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Product Code A0513-F

They're Irish!
They're Catholic!
They're Guilty!

**An historical drama based on an 1806 transcript from
the murder trial of Dominic James and Daley Halligan**

by

Jim Curran

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GENERAL VIEW OF BOSTON, MASS., 1810,
SHOWING THE COURT HOUSE, FIRST CONGREGATIONAL CHURCH, ETC., AS SEEN FROM THE ROAD IN A NORTHEASTERN DIRECTION.

**“THEY’RE IRISH!
THEY’RE CATHOLIC!
THEY’RE GUILTY!”**

by Jim Curran

A dramatization of the 1806 trial of

*Dominic
James*

*Daley, &
Halligan*

based on an authentic trial transcript



They're Irish, They're Catholic, They're Guilty!

by Jim Curran

CAST IN ORDER OF APPEARANCE

BELLRINGER	<i>TOWN CRIER</i>
CLERK OF COURT	
DOMINIC DALEY	<i>DEFENDANT</i>
JAMES HALLIGAN	<i>DEFENDANT</i>
ATTORNEY GENERAL	<i>PROSCECUTOR</i>
JOHN BLISS	<i>WITNESS</i>
DEFENSE COUNSEL	
MOSES K. BARTLETT	<i>WITNESS</i>
DOCTOR MERRICK	
ROBERT STAUNTON	<i>WITNESS</i>
MARVEL UNDERWOOD	<i>WITNESS</i>
JESSE FARNUM	<i>WITNESS</i>
PLINY BLISS	<i>WITNESS</i>
ENOS RIDER	<i>WITNESS</i>
JUDGE SEDGEWICK	
JOHN POWERS	<i>WITNESS</i>
THOMAS STEBBINS	<i>WITNESS</i>
GRIFFIN BAILEY	<i>WITNESS</i>
THOMAS GLOVER	<i>WITNESS</i>
EBENEZER RUSSELL	<i>WITNESS</i>
OLIVER MORRIS	<i>WITNESS</i>
HUBBARD BLISS	<i>WITNESS</i>
JOHN DEWEY	<i>WITNESS</i>
LAERTES FULLER	<i>WITNESS, A 13-Year-Old Boy</i>
GEORGE BLISS	<i>WITNESS</i>
ABRAHAM FULLER	<i>WITNESS</i>
EDWARD SEYMS	<i>WITNESS, A Storekeeper</i>
CHARLES CLARK	<i>WITNESS</i>
DAN STEBBINS	<i>WITNESS</i>
JEREMY BLISS	<i>WITNESS</i>
JOSIAH BARDWELL	<i>WITNESS</i>
JUDGE SEWALL	<i>SECOND JUDGE</i>
JAIL GUARD	
CATHOLIC PRIEST	

SETTING

*A Courtroom in Northampton, Massachusetts; the Year, 180.
The trial of Dominic Daley and James Halligan accused of murdering Marcus Lyon, a farmer*

They're Irish, They're Catholic, They're Guilty

by Jim Curran

An Historical Drama

PROLOGUE

VOICE, *OFFSTAGE*

(From "The Hangings at Pancake Plain")

“TONIGHT UNFOLDS A TALE OF WOE,
OF MURDER, TRIAL AND SENTENCE.
OF TWO ACCUSED. BUT WRONGLY SO,
AND OF BELATED CONFESSION AND REPENTANCE.

IN EIGHTEEN—SIX, GOOD FOLK GIVE HEED,
FOUL MURDER WAS COMMITTED.
TWO CELTIC MEN CHARGED WITH THE DEED
IRISH-CATHOLICS, THEREFORE GUILTY, NOT ACQUITTED.

THERE WERE RACISTS, TOO, IN DAYS OF YORE,
TO POOR HALLIGAN AND DALEY
TO THE SCAFFOLD ON PANCAKE PLAIN, THEY BORE,
LACK-A-DAY! LACK-A-WALEY-WALEY!

THEY HANGED THEM THERE ON PANCAKE PLAIN
WHERE LOOMED THE SCAFFOLD GRIM AND GRUESOME.
AND DOWN THE YEARS 'TWOULD BE A STAIN...
DID THEY HANG A GUILTLess TWOSOME?

YOU BE THE JUDGES WHEN YOU HEAR THE PLAY
AS WE VACATE THE PODIUM
“ON WITH THE ACT’ AS HISTORY WE PORTRAY
AND YOUR PATIENCE BEG FOR THIS EXORDIUM.

Ann Sherwood, 1983

SCENE I

(A darkened stage. MUSIC: PENNY WHISTLE THEME plays plaintive melody offstage. As MUSIC FADES, a SPOT follows BELLRINGER slowly ambling across the stage ringing a clanging bell.)

BELLRINGER

Hear ye! Hear ye! Court is now in session. All rise! All rise! Court is now in session!

(AT RISE: A Courtroom in 1806 Northampton, Massachusetts. Two Irish Immigrants, Dominic Daley and James Halligan are on trial for the murder of farmer Marcus Lyon. The entire region is infested with anti-Irish, Anti-Catholic prejudice. Two JUDGES in white powdered wigs sit together on a raised bench Center' the CLERK OF COURTS between. Two shackled PRISONERS stand Right. The PROSECUTOR and DEFENSE COUNSEL stand opposite one another at podiums. ALL appear frozen in time. BELLRINGER addresses Audience.)

BELLRINGER

At a court held in Northampton, Massachusetts, within and for the county of Hampshire, on the fourth Tuesday of April, in the year of Our Lord, one thousand eight hundred and six, before the Honorable Judges Theodore Sedgewick and Samuel Sewall, Esquires... Dominic Daley and James Halligan are to be tried for the murder of Marcus Lyon. *(Exits)*

CLERK OF COURT

The Commonwealth alleges in Count One of the Indictment that Dominic Daley, with a pistol, gave Marcus Lyon the blow from which he instantly died and that James Halligan was present, siding, abetting and encouraging him. The Commonwealth alleges in Count Two of the Indictment that Dominic Daley gave the blow as aforesaid and immersed the body in the Chicopee River and that James Halligan was present siding and abetting as before. The Commonwealth alleges in Count Three of the Indictment that both Daley and Halligan, with each a pistol in his right hand, gave the mortal bruises and wounds from which Lyons instantly died. *(Looks severely at DALEY)* Dominic Daley! How will you be tried?

DALEY

(Raises shackled arm) By God and my country!

CLERK OF COURT

God send you a good deliverance! *(Looks severely at HALLIGAN)* James Halligan! How will you be tried?

HALLIGAN

(Raises shackled arm) By God and my country!

CLERK OF COURT

God send you a good deliverance. *(Unfolds small paper)* The jury will now take their seats as your name is called.

(12 MEN, previously selected from the audience, rise cross to the "Jury box.")

CLERK OF COURT, *Continued*

(Reading)

Justus Dwight, Foreman
 Elijah Arms
 John Bannister
 Elijah Hubbard
 Jabez Nichols
 Samuel Partridge III
 Thomas Lyman
 Roland Blackmar
 Elijah Allen
 Asa Spaulding
 John Newton
 Jonathon Peterson

(JURORS are sworn in and seated; then PRISONERS.)

ATTORNEY GENERAL

(From Podium) May it please Your Honors... *(Nods to JUDGES)* ...and Gentlemen of the Jury... *(Nods to JURY)* Your situation, Gentlemen, is one of the most solemn to which men are ever called: the destinies of two of your fellow creatures are depending on your verdict, and, though you are selected and sworn to pass between the accused and the Commonwealth on a question of life or death, yet, you have this consolation...that you are sworn to try the issues according to the evidence.. Hence, Gentlemen of the Jury, if you shall find to your full satisfaction that the deceased came to his death in either of the ways that have been heretofore specified...you will be authorized to find a verdict of conviction upon this indictment.

Marcus Lyon, at the time he was murdered, was returning from Cazenovia in the state of New York to his friends in Connecticut. On the ninth of November, he was seen travelling on the turnpike road that runs from Springfield to Boston, and that evening, he was found dead in Wilbraham. The circumstances which led to this discovery may shed some light on the subject and enable you to form more clear conceptions of the evidence to be introduced. On Saturday, the ninth of November, John Bliss, who lives in that neighborhood, was informed that a horse was in his pasture, saddled and bridled. He sent his boy to fetch him and believing the horse was owned by strangers, tied him by the side of the road. The next day no one appeared to claim the horse and Mister Bliss became anxious and suspected that the owner of the horse had been killed. There was a portmanteau and valise on the horse. Mister Bliss examined it with friends and found in it some articles of clothing and letters written to people who lived in Woodstock Connecticut...entrusted to one Marcus Lyon for their conveyance. At Sunday noon, a search was made along the Chicopee River but nothing was discovered and when it became dark the party returned home.

Upon hearing that the guard and ramrod of a pistol had been found that morning a few rods west of the bridge that crosses a small brook which emptied into the Chicopee River, they returned with lanterns and torches about eight o'clock and again went in pursuit of a body.

ATTORNEY GENERAL, *Continued*

Five or six rods from the place where the guard and ramrod were found, near the edge of the river, a pistol was found and five or six feet distant from it...the body was discovered as some garments had risen to the surface of the water. The head lay toward the shore covered by a huge stone...the skull was broken on the back part and the forehead had the marks of violent blows. There was a contusion on one side...near the third rib which appeared to been produced by a bullet. It entered the flesh but did not lodge in the body. The whole complexion was such that Lyon could not have destroyed himself. His greatcoat and mittens were on and an impression in the ground remained where he had been drawn from the road to the river.

The turnpike runs near the river in which the body was concealed and it is on the side of a hill. There are no houses in view although there are some in the general vicinity. The place is shaded by thick woods and exhibits a very gloomy aspect...well suited to the perpetration of such a deed of darkness. There...the murder was probably committed and the evidence that the prisoners at the bar are guilty of the crime I will briefly state to you.

