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IN JUDICIAL RHETORIC

DISSERTATION
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By

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* * * * * *

The Ohio State University
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CHAPTER I

INTRODUCTION

Justice is a political idea. It is concerned with the collective existence of man. It inquires into the life of men in politically organized society, examining their relation to politico-legal norms, to power, and to the network of institutions in which they live. Implied in the idea are formulations about ideal relations among men, considerations about how men ought to live in society, and the judgment of existing relations according to these conceptions. All of these things are not always explicit, but are necessarily implied in the idea of justice.

On August 3, 1830, the Commonwealth of Massachusetts, represented by Daniel Webster and Solicitor General Daniel Davis, delivered to Franklin Dexter, the defense attorney, and the people of the Commonwealth the opening address in The White Murder Trial. John Francis Knapp, his brother Joseph, and a friend, George Crowninshield, were being tried for the murder of Captain Joseph White. With the conviction of John Francis Knapp, the struggle between "the God-like Daniel" and Franklin Dexter came to an end. At half-past eight on the morning of December 28, 1830, Frank Knapp was hanged. During these five months there took place one of the
most important and famous trials in the history of English and American law.¹

The fame of the trial has so long endured that it is, along with the trials of Charles I, Thomas Wentworth, Dreyfus, Andrew Johnson, Warren Hastings, and Sacco-Vanzetti, one of the half dozen or so cases which spring readily to the mind of nearly every American or Englishman who possesses a sense of history or drama. As a matter of fact, with the possible exception of a few bad commercials, the White Murder Case had all the earmarks of a great television drama.

Edmund Pearson describes it as follows:

... resurrecting in the early years of the nineteenth century the apparatus of the eighteenth century romance, and at the same time anticipating a favorite device of the modern detective story—the murdered millionaire alone in his house. There was hardly one omission of scene, of cast, or of stage property. There was the morbidly respectable and extremely horrified community of Salem; there was a dark conspiracy, involving hired desperadoes and the black sheep of two good families;—there was a white-haired and blameless old gentleman—a man of wealth—asleep in his bedchamber; there were dirks and doubloons; and there were lurking figures of men in "camblet" coats. There was even talk of a cave in the woods, where a gang of "harlots, gamblers and sharpers" used to gather... What a romantic place was my native County of Essex a century ago.²

Yet, despite its fame and importance, The White Murder Trial for one hundred and forty years has remained relatively unexamined


²Charles Pearson, Murder at Smutty Nose and Other Murders (New York: Charles Scribner's Sons, 1927), p. 250.
by rhetorical scholars and ignored by legal historians. Apparently the only study which deals with the trial was completed in 1956 by Howard A. Bradley and James A. Winans, Daniel Webster and the Salem Murder. There appears to be no definitive rhetorical criticism of either the trial or of Franklin Dexter and the defense.

Preliminary Description of the Problem

The absence of critical research on The White Murder Trial as well as on Franklin Dexter is understandable for the task is a huge one. For example, a full four months passed from the time the Knapp brothers were arrested to the day of their sentence. During this time numerous articles, and some speeches, about them were made not only at the trial in Salem, but also throughout the Commonwealth. Furthermore, the lack of rhetorical criticism on Dexter can be traced to the fact that critics of American public address have generally focused their attention upon political events which dealt primarily with those periods immediately surrounding the American Revolution and the Civil War.

As previously indicated, we do not have, at present, a rhetorical criticism and analysis of Dexter's career, much less The White Murder Trial. Until such a study has been provided, the field of public address will be deprived of technical rhetorical data about one of the most important trials in the history of this, or any, country. In addition, this trial was selected because the arguments are presented, "by one of the greatest masters of jury argument,
Daniel Webster," and also because, according to Wigmore, in this case, "the galaxy of counsel included a name unexcelled for eminence in his day and place--Franklin Dexter." We have no specific information relating to: Dexter's place in the mainstream of American public address; Dexter's rhetorical characteristics, abilities, and impact as a speaker; the strategies used at the trial by the prosecution and by Dexter as he directed the defense; or the rhetorical characteristics, qualities, and impact of the prosecution and defense. To carry this point a bit farther: we do not know the distinguishing characteristics, if any, of forensic speaking of the nineteenth century. Beyond this, we have not yet interfaced rhetoric with nineteenth-century courtroom practice, to learn the procedural rules and constraints to which the orator had to adapt. Although there have been a few specialized studies, such as William N. Brigance's study on Jeremiah Black, and Warren Wright's study of Learned Hand there have not been enough specific studies during the period to facilitate the development of generalized theories. Furthermore, one of the most significant and unique forms of persuasive communication in terms of consequences is that which takes place in a jury trial. Justice and the fate of a defendant rest upon the responses of the jurors to the arguments, testimony, and evidence communicated to them on behalf of the prosecution and the defense. In summary, four major points have been developed as the foundation for this

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research: (1) the importance of Dexter's place in the over-all scope of judicial rhetoric; (2) the importance of The White Murder Trial as related to legal history; (3) the existence of only meager research on the trial; and, (4) what needs to be learned about the trial from a rhetorical-critical standpoint. In light of these and related considerations a need exists for a rhetorical criticism and analysis of Franklin Dexter and The White Murder Trial. It is the expressed purpose of this study to provide answers to the line of questions previously posed.

Rhetorical Standards of Judgment

Rhetorical standards should be viewed as little more than instruments utilized by a critic of oratory in making judgments concerning the merits of public addresses or of a speaker. They refer to a set of selected values by which a speech is appraised and are drawn from rhetorical theory as it has been interpreted and modified through the centuries. Their primary purpose is to aid the rhetorical critic in his evaluation.

Over the years there have been extended discussions relating to methods of determining whether a given persuasive effort may be classified as a good speech. Such controversies will probably continue as long as men speak with the intent of influencing social co-ordination and control. Every evaluation, however, reveals a

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4See page 4.
critic's view of what is excellent in persuasive speaking and it is in terms of these individualized standards that his judgments of merit are based. Although Aristotle's *Rhetoric* remains the most comprehensive statement of the philosophy and practice of rhetoric developed in the last twenty centuries, it no longer seems adequate for modern rhetorical practice. While Aristotle is still respected by modern scholars, they cannot fail to recognize the limitations of his theories. Aristotle's *Rhetoric* was developed at a period in history when the "social order of things" was far less complicated. The complexity and pace of modern society must be reflected in the rhetorical critics measuring device. Therefore, the present study will endeavor to develop a dynamic pluralistic system of rhetorical criticism based upon Aristotelian rhetoric. Such an eclectic system has at its foundation elements from several systems of rhetorical theory and criticism. It is hoped that this system will prove to be sufficiently comprehensive to allow for constant adaptation to different rhetorical situations.

A charge presented by Wayne Brockriede combined with a brief survey I conducted of recent dissertations dealing with rhetorical criticism magnified the failure of rhetoricians to integrate relevant

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Therefore, I will endeavor to present a research design sufficiently developed so as to enable replication of this study.

Development of the Research Design

Construction of a Methodology Suited to Making a Rhetorical Analysis and Criticism of the Trial

Dexter's Rhetorical Purposes

The first step in constructing a methodology responsive to the particular needs of an analysis in the area of jurisprudence will be to establish the rhetorical purposes of the defense. It is evident that Dexter was under no obligation to act as the defense attorney in The White Murder Trial; he could have simply refused the case. As we know, Dexter chose to defend the Knapp brothers. A superficial glance at the situation might reveal that Dexter's primary purpose was simply to save his client's lives; however, such a conclusion would be a great oversimplification for the critic as
this general end could have been achieved if the Knapps had simply entered pleas of guilty. Consequently, the first aim of the study will be to ascertain precisely why Dexter accepted the case, and what he hoped to accomplish by opposing the Commonwealth of Massachusetts. Moreover, it is reasonable to assume that Dexter's rhetorical purpose did not remain the same throughout the trial. In all likelihood his purposes changed significantly as the trial moved along and the advantage swung for or against him. The second aim, therefore, will be to discover how and why Dexter's rhetorical aims varied during the trial.

