcely that; not over that.

Q. Do you look right down the main street?

A. Immediately down the road.

Q. That is the main street of the town?

A. Yes, sir.

Q. In going from Bryantown, or from that bridge, to Dr. Mudd's house, is there any road turning off the main road except this farm cut-off as indicated here?

A. No, sir: there is not on that portion of the road, unless it is the one leading into McPherson's on the hill, a private farmroad.

Q. But can you go from the bridge to Dr. Mudd's house by any road or path, without passing along one or the other of these two roads indicated here?

A. No, sir.

Q. Going, then, from the bridge to Dr. Mudd's house, any one

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would have to pass either along the main road by the big elm, or else the cut-off by John Murray's house?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. There is a path up there through a farm of Dr. Mudd's, I believe now, that diverges from the Bryantown Road,—a private road, a bridle-way. Who lives on it?

A. This man Booz lives on that road.

Q. What is his first name.

A. George.

Q. Is he a colored man?

A. Yes, sir.

Q. Where does that path diverge from the main road?

A. It leaves the public road near the barn indicated on the map, and joins the public road again above the house.

SUSAN STEWART,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you live.

A. I live at Mr. John Murray's.

Q. How far from Bryantown?

A. I guess, about a mile, or a little more.

Q. How near do you live to where George Booz lives?

A. A very little distance from his house: it is not a quarter of a mile.

Q. You both live on the little cut-off road leading through the farm?

A. Yes, sir.

Q. State whether you know Dr. Samuel A. Mudd, one of the prisoners here.

A. Yes, sir: there is the doctor [pointing to the accused, Samuel A. Mudd.]

Q. State whether you saw him the day after the assassination of the President, and where it was.

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A. I saw Dr. Samuel Mudd on Easter Saturday, in the evening, about three or four o'clock. He was about fifty yards from the main road, inside of the place where I live. When I saw him, he was just at the corner of the barn, coming towards Mr. Murray's house, riding very slow, and by himself: I saw nobody with him. It was very cloudy and misty; raining a little, I think.

Q. Whereabouts were you standing when you saw him?

A. In the door opposite the main road, the kitchen-door.

Q. Could you see the main road from where you were standing?

A. I could see the main road; but I did not take notice of the main road. Some one said, "Here is a gentleman coming up the road;" and I went to the door, and said, "It is Dr. Mudd."

Q. How much of the main road can you see from where you were standing?

A. I reckon it is about a quarter of a mile altogether, or more. I can see from the swamp clean up to a tree called Big Elm.

Q. Did you see anybody on the main road?

A. No, sir; I did not.

Q. You say Dr. Mudd was about fifty yards out of the main road, in the side road?

A. Yes; in the place where Mr. Murray lives. I did not see him when he came out of the main road, though.

Q. If there had been anybody in the main road that was riding with Dr. Mudd, and was riding up towards the big elm, would you have noticed him?

A. I would have noticed him if I had taken any notice of the main road; but I did not take any notice of the main road. I could have seen very easily if there had been anybody; but I just went to the door, opened it, and looked out.

Q. Would you probably have seen him if there had been anybody in the main road, between the big elm and the branch.

A. I did not take any notice of the main road at all.

Q. Would you probably have seen anybody?

A. I should have seen anybody there if I had taken notice of the road. I could have seen plain until they got to the big elm. I know Dr. Mudd. I have seen him very often pass through that way, and I did not take much notice of him.

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Q. He was riding by himself?

A. Yes, sir.

Q. Did you see George Booz meet Dr. Mudd that day?

A. Yes, sir.

Q. Was it at that time?

A. It was after I had seen him. He had passed our house then.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. This was last Easter Sunday?

A. Yes, sir; and, I think, about three or four o'clock in the afternoon.

Q. And Dr. Mudd was coming down from towards Bryantown?

A. Yes, sir: I saw him opposite the barn. The barn is not more than fifty yards from the main road.

Q. He was coming as if he had been up to Bryantown, and was coming back home?

A. He was coming up right towards our house.

Q. From Bryantown?

A. Yes, sir; from that direction.

By MR. EWING:

Q. Did you see from which way he came, whether from Bryantown or the other way?

A. No, sir: I did not see him when he was in the main road.

PRIMUS JOHNSON (colored),

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. State whether you know the prisoner, Dr. Samuel A. Mudd.

A. I know his name.

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Q. Look at the man among the prisoners, in the linen coat [pointing to the accused, Samuel A. Mudd], and say whether you know him by sight; whether you have seen him before.

A. Yes, sir.

Q. State whether you saw him the day after the President was killed, and where it was you saw him.

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A. I saw him coming from Bryantown, by Mr. Booz's, at the hill, on Saturday evening.

Q. What time was that?

A. I reckon it was about three o'clock; perhaps a little after three.

Q. Did you see him when he was going to Bryantown that day?

A. Yes, sir.

Q. Did you see any man riding along with him when he went towards Bryantown?

A. No, sir: he was by himself.

Q. Did you see a man riding along the road about the same time?

A. There was a man after Master Sam.

Q. Dr. Mudd was the first?

A. Yes, sir.

Q. And the man followed him?

A. Yes, sir.

Q. On towards Bryantown?

A. Yes, sir: he went on that course.

Q. Did you see any thing of that man who followed after Dr. Sam. Mudd when he was going on to Bryantown, coming back?

A. Yes, sir: the same man that went to Bryantown came back also by himself.

Q. Which came back first, he or Dr. Mudd?

A. He was before Dr. Sam. Mudd.

Q. How long before?

A. I reckon it was about an hour and a half.

Q. You say he went back from Bryantown about an hour and a half before Dr. Sam. Mudd passed going back?

A. Yes, sir, much about that time; because, when he came along, I had just got through washing the carriages, and was going to the stables to get the horses; and I met Dr. Sam. there by Mr. Booz's.

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Q. Where is Mr. Booz's?

A. I suppose it is about a couple of miles this side of Bryantown.

Q. On the road between Dr. Sam. Mudd's and Bryantown?

A. Yes, sir.

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CHARLES BLOYCE (colored),

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. At Mr. Adams's, down next to Woodville.

Q. Where did you live last year?

A. Down there at the same place.

Q. Do you know the prisoner, Dr. Samuel A. Mudd?

A. Yes, sir.

Q. Were you about his house last year? and, if so, how much?

A. I was there Saturday nights and some parts of Saturday and Sunday, except from the 10th of April to the 20th of May.

Q. Do you mean that you were there only on Saturdays and Sundays?

A. Yes, sir; only on Saturdays and Sundays.

Q. For how long a time during the year?

A. On the 10th of April, I went to haul seine; and I was at that until the 20th of May; and I was about the house on Saturday and Sunday all the rest of the year.

Q. Did you commence going there in the winter?

A. Yes, sir; from the twelfth day after Christmas.

Q. Are you the husband of one of Dr. Mudd's servants, who has been a witness here?

A. Yes, sir.

Q. When did she go to his house to live?

A. The twelfth day after Christmas.

Q. When did she leave Dr. Mudd's house?

A. She left Dr. Mudd's house two days before Christmas Day.

Q. You mean before last Christmas Day?

A. Yes; last Christmas gone.

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Q. Then you were about his house during that year every Saturday and Sunday, except between the 20th of April and the 20th of May.

A. Yes, sir.

Q. Were you there every Saturday?

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A. Oh, yes, sir! every Saturday night: I hardly ever missed.

Q. And every Sunday?

A. Every Sunday.

Q. Were you there all day Sunday?

A. Not all day: sometimes I would go to church.

Q. Do you know, or have you ever seen, Ben. Gwynn or Andrew Gwynn?

A. Yes, sir: I saw them about four years ago,—the first year the war commenced.

Q. Where did you see them?

A. They passed along by Mr. Dyers's.

Q. Did you see either of them about Dr. Mudd's house last year?

A. No, sir.

Q. Did you see or hear any thing of Wat Bowie, John H. Surratt, Captain White of Tennessee, Captain Perry, Lieutenant Perry, or Booth, around there?

A. No, sir.

Q. Did you ever see or hear of any of them being about Dr. Sam Mudd's last year?

A. No, sir.

Q. Were you accustomed to go about the stable when you were there?

A. Yes: I used to go around the stable often enough on Sunday morning.

Q. Did you know of any rebel soldiers or officers being there?

A. No: I never saw any of them there.

Q. Did you ever see anybody about there last year dressed in any kind of uniform?

A. No, sir.

Q. Did you not work at the house of Dr. Mudd's father during a part of the time last year?

A. Yes, sir.

Q. How long?

A. I worked there about a month, and a little better, I believe.

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Q. During that time, where did you stay at nights?

A. I went home every night.

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Q. You mean to Dr. Sam. Mudd's?

A. Yes; every night I could get there, when it was not raining too hard.

Q. And you never saw or heard of any of these people, or rebel officers or soldiers, being about his house during all that time?

A. No, indeed, sir.

Q. Do you know Mary Simms?

A. Yes, sir.

Q. Do you know what the colored folks about there think of her as a truth-teller?

A. Well, sir, the home folks there said she was not a truth teller; and they always laughed at her, and said she told such lies that they could not believe her.

Q. Do you know what the colored folks there think about Milo Simms?

A. They say the same about him; and I thought myself he was a liar, because he used to tell me some sometimes.

Q. What was Dr. Sam. Mudd's character as a master over his servants?

A. Well, I call him a first-rate man. I did not see him whip one of them, and I did not hear talk of his whipping any of them. He did not say any thing to them; and they did pretty much as they pleased, as far as I saw.

Q. Did you ever hear of his threatening to send any of his servants to Richmond?

A. No, indeed: I never heard a word of that either of them.

Q. You never heard any one of them say a word about that?

A. No: I never heard any of them say a word about it.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you ever hear any thing about his shooting any of his servants?

A. I did hear that.

Q. Do you think that is first-rate business?

A. I do not know about that.

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ASSISTANT JUDGE ADVOCATE BURNETT stated to the Court, that, since the case was closed on the part of the prosecution, testimony of great importance as affecting some of the accused had been discovered; and he now applied for permission to examine Marcus P. Norton as a witness.

MR. COX objected to the introduction of any evidence affecting any of the individual prisoners; the understanding having been that the case of the prosecution had been closed, except as to evidence tending to reflect light on the general question of the conspiracy. It was contrary to the practice of the civil courts, after a case had been so closed, to allow the introduction of testimony afterwards tending to prove the offence charged, except when it was strictly rebutting testimony.

ASSISTANT JUDGE ADVOCATE BURNETT stated, that according to the custom of military courts, even after the case had been closed on both sides, witnesses might be recalled, or new witnesses examined, at the discretion of the Court.

A MEMBER of the Court inquired what was proposed to be proved by the witness now asked to be called.

ASSISTANT JUDGE ADVOCATE BURNETT stated that the evidence would tend to implicate George A. Atzerodt, Michael O'Laughlin, and Samuel A. Mudd, as to their connection with Booth.

MR. EWING stated that he was willing to leave the matter in the discretion of the Court, trusting, however, to have a full opportunity to summon witnesses to meet the evidence now proposed to be introduced.

ASSISTANT JUDGE ADVOCATE BURNETT stated that the offer was made at this time so that the accused might have full time and opportunity to meet the evidence about to be offered.

The COMMISSION granted the application.

MARCUS P. NORTON,

a witness called for the prosecution, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Where do you reside?

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A. In the city of Troy, N.Y.

Q. State where you were during the latter part of the past winter and spring.

A. I was in this city, stopping at the National Hotel.

Q. During what months?

A. From about the 10th of January until about the middle of March, or perhaps the 10th of March.

Q. While at the National Hotel, did you become acquainted with J. Wilkes Booth?

A. Not personally acquainted: I knew him by sight. I had seen him act several times at the theatre.

Q. State to the Court whether, while at that hotel, you saw any of the prisoners at the bar with him at that place, and which ones, pointing them out to the Court.

A. There are three that I recognize having seen during that time in company with Wilkes Booth, or rather I should say two in company with him.

Q. Specify now the two you saw in company with him.

A. That one [pointing to George A. Atzerodt], and that one near him [pointing to Michael O'Laughlin]; those two.

Q. You saw those two with him there?

A. Yes, sir.

Q. At what time?

A. I do not remember the exact dates; but it was prior to the inauguration of President Lincoln.

Q. How frequently did you see them there with him?

A. I should say I saw that person [pointing to George A. Atzerodt] twice with him. I do not know the man's name. The other man [Michael O'Laughlin] I saw with him more times than twice.

Q. Were they in conversation or communication?

A. They were.

Q. You say you saw O'Laughlin more times than you Atzerodt with Booth. How many times would you think that you saw O'Laughlin and Booth together?

A. Perhaps four or five times.

Q. State whether you, accidentally or otherwise, overheard any conversation between Booth and either of these parties.

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A. I did between him and that person [pointing to George A. Atzerodt].

Q. State what the conversation was, as near as you can remember.

A. I cannot give the precise language.

Q. Give the best of your recollection.

A. The substance of it was, that, if the matter succeeded as well with Mr. Johnson as it did with old Buchanan, their party would get terribly sold.

Q. Do you know what was meant by that party?

A. I do not.

Q. Did you hear any other conversation between them?

A. Another conversation was something of this sort,—that the class of witnesses would be of that character that there could be little proven by them.

Q. Do you know to what that referred?

A. I do not.

Q. Did you hear any of the other parts of the conversation?

A. I did not: I just heard these statements accidentally as I sat on the same seat with them.

Q. Did you hear both these statements in the same conversation?

A. Yes, sir.

Q. Now, as near as you can, give the time when that was.

A. It was either the evening of the 2d or the 3d of March last; I think, the 3d of March last.

Q. Now, I ask you if you ever saw the man among the prisoners who wears a linen coat [pointing to Samuel A. Mudd, one of the accused].

A. I think I have seen him once.

Q. When and where?

A. It was at the National Hotel.

Q. Under what circumstances?

A. There was a person came to my room, entered it hastily, on the morning of the 3d of March, I think. He appeared somewhat excited, made an apology, and said that he had made a mistake; that he wanted to see Mr. Booth. I told him that Booth's room,

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perhaps, was on the next floor above; the number I did not know. My room being entered in that way, by a person apparently excited, I left my writing, went into the hall, followed him partly through the hall, and he went down the flight of the stairs to the story below. He turned, and gave a look at me.

Q. Did you, when you first entered the Court-room this morning, recognize that person here?

A. I pointed out to the Hon. Horatio King those three persons.

Q. The man that entered your room was which one of these prisoners?

A. I should say that (pointing to Samuel A. Mudd) was the gentleman. It was either he, or a man exactly like him.

Q. Do you recognize him? and are you satisfied in your own mind that he is the man?

A. I am satisfied myself; but I do not know that I can satisfy others.

Q. Did you ever see him afterwards?

A. I did not.

Q. Did you ever see him before?

A. I did not.

Q. He simply inquired for Booth, turned around, and passed?

A. Yes, sir.

Q. His conduct, I understand you to say, was so singular, that you followed him, and saw him passing down the stairs.

A. Yes, sir.

Q. How are you enabled to fix the date?

A. I fix it from the fact of the inauguration.

Q. You think it was the day before?

A. I think it was.

Q. Was it in the daytime, or in the evening?

A. In the daytime.

Q. About what time of day?

A. About ten or eleven o'clock in the morning.

Q. Might it not have been in the previous month, in February? or are you enabled to fix the date with certainty?

A. I think the 3d of March was the date.

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Q. That is the best of your recollection?

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A. It is the best of my recollection.

Q. Are you certain about that as you are about the identity of the person?

A. Yes, sir.

Cross-examined by MR. COX:

Q. Can you fix the date when you saw O'Laughlin talking with Booth?

A. I cannot.

Q. Was any one else in company with him at those times?

A. No, sir; there was not.

Q. You did not overhear what their conversation was?

A. Not between these two parties: I was not near enough.

Q. Do you think it was in the winter or spring?

A. It was in the winter, I think, during the two months I was there.

Q. What were the months you fixed?

A. Before the inauguration.

Q. You were there two months before that time?

A. No, sir: I went there, I think, about the 10th of January, and remained there until the 10th or 15th of March. These may not be the exact dates, but it was near that time.

Cross-examined by MR. EWING:

Q. How do you fix the 3d of March as being the day when the prisoner, Dr. Samuel A. Mudd, entered your room?

A. From the fact of the inauguration. That is the only thing I have in my mind to fix it by. I did not make any memorandum of it, nor charge my mind particularly with the date.

Q. You fix the conversation, of which you overheard a part, on the same day?

A. Either on the 2d or 3d of March.

Q. Was it before or after you overheard that conversation that the person whom you recognize as Dr. Mudd entered your room?

A. It was after, I should think. My impression is that it was on a different day too.

Q. But you are certain it was before the inauguration?

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A. Immediately before.

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Q. And it was the day before?

A. I would not swear positively that it was the day before, but it was either the 2d or 3d of March.

Q. Would you swear positively that he entered your room either on the 2d or 3d of March?

A. I should say that it was on the morning of the 3d of March. I will give you another fact by which I fix that time.

Q. Please give all the facts by which you fix the time.

A. There was a motion pending in the Supreme Court of the United States, which I was resisting; and on the morning of that day I was preparing my papers to go to the Capitol, and did so about half-past ten o'clock. That was what kept me in my room until that time.

Q. You were preparing your papers when the man entered?

A. Yes, sir: I was getting them ready to go to court.

Q. When did you argue the motion?

A. On that day. Mr. Bradley of this city was the opposing counsel.

Q. What was the motion?

A. A motion to dismiss a certain case from court for want of jurisdiction.

Q. What was the case?

A. A patent case.

Q. The names of the parties?

A. John Stainthrop and Stephen C. Quinn against Willis Hollister,—a case originating in the Northern District of New York. An appeal had been taken to the Supreme Court here; and the motion was to test whether the appeal should stand and the case go to argument in this court, or be sent back.

Q. You are certain the motion was argued on the day that the person entered your room?

A. Yes, sir: I have no question about it.

Q. How was he dressed?

A. That I cannot say.

Q. Describe any article of his clothing.

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A. His garments were black. He had on a black coat, and his hat was in his hand.

Q. What sort of hat?

A. I do not know that I can give any name to it.

Q. What is a high-crowned hat?

THE TRIAL.

A. They have so many names for hats, that I cannot give the name.

Q. Was it a hat like that? [pointing to a silk hat upon the table.]

A. Something like that, but not so tall.

Q. Can you describe any other article of his clothing?

A. No, sir: it was a hasty coming-in, and a hasty going-out.

Q. Do you recognize him with as much certainty in your mind as you recognize the others?

A. In my mind, I have no doubt as to either of the others.

Q. Do you recognize him with as much certainty as you do either of the others?

A. I think so.

Q. Were you in Washington from the 10th of January to the middle of March?

A. I think I was. I may not have been on those precise dates, but somewhere near that time. I came here, I think, about the 10th of January.

Q. And staid constantly until the middle of March?

A. Yes, sir: I did not suppose I should be a witness here, and did not examine the book at the hotel to see the precise date at which I did come.

Q. What room did you occupy?

A. I occupied room No. 77 at that time. I had before that occupied No. 126, I think.

Q. Did you stay constantly at the National Hotel?

A. I did: I always stop there when I am here; have done so for years.

Q. Do you recognize either of the other prisoners at the bar?

A. I do not: I do not know that I ever saw any of them before now.

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Cross-examined by MR. DOSTER:

Q. You have mentioned two conversations that you overheard between Atzerodt and Booth. Will you state precisely on what day those conversations took place?

A. I cannot.

Q. You do not remember the day on which either occurred?

A. I do not: I thought nothing of the conversation at that time.

Q. Were they made at different times?

A. It was at the same sitting between the parties.

THE TRIAL.

Q. Whereabouts was it in the National Hotel?

A. In the rotunda, or office part of the hotel.

Q. Do you remember the time of day?

A. It was in the evening.

Q. What time in the evening?

A. Early in the evening.

Q. You do not remember the time in the evening?

A. No, sir.

Q. How did you happen to overhear them?

A. I sat on the seat near by where they sat.

Q. Had you been talking to Booth at all?

A. No, sir; but in hotels we sometimes overhear conversations between parties, when there are so many together, even when we are talking with others ourselves.

Q. Did they talk in a loud tone of voice?

A. An ordinary tone: they did not seem to be talking very loud.

Q. How near were you?

A. Perhaps two or three feet from them.

Q. Was the prisoner Atzerodt dressed at that time as he is now?

A. I should think not.

Q. How was he dressed?

A. I did not take particular notice.

Q. You do not remember that?

A. No, sir: my mind was not fastened on that circumstance as being connected with any important matter. I passed it as I do a thousand others.

Q. You do not recognize him, then, by his dress?

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A. No, sir: I recognize him by his countenance, his looks, his general features.

Q. His face is the same as you saw it that day?

A. It gives the same appearance. I do not know that he had as much of a scowl on his face then as he has now: I do not think he had.

Q. Is he as fleshy now as he was then?

A. I do not know; I cannot state that: I did not take his dimensions as to avoirdupois weight.

Q. You do not remember that exactly?

A. I do not.

Q. Have you seen Atzerodt between that time and to-day?

THE TRIAL.

A. I have not.

Q. Was it in the earlier part of March, or the latter part of March?

A. It was before the 4th of March; the 2d or 3d, I think; I believe, on the evening of the 2d.

Q. It is, then, about two months since you saw him?

A. Yes, sir; about that.

Q. Have you repeated that conversation to anybody since then, before to-day?

A. I have spoken to Mr. King, I think, once in regard to it, before to-day.

Q. When did you speak to him about it?

A. I cannot tell you the day. It has been within a week; since I have been here this time.

Q. Are you in the habit of remembering a conversation that you overheard casually for two months?

A. I remember some things for a long time.

Q. Are you in the habit of remembering faces that you see in hotels casually for two months?

A. There are a good many faces that I remember for a long time.

Q. Have you remembered that conversation so distinctly as to be able to swear to it?

A. I would not swear to the precise language.

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Q. You are not certain, then, whether the language was not different?

A. I have stated that that was the substance of the language.

Q. Are you a lawyer?

A. I am.

Q. Have you read the testimony in this case?

A. I have not. Some of it I have read. I have not read it as a general thing. I think there are two or three examinations of different witnesses that I have read.

By MR. COX:

Q. When you speak of a conversation between Booth and O'Laughlin, were they in the public hall?

A. Yes, sir; but I heard no conversation between those persons.

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Q. Were they in the presence of other people?

A. There were other people in the hall on both occasions.

Q. They had not retired apart from the crowd frequenting the hotel?

A. No, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. When you recognized these persons to-day, did you know the names of any of the parties?

A. I did not.

By MR. EWING:

Q. Had the person whom you recognize as the prisoner, Dr. Mudd, an overcoat on?

A. I think not.

Q. Was the hat in his hand a stiff black hat?

A. A hat something like that [pointing to a black silk hat on the table]; but I think not so high as that,—that kind of a hat, I should judge, from the general idea I had of the hat. I could not swear to the exact hat: I would not pretend to do any such thing. I did not examine his hat for any purpose, nor his clothing for the purpose of identification.

Q. It was a high-crowned, stiff, black hat?

A. A hat something like that. I cannot give you an exact description of his hat.

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Q. Was it a high-crowned hat?

A. What I call a high-crowned hat.

Q. Was it a stiff hat?

A. I do not know.

Q. Was it a soft slouch hat?

A. No: it was not what is called a soft slouch hat.

Q. Was it not a hat commonly called a stove-pipe hat?

A. I do not know that. I do not know so much about the hat as I do about the countenance.

Q. You know it was a black hat?

A. I would not undertake to swear that either.

Q. Can you describe any one article of his clothing?

A. I cannot particularly.

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Q. Can you describe the color of any article of his clothing?

A. I should say he had on dark clothing: I cannot state the exact color, whether deep-brown, deep-blue, or dark-black or light-black.

Q. Can you describe the color of his hat?

A. I cannot.

Q. You cannot say whether it was white or black?

A. I did not make any examination so as to go into things so particularly.

Q. Do you know whether it was white or black?

A. A black hat.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. [Submitting to the witness the photograph of John H. Surratt.] Did you ever see that person?

A. No, sir.

By the COURT:

Q. What is the character of your eyesight?

A. I am somewhat near-sighted.

Q. Do you wear glasses all the time?

A. Yes: I have for sixteen or eighteen years. My glasses are not very strong.

Q. Have you perfect confidence in recognizing people's countenances?

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A. Yes; the confidence of men ordinarily. I recognized a classmate of mine once in New York by his voice, before I saw him, whom I had not seen for ten years.

Q. Do you frequently make mistakes in recognizing persons?

A. I sometimes do at a distance. I may see a person coming at a distance, and I may think from his general appearance it is such a person, and, on nearer approach, find that I am mistaken.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. At the distance those persons were from you, do you think your vision would extend to them perfectly?

A. They were within the range of my glasses.

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Q. Within that range you can see well?

A. Yes, sir; perfectly.

By the COURT:

Q. What is the impression that the man who entered your room so suddenly made upon you, that led you to follow him?

A. It was his hasty exit, and the hasty apology, and the hasty departure.

Q. Did he seem embarrassed when he entered the room, or say that he was mistaken in the room?

A. He seemed somewhat excited or something in a hurry rather, and said he had made a mistake in the room. He apologized in that way.

Q. Did he distinctly ask for Booth, or if that was Booth's room?

A. Yes.

Q. Had you occupied that room for any time previous to that day?

A. I had been changed from No. 120 into that room. I cannot tell you the exact date of that change.

Q. You cannot say whether it was ten days before that your room was changed?

A. I should think it was a full ten days.

Q. Do you remember seeing in that room any Congressional documents?

A. I do not think there were any in 77. I occupied 77; what

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is known as 77½. The room adjoining 77½, I think, was occupied by some person connected with Congress.

Q. Were there any Congressional documents there that were accessible to that room?

A. I think not to 77.

LEONARD S. ROBY,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

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By MR. EWING:

Q. Where do you live?

A. I live in the Fourth Election District of Charles County, Md.

Q. State whether or not you were in Bryantown on the day after the assassination of the President.

A. I was, on the afternoon of that day.

Q. What time did you go to the town?

A. I was there from about three o'clock that afternoon, I think.

Q. How long did you stay?

A. I staid till dusk; till night.

Q. State what you heard there about the assassination of the President.

A. Before I got there, I met a gentleman on the road who made the statement; but he professed not to believe it; and neither did I till I got near there, when I met some soldiers who were stationed on the road two or three hundred yards from the village, and I made inquiry of them, and they stated that such was the fact. I made inquiry of them whether it was ascertained who was the perpetrator, the assassin; and they said that it was somebody that belonged to the theatre.

Q. Did they give you the name?

A. No, sir: they spoke as if they did not know. Neither did I hear, though I conversed with several. There was a great deal of confusion, though, in reference to it. Nobody could give me the information, until, a few minutes before I left, I received the information from Dr. George Mudd, who said it was Booth.

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Q. State whether or not you made any inquiries before you saw Dr. George Mudd, during the time you were in Bryantown, as to who the man was that had killed the President.

A. I did. I made inquiries of several persons; and all gave the same answer, that it was some person who belonged to the theatre, but without a specification of names. I did not hear the name until I received it from Dr. George Mudd.

Q. Did you ask those persons what the name of the man was?

A. I did; I asked several.

Q. Citizens, or soldiers?

A. Both, and particularly the soldiers I first met,—those who were on guard.

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Q. Were you about Bean's store during the time you were there?

A. I was not. I passed it. I was not in the store.

Q. Are you acquainted with Daniel J. Thomas, who has been a witness for the prosecution?

A. Yes, sir; I know Mr. Thomas.

Q. Do you know his reputation, in the neighborhood in which he lives, for veracity?

A. It is very bad.

Q. From your knowledge of his reputation for veracity, would you believe him under oath?

A. No, sir: I do not think I should, from that together with other circumstances.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. How near do you live to Mr. Thomas?

A. Four or five miles.

Q. How intimately have you known him in the last four years?

A. I have known him from his boyhood.

Q. How frequently have you seen him?

A. Very frequently.

Q. State to the Court what your own attitude towards the Government during this Rebellion has been.

A. It is my belief that I have been a true loyal citizen.

Q. That is the fact?

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A. That is the fact, and that is what I state under oath. I have done no overt act in any shape, way, or manner.

Q. Have you said any thing against the Government? given any counsel or assistance to the rebels?

A. No, sir: there are some of the acts of the Administration I may have spoken not so pleasantly of, but nothing else.

Q. Have you said any thing against any efforts of the Government in seeking to put down this Rebellion?

A. I do not think I have.

Q. Have you maintained the attitude of a friend of the Government, or a friend to the South, during this struggle?

A. Early after the commencement, I voluntarily took the oath of allegiance and fealty to the Government; and I have strictly ad-

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hered to that oath; have neither turned to the right or the left since that time.

Q. What has been your counsel, your words of comfort, to the rebels or to the Government?

A. I do not think I interfered with either.

Q. Have you talked against the Government?

A. No. I may have talked against some of the acts of the Administration.

Q. What acts?

A. Arbitrary arrests. I do not know of any thing else.

Q. Arbitrary arrests of rebels?

A. No, sir; of citizens.

Q. Were not those citizens that were arrested rebels?

A. They professed to be loyal citizens.

Q. Whom did you take the part of?

A. I do not recollect now; but there were several of our county men.

Q. What other acts of the Administration did you condemn and talk against?

A. I do not know now that there were any.

Q. You say you have never committed any overt act?

A. None that I am aware of. If I did, I did it unwittingly.

Q. Do you know a man by the name of Boyle?

A. I do.

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Q. Do you know the man Boyle who murdered Captain Watkins?

A. I have seen him once, I believe; or perhaps a second time.

Q. Did you, or did you not, harbor and feed him at your house after that murder?

A. Never. He was never on my premises after that. He came to my house the morning after our general election, with some ten or a dozen or fifteen; I do not know how many. I live not far from the road, and many call after the election. After the general election, on their route homeward, a party called; and he was among them. I did not know him at that time. They staid but a short time. When I heard his name, I had a reason not to want him there, and I was not so particular in my treatment towards those with him; and they left after an hour or two.

Q. Was that before or after the murder?

A. That was after the general election last fall.

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Q. Have you ever seen him since the murder?

A. No, sir; not since the murder. I saw him once on the road, about the time he was charged with taking a horse from a soldier.

Q. Have you seen him since the murder?

A. I have not.

Q. Not at all?

A. Not at all.

By MR. EWING:

Q. In your statement as to the reputation of Thomas for veracity, do you refer to his reputation before the war as well as since the war?

A. All the time.

Q. Ever since his youth?

A. Yes, sir. It appears to me he is this kind of a man, that he will imagine things, and then bring himself to believe they are facts, and then assert them, and stand to them to the last that they are facts and swear to them.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You do not mean to say that Mr. Thomas would say what he did not believe to be true?

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A. I do not know; but the impression I have formed of him is, that he will say things are so which are not so, and will make himself believe that they are so.

E. D. R. BEAN,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Are you acquainted with the prisoner, Dr. Samuel A. Mudd?

A. I am.

Q. What is your occupation and residence?

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A. I am a merchant in Bryantown.

Q. Did he make any purchase of you the day after the assassination of the President?

A. I cannot remember positively whether it was the day after the assassination of the President. I remember him buying some goods from me; and I think, from circumstances, it must have been that day.

Q. What articles did he purchase?

A. I think I sold him some calico: that is the only particular article I remember.

Q. State what you heard that day in Bryantown as to the assassination of the President.

A. I heard that day that the President was assassinated. When I first heard it, I asked by whom; and my impression is, that, when I heard it, it was said to be by Boyle.

Q. Who is Boyle?

A. I believe he is the man who is said to have killed Captain Watkins.

Q. Was he a noted desperado in that neighborhood?

A. I believe so: he had that reputation.

Q. Did you during that day hear that it was Booth who had assassinated the President?

A. I cannot positively say whether I did or not.

Q. What is your impression?

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A. My impression is that I did not that day understand that it was Booth.

Q. Were the soldiers in and out of your store that day?

A. Yes, sir.

Q. And citizens?

A. Yes, sir.

Q. Was not the subject the general topic of discussion?

A. It was.

Q. Did you have a conversation with the prisoner, Samuel A. Mudd, that day, as to the assassination of the President?

A. The day I sold him the calico, I had some conversation with him; and that circumstance leads me to think it was the day I heard of the assassination.

Q. What was the conversation?

A. I remarked to him that there was very bad news. "Yes," said he: "I am sorry to hear it."

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ASSISTANT JUDGE ADVOCATE BINGHAM objected to the witness stating the conversation between him and Dr. Mudd; but, inasmuch as the witness had already partly answered the question, he would allow the answer to stand as far as it had gone.

By MR. EWING:

Q. What else did Dr. Mudd say in regard to the assassination of the President?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question and the COMMISSION sustained the objection.

By MR. EWING:

Q. It was from the conversation you had with Dr. Mudd in regard to the assassination of the President that you are enabled to fix that as the day when he made the purchase of calico?

A. That led me to believe it was the day because I remember his remarks.

Q. What is the distance from here to Surrattsville?

A. I believe it is generally called ten miles from the Eastern Branch Bridge to Surrattsville. I have always heard so.

Q. How far is it from there to Bryantown?

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A. I do not know exactly; but I have always understood it to be sixteen miles.

Q. How far is it from Bryantown to Port Tobacco?

A. Thirteen and a half miles, I think.

Q. Is Port Tobacco on the direct road from Surrattsville to Pope's Creek?

A. I do not know: I never was at Pope's Creek.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You did find out at some time or other down there that Booth was the man charged with the murder of President Lincoln?

A. I heard so; and that was the general impression, I think.

Q. Now, can you state to the Court when you ascertained the fact the he was charged as the man?

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A. Really I cannot name the day.

Q. You do not know but that it was Easter Saturday?

A. It might have been.

Q. You do not know but it was that day?

A. I do not.

Q. Did you not, at the same time that you heard it was Booth who had murdered the President, learn that the same man had been traced to within three miles of Bryantown?

A. I do not know that it was at the same time. I cannot say positively as to that: I heard he was traced within three miles or three and a half miles of Bryantown.

Q. And you heard it about that time, did you not?

A. I cannot say at what time I heard it.

Q. Can you say how you heard it?

A. I do not know. I believe it was a general conversation.

Q. That may also have been on Eastern Saturday afternoon?

A. It may have been.

Q. Do you connect the sale of the calico with that fact as well as the other? Do you connect it with the killing of the President, and with the knowledge that Booth had done it?

A. No: the only reason I remember that was because of what I said to Dr. Mudd at the time.

Q. I am not asking you what you said to him: I am asking

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about the calico. You sold the calico after you heard of the murder of the President?

A. Yes, sir.

Q. And you did hear of the President's murder on Easter Saturday?

A. Yes, sir.

Q. And you did hear that Booth had murdered him, and do not know but that you heard it on Saturday also?

A. I cannot positively say that I heard that on Saturday or not; but I did not hear it.

Q. And you did hear that Booth had been traced within three miles of Bryantown?

A. I did not hear that on Saturday: I cannot say on what day I heard it.

Q. But can you swear that you did not hear it on Saturday afternoon?

A. I think Dr. George Mudd told me on Sunday.

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Q. When did you first hear that Booth had been traced within three miles of Bryantown?

A. That I cannot tell: I do not know what day it was.

Q. Did you hear it on Easter Sunday?

A. I do not think it was until Monday; but I cannot positively say.

Q. How do you know it was on Monday?

A. I cannot positively say.

Q. You cannot positively say that it was on Saturday?

A. I cannot.

By MR. EWING:

Q. Your impression is that you did not hear on Saturday that Booth had been traced within three miles of Bryantown?

A. It was my own impression on Saturday that the man was Boyle.

Q. Gathered from information that you got in your store?

A. That was what I first heard. My impression on Saturday way, that it was Boyle; and I do not know at which time I learned it was Booth.

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Q. But you think it was not Saturday that you heard that?

A. I do not think it was.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Was not the information you got brought there to the town by the soldiers?

A. It was.

Q. And whatever they brought there and circulated you heard?

A. I suppose so.

JOHN R. GILES,

a witness called for the accused, Michael O'Laughlin, being duly sworn, testified as follows:—

THE TRIAL.

By MR. COX:

Q. Where do you reside?

A. At No. 456, Pennsylvania Avenue, late Rullmann's Hotel.

Q. What is your occupation there?

A. Bar-tender.

Q. Do you know the accused, Michael O'Laughlin?

A. Yes, sir.

Q. How long have you known him?

A. I have known him personally about four months.

Q. Did you see him on Thursday, the day before the assassination of the President?

A. I did.

Q. At what time of the day?

A. I saw him in the evening.

Q. In what company?

A. I cannot name them all: he was with a good many.

Q. Mention some.

A. Barney Early, Mr. Murphy, Lieutenant Henderson, myself, Purdy, and several others.

Q. Where was it?

A. At our place, 456, Pennsylvania Avenue.

Q. Two doors from the Globe office?

A. Yes, sir.

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Q. At what hour?

A. I saw him early in the evening, and then I saw him about ten o'clock.

Q. How long did they remain at your hotel, late in the evening, when you saw them the second time?

A. They remained there till after eleven.

Q. Did you join them, and go with them?

A. I did.

Q. How late were you with them that night?

A. Until one o'clock.

Q. Did you see them on the next evening,—Friday?

A. I did.

Q. At the same place?

A. Yes: they were there nearly all the evening,—Friday.

Q. Do you know whether O'Laughlin was at your hotel at the time the news of the President's assassination arrived there?

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A. He was.

Q. Do you know what hour that was?

A. I cannot tell the exact hour, but I think it was between half-past nine and ten o'clock.

Q. Do you remember his going out with Fuller?

A. I do.

Q. Your house is owned by Mr. Lichau, I believe.

A. Yes, sir.

Q. Is it the house known as the Lichau House?

A. No, sir.

Q. Where is the Lichau House situated?

A. On Louisiana Avenue, between Four and Half and Sixth Streets.

Q. Where is the Canterbury Music Hall situated?

A. On Louisiana Avenue, between Four and Half and Sixth Streets, right next door to the Lichau House: I don't know the numbers.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You think the news of the President's murder came to your house about half-past nine or ten o'clock?

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A. I cannot state exactly; but I think about that time: it might have been after ten.

Q. Or it might have been before ten?

A. Yes, sir; somewhere along there.

Q. You did not look at the clock, and therefore cannot tell?

A. I did not at that time: I was busy.

Q. This man came into your house, you say, about ten o'clock for supper?

A. Yes, sir.

Q. And you do not know whether it was ten or eleven when he came in on Friday night?

A. On Friday night, he was there all the evening; was not away from there.

Q. Did you not say a little while ago that he came about ten o'clock?

A. That was on Thursday evening.

Q. Did you say he was at your house all of Friday evening?

A. Yes, sir.

THE TRIAL.

Q. From what time in the evening?

A. From about seven or eight o'clock.

Q. And he was there from seven or eight o'clock until what time?

A. Till eleven o'clock that night.

Q. Was he not out of the door during that time?

A. He was out on the pavement, and in and out drinking?

Q. If he went away at all, do you know where he was?

A. He was not away from the house.

Q. Was he not away from your eyes from seven or eight till ten?

A. Not at all until about eleven o'clock, when he went away with Fuller.

DAVID C. REED

recalled for the accused, Mary E. Surratt.

By MR. AIKEN:

Q. Are you acquainted with John H. Surratt?

A. I know him by sight.

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Q. What time did you see him last?

A. About two or half-past two o'clock on the day of the assassination, the 14th of April last.

Q. Did you ever have any connection with Mr. Surratt?

A. I cannot say that I have had since he was quite a child.

Q. You have not had any conversation with him for years?

A. Oh, no! I knew him by sight; just a bowing or speaking acquaintance as we passed each other.

Q. Whereabouts were you when you saw him?

A. I was standing on the stoop of Hunt & Goodwin's military store.

Q. How was his hair cut?

A. It was cut very singularly; cut rounding away down on the coat collar behind.

Q. Had he whiskers or mustache?

THE TRIAL.

A. I did not notice, and cannot say whether he had or had not. In fact, I did not look at his face particularly. As I stated before, I was more attracted by the appearance of the clothing he had on.

Q. You cannot tell whether he wore whiskers or not?

A. I cannot say whether he had whiskers or not.

Q. [Submitting to the witness the photograph of John H. Surratt.] Look at that picture, and see if you recognize it.

A. That is very like the clothing and general appearance of the face, but it is not the style his hair was cut, or as he wore it at the time I saw him.

Q. That certainly could not have been the style of whiskers then, if he had not any.

A. I did not notice any whiskers at all.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. That is the picture of John H. Surratt; is it not.

A. From the appearance of the face, it is a fair picture of John H. Surratt. The only thing I notice is, that the hair is not cut as his was on the 14th of April, when I saw him; but the shape of the coat, the style in which it is cut, is precisely the same.

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By MR. AIKEN:

Q. If that picture had not been shown to you as the picture of Mr. Surratt, would you have recognize it as his?

A. I do not know that I should recognize it particularly if I saw it hanging in a window; but if I came to look at it, and examined it, I should recognize it. It is a remarkable face.

Q. In what direction was Mr. Surratt walking on the avenue when you saw him?

A. Going past the National Hotel.

Q. Was he very cleanly in his appearance at the time, or did he look like a traveller?

A. Very genteel; remarkably so.

Q. He did not look like a person right from a long travel?

A. Oh, no! his clothing was very clean. He looked very genteel; remarkably nice.

ANNA WARD,

a witness called for the accused, Mary B. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. State to the Court your residence.

A. At the Female School in Tenth Street, Washington City.

Q. Are you acquainted with the prisoner at the bar, Mrs. Surratt?

A. Yes, sir.

Q. How long have you been acquainted with her?

A. Between six and eight years.

Q. Have you ever known her or not, on any occasion, to fail to recognize yourself or her friends when you have been with her?

A. Yes, sir. She failed to recognize me on one occasion,—passed me on the street; but her daughter recalled her. I had done the same thing, and she returned and excused herself to me. I said I had to make an apology also; and she said she had passed, when her daughter recalled her.

Q. Are you near-sighted yourself?

A. I am.

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Q. Whereabouts was that in the city?

A. On Seventh Street. I was coming up from the avenue, and she and her daughter were going towards the avenue; and she passed me. Her daughter came after me, and took my arm, and asked me if I did not know my acquaintances: with that she called her mother, who excused herself.

Q. Did you ever have occasion, at any time, to read for her?

A. Yes, sir. I gave her a letter to read once, at her house, some time ago; and, when she took it, she handed it back to me, and asked me to read it; and I think I handed it to her daughter, and I am not quite certain whether Anna or I read the letter. I am certain, however, that Mrs. Surratt said she could not read it. It was by gas-light.

Q. Do you recollect any other occasion when she failed to recognize any friends?

THE TRIAL.

A. I do not know that she failed to recognize any one; but on one occasion, something was pointed out to me, and I was laughed at for not seeing it, as it was pretty close by; and she then said she supposed I was something like herself,—I could not see. I said I could not see any thing at a distance; but I could see pretty close by.

Q. She had the same difficulty?

A. She said she labored under the same difficulty I did.

Q. And you recollect these circumstances on account of your own nearsightedness?

A. Yes, sir: I felt relieved to find that somebody else had the same difficulty I had.

Q. Did you receive a letter not long since from John H. Surratt?

A. I did.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Have you been in the habit of visiting Mrs. Surratt at her house frequently?

A. Not very frequently. I have occasionally.

Q. Down to the time of her arrest?

A. No, sir: the day of the assassination was the last day I visited there.

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Q. On all occasions, when you went into her house, and saw her there, did Mrs. Surratt recognize you or not?

A. She did. Once or twice she opened the door for me; and the other times I sent my name to her before she came up stairs.

Q. She always recognized you whenever she met you in the house?

A. Yes, sir.

Q. Did she seem to be quick in recognizing the voice also?

A. I do not recollect.

Q. You did not discover that she was defective in that way?

A. No, sir. She always knew who I was, I believe, before she came to the room.

Q. You were acquainted with John H. Surratt?

A. Yes, sir.

Q. Did you go with him or go alone to the Herndon House to engage a room for any one?

THE TRIAL.

A. I did not engage a room there. I simply went there to ask if there was a vacant room.

Q. When did you do that?

A. I do not recollect. It seems to me it has been a long while ago.

Q. Was it last winter?

A. I think it was. I do not recollect what time.

Q. Was it probably last February?

A. It may have been.

Q. Or perhaps in March?

A. I do not remember, indeed.

Q. Did you go to retain it on behalf of a delicate gentleman?

A. No, sir.

Q. Did you go to retain it for a gentleman?

A. I did not know for whom it was.

Q. Have you met any of the prisoners at the bar before?

A. I cannot see them well enough to know. I do not think I have, though.

Q. I mean before the assassination of the President?

A. Not that I know of.

Q. Did you meet strangers at Mrs. Surratt's house?

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A. I met one there,—Mr. Booth.

Q. Did you meet any other gentleman there except John H. Surratt?

A. Yes, sir: I met two gentlemen who were boarding there.

Q. What were their names?

A. Mr. Weichmann and Mr. Holohan.

Q. Did you get a letter from John H. Surratt, postmarked Montreal, Canada East?

A. Yes, sir.

Q. When did you receive it?

A. I do not recollect the date of the first, but the second one I received on the day of the assassination. It was that which took me to Mrs. Surratt's that day to give it to her.

Q. You received the first one before that?

A. Yes, sir.

Q. How many days before that?

A. I do not recollect.

Q. Not many days before, I presume?

A. Not long before; I think, a very short interval before.

THE TRIAL.

Q. Perhaps within one or two days?

A. It might have been, or perhaps a little longer.

Q. Did you deliver both of those letters to Mrs. Surratt?

A. Yes, sir: I delivered one to her; and the other I gave to her daughter, when I called, and she was not at home.

Q. Have you seen them since?

A. No, sir.

Q. Have you received any other letters from John H. Surratt since that date?

A. No, sir.

Q. Did you answer either of the letters referred to?

A. I did not answer either of those. I answered the two letters he wrote to myself. The two letters to which I have referred were to his mother.

Q. How did you come by them?

A. He enclosed them to me.

Q. When you received two letters addressed to yourself, and two to his mother?

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A. Yes, sir.

Q. And they were all about the time of the President's assassination?

A. I do not recollect when they were. They were about the same time, though, after he left home.

Q. They were very near to the time of the President's assassination?

A. Yes, sir.

Q. They were post-marked Montreal, Canada?

A. Yes, sir.

Q. You have not got any of them?

A. No, sir.

Q. You delivered them to his mother?

A. Yes, sir: I supposed she would be glad to hear from him.

Q. Do you know whether the letters to yourself have been destroyed?

A. I do not. I left them with his mother; and I never inquired for them again.

THE TRIAL.

By MR. AIKEN:

Q. You state that you did not say any thing about a room for a delicate gentleman?

A. I did not, to my recollection; and I think I could have recollected it.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you not ask for a room for a man?

A. I did not. I did not know it was for a man. I did not know for whom it was. I simply asked if there was a vacant room at the house.

Q. Who went with you?

A. No one. I was on my way to the post-office, and stopped in.

Q. You are not able to fix the time, but think it might have been February or March?

A. It might; I do not know: I have not an idea.

By MR. AIKEN:

Q. Have you known Mrs. Surratt as a lady always attentive to her Christian duties as a member of the church?

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A. I have not been very intimate with her; but she always bore the character of a perfect lady, and a Christian, as far as my acquaintance with her extended.

Q. You have stated the only occasions you recollect when there were exhibitions of her defective eyesight, to your knowledge?

A. Yes, sir.

By the COURT:

Q. Do you attend the same church with Mrs. Surratt?

A. I do.

JOSEPH S. SESSFORD,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows:—

By MR. EWING:

Q. State the business you were employed in on the 14th of April last.

A. I was ticket-seller at Ford's Theatre.

Q. How long were you at the ticket-office during the day or night?

A. My business commenced at about half-past six o'clock in the evening.

Q. State whether any of the private boxes, except those occupied by the party of the President, were applied for during that evening.

A. No, sir.

Q. Had any of the tickets for those boxes been sold during the day?

A. I think not.

ASSISTANT JUDGE ADVOCATE BURNETT stated to the Court that he had received the following communication from the counsel for Lewis Payne:—

WASHINGTON, D.C., June 3, 1865.

Colonel Burnett, Judge Advocate.

COLONEL,—I have the honor to request that permission be granted or instructions given Dr. Charles Nichols, Superintendent

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of the Government Asylum for the Insane, to make a personal examination of the prisoner Payne concerning his condition as to sanity.

[ASSISTANT JUDGE ADVOCATE BURNETT. That has been done.]

I have the honor to request also that the Court may not close the defence, as far as the prisoner Payne is concerned, until he shall have an opportunity of showing, by his father, George C. Powell of Florida, Captain Dolly Richards, and Mr. John Grant of Virginia,

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his antecedents,—the bearing of his family history upon his own sanity and his previous life,—and until Dr. Nichols may be ready to report upon the case.

Very respectfully,
Your obedient servant,
W. E. DOSTER, Counsel for Payne.

Without acting on the application, there being no further witnesses in attendance for any of the accused, the Commission adjourned until Monday morning, June 5, at ten o'clock.

MONDAY, JUNE 5, 1865.

The Court met at the usual hour, and took the following testimony:—

WILLIAM A. EVANS,

a witness called for the prosecution, in rebuttal, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State where you reside.

A. I reside in Prince George's County, Md.

Q. What is your profession?

A. I am a Presbyterian minister.

Q. When did you leave your church in that county?

A. I was compelled to leave my church in 1861 because of my loyalty and devotion to the Union.

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Q. It is a very disloyal neighborhood?

A. Yes, sir.

Q. Do you know J. Z. Jenkins, who has given testimony here?

A. Yes, sir: I know him well.

Q. Do you know his reputation for loyalty or disloyalty?

A. He pretended to be a loyal man in 1861, as a great many in Prince George's and St. Mary's and those lower counties, did; but I

THE TRIAL.

never considered him a loyal man, because, if he had been, he would have co-operated with me and others who were endeavoring to discharge our duty to our country.

Q. What has been his reputation and conduct since?

A. He has been disloyal. I call him a rebel. I do not call such men Southern sympathizers; I call them rebels.

Q. So far as you have known, or have reason to believe, he has been open and outspoken in his sympathy with the rebels?

A. Very much so.

Q. Do you know the prisoner at the bar, Dr. Mudd?

A. I am slightly acquainted with him.

Q. Do you know him when you see him?

A. Yes, sir.

Q. State whether or not, on any occasion during the past spring, you know of his having come to Washington City.

A. I think, about the 1st or 2d of March, Dr. Mudd drove past me in the morning, coming to the city of Washington. I drove on after him.

Q. On the road between his house and the city?

A. Yes, sir; I think, about eight miles from the city now: and he having a fiery horse, and I wishing to take my time, he drove past me, and I drove after him.

Q. How far did you follow him?

A. On up to the city.

Q. You think that was on the 2d or 3d of March?

A. The 1st or 2d of March last, I think. I know it was before Inauguration Day.

Q. Are you certain it was before Inauguration Day?

A. I know it was.

Q. And you feel assured that it was after the 1st of March?

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A. Yes, sir.

Q. Between the 1st and 4th of March?

A. Yes, sir; between the 1st and 4th of March, to the best of my knowledge.

Q. Where did you lose sight of him?

A. There are several hills on the way. I could always keep him in view.

Q. But in the city?

A. I put my horse up at the Navy Yard, in Pope's stable, and rode down in the cars to my office.

THE TRIAL.

Q. You lost sight of him there?

A. Yes, sir.

Q. You did not see him when he returned from the city?

A. No, sir.

Q. You do not know where he stopped in the city?

A. No, sir.

Cross-examined by MR. CLAMPITT:

Q. How long have you been acquainted with Mr. Jenkins?

A. About fifteen years.

Q. Have you been a resident of the same county with him for the last four years?

A. Because of my abolition proclivities, I was not permitted at times to remain in the county or in the State.

Q. Were you there in 1861, in the early stage of the Rebellion?

A. I was. There was a writ out for me in 1861, and occasionally I visited my house in secrecy; but I know Mr. Jenkins, and every one who knows him knows him to be a rebel.

Q. What was the status of Mr. Jenkins in 1861?

A. He pretended to be a Union man; but I knew him to be a hypocrite.

Q. You state that you have known him to be a rebel, or a rebel sympathizer?

A. Well, I make use of the term "rebel," because any one that is opposed to our Government is a rebel at heart.

Q. How did you know him to be opposed to the Government?

A. I know it from his conduct. Actions speak louder than words.

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Q. What were his actions?

A. His general deportment and conduct, saying that the country would go to ruin, and the South would be successful.

Q. Did he say that to you?

A. He said it to other gentlemen who repeated it to me. I hold a secret commission under the Government.

Q. You did not hear him state it?

A. I did not hear him state it. I did not associate with him.

Q. Do you not know, that in 1861, Mr. Jenkins was a loyal man, that he labored himself, and that he urged others to labor, to keep the State of Maryland in the Union?

THE TRIAL.

A. No, sir.

Q. Are you not aware that he came to this city in 1862 and 1863 in order to get citizens who formerly resided in Maryland, but had moved to this city, and had not been here long enough to lose their residence in the State of Maryland, to return, and cast their votes for the Union ticket in the State of Maryland?

A. I do not think Mr. Jenkins ever voted for the Union ticket in Maryland.

Q. Do you not know that he raised a flag after the first battle of Bull Run; and that, when it was threatened to be torn down by rebel sympathizers, he gathered a band of twenty or thirty men, armed Union men, and staid by it all night?

A. He may have done a great deal; but I have never seen it.

Q. You know nothing of this?

A. I did not know it.

Q. You hold a secret commission, and all you know of Captain Jenkins is from what you have heard?

A. I never heard him called captain before: that is a new name.

Q. Well, Mr. J. Z. Jenkins?

A. He goes by the name of Zed Jenkins down there. He is commonly known by that name.

Q. You have not heard this?

A. No, sir; never.

Q. Then all that you know of J. Z. or Zed Jenkins, or whatever

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name you may have heard called by, is from having heard others speak of him?

A. I had occasion to call at the different polls, having the supervision of those matters; and Zed Jenkins always endeavored to raise a fuss at the polls, and to dissuade loyal men voting for the country, and for the Union cause in Maryland. Even at the last election in 1864, he said he would not vote for the damned abolition Government to save anybody's life.

Q. Did you hear him state that?

A. Our enrolling officer is here, and he will testify to that fact.

Q. Did you hear him state that?

A. No, sir: I was at my other polls. We had to lay the matter before General Wallace, and put him under arrest for the course of conduct he pursued. He never could have demonstrated his loyalty there. I positively state on oath that I know Mr. Jenkins is not a loyal man.

THE TRIAL.

By the JUDGE ADVOCATE:

Q. I understood the witness to speak from the reputation this man Jenkins bore, more than from his personal knowledge.

A. He bears that reputation in common with others in his neighborhood. I do not know a loyal man in the neighborhood except Mr. Roby and his son and a few others. We were in danger all the time,—so much so, that I called upon General Augur for a guard; and the Secretary of War gave me an order for that guard. I had it in my possession.

By the COURT:

Q. You say you are a Presbyterian minister?

A. Yes, sir.

Q. What branch of the Presbyterian Church?

A. The New-School Church.

Q. You are still in connection with the church?

A. I am a member of the Presbytery of the District of Columbia.

DORLEY B. ROBY,

a witness called for the prosecution, in rebuttal, being duly sworn, testified as follows:—

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By the JUDGE ADVOCATE:

Q. Are you acquainted with J. Z. Jenkins?

A. I am acquainted with him; have known him for several years.

Q. Has he borne the reputation of a loyal man during the Rebellion?

A. For the last three years, he has been one of the most disloyal men in our country.

Q. Have you personal knowledge of his disloyal conduct and observations?

A. Yes, sir; and from my personal observation of his conduct and conversation, I pronounce that opinion.

THE TRIAL.

Q. Has he been uniformly so?

A. Uniformly. He got so outrageous, that I had to apply to General Wallace, in Baltimore, to have him arrested. Since that time, he has behaved himself a little better.

Q. Is he known and recognized of all there as an open, outspoken enemy of the Government?

A. Yes, sir. I have heard him curse the President of the United States, damn him to all intents and purposes; and he said old Lincoln, the damned old son of a bitch, had offered him an office under him, but he would not hold an office under any damned creature or any such damned Government.

Cross-examined by MR. CLAMPITT:

Q. How long have you known Mr. Jenkins?

A. For four or five years.

Q. Were you a resident of the county with him in 1861?

A. I was not a resident of the county in 1861.

Q. Were you a resident of the county in 1862?

A. In 1863, I was a resident of the county. I was well acquainted with him in 1863.

Q. You were not a resident there in 1861 and 1862?

A. I was backwards and forwards there. I was born in Charles County, and raised in Prince George's, and have been through there backwards and forwards all the time.

Q. Then you did not know him to be a Union man in 1861?

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A. I knew him to be a Union man until about three years ago last fall. He was a very strong Know-Nothing, and I was a Know-Nothing also. We advocated the Know-Nothing principles together.

Q. What time did he abandon the Union party?

A. He abandoned the Union party about three years ago this fall. He lost a negro man, and it seemed that his loyalty extended only as long as the negro lasted. As soon as he lost the negro, he abandoned the Union principles.

Q. Do you not know, that in 1862 and 1863, he came to Washington City to get citizens who had left Maryland, but had not remained from the State long enough to lose their residence there, to return, and vote the Union ticket?

A. I do not know any such thing.

THE TRIAL.

Q. Do you know that, in 1861 and 1862, he was considered to be a loyal man from the fact that he raised a Union flag after the first battle of Bull Run?

A. I think the only flag he ever did raise was a Know-Nothing flag; and he raised that flag some time before that.

Q. What is a Know-Nothing flag?

A. It was a flag that the Know-Nothings used. It might have been the United-States flag. It was raised by that party.

Q. Then, if I understand you, the United-States flag and the Know-Nothing flag are synonymous?

A. Yes, sir.

Q. Then Know-Nothingism is the United States?

A. Yes: that is the reason I belonged to them.

Q. As a general thing, were not the Know-Nothings considered in Maryland to be a body of Union men, and Democrats the pro-slavery men or disunion and rebel sympathizers?

A. Yes: the Know-Nothings were generally considered Union men; but there were a good many like Mr. Jenkins, who went over to the rebels as soon as there was a division of parties.

Q. Is there a suit pending between you and Mr. Jenkins in the United States District Court?

A. At no time, and under circumstances, have I ever had

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any suit with Mr. Jenkins. Today, I bear no malice against any man living on the face of the earth.

Q. Do you know of any suit pending between you and any citizens of Maryland?

A. I know of a suit pending against my son, Andrew V. Roby, who was appointed Deputy United-States Marshal for the purpose of carrying out General Schenck's order at the election. He was ordered to have every man arrested who interfered with the election. Colonel Baker had a company of men there, and my son suggested to Colonel Baker's captain that he had better arrest that man. He did so; put him on a chair, and took a bottle of whiskey out of his pocket, and let him remain there until night. I was there; I was Deputy United-States Marshall also: and at night I thought the poor fellow had got sober; he looked very penitent; and I suggested to the captain that it was not worth while to bring him up to Colonel Baker's, but to let him go, and perhaps in future he would behave better. He did so at my suggestion.

THE TRIAL.

Q. What is the nature of that suit pending between Mr. Jenkins and your son?

A. A prosecution for false imprisonment, I believe

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. That is a State prosecution against your son for attempting to execute the Federal authority?

A. Yes: the Federal authorities took steps to have it removed to the United States Court; and they have the management of it now.

JOHN L. THOMPSON,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Where do you reside?

A. In Maryland.

Q. Are you well acquainted with J. Z. Jenkins?

A. I am pretty well acquainted with him.

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Q. How long have you known him?

A. Ever since I can remember.

Q. What has been his conduct and conversation, and his reputation for loyalty or disloyalty?

A. He was four years a loyal man, and about two years and six months he has not been.

Q. You mean four years ago before the last two years and six months?

A. Yes, sir.

Q. What has been his conduct as a citizen for the last two years and six months?

A. I think he has been on the Southern side.

Q. Will you state what has been his reputation? How is he regarded by the country at large?

A. I cannot tell you. He was not much respected, I think.

Q. Is he regarded as a loyal or disloyal man?

THE TRIAL.

- A. As a disloyal man.
Q. Is he open and outspoken in his disloyalty?
A. Yes, sir
Q. You are yourself a loyal man, are you not?
A. Yes, sir.
Q. And have been so throughout the Rebellion?
A. Yes, sir.
Q. Will you state whether or not you had any difficulty with Mr. Jenkins, growing out of your loyalty?
A. Yes, sir.
Q. What was it?
A. I went to Mr. Roby's son to aid me when I was drafted, he being a loyal gentleman; and he said he would let me cut my throat in consequence of it.
Q. Jenkins said that?
A. Yes, sir, and drew his knife against me.
Q. Why did he do it?
A. I do not know what was the cause of his doing it; because he hated the Government, I suppose: it must have been against the Government.
Q. What kind of knife?

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- A. It was a small penknife.
Q. Do you know anything as to the reputation for loyalty or disloyalty of Mrs. Surratt?
A. I think she was not loyal.
Q. Have you lived in her family?
A. Yes, sir.
Q. How long?
A. I lived in her family two years.
Q. What makes you say that she was not loyal? What evidence have you?
A. I had her evidence to believe that she was not.
Q. From her conversation, conduct, or what?
A. From her conversation.
Q. What was the character of that conversation? Cannot you give some idea of it to the Court?
A. No, sir; I cannot: it was against the Government.
Q. Was it always so?
A. Yes, sir.

THE TRIAL.