It will be proved by those who knew him and who saw the body after he was dead...that Marcus Lyon was the person killed and that the horse found in the pasture of Mister Bliss was his horse; that Lyon was at that place with the horse on Saturday the ninth of November not far from one o'clock in the afternoon; that the prisoners were there about the same time travelling from Boston to New York; that they were seen by Laertes Fuller, one leading and the other driving the same horse which Lyon rode; that they were five days, from Tuesday to Saturday, in coming to Wilbraham from Boston...a distance of eighty miles and but a little more than two days in going thence to Cos Cob Landing in Connecticut, a distance of one hundred and thirty miles; that for several miles before they arrived where the tragedy was acted, their pace was moderate and that, immediately afterward, was so rapid that the sweat rolled from their faces in profusion; that they had pistols and holsters in their greatcoats,; that these I now show you, are the pistols which one or the other purchased from a Mister Syms at Boston under circumstances deemed suspicious and that some of the money that the deceased brought with him from Cazenovia was found in the possession of Halligan at the time he was arrested by the officer at Cos Cob.

These, Gentlemen of the Jury, are the facts which we expect to prove. If they produce in your minds a full conviction of the prisoners' guilt, you will pronounce them GUILTY. If not, you will be happy in returning a verdict of acquittal.

(ATTORNEY GENERAL sits briefly then rises to call WITNESS.)

ATTORNEY GENERAL, *Continued*

John Bliss.

(WITNESS BLISS approaches bench, is sworn in and seated.)

BLISS

On November the ninth of November last, standing in my door, Jeremy Bliss informed me that a horse was in my pasture with a saddle and bridle on. I sent my boy to bring him up and he appeared to be a strange horse with a small pair of saddlebags on him. I opened them and

BLISS, *Continued*

found some clothing and some bread and cheese. I then tied him by the road on that people might see him as they passed...but nobody called for him. On Sunday morning I found him still in my pasture and at ten o'clock I grew more and more uneasy. My brother came in who lived up the road at the tavern and said...

DEFENSE COUNSEL

(Rises to object) You must not tell what your brother said...

ATTORNEY GENERAL

Did you open the saddlebags?

BLISS

I did.

ATTORNEY GENERAL

Did you find any letters?

BLISS

I did in the valise.

ATTORNEY GENERAL

Did you read them?

BLISS

Not at that time.

ATTORNEY GENERAL

Where were they dated?

BLISS

At Cazenovia.

ATTORNEY GENERAL

What was the date?

BLISS

The fourth of November.

ATTORNEY GENERAL

What was written on the outside?

BLISS

By Marcus Lyon.

ATTORNEY GENERAL

How far is it to Cazenovia?

BLISS

About two hundred and thirty miles.

ATTORNEY GENERAL

How far is it from Albany?

BLISS

A hundred miles.

ATTORNEY GENERAL

Did anyone ever claim the horse?

BLISS

Never.

ATTORNEY GENERAL

What became of him?

BLISS

I delivered him to Jeremy Bliss.

ATTORNEY GENERAL

To whom did you deliver the saddlebags?

BLISS

To the Jury of Inquest.

ATTORNEY GENERAL

How long was the horse in your custody?

BLISS

From Saturday to Sunday evening.

ATTORNEY GENERAL

Was the saddle partly turned when he was found?

BLISS

It was.

ATTORNEY GENERAL

You are dismissed.

(BLISS exits the witness chair.)

CLERK OF COURT

(Calls next WITNESS) Moses. K. Bartlett. (Swears in WITNESS)

BARTLETT

On Sunday evening I went down to John Bliss's house with several others. I had seen the horse tied by the road and had heard much talk on the subject. While we were there, Pliny Bliss came in with a ramrod and guard and told us where he had found them. We suspected that some person had to be murdered and five or six of us went back there to look for the body with lanterns and torches. I went between the turnpike and river. Pliny Bliss was a little back of me and he found a pistol and we then thought the body must be nearby. I saw a stone at the edge of the water and then immediately saw the greatcoat which lay partly out of the water and under it we found the body. The head was towards the shore with a large stone covering it. The face was downward and covered with water six or eight inches deep. We then took the body and carried it to Mister Calkins.

ATTORNEY GENERAL

How large was the stone?

BARTLETT

It weighed sixty-five pounds.

ATTORNEY GENERAL

Did you find Lyons' hat?

BARTLETT

We found an oil cloth hat about eight rods from the bridge.

ATTORNEY GENERAL

Saw you wounds upon the body?

BARTLETT

I did.

ATTORNEY GENERAL

Where were they?

BARTLETT

On his head and over his right eye.

ATTORNEY GENERAL

Were his mittens on?

BARTLETT

They were.

ATTORNEY GENERAL

How far is this place from the turnpike?

BARTLETT

Five or six rods. The body was drawn a little downstream.

ATTORNEY GENERAL

Were there any marks?

BARTLETT

There were.

ATTORNEY GENERAL

What marks?

BARTLETT

There was underbrush between the road and the river and the small alder trees were bent and turned partly around.

DEFENSE COUNSEL

(Cross Exam) Did the same man find both the pistols?

BARTLETT

He did not. Pliny Bliss found the first.

DEFENSE ATTORNEY

Did you see him find it?

BARTLETT

I did not. He stood behind me when he found it. I then looked back and saw it.

DEFENSE ATTORNEY

Who found the other?

BARTLETT

Enos Rider.

DEFENSE COUNSEL

(Points to PRISONERS) Are these the men who found the ramrod and guard?

BARTLETT

They are not.

DEFENSE ATTORNEY

Who directed you to this place?

BARTLETT

Nobody. *(Is dismissed and step down)*

CLERK OF COURT

The Court calls Doctor Samuel F. Merrick to the stand.

(WITNESS is sworn in and seated.)

DOCTOR MERRICK

On Monday evening the eleventh of November, I was called upon by the Jury of Inquest and went to Mister Calkin's home where they were sitting and where the body was. Over the right eye was a hole to the skull but the bone was not fractured. On the left part of the head was another wound very similar but the bone was not injured. On the back part of the head, rather to the right side, the skull was badly broken. I applied a common probe and it went in the whole length without any obstruction.

ATTORNEY GENERAL

Did it enter the brain?

DOCTOR MERRICK

Without doubt. It was mentioned that a pistol had been found but those wounds were not produced by a bullet. On his right side, against the third rib from the bottom of the rib cage...just there...I observed a bullet hole and done of the Jury picked up the ball.

ATTORNEY GENERAL

Did you see him pick it up?

DOCTOR MERRICK

I did not. They wished to have the body opened to see if it entered. We opened it but it did not penetrate beyond the rib. It struck directly against it.

ATTORNEY GENERAL

Did the bullet suit the pistol?

DOCTOR MERRICK

It did not. It was too small.

ATTORNEY GENERAL

Would the wounds have been mortal?

DOCTOR MERRICK

Immediately. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Robert Staunton to the stand. *(Sworn in)*

ATTORNEY GENERAL

Were you at the Coroner's Inquest?

STAUNTON

I was.

ATTORNEY GENERAL

Did you know the body of the deceased?

STAUNTON

I did. I was the guardian. I heard that a man had been killed whose name was Lyon and went in great haste to see and was admitted into the room where the Jury was sitting.

ATTORNEY GENERAL

Where do you live?

STAUNTON

In Monson.

ATTORNEY GENERAL

How old was he?

STAUNTON

Nearly twenty- three years.

ATTORNEY GENERAL

Where did he live?

STAUNTON

In Woodstock Connecticut. I lived by him until he was twenty and then moved to where I now live.

ATTORNEY GENERAL

When did he move to Cazenovia?

STAUNTON

A year since last March.

ATTORNEY GENERAL

What was his occupation?

STAUNTON

\He was a farmer.

ATTORNEY GENERAL

Was he robust?

STAUNTON

Very.

ATTORNEY GENERAL

Did you know the body of the deceased?

STAUNTON

Very.

ATTORNEY GENERAL

Did you certainly know him?

STAUNTON

I did.

ATTORNEY GENERAL

Had he a horse when he went away?

STAUNTON

He had.

ATTORNEY GENERAL

Was that his horse that was found in Wilbraham?

STAUNTON

I did not see him.

ATTORNEY GENERAL

Had Lyon saddlebags?

STAUNTON

He had.

ATTORNEY GENERAL

Were those his that were found in Wilbraham?

STAUNTON

They were.

ATTORNEY GENERAL

Where did you see them?

STAUNTON

In the hands of one Gordon. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Marvel Underwood to the stand. *(Sworn in)*

ATTORNEY GENERAL

Were you acquainted with Marcus Lyon?

UNDERWOOD

I was.

ATTORNEY GENERAL

When saw you him last?

UNDERWOOD

The fourth of November, on Monday evening in Cazenovia.

ATTORNEY GENERAL

Where was he going?

UNDERWOOD

To Woodstock.

ATTORNEY GENERAL

Did he ride?

UNDERWOOD

He did. He rode a light bay mare.

ATTORNEY GENERAL

Brought from Woodstock?

UNDERWOOD

She was...but I kept her during the summer.

ATTORNEY GENERAL

Where have you seen her since?

UNDERWOOD

At Woodstock with his brother.

ATTORNEY GENERAL

Did he have saddlebags when he left your house?

UNDERWOOD

He had.

ATTORNEY GENERAL

Were the saddlebags found at Wilbraham his?

UNDERWOOD

They were.

ATTORNEY GENERAL

Are you sure?

UNDERWOOD

I am.

DEFENSE COUNSEL

What is the distance from Cazenovia to Woodstock?

UNDERWOOD

It is one hundred seventy miles to Albany. I don't know how far to Woodstock. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth calls Jesse Farnum to the stand. (*Sworn in*)

FARNUM

On Sunday the tenth of November in the forenoon I was walking on the turnpike going to Mister Calkins house. A few rods west of the bridge, I found the guard of a pistol newly broken. I washed off the mud and carried it along in my pocket. And about three feet distant, I found a ramrod and carried both of them home.

ATTORNEY GENERAL

(*Shows evidence*) Are these the guard and ramrod you found?

FARNUM

They are.

ATTORNEY GENERAL

You delivered them to the Sheriff?

FARNUM

I did.

ATTORNEY GENERAL

Had you then heard of any murder?