Analysis of the Nature of the Audience

In order for rhetorical purposes to be properly understood they must be evaluated in terms of the particular audience for which they were designed. As a result the next phase of the study will be designed to establish the feasibility of Dexter's rhetorical purposes. To that end the nature of the audience will need to be discovered and then described in terms of its pertinent attitudes, convictions, knowledge, and experiences.

Estimation of the Feasibility of Dexter's Rhetorical Purposes

Rhetorical feasibility, as discussed by Kenneth R. Williams, Audience Analysis: A Conceptual Clarification, refers to whether or not a speaker's purpose is both logical and practical for the
situation that confronts him. In the present study an analytically based criticism which exhibits faithfulness to a formal concept of logic is not employed. Instead, a line of reasoning is deemed logical if it is adaptive, in terms of the speaker's purpose (purposes) or aims, to the specific needs of the audience he faces. Therefore, when we use the term logical it will not be thought of in its traditional form, but rather in terms of a concept which is responsive to its environment.

Utilization of the concept of the burden of proof, as an example, will enable us to view the distinction being made between the formal and the presently developed concept of logic. Traditionally, the jury is told by the judge that the burden of proof rests with the prosecution. If the jury is functioning within the context of the judicial situation, by having no vested interests in the outcome of the trial, in most cases, they will accept the judge's directive as logical. Here, then, is an example of a traditional form of logic. However, in those instances where the jury does have a vested interest in the outcome of the trial, the jury is operating within the context of a legislative rather than a judicial situation. In this case if the jury were inclined to side with the prosecution, they would place the burden of proof with the defense, thus regarding the judge's line of reasoning as non-responsive, illogical, for their particular needs.
Any purpose, then, that is illogical or impractical would be considered rhetorically unfeasible for the situation. Thus, before a purpose can be termed feasible, the speaker must determine if there is a logical possibility that he can achieve his purpose, and then, whether or not his efforts will overcome the difficulties presented by the situation. Such a criticism of Dexter's audience adaptation presupposes the aforementioned specific purposes at which he aimed during the trial, thus defining what he, Dexter, took to be the consummate responses at which he aimed.

Unnecessary criticism will be avoided by estimating the logicality of Dexter's purposes. For example, if Dexter's purpose was to create a new meaning for an old concept, his purpose would be illogical if his audience possessed the new meaning before hearing his discourse. In such cases where this might occur the criticism would be focused upon how and why Dexter misjudged his audience, rather than upon points of inductive or deductive logic, style, or delivery. Also, in such cases, the discovery of illogicality would reveal the speaker's purpose to be unfeasible, and, therefore, expose poor audience analysis on his part. If, on the other hand, the audience did not possess the new meaning that the speaker desired

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7At this point in the study, I will hopefully possess an estimate of Dexter's purposes at various points throughout the trial, as well as an estimate of the attitudinal structure of the audience at various points throughout the trial. I will then proceed to criticize feasibility, in terms of the logicality and practicability of Dexter's purposes, as compared with the audience he faced.
them to have, then success in the situation is at least logically possible.

After determining the logicality of Dexter's purposes, their practicality will be estimated. In order to make this type of estimate, the critic will need to ascertain the attitudinal relationships which directed and influenced the behavior of the audience. Such an estimate is viewed as presenting a mirror image of the speaker's task when he tries to discover the "status" of his audience. Any attempt to understand the rhetorical situation faced by a speaker by reference to differing patterns of audience attitudes often enables the critic to discover what the speaker had to accomplish as prerequisites to achieving his purposes. For example, the critic might become aware of the kinds of prejudices the speaker had to overcome as instrumental goals to be accomplished as he progressed toward his long range goals. The uncovering of extreme hostility might lead the critic to conclude that the speaker's purpose was impractical.

The final step in judging the practicality of Dexter's purposes will be to assess the alternative means to his ends used during successive stages of the trial. Dexter did employ alternative methods of persuasion. Thus, the primary critical question is: Did Dexter analyze his audience validly and then choose the most viable alternatives? The critic will note how and why the speaker avoided using particular rhetorical options. The critic's task, then, will be to evaluate the speaker's choice of alternatives.
Critical consideration of the interrelationships between purpose, audience, and feasibility will provide a basis for criticizing Dexter's selection of purpose, audience analysis, and audience adaptation. These interrelationships will also provide a foundation for the criticism done in subsequent phases of the study.

**Analysis and Criticism of the Types and Structure of Proof Advanced by the Defense**

One of the most extensive and basic phases of the study deals with the types and structure of proof advanced by the defense. This aspect of the study was principally concerned with a critical analysis of the proofs advanced by the defense. To facilitate the critical analysis, an operational definition of proof was established. Proof is the process of securing belief in one statement by relating it to another statement already believed by the audience. In developing a method for the criticism of proof, I assumed, as did Toulmin, that any unit of proof might consist of six elements, three of which, data, warrant, and claim, are requisite for a complete proof.

**Data.**—"Data" is defined by Toulmin as, "the facts we appeal to as a foundation for the claim."8 Thus, data may be viewed as facts which are accepted as true by the audience, and which are employed by the advocate as a basis from which he may secure belief in another

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statement. Data in a unit of proof must meet two general requirements: (1) some principle of reasoning must warrant the conviction of a bit of information and the claim to be advanced by the advocate, and (2) the facts must be accepted by the audience before they can be included as data within the structural unit of proof. Thus, this study allows for no psychological difference between evidence of fact and evidence of opinion.

Warrant.—The informative data upon which a unit of proof will be erected is supplied by evidence. The warrant provides a method by which proof may be derived. Because a warrant is a means by which one moves from data to claim, it states an inference and involves a so-called mental leap. Thus, warrants are "... general, hypothetical statements, which can act as bridges, and authorize the sort of step to which our particular argument commits us." Data may be looked upon as being categorical and bound to the subject matter, whereas, a warrant is hypothetical and content-free; or data are given and states; and a warrant is dynamic and creative. The warrant often may appear to be incidental to the explicit appeal made by the proof, but without the general assumption that it advances, the accepted data could not be connected to the claim, nor could the relationship between these elements be validated. The warrant may, therefore, be said to give birth to the proof as a whole.

9Ibid., p. 98.
Claim.—The claim is the explicit appeal produced by the data and warrant. It is the position which the audience is prepared to assume with regard to the question under consideration. This is generally a direct result which occurs when the audience accepts the data and recognizes the validity of the reasoning. A claim may be a final proposition in an argumentative discourse, or an intermediate statement that may serve as data for a subsequent proof.

The following elements may be added to a unit of proof when necessary.10

Backing for Warrant.—If the listener is unwilling to believe the assumption stated by the warrant, then the claim has not been critically accepted. Thus, the purpose of any material used to support the warrant is to psychologically underwrite the acceptability of the warrant which is to be employed in the proof. As a result, the backing for the warrant is used to certify the acceptability of the assumption which is expressed by the warrant.