Cross-examined by MR. CLAMPITT:

Q. How long have you known Mr. Jenkins?

A. Ever since I was a child.

Q. Did you know him in 1861 and 1862?

A. Yes, sir: I have known him ever since I knew myself.

Q. You say he was considered a Union man in 1861 and 1862?

A. Yes, sir.

Q. Was he considered so in 1863?

A. No, sir.

Q. Do you not know that in 1863 Mr. Jenkins came to Washington to obtain voters,—men who had lived in the State of Maryland, in his and your county, but who had not lost their residence by thus removing from the State of Maryland,—and carried them there to vote the Union ticket?

A. I do not think Mr. Jenkins did that.

Q. You know nothing of that?

A. No, sir.

Q. You know nothing of his erecting a Union flag, and getting a band of men to surround it, and remain by it all night?

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A. Yes, sir.

Q. Do you know that he did it?

A. Yes, sir I do so.

Q. Do you consider that a disloyal act?

A. That was a loyal act of him at that time, because he was loyal then.

By ASSISTANT JUDGE ADVOCATE BURNETT.

Q. That was in 1861?

A. Yes, sir.

By MR. CLAMPITT:

Q. What caused the sudden change in Mr. Jenkins's loyalty?

A. I cannot tell.

Q. Did ever you have a conversation with him?

A. Many a time.

Q. Did you ever hear him make any disloyal remark?

A. Many a time.

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Q. What did he say?

A. He said that he hated the Government on the face of the earth.

Q. What Government?

A. This Government.

Q. Did he state his reason for it?

A. He did not.

Q. Did he say any thing about the emancipation of slavery in the State of Maryland?

A. He did.

Q. What did he say?

A. He said that it was all wrong.

Q. Did you ever hear him state, in 1863 and 1864, that he considered himself to be as good a Union man as there was in the State of Maryland, but that he was opposed to some acts of the Administration?

A. I never heard him say any thing about that.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Which side did he say would fight for in case he was forced to fight?

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A. He said he would go with the South.

MR. EWING and MR. STONE having appeared,

WILLIAM A. EVANS

was recalled, by consent, for cross-examination.

By MR. EWING:

Q. Will you state whether you have been acquainted with Dr. Mudd?

A. I know Dr. Mudd.

Q. Where have you seen him?

A. I have seen him at different times for the last fifteen years. I was preceptor in the family of Colonel Warren in 1850, and knew Dr. Mudd ever since. I have never been introduced to Dr. Mudd. I

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thought it of no use keep such company. They were opposed to my views and feelings, and did not wish to keep company with me.

Q. I did not ask you your reasons for not keeping company with him: I asked you where you knew him. You were preceptor in what family?

A. The family of Colonel Warren, contiguous to Nottingham,—John Henry Warren.

Q. When did you see him there?

A. I did not say I saw him there.

Q. Where did you see Dr. Mudd before this occasion of which you speak?

A. I have seen him in Bryantown, at the Catholic church. Father Courtney was the pastor of the church. I was sent there to be examined by Colonel Warren, before I took charge of his family. He [Dr. Mudd] was there at church.

Q. When was that?

A. That was in December, 1850.

Q. Was that in the town of Bryantown?

A. It was contiguous to the town, at the college or seminary.

Q. What time in 1850 was that?

A. I told you already it was in December, 1850.

Q. You were never introduced to Dr. Mudd?

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A. No, sir.

Q. When did you see him next after December, 1860?

A. At different times in Washington City.

Q. At what places?

A. On the street, and about the hotels and other places.

Q. Did you ever meet him in any house?

A. I think I met him at the National Hotel.

Q. Did you ever meet him at the house of any citizen?

A. I think I saw him last winter going into the house of Mrs. Surratt on H Street.

Q. What time last winter?

A. I could not say. I am called at different times to attend funerals, baptize children, &c.; but I could not say without referring to my journal. I could not swear to it.

Q. Were you at Mrs. Surratt's house last winter?

A. I never visited Mrs. Surratt's house in all my lifetime.

Q. Where is this house into which saw him enter, that you think was Mrs. Surratt's?

THE TRIAL.

A. On H Street, I think.

Q. Whereabouts on H Street?

A. I could not say positive; between Ninth and Tenth, or Eighth and Ninth Streets,—somewhere along there. I never placed the street, but I was told it was Mrs. Surratt's house.

Q. Who told you it was Mrs. Surratt's house?

A. I asked, because I saw rebels going there,—Jarboe and others; and I wanted to know whose house it was.

Q. Whom did you ask?

A. I asked a policeman, and some one living contiguous to the house; and I was told it was Mrs. Surratt who resided there.

Q. You say it was between Eighth and Ninth, or Ninth and Tenth Streets?

A. I cannot state positively; but I think it was on H Street. I was passing, along there, as business called me that way to see a minister: I know it was on H Street; I am positive it was on H Street.

Q. Cannot you recollect between what streets?

A. I cannot.

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Q. Was it between the Patent Office and the President's house?

A. It was.

Q. Are you certain of that?

A. I think so.

Q. What kind of a looking house was it?

A. It was a brick house, I think.

Q. Two-story or three-story?

A. Perhaps two-story, and an attic: I cannot say; I cannot positively swear as to that.

Q. Is it built out square on the front of the pavement, or does it set back in the yard?

A. I cannot recall my recollection positively as to that: I would not like to swear to what I do not know.

Q. Is it painted red, or painted another color?

A. I cannot say. This was during last winter; and I see so many houses, and go into so many, that I cannot recollect.

Q. But you recollect distinctly of his going into Mrs. Surratt's house?

A. I was told it was her house: I knew nothing about it.

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Q. But you recollect distinctly of Dr. Mudd going into that house?

A. He went into that house.

Q. And you think it was on H Street, between the Patent Office and President's house?

A. I should think so.

Q. Was there a porch to the house?

A. I cannot say.

Q. Can you recollect nothing about the house?

A. No, sir: I did not pay particular attention to it. I saw Jarboe going in there.

Q. Where did you see the policeman when you made the inquiry?

A. The policeman was walking along the street; and I also asked a lady.

Q. Who was the lady?

A. I cannot say.

Q. You did not know her?

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A. I did not know her name? [*stet*]

Q. Where was the lady? in a house near by?

A. She was contiguous to the house, standing on the pavement, or sweeping the pavement, or something of that sort, at the time.

Q. On which side of H Street was it?

A. It was on the left side coming down this way.

Q. That is, on the north side of the street?

A. I think it was the south side.

Q. You think it was the left-hand side going towards the Capitol?

A. I do not know the cardinal points of the compass here.

Q. Was it the left-hand side going towards the Capitol?

A. I think it was on the right-hand side going towards the Capitol.

Q. Which way were you going?

A. I was riding down the street, going to see the Rev. Mr. J. G. Butler, of the Lutheran Church.

Q. Did you see Mr. Butler on that day?

A. No, sir.

Q. Did you call to see him?

THE TRIAL.

A. No, sir: I was going to a Union prayer-meeting, and did not see him.

Q. I thought you said you were going to see Mr. Butler?

A. I wanted to see him, and, at the same time, call at the Union prayer-meeting.

Q. Did you go to the Union prayer-meeting?

A. I did.

Q. Where was it?

A. In his church.

Q. Did you see Mr. Butler there at the prayer-meeting?

A. No, sir.

Q. Whom did you see there?

A. A great many.

Q. Name some of them.

A. Ulysses Ward, and other members of different churches.

Q. Name some others.

A. I cannot name them. I cannot state positively who were there. There were members of different churches assembled there.

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Q. Can you name anybody besides Ulysses Ward who was there?

A. I cannot. I do not know the members of the different churches. They know me as a minister but I am not personally acquainted with them, except those of my own congregation.

Q. Name any one person that was at the prayer-meeting but Ulysses Ward.

A. I cannot bring them up to my recollection. I do not think it is necessary.

Q. It is necessary. I ask you the question; and I want you to answer it, if you can.

A. I answer to the best of my ability.

Q. See if you cannot name somebody else who was there.

A. I cannot.

Q. Can you name anybody else you saw that day?

A. No sir; not particularly. I saw Mrs. Pressy, Miss Pumphrey, and several others, on that day.

Q. At their houses?

A. At their houses: I visited them.

Q. State where they live.

A. They live on Fifth Street, between I and K.

Q. State their full names.

THE TRIAL.

A. Mrs. Sophia Pressy and Miss Pumphrey.

Q. Did you call on either of those ladies afterwards during the winter?

A. I called on them often.

Q. During the winter afterwards?

A. Oh, yes sir! When I was detained in town preaching at night, I used to remain there.

Q. At which house.

A. At the house of my wife's aunt.

Q. What is her name?

A. Mrs. Pressy.

Q. What other persons did you call upon on that day on which you saw Dr. Mudd going into Mrs. Surratt's house?

A. I called on different members of my congregation.

Q. Name them.

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A. I called on some families that reside on Thirteenth Street, between E and F. They are colored families. I was pastor of the Fifteenth-street Presbyterian Church; and I visited them all. I made it a point to visit every family connected with the church. I passed a great deal through the city, attending to the discharge of my duties.

Q. I am speaking of the persons you called on on that day.

A. I do not know particularly: without referring to my journal, I could not positively state. I did not think I would be called upon in regard to that.

Q. Can you fix that day by referring to your journal?

A. I do not know that I could particularly fix that day, because I did not put down Dr. Mudd's name: but I saw Jarboe and Mudd and others go in there; and knowing them to be disloyal, I wanted to know who resided there.

Q. I want you, when you leave the stand, to go home and return with that journal, and endeavor, if possible, to fix the day on which you saw Dr. Mudd.

A. I cannot do it.

Q. I want you to endeavor to fix the day on which you saw Dr. Mudd going into Mrs. Surratt's house.

A. It would be impossible for me to get possession of my books now, because I was then Moderator of the Presbytery of the District of Columbia, and our books are not to be taken out of the churches: it is not allowed. I am not now pastor of that church. I

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am pastor of the church in Baltimore County called the Granite Church.

Q. Who is the pastor of that church?

A. Dr. Garnett, colored.

Q. Who has possession of that journal that you speak of?

A. The journal of the visits I made, and the baptisms, &c., is in the possession of the trustees of the church; not particularly the visits on that day any more than any other day. You could not gather any information from the journal were it here, particularly as to the 1st or 2d or 3d or 4th of March. I visit every day that I can.

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Q. Who has possession of that journal?

A. The proceedings of the sessions of the church, and the baptisms, marriages, and communion-seasons by the pastor, are all concentrated, and put in a session journal just by the pen of the moderator.

Q. Who has possession of that journal?

A. The journal of my baptisms, marriages, and deaths, is in possession of the moderator of the church, who is also pastor of the church.

Q. Name him.

A. The Rev. Henry Highland Garnett; but my own private journal I keep in my own possession, and it is in my secretary at home. That would have no reference at all to my visits on the 1st or 2d of March. If we had a hundred such journals, they would have no effect here at all, and could not bear on the point in any way whatever, as I did not put down Dr. Mudd's name or Arnold's name.

Q. What journal did you refer to as being the journal to which you might refer for the purpose of fixing the date of your seeing Dr. Mudd go into Mrs. Surratt's house?

ASSISTANT JUDGE ADVOCATE BINGHAM. The witness did not make any statement of that kind; and the counsel has no right to assume any such thing.

The WITNESS. I told you that the families I visited would be put down in the journal; but I did not put down Dr. Mudd's name.

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Q. I ask you what journal did you refer to, as being the journal which would enable you to fix the date of your seeing Dr. Mudd go into Mrs. Surratt's house.

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question. It was an assumption that the witness had sworn that there was a journal that would enable him to refresh his recollections as to the day on which he had seen Dr. Mudd. The counsel had no right to assume any such thing, nor had the witness sworn, to any such thing.

The WITNESS. One was a register of baptisms, deaths, burials, &c., and the other my private journal; and I could not place the

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day when I saw Dr. Mudd from them. I never put down Dr. Mudd's name.

ASSISTANT JUDGE ADVOCATE BINGHAM stated that the witness had repeated over and over again, before this question was asked, that the journal would throw no light on the question as to the day he saw Dr. Mudd, and that was on the record.

The WITNESS. That is what I said. I certainly could not have said, that, by referring to that journal, I could say when Dr. Mudd went to that house, because I never placed any thing in reference to that on the journal; and the journal would not enable me to say when it was.

MR. EWING insisted on the question as a legitimate question in cross-examination.

ASSISTANT JUDGE ADVOCATE BINGHAM said that it was not legitimate in any shape to assume what a witness says contrary to the record.

The COMMISSION sustained the objection.

By MR. EWING. In whose possession is the journal to which you have referred?

The WITNESS. Which journal?

Q. Both the journals.

A. I recollect baptizing during the whole of last winter. I cannot specify the day, as I told you before.

Q. Please to answer my questions. Where are the journals that you have referred to?

A. I have a private journal of my own that I keep in my possession.

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Q. Where is the other journal to which you have referred? In whose possession?

A. The church session book is in possession of the pastor of the church.

Q. Is that the other journal to which you have referred in your testimony?

A. That journal has no reference to any thing I have said here.

Q. Is that the other journal to which you have referred in your testimony?

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A. Those are the only two journals that I have referred to.

Q. Is that the other journal referred to in your testimony?

A. Doubtless it is.

MR. EWING. May it please the Court, the witness is disposed to do his own talking, and answer no questions. I want an answer to my questions.

The WITNESS. I am entitled to respect as well as you; and I hope you will treat me with respect as a Christian minister.

The PRESIDENT. It is your duty to answer the questions.

The WITNESS. I have said the book had no reference at all to my going on the street that day. I cannot answer a question before he commences to ask another.

The last question was re-read to the witness, as follows:—

Q. Is that the other journal referred to in your testimony?

A. I emphatically state that that has no reference to, and will throw no light on, any thing said on this subject to-day.

Q. Is that the other journal to which you have referred in your testimony?

A. Yes, sir; that is the other journal.

Q. Now, if you please, state the appearance and character of any of the houses adjacent to the one that you saw Dr. Samuel Mudd enter in December.

A. There are brick houses along there; there are some frames; there are some common shanties; and there are churches.

Q. On the same square.

A. On H Street: I do not say on the same square. I passed along the street, and did not pay particular attention to the square. I knew I was on H Street.

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Q. Can you give the description of any of the houses on the same side of the street, and on the same square of the house Dr. Mudd entered?

A. I cannot positively state. I cannot describe any of the houses now, it being more than six months ago. It would be impossible for me, passing over the city as I do, to pay particular attention to the houses in that locality. I cannot describe the houses.

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Q. Cannot you describe any of the houses on that side of the street, and on that square?

A. There are two-story and three-story houses along there, to the best of my knowledge.

Q. Brick?

A. Brick and frame. I saw a few frames there, I think.

Q. On the same square and same side?

A. I cannot say what square. I speak of the street.

Q. I am speaking of the square.

A. I cannot state the square.

Q. Can you describe any of the houses on the same square, and on the same side of the square?

A. No, sir.

Q. Can you describe any houses on the same square, and on the opposite side of the square from Mrs. Surratt's?

A. No, sir.

Q. Can you tell whether the house Dr. Samuel Mudd entered was near the centre of the square, or near the corner?

A. I cannot say. I only know that I was informed that Mrs. Surratt lived there; and that Mr. Jarboe of Prince George's, and Dr. Mudd, entered it.

Q. Have you ever passed that house since?

A. No, sir.

Q. And you inquired as to who lived there of whom else besides the policeman.

A. Of a lady, I told you.

Q. What is her name?

A. I cannot say.

Q. Did you inquire of anybody else?

A. No, sir.

Q. Was it of the lady living in the adjoining house?

A. No, sir.

Q. How far off?

A. A short distance off. I turned around, asked who lived there.

Q. Please state what other persons you visited on that day on which saw Dr. Mudd enter Mrs. Surratt's house.

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A. I could not give the names positively. I could not place the names.

Q. Can you give no names?

A. I cannot.

Q. Not one?

A. I could give one, I believe. I visited a family on Thirteenth Street. I cannot give their names now.

Q. On what part of the street?

A. Between E and F Streets.

Q. A colored family?

A. Yes, sir; they keep a boarding-house. Senator Conness boarded there last winter. I know them very well: they are members of the colored church.

Q. You visited that family the same day?

A. Yes, sir; and also another colored family, between Eleventh and Twelfth Streets, on an alley running back.

Q. Give a description of that house.

A. That house is in an alley between Eleventh and Twelfth, and between I and K.

Q. Do you know the name of that family?

A. I do; but I am so confused at present, that I cannot recollect it. I have been so confused since the death of President Lincoln, that I really, at times, am bordering on insanity almost: I never got such a shock in all my life.

Q. Confine yourself to the answers to the questions.

A. I cannot give the names at present. I cannot recollect the names.

Q. See if you cannot recollect some other family you visited.

A. No, sir: I cannot recollect any other family.

Q. When you were passing Mrs. Surratt's house, were you on foot, or on horseback.

A. I was driving in my buggy.

Q. How was Dr. Mudd dressed?

A. He had on dark-colored clothes. I think, to the best of my knowledge, with some kind of a brown overcoat. I cannot positively state the color. I think they were dark.

THE TRIAL.

Q. What sort of a hat had he on?

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A. A soft, slouch hat.

Q. What color?

A. Dark.

Q. How long had it been before that that you had seen Dr. Mudd?

A. I passed up and down the road almost every day as I came up from my home in the country.

Q. I ask you a question as to how long before that you had seen Dr. Mudd, before you saw him go to Mrs. Surratt's house?

A. I cannot say positively. He passed me often on the road from his home to the city,—not often, either; perhaps once in two weeks or so. I cannot state positively; but he often passed me. When I would be going home, he might be going home; and, when I was coming up in the morning, he would often be coming up to the city, and his brother also, sometimes his father. I know all those men in the country.

Q. You know his father?

A. I am not personally acquainted with his father. I know him when I see him.

Q. When did you see him last?

A. I have not seen him for a long time.

Q. How long?

A. It is some years.

Q. Then, when you speak of his coming to the city with his father, you are referring to several years back?

A. Perhaps eighteen months to two years. I might have passed him oftener; but I won't state positively.

Q. Can you state when you saw his father coming with him within two years?

A. Not with him: I did not say so at all.

Q. Have you seen his father come to the city at all within two years?

A. I might have seen him: I cannot state.

Q. You spoke of seeing his father?

A. You asked me if I was acquainted with his father, and I said yes.

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Q. You spoke of seeing his father with him, and passing him on the road. When was that?

A. I cannot state.

Q. Within two years?

A. It might have been, and might not.

Q. Was it within three years?

A. Oh, yes, sir!

Q. You are certain of that?

A. Yes, sir: I have been passing up and down that road for twelve years, when I could pass it.

Q. How often have you seen Dr. Mudd's father pass up and down that road within three years?

A. I cannot state positively.

Q. Can you say positively that you have ever seen him within the last three years?

A. Perhaps I have seen him, or a man pointed out to me as Dr. Mudd, sen.

Q. Are you as certain that you have seen Dr. Mudd's father, or a man who was pointed out to you as such, passing up and down the road within three years, as you are that you have seen Dr. Mudd himself?

A. I would ask the gentleman who was riding with me who that was that was passing by. These gentlemen were pointed out to me fifteen years ago by the Rev. Father Courtney. He was a friend of mine; and, I believe, introduced me to several,—Dr. Garner and several others there.

Q. How often have you seen Dr. Mudd's father passing up and down the road within four years?

A. I cannot say.

Q. More than once?

A. I cannot say.

Q. Are you certain that you have seen him pass up and down the road within four years at all?

A. I am.

Q. How long have you lived at that place.

A. When I could live there, I have lived there perhaps nearly fifteen years, but I often had to run away from there. I had to go

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to Europe on account of being an abolitionist. No man ever received worse treatment than I have there.

Q. I asked you how long you had been living there.

A. When it was peaceful there, I have lived there, off and on, for fifteen years.

Q. Have you been constantly living there for five years?

A. Yes, sir.

Q. And have you seen Dr. Mudd's father pass up and down the road frequently?

A. I should say, in regard to the last question, that I have not been there constantly. I would go there on Monday to visit my family, and then go to the churches on Saturday again.

Q. But your family have been living there for five years past?

A. For fifteen years.

Q. And you have seen Dr. Mudd's father pass frequently during the last five years?

A. No frequently.

Q. How often?

A. I cannot say how often.

Q. Now state how it is that you are enabled to fix the date from the 1st to the 3d of March as being the day on which you saw Dr. Mudd riding into town.

A. I hold a position in the Post-office Department, and I was making arrangements to come up to the inauguration on the 4th of March; and I was coming up very early on those mornings to do extra work in order to be present at the inauguration. Dr. Mudd drove on past me. My horse got scared at the time, and was very near throwing me out. I remarked, as he passed by, how rude he was in almost knocking his wheel against my buggy; and I came home, and told my wife I was very near being thrown out. I have only one leg, and it is difficult for me to get along. I could not get out of my buggy if the horse ran away.

Q. When did you commence this extra work, so as to be enabled to attend the inauguration?

A. Several days before the inauguration.

Q. Three or four days before?

A. About the latter part of February. I always like to dis-

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charge my duty. I have a certain amount of work to do, and I want to do it.

MR. EWING. We do not want your personal history.

The WITNESS. You seem to be so precise. I want to give you every thing connected with it.

MR. EWING. We are not so precise as to your personal history.

The WITNESS. A little of it will not do you any harm.

MR. EWING. I do not think it will do any good in this case.

The WITNESS. We are all free men and equal men, and can talk as we please.

MR. EWING. If the Court wishes this examination continued perpetually, this witness may be indulged in his lucubrations as to his history and answers to every thing except the questions that I propose. I ask the Court really to restrain him somewhat, and to enable me to get through the examination with him.

The PRESIDENT. The witness has been told once that he must reply to the questions.

The WITNESS. I have answered *every* question that he asked me, to the best of my ability.

The PRESIDENT. We do not want any thing else but answers to the questions.

The WITNESS. Very well: I will answer them.

The PRESIDENT. If you do not do as you are directed, we will try—

The WITNESS. And make me do it.

The PRESIDENT. Yes, sir.

Q. [By MR. EWING.] Now fix as precisely as possible, the time, the day, when you met Dr. Mudd.

A. About the 1st or 2d of March.

Q. Can you say it was either on the 1st or 2d day of March?

A. I would say about that time.

Q. Do you think it may have been on the 28th of February?

A. I am sure it was not.

Q. Was it not the 27th of February?

A. No, sir.

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Q. The 26th of February?

A. No, sir.

THE TRIAL.

Q. Are you sure it was after the 28th of February?

A. I am sure it was.

Q. You are certain, then, that it was either on the 1st or 2d day of March?

A. Yes, sir; to the best of my knowledge.

Q. What time was it in the morning?

A. About six o'clock in the morning, by my time. I generally keep a timepiece in my pocket [drawing out a watch, and exhibiting it to the Court].

Q. What sort of a buggy was Dr. Mudd driving?

A. I could not say exactly, because I had to pay all the attention I possibly could to my horse; but it seemed to be what we would term a rockaway.

Q. What sort of a horse was he driving?

A. I cannot tell whether it was black, brown, gray, or white.

Q. Who was with Dr. Mudd?

A. I could not say.

Q. Was anybody?

A. There seemed to be a driver in the buggy with him.

Q. Was it a single-seated buggy?

A. The curtains were down, and I cannot positively state. He was passing me quickly at the time.

Q. Was there anybody else in the buggy with him?

A. I told you there was a driver.

Q. Anybody besides the driver?

A. No, sir; except Dr. Mudd.

Q. Was he a white driver, or a colored one?

A. I could not say.

Q. Do you know how Dr. Mudd was dressed?

A. No, sir.

Q. Did you see him until he passed?

A. I looked around as he was coming up with the horses on the wheel swiftly, and I saw that Dr. Mudd was in the buggy.

Q. Were there two horses in the buggy?

A. Yes, sir.

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Q. Do you live on the road between Washington and Surratsville?

A. No, sir.

Q. On what road do you live?

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A. I live on a road that runs from that—what they call the new-cut road—to the Marlboro' Road,—between those two roads. It is, strictly speaking, between Washington and Surrattsville; but it is a little to the left.

Q. It is not the direct road between Washington and Surrattsville?

A. It is about a mile off the direct road.

Q. How much farther is that road to Surrattsville than the direct road?

A. You can go as far as Swann's towards Surrattsville, and then turn into my own house.

Q. How much farther is that road to Surrattsville than the direct road?

A. I can go on the road to Surrattsville as far I do go, and then turn into my own house.

Q. How much farther is that road to Surrattsville than the direct road?

A. I do not understand what road you mean.

Q. The road you live on.

A. I live on no road, particularly speaking. I live between the two roads,—the Marlboro' Road and the Surrattsville Road,—on a kind of road that leads into my father-in-law's place, off the Surrattsville Road.

Q. How far off the Surrattsville Road?

A. I told you about a mile.

Q. Whereabouts was it on the road from here to Surrattsville that you saw Dr. Mudd that morning?

A. On the other side of what they call Ridgeway's Hill.

Q. How far from here?

A. About five or six miles.

Q. How far did you notice him as he came in?

A. I kept on from one hill to the other.

Q. How long did you notice him?

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A. Until he got to the bridge.

Q. On this side of the bridge?

A. I noticed, when on Good-Hope Hill, that he was going down to the bridge.

Q. Did you notice him this side of the bridge?

THE TRIAL.

A. No; not particularly. We are not allowed to trot on the bridge. He kept on over the bridge, and I kept on behind him: I had to come slowly down Good-Hope Hill.

Q. Where did you see him last? on what part of the road?

A. On the bridge, I think. I could see the vehicle on the bridge as I was coming down the road near the bridge.

Q. Did you see it stop anywhere?

A. No, sir.

Q. Did you stop anywhere?

A. No, sir: I never stopped.

Q. Where did you go that day after getting into the city?

A. I put my horse up at Pope's stables, and went on down to my office, in the Post-office Department, in the cars.

Q. You are certain he had two horses in the buggy?

A. I believe he had two, to the best of my knowledge.

Q. In your examination in chief, you said he had one horse, and that it was a fiery horse?

A. No, sir. You asked whether he had one horse or two horses, and I told you I thought he had two; that his horses were fiery, and passed by me quickly.

Q. Was it what is called a single buggy, or a double buggy?

A. I could not say: the curtains were down.

Q. Was it what is called a carriage, a two-seated carriage?

A. I told you it was what is termed a rockaway.

Q. To whom did you first mention the fact that you had met Dr. Mudd that morning?

A. I did not mention it to any person in particular, only my wife. I said that I was very nearly being thrown out of my buggy. I did not think it worth while to mention it to any one.

Q. Did you mention it to nobody until you got on the stand?

A. Oh, yes, sir!

Q. To whom did you mention it?

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A. I mentioned it to the Judge Advocate.

Q. To whom else?

A. No person else, except Mr. Roby, I believe. I had no person to mention it to.

Q. When did you mention it to Mr. Roby?

A. This morning, when I saw him.

Q. The detective?

A. I believe he is a detective.

THE TRIAL.

Q. Did you mention it to anybody else but the Judge Advocate, and Mr. Roby the detective?

A. I told you that I mentioned it to my wife; to no else that I know of.

Q. When did you mention it to the Judge Advocate?

A. This morning.

Q. To whom did you first mention the fact that you had seen Dr. Mudd go into Mrs. Surratt's house?

A. I do not know that I mentioned it to any one in particular. I have often told my father-in-law since the assassination, that I saw those characters, Mr. Jarboe and Dr. Mudd, coming out and going in that house that day.

Q. What is the name of your father-in-law?

A. Judson C. Pumphrey; the only loyal Pumphrey in Maryland.

Q. When did you mention it to him?

A. Since the assassination.

Q. Where?

A. At our own house.

Q. Can you tell anybody else to whom you mentioned it?

A. No, sir. I may have mentioned it to some of the clerks in my room at the department; but I cannot state positively whether I did or not.

Q. Do you know John H. Surratt?

A. I was not personally acquainted with him. I knew him when he passed me up and down, and his father, and Mrs. Surratt, and all of them.

Q. Did you see the face of the person that you saw going into Mrs. Surratt's house, whom you took for Dr. Mudd?

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A. Oh, yes! I saw the face. I saw Mr. Judson Jarboe shaking hands with a lady at the door.

Q. I am not asking about Jarboe.

A. I paid attention to that fact and this gentleman [Mudd] walking in at the time.

Q. Did he go in at the same time with Jarboe?

A. Jarboe was coming out as he was going in, I believe.

Q. Who was the lady that met him at the door?

A. I cannot positively state: perhaps it was the daughter of Mrs. Surratt.

Q. Have you ever seen her?

THE TRIAL.

A. I have seen them all: but I could not positively swear now whether I could identify them or not.

Q. You think it was the daughter of Mrs. Surratt who was at the door?

A. I took her to be the daughter from the striking likeness to the mother.

Q. Endeavor to recollect when it was that you saw old Mr. Mudd last on the road.

A. I cannot bring it my recollection.

Q. Can you recollect whether he was riding on horseback?

A. He was driving in some kind of vehicle: I cannot tell what kind.

Q. A buggy or rockaway?

A. I cannot tell now, distinctly, exactly what kind of a vehicle it was.

Q. What kind of looking man is the old gentleman?

A. An elderly-looking gentleman.

Q. How old?

A. I cannot positively say: perhaps about sixty or sixty-five, or along there. I do not know positively.

Q. About how large?

A. He is a middle-sized man. I never measure men when I am not bound to do it: I pass them by, speak politely, and go on.

Q. Did you ever meet Dr. Samuel A. Mudd in any house except in the National Hotel, as you stated before?

A. Never, except at church at Bryantown. I met a great many

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of those men there at that time. Father Courtney introduced me.

Q. That was how many years ago?

A. That was in 1850.

Q. You never saw him in a house afterwards, except at the National Hotel?

A. No, sir: I taught in Mr. Plummer's house afterwards, and used to come up with Mr. Plummer to the National Hotel, and stop there with him. When I left Mr. Warren's, I entered as preceptor in the family of Mr. Mordecai S. Plummer.

Q. What time in 1850 was it that you saw Dr. Mudd at Bryantown?

A. Somewhere about November or December. I cannot place the time exactly.

THE TRIAL.

Q. As you were coming in on the road, when you saw Dr. Mudd last, did you meet or pass any persons?

A. No, sir: it was too early in the morning. I generally came into my office, and entered on the discharge of my duty, at seven o'clock: The Postmaster-General gave me that privilege.

Q. Did you meet nobody and pass nobody that morning?

A. Not that I recollect.

Q. Did you see anybody at the bridge, or near the bridge, as you came along?

A. No, sir: there were soldiers guarding the bridge as usual.

Q. Did you see Mr. Martin as you passed his house?

A. Sometimes I see Mr. Martin, and sometimes I do not.

Q. Did you then?

A. No, sir: I cannot say positively that I did.

Q. Did you meet anybody that you knew as you were crossing the bridge?

A. No, sir.

Q. Or on this side of the bridge?

A. No, sir. I think I met the baker who generally goes out with bread. I do not know his name. He is a German. He passes me every morning, generally. He goes over the bridge with bread. I think I met him.

Q. Where did you meet him?

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A. About the draw.

Q. Do you know where he lives?

A. No, sir; I do not. I do not know his name.

Q. Where does he take bread to sell?

A. I think he takes it to Martin's, and to a German's, contiguous to Martin's: I do not know the name. I believe he takes bread over to those stores in what they call Uniontown.

Q. You mentioned to no officer or employé of the Government the fact that you met Dr. Mudd that morning, except as you have stated?

A. No, sir.

Q. You mentioned it to nobody but the persons you have named?

A. To no person else.

Q. When was it that you saw Dr. Mudd last, before he passed you on the road?

THE TRIAL.

A. I cannot say positively. He passed often on the road during last winter: I cannot say when I saw him last. I think he came up once with this Herold here [pointing to David B. Herold, one of the accused]. Herold used to come up and down the road very often.

Q. When was that?

A. I cannot place the time. I never retained it in my mind. I did not think it would ever be worth my while to retain any such thing.

Q. Was it a year ago?

A. It might have been about that time: it might not have been so long.

Q. On further reflection, about how long ago do you think it was that you saw him going into Mrs. Surratt's house?

A. It was some time during the winter, for it was in cold weather.

Q. State whether old Mr. Mudd wears whiskers or not.

A. I cannot state now.

Q. Can you state what sort of a day it was when you met Dr. Mudd on the road?—whether it was clear, or cloudy, or rainy?

A. It was cloudy, I think. At that time in the morning, I could not tell: the sun was not up.

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By MR. CLAMPITT:

Q. Did you say that Mr. Jarboe was in company with Dr. Mudd?

A. No: I did not say he was in company. I said that I saw Mr. Jarboe coming out of the house of Mrs. Surratt when Dr. Mudd was in the act of going in.

Q. At what time in the day was it that you passed Mrs. Surratt's house?

A. It might have been about eleven o'clock; I cannot say positively.

Q. Did you not remark that you were on your way to prayer-meeting at the time?

A. No, sir: I was on my way to see Dr. Butler. We have prayer-meeting occasionally, and a minister takes charge of the prayer-meeting. I said I was on my way to visit some families, and then, in that neighborhood, to go to prayer-meeting. Being lame, I take pains to arrange my journeys so as not to be going over the same ground again.

Q. Where does Dr. Butler reside?

THE TRIAL.

A. One door from his church.

Q. Where is his church?

A. At the corner of Eleventh and H Streets.

Q. How far is that from the house where you saw Dr. Mudd go in?

A. I cannot say positively now.

Q. How many blocks do you think?

A. I cannot say.

Q. Did you not remark that it was between Eighth and Ninth Streets?

A. I thought it was between Eighth and Ninth, or Ninth and Tenth Streets,—along there; for I visited some families between Eleventh and Twelfth Streets, and came down on other streets to where those colored families reside.

Q. Were you walking, or riding.

A. When I was going down that time, I was driving in my buggy.

Q. Did you not remark that you found out that it was Mrs.

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Surratt's house from the fact that you turned, and accosted a young lady on the pavement, a few steps off?

A. I asked a young lady on the pavement whose house it was. I asked her who resided there, because Mr. Jarboe had murdered one of our citizens, and I wanted to know who resided there.

Q. How could you ask a lady the question when you riding in your buggy?

A. I drove along up to the pavement.

Q. Then you rode along: you did not turn around?

A. The lady was on the pavement; and I drove in towards it.

Q. How long ago was this?

A. I cannot state.

Q. Did you not say it was six months ago?

A. I said it was about six months ago, or better: I said it was winter time. It might have been seven or eight months ago for aught I know: I cannot positively swear.

Q. Do you not think it was seven or eight months ago?

A. It was in winter time, cold weather,—last winter.

By MR. AIKEN:

Q. What is Jarboe's given name?

THE TRIAL.

A. Judson C. Jarboe.

Q. And you state that you saw Judson C. Jarboe come out of Mrs. Surratt's house?

A. Yes, sir.

Q. Are you a minister now?

A. I am a minister now; have been for fifteen years.

Q. When did you lay aside your clerical robes to become a detective officer?

A. I did not say I was a detective officer.

By MR. CLAMPITT:

Q. Do you not hold a commission under the Government?

A. I hold a secret commission under the Government,—to discharge my duty.

Q. What is the nature of your commission?

A. To arrest deserters and disloyalists wherever I find them.

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By MR. AIKEN:

Q. Then you are detective?

A. I am. I wish to discharge my duty towards the Government to the best of my ability, and never received one cent for any duty of that kind.

MR. CLAMPITT: That is totally irrelevant.

Q. [By MR. AIKEN.] When you were a minister, and about the time you laid aside your clerical robes to become a detective—

The WITNESS. I never did that. I think minister and citizen, and every man, has a right to sustain the Government; it is his duty; and I have done it.

Q. Do you know any thing of the code of morals as announced by certain detectives?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to any such question. You might as well ask him if he knows any thing about a Dutch almanac.

The JUDGE ADVOCATE. I think this witness has been treated in a very extraordinary manner.

MR. AIKEN. I waive the question.

The JUDGE ADVOCATE. I have borne with this treatment of the witness, because, although the matter was totally irrelevant, I knew it would not be competent for the counsel to occupy the time of the Court hereafter in contradicting what the witness was speaking; but when there is a studied effort made to trample upon this witness, and to insult and degrade him, simply because he is upon the witness-stand, I think he is entitled to the protection of the Court. His answers are unfortunately unpleasant; but we cannot help that: he is still entitled to be protected here; but the questions are as offensive to him personally as they can be made.

MR. EWING. Do you allude to any questions I have asked?

The JUDGE ADVOCATE. Not at all. I am speaking of the questions just asked.

MR. AIKEN. We have had occasion, may it please the Court, to censure ourselves more than once, in the course of the examination of witnesses introduced on the part of the Government, because we did not then and there ask them certain questions; and

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we have been obliged to ask for a recall of those witnesses after learning more of their character and antecedents. I must say, knowing as much as I do of the witness now upon the stand, that he has been treated with exceeding leniency and exceeding kindness by me, much more so than I really felt to be his due when I asked him that simple question.

ASSISTANT JUDGE ADVOCATE BINGHAM. Do you insist on that question?

MR. AIKEN. I do not.

ASSISTANT JUDGE ADVOCATE BINGHAM. Then that is the end of it.

MR. EWING. If the remark of the Judge Advocate is applicable to counsel generally, I have simply to say that I conducted the cross-examination of the witness, as far as I am concerned, according to the rules of propriety which govern members of the bar, and that I do not hold myself amenable to the censure which has been broadly laid upon the counsel for the accused.

The JUDGE ADVOCATE. I thought I said to the gentleman that my remark did not apply to him.

MR. EWING. That was not said to the Court.

The JUDGE ADVOCATE. My remark was in relation to the questions last addressed to the witness.

FANNIE MUDD,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Are you a sister of the accused, Dr. Samuel Mudd?

A. He is my brother.

Q. State to the Court whether you know where your brother was from the first to the fourth day of March last, and give the circumstances.

A. Yes, sir: the first day of March was Ash Wednesday. We were particularly anxious to go to church that day. Rising in the morning, my sister was sick, and she was unable to rise. However, we went to church, and left her at home. On the second day,

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which was Thursday, my father sent out early in the morning to her room to know how she felt. She sent him word that she felt very badly, and was afraid she had the small-pox. He immediately got out of his bed, and went for my brother to come; and he came over with my father to breakfast.

Q. Thursday was the 2d of March?

A. Yes, sir: Friday was the 3d of March. It was a rainy, dark day; and my brother was in the barn, stripping tobacco, midway between his house and ours, and between eleven and twelve o'clock came over home to see my sister. He then took dinner with us. As he came from the barn, he had not his medical case with him. He went back home again; and, later in the evening, he came over, and brought the medicine which my sister required. That was two visits on the 3d of March. On the 4th of March, it continued to rain. He came over again to dinner on that day. On the 5th of March, which was Sunday, he came with my brother-in-law, Dr. Blanford, in the evening.

Q. State how far your father's house is from your brother Dr. Samuel A. Mudd's house.

A. I think, about half a mile.

Q. And how far from Washington?

A. We call it thirty or thirty-two miles from our house to Washington.

THE TRIAL.

Q. He took dinner, then, at your father's house on the 3d of March and on the 4th?

A. Yes, sir.

Q. At what time in the day?

A. We are very early risers, and we have regular hours; and our dinner-hour is twelve o'clock. I am pretty sure our dinner that day was about twelve o'clock, or it may have been a little after.

Q. Did you see him on the 1st of March?

A. No: I did not see him on the 1st of March. My sister was sick; but we did not think her case required the attention of a physician, and we did not send for him on the 1st of March.

Q. Do you know any thing of his having been absent from home on the 1st of March?

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A. No, sir: I am pretty sure he was at home.

Q. Did you see him on the 2d of March?

A. Yes, sir: he took breakfast with us on the 2d of March.

Q. At what hour?

A. I suppose our breakfast time is about seven o'clock. We are very early risers, and have early breakfasts.

Q. Did you see him again on the 2d?

A. I did not again on the 2d: I only saw him once that day.

Q. Have you any knowledge of his having been absent from home on the 2d?

A. No: I am sure he was at home. I feel confident he was at home.

Q. On the 3d of March, what time in the morning was it that he came to your father's house?

A. Between eleven and twelve o'clock: he came from his barn directly, because as he came in, he remarked to my mother—

ASSISTANT JUDGE ADVOCATE BINGHAM: You need not state any thing he said.

Q. [By MR. EWING.] How long did he remain that first time, on the 3d of March?

A. I think he staid until two o'clock, or about that time. I am not very sure.

Q. He took dinner there?

A. Yes, sir: he took dinner there.

THE TRIAL.

Q. Do you know any thing of his having been absent from home at any time between the 1st and 5th of March?

A. I am confident he was not absent. We are very near, and go backwards and forwards,—sometimes, probably, twice a day.

Q. Were you in the habit of visiting your brother's house frequently during last summer and the summer before?

A. Yes, sir; very frequently.

Q. And the summer before that?

A. Yes, sir.

Q. Did you ever see or hear of John H. Surratt being at your brother's house?

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A. Never.

Q. Or Booth?

A. Never. I heard of his being there once; but I did not see him.

Q. When was that?

A. I think it was probably about November; some time in November.

Q. Do you know what time in November?

A. I think it was in the early part of November, the first of the month; but I am not sure.

Q. How often have you heard of Booth being in that country?

A. But the once. Since this trial has been going on, I have heard he has been there twice; but I never heard that until this trial has been going on.

Q. Did you know any thing of there having been a party of men sleeping in the pines, near your brother's house?

A. In 1861, I think there were three gentlemen who slept there,—Mr. Jerry Dyer, Andrew Gwynn, and Bennett Gwynn. I do not think these gentlemen secreted themselves hardly, except during the night.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what you think about it.

A. There was one of the party who is very fond of music, and he was an intimate friend of ours, and he came to spend the evening with us twice at my father's house.

Q. Who was he?

A. Mr. Andrew Gwynn.

THE TRIAL.

Q. Have you seen any thing of him since the year 1861?

A. No, sir: I believe he left that year; and I have never seen any thing of him since.

Q. Have you heard of his being at your brother's house since?

A. No, sir.

Q. Did you ever hear of Captain Perry or Lieutenant Perry being at your brother's house?

A. Never.

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Q. Did you ever see or hear of any parties of Confederate officers or soldiers being about your brother's house?

A. Never.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

Q. When did you hear that Booth was at your brother's house?

A. I think, the first part of November.

Q. Last November?

A. Last November.

Q. Do you know that your brother was not absent from home on the 1st of March?

A. Yes, sir: I am positive of it.

Q. Do you know?

A. I did not see him that day.

Q. Then you do not know personally any thing about it?

A. I do not know personally.

Q. You did not see him there on the 2d of March until noon?

A. Yes: I saw him early on the 2d of March; probably about five o'clock in the morning.

Q. Where did you see him early on the 2d of March?

A. At my father's house: he came there to see my sister.

Q. I thought you said that was the 3d that he came early in the morning?

A. No: on the 3d he came to dinner; on the 2d he came early in the morning.

Q. Did you see him any more on the 2d?

A. No: I did not see him any more that day.

Q. Then you did not see him again on the 3d until noon?

A. Some time in the evening, about four o'clock.

Q. On the 3d?

THE TRIAL.

A. On the 3d, I saw him at dinner; and then again he went back home soon after dinner, and came back with some medicine about four o'clock.

Q. Consequently you did not see him on the 3d until dinner-time?

A. I did not.

Q. Nor on the 2d after early in the morning?

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A. No—; but he remarked to us that he was—

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what he said to you.

Q. Do you know the enrolling-officer who was in that neighborhood last fall or spring?

A. I think not. I do not know.

Q. I mean the officer who was enrolling the names subject to the draft in the neighborhood.

A. I believe Mr. Smith was the enrolling-officer of the county.

Q. Do you remember seeing him in that quarter?

A. No; I do not.

Q. Did you not say any thing to him at all?

A. No, sir; I do not know the gentleman at all.

Q. Did you say any thing to the enrolling-officers as they passed by you, or were at your house?

A. No, sir; I did not.

Q. Nothing at all?

A. Nothing at all.

By MR. EWING:

Q. Please state how it is that you enabled to fix these dates,—the 1st, 2d, and 3d of March?

A. Because my sister was sick: that is the reason. She was taken sick the 1st of March; but we considered the case very light, and did not send for a physician until the 2d of March. Early on the 2d of March we sent; and, on the 3d, he came twice to see her. On the 4th, he again came to dinner. On the 5th he and my brother-in-law, Dr. Blanford, came in the evening. That was Sunday evening.

Q. How do you know it was the 1st of March that your sister was taken sick? How do you fix that date?

THE TRIAL.

A. Because it was Ash Wednesday, and it is customary with Catholics to go to church that day, if possible; and we were Catholics, and were particularly anxious to go to church. My sister attempted to rise that morning, and she was not able to do it; she attempted it the second time, and she was not able to do it: she was obliged to remain at home.

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Q. Is that day a holiday of the church?

A. It is not one of strict obligation: it is left to the discretion of those that choose to go. It is advisable for every good Catholic to go to church that day to prepare for the penitential season; but it is not a holiday of obligation: we are not obliged to do it under pain of sin.

Q. It is the first day of Lent, is it not?

A. It is the first day of Lent.

Q. You spoke of Booth having been down there in that country. Did you meet him?

A. No: I did not.

Q. Where did you see him?

A. I saw him at church: I only had a glance of him. I noticed a stranger kneeling there near me, and, after I came out, I inquired who he was.

Q. In whose pew was he?

A. In Dr. Queen's pew.

Q. Did he go there with Dr. Queen's family?

A. That I do not know: I only saw him in church.

Q. Was Dr. Queen's family there?

A. Yes, they were there.

MRS. EMILY MUDD,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you live, madam.

A. I live in Charles County, two miles above Bryantown.

Q. At whose house?

A. At the prisoner's father's, Mr. Henry L. Mudd.

THE TRIAL.

Q. State what you know as to the whereabouts of Dr. Samuel A. Mudd between the 1st and 5th day of March last.

A. The 1st day of March being Ash Wednesday, we intended to going to church. We went down to church on that day. The prisoner's sisters, two of them, intended going also; but, one of them being very sick, she could not go.

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Q. Go on and state what you saw of Dr. Samuel A. Mudd between that and the 5th day of March.

A. The doctor was summoned to his father's house the 2d of March, Thursday, before breakfast, very early, to see his sister; and he was summoned the next Friday, the 3d of March.

Q. What time on Friday?

A. He came over to dinner on Friday.

Q. At what time in the day?

A. He came over to his dinner about twelve o'clock. Finding his sister much worse, he came over again in the evening, and brought her some medicines. He came over again on Saturday—, and I think he was there on Sunday afternoon.

Q. What time on Saturday was he there?

A. He was there to dinner on Saturday.

Q. Do you fix these dates with certainty in your own mind?

A. I am positive of the dates.

Q. Did you know Andrew Gwynn?

A. Yes, sir.

Q. When did you last see him?

A. I have not seen him since the fall of 1860.

Q. State whether he was in the habit of visiting at the house of Dr. Mudd's father before that.

A. Yes, sir.

Q. Has he been there since 1861?

A. Not to my knowledge.

Q. Have you seen or heard of his having been at Dr. Samuel Mudd's house since 1861?

A. I never have.

Q. Have you seen or heard of Lieutenant Perry, or Captain Perry, having been there?

A. No, sir.

Q. Or John H. Surratt?

A. No, sir: I never knew them.

THE TRIAL.

Q. Have you ever known or heard of parties of Confederate officers or soldiers being about Dr. Samuel Mudd's house?

A. Never.

Q. Have you been in the habit of going there frequently since 1861?

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A. Yes, sir: I go there very often.

Q. State whether or not you saw Dr. Samuel Mudd on his way home from towards Bryantown on the day after the assassination of the President.

A. Yes, sir: I was standing at the window on Saturday evening; I saw him pass.

Q. Was anybody with him?

A. No, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Where did you see him Saturday afternoon?

A. I saw him going by the road by the house.

Q. Which way was he going?

A. Going towards Bryantown.

Q. What time of day?

A. I do not know the exact time; but it was a cloudy evening. I expect it was between one and two, and perhaps earlier.

Q. What time did you see him coming back?

A. I do not know the exact time either, it being a cloudy evening; but I do not expect it was later than four o'clock. I am not positive as to the time.

Q. What time on Thursday, the 2d of March, did you see him at his father's house?

A. He came very early, before breakfast.

Q. What time did he leave?

A. I do not know. I was sick that morning. I do not know what time he left.

Q. You did not see him any more that day?

A. No, sir.

Q. On Friday, you did not see him until noon?

A. No, sir: I saw him at dinner.

Q. And on Wednesday you did not see him at all?

A. I did not see him on Wednesday.

THE TRIAL.

By MR. EWING:

Q. Do you know any thing of Dr. Samuel A. Mudd having been absent from home at any time between the 1st and 5th of March.

A. I am sure he was not from home at that time. I know that

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he was not from home. He was attending his sick sister; and I am sure he was not from home.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You do not know yourself whether he was at home or abroad on the first day of March, Ash Wednesday?

A. No, sir; I do not.

Q. You do not know whether, on the 2d day of March, he was at home or abroad, after he left his sister in the visit early on the morning of the day, until the next day at noon, do you?

A. No, sir; I do not.

By the COURT:

Q. You speak of the dinner-hour: what hour of the day is it?

A. We are in the habit of taking dinner at twelve o'clock.

CHARLES DUELL,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State to the Court where you reside.

A. In Washington.

Q. Have you recently been in North Carolina?

A. Yes, sir.

Q. What part of that State?

A. Morehead City.

Q. State whether or not, while there, you picked up a letter written in cipher.

THE TRIAL.

A. I did.

Q. [Submitting to the witness a letter in cipher, the envelope of which is directed, "John W. Wise."] Look at that, and see whether it is the letter, and mention the circumstances under which you picked it up.

A. That is the letter: I found it on the 2d day of May.

Q. Where?

A. At the Government wharf at Morehead City, N. C., floating in the water.

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Q. Did you pick it up and decipher it?

A. Yes, sir.

Q. [Submitting to the witness a paper in writing.] Look at that paper, and see whether it is a correct deciphering of that letter, made by yourself.

A. It is, as I believe, a correct translation.

The translation was read, as follows:—

WASHINGTON, April the 15, '65.

DEAR JOHN,—I am happy to inform you that Pet has done his work well. He is safe, and Old Abe is in hell. Now, sir, All eyes are on you. You must bring Sherman: Grant is in the hands of Old Gray ere this. Red Shoes showed lack of nerve in Seward's case, but fell back in good order. *Johnson* must come. Old Crook has him in charge.

Mind well that brother's oath, and you will have no difficulty; all will be safe, and enjoy the fruit of our labors.

We had a large meeting last night. All were being in carrying out the programme to the letter. The rails are laid for safe exit. Old — always behind, lost the pop at City Point.

Now I say again, the lives of our brave officers, and the life of the South, depends upon the carrying this programme into effect. No. Two will give you this. It's ordered no more letters shall be sent by mail. When you write, sign no real name, and send by some of our friends who are coming home. We want you to write us how the news was received there. We receive great encouragement from all quarters. I hope there will be no getting weak in the knees. I was in Baltimore yesterday. Pet had not got there yet. Your folks are well, and have heard from you. Don't lose your nerve.

THE TRIAL.

O. B.

No. Five.

[The original letter and the translation were offered in evidence, without objection.]

Q. In what business were you engaged in North Carolina?

A. I was driving piles.

Q. And you found this letter floating in the water where you were at work?

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A. Yes, sir.

Q. You know nothing of this person, Wise, to whom it was addressed?

A. No, sir; and could not hear any thing of him. I made inquiries there relative to him.

Q. Do you know anybody of that name in North Carolina?

A. Nobody.

Cross-examined by MR. AIKEN:

Q. Did you assist in making the translation of that letter?

A. Yes, sir.

Q. How did you know any thing of the key to the cipher?

A. A gentleman there told me that he had seen it before. We first supposed, by its commencing with a "W," that it was dated at Wilmington; and the first evening we tried it with "Wilmington," but we could not make out any thing. The next evening we tried it with "Washington;" took the letters contained in the words "Washington" and "April;" made an alphabet, and stuck figures and characters under the letters of the alphabet, and proceeded in that way, and worked it out.

Q. You had no acquaintance with the cipher yourself until you came to Washington?

A. No, sir.

Q. You found the letter in the river?

A. Yes, sir.

Q. Was the original a good deal blurred from being wet?

A. It did not seem to have been in water a great while: I could not tell how long. It did not seem to be blurred much.

THE TRIAL.

Q. You are satisfied with the translation, that "Red Shoes," "Old Gray," "Crook," &c., were the names intended by the writer?

A. No, sir: I had no idea who were meant.

By the JUDGE ADVOCATE:

Q. You mean to say that you believe these names to be correctly translated as other portions of the text?

A. Yes, sir.

Q. I understand you to say, that, in making this translation, you

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had the assistance of a man who professed to have seen the cipher before, and to be acquainted with it?

A. Yes, sir: the letter was shown to a man in North Carolina who read it very readily.

Q. Was there anybody with you at the time you picked up the letter?

A. Yes, sir: my attention was called to it by a gentleman who is here,—a Mr. Ferguson.

JAMES FERGUSON,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State whether or not you have been recently at Morehead City, N. C.

A. I left Morehead City a week ago last Wednesday morning.

Q. Were you there in company with Mr. Duell?

A. Yes, sir: I was laboring under him.

Q. Were you present when he picked up a cipher letter which was floating in the water when you were at work?

A. Yes, sir: I was the one who discovered the letter, and called his attention to it.

Q. [Submitting to the witness the letter in cipher.] Look at this letter, and see if you can identify it as the one picked up at that time.

THE TRIAL.

A. The letter is the same that was then picked up; and the envelope is the same.

Q. You directed his attention to it, and he picked it up out of the water?

A. Yes, sir.

Q. When was that?

A. It was either on the 1st or 2d of May last.

JOHN H. BARR,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows:—

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By MR. DOSTER:

Q. Look at the prisoner at the bar, Atzerodt, and say whether you have ever seen him before.

A. Yes, sir: there is the man, to the best of my knowledge, [pointing to the accused, George A. Atzerodt].

Q. Where did you see him?

A. All I know about Atzerodt is this: One evening, in the Navy Yard, I was coming from my shop from work; and I stopped at Mr. Pope's restaurant, and fell in contact therewith this gentleman. I did not know him at the time; but we had several drinks there together. From that I proposed to him to go home and take supper with me. After a while he concluded to go, and he did so. He went home with me, and took supper with me. From there, we came back to Mr. Pope's restaurant again, and we had then, I think, a couple of more drinks. He was there with me. We went out, and came back again to the restaurant, and took two glasses; and from there we went to Mr. Pope's stable, and he took his horse out. I saw the horse saddled and bridled, and saw him get on the horse and go off. That is the last I saw of him.

Q. Now tell us on what day that was.

A. I think it was between the 10th and 12th of April.

Q. Do you not remember that it was the 12th of April?

A. I think it was near about that time. I remember the work I did the day I fell in contact with him; and it is marked in the book which I have with me.

Q. What work did you do that day?

THE TRIAL.

A. I put in a spring block or spoke, I forget which, for Sanderson and Miller; but I can tell by looking at the book.

Q. Look at your book, and see what it was.

A. [After examining a memorandum-book.] On the 12th of April, I made two spring blocks for Sanderson and Miller.

Q. You are sure that was the same you were with Atzerodt?

A. Yes, sir; on the 12th of April.

Q. You are sure of that?

A. Yes, sir: that is the same day I was with him. I saw him that evening after I quit work.

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BETTY WASHINGTON

recalled for the accused, Samuel A. Mudd.

By MR. EWING:

Q. State to the Court how long you have been living at Dr. Samuel A. Mudd's house?

A. I went there the week after Christmas.

Q. Do you know where Dr. Mudd was on the first day of March last?

A. On the first day of March, he was down at the tobacco-bed. He was planting it, ready to sow.

Q. How do you know that was the first day of March?

A. I know it was the first day of March. It was Ash Wednesday.

Q. State how often you saw him that day, and what times in the day.

A. He staid there till dinner-time; and Mr. Blanford came, and they went into the house to dinner. He was in the house that evening. It was raining.

Q. He and Mr. Blanford, then, took dinner at Dr. Mudd's house that day?

A. Yes, sir.

Q. Were they in all the afternoon?

A. Yes, sir: I did not see him out any more.

Q. Was he at home that night?

A. Yes, sir.

Q. Where was he the next day?

THE TRIAL.

A. The next day, Thursday, he was cutting brush.

Q. What time did you see him in the morning that day?

A. I saw him in the morning at breakfast-time. He was not exactly close to us cutting brush. He was cutting close to the path, on one side, and we were on the other.

Q. Were you out there when he was at work?

A. Yes, sir: he asked Mrs. Mudd to let me come out. I was not a regular field-hand; but, at particular times, he asked her to let me come out.

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Q. Did you see him in the afternoon of Thursday, the 2d of March?

A. Yes, sir: he was there all day,—the day we cut brush.

Q. He was there all day Thursday?

A. Yes, sir: he was there all day Thursday.

Q. Did you see any thing of him on Friday, the third day of March?

A. Friday he was stripping tobacco. It was raining and he went to the barn on Friday.

Q. Did you see him on Friday morning?

A. Oh, yes, sir! I saw him on Friday morning.

Q. Did you see him at noon on Friday?

A. No, sir: he went from the barn over to his father's, and took his dinner.

Q. Where was he on Friday night?

A. He came back that evening just about night. We had been to supper when he got there.

Q. Did you see him on Saturday morning, the 4th of March?

A. Yes, sir.

Q. Did he take breakfast at home?

A. Yes, sir: he took breakfast at home.

Q. Where was he through the day on Saturday?

A. After dinner he went to the post-office.

Q. Where is the post-office?

A. At Beantown.

Q. When did you see him again? Did you see him on Saturday night?

A. Yes, sir: he was back Saturday night.

Q. Did you see him on Sunday, the 5th of March?

A. On Sunday he went to church. His sister wanted to go with him, and he told her she could not go.

THE TRIAL.

Q. Was he at home on Sunday night?

A. Yes, sir: he was at home on Sunday night. He came home Sunday night.

Q. Where is the tobacco bed that you said he was fixing on Ash Wednesday, the first day of March?

A. Down close to Mr. Sylvester Mudd's.

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Q. How far from Dr. Sam. Mudd's house?

A. Nearer to Sylvester Mudd's than to his house.

Q. Did you see him down there at work on Ash Wednesday?

A. I was working with him on Ash Wednesday.

Q. Where was he the day before Ash Wednesday, the last day of February?

A. On Tuesday, he laid the brush off for us to dig up.

Q. While you were living there at Dr. Mudd's, did you ever see or hear of John H. Surratt there?

A. I never heard talk of him.

Q. Would you have noticed the name if you had heard it there?

A. Yes: if I had heard talk of his name, I should know it.

Q. Why?

A. Because I often inquired the way to Washington before I went there to live; and they told me that whenever I got to Surratt's I would be so far, and so far from Washington: but I never came.

Q. If you had heard the name of John H. Surratt at the house, would have recollected it?

A. Oh, yes, sir!

Q. Do you know Mary Simms, who used to live there at Dr. Mudd's?

A. Yes, sir: I know her.

Q. Do you know what the colored folks about there think of her as a truth-teller?

A. They all give her a bad name.

Q. As a truth-teller?

A. As a story-teller.

Q. What sort of a master was Dr. Samuel Mudd?

A. I have no fault to find with him at all myself. He treated me very well while I was there.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You went there to live the first Monday after Christmas?

THE TRIAL.

A. I know I went there the week after Christmas, but what day of the week I do not know exactly.

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Q. I thought you said before that it was the first Monday after Christmas?

A. I said the week after Christmas.

Q. On Thursday, the 2d of March, Dr. Mudd took breakfast with you in the morning?

A. Yes, sir.

Q. He took breakfast with you at home?

A. Yes, sir: on Thursday.

Q. And you went with him out to cut brush on Thursday, the 2d of March?

A. It was raining that day; and we cut no brush that day.

Q. You did not cut any brush on Thursday?

A. I thought you said Friday. Thursday was the day we cut brush.

Q. He went with you to cut brush?

A. He went to cut brush, and I went along with the cart. The pines are very thick between there and Mr. Sylvester Mudd's.

Q. You know that Dr. Samuel A. Mudd was there?

A. Yes, indeed, sir.

Q. You cut on one side of the path, and he on the other?

A. Yes, sir.

Q. Did you go home to dinner, or take dinner to the field?

A. We came home to dinner on Thursday.

Q. You and he came home to dinner on Thursday, and then you went back to cutting brush?

A. Yes, sir.

Q. In the evening of Thursday, you and he came home together, and he took his supper?

A. I did not exactly walk along with him.

Q. But he was in sight, and you saw him take supper at home?

A. I expect he ate it, though I did not see him eat it. I got my supper.

Q. You were about the house when he was getting his supper?

A. I know he was in the house.

Q. Then he took his breakfast, dinner, and supper at home on Thursday?

A. Yes, sir.

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Q. And that was the day after Ash Wednesday?

A. Yes, sir.

Q. You did not work with him on Ash Wednesday?

A. I was there on Ash Wednesday.

Q. What did you work at on Ash Wednesday?

A. I was chopping the tobacco-bed on Ash Wednesday. Sometimes he was standing about there, and sometimes he was not.

By MR. EWING:

Q. Are you certain that Dr. Mudd took breakfast at his house on the day after Ash Wednesday?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question as not proper re-examination. The cross-examination had been confined to matters brought out on the examination in chief, and therefore this kind of re-examination was not proper.

MR. EWING desired to put the question in order to explain a seeming contradiction, and have the matter fully understood.

The COMMISSION sustained the objection.

WILLIAM P. WOOD,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. CLAMPITT:

Q. State to the Court your present occupation.

A. I am superintendent of the Old Capitol Prison.

Q. State whether you are acquainted with J. Z. Jenkins, a brother of Mrs. Surratt, and a witness who has testified before this Court; and if so, how long have you known him?

A. I am acquainted with J. Z. Jenkins. I have known him from six or seven years, perhaps; been rather intimately acquainted for five years.