FARNUM

I had not. I supposed they had been lost by somebody.

ATTORNEY GENERAL

Where was your home?

FARNUM

At Gideon Kings... a mile distant.

ATTORNEY GENERAL

How come you to go to Mister Calkins?

FARNUM

I went to see them.

ATTORNEY GENERAL

Had you any suspicions of a murder?

FARNUM

I didn't. A little after sunset, Mrs. King said she had heard that a horse had been found at the Blisses and did not know but somebody had been killed. I went down Mister Calkins and left the guard and ramrod in my coat pocket at home and saw them the next morning in the hands of Pliny Bliss.

ATTORNEY GENERAL

What time did you find the guard?

FARNUM

Not far from twelve o'clock.

ATTORNEY GENERAL

Where did it lie?

FARNUM

About three feet off the road.

ATTORNEY GENERAL

Was it plainly to be seen?

FARNUM

It was.

ATTORNEY GENERAL

Did it rain Sunday morning?

FARNUM

Very hard.

ATTORNEY GENERAL

Was the mud in which the guard lay occasioned by the heavy rain?

FARNUM

It was. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Pliny Bliss to the stand. *(Sworn in)*

PLINY BLISS

On the tenth of November I was at my brothers...John Bliss. He told me about the horse and showed me the saddle and saddlebags. They were very handsome...almost new. He opened the valise and found some letters as my brother has stated.

ATTORNEY GENERAL

What was the writing?

PLINY BLISS

“Favoured by the politeness of Marcus Lyon.” I went home and told the circumstances to some of my neighbors. We decided to go down to the river and look around and when he arrived there, we found several others who had been making search...Mister Fuller among the rest. We walked along by the stream but could discover nothing. It grew dark and we continued to look until seven o’clock when we gave up. As I was going to bed, some of my family told me what had been found. I then brought the ramrod and guard to my brother’s house where many people were talking on the subject and I told them the whereabouts I had found them. We procured lanterns and torches and went again in search of the body. Near the place where they were found, Mister Bartlett went down to the river before me with a lantern and I followed with a torch. Very near the river, between him and me, I found a pistol between the high and low water mark with some hair sticking to it. It was lying by itself and was on the sand some five or six feet from the water. Mister Bartlett and I then saw the body...I don’t recollect who saw it first. It lay as Mister Bartlet has described. We then called fourteen other neighbors and carried the body to Mister Calkin’s house.

ATTORNEY GENERAL

What did you do with the pistol?

PLINY BLISS

Gave it to the Sheriff.

ATTORNEY GENERAL

Should you know it?

PLINY BLISS

I should.

ATTORNEY GENERAL

(Shows pistol) Is this it?

PLINY BLISS

It is.

ATTORNEY GENERAL

Where was the hair?

PLINY BLISS

In the head of the screw-pin that holds on the lock.

ATTORNEY GENERAL

How far was the pistol from the path of the highway?

PLINY BLISS

Four or five rods

ATTORNEY GENERAL

Was the stock so broken when you found it?

PLINY BLISS

It was.

ATTORNEY GENERAL

Had the body been drawn along?

PLINY BLISS

It had...I think.

ATTORNEY GENERAL

What was the appearance?

PLINY BLISS

It was as if you had drawn a log through a thickness of bushes. The mud was so impressed and the low alders were bent towards the river.

ATTORNEY GENERAL

What was the weather on Saturday?

PLINY BLISS

Cloudy. Sunday morning it rained.

ATTORNEY GENERAL

Saw you the tracks of men?

PLINY BLISS

I do not recollect particularly. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth recalls M. K. Bartlett to the stand. (*Sworn in*)

ATTORNEY GENERAL

Did you observe any tracks along where the body was drawn?

BARTLETT

I did.

ATTORNEY GENERAL

Of how many?

BARTLETT

I don't know.

DEFENSE COUNSEL

(Cross Exam) Were they on one side or the other?

BARTLETT

In the place where the body was drawn.

DEFENSE COUNSEL

Was the ground very wet?

BARTLETT

It was...and in some places the rain had effaced the footsteps entirely.

DEFENSE COUNSEL

Did you observe any mud on the hat?

BARTLETT

I did not. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Enos Rider to the stand. *(Sworn in)*

ATTORNEY GENERAL

Did you find a pistol near this place?

RIDER

I did...on Wednesday the thirteenth of November.

ATTORNEY GENERAL

Is this the one? *(Holds up pistol)*

RIDER

It is.

ATTORNEY GENERAL

What did you do with it?

RIDER

Carried it to Springfield and then gave it to the Sheriff.

ATTORNEY GENERAL

Where did you find it?

RIDER

Between the road and the river where Lyon was killed.

ATTORNEY GENERAL

Did you observe anything further?

RIDER

Nothing except the track where the body had been dragged along.

ATTORNEY GENERAL

Had the pistol been shot?

RIDER

It had. The inside was black and the pan was open and the cock was forward.

ATTORNEY GENERAL

Are there any Cavalry about there?

RIDER

There are. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth recalls John Bliss to the stand.

DEFENSE COUNSEL

How far from your house is the pasture where the horse was discovered?

JOHN BLISS

One hundred and twenty rods in the road...eighty in a direct course.

DEFENSE COUNSEL

Could they have seen your house from the barn at which the horse was put into the pasture?

JOHN BLISS

They could.

DEFENSE COUNSEL

(Addresses JUDGES) We can prove, your Honors, that within three or four miles from this place a robbery had been committed. That trunks had been taken from the stage-coach as it was passing. That the drivers always feel apprehensive of danger when they are near and check out their arms in order for defense before they attempt to pass through this tract of land and...with submission to the Court...we beg leave to introduce this testimony.

JUDGE SEDGEWICK

Such evidence cannot be permitted...for unless this murder be proved upon the prisoners...they will be acquitted.

DEFENSE COUNSEL

But...may it please Your Honor...may we not introduce presumptive testimony to counteract presumptive testimony? Such testimony the government has and such is that we offer.

JUDGE SEDGEWICK

The testimony you offer has no relation to the present case. You leave that under consideration for another that is foreign and if it be proper for you to go into this evidence. It will be proper for the government to go into evidence to prove the prisoners have been guilty of crimes heretofore. This could NOT be allowed.

CLERK OF COURT

The Commonwealth calls John Powers to the stand. (*Sworn in*)

ATTORNEY GENERAL

Did you see the prisoners on Saturday the ninth of November?

POWERS

I did...about twelve rods west of the bridge and seventy of the place where Lyon was killed.

ATTORNEY GENERAL

Are you sure these are the men?

POWERS

I am.

ATTORNEY GENERAL

What did they say to you?

POWERS

They asked me how far it was to Wilbraham and how far to a tavern. I told them and passed on.

ATTORNEY GENERAL

Saw you them the week after?

POWERS

I saw them.

ATTORNEY GENERAL

Had you any doubt that they were the same men you met?

POWERS

I had not.

ATTORNEY GENERAL

How knew you them?

POWERS

By their countenance...especially Daley.

ATTORNEY GENERAL

Did you observe a handkerchief?

POWERS

I did. They had some clothes tied up in it and that handkerchief was taken from them when they were brought back to Springfield.

ATTORNEY GENERAL

How did you know the time of day...the weather being cloudy?

POWERS

When I passed by John Bliss's house, he stood in the door and I asked him the time of day. He looked at his clock and told me.

ATTORNEY GENERAL

Did they look nervous?

POWERS

No.

DEFENSE COUNSEL

(Cross Exam) Did you observe them attentively?

POWERS

I did.

DEFENSE COUNSEL

How near?

POWERS

As I am to you...three or four feet.

DEFENSE COUNSEL

Did they wear their hats low?

POWERS

Low...as usual.

DEFENSE COUNSEL

What marks did you observe?

POWERS

Those that the smallpox had made on their faces. They were pitted.

DEFENSE COUNSEL

How were they dressed?

POWERS

Daley had on the greatcoat he now wears. Halligan had none on. He wore a blue jacket.

DEFENSE COUNSEL

Did they walk fast?

POWERS

Not very.

DEFENSE COUNSEL

How long would it have taken them to go to the place where Lyon was killed?

POWERS

Five minutes.

DEFENSE COUNSEL

Did you hear the discharge of a pistol?

POWERS

I did not. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth calls Thomas Stebbins to the stand. (*Sworn in*)

STEBBINS

On the evening of the eighth of November, coming from Boston, I put up at Dwight's Tavern in Weston about seven or eight o'clock. The prisoners and two other men were there. They wore their greatcoats during the evening while I was there and after an hour they went to bed and I went also and slept in the same chamber with them. They awoke at daybreak and inquired of me the way to Springfield. Half an hour after they had set out I started and came on to Bates Store in Palmer at eleven o'clock. I had passed by them somewhere and they came up behind me.

ATTORNEY GENERAL

How far is it from the Bates store to where the body was found?

STEBBINS

Four miles and a half. I continued on and we stopped a moment at Russells and saw them again in Springfield near the Arsenal Hall at three or four o'clock.

ATTORNEY GENERAL

Did they walk fast?

STEBBINS

As fast as anybody would have walked.

ATTORNEY GENERAL

How fast did you walk?

STEBBINS

At the rate of four miles and a half an hour.

ATTORNEY GENERAL

Did you see Marcus Lyon?

STEBBINS

I do not know. I saw a man riding a fine horse at the Nine Mile Pond about a mile from the place where Lyon was found. He was leading his horse down a hill.

ATTORNEY GENERAL

Was that the horse you saw at Springfield when the prisoners were examined?

STEBBINS

It was. The horse had a very peculiar appearance.

ATTORNEY GENERAL

Did you observe his portmanteau?

STEBBINS

I did not.

ATTORNEY GENERAL

In whose possession was the horse at Springfield?

STEBBINS

Mister Williams.

ATTORNEY GENERAL

Did you observe the man who led him?

STEBBINS

I did.

ATTORNEY GENERAL

How far was it from the place where the man overtook you to the place where you met the man leading the horse?

STEBBINS

Nine miles.

DEFENSE COUNSEL

(Cross Exam) What did they say to you when they overtook you at Bates?