Qualifier.—Since claims may have a wide variance in the degree of strength with which they are believed by the audience, the advocate often needs a set of qualifying terms that declare how strongly he intends to affirm the claim. These terms not only register the

10Of these three elements the "rebuttal" and "qualifier" are used primarily to indicate the concept of probability. See Jimmie D. Trent, "Toulmin's Model of an Argument: An Examination and Extension," O.J.S., LIV (October, 1968), p. 253.
degree of force which a claim is judged to possess, but also the
degree of commitment the advocate is ready to assume.\textsuperscript{11}

Rebuttal.—Toulmin tells us that the rebuttal "indicates circumstances
in which the general authority of the warrant would have to be set
aside."\textsuperscript{12} In other words, specific circumstances or conditions
surrounding the proof might reduce the psychological force exerted
by the warrant upon the claim. The advocate then must include some
reservations to his statement of the claim.

In Figure One a diagrammatical presentation of the elements
of proof is set forth. These same elements of proof allowed an
analysis of the trial's "logos," logical proof, to be made. What
may not be so clear is that the same structural relationships which
enabled an analysis of "logos" to be made also allowed an analysis of
"pathos," emotional proof, and "ethos," ethical proof, to be made.\textsuperscript{13}

\textsuperscript{11}Toulmin, Uses of Arguments, p. 101. Toulmin's interpreta-
tion seems to emphasize the ethical responsibilities of the speaker
more than do previous theories. See Trent, p. 254, for further
elaboration.

\textsuperscript{12}Ibid.

\textsuperscript{13}In dealing with the concept of ethos a marked point of
departure is made from the traditional Aristotelian concept. In this
study antecedent ethos--loosely, the "reputation" of the speaker--is
considered to be as important, if not more important, than intrinsic
ethos, or character developed in and through the speech. For a
detailed destination between the two see Kenneth Anderson and
Theodore Clevenger Jr., "A Summary of Experimental Research in Ethos,"
Speech Monographs, XXX (June, 1963), p. 59. For a discussion of the
concept of antecedent ethos, see Cicero De Oratore, I, 327-329, and
Quintilian Institutions of Oratory, II, 391-402.
Fig. 1.—The six elements of proof and their relationship.
The only difficulty encountered in this task was discovering when and where the advocates varied their use of the types of data, warrants, or claims.

Data types could be varied as follows:

1. audience opinion
2. audience information
3. speaker opinion
4. asserted information
5. opinions of others (testimony)
6. information of others (inartistic proofs)

Warrant types could be varied as follows:

1. authoritative credibility of source of data
2. motivational value and emotional structure of audience
3. substantive logical patterns accepted by audience¹⁴ (cause, sign, generalization)

Claim types could be varied as follows:

1. factual
2. definitive (definition)
3. evaluative (value)
4. advocative (policy-action)

An evaluation of the quality and force of the proofs employed by Dexter and the prosecution will be ascertained by analyzing and

describing, in the above manner, the proofs set forth at the trial. This will be accomplished by comparing the structure of the proofs that were set forth with the previously derived estimate of Dexter's feasibility of purpose.\textsuperscript{15}

**Description and Criticism of the Central Ideas and Major Methods of Argument Used by the Defense**

One of the most important tasks of any rhetorical criticism is to abstract the central ideas and major methods of argument presented so as to allow an estimate of effectiveness to be made. Subsequently, the next task of the study will be to describe and criticize the ideas and methods of argument which were used during the trial. This analysis will group factors which responded to heuristic questions into cluster areas, including: the central ideas, which are the foundation or the starting place of the arguments; the topic represented by the arguments; the use of suggestion which consisted of the major ideas which are implied but not argued, the premises and topic which are represented by suggestion; and, the structure and flow of the argument.

There is little existing information which relates to the rhetorical anatomy of The White Murder Trial. The collection of

\textsuperscript{15}This estimate, it will be recalled, was derived from the description of: rhetorical purposes; nature of audience; logical and practicality requirements; variables affecting the audience; and, the comparison of the alternative means to achieve the desired response.
cluster areas provided a map of the trial which enabled the critic to evaluate Dexter's ideas and methods in light of his feasibility of purpose. Thus, the rhetorical force of the ideas and of the arguments will be related to the audience situation yielding a judgment of Dexter's skill.

Abstracting and Criticizing the
Stasis of the Strategies

Stasis\(^{16}\) may be viewed as a device which can serve as a method for discovering within an individual's knowledge what can and must be said to support a proposition. Stasis is, then, a line of approach to a cause and its accompanying evidence. Stasis provides angles of attack upon a case or proposition. These angles provide various and diverse mental vantage points from which one may observe a subject. Thus, an examination of stasis may be considered structurally as an interrogational function.

The implication that either Dexter or the prosecution consciously used the classical idea of stasis as a rhetorical device for invention is not warranted. This is little more than a moot question; however, the critic can use the concept of stasis as a device to uncover how the defense viewed its position in relation to the opposing side. Thus, stasis may be used as a device for

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discovering the lines of approach actually taken by Dexter on the one hand and by the prosecution on the other.

The next step of the study will be to group the ideas and arguments of the speaker into "stasis clusters" such as the following:

1. Types of issue
   a) conjectural
   b) legal
   c) juridicial
2. Justifying motive
3. Central point of accusation
4. Question for decision—point to adjudicate.

Organizing the material according to stasis clusters will do little more than provide another kind of anatomy of the arguments. Yet, keeping in mind that speakers, during the inventive stage, utilize their own tactics of method discovery, then the concept of stasis (angle of attack) would cause the speaker to create his own unique psychological integration of the problem and its data. Thus, projections developed from a particular case and data will lead to the emergence of a specific angle of attack in the speaker's mind. Consequently, whether the speaker was aware of his angle of attack or not, the critic can employ stasis in at least four ways:

1. as a heuristic device for criticizing selection: What influenced the speaker during his process of abstraction from the available data?
2. as a heuristic device for criticizing organization: What influenced the speaker during his task of patterning the data?

3. as a heuristic device for criticizing association and discrimination: What influenced the speaker's mental process of comparing?

4. as a heuristic device for criticizing the speaker's criteria of judgment: What influenced the speaker during his process of evaluating?

Description and Criticism of the Arrangement of the Arguments

The aim of this aspect of the study will be to criticize the arrangement of the arguments used throughout the trial. To accomplish this, the task will be subdivided into the following sub-tasks:

1. Identification of the parts of trial and of the parts of the speeches
   a) identification of the main divisions of the trial and the speeches
   b) estimate of whether introductions, bodies, and conclusions accomplished their purposes.

2. Identification of the structure of the trial and the speeches
   a) identify the general structure
   b) identify the order and relationships
   c) estimate the intended function of order and relationships.
3. Estimate of the rhetorical quality and persuasive force of the arrangement of the arguments.

Additional Analysis and Criticism of Factors Related to Speaker Audience, Occasion, and Message

Up to this point the critic had approached The White Murder Trial from fourteen different, critical angles of attack. These fourteen points of view yielded a large amount of data about the trial and about Dexter as a public speaker. However, there still existed several unexplained possibilities which were related to the speaker, the audience, the occasion, and the message. In order that as complete a picture of the trial as possible be assembled, I raised several additional questions. These questions would serve as further guides in attempting to complete a comprehensive rhetorical analysis of The White Murder Trial. The additional questions were as follows:

1. Speaker
   a) family history and tradition
   b) sources and development of the speaker's ideas, values, skills--including theories about speech making
   c) relevant ideational-emotional-moral characteristics that speaker brought to occasion.

2. Audience
   a) relevant predisposing factors influencing society
   b) relevant precipitating factors influencing society.
3. Message
   a) speaker's specific preparation for speeches—including research, composition, and rehearsal
   b) what was the rhetorical quality of what was said; not said; might have been said?
   c) how does trial relate to other ideas?
   d) how might speeches have been improved?
   e) what were the ostensible and real purposes of the participants?

4. Occasion
   a) what were the relevant antecedent factors affecting the occasion?
   b) what were the physical and psychological factors which affected the situation?