Q. Can you speak confidently of his reputation?

A. In what particulars?

Q. For loyalty?

A. He has always been an opponent of the Democracy in his county. He was with the Know-Nothing party; and, when the Union

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party got up, he was counted as one of the most reliable Union men in that district in the early part. I mean in 1860 and 1861. In 1862, I called upon him to get him to vote for Holland; went out with a gentleman by name of Stone. He refused to vote for Mr. Holland, and said he was under obligations to Mr. Calvert, who had owned that section of the country; and he believed him to be as good a Union man as any man in the country.

Q. Please to state whether he did not labor himself, and urge his friends to labor, and expend his means freely, to keep the State of Maryland in the Union.

A. Up to 1862, I have knowledge of that fact.

Q. In 1862 and 1863, did he not come to this city—the city of Washington—to obtain voters who had left the State of Maryland, but had not lost their residence, to return there to vote the Union ticket, at his own expense?

A. I believe such was the fact. It was so reported and understood by those who had control of matters in 1862; I believe, the fall of 1862.

Q. Were you not appointed the Union State Central Committee of Maryland an agent to operate in certain portions of the State of Maryland in order to insure the success of the Union ticket?

A. I was not appointed by anybody: it was merely a request to help along Mr. Holland in that Congressional district, which I was requested to do.

Q. Did not Mr. Jenkins co-operate with you?

A. He went for Calvert, and agreed to do all he knew how against Harris, whom he understood to be a Copperhead and Disunionist.

Q. Did you or not understand then that he was co-operating in the election of the Union ticket?

A. He did not act with the Holland party, but did for Mr. Calvert.

Q. Was Mr. Calvert considered a Union man?

A. He was considered by a few in portions of that county, but not in other portions of the county.

Q. What was the status of Mr. Harris?

A. Mr. Harris was considered as a Democrat of the secession school, States-Rights Democrat, in that section of the country.

Q. Did not Mr. Jenkins remark to you that he was under certain obligations to Mr. Calvert, and that, in the event that Mr. Calvert did not run, he would support Mr. Holland?

A. He agreed to do that. He said that he was under personal obligations to Mr. Calvert, or he would try to accommodate me, and vote for Holland.

Q. Can you speak of your own knowledge whether or not, immediately after the first battle of Bull Run, Mr. Jenkins procured a United-States flag, and hoisted the same in the county, and that, when he was informed that certain rebel sympathizers intended to haul down that flag, he gathered a band of some twenty to fifty Union men, armed them, and stood by that flag all night, in order to protect and defend it.

A. I understand that to be the fact. It was generally understood so by parties that were acting with the Administration, that he had done that thing; got the flag from Mr. Murphy, I believe, on the Navy Yard.

Q. Are you acquainted with a man by the name of Van Roby, and one by the name of Smoot?

A. I know Mr. Roby by sight, but have no personal acquaintance?

Q. What is their reputation among their neighbors?

A. The people in Prince George's are rather dissatisfied with the Administration on account of the slavery subject; and Mr. Roby is, I believe, holding office under the Administration; and they do not like him. That is about the only thing I know. They are in hostility one with another. The people down there who acted with the Administration in the early part of the war are dissatisfied on the subject of slavery, those who were regarded as Union men; and there is not a single friend of the Administration, hardly any of them, in that county now.

Q. Have you or have not ever heard any doubt expressed as to the veracity of Jenkins?

A. No, sir: I believe him to be a loyal man.

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Q. I meant to ask whether you had heard doubts as to the veracity of Smoot and Roby.

A. I do not know Smoot.

Q. Did you or did you not receive, first of all, from Mr. Jenkins, certain information submitted by you to the War Department, which led to the final capture of Booth, the assassin of the President?

A. I received in the early stage of affairs some information from Mr. Jenkins that I forwarded to Judge Turner, who is the Judge Advocate of the prison.

Q. Do you not consider that a loyal act?

A. I was satisfied he would give it to me if he had it in his possession, when I started off. I called on him, and he did give it to me.

Q. Do you not Mr. Jenkins to be a consistent Union man, a loyal man?

A. I do. I do not believe he is friendly to the Administration. He is very bitter on the Administration on account of his negroes. Outside of that, I believe him to be a loyal man. I know he has always been so considered by those who have meddled with politics in this section of the country: he has been counted one of the most reliable men in that county.

Q. Have you ever heard him speak in very strong terms against the Government of the United States? I do not mean the Administration?

A. I never heard him utter a sentiment against it.

Q. You never heard him say that he desired the South to succeed?

A. Never. I have heard him express himself rather positively the other way; but I have heard him very bitter on the Administration. It is only lately that he has been bitter on the Administration.

Q. Is Mr. Jenkins now under arrest at the Old Capitol?

A. He is committed to the Old Capitol as a prisoner there: I do not know what for.

Cross-examined by the JUDGE ADVOCATE:

Q. Do you profess to have had as intimate an acquaintance with

the conduct and conversation of Mr. Jenkins as his near neighbors who have deposed in this case during the past few days?

A. No, sir; I do not.

Q. You state, that at present, and for some time past, he has been bitterly hostile to the Government?

A. Yes, sir.

Q. Do you understand that hostility to constitute disloyalty, being opposition in the interest of the public enemy?

A. I never regarded Mr. Jenkins in that light. I have always accounted him rather influential at election times, and have always solicited his aid to assist the Government.

Q. Do you not regard such bitter hostility to the Government in a civil war like this, as in the interest of the public enemy, and therefore disloyal?

A. Lately I have not considered him sound on the subject, and have had very little do with him, except on account of former friendship in past times. I thought then he was as loyal as any man in the county, and regarded him as such, and treated him as a friend; but at the last election he voted for Harris, and was in with these other parties; and I did not like that state of affairs, and hence had not that political confidence in him that I had previously.

FRANK WASHINGTON

recalled for the accused, Samuel A. Mudd.

By MR. EWING:

Q. State to the Court again how long you have been living at Dr. Mudd's house.

A. A little better than twelve months.

Q. State whether you know where Dr. Mudd was on the 1st day of March last.

A. He was about the tobacco-bed.

Q. How do you fix that day the 1st of March?

A. It was Ash Wednesday.

Q. Were you at work on the tobacco-bed with him?

A. Yes, sir.

Q. During how much of the day?

THE TRIAL.

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- A. From morning till night.
- Q. Where was he the next day, the 2d of March, Thursday?
- A. He was at home in the barn stripping tobacco.
- Q. Were you with him through the day?
- A. Yes, sir; till twelve o'clock, when he went over to his father's to dinner.
- Q. Was it on Thursday that he went to his father's to dinner?
- A. No, sir: it was on Friday.
- Q. But I am talking about Thursday now. Whereabouts was he on Thursday?
- A. On Thursday he was about the tobacco-bed.
- Q. Were you with him during the forenoon?
- A. Yes, sir.
- Q. During the afternoon?
- A. Yes, sir.
- Q. State what you saw of him on Friday, and where he went.
- A. He went over to his father's on Friday, about twelve o'clock, from the barn.
- Q. Where was he up to twelve o'clock on Friday?
- A. He was down about the tobacco-bed in the morning; and it commenced raining, and he went from the tobacco-bed to the barn.
- Q. Did you see any thing of him on the next day, Saturday?
- A. Yes.
- Q. Where was he on Saturday?
- A. He was at home. It was raining pretty hard in the morning on Saturday, and he kept house all day. Late in the evening, he rode up to the post-office at Beantown.
- Q. Do you recollect whether he was over to his father's on Saturday?
- A. No, sir; I do not.
- Q. You do not recollect whether he was or not?
- A. No, sir.
- Q. Where was he on Sunday, the 5th of March?
- A. He went to church.
- Q. Did you see him on Ash Wednesday night at home?
- A. Yes, sir.

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- Q. On Thursday night?

THE TRIAL.

A. Yes, sir.

Q. On Friday night?

A. Yes, sir.

Q. On Saturday night?

A. Yes, sir.

Q. Where was he on the day before Ash Wednesday,—the last day of February?

A. He was at home that Tuesday.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you see him on Thursday morning after Ash Wednesday?

A. Yes, sir.

Q. How early in the morning did you see him?

A. I saw him, perhaps, about the time the sun was out.

Q. Did you get up and out before he came out?

A. Yes, sir. I always get up before him.

Q. And you saw him when he came out?

A. Yes, sir.

Q. When did you see him next after he came out?

A. I saw him all that day. I was working with him.

Q. Where did you get your breakfast?

A. In the kitchen.

Q. Did he eat his breakfast in the kitchen?

A. No: in the house.

Q. Did he eat his in the house that morning before you ate yours?

A. Yes.

Q. Where did he eat his dinner on that day, Thursday?

A. At home.

Q. Did you eat yours there too?

A. Yes, sir.

Q. On that day, Thursday, where did he eat his supper?

A. At home.

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Q. And you ate yours there too?

A. Yes, sir.

Q. And you were with him all day pretty much?

A. Yes, sir.

THE TRIAL.

Q. Where did he eat his breakfast on Friday morning, the second morning after Ash Wednesday?

A. There, in the house.

JOHN ACTON,

a witness for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. How far do you live from Dr. Samuel Mudd's?

A. About a mile, I reckon; or perhaps a mile and a quarter.

Q. Is it on the road from Dr. Mudd's to Bryantown?

A. Yes, sir.

Q. State whether you saw any thing of Dr. Mudd going toward Bryantown on the day after the President was killed.

A. Yes, sir.

Q. What sort of a horse was he riding?

A. A gray horse.

Q. Was there a man along with him?

A. Not when I first saw him: there was a man overtaking him.

Q. Did you see any thing of that man afterwards?

A. Yes, sir: I saw the man come back after a while.

Q. After how long?

A. It might have three-quarters of an hour, or thereabouts.

Q. How far is it from your house to Bryantown?

A. Three miles, I think.

Q. How near the road were you when you saw this man returning?

A. About fifty yards, I reckon.

Q. How long did you remain there after the man passed, going back towards Dr. Mudd's?

A. About an hour, I reckon,—perhaps longer, perhaps less; but very near an hour, I'm sure.

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Q. Did Dr. Mudd pass that road going back towards his house while you were there?

A. No, sir.

Q. If he had passed along the road, you would have seen him?

THE TRIAL.

A. Yes, sir: I could not help seeing him.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did the man who followed Dr. Mudd overtake him?

A. Yes, sir: he overtook him.

Q. Did you see them when they met?

A. I saw them when they were a little way apart, and the next thing I saw him get up to him.

Q. When they got together, did you notice whether they were conversing?

A. I did not hear any conversation.

Q. Do you know that man personally?

A. No, sir.

Q. Do you see him there in the dock, the first one next the door [pointing to David E. Herold, one of the accused.]

A. I cannot swear it.

Q. Does that look like the man, in your opinion?

A. It looks more like him than any of the others.

Q. State whether, in your opinion, that is the man.

A. I cannot say.

Q. Cannot you form an opinion?

A. I did not particularly notice the man. I noticed the horse more than the man.

Q. State whether, in your opinion, this looks like the man.

A. It looks very much like him.

Q. What sort of a horse did he ride?

A. A bay horse.

Q. A bay mare?

A. I do not know.

Q. What time of day was it?

A. Three or four o'clock in the afternoon, I reckon.

Q. And this man was following Mudd towards Bryantown?

A. On his return, it was about that time, I think.

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Q. When he was following him?

A. I did not reckon exactly the time: it was a cloudy day, and I had no timepiece with me; but it was in the evening.

Q. It was some two hours, after he overtook him, before you saw them coming back?

A. No, sir.

THE TRIAL.

Q. How long was it, after he overtook him, that they came back together?

A. They did not come back together.

Q. You saw this man come back?

A. Yes, sir.

Q. How long after he overtook him was it that you saw him come back?

A. Not more than an hour at the latest.

Q. Did he come from towards Mudd's house when he followed him?

A. Yes, sir; from the road leading down that way.

Q. How near was he to Mudd's house when you first saw him following him?

A. Very near my house, as I stated; about a mile and quarter from Mudd's house.

Q. Did you see him ride back towards Mudd's house?

A. I did not see Dr. Mudd any more that evening.

Q. But this man who followed?

A. I did not see him pass my house: he was going up the same road he came down.

Q. When he came back alone, he was going up the road he had come down on?

A. Yes, sir.

Q. How far was that from Bryantown?

A. About three miles, I judge.

MASON L. MCPHERSON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING.

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Q. Where do you live?

A. I live within about three-quarters of a mile of Bryantown.

Q. Were you in Bryantown on the day after the assassination of the President?

A. I was.

Q. What time in the afternoon did you go there?

A. About two o'clock.

THE TRIAL.

Q. How long did you stay?

A. All the evening, till some time after sunset.

Q. Till about what hour?

A. I reckon seven or eight o'clock.

Q. State what you heard there as to the assassination of the President.

A. I never heard who had assassinated the President of the United States.

Q. What did you hear about it?

A. I heard that Boyle had assassinated the Secretary of State.

Q. What Boyle?

A. John Boyle?

Q. Was he a guerilla in that neighborhood?

A. He had passed through there several times. I am not acquainted with Boyle.

Q. He had previously killed Captain Watkins there?

A. Yes, sir.

Q. Did you hear any thing said that afternoon as to who had assassinated the President?

A. I did not.

Q. Did you make any inquiries?

A. Yes, sir: I made inquiry among some of the soldiers. They did not know who had assassinated the President. I heard on Sunday who the supposed party was.

Q. Did you make any inquiries to find out who had assassinated the President?

A. I asked right smart of several persons.

Q. Did you inquire of citizens as well as soldiers?

A. Yes, sir.

Q. Were you in Bean's store that day?

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A. I was a short time.

Q. Did you hear the talk there in the store on the subject?

A. Yes, sir.

Q. And you say it was not mentioned who it was that had killed the President?

A. Not that evening. I did not hear it that evening.

Q. Did you see Lieutenant Dana there?

A. Yes, sir.

Q. Were there many persons in town that day?

A. A good many.

THE TRIAL.

Q. Did you see Lieutenant Dana on Monday morning?

A. I did.

Q. Did you see him in conversation with Dr. George Mudd?

A. Yes, sir.

Q. Where?

A. In the hotel at Bryantown.

Q. What time in the morning?

A. Between eight and nine o'clock, I guess.

Q. Are you acquainted with Dr. George Mudd's reputation in the community as a Union man?

A. Yes, sir; very well,—as good Union man as any in the United States.

Q. Are you acquainted with Daniel J. Thomas, who was a witness on the stand for the prosecution?

A. Yes, sir; I am.

Q. Do you know the reputation in which he is held, in the community where he lives, for veracity?

A. Not very good.

Q. You know his reputation?

A. Yes: I know it from general report.

Q. And it is not good?

A. It is not.

ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You are sure that it was on Monday morning that Lieutenant Dana had this talk with Dr. George Mudd?

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A. Yes, sir: I am confident of it.

JOHN MCPHERSON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. Near Bryantown.

THE TRIAL.

Q. Were you there on Saturday, the day after the assassination of the President?

A. Yes, sir.

Q. What time did you go into the town?

A. At two o'clock.

Q. How long did you stay?

A. Till about six.

Q. You had a conversation there on the subject of the assassination of the President?

A. Yes, sir.

Q. Did you hear who the assassin was?

A. I did not.

Q. Did you make inquiries about it?

A. I do not recollect.

Q. You heard talk about the town?

A. Yes, sir.

Q. It was the general topic of conversation, was it not?

A. Yes, sir.

Q. When did you first hear that it was Booth who had assassinated the President?

A. On Monday morning.

Q. Did you see Lieutenant Dana on Monday morning?

A. I did.

Q. Did you see him with Dr. George Mudd?

A. I did.

Q. Where?

A. At the hotel.

Q. What time in the morning?

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A. About eight o'clock.

Q. Were they in conversation?

A. Yes, sir.

Q. Were they to themselves, or in a crowd?

A. There were some three or four in the room.

Q. Do you know Dr. George Mudd's reputation in that community as a Union man?

A. Yes, sir.

Q. What is it?

A. As good as any man's.

Q. Are you acquainted with Daniel J. Thomas?

A. I am.

THE TRIAL.

Q. Do you know the reputation he has, in the community in which lives, for veracity?

A. Very bad.

Q. You know his reputation?

A. I do not myself.

Q. Do you know what the people generally think of him as a man of veracity?

A. Yes.

Q. What do they generally think of him?

A. They think that he is not a truth-telling man.

Q. Are you acquainted with the prisoner Dr. Samuel A. Mudd?

A. I am.

Q. Do you know his general character as a man of peace, order, and good citizenship?

A. Yes, sir: he is considered among his neighbors a very good man, a peaceable man, a good citizen.

Cross-examined by the JUDGE ADVOCATE:

Q. Have you ever heard Daniel Thomas charged with having sworn falsely in any case?

A. I do not recollect whether I have or not.

Q. You do not understand, then, that his reputation has any reference to any oath he has taken, or would take, in a court of justice?

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A. No, sir.

Q. It applies simply to his idle and extravagant habit of talking: is that what you mean by it?

A. Yes, sir: I have heard him spoken of as rather a bad man; that is, he would not be apt to speak the truth.

Q. Do I understand you to say, under the oath you have taken, and with the knowledge which you have of Mr. Thomas and of his life and character, that you would not believe him when speaking under oath before a court?

A. I cannot say that.

By MR. EWING:

Q. Have you ever heard any conversation as to Thomas having been a witness before this trial?

THE TRIAL.

A. I do not think I have.

JOHN T. LANGLEY,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. Within about a quarter of a mile of Bryantown.

Q. Were you in Bryantown on Saturday, the 15th of April, the day after the assassination of the President?

A. I was.

Q. What time did you go there?

A. I think I was there between twelve and one o'clock.

Q. What time did you leave?

A. I left two or three times during the evening, and returned again. It was sundown when I last left.

Q. Did you hear conversation there on the subject of the assassination of the President?

A. No, sir; I did not.

Q. Did you hear that the President was assassinated?

A. Yes, sir.

Q. Did you hear who had assassinated him?

A. No, sir.

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Q. When did you first learn who had assassinated him?

A. Not until Monday morning.

Q. Was the town pretty full of citizens and soldiers?

A. Not a great many citizens, and not a great many soldiers, either.

Q. Was there much talk about the assassination?

A. Not much. Some of the citizens coming in heard that soldiers were there, and that martial law was to be proclaimed, and returned to their homes again. That was so with a good many of them. Those that were there remained pretty much until about night.

Q. Was not the subject of the assassination a matter of general conversation among the people, the citizens, and the soldiers?

THE TRIAL.

A. Yes, sir. The first I heard of any thing about the President being assassinated was through the soldiers.

Q. Did you make inquiries as to who had assassinated the President?

A. Yes, sir; and they said they did not know.

Q. Did you hear any thing of any one, who was supposed to have assassinated the President, being tracked to near Bryantown?

A. No, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You heard that the soldiers were in pursuit of the President's assassin?

A. Yes, sir.

PETER TROTTER,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you live.

A. In the village of Bryantown.

Q. Were you there on Sunday, the day after the President was killed?

A. Yes, sir.

Q. Did you hear on that day who it was that killed him?

A. No, sir; I did not.

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Q. When did you first hear who it was that killed him?

A. On Sunday evening.

Q. Did you see much of the soldiers on that day?

A. Yes, sir; a good many; some twenty-four or twenty-five. They were all around my shop the whole of the afternoon.

Q. What is your business there?

A. I am a blacksmith.

Q. Did you hear the subject of the killing of the President talked of?

A. Yes, sir; a good deal.

THE TRIAL.

Q. Did you inquire who killed him?

A. Yes, sir: I inquired of some soldiers, and they said they did not know, but they mentioned Boyle as being the one that had assassinated the Secretary.

Q. Are you acquainted with Daniel J. Thomas?

A. Yes, sir.

Q. How long have you known him?

A. For some eight years.

Q. Do you know what his general reputation is, in the community where he lives, for veracity?

A. Yes, sir: it is not very good.

Q. From your knowledge of his general reputation for veracity, would you believe him under oath?

A. In some cases I would, in others I would not: it would depend upon what it would be about. I do not think I would believe him on his oath myself, and but very few in our community would.

Cross-examined by the JUDGE ADVOCATE:

Q. Have you been loyal to the Government during the Rebellion?

A. Yes, sir.

Q. You have never had any sympathy with the rebels?

A. I suppose at the first I may have thought a good deal.

Q. Have you constantly desired that the Government should succeed in putting down the Rebellion?

A. Yes, sir; latterly I have.

Q. For how long?

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A. Nearly eighteen months.

Q. Before that time, you preferred that the Rebellion should succeed?

A. Not much; no, sir.

Q. Not very decidedly?

A. No, sir.

Q. The neighborhood in which you live [was] pretty much of the same way of thinking was it not?

A. Yes, sir; generally.

Q. Mr. Thomas in that neighborhood is very unpopular, is he not?

A. Yes, sir; he is.

THE TRIAL.

Q. He has been very outspoken, and rather noisy in his loyalty, has he not?

A. I never heard him speak much about his loyalty in any shape or form.

Q. Do you not know that he is regarded as a very extreme Unionist, and offensively so?

A. Well, sir, I have seen him both ways sometimes.

Q. When did you see him the other way?

A. Often when he has been at Bryantown. I have seen him at Bryantown, when we would hear tell of some great feat that was done, sometimes think one way, and sometimes another.

Q. You have never heard him speak in favor of the Rebellion?

A. No; I never did.

Q. You have never at any time, even before the eighteen months of which you speak, or since, known Mr. Thomas to be unfriendly at all to the Government, or have any sympathies with the Rebellion?

A. No, sir; I have not.

Q. You admit that you yourself, before the past eighteen months, were unfriendly to the Government?

A. I thought a good deal; but as far as doing, or any thing like that, I never did: I have never spoken even much about it.

Q. Would you not think a great deal better of Mr. Thomas if he had been thinking the same way that you had all this time?

A. Well, I do not know.

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Q. Have you ever taken the oath of allegiance?

A. No, sir; I have not.

Q. Have you not refused to take it?

A. No, sir: I called on the captain, and he had no blanks.

Q. How long has that been?

A. About three weeks ago.

Q. You never felt until three weeks ago that you were willing to take the oath?

A. I had taken the oath of Baltimore to get my goods out there, three years ago.

Q. In order to get your goods out?

A. Yes, sir: that was all that was required.

Q. That is the time you felt your sympathies with the Rebellion? That is more than eighteen months ago?

A. Yes, sir.

THE TRIAL.

Q. Have you been engaged in blockade-running at all?

A. Never.

Q. You have never been crossing our military lines without permits?

A. Never.

Q. You say whether you would believe Mr. Thomas or not, under oath, would depend entirely on what he said?

A. Yes; in some cases it would.

Q. Would you believe him, probably, if he was speaking in a court of justice, under oath, against the rebels in any way?

A. I would believe him if I knew he was telling the truth.

Q. But suppose you did not know that, and had to rely upon him, and he was speaking against the rebels, do you think you could bring yourself up to the point of believing him?

A. Well, I do not know that.

By the COURT:

Q. Are you a native of this country?

A. I am a Scotchman,—a British subject: I have used the right of a citizen.

Q. Have you ever been naturalized?

A. No, sir.

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By MR. EWING:

Q. State if you know what Mr. Thomas's reputation for veracity was before the war.

A. Just about the same as it is now.

Q. State whether he was loyal in the early part of the war.

A. I think he was just about the same as some of the people there, and thought just as they did.

Q. Had he the reputation of being a loyal man in the early part of the war?

A. Not in the first part of it. I am sure he was not.

By the COURT:

Q. Did you say you were a British subject?

A. No, sir.

Q. You have never been naturalized here?

THE TRIAL.

A. No, sir.

Q. What country do you belong to?

A. Scotland. There is where I came from.

Q. Have you ever voted in this country?

A. Yes, sir.

Q. When? on what occasion?

A. I have not voted for the last two years. Before that, I voted about three times.

Q. On what question?

A. The first vote I gave was for President Buchanan. Afterwards I did not vote, except for local officers for the county.

Q. Did you vote on the question of the adoption of the new constitution of Maryland?

A. I do not think I did.

Q. You ought to know.

A. I am sure I did not.

Q. Why did you not vote then?

A. I do not know.

Q. Was it because you would not take the oath required?

A. No, sir; it was not for that.

By MR. EWING:

Q. Did you come to this country when you were a minor?

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A. No, sir.

Q. How long is it since you came here?

A. Twelve years ago last September.

Q. Did you come to this country before you were of age?

A. No, sir.

By the COURT:

Q. What age are you now?

A. I am thirty-four years old.

BENJAMIN W. GARDINER,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

THE TRIAL.

By MR. EWING:

Q. Will you state whether or not you saw the prisoner, Dr. Samuel A. Mudd, at church on the Sunday after the assassination of the President?

A. I did.

Q. Will you state whether you saw him in conversation with his neighbors about the church before it commenced?

A. Yes, sir.

Q. What time in the morning was it?

A. Our church generally commences about ten o'clock or thereabouts; and it was before the commencement of church.

Q. Will you state whether or not he there mentioned any thing about two suspicious persons having been at his house on Saturday morning?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to Mr. Mudd giving his declarations, what he said on Sunday morning at church.

MR. EWING. It is like the evidence of his informing Dr. George Mudd of the presence of those suspicious persons at his house, which the Court refused to allow to be given in evidence, and which, for the reasons that I then very fully stated, I then thought, and still think, a most important item of testimony, and one most clearly admissible.

ASSISTANT JUDGE ADVOCATE BINGHAM. I have heretofore stated

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to the Court the ground of the objection. It is this: that it is the declaration of the prisoner himself, at a time and place about which the prosecution has given no evidence at all; to wit, his declarations on Sunday at church.

MR. EWING. But it is during the alleged commission of the crime of concealment; and it is evidence of his having broken that silence, for which they propose to convict him of complicity in the crime.

ASSISTANT JUDGE ADVOCATE BINGHAM. There is no allegation of time in the charge or specification that is important. The matter of time becomes important by the evidence, and the evidence of the prosecution has not gone to any thing he said or did on Sunday.

THE TRIAL.

MR. EWING. But the evidence of the prosecution has gone, with one witness, to the fact of his having, as late as Tuesday, concealed the fact of the presence of two suspicious persons at his house.

ASSISTANT JUDGE ADVOCATE BINGHAM. The evidence has gone to Tuesday as to what he said.

ASSISTANT JUDGE ADVOCATE BURNETT: As to his misstating the facts—

MR. EWING. As to his concealing the fact and denying it.

ASSISTANT JUDGE ADVOCATE BINGHAM. As to what he said, and all he said, on Tuesday, at that time and place, of course is admissible; but that is not Sunday.

The COMMISSION sustained the objection.

THOMAS DAVIS

recalled for the accused, Samuel A. Mudd.

Q. State how long you have been living at Dr. Mudd's house.

A. I have been living there since the 6th of January.

Q. Do you recollect where Dr. Mudd was on the first day of March last?

A. Yes, sir: he was at home. He came to my room in the course of the day to see me while I was sick.

Q. You were sick?

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A. Yes, sir; at that time.

Q. How are you enabled to fix the day?

A. He told me it was the first day of March, Ash Wednesday; and that he could give me no meat on that day: that is all.

Q. The beginning of Lent?

A. Yes, sir.

Q. What time did he come up to your room?

A. He came up in the morning, between eight and nine o'clock, and again in the evening.

Q. What time in the evening?

A. About four o'clock in the evening.

Q. Did you see him on the second day of March?

A. Yes, sir: he was up to see me again on the second day of March.

Q. How often?

THE TRIAL.

A. Twice in the course of the day,—in the morning and in the evening.

Q. Were both the visits on the second day of March during the daytime?

A. Yes, sir.

Q. Did you see him on the third day of March?

A. Yes, sir; I did. I saw him the morning, and I saw him again about half-past eleven o'clock, and I saw him again between four and five o'clock in the evening.

Q. Did you see any thing of him on Saturday, the fourth day of March?

A. Yes, sir: he came up as usual to see me.

Q. Did you see him on the fifth day of March, Sunday?

A. Yes, sir: he was there on Sunday; came up to my room.

Q. Did you see him on the last day of February, Tuesday?

A. Yes, sir; I did.

Q. In the daytime?

A. Yes, sir; it was in the daytime.

Q. Were these visits on the 1st, 2d, 3d, and 4th of March, that you speak of, all in the daytime?

A. Yes, sir.

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Q. One visit in the forenoon, and one in the afternoon, of each day?

A. Yes, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Were you sick and confined to your room more than once in Dr. Mudd's house last winter?

A. No, sir; only once. I was confined to my room for about three weeks.

Q. Did you swear to that before in this Court?

A. Yes, sir; that I was sick.

Q. When was it that you swore before that you were sick?

A. This day a week ago.

Q. But what time was it that you were sick, as you swore before?

A. I was taken sick on the 22d of February, and was sick until about the 15th of March.

Q. That is what you swore before?

THE TRIAL.

A. Yes, sir.

Q. You were confined to the house all that time, you say?

A. Yes, sir.

By MR. EWING:

Q. Did you see Dr. Mudd every day from the 22d of February to the 15th of March?

A. Yes, sir; I did. He was up to see me every day while I was sick.

Q. In the daytime?

A. Yes, sir.

Q. And generally twice a day?

A. Yes, sir; generally twice a day.

Q. Once in the forenoon and once in the afternoon of each day?

A. Yes, sir.

Q. Will you state whether or not Dr. Samuel Mudd has owned a two-horse buggy or rockaway?

A. No, sir; he does not.

Q. Not during the time you have staid there?

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A. No, sir; he has not.

Q. Has he owned any buggy at all?

A. No, sir; he has not.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Has he had any carriage of any sort about his house while you were there?

A. He has had his father's carriage there once. That was on the 17th of April, I believe.

Q. You do not know what he might have had while you were lying sick three weeks?

A. He has not owned any carriage.

Q. You do not know what he might have had there, during the time you were sick three weeks, in the way of a carriage?

A. No, sir; I was not out to see what he had.

Q. You do not know whether he had or had not?

A. I say I do not know what he had while I was sick.

THE TRIAL.

By MR. EWING:

Q. What sort of a carriage is his father's?

A. It is a two-horse carriage.

Q. Is it a rockaway?

A. Yes, sir.

Q. It is single-seated, or double-seated?

A. Double-seated.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. A double-seated rockaway?

A. Yes, sir.

By MR. EWING:

Q. Is it a light or heavy carriage?

A. It is not a very heavy carriage.

Q. How many seats are there inside of that carriage?

A. There is only one inside, and one outside for the driver to sit on.

Q. It is a close or open carriage?

A. Close.

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By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. That is to say, it has curtains to it?

A. Yes, sir.

By MR. EWING:

Q. Has it a window?

A. Yes, sir, it has a window.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. The window is behind?

A. Yes, sir.

THE TRIAL.

By MR. EWING:

Q. And on each side?

A. I think it has a window on each side: I am not certain.

Q. It is a carriage with a door opening on the side?

A. Yes, sir: it has a door opening on the side.

Q. It is what would be called a close carriage, then?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You call it a rockaway, I believe?

A. Yes, sir. I said "carriage" first.

Q. You call it a rockaway?

A. Yes, sir.

Q. You have heard it called a rockaway?

A. No, sir: I never did hear it called a rockaway.

Q. How did you come to the conclusion that it was a rockaway, and swear to it?

A. I only said so.

MR. EWING, with the consent of the Judge Advocate, offered, as evidence of the same validity as if the same fact were testified to by Mr. John McCullough, the actor, on the stand, the following telegraphic despatch:—

MONTREAL, June 2, 1865.

To John T. Ford, National Hotel.

I left Washington on Monday evening, March 26, and have not been there since. You can have my testimony before American consul here, if requisite.

JOHN McCULLOUGH.

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JOHN F. DAVIS,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

THE TRIAL.

By MR. EWING:

Q. State where you live.

A. I live in Prince George's County, Md. about a mile from the line of Charles County.

Q. Will you state to the Court whether you know of the whereabouts of Dr. Samuel Mudd on the third day of March last?

A. Yes, sir. Dr. Samuel Mudd was home at ten o'clock on the third day of last March. My son was living with him. I heard he was sick on the second day of March; and, on the third day of March, I went down to see him. I carried him half a dozen small perch. It was the only time I went to see him during his sickness.

Q. How are you enabled to fix it as being the third day of March?

A. I went from Washington on the last day of February, went to Calvert County on the 1st of March, came home on the 2d, and went to Dr. Sam. Mudd's on the 3d.

Q. Did you see Dr. Sam. Mudd then?

A. I saw Dr. Sam. Mudd about ten o'clock on Friday morning, the third day of March.

Q. At his house?

A. Yes, sir.

Q. Near Bryantown?

A. It is within about five miles of Bryantown, I suppose.

There being no other witnesses in attendance, the Commission adjourned until to-morrow, (Tuesday) morning at eleven o'clock.

TUESDAY, June 6, 1865.

The Commission took the following testimony:—

D. W. MIDDLETON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

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By MR. EWING:

Q. State whether you are Clerk of the Supreme Court of the United States.

A. I am.

Q. State whether Marcus P. Norton argued a motion in the Supreme Court of the United States on the third day of March last.

A. He did.

Q. State the name of the case: read your entry of it, if you have it.

A. There was an entry made at the time:—

Supreme Court of the United States.

No. 276. Dec. Term, 1864.

Willis Hamiston, Appt.	}	The argument of the motion to dismiss this cause was commenced by Mr. Jos. H. Bradley in support of the same, continued by Mr. Norton in opposition thereto, and concluded by Mr. Bradley in favor of the motion. Friday, 3d March, 1865.
vs.	}	
John Stainthrop and al.	}	

MR. EWING applied to the Court for permission to recall Daniel J. Thomas, a witness for the prosecution, for the purpose of further cross-examination; the object being to show that the witness had given his testimony from corrupt motives.

The JUDGE ADVOCATE consenting to the application, the witness was directed to be recalled for farther cross-examination.

DANIEL J. THOMAS,

a witness for the prosecution, recalled for further cross-examination.

By MR. EWING:

Q. Were you at William Watson's door-yard, near Horse Head, on the first day of June,—last Thursday,—with John R. Richardson, Benjamin J. Naylor, George Lynch, Lemuel Watson, and William Watson, when James W. Richards, the magistrate, rode up?

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A. I was.

Q. Did you then state to Mr. Richards that you had been asking those gentlemen, or some of them, for a certificate that you were the first person who gave information which led to the arrest of Samuel A. Mudd, and that you had been saying to them that Dr. Mudd would be convicted, and that, if they would give such certificate, you would be entitled to a reward of \$10,000?

A. No, sir; I did not. I will tell you what I did state. I stated to Mr. Watson that persons had said, that, if I mentioned the information before the assassination, I was entitled to so much reward; but I said I never expected a cent, and never looked for such a thing; but still, I said, I would be very glad to receive it if it was so. That is what said.

Q. Did you not then further say to Mr. Richards that you had been saying what I have read to you to those gentlemen? and did you not ask him, whether, in case they gave you such a certificate as you asked for, you would not be entitled to the reward of \$10,000?

A. Let me state to the Court just what I said. I wish the Court to understand: let me give my own testimony.

ASSISTANT JUDGE ADVOCATE BINGHAM. Wait till Mr. Ewing reads the question again.

By MR. EWING:

Q. I will put the question in this form: Did you not then further say that you were the first person who gave information which led to Dr. Samuel Mudd's arrest, and that Dr. Mudd would be convicted, and that, if they would give such a certificate, you would be entitled to a reward of \$10,000? and did you not then ask Mr. Richards whether on such a certificate you would be entitled to the reward of \$10,000?

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A. I will just tell you exactly the conversation.

Q. I want an answer, yes or no, to the question.

A. Let me tell the conversation that passed: I want to tell the Court. I told them, that, the last time I was in Washington,—I was up the day before,—some of Baker's men said to me that I was entitled to so much reward if Dr. Sam. Mudd was convicted. My reply to them was, that I never expected a cent, for I did not think

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Dr. Sam. Mudd was with Booth at the time, and how could I be entitled to the reward; that I only told the conversation between Dr. Mudd and myself, and therefore I did not expect to look for a cent. But I said, that if such a thing was to come, in case I mentioned it before the assassination of the President, I should be entitled to the reward; that is, if the reward was to come, provided I did give the information, I would be very thankful for it. That is what I said. I never thought of such a thing before Sam. Mudd was arrested, and I never expected such a thing: it never came into my mind. I just mentioned what those fellows said. I knew they said it in a joke, and I meant it in a joke.

Q. Did you tell them that you were the person who gave the information which led to Dr. Samuel Mudd's arrest?

A. I never told any one so.

Q. Did you tell Mr. Richards that you had been telling them that you were the person who gave the information which led to Dr. Samuel Mudd's arrest?

A. No, sir; I did not.

Q. Did you tell Mr. Richards that you had been saying to them that Dr. Mudd would be convicted?

A. I told them it was the expression in Washington City that he would go up. I told them that was the expression in Washington City that he would be convicted.

Q. Did you tell them, that, if they would give such a certificate as you asked for, you would be entitled to the reward of \$10,000?

A. Give such a certificate as I asked for! No, sir.

Q. Did you ask them for any certificate?

A. No. I asked them what they would think about it if I had told persons before; that a person had said, that if I did give information before the assassination, that if I had told anybody before the assassination, I would be entitled to a certain part of the reward, if Dr. Sam. Mudd was convicted: and I asked them what

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they thought about it; whether they did not think I would be entitled to it.

Q. You asked them their opinion as to whether they thought you would be entitled to it?

A. Yes, sir.

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Q. But you did not ask them for any certificate of the fact that you had given the information?

A. I never did.

Q. Did you tell them that you had mentioned the conversation, to which you testified, between you and Dr. Mudd, before the arrest of Dr. Mudd?

A. I told them I expressed it to some before and to some since. I did not know I had expressed it to Mr. John B. Moran before; but I met him the other day, and he told me about it. I had forgotten it. He said to me, "You told me about it." He is in the city now.

Q. When did you tell John B. Moran this?

A. I do not know: I forget what time it was; but he said to me that it was before the assassination.

Q. Did Moran say that it was before the assassination of the President?

A. Yes, sir. Moran told me the other day that it was before the assassination of the President.

Q. Where did you tell Moran that?

A. Inside his own house.

Q. Where is his house?

A. About four miles or better from my mother's, I reckon.

Q. And you did tell him that before the assassination of the President?

A. He said that I had told him before.

Q. Do you recollect that you told him before?

A. I do not recollect whether it was before or since; but he says it was before the assassination.

Q. John B. Moran told you in the city that it was before?

A. He did not tell me in the city. He told me the other day. He is in the city now.

Q. When did he tell you that?

A. The day before yesterday?

Q. Where?

A. At my mother's.

Q. He told you that you had given him that information before the assassination of the President?

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A. Yes, sir; sometime before, he said. He did not say how long, but that he thought it was some time before.

Q. Do you recollect now, as a matter of fact, whether you did give John B. Moran that information before the assassination?

A. I do not.

Q. Do you recollect whether, as a matter of fact, you did tell John B. Moran of the conversation between you and Dr. Mudd before the assassination?

A. I know I mentioned something to him about it: I told him about it; but I did not know whether it was before or since the assassination. He says it was before.

Q. But you told John B. Moran about it?

A. Yes, sir; and I told other persons the same thing. I spoke of it at his house, and he was present and heard it. He told other persons of it; he told Mr. Gardiner the same thing; and he is in the city now, up to his sister's.

Q. Which Mr. Gardiner did you tell it to?

A. Henry Gardiner, I think.

Q. Where you tell it to him?

A. I did not tell it to him; but Moran mentioned it to him. I told him about it.

Q. Let me understand you.

A. I say Mr. Moran told me that he had heard me tell about it before.

Q. Did he tell Mr. Gardiner that he heard you say it?

A. Yes, sir: he not only told him, but told many others. Mr. Moran can be had here: he is right down in the city, not far from here.

Q. Did you not, on the occasion to which I have been referring, say to Mr. Richards that you had been saying to those gentlemen that you were the first person who gave the information which led to Dr. Samuel Mudd's arrest, and that you had been asking them for certificates?

A. No, sir: Dr. George Mudd was the first one, I understood, that give information for Dr. Sam. Mudd's arrest. I told them that I understood Dr. George Mudd had given the information.

Q. You did not say to him that you had been telling those gen

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tllemen that you were the first person who gave information which led to Dr. Samuel Mudd's arrest?

A. No, sir: I never told anybody that I gave information to have Dr. Sam. Mudd arrested. I never did. I told the soldiers there that Dr. Sam. Mudd was arrested about these things at Bryantown.

Q. And you did not ask either of the gentlemen I have named for a certificate that you were the first person who gave the information which led to Dr. Samuel Mudd's arrest?

A. Never. I just said to them, "You can say I mentioned it before the assassination; you can give me a certificate, and I will have you summoned to prove it." They said, "No: we did not hear you then." Said I, "Will you give me a piece of paper to show that I mentioned it to you before the assassination?" – "No," they said; they did not hear it; because they were afraid I would have them summoned.

Q. What did you ask a paper for?

A. To certify that I had said such a thing before the arrest of Dr. Mudd.

Q. Did you not ask Mr. Richards, whether, if these gentlemen gave you such a certificate as it was stated you had asked them for, you would then be entitled to a reward of \$10,000?

A. No, sir: they misunderstood it if they said such a thing. I said what I say now, that I would not swear to a lie for every thing in the whole world. I want the Court to thoroughly understand that. Before I would get up on the stand, and swear to a lie, I would sooner die. I wish the Court to understand that. I do not expect to live here forever.

Q. Did you not meet Eli J. Watson in his field on the first day of this June, before you met these gentlemen and had the conversations we have been speaking of, and say to him that you wanted him to certify that you were the cause of Dr. Mudd's arrest?

A. Never in my life.

Q. Or that you gave the information which led to Dr. Mudd's arrest?

A. Never in my life. That is a thing I never did. I never

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gave any information for the arrest of Dr. Sam. Mudd; never told such a thing.

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Q. Did you not then say to Eli J. Watson that you wished from him a certificate that you were the person who gave the information which led to Dr. Samuel Mudd's arrest?

A. Never in my life. I never asked such a thing from anybody.

Q. Did you not then say to him that you were entitled to a reward of \$25,000, because of having given the information which led to Dr. Samuel Mudd's arrest?

A. Never in my life.

Q. Did you not say to him, that if you could get such certificates as that I have referred to, as to your having been the person who gave the information which led to Dr. Mudd's arrest, you would then be entitled to the reward of \$25,000?

A. No, sir; I never did; I never told anybody that I ever had Dr. Sam. Mudd arrested; and I never had. I never had Dr. Sam. Mudd arrested. He was arrested before I knew it.

Q. When did these people tell you that you would be entitled to this reward if you were the person who gave the information?

A. It was on Wednesday, I think. I do not know exactly. I think it was Wednesday, the time I was up here. I can bring the man here.

Q. Was it before you testified?

A. No: I had testified long before.

Q. Did anybody tell you you would be entitled to a reward, before you testified?

A. No, sir; never in the world.

Q. Nobody told you?

A. Nobody. I never thought of such a thing. I looked upon his saying it as joking at the time, because I told him I might apply to him afterwards. I never expect such a thing; I do not look for such a thing; and, more than that, I would not have a reward.

Q. You deny that you asked any of those persons for a certificate that you were the first person who gave the information which led to Dr. Mudd's arrest?

A. I do solemnly deny it. What!—say that I led to Dr. Mudd's arrest! It is a thing I never did.

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Q. But you say you applied to them for certificates that you had told them, of this conversation before?

A. That the conversation passed before the assassination. When I was on the stand before, Mr. Stone wanted to know if I ever mentioned it to any one before the assassination. When these

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men said that I had mentioned it to them before the assassination, I then asked them if they would sign that paper to the Court that I mentioned it before. That was my view in doing it.

Q. That is the only paper you asked from those gentlemen on the occasion I have referred to?

A. The only one.

By the COURT:

Q. Did you know that there was any reward offered for the arrest of Dr. Mudd?

A. I did not: I never heard of such a thing. There never was such a thing as a reward offered for Dr. Mudd.

The WITNESS proceeded to say, I wish to say to the Court that I was really mistaken about the time I mentioned it to my brother. It seemed to me to be Easter Sunday; but I investigated the matter, and Colonel Burnett asked me to take down a summons for him; and after opening it, and counting up the time, it seemed to him as if it was Easter Sunday that I talked to him about it and mentioned the conversation to him.

By MR. EWING:

Q. How do you know it was Easter Sunday?

A. From the time he counted it up, it must have been Easter Sunday. Then I remembered afterwards that I was down there on a Tuesday; and he said to me that I mentioned it to him at the same time. I said, "No, brother: I could not have mentioned it at the same time." I told him I could not have mentioned it to him at the same time if I had told him on Easter Sunday; and I calculate I mentioned the boot to him on Saturday after that. The Saturday afterwards I was down to his house; and I mentioned the boot to him at that time, I know. It might have been a week after Easter Sunday. I was down there then, I know; and he might have understood me as mentioning it at that time.

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Q. You were at his house on Easter Sunday?

A. Yes, sir; and the Sunday after too: but he says he thought it was Easter Sunday.

Q. Do you swear you were at his house on Easter Sunday?

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A. I would not swear to any such thing. I would not positively. I know I was there two Sundays in succession.

Q. Would you swear that you were at his house on the Sunday after the President was assassinated?

A. He said that was his recollection.

Q. I am asking whether you know that you were.

A. I will not say that I was there the Sunday after the assassination; but he said I was: that was his recollection.

Q. But what is your recollection? Were you at his house the Sunday after the President was assassinated?

A. I told him I did not think I was. He said he thought I was.

Q. You do not think you were?

A. I do not think I was there that Sunday. He differed with me.

Q. I am not asking what he said: I want to know what your impression is, whether you were there the Sunday after the President was assassinated.

A. I think it was the Sunday following Easter Sunday. That was my opinion about it.

Q. And that was the Sunday on which you had the conversation that has been referred to by him on the stand?

A. Yes, sir: that was a mistake in me before.

JAMES W. RICHARDS,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you live.

A. Near Horse Head, Prince George's County, Md.

Q. State whether you are acquainted with Daniel J. Thomas.

A. I am.

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Q. State whether you met Daniel J. Thomas in company with John B. Richardson, Benjamin J. Naylor, George Lynch, Lemuel Watson, and William Watson, at the door-yard of William Watson, near Horse Head, on the first day of June, 1865.

A. I did.

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Q. Will you state to the Court, what, if any thing, Mr. Thomas stated to you as to what had been the subject of his conversation with those other gentlemen before you came up?

A. He stated that he had called on Mr. William Watson and Mr. Benjamin J. Naylor for a certificate certifying that he was entitled to the reward, or a portion of the reward, that was offered for Booth and his accomplices; and thought, if he could get a certificate from them to that effect, he would be entitled to a portion of the reward, as Dr. Mudd was considered one of Booth's accomplices; and if Dr. Mudd was convicted, he would be entitled to the reward.

Q. Did he name what reward?

A. \$10,000.

Q. Did he state to what fact they were to give the certificate?

A. He stated that the certificate was to certify that he informed them concerning Dr. Mudd's arrest.

Q. That he informed them of the fact of Dr. Mudd's having been arrested?

A. Yes, sir; the fact of his having been arrested.

Q. Did he ask for any certificate as to his having given the information which led to the arrest?

A. I do not think he stated that he wanted to get a certificate that he was the cause of Dr. Mudd being arrested; but he only wanted to get a certificate certifying that he was entitled to a portion of the reward.

Q. By reason of what?

A. That he had informed those men concerning Dr. Mudd's arrest.

Q. Did he say any thing as to what he could do in case he got such a certificate?

A. He said he thought he could get \$10,000; that he was entitled to that portion of the reward.

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Q. Did he say any thing upon the question as to whether Dr. Mudd would be convicted?

A. He said, that, if Dr. Mudd was convicted, he was entitled to a portion of the reward: those were the words he used.

Q. Will you state whether or not you know of the reputation of Daniel J. Thomas, in the community in which he lives, for veracity?

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A. His character is very bad, as far telling the truth is concerned.

Q. Do you know his general reputation for veracity?

A. To my knowledge, his character is bad.

Q. Do you know what his general reputation is, in the community in which he lives, for veracity?

A. Yes, sir.

Q. You say it is very bad?

A. Yes, sir; very bad.

Q. From your knowledge of his general reputation for veracity, would you believe him under oath?

A. If I believed he had any prejudice about it, or if any money was at stake, I would not believe him.

Q. Do you know what his general reputation for veracity was before the war broke out?

A. I have only known him five years: I knew him one year before the war.

Q. Do you know what his general reputation was during the one year before the war that you knew him?

A. About the same as it is now.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. On what day of the week was this conversation that you have been talking about?

A. On the first day of June.

Q. On what day of the week?

A. On Thursday.

Q. Where was it?

A. At Mr. William J. Watson's.

Q. Who introduced this conversation that you have been detailing?

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A. When I rode up—

Q. Who introduced it? who began it?

A. From the explanation Mr. Thomas made to me—

Q. My question is, Who began this conversation that you are testifying about?

A. Let me explain—

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Q. If you cannot answer my question, then explain anything you please; but it is a plain question. Who began the conversation that you have been testifying about?

A. Mr. Lemuel Watson, I think.

Q. To whom was Lemuel Watson speaking.

A. He was speaking in reference to Daniel Thomas.

Q. To whom was he speaking?

A. He was speaking to me.

Q. After he began, who followed?

A. Mr. Daniel Thomas.

Q. What did Lemuel Watson say at that time, when he began it?

The WITNESS. Do you mean his first words?

[ASSISTANT JUDGE ADVOCATE BINGHAM.] Yes; and all his words in the presence of Thomas.

A. When I rode up Lemuel Watson remarked to me, "You are a justice of the peace, and I am glad you have come: I want you to try a case here. Daniel says he is entitled to so much reward, and I want you to say what you think of it."

Q. Is that all that Watson said then?

A. To my knowledge, I think that is all.

Q. Then what did he say?

A. I do not recollect what I said.

Q. Did you say any thing?

A. Yes, sir.

Q. You do not know what you said?

A. I do not recollect what I said at that time; but I know what I said afterwards.

Q. I mean at that time. You think you can remember what Thomas said better than you can remember what you said yourself, do you?

A. I do not know what reply I made to him.

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Q. Do you think you can remember what Thomas said better than you can remember what you said yourself?

A. I remember what Mr. Thomas said.

Q. But you cannot remember what you said?

A. I remember what the reply of myself and Lemuel Watson was to Mr. Thomas.

Q. But what did you say in reply to what Lemuel Watson said to you? Do you know?

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A. No, sir; I do not.

Q. Then if you do not mind what you said, do you mind who next spoke after you?

A. Mr. Thomas.

Q. Now state exactly the words that Thomas used, and all his words.

A. Mr. Thomas stated that he had applied to Mr. Watson and Mr. Naylor for a certificate from them that he had informed them concerning Dr. Mudd's arrest; and that, if he could get such a certificate, he thought he could get a portion of the reward, or words equivalent. That was about the principal part of the conversation.

Q. You say that it was words equivalent?

A. Yes, sir; or words equivalent.

Q. Now I ask you whether it would not be words equivalent if he had said, "If you give me a certificate that I informed you concerning Dr. Mudd's arrest, I would be entitled to a part of the reward." Would not that be words equivalent?

A. I have informed you—

Q. But I ask you the question, if Thomas said, "If you give me a certificate that I informed you concerning Dr. Mudd's arrest," would not that be equivalent to what you have just detailed?

A. If Daniel Thomas had asked me—

Q. If he had said simply, "If you gentlemen [meaning these other men, Watson and the others] give me a certificate concerning Dr. Mudd's arrest," would that be the equivalent of what you think Thomas actually did say?

A. Yes, sir.

Q. Do you remember that Thomas said any thing more than you have just now stated?

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A. Yes, sir: Mr. Lemuel Watson and myself told him we thought—

Q. I am not asking what you and Lemuel Watson told him you thought: I am asking you now whether you remember that Daniel J. Thomas said any thing more than what you have now just stated, at that time?

A. No, sir: I do not think he said any more.

Q. What did you and Lemuel Watson then say to him?

A. We told him that we thought he was entitled to twenty thousand dollars' reward, in the way of a joke.

Q. But did you tell it to him in the way of a joke?

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A. Yes, sir.

Q. Did you tell him you said it in the way of a joke?

A. Yes, sir.

Q. You told him it was in the way of a joke?

A. We told him afterwards it was in a joking manner.

Q. I do not ask you what you said afterward. Did you use the words to Thomas then, "We think you are entitled to twenty thousand dollars," and add the further words, "We say this in the way of a joke."?

A. No, sir.

Q. Did you tell Thomas there yourself that you thought he was entitled to a reward of twenty thousand dollars?

A. Yes, sir; I told him so.

Q. Did Watson tell him?

A. Yes, sir, both Lemuel Watson and myself.

Q. When you and Watson told him that, what did Thomas reply?—any thing?

A. Mr. Thomas replied that he did not want a certificate from me, I believe; or something to that effect.

Q. Did he say he did not want a certificate from Watson?

A. No, sir; I did not hear him say that he not want a certificate from Watson.

Q. What words did Thomas use when he said he not want a certificate? What words further did he use to you at that time?

A. He told me he would not want me to swear to a lie for him to get ten thousand dollars.

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Q. He said that in the hearing of Watson?

A. Yes, sir.

Q. Did he pretend to say to Lemuel Watson that he had ever told him any thing about the arrest of Dr. Mudd?

A. Yes, sir; I think he did.

Q. Did you not swear a little while ago that what you repeated in answer to my question was all he said at that time? Did you not swear that?

A. I stated that—

Q. Did you not swear a little while ago that what you said in answer to my question was all that Daniel J. Thomas said at the time?

A. Yes, sir; but you would not let me explain what I had stated, so that I could bring these words in.

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Q. Now, if you want to explain what you swore to then, suppose you explain.

A. I was going to state the conversation that passed.

Q. Go on, and state any thing you want to state.

A. After the conversation in reference to Mr. Thomas asking for those certificates, I remarked to him that I did not think ten thousand dollars was enough; he had better take twenty thousand; and then I was going to tell you what Mr. Thomas said.

Q. Go on, and tell any thing you want to tell.

A. Afterwards he told me that he did not want me to swear falsely for him. I did not state that I would swear for him for twenty thousand dollars; but Lemuel Watson and I told him we thought he was entitled to twenty thousand dollars.

Q. And he said he did not want you to swear falsely for him?

A. It was in the way of a joke.

Q. You need not state what you meant privately. I am asking you what you said. Did you not swear a moment or two ago that you told Thomas he had better take twenty thousand dollars?

A. I think I said, that, if he was entitled to any, he was entitled to twenty thousand dollars.

Q. Did you not swear a little while ago that you told him he had better take twenty thousand dollars?

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A. If I did, I recall it.

Q. Did you not swear a little while ago that you and Lemuel Watson both told he was entitled to twenty thousand dollars?

A. Yes, sir.

Q. How did you come to know he was entitled to any thing?

A. I was just telling him in a joke.

Q. Did you know that he was entitled to any thing?

A. No, sir; I did not.

Q. State to the Court what connection you have had with this Rebellion.

A. I have not had any at with reference to the Rebellion. I have not sympathized with the Rebellion in any way at all.

Q. Where have you been during all this Rebellion?

A. I have been in Charles and Prince George's Counties, teaching school.

Q. All the time?

A. Yes, sir.

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By MR. EWING:

Q. State whether you have always been a loyal man.

A. Yes, sir: I have always been a loyal man.

Q. Have you always been a hearty supporter of the Government?

A. Yes, sir: I voted for Mr. Lincoln and Mr. Johnson.

Q. Have you always been a hearty supporter of all the measures of the Government for the suppression of the Rebellion?

A. Yes, sir; I have.

Q. Has Mr. Thomas always been hearty supporter of the Government?

A. In 1861 I met Mr. Thomas in the road on my way from school; and he stated that he was going over to join the Southern army; and that he intended to come back when Beauregard would cross, and hang a man by the name of Thomas B. Smith.

Q. Was he a loyal man in the beginning of the war?

A. No, sir; he was not.

MR. EWING, with the consent of the Judge Advocate, offered in evidence a printed copy of the following order:—

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[OFFICIAL.]

WAR DEPARTMENT, WASHINGTON, April 20, 1865.

ONE HUNDRED THOUSAND DOLLARS' REWARD.

The murderer of our late beloved President, Abraham Lincoln, is still at large. Fifty thousand dollars reward will be paid by this department for his apprehension, in addition to any rewards offered by municipal authorities or State executives. Twenty-five thousand dollars' reward will be paid for the apprehension of G. A. Atzerodt, sometimes called "Port Tobacco," one of Booth's accomplices. Twenty-five thousand dollars' reward will be paid for the apprehension of David C. Herold, another of Booth's accomplices. Liberal rewards will be paid for any information that shall conduce to the arrest of either of the above-named criminals, or their accomplices. All persons harboring or screening the said persons, or either of them, or aiding or assisting their concealment or es-

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cape, will be treated as accomplices in the murder of the President, and shall be subject to trial before a military commission, and the punishment of death. Let the stain of innocent blood be removed from the land by the arrest and punishment of the murderers!

All good citizens are exhorted to aid public justice on this occasion. Every man should consider his own conscience charged with this solemn duty, and rest neither night nor day until it be accomplished.

EDWIN M. STANTON, Secretary of War.

JOHN F. DAVIS

recalled for the accused, Samuel A. Mudd.

By MR. EWING:

Q. State whether or not you were at Dr. Mudd's house on the Tuesday following the assassination of the President.

A. I was.

Q. State whether you went into the field, and informed him of the fact that Lieutenant Lovett, and a party of soldiers who were with him, had come there to see him.

A. I did.

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Q. Did you state whether they came to arrest him?

A. I did not,—not to my knowledge. I was not near where the soldiers were; not nearer than fifty yards.

Q. State whether or not you came up to the house, and met Dr. George Mudd.

A. I did.

Q. Where did Dr. Samuel Mudd meet Dr. George Mudd?

A. Just at the end of his kitchen.

Q. State what Dr. George Mudd told Dr. Samuel Mudd.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to the question.

MR. EWING. May it please the Court, one of those four persons who testified, contradicting the others, it is true, stated that Dr. Samuel Mudd, on that visit, denied that there had been any persons

at his house on Saturday morning. We have proved, in a round-about sort of way, owing to the objections that were made (but still it is proved), that Dr. Samuel Mudd informed Dr. George Mudd, on Sunday, that there were two suspicious persons at his house on Saturday morning, and requested him to communicate the fact to the military authorities, and have him sent for, if necessary, to give further information on the subject. One, or perhaps more, of those persons who went with Lieutenant Lovett, spoke of the fact of Dr. George Mudd having a short conversation with Dr. Samuel Mudd outside the door before Dr. Samuel Mudd saw the officers and detectives. I wish to prove by this witness that Dr. George Mudd's whole conversation with Dr. Samuel Mudd was, that, in pursuance of the information which Dr. Samuel Mudd had given him on Sunday, and of his request, he had communicated the facts that Dr. Samuel Mudd stated to him to this officer and detectives, and that they had come for the purpose of questioning him upon the subject. The purpose of this evidence is twofold: first, to show that Dr. Samuel Mudd knew that these parties had been acquainted, by Dr. George Mudd, with the circumstance of those two suspicious persons having been at Dr. Samuel Mudd's house on Saturday morning, for the purpose of showing that he could not, after that, as a rational man, have gone into the room,

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and denied that that there were two persons in the house on Saturday morning; second, to show that the conversation was not one that was in any manner objectionable, but, on the contrary, in strict pursuance of the request of Dr. Samuel Mudd; and that that was all there was of it. It is true, it is conversation with Dr. George Mudd with the accused. I do not wish to prove any thing the accused said: I wish to prove merely what Dr. George Mudd stated to him, to show the information he had as to the purpose of this visit, and as to the knowledge of the visitors with reference to those persons, before he entered the room to have his conversation with them.

ASSISTANT JUDGE ADVOCATE BINGHAM. The witness is asked to state what a third person told the prisoner at the bar: and that I object to as utterly incompetent.

The COMMISSION sustained the objection.

Q. [By MR. EWING.] Will you state whether or not Dr. Samuel Mudd betrayed any alarm?

A. None that I know of.

THE TRIAL.

Q. Or any unwillingness to go to the house to see the officer?

A. Not a moment. As soon as I hallooed to him, he wanted to know who it was. I answered, and told him who it was, that it was Davis, and he came right out of the pines, coming up there from where the ploughs were, and met me, and came right to the house straight along with me. I told him that there were some soldiers and Dr. George Mudd at the house.

Q. He betrayed no alarm?

A. No, sir; none in the world.

Q. And no unwillingness?

A. Not a moment.

LEMUEL L. ORME,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING,

Q. State whether you are acquainted with Daniel J. Thomas.

A. Yes, sir; I am.

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Q. Do you know what his reputation is, in the community in which he lives, for veracity?

A. It is very bad.

Q. Do you know what his reputation is?

A. He is looked upon as a man that hardly ever tells the truth.

Q. Do you know what his reputation is?

A. I do. I never heard him undertake to tell any thing, that was of any length, that he did not tell some story about it, and betray himself before he got through, so as to prove that it was a story.

Q. Do you know what his neighbors and the people around there think of him as to veracity?

A. I only know from what they say. I have not heard a man down there scarcely that would believe him in any thing he would undertake to tell.

Q. How long have you known him?

A. He was not grown when I first knew him: he was small; not more than thirteen or fourteen years old, perhaps.

THE TRIAL.

Q. From your knowledge of his general reputation for veracity, would you believe him under oath?

A. If he had the least prejudice against a person, I could not believe him if he swore against him

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. But supposing he had not a prejudice against a person, would you believe him under oath then?

A. If he had not any, I should hardly believe him anyhow.

By the JUDGE ADVOCATE:

Q. Will you state whether you have been loyal to the Government during the Rebellion?

A. I have, to the best of my knowledge.

Q. You certainly know whether you have or not?

A. In my belief, I have. Some persons say that some men are disloyal, and, at the same time, those men may not think so.

Q. Have you constantly desired that the Government should succeed in putting down the Rebellion?

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A. I have never done anything contrary to that; nothing in the world.