STEBBINS

That I must have passed them while they were at their breakfast. They seemed nervous.

DEFENSE COUNSEL

Had you a load in your wagon?

STEBBINS

I had.

DEFENSE COUNSEL

How far is it from Bates' to where they passed you?

STEBBINS

About fifteen miles.

DEFENSE COUNSEL

What color was the horse the man was leading?

STEBBINS

A reddish color. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Griffin Bailey to the stand. *(Sworn in)*

BAILEY

On Saturday between twelve and one o'clock I saw a man on the turnpike going east. I saw him near the Nine Mile Pond. He asked the way to Norcross and rode a bright bay horse. He had mittens on and wore a light colored greatcoat.

ATTORNEY GENERAL

Saw you Mister Stebbins?

BAILEY

I did. Coming from the east...and this man was riding from the west.

ATTORNEY GENERAL

When you saw Lyon after his death...did you know him to be the man you met?

BAILEY

I took him to be the same.

ATTORNEY GENERAL

Had he on the greatcoat you described?

BAILEY

The same or one very similar.

ATTORNEY GENERAL

What time was this?

BAILEY

About noon. An hour later I saw the two men pass by, each carrying a bundle on his shoulder. Daley is one of the men. I could not see the other's face.

ATTORNEY GENERAL

Have you no doubt but Daley is one of these?

BAILEY

I have not.

ATTORNEY GENERAL

Did they walk fast?

BAILEY

Faster than usual.

ATTORNEY GENERAL

Were they abreast?

BAILEY

Daley was a little before the other.

DEFENSE COUNSEL

(Cross Exam) Had they hats on?

BAILEY

They had.

DEFENSE COUNSEL

And the same clothes that they now wear?

BAILEY

If I mistake not...they had the same. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Thomas Glover to the stand. *(Sworn in)*

GLOVER

On the ninth of November I was at work at the blacksmith shop and saw a man ride past who had on a mixed coloured greatcoat which looked homemade. About an hour later I saw two men walking very fast to the westward. They wore brown greatcoats and one of them had a bundle and walked much faster than the other who had to hop to keep pace.

ATTORNEY GENERAL

Were the men the prisoners?

GLOVER

They appear to be.

ATTORNEY GENERAL

Was Marcus Lyon the man you saw first?

GLOVER

He was.

ATTORNEY GENERAL

Was the horse that you saw in Springfield at the Inquest the same that you saw him riding?

GLOVER

I think it was.

ATTORNEY GENERAL

What time did Lyon pass you?

GLOVER

Twelve or one o'clock.

ATTORNEY GENERAL

How far from the place where you work is it to where Lyon was killed?

GLOVER

About half a mile.

ATTORNEY GENERAL

No more than that?

GLOVER

No. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth calls Ebenezer Russell to the stand. (*Sworn in*)

RUSSELL

That same Saturday I was cutting timber by the road eight miles west of the place where Lyon was killed and I watched him pass me heading east about half-past twelve o'clock.

ATTORNEY GENERAL

Was the hat found the same that he wore?

RUSSELL

It looked like the same. Soon after I saw two men passing to the west. One carried a bundle in a blue handkerchief. They walked very fast and though it was so cold that we wore our mittens...they appeared very warm and kept wiping sweat from their brows.

ATTORNEY GENERAL

How did you know the time of day?

RUSSELL

A man came by who had a watch and told us the time and they had just passed by.

ATTORNEY GENERAL

Had they on the greatcoats as they now wear?

RUSSELL

They had. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Oliver Morris to the stand. *(Sworn in)*

ATTORNEY GENERAL

Tell us what you know.

MORRIS

On the ninth of November I saw two men passing at Springfield. They walked unusually fast and sweat profusely. When they were brought back...I immediately recognized Daley as being one of them. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Hubbard Bliss to the stand. *(Sworn in)*

H. BLISS

On the same day I saw them in Springfield turning the corner by Mister Dwight's store. Indeed, I saw them at some distance as they were coming down the road. I observed that they travelled fast and sweat very much and appeared to take no notice of anything and hardly turned their heads. I have no doubt but these are the men. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth recalls Mister Bartlett to the stand. *(Sworn in)*

ATTORNEY GENERAL

Did you see the hat which was found?

BARTLETT

I did.

ATTORNEY GENERAL

Was there a name in it?

BARTLETT

The manufacturer's name was in it.

ATTORNEY GENERAL

Was Lyon's name in it?

BARTLETT

It was not. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth calls John Dewey to the stand. (*Sworn in*)

DEWEY

Coming from Monson on the stage road by Captain Shearer's house, one quarter of a mile east of Sikes', I met a man on horseback. I imagine it was about ten o'clock. Five miles west of Sike's house I saw two men coming rapidly up the road. They overtook me at Landlord Russell's house. They had greatcoats on but I don't know for sure that these are the same men.

ATTORNEY GENERAL

Did you ever see Marcus Lyon?

DEWEY

Never.

ATTORNEY GENERAL

Did you recollect ever seeing the horse before...when you saw him at Springfield?

DEWEY

I did. He looks like the horse the man rode whom I met...but I am not certain. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth calls Laertes Fuller to the stand. (*Sworn in*)

DEFENSE COUNSEL

(*To JUDGES*) May it please your Honors...we object! The witness is not yet fourteen years of age and is...therefore...incompetent.

JUDGE SEWALL

The qualifications of a child may be far more correctly ascertained from his answers on the stand and from the manner of his giving them. This Court will permit his testimony.

ATTORNEY GENERAL

(To WITNESS) Where do you live?

FULLER

In Wilbraham.

ATTORNEY GENERAL

How far from the place where the murder was committed?

FULLER

About thirty rods

ATTORNEY GENERAL

Where were you the ninth of November?

FULLER

At home.

ATTORNEY GENERAL

What were you doing?

FULLER

Not much of anything.

ATTORNEY GENERAL

How far from home did you go that day?

FULLER

I went near the place where the body of Marcus Lyon was found.

ATTORNEY GENERAL

Go on and state what you saw.

FULLER

About one o'clock I saw two men on the turnpike walking west. They passed on and left my sight. In a few minutes I saw them coming back...one leading and the other driving a horse and they turned up the old road. I followed them and when they were at the top of the hill...one of them stopped and the other jumped on the horse and rode him off. I climbed over the stone wall and went to get apples under a tree. One of them came up to the wall...leaned over it and stared at me. I then ran home and left him there.

ATTORNEY GENERAL

How far were they from you when you first saw them there?

FULLER

Ten or twelve rods.

ATTORNEY GENERAL

How far is this from the place where Lyon was killed?

FULLER

Five or six rods.

ATTORNEY GENERAL

Did they come towards you at the top of the hill?

FULLER

They did not.

ATTORNEY GENERAL

Why did you run?

FULLER

Because I was cold

ATTORNEY GENERAL

Did you observe the horse?

FULLER

I did not pay him much mind.

ATTORNEY GENERAL

What colour was he?

FULLER

A reddish color.

ATTORNEY GENERAL

Did you see him afterward?

FULLER

I saw him in John Bliss's pasture.

ATTORNEY GENERAL

Are you sure you saw the same horse?

FULLER

I am.

ATTORNEY GENERAL

\Which one was driving the horse?

FULLER

Daley.

ATTORNEY GENERAL

How far distant was he from you when he looked over the rail?

FULLER

Five or six rods.

ATTORNEY GENERAL

What clothes had he on?

FULLER

A brown greatcoat.

ATTORNEY GENERAL

Had the horse a good saddle on his back?

FULLER

He had.

ATTORNEY GENERAL

Had he a good portmanteau?

FULLER

It looked almost new.

ATTORNEY GENERAL

Did you see Halligan's face?

FULLER

I did not.

ATTORNEY GENERAL

What time did you dine that day?

FULLER

About half after twelve o'clock.

ATTORNEY GENERAL

How far were you from the place where the horse was found?

FULLER

Almost half a mile.

ATTORNEY GENERAL

Had they anything in their hands?

FULLER

The one who stopped at the wall had a bundle in a blue handkerchief.

ATTORNEY GENERAL

Are you sure that that was Daley?

FULLER

I am.

ATTORNEY GENERAL

When they were brought back to Springfield did you select him as the man among a number of men?

FULLER

I did.

DEFENSE COUNSEL

(Cross Exam) How far distant did you say they were when you first saw them?

FULLER

Eight or ten rods.

DEFENSE COUNSEL

When Daley stopped what did the other do?

FULLER

Rode the horse off.

DEFENSE COUNSEL

How far distant were they then?

FULLER

Five or six rods.

DEFENSE COUNSEL

How came you there?

FULLER

I went after some hogs.

DEFENSE COUNSEL

Why did you run after these men?

FULLER

I was after the hogs...and the men too.

DEFENSE COUNSEL

Can you see the road where the men were from your house?

FULLER

I cannot.

DEFENSE COUNSEL

What were they doing when you saw them the second time?

FULLER

Leading the horse.

DEFENSE COUNSEL

How long was it from the time you first saw the men to the time you saw them leading the horse?

FULLER

Fifteen minutes.

DEFENSE COUNSEL

When did you fix the time in your mind...at that moment?

FULLER

Yes, sir.

DEFENSE COUNSEL

Were they the same men you had seen before?

FULLER

I don't know.

DEFENSE COUNSEL

How far is your father's house from the place where Marcus Lyon was killed?

FULLER

Ninety rods.

DEFENSE COUNSEL

The first time you saw the two men...had they a bundle in their hands?

FULLER

I don't know.

DEFENSE COUNSEL

Did you hear the discharge of a pistol?

FULLER

I did not.

DEFENSE COUNSEL

Did you notice Halligan particularly?

FULLER

I did not.

DEFENSE COUNSEL

Did Daley have his hat on when he looked at you over the fence?

FULLER

He had. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Doctor Merrick to the stand. *(Sworn in)*

ATTORNEY GENERAL

What was the testimony of this boy before the Jury of Inquest?