Evaluation of Dexter's Style

Here and there in their accounts of the trial the reporters reach a level of specificity which they managed to maintain long enough to give the critic a partial, though flimsy, foundation upon which to base an estimate of Dexter's style. For example, his closing speech was recorded almost word for word. Therefore, where appropriate, I will evaluate such aspects of his style as correctness,
clarity, appropriateness, ornateness and force. The criticism of Dexter's style will follow the format below: 17

1. Correctness
   a) grammatical construction
   b) word choice
   c) connective words
   d) specific words
   e) avoidance of ambiguous language.

2. Clarity
   a) coherence of ideas
   b) length and arrangement of sentences
   c) arrangement of words
   d) word coinage
   e) presence or absence of colloquialism
   f) illustrations
   g) examples
   h) repetition.

3. Appropriateness
   a) adaptation to the subject
   b) adaptation to the speaker
   c) adaptation to the audience
   d) use of conversational language

e) familiarity of language
f) avoidance of triteness
g) homely allusions
h) apologetic or patronizing style
i) use of pictorial words and sentences.

4. Ornateness

5. Force
a) concrete and specific language
b) position of sentences
c) conciseness
d) rhythm
e) climax
f) euphony
g) rhetorical questions
h) figures of speech
i) use of antithesis
j) emphatic words
k) loaded words and phrases.

Plan of Study

The general approach of this study will be to seek to see Dexter, not as a speaker isolated from his society, but as a man living in, reflecting, and influencing the views of a particular period of American history. The study shall seek to understand the issues with which he was concerned, and to evaluate the effect
which his speeches may have had on his audiences and on the judicial system as a whole. In order to facilitate this end theories developed in the behavioral sciences will be widely utilized.

Chapter II presents a survey of attitudinal research with an emphasis placed upon attitude change and the limits of communication effects. This chapter is necessary for a clear understanding of some of the underlying forces at work during the trial.

In light of the rhetorical standards and elements previously developed, Chapter III will deal generally with the outlook of New England toward justice from 1780 to 1830, and how this outlook instrumentally affected the outcome of The White Murder Trial.

Chapters IV and V present a rhetorical analysis of The White Murder Trial, and Chapter VI contains the summary and conclusions of the study. The Appendix includes a copy of the transcript of the trial and other material pertinent to both the study and the trial.

This dissertation, in sum, will endeavor to provide insights into a specific aspect of American history, the judicial process, and on a man who lived in that era. It will make every attempt to understand Dexter as both a product of and an agent in his society. While this goal is by no means a simple one, it promises to be challenging and rewarding.
Availability and Collection of Data

Availability

The data necessary for this study are, for the most part, a part of the public record. In addition to a court appointed recorder and newspaper coverage, several independent reporters published accounts of the trial proceedings. A small number of diaries and personal manuscripts were also available. However, severe difficulty was encountered in trying to locate this material, for the most part, collected over one hundred and forty years ago.

I had the opportunity to work with all the original materials available at the Essex Institute, Baker Memorial Library at Dartmouth College, the Harvard University Libraries, the Boston Public Library, the Salem Public Library, the New England Geneological Society, the Massachusetts Historical Society, the Worcester Antiquarian Society, the New York Public Library, and the Charlotte, North Carolina Public Library. Nonetheless the large majority of the primary source material was uncatalogued; therefore it was necessary to spend many hours organizing papers, notes, letters, memorandums, etc.

Collection

A sufficient amount of data was needed so that the judicial structure of the period surrounding the trial could be reliably reconstructed. Since no phenomenon can be understood apart from its milieu, the first task was to place the entire period in
perspective in order that all subsequently gathered evidence might be viewed as a product of that age. Pertinent historical and criminological works were consulted for this purpose.

Description of Data Collected.—The collection of data depended primarily upon library research. As was previously stated, general works were used to give a perspective of the period. Then, works concerning Dexter and The White Murder Trial, biographies, diaries, personal manuscripts, collected papers of individuals, pamphlets, newspaper articles, writings, and the like were consulted.

Recording Evidence.—The large majority of the primary sources were uncatalogued and often intermingled with other materials. This combined with a vast amount of general material of a historical nature yielded a mass of information during the collection of the data. As a result the most pertinent and valuable information had to be separated from that which was less valuable. All tangential data had to be rejected. The employment of a less severe method of sorting would have made the vast array of data unmanageable.

In order to facilitate selection, the statement of the problem was employed as the criterion for determining relevant from irrelevant material. This statement was deemed a sufficient test of relevance, since the problem statement specifically implies the distinctive nature of the data necessary for its own solution.18

18Wherever a reasonable doubt arose, the data in question was recorded.
In addition, sufficient data had to be collected in order that the questions posed by the statement of the problem be answered. At this point it was decided that the questions of the problem statement could adequately establish the nature and scope of the answers. Accordingly, with the general structure and limits of variation of the solution thus specified by the statement of the problem, it was possible to use this same problem statement as a criterion for judging if and when collected data might plausibly yield the sought after answers.

Construction and Verification of a Text of the Trial

The most important aspect of the preliminary work involved in this study, next to establishing the research design, was to discover whether or not an accurate and dependable record of the entire White Murder Trial could be assembled from the primary sources available. Needless to say without such a text the proposed study could proceed no further. Thus, I had to determine to what extent the accounts of the trial were accurate, and how much of the trial was covered by these records.

Accuracy of the Records of the Trial

Transcripts and reports of the trial can be located in five different sources: (1) diaries of spectators who attended the trial and recorded what they saw and heard; (2) the speech and trial notes of both the defense and the prosecution; (3) privately printed
accounts of the trial proceedings; (4) an account of the trial as set down by the court reporter; and (5) newspaper reports of the daily proceedings.

The Court Reporter's Transcription. — A careful examination of all of the sources of data has revealed that the most accurate record of the trial is the transcript taken by Octavius Pickering. During his professional life Pickering made a reputation for himself as an accurate observer and reporter of contemporary events. Largely due to his reputation as a meticulous stenographer, he was appointed by the Commonwealth as Clerk of Courts for Essex County. From his own account it is clear that Pickering attended each session of the trial for the explicit purpose of making a clear and accurate record of the entire proceedings, and as the clerk of courts he was assigned a desk directly in front of the judge's bench from where he could observe all.

Diaries. — After an extensive study of the diaries available, it was evident that none of the diarists were professional stenographers. In all probability none of them had had any training in the art of taking notes. From gaps in the material and missing entries, it became clear that their attendance at the trial was less than regular. In most cases argument, rather than word for word testimony, was the

19Apparently, the existence of this transcript had gone unnoticed and/or undiscovered prior to the present study.
diarist's first concern. As a result the diaries are highly irregular, detailed one day, and devoid of trial information on another. Moreover, the size of the courtroom created certain physical problems which hampered the diarist. For example, because of wide public interest in the trial, a spectator might have found the only available space was standing room far from the center of action. This would make it difficult to see and hear. The simple process of writing posed another problem as the courtroom was poorly furnished. Spectators sat on long wooden benches. The clerk of courts alone possessed a writing table. As a result the diaries are for the most part hastily written notes. Despite their limitations, the diaries were used to spot check the accuracy of the official transcript.