Q. But that is not an answer to my question. Have you constantly desired that the Government should succeed in suppressing the Rebellion?

A. I have always wished that the Union might be sustained. I always had that desire. I never wanted to see this Government broken up, and I have always expressed myself in that way.

Q. Which did you wish to succeed, the South or the North, so as to make it one country?

A. I had no idea of the South ever forcing the North to go to them. I always expected, of course, so far as the Union is concerned, that, if any would, it would be through the North that the Union would be.

By MR. EWING:

Q. Do you know whether Mr. Thomas has been a loyal man since the beginning of the war?

THE TRIAL.

A. He has not; not if words testify any thing. He advised and talked to me once for about two miles to go South with him.

Q. When was that?

A. I think it was in the fall of 1861.

Q. What was he understood to be in the first two years of the war?

A. He may have changed his views on the subject in twelve or eighteen months after the commencement of the war.

Q. How was he looked upon during the first twelve or eighteen months of the war?

A. He was looked upon as a great friend of the South; a great helper in that way, as far as he was able, as far as his ability went. He was not looked upon as being able to help anybody; but his conversations were all that way.

HENRY L. MUDD, JR.

recalled for the accused, Samuel A. Mudd.

By MR. EWING:

Q. State whether you know of the whereabouts of your brother,

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Dr. Samuel Mudd, in the first five days of the month of March last.

A. I did not see him on the first day of March at all: but I judge he was at home; he certainly was at home. On the second day of March, he was at my father's before breakfast in the morning. He came to see my sister, who was sick. I am not certain whether he took breakfast or not. I saw him again in the evening of the second, about four o'clock. On the third day of March, he was sent for about ten o'clock; and the boy found him in the barn, stripping tobacco. He came to my father's to dinner between eleven and twelve o'clock,—I guess it was about half-past eleven o'clock,—and took dinner with us, and left about two o'clock. In the evening of the same day he came back again, and brought some medicine.

Q. That was the third day of March?

A. Yes, sir.

Q. What time in the evening?

THE TRIAL.

A. I do not know exactly what time it was. I say he came back again; but I did not see him. I was told—

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what you were told.

Q. [By MR. EWING.] Did you see him again on the evening of the third day of March?

A. I did. I went to his house at night, and brought some medicine over. On the fourth day of March, he was again at my father's to see my sister. On the fifth day of March, I saw him at church; and he dined at our house.

Q. Are you certain that he took dinner at your father's house on the third day of March?

A. I am positively certain of it.

Q. State to the Court the distance of your father's house from the city of Washington.

A. I guess, as near as I can come at it, it is between twenty-seven and thirty miles from the Navy-Yard bridge.

Q. Will you state if you know whether your brother has owned a buggy within the past few years?

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A. No, sir; I do not know that he ever did own one, or a carriage of any description. I know he has not one now, and has not had one since I can remember. I do not know that he ever did own one.

Q. If he had one, would you have been likely to know it?

A. I would have known it anyhow: I would be bound to know it.

Q. Will you state whether your father owns a buggy or rockaway?

A. He does not.

Q. What sort of a carriage does your father own?

A. He owns a large double-horse carriage, a close carriage, it is called, holding four persons inside, two on the driver's seat, and a large seat behind.

Q. How is it as compared with the hacks that are used about the city?

A. I guess it is about as large as any of them; very near it, anyhow. It is a very heavy carriage.

THE TRIAL.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. How did you come to be certain about the 3d of March?

A. I was at the barn stripping on the 3d of March; and when I came to my dinner, my brother came in immediately afterwards, and he asked for some water to wash his hands. His hands were covered with the gum of tobacco. I saw the gum on them myself. My sister was sick at the time, and that is the way I came to be certain about it.

Q. How long was your sister sick?

A. She was sick at least a week; not dangerously ill.

Q. The first week of March?

A. Yes, sir: she was taken sick on Ash Wednesday, the first day of March.

Q. And that is all the way you are certain about it?

A. Yes, sir.

By MR. EWING:

Q. What did you do on Ash Wednesday? Where did you go?

A. I went to church on Ash Wednesday in the morning, and

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in the evening. I do not know what I was doing. I was at home, though.

Q. How far is the church from your house?

A. About four miles.

DR. J. H. BLANFORD

recalled for the accused, Samuel A. Mudd.

By MR. EWING:

Q. State whether you knew of the whereabouts of Dr. Samuel A. Mudd in the first five days of last March.

A. I know that Dr. Mudd was at home on the first day of March, and on the fifth day of March, at least.

Q. Did you see him there?

A. I saw him at his house on the 1st of March: I saw him at church on the 5th of March.

THE TRIAL.

Q. What was he doing on the 1st of March?

A. He was making a tobacco-bed when I saw him; sowing tobacco-seed preparatory to the crop.

Q. Do you know whether or not Dr. Mudd owns a buggy?

A. He does not.

Q. Does his father own a buggy or rockaway?

A. No, sir.

Q. What kind of a carriage is it that his father owns?

A. It is a large family carriage, a close carriage; four seats inside, two seats outside.

DR. CHARLES ALLEN,

a witness for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Are you acquainted with the prisoner, Samuel A. Mudd?

A. I am.

Q. State whether he has been at your house within the past two or three months, and, if so, on what day or night.

A. He was in my office on the evening of the 23d of March, I think it was.

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Q. Who was in company with him?

A. He came in with H. A. Clark and Mr. Gardiner.

Q. What is Mr. Gardiner's first name?

A. I do not know. It was the first time I had ever seen Mr. Gardiner: I was introduced to him on that evening.

Q. Is it the Mr. Gardiner who has been a witness here?

A. I do not know: I was not here.

Q. Where does Mr. Gardiner live?

A. I understood that he lived in the same section of country that Dr. Mudd lived in.

Q. What time did they come to your house?

A. Somewhere near eight o'clock in the evening.

Q. How long did they stay?

A. They staid until twelve or one o'clock.

Q. At night?

THE TRIAL.

A. At night.

Q. Who were of the party?

A. There were several persons in there when they came,—Mr. Emerson: I think Mr. Veighmyer was either there then, or came in afterwards: Dr. Morgan also came in afterwards; he came in later. Mr. Clark then came in with Dr. Mudd and Mr. Gardiner, whom he introduced to the parties then in the room.

Q. Did they leave your house between that and twelve o'clock?

A. They left somewhere after twelve, I suppose.

Q. How do you fix it as the twenty-third day of March?

A. I was thinking over the matter, and at first could not fix it; but I remembered, that, on that day, there was a gale or tornado swept over the city, unroofing one or two houses, and killing a negro man on Seventh Street; and that circumstance was spoken of that evening, and I know it was remarked upon by two or three of us; and thinking over the matter, and remembering that, I went to look at the journals,—the “Star” and “Intelligencer,”—and from these papers I found that the tornado took place on that day. Then I supposed that was the time.

Q. Had you seen Dr. Mudd in the city before?

A. I had seen him once before that time.

Q. When?

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A. I was introduced to him prior to that by Mr. Clark.

Q. At what date?

A. I think it was some time in the early part of 1864.

Q. Have you seen him since?

A. I have not seen him since that time. I think those are the only two occasions I have ever seen Dr. Mudd.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Your house, at which he stopped on the evening of March 23, is in Washington City, is it not?

A. Yes, sir.

Q. And he staid there until midnight?

A. Yes, sir.

Q. And thereupon he left?

A. Yes, sir.

HENRY A. CLARK,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. State whether you are acquainted with the prisoner Samuel A. Mudd.

A. Yes, sir: I am acquainted with him.

Q. State whether you saw him at any time within the past year in the city of Washington; and, if so, where.

A. I saw him last March.

Q. What time in March?

A. He and Mr. Gardiner spent an evening in my house in March,—the latter part of March.

Q. What is Mr. Gardiner's first name?

A. I cannot remember exactly.

Q. Where does Mr. Gardiner live?

A. He is a neighbor of Dr. Mudd's.

Q. When did they come to your house?

A. They came to my store in the afternoon, between six and seven o'clock. They then went home with me to my house, and

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took tea with me; and, after tea, we went round to Dr. Allen's office, and spent the evening there.

Q. In company with whom?

A. With a number of gentlemen.

Q. Name them.

A. There were ten or a dozen, likely. Amongst the number was Dr. Morgan: he was there for a few minutes only. Mr. Veighmyer was there; Mr. Emerson was there; Mr. Gardiner was there; and, I think, Mr. Ethan Allen was there: but I will not be positive about Ethan; I think he was there. Several other gentlemen were there: I cannot positively recall their names.

Q. Was Mr. Bowman, of the Bank of Washington, one of the party?

A. He might have been. I think he was.

Q. How long did you remain at Dr. Allen's?

A. We remained there until between twelve and one o'clock.

THE TRIAL.

Q. What did you then do?

A. We went home.

Q. Did Dr. Mudd go with you?

A. Yes, sir.

Q. And Mr. Gardiner?

A. Mr. Gardiner and Mr. Veighmyer.

Q. Did they stay at your house that night?

A. Mr. Veighmyer lived on the same square with me, and went as far as his own house with us.

Q. Did Dr. Mudd stay at your house that night?

A. He went into the house with me, and I gave him a bedroom; and the next morning he was in my house. I took it for granted he was there all night.

Q. At what time did he leave your house the next morning?

A. After breakfast.

Q. Did he and Mr. Gardiner go off together?

A. He and Mr. Gardiner went off together.

Q. Did Dr. Mudd and Mr. Gardiner room together that night?

A. I judged they did: I put them in the same room.

Q. State whether you saw Dr. Mudd upon any other occasion this year.

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A. I have not seen him on any other occasion that I know of, until yesterday.

Q. Did you know J. Wilkes Booth?

A. No, sir.

Q. Or John H. Surratt?

A. No, sir.

Q. Or Mr. Weichmann?

A. No, sir: I do not know any of those three names.

Q. Was any man of the name of either of those three persons in company with you and Dr. Mudd while you were together that night, either at Dr. Allen's or at your house?

A. No, sir: they never were in my company there or anywhere else; not even in a theatre with Booth.

Q. Were you with Dr. Mudd constantly through the evening, from the time you took tea and went up to Dr. Allen's?

A. We were not out of one another's sight that night from the time he came to the store until he went to bed that night,—until he went into his room.

THE TRIAL.

Q. Did you see either of the parties I have named in company with him next morning before he left your house?

A. I do not know the parties that you have reference to: I do not know them at all.

Q. Did you see any strange persons in company with him next morning?

A. There were no strange gentlemen at my house, or about my house; or they were not there when he left there. They went off together, and no one in company with them.

Q. Are you enabled to fix the day in March that was?

A. The only way in which I can fix the day positive is this: We were all at Dr. Allen's, and we were talking about the accident that occurred on that occasion,—of a storm, and some negro boy being killed.

Q. Was the storm on that day?

A. I believe it was, to the best of my knowledge.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You say that there were ten or twelve persons at Dr. Allen's along with yourself and Dr. Mudd that night?

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A. I suppose in that neighborhood, about that number.

Q. Did they remain until between twelve and one o'clock?

A. Oh, no sir!

Q. You have only named four or five of them: do you remember the names of the others?

A. I would not speak positively about the names of the others. I could not say.

Q. You do not know what their names were?

A. Yes, I do: if I could remember positively, I could give the names, because I was acquainted with every gentleman who visited there, pretty much. We go there to spend the evening often.

Q. If you do not remember the names, how do you know you are acquainted with every man there?

A. Very well.

Q. If you do not remember their names?

A. Very well; from the fact that I am acquainted pretty much with every gentleman who came into the room.

THE TRIAL.

Q. I am asking you how do you know that you are personally acquainted with all the gentlemen there that night, if you cannot remember who they were?

A. The fact is this: I cannot tell you precisely who were there; but I can say the number was about ten or a dozen, likely. It might have been a dozen or ten or eight; but my impression is in the neighborhood of ten or a dozen. Now, you ask me to name the ten or a dozen. I cannot name them.

Q. You cannot mind who they were?

A. No, sir.

Q. And you do not know now who they were?

A. I would not swear positively to the names of the ten or dozen who were there.

By MR. EWING:

Q. What were you engaged at that evening at Dr. Allen's?

A. We were playing cards.

EATON J. HORNER

recalled for the accused, Samuel Arnold.

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By MR. EWING:

Q. State where the confession of the accused, Samuel Arnold, in regard to which you have testified, was made.

A. It was written in Mr. McPhail's house.

Q. But I am inquiring as to the verbal statements in regard to which you have testified.

A. At Fortress Monroe.

Q. Was any part of those confessions made on the boat "Louisiana"?

A. I did not speak of any thing that occurred on the boat: I was not allowed in my testimony to do so.

Q. What you testified, then, as to his admissions, was based entirely upon what he said on shore?

A. Yes, sir; at Fortress Monroe.

Q. And none of it upon what he said on the boat?

A. I did not speak of any thing that occurred on the boat.

THE TRIAL.

Q. Then your recollection of his statements to which you have testified is derived entirely from what he said on shore; and none of it is derived from any thing which he communicated on the boat?

A. None at all.

No other witnesses being in attendance, the Commission adjourned until to-morrow (Wednesday) morning, June 7, at eleven o'clock.

WEDNESDAY, June 7, 1865.

The Court again assembled, and took the following testimony:—

GEORGE BOOZ

recalled for the accused, Samuel A. Mudd.

By MR. EWING:

Q. In your testimony a few days ago, you spoke of having met Dr. Samuel Mudd up about your house on the by-road leading through the farm?

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A. Yes, sir.

Q. That was on the day after the assassination of the President?

A. On Saturday.

Q. Easter Saturday?

A. Yes, sir.

Q. Whereabouts did you cross the road, in going through the swamp up towards your house?

A. I crossed it just opposite my house, coming up through the swamp, right opposite the house, coming to the gate.

Q. How far was it from the big elm-tree?

A. I reckon, about three hundred yards, as near as I can come at it.

THE TRIAL.

Q. On which side of the big elm-tree did you cross the main road,—the side next to Bryantown, or the other side?

A. On the upper side, farthest from Bryantown.

Q. State how far you could see up and down the main road at the point where you crossed it.

A. At the point where I crossed it, I reckon, as near I can come at it, I could see plain for about a quarter of a mile above, and upwards of a quarter of a mile below,—a plain, full view.

Q. When you say “below,” you mean in the direction of Bryantown?

A. Yes, sir; in the direction of Bryantown. I could see from the swamp for about a quarter of a mile each way.

Q. Was there any horseman on the road when you crossed it?

A. I never saw any horseman at all.

Q. If there had been anybody going along the road with Dr. Mudd, and who kept on the main road away from Bryantown when Dr. Mudd turned up through this by-road, would you have seen him?

A. I should think I ought to see him in passing the road. There was not any thing in my sight except a line of fence that ran down the road. That was all that was in my sight from the gate where he turned in at, up to the gate where he crossed.

Q. How far could you see down the road in the direction of Bryantown?

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A. There was not any thing at all between me and the road as far as the swamp, except a line of fence. From me down to the swamp, where it crossed over to Bryantown, there was only a line of fence.

Q. From the point where you crossed the main road, could you see the whole of this by-road that Dr. Mudd was travelling on?

A. No, sir. I could not see it all,—not until I came on the hill. When I crossed at the gate, I had a full view of the main road. That is about one hundred yards from the main public road. I then had a full view of the by-road.

Q. And you saw Dr. Mudd on the by-road?

A. Yes, sir; on the by-road.

Q. Was he between the gate by which he entered the main road and your house?

A. Yes, sir; right opposite the dwelling-house. My house leads back of the dwelling-house.

THE TRIAL.

Q. Was he moving when you saw him?

A. Yes, sir.

Q. Where you crossed the main gate up above the big elm, is there a gate going into the field?

A. Certainly; from the main road.

Q. Then there is another gate down where Dr. Mudd entered?

A. Yes, sir.

Q. How far is it from the point where you crossed the main road to the gate by which Dr. Mudd entered the by-road?

A. As I said before, as near as I can come at it, it is about three hundred yards between the two gates.

Q. And when you saw Dr. Mudd on the by-road, how far was he from the gate by which he entered?

A. Pretty much equal from both. Some persons there have a near cut in going over the hill. He was nearly equal from the two gates. He came up a little, and then turned right up the road toward the house.

Q. Then if anybody had been travelling with Dr. Mudd on the main road, and kept on the main road when he turned in at the gate, that person would have been about how far from where you crossed the main road?

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A. He would have been about equal with the doctor above my house, if he had kept on riding. I think both distances would be nearly equal.

Q. When you crossed the main road, he would have been pretty near the point you crossed at?

A. Pretty much, if the gentleman had kept on riding.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you swear, before, that you saw Dr. Mudd turn up from the main road at all?

A. No, sir; I did not.

Q. Do you swear now that you saw him turn up from the main road at all?

A. No, sir.

Q. Then, if you did not see him turn up at all, how do you know there was not a man riding by his side?

A. I did not say I saw a man riding by his side.

THE TRIAL.

Q. But when you are asked to swear that, if there had been, you would have seen him, you do not mean to swear that you would have seen him, because you did not see him?

A. I did not see him. I cannot swear to that. I did not see the gentleman.

RICHARD EDWARD SKINNER,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. In Charles County, Md.

Q. Whose servant have you been?

A. Mrs. Thomas's.

Q. The mother of Daniel J. Thomas?

A. Yes, sir.

Q. How long have you known Daniel Thomas?

A. I have known him for thirty years, I reckon.

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Q. Do you know what his reputation is, in the community where he lives, for telling the truth?

A. Yes, sir.

Q. What is it?

A. His reputation is that he don't bear no good reputation by gentlemen.

Q. From you knowledge of his reputation for truth, can you believe him under oath?

A. Well, I do not know. I man to be sworn on his oath is something different. I cannot swear that I would not take him on his oath.

Q. What means have you of knowing what his reputation is, in the community in which he lives, as a truth-teller?

A. I have always been living with him, and I have heard gentlemen say they would not believe him on his oath.

Q. You have heard people generally say that?

A. Yes; I have heard that: but, as to taking him on his oath, really I do not know whether they would or not.

THE TRIAL.

Q. But you have heard gentlemen say that they would not believe him under oath?

A. Yes, sir.

Q. Do you know whether he was a loyal man when the war broke out?

A. No, sir; he was not.

Q. Has he generally been a loyal man since?

A. He has been sometimes; and then again he has not been so,—just changeable.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Have you heard people speak of Mr. Daniel Thomas's oath at all until this trial commenced?

A. No, sir: I have not heard them speak of his testifying in courts at all.

Q. You never heard them say any thing about his oath?

A. Not in court, I have not.

Q. And therefor you do not mean to say to this Court that gentlemen generally said that this man, on oath in court, was not to be believed at all?

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A. No, sir; I never heard them say that.

By MR. EWING:

Q. Have you ever heard any gentlemen speak of Thomas having giving an oath in a court of justice?

A. No, sir; I never heard that.

JOHN W. WHARTON,

a witness called for the accused, Samuel Arnold, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you live, and the business you are engaged in.

Q. I live in the city of Baltimore: my place of business is at Fortress Monroe.

THE TRIAL.

Q. Inside the fort, or outside?

A. Outside.

Q. Are you acquainted with the prisoner, Samuel Arnold?

A. Yes, sir; for the time he was in my employment,—two weeks.

Q. When did he go there?

A. He came there on the 2d of April.

Q. And stayed with you until when?

A. Until the 17th, the morning of his arrest.

Q. How was he employed with you?

A. By the week, as clerk.

Q. Was he in regular attendance at your store during that period?

A. Yes, sir. I was absent about three days in the two weeks: I judge, though, he was there, or some of my men would have told me if he had been absent.

Q. He performed his duties very faithfully during the time he was there?

A. Yes, sir.

Q. State how he came to be employed in your store.

A. Through his father.

Q. Did you receive any letter from Mr. Arnold, yourself?

A. Yes, sir.

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Q. At what time?

A. About the latter part of March.

Q. In that letter, did he make any reference to the business in which he had heretofore been engaged?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question. The letter would be the best evidence of what it contained: but, even if the letter were produced, it would not be evidence; and, therefore, proof of the contents of the letter, so far as to show that Arnold had applied to the witness for employment. That had been admitted because it seemed perhaps to be fair to the accused, without doing injustice to the Government. He had the benefit of that application; but the proposition now made was entirely inadmissible.

MR. EWING stated that it had been proved that the letter in question was taken from the store of the witness by Major Smith, an officer of the United States, at the time of Arnold's arrest: the

Judge Advocate had been requested some days since to produce the letter, and he had been unable to find it; so that, if the letter itself would be admissible in evidence, it was now competent to prove its contents by parole. It was a declaration by the prisoner Arnold, at the time of his application to the witness, as to his having abandoned the business in which he had formerly been engaged. Under the latitude of examination which had been indulged in on the part of the prosecution, this proof might fairly be admitted.

ASSISTANT JUDGE ADVOCATE BINGHAM replied, that, if the letter was here, it would be utterly inadmissible in regard to any thing contained in it about his former pursuits or whereabouts, and doings of any sort, for the simple reason that a party could not, either in writing or orally, make evidence at his pleasure to bar the doors of justice against the power of the Government, which he is charge to have offended.

The COMMISSION sustained the objection.

MR. EWING. I have a motion to make to the Court. I move that the cipher letter introduced in evidence, June 5, 1865, and its translation, be ordered to be stricken from the record. As ex-

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planatory of the fact that I have not heretofore made the motion, I was necessarily absent from the court-room, in the supposition that no evidence, except general testimony as to the conspiracy, was being introduced. In fact, I was informed that that was the character of the evidence then being introduced. I therefore could not make the motion at the time, and since then have not seen it, having been furnished only this morning with the copy. My reason for making the motion is a twofold one. In the first place, I really believe the letter to be fictitious, and to bear upon its face the evidence that it is so, and therefore feel entirely free in my own conscience in making the motion to have it stricken from the record. In the second place, it is testimony that was wholly inadmissible under the plainest rules of evidence. It is not signed; the handwriting was not proved; it was in cipher; it was not shown at all that it was traced to anybody proved or charged to be connected with this conspiracy, or that it was in the possession of anybody shown or charged to be connected with this conspiracy. The rule in regard to declarations in cases of conspiracy is, that they may be admitted when they are declarations of one of the conspirators. This is not shown to be the declaration of one of the conspirators. And, when

they are the declarations of a conspirator, they must be declarations accompanying some act of the conspiracy; not merely a declaration of what had been done, or was going to be done, but some declaration connected with an act done in furtherance of the common design. The rule is very succinctly stated in Benét on military law and courts-martial, p. 289:—

“In like manner, consultations, in furtherance of a conspiracy, are receivable in evidence, as also letters, or drafts of answers to letters, and other papers found in the possession of co-conspirators, and which the jury may not unreasonably conclude were written in prosecution of a common purpose, to which the prisoner was a party. For the same reason, declarations or writings explanatory of the nature of a common object, in which the prisoner is engaged together with others, are receivable in evidence, provided they accompany acts done in the prosecution of such an object, arising naturally out of these acts, and not being in the nature of a subsequent statement or confession of them. But where words or writ-

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ings are not acts in themselves, nor part of the *res gestæ*, but a mere relation or narrative of some part of the transaction, or as to the share which other persons have had in the execution of a common design, the evidence is not within the principle above mentioned: it altogether depends on the credit of the narrator, who is not before the Court, and therefore it cannot be received.”

In this case, it is a declaration not only of some person who is not shown to be connected with the conspiracy, but it is a declaration of some person whose existence nobody knows any thing of,—a nameless man,—a letter as completely unconnected with the subject of investigation as the loosest newspaper paragraph that could be picked up anywhere.

ASSISTANT JUDGE ADVOCATE BINGHAM. If the Court please, there is a great deal in what the gentleman says that is exactly the law about this matter of conspiracy: but there is one thing I beg him to take notice of, that, while that limitation which he has named obtains in regard to third persons, there are two principles of the law touching conspiracy which are just about as old as the crime itself, and as old as the common law, which itself is the growth of centuries; namely, that every declaration made, whether it is in the formation of a conspiracy, in the prosecution of a conspiracy, before it is shown to have been organized, or after it is

shown to be completed, is always evidence against the party himself. There is no exception to it at all.

MR. EWING. Who is this party?

ASSISTANT JUDGE ADVOCATE BINGHAM. We will see now. That is what I have to say about that. There is an allegation in the charge and specifications here that this conspiracy was entered into with the parties named and with others unknown, which is also a mode of proceeding known to the administration of justice wherever the common law obtains. There is a rule in connection with that that cannot be challenged, and I know will not be challenged by my learned friend or any other lawyer; and that is, that the declarations of parties who are neither indicted nor on trial are admissible in the trial of those who are indicted and upon trial touching upon the conspiracy.

Having stated this much, I beg leave to show the Court what

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sort of foundation was laid which justified the introduction of this evidence; and I am glad to have the opportunity to show it. It is but just to the client of the counsel who has made this motion that I should say here, in this connection, that this item of evidence, as to him, cannot affect him; but it cannot be excluded from this Court because it cannot affect him, by any manner of means. It may affect somebody else. I mean the mere fact of its being written may not affect him. But what sort of foundation was laid for the introduction of this evidence?

In the first place, you find it proved, beyond any question of doubt by any rational man who has heard this testimony, that Booth, during the month of October, 1864, was in Canada, plotting this assassination with the declared agents of this revolt. There is no question about that. You find, in the month of November, 1864, after he had so plotted this assassination with those who had weighed him out the price of blood, he is on his way to Washington City for the purpose of hiring his assistants; he is in the city of New York; he is in conversation with one of his co-conspirators, and, in my judgment, in conversation with one of them who is now within the hearing of my voice; but that is no matter.

He is in conversation with one of his co-conspirators about the 14th of November last; and in that conversation they disclosed the fact in the first place between them they are conspirators, as detailed by the witness who was present, Mrs. Hudspeth: one of them the lot has fallen upon to go to Washington to carry out the con-

spiracy, to go to Washington to hire the assassins, to go to Washington to strike the murderous blow in aid of this Rebellion; and what of the other? The other has been ordered, and that is the testimony, to go to Newbern,—Newbern, North Carolina; Newbern, which became the doomed city afterwards amongst these conspirators for the importation of pestilence; and after the introduction of proof of this sort, amongst these unknown conspirators, who are numbered by fifties and hundreds, as Booth himself testified when he was trying to hire with his money a man who could not be hired to do murder, Mr. Chester, in the very vicinity of Newbern, after such facts as these are proved, this infernal thing is found floating as a waif on the waters, bearing witness against these vil-

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lains, I say it is admissible in evidence. Although you cannot prove the writer of it, it is admissible in evidence. It is alleged that there are conspirators here unknown. There are facts here to prove that one of them was to go to Newbern. The letter is found in the vicinity of Newbern, in North Carolina, as your geography will advise you,—at the dock in Morehead City. The foundation has been laid for the introduction of it. And now allow me to say one other word in this connection. There are some rules of the law that draw very harshly on conspirators that are engaged in crime, I know. It may seem very hard that a man is to be affected in the remotest degree by a letter written by another who is not upon his trial, or a letter that has never been delivered, which could only speak from the time of its delivery; and yet the gentleman knows very well that upon principle it has been settled that a letter written and never delivered is admissible upon the trial of conspirators.

MR. EWING. Written by a co-conspirator.

ASSISTANT JUDGE ADVOCATE BINGHAM. Of course. But the fact that it was written by a co-conspirator is patent on its face, and gathered from the other facts in proof in the case. The point about it is that he is an unknown conspirator. Suppose it had been found in possession of Booth, addressed to him through the post-office instead of being sent by hand, as the cipher letter shows they must do, because the detectives are on their track; suppose it had been found in possession of Booth: is any man in his senses going to say here it would not be admissible in evidence against him and everybody else who conspired with him in this infernal plot? What is the difference that it had not reached him, or had not reached the other hired assassin that was on the track of Sherman, to creep into his

tent and murder him, as they crept into the tent of the Commander-in-chief of your army and murdered him? I say it is evidence.

MR. COX. If the Court will allow me, I desire to submit a word in support of the motion made by General Ewing. When it was announced that a cipher letter was about to be offered in evidence, the counsel for the defence took it for granted that it belonged to that general class of evidence relating to the machinations of the

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rebel agents in Canada which had been generally admitted here without objection. The counsel for the defence have had no objection to the exposure of those machinations: their only concern has been to show that their clients were not involved in them. The whole of the evidence of this description of a secret character heretofore has been evidence relating to the contrivances and machinations of the rebel agents in Canada, either on their own responsibility, or in connection with the authorities in Richmond. Therefore no objection was made to the introduction of that evidence; nor was it perceived, until the letter was read before the Court, that it purported to come from somebody in immediate connection with this act of assassination itself. Therefore the counsel were taken by surprise, and allowed the letter to be read to the Court without objection, without inspecting it as they had a right to do, if they desired to submit objections to its introduction as evidence. When the letter was read, it was seen that it purported to come from somebody immediately concerned in the assassination.

Now, the rule stated by my learned friend on the other side is undoubtedly true, in general, that the declarations of conspirators are admissible in evidence against their co-conspirators; but that is subject to this limitation, that the conspiracy must first be established between the author of the declaration, whether oral or written, and the party accused. That conspiracy being first proved by evidence *aliunde*, by other proof than the declaration itself, then the declaration may be offered in evidence to show the scope and design of the conspiracy; and if it had been established that this letter emanated from somebody between whom and any one of the accused the conspiracy had already been established, unquestionably it would have been evidence against the accused, supposing it to be made in the prosecution of the conspiracy: but there has not been a particle of proof produced to the Court that the letter did emanate either from Booth or any one of his associates. The logic of my learned friend on the other side seems to be this: It is suffi-

ciently established, at least by *primâ-facie* evidence before the Court, that Booth was engaged in a conspiracy with some unknown persons: this letter comes from an unknown person; *ergo* it is a letter from

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somebody connected with Booth in this conspiracy. That seems to be about the logic of my learned friend on the other side.

ASSISTANT JUDGE ADVOCATE BINGHAM. Not all the logic.

MR. COX. But, as far as it goes, it seems to be the logic of the other side. He says the charge is, that these accused were engaged in a conspiracy with somebody unknown: this letter comes from somebody unknown; therefore it is admissible in evidence. That is about the substance of it. I submit to the Court that this is chop logic. The rule of law is, that the author of a declaration must first be shown: and when a letter is produced here, and read in evidence, it must be first shown whose the handwriting is; that it is really the production of somebody whose declarations, oral or written, are evidence against the accused; and, until that is proved, the letter is clearly inadmissible.

If the Court will look at the face of the letter, although that is a matter for argument in case it is fairly before the Court as evidence, I think the Court will perceive that it does bear on its very face the marks of fabrication. The letter is picked out of the water at Morehead City, no more blurred, I think, than any paper on this table. It looks as if it had been written, and dropped in the water immediately before it was found, for the very purpose of being picked up by the Government agents to be used as evidence. It declares there "Pet," who, I suppose, is intended to mean Booth, "has done his work well." "We had a large meeting last night,"—the Friday night when these conspirators were flying from the city for their lives! "I was in Baltimore yesterday." That was Friday. "Pet had not yet got there." Of course he had not got there, when the very work of conspiracy was to be done that very night,—Friday; yet this letter assumes that he had done the work before, and was to get there "yesterday,"—Friday,—in Baltimore. There is every thing about it suspicious. That, however, is a matter of argument to the Court as a question of evidence when it is before the Court as evidence. I submit to the Court, in support of the motion of my learned friend, that the letter was admitted and read in evidence by surprise: it is not legitimate evidence, and therefore should be struck from the record.

ASSISTANT JUDGE ADVOCATE BINGHAM. I intended to make

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one other remark about this, though it was quite foreign to the argument I have made, for I propose to meet the question fairly; and that is, that a matter of evidence which has been admitted by the Court, and placed upon its record, cannot be struck out upon the motion of anybody, although the Court may disregard it, for the reason that the reviewing officer must have an opportunity to review the matter proposed to be erased from the record, in order to determine whether it was rightly done or not.

MR. EWING. I do not mean to actually erase it, but to enter that it is stricken out.

ASSISTANT JUDGE ADVOCATE BINGHAM. That is another thing. That is deciding the matter in advance. The motion as made is to obliterate the letter from the record. On that point, the authority is, on page 114 of Benét: "No erasure or obliteration is permitted under any circumstances, as it is absolutely necessary that the reviewing authority should have the most ample means of judging both of discrepancies in the testimony of witnesses and of incidents that have been made the subject of comment by either party."

MR. EWING. My motion is simply that the Court shall enter on the record that that item of testimony is to be rejected, so as to conclude the question that it is not to be considered.

ASSISTANT JUDGE ADVOCATE BINGHAM. If that is the form of the motion, I have only to say that it will come more fitly when the gentleman makes his final argument. It is competent for him then to say to the Court, "You are not entitled to consider this evidence;" but what I object to is commencing the argument of the case in the middle of the trial, and asking the Court to try a part of the case at one time finally, and another part of it at another. That is a new system of practice.

Now, in regard to the remarks of my learned friend who has just spoken (Mr. Cox), I wish to say this: His tongue certainly tripped, and he forgot himself, when he said that written evidence could not be admitted without proving the handwriting, in cases of conspiracy. I asked him, and challenged him, when I made my opening remarks, to produce a single authority that showed any such limitation, where the paper was found relating to the con-

spiracy, on the trial of the conspirators charged, no matter who wrote it. Will the gentleman say here, that because we did not prove who wrote the cipher that was found in Booth's possession, which accords exactly with the cipher found in Davis's or Benjamin's possession at Richmond, it is not evidence? It is no matter who wrote it: he had it, and let him account for his possession of it, and let him account for the uses he was making of it. This letter was found on the premises under the control and occupied by the enemy, who were engaged in a conspiracy. The gentleman said very well that "Pet" is referred to in the letter. Of course he is; and it turns out that it is proved that "Pet" is the name by which Booth was known among his co-conspirators in Canada: it is so proved by Conover. How would Conover know any thing about it? Who has proved that he was in North Carolina at the time of the flight?

The gentleman criticises the letter, as if the Court should reject it now; and the criticism is not fair. I admit that the letter is not a very fine literary production. I admit that the letter does not indicate in any respect the highest qualities of intellectual power or character; but I deny that the letter, on its face, is open to any such criticism as has been pronounced on it here. It will be time enough to consider its weight when we come to sum up the case; but, inasmuch as that point is made now for the first time, the Court will bear with me for calling attention to it.

In the first place, the letter is dated Washington, April 15; which is the day after the murder, and the day of the death of the President of the United States. It does not follow by any means that it was written in Washington; but that is what is on its face. Now, let us see whether there is any thing of this supposed contradiction on the face of it.

"I am happy to inform you that Pet has done his work well. He is safe, and Old Abe is in hell."

Is there any contradiction here in dates, or time, or fact? Did not Abraham Lincoln die on the morning of the fifteenth of April? and is not that in proof? The conclusions of this miserable monster, of course, are not statements of fact: but monster as he is, he knows enough to state the fact, which he does state, that

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“Pet has done his work well,” after their method of well-doing; and that his victim, Abraham Lincoln, is dead. That is the fact that he states: there is no contradiction there.

“Now, sir, all eyes are on you. Who? “You.”

“You must bring Sherman. Grant is in the hands of Old Gray ere this.”

Who in America knew that, except a man in this conspiracy, on the 15th of April?

MR. COX. We do not know that it was written on that day.

ASSISTANT JUDGE ADVOCATE BINGHAM. We are taking things as we find them.

“Red Shoes showed a lack of nerve in Seward’s case, but fell back in good order.”

Who knew in what sort of order he fell back, except a co-conspirator? We know who Red Shoes was. He did fall back.

MR. COX. When was the letter found?

ASSISTANT JUDGE ADVOCATE BINGHAM. On the second day of May.

MR. COX. Three weeks after.

ASSISTANT JUDGE ADVOCATE BINGHAM. Yes, but the gentleman assumes in his criticism that it bears date the day it purports to have been written.

“Johnson must come. Old Crook has him in charge.”

Who knew on the 15th of April who had him in charge?

“Mind well that brother’s oath.”

Who knew then about the oath? It is all abundantly proved here, however.

“And you will have no difficulty. All will be safe, and enjoy the fruit of our labors.”

That is, the price.

“We had a large meeting last night. All were bent on carrying out the programme to the letter.”

The gentleman says there is a contradiction. Wherefore?

“The rails are laid for safe exit. Old ——, always behind, missed the pop at City Point. I say again, the lives of our brave officers, and the life of the South, depend on carrying this programme into effect.”

Which was the original design.

“No. Two will give you this. When you write, sign no real name. I was in Baltimore yesterday. Pet had not got there yet.”

The gentleman says there is a contradiction. Wherefore? Was not “yesterday” until midnight, at least of the 14th of April? “I was in Baltimore yesterday.” Assuming that he was in Washington on the 15th, he was in Baltimore the day before, the day of the murder. “Pet had not got there yet.” Where? At midnight yesterday, under cover of the same darkness which he sought when he inflicted the mortal wound upon Abraham Lincoln. If he had got the benefit of the trains, everybody knew he would have been there “yesterday.” Where is the contradiction?

I submit to the Court, upon the showing of Mr. Ewing last stated, inasmuch as the motion now is not to obliterate this letter from the record, this is no time to decide its effect upon the case or upon the Court. That question will come up for full argument when the gentlemen state their defence; and I, for one, will be as ready, I trust, as any human being connected with this trial, to yield to any conviction that may be made upon my mind by the argument of the counsel (Mr. Ewing), that this evidence ought not to affect the client he represents, and that he so ably and earnestly and faithfully defends. But that does not end this question: the Government has the right to know who else is to be affected here.

MR. COX. The argument of the learned counsel for the Government is, that the handwriting of a letter need not be proved when it is found in the custody of parties implicated in the conspiracy. That I may admit; but that assumes the whole question. The letter was not found in the custody of any person. It was found floating upon the water, and *non constat* that the letter may not have been written the very day when it was found, and a few minutes before it was found, and written by somebody who had possessed himself of sufficient knowledge of the facts charged against the conspirators to enable him to fabricate a letter, specious on its face, and appearing to have some bearing on the conspiracy itself.

ASSISTANT JUDGE ADVOCATE BINGHAM. Pardon me for saying to the gentleman, that, while his statement is correctly made as

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regards what I said, I did also say, in that connection, that we must lay a foundation, and show that it had been in the custody of one of the conspirators: I think we have done it by showing that "Pet" was the name of one of the party; by showing that the object of the conspiracy, as narrated in the letter, was the object agreed upon; by showing that that was not a matter of notoriety, nor a matter known to anybody except the conspirators themselves on the day of its date; and by showing that all the evidence in this case, so far as this letter can be understood to-day, corroborates the fact which I assert,—that the writer of the letter on the fifteenth day of April was a party to this conspiracy; a fact clearly shown, I think, to hang him if he were found with that paper in his pocket,—though no man knew his name, and no man ever testified about the writer,—unless he could explain how he came by it.

The COMMISSION overruled the motion of MR. EWING.

MINNIE POLE,

a witness called for the accused, Samuel Arnold, being duly sworn, testified as follows:—

By Mr. EWING:

Q. State where you live.

A. In Baltimore City.

Q. Are you acquainted with the prisoner Samuel Arnold?

A. Yes, sir.

Q. Will you state whether you saw him in March last? and, if so, when?

A. Yes, sir; on the 20th, the 27th, and the 28th.

Q. Where did you see him on the 20th?

A. In the omnibus going to Hookstown.

Q. Where did you see him on the 27th?

A. At his uncle's, about two miles from our house.

Q. What time on the 27th?

A. In the evening. It was at a party.

Q. Was it near Hookstown?

A. Yes, sir.

Q. Where did you see on the 28th?

A. At our house, on his way to Baltimore.

Q. Near Hookstown?

A. Yes, sir.

Q. Did you see him afterwards till now?

A. No, sir.

There being no other witnesses for the defence in attendance, the Judge Advocate stated, that if MR. AIKEN was through with his testimony impeaching the character of Mr. Weichmann, and with that understanding, he would proceed to examine testimony in rebuttal.

MR. AIKEN stated that he concluded that portion of the case.

JOHN RYAN,

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Will you state to the Court whether you are acquainted with Louis J. Weichmann?

A. Yes, sir: I have known him something less than a year.

Q. Have you known him intimately?

A. Not what you may call intimately. I have met him casually; and he has been quite friendly in his conversation with me,—quite communicative.

Q. Do you know the reputation which he bears among those who know him?

A. As far as my knowledge extends, he has always borne a good character; that is, as a moral young man.

Q. And truth-telling?

A. Yes, sir; as far as I know. I know nothing that would tell against his character for truth.

Q. From the knowledge which you have of him, would you or not hesitate to believe him under oath?

A. I would believe him under oath, or, in fact, whether he was under oath or not, as far as my knowledge goes. I should not suppose he would tell a falsehood.

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Q. Have you any knowledge of his conduct and conversation and character, so far as the question of his loyalty is concerned?

A. I only remember one conversation distinctly that he had with me that would bear on that question; and that was on the evacuation of Richmond. I happened to meet him at Willard's, and we walked down together.

Q. From the knowledge which you have got through your association with him, what is your estimate of him as a loyal man?

A. That is the only conversation I remember hearing on political or loyal questions, although it is possible he spoke once or twice before about it: but it must have been in harmony with that conversation, or else it would have made a contrary impression on my mind; and at that time he expressed his—

MR. EWING. I object to the witness stating what he said.

The JUDGE ADVOCATE. The witness has a right to state his impressions as to his loyal character.

The WITNESS. My impressions on that conversation would be, that he rejoiced at the success of the Union, the restoration of the Union.

Q. [By the JUDGE ADVOCATE.] And in no part of his conduct or conversation previously to that do you remember any thing in conflict with that?

A. No: I think, if there was, it would leave some impression: at least, I have no impression of any thing to the contrary on my mind.

Cross-examined by MR. AIKEN:

Q. Has your acquaintance with Mr. Weichmann been at all of an intimate character?

A. We have met casually. They were casual meetings. I met him accidentally one day at a store where I used to purchase books and papers, and got introduced to him. I never visited him at his house. I was not what you would call a visiting friend. I would meet him casually on the street; and whenever we met he would speak to me quite friendly, and I to him.

Q. Was he a clerk in the same department, with you?

A. No, sir.

Q. In a different department?

A. Yes, sir.

Q. Have you heard more within the last month than ever before of Mr. Weichmann's character as an honest, veracious man?

A. I have heard nothing within the last month, that I can remember, that would indicate that he was not an honest, veracious man; that is, if you do not want my opinion of his testimony here on the stand. I am speaking of what I have heard among those whom I know know him. I know parties he was intimate with, or at least had acquaintance with.

Q. You cannot state positively that you ever heard him express a Union sentiment before the evacuation of Richmond?

A. I cannot remember any distinct conversation, except that: but I think, as a general thing, whenever he spoke on political questions, or topics bearing on the war, they were in harmony with that conversation; that is, if he had spoken differently, I think it would have made an impression on my mind.

Q. Was Mr. Weichmann a clerk in the War Department when you knew him? Did you know him as such?

A. No, sir; only from his own representations that he was a clerk there.

Q. Did he ever represent himself to you as being in confidential relations to that department as a detective?

A. No, sir; he never did.

Q. Did you ever hear of any such thing?

A. No, sir; I never did.

Q. On the whole, have you not heard quite as much said against Mr. Weichmann's reputation as an honest man, and in regard to truth-telling, money-matters, and all that, as you ever heard in his favor?

A. I have never heard any thing said against his character relative to money-matters, veracity, or any thing of that kind. I have my own private opinion of his testimony and of his connection with this affair; but I presume that is not relevant testimony, nor what I have heard said relative to his testimony.

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FRANK STITH,

a witness called for the prosecution in rebuttal, being duly sworn,
testified as follows:—

By the JUDGE ADVOCATE:

Q. Will you state to the Court whether or not you are acquainted with Louis J. Weichmann?

A. I am.

Q. How long and how intimately have you known him?

A. I have known him about sixteen months.

Q. Intimately?

A. Yes, sir.

Q. Do you know the reputation he bears as an honest, truthful man?

A. Yes, sir.

Q. Will you state what that reputation is?

A. It is very good indeed, as far as I have heard.

Q. You have never heard him questioned as an honest and truthful man?

A. No, sir; I have not.

Q. Were you not both in the public service, in the same office?

A. Yes, sir.

Q. What reputation did he bear in the public service while you were associated with him, so far as loyalty is concerned?

A. Excellent.

Q. Was he open and outspoken in his friendship for the Government?

A. Always, so far as I know.

Q. Do you know whether or not he had any connection with some military organization here, organized for the defence of the city?

A. Yes, sir; I know he had.

Q. Was he a member of it?

A. Yes, sir.

Q. That was a voluntary association, was it not?

A. Yes, sir.

Cross-examined by MR. AIKEN:

Q. Did you make your acquaintance with Mr. Weichmann as a clerk in the War Department?

A. Yes, sir; in the office of the Commissary-General of Prisoners.

Q. Were your relations to Mr. Weichmann intimate outside of the office?

A. Not very.

Q. Did you ever know him as a detective in the War Department?

A. No, sir.

Q. You never heard of his being a detective?

A. Never.

Q. Will you state the character of that military organization to which you belong?

A. It was an organization for the defence of the capital, I believe.

Q. Was it not an organization composed exclusively of clerks in the department?

A. Yes, sir.

Q. Was it not considered, at the time that the organization was formed, equivalent to a dismissal from office not to join that organization?

A. Yes, sir.

Q. Was Mr. Weichmann in the habit of wearing blue pantaloons about his office always after that?

A. Not always. He did not always wear them.

Q. Did you ever see those blue pantaloons on Mr. Weichmann on any other than rainy days, except on days of drill?

A. I cannot say as to that.

Q. Would he not go home to put on his blue pantaloons, and, after the drill, retire, and immediately put on his citizen's clothes, making hateful expressions with reference to them?

A. I do not recollect about that.

JAMES P. YOUNG,

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

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By the JUDGE ADVOCATE:

Q. Are you in the public service in this city?

A. Yes, sir.

Q. In what position?

A. In the War Department; General Meig's office.

Q. Will you state to the Court whether or not you are acquainted with Louis J. Weichmann? and, if so, how long you have known him?

A. I am very intimately acquainted with him.

Q. For how long a time?

A. I have known him for many years; since 1856.

Q. Do you know the reputation which he bears as an honest and truthful man? and, if so, will state what that reputation is?

A. It is very excellent. I was a college classmate of Mr. Weichmann. He and I entered the Central High School of Philadelphia in the summer of 1856. He remained in that college for two or three years. He then left, and went to Maryland,—to another college, I believe,—and I heard frequently from him. Several years afterwards, about eighteen months ago, I met him in this city. I have been very intimate with him while in this city. I have met him frequently.

Q. You say his character as an honest and truthful man is very good?

A. Unquestioned.

Q. Without any reproach whatever?

A. Yes, sir.

Q. Will you state what character he bears as a loyal citizen?

A. I have had many conversations with him on that point, and heard him express himself very freely. I regard him as a very radical loyal man. I suppose I may state that he is a member of the Union League. I am a member of that body.

Q. Has he or has he not at all times been perfectly frank and unhesitating, in his intercourse with you, in his expressions of loyalty to the Government?

A. Yes, sir; unequivocal.

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Cross-examined by MR. AIKEN:

Q. What year was it when you were at the Central High School in Philadelphia?

A. 1856.

Q. Is that a college, or a high school for boys?

A. It is both: it is called the People's College.

Q. I suppose you mean to give us to understand, then, that there are different grades of classes in the school?

A. Yes, sir.

Q. What grade was Mr. Weichmann in when you were there?

A. He and I entered what is called Division H, at first. Division G. and H in the Central High School of Philadelphia correspond to the freshman-year in other colleges.

Q. Did Mr. Weichmann at that time ever declare to you his intention to become a minister?

A. No, sir.

Q. Were you a member of the same military organization with Weichmann?

The WITNESS. To what military organization do you refer?

Q. I mean to the organization formed of clerks here.

A. I belong to General Meigs's office battalion.

Q. Was it not equivalent to a dismissal from office to refuse to become a member of that military organization?

A. I could not state.

Q. When did Weichmann join the Union League?

A. I could not state.

Q. Do you know that he ever did join it?

A. I know that he was a member.

Q. How do you know it?

A. I am also a member.

Q. But how do you know that Weichmann was a member?

A. I know it by unmistakable evidences.

Q. We are anxious to know a little something of what that evidence of being a member of the Union League consists.

A. There are certain signs, of course, which members use, by which they know each other.

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Q. What sign did Weichmann ever give to you indicating that he was a member of the Union League?

A. He gave me the signs which are peculiar to the Union League.

Q. Did he give you that sign since or before the assassination of the President?

A. He gave it to me before. I have met him at the Union League rooms frequently.

Q. Is that all the evidence you have of the fact that Mr. Weichmann is a member of the Union League, because he gave you a sign?

A. Not only one sign, but many.

Q. Are those signs indubitable evidence that a man is a member of the Union League?

A. I should say they were.

Q. What are the signs?

ASSISTANT JUDGE ADVOCATE BINGHAM. It is not important what they are, and I object to any inquiry on the subject. It is wholly immaterial, and not important at all for any purpose in the world.

MR. AIKEN. It has been truly stated by the Judge Advocate that the counsel for the defence had sought to impeach Mr. Weichmann's loyalty. One of the evidences brought here of his loyalty is that he is a member of the Union League, and that the witness on the stand knows it by a sign. I should like to know what that sign was. I cannot consider that evidence: I do not think any one could.

ASSISTANT JUDGE ADVOCATE BINGHAM. If it is not evidence, it does not amount to any thing.

GENERAL FOSTER. I object to the counsel taking up the time of this Court asking any such questions.

The JUDGE ADVOCATE. The witness has stated that he saw Mr. Weichmann in the Union League rooms, acting with others as a member.

GENERAL FOSTER. The counsel has no right to take up the time of the witness and of the Court with such questions.

MR. AIKEN. I do not wish to expose the secrets of the Union

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League. If there is a record with Mr. Weichmann's signature to it, showing that he is a member of it, that would be evidence.

ASSISTANT JUDGE ADVOCATE BINGHAM. The Union League will take care of itself; but this point about it is wholly immaterial.

The question was waived.

By MR. AIKEN:

Q. Have you ever known Mr. Weichmann as a detective in the employ of the Government?

A. No, sir.

P. T. RANSFORD,

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Will you state to the Court whether you are acquainted with Louis J. Weichmann?

A. I am.

Q. How long have you known him?

A. I have known him since last September.

Q. Have you known him intimately or otherwise?

A. About as intimately as young men usually know each other when acquainted.

Q. Were you associated with him in the public service?

A. I am a clerk in the War Department, and he was a clerk in another branch of the War Department. I have known him outside. He has visited me at my rooms.

Q. Do you know his reputation for integrity and truth?

A. I have always regarded it as being very good indeed.

Q. Do you state that to be his character?

A. That has always been my impression of his character.

Q. And on the score of loyalty how do you regard him?

A. I have had but little conversation with him on political matters; so little, indeed, that I do not think I am competent to give an opinion as to his loyalty.

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Cross-examined by MR. AIKEN:

Q. Are you a member of the same military organization that Mr. Weichmann belonged to?

A. I do not know what organization Mr. Weichmann belongs to. I used to belong to a military organization called the War-Department rifles. I presume it is the same one. I have not been drilling with them for some time; but I did belong to it.

Q. Was not a refusal to become a member of that organization equivalent to a dismissal from office?

A. I understood so at the time the organization was being raised in the War Department.

Q. You said that you know nothing of Mr. Weichmann's loyalty. Have you never heard any expressions of his on that subject?

A. I said that I had had such very little political conversation with him, that I could not hazard an opinion about that. I know his character to be very good, though, so far as I have heard and know.

Q. Did you ever have any transactions with him yourself?

A. No, sir; except as a friend, meeting him once in a while.

Q. Did you ever know of his having dealings and transactions with anybody else?

A. No, sir.

Q. Then, in fact, you have no means of knowing much about him?

A. Only as a friend. He visited me, and I am acquainted with a great many of his friends.

Q. I suppose you simply met him as a friend and acquaintance.

A. Simply as a friend.

JOHN T. HOLAHAN,

a witness for the prosecution in rebuttal, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. State to the Court where you now reside, and have resided for the last three years.

A. I reside in Washington, and have resided there all my life-time.

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Q. State where you boarded during the last winter and spring.

A. I commenced boarding with Mrs. Surratt the first week of February.

Q. And left there when?

A. The last time I slept in the house was on the Saturday night after the assassination.

Q. During the time you were boarding there, state whether you ever saw any of the accused there; and, if so, what ones?

A. I saw Mr. Atzerodt; I did not know him by that name at that time; and I saw Mr. Payne there once.

Q. State where you saw them in the house; what part of the house.

A. I saw Mr. Atzerodt there several times at meals. I saw Mr. Payne there once at breakfast. I did not know his name was Payne then. His name was Wood when I knew him.

Q. You saw him there as Wood?

A. Yes, sir.

Q. What did Mr. Atzerodt go there to see, so far as you learned? Who was he with?

A. He was with John Surratt the principal time. They were all in together; that is, when I would go to the table. I would see them there; and I would leave them at the table, and go up to my room.

Q. During the time they were at the table, did Mrs. Surratt and the parties at the table engage in general conversation? What was the fact about that?

A. There was no general conversation that I know of but what would occur at the table,—passing the compliments of the day, or something of that kind.

Q. You did not see Mr. Wood, as you then knew him, in the parlor, the evening before, with Mrs. Surratt?

A. No, sir: I only saw him once at table.

Q. And that was at breakfast, or dinner?

A. At breakfast.

Q. You do not know how long he remained at Mrs. Surratt's?

A. No, sir.

Q. During all the time that you were at Mrs. Surratt's house,

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has she ever failed to recognize you? or have you ever known of any weakness of the eyes, or defect of sight, on her part?

A. No, sir: I never knew any thing about that.

Q. Did she ever on any occasion fail to recognize you?

A. No, sir.

Q. Do you or not know that Mr. Booth visited at the house of Mrs. Surratt?

A. I have seen him there frequently.

Q. Where have you seen him in the house?

A. In the parlor.

Q. With whom?

A. Mrs. Surratt and the young ladies would be there.

Q. Did you ever know the prisoner Herold to call there?

A. I never saw him at the house. I knew him previously: I knew him two years ago.

Q. You never saw him at the house?

A. No, sir.

Q. You never heard it alluded to, by any member of the household there, that there was any defect in Mrs. Surratt's eyesight?

A. No, sir; not that I know of.

Q. I will ask you if you ever saw, at Mrs. Surratt's house, a woman by the name of Mrs. Slater; and about what time you met her there.

A. I never saw Mrs. Slater there.

Q. Did you ever see any person there whom you afterwards learned was Mrs. Slater?

A. I saw a woman who left there; but I did not know she was Mrs. Slater until I saw the testimony of Mr. Weichmann, and he gave the name of the woman.

Q. State the circumstances of your seeing the lady whom you did not then know.

A. I was getting up one morning, dressing myself; and I saw a lady getting into an open carriage.

Q. Who was with her?

A. John Surratt.

Q. What time was that?

A. About half-past seven o'clock in the morning.

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Q. What time in the month, and what month?

A. I could not say. It was about two weeks previous to the assassination.

Q. Where was Mrs. Surratt at the time these parties were in the carriage?

A. She was on the pavement.

Q. Doing what?

A. I suppose she was talking to her, or something of that kind.

Q. Was she or not talking to Mrs. Slater at the time she was getting into the carriage?

A. She was talking to this lady. I did not know her name.

Q. Was Mrs. Surratt doing any thing to her at the time, or did she aid her in any way?

A. She may have spoken to her, or assisted her in the buggy: I do not know; I paid no particular attention.

Q. Do you remember whether she gave any assistance to her in getting into the carriage?

A. Possibly she did.

Q. I want to know whether you remember the fact; not whether possibly she did or not.

A. I cannot say positively.

Q. They were all at the carriage together?

A. Yes, sir.

Q. They were getting ready to drive away?

A. Yes, sir.

Q. Mrs. Surratt, John Surratt, and this lady, were there together?

A. Yes, sir.

Q. And that was about two weeks before the assassination?

A. I think it was.

Q. Was that the last time you saw John H. Surratt at that house?

A. No, sir.

Q. When was the last time?

A. On the 3d of April.

Q. Did you know where he had returned from when he came back on the 3d?

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A. No, sir.

Q. Did you learn, then or subsequently, where he had been?

A. I did not learn until after the assassination where he had been.

Q. Then how did you learn it?

A. Through Mr. Weichmann: no, I am too fast; I learned it previous.

Q. How did you learn it?

A. Through Mr. Weichmann.

Q. You learned it previous to the assassination, through Mr. Weichmann?

A. Yes, sir.

Q. But not from any member of the family?

A. No, sir.

Q. Was the time you saw John H. Surratt going into this buggy with this lady, and Mrs. Surratt there, the last time you saw him previous to the 3d of April?

A. Yes, sir.

Q. You saw him on the 3d of April?

A. Yes, sir.

Q. How long?

A. The time I saw him did not occupy five minutes.

Q. Where did you see him?

A. I saw him in the house. He was to the door of my room, and rapped. I was in bed.

Q. Was it in the morning, or evening?

A. At night, about ten o'clock.

Q. On the 3d of April?

A. The night of the 3d of April.

Q. How are you enabled to fix the day?

A. It was the day news was received here of the evacuation of Richmond. I had arrived from Baltimore that day. I had had my family over to Baltimore. I went over there on Saturday, and came back on Monday morning.

Q. You know that was the day the news arrived of the evacuation of Richmond?

A. Yes, sir.

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Q. Was he here in the city the next morning? or did he leave that evening?

A. I cannot say: I only saw him for about five minutes.

Q. You did not see him afterwards, and have not seen him since?

A. No, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you exchange money with him?

A. Yes, sir.

Q. How much?

A. When he rapped at my door, he told me [he] wanted to see me—

Q. I do not ask what he said to you. Did you exchange money with him?

A. Yes, sir: I did.

Q. How much?

A. I gave him sixty dollars in paper, and he gave me forty dollars in gold.

Q. That was on the 3d of April?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Did you notice whether he had more gold than the amount you exchanged with him?

A. He told me he had some gold, and that he wanted some greenbacks. Those were the words he used. He said he wanted to go to New York, and that he could not get it discounted in the morning, as he wanted to take the early train in the morning.

Q. Did you see him have any more gold than the amount he exchanged with you?

A. No, sir: he only pulled out that amount.

Q. Did he say whether he had more?

A. No, sir.

Q. He simply made that statement?

A. That is all.

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Cross-examined by MR. AIKEN:

Q. When Mr. Atzerodt came to the house, was it not his custom to visit Mr. Weichmann?

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A. I could not say who he came there to visit at all. He was usually at the table when I saw him.

Q. Do you recollect for whom he called when he first came to the house?

A. No, sir: I do not.

Q. Have you no means of knowing?

A. No, sir.

Q. Did you learn any thing while you were boarding at Mrs. Surratt's of the displeasure it gave the family to have Atzerodt there?

A. I recollect Mrs. Surratt saying—

Q. You need not state any thing Mrs. Surratt said about it, but state what you know.

A. I do not know any thing about it, except what I have heard them say in the house. I had very little communication with any one in the house; only when I would go down to the table at my meals. I was but very little time in the house.

Q. Can you state to the Court from your own knowledge whether or not you knew it was unpleasant to the family to have Atzerodt there?

A. I could not state any thing to my own knowledge; only from information I had from the family.

Q. Did he or not go by a nickname while he was there?

A. He did.

Q. Was not fun made of him while he was there?

A. Yes, sir.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing about the fun.

Q. [By MR. AIKEN.] You state that you only saw Payne at breakfast once.

A. That is all.

Q. Do you know whether or not, during this visit of Payne, he saw Weichmann at the house?

A. I have no knowledge of that at all. Mr. Weichmann was at the table.

Q. Can you state from your own knowledge whether or not Mr.

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Weichmann did not ask Mrs. Surratt to entertain Payne, and keep him there over night?

A. I have no knowledge of it at all.

Q. In regard to Mrs. Surratt's eyesight, was it not your custom, while you were boarding at the house, generally to be away in the evening?

A. Yes, sir.

Q. And therefore you have no means of knowing whether she was able to read or sew by gas-light or not?

A. Yes, sir.

Q. Did I understand you to state to the Court that Mrs. Surratt was at the door on that morning when the lady whom you suppose to have been Mrs. Slater went away?

A. Yes, sir.

Q. On further reflection, do you not think Mrs. Surratt was at church the morning that Mrs. Slater went away with John H. Surratt?

The WITNESS. Mr. Aiken, you know me very well; well enough to know that I am not a man to tell an untruth. You have known me for several years.

MR. AIKEN. I place implicit confidence in every word that Mr. Holohan says.

The WITNESS. I have told you that I saw Mrs. Surratt there that morning, and she could not have been at church if she was there.

By MR. AIKEN:

Q. Do you know whether she had been at church that morning or not?

A. That is more than I am able to say.

Q. Do you know whether she went to church after they went away, or not?

A. I do not know.

Q. Can you state to the Court whether Weichmann gave himself up after the assassination, or whether he was taken to Superin-

tendent Richard's police-department, and whether Weichmann was not under arrest some before he knew it?

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ASSISTANT JUDGE ADVOCATE BINGHAM. I object to any such question as that.

ASSISTANT JUDGE ADVOCATE BURNETT. The witness need not state any thing of the kind.

MR. AIKEN. What is the objection?

ASSISTANT JUDGE ADVOCATE BURNETT. The objection is very plain. It is no cross-examination of any matter examined in chief for the Government.

ASSISTANT JUDGE ADVOCATE BINGHAM. It is not competent evidence anyhow.