MERRICK

Very similar to his testimony here. However, he did not state that he saw the two men from his father's house before he saw them with the horse. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls George Bliss to the stand. *(Sworn in)*

ATTORNEY GENERAL

Were you, sir, at the examination of the two men before the Justices?

G. BLISS

I was and the testimony of this lad is the same that it has been here except in the particular mentioned by Doctor Merrick. Of that he was not asked.

ATTORNEY GENERAL

I see. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Abraham Fuller to the stand. *(Sworn in)*

ATTORNEY GENERAL

Did your son state to you this story, which he told here, on the Sunday following?

MISTER A. FULLER

He did. When the horse that had been found was spoken of...he told what he had seen the day before.

ATTORNEY GENERAL

How far from your house is it to the place of Lyon's death?

MISTER A. FULLER

Ninety rods. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth calls Edward Syms to the stand. (*Sworn in*)

ATTORNEY GENERAL

Are these the pistols that you sold?

SYMS

I believe they are.

ATTORNEY GENERAL

Why do you believe them to be the same?

SYMS

Because they have the same mark on the barrel.

ATTORNEY GENERAL

When did you sell them and to whom?

SYMS

Sometime in the month of October last, between the twentieth and the thirtieth a man came into our store to purchase hold-fasts for timber and asked the price of our pistols. The clerk told him seven dollars. He said he would give six and a half. My curiosity was a little excited because it is very unusual for a person of his appearance to inquire about such an article and I came in from the other end of the store. As the barrels were dull and unfit for horsemen...I told him he might take them.

ATTORNEY GENERAL

Where do you have your store?

SYMS

In Boston.

ATTORNEY GENERAL

Do you know the man to whom you sold them?

SYMS

I do not.

ATTORNEY GENERAL

What was his dress?

SYMS

He had on a drab greatcoat. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth calls Charles Clark to the stand. (*Sworn in*)

ATTORNEY GENERAL

Are these the pistols you sold?

CLARK

They are like them. The maker's name on the cock and the figure on the barrel are the same as on those we sold.

ATTORNEY GENERAL

Do you know to whom you sold them?

CLARK

I do not...but the man talked like one of those Irishmen.

ATTORNEY GENERAL

What was his height?

CLARK

About the size as that of the prisoners.

ATTORNEY GENERAL

Why are you able to recollect?

CLARK

Because I noticed him particularly. It is uncommon for a laboring man to buy pistols. Had he been a seaman I should have thought nothing of it.

ATTORNEY GENERAL

Is either of the prisoners the man who bought them?

CLARK

I cannot say. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth calls Dan Stebbins to the stand. (*Sworn in*)

ATTORNEY GENERAL

Tell us what you know.

STEBBINS

On Saturday the ninth of November, as I was passing with a wagon in the north part of Wilbraham near the turnpike gate, I met two men. My horses became perplexed and detained me a little time. After I had passed the gate...I heard the report of a gun in the southwest.

ATTORNEY GENERAL

How far was the gate from the place of Lyon's death?

STEBBINS

I don't know.

ATTORNEY GENERAL

Did you observe the men?

STEBBINS

I did not.

(ATTORNEY GENERAL returns to his seat.)

DEFENSE COUNSEL

(Cross Exam) Was there not a squirrel hunt on that day in Wilbraham?

STEBBINS

There was. *(Dismissed; steps down)*

CLERK OF COURT

The Commonwealth calls Jeremy Bliss to the stand. *(Sworn in)*

ATTORNEY GENERAL

(Rises) Tell us what you know.

JEREMY BLISS

On the ninth of November I was at the blacksmith's shop of Thomas Glover in Wilbraham. While I was there I saw a man pass by toward the well with a flock of sheep. Soon after I saw two men passing in the same direction. They walked very fast and I could not see their faces.

ATTORNEY GENERAL

What time of day was this?

JEREMY BLISS

About one o'clock. Some time later in the afternoon as I was going by John Bliss's house, I saw a horse in his lot with the saddle on. I called out to him and told him about it.

ATTORNEY GENERAL

Did you see the same horse in Williams' stable in Springfield at the Inquest?

JEREMY BLISS

I did.

ATTORNEY GENERAL

Did you point him out among a number of horses to Ithabar Stebbins?

JEREMY BLISS

I don't recollect that he was there.

ATTORNEY GENERAL

Did you...to anybody?

JEREMY BLISS

I did. Sunday morning, after the body was found, I rode the horse to Springfield. I agreed to go in company with Mister Bardwell in pursuit of the persons who had been seen passing the Saturday before. About two o'clock on Monday morning, we started and by inquiry, learned which way they had gone. We passed as far as Cos Cob Landing in Greenwich Connecticut. While they were waiting for a boat to carry them to New York...we overtook them. Halligan was sitting on the stoop of a public house and Daley was shaving himself. This was on Tuesday morning. We brought them back to Springfield.

ATTORNEY GENERAL

How far is it from the place where the body of Marcus Lyon was found to the turnpike gate?

JEREMY BLISS

A little more than a quarter of a mile. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth calls Josiah Bartlett to the stand.

ATTORNEY GENERAL

Tell us what you know.

BARDWELL

On Monday morning after the murder in Wilbraham...about two o'clock in the afternoon...I went in pursuit of the prisoners. We heard of them at the lower ferry and in Suffield. At Hartford we were delayed two hours before we could obtain any information where they stopped or what course they had taken. We pursued them to New Haven. Here we were delayed nearly three hours before we could learn anything further about them. About four o'clock we were informed that they had been seen on the road to New York. We went to Bridgeport that night and arrived at Norwalk by sunrise and reached Cos Cob Landing between nine and eleven o'clock where we found the prisoners. Halligan was sitting as has been mentioned. I asked him if there was a packet going to New York. He answered that one was leaving in two hours. I asked him if he was a passenger. I asked him if he belonged to these parts and he replied that he came from Boston. Halligan joined him and then they went into the kitchen.

We immediately followed them and disclosed our business and told them we had warrants for both of them. Daley asked for what. I answered "for murder." We secured and searched them and found in their pockets one dollar and fifty cents in silver and twenty dollars in bank bills. There was one five dollar bill of a Nantucket bank and a seven dollar bill of a Saco bank, a three dollar bill of a Newburyport bank and a one dollar bill of a Bristol bank. They also had some clothing tied up in a handkerchief. When we returned to Norwalk we searched them

BARDWELL, *Continued*

again and discovered in the inside of their greatcoats deep and narrow pockets sewn into the lining. At the top they were sufficiently large to receive your hand and at the bottom very narrow. I asked them the use of these pockets and they said they were designed to carry their bottle. I then inquired of them what day they had left Boston and they answered on the Tuesday preceding about noon. (*Coughs and blows nose*)

ATTORNEY GENERAL

Proceed.

BARDWELL

They gave a regular account of their journey from Boston and the places they were on each day...except for Saturday. Neither could recollect anything about that day...through what towns they passed nor any place they stopped at. They could not recollect when or how they crossed the ferry at Springfield which was the only ferry they crossed on their entire route.

(*ATTORNEY GENERAL returns to his seat.*)

DEFENSE COUNSEL

(*Cross exam*) How far is it from Wilbraham to Cos Cob Landing?

BARDWELL

Almost one hundred and twenty miles.

JUDGE SEDGEWICK

Did you ask the prisoners why they travelled so fast?

BARDWELL

I did. I asked them how it happened that they were from Tuesday to Saturday afternoon coming from Boston to Wilbraham...between eighty and ninety miles...and that from Saturday to Tuesday morning they had travelled so much faster as to get to Cos Cob Landing. They did not give me any reason. Daley told me that he had money due him in New York and that he was going after it. Halligan said that he was going there to see a cousin. (*Dismissed; steps down*)

CLERK OF COURT

The Commonwealth recalls Marvel Underwood to the stand. (*Sworn in*)

ATTORNEY GENERAL

Did you see any money in the hands of Marcus Lyon before he left your home in Cazenovia?

UNDERWOOD

I did. The night before he left my home he showed me his money. He had about twenty-four dollars. Fourteen dollars of it were in bills. He had a seven dollar bill of a Saco bank, a three dollar bill of a Newport or Newburyport bank, a two dollar bill of a Rhode Island bank and two one dollar bills. One of them was of the Farmer's bank and the other of Manhattan or Bristol.

JUDGE SEWALL

Do you describe these bills from your own recollection?

UNDERWOOD

I do.

ATTORNEY GENERAL

Have you seen the bills in the hands of the Sheriff?

UNDERWOOD

I have not. I wrote a letter as soon as I heard of the death of Marcus Lyon in which I described the bills he had with him.

ATTORNEY GENERAL

How long had Lyon been with you before he set out on this journey?

UNDERWOOD

He came to my house about the first of April.

ATTORNEY GENERAL

You are dismissed.

(ATTORNEY GENERAL returns to his chair and rearranges some papers; UNDERWOOD steps down from the stand. After a few moments the ATTORNEY GENERAL confidently strides forward, rubbing his hands together to present the Summary.)

ATTORNEY GENERAL

The Commonwealth has now introduced all of the evidence we have gathered. If you are prepared to say, on the basis of the evidence, that the prisoners killed the deceased... they are GUILTY of the crime with which they have been charged. Or...that if either of them inflicted the blows or immersed the body by reason of which Marcus Lyon died and that the other was present...siding abetting or encouraging...they are BOTH murderers in the eyes of law and you are bound by your oath to pronounce them guilty.

(ATTORNEY GENERAL glares at PRISONERS then returns to his seat. PRISONERS sit with heads bowed while JURY stares at them. A long silence ensues before DEFENSE COUNSEL rises to present his summary. He appears extremely nervous. He shuffles papers in his hand; nods to JUDGES.)

SCENE II

(DEFENSE COUNSEL rises. He appears extremely nervous. He shuffles papers in his hands then nods to JUDGES.)

DEFENSE COUNSEL

May it please Your Honors...the Defense has no witnesses to present.

(DEFENSE COUNSEL clears his throat, coughs, sips water and clears his throat again then addresses the JURY.)