**Trial notes.**—Notes of the trial, of speeches, and of projected lines of argument have been found which were made by Dexter, Gardener, and particularly Rantoul. Some of the materials used by Webster and Davis for the prosecution are also available. The material contained in these notes, with the exception of that collected by Rantoul, is very incomplete; however, where they do exist, the speaker's invention and arrangement of materials, even though the notes do not give a word-for-word account of what was said, is quite evident. Despite
the obvious limitations, such a source of data is most valuable in checking the official transcript.20

Privately published accounts of the trial.—Due primarily to the vast interest expressed in the trial by the populace of Eastern Massachusetts, and surrounding areas, W. and S. B. Ives of Salem, and Beals and Homes of Boston published, in 1830, accounts of the trial proceedings. These accounts contained the charge of Chief Justice Parker, and a transcript of the trial, as well as the verdict reported by the foreman of the jury. With only slight exception these accounts correlate very nicely with the official transcript. Also, copies of the speeches delivered at the trial by individuals appeared in print from 1830 onward. Daniel Webster, for example, had his best efforts at the trial printed. It should be remembered, however, that the purpose of these printed speeches was not to provide posterity with a faithful record, but rather to circulate the speaker’s view or to demonstrate his eloquence for friends and admirers. As a result, these printings were literary works aimed at a reading audience, and were usually meticulously edited by the speaker. They offer a fair record of the speaker’s main ideas and arguments, but are not to be considered as a precise report of what was actually said at the trial. However, they too provided another method for spot checking the accuracy of the official transcript.

20The primary importance of this data was realized in making a rhetorical analysis of the defense.
Newspaper accounts of the trial.—The local papers which covered the trial are as follows: Boston Courier, Essex Register, Ladies Miscellany, Marblehead Register, Salem Gazette, New Hampshire Patriot and State Gazette, Newburyport Harold, Salem Mercury, Salem Observer, and the Newburyport Advertiser. An equal number of out of state papers also carried accounts of the trial; regardless, the Essex Register, the Ladies Miscellany, and the Salem Gazette were the only papers which endeavored to carry a word-for-word report of the testimony. The reporting was generally done by the editor who would, out of necessity, have to be a decent stenographer. Thus, at first glance, one might assume that the newspapers carried an accurate report of what was happening; however, since the court ruled several times that undue editorializing was presenting a biased picture, and also ruled against such activities, this source was severely limited. Despite the limitation, the newspaper accounts were also used to spot check the accuracy of the official transcript.

Using diaries, notes, privately published accounts, and newspaper reports as a basis the accuracy of the official transcript was ascertained from a quadangulation of the agreement-disagreement found among the five independent sources. The statistical technique employed was based upon the idea that a greater incident of agreement extends the probability that the official transcript is a dependable, accurate source.

21One can detect, while reading newspaper accounts of the trial, what little effect such rulings had.
Determining the Authenticity of Sources

In trying to determine the authenticity of the sources as rigorous a process of verification as was possible, with the present state-of-the-art of historical methodology, was employed. Thus, none of the data were presented as historical facts until the probability that the data were reliable had been determined.

Only after determining the credibility of each witness was a critical examination of their testimony carried out. Each source was subjected to a careful and systematic investigation through the use of both internal and external evidence. Wherever possible the inquiries were presented in such a manner that any competent individual concerned with the reliability of a specific source could, by using the thesis and its bibliography, retrace the writer's work.

Determining the Accuracy of the Statements

After establishing the credibility of a witness, the accuracy of his statements was examined. In trying to determine the truthfulness of the data, four steps were taken:

1. The competence of the witness was tested, as explained in the section on determining the authenticity of sources.

2. The reports were inspected so as to discover any possible prejudice or bias on the part of a witness which might have rendered his report unreliable.
3. The testimony of the witnesses was examined for internal consistency. Other statements made by the same individual were checked to learn the consistency of his views through the passage of time.

4. Reports of one witness were compared with the reports of others. When independent reports agreed upon a particular fact, they were accepted as being accurate. Contradictions were carefully scrutinized to see whether the differences were real or apparent.

In short, a search was carried out for the qualified and/or unbiased observer who was a primary source, and whose observations had been confirmed by other reliable witnesses. As before, whenever possible the inquiries were presented in such a manner that any competent individual concerned with the reliability of a specific source could, by using the thesis and its bibliography, retrace the writer's work.

A Theoretical Approach to the Problem of Analyzing and Criticizing The White Murder Trial

Audience Analysis and Adaptation

Lloyd Bitzer states that

... rhetoric is a mode of altering reality, not by direct application of energy to objects, but by the creation of discourse which changes reality through the mediation of thought and action. The rhetor alters reality by bringing into existence a discourse of such a character that the audience, in thought and action, is so engaged that it
becomes mediator of change. In this sense rhetoric is always persuasive. ²²

Thus, the rhetorical critic, as well as the rhetor must, because of the integral part it plays, concern himself with the speaker's audience. In order to gain a proper perspective of the audience this study will utilize many social scientific theories, thus adding to our understanding of Dexter's invention and arrangement. These same theories will also be used in aiding our understanding of historical data; therefore, an extensive review of these theories is relevant as well as necessary.

The critic's ideas concerning the nature of the audience help to shape any criticism of public address he might make. The critic's perception of the audience, in turn, reflects his theoretical assumptions with regard to the characteristics of a given communicative situation. The assumptions directing this inquiry are: (1) the speaking situation consists of interactions between the speaker, the audience, the subject matter, and the occasion; and (2) that within the speaking situation, and audience is an "emergent;" that is, a function of the audience's predispositions toward the topic and purpose; the audience's reaction to the occasion; and how the audience responds to what the speaker does. ²³ Thus, the critic


must try to discover what mediating factors in the speaking situation led the audience to a posture of support of, or opposition to, the purposes of the speaker. In this case, what did Dexter's audience bring with them to the trial which could have affected their responses to the speaker, topic, purpose, or occasion?

It is quite evident that Dexter's audience carried with it a lifetime of loyalties, attitudes, beliefs, and values. These were organized in such a way as to provide compatibility within the scheme of things which were important to them. In the language of modern psychology, each member of the audience (jury) possessed a "behavioral history" which accompanied him into the courtroom. Any single factor in the audience's behavior history could conceivably have mediated or affected his response to the rhetorical situation. As a result, Dexter, in order to be effective, had the problem of accurately estimating what variables were at work at any given moment. Thus, the critic may view the audience as a network of interrelated responses affected through points in time by attitudes or beliefs.

From this point of view the audience is seen as a variable intervening between Dexter's opinion of the accusation and the achievement of his purposes; the achievement of a specific purpose being dependent upon how the audience responds. It follows then that the audience to which Dexter had to adapt emerged for him at various times during the trial. As a result of this point of view the attention of the critic is focused upon how well Dexter handled the "constraints" which he had to meet during the trial. Therefore,
effective communication depended upon two things: (1) the nature of the behavioral history which directs an individual's decision system; and (2) the nature of the situation constructed by the speaker for the audience, which will determine the kinds of stimuli to which the latter is exposed. In other words, the speaker is confronted with the problem of determining the kinds of stimuli to which the audience shall be exposed. Thus, the task of the critic is to evaluate not only the quality and effectiveness of these stimuli; but also, the decisions the speaker used to select this or that stimuli.

Often a speaker is faced with rhetorical alternatives to a communicative situation. When this happens it is the critic's responsibility to evaluate both the line of argument taken by the speaker and the choice of possible alternatives available. It is from this kind of general concept that the study proceeds.
CHAPTER II

ATTITUDE, ATTITUDE CHANGE, AND THE LIMITS OF COMMUNICATION EFFECTS

Psychological Predisposition

The Nature and Functioning of Attitudes

Perhaps the most important feature man possesses is his ability to learn. One might go so far as to describe man as the "highest form of learning animal." According to modern psychology, learning is a process of adjustment to environment which a person makes with his entire personality. It is no longer possible, if indeed the idea was ever tenable, to think of learning as a purely rational process. Learning, "... involves not only our sensory apparatus and nervous systems, but emotions and emotional commitments, native and habitual, chemical and physiological, as well as the most commonly recognized factors of memory, imagination and reasoning."¹ These factors should not be viewed as independent; functionally, they are integral parts of the same organism, co-operating and influencing one another in the adjustment to environment which we call learning. If we accept this concept

of learning, it becomes clear that the role of attitudes, which constitute so potent and integral a part of our total make-up, must receive increased recognition.