MR. AIKEN. But it will be recollected that Mr. Weichmann stated that he was not under arrest.

ASSISTANT JUDGE ADVOCATE BURNETT. If the counsel for the accused desired to contradict Mr. Weichmann, they should have called the witness to contradict him, and then, if it was competent testimony, it would have been heard. Now they are cross-examining the witness, and are confined to the examination in chief, and to that alone. Before we opened our testimony in rebuttal, we expressly inquired whether the testimony as to Mr. Weichmann was closed. We were informed that it was. Now we propose to introduce purely rebutting testimony. Whenever we transgress that rule, whenever we offer any thing that is not purely rebutting, then we are to be stopped by the counsel for the accused. We ask only that which is fair and legitimate.

MR. AIKEN. But this is with reference to a matter that was disclosed by Weichmann in his examination in chief, if I recollect aright.

ASSISTANT JUDGE ADVOCATE BURNETT. But not spoken of by this witness in our examination.

MR. AIKEN. No, it was not.

ASSISTANT JUDGE ADVOCATE BURNETT. Then you have no right to cross-examine him upon it.

The question was waived.

Q. [By MR. AIKEN.] Did you accompany Mr. Weichmann on his way to Canada?

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ASSISTANT JUDGE ADVOCATE BURNETT objected to the question, and it was waived.

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Q. [By MR. AIKEN.] Who were the first parties who entered Mrs. Surratt's house the night after the assassination?

ASSISTANT JUDGE ADVOCATE BURNETT objected to the question, and it was waived.

Q. Did you ever hear loyal sentiments expressed freely and fully by Mr. Weichmann?

A. I never heard any political discussion in the house while I was there.

Q. Did you ever learn any thing while you were in the house, of any plan, plot, or conspiracy to capture the President?

A. No, sir; I never did. If I had, I should have prevented it.

Q. Or any plan, plot, or conspiracy to assassinate the President or any members of the Government?

A. I never did.

Q. If you had heard of any such thing, would you not have given the information at once to the proper authorities?

A. I think I should.

Q. You stated to the Court that you had not seen Mr. Surratt since the 3d of April?

A. I have not seen him since.

Q. Have you any knowledge of his being in the city since that time?

A. No, sir.

Q. Did you see Mr. Weichmann at three o'clock on Saturday morning, April 15?

A. I did.

Q. Where was he?

A. He was in the house.

Q. Was he dressed, or undressed?

A. He was dressed when I saw him.

Q. Had he risen from his bed?

ASSISTANT JUDGE ADVOCATE BINGHAM. It is not important whether he had been in his bed at all or not.

MR. AIKEN. It is very important.

ASSISTANT JUDGE ADVOCATE BINGHAM. Why?

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MR. AIKEN. To show you that he was ready to take his flight, to run away.

ASSISTANT JUDGE ADVOCATE BURNETT. This is all outside of a proper cross-examination. If the counsel desired to ask those questions, they should have called the witness themselves. He has been in the city all the time, subject to their call. If there was any thing in that matter that was important to them, they should have made him their witness, and then he would have been competent to prove it; but this not a legitimate cross-examination. All these questions latterly are not legitimate: but I have kept silent, holding that these questions on immaterial matters would come to an end; but, if not, we may as well interpose our objections.

MR. AIKEN. We are perfectly willing, may it please the Court, to abide by the strictest rules of evidence. At the same time, the Court will bear the counsel for the accused witness that they have objected to nothing legal or illegal, in the way of its presentation, that could possibly affect any conspiracy, co-conspirator, or any one who had any knowledge of the terrible crime which has placed our country in the very attitude of the Niobe of nations. On the other hand, while we are doing whatever we can to shield and protect the innocent, and to clear them from the awful charges laid against them, we feel that it our right, owing to the range which the Government have taken in their examination of witnesses, to be allowed the same room, the side wide range, the same permission to make examinations over field that are not legitimate in evidence, for the purpose of throwing around, and bringing to full view before the Court every thing that will add strength to the position of the accused in their defence, and to shield them from the crime with which they are charged. That is my excuse for propounding at this time the questions to the witness that I have.

ASSISTANT JUDGE ADVOCATE BURNETT. Certain it is the desire of the Government to give the accused every opportunity to present their defence. They have asked for no process to any part of this land that the arm of Government has not been reached out to try to bring that witness here. Every effort has been made to aid the defence in making the guilt of the accused disappear if possible, and their innocence appear. But the witness now on the

stand has been here in this city all the time, a personal acquaintance of the counsel himself, all these facts known to him; and now for him continue this examination after he could have brought him for himself, and call him as his witness; now to prolong this case; to raise new questions that there is no opportunity for the Government to meet; to try to cast reflections upon a witness in reference to whom he said his testimony was closed,—is unfair: it is certainly prolonging the case to no purpose. We simply desire that justice and fairness may prevail, and that this case may some time come to a close. The gentleman cannot complain that any unfairness has been exercised, or that the Government has been strict in her rules against him. It is certainly a very weak argument for counsel to say that he permitted illegitimate matter, and therefore that illegitimate matter should be permitted for him. It is his duty, under his oath, to see that his client has the rights of law; and it is an admission that I certainly would not make to this Court, that I had not maintained the rights of my client. He is to blame, and no one else, if such has been case, which I most certainly deny. This case we conduct according to the rules of law.

The question was waived.

MR. EWING. I have two or three questions to ask the witness. It is not properly a cross-examination; but I propose to treat him as my witness, if there is no objection.

ASSISTANT JUDGE ADVOCATE BURNETT. The gentleman announces that he desires to ask some questions, making the witness his own, enabling us to rebut it; to which there is no objection.

By MR. EWING:

Q. Do you know Judson Jarboe?

A. I know a Mr. Jarboe: I don't know his Christian name.

Q. You do not know whether it is Judson Jarboe or not?

A. No, sir.

Q. Do you know of his ever having come to Mrs. Surratt's house while you were there?

A. I never saw him there.

Q. Did you ever hear of his being there?

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A. No, sir.

Q. Nor of any man by the name of Jarboe?

A. No, sir.

Q. Will you state between what streets Mrs. Surratt lived when you went there first?

A. When I went there first, as when I left there last, her house was on the south side of H Street, about forty-five feet from Sixth Street. It is the first house from the corner of Sixth Street.

Q. How long has she been living there?

A. That is more than I am able to say. A year or two, I guess, to my knowledge.

Q. What kind of a house is it?—What is the description of the front of the house?

A. It is a brick house, painted lead or drab color. There is a basement; and there is a porch going up to the entrance, some eight or ten steps,—a side-porch runs up. It is adjoining the house of Hugh B. Sweeney.

Q. Did you ever know, while, you were there, of the accused, Samuel A. Mudd, going to the house?

A. I never heard Samuel Mudd, or any Mudd, mentioned in the house at all.

Q. You have no knowledge of his ever having gone there?

A. No, sir.

Q. What time did you go there?

A. About the first week of February last.

Q. And remained there how long?

A. I remained there until the Sunday morning after the assassination. I was in the house afterwards, but my family had left on that Saturday morning.

Q. Will you state whether Mr. Weichmann gave himself up after the assassination of the President?

ASSISTANT JUDGE ADVOCATE BURNETT. You need not state that.

MR. EWING. The testimony of Mr. Weichmann, may it please the Court, bears pretty strong evidence upon its face that he was either a conspirator (and, if he was, we have a right to show that, to

impair the weight of his testimony), or else that many of the statements which he made are wholly untrue. I wish to show, by this question and by other questions, to the Court, that he acted very much as if he considered himself implicated in the crime of the assassination.

ASSISTANT JUDGE ADVOCATE BURNETT. It is an old maxim, that the law is the perfection of wisdom. The rule of law is, that a cross-examination shall be confined to the matters called out in the examination in chief; and the longer any lawyer serves in the harness of the law, the more beautiful appear the rules of the law, and the better and more clearly appears the adaptation of the rules of law to the end desired,—to the maintenance and defence of an accused, and to the purpose of getting at the exact truth in any given case.

Now, then, that this matter was entered upon in chief is not claimed. The counsel attempt to take this matter up on cross-examination. They have stated to this Court openly, that, as to the attack on Weichmann, it was closed. This witness is our witness. We cannot bring witnesses here to contradict him: that would be contrary to the rules of law. I am not saying but what he might state the exact truth; but that has nothing to do with the matter in issue, which is this,—that they have no right to enter upon this attack upon Mr. Weichmann at this time. We cannot meet it. That question was closed. We are now upon our rebutting testimony, and they should be confined to that in the cross-examination. If they had not closed, it would be perfectly legitimate for them to show it. It is due to the witness Weichmann himself that he shall not be illegitimately attacked. It is what we owe to every man that we put upon this stand, that his character shall be maintained, or that he shall have the rights of the law and its guaranties thrown around him; that he shall not be surreptitiously attacked; and we are bound to maintain him according to the rules of law. That is our objection to this testimony: not that we fear its result; but it is illegitimately prolonging the contest, and raising new issues.

MR. EWING. I should like to inquire of the Assistant Judge Advocate whether I said I had closed upon any single point of my

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defence: not one. I have reserved all the rights in regard to my clients to introduce any testimony that is admissible. Before I took this witness, I stated that I did not claim the right to cross-examine him, but indicated to the Judge Advocate that I would take him in chief to save recalling him.

ASSISTANT JUDGE ADVOCATE BURNETT. This matter is very plain. The gentleman who appears for Mrs. Surratt, whose case is affected by this, undertook to ask these questions. I objected to them, and he withdrew them, without having the Court pass upon them. This gentleman (Mr. Ewing), whose case had not been closed, and who had not announced, as he states to the Court, that he had closed,—to him is passed the paper containing the very same questions to aid Mrs. Surratt. This a species of financiering that I hardly consider legitimate. When the counsel for Mrs. Surratt fails in his attack upon this man Weichmann in this illegitimate mode, he simply uses another person, who does not stand in the same attitude towards the case, to achieve the same end. Will that be allowed by this Court? Certainly the rule of law is with us, and certainly all rules of fairness are with us.

MR. EWING. I beg leave to say to the Assistant Judge Advocate, that I have as keen a sense of the rules of propriety as he has, and that I think that his volunteer reprimand is entirely unnecessary, and exceedingly out of place. This witness I made my witness. I waived no rights in regard to my client, whose case is affected by the character of Mr. Weichmann. If these questions were in the hand of Mr. Aiken, is that the business of the counsel for the Government? Is it the business of Court where I get my questions? I do not propose to open my means of information to the scrutiny or the censure of the Assistant Judge Advocate. He is stepping beyond the proprieties of his position when he undertakes to state how I get the information upon which I examine my witnesses; and he enters upon a line of censure to which I will not submit, because it is unmerited, and because he is not in the position to censure me.

But I will state to the Court that these questions were mine; that I handed them to Mr. Aiken; and, upon his being ruled out upon the technical ground that he had no right to ask them on

cross-examination, I, who have closed no part of my case, and who have the right to impeach the character of Mr. Weichmann, and who was given the witness in chief for examination, propounded them; and I am not open to the censure or reflection that he casts upon me.

ASSISTANT JUDGE ADVOCATE BINGHAM. The gentleman will allow me to ask him whether he asked Weichmann at all, on cross-examination, any thing about his giving himself up. I think it is important that the Court should know the fact whether he asked him any such question at all.

MR. EWING. That is not the ground of the objection.

ASSISTANT JUDGE ADVOCATE BINGHAM. I understand that; but still it touches this question.

ASSISTANT JUDGE ADVOCATE BURNETT. I wish simply to say one word in reply. If the gentleman takes my statement of the facts as a censure, that censure must rest upon him. The very words of his question were propounded by Mr. Aiken; and he withdrew the question. I saw the same question repeated by Mr. Ewing, and saw the same paper, to the witness the second time. I say, that, having been withdrawn by one counsel, it is not proper to be put at him by another. Now, they can only make this witness their witness, and ask these questions by the consent, by the courtesy, of the opposite party. Whenever, for the justification of the Government, he being our witness, we withdraw that consent, the rule of law says that they shall not make him their witness until they call him in their own behalf. I now withdraw any such courtesy, and say to the counsel, that, when they want this witness as to any matter they have not closed, they must call him. He is now our witness; and I ask this Court to confine them to the rules of law, and to a strict cross-examination.

MR. EWING. Does the Judge-Advocate General withdraw the consent?

The JUDGE ADVOCATE. The witness was given to the counsel.

ASSISTANT JUDGE ADVOCATE BINGHAM. The great trouble about it is, that the counsel has put a question of impeachment that cannot be admissible, because the foundation for it is not laid. Weichmann was never asked any such question. If he was, I am totally

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at fault about it; but I think he was never asked any such question.

ASSISTANT JUDGE ADVOCATE BURNETT. I object to the counsel entering into any new matter with this witness on the cross-examination.

MR. EWING. The Judge Advocate General, and the Assistant Judge Advocates, will settle between themselves as to whether the witness is my witness or not. I wish to be informed on that point.

ASSISTANT JUDGE ADVOCATE BINGHAM. I am not quarrelling with the Judge Advocate General.

The JUDGE ADVOCATE. The Court was distinctly advised that the counsel had taken the witness as his own.

The PRESIDENT. I understood that to be the case.

ASSISTANT JUDGE ADVOCATE BURNETT. That was the case by consent; and, whenever that was withdrawn, then he had no right to enter on these matters, which were not legitimate.

MR. EWING. Is the consent withdrawn?

ASSISTANT JUDGE ADVOCATE BINGHAM. I have nothing to settle with the Judge Advocate General, because I agree with him; but the point I make with the gentleman is, that he has never laid the foundation for this question, and that it is utterly incompetent. I want him to show that it is competent, admitting that he has got the witness as his original witness.

MR. EWING. I should like to have it settled whether he is my witness or not.

The JUDGE ADVOCATE. The Court has so announced.

MR. EWING. Now I will state to the Court that my inquiry in regard to Mr. Weichmann is an inquiry for the purpose of proving acts in regard to him, associated with Booth and other men connected with the conspiracy. I want to show acts of his at that time, tending to show the Court that he was really a guilty party in the plot to kill the President; and if I show that he was, or if I make it appear that he was, the fact that he was not indicted, not charged, but that he appears here, turning State's evidence, will tend very much, I think, to impair the value of his testimony. It is not the ordinary form of impeachment of a witness by laying the foundation in his examination for contradicting his statements upon

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the stand. That is not the purpose, but it is to show that he occupied the position of a co-conspirator, and that he comes here clearing himself by being a swift witness against others.

ASSISTANT JUDGE ADVOCATE BINGHAM. Now I wish to state to the Court distinctly, without any ceremony about it, that what the gentleman calls the act of Weichmann never can be proved by any human being but by Weichmann himself. He has testified that he was taken into custody: nobody doubts it. He has testified that he was in custody when he was brought on the stand: nobody questions it. It is utterly incompetent for the gentleman to prove any thing he said about that matter, until he has first laid the foundation by a cross-examination of Weichmann; and then it is never competent, except by way of contradiction. There is no such foundation laid; and it is therefore incompetent and illegal at any stage of the case, either now or any other day.

The COMMISSION sustained the objection.

Q. [By MR. EWING.] Did you go with Mr. Weichmann to Canada and back?

A. I did.

Q. What was his bearing in the discussions about the assassination? Did he exhibit coolness or anxiety?

A. He seemed to be a good deal excited about it.

Q. Did you see him the morning after the murder?

A. I did.

Q. What was his bearing then?

A. He was a good deal excited.

Q. Who were the first persons that entered the Surratt house after the assassination of the President?

A. Mr. McDevitt and Mr. Clarvoe, detectives of the Metropolitan Police force.

Q. Where was Mr. Weichmann then?

A. He was in the house.

Q. At what time in the morning?

A. About two o'clock in the morning, I should judge. I asked the detectives what time it was, and they told me it was two o'clock.

Q. Do you know whether they found him abed, or dressed?

THE TRIAL.

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A. I think he opened the door for them.

Q. Was he abed, or dressed?

A. He opened the front door, I think, to let them in.

Q. Was he dressed then? or do you know?

A. I did not see him: I do not know. They were in the entry, outside, in the passage, when my wife woke me up, and told me that men were in the house. I came out of the door, saw Mr. McDevitt and Mr. Clarvoe, and asked them what they wanted; and they told me they were in search of parties who had assassinated the President.

Q. Where was Mr. Weichmann then?

A. At the steps back of them, or at his room door: I do not know which.

Q. Did you see him?

A. Not at that time.

Q. Had he previously let them in?

A. Yes, sir.

Q. Where was he when they rang the bell?

A. That I do not know, I was asleep when they rang the bell.

Q. Did he room on the floor above you?

A. No: I had the front room, and he the back room, on the same floor.

Q. Was Weichmann then arrested?

A. I took Weichmann down myself to Superintendent Richards.

Q. When?

A. In the morning after breakfast.

Q. When you took him down, did you know he was to be arrested?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, and it was waived.

Q. [By MR. EWING.] How did you come to take him down?

A. From an expression he made to me.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing he said.

THE TRIAL.

Q. [By MR. EWING.] Was that expression the expression of a wish to be delivered up?

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A. No, sir.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing about his expressions.

The WITNESS. I was asked the question, and I was not told not to answer it.

By the JUDGE ADVOCATE:

Q. You say he was very much excited the morning after the murder?

A. Yes, sir.

Q. Was not that excitement very general in the city?

A. It was, I believe.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. After Mr. Surratt and Mrs. Slater drove away, did you hear Mrs. Surratt say any thing as to where they had gone?

A. No, sir.

Q. Did you hear her say any thing about the vehicle that he had driven away in?

A. No, sir; not at that time.

Q. At any subsequent time?

A. She told me some weeks afterwards that the team had been sent for, and that he was down in the country.

Q. How long did Mr. Howell stay at Mrs. Surratt's the time he was there?

A. Some three or four days, maybe five days,—some days anyhow.

Q. That was in what month?

A. I cannot designate the time or month; but he was there some three or five weeks after I went to the house.

Q. Probably about the first of March, then?

A. Possibly it might have been about that time.

JAMES A. MCDEVITT,

a witness called for the prosecution, in rebuttal, being duly sworn, testified as follows:—

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By Assistant JUDGE ADVOCATE BURNETT:

Q. Are you one of the persons who went to Mrs. Surratt's house on the night of the assassination?

A. I think it was near on to two o'clock when I went to Mrs. Surratt's house in company with my partner, Mr. Clarvoe, and several other officers of our department.

Q. State who answered the call at the door.

Q. We rang the bell, and one of the upper window-shutters was opened, and a lady put her head out of the window, and asked who was there. We asked if Mrs. Surratt lived there. She said she did. We said we wished to enter the house. She went in; and, as she went in, the door was opened. Mr. Weichmann opened the door.

Q. State what was his condition as to dress at the time.

A. It appeared to me that he had just gotten out of bed; he was in his shirt, his shirt all open in front, with his pants on, and, I think, in his stocking feet.

Q. Had he time, from the time you first approached the house or made a noise, to have dressed himself to that extent?

A. Yes, sir.

Cross-examined by MR. AIKEN:

Q. Did you arrest Mr. Weichmann?

A. Not at that time.

Q. When did you arrest him?

A. He came to the office in company with Mr. Holahan the next morning. I told our superintendent—

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing he said about it. He came there. That is all about.

A. the next day after the assassination, I told Mr. Weichmann—

THE TRIAL.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing you said to him, or any thing he said to you.

By the JUDGE ADVOCATE.

Q. State under what circumstances Mr. Weichmann went to Canada.

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A. He went under my charge. I took him with me to identify John H. Surratt.

Q. Did he willingly or not willingly associate himself with you in the attempt to pursue the assassins?

A. He did, and had every opportunity to leave me in Canada: in fact, I left him in Canada, and returned to New York.

Q. Did he seem to be zealous and earnest in performing the part which you allotted to him in this pursuit?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You say you arrested him, and subsequently released him?

A. I misunderstood the gentleman. I understood him to ask me if I left Weichmann in Canada; and I said yes.

Q. Then you did not arrest him?

A. Not at that time.

Q. You mean, not when you saw him first at Mrs. Surratt's?

A. Yes, sir.

Q. But subsequently, when he came to your office, you arrested him?

A. Yes, sir.

Q. Did you afterwards release him?

A. I left him in Canada in company with Detective Bigley, and returned to New York.

Q. You left him there?

A. Yes, sir.

By MR. AIKEN:

Q. Did Mr. Weichmann make any disclosures to you after his arrest?

THE TRIAL.

A. He made no confession in regard to himself. He told me the names of persons—

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state the names.

Q. [By MR. AIKEN.] Did he make disclosures in regard to some persons?

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what he told you.

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MR. AIKEN. I only want to know the fact if he did make disclosures in regard to certain persons.

The WITNESS. I am not at liberty to answer.

Q. [By MR. AIKEN.] If you took Mr. Weichmann to Canada under arrest, and for a specific purpose, what were your reasons for leaving him there?

A. I sent him to Quebec in company with Mr. Bigley, a detective officer of our corps.

Q. If he went there in company with Mr. Bigley, a detective officer of the corps, he was not actually released from arrest, was he?

A. I did not say I released him: I said I left him Canada.

Q. Had he opportunities to run away if he wished to do so?

A. I think he had.

Q. Why were any such opportunities given to him?

A. He left us in a hotel, and went out with a citizen of Montreal to identify some parties who were in St. Lawrence Hall. The person he went with was not an officer.

Q. Was or was not the reason that you left him to roam about the city at his own will owing to the fact that he had given you all the information he possessed?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question as immaterial. The man was taken to a foreign jurisdiction, where, of course, he was free; and the officer's whys and wherefores had nothing to do with it.

The question was waived.

THE TRIAL.

Q. [By MR. AIKEN.] What did you take him to Canada for?

A. To identify John H. Surratt.

Q. Did you find him there?

A. I did not.

Q. Did you find on the books of the St. Lawrence Hotel that John H. Surratt left on the 12th of April?

A. No: I saw that he was registered there on the 6th of April as John H. Surratt, Washington, D.C.; and, on the 18th of April, John Surratt, without any Washington, D.C. or any other city.

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Q. Was his name registered again on the 18th?

A. I think it was on the 18th, to the best my recollection.

Q. At the St. Lawrence Hall?

A. Yes, sir.

Q. Did you find out while you were there whether he left on the 12th or not?

A. He left that hotel the day before we arrived in Canada.

Q. What day did you arrive?

A. We arrived on the Thursday following the assassination,—the 20th of April.

Q. Then you did not learn any thing about his leaving the St. Lawrence Hall on the 12th?

A. I did not.

Q. How long did it take you to go from Washington to Montreal?

A. I left Washington in the 11.15 train, on Monday morning. I stopped over one night in Philadelphia, and arrested a man there whom we were told to arrest; and the following night we proceeded to Canada.

Q. In returning, did you come directly from Montreal to Washington?

A. I did not.

Q. Then you are unable to state the number of hours it would take to come from Montreal here?

A. Yes, sir.

Q. Where did you get your first information that you would be likely to find Surratt in Montreal?

A. I got it from Mr. Weichmann.

Q. And that is the reason why you took Weichmann there?

THE TRIAL.

A. Yes, sir. I would state, too, that his mother told me that morning that she had received a letter from him that day, dated in Canada.

Q. Did you have any difficulty in finding out that fact from Mrs. Surratt? Did she voluntarily tell you?

A. We were inquiring for her son. She said she had not seen him for two weeks, but that there was a letter somewhere in the house which she had received from him that day. I asked her

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where the letter was. She said somewhere about the house. I could not find the letter.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you ask Mrs. Surratt to find it?

A. I did not.

Q. She did not give it to you?

A. No, sir; she did not.

J. Z. JENKINS

recalled for the accused, Mary E. Surratt.

By MR. AIKEN:

Q. Where were you living in 1861?

A. I was living a mile and a half this side of Surrattsville.

Q. Did you have occasion at any time during that year to personally defend the flag of your country?

A. I did.

Q. Please state to the Court under what circumstances that was, and how it occurred.

A. I think it was about the time of the first Bull-Run fight, or after. I wrote to John Murphy, a butcher on the Navy-Yard Hill here, to send me a United-States flag, which we raised, I and several of our Union neighbors there. There came a report a while after that it was going to be taken down by the secession sympathizers. I went round the neighborhood and collected some twenty or thirty, with our muskets, double-barrelled guns, or whatever we had; and we lay there all night to keep it up.

Q. Around the flag?

A. Yes, sir.

Q. Did you stand guard around that flag more than one night?

A. One night and a day, I think.

Q. State to the Court, the circumstances, if any ever occurred, with reference to your expending your means to get Union voters into Maryland.

A. There was but one man in my district at that time that advocated that particular course. They were all Democrats at that time, except myself. I was the only one who had a dollar to expend; and

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I had not it then to expend indeed, but I used it when my family was in need of it.

Q. Did you come to Washington or not to get voters?

A. Yes, sir. There was Richard Warner here, of the Navy Yard, who had removed from there not long enough to lose his residence. I made it my business to go to him, and get him to go to the polls to vote.

Q. Will you state some other circumstances to the Court, if any there are, where you have expended your means to sustain the Union?

A. I do not recollect.

Q. Have you not all the time been a firm and consistent loyal supporter of the Government of the United States?

A. I have always been a loyal man. I have never had any intercourse, or any thing to do, one way or another, with the enemies of my country.

Q. Are you acquainted with Mr. Smoot?

A. Not long. I have seen him. He married in my neighborhood.

Q. How long has he lived there?

A. He removed there, I think, about the latter part of December or January; but he married in my neighborhood probably two or three or four years ago,—I do not know how long; and I have seen him pass back and forth.

Q. Has Smoot held an office? and, if so, what was that office?

A. He never held any, to my knowledge.

Q. For whom did you vote for Congress in 1862?

A. In 1862, I did not vote at all. I was arrested on the morning of the election, and was not suffered to vote.

THE TRIAL.

Q. Did you take the oath of allegiance at the time they were voting on the adoption of the new constitution?

A. Yes, sir.

Q. And voted that day?

A. Yes, sir.

Q. Did you make any objections to taking the oath that day?

A. Not to my knowledge. There was no objection made at the precinct at all, that I remember.

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Q. As you will be asked, you may state to the Court for whom you voted last time for member of Congress.

A. I voted for Harris the last time. I voted the Democratic ticket then for the first time in my life.

Q. You had been on Old-Line Whig?

A. Yes, sir; and Mr. Roby voted the Democratic ticket.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state about the votes of your neighbors.

Q. [By MR. AIKEN.] Did Mr. Roby vote for Harris?

A. No, sir. He voted for McClellan, though.

Q. Have you suffered since the war in your property to a considerable extent on account of the war?

A. I have only suffered by the loss of my negroes.

Q. Did you ever make any complaint about that?

A. Not to my knowledge. When the State declared her new constitution, I was willing for them to go.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. I understood you to say the other day that you had used no threats against Mr. Kallenback?

A. Not to my knowledge, I said.

Q. And did not threaten to whip or kill him if he testified against you or any of your relatives?

A. No, sir.

ANDREW KALLENBACK,

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. State to the Court where you reside.

A. Near Surrattsville, Prince George's County, Md.

Q. Have you, since the assassination, had any conversation with Mr. Jenkins, who has just left the stand, in reference to testifying in this case?

A. Yes, sir.

Q. Where and what was that conversation?

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A. I had a conversation with him on the 17th of last month.

Q. In the evening, or daytime?

A. In the evening.

Q. State to the Court what that conversation was, and especially whether he used any threats against you.

A. On the 17th, he arrived from Washington at Mr. Lloyd's Hotel; and, after he had got there about fifteen minutes, he said that I was a liar; that he understood I had been telling some lies on him; and if so, if he found it out to be the truth, he would give me the damnedest whipping I ever had.

Q. What else?

A. After that, he said that if I testified against him, or any one connected with him, he would still give me a damned whipping. That was in the presence of Mr. Cottingham and Mr. Joshua Lloyd.

Q. Did he mention Mrs. Surratt's name in that conversation?

A. He did not mention her name.

Q. He simply said himself, or any one connected with him?

A. He said that if I testified against him, or any one connected with him, he would give me the damnedest whipping I ever had.

Q. How long have you known Mr. Jenkins?

A. About ten years, I think.

Q. What has been in his reputation in that neighborhood for loyalty during this struggle?

A. I have never heard him express any disloyal sentiments. He has always said that he was a Union man, in my presence.

THE TRIAL.

Q. What was his reputation as a matter of fact through the neighborhood?

A. That I do not know.

Q. He claimed to be a Union man all the time?

A. Always in my presence. I have never heard him express any other sentiments.

By the COURT:

Q. Was Mr. Jenkins drunk, or sober, on that occasion?

A. He was not very sober; and I cannot say that he was very drunk, either.

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Q. Had he been drinking?

A. Yes.

By MR. AIKEN:

Q. You state that Mr. Jenkins had been drinking that day. Did you see him drink?

A. No, sir: I did not see him drink until that night.

Q. You state that the quarrel commenced by his calling you a liar?

A. Yes, sir.

Q. What had you been saying that induced him to make that remark to you?

A. Nothing at all.

Q. Were you at Alexandria at any time about the breaking-out of the war?

A. I used to deal at Alexandria all the time before the war broke out; and, since the war broke out, I have been always dealing in Washington.

Q. Have you a grown son?

A. Yes, sir: I have two.

Q. What is the name of the one that you put in the rebel army at Alexandria?

A. I did not put any in the rebel army.

Q. Have you not had a son in the rebel army?

A. Yes, sir.

Q. Did he not go there with you full and free consent?

A. He went there with his own consent; without mine.

THE TRIAL.

Q. Did you place any restrictions in the way of his going?

A. No, sir.

Q. Have you lived neighbor to Mrs. Surratt for years?

A. Yes, sir.

Q. Has she or not been exceedingly kind to your family?

A. Nothing more than neighborly.

Q. Has she or not given them very much in the way of food and clothes?

A. No, sir.

Q. Has she not, on all occasions and at all times, been a great friend to your family?

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A. No more than any one neighbor will do for another.

Q. Did you know any thing about horses that escaped from Giesboro', and were gathered up on her premises?

A. Nothing more than I heard there were two horses there that were sent there to be taken care of; and the Government got them; and I understood that she got a receipt.

Q. You do not know any thing about it, only what you heard?

A. That is all.

Q. When did your son return from the rebel army?

A. I forget the date exactly; but it has been about three weeks ago.

Q. He has been there all the time, then, since the war?

A. I judge so.

Q. What have been your politics during the war?

A. I have been a Democrat all my lifetime.

Q. Have you not gone farther than that, and been violent in your expressions against the Administration?

A. No, sir.

Q. Have you not frequently expressed the most disloyal sentiments?

A. No, sir.

Q. Have you not often said that you wished the South would succeed?

A. I never did, to my recollection.

Q. Then the only prominent act you now recollect of favor to the Rebellion is giving a son to the cause?

A. I did not give him: he went of his own accord.

THE TRIAL.

JAMES JUDSON JARBOE,

a witness for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. In what county do you live?

A. Prince George's.

Q. Is there any other Mr. Jarboe of Prince George's County?

A. Yes, sir: I have a brother there.

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Q. What is his name?

A. William.

Q. Any other?

A. He has a son,—a young man.

Q. How old?

A. About eighteen, I suppose. I do not know his age exactly.

Q. Are you and your brother the only men grown of the name of Jarboe in Prince George's County?

A. The only ones I know of; the only ones of our family.

Q. Do you know of any other family of the name of Jarboe in Prince George's County?

A. No, sir.

Q. Are you commonly called Judson Jarboe?

A. Some persons call me Judson, and some James.

Q. Judson is your middle name?

A. Yes, sir.

Q. State whether you know the prisoner, Dr. Samuel Mudd, or ever saw him before his arrest.

A. I never did.

Q. State whether you were coming out of a house in Washington last winter on H Street, and met him going in.

A. I never met him on H Street.

Q. State whether you have seen Mrs. Surratt, the prisoner, for a year before her arrest.

A. I saw her some time this last April, since she was arrested; but I did not see for about three years before that, I think.

Q. Have you ever been at her house in the city of Washington?

A. No, sir.

THE TRIAL.

Q. Have you ever met her daughter at any house in Washington City prior to the arrest of her mother?

A. No, sir.

Q. Do you know the Rev. Mr. Evans, living within six or eight miles of the city, in the direction of Surrattsville?

A. I have not seen him for several years, except here recently. I think I met him. I cannot charge my memory exactly when: but some two or three weeks ago, I think, I met him on the street; that is, I was standing at the corner of a street, and he passed by

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me. I was standing at the corner of G and Seventh Streets. I had not been in town long. I left my horse at Mr. Howard's stable, near the corner; and I walked up the corner, and was talking with a blacksmith, who keeps a blacksmith-shop close to the corner, when Mr. Evans passed. I had not seen him before—I do not think for—I could not tell exactly—a year or two, I am sure.

Q. Was he walking, or riding, or driving?

A. Walking.

Q. You have known Mr. Evans, then, have you?

A. I have known him for several years; that is, he used to live in my neighborhood, and he used to attend a Methodist church there in my neighborhood. I used to see him passing.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Are you acquainted with John Surratt?

A. Yes, sir: I know John Surratt.

Q. You have met him often, have you not?

A. Not very often.

Q. You met him last season?

A. Yes, sir; I met him last winter.

Q. You met him in this city last winter?

A. I do not think I did. I met him this spring.

Q. You say you did not meet him in this town last winter?

A. I do not think I met him in town.

Q. Where did you meet him last winter?

A. I do not think I met him last winter, but some time in the spring.

Q. Did you not say a little while ago that you met him last winter?

A. It was cold weather: I suppose it was in March.

THE TRIAL.

Q. Where did you meet him?

A. I met him on Seventh Street.

Q. In this city?

A. Yes, sir.

Q. What time in March was it?

A. I cannot tell exactly; some time early in March, though.

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Q. Whereabouts in Seventh Street did you meet him?

A. I met him, I do not know the name of the place exactly: it was a restaurant, though, in Seventh Street, nearly opposite the Odd-Fellows' Hall.

Q. Who was with him?

A. I do not know. There were several gentlemen with him. I went into the restaurant, and several gentlemen were standing at the door.

Q. Did you stop to talk to him?

A. Not much. I just spoke to him, and passed out.

Q. You had some talk with him?

A. I just passed the time of day with him, and passed on.

Q. Do you not know some of the men who were with him?

A. I could not charge my mind exactly with them.

Q. Did you not know John Wilkes Booth?

A. I did not.

Q. Do you not know David E. Herold?

A. I have seen him.

Q. You see him here now among the prisoners, do you not?

A. Yes, sir.

Q. Was he not with Surratt when you met him in this town last spring?

A. He was not.

Q. Who was with him?

A. I cannot tell you. There were several gentlemen with him: I do not know them.

Q. When did you see Surratt after that?

A. I do not think I have seen him since.

Q. When did you see him before that?

A. I cannot tell exactly when it was. I met him on the road one time; but I cannot tell you what time it was. I was going one way, and he the other.

Q. Where did you meet him on the road?

THE TRIAL.

A. I met him on the road between Washington City and Upper Marlboro'.

Q. Was somebody with him then?

A. No, sir.

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Q. Was it last fall, or last winter?

A. I cannot tell; but it must have been some time last fall.

Q. Do you know any of the other parties accused here?

A. No, sir: I do not think I do.

Q. Except Mrs. Surratt: you are acquainted with her?

A. Yes, sir: I have seen Mrs. Surratt.

Q. You say you saw here since her arrest?

A. Yes, sir.

Q. Where did you see her?

A. I met her at Carroll Prison.

Q. Did you go to see her?

A. No, sir.

Q. How did you meet her?

A. I was unfortunately there myself.

Q. Were you and Mrs. Surratt in the same room?

A. No, sir.

Q. How did you get to see her?

A. I saw her through the window.

Q. Did you have any talk with her there?

A. Not through the window.

Q. Had you any talk with her there?

A. Yes, sir.

Q. If you did not have it through the window, where did you have it?

A. In the room.

Q. Then you did get into the room with her?

A. Yes; but I did not go to see Mrs. Surratt, though.

Q. Did she come to see you?

A. No, sir: I went to see her.

Q. You did go to see her?

A. No; I did not. I went up into the room.

Q. I thought you said you did go to see her?

A. Oh, no, sir!

Q. Did you talk to her about this business?

A. No, sir.

Q. Did you talk to her about John?

A. No, sir; I did not.

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Q. Did you talk to her about Herold?

A. No, sir.

Q. Who was present?

A. Mrs. Surratt's daughter and my daughter. That was the way I got into the room. I went to see my daughter.

Q. You had got into other trouble with the Government, had you not?

A. I do not know that I was in trouble with the Government.

Q. Was there any complaint or accusation made against you in connection with this Rebellion, or with the soldiers of the Union down there?

A. I do not know whether there was or not. I was arrested on the road, and carried to prison.

Q. When were you arrested?

A. On the 15th day of April.

Q. Do you know whether you were charged with any disloyal conduct down there in Maryland?

A. No, sir.

Q. Have you heard of being charged with any disloyal conduct down there?

A. There was no charge against me, that I know of.

Q. Were you informed—I do not say in writing—that there were accusations against you?

MR. EWING. Does the gentleman think this is legitimate cross-examination?

ASSISTANT JUDGE ADVOCATE BINGHAM. Undoubtedly; but the witness is at liberty to decline, if he chooses; but, if he is willing to answer, he may.

MR. EWING. I think it is not according to the ordinary rules.

ASSISTANT JUDGE ADVOCATE BINGHAM. The witness has a right to decline answering, if he wants to. I am not going to accuse him, myself: I want to know the facts.

The WITNESS. I should like to know if I am here as a witness, or here on trial. I do not know how to answer the question.

ASSISTANT JUDGE ADVOCATE BINGHAM. Every witness is put a little on trial; and you have a right, if you do not want to answer that question, to put yourself on your privilege, and say you will

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not answer it, because it criminate you; but, if you think it does not criminate you, you can answer it: you do as you please about it. What I want to know is, if you choose to answer, whether you were not accused of offences against the Government, in Maryland, and whether you were not so advised.

The WITNESS. No: I do not think I was.

Q. Were you not so advised?

A. I was not accused. I do not know what I was arrested for.

Q. Were you not told any thing about it by the officers of the Government or others down there?

A. No, sir: the man that arrested me did not say any thing to me on the subject.

Q. Did anybody tell you any thing about it?

A. There were some questions asked me.

Q. Was there not a soldier killed lately down in your neighborhood?

A. Not that I know of.

Q. Did you not hear of it?

A. No, sir: I have not heard of a soldier being killed lately.

Q. I do not know how lately,—perhaps last fall or last winter.

A. No, sir.

Q. You did not hear any thing about that?

A. No, sir; not in my neighborhood.

Q. I am not familiar with that neighborhood, and I am probably wrong about the locality. I only asked for information. Who questioned you?

A. I was asked some questions by Major Wooster the night I was arrested.

Q. Whereat?

A. At the fort.

Q. What fort?

A. Fort Baker, I think.

Q. What did he ask you?

A. He asked me something about a man by the name of Boyle.

Q. What did he ask you about Boyle?

A. He asked me if I knew him.

Q. What else did he ask you about him?

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A. He asked me if I had not harbored him.

Q. What did you say?

A. I told him no.

Q. What did he say Boyle was charged with?

A. Charged with assassination and horse-stealing, &c.

Q. Assassinating whom?

A. I think a man by the name of Watkins.

Q. That man was a soldier?

A. I do not know that he was. I do not know any thing about him.

Q. Did he not say Captain Watkins?

A. He may have said Captain Watkins.

Q. And that this Boyle was charged with killing and murdering him?

A. Yes, sir.

Q. And he wanted to know if you had not harbored Boyle?

A. Yes, sir.

Q. And you said you had not?

A. I had not.

Q. You knew Boyle?

A. I knew him when he was a boy. I have not seen him for four years.

Q. Do you say that you know the fact that he did not find refuge on your premises?

A. I do: I am sure of that.

Q. You are sure he did not?

A. Yes, sir; I am sure of it: that is to say, he did not, to my knowledge.

Q. Do you know when the murder of Captain Watkins was committed?

A. I do not. Captain Watkins lived a long way from me.

Q. How have you stood yourself in relation to this Rebellion, since it broke out?

A. I do not exactly understand you.

Q. Have you made any declarations against the Government of your country since this Rebellion broke out?

A. No, sir.

Q. Have you joined in any glorification down in Prince George's County, Md., over rebel victories?

A. No, sir.

Q. Have you wished for the success of the Rebellion?

A. Oh, no, sir! I could not expect that.

Q. Did you want it, whether you expected it or not? Did you want this Rebellion—this Southern Confederacy, if you please—to triumph?

MR. EWING. I will state to the witness that he has the privilege of declining to answer. I do not care about interfering further than that. What I called him to was one single question of fact.

ASSISTANT JUDGE ADVOCATE BINGHAM. I have already stated to the witness, that, if he thinks his answer to my question will criminate him, he can say so, and decline to answer.

The JUDGE ADVOCATE. I do not think a mere wish is such criminality as would protect him from exposure.

MR. EWING. I think this is a species of inquisition which counsel ought not to indulge in.

The JUDGE ADVOCATE. Loyalty is a question of feeling and conviction as well as of action.

ASSISTANT JUDGE ADVOCATE BINGHAM. If the witness thinks it will criminate him to make a full and complete answer, he can say so. If he does not think it will criminate him, he must answer the question.

The WITNESS. I hardly know what would criminate me here.

Q. [ASSISTANT JUDGE ADVOCATE BINGHAM.] As you have given your opinion on that subject, instead of answering my question, I should like to know whether it is your opinion that the Southern Confederation down here was criminal at all or not.

A. I do not know much about it.

Q. Have you not expressed yourself that it was all right?

A. What was all right?

Q. The Southern Confederacy and the Rebellion?

A. I do not think that I did.

Q. Did you not think that?

A. I think a good many things.

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Q. State whether you made an assault upon a man at the election four years ago, or about four years ago; and what did you do to him?

The WITNESS. Are you going to try me for that?

Q. No; but I ask you the question.

A. I have been tried for that same offence twice.

Q. State whether you made an attack about four years ago, at the time of the election, on a Union man down there, and killed him.

A. There was a pretty smart attack made upon me.

Q. What became of the man?

A. It would be very hard for me to tell now.

Q. Was he killed or not at the time?

A. I understood that he was.

Q. Do you not know who did it?

A. No: I do not know exactly who did it.

Q. Do you know whether you had a hand in it in killing him?

A. I do not know. I have answered all the questions so often, that—

Q. You can answer that question, or let it alone. If you say you cannot answer it without criminating yourself, you need not.

A. I have answered that several times.

Q. You have not answered me yet.

A. I have answered these questions before other courts. I have been asked these questions over and over.

Q. Did you kill him, or did somebody else kill him?

A. I cannot tell you whether some one else did it.

Q. Did you have a hand in it?

No answer.

Q. Where was it that this man was killed?

A. I understood that he was killed. It happened at the election.

Q. Do you not know the man who was killed? Were you not there?

No answer.

Q. What was the man's name that was killed?

No answer.

ASSISTANT JUDGE ADVOCATE BINGHAM. I shall not insist on an answer. If you do not wish to answer, you need not answer. It is your privilege to decline, or do so.

By MR. EWING:

Q. Have you any statement you wish to make in regard to the circumstances as to which the Judge Advocate has been questioning you?

The WITNESS. Concerning what?

MR. EWING. In regard to the difficulty about which the Judge Advocate has been questioning you. If you have any thing to say to the Court, say it.

The WITNESS. Well, I do not know. If the Judge wants to know all the particulars about it—

ASSISTANT JUDGE ADVOCATE BINGHAM. I do not insist on any more. You have declined to answer, as is your right.

The WITNESS. I have answered these questions, and I have been tried for that thing by our courts.

MR. EWING. What was the result?

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state.

The WITNESS. I was acquitted.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to all that.

MR. EWING. You have been going into the question whether he was tried or not, and I ask him the question in what court he was tried.

ASSISTANT JUDGE ADVOCATE BINGHAM. The gentleman has made an issue with me. I deny his assertion.

MR. EWING. The witness can state in what court he was tried.

ASSISTANT JUDGE ADVOCATE BINGHAM. He cannot state where. I did not ask him in what court he was tried. He chose not to answer my questions; and that was all.

MR. EWING. If the Court please, I think the character of the cross-examination of this witness was most extraordinary,—catching the witness, badgering him with questions, and snapping him up when he started to answer, and undertaking to present to the Court the impression from his answers that he was a felon; and then not allowing the witness to state that he was tried for the

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offence alleged against him, in a high court of the country, and was acquitted. That is not fair; and more than that, the gentleman is certainly wrong. He drew out of the witness, the fact that he was tried. Now I want to know where he was tried. I want to know whether they was a solemn inquiry into it; whether he was tried in a high court.

ASSISTANT JUDGE ADVOCATE BINGHAM. Whether I badgered the witness, or the witness badgered me and justice both, is a question that will appear by the record hereafter. The point I make on the gentleman is, that I never asked this witness a question whether he was tried.

MR. EWING. You drew it out.

ASSISTANT JUDGE ADVOCATE BINGHAM. I did not draw it out of him. What I tried to draw out of him was legitimate; but as the gentleman chooses to arraign me here—

MR. EWING. I take that back.

ASSISTANT JUDGE ADVOCATE BINGHAM. I am glad of it. As the gentleman chooses to arraign me here, holding myself as the humblest man here, I beg leave to say, in vindication of my conduct, that there is not a law-book fit to be brought into a court of justice, on the law of evidence, which does not say I had the right to ask him the question, whether he had been guilty of murder; and I am not going to let this witness go away from this Court with the impression that I have invaded any right of his. I had a right to ask him the question, whether he was guilty of murder, and he had a right, as I told him, to refuse to answer it if he saw fit. Now, what I say to the Court is, that he never answered my questions.

MR. EWING. You did not ask him whether he was guilty of murder.

ASSISTANT JUDGE ADVOCATE BINGHAM. I asked him whether he killed a man, and I asked him whether he had any thing to do with killing a man.

MR. EWING. That is not necessarily murder.

ASSISTANT JUDGE ADVOCATE BINGHAM. If I may ask whether he was guilty of murder, I may ask him whether he killed a man.

MR. EWING. You did not ask whether he had committed murder.

ASSISTANT JUDGE ADVOCATE BINGHAM. The greater includes the less.

MR. EWING. But you asked the less.

ASSISTANT JUDGE ADVOCATE BINGHAM. What I say is, that the law authorized me to ask squarely whether he was guilty of murder; and he is not to go out of court with the impression that I have invaded any rights of his. I never asked him about any trials. He did not answer my questions; he had a right not to answer them: but I never asked him about trials at all. He never stated whether he had killed the man; he did not ever state whether he had a hand in killing the man; and he would not tell me whether the man was killed at all, or not. Now, in that stage of the case, upon that record, the gentleman proposes to prove by parol evidence what appears on the record. The man has not admitted yet that anybody was killed; and, if nobody was killed, how could he be tried? Then, in the next place, if he was tried, how are you going to prove it by parol? We have not the benefit of any testimony on the subject. The truth is, I do the witness the justice to say that he has not answered my question at all. He has not stated that the man was killed: he has stated that he understood he was killed. He would not state that he himself had a hand in it, and he would not state that he knows the man's name. He has not given his name. That is the way it stands so far; and I object to any thing further about it.

MR. EWING. He has stated that he was tried; and I ask him now, in what court?

ASSISTANT JUDGE ADVOCATE BINGHAM. I did not ask him if he was tried.

MR. EWING. He stated that he was tried; and now I ask simply in which court? I do not ask the result of the investigation.

ASSISTANT JUDGE ADVOCATE BINGHAM. If there was nobody killed, there was nobody hurt, I reckon.

By MR. EWING:

Q. In what court were you tried?

A. In Prince George's County Court.

Q. Were you, during last spring, winter, or fall, in any house on H Street, in the city of Washington?

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A. I do not recollect. I do not think I was in any house on H Street, though.

Q. Have you any acquaintances living on H Street?

A. No, sir; none at all, that I know of.

Q. Have you any acquaintances living on H Street, between 6th and 7th?

A. I do not think I have.

Q. Do you know in what part of the city Mrs. Surratt lives?

A. I do not. I never saw her house in my life. I do not know any thing about Mrs. Surratt's residence.

Q. What is the name of your brother's son?

A. Lambert.

Q. Is there any other Judson Jarboe in Prince George's County but yourself?

A. I do not think there is: I never heard of any.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Not in that neighborhood?—not in Charles County?

A. I do not think there is.

Q. You say you were tried in a court. What were you tried for?
No answer.

Q. Do you know what you were tried for?

A. I suppose I was tried for what you stated a while ago.

Q. No, sir: I did not state it at all.

The WITNESS. You said I killed a man.

ASSISTANT JUDGE ADVOCATE BINGHAM. No: I did not.

The WITNESS. You asked me if I did not.

ASSISTANT JUDGE ADVOCATE BINGHAM. I asked you if you did; and you did not answer the question. Now I ask you for what you were tried.

A. I was tried in that case.

Q. What were you tried for? Were you tried for murder?

A. Well, if I understood the case aright, I do not think—

Q. Were you charged in that case with the murder of a Union man?

A. I do not know whether he was a Union man or not.

Q. Was he called a Union man?

A. That I do not know.

Q. But you were tried for murder?

No answer.

Q. In what county?

A. Prince George's.

Q. When?

A. I do not recollect exactly when it was.

Q. Since this Rebellion broke out?

A. Yes: I think it was somewhere about the first of the war.

JAMES A. MCDEVITT,

a witness for the prosecution, recalled at his own request.

The WITNESS said, I think I made a mistake in giving my testimony in regard to finding the name of John Surratt on the books of the hotel in Montreal. I should have said "John Harrison."

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. That was the last entry?

A. The first and the last: both were "John Harrison."

Q. "Surratt" was not attached to it at all?

A. The name of Surratt was not there.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Do you know John Surratt's handwriting?

A. I have three letters in my office of John Surratt's writing; but they are different handwriting.

Q. Are you able, from your knowledge of his handwriting, to say whether the entry on the register of St. Lawrence Hall was his or not?

A. No, sir.

Q. Did you take with you any one who knew his handwriting?

A. No, sir.

JOHN THOMPSON,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

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By MR. AIKEN:

Q. State to the Court your residence.

A. I live at T. B., Prince George's County, Md.

Q. Are you acquainted with J. Z. Jenkins?

A. Yes, sir: I am acquainted with him.

Q. How long have you been acquainted with him?

A. Since 1860 or 1861.

Q. Do you know any thing of his reputation for loyalty and integrity to the cause of the Government and the Union?

A. I always considered him a loyal man.

Q. What is his reputation for loyalty among his neighbors and acquaintances?

A. I do not know that I have heard any one say so, but I have talked with him myself, and he always seemed to be that way.

Q. Has he, or not, been called by his friends and neighbors an abolitionist?

A. I do not know that I could say whom I heard say so.

By ASSISTANT JUDGE ADVOCATE BURNETT.

Q. Do you think you yourself are a competent judge of loyalty?

A. I do not know: I always considered myself loyal.

Q. Do you think your own reputation has been that of a loyal man during this struggle?

A. I think so.

Q. Are you confident of that?

A. I am.

Q. Have you never desired the success of the Southern Rebellion?

A. No, sir: I never have.

Q. You have all the time been on the side of the Government?

A. Yes, sir.

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By MR. AIKEN:

Q. Are you acquainted with Mr. Kallenback?

A. I know him.

Q. Do you know any thing of his reputation for loyalty?

A. I do not.

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DR. J. H. BLANFORD

recalled for the accused, Mary E. Surratt.

By MR. AIKEN:

Q. Are you acquainted with J. Z. Jenkins?

A. Yes, sir.

Q. Do you know any thing of his general reputation for loyalty to the cause of the Government and the Union?

A. I have always regarded Mr. Jenkins as being loyal to the Government of the United States?

Q. Have you ever heard him express, on any occasion or at any time, the first disloyal sentiment?

A. I never heard Mr. Jenkins express any sentiments disloyal to the Government.

Q. Has not he been called by his friends and neighbors, or by some of them, an abolitionist?

A. I do not know that I ever heard of Mr. Jenkins being termed an abolitionist; I think to the contrary; but I have always regarded him as being any thing else but in opposition to the Government. He was generally avoided in the beginning of this war by parties who were not thoroughly in favor of the Administration.

Q. Was he or not active and zealous in his efforts, at the breaking-out of the Rebellion, to keep the State of Maryland in the Union?

A. I know that Mr. Jenkins supported consistently the opposition candidate to the Democracy. I am not in his particular voting precinct; and of what particular efforts he may have made in that respect I am not aware.

Q. Are you acquainted with a man by the name of Kallenback, who lives in the neighborhood?

A. I do know a Kallenback.

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Q. Andrew Kallenback?

A. Yes, sir.

Q. Are you acquainted with his reputation for loyalty, &c.?

A. I do not know any thing to the contrary of Mr. Kallenback's loyalty.

Q. He has been opposed to Mr. Jenkins in politics, has he not?

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A. Yes, sir. Mr. Kallenback is a Democrat, and always acted with the Democratic party.

Q. Do you know any thing of his taking his son to Alexandria to enlist him in the rebel army?

A. I do not.

ANNA E. SURRETT

recalled for the accused, Mary E. Surratt.

By MR. AIKEN.

Q. [Submitting to the witness the card containing the arms of the State of Virginia, with the motto, "*Sic semper tyrannis*," being one of the cards contained in Exhibit No. 52.] Do you recognize it?

A. Yes, sir: I recognize it.

Q. Is it yours?

A. Yes, sir. It was given to me by a lady about two years and a half ago. I asked her for it. She at first refused to give it to me: but I told her I wanted it; and then she left it in the book, and said she did not care whether I took it or not; and I took it, and it has remained among my papers ever since. It remained there ever since until I saw it now.

By MR. EWING:

Q. How long have your family been living in the house you have been occupying on H Street, between Sixth and Seventh Streets?

A. We commenced moving there, I think, about the 1st of October. I came there myself the first week in November; I think, about the sixth day.

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Q. Have your family occupied any other house in the city of Washington than that?

A. No other.

Q. Did you ever see Judson Jarboe at your house?

A. No, sir: he never visited our house at all. I never saw him there.

Q. Did you ever see him at all prior to the 14th of April?

A. I have seen him pass in his buggy in the country; but I never saw him before to speak to him. I saw him at distance.

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Q. That was when you living in the country?

A. Yes, sir: I saw him pass in his buggy.

Q. Are you the only daughter of Mrs. Surratt?

A. Yes, sir; the only daughter.

Q. Did you ever see or hear of Dr. Samuel Mudd being at your mother's house in this city?

A. No, sir.

The Commission then adjourned until to-morrow (Thursday, June 8, 1865), at eleven o'clock, A.M.

THURSDAY, June 8, 1865.

MR. EWING offered in evidence a copy of General Orders, No. 26, War Department, Adjutant-General's Office, Washington, Feb. 2, 1863, as follows, viz.:—

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
WASHINGTON, Feb. 2, 1863.

GENERAL ORDERS, No. 26.—The district of country north of the Potomac River, from Piscataway Creek to Annapolis Junction and the mouth of the Monocacy, and south by Goose Creek and Bull Run Mountain to the mouth of the Occoquan, will constitute the Department of Washington; and troops in that department will constitute the Twenty-second Army Corps, to be commanded by Major-General Heintzelman.

By order of the Secretary of War.

L. THOMAS, Adjutant-General.

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A copy of the foregoing orders was received in evidence without objection.

The JUDGE ADVOCATE offered in evidence, without objection, the following proclamation of the President of the United States, dated Sept. 25, 1862, with the accompanying certificate of the Secretary of War, dated May 30, 1865, as follows, viz.:—

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
WASHINGTON, Sept. 25, 1862.

GENERAL ORDERS. No. 141.—The following proclamation by

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the President is published for the information and government, of the army and all concerned:—

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas it has become necessary to call into service not only volunteers, but also portions of the militia of the States by draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the order processes of law from hindering this measure, and from giving aid and comfort in various ways to the insurrection:—

Now, therefore, be it ordered,—

First, That during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by courts-martial or military commissions.

Second, That the writ of habeas corpus is suspended in respect to all persons arrested, or who are now, or hereafter during the Rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement, by

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any military authority, or by the sentence of any court-martial or military commission.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred [?] and sixty-two, and of the independence of the United States, the eighty-seventh.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, Secretary of State.

By order of the Secretary of War:

L. THOMAS, Adjutant-General.

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WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
WASHINGTON, May 30, 1866.

I certify that the foregoing is a true copy of the original order on file in the War Department; and that the same is in full force, and not revoked.

E. D. Townsend,
Assistant Adjutant-General.

Be it known that Edward D. Townsend, who has signed the foregoing certificate, is the Assistant Adjutant-General of the Army of the United States, and that to his attestation as such full faith and credit are and ought to be given. In testimony whereof, I, Edwin M. Stanton, Secretary of War, have hereunto set my hand, and caused the seal of the Department of War of the United States of America to be hereunto affixed, on this thirtieth of May, one thousand eight hundred and sixty-five.

EDWIN M. STANTON,
Secretary of War.

The JUDGE ADVOCATE also offered in evidence, without objection, General Orders, No. 100, Adjutant-General's Office, Washington, April 24, 1863, containing "Instructions for the government of the armies of the United States in the field," prepared by Francis

Leiber, LL.D., and revised by a board of officers of which Major-General E.A. Hitchcock was president.

MR. AIKEN proposed to offer in evidence a telegraphic despatch from Montreal, Canada, containing an affidavit of John McCullough, made before the Vice-Consul of the United States in Montreal, for the purpose of contradicting a statement made by Louis J. Weichmann, a witness for the prosecution, that he had seen McCullough at Booth's room in the National Hotel on the second day of April last.

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the introduction of the paper. It was a wholly immaterial question whether McCullough ever met Weichmann or not. That point being immaterial, Weichmann could not be contradicted about it. The witness (Weichmann) was not to be treated in that way. He could only be impeached on material points. Such was the rule of law.

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MR. AIKEN stated that he had no desire to offer any thing which was not strictly legal; but the proposition now made was of considerable importance to the accused. Mr. Weichmann had sworn to certain statements which were contradicted in the sworn affidavit of Mr. McCullough. If he was mistaken in such small matters, might he not also be mistaken in the greater matter of the guilt or innocence of some of the accused?

ASSISTANT JUDGE ADVOCATE BINGHAM replied, that this was an illegal mode of attacking a witness. If, on cross-examination, a witness is asked an immaterial question, his answer concludes the party asking the question. How was this point material? The only material matter connected with that visit of Weichmann was, that he went, at the request of Mrs. Surratt, to see Booth. For what purpose? That Booth should come to see her. Her own daughter had confirmed the statement of Weichmann, and sworn that Booth did go to see Mrs. Surratt that day, and at the hour named by Weichmann. Were they both to be discredited by an *ex parte* statement of McCullough? It was not testimony at all for any purpose, because it was wholly immaterial.

MR. AIKEN inquired if Weichmann was on the stand, and the question put to him, whether he had met Mr. McCullough at the National Hotel on the second day of April last, and he were to swear that he did meet McCullough there, would it not be competent to prove that he was mistaken?

THE TRIAL.

ASSISTANT JUDGE ADVOCATE BINGHAM. No: you would have no right to prove any thing about it, because John McCullough is not involved in the issue before the Court.

MR. AIKEN claimed that it was competent to disprove any statement made by Weichmann which was not true.

ASSISTANT JUDGE ADVOCATE BINGHAM would yield the point if any authority whatever could be adduced to support the counsel's position. If that were allowed, there would be no end to judicial proceedings.

The JUDGE ADVOCATE proposed to read to the Court an authority on this point, as it was raised so often, and might be again; and he wished the authority borne in mind; namely:—

“Irrelevant questions will not be allowed to put to a witness

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on cross-examination, although they relate to facts opened by the other party, but not proved in evidence. Nor can a witness be cross-examined as to any facts which, if admitted, would be collateral and wholly irrelevant to the matters in issue, for the purpose of contradicting him by other evidence, and in this manner to discredit his testimony; and, if the witness answers such an irrelevant question before it is disallowed or withdrawn, evidence cannot afterwards be admitted to contradict his testimony on the collateral matter.” —*Benét*, p. 307.

ASSISTANT JUDGE ADVOCATE BINGHAM stated the same position was sustained by Roscoe's “*Criminal Evidence*,” p. 87, from which he read the following extract:—

“Evidence to contradict the opponent witnesses.—This may always be given on points relevant to the issue; but if any opponent witness be asked questions on cross-examination which are not relevant to the issue, which, as we shall hereafter see, may be done (p. 146), the answer must be taken, and he cannot be contradicted by other evidence. — *Spenceley v. De Willott*, 7 East, 108; *R. v. Yewin*, 2 Camp. 638; where a witness was asked whether he had not been charged with robbing the prisoner, his master, which he denied, and Lawrence, J., refused to allow him to be contradicted on this point.”—*Roscoe's Criminal Evidence*, p. 87.

MR. AIKEN. It was considered by the Government material to show that Dr. Mudd was at Booth's room.

ASSISTANT JUDGE ADVOCATE BINGHAM. That is a very different matter. Mudd is one of the accused; McCullough is not. It

would be just as material to ask whether McCullough had on a silver spur, and then contradict him on that.

JOHN C. HOLLAND,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING.

Q. State where you live, and what, if any, official position you hold.

A. I hold the position of provost-marshal of the draft for the Fifth

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Congressional District of Maryland. My office, or headquarters, is at Ellicott's Mills, Howard County.

Q. That is your post-office address?

A. Yes, sir.

Q. Are you acquainted with Daniel J. Thomas, of Charles County?

A. I just know him from the fact of his having been a drafted man; and I examined him at Benedict, Charles County, I know him thus far.

Q. State whether, at any time during last spring or winter, you received a letter from him stating that Dr. Samuel Mudd, one of the accused, had said to him (Daniel J. Thomas) that the President (Mr. Lincoln) and his whole Cabinet, and every Union man in the State of Maryland, would be killed within six or seven weeks.