DEFENSE COUNSEL, *Continued*

You are called upon...Gentlemen of the Jury... *(Coughs again; clears throat)* ... to discharge one of the most important and solemn duties which can ever befall a jury. You are required to decide between the Commonwealth and two unfortunate creatures whose lives are demanded as a sacrifice to the violated laws of God and your country. *(Clears throat)* I read in your faces your deep anxiety. I believe all of you would cheerfully back away from the performance of the awful task assigned to you in the solemnities of this day. But...your country DEMANDS...and you are bound to submit.

(DEFENSE COUNSEL silently paces before JURY.)

DEFENSE COUNSEL, *Continued*

As painful and distressing is your situation, you will readily imagine that mine cannot be less critical and embarrassing than yours. For the very FIRST time in my life...I appear as an advocate for the life of a fellow creature! For the very FIRST time in the course of my professional employment as an attorney...I have the honour to address a jury of this County! It is the very first time I have ever spoken in the presence of so large and interested an audience. *(Clears throat, crosses to desk, sips water and coughs again)* To complete my embarrassment, I am afflicted, as you have perceived, with a severe cold which has affected my voice and which denies me the power of utterance. I had tried to transfer this deep responsibility and trust to another person connected with me in the defense of the prisoners but this was not possible and now I am compelled to claim your indulgent attention to my feeble effort to plead for the lives of two of our most wretched fellow creatures. Due to these problems, Gentlemen of the Jury, I suggest to you that I do not have much hope for my unfortunate clients. Their destiny is committed to an upright, intelligent. And...I trust in God...to an unprejudiced jury. This jury is...YOU!

With these preliminary remarks...I proceed to consider the indictments submitted to your decision. By this indictment, the prisoners...Dominic Daley and James Halligan...are charged in two separate counts with the murder of Marcus Lyon. I readily assent to the principle advanced by the learned Counsel for the Commonwealth that every person who is present, siding, abetting or advising in the commission of a murder is to be considered as a principal; is equally guilty and is punishable in the same degree with him by whom the mortal blow was actually given. If, therefore, the facts charged in either of the counts are proven to your satisfaction...you are bound to render a verdict against both the prisoners.

Before I begin a review of the evidence presented to you...I must beg the indulgence of the Court...and your patient indulgence...for a few remarks which I humbly hope may be permitted to offer relative to the state of public mind and the popular opinion of this interesting case which is this day submitted to your consideration. *(Pause; turns to look at JUDGES; sips water, clears throat; coughs)*

JUDGE SEWALL

(Nods) Proceed.

DEFENSE COUNSEL

I need not describe to you the ALARM...the APPREHENSION...the INDIGNATION...the ABHORENCE that this community has been subjected to since there was done this deed of dreadful note. You have been convened from this County...some of you perhaps from the vicinity of the very spot which was the scene of this tragedy. Some of you may have seen the mangled body of the deceased and felt the horror which such a spectacle would inspire. It would be foolhardy to represent to you the feelings of the detestation and abhorrence which has been produced against the alleged murderers of Marcus Lyon.

You...Gentlemen of the Jury...are to decide as jurors. You have sworn to make true deliverance according to the evidence. You are solemnly pledged to divest yourselves of the passions and prejudices which are inherent to your nature as men. The sorrow you may have felt at his death...the sympathy you may have experienced for his friends and relatives...are this day to be buried in the grave with the deceased. You...Gentlemen of the Jury...are pledged by your oaths to guard every avenue against the approach of prejudice. GENTLEMEN!! Examine with your hearts before you proceed to deliberate a case where the lives of your fellow creatures are committed to your custody. That the prisoners have been tried, convicted and condemned in every bar room and barbershop in the County is a fact which will not be contested. My intent is to warn you against the influence of the popular fury so that you may discriminate between the idle rumors of evidence against the prisoners and the facts presented to you this day.

Ever since I have been engaged in this defense, my ears have been stuffed with false reports intended to weaken my confidence in the cause of my wretched clients. I have heard that a button had been found near the body of Marcus Lyon which matched those on a greatcoat of one of the prisoners. I had been told that a pen knife that Lyon had when he left Cazenovia had been found in the pocket of Dominic Daley. I had been told that the pistols would not only be completely identified and proved beyond all reasonable doubt that they had been sold to Daley a short time before the murder. I have found these 'damned proofs' to exist only in the prolific imaginations of newsmongers and the gaping credulity of their bearers.

JUDGE SEWALL

(Interrupts) Bailiff? May I have some water?

(BAILIFF exits and returns with water for JUDGE SEWALL.)

DEFENSE COUNSEL

As further evidence of the prejudices which has prevailed against the prisoners, I cannot help but notice the remarks which have been made about the expressions on their faces. They have been described to me as monsters without even the appearance of men! I had been prepared to see the 'Mark of Cain' on their countenances and 'ROBBER AND MURDER' written on their foreheads. They have been solemnly called to pass in review before you. Do they look like monsters? Let me ask you, Gentlemen of the Jury, do you see the ferocious frown of the robber or the dark and sullen gloom of the assassin? Their youthful handsome faces assure you they are not known to the ways of vice. Let us not think then of them as monsters...but believe them to be men! And...in so believing...you are bound to presume them INNOCENT until they are proved to be guilty. *(Coughs; sips water; clears throat)*

DEFENSE COUNSEL, *Continued*

There is another type of prejudice, Gentlemen of the Jury, about which it is my duty to warn you. I allude to the inveterate hostility against the people of that wretched country from which the prisoners have emigrated. How far this hostility is the result of narrow and illiberal opinion or how far it is justified by the character and conduct of they who have come among us is neither mine nor your province to decide. They have lived under the fostering protection of this government and are now to be tried by the beneficent provision of our laws. Whether they have brought with them all the vices...without any of the virtues of this degraded people; whether they are wandering fugitives from justice or whether they are the exiled victims of oppression; whether they have been transported for their crimes or have been driven across the Atlantic by the storms of internal commotion; it is enough to insure them a fair and impartial trial and to be tried by the laws and jury of Massachusetts. Do NOT therefore believe them to be guilty because they are IRISHMEN!! Rather...view them as your countrymen. Remember...you are sworn to believe them innocent until every reasonable doubt of their guilt is removed from your minds. (*Pause; coughs; clears throat*)

Before I examine the evidence, permit me to quote a maxim of law. Sir Matthew Hale, the most learned among all the English commentators on criminal law has strongly expressed the caution in which 'presumptive evidence' is to be received in criminal cases. "In some cases," says he, 'presumptive evidence' goes far to prove a person guilty though there is no express evidence that the fact was committed by him. It is better that five guilty persons escape unpunished than for one innocent person should die." In all cases of 'presumptive evidence' it is imperative that all the witnesses be persons of unimpeachable veracity for it is possible the prisoners may be innocent of the crime. Doubt, in the breast of a jury, is a certain assurance of acquittal to the prisoner. (*Coughs; sips water; clears throat*)

I now proceed to a discussion of the evidence. I begin by stating certain facts which are not in controversy between the Commonwealth and the prisoners at the bar. It is admitted first...that Marcus Lyon was killed by human agency. Second...that he was killed of malice aforethought and was therefore murdered. Third...that the pistols which were found near the body which have been produced in court were the instruments of his death. Fourth...that both the prisoners were on the road, between Boston and Springfield, and passed near the place where the body was found on the ninth of November last. These facts being conceded, your attention will be immediately directed to the remaining topics of discussion upon which your verdict will be derived. It is contended by the prisoners that Marcus Lyon was NOT murdered on that day, the ninth of November. It is also contended that IF he were murdered on that day...murder was committed by some person other than the prisoners. In considering the first point, it will be necessary to examine whether the Commonwealth produced such evidence that Marcus Lyon actually passed on the road through Wilbraham and was on the spot where the murder was committed on the ninth of November.

Marvel Underwood, who was well acquainted with the deceased, has testified that Lyon left Cazenovia on Monday the fourth of November last. The distance between Cazenovia to the scene of the murder is two hundred and twenty miles. No witness has been produced by the Commonwealth who had the slightest acquaintance with Lyon who saw him on his journey after leaving Cazenovia until his body was found on the evening of the tenth of November

DEFENSE COUNSEL, *Continued*

last. Let me examine then, by what evidence the Commonwealth has endeavored to satisfy you that Lyon was on the road on the ninth of November. (*Coughs; sips water; clears throat*)

Five witnesses have testified for the purpose of satisfying your mind on this point and to identify the man and the horse which were seen by them about noon on the ninth of November. Two of them, Ithamar Stebbins and Jeremy Bliss, do not pretend to have noticed their faces but directed their attention to the mare on which he rode. Those two witnesses disagree on the color of the mare. One described it as a red and the other as a bay. They both agree, however, that this mare was found on the afternoon of that same day in the pasture of John Bliss.

Three other witnesses. Griffin Bailey. Thomas Glover and Ebenezer Russell have tried to fix the identity of the man as of the mare. One describes the mare as a light bay and the other as being brown. One describes the man to be of middling stature and the other as ABOVE the common size. Neither remember his face minutely but one of them THINKS he resembled the man whose mangled and mutilated features he saw after the murder was committed. Upon this evidence, vague and uncertain in its nature, it must be admitted that you are required to state that you cannot entertain a reasonable doubt that Marcus Lyon was the person seen by the witnesses and that he was therefore murdered after noon of the ninth of November last. Are you prepared to say, Gentlemen of the Jury, on the vague and uncertain testimony of men who are utter strangers to the deceased and who had only a passing glimpse of a man of no uncommon appearance travelling on horseback upon a public highway where perhaps hundreds were also passing that same day in the same direction from west to east to the town of Wilbraham...that this man was the same man found dead on the evening of the tenth? And that the mare he rode...which has been so loosely described by those witnesses, was the same which was afterward found in the pasture of John Bliss? For the purpose of strengthening your doubt on this subject, we ask that you compare their testimony as to the stature of the man with that of Mister Staunton who has known Marcus Lyon since childhood until the time of his death. He has told you he was much above the ordinary size of a man...about six feet tall and of an uncommon and robust appearance. NONE of the witnesses have given this testimony and description of the man they saw pass by on the ninth of November last. One of them saw him walking his horse and he has told you he was of middling appearance. Is this not in itself sufficient to create doubt as to the true identity of the man? Or are you prepared to say upon your oaths that you have sufficient proof that the man indeed WAS Marcus Lyon whom the witnesses have thus described.