Briggs declares that attitudes influence our receptivity, our interpretation of facts, our retention, our thinking, our integration and our action;\(^2\) while Jastrow suggests that in so far as attitude is concerned, "Tradition and convention bear heavily upon us, and determine what we believe almost as rigidly as what we eat or what we wear. We are in the stream and are borne along by the general current, and caught in the eddies and tossed by the waves of our immediate surroundings."\(^3\) Attitudes appear, then, to be so closely woven into the matrix of character that the two are practically inseparable. Indeed, Briggs indicates that, "it would not be far from the truth to say that character is the sum of one's attitudes."\(^4\)

Less than one hundred years ago the word "attitude" was used almost exclusively as an indicator of a person's physical demeanor. Thus, the individual exhibited a "threatening attitude." The word can still be used in this same vein; however, in recent years it is uncommon to find explicit labeling of an attitude as

\(^2\)Ibid.


being either "mental" or "motor." Such a practice hints of body-mind dualism, and is therefore distasteful to contemporary psychologists. If a tendency to lean in one direction or the other is visibly present, attitude, then, describes the psychological rather than the motor characteristics of the individual—his mental state as opposed to his bodily stance. In our culture this term is readily understood by all people. There is no essential communication breakdown when speaking to someone of the Russian attitude toward Viet Nam, of one's attitude toward the Negro, or toward sex. The term "attitude" as the terms "intelligence" and "personality" have much less technical application today than they had even ten years ago. This is viewed by some as a move in the right direction and by others as a move closer to the obscure realm of word confusion. From the point of view of this study, there is a singular advantage in using terms which are available, in one sense or another, to all; that is, that we move smoothly into a discussion of attitudes. This does not necessarily imply that there are no problems in defining the concept—attitude. Since the study of attitude came into vogue the literature has reflected a continuous controversy over the operational and theoretical definition of the term. Ultimately, a definition is little more than a matter of convenience. But this makes it all the more important to examine specifically what one implies by a concept.

The first part of this chapter will deal primarily with some of the conceptual issues of attitude theory. This discussion
will be followed by a section devoted to some of the principal methods used to explain attitude change, and the chapter will conclude with a section directed to the limits of communication effects. Such an approach seems to be directed by logical priorities; however, at times attempts to come to grips with conceptual issues are best approached as a continual procedure in co-ordination with the usage of the concepts concerned. The reader is at times in a more advantageous position to inquire into the detailed meaning of concepts when he has been previously acquainted with some of the theory which explains its workings and relationships. If the term has some implicit meaning, this procedure can be followed. When, in fact, we speak of an individual's attitude toward something, we are forming an abstraction based, at times, upon a good deal of information and personal observation. Various kinds of abstractions can be derived from the same observational data, and these can give rise to problems of conceptualizing attitudes. At times concepts are used substantively rather than abstractly and then attitudes are unsophisticatedly referred to as if they were things or objects of which direct knowledge is possible. Ultimately, we will have to use this concept more and more abstractly; however, if we choose to look at attitudes as if they are things or objects, then it becomes necessary to keep in mind that at best this is no more than a temporary measure, on the way towards sophisticated abstraction. One final thought—no one has ever seen an attitude.
Attitudes.—Many definitions of attitude have been advanced. Gordon Allport indicates that, "an attitude is a mental and neural state of readiness, organized through experience, exerting a directive or dynamic influence upon the individual's response to all objects and situations with which it is related." Thus, it is quite evident that without some sort of guiding attitudes, the individual would be confused and disoriented. Some type of preparation is necessary if he is to make satisfactory observations, pass controlled judgments, or make any but the most primitive reflex responses.

Newcomb's definition of attitude supports Allport's position generally; however, he chooses to place primary emphasis upon "previous experiences" and "contemporary influences" rather than upon an active state of "readiness." Newcomb suggests that an attitude is the individual's organization of psychological processes, as inferred from his behavior, with respect to some aspect of the world which he distinguishes from other aspects. It represents the residue of his previous experience with which he approaches any subsequent situation including that aspect, and together with the contemporary influences in such a situation, determines his behavior in it.

Newcomb goes on to indicate that attitudes endure in the sense that such "residues" are carried over to new situations, but they change

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in so far as new "residues" are acquired through experience in the new situation.

The concept, advocated here by Allport and Newcomb, and set forth by Krech and Crutchfield, which states, "an attitude can be defined as an enduring organization of motivational, emotional, perceptual, and cognitive processes with respect to some aspect of the individual's world," has probably had the greatest contemporary effect.  

Newcomb indicates that like attitudes, motives, are distinguished from one another by labels which refer to objects of orientation. He asserts the ultimate referent of attitude is behavior and makes these distinctions between the two terms:

(a) motives are conceptualized as existing only during those periods in which organisms are actually being activated in some manner, while attitudes are thought of as persisting, even during periods of behavioral quiescence; and (b) a wide range of specific and transitory motives may be aroused in the same individual who may be said to have a single, general attitude toward a whole class of specific objects—e.g., an entomologist with a favorable attitude toward lepidoptera is, at a given moment, motivated to catch a particular butterfly. Thus attitudes are generally both more persistent

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and more inclusive than motives, and a "motive" which is
described as both persistent and general is indistinguishable
from an attitude.9

An individual or group may simultaneously hold many attitudes
at any given point in time. Each attitude exerts a directive
influence upon the organism's responses to the objects and situations
with which it has intercourse. Used properly such knowledge could
enable a speaker to regulate the responses of an individual, or
group. The fact that Franklin Dexter, the principal character of
the study, was aware of the influence of attitudes upon human
behavior is evidenced by his repeated references to them in his
pre-trial notes.10

Allport's definition of attitudes reinforces the theory that
attitudes operate either to inhibit or effect changes in human
behavior. Writing about this influence Sherif and Sherif observe
that attitudes help man to structure his world. A stable base of
operation, once established, enables the individual to react to his
social world in a "consistent" and "characteristic" way, instead of
in a transitory and haphazard way.11 Allport tells us that, "many
authors have reduced the phenomena of perception, judgment, memory,
learning, and thought largely to the operation of attitudes . . . it

9 Newcomb, Social Psychology, p. 85.

10 For further information regarding Dexter see Appendix A.

11 C. W. Sherif and M. Sherif, Attitude, Ego-Involvement and
is especially when the stimulus is not of great intensity nor closely bound with some reflex or automatic response that attitudes play a decisive role in the determination of meaning and of behavior."\textsuperscript{12}

Asch is essentially maintaining Allport's position when he states that, "an attitude functions as an orientation to and context for current events. It has some of the earmarks and functions of an hypothesis, being a systematization and ordering of old experiences. It therefore relates present happening to what we already know and believe."\textsuperscript{13} This transpires primarily because attitudes sensitize the individual to events that he might otherwise overlook. Attitudes may also be directly responsible for the neglect and/or special interpretation of contemporary facts.\textsuperscript{14} Asch goes on to

\textsuperscript{12}Allport, "Attitudes," \textit{A Handbook of Social Psychology}, p. 813.