A. I never received any such letter.

Q. Did you ever receive a letter from Daniel J. Thomas mentioning any thing to the effect of that statement, in whole or in part?

A. No, sir.

Q. Or any letter from him mentioning the name of Dr. Samuel Mudd?

A. No, sir.

Q. Did you receive any letter from Mr. Thomas about that time?

THE TRIAL.

A. I had received a letter from him dated the 9th of February, 1865.

Q. Had it any relation whatever, direct or indirect, to the subject I have inquired of you in regard to?

A. No, sir.

Q. Or in relation to Dr. Samuel Mudd?

A. It had no relation to Dr. Samuel Mudd.

Q. Was Mr. Thomas a detective under you?

A. I believe he was commissioned as what we call an independent-

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ent detective; that is, not commissioned under the Government, but by me specially to arrest drafted men who failed to report, and deserters; for which he received as a compensation the reward allowed by law for such arrests, but was not under pay from the Government.

Q. Were such commissions given to anybody who applied?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You say that letter did not relate to Dr. Samuel Mudd. Did it relate to one of the Mudds?

A. There was a reference in the letter to Dr. George Mudd, a gentleman with whom I am acquainted. I was not acquainted with Dr. Samuel Mudd. I do not know him.

ALEXANDER BRAWNER,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. State to the Court where you live.

A. I live in Port Tobacco, Md.

Q. Do you know the prisoner Atzerodt?

A. I do.

Q. How long have you known him?

THE TRIAL.

A. I have known him for the last six or eight years. I have known him well for the last five years.

Q. State whether, about the last day of February or the beginning of March of this year, you saw Atzerodt at Port Tobacco.

A. He was down in Port Tobacco some time in the spring. It was in February or March,—somewhere along there,—I do not know exactly what time.

Q. How do you associate it with the time?

A. He came down, and I was going into the country. He was down on horseback; and I told him I had to go out to the country, and had not seen him—

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing that was said between you and him at all.

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Q. [By MR. DOSTER.] Just state how you associate the visit with that time.

A. I was going out into the country, and he went along with me. I had some business out in the country, and he went along with me.

Q. Is that associated in your mind with the end of February?

A. It was some time in the latter part of February or March. I do not know exactly. I do not remember dates at all. I never took any account of it at all.

Q. Did you know whether on that occasion he had just come down from Barnestown?

A. I do not.

Q. Or that he had come from Bryantown?

A. I think he had come from Bryantown.

Q. Was he riding a horse?

A. Yes, sir.

Q. What was the color of the horse?

A. It was a sorrel horse.

Q. Do you know any thing about the prisoner's reputation for courage?

A. Well, I never considered him a very courageous man, by a long streak.

Q. What is his general reputation down there as a man of courage?

THE TRIAL.

A. I never knew him to get into a difficulty at all. I have known him for the last five years. I have seen him in scrapes, and I have seen him get out of them very fast.

Q. Is he not rather celebrated for being a notorious coward?

A. He is.

Q. Have any instances of his cowardice fallen under your observation?

A. I have seen him in little scrapes,—bar-room scrapes, &c.

Q. State any instances you may have seen of his want of courage.

A. I have seen him in little difficulties and bar-room scrapes, where there were pistols drawn, &c.; and he generally got out of the way.

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Q. Was he particularly fast in getting out of the way?

A. Well, sir, he made pretty good time.

JOHN H. BADEN,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you live.

A. I live in Anacostia District, Prince George's County, Md.

Q. Are you acquainted with Daniel J. Thomas, who has been a witness on the stand here?

A. Yes, sir.

Q. Do you know what his general reputation is, in the community in which he lives, for veracity?

A. I have heard very few persons speak high of it.

Q. Do you know what his general reputation is?

A. It is rather bad. He is counted a very untruthful man. I do not believe but a very few place any confidence in him and what he says.

Q. From your knowledge of his reputation for veracity, would you believe him under oath?

A. I do not think I could if any thing was at stake.

THE TRIAL.

Cross-examined by the JUDGE ADVOCATE:

Q. Have you ever heard him charged with swearing falsely?

A. No, sir: I never have.

Q. Has he any reputation to that effect, that he would swear falsely?

A. I do not know: I never heard of the man swearing falsely. I have known him to tell a great deal that was not so; but I never heard him swear to it.

Q. From your knowledge of human character, do you not think there are many men who talk idly and extravagantly, and sometimes untruthfully, who would nevertheless, when under the obligations of an oath, speak the truth?

A. I do not know, sir. I do not place any confidence myself in

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what I hear him say. I have nothing against Mr. Thomas. I have known him a good while; but I do not put any confidence in what I hear him say.

Q. That is not an answer to my question. Could you not give me answer to that?

The WITNESS. What was that?

Q. Do I understand you to hold that a man who will sometimes speak untruthfully will necessarily swear to an untruth in a court of justice? Is that your judgment of human character and conduct?

A. Not at all.

Q. That is what I wish to ascertain.

A. Not all.

No other witnesses for the defence being in attendance, the prosecution proceeded to call rebutting testimony.

FRANCIS R. FARRELL,

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State to the Court where you reside.

A. In Charles County, Md., near Bryantown.

THE TRIAL.

Q. Are you acquainted with Dr. Samuel A. Mudd?

A. I am.

Q. Well acquainted with him?

A. Yes, sir.

Q. State whether or not you fell in company with him on Saturday, April 15, the day following the assassination of the President.

A. I did.

Q. State where, and under what circumstances, you fell in company with the prisoner Dr. Mudd.

A. Dr. Samuel A. Mudd came to my house on Easter Saturday evening last.

Q. That was the day following the assassination of the President?

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A. Yes, sir.

Q. What hour was he there?

A. I do not know exactly: I had no time. I judged that it was between four and five o'clock.

Q. How is your house situated in reference to his and to the town of Bryantown?

A. I think, about half-way from Bryantown; between the two.

Q. From which direction did he come when he came to your house?

A. He came down from the main road,—left the main road, and turned into the road that leads to my house.

Q. Was he coming from Bryantown?

A. I do not know.

Q. Did you learn from his conversation whether he was from Bryantown?

A. I did not.

Q. Does that main road lead to Bryantown?

A. It does.

Q. Did you observe the direction he took when he left your house?

A. He went out the same way he came in.

Q. He came there between four and five, you think?

A. I think so. It was not long before night.

Q. While he was at your house, was the assassination of the President a subject of conversation between him and yourself?

A. Yes, sir: he told it there.

THE TRIAL.

MR. EWING. I object.

The JUDGE ADVOCATE. The gentleman objects to our giving the statements of Dr. Mudd in evidence, I suppose.

MR. EWING. I object to it on the ground that it is not rebutting evidence.

The JUDGE ADVOCATE. I could offer it on another and distinct ground,—that it is, so far as we understand it, a confession on the part of the prisoner,—which is at all times competent evidence,—and that it has come to our knowledge since the commencement of this trial, and since the close of our testimony on this point. On

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that ground alone, I think the Court, in the exercise of a sound discretion, would allow it to be introduced; but I think also it is strictly rebutting testimony offered for the defence.

MR. EWING. I will state to the Court, that, if this testimony is admitted, it will be indispensable to the rights of the accused to have one or more witnesses from that neighborhood who have not already been subpoenaed.

The COMMISSION overruled the objection.

Q. [By the JUDGE ADVOCATE.] Now state to the Court what Dr. Mudd said in regard to the assassination of the President in that conversation with you.

A. When the doctor came to my house, I was in the house; and Mr. Hardey was in my house also. He walked out, and had some talk with the doctor; I do not know what. He halloed to me directly after he went out, and told me that the President was assassinated, and also Seward and his son, I think. Then I got up and went out to my yard-gate, where the doctor and Mr. Hardey were. I asked if it was so. I understood the doctor to say that it was so; and that the President was assassinated, and also Mr. Seward and his son. I asked the question who assassinated the President; and the doctor replied, and said, "A man by the name of Booth." Mr. Hardey then asked him if it was the Booth that was down here last fall. The doctor said he did not know whether it was or not; that there were three or four men of the name of Booth, and he did not know whether it was that one or not: he said, that, if it was that one, he knew him. That was all he said about it, excepting that he said he was very sorry that this thing had occurred,—very sorry.

THE TRIAL.

Q. Do you remember whether, in the course of that conversation, he spoke of two men having been at his house that morning and during the day?

A. He did not.

Q. He made no allusion to it?

A. No, sir.

Q. How long did he remain at your house?

A. I do not think he staid over fifteen minutes.

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Q. You say he went down the same road he came. Did you suppose he was going home when he left you?

A. I cannot say which way he went.

Q. You did not see which way he turned when he got to the main road?

A. I did not, from my house.

Q. And did not see from which way he had come when he turned into the lane as he came to your house?

A. No, sir.

Q. Did he give you any of the particulars of the assassination?

A. He did not.

Cross-examined by MR. EWING:

Q. What Mr. Hardey was it that was there?

A. John F. Hardey.

Q. Did Dr. Mudd say why he was sorry that the President had been killed?

A. He only said it in this way: That, at this time, it was the worst thing that could have happened, he thought. That was the only reason he gave why he was sorry, according to my recollection.

Q. Did he say how it would operate badly for the country?

A. I think he did. I think he said that it would make it a great deal worse for the country. I shall not be certain; but I think he said he was afraid it would make it a great deal worse for the country than it was while the war was going on.

Q. Did he seem to be entirely in earnest in expressing his sorrow for the crime?

A. I think he did, from his appearance.

Q. Did you notice him as he was coming towards your house out of the main road?

THE TRIAL.

A. I did.

Q. Was there anybody riding with him?

A. No, sir.

Q. There was nobody in the main road riding with him as he turned into your house?

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A. I could not see him in the main road. I saw him in the road leading to my house after he left the main road.

Q. And as he was approaching your house?

A. Yes, sir; and, instead of his coming directly to my house,—there is a man who lives right close to me, who was fencing on the branch above my house; and he rode up to the man who was fencing, and said to him when he got there,—so the gentleman told me himself,—that he thought it worried me, and that caused him to ride there.

Q. Who was that man?

A. Mr. William Roby.

Q. If any one had been riding on the main road with him, and parted with him as he turned down to go to your house, would you probably have noticed this person?

A. I could not see the main road from my house.

Q. Could you see no part of the main road from your house?

A. No, sir.

Q. Was Mr. Hardey present through the whole of this conversation?

A. He was.

Q. What did Dr. Mudd go there for, do you know?

A. He came there to see Mr. Hardey about getting some railtimber, so he said.

Q. Did he transact his business with Mr. Hardey as to the railtimber?

A. He did not. Mr. Hardey told him where he could get some; but he did not say whether he would take it or not. I think he said it was too far to haul it from where Mr. Hardey told him he could get the timber.

Q. Had there been any previous bargain about the timber?

A. There had been.

Q. Mr. Hardey was unable to furnish the timber that had been bargained for?

A. Yes, sir; he told him so. He had let Mr. Sylvester Mudd have the timber Dr. Mudd had first bargained for.

THE TRIAL.

Q. And he said he could let the doctor have some timber in another place?

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A. Yes, sir.

Q. About how far do you think it is out of the main road to your house?

A. I do not think it is a quarter of a mile exactly.

Q. And you think Dr. Mudd was there how long?

A. I do not think he was there longer than fifteen minutes.

Q. And what time in the day do you think it was?

A. I cannot say. It was late in the evening. I suppose it to have been between four and five o'clock. I had no time. It was cloudy; and I did not see the sun, and could not tell the exact time.

Q. Do you not think it was as late as five o'clock?

A. I do not know that it was not. It seemed to me to be a very short time from the time he left until night.

Q. It is dark about half-past seven o'clock at that time of the year?

A. I think it is.

Q. How long do you think it was before that?

A. Indeed I do not know: I cannot tell. I would not have thought it more than a couple of hours to dark, anyhow, when they left.

Q. At the furthest, not over a couple of hours?

A. I do not think it was over a couple of hours.

Q. Then that would make it about half-past five o'clock?

A. I cannot say positively what time it was; but I think it was likely between four and five o'clock when he came there. I do not know positively.

LOUIS B. HARKINS,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Do you know the prisoner Atzerodt?

A. Yes, sir.

Q. How long have you known him?

THE TRIAL.

A. I have known him ever since he has been in the county. I

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can hardly date the time: it seems to have been about ten years, though, as well as my memory serves me now.

Q. Do you know of his having been in Port Tobacco about the latter end of February or the beginning of March, this year?

A. He was down there somewhere about that time; but I cannot fix the date.

Q. About how long did he stay during that visit?

A. As well as my memory serves me, not over a day or two. He might have staid longer. Of course, I cannot tell. I think I saw him for a day or two.

Q. What is his general character in the community down there?

A. He is looked upon by us folks down there that have known him a long while as a good-natured kind of a fellow. We never gave him credit down our way for much courage. Outside of that, I know nothing at all about him.

Q. Is he not rather remarkable for not having courage?

A. I think my attention has been called to that since he got into this difficulty; and I have called to mind two difficulties in which I saw him, in both of which I thought he lacked courage: one of them happened in my shop; the other, at an oyster-saloon in our place.

EDWARD FRAZIER,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Where do you reside?

A. In St. Louis, Mo.

Q. Have you been residing there for some years?

A. I have been residing there, and making it my home, for the last nine or ten years.

Q. Do you remember that, within the last year or two, there have been extensive burnings of steamboats on the Western and Southwestern waters, with the details of which you are probably

acquainted? State to the Court what knowledge, if any, you have of those burnings, and the persons connected with them, and the

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authority under which they occurred. State any information you may have on that subject.

Q. The parties are these: Tucker is one; Majors is another,—he is a Missourian.

Q. In the service of the Confederate Government?

A. Yes, sir. Thomas L. Clark is another. They are the only agents I know.

Q. Were they all agents of the Confederate Government so called?

A. Yes, sir.

Q. In what business were they engaged in that connection?

A. They were engaged in burning steamboats.

Q. Where?

A. On the Mississippi and Ohio Rivers. There was another agent too, whom I had forgotten; a man by the name of Barrett.

Q. Is he a Missourian, who was formerly in Congress from that State?

A. I cannot say whether he was in Congress or not. I believe he was a Missourian.

Q. Is he a lawyer by profession?

A. I cannot say whether he is a lawyer or not.

Q. Do you know his given name?

A. I do not. I never heard his given name.

Q. Did he have any title?

A. I have heard him called "Colonel Barrett."

Q. State whether these men were associated together, and what were their operations.

A. Their operations were in burning, on the Mississippi, Ohio, and other rivers, steamboats carrying Government freight, or used as transports for the army, and some that were not.

Q. Do you know through what combustible materials, and in what way, those boats were burnt or supposed to be burnt?

A. No, sir; I do not. All I know about it is, that I suppose they were burnt by matches.

Q. Was it done secretly, at night, or under what circumstances generally? What was the plan of operations?

A. It was done secretly.

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Q. Will you enumerate the boats which were burnt under the operations of these parties?

A. The steamboat "Imperial," and three others; the steamboat "Robert Campbell," the steamboats "Louisville," "Daniel G. Taylor," and others; and some in New Orleans that I do not know the names of.

Q. Were these large vessels?

A. Yes, sir: some were large, and some small.

Q. Owned by private individuals?

A. They were owned by private individuals.

Q. Was there any loss of life connected with the conflagration of these vessels?

A. There was in the case of the "Robert Campbell."

Q. Were they burnt in the stream, or lying at the shore.

A. The "Robert Campbell" was burnt in the stream.

Q. When under way?

A. Yes, sir.

Q. Was it understood that the agent was on board, or merely that he had deposited his combustibles?

A. He was on board.

Q. Where was that vessel burnt?

A. At Milliken's Bend, twenty-five miles above Vicksburg.

Q. You say there was loss of life?

A. Yes, sir.

Q. Considerable?

A. Considerable.

Q. State whether or not this plan of operations embraced the Government hospitals and storehouses.

A. It embraced any thing appertaining to the army.

Q. Do you know any thing of the burning of a hospital of the United States at Louisville?

A. No, sir: I do not. All I know about that is, that there was a man put in jail; but I do not think he did it.

Q. Do you know the man who claimed compensation from the Confederate Government for that service? What was that man's name?

A. Dillingham.

Q. What amount did he claim for having burnt that hospital?

A. He did not claim any particular amount at Richmond.

Q. When was that hospital burned?

A. It must have been burned along in June or July, 1864.

Q. Do you remember how the fire occurred? Was it at night? and was it attended with any loss of life?

A. It was at night.

Q. You do not know whether there were any patients burned up or not?

A. I believe there was nobody burned up; at least, I never heard of anybody being burned.

Q. State whether you have been at Richmond, and whether, while there, you had an interview with Jefferson Davis, the so-called President of the Confederacy, and with Benjamin, the Secretary of State.

A. I was in Richmond on the 20th, and until the 25th or 26th day of August, 1864. I there had an interview with the Secretary of War, the Secretary of State, and Mr. Jefferson Davis.

Q. Now state what occurred in those interviews.

A. Thomas L. Clark, Dillingham, and myself went there in connection with the boat burning, and put in claims to Mr. James A. Seddon. Mr. Clark introduced me to him, and he said he had thrown up that business. It was in the hands now of Mr. Benjamin. We went to Mr. Benjamin. Mr. Benjamin looked at the papers; asked me if I was from St. Louis. I told him I was. He asked me if I knew any thing about those. I told him I did; that I believed they were right. He asked Mr. Clark if he knew me to be right. Mr. Clark said that I had been represented to him as being all right by Mr. Majors, and Mr. Majors had left my name there when he was down before. He had been there before that. He said for me to call back the next day with Mr. Clark and Mr. Dillingham. I called back next day, and he said he had shown those to Jefferson Davis.

Q. Shown the papers you had left with him?

A. Yes, sir; and he wanted to know if we would not take \$30,000, and sign receipts in full. We told him we would not do it. Then he said, if Mr. Dillingham was to claim this in Louis-

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ville, he wanted a statement of that for Louisville. We went back to the hotel, and drew up a statement of it. I wrote the statement out myself. It read that Mr. Dillingham had been hired by General Polk.

Q. Bishop Polk?

A. Yes, sir; and sent to Louisville expressly to do that work.

Q. Burning the hospital?

A. Yes, sir. I signed Mr. Dillingham's name to it. That was given to Mr. Clark. Mr. Clark took it over to Mr. Benjamin, and we made a settlement with him. We made the settlement for \$50,000,—\$35,000 down in gold, \$15,000 on deposit,—to be paid in four months afterwards, provided those claims proved correct. He gave us a draft on Columbia, S.C., for \$34,800 in gold, and \$200 in gold in Richmond. That we got cashed in Columbia, and went along with it.

Q. Did you receive the gold on that draft?

A. Yes, sir. While there, Mr. Benjamin and Mr. Davis wanted to see me. I went in. Mr. Benjamin and myself and Mr. Davis sat there and talked. The conversation went on about a bridge between Nashville and Chattanooga,—the Long Bridge, they called it. Mr. Benjamin, I believe, was the one who mentioned it first. Mr. Davis wanted to know if I knew where it was. I told him I did; but I do not: I have never been there. He wanted to know what I thought about destroying that bridge, he said that he had been thinking about it there, they had been thinking about sending some to have it done. I told him that I did not want to think about it. He said I had better study it over. I finally told him that I thought it could be done. Mr. Benjamin—I believe it was Mr. Benjamin—first made the remark that he would give \$400,000 if that bridge was destroyed, and wanted to know if I would not take charge of it. I told him that I would not have any thing to do with it unless all passes were taken away from those men down there; that nobody should be allowed to go up any more; and they said it should be done. Then the conversation turned on the burning of steamboats. I told Mr. Davis that I did not think it was any use in burning steamboats: and he said no; he was going to have that stopped. I then told

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him that the best way to stop that would be to take the passes away from those men he had there immediately; that there were men lying around South with this kind of passes, who would go out, burn steamboats, and go back again, and it was not doing a particle of good to them. He said it would be done. I saw an order issued in the paper next day, taking away all passes issued on or before the 23d of August.

Q. Were these passes permits or authority to do this work?

A. Yes, sir.

Q. He knew that you had received this pay for the work done, did he?

A. I presume Mr. Davis did. He knew that I had received money there.

Q. The papers of which you speak were simply bills for this service?

A. They were statements made out. They were written by Mr. Clark, in South Carolina and Mississippi.

Q. Stating the service rendered, and the amount claimed?

A. Yes, sir.

Q. What was the sum originally demanded?

A. Fifty thousand dollars was what we settled for.

Q. Did you demand a larger sum, which was reduced to that?

A. No, sir. Thirty thousand in greenbacks is what he first wanted to pay us.

Q. You expressed the opinion to Davis that there was no good to be accomplished by burning these boats in this manner?

A. I did.

Q. He said he was going to abandon that policy?

A. He did.

Q. He fully approved what you had done? He did not condemn what had been done, did he?

A. He did not condemn what had been done.

Q. He was fully aware of what had been done?

A. He appeared so.

Q. Did you come to any understanding about the bridge? or was it a mere conversation?

A. It was a conversation rather, that, if the bridge was destroyed,

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he would give four hundred thousand dollars for doing it. I asked Mr. Davis, moreover, if it made any difference where the work was done? He said it did not. It might be done in Illinois, or any place,—such as railroad bridges, commissary and quartermasters' stores,—any thing appertaining to the army, but as near Sherman's base as possible; that Sherman was the man who was doing more harm than anybody else at that time.

Q. Do you know Majors's full name?

A. Minor Majors.

Q. Do you know where he is now?

A. I have every reason to believe that he has been in Canada; and he left from there, and went to Bermuda Hundred, I believe; and he was there when last heard from.

Q. Do you know whether or not these men were members of any secret society?

A. Yes, sir: they principally all belonged to secret organizations.

Q. What was the name of the society?

A. It goes by the name of the O. A. K. organization.

Q. Is it the Order of American Knights?

A. Yes, sir.

Q. Will you state, if you think proper to state it, whether you are also a member of that order. You are not bound to state it if it will criminate you in any way.

No answer.

Q. You say you are not able to describe precisely the process through which those boats were burnt, whether any combustible beyond matches was used or not?

A. I do not think there was.

Q. Do you remember the position which Barrett held in that association?

A. I understood that he held the position of Adjutant-General for the State of Illinois.

Q. For the O. A. K.?

A. I cannot say whether for the O. A. K. or the Sons of Liberty.

Q. Do you know whether Majors and Barrett were at Chicago in July last?

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A. Mr. Majors left St. Louis either last June or July to go to Canada; and, I presume, went through by the way of Chicago.

By the COURT:

Q. Was the steamer "Hiawatha" one of those that were burnt?

A. She was.

Q. Do you recollect the number of lives that were lost on the "Hiawatha"?

A. I do not.

Q. Do you recollect the number of lives that were lost on the "Imperial"?

A. I do not. I do not think there were many lost on the "Imperial."

Q. She was one of the largest and finest transports on the Western waters, was she not?

A. She was.

Q. Are you a steamboat-man?

A. I am.

Q. What boats have you been running out?

A. I have been running on the "Von Phul" last, Captain Gorman.

Q. Did you ever run on the "G. W. Graham"?

A. I never did.

Q. Do you know the "Graham"?

A. I do.

JOHN F. HARDEY,*

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Are you not acquainted with the prisoner at the bar, Dr. Samuel Mudd?

A. I am.

* Name shown as John F. Hardy in the official record.

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Q. Do you live near him?

A. I live about two and half or three miles off him, I think.

Q. Will you state whether or not he was at your house on Saturday, the day after the assassination of the President?

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A. He did not get to my house. He was a few hundred yards from it.

Q. At what hour did you see him on that evening?

A. Very near sundown.

Q. At whose house?

A. It was just below the house of a man that I employ.

Q. Mr. Farrell?

A. Yes, sir.

Q. Will you state what, if any thing, he said to you on that occasion in regard to the assassination of the President?

A. He said to me that there was terrible news now; that the President and Mr. Seward and his son had been assassinated the evening before. Something was said in connection with Boyle (the man who is said to have killed Captain Watkins) assassinating Mr. Seward. I remember that Booth's name was mentioned in the same connection; and I asked him if Booth was the man who had been down there, and was represented as Booth. His reply was, that he did not know whether it was that man, or some of his brothers: he understood that he had some brothers. That ended the conversation, except that he said it was one of the most terrible calamities that could have befallen the country at this time.

Q. Did you say that it was understood or said that Booth was the assassin of the President?

A. There was some such remark as that made; but I do not exactly remember the remark.

By the COURT:

Q. Did I understand you to say that that was on Saturday?

A. Yes, sir; Easter Saturday.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. About what time in the afternoon? What time before sundown?

THE TRIAL.

A. I do not think the sun was fifteen minutes high on that Saturday evening.

By the JUDGE ADVOCATE:

Q. Did he or not say any thing to you in that conversation about

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any strangers having called at his house that morning, and continued there during the day?

A. Not a word.

Q. The Booth that was spoken of was the one who had been there looking at lands. Is that what you asked?

A. I saw a gentleman there that went by that name: I did not know who he was.

Q. Where did you see him?

A. I saw him some time before Christmas, at church, one Sunday. As we passed through the gate leading to the church, I was standing on the corner on the right-hand side of the church-entry; and I happened to pass my eye around in that direction, and said I, "What man is that?—there is a stranger there;" and some one said to me, "His name is Booth." I do not know whether he went into church or not. I did not see him after that time, that day, either in church or out of church. I went around. I have business there about the church to wait on the minister. I do not know whether Mr. Booth was in church or out of church, or where he went after church. Some time again I saw him at the same place, and asked if that was the same man; and the answer was, "yes."

Q. When did you first see him?

A. Some time before Christmas: it may have been November. I will not be positive.

Q. Do you remember whether the prisoner Dr. Mudd was at church that day?

A. I do not know.

Q. Do you remember whether he was there on the second occasion when you saw Booth?

A. I do not remember whether he was or not.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. That was last fall?

THE TRIAL.

A. Yes, sir.

Cross-examination by MR. EWING:

Q. Who began this conversation as to this news? Did Mudd introduce the subject himself?

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A. He told me there was bad news in the country. I do not think that I asked about the news.

Q. You had not heard the news then?

A. I do not think I had been out that week: I was at home. I had been very busily engaged ploughing and doing other work,—planting some corn, and so on.

Q. And you had heard nothing of it?

A. I had not heard a word. I intended that evening to go to the post-office; but it looked so likely for rain, and I was so very tired, that I declined going.

Q. Did Dr. Mudd say where he got this news?

A. He said he got it in Bryantown.

Q. Did he say he had just come from Bryantown, or that he had been to Bryantown that afternoon?

A. He had been to Bryantown. I think those were his words, as well as I remember them.

Q. Did he seem to be in earnest when he spoke of its being a terrible calamity?

A. He did.

Q. Did you think that he felt the sorrow that he expressed?

A. I do honestly think so.

Q. How far was that place from Dr. Mudd's house?

The WITNESS. Do you mean the place where the conversation took place between him and myself?

MR. EWING. Yes.

The WITNESS. The conversation took place, I suppose, maybe not two hundred yards from my house-door; and from my house to Dr. Mudd's, around the road, to go on horseback, I suppose, will reach the best end of three miles; but if I was to walk it, going through, it would be about two miles and a half. That is the extent, I think.

Q. On what business did he come to see you?

A. He came there to see me respecting a parcel of rail lumber. I had been clearing some very heavy chestnut land, and was speak-

ing to him some time early in the winter, perhaps in January. He said he was wanting some chestnut rails; and if I would cut the trees, and cut them into rail cuts, he would send some hands down,

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and maul the rails, and take them away at fifteen dollars per thousand. I told it was a bargain. I continued on cutting the trees down, and cutting them up into rail cuts, expecting that he would come. I called to see him. He said he was afraid that he could not come; that if he could he would; but finally he told me that he could not come down after it; and I let Sylvester Mudd, a neighbor of his, have it.

Q. And then he came to see you about those rails?

A. Yes, sir. When he came and found the rails malled, I said to him, "The rails are all malled by Sylvester Mudd: perhaps there are some few cuts that are not malled. If you wish it, you can have those cuts already malled; and I have a parcel of rails unmalled, about two years in the pile, which you can have if they will suit you."

Q. Endeavor to refresh your recollection as to the dates of the two occasions that you saw Booth in the country.

A. I cannot call the dates: I do not remember any dates at all.

Q. How long were the two times apart?

A. I think, about a month. It might not have been quite that length of time, and it may have been a little longer.

Q. The first time was about the 1st of November?

A. I think it was some time in November.

Q. Early or late in November?

A. That I cannot answer; but I think it must have been some time in November. I think both times that I saw him there were before Christmas; I am pretty sure it was, each time that I saw him there: and it strikes me it must have been in November when I first saw him here.

Q. Did you ever hear of his being in that part of the country, at any other except those two times, before the assassination?

A. No, sir: a day or two after the second time that I saw him at church, I met him a little above Bryantown, riding on the Horse Head Road, by himself; but I only call that about one time, as I think it was the next day after Sunday. On Sunday, I saw him at church. On Monday evening, I rode to Bryantown to see if I could get my horse shod; and I met Mr. Booth, or the same man they called Booth,—I do not know who he was,—a little above

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Bryantown, riding by himself. He was riding a horse in the road leading straight to Horse Head, or he could not come to this point, to Washington, on the same road.

Q. Did Dr. Samuel Mudd, when he mentioned the news that he had got at Bryantown, betray any excitement?

A. He seemed to be somewhat excited, I thought.

Q. Was it any more than that excitement which was shown by the neighbors and the people of the county generally when they first heard the news?

A. When they first heard it for a fact, it was not. When I first heard it, I could hardly believe it. I felt very singular when I heard it. I could hardly express my feelings when I heard it.

Q. Dr. Mudd betrayed no undue excitement?

A. I think not.

Q. But seemed to be sincerely sorry for the news?

A. Yes, sir; he seemed to be sincerely for it; and he spoke as if he really felt what he spoke.

Q. How long did he stay?

A. I do not think he staid ten minutes.

Q. From the position in which you were, could you notice whether anybody had been riding with him along the main road?

A. No, sir; not at all.

Q. You could not tell?

A. There is a bunch of pines just above where he and I were standing; and that bunch of pines is on an elevated spot. The road goes through the pines one way, and then makes a turn, so that it obstructs the sight of the road. I could not see any one, and did not see any one, and heard of no one being with him.

Q. Do you know where Squire George Gardiner lives?

A. Yes, sir; very well.

Q. Is he not the person of whom Booth bought a horse on one of the two visits you have spoken of?

A. He is the gentleman who is represented as having sold a horse to Mr. Booth.

Q. Will you state whether Dr. Mudd's house is on the road between Bryantown and Squire Gardiner's house?

A. It is not immediately on the main road. You can go by the

doctor's, and then to Squire George Gardiner's house. It is a little off the main road.

Q. Would it be much out of the way?

A. No, sir; it is nearer to go to the doctor's, I think.

Q. The nearest road?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did Dr. Samuel Mudd, in this conversation, tell you how or from whom he had obtained the information that the President had been assassinated the evening before?

A. No, sir; he did not. He said he had simply heard it in Bryantown.

ELI J. WATSON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you reside.

A. In the Eighth Election District, Prince George's County, near Horse Head.

Q. Are you acquainted with Daniel J. Thomas, who has been a witness for the prosecution in this case?

A. Yes, sir; I am.

Q. How long have you known him?

A. I have known him for some time.

Q. About how long?

A. I have known him ever since he was a boy; at least, he was a boy about the same time I was.

Q. Do you know his reputation, in the neighborhood in which he lives, for veracity?

A. I do.

Q. What is his reputation?

A. It is bad.

Q. From your knowledge of his reputation, in the neighborhood in which he lives, for veracity, would you believe him under oath?

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A. From his general reputation, and my own knowledge, I would not.

Q. Will you state whether you saw Mr. Thomas in the field, on your farm, on the first day of June last,—the last day?

A. It was last Thursday that I saw him on my farm.

Q. Will you state what he said to you then as to his having testified here in this case, and as to his expecting a reward?

A. He said he was a witness against Dr. Mudd, and Mr. Joshua S. Naylor had sworn to put down his oath; and he said, if his oath was sustained, he expected a portion of the reward that the Government was to give for Booth.

Q. Did he say what portion?

A. No, sir; he did not.

Q. Did he say what would be the result in Dr. Mudd's case if his oath was sustained?

A. No, sir; he did not.

Q. "And Joshua S. Naylor had sworn to put down his oath." What did you understand by that?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, and it was waived.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Who introduced that talk in the field?

A. Mr. Thomas did.

Q. How did he begin?

A. I was in the field, and he said he was going around to notify some persons in the neighborhood that he expected would be summoned, and he expected to have them summoned to prove his character; and he went on to state—

Q. What did he go on to state?

A. He said that he was going to have me, for one, summoned to sustain his character.

Q. What else did he say?

A. I do not remember all he did say.

Q. That is about all you do remember?

A. Yes, sir.

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MARCUS P. NORTON,

a witness for the prosecution, recalled by consent for further examination.

By MR. DOSTER:

Q. You said on Saturday, in your examination, that you knew Booth by sight.

A. Yes, sir.

Q. And that you had seen him play several times?

A. Yes, sir.

Q. Can you state where you saw him play, and when?

A. I have seen him play in Washington, in the city of New York, and once in Boston, I think.

Q. How many times did you see him play in Washington?

A. I cannot tell.

Q. How many times in New York?

A. I cannot tell.

Q. How many times in Boston?

A. I cannot tell.

Q. In what pieces did you see him play?

A. That I cannot tell.

Q. Do you remember the time of the year that you saw him play at any of these towns or cities?

A. No, sir: I have seen him at different times during the year.

Q. How long back is it since you saw him the first time?

A. That I do not know. These are matters that—

MR. DOSTER. I do not want any more, if you say you do not know.

The WITNESS. I was going to tell you how I do not know.

ASSISTANT JUDGE ADVOCATE BURNETT. The witness has a right to explain his answer. You may explain, Mr. Norton, why you do not know.

The WITNESS. It is because, when I attend theatres, I never make any written memorandum of it; and I make it a habit always, when away from home, to attend those places of amusement; and I see a great many pieces played, and by different persons; and un-

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less it is really a remarkable actor, or a remarkable piece, I do not charge my mind to remember it.

Q. [By MR. DOSTER.] You stated the other day that you remembered conversations of persons you did not know for three months?

A. I do not think I stated any such thing.

Q. You did state that exactly.

A. I should like to see it.

Q. You stated the other day that you remembered a conversation held at the National Hotel on the evening of the 3d of March, and you gave your testimony about the 3d of June: that is three months after the conversation happened. You state now that you do not remember ever where, when, or in what place you saw Booth act. Now, I ask you, is your memory for conversations better than that for plays?

A. I stated then that there were some conversations that I remembered a good while, and there were others that I passed by and forgot.

Q. That is not an answer to my question.

A. I recollect that conversation, if that is what you want to know.

Q. I want to know whether your remembrance of conversations is better than your remembrance of plays?

A. I remember a great many plays, and a great many things said in them; but I do not remember all that is said. I suppose my memory is as good in that respect as the memory of people generally.

Q. I want you to compare your memory for plays with your memory for conversations.

A. I think that is hardly a fair comparison.

Q. You are not to criticize; you are to answer my question.

A. I have answered it.

Q. I do not yet understand which is the best,—which is your best memory.

A. I must give you the same answer that I have already given.

Q. That is no answer to my question, and I desire an answer to that question. If the witness cannot answer it, let him say so.

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A. I do not know how I can answer it any better than I have. We remember some things in conversation longer than others; we remember some things in plays longer than we do other parts of plays.

Q. You said you saw on that occasion Booth and Atzerodt in company at the National Hotel?

A. Yes, sir.

Q. Do you remember anybody else that you saw in company with Booth on the 3d of March?

A. No, sir; I saw no one else with him that day.

Q. Do you remember anybody else during the whole time of your stay at the National Hotel, except the prisoners here, that you saw in company with Booth?

A. Yes, sir; I do.

Q. Who were they?

A. The eldest daughter of the Hon. John P. Hale, was one.

Q. When did you see her in company with him?

A. About the same time.

Q. Where?

A. At the National Hotel.

Q. Whereabouts in the hotel?

A. In the parlor.

Q. What time of day?

A. In the evening.

Q. Of the 3d of March?

A. No, sir: it was before that, I should think.

Q. What date?

A. I could not give the precise date.

Q. Did you see anybody else in his company?

A. Not specially in his company,—engaged in conversation with him. I used to see him passing around among the people there.

Q. Did you see anybody else there with him?

A. Not engaged in conversation.

Q. Did you, during your whole stay at the National Hotel, overhear and remember any other conversation between persons you did not know?

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A. I presume I did.

Q. If there is any such, state the persons and the conversation.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to it. It is wholly immaterial; and I do not wish to be kept here to inquire about conversations with John Jones, Jake Jarvis, Bob Snooks, and everybody else that he can conceive of. The counsel has no right to ask the question at all. If it were a question that tended to disgrace the witness, I admit he would have the right to ask it, and the witness would have the right, upon his privilege, to answer it, or let it alone; but it is not. It is not a question upon which he can impeach him; and it is not a question upon which the witness or any human being can give a conceivable answer that will enlighten this Court upon the issue joined. I object that it is wholly immaterial and out of place, without character.

MR. DOSTER. It is very material to ask questions showing the degree of confidence we are to place in this man's veracity. He has told us (what I passed over the other day, because it did not seem to be of very great importance) that he remembered detached conversations between people he did not know for three months,—a thing so remarkable, that I inquired into the character of the witness, and found out what I stated some time ago. My purpose, therefore, is to go over this conversation again, and find out what degree of confidence we are to place in him; and that I can only do by comparing his own narrative with conversations that he overheard besides. It is the only way of arriving at it, and is perfectly legitimate.

ASSISTANT JUDGE ADVOCATE BINGHAM. You cannot impeach him on a matter of conversation with third persons at all. His answer is immaterial if he gives it; and an immaterial question I have a right to object to, and that the reason I do object.

The question was waived.

Q. [By MR. DOSTER.] You stated the other day that you overheard these words: "That, if the matter succeeded as well with Johnson as it did with old Buchanan, their party would be terribly sold." Did you or not understand that this had reference to an attempt to poison Mr. Johnson?

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A. I stated that that was the substance of the conversation. I did not state that those exact words were used.

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Q. That is not an answer to my question. Did you or not understand, at that time, that this had reference to an attempt to poison Mr. Johnson?

A. No, sir; not at that time. Since then I have so construed it.

Q. When?

A. Since the assassination of the President; and the fact of the assassination, and Booth being coupled with it in the manner he has been, was what turned my attention to that conversation.

Q. What did you understand by it?

A. I have told you.

Q. You gave me the substance of it. I want to know what you understood by it.

A. I say, that, since then, it has been my belief that it had reference to the poisoning of Mr. Johnson.

Q. I want to know exactly what you understood by it at that time.

A. I said the other day in my examination that I did not know what it meant. I say that to-day.

Q. You stated that you did not know what was meant by that party?

A. At that time.

Q. I want to know what you understood by the whole tenor of the words,—by the substance that you spoke of.

A. I stated that other day that I did not know; that I passed it as I pass a great many things.

Q. Was not that on the evening of the 3d of March?

A. I said it was on the evening of the 2d or 3d.

Q. The day before the inauguration?

A. Yes, sir.

Q. And in the National Hotel?

A. Yes, sir.

Q. Did you have any knowledge in your lifetime that there had been suspicion, in former years, of a plot to poison Mr. Buchanan? Had you heard such a thing?

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A. I have heard such a thing: and I have heard again that it was all unfounded; that there was no truth in it.

Q. But, when you heard these words, you drew no such conclusion that it had any reference to such a thing?

A. Not at that time. I did not know at that time that Mr. Johnson was to be poisoned, or that Mr. Lincoln was to be assassinated.

THE TRIAL.

If I had, I presume I might have put the construction upon it then that I have put it upon it since.

Q. When you heard the other words in reference to the character of the witnesses, what did you understand by those words?

A. I did not understand that they had any meaning then; that is, that I could give any construction to what they did mean at that time.

Q. Were you known to Booth yourself?

The WITNESS. Do you mean personally acquainted with him?

MR. DOSTER. Yes, sir.

The WITNESS. No, sir.

HENRY BURDEN,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Please state to the Court where you live.

A. I live in Troy, N.Y.

Q. Do you know a person by the name of Marcus P. Norton?

A. Yes, sir.

Q. The same person who has testified?

A. Yes, sir; the one who was here a moment ago.

Q. What is his general reputation for veracity in Troy?

A. Not good.

Q. Is it or not very bad?

A. It is bad.

Q. Would you believe him on his oath?

A. No.

Cross-examined by the JUDGE ADVOCATE:

Q. Do you live in Troy yourself?

A. Yes, sir.

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Q. Mr. Norton is a lawyer by profession, is he not?

A. I believe so.

THE TRIAL.

Q. You are the holder of some very valuable patents, are you not?

A. I was the holder of some.

Q. For the manufacture of horseshoes?

A. Yes.

Q. Had you any legal controversies about those patents?

A. I had some legal controversies in reference to those patents with parties near by.

Q. Has Mr. Norton been in any way, either as counsel or witness, connected with those controversies?

A. I believe he was.

Q. In what character was he?

A. He was there as counsel for one of the parties.

Q. Parties that were opposed to you in those suits?

A. Yes.

Q. They were very severely contested cases, were they not?

A. Well, they were, to some extent.

Q. The amount involved was very large?

A. No: not the amount in the horseshoe case.

Q. Was there a good deal of feeling in the case?

A. I do not know that there was much feeling in the case, further than for me to get my rights in the question.

Q. Did you form your opinion of Mr. Norton from his conduct in conducting the case against you?

A. Not at all; not that by itself.

Q. Did you entertain the same opinion of him before his conduct in conducting that suit that you now express?

A. I was not acquainted with him until after he came to examine the matter.

Q. Your opinion of him, then, has been formed since?

A. Yes, and with other matters there in Troy; with other suits that came up.

Q. Was he not engaged in more than one of these suits against you?

A. Not that I know of.

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Q. No other suits in which you were concerned?

A. Nothing else but one that I remember; and that was settled at the Patent Office.

Q. Since then, you have not been at all on friendly terms with him?

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A. Nothing friendly, or nothing unfriendly; nothing passed.

Q. You do not speak when you pass?

A. No: I only speak here of his general character.

Q. When you undertake to declare to the Court that he is not to be believed on oath, you are expressing the opinion entertained by the people of Troy, who know him? or are you expressing your own individual opinion, based on his conduct?

A. I am speaking more particularly of what the people of Troy think,—the great mass of the people.

Q. How did you derive the knowledge of such an opinion there?

A. From testimony taken there in other matters, where he was impeached.

Q. The affidavits of which you now speak?

A. I do not allude to affidavits, but to testimony taken,—an impeachment of him on a trial. I know the parties who were called there,—a large portion of the people of Troy.

Q. Was that one of the cases in which you were concerned?

A. No; not at all. I had no connection with that, and I was not called.

Q. State whether or not Mr. Norton is not a lawyer in good practice in Troy?

A. I am not acquainted with the amount of practice he has.

Q. Has he not the reputation of being a fair lawyer there? and, as such, do you not find him appearing in the courts?

A. Not as much as used to be the case, I think.

Q. He still has practice there as a lawyer?

A. The amount of his practice latterly I do not know. Within the last two years, I am not aware of what it amounts to.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Was Mr. Norton counsel in the suits you have referred to in the testimony you have given here?

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A. My statement is not founded on any litigation that took place.

Q. You stated something about testimony taken.

A. That was in another case.

Q. Was Mr. Norton counsel in the case?

A. I do not know that.

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Q. How was he connected with the case?

A. I really do not know.

Q. How could the testimony connect him with it?

A. He must have been counsel on one side of the case, I think.

Q. You do not know that?

A. Not further than I know there was a large array of witnesses called there with whom I was acquainted.

Q. They were witnesses in the case?

A. No: witnesses in regard to the impeachment case.

Q. In regard to an impeachment case?

A. Impeaching Mr. Norton's truth.

Q. Was he party to the suit?

A. I do not know how that stood.

Q. Do you know whether witnesses can be called to impeach a man who is not a party to suit in any way?

A. I do not know. I know there was a suit.

Q. Do you know whether Mr. Norton had any connection with the suit in any way at all?

A. I do not know what connection he had with the suit.

Q. In any way at all?

A. I do not know the particular case. He was connected with it in some way.

Q. Did you hear the witnesses testify?

A. No; I did not.

Q. Then you do not know very much about it?

A. I have seen the witnesses.

By MR. DOSTER:

Q. I understood you to say that it is the general opinion of the people in Troy that this man is not to be believed.

A. That is so.

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The Commission adjourned until Friday morning, the 9th instant, at eleven o'clock.

THE TRIAL.

[FRIDAY, June 9th, 1865.]

A. B. OLIN

recalled for the accused, George A. Atzerodt.

By MR. DOSTER:

Q. Please state to the Court whether or not you have been living in the city of Troy, N.Y.

A. I resided there for about twenty years prior to my coming to this city to reside, some two years ago.

Q. Did you know a person there by the name of Marcus P. Norton?

A. I knew him there, a lawyer, in the city of Troy, if that is the person you speak of.

Q. What is his reputation in Troy for veracity?

A. Judging from what people say of him in respect to his character for veracity, I should say his reputation was bad.

Q. Is it or not remarkably bad?

A. It is reasonably bad, in my judgment.

Q. Would you believe him on oath?

A. Where his interests or passions or prejudices were enlisted, I would not rely upon this testimony under oath.

Q. Have you ever had any difference with him?

A. None whatever.

Cross-examined by the JUDGE ADVOCATE:

Q. Is this opinion which you express of him the result of any personal knowledge of yours of his character and conduct?

A. No sir: I have never had any intercourse with him, or business relations with him, or professional relations with him. All I speak of is from the speech of people who have been brought in contact with him.

Q. By being brought in contact, you mean persons who have legal controversies with him, or who have been party to legal controversies where he was concerned?

A. Yes, sir. I should say generally persons against whom he

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had been employed as counsel or attorney, or parties litigant in suits that he had been connected with.

Q. Do you know what kind of suits there were? Were they patent suits?

A. Mostly. He very seldom appeared in courts of law or equity there. He generally engaged in controversies in respect to patents, and the renewal of patents and patent rights.

Q. State whether you have any knowledge of the fact that that particular class of suits probably more than others excite bitter personal animosity.

A. All the knowledge I have of them mostly arises since the commencement of my duties here as a judge of this district. I had uniformly refused to take employment in that kind of cases, though I had opportunity to do so; and I had very little knowledge of those controversies, except merely incidentally, until I came here, where appeals are frequently brought from the Commissioner of Patents to the court of which I am a member; and I have seen enough of them to see that they are about as bitter as any controversies in law that I have knowledge of.

Q. Are they not extremely censorious in the tone of conversation about each other, the parties and counsel in those cases?

A. I have seen instances of that kind.

Q. Among the persons who have spoken of Mr. Norton, do you remember a citizen of that place by the name of Burden?

A. I know him very well.

Q. You have heard him speak of Mr. Norton in that way?

A. Yes, sir.

Q. You are aware, I suppose, that Mr. Norton has been counsel in opposition to him in patent cases?

A. I am aware of it.

Q. Is he not a man of large fortune and influence in Troy?

A. Yes: Mr. Burden is a very wealthy man.

Q. Has he not been extensively engaged there in suits of this class?

A. He has had several very warmly contested suits. One of them is known all over the country,—the suit in reference to the spike machine, his invention for making hook-headed spikes: I

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presume it has come to your knowledge. His controversy with Corning & Co. has been pending now before Chancellor Walworth for ten or twelve years, taking testimony in reference to the damages that he sustained. I believe he has not got through with it. He has had several other warmly contested suits of the same kind.

Q. Would not the conversation of a man of his fortune and influence, and that of his friends, continued through a series of years, under the influence of excited legal controversies, in which this witness was involved against him, afford to your mind some explanation of the reputation which you say exists?

MR. DOSTER. I object to that question.

The JUDGE ADVOCATE. I wish to get at the grounds of the witness's opinion, and I think this is a legitimate mode of reaching it.

MR. DOSTER. Judge Olin can scarcely be brought here as a expert as to the character of the testimony of Mr. Burden. It is not material to the issue what Mr. Burden said.

The JUDGE ADVOCATE. It is not an impeachment of Mr. Burden: it is an explanation.

MR. DOSTER. It is evidently brought here to contradict and invalidate the testimony of Mr. Burden. There can be no other object.

The JUDGE ADVOCATE. I cannot take the opinion of Judge Olin without the privilege of looking at the foundation for that opinion; and the question is directed but to that object.

The COMMISSION overruled the objection.

The question being repeated to the witness, he answered:—

A. Yes; undoubtedly it would. Mr. Burden is a man of large wealth, high social position, many friends, and speaks pretty freely his mind generally. Perhaps I ought to add, that, so far as I am aware, Mr. Norton's reputation was very questionable before he had any controversy or any connection with Mr. Burden, but probably this controversy, and the conversation of Mr. Burden and his friends, has disparaged, to some extent, the reputation of Mr. Norton in the estimation of the community where he resides.

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By the COURT:

Q. Is Mr. Norton considered one of the leading lawyers of Troy?

A. Oh, no! Mr. Norton is frequently employed in patent cases. What his ability is in those cases I am not competent to say. He may be a very good lawyer in those cases: but Mr. Norton, as I understand it, is hardly classed among lawyers of any considerable attainment; that is, he is not ascribed so by the profession, so far as I am acquainted with it. He is an ingenious, and, I believe, a very excellent mechanic: he has a good deal of mechanical ingenuity, and he is, very probably, very serviceable in cases of the description in which he is usually employed. I never knew of his appearance in court in an ordinary suit at law or equity of any importance.

MARY MUDD,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Will you state whether you are a sister of the prisoner Samuel Mudd?

A. I am.

Q. Will you state what you know as to his whereabouts during the month of March last?

A. I saw him on the 2d, 3d, 4th, 5th, 6th, and 7th. I remember it, because on the 1st, Ash Wednesday, I was making preparations to go to church, and I was taken very sick. It soon passed off, and I grew better. We did not send for my brother until the 2d, Thursday. My father went for him very early in the morning. He found him in bed. He brought him over, and he remained with us until about seven o'clock. He then returned to his own house. On Friday morning, the 3d of March, there was an eruption on my face. My mother grew very much frightened. She sent a small colored boy over for my brother, and he sent word back that he would be there to dinner. He came between eleven and twelve o'clock to see me, and he dined with us.

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Having come from his barn, where he was stripping all day, he brought no medicine. He left at two o'clock, and returned again at four o'clock in the evening, and brought me medicine. On the same evening, my brother Henry, late in the evening, went over, and returned with more medicine, which was to be taken the next morning. On the 4th, Saturday, my brother dined with us. He came to see me that day. On the 5th, Sunday, he was at our house in the evening. On Monday, he came to see me again. On Tuesday, he came to see me again; and, on Wednesday, I was able to leave my room, and did not need his attention any more. During the time, on one of the days, I do not remember which, a negro woman upon the place was taken very sick: she was ill with typhoid pneumonia, and he saw her every day until the 23d of March. That day I remember well, because we had a tornado, and his barn was blown down. After that, I saw him every two or three days, or heard from him during the whole of the month. I have been in the habit of seeing my brother every day or so, because my mother's health is delicate, and he comes in frequently to see her.

Q. And he visited a negro woman, you say, every day from what day in March until the 23d?

A. She was taken sick one day whilst I was sick. I do not remember the precise date; but it was during the time whilst I was sick.

Q. Did you also attend her, after you got well, as nurse?

A. I did. I carried her medicine, and I saw her nearly every day during this time.

Q. Will you state whether your father is in a condition of health to be able to be in attendance upon the Court?

A. No, sir. He got up yesterday morning, and attempted to come; but he was so feeble that he could not ride; and we did not think it was prudent for him to ride ten miles, much less thirty-two.

Q. Will you state what circumstances, if any, make you certain that he came to your house twice on the 3d of March?

A. Because he was stripping at the barn, and he came from the barn without any medicine. He came over between eleven and

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twelve o'clock, and dined with us at twelve. He left about two, and returned again with medicine about four o'clock in the evening. It

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was upon that day that the eruption made its appearance upon my face, and frightened the family.

Q. That was the third day after Ash Wednesday?

A. It was the 3d of March, Friday.

Q. The third day after you were taken ill?

A. Yes, sir.

Q. How do you know he had been stripping tobacco that day?

A. He said so.

Q. Did you see any appearance of it?

A. Yes, sir: he washed his hands in my room. He came directly into my room, and washed the tobacco-gum from his hands in my room.

Q. Do you know where he went on the 23d of March?

A. On the 23d of March, he came to Washington in company with Llewellyn Gardiner.

Q. Do you know of any absences of his from home between the 23d of December and the 23d of March?

A. He was at a party of George Henry Gardiner's in January: I do not remember the date; but I was there with him, and saw him there.

Q. Were any members of his family with him?

A. His wife was there.

Q. How long did they remain?

A. Mrs. Simms, who boards in the family, was also there at the party. They remained until daybreak.

Q. Do you know of his having been absent from home any other night between the 23d of December and the 23d of March, except this one absence, at George Henry Gardiner's, at a party?

A. No, sir; I do not. I never heard of his being absent any more.

Q. Do you know when he was again absent from home after the 23d of March?

A. A short time after that, he came with my brother Henry to Giesboro' to buy some horses; and my brother told me that they remained all night at my sister's, at Dr. Blanford's.

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Q. Do you know of any other absences of his, between the 23d of December and the day of the assassination of the President, except those three that you have spoken of?

A. I do not.

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Q. And you say you were in the habit of seeing him almost every day?

A. Yes, sir; seeing or hearing from nearly every day.

Q. Do you know whether your brother owns a buggy or carriage?

A. He never had one.

Q. Do you know of your brother ever having worn, within the past year, a black hat of any description?

A. I have not seen him with a black hat for a year.

Q. Do you know what kind of a hat he has worn for a year past?

A. A drab slouched hat, I think the gentlemen call it.

Q. Do you know Andrew Gwynne?

A. I do.

Q. Do you know of his having been at or about your brother's house at any time since 1861?

A. No, sir; I do not.

Q. Where has Andrew Gwynne been since 1861?

A. I have heard that he was in the Confederate service.

Q. Did you ever know of any party of Confederate officers or soldiers, or individual Confederates, stopping at your brother's house?

A. I never did.

Q. Did you see Booth in that country last fall or winter?

A. Yes, sir; I saw him at church once.

Q. Do you know whom he came to church with?

A. He was in Dr. Queen's pew; I saw him there.

Q. About what time was that?

A. It was in November; I do not remember the date.

Q. Do you know whether it was on the same visit when he purchased of Mr. Gardiner?

A. It was the same visit. I never heard of a second one until after this trial commenced.

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Q. Do you know where Mr. Gardiner, of whom Booth purchased the horse, lives?

A. He lives very near my brother's.

Q. How far from it.

A. I do not think it is a half a mile.

Q. Is Bryantown on the road between Dr. Queen's house and Mr. Gardiner's house?

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A. It is.

Q. Is your brother's house also on the road?

A. It is.

Q. Do you know where your brother was in December, and in the fall and winter of 1850 and 1851?

A. In 1850, he was in St. John's College, Frederick; in 1851, he went to Georgetown College. He went first in 1849 to St. John's College. He was there in 1849 and 1850. He then went to Georgetown College in 1851.

Q. Was he at home, or at Bryantown, in the months of October, November, or December, 1850, or January or February, 1851?

A. No, sir: he never spent any holiday at home except the summer vacations.

Q. Was he at home during these months at all?

A. No, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. With whom did Booth lodge every night in November when he was down in your neighborhood?

A. I do not know.

By MR. EWING:

Q. Do you know of his having been at your brother's house during that visit?

A. I do not know of it: I only heard it.

Q. But you did not hear whether he lodged there over night or not?

A. I did not.

Q. That was the visit when the horse was purchased?

A. Yes, sir.

Q. And when you saw him in Dr. Queen's pew in church?

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A. Yes, sir.

Q. How long was it between the time you saw him at Dr. Queen's pew in church, and the time of his purchase of the horse?

A. It was the same visit.

Q. Were these occurrences within a short time of each other?

A. A day or so, I suppose. I saw him on Sunday. I do not know what day he purchased the horse; but I do not suppose it was done

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on Sunday. It must have been on Monday or Tuesday. I do not know the time.

JOHN L. TURNER,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING.

Q. State where you live.

A. I live in the lower part of Prince George's, near Magruder's Ferry, on the Patuxent River.

Q. Are you acquainted with Daniel J. Thomas, who has been one of the witnesses for the prosecution?

A. Slightly. I know him when I see him. I never had any dealings with him in any way.

Q. Do you know what his general reputation is, in the community in which he lives, for veracity?

A. That is a question I am hardly able to answer, because I have no dealings with him. I can only answer from his general character in the neighborhood.

Q. That is all I wish to inquire about.

A. It is not as good as it ought to be.

Q. What is his general reputation on the subject of truthfulness?

A. I know nothing about his truthfulness; but his general character is—

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state anything about it if you know nothing about his truthfulness.

Q. [By MR. EWING.] Do you know what people gen-

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erally think, in the neighborhood in which he lives, of his truthfulness?

A. They do not think him a truthful man by any means.

Q. From your knowledge of his general reputation, would you believe him under oath?

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A. I would rather not answer that question, unless I had full knowledge. I could only speak from his reputation generally.

Q. I am speaking from his general reputation. Judging from that, would you believe him under oath?

A. If I was to take his reputation as such, I could not, where he was much interested.

Q. Will you state whether Mr. Thomas has been understood to be loyal from the beginning of this war?

A. I do not know. He has been part of the time loyal, but I cannot say all the time.

Q. Was he, in the beginning of the war, a loyal man, and so understood?

A. I do not know about the beginning of the war. He has been loyal for the last year or two. Some of the other witnesses can tell you more about that than I can, because they live immediately in his neighborhood. He lives in another county from me. He has never voted in our county at all; and the gentlemen from his county can tell you more about that than I can.

Q. Will you state what has been the general reputation of Dr. Mudd as to loyalty?

A. He has been considered a good loyal man throughout the whole war.

Q. Has he been a supporter of the Administration in its war measures?

A. That I am not aware of, because he does not vote in my county. We live in different counties.

Q. What has been his reputation as to that?

A. He has always been considered a true loyal man all the time.

Q. What has been your position with reference to the Government?

A. I have always been with the Government. I have always been a loyal man.

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Q. A supporter of the Administration?

A. At the late election, I voted for George B. McClellan for the Presidency, because I considered him as good a loyal man, and as good a Union man, as Mr. Lincoln; and as he said, that, if he was elected, the war would last only a few months, on that ground I voted for him. I always supported the Administration otherwise all the time.

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Q. Are you acquainted with Dr. Samuel Mudd?

A. Yes, sir.

Q. Do you know what his reputation has been for peace, order, and good citizenship?

A. Very good. I have always considered him a good, peaceable, quiet citizen; as much so as any man we have amongst us.

Q. Did you ever know of his having done any thing in aid of the Rebellion?

A. Never.

Q. Did you ever hear of his having done any thing in aid of it?

A. No, sir.

Q. You have known him well?

A. I have known him ever since he was a boy.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. How near do you reside to Dr. Mudd?

A. About six or seven miles.

POLK DEAKINS,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. Near Gallant Green, Charles County, Md.

Q. Are you acquainted with Daniel J. Thomas, who has been a witness for the prosecution?

A. I am.

Q. How long have you known him?

A. Ever since I can remember.

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Q. Do you know what his reputation is, in the community in which he lives, for veracity?

A. Very bad, I believe.

Q. Do you know his reputation?

A. I have heard a good many remarks made about it.

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Q. Do you know what the common opinion is in regard to him, as to veracity?

A. Very bad.

Q. From your knowledge of his reputation for veracity, would you believe him under oath?

A. No, sir; not if he had any inducement.

Q. Do you know whether Mr. Thomas has been a loyal man through the war?

A. I think I heard him, in 1861, say that he was going over into Virginia; and he persuaded me to go with him.

Q. To join the Rebellion?

A. Yes, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Were you persuaded?

A. I was asked.

Q. Were you persuaded?

A. I was persuaded.

By MR. EWING:

Q. Were you induced to go?

A. He begged me to go.

Q. Did you go?

A. No, sir; I did not.

Q. Did he induce you to make up your mind to go?

A. Yes, sir.

Q. Did you make up your mind from his persuasion?

A. I did not go.

ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You were persuaded yourself?

A. Yes, sir.

Q. You and Thomas were at argument, then, that you ought to go, and that he ought to go?

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A. He said we both ought to go; but I did not.

Q. You were only persuaded, and kept your opinion to yourself?

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A. Yes, sir.

JOHN WATERS,

a witness called for the accused, Samuel A Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. State where you live.

A. In Charles County, Md.

Q. What has been your position with reference to the Government during the war?

A. I have been loyal, I believe.

Q. A supporter of the Government in the prosecution of the war?

A. I think so.

Q. Are you acquainted with Daniel J. Thomas, who has been one of the witnesses for the prosecution?

A. I am.

Q. How long have you known him?

A. I have known him from a boy.

Q. Do you know what his general reputation has been, in the community in which he lives, for veracity?

A. It has not been very good.

Q. What have the people generally thought of him on that subject?

A. About the same as I have stated, as far as I know.

Q. That he was a truthful, or untruthful man?

A. I do not know much about that.

Q. Do you know what the people generally think of him there as a truthful or untruthful man?

A. I think they generally think that he is not very truthful.

Q. Are you acquainted with the prisoner Dr. Samuel A. Mudd?

A. Yes, sir.

Q. Do you know what his reputation is and has been, in the community in which he lives, as a citizen?

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A. It has been good, I believe.

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Q. Do you know whether Mr. Thomas had information before the arrest of Dr. Mudd, of the reward offered for the arrest of the assassins and their accomplices?