(At this point, DEFENSE COUNSEL coughs heavily. When he is finally able to gain his composure, he clears his throat, sips water and continues.)

DEFENSE COUNSEL, *Continued*

I now solicit your attention to another argument upon this point. From the extraordinary diligence displayed by the Commonwealth in preparing for this trial there is, however, a missing link needed to complete the chain of evidence by which you are bound to a verdict of condemnation. If it is incumbent upon the Commonwealth to convince you that Marcus Lyon was murdered on the ninth of November last, ought they not to trace him from the time of his departure from Cazenovia and prove to you the place he lodged the night before his murder?

DEFENSE COUNSEL, *Continued*

It would be easy to retrace the road he travelled. The rumor of this foul deed had spread in every direction. The horse would have assisted in the research to locate the last place at which he had lodged. It could only have been a half days journey from the scene of the murder. NO attempt has been made to search out this place and we contend that this has been a stumbling block for the Commonwealth.

If, upon reviewing the evidence, the LEAST degree of uncertainty is left on your minds...the prisoners MUST receive the benefit of that shred of doubt. Whether the mare was that of Marcus Lyon or that of someone else! Whether the murder was committed in the broad glare of day on a public road where travelers continually pass in either direction or whether the murder was perpetrated the night before by some midnight assassin who would choose darkness instead of light to shroud himself not merely from the sight of man but also from the scrutiny of his Maker.

(DEFENSE COUNSEL returns to his table, shuffles some papers and coughs. He then addresses the JURY once again.)

DEFENSE COUNSEL, *Continued*

It is now time to approach the stronghold of the Commonwealth and attempt to counter their evidence. I allude to the testimony of young Laertes Fuller. It is my intention to consider the testimony of this witness alone. I contend that his age...thirteen...does not entitle his testimony to be creditable. Second...his testimony is vague and uncertain. Third...it is highly improbable and inconsistent. It has ALWAYS been the rule to REJECT witnesses as incompetent who had not arrived at the age of fourteen years of age. Modern practice has permitted an alteration to this rule and witnesses are now considered competent at any age if they can satisfy the Court by a previously held examination. The Defense feels strongly that a mind given only thirteen years is easily pliable and may yield to false impressions and have difficulty in distinguishing right and wrong. We feel that a thirteen year old mind is ignorant of the solemnity of an oath or of the dreadful consequences which could result from false testimony.

The remarks I have already made on the testimony of other witnesses as to the identity of Lyon and the mare I apply with redoubled force to the testimony of this boy. Let me remind you that his father's house is ninety rods east of where the body was found. The boy as told you ABSOLUTELY that the man whom he first saw driving the mare was Daley and that it was he who peered at him over the wall as he was picking up apples. The boy has told you that he did not notice the face of the other man although he was closer to him and THINKS the horse he saw was the same seen later in his father's pasture. He said he heard no report of a pistol and that the men did no present any particular impression on him until the next day when he mentioned seeing them to his father. *(Pause; sips water; clears throat)*

On the first place...can you satisfy in your minds why it was the face of Daley that left such an indelible impression on him while the face of his companion left no trace whatsoever? Is there such a marked difference between the prisoners to account for this phenomenon? But...above all...Gentlemen of the Jury...you will consider the time which passed in the execution of this robbery and murder if the testimony of this young lad is taken to be true. By

DEFENSE COUNSEL, *Continued*

HIS account, it took only fifteen minutes from the time he first saw them quietly passing westward near the brow of the hill until he met them returning with the 'spoils of robbery and murder.' In this fleeting fifteen minute interval, the murderers are said to have met their man, planned their attack, discharged a pistol, dismounted the rider and finished the dastardly deed...all of this with an antagonist who was very robust. They then dispatched him with six or seven wounds to his head and then rifled through his pockets and saddlebags. Then they had to drag his body from the road to the Chicopee River...a distance of five or six rods and then place a heavy stone weighing sixty-five pounds on his head. They then led the horse back to the main road before releasing him into the pasture of Mister Bliss. All this in FIFTEEN MINUTES!! (*Softly*) Fifteen minutes....Gentlemen of the Jury! If you discern anything improbable in this part of the story...you will be bound to discredit at once the whole of the boy's testimony.

An attempt has been made to identify the pistols and to trace them into the hands of the prisoners. A witness from Boston, Mister Seyms, has told you he sold a pair of pistols to a man in the garb of a laborer and with the accent of an Irishman. He told you he was suspicious of them because they were laborers and because they had the brogue of an Irishman. He does not identify the pistols with any precision. You are asked to believe that the pistols sold in Boston are the same used as the instrument of death for Marcus Lyon. The comments of Mister Seyms are an excellent example of the commentary I mentioned briefly about guarding our minds from prejudice. The witness Seyms lives far from the scene of the murder but he has been caught up in much of the enthusiasm which pervades this part of the country as to be able to recognize the nationality of Daley at a mere glance. His mind is infected, in common with many others, with that national prejudice which could lead to a prejudgment of the prisoners because they are Irishmen!

Pronounce then a verdict of GUILTY against them! Condemn them to death! Hold out an awful warning to the wretched fugitives from that oppressed and persecuted nation! Tell them that although they were driven into the Atlantic Ocean by the tempests which swept over their native land and laid waste to their dwellings and deluged their fields with blood...yet OUR inhospitable coast presents to them no Mount Ararat upon which they can rest in safety. We are not a nation of cannibals and do not feast on human flesh...yet with all our bloated philanthropy which embraces much of the habitable globe...we have no mercy for two wandering and expatriated fugitives from Ireland. That the name of an IRISHMAN is among us is but another name for a robber and assassin...that when a crime of unexampled atrocity is perpetrated among us...we look for an IRISHMAN!! With HIM...the benevolent maxim of our laws is reversed and from the moment he is accused...he is presumed to be GUILTY...until his innocence appears.

Another proof of the guilt of the prisoners is said to be the rapidity with which they travelled after they were seen in Wilbraham. It has been learned that they travelled at a pace of forty miles a day from Wilbraham to their place of apprehension. This is not an extraordinary speed...especially in November.

The Commonwealth has shown you evidence of the peculiar form and appearance of the pockets of their greatcoats and would have you believe they were adapted that way for the

DEFENSE COUNSEL, *Continued*

purpose for the retention of pistols. The prisoners' account that these deep pockets were intended for the purpose carrying a bottle of whiskey is plausible and probable.

Does any ONE of the facts...the pistols...the speed...the deep pockets...when considered alone furnish anything like the 'plain direct and manifest proof' which the law requires? Is separately considered...they amount to nothing. (*Long pause; sips water; clears throat*)

The decision in this case must ultimately depend on the testimony of Laertes Fuller. The reasons for discrediting this witness I have already mentioned. I BESEECH you to consider this testimony very minutely. I ask you to consider the conduct of the prisoners both before and after their apprehension. Would they have continued to travel together on a public road after seeing the boy when they would have good reason that an alarm would be given? They continued their journey on a public road. At the time of their apprehension, they had been waiting several hours for a boat to convey them to New York. They were immediately charged with the crime and examined separately. They agreed perfectly in their stories in stating from whence they had come, the course they had pursued, and the end of their journey. They have persisted in their story from the time of their apprehension to the present day.

Having now completed my summary of the evidence...I beg to entreat your attention to a few topics which remain to be discussed. The proof on which the Commonwealth relies is 'presumptive.' I ask permission of the Court to point out the danger of yielding to presumptive evidence when the life of a man...or in this case...two men...is at stake.

(*DEFENSE COUNSEL looks to JUDGES who remain impassive. He turns back to JURY.*)

DEFENSE COUNSEL, *Continued*

If I have any concerns with your passions, it is rather to allay them...not excite them. It is rather to soothe the spirit of indignation awakened by the atrocity of this murder than to rouse your feelings of sympathy or compassion for our wretched prisoners or their more wretched relatives. The lives of the prisoners are now consigned to your disposal. Before you proceed to the performance of your awesome duty...let me borrow the language of one of their countrymen who was one of the greatest orators of the old world...who stated eloquently at another trial 'there is another than a human tribunal where the best of us will on one day, have occasion to look back on the little good we have done. In that solemn trial, may your verdict on this day give assurance to your hopes, and afford you strength and consolation in the awful presence of an adjudging God.'" (*Walks slowly to face JURY*)

Gentlemen of the Jury! Those words were spoken by John Phillips Curran at the trial of Patrick Finney for High Treason in January of 1798...only eight years ago!

(*DEFENSE COUNSEL lowers his head. He returns to his seat and slumps forward, exhausted.*)

SCENE III

(ATTORNEY GENERAL rises and walks Center. He dons his glasses and glares at PRISONERS. He turns with confidence to the JURY and smiles.)

ATTORNEY GENERAL

(Summary) Gentlemen of the Jury! The solemnity of this trial and the importance to the prisoners has been urged with considerable eloquence by their Counsel. It now remains for me in the execution of my office, to arrange the evidence offered and give it the proper and legal weight it should have. If, in the performance of this duty, anything should escape from me which would be unbearably hard on the prisoners or if there should appear on my face a warmth of expression or zeal of conduct...be assured that it comes from habits of forensic debate and not from any opinion I have on the prisoners' guilt.

YOUR part in this trial is important. YOUR verdict will determine the fate of the prisoners as to life or death. You will remember the oath you have taken and have no prejudice or preconceived opinion. You are to entertain no consequence to the opinion of the multitude of citizens who here attend this event. Your verdict is to deliver the prisoners over to the sentence of the law or to restore them again to their former standing in society. The evidence given you in this trial is the testimony of the many witnesses who have been examined before you. The most powerful eloquence is not evidence. Sympathy is an affectation of the human heart. It is intended by nature to break the iron bars of prejudice but it offers no proof as to the existence of the facts. Compassion is the warm advocate of injured innocence but in a fair and open trial...it has no use. Mercy is a divine attribute but where justice is excluded...mercy has no place. The idea that you should take into consideration the certainty of the prisoners being punished in another world for the crime they are charged with is not a relevant suggestion. The punishment of death has been annexed to the crime of murder in all civilized states since the time of Moses.