\textsuperscript{14}Ibid. There seems to be proof which tends to indicate that attitudes are preconceptions. Klineberg, \textit{Social Psychology} (New York: Holt, Rinehart, and Winston Co., 1940), give numerous examples of situations where it appears that the evaluative and decisional processes are completed before an individual examines a new situation. The view that the decisive effects of attitudes is to distort perception, thinking, and recall or to function as a source of error has gained ground lately. In a study by K. R. Hammond, "Measuring Attitudes by Error-Choice: an Indirect Method," which appeared in the \textit{Journal of Abnormal Social Psychology}, the author states that the presence of an attitude could be detected and its strengths estimated by measuring the distortion it exercised on judgment. The experiment utilized two groups, one which consisted of employees in a labor organization; the other was composed of businessmen. The groups were selected on the assumption that they
indicate that attitudes have a tendency to maintain their current "equilibrium," or resist change. They do this in three ways:

"(1) a fact may be rejected because its authenticity is questioned."\(^{15}\)

In this situation the individual either doubts the source or questions the fact because it conflicts with other, presumably more complete facts. By way of an example, I may refuse to believe that the charming young lady I have just met belongs to a group supporting anti-Italian beliefs; "(2) the meaning of a fact may be interpreted

\[^{15}\text{Ibid., p. 35.}\]
to reduce its threat to an existing view;"16 and "(3) equally significant are the effects of attitudes in prompting us to seek facts in accordance with them and to avoid those that might serve as a threat."17 Thus the significance of an attitude may be viewed as the effects it exerts upon past and present experiences and upon the appraisal of new conditions. As a result individuals shun fast recognition which may threaten their prevailing attitudes.18 Attitudes may then be viewed as operating to inhibit change, or as strong influences tending toward stability.

In contemporary society we find the term attitude used most often to denote psychological set; however, there are other terms often used to convey more specific psychological meaning. As is often the case when the definitions of terms differ only slightly in degree, there seems to be more confusion than clarification of

16Ibid. Asch suggests that there are varying ways through which this may be achieved: (1) the selection of a meaning in order that it will fit the given attitude. One possible meaning may be picked, or the fact may be considered in light of other material which is compatible with the attitude. The belief that Negroes are dirty people fits nicely into an anti-Negro position; (2) a fact may be "segregated" on the ground that it is not relevant or that it is out of date. When this occurs the fact is accepted but the attitude remains unchanged; and (3) in the instance where a fact is taken to be an exception the individual has chosen to limit the meaning of the fact.


the basic concept of psychological set. On the other hand, such terms are worth reviewing since we may assume that their long history in our language insures that they have some utility. Brief definitions of such terms as belief, faith, ideology, value, opinion, doctrine, judgment, bias, and stereotype will help clarify their operation in human behavior.\(^{19}\)

**Belief.**—The large majority of theorists seem to agree that an attitude is not a basic irreducible element within the personality, but rather represents a group of two or more interrelated elements.\(^{20}\) Jastrow tells us that the human "mind is a belief-seeking rather than a fact-seeking apparatus."\(^{21}\) In describing a belief Rokeach indicates that,

> a belief is any simple proposition, conscious or unconscious, inferred from what a person says or does, capable of being preceded by the phrase "I believe that . . ." The content of a belief may describe the object of belief as true or false, correct or incorrect; evaluate it as good or bad; or advocate a certain course of action or a certain state of existence as

\(^{19}\)These terms are most frequently used as specific variation of the attitude construct. The reader is cautioned to note the subtle differences between the concept attitude and between the individual concepts projected by the other terms herein used.


desirable or undesirable. The first kind of belief may be called a descriptive or existential belief (I believe that the sun rises in the east); the second kind of belief may be called an evaluative belief (I believe this ice cream is good); the third kind may be called a prescriptive or exhortatory belief (I believe it is desirable that children should obey their parents).22

All beliefs are predispositions to action; thus an attitude is a set of interrelated predispositions to action organized around an object or situation regardless of whether the content of a belief is to describe, evaluate or exhort. In addition, each belief is viewed as being made up of three parts: a cognitive, an affective, and a behavioral component.23

Several people may have an attitude about the same object but different beliefs may be central.

... what is criterial for one individual may not be criterial for another individual. To be sure, if an attitude is to be an attitude, criterial referents must be shared. But they can be and are differentially shared. That is, we can assume a continuum of relevance for any referent. Group membership,


23The cognitive component because it represents the individual's knowledge about what is right or wrong, good or bad, etc.; the affective component because the belief, under the right conditions, could arouse positive or negative affect of varying degree around the objects or around the belief itself; the behavioral component, because the belief is a predisposition to action, it will give way to action when activated. The end product of the action will be dictated by the content of the belief.
skin color, and civil rights, for instance, can be assumed to be differentially criterial for different individuals.\textsuperscript{24}

It does not seem reasonable to think of countless numbers of beliefs as being retained in an unorganized state within the human mind. Rather, it must be assumed that man's beliefs somehow become organized into systems which are not only describable but are also measurable and have observable behavioral characteristics. Thus, we may define a belief system as having represented within it the entire scheme of a person's beliefs about physical and social reality. These beliefs exist in some organized psychological, but not necessarily logical, form. By definition we do not allow beliefs to exist outside of such a system.\textsuperscript{25} All beliefs cannot be equally important to the person possessing them; they must vary along a continuum of importance or centrality. Further, it is assumed that the more important a belief, the greater will be its resistance to change. The more trivial beliefs will give way to change quite readily. It must follow, then, that when an important belief is changed, the more sweeping the repercussions in the rest of the person's belief system. This occurs because many of the beliefs which are "hooked up" with the belief that changes will also change.


Rokeach describes a belief system as being comprised of five kinds of beliefs, represented by five concentric circles, with the strongest belief at the center and the weaker beliefs along the outside circle. For ease of identification, the innermost beliefs are labeled Type A, which is followed by Type B, then Type C, Type D, with Type E existing along the outside circle.

At the center of the belief system stands the Type A or primitive beliefs. As viewed by Mead, these are beliefs we all share about the nature of our physical world, of our social world, and of the self. For example, I believe this is a chair. I believe this is a party. I believe my hair is black. These beliefs receive complete social consensus. They are taken-for-granted beliefs which are not subject to dispute because we believe, and we believe everyone else believes. These fundamental beliefs are more resistant to change than are any other type of belief. If such a primitive belief could be seriously challenged, it would be an extremely upsetting experience.

A second kind of primitive belief, Type B, is the converse of the above, and is also extremely resistant to change. Such beliefs do not depend upon social support, but rather arise from deep personal experience. Instead of virtually everyone serving

as external referents or authorities, there is no one. Suppose, for instance, that I suffer from a fear of high places. I have been told repeatedly that my fear is groundless, but it does not help. I continue to believe that bad things will happen to me if I expose myself to high places. Type B beliefs are incontrovertible and we believe them regardless of whether anyone else believes them or not. Many of these unflaggable self concept beliefs are positive, and others are negative. The positive, Type B+, represent beliefs about our capabilities, and the negative, Type B-, represent beliefs about what we fear.

As the child interacts with others, his expanding repertoire of primitive beliefs is continually brought into play and he thus stands to discover at any moment that a particular belief he had heretofore believed everyone else believed, such as the belief in God or Country or Santa Claus, is not shared by everyone. At this point the child is forced to work through a more selective conception of positive and negative authority; this point marks the beginning of the development of the nonprimitive parts of the child's ever-expanding belief system.

Nonprimitive beliefs develop out of primitive beliefs and have a functional relationship with them. They seem to serve the purpose

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27 The goal of the psychotherapist here is to become an external referent.

28 Rokeach views Type A and Type B beliefs as beliefs which cannot be changed unless change: (1) occurs over an extremely long period of time, or (2) attempted by a highly skilled psychotherapist.