A. I think I saw him with an advertisement something to that effect.

Q. When?

A. The Tuesday after the assassination of the President, as well as I recollect.

Q. You saw him with an advertisement offering a reward for the assassins and their accomplices?

A. I think so.

Q. Where was that?

A. At Mount Pleasant.

Q. In what shape was the advertisement? What was it in?

A. In a paper.

Q. A handbill, or a newspaper?

A. A handbill.

JOSEPH WATERS,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. At Gallant Green, Charles County, Md.

Q. Are you acquainted with Daniel J. Thomas, who has been one of the witnesses for the prosecution in this case?

A. I am.

Q. How long have you known him?

A. From childhood.

Q. Do you know what his general reputation is, in the community in which he lives, for veracity?

A. Very bad.

Q. From your knowledge of his general reputation for veracity, would you believe him under oath?

A. No, sir: I do not think I could.

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Q. Has he been a loyal man throughout this war?

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A. I do not know any thing to the contrary as to his politics.

Q. Do you know whether he was loyal in the beginning of the war?

A. I do not.

Q. What was his reputation as to that?

A. His reputation was not very good, as far as I know, for any thing.

Q. Are you acquainted with Dr. Samuel Mudd?

A. Yes, sir.

Q. How long have you known him?

A. I have known him from childhood.

Q. Do you know what his reputation has been as a citizen?

A. Very good, as far as I have known: I have never known any thing against him.

Q. Have you ever known of his being engaged in any way in aiding the Rebellion?

A. No, sir.

Q. Have you been a Union man throughout the war?

A. Yes, sir.

FRANK WARD,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. At Horse Head, Prince George's County, Md.

Q. Are you acquainted with Daniel J. Thomas, who has been one of the witnesses for the prosecution?

A. I am.

Q. How long have you known him?

A. I do not know exactly how long, but ever since I was a boy.

Q. Are you acquainted with his general reputation, in the community in which he lives, for veracity?

A. Yes, sir.

Q. What is it?

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A. It is considered pretty bad.

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Q. Has he been a loyal man throughout the war?

A. He is first one thing, and then another, generally; sometimes Union, and sometimes disloyal.

Q. Unstable as to his politics?

A. He is sometimes one thing, and sometimes another. It is generally so understood. I cannot say positively.

Q. Do you know whom he supported for the Presidency at the last election?

A. I have understood that he voted for McClellan.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what you understand.

The WITNESS. I did not see him vote. I do not live in his county.

Q. [By MR. EWING.] Have you been a loyal man through the war?

A. I have tried to be so.

By the COURT:

Q. Did you vote for McClellan?

A. I did.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Did you vote for Harris for Congress?

A. I am not positive about that: I am not certain.

Q. Is it doubtful?

A. I do not recollect whether I voted for him or not.

By the COURT:

Q. Did you not rejoice at the success of the rebels at the first battle of Bull Run?

A. No: I did not do that.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You said that Daniel J. Thomas's reputation for truth was not very good: will you state to the Court the name of any person you heard speak of his veracity before this trial?

A. I do not know any one particularly. It is a general thing.

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Q. If it is a general thing, can you not give us some one of that general number, any man in that entire community, who, before this trial, said one word in reference to Mr. Thomas's veracity? I want you to name a man.

A. I think I have heard the Ormes speak about it.

Q. When did you hear them say it? and what did you hear them say?

A. I do not know particularly, exactly.

Q. Did you hear them say any thing about his truth?

A. I have never taken a minute of any thing of the kind.

Q. Have you any recollection now of hearing them say any thing about it?

A. No more than I have heard them talking in conversation; and they would say they would not believe him, or something like that.

Q. Did you hear them say that before this trial?

A. I do not know particularly about that.

Q. We want you to state particularly what you know. Did you hear them say that, or not?

A. I do not know that I heard them particularly.

Q. If you did not hear them, whom did you hear say that? or did you hear any person say any thing about it before this trial? or is it only an opinion you have gathered from the rumors that come to that neighborhood, and the opposition that has been raised against him during this trial?

A. I do not know any thing more than what I have generally heard.

Q. You cannot name a man in that entire community that you heard say a word about his truth before this trial?

No answer.

Q. How far do you live from Mr. Thomas?

A. About two miles.

Q. You are unable to name a single man?

A. I do not know of any particular person I can positively name.

Q. You cannot say positively whom you have heard say any thing about it, so as to tell us who it was?

A. I do not know exactly.

Q. You cannot state a man?

A. I cannot state positively.

By MR. EWING:

Q. Was your knowledge of his reputation for veracity, knowledge had and obtained before this trial commenced?

A. I have heard as much before as I have since.

Q. Before the war?

A. It has been several years. I do not know particularly whether it was before or since the war.

DANIEL W. HAWKINS,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. I live about four miles and a half from Bryantown, in Charles County.

Q. Are you acquainted with Daniel J. Thomas, who has been a witness for the prosecution?

A. I am very well acquainted with him.

Q. How long have you known him?

A. I have known him for about ten or fifteen years; a very long time.

Q. Do you know what his general reputation is, in the community in which he lives, for veracity?

A. His general reputation is not very good.

Q. From your knowledge of his general reputation for veracity, would you believe him under oath?

A. If I were a juror or a judge, I should think it very unsafe to convict on his evidence. I should have very serious doubts about his oath.

Q. Are you acquainted with Dr. George Mudd?

A. I am very well acquainted with him.

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Q. What is his reputation, in the community in which he lives, as a loyal man?

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A. I know him well; and I can say that I do not know a better loyal man in the State of Maryland than Dr. George Mudd.

Q. What has been your attitude towards the Government during the war?

A. I have been strictly loyal.

Q. Have you been a supporter of the Government in its war measures?

A. I have, from the very beginning.

Q. State what your profession is.

A. I am a lawyer.

HONORAH FITZPATRICK *

recalled for the accused, Mary E. Surratt.

By MR. AIKEN:

Q. State to the Court whether or not you were at communion on Thursday morning with Mrs. Surratt.

A. Yes, sir; I was.

Q. State whether or not you were present at the time the arrest of Payne was made at Mrs. Surratt's house that evening.

A. Yes, sir; I was.

Q. You had seen Payne at Mrs. Surratt's house under the name of Wood, had you not?

A. Yes, sir.

Q. Did you recognize him at that time as being the person whom you had seen there before?

A. I did not recognize him until we were taken to General Augur's office. Then I recognized him when the skull-cap was removed from his head.

Q. I understand you to state that you did not recognize him at the house?

A. No, sir; I did not recognize him. I was sitting on the sofa at the time he came in.

* Name shown as Honora Fitzpatrick in official record.

THE TRIAL.

Q. You did not recognize him at General Augur's office until the shirt-sleeve had been removed from his head?

A. No, sir.

Q. State to the Court whether or not you have been obliged, even in the daytime, to thread a needle for Mrs. Surratt?

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A. Yes, sir: I have often threaded a needle for her when she was sewing during the day.

Q. Was that because she could not see to do it herself?

A. Yes, sir.

Q. You have never known her to read or sew by gaslight?

A. No, sir: I have never seen her read or sew by gaslight.

By MR. EWING:

Q. Do you know Judson Jarboe?

A. Yes, sir: I got acquainted with him, after I was arrested, at Carroll Prison.

Q. Did you ever see him before?

A. No, sir.

Q. Did you ever see or hear of his being at Mrs. Surratt's house during your stay?

A. No, sir: I never heard his name mentioned, nor heard of his being at the house.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. When you went up to General Augur's headquarters, were you all taken there together,—you, Mrs. Surratt, and Miss Surratt?

A. Yes, sir: Mrs. Surratt; and Miss Surratt, and her niece and myself, were taken to the office.

Q. Did you all remain together in one room then at General Augur's headquarters?

A. No, sir: Mrs. Surratt was taken into the other room.

Q. Was Payne in the room where you were, or where Mrs. Surratt was?

A. He was down there behind the railing. Only Miss Surratt, and her niece, Miss Jenkins, and myself were in the room.

Q. Were Mrs. Surratt, her daughter, and yourself in the room

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with Payne at any time at General Augur's headquarters, that you remember?

A. Only the time that Miss Surratt gave way to her feelings about her brother. Then Mrs. Surratt came in.

Q. Was not that giving way to her feelings about her brother at the time some one suggested that this man Payne was John H. Surratt?

A. Yes, sir.

Q. Did not she and her mother then exclaim, at that time, that they had never seen or heard tell of that man before?

A. If they did, I do not remember hearing them say it.

Q. Do you not remember that it was stated there at that time that they had never seen or heard tell of that man before, and that he was certainly not a Surratt?

A. Yes, sir: I remember her saying that that was not John Surratt.

Q. Did she not also add at the time that she did not know him, and had never seen him?

A. I never heard her utter those words.

Q. Any thing of that import at that time and place?

A. No, sir: I never heard her say it.

Q. Were you there all the time that Payne was present at that time?

A. Yes, sir; until we were taken into another room, after Miss Surratt gave way to her feelings about her brother.

Q. At the time Payne was arrested, were you in the hall at any time when Mrs. Surratt came out there to Payne in the hall?

A. No, sir: I was sitting in the parlor on the sofa.

Q. You did not see her when she was called out of the parlor to see Payne?

A. No: I did not know that she was called out.

Q. You did not hear what passed in the hall at that time?

A. No, sir.

Q. Give to the Court exactly what Miss Surratt or Mrs. Surratt did say at General Augur's headquarters about Payne being a Surratt.

A. I remember that Miss Surratt remarked, at the time, that that

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ugly man was not her brother; that she thought whoever called him so was no gentleman.

Q. Had he his cap off at that time?

A. Yes, sir.

Q. Did she or did she not at that time deny that she ever knew him, or had ever seen him?

A. No: I do not remember hearing her say that.

Q. She simply denied that he was a Surratt?

A. That he was John Surratt.

Q. You do not know what occurred in the hall of the house while Payne was present?

A. No: I do not remember whether the officers called Mrs. Surratt out or not. I remained in the parlor at that time.

JANE HEROLD

recalled for the accused, Samuel A. Mudd.

By MR. EWING:

Q. Where do you live?

A. On Eighth Street east, in Washington City.

Q. How far from the Navy-Yard bridge?

A. About a quarter of a mile.

Q. How far from the Navy-Yard gate?

A. A few yards. I do not suppose it is a hundred yards.

Q. Is that on the route from the city to the bridge?

A. Not the direct route; but it is one that is very much used.

Q. How long have you lived there?

A. Eighteen years.

Q. Are you acquainted with the prisoner Dr. Samuel Mudd?

A. No, sir.

Q. Did you ever hear him spoken of in your house?

A. No, sir.

Q. Did you ever hear your brother speak of him at all?

A. No, sir; never.

MRS. MARY E. NELSON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

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By MR. EWING:

Q. Are you a sister of David E. Herold, one of the accused?

A. I am.

Q. Did you ever hear him speak of Dr. Samuel A. Mudd?

A. No, sir; not to my knowledge.

Q. Have you ever heard Dr. Samuel A. Mudd's name mentioned in your family at all?

A. No, sir; not until his arrest.

WILLIAM J. WATSON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. I live in the Eighth Election District of Prince George's County, Md.

Q. Are you acquainted with Daniel J. Thomas, one of the witnesses for the prosecution?

A. Not very intimately acquainted.

Q. Were you present in your door-yard near Horse Head, on last Fast Day, the 1st of June, with John R. Richardson, Benjamin Naylor, George Lynch, Lemuel Watson, and Daniel J. Thomas?

A. I was.

Q. Will you state what he then said to you, if any thing, as to having been a witness in Dr. Mudd's case, and being entitled to a reward?

A. I think, if my memory serves me right, he said, that, if Dr. Mudd was convicted upon his testimony, he would then have given conclusive evidence that he gave the information that led to the detection of the conspirator.

Q. Did he say any thing as to a reward?

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A. He said that he thought that his portion of the reward ought to be \$10,000, and asked me if I would not, as the best loyal man in Prince George's County, give him a certificate of how much I thought he ought to be entitled to.

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Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. What did you tell him that he ought to receive as his portion?

A. I told him I did not think he was entitled to any portion of the reward, and would give him no certificate.

Q. What did he say in reply to that?

A. I then appealed to his conscience in the most powerful manner, and asked him if he believed himself that he was entitled to the reward?

Q. What did he say to that?

A. I did this three times, and he waived the question every time by saying that Daniel Hawkins said he was entitled to it. That is what I understood him to say.

Q. Is that what he said?

A. Yes, to the best of my knowledge and belief. He did not say that Daniel Hawkins told him he was entitled to the reward, but that Daniel Hawkins told somebody else that he was entitled to the reward.

Q. Are you Daniel Hawkins, or was somebody else Daniel Hawkins?

A. Daniel Hawkins lives in Charles County; a young lawyer at the bar in Port Tobacco. He has testified here to-day, I believe, in this case.

Q. And that is all that Dan. Thomas said?

A. That is all that I heard him say. He then, I think, asked Mr. Benjamin J. Naylor if he did not mention to him and Arthur D. Gibbons, before the killing of the President, the language that Dr. Mudd had used to him. Mr. Naylor said that he had never done it before or after.

Q. Did not Thomas wind it all up by saying that he would not have that man swear to a lie for \$10,000?

A. When I was appealing to his conscience in regard to the matter, Mr. James Richards, the magistrate in the neighborhood, rode up; and my brother, Joseph L. Watson, or Lemuel Watson, as he is called, appealed to him, saying, "There is a contest going on

here between Billy and Daniel: you are a magistrate, and I want you to decide it between them.”

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Q. Please answer my question: Did Thomas say at that time, to any of the parties, “I would not have you for \$10,000 swear to a lie.”

The WITNESS. Let me go on, if it please your Honor.

ASSISTANT JUDGE ADVOCATE BINGHAM. Go on in your own way.

The WITNESS. Mr. Richards said: “Lem., let us say that he entitled to \$20,000 of the reward.” Mr. Thomas then said, “No, sir: I would not have either of you gentlemen swear false, though, by your doing so, it would give me \$20,000.” That is what I understood.

By MR. EWING:

Q. Did Mr. Richards offer to take a false oath for Mr. Thomas?

A. No, sir; he did not. I think Mr. Richards was joking. I am confident of that. Mr. Richards, I think, is a good Union man, and I think he was joking with Mr. Thomas. I will say for Mr. Richards, that he has always acted with me; and he has been of great benefit to me in getting along with the elections.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Do you not consider that Daniel J. Thomas is entitled to belief on his oath?

A. I have no reasons bearing on my mind to offer to this Court why I would not: therefore I must say, I would.

Q. Would you believe him on his oath?

A. I would.

Q. He has as good a reputation for truth as most of his neighbors down there?

A. I should not think he had as good a reputation for truth as most of the neighbors.

MR. EWING objected to this course of examination as improper. It was not legitimate cross-examination. The witness had been subpœnaed by the Government, and, at the consent of the Judge

Advocate, was called by the accused as to a single point, with the understanding that he should be treated as a witness for the accused only to that one point.

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The JUDGE ADVOCATE (while not yielding the point that the line of examination being indulged in was improper) stated that he would agree now to take this witness as one for the prosecution; and the witness was accordingly examined for the prosecution in rebuttal, as follows:—

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Are you acquainted with Daniel J. Thomas and with the general reputation in which he is held, in the neighborhood, for truth?

A. I was never much acquainted with the man until 1863.

Q. You lived in his neighborhood?

A. Not immediately.

Q. How near?

A. I suppose, about four or five miles off. He lives in Charles County, and I live in Prince George's.

Q. How long have you lived so near?

A. He was born where he now lives, I think; and I have lived in the neighborhood where I now live ever since I was born; and that has been fifty-three years, going on fifty-four now.

Q. From his general reputation for truth in the neighborhood in which he lives, is he entitled to be believed upon his oath?

A. I do not know what kind of reputation he does bear in Charles County; and in my county he does not come often, or never did until 1863, after the battle of Gettysburg.

Q. It is not confined to county lines; it is confined to the neighborhood in which a man lives; and that may embrace half a dozen counties.

A. I do not know what the people of Charles County may think about his reputation.

Q. I am asking you for his reputation in your neighborhood, which is his neighborhood.

A. They speak evil of him around there.

Q. And some speak well of him?

A. Some speak well of him. They say he tells a good many lies; but I think people tell him as many lies as he tells them.

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Q. Do you know what people generally say in the neighborhood about his character for truth, for and against him?

A. They generally say that his character for truth is bad. I know they generally say so.

Q. Do you know that some say it is good?

A. Some say it is good.

Q. I ask you your opinion whether you consider, from all you hear of his reputation there, that his character for truth is such that he is entitled to be believed on oath?

A. I believe that he is; because if he was to come here and say he was not qualified, I should have to say that half the men around there are not qualified.

By MR. EWING:

Q. Are you able to say that you know what Mr. Thomas's general reputation is, in the community in which he lives, for truth?

A. I think I have stated that it is not good for truth in speaking; but I think he lies more in self-praise, to make the people think a great deal of him, than in any other way. I have never heard of Mr. Thomas telling a lie that would make a difference between man and man. I have known of no quarrels to be kicked up in my neighborhood about any thing Mr. Thomas has told from one man to another.

JOHN T. FORD

recalled for the accused, Edward Spangler.

By MR. EWING:

Q. How long have you known the accused, Edward Spangler?

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A. Nearly four years, I think.

Q. Was he in your employ through that time?

A. Most of that time.

THE TRIAL.

Q. State what his character is for peace and good-nature and kindness.

A. He was always regarded as a very good-natured, kind, willing man. His only fault was occasionally participating in drinking liquor more than he should have done,—disposed to drink at times,—not so as to make him vicious, but more to unfit him to work.

Q. Is he a quarrelsome man?

A. I never knew him to be but in one quarrel since he has been in my employ; and that was through drink.

Q. Was he faithful in attending to his duties?

A. Very; a good efficient drudge; always willing to do any thing: I never found him unwilling.

Q. Was he a man that was trusted with the confidence of others?

A. I should think not to any extent. He had no self-respect. He was not one who had many associates. He usually slept in the theatre,—a man who rarely slept in a bed. I judged by that.

Q. A harmless man?

A. Very harmless,—always esteemed so, I think, by all the company around the theatre,—often the subject of sport and fun; but never, except on one occasion, did I know him to be engaged in a quarrel.

Q. How was he as to his politics? Was he a man of intense feeling?

A. I never knew any thing of his political sentiments in this city. In Baltimore, he was known to be a member of the American Order.

Q. Was he a man of intense partisan or political feeling?

A. I never heard an expression of political sentiment from him.

By MR. CLAMPITT:

Q. Are you acquainted with J. Z. Jenkins?

A. I never met him, except in Carroll Prison.

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JAMES E. RUSSELL,

a witness called for the prosecution, being duly sworn, testified as follows:—

THE TRIAL.

By the JUDGE ADVOCATE:

Q. Where do you reside?

A. In Springfield, Mass.

Q. State to the Court whether you are acquainted with Lewis F. Bates.

A. I have known him about twenty-five years.

Q. Where has he been residing for the last three or four years?

A. For the last five years, I have not known any thing of his whereabouts, until I have recently met him here.

Q. Did you learn from him that he had been living in the South?

A. I learned from him that he had been living in Charlotte, N.C.

Q. State what his reputation is, as known to you, as a man of truth and veracity.

A. He was in business on the Western Railroad, in Massachusetts, as baggage-master, while I was conductor, for a number of years; and I never heard any thing against his reputation for truth.

WILLIAM L. CRANE,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Are you acquainted with Lewis F. Bates?

A. Yes, sir.

Q. How long have you known him?

A. Since 1848.

Q. What is his reputation for as a man of truth and integrity?

A. I never heard any thing against it.

Q. Do you know the business in which he is engaged, and has been for many years?

A. In 1848 and 1849, he was baggage-master on the route

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between New York and Boston. I was running at the time between New York and Hartford.

THE TRIAL.

Q. What position do you occupy now?

A. I am the agent of Adams's Express Company, New York, eastern division.

DANIEL H. WILCOX,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Where do you reside?

A. I did reside in Augusta, Ga., until within the last few months.

Q. When did you leave the South?

A. A year ago last April.

Q. Did you know in the South a Mr. L. F. Bates?

A. I did.

Q. Did you know him well?

A. Yes, sir: for the last two or three years, I knew him pretty well.

Q. In what business was he engaged?

A. Superintendent of the Express Company for the State of North Carolina.

Q. State to the Court the reputation he bore as a man of truth and integrity.

A. The very best reputation possible, so far as I know. I knew him quite intimately: I know he occupied a position of great trust and responsibility. He was placed there by men who knew their business.

Q. His character is without reproach, so far as you know?

A. Entirely so.

JULES SOULE,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Where do you reside?

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A. At present, in New-York City.

Q. Where have you been residing during the past few years?

A. At Columbia, S.C.

Q. Did you, while South, within the last few years, know L. F. Bates?

A. I did.

Q. Do you know the business in which he was engaged there?

A. Yes, sir.

Q. What was it?

A. The express-business.

Q. State what his reputation was there as a man of truth and integrity.

A. He bore the reputation of a truthful and reliable man in every respect, to the best of my knowledge.

Q. You never heard his character assailed or reproached in any way?

A. I have been intimately acquainted with him: we have been connected in business for the last three or four years, and I never heard any thing against him.

Q. Was the position he occupied there one of high responsibility and trust?

Q. It was.

MAJOR T. T. ECKERT

recalled for the prosecution.

By the JUDGE ADVOCATE:

Q. State whether you are acquainted with L. F. Bates, a witness who has been examined here.

A. Only since his arrival in Washington City.

Q. State under what circumstances he was brought from North Carolina here.

A. By the order of the Secretary of War.

Q. Can you state when it appears, by the records of the War Department, that the army of General Butler was ordered to leave New York last November?

A. I cannot state now without looking at the record.

WILLIAM WHEELER,

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State to the Court whether you are acquainted with Marcus P. Norton, and, if so, how long you have known him, and how intimately.

A. I have known him intimately from twelve to fifteen years,—first at school in Vermont; subsequently at Troy, N.Y., — where he now resides.

Q. Do you reside there?

A. I did reside, until I came to Washington, on the 15th of April, at Lansingsburg, three miles from Troy, I was formerly a resident of Troy, before I lived in Vermont.

Q. State to the Court, from this long acquaintance you had with him, what reputation he bears as a man of truth and integrity.

A. It is good.

Q. You state it to be so from your own personal knowledge?

A. I do.

Q. From that knowledge, would you, or not, have any hesitation in believing Mr. Norton when speaking under oath in a court of justice?

A. I would not have any.

Cross-examined by MR. DOSTER:

Q. Are you living in Washington?

A. I am.

Q. How long have you been living here?

A. Since the 15th of April.

Q. Of this year?

A. Of this year.

Q. Were you, or not, a witness in a case in which the testimony of Mr. Norton was impeached?

A. No, sir.

THE TRIAL.

Q. Have you ever heard Mr. Norton's reputation for veracity questioned?

A. I have heard of cases of impeachment, but know nothing

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about them except by general rumor that they were failures. There have been one or two, as I have understood, but they essentially failed.

Q. What have been your personal relations with Mr. Norton?

A. He was at school in Vermont from 1850 to 1853, in the village where I then lived.

Q. What village was that?

A. West Poultney. He was an active, persevering scholar. From that he was a joiner a while—,

Q. I want to know your own relations to him, not his history. Were they of a friendly character?

A. Yes, sir; always.

Q. Were they specially friendly?

A. Not any thing more than with other neighbors.

Q. Have you been in Troy since you moved here in April?

A. No, sir; not since.

Q. You are not prepared, then, to swear what his reputation now is in Troy?

A. I might give an opinion.

Q. Do you know what his reputation at present is in Troy?

A. I have heard nothing against him.

Q. Have you heard any thing for him since?

A. Nor in his favor till questions arose here. He is a man in large business there, employed by first-class houses.

Q. I understand you to say, then, that all you know about Mr. Norton is what you learned and knew of him as a schoolboy?

A. No, sir: I have been familiarly acquainted with him since the period he went to school there.

Q. Where?

A. In Poultney; as I was back and forth from Poultney to Troy, and formerly a resident there, and well acquainted in Troy; and, when I came to Washington on the 15th of April last, I came from the village of Lansingsburg, three miles north of Troy.

Q. Then you were not living in Troy at that time?

A. No, sir: I was not living in Troy at that time; but I was down there several times a week on business.

Q. How long have you lived in Troy?

A. I lived there five years formerly.

Q. When was that?

A. From 1845 to 1850.

Q. That was about fourteen or fifteen years ago?

A. From fifteen to twenty years ago.

Q. Since then you have not lived in Troy?

A. No: I have not been a resident of there since.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You lived all this time almost as close together as neighbors live to one another in the country?

A. He was back and forward into Rutland County, having business there; and I used to see him on the way, and see him also at Troy, where I was frequently.

Q. And where you were intimate and well acquainted?

A. I have been intimately acquainted with him, as much so as with any man.

Q. And with the people of Troy also?

A. Yes, sir: I have had an intimate acquaintance with Troy for thirty years.

Q. I understand you to say that he is a man of large practice, and employed by first-class houses there?

A. Yes, sir.

Q. What knowledge have you as to that fact?

A. I was called a year ago last March or April to give testimony in a case in which he was employed as counsel,—in the case of P. P. Stewart's stove, that was litigated here,—in which the interests of Fuller, Warren, and Morrison, who make those stoves, were largely involved; a very reputable, wealthy house.

Q. Was he employed by that house?

A. He was.

Q. You know the fact that he is employed by large firms there, and has an extensive business?

A. I do.

By MR. DOSTER:

Q. You stated that you were a witness in a case in which Mr. Norton was counsel: was that a very large case?

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A. It was a case between Atwood and Fuller, Warren, and Morrison, relative to the right of a stove.

Q. Did it involve a great deal of money?

A. I cannot answer that question, other than by stating what Atwood himself said, that it subjected him to a loss of about eight thousand dollars.

Q. Where were you living, then, when you were a witness?

A. In Lansingsburg.

Q. And were brought here?

A. No, sir.

Q. Was it at home?

A. That testimony was taken before a commission in Troy, at Mr. Norton's office.

Q. You were a witness called by Mr. Norton?

A. Called by Fuller, Warren, and Morrison.

Q. But Norton was counsel in the case?

A. Yes, sir.

SILAS H. HODGES,

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. State to the Court where you reside, and what your business or profession is at this time.

A. I am now a resident of Washington, holding the appointment of Examiner-in-chief in the Patent Office.

Q. Where did you formerly reside?

A. For twenty odd years past, in Rutland, Vt.

Q. Did you ever know Mr. Marcus P. Norton?

A. Very well.

Q. How long have you known him?

A. I am sure I have known him for eleven years past, perhaps longer.

Q. Do you know his reputation for truth and veracity?

A. Some years since, Mr. Norton moved to Troy; and I do not know how he stands there so well. I can only speak of his reputation in Rutland and that vicinity, where I resided.

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Q. So far as you know, what is that reputation in those places where you have known him?

A. Until within two or three years past, I do not know that I ever heard any thing against him.

Q. Has any thing you have heard against his reputation in the last two or three years grown out of the litigations in which he was engaged?

A. Entirely: out of litigation in which he was engaged, or in which he was a witness who was very intimately acquainted with the circumstances.

Q. Outside of those cases, have you ever heard Mr. Norton's reputation for truth and veracity questioned?

A. No, sir, I have not; only in this way (as I was going to qualify it): I have been employed as Mr. Norton's counsel in cases where a good deal of angry feeling was elicited, and remarks were made by counsel and parties. Further than that, I do not know that I ever heard his reputation impeached, until, as I said before, two or three years ago.

Q. When you say "impeached," you mean "attempted to be impeached"?

A. I never heard of any such attempt until within the last two or three years.

Q. In these litigations?

A. In consequence of these litigations where he was counsel or witness.

Cross-examined by MR. DOSTER:

Q. Have you ever, in the course of your experience, heard any one speak of Mr. Norton as a man distinguished for veracity?

A. I do not now recall any such observation.

Q. Did you ever hear any man say that he usually spoke the truth?

A. I do not remember that question ever being raised, as I said before, until within two or three years ago?

Q. How long is it since you knew Mr. Norton at home?

A. I know him now at Troy; but I am not acquainted at Troy sufficiently to speak of his reputation there.

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Q. How long is it since you lived in the same town with him?

A. I do not remember the time he left Rutland.

Q. How many years about?

A. It must be as much as five years since he left Rutland.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You have known him personally ever since?

A. Yes, sir.

MR. EWING, by the consent of the Judge Advocate, presented the following agreement entered into between him and the Judge Advocate:—

“It is admitted by the prosecution that John F. Watson, John R. Richardson, and Thomas B. Smith, loyal citizens, will testify they are acquainted with the reputation of Daniel J. Thomas where he lives, and that it is bad; and that, from their knowledge of it, they would not believe him on oath.

“And, further, that John R. Richardson above named will testify that Daniel J. Thomas (the witness for the prosecution) made the statement on the 1st of June (the National Fast Day) as sworn to by William J. Watson before this Court this day.

“And the prosecution agree that this statement be put upon the record, and received and weighed by the Court as though said witnesses had actually so testified before it.”

BENJAMIN W. GARDINER

recalled for the accused, Samuel A. Mudd.

The JUDGE ADVOCATE. I will explain to the Court that this witness is now offered to prove what was rejected the other day by the Court on objection,—the declarations made by the prisoner Dr. Mudd on Sunday, at church, in regard to the two suspicious men having been at his house. Although I think that statement is strictly irregular, yet, wishing that the Court shall have the benefit of every

thing which can possibly aid it in arriving at a correct conclusion, I am willing that the statements of the prisoner, made the day after these men had left his house, shall be heard, and taken for what they are worth.

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By MR. EWING:

Q. When you were on the stand before, you spoke of having met Dr. Samuel Mudd on Sunday morning before church, in the church-yard, in company with a number of his neighbors.

A. Yes, sir.

Q. And I asked you what he said then about the persons being at his house. Go on now, and state what he said.

A. I heard on Saturday evening that the assassination had taken place; but I heard it in such a way that I did not believe it. Our church generally commences about ten o'clock, or thereabouts, on Sunday. As I got to the church, I saw the people collected together, talking, and apparently in earnest conversation. It turned out to be respecting the assassination of the President of the United States. As I advanced towards the church, I happened to go to where Dr. Samuel Mudd was. I walked up to where he was, and spoke to him, and he spoke to me. I asked him was such the fact that the President had been assassinated. He then turned around to me from the crowd, and said, "Yes, such seems to be the fact;" and he added, "Sir, we ought to raise immediately a home guard, and to hunt up all suspicious persons through our section of country, and arrest them and deliver them up to the proper authorities; for there were two suspicious persons at my house yesterday morning." I paid no attention to what he said about suspicious persons, because, since the war commenced, we have always had in our neighborhood deserted soldiers constantly, and detectives, and soldiers of the United States; and we could hardly tell who they were.

Q. State the whole conversation.

A. I have given all the conversation I recollect that I had with him on that occasion.

Q. Did he say any thing about the assassination itself?

A. Nothing that I recollect after that. There were so many persons talking about it, that I can hardly tell who did say any thing respecting the assassination after the conversation between me and him; for everybody in church was talking about it until church

commenced, and I cannot tell whether he said any thing more, or whether anybody else did.

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Q. You do not recollect whether he said any thing characterizing the act of the assassination?

A. It seems to me—but I will not be certain about that—that he seemed to be concerned that we should raise a home guard, and arrest suspicious persons passing through the neighborhood. I do not recollect that he said any thing more. I cannot recollect that he did, because there was so much talk at the church about the assassination. It seemed to take up the whole thoughts of the people. I do not recollect any thing more; but this was the first conversation that took place between him and me at church that day.

GEORGE D. MUDD

recalled for the accused, Samuel A. Mudd.

The JUDGE ADVOCATE. The statement which this witness is about to make is of the same character with the former, and I admit it in the same way.

By MR. EWING:

Q. You spoke, in your testimony before, of a conversation between you and Dr. Samuel Mudd at and directly after church, on Sunday, the 16th of April last. I wish you to state to the Court now the whole of that conversation in reference to the assassination.

A. I had very little conversation with Dr. Mudd at church. He remarked that he regarded the assassination of the President, to use his own expression, as a most damnable act. That, I think, was about the whole of what I heard him state at church.

Q. State to the Court what he said to you after you left the church, on the road.

A. On the road, he overtook me, and stated to me that two suspicious persons had been at his house; that they came there on Saturday morning a little while before daybreak; that one of them had a broken leg, or a broken bone in the leg, which he bandaged; that they got, whilst there, something to eat; that they seemed laboring under some degree, or probably quite a degree, of excitement,—

more excitement than, probably, should necessarily result from the injury received; that they said they came from Bryan-

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town, and were inquiring the way to Parson Wilmer's; that, whilst there, one of them called for a razor, and shaved himself (I do not remember whether he shaved his whiskers or mustache, but altered somewhat, or probably materially altered, his features); that he himself, in company with the younger one, or the smaller one, of the two, went down the road towards Bryantown in search of a vehicle to take them away from his house; that he arranged or had fixed for them a crutch or crutches (I do not remember which) for the broken-legged man, and that they went away from his house on horseback in the direction of Parson Wilmer's.

Q. Did he say what time they went?

A. No, sir; I do not think he did.

Q. State what was said between you as to communicating with the military authorities on the subject.

A. When I was about leaving, he turning into his house, I told him that I would state it to the military authorities, and see if any thing could be made of it. He told me that he would be glad I would, or that he particularly wished me to do it. I think he said he would be glad I would, or that he particularly wished me to do it. I think he said he would be glad I would, but he would much prefer if I could make the arrangement for him to be sent for, and he would give every information in his power relative to the matter; that, if suspicions were warrantable, he feared for his life on account of guerillas that were or might be in the neighborhood.

Q. Did you say to him then, when you left, any thing further as to communicating it to the military authorities?

A. When I left there? No, sir; I did not.

Q. You parted with him with the understanding you would communicate it?

A. Yes, sir.

Q. About what time on Sunday was that?

A. I guess it was about half-past eleven o'clock in the forenoon.

Q. Was you then near Dr. Mudd's house?

A. Yes, sir: when I said to him that I would communicate it to the military authorities then in Bryantown, I was within fifty yards of his house, I suppose.

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Q. Which way did you go when you left him,—towards Bryantown?

A. Yes, sir.

Q. Did you go to Bryantown?

A. I did not go to Bryantown directly. I dined at his father's house that day.

Q. At what time did you go to Bryantown?

A. On my way to Bryantown, I stopped to see a patient near Bryantown; and I think it was nightfall before I got to the village at Bryantown.

Q. Do you recollect, since you were upon the stand before, certainly whether you communicated the information to the authorities on that night or the next morning?

A. I think it was not until the next morning.

Q. Do you recollect the cause of your not communicating it that night?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to that question.

MR. EWING. Let him state the reason, for his own justification.

ASSISTANT JUDGE ADVOCATE BINGHAM. Nobody assails this witness about it; at least, I do not.

The question was waived.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. The prisoner, I suppose, informed you in some way which of the two men did shave off his whiskers or his mustache?

A. I do not remember. I simply remember the general facts that he stated to me; but I did not inquire, nor do I think he informed me, which one did that.

Q. He informed you anyhow that one of them shaved off either his mustache or whiskers?

A. Yes, sir.

Q. And thereby made a change in his personal appearance? That is what he said?

A. Yes, sir.

By MR. EWING:

Q. Did he say which of them it was that had shaved off the whiskers or mustache?

A. I do not remember.

CHARLES A. DANA

recalled for the prosecution.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. [Submitting to the witness two letters found and identified by Mrs. Hudspeth.] State to the Court whether you have ever seen these papers before, and how they came into your hands.

A. These letters came to me by mail at the War Department, enclosed in one from General Dix. I see that the letter of General Dix is dated the 17th of November, 1864. I suppose I got it the next day. I know it was about that time.

Q. You remember receiving it about that time?

A. Yes, sir.

Q. Do you remember what you did with those papers at the time?

A. I took them to the President, Mr. Lincoln.

Q. Have you seen them since you took them to the President, at that time?

A. After the murder of the President, the Secretary of War sent for me to go and get them back, to see if I could find them; and I went over, and searched in the President's private desk, and there I found them, and brought them back.

Q. That was since the assassination?

A. Two or three days after the assassination.

Q. Do you remember to whom you delivered them after you brought them back?

A. I kept them for some time; and I think I delivered them to Judge Bingham.

Q. You identify the two letter shown to you as the two which were enclosed in the letter of General Dix that you received?

A. Those are the letters and the envelope.

THE TRIAL.

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Q. Do you recognize the letter enclosing them as in the handwriting of General Dix?

A. Perfectly. I am familiar with his handwriting.
The letter of General Dix was read, as follows:—

HEADQUARTERS, DEPARTMENT OF THE EAST,
NEW-YORK CITY, 17th November,
1864.

C. A. DANA, Esq. My dear Sir, — The enclosed was picked up in a Third-Avenue railroad-car. I should have thought the whole thing got up for the "Sunday Mercury," but for the genuine letter from St. Louis, in a female hand. The Charles Selby is obviously a manufacture. The party who dropped the letter was heard to say he "would start for Washington Friday night. He is of medium size, has black hair and whiskers, but the latter are believed to be a disguise. He had disappeared before the letter was picked up and examined.

Yours truly,

JOHN A. DIX.

The original of the foregoing letter was offered in evidence without objection.

By the COURT:

Q. Did you hand these letters to the President?

A. I showed them first to the Secretary, and then took them over the President.

Q. Mr. Lincoln?

A. Yes.

Q. Do you recollect his answer to you?

A. He looked at them. I do not think he made any special answer. At any rate, it did not impress itself on my mind at all.

Q. Did he appear to attach any importance to it?

A. He seemed to attach very little importance to it.

THE TRIAL.

Q. What seemed to be the feelings of President Lincoln in regard to communications of this kind?

A. He seemed to attach very little importance to it. A good many communications of a similar nature were received; and he seems to have attached more importance to this than to any other,

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because I found it among his papers in an envelope, marked, in his own hand, "Assassination." It was filed among them in that envelope.

By MR. AIKEN:

Q. Are not the officials at the War Department in the habit, and have they not been in the habit, through the presidential campaign and through the war, of receiving all sorts of queer letters of a threatening character, and making queer propositions to do extraordinary things from unknown parties, anonymous correspondents, and such people?

A. Yes, sir; a good many foolish letters are received of all kinds.

No other witnesses being in attendance, the Commission adjourned until to-morrow, Saturday, June 10, at eleven o'clock A.M.

SATURDAY, June 10, 1865.

DANIEL E. MONROE,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Where do you live?

A. In Charles County, Md., a few miles below Beantown.

Q. State whether you heard, on the Sunday after the assassination, who it was that had assassinated the President, and from whom you heard it.

THE TRIAL.

A. I heard from Mr. Moore that it was Edwin Booth.

Q. Where did you hear it?

A. At Beantown.

Q. Where was Mr. Moore from?

A. Mr. Moore was from Bryantown.

Q. That morning?

A. Yes, sir.

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Q. Do you know Daniel J. Thomas, a witness for the prosecution?

A. Only by reputation.

Q. Do you know what his reputation is, in the community in which he lives, for veracity?

A. It is not very good, so far as I know.

Q. Do you know what the neighbors generally think of him as a man of truth?

A. They think, as far as I know, that he is untruthful.

Q. From your knowledge of his reputation, would you believe him under oath?

A. No, sir: I do not think I could.

Q. Is that opinion of Mr. Thomas an opinion of one party in that community, or is it the opinion of the community generally?

A. It is the opinion of the community generally.

Q. Have you been a loyal man throughout the Rebellion?

A. I have never done any disloyal act.

Q. Have you approved of the efforts of the Government to suppress the Rebellion?

A. I have, with one or two exceptions.

Q. Have your feelings been in favor of the suppression of the Rebellion, or of its success?

A. My feelings have been in favor of the suppression of the Rebellion under the Constitution as it formerly stood.

Q. In the efforts of the Government to suppress the Rebellion, have you sympathized with it, or have you sympathized with the Rebellion?

A. I have sympathized with the Federal Government.

Q. All through the war?

A. Yes, sir, with the exception I speak of. I did not approve of the manner in which slavery was abolished.

Q. Whose election did you advocate at the last presidential election?

THE TRIAL.

A. I used my influence for Messrs. Lincoln and Johnson.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Whom did you hear speak about the assassination at Beantown?

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A. Mr. Moore.

Q. When was it?

A. On the Sunday after the assassination.

Q. What Mr. Moore?

A. Mr. William Henry Moore of Bryantown.

Q. What time of day was it?

A. It was, I suppose, near ten o'clock in the morning.

Q. Who was present?

A. Mr. Sasser and Mr. Warren.

Q. What did Mr. Moore say?

A. Mr. Moore said that he had understood in Bryantown that it was Edwin Booth who had assassinated the President.

Q. From whom did he say that he heard it?

A. I do not remember that he stated from whom he heard it; but my impression is that he said he had heard it from the soldiers.

Q. Was there any thing said, or did you hear, that this Booth, who had assassinated the President, had been traced to the neighborhood of Bryantown? Was that a part of the talk there?

A. No, sir: I had not learned that he had been traced to the neighborhood of Bryantown.

Q. When did you learn it?

A. I learned it some time afterwards.

Q. Did you not learn it that day?

A. No, sir.

Q. Did you understand during that conversation what the troops were down there for?

A. The troops were around there, I understand, hunting for the assassin.

Q. For Booth?

A. Yes, sir.

Q. What is Sasser's first name?

A. Philip A. Sasser is his name.

L. A. GOBRIGHT,

a witness for the accused, Samuel A. Mudd, being duly affirmed,
testified as follows:—

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By MR. EWING:

Q. State in what business you have been engaged in Washington City for the past six or eight months.

A. My business is connected with the press. My profession is that of a journalist, a reporter, and telegraphic correspondent.

Q. Of the Associated Press?

A. Yes, sir.

Q. Will you state whether you were at Ford's Theatre after the assassination of the President on Friday night, the 14th of April?

A. I was.

Q. What did you learn there as to who was the assassin? Did you learn positively who it was?

A. I heard some person say positively that it was Wilkes Booth; and others said that they knew Wilkes Booth, but the man who jumped upon the stage, and made his exit, differed somewhat in appearance from Wilkes Booth. There did not seem to be any certainty, so far as I could ascertain at that time.

Q. How long was that after the assassination?

A. I was informed of the assassination, I suppose, about twenty minutes to eleven o'clock; and I arrived at the theatre at five minutes to eleven that night.

Q. State whether you became certain that night who it was that had killed the President.

A. I was not positively satisfied on that occasion, during that visit which I made to the theatre, in my own mind, who was the assassin.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You did become satisfied during that night that Wilkes Booth had killed the President?

A. I was not perfectly satisfied of that fact.

Q. But during the night you were?

A. Not thoroughly satisfied.

Q. You were so satisfied that night, anyhow, that you came to the conclusion that Wilkes Booth was probably the man, and so telegraphed to the country?

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A. I did not telegraph that fact.

Q. It was telegraphed?

A. It was telegraphed that night: I could tell by whom, if necessary.

Q. You came to the conclusion very suddenly next morning that Wilkes Booth was the man?

A. After I saw the official bulletin the next morning.

REV. CHARLES H. STONESTREET,

a witness recalled for the accused, Samuel A. Mudd.

By MR. EWING:

Q. Were you connected with Frederick College in 1850?

A. I was president of the college in that year.

Q. Where is Frederick College?

A. In Frederick City, Md.

Q. Was the accused, Samuel A. Mudd, a pupil at that college?

A. He was. I have recently seen the book kept by myself, and his name is entered there.

Q. Was he a pupil at the college during the fall and winter of 1850-51?

A. I cannot speak of 1851, because I myself left the college, and was transferred to Georgetown College in 1851; but I am under the impression that he was there when I left: I am not certain of the fact, however.

Q. What time in 1851 did you leave?

A. Perhaps at the close of 1850: I think it was in December, 1850, that I left.

Q. He was there when you left?

A. I am under the impression that he was; but I do not feel perfectly certain of it.

Q. Do you have at Frederick College any fall or winter vacation?

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A. We had one principal vacation: the others were only for a few days. There was one only one principal vacation, which commenced in July, and continued during August.

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Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You had other short vacations that were for but a few days, you say?

A. Yes, sir.

Q. You had vacations during the holidays, in the fall, I suppose?

A. No holidays in the fall.

Q. You did, nevertheless, have recesses about the time of Christmas?

A. A few days only.

By MR. EWING:

Q. Did those pupils who lived at a distance of a hundred miles or so go home during those short vacations you speak of?

A. They did not.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. There was nothing to restrain them, was there? They could have gone if they wished to go?

A. There was the authority of the president. They could not go.

Q. Do you pretend to say that Dr. Mudd was there in December, 1850?

A. I cannot say certainly. I do not remember.

Q. If he was, do you pretend to say that he did not go away during the temporary vacation?

A. It was the rule not to go.

Q. That is not the point. Do you know the fact that he was there during the vacation?

A. I do not know the fact.

Q. Nor the fact that that he was there at all during December?

A. There is nothing to impress it on my mind.

THE TRIAL.

MR. EWING announced to the Court that the case was closed on the part of the accused, Samuel A. Mudd, Samuel Arnold, and Edward Spangler, respectively.

MR. DOSTER announced that the case was closed on the part of the accused, George A. Atzerodt.

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MR. COX stated that he had not been able to procure the attendance of all the witnesses he desired in the case of the accused, Michael O'Laughlin; but he did not ask for any further delay on that account, and therefore the case might be considered closed as to him.

A MEMBER OF THE COURT stated that the counsel for Mrs. Surratt, who were not now present, had before stated that they had but one more witness to examine on her behalf, but would not delay the Court for that reason.

MR. STONE announced that the case was closed on the part of the accused, David E. Herold.

MR. DOSTER stated that he had not yet heard any thing in regard to the witnesses summoned for the accused, Lewis Payne, from Upperville and Warrenton, Va.

The JUDGE ADVOCATE responded, that the usual military channels had been employed for the service of process in those cases, and the telegraph had also been called into requisition, and every effort had been made to find the persons summoned, but thus far without success; and as there was no proof, and indeed no personal knowledge even on the part of the counsel, that such persons were in existence, it was no cause for delay.

MR. DOSTER further stated to the Court, that the medical witness, Dr. Nichols, to whom permission had been accorded to examine the accused, Lewis Payne, and report upon his sanity or insanity, had not yet had access to the accused for the purpose of making the examination.

The JUDGE ADVOCATE replied that the prisoner was at all times accessible to Dr. Nichols for the purpose of such examinations, except while the Court was actually in session.

MR. DOSTER cited the practice in the State of Maine, where, when a question was raised as to the sanity or insanity of a prisoner, the custom was to transfer the prisoner to the care of a medical expert to investigate the case, and the trial was not closed until such examination was made and a report had. It was only proper

that time should be allowed for the procurement of witnesses, and for a thorough scientific examination.

The JUDGE ADVOCATE replied, that the usage spoken of as existing in the State of Maine had never been known in the District of

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Columbia, and he would be unwilling to introduce it in this particular case.

The PRESIDENT (after consultation with the members of the Commission) announced that the Commission would allow until Monday morning for the examination of the prisoner Payne by Dr. Nichols, and a report by him.

HENRY G. EDSON,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State where you reside.

A. At St. Albans, Vt.

Q. What is your profession?

A. Attorney and counselor at law.

Q. Were you, or not, in Canada during the judicial investigations which occurred there in connection with what is known as the St. Albans raid?

A. I was.

Q. In what character were you there?

A. Acting as counsel in behalf of the bank and the United States.

Q. While you were there in that capacity, did you or not meet George N. Sanders, Jacob Thompson, Clement C. Clay, and others of that circle of rebels, or any of them?

A. I saw them; that is, they were pointed out to me by the counsel for the prisoners as their friends.

Q. Did you have any conversation with any one of the persons I have named?

A. I had no conversation with them.

Q. None with George N. Sanders?

A. No, sir.

THE TRIAL.

Q. Did you hear him in conversation with any others in regard to the contemplated movements of the rebel authorities in the United States?

A. I heard a conversation he had with other parties at St. John's.

Q. What did he say then?

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A. I keep a memorandum-book or diary, in which I entered it at the time; and I will, with your permission, look at that.

The WITNESS, having consulted his memorandum book, proceeding to say,—

In speaking of the so-called St. Albans raid, George N. Sanders said he was ignorant of it before it occurred, but was satisfied with it. He said that it was not the last that would occur; but it would be followed up by the depleting of many other banks, and the burning of many other towns on the frontier, and that many Yankees sons of—[using a coarse, vulgar expression] would be killed. He said that they had their plans perfectly organized, and men ready to sack and burn Buffalo, Detroit, New York, and other places, and had deferred them for a time, but would soon see the plans wholly executed; and any preparation that could be made by the Government to prevent them would not, though it might defer them for a time. He made other statements in connection with the case; that he had hired a house in St. John's, which he intended to furnish himself to accommodate his friends and attorneys; that he had employed twenty or thirty counsel in Canada.

Q. Did he claim to be acting as an agent of the so-called Confederate Government?

A. Yes, sir; and said that he had retained these counsel; that Mr. Clement C. Clay was to appear from the Clifton House to aid.

Q. To whom did he address this conversation?

A. There were several people present, and they were strangers to me: I do not know who they were.

J. L. RIPPLE,

a witness for the prosecution, being duly sworn, testified as follows:—

THE TRIAL.

By the JUDGE ADVOCATE:

Q. State whether or not you have been in the military service of the United States, and what position you have held.

A. I am a first lieutenant now.

Q. Have you been a prisoner of war?

A. I have been.

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Q. Where were you confined?

A. At Andersonville.

Q. For how long a period of time?

A. Six months.

Q. Were you acquainted, while there, with a rebel officer,—Quartermaster Hume?

A. Yes, sir.

Q. State what declarations, if any, you heard him make, and under what circumstances they were made, in regard to the probable death of the President of the United States before his inauguration, and in the event of his inauguration.

A. I heard him, previous to the election, say, that, if Lincoln was re-elected, he would not live to be inaugurated.

Q. Did he go on to give any reasons why he thought so?

A. Not at that time.

Q. Did he at any other time?

A. He did, after the election. He said they had a party North who would attend to him, and Mr. Seward also.

Q. State whether or not you heard similar declarations made by other military officers in the Confederate service.

A. Yes, sir: I heard a lieutenant, who was in charge of the guard, say something similar to that one day.

Q. At what time was that?

A. After the re-election of President Lincoln.

Q. To the effect that they had friends who would take care of the President?

A. Yes, sir; that he would not be inaugurated.

Q. During your long confinement, you have, no doubt, heard a great deal of conversation among rebel officers. Will you state whether or not, on other occasions, you have heard the assassination of the President spoken of as a probable event, and one to be desired?

A. Not outside of those two cases.

THE TRIAL.

By the COURT:

Q. You said you were a lieutenant in the United-States service: to what regiment do you belong?

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A. The Thirty-ninth Illinois.

Q. When did you enter the service of the United States?

A. On the 28th of October, 1861.

Q. Were you an officer, or a private, then?

A. A private at that time.

Q. Have you been on detached duty?

A. I have been.

Q. What duty?

A. Aide on General Osborn's staff.

By the JUDGE ADVOCATE:

Q. Had you an intimate knowledge of the treatment which the prisoners of war received there at the hands of the rebel authorities?

A. Yes, sir.

Q. What was the character of the food furnished, both as to quality and quantity?

A. The quality was poor, and the quantity very small.

Q. What proportion did the quantity bear to full rations?

A. I do not know. We got about half a pint of corn meal, and from two to four ounces of meat.

Q. Did the prisoners die in large numbers?

A. Yes, sir.

Q. Have you any doubt that those deaths, in the main, were produced by starvation and the horrible treatment to which they were subjected?

A. I believe, in many cases, that was the cause of death.

Q. Did you hear any language from the Confederate officers having charge of the prisoners in approbation of the treatment to which they were exposed?

A. I did.

Q. What was its character?

A. I heard them say it was good enough for the prisoners; that they should every one die.

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Q. Was that in answer to remonstrances on this point?

A. Yes, sir: I heard Captain Wurtz say so, who had charge of the prisoners at Andersonville.

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Q. He said they ought all to die?

A. Yes, he said, "It is good enough for you: you should all die!"

Q. Is he the man who is now in the Old Capital Prison?

A. I do not know. I heard him say that on the 1st of July.

Q. State whether or not the location of the camp, and all the arrangements connected with it, did not seem to look, on the part of the Confederate authorities, to the creation of disease, and the infliction of all possible suffering on these men, short of just putting them to death.

A. It did at Andersonville. I was also confined at Millen: it was somewhat better there.

Q. Was there a pack of bloodhounds kept lying around the camp always?

A. There was at Andersonville.

Q. Do you know whether any of those poor prisoners made attempts to escape, and were pursued by those hounds?

A. I have understood so.

Q. Do you know with what result?

A. Nothing but what they had told me.

Q. Do you know of any of them having been torn to pieces by those dogs?

A. Not to my personal knowledge; but I have heard some of the men who went after them say that there were persons who had been torn by the dogs.

The Commission then adjourned until Monday June 12, at eleven o'clock A.M.

MONDAY, June 12, 1865.

MR. DOSTER. I am about to call two witnesses; and, to prevent any objections being made, I will state the reason for calling them. My purpose is show that the prisoner Payne, three months before the alleged attempted assassination of Mr. Seward, saved the lives

of two Union soldiers. The connection that has with the plea of insanity is this: It is the very essence of insanity that one violates the "even tenor" of his previous life; and there-

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fore, if I can show, that, three months before the alleged attempted assassination, this person exercised a degree of honor and benevolence which he afterwards violated, and turned into ferocity and malignity, it will give a high degree of probability to the plea, and his subsequent conduct can only be explained by his being under the control of fury or madness.

MRS. LUCY ANN GRANT,

a witness called for the accused, Lewis Payne, being duly sworn, testified as follows:—

By Mr. DOSTER:

Q. State where you live.

A. In Warrenton, Va., on the Waterloo Pike

Q. Look at the prisoners at the bar, and see whether you recognize any of them.

A. I recognize the gentleman they said was Mr. Powell.

Q. Which is that?

A. That one with the gray shirt [pointing to the accused, Lewis Payne].

Q. Where did you see him before?

A. In front of our house in the road.

Q. Was he not at the time in charge of soldiers, prisoners?

A. Three Union prisoners.

Q. Did, or did not, somebody attempt to kill those prisoners?

A. Yes, sir.

Q. Who tried to kill the prisoners?

A. I do not know who it was.

Q. Were they citizens or soldiers?

A. They were said to be soldiers. They had on soldiers' uniforms.

Q. Where did these prisoners belong? Do you know what command they had been captured from?

A. I do not know.

THE TRIAL.

Q. What time was this? Was there or not a raid at the time?

A. It was after General Torbert passed through Warrenton, about Christmas. I do not recollect the day; but it was about Christmas-time.

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Q. Did, or did not, these soldiers try to kill those Union prisoners?

A. Yes, sir; they did: and the gentleman whom they called Powell tried to prevent it.

Q. What did he say on that occasion?

A. I saw him in his saddle-stirrups; and he told them, that whilst he was a gentleman, and wished to be treated as one, though he could not defend all, if they killed or captured the one he had in charge, they would do it at the peril of their lives, as well as I recollect the words. That was the meaning anyhow.

Q. What time of the year was that?

A. It was about last Christmas. I reckon you all recollect the raid of General Torbert; and, on his return, he passed through Warrenton.

Q. Did he succeed in getting the prisoner away?

A. They left our house. I do not know what came to them afterwards. They left the road.

Q. Was one of those men killed by the soldiers?

A. Yes, sir: one was killed. I did not see him fall off the horse; but one of the Confederate soldiers rapped at my door, and wanted to bring him into my house. My husband was not at home, and I was scared nearly to death: there was nobody there but me and my small children.

Q. The man who was called Powell, you say, saved the lives of the two?

A. Yes, sir: they left there. I do not know what became of them. Those prisoners ought to be here to answer for themselves, I should think.

By the JUDGE ADVOCATE:

Q. What name do you say he bore when there?

A. I know nothing about his name. I never heard of him, nor saw him before or since, that I know of.

Q. You did not hear his name?

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A. No, sir: I was speaking of his trying to save those Union soldiers to a citizen; and he said he was Powell: that is all I know of him.

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Q. You feel certain that is the same person?

A. That is the same person: I would know him anywhere, I think.

Q. You had never seen him before?

A. Never that I know of.

Q. Nor since?

A. Nor since that I know of.

Q. Was he dressed as a Confederate soldier?

A. Yes, sir.

By the COURT:

Q. Did he seem to be a Confederate officer?

A. Some of them called him "lieutenant," I think; but I did not know any thing about it.

Q. How was he dressed?

A. In dark-gray Confederate uniform.

Q. Had he any marks of an officer?

A. None at all. He looked rather more genteel than the common soldier.

JOHN GRANT,

a witness called for the accused, Lewis Payne, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Are you the husband of Mrs. Grant, who has just left the stand?

A. I am.

Q. Were you, or not, present at a certain affray that occurred in front of your house last Christmas?

A. I happened there a few minutes after it occurred. I was not at home at the time, but got up a very few minutes afterwards. I

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was three hundred yards from my house, I suppose, when the pistol-firing commenced; and I rushed home as quick as I could.

Q. Could you see the firing?

A. I could at that time.

Q. Do you know whether or not the prisoner at the bar saved the lives of two Union soldiers?

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A. That is what was said there when I got to the house.

Q. What name did the prisoner go by?

A. I understood his name was Powell.

Q. Was he an officer, do you know?

A. Not that I am aware of.

Q. When was it?

A. On the first day of January last.

JAMES B. HENDERSON

recalled for the accused, Michael O'Laughlin.

By MR. COX:

Q. You are an officer of the United States Navy, I believe?

A. An ensign in the navy.

Q. Are you acquainted with the prisoner Michael O'Laughlin?

A. Yes, sir.

Q. How long have you known him?

A. About six years.

Q. State to the Court whether you came in his company from Baltimore to Washington on Thursday, the 13th of April last.

A. I did. We left Baltimore at half-past three o'clock on that Thursday afternoon for Washington.

Q. Did you propose the trip to him?

A. Yes, sir.

Q. At what time did you reach here?

A. Between five and six o'clock, I judge.

Q. Where did you first go when you came to Washington?

A. We came up the avenue, and stopped at Lichau House, or Rullman's Hotel.

Q. Did you sup there?

A. No, sir.

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Q. State whether, from that time till bedtime, O'Laughlin was out of your company at all, and, if so, how long.

A. I went into the barber-shop adjoining Rullman's to get shaved. He proceeded up the street, and returned again before I had finished shaving.

Q. After you finished shaving, did you join him again?

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A. Yes, sir.

Q. Was he out of your company at all the whole evening afterwards until bedtime?

A. No, sir.

Q. You are sure of that?

A. I am as to that Thursday evening.

Q. Did you go up the avenue in his company and that of others to look at the illumination that evening?

A. Yes, sir.

Q. How far up the avenue?

A. I am not acquainted on the avenue; but I know it was above Seventh Street.

Q. Was it as far up as Ninth Street?

A. No, sir. We went across the corner of Seventh Street, and we stopped there: some proposed to go to the Treasury Department, and others to go down the avenue; and we turned back.

Q. Did you then go to the Canterbury Music Hall?

A. Yes, sir.

Q. At what hour?

A. About nine o'clock.

Q. How long do you think you staid there?

A. About three-quarters of an hour, as near as I can judge.

Q. After that, where did you go?

A. We returned to Rullman's Hotel.

Q. Then it would be in the neighborhood of ten o'clock that you arrived there?

A. Between ten and eleven.

Q. How long did you remain there before you went out again?

A. About half an hour.

Q. Can you state whether you went farther west than the point you mentioned on the avenue?

A. No, sir; not farther west than a little beyond Seventh Street.

Q. Was the avenue much crowded that night,—the night of the illumination?

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A. Yes, sir: it was almost impossible for a person to get along.

Q. Can you state whether he was anywhere in the neighborhood of Franklin Square, Mr. Stanton's residence, that evening?

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A. On Thursday evening, he was not.

Q. Was he in company with you that whole evening?

A. He was, except the short time he left me while I was being shaved.

Q. At what time did you retire that night?

A. Between one and two o'clock in the morning.

Q. Whereat?

A. At the Metropolitan Hotel.

Q. Do you know certainly whether he slept there that night?

A. I saw him in his room, and he was there the next morning when they called him at his room.

Q. Was he with you during most of the day on Friday?

A. Yes, sir.

Q. Was he with you on Friday evening?

A. He left me on Friday afternoon in company with another gentleman; Mr. Early, I think. On Friday evening, I met him again.

Q. At Rullman's?

A. Yes, sir; at Rullman's Hotel.

Q. How late was he there with you?

A. He was there with me until ten o'clock, I should think; and then went out in company with a man named Fuller, I think.

Q. Was he there at the time the news of the President's assassination came?

A. He was.

Q. Had it been arranged in your party to return to Baltimore on Friday?

A. We had arranged to go back to Baltimore on Friday morn.

Q. What occasioned the delay?

A. I proposed to stay down until Friday evening.

Cross-examined by the JUDGE ADVOCATE:

Q. Do you know where Mr. Stanton, the Secretary of War, resides?

A. I have been shown the place, and that is all.

Q. It is, I believe, on K Street, between Thirteenth and Fourteenth Streets.

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A. Yes, sir: I have been shown the place, and that is all I know about it.

Q. Do I understand you to say that it is impossible the prisoner O'Laughlin could have been there on the evening of the 13th of April, at Mr. Stanton's residence, from dark until ten or eleven o'clock?