We now come to the evidence in this case. The prisoners offer no evidence in their own favor but rest their defense upon that of the government. Your first inquiry will be whether Marcus Lyon is, in fact, dead. To prove this fact, you have the testimony of Robert Staunton to whom Lyon was well-known who swears he saw his corpse on the eleventh of November at the Coroner's Inquest.

Your next inquiry is whether Marcus Lyon died a violent death. Here you have the testimony of Doctor Merrick who described the wounds to the head and proved those to be mortal wounds. It may be as well to describe and examine the nature of 'presumptive evidence' at this point in the trial. Presumptive evidence is that class of proof which **IMPLIES** a possibility of error or mistake. This is divided into three classes. Light presumption...which weighs nothing. Probable presumption...which has but little weight and...violent presumption...which is legal proof. Presumptive evidence is the result of conclusions reasonably made from facts proved by positive evidence.

If you doubt that the wounds on the head of Marcus Lyon were the result of his death...you need proceed no further. If you are satisfied that he died from these wounds, you will then need to inquire whether those who gave them are guilty of murder. It appears by the testimony

ATTORNEY GENERAL, *Continued*

of Doctor Merrick that he received a shot in his side by a pistol which perforated the skin and was stopped by a rib. It is probable that he was thrown off his horse by the shot though the wound was not mortal. The wounds in his head were undoubtedly made by the pistols which were found near where the murder was committed in a shattered condition. That he was killed on the highway is proved by the broken pieces of the weapons found there and the marks on the ground where his body was dragged into the river. If you are convinced that Marcus Lyon was murdered...you must ask whether the deed was committed by the prisoners. (*Pause; walks to seat; returns to JURY*)

Griffin Bailey has testified that on Saturday, four miles west of the place where Lyon was killed, he saw a man pass eastward about twelve o'clock. Thomas Glover was near the same place and has the same recollection. Ebenezer Russell saw such a person pass and took notice of his oil cloth hat which was later found near the body. John Dewey met the same man and remembers the horse near the place where Lyon was killed. These witnesses establish the fact that Lyon arrived to the place where he met his death around one o'clock on the ninth of November.

Your next inquiry will be whether there is evidence to prove that the prisoners were there at the same time. You have the testimony of Ithamar Stebbins who swears he met the man at Dwight's Tavern about fifteen miles east of where the fact happened and that he lodged in the same chamber with them on the night of the eighth of November. Thomas Powers testified he saw the prisoners at one o'clock near the parting of the old road and seventy rods west of where the body was found.

You have the testimony of five men who said that about two o'clock that day, they saw two men walking westward in a great hurry and that was about four and a half miles from the place Lyon was killed. If you are satisfied that the prisoners were the men whom these witnesses saw then you have proof that the prisoners were...at one o'clock...about the time that Lyons entered the turnpike...at the crime scene and at two o'clock they were five miles west of the same place! It is observed that none of the witnesses positively swear that the prisoners were the men who passed by. This is true and as they do not offer any account of themselves during that time or prove that there were any other travelers on the road...you are to judge if you are satisfied with the evidence offered to prove that they were there at the time the murder happened.

But...if Lyon was in fact murdered and the prisoners were in a situation where they might have committed the deed and there is no evidence that it was committed by anyone else...you are asked are they to be condemned as murderers without proof that they are guilty? The idea that there may be prejudice against them because they are foreigners can have no foundation but is a mere imagination. The prisoners are men and as men they are entitled to as fair a trial as men of the first rank. The law must remain sacred and the guilt or innocence of the prisoners must be determined on the evidence alone, without outside regard because they come from a foreign country.

ATTORNEY GENERAL, *Continued*

We now come to that part of the evidence which will fix on the prisoners the crime for which they are on trial. This evidence is the testimony of Laertes Fuller... a boy thirteen years old. This witness swears that between one and two o'clock on the afternoon of the ninth of November last, the day before Lyon's body was found, he was near the parting of the road and saw two men coming from the west. One was leading a horse and the other urging it forward with a stick. He noticed the horse with saddle and saddlebags and watched them turn up the hill towards the Bliss house. One of the prisoners who he now recognizes as Daley stopped... leaned against the wall... and stared at him. He noticed the other mount the horse and continue to ride up the hill toward the house. It has been said that this boy is too young to be depended upon. The Court has privately examined this witness and is satisfied to admit his testimony.

The prisoners were returned to Springfield and this lad pointed out Daley in a crowd of men. Were any other men with a horse seen on the road that day? If any other man had been in possession of Lyon's horse then, and having the appearance of the prisoners... where were they? If you are not satisfied to believe that the prisoners were not in possession of the horse and not in that location soon after one o'clock on the ninth of November last... they must be acquitted! If you believe the prisoners to be in possession of this horse, you must decide whether this fact with the matching circumstances attached to it... gives you proof that they murdered the man.

They were on a journey westward. Why did they turn back eastward on the turnpike and up the hill out of their way into the old road? Had they found the horse loose as a stray? Why did they not make him fast or... without touching him... pass on and leave him? Why did they turn the horse loose in the Bliss pasture and forsake him? WHY? Gentlemen of the Jury. WHY?

The prisoners have stated that they came from Boston and were going to New York to see a friend and collect a small debt. They have given no evidence of one of them having a friend there or the other having a debt due him. When they were found, they both wore greatcoats as has been described. In the side of each greatcoat under the left arm there is a pocket in the form of a holster fitted to carry pistols. It is said by the prisoners' Counsel that these were pockets made to carry whiskey bottles. This, Gentlemen of the Jury, is the sense I have made of the evidence. If I have omitted anything, your memory will rectify it. The weakness of my voice in this unusually large crowd, has compelled me, in order to be heard to speak with the appearance of much zeal. I lament it as a misfortune. It is produced from my situation and not from my feelings.

It is true, as has been repeatedly urged by the prisoner's Counsel... that all the facts you have in evidence may exist in a way that might be compatible with the prisoners' innocence. This position cannot be denied. It is true that Marcus Lyon might have been murdered by other persons. That the prisoners might have come upon the place the moment after his body was cast into the river. They might have taken the horse with a felonious design knowing nothing of the murder or they might have taken him innocently as a stray. Their hurry in leaving the scene has the strong appearance of flight but this might have been from an ordinary occasion and not from guilt. If these facts are proved upon them... they must be deemed guilty... unless

ATTORNEY GENERAL, *Continued*

they can by offering some evidence to blunt the sharp points of convincing proof and explain their conduct.

The expression ‘possibility of error’ which has been often repeated in this trial is an error of language. There is no such legal expression in the books! We have no right to form an opinion against anyone until we have heard and candidly examined all the evidence for and against him. When we hear the testimony of credible witnesses, we know that they may be corrupt. We know that they may be mistaken. Yet...the necessity of our situation claims credit for them. Our state of existence is imperfect and intelligence limited. Yet...when duty calls us to act...we need not tremble for fear from doing wrong. We are candidates for another state of existence and our fear will depend on whether we have acted with an upright heart and from pure motives.

(ATTORNEY GENERAL completes his summary, nods to JURY and returns to his seat.)

JUDGE SEWALL

The prisoners are charged with the murder of Marcus Lyon. These charges the prisoners deny and as everyman is presumed to be innocent until he is proved guilty...the Commonwealth must satisfy your minds beyond all reasonable doubt that the accused are guilty of the crime with which they are charged.

You have heard the testimony to establish their guilt and the very eloquent and able defense of their Counsel. It only remains for us to inform you what evidence is requisite to authorize a verdict of conviction and how far, in our opinion, that evidence has been furnished.

That Marcus Lyon is dead...you cannot have a doubt. That he was murdered...you also cannot doubt. The Counsel for the prisoners admits to these facts. Your next and most important inquiry will be...who were the agents of death? Were they the prisoners? Or...were they not? Your verdict must depend upon the testimony of Laertes Fuller. If you believe this young witness, Gentlemen, you must bring a verdict of conviction. Because when it is proved to you that Marcus Lyon was murdered...that the prisoners were on the same road in possession of his property almost on the very spot where the body was found and rendering no account of themselves during that period...you can hardly have a reasonable doubt but that they are guilty of the crime of which they have been accused. But...you are told...the boy is not to be believed. That he is too young and easily liable to be mistaken. Of this, Gentlemen, you are the judges. You have listened to his testimony and you have seen the manner in which he gave it. We deem it is our duty to tell you that he has been ever consistent and that the story he told to his father on the Sunday following the deed to the Coroner at the Inquest...and to the justices that examined the prisoners after they had been apprehended...has been the same.

Now...Gentlemen...you are the only judges of the evidence. The question before you depends on a chain of evidence and ultimately on the testimony of the boy. If you are satisfied that his story is correct, you must discharge your duty to yourselves. But...if you have well-founded and reasonable doubts of his testimony...you must acquit the prisoners. To YOU...they have made their appeal and to YOU...the Commonwealth hath given the power of deciding on

JUDGE SEWELL, *Continued*

their guilt or innocence. You will try the issue according to the evidence and according to your oath and true deliverance make between the Commonwealth and the prisoners.

(LIGHTS FADE OUT as JURY exits for deliberation.)

SCENE IV

(AT RISE: JURY enters and is seated.)

JUDGE SEWALL

Gentlemen of the Jury! Have you reached a verdict?

JURY FOREMAN

We have, Your Honor.

(JURY FOREMAN hands paper to CLERK OF COURT who hands it to JUDGE SEWELL. JUDGE SEWELL reads the verdict and returns the paper to CLERK.)

This is Not the End of the Play

Ending Intentionally Omitted for Security Purposes

Report of the trial of Dominic Daley & James Halligan : for the murder of Marcus Lyon, before the Supreme Judicial Court, begun and holden at Northampton, within and for the county of Hampshire, in the commonwealth of Massachusetts, on the fourth Tuesday of April 1806

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