29 Rokeach, Belief, Attitude, and Value, p. 9.
of helping the person to round out his picture of the world, realistically and rationally to the extent possible, defensively and irrationally to the extent necessary." In using the concept of nonprimitive beliefs, Rokeach is trying to reveal a class of beliefs that do not appear to possess the same taken-for-granted character as the Type A primitive beliefs. We learn to expect differences of opinion and controversy concerning them and for these reasons all men need to identify with authorities who will help them decide what to believe and what not to believe. Is there a God? Was there really a Roman Empire? No one man is capable of ascertaining the truth on these issues for himself. As a result he comes to believe in one or another authority, parents, teachers, priests, politicians, and he often takes their word for many things. Thus, we all develop beliefs as to which authorities are positive and which are negative. The particular authority relied on for information differs from person to person and is dependent upon learning experiences within the context of family, class, religion and country.31

30Ibid.

31A disturbing possibility presents itself at this point and will persist if this line of reasoning is carried to its logical conclusion. It appears, at least to this author, that the world is generally evaluated according to the authorities and belief systems they parallel, i.e. We have beliefs about people who have beliefs. For example, when authority is seen to be absolute it leads to extreme cognitive distinctions between people as faithful and unfaithful, just and unjust, friend or enemy. Those who disagree may be rejected as enemies to God, Country, or mankind; those who agree are accepted, but only so long as they continue to agree. This kind of qualified acceptance is not very much different psychologically from unqualified rejection.
A person still has numerous beliefs left which need to be brought into line with those previously discussed. A fourth kind of belief, Type D, we call peripheral beliefs—beliefs which are derived from the authorities we identify with. Contained within the peripheral region is every belief which issues forth from positive and negative authority, regardless of whether these beliefs are perceived consciously. For example, a favorable or unfavorable belief about birth control, or having more than one wife at a time would be considered peripheral beliefs because they are derived from one's knowledge about the Catholic church. The Catholic church would be representative of a Type C belief. Thus, many people adhere to a particular set of beliefs because they identify with a particular authority. Providing that the suggestion for change emanates from one's authority, or, providing that there is a change in one's authority, such peripheral beliefs can be changed.32

Finally, there is a fifth class of beliefs, Type E, which Rokeach calls inconsequential beliefs. If they are changed "they have few or no implications or consequences for maintaining other beliefs involving self-identity and self-esteem, or for requiring consistency-restoring reorganization within the rest of the system."33 I may believe, for example, that short girls are more appealing than tall girls; I believe that Fall is a better time of year than Spring.

32Rokeach, Beliefs, Attitudes, and Values, pp. 10-11.

33Ibid., p. 11.
If you should persuade me to believe the opposite, the change is inconsequential because the rest of my belief system is not likely to be affected.

Specific content of peripheral beliefs vary from person to person. When we wish to determine and identify someone's ideological position, we must concern ourselves with specific content. But let's not go too far afield. What is of primary interest here is not so much ideological content as structural interconnections between peripheral beliefs and their antecedents.

Let us suppose that all stimuli (communication) impinging upon a human being from outside the body must be handled, or processed in a manner that will either allow it to enter the belief system or will keep it out. This process is most commonly referred to as thinking. The natural conclusion is that it is within the belief system that thinking takes place.

No one knows how new information is assimilated by the human mind. There are many theories which direct themselves to this problem and Rokeach's stands as good a chance as any of finally proving out. After all, the definition of a good theory is "one that lasts long enough to bring you to a better theory." The initial step in the thinking process begins with the person first screening the new information so as to determine whether it will be compatible with the primitive beliefs. This step may lead to the total narrowing or rejection of the information thus ending the process completely. For example, there are many people who
do not pay any attention to the current work being done in the field of Extra Sensory Perception because they are not psychologically ready to accept ESP regardless of how conclusive the supporting evidence. For these people ESP infringes upon their primitive belief that the world can only be recognized through the senses. However, if the new information is compatible with one's primitive beliefs, it may not be compatible with the Type C authority beliefs. This is often the reason people discriminatively avoid contact with certain people, social or political events, etc. that may well threaten the validity of their ideology. "Cognitive narrowing may be manifested at both the institutional and noninstitutional levels." 

Institutional level narrowing comes about when the screening is done for the individual by his authority; for example, by the publication of lists of taboo movies by the Catholic League of Decency, the removal and burning of books which were designated as being dangerous by the Nazi party, and the rewriting of history based upon supposition or fancy rather than fact. Noninstitutional level narrowing is achieved by the restriction of one's activities so as to avoid contact with people, ideas, and events that would weaken the validity of the belief system. This occurs when a person selectively chooses friends and acquaintances primarily on the basis of compatible beliefs, and only exposes himself to one point of view on key issues. In the academic field cognitive narrowing above and

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34Rokeach, The Open and Closed Mind, p. 48.
beyond that demanded by the requirement of specialization often occurs. This may be evidenced by the selective association of some faculty members with certain colleagues, and the selective reading of professional publications so that the belief system becomes increasingly narrow. However, not all information is handled this way. Ofttimes new information gets through and is not narrowed out if it somehow can be assimilated into the belief system. Many times this requires altering, by addition or subtraction, or rationalizing the new information. Generally, this is done by consulting one's authority sources. Finally, the information, which may or may not be new at this point, is filed into the person's world view.

In summary, we see that every person's system of beliefs is made up of beliefs which may be plotted along a continuum ranging from inconsequential, through the peripheral, to authority with primitive beliefs at the core. Primitive beliefs may be extremely resistant to change either because they enjoy universal social support or because they do not at all depend on social support. These five kinds of belief are structurally organized in a belief system which serves adaptive functions for the person in order that he may better know himself and the world around him. The beliefs and their subsequent structure are undoubtedly first learned by the child in the context of interaction with the family unit. As the child matures he realizes that there are certain important beliefs that all others believe and others about which men differ.
Taken together, the total belief system may be seen as an organization of beliefs varying in depth, formed as a result of living in nature and in society, designed to help a person maintain, insofar as possible, a sense of ego and group identity, stable and continuous over time—an identity that is a part of, and simultaneously apart from, a stable physical and social environment.35

Faith.—Beliefs, according to Cooper and McGough, are closely related to the concept of faith. Faith, however, seems to involve the individual's affective nature more deeply. Faith may be received as a system of attitudes which describe a fundamental belief in a person or principle or in a conception about a person or principle which may or may not be socially shared. Faith is said to stand between belief and ideology.

It is belief in that it is a prediction, it tells what will happen in the future. It is ideology in that it may be an elaborate cognitive system which purports to explain some phenomenon. On the other hand, one may be said to have faith in a doctrine. Thus, the term is closely associated with other "attitude species" terms. All theologies incorporate faith; in fact, religions are frequently referred to as faiths. Also, faith incorporates personal identification; the individual surrenders self to a predetermined future.36

Thus, faith may be conceived as an attitude directed toward equilibrium which operates at the cognitive and affective levels. When a person has faith in a belief, ideology, or doctrine, the belief, ideology or doctrine may be more resistant to alteration than one

35Rokeach, Beliefs, Attitudes and Values, p. 12.

not so related. Faith also implies a deep commitment to overt behavior, action, in the real world.

**Ideology.**—Allport tells us that the use of the term ideology can be traced back to Francis Bacon's "idols." If this is the case, and Allport's analysis seems to rest on solid ground, then the term ideology refers to a rather elaborate cognitive system which is used to rationalize certain forms of behavior. Newcomb speaks of ideologies as "... codification of certain kinds of norms," while Cooper and McGough indicate that, "the truth of an ideology may be defended even though there are no criteria by which its accuracy may be tested." We conclude, then, that ideologies direct human behavior by organizing the world and by giving man