A. It was not possible, because he was with us the whole evening.

Q. Was there at no moment such a separation of him from you as would have enabled him to go there and return?

A. Not before ten o'clock. Up to ten o'clock, he was with me; after ten o'clock, he went out with a man named Fuller.

Q. That was on Friday, was it not?

A. It was. On Thursday, he was with me the whole evening.

By the JUDGE ADVOCATE:

Q. At what hour did you arrive in this city that afternoon?

A. We left Baltimore at 3.30, and arrived between five and six o'clock.

Q. Were you separated from O'Laughlin, then, for some time?

A. I went to get shaved, and he left me there.

Q. Do you know where he went?

A. He told that he had been to see Booth.

Q. That was between five and six o'clock?

A. Yes, sir.

Q. Do you know of any other interview he had with Booth?

A. The next morning, he was to see Booth; and I went up to the National Hotel to call for him.

Q. Did you find him there?

A. No, sir: I returned to Rullman's, and found him there. He said that he had not seen Booth; that he was out.

Q. Do you know whether there was any attempt made on his part again to see Booth?

A. No, sir; not that I am aware of.

Q. You do not know the object he had in seeking this interview?

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A. No, sir.

Q. He made no communication of it on the way?

A. No, sir.

By MR. COX:

Q. To refresh your recollection, I will ask you whether O'Laughlin said any thing about Booth owing him money, and he wanting to get some money from him?

A. He did not.

Q. On Thursday evening, did he tell you that he had been to see Booth?

A. He only told me that he had been up to see him. On Friday, he told me that he had been to see him, and he was not at home.

By the JUDGE ADVOCATE:

Q. On the first occasion, did you infer that he had seen Booth?

A. On Thursday evening, he simply said that he had been to see him; and on Friday he said he had not seen him; he was not at home.

Q. What was the reason you yourself did not return to Baltimore on Friday?

A. I had no particular reason: I wanted to stay a little while myself; and I asked them to stay.

Q. From whom did the suggestion come that the party should remain over, instead of going back on Friday?

A. I suggested it.

Q. To whom did you suggest it?

A. To the party that were present: there were three besides myself,—O'Laughlin, Murphy, and Early.

Q. You say you had no special reason for it?

A. No.

Q. Had O'Laughlin himself spoken of staying over?

A. No, sir.

By MR. COX:

Q. Did I understand you distinctly to say, that, on Thursday evening, O'Laughlin simply told you that he had been to see Booth, but not whether he had seen him?

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A. Simply that he had been to see him, and not whether he had seen him or not.

By the JUDGE ADVOCATE:

Q. State under what circumstance your party was made up that came over from Baltimore to this city. Was it an accidental meeting, or an arrangement among yourselves before you left?

A. An arrangement amongst ourselves to come down and visit Washington. On Wednesday, we arranged to come down on Thursday.

Q. Who first made the suggestion? Do you remember?

A. No, sir. We were all speaking that we would like to go down to Washington; and I proposed to go down on Thursday.

Q. Had you been on terms of intimate associate with the prisoner O'Laughlin before that?

A. Only about a week previous to that.

Q. Do you remember whether he made any suggestion to you about coming down?

A. I do not remember; but I do not think he did. I think I asked him to come down.

Q. During your walks that Thursday night, which you continued up to a late hour, was there not a great deal of free drinking by the party?

A. Yes, sir.

Q. How often do you suppose the party drank in the course of that evening?

A. That would be almost impossible for me to say.

Q. One of the witnesses here thought he had taken at least ten drinks. Can you remember that many?

A. I cannot. It would be impossible for me to say how many we did take.

Q. Would that be your estimate? Would you think it fell under ten drinks that evening?

A. I should think not more than ten.

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Q. How many suppers did you take?

A. Only one.

Q. Where did you stop in the course of this ramble of yours?
Can you name the places where those drinks were taken?

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A. On the avenue; but exactly where, I cannot tell. I am not acquainted on the avenue.

Q. Was it in hotels, or restaurants, or private houses?

A. Hotels and restaurants.

Q. Are you able to state the condition in which the party were, so far as soberness is concerned, at ten o'clock?

A. One of the party was not sober: the others, I think, were.

Q. Do you think they were in a condition to observe each other, and to be conscious of each other's presence or absence of movements?

A. Oh, yes, sir!

Q. Fully so?

A. Entirely, so far as that goes.

Q. Which of them do you speak of as being drunk?

A. Mr. Early.

RICHARD SWEENEY,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. Are you acquainted with John M. Lloyd?

A. Yes, sir.

Q. Did you or not meet him on the 14th of April last at Marlboro'?

A. I did.

Q. Did you ride any portion of the way from Marlboro' with him towards his home?

A. I did.

Q. What was Mr. Lloyd's condition at that time?

A. He seemed to be influenced by liquor at the time.

Q. Did he seem to be considerably under the influence of it?

A. He did.

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Q. Did he drink on the road?

A. I do not know that he drank. He attempted to drink: he put a bottle to his lips, and I suppose he drank.

Q. Did the bottle contain liquor?

A. It did.

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Cross-examined by the JUDGE ADVOCATE:

Q. Were you with him?

A. I was present at the time.

Q. Did you drink with him?

A. I did.

Q. Do you think you drank as much as he did?

A. I cannot tell: we both drank from the same bottle.

Q. You say he was considerably under the influence of liquor?

A. Yes, sir: he seemed to be considerably excited; which excitement I attributed to an excess of drink.

Q. Nevertheless, he was alone in his buggy, was he not?

A. He was after I went from the buggy.

Q. Were you in the buggy?

A. I was on horseback by the side of it.

Q. Did he keep to the road as straight as you did?

A. I did not see him deviate from it.

Q. He simply was excited in this conversation?

A. And deportment generally.

Q. Were you a little excited yourself?

A. I do not think I was.

Q. Mr. Lloyd drinks occasionally, and gets excited; but he has not the reputation of losing his senses while in that condition, has he?

A. Not that I know of.

Q. Do you think he knew where he was going, and what he was doing, and what he was talking about, that evening?

A. I suppose he knew where he was going.

Q. You did not feel that he was a man who, as a sober neighbor of his, you thought it your duty to take care of?

A. No, sir.

Q. You thought he was quite able to take care of himself?

A. I thought he could take care of himself.

Q. Did it occur to you once that he was a man whom it was your duty to take charge of?

A. No, sir.

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By MR. CLAMPITT:

Q. Are you acquainted with J. Z. Jenkins, a brother of Mrs. Surratt?

A. Yes, sir.

Q. How long have you known him?

A. Ten years, I think.

Q. Can you speak confidently of his reputation as a loyal man?

A. I can.

Q. What do you know of it?

A. I knew Mr. Jenkins, at the onset of these difficulties, to be a zealous Union man.

Q. Do you know of any acts he performed that would induce you to believe that was a thorough and consistent loyal man?

A. There was a flag erected, probably within a hundred yards of where I boarded, at one time, and there was a rumor that the pole in which the flag was hoisted was to be cut down; and Jenkins was one of the men who took a gun that night, and came there for the purpose of guarding the flag, and remained the night.

Q. Do you know any thing of Mr. Jenkins coming to this city to get Union voters, who had left Maryland, to return and vote?

A. I do not. I have heard of such a thing; but I do not know it.

Q. Do you believe him to be a consistent loyal man?

A. I do.

By the JUDGE ADVOCATE:

Q. Have you been entirely loyal yourself during the Rebellion?

A. I suppose so, and think so. I have never done any thing inimical to the interests of the Government, that I know of.

Q. Have you never desired the success of the Rebellion?

A. No, sir: I never expressed any desire for its success.

Q. Have you always desired that the Government should succeed in putting down the Rebellion?

A. I cannot say but what my feelings were neutral in the matter.

Q. Are you quite sure they were neutral? It is very difficult to be neutral in such a war as this has been.

A. I think I was about as strictly neutral as anybody else.

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Q. When you examine your feelings closely, if you can recall them, have you not an impression, that, at some time or other, you preferred that the Rebellion should succeed?

A. I may possibly have done so. I think I exercised a neutral feeling very nearly.

Q. You were neutral in your conduct?

A. And in my feelings; as strictly neutral, I think, as anybody else.

Q. You think your feelings were perfectly indifferent whether the Government succeeded or failed?

A. I was.

By the COURT:

Q. How far was it from Surrattsville where you parted with Lloyd on the 14th of April last?

A. About six miles.

Q. Did you take more than one drink with him out of that bottle?

A. I did not.

Q. When you took the drink, was the bottle a flush one?

A. I did not notice particularly whether it was or not; but I think it was. I cannot say particularly whether it was or not.

MR. AIKEN. I desire to state to the Court, that when, on Friday last, I said I should not delay the Court at all after the other accused had closed their defence, I did not know, and had not then learned, some important facts which have since come to my knowledge. On Friday afternoon, I went to Surrattsville and to Marlboro'. I hastened back on Saturday morning to be here before the adjournment of the Court. I got to the Arsenal, however, just as the Court adjourned, and was unable, of course, then to make my statement to the Court, or file any præcipe for the appearance of witnesses. While on that trip, I gained some information, and learned some facts, which I deem of material importance to the accused, Mrs. Surratt; and I should like the privilege of introducing that testimony. I presume all the witnesses whom I desire to summon can be here to-morrow morning; and their examination will not consume more than hour, or perhaps an hour and a

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half. I do not know that that testimony will affect materially any rebutting testimony which the Government may have.

The JUDGE ADVOCATE. Does the counsel feel any disinclination to state the point to which the testimony he proposes to introduce will go?

MR. AIKEN. I wish to contradict, by the witnesses who will be summoned, the statement made by Captain Cottingham, of Mr. Lloyd's confession or statement to him, so far as it affects Mrs. Surratt, in which he stated that Lloyd used the expression, "Oh! that vile woman, Mrs. Surratt, has got me into this difficulty," or some language like that.

The JUDGE ADVOCATE. That was a statement that came from your own witness, I believe.

MR. AIKEN. Certainly; but the Court will recollect under what circumstances that witness was placed on the stand, and his acknowledging to the Court that he had told a deliberate lie to me in reference to it, and then saying that he was not on oath at the time he told the lie.

The JUDGE ADVOCATE. I am not sure that you laid the foundation for introducing such testimony.

MR. AIKEN. I think the question was asked him directly.

The JUDGE ADVOCATE. Whether he had made this statement to these persons?

MR. AIKEN. Yes, sir. There is also much interesting testimony that might be introduced at the same time in reference to the Roby witnesses, and to Mr. Smoot and Mr. Evans, all coming from the same witnesses; and it will not altogether consume over an hour or an hour and a half of the time of the Court.

ASSISTANT JUDGE ADVOCATE BURNETT. I do not see very well how witnesses can be called to contradict Mr. Roby and Mr. Smoot. They were called purely as impeaching witnesses of the man Jenkins. If they can impeach impeaching witnesses, it may go on *ad infinitum*; there is no end to it.

MR. AIKEN. That is the very difficulty which should have been thought of when the loyalty of Mr. Jenkins was attacked. If we are to try the loyalty of the people of Prince George's and Charles Counties, we shall not get through before this time next year.

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The loyalty of Mr. Jenkins, I think, is as well established as that of any other Marylander possibly could be; and yet there are men who have lived in his neighborhood six months, who come here, and swear he is not a loyal man.

The JUDGE ADVOCATE. If the Court please, inasmuch as there is some important testimony for the Government, which was expected here this morning, and which will probably be here by tomorrow morning, I do not think there will be any loss of time by granting this application, which I am disposed to grant without hesitation.

The application of MR. AIKEN was granted, and subpoenas were directed to be issued for the witnesses indicated by him.

BRIGADIER-GENERAL E. D. TOWNSEND, U. S. A.,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE;

Q. State to the Court whether or not you were acquainted with G. J. Rains, lately a brigadier-general in the rebel military service.

A. I was well acquainted with G. J. Rains, who resigned as lieutenant-colonel of the Fifth Regular Infantry, in 1861, of the army of the United States.

Q. Were you acquainted with his handwriting?

A. Very well.

Q. [Submitting to the witness a paper.] Look at the indorsement on that paper, signed “G. J. Rains, Brigadier-General, Superintendent,” and state whether the signature to that indorsement is in his handwriting.

A. To the best of my knowledge and belief, it is his signature.

The paper referred to, with its indorsement, was read as follows:—

THE TRIAL.

RICHMOND, Dec. 10, 1864.

Captain Z. McDaniel, Commanding Torpedo Company.

CAPTAIN,—I have the honor to report, that, in obedience to your order, and with the means and equipment furnished me by you, I

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left this city 26th July for the line of the James River, to operate with the "Hozological Torpedo" against the enemy's vessels navigating that river. I had with me Mr. R. K. Dillard, who was well acquainted with the localities, and whose services I engaged for the expedition. On arriving in Isle of Wight County, on the 2d of August, we learned of immense supplies of stores being landed at City Point; and for the purpose, by stratagem, of introducing our machine upon the vessels there discharging stores, started for that point. We reached there before daybreak, on the 9th of August last, with a small amount of provisions; having travelled mostly by night, and crawled upon our knees to pass the east picket-line. Requesting my companion to remain behind about half a mile, I approached cautiously the wharf, with my machine and powder covered by a small box. Finding the captain had come ashore from a barge then at the wharf, I seized the occasion to hurry forward with my box. Being halted by one of the wharf sentinels, I succeeded in passing him by representing that the captain had ordered me to convey the box on board. Hailing a man from the barge, I put the machine in motion, and gave it in his charge. He carried it aboard. The magazine contained about twelve pounds of powder. Rejoining my companion, we retired to a safe distance to witness the effect of our effort. In about an hour, the explosion occurred. Its effect was communicated to another barge beyond the one operated upon, and also to a large wharf-building containing their stores (enemy's), which was totally destroyed. The scene was terrific, and the effect deafened my companion to an extent from which he has not recovered. My own person was severely shocked; but I am thankful to Providence that we have both escaped without lasting injury. We obtained and refer you to the enclosed slips from the enemy's newspapers, which afford their testimony of the terrible effects of this blow. The enemy estimate the loss of

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life at fifty-eight killed, and one hundred and twenty-six wounded; but we have reason to believe it greatly exceeded that.

The pecuniary damage we heard estimated at four millions of dollars; but, of course, we can give you no account of the extent of it exactly. I may be permitted, captain, here to remark, that, in the enemy's statement, a party of ladies, it seems, were killed by

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this explosion. It is saddening to me to realize the fact that the terrible effects of war induce such consequences; but when I remember the ordeal to which our own women have been submitted, and the barbarities of the enemy's crusade against us and them, my feelings are relieved by the reflection, that, while this catastrophe was not *intended* by us, it amounts only, in the providence of God, to just retaliation.

This being accomplished, we returned to the objects of our original expedition. We learned that a vessel (the "Jane Duffield") was in Warwick River; and with the assistance of Acting-Master W. H. Hinds, of the C. S. Navy, joined a volunteer party to capture her. She was boarded on the 17th September last, and taken without resistance. We did not destroy here, because of the effect it might have had on the neighboring citizens and our own further operations. At the instance of the captain, she was bonded; he offering as a hostage, in the nature of security to the bond, one of his crew, who is now held as a prisoner of war on this condition in this city.

In the mean while, we operated on the James, as the weather and moon co-operated, but without other success than the fear with which the enemy advanced, and the consequent retarding of his movements on the river. We neared success on several occasions. Finding our plan of operations discovered by the enemy, and our persons made known, and pursued by troops landed from their boats at Smithfield, we deemed it best to suspend operations in that quarter, and return to report to you officially our labors. Your orders were to remain in the enemy's lines as long as we could do so; but I trust this conduct will meet your approval. The material unused has been safely concealed. I have thus, captain, presented you in detail the operation conducted un-

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der your orders and the auspices of your company, and
await further orders.

Very respectfully, your obedient servant,

JOHN MAXWELL.

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INDORSEMENTS.

December 17, 1864.

Report of J. Maxwell, of Captain Z. McDaniel's company,
secret service, of his operations on James River.

Respectfully forwarded to Brigadier-General Rains.

Z. MCDANIEL.

Capt. Co. A., Secret Serv-
ice.

FOR. BU., RICHMOND, VA., Dec. 17, 1864.

For Hon. Secretary of War,—

Present.

Respectfully forwarded, with remark that John Maxwell and R. K. Dillard were sent by Captain McDaniel into the enemy's line, by my authority, for some such purpose; and the supposition was strong, as soon as the tremendous explosion occurred at City Point on the 9th of August last, that it was done through their agency; but, of course, no report could be made until the parties returned, which they did on Wednesday last, and gave an account of their proceedings.

This succinct narrative is but an epitome of their operations, which necessarily implies secrecy, for the advantage of this kind of service, as well as their own preservation.

John Maxwell is a bold operator, and well calculated for such exploits; and also his coadjutor, R. K. Dillard.

G. J. RAINS, Brig.-Gen. Supt.

ASSISTANT JUDGE ADVOCATE BINGHAM offered in evidence, without objection, certified copies of the journals of the joint sessions of the Senate and House of Representatives on the second Wednesday of February, 1861, and the second Wednesday of February, 1865, (certified to be correct copies by the Clerk of the House of Representatives, under the seal of that House), showing that Abraham Lincoln and Hannibal Hamlin were elected President and Vice-President of the United States for the term of four years, commencing on the fourth day of March, 1861; and that Abraham Lincoln and Andrew Johnson were elected President and Vice-

President of the United States for the term of four years, commencing on the fourth day of March, 1865.

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BRIGADIER-GENERAL E. D. TOWNSEND

recalled for the prosecution.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Do you know the fact that Abraham Lincoln acted as President of the United States from and after the 4th of March, 1861, until the 15th of April, 1865, when he died?

A. Yes, sir: I had frequent official intercourse with him as President of the United States during that time.

Q. Do you know the fact that Hannibal Hamlin acted as Vice-President during the four years preceding the fourth day of March, 1865?

A. Yes, sir.

Q. And that afterwards Andrew Johnson acted as Vice-President until the death of Abraham Lincoln on the 15th of April, 1865?

A. Yes, sir.

MR. DOSTER stated to the Court that he had just been informed by a note, from the Assistant Surgeon of the Government Hospital for the Insane, that the wife of Dr. Nichols had died this morning; and, in view of the inability of Dr. Nichols to be present, he suggested that the Court grant to Dr. Hall, of Washington City, the same permission which had before been accorded to Dr. Nichols,—to visit the accused, Lewis Payne, and report upon his mental condition as to sanity or insanity.

The JUDGE ADVOCATE suggested that Dr. Stone of Washington City be associated with Dr. Hall for the purpose of making the examination, and with the understanding that they report to-morrow morning.

MR. DOSTER assented to the suggestion, and it was so ordered.

RICHARD MONTGOMERY

recalled for the prosecution.

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By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. [Handing to the witness a paper in writing.] Examine that paper and say from whom you received it.

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A. I received that letter from Mr. Clement C. Clay, jun.

Q. When?

A. On the evening of the 1st or 2d of November, 1864.

Q. State whether or not you saw Mr. Clay write any portion of that paper.

A. Yes, sir; a very considerable portion of it.

Q. You know that to be his handwriting?

A. Yes: I know that to be his handwriting. He wrote a part of that letter with my pen.

Q. Where was it written?

A. At the house at which he was residing. I think the street is called Park Street, in St. Catharine's, C.W.

Q. To whom did he deliver the paper?

A. To the Hon. C. A. Dana, Assistant Secretary of War.

Q. [Handing to the witness a paper in writing.] State whether this is a true copy of that paper, made simply for the purpose of more convenient reading.]

A. Yes: I made that copy, and it is a correct copy.

Q. There are certain blanks and omissions in this paper: had you any instructions in reference to filling them up, and giving the information which is left out in this despatch?

A. Yes, sir: I was instructed to deliver that to Mr. Benjamin, Secretary of State of the Confederate States, if I could get through there; and to tell him that I was informed of the names that were to be put in the blanks. There are blanks left for two or three names.

Q. What was the reason for omitting the signature to this paper?

A. That was for my safety principally, and so that it could not be used to injure Mr. Clay as evidence against him. Both reasons were given to me.

Q. By Mr. Clay?

A. By Mr. Clay. Protection to me was the principal reason.

Q. Do you know at what time Clement C. Clay left Canada?

A. Yes, sir: it was either in the latter part of December or the early part of January that he left. I think it was about the 1st of

January that he left. The copy of the letter identified by the last witness was read to the Court as follows:—

ST. CATHERINE'S, C.W., Nov. 1, 1864.

Hon. J. P. Benjamin, Secretary of State, Richmond, Va.

SIR,—You have doubtless learned, through the press of the United States, of the raid on St. Albans, Vt., by about twenty-five Confederate soldiers, nearly all of them escaped prisoners, led by Lieutenant Bennett H. Young; of their attempt and failure to burn the town, and of their robbery of three banks there of the aggregate amount of about \$200,000; of their arrest in Canada by United-States forces, their commitment, and the pending preliminary trial. There are twelve or fourteen of the twenty-five who have been arrested, and are now in prison at Montreal, where the trial for commitment for extradition is now progressing. A letter from Hon. J. J. N. Abbott, the leading counsel for the prisoners, dated Montreal, 28th October, says to me, "We (prisoner's counsel) all think it quite clear that the facts will not justify a commitment for extradition under the law as it stands; and we conceive the strength of our position to consist in the documents we hold, establishing the authority of the raiders from the Confederate States Government. But there is no doubt that this authority might be made more explicit than it is, in so far as regards the *particular* acts complained of; and I presume the Confederate Government will consider it to be their duty to recognize officially the acts of Lieutenant Young and his party, and will find means to convey such recognition to the prisoners here, in such a form as can be proven before our courts. If this were accompanied or followed by a demand upon our Government that prisoners be set at liberty, I think a good effect would be produced, although, probably, the application would not be received by the authorities. There will be at least, a fortnight's time, and probably more, expended in the examination of witnesses; so that there will be plenty of time for any thing that may be thought advisable to be done in behalf of the prisoners.

I met Mr. Young at Halifax, on my way here, in May last. He showed me letters from men whom I knew, by reputation, to be

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true friends of States rights, and therefore of Southern independence, vouching for his integrity as a man, his piety as a Christian, and his loyalty as a soldier of the South. After satisfying me that his heart was with us in our struggle, and that he had suffered imprisonment for many months as a soldier of the Confederate States army, from which he had escaped, he developed his plans for retaliating on the enemy some of the injuries and outrages inflicted upon the South. I thought them feasible and fully warranted by the law of nations, and therefore recommended him and his plans to the Secretary of War. He was sent back by the Secretary of War with a commission as second lieutenant to execute his plans and purposes, but to report to Hon. ————— and myself. We prevented his achieving or attempting what I am sure he could have done, for reasons which may fully explained hereafter. Finally, disappointed in his original purpose and in all the subsequent enterprises projected, he proposed to return to the Confederate States *via* Halifax, but, passing through the New-England States, and burning some towns, and robbing them of whatever he could convert *to the use of the Confederate Government*. This I approved as justifiable retaliation. He attempted to burn the town of St. Albans, Vt.; and would have succeeded but for the failure of the chemical preparations with which he was armed. Believing the town was already fired in several places, and must be destroyed, he then robbed the banks of all the funds he could find, amounting to more than \$200,000. That he was not prompted by selfish or mercenary motives, and that he did not intend to convert the funds taken to his own use, but to that of the Confederate States, I am as well satisfied as I am that he is an honest man, a true soldier and patriot; and no one who knows him well will question his title to this character. He assured me, before going on the raid, that his efforts would be to destroy towns and farm-houses, not to plunder or rob; but he said, if, after firing a town, he saw he could take funds from a bank or any house, which might inflict injury on the enemy and benefit his own Government, he

would do so. He added most emphatically that whatever he took should be turned over to the Government or its representatives in foreign lands. My instructions to him, oft repeated, were "to destroy whatever was valuable; not to stop to

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rob; but if, after firing a town, he could seize and carry off money, or treasury or bank notes, he might do so upon condition that they were delivered to the proper authorities of the Confederate States. That they were not delivered according to his promise and undertaking, was owing, I am sure, to the failure of his chemical compound to fire the town, and to the capture of himself and men on Canadian soil, where they were surprised and overpowered by superior numbers from the United States. On showing me his commission and his instructions from Mr. Seddon,—which were, of course, vague and indefinite,—he said he was authorized to do all the damage he could to the enemy in the *way of retaliation*. If this be true, it seems to me the Confederate States Government should not hesitate to avow his act was fully authorized as warrantable retaliation. If the Government do not assume the responsibility of this raid, I think Lieutenant Young and his men will be given up to the United-States authorities. If so, I fear the exasperated and alarmed people of Vermont will exert cruel and summary vengeance upon them before they reach the prison at St. Albans. The sympathies of nine-tenths of the Canadians are with Young and his men: a majority of all the newspapers justify or excuse his act as merely retaliatory; and they desire only the authority of the Confederate-States Government for it to refuse their extradition. The refusal of extradition is fully warranted by the like course of the United States in many cases cited lately in the Canadian papers, which I cannot now repeat, but which you can readily find. The refusal of extradition would have a salutary political influence, it is thought, both in the British Provinces and in England. I cannot now explain why. I trust, therefore, for the sake not only of the brave soldiers who attempted this daring exploit (which has caused a panic throughout the United States bordering on Canada, and the organization of forces to resist, as well as the arbitrary and tyrannous order of General Dix touching the coming presi-

dential election), but for the sake of our cause and country, that the President will assume the responsibility of the act of Lieutenant Bennett H. Young, and that you will signify it in such form as will entitle it to admission as evidence in the pending trial.

I send the special messenger who brings this, that your answer

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may be brought back by him within ten days or by the 11th instant. The final judgment can and will be postponed for the action of the Confederate-States Government as long as possible,—certainly for ten days.

I avail myself of this opportunity to bring to your notice the case of Captain Charles H. Cole, another escaped prisoner of General Forrest's command, who was taken about six weeks since in the "Michigan" (the Federal war-steamer on Lake Erie), and is charged with an attempt at piracy (for attempting to capture the vessel), with being a spy, &c. The truth is, that he projected and came very near executing a plan for the capture of that vessel, and the rescue of the prisoners on Johnson's Island. He failed only because of the return of the captain (Carter) of the "Michigan" a day sooner than expected, and the betrayal (in consequence of Carter's return) of the entire plot. The only plausible ground for charging him with being a spy is, that he was in Sandusky, on Johnson's Island, and in the "Michigan," frequently, without having on his person the Confederate uniform, but wearing the dress of a private citizen. Mr. _____ and I have addressed a letter to the commandant at Johnson's Island, protesting against his being treated as a spy, for the following reasons: "That he was in the territory of the United States as a prisoner against his consent; that he escaped by changing his garb; that he had no Confederate uniform when he visited Sandusky, Johnson's Island, and the "Michigan;" that he did not visit them as *an emissary from the Confederate States*; that, whatever he conceived, he had not executed any thing; that he had conveyed no information to his Government, and did not contemplate conveying any information to the Government." His trial has been postponed. I know not why or what time. His exchange should be proposed, and notice given that any punishment inflicted on him will be re-

taliated upon an officer of equal rank. He is a very brave and daring soldier and patriot, and deserves the protection of his Government.

I wrote to you on the 14th of June, to the President 25th July, and to you again on the 11th August and 12th September last. I trust you received those letters. Mr. H (who, I see, has gotten into the Confederate States) has doubtless explained things here.

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I have never received a line from you or any person, except my brother at Richmond.

I have not changed the views expressed in my former communication. All that a large portion of the Northern people—especially in the North-west—want, to resist the oppressions of the despotism at Washington, is a *leader*. They are ripe for resistance, and it *may come soon after the presidential election*. At all events, it must come, if our armies are not overcome and destroyed or dispersed. No people of the Anglo-Saxon blood can long endure the usurpations and tyrannies of Lincoln. Democrats are more hated by Northern Republicans than Southern rebels, and will be as much outraged and persecuted if Lincoln is re-elected. They must yield to a cruel and disgraceful despotism, or fight. They feel it and know it.

I do not see that I can achieve any thing by remaining longer in this province, and unless instructed to stay, shall leave here by 20th instant for Halifax, and take my chances for running the blockade. If I am to stay till spring, I wish my wife to join me under a flag of truce, if possible. I am afraid to risk a winter's residence in this latitude and climate.

I need not sign this. The bearer, and the person to whom it is addressed, can identify me.

But I see no reasons why your response should not be signed and sealed, so as to make it evidence, as suggested, in respect to the St. Albans raid. A statement of prisoners' counsel has been sent by way of Halifax and Wilmington; but it may never reach you, or not in time for the deliverance of the prisoners. This is my chief reason for sending this by one I can trust. Please reply promptly, and start the messenger back as soon as possible. He will explain the character of his

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mission. Send under a seal that cannot be broken without being discovered.

I am, respectfully, your most obedient servant.

N. B.—See the Secretary of War (Mr. Seddon) touching Young's case.

JACOB SHAVOR.

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

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By the JUDGE ADVOCATE:

Q. State to the Court whether you are acquainted with Marcus P. Norton, who has given testimony in this case.

A. I am acquainted with him.

Q. How long have you known him?

A. Since the summer of 1858.

Q. Have you known him quite intimately?

A. Yes, sir.

Q. State whether you acquainted with his reputation for truth and veracity where he is known.

A. It seems to be good in Troy.

Q. Do you live in Troy?

A. Yes, sir.

Q. State whether you have or have not knowledge, that in the town of Troy, where he and you resided, his reputation as a man of integrity and truth is good.

A. It is good.

Q. Would you or not, on the knowledge you have of that reputation, and of his conduct and character, believe him upon oath?

A. Yes, sir; every time.

Q. Fully?

A. Yes, sir.

Q. Have you personal knowledge of his having been concerned as a lawyer in various patent-suits there?

A. Yes, sir. He has been in the employment of Charles Eddy & Co., of which firm I am a member, for six years; a patent-lawyer.

THE TRIAL.

Q. State to the Court whether or not these patent-suits have given risen to a great deal of bitter personal animosity, among the parties and counsel engaged.

A. They may have in some cases. I am not posted on that particular.

Q. Can you state whether Mr. Norton has had a fair practice as a lawyer in Troy?

A. He has had a good practice, and has still.

Q. He has been attorney of the firm to which you belong?

A. Yes, sir.

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Q. Have you known an attempt to impeach Mr. Norton's credibility as a witness in any judicial proceeding in Troy?

A. In 1863, in the early part of the year, I think, there was an unsuccessful attempt made.

Q. Is it so regarded by the public there and by yourself?

A. Yes, sir.

Cross-examined by MR. DOSTER:

Q. You state that the reputation of Mr. Norton is good in Troy for veracity?

A. Amongst business-men generally.

Q. Do you or do you not know that his testimony has been impeached?

A. It has not been.

Q. Do you know that an attempt has been made to impeach it?

A. Yes, sir; but an unsuccessful one.

Q. Do you know that eighty men in Troy swore that he could not be believed?

A. No, sir. There is no truth in it, either: you know there ain't.

Q. You say that Mr. Norton has been employed as a lawyer by your firm?

A. Yes, sir.

Q. In what cases have you employed him?

A. The Stanly case is one.

Q. A patent-case?

A. Yes, sir; and he has had a number of our cases in hand. We have more or less every year.

Q. Did you ever use him as a witness in one of your own cases?

THE TRIAL.

A. I do not know: I do not remember.

Q. Try to remember whether you have not used him as a witness in one of your own cases.

A. In an individual matter, I had another lawyer.

Q. Did you not summons Mr. Norton as a witness in one of your cases?

A. I think he was in one of my individual matters, not the firm's.

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Q. Was it an important case?

A. Yes, sir.

Q. And a great deal of money depended on this man's testimony?

A. Not much money.

Q. Was that the same case in which an attempt was made to impeach his testimony?

A. Yes, sir.

Q. The same case?

A. Exactly.

Q. And, if this man's testimony had been successfully impeached you would have lost the case, would you not?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, and it was waived.

WILLIS HAMISTON,

a witness called for the prosecution in rebuttal, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Are you acquainted with Marcus P. Norton?

A. I am.

Q. How long have you known him?

A. I have known him for nine or ten years.

Q. Intimately?

A. Intimately for six years.

Q. Do you reside in Troy?

A. I do.

THE TRIAL.

Q. State if you have knowledge of the reputation which he bears there as a man of integrity and truth.

A. I have some knowledge of his integrity.

Q. State what that reputation is.

A. Good.

Q. And for truth?

A. Good.

Q. From the knowledge you have of his reputation, and of his conduct in life, would you or not believe him when upon oath?

A. I would, under oath or without.

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Cross-examined by MR. DOSTER:

Q. Are you one of the firm that employed Mr. Norton as a lawyer?

A. I employed him.

Q. How much money was involved in that case?

The WITNESS. In what case?

MR. DOSTER. In the same case in which you employed Mr. Norton.

The WITNESS. Do you mean my individual case?

MR. DOSTER. Yes, sir.

The WITNESS. I do not know.

Q. Was it a thousand dollars, or a hundred thousand?

A. It has not been footed up yet. You speak of my own case?

MR. DOSTER. I speak of the case in which you employed Mr. Norton: I do not care what the case was.

The WITNESS. It has not been fully decided yet, I think.

Q. It involves considerable money?

A. Some money.

Q. Did you summons Mr. Norton as a witness?

A. No, sir; not in my case.

Q. He was only your lawyer?

A. He was my lawyer.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You have employed him in more cases than one?

A. Yes, sir: he is engaged in two patent-cases for me.

Q. Is Mr. Norton a man of extensive business in his profession, or some departments of it at least?

THE TRIAL.

A. Quite so in patent-cases in the United States courts.

Q. Extensively employed by the people there?

A. Yes, sir; generally.

HORATIO KING,

a witness called for the prosecution in rebuttal, being duly sworn,
testified as follows:—

By the JUDGE ADVOCATE:

Q. You reside in Washington City?

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A. Yes, sir.

Q. You have been an assistant postmaster-general and postmaster-general, have you not?

A. Yes, sir.

Q. While living here, have you made the acquaintance of Marcus P. Norton, a lawyer from Troy?

A. I have.

Q. How long have you known him?

A. Eight or ten years.

Q. Have you known him somewhat intimately?

A. Quite so.

Q. State, if you have knowledge of it, what his reputation as a man of integrity and truth is.

A. I saw him at the department frequently, once or twice a year, perhaps oftener, for the last eight or ten years before I left the department. Since I left the department, having had some business with him, I have seen him oftener, and known more of him, than I did while I was in the department. I have always regarded him as scrupulously honest and correct.

Q. As a truthful man?

A. A truthful man, so far as his business with me is concerned. I never dealt with a man more particular to keep all his engagements.

Q. From his character, and from your knowledge of his conduct in life, would you, or not, believe him fully when under oath?

A. Unhesitatingly.

THE TRIAL.

Cross-examined by MR. DOSTER:

Q. Have you ever lived in Troy?

A. Never.

Q. Then you do not know the reputation of Mr. Norton in Troy?

A. No.

Q. What business relations have you had with him?

A. I have had connection with him with reference to patent post-rating and cancelling stamps.

Q. Has it been a business in which you heard of his reputation for veracity?

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A. Nothing more than as I came in contact with him here. I know him quite intimately here.

Q. You then speak solely of your own judgment?

A. I know nothing of him beyond that here. I never heard any one speak otherwise than favorably of him here.

Q. But you cannot say what his general reputation is in Troy among the people who knew him?

A. I know nothing of it personally.

Q. Have you ever heard that his character for veracity was impeached?

A. Not until this present time.

By the JUDGE ADVOCATE:

Q. Did you see Mr. Norton in this city in March last?

A. Frequently.

Q. What time in March?

A. I used to meet him nearly every day, all the time he was here last winter.

Q. State whether or not, in any of those conversations, he mentioned to you the singular manner in which some person had called at his room, asking for Booth.

MR. DOSTER. I object to that question, because it is not material to the point in issue. Besides, it has not been brought out on the cross-examination.

The JUDGE ADVOCATE. It is entirely competent for me to corroborate the statement which Mr. Norton made before the assassi-

nation of the President, and before there had arisen any possible motive for the fabrication of his testimony, to show that that statement was substantially the same, as far as it went, as that which he has now made before the Court in regard to the call the prisoner Mudd made at his room, asking for Booth. I think it is competent to sustain him, assailed as he has been by the testimony for the defence.

The COMMISSION overruled the objection.

The question being repeated to the witness, he answered:—

A. I recollect perfectly that he mentioned at the time that some

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person had come into their room very abruptly; so much so as to alarm his sister-in-law, who was with him in an adjoining room. They had rooms adjoining; and, in the course of the day, they were in the same room.

Q. Do you remember whether he stated for whom that person made inquiry?

A. I do not.

Q. Do you remember about the time it occurred?

A. I think it was some time in March: I cannot state positively.

Q. That was the time you had this conversation with him; but you cannot state precisely when this entrance into his room was made?

A. I cannot. I saw him nearly every day when he was here in the course of the winter; and I was engaged with him in a matter of business that I had charge of.

By MR. DOSTER:

Q. Did you ever hear Mr. Norton, during his stay in March, mention to you that he overheard a conversation between Booth and Atzerodt?

A. No; not while he was here at that time.

Q. Did he ever mention it to you until he came into Court the other day?

A. I never heard it until he made some allusion to it in a letter that he wrote me, I think, on the 15th of May. That was the first allusion.

Q. About the beginning of the trial?

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A. I think it was on the 15th of May that his letter was dated, in which he made some allusion to his having seen persons there that he would like to speak with me about when he should come here.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. [Submitting to the witness a letter.] Is that the letter to which you refer?

A. It is. It was received by me, I presume, on the 17th of May. It bears my indorsement. The letter is dated Troy, N.Y., May 15, 1865, addressed to me, and signed "Marcus P. Norton."

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MR. DOSTER. I object to the reading of the letter.

ASSISTANT JUDGE ADVOCATE BURNETT [To the witness.] Read the passage of it which relates to the matter of which you are now speaking.

The WITNESS. It is, "I believe Johnson was poisoned on the evening of March 3d, or the morning of March 4th last. I know of some things which took place at the National Hotel last winter, between Booth and strangers to me, which, since the death of our good President, have thrown me into alarm and suspicion, and about which I will talk with you when I see you."

By MR. DOSTER:

Q. What is the date of that letter?

A. May 15, 1865.

Q. I understand you to say that was the first intimation you had of that language?

A. I think so: I have no recollection of his mentioning it before.

Q. Did you meet Mr. Norton frequently while he was here?

A. Nearly every day last winter.

Q. And he never mentioned that conversation to you?

A. I do not remember that he did.

By MR. EWING:

Q. What time did Mr. Norton leave here?

THE TRIAL.

A. I cannot tell that exactly. It was after the inauguration, I know. I know that he was here at the inauguration, because I procured tickets for him and his friend to go into the Capitol.

Q. Did you see him on inauguration-day?

A. I do not remember that I did.

Q. Did you see him afterwards, before he left?

A. I think so. My impression is that he did not leave until several days after the inauguration.

Q. You are not certain, though, that you saw him after the inauguration?

A. I am quite certain I did, because he spoke of feeling grateful to me for having procured the tickets for himself and friends.

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Q. When did the conversation occur in which he spoke of a person having entered his room, at the National Hotel, abruptly?

A. I cannot state the particular time: it was while he was here last winter.

Q. Can you say whether it was before or after the inauguration?

A. I cannot state positively.

Q. What is your best recollection as to that?

A. I should say it was about the time of the inauguration; but I have no means of fixing the exact date.

Q. What did he say excited his suspicion as to this person?

A. It was the abrupt manner in which he entered the room. He spoke of it as unusual, and of its alarming his sister very much. I think he said that she was unwilling to remain in the room alone after that.

Q. How long before your conversation with him did he say that this had occurred?

A. I do not remember that he said; but I think it was just at the time, because, as I remarked, I used to see him nearly every day, and was in free intercourse with him nearly every day while he was here.

Q. He did not speak to you, then, of the person having made any inquiry for anybody else?

A. I do not remember that he did.

Q. Did he at that time give you any description of the person who had entered his room?

A. I do not remember that he did.

Q. Did he say nothing as to the appearance of the man?

THE TRIAL.

A. I really cannot say whether he did or not. I merely remember his stating the circumstance of a man having abruptly entered his room.

Q. Did he say what he did when the man left?

A. I think he did. I am quite sure that he said he followed him.

Q. How far?

A. Down stairs. He expected the man to go up stairs; but, instead of doing that, he went down stairs, and he followed him down.

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Q. Did he follow him down into the office?

A. I do not remember whether he said he went clear down or not.

Q. Did he speak of having any conversation with this man after he left the room?

A. I do not remember that he did.

Q. Or of the man having said any thing to him, either in the room or after he left?

A. My impression is that he said the man made some excuse for his abrupt entrance. I cannot say what he said.

Q. Are you sure whether it was, or was not, before your last interview with Mr. Norton that he mentioned it? Fix the time at which he mentioned it,—whether it was on inauguration-day, or before that day, or after it.

Q. I think it was about that time. I really cannot say whether it was immediately before or immediately after; because I was with him, as I remarked, nearly every day while he was here.

Q. And he mentioned nothing at the time of the conversation to which he alludes in the letter, a passage from which you have read?

A. Not to my knowledge.

WILLIAM H. ROHRER,

a witness called by the prosecution, being duly sworn, testified as follows:—

THE TRIAL.

By the JUDGE ADVOCATE:

Q. State to the Court whether or not you are acquainted with Clement C. Clay, jun., of Alabama, formerly of the United States Senate.

A. I am.

Q. Are you acquainted with his handwriting?

A. I have had opportunities for becoming well acquainted with his writing.

Q. [Submitting to the witness the original letter testified to by Richard Montgomery.] Look at that paper, and see whether it is his handwriting.

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A. I have examined this paper previously; and from memory, and from comparison, I have no hesitation in pronouncing it his writing.

Q. You spoke both from your own recollection of his handwriting, and from having compared it with some of his writing which you have in your possession?

A. Yes, sir.

No other witnesses being in attendance, the Commission adjourned until to-morrow, Tuesday, June 13, at eleven o'clock, A.M.

TUESDAY, June 13, 1865.

MR. COX. I desire to call the attention of the Court and of the Judge Advocate to a paragraph in the "Evening Star" of yesterday, in reference to "A Mysterious Letter," extracted from the "Cumberland Union:"

A MYSTERIOUS LETTER.—On the 4th instant, two men, named French and McAleer of South Branch, Va., were arrested by Major Meyers, and brought to this city and lodged in the guard-house, on the charge of writing a mysterious letter, addressed to J. Wilkes Booth, and which was submitted in evidence before the assassination court at Washington. It turns out to be that the letter was a fraud, perpetrated by a person named Purdy, who is said to be a Government detective; and who, entertaining a bitter hatred to-

wards the parties arrested, availed himself of this mode to wreak revenge. French and McAleer have been released; and Purdy has since been arrested, and placed in close confinement, on the charge of committing the alleged fraud.

I cannot now put my hand on the letter referred to; but my recollection is that it was a letter addressed to "J. W. B.," and found in the clerk's office at the National Hotel, and dated, I think, in March.

ASSISTANT JUDGE ADVOCATE BINGHAM. No; dated the 6th of April last; and it bears unequivocal signs on its face that the writer of that letter was a party to the conspiracy to murder the President of the United States.

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MR. COX. If the fact be stated as in this paper, it is a fact of which the Government has possession; and, if it is supposed that the letter has any bearing on the case of the accused, they may justly claim that the truth of the matter be disclosed.

The JUDGE ADVOCATE. The matter is now undergoing investigation by the Government.

MR. COX. But the very possibility of such a transaction as this shows the danger of admitting letters in this way, picked up as waifs floating on the water, or found in hotel-offices, without any identification, or any proof connecting them with anybody implicated in the alleged conspiracy; but if the letter has any weight, and the fact be as stated, I think, as a matter of justice, it ought to be admitted on the part of the prosecution.

ASSISTANT JUDGE ADVOCATE BINGHAM. I do not think any thing of that sort ought to go upon this record at all. If the parties desire to have Purdy or anybody else here, let him be brought; but it does seem to me that this is no way to dispose of a record, to bring in here newspaper paragraphs for which nobody is responsible particularly, and read them about a matter of this sort. There is nothing in it, of course, of any consequence, except the statement of these individuals that the letter is a fraud. It is no answer for a man who wrote that letter on the 6th of April to say that it is a fraud. I undertake to say that that letter is sufficient to cost the writer his life. He cannot explain it: it bears on the face of it evidence that the man who wrote it was guilty of the murder of the President. How could he know all the facts he details in that letter if he was not? Touching the competency of the letter as evidence, it will be time enough to talk about that when the question comes

up. I say, upon all authority, that a letter addressed through the mail to one proved to be a conspirator and an assassin, acting in the interest of this conspiracy, although it never reached his hand, is evidence against him and everybody else that conspired with him.

The JUDGE ADVOCATE. I suppose the gentleman has accomplished his object by bringing the matter to the notice of the Court. It is undergoing investigation; and the result of that investigation

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I certainly do not intend to conceal in any way; but I think it ought not to go upon the record.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to loose newspaper articles going upon the record: I have no objection to any application counsel may make going upon record.

MR. EWING. It is undoubtedly very loose, but no looser than that cipher letter picked up on the water at Morehead City.

ASSISTANT JUDGE ADVOCATE BINGHAM. Yes; a good deal looser.

MR. EWING. It has just as much relevancy to the case as that; and that was admitted in evidence.

ASSISTANT JUDGE ADVOCATE BINGHAM. It was stated that that letter was not evidence against those accused, but might be evidence against other parties named in the record.

MR. AIKEN. Mr. Wallach, the editor of the "Star," is well known to the Court and to the public as a careful, truthful editor; one who endeavors to be exact in all his news items; and one who would not, under any circumstances whatever, admit a paragraph of that kind into the "Star" unless there was foundation for it.

The JUDGE ADVOCATE. I certainly commend the gentleman [Mr. Cox] for his zeal in bringing the matter to the notice of the Government. I only insist that it shall have no place upon the record.

The Commission took a recess until two o'clock, P.M., to allow a scientific examination of Payne in reference to his sanity or insanity. On reassembling, the examination of the witnesses was continued as follows:—

DR. JAMES C. HALL,

a witness called for the accused, Lewis Payne, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Please state whether you have examined the prisoner Payne.

A. I have examined him this morning.

Q. How long did the examination last?

A. About three-quarters of an hour.

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Q. Will you please give in detail the result of your examination?

A. I first examined him, so far as I could, with regard to his physical condition. His eye appeared to be perfectly natural, except that it appeared to have very little intellectual expression; but it was capable of showing a great deal of passion and feeling. I discovered a remarkable want of symmetry in the two sides of his head. The left side is much more developed than the right. His pulse I counted carefully at two several times. I found it to be a hundred and eight, which is about thirty strokes above a natural, healthy pulse. In other respects, his health seemed to be good, with the exception of another habit, which, I believe, the Court is informed of,—constipation. His general muscular development is perfectly healthy. I questioned him first with regard to testing his memory. I found that it acted very slowly. He appeared to answer my questions willingly, but his mind appeared to be very inert; and it took some time before he would give me an answer to a very simple question, though he did not seem to be at all reluctant in giving me the information I was seeking for. I should take it that his intellect was of a very low order; and yet I could not discover that there was any sign of insanity. His mind is dull and feeble naturally, and, I presume, has not been cultivated by education.

Q. Did you examine him in reference to his moral nature or moral character?

A. I asked him certain questions, which, I think, would draw out his opinion or feeling on that subject; and the conclusion to which I came is, that he would perform acts, and think himself jus-

tified in performing them, which a man of better moral nature, and of a better mind, would condemn.

Q. Did you, or not, state the case to him of a person committing the crime with which he is charged, and ask his opinion in reference to the moral right to commit it?

A. I did. I mentioned it as a supposed case; and he said he thought a person performing such an act as I described would be justified. "Well," said I, "I wish you would give some reason why you think he would be justified; why you think an act

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which I think wrong, and which everybody else thinks wrong, could be justified." His answer amounted to this, that he thought, in war, a person was entitled to take life. That was the reason he assigned why he thought such an act could be justified.

Q. Did he use the word "war"?

A. Yes, sir.

Q. Upon your whole examination, are you, or note, of opinion that there is reasonable ground for suspicion of insanity?

A. I should say that there was. It seems to me that no man could, if he were perfectly sane, exhibit the utter insensibility that he does, and did in my presence. I do not think there was any attempt at deception. He answered the questions, so far as his mind would permit him, plainly and clearly, without any attempt at deceiving me or misleading me. I cannot give a positive opinion that he is laboring under either moral or mental insanity.

Q. What time would it require to enable you to give a decided opinion?

A. In the first place, I am not an expert in examinations of this kind. In the course of a long practice, I have, of course, seen a good many insane persons, but never have made it a subject of special study or practice. To decide on a case of that kind, one ought to see the person at various times, and under various circumstances. I never saw this man before.

Q. Would it be necessary to see the prisoner under different circumstances?

A. I think it would be very well that either I, or some person who had much more experience, and was much more competent to form a judgment, should see him. I think that is the proper course. It should be some one who is known to be an expert in examinations of this kind, to see him.

By the JUDGE ADVOCATE:

Q. I understand you to state, doctor, that what you have discovered as peculiar in the condition of Payne is not insanity, but extreme insensibility?

A. I cannot discover any positive signs of mental insanity, but of a very feeble, inert mind; a deficiency of mind rather than a

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derangement of it,—a very low order of intellect. His memory appears to be very slow in acting.

Q. Did he, or not, seem to have a distinct recollection of his crime, and also of the motives and course of reasoning—

MR. DOSTER. I object to that question.

The WITNESS. I merely supposed a case to Payne. I did not refer to it as the crime committed by himself: I merely asked him what he would think of such a crime.

The JUDGE ADVOCATE. And he expressed the opinion, that, under such circumstances, assassination would be justified as a belligerent right,—a right of war?

The WITNESS. I asked him what he would think of a man who had done a crime such as he was charged with; and he said he thought he would be right in doing it.

Q. Did he, in answer, betray any lack of consciousness of what the crime was, or any lack of recollection of the motive under which he had acted?

A. I carefully avoided applying it to himself personally: I merely spoke of it as a supposititious case. I did not think it would be right for me to receive any confession from him; and I rather avoided extorting it.

Q. Do you regard atrocious crimes as *per se* evidence of insanity?

A. By no means.

Q. Do you regard insensibility under crime, or indifference to the results of crime, as indicating insanity?

A. Where a man commits crime habitually, and without any adequate motive or provocation, I should be disposed then to suspect insanity. If there is an absence of motive and an absence of provocation, and if it is done habitually, these are the conditions. A single act I should be very reluctant to form an opinion upon.

Q. If a man engaged in arms as a rebel against the Government of his country is found assassinating its Chief Magistrate and the

members of his Cabinet, would you, or not, regard those circumstances as indicating sufficiently the presence of motive to save him from the imputation of insanity?

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A. Yes: he might have a motive. I can readily conceive that a man might think he had a sufficient motive and a sufficient justification for it.

Q. Do I, or not, understand you to say, doctor, that, from the whole examination you have made, you regard the prisoner Payne as sufficiently sane to be a responsible being for his acts?

A. I have not altogether made up my mind on that. I do not think that the single examination which I have made would suffice to decide the question. I think there is enough to allow us a suspicion that he may not be a perfectly sane and responsible man. I can give no positive opinion on that point. His intellect is very feeble and inert.

Q. The extent, then, to which you go, is, that there is ground for suspicions? You do not express any such opinion?

A. I do not express a positive opinion that he is either morally or mentally insane, but that there is sufficient ground, both from his physical condition and his mental development, for a suspicion of insanity.

Q. Do you rest that suspicion largely on his course of reasoning on the case which you supposed?

A. The reasoning was very brief. He simply assigned as a reason what I mentioned.

Q. The conclusion which he drew from your premises?

A. Yes, sir: I should think that was the result either of insanity or very badly cultivated mind, and very bad morals.

Q. Might it not be wholly the result of very bad morals?

A. It might entirely. I attach some importance to his physical condition. It is generally known that persons who are insane, habitually, with few exceptions, have an unusually frequency of pulse. His pulse is thirty odd strokes above the normal standard.

Q. He was aware of the purpose for which you had you interview with him, was he not?

A. I introduced myself by telling him that I was a physician, and that the Court had directed me to examine into his condition; and I referred to some matters connected with his health.

Q. Did he seem to be under any excitement?

A. Not the least. He was perfectly calm, and at times smiled.

He did not seem to be playing a part at all. He appeared to answer the questions honestly and truthfully, so far as I could judge; but his memory is very slow, and it is very difficult to get from him an answer to a very simple question. I asked him in regard to his birth and his residence. He could not remember the maiden name of his mother. He said her first name was Caroline; but he could not remember her maiden name.

Q. Do you think that was sincere, or an affectation?

A. I think it was sincere. His memory is evidently very deficient.

Q. Did you ever in your life before meet a man who was abroad in the community, as a sane and responsible man, who did not know the name of his mother?

A. Yes, sir: I have known persons who forgot their own names.

Q. Sane persons?

A. Yes, sir. I suppose you have heard of the celebrated John Law, of this city, who would go to the post-office, and be unable to call for a letter in his own name.

Q. Then you do not consider forgetfulness of names any evidence of insanity?

A. No, sir.

JOHN T. HOXTON,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. Where do you reside?

A. In Prince George's County, Md.

Q. How long have you resided there?

A. For the last forty-five or fifty years; ever since I came from school at Alexandria.

Q. Is your residence near Surrattsville?

A. Yes, sir; about a mile from there.

Q. Have you or not been acquainted with the prisoner at the bar, Mrs. Surratt, for a number of years?

A. Yes, sir.

Q. How long?

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A. I have known her for a good many years; but I have known her better since she came into our neighborhood, which was some ten or twelve years ago.

Q. What has been her reputation in her neighborhood, among her friends, as a truthful, Christian, kind lady?

A. Very good, I believe: I never heard any thing to the contrary.

Q. Have you or not, since the Rebellion, met her frequently?

A. Yes, sir: I have met her occasionally, not very frequently. I have not visited her house very often of late years: in fact, I have gone very little from home myself, and, when I have gone there, I have staid but a very short time generally.

Q. Have you, in all those conversations that you have had with Mrs. Surratt, ever heard her make use of a disloyal expression?

A. No, sir: I never had any conversation with Mrs. Surratt on political subjects.

Q. Are you acquainted with J. Z. Jenkins?

A. Yes, sir; very well.

Q. What is his reputation in your neighborhood for loyalty?

A. He was a good Union man up to 1862, I think. At the election in 1862, he was arrested. Since then I have understood he had secession proclivities.

Q. Did you take any part in his arrest that day at all?

A. No, sir; I did not: I got to the polls between nine and ten o'clock.

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question as incompetent, and it was waived.

Q. [By MR. AIKEN.] Was it your opinion or not, at the time of Mr. Jenkins's arrest that day, that he was good Union man?

A. My impression was that he was a good Union

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing more about y our impressions.

Q. [By MR. AIKEN.] Do you know any thing of the circum-

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stances of his defending the Union of the Union with arms in his hands?

A. Not to my own knowledge. I understand that he did.

Q. Are you acquainted with the Rev. W. A. Evans?

A. I have seen him.

Q. Is there a Presbyterian church in Prince George's County?

A. Not that I know of.

Q. What is the reputation of the Rev. Mr. Evans, in that community, for veracity?

A. I cannot exactly tell you. Mr. Evans was impeached some years ago—

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state that.

Q. [By MR. AIKEN.] From your knowledge of his character and his reputation, would you believe him on oath where any of his interests were involved?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question. The witness should first state whether he knew the general reputation of Mr. Evans for truth among his neighbors.

Q. [BY MR. AIKEN.] Are you acquainted with the reputation of the Rev. Mr. Evans in your community, in your neighborhood?

A. Not except by rumor.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. In Evans's neighborhood?

A. Evans kept school, in the neighborhood where I live, some ten or twelve years ago.

Q. The questions is as to his reputation now.

A. I know nothing of his reputation now.

By MR. AIKEN:

Q. Has his reputation in his neighborhood, and where he has taught school, been notoriously bad?

THE TRIAL.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to any such question. This witness has already disclosed to the counsel, that, some ten or twelve years ago, Mr. Evans taught a school somewhere

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in his neighborhood. He has also disclosed the fact that he does not know what the present reputation of Mr. Evans among his own neighbors for truth and veracity is. The law, in its humanity and in its justice, has said that no man called into a court as a witness shall be put upon trial for every act of his life; but the question is as to his general reputation at the time he appears as a witness. Now it is proposed to go back ten years. It is supposed in law, that, in ten years, a man can live down a slander, at least.

The question was waived.

By MR. CLAMPITT.

Q. Do you or do you not believe Mr. Jenkins to be a consistent Union man at the present time?

A. I cannot positively state that he is now; he was some two years ago. I only met him occasionally, and then but for a short time; and had no political conversation with him. The report in the neighborhood is that Mr. Jenkins is not at this time a very loyal man.

By MR. AIKEN:

Q. Have you ever known or heard of Mr. Jenkins committing a disloyal act?

A. No, sir; I never have.

Q. You have never heard of his committing any overt act against the Government?

A. No, sir; never.

Q. Have you ever heard any expression, unfriendly to the Government, coming from him during the last two years?

A. No, sir.

WILLIAM W. HOXTON,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. Where do you reside?

A. In Prince George's County, Md.

Q. Near Surrattsville?

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A. Yes, sir; about a mile from there.

Q. Are you acquainted with the prisoner at the bar, Mrs. Surratt?

A. Yes, sir: I have known her for about twelve years.

Q. What has been her reputation in that community, during that time, as a Christian lady?

A. She has always been looked upon as a very kind lady, very kind to the sick especially; a church-going woman.

Q. Have you met her frequently during the last two or three years?

A. Yes, sir: I have seen her very often during the last four or five years.

Q. Have you ever heard from Mrs. Surratt during that time any disloyal expression?

A. No, sir: I have never heard her say a disloyal word.

Q. Are you acquainted with J. Z. Jenkins?

A. Yes, sir: he lives about a mile and a half from me.

Q. What is his reputation, in your community, for loyalty?

A. He was the strongest Union man I ever saw when the war first broke out. I have heard that he has changed recently when he lost his negroes; but I have never heard him say any thing disloyal.

By the COURT:

Q. Did you say that he changed when he lost his negroes?

A. It was said so. I have never seen any change in him myself. I have never heard him express any disloyal sentiments.

THE TRIAL.

By MR. AIKEN:

Q. You have never seen any change in Mr. Jenkins yourself, you state?

A. No, sir.

Q. You have never heard of any disloyal or overt act of his against the Government?

A. No, indeed; I never have.

Q. At the time Mr. Jenkins lost his negroes, did he say any thing against the Government?

A. I never heard him say any thing against the Government when he lost his negroes.

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HENRY HAWKINS (colored),

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. Where do you live?

A. In Prince George's County, Md.

Q. Have you lived at Surrattsville?

A. Yes, sir.

Q. How long?

A. Ever since I have been there.

Q. How many years have you lived there?

A. About eleven years.

Q. Where you formerly a slave of Mrs. Surratt?

A. Yes, sir.

Q. What was her treatment towards her servants?

A. Very good, sir.

Q. Did she, or not, always treat you kindly?

A. Yes, sir.

Q. Do you recollect, about the time the horses broke away from Giesboro', of any horses coming to Mrs. Surratt's stables?

A. Yes, sir: we had seven there.

Q. Do you know, or not, whether Mrs. Surratt purchased from her own means, with her own money, hay and grain with which to feed those horses?

THE TRIAL.

- A. Yes, sir; she did.
Q. How long were the horses there?
A. They were there a fortnight, if not longer.
Q. And then were returned to the Government by her?
A. The Government sent for them.
Q. Do you know, or not, whether she received a receipt?
A. No, sir; not that I know of.
Q. Have you since the war ever heard Mrs. Surratt talk in favor of the South?
A. No, sir; I have not.
Q. Have the expressions that you have heard while at her house been in favor of the Government, loyal ones, or not?

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- A. No, sir. I have heard no expressions at all. I was not there.
Q. You were at the house a good deal of the time?
A. A part of the time I was; but, since I got free, I have not been there. I work out at a place.
Q. Did you ever hear disloyal expressions and sentiments from Mrs. Surratt while you were there?
A. No, sir; I did not.
Q. Can you state to the Court whether it was, or was not, her habit, to feed, at her own expense, Union soldiers that passed her house?
A. Yes, sir: she has done so frequently.
Q. Did she always give them the best she had in the house?
A. Yes, sir.
Q. Was she in the habit of taking pay for it?
A. Not that I know of. I do not think she did.
Q. Do you recollect any occasion of bad eyesight on the part of Mrs. Surratt?
A. Yes, sir. I heard she could not see some time back, and that she had to wear specs.
Q. Do you recollect of something occurring before your own eyes; any particular instance?
A. No, sir; I do not. I heard them say she did.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

- Q. You heard that she had to wear spectacles of late?
A. Yes, sir.

RACHEL SEMUS (colored)

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. How long have you lived at Mrs. Surratt's?

A. I have lived there for six years.

Q. Were you formerly her slave?

A. No, sir: I was hired to her by Mr. Williams.

Q. What has been her treatment of her servants at her house?

A. She treated her servants very well all the time I was with her.

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Q. Did you, or not, ever have any reason to complain of any hardship?

A. No, indeed: I never had any reason to complain at all.

Q. Do you recollect any instances since the war broke out, of Union soldiers having been fed at Mrs. Surratt's?

A. Yes, sir: they have.

Q. What was her habit in regard to that?

A. I know she always tried to do the best she could for them, because I always cooked in the kitchen.

Q. Did she entertain many of them there?

A. Yes, sir: sometimes a good many of them.

Q. Did she always give them the best she had in the house?

A. Yes, sir; she did so. She always gave them the best she had; and very often, indeed, she would give them all she had in the house, because so many of them came.

Q. Do you, or not, recollect on one occasion of her cutting up the last ham in the house to give it to the soldiers?

A. Yes, sir; she did so; and she had not any more until she sent to the city. She sent to the store first, and could not get any hams there, and then sent to the city.

Q. Do you know whether or not Mrs. Surratt was in the habit of taking pay for such things?

A. If she took any pay, I never saw her. She always said she never took any thing.

THE TRIAL.

END OF VOL. III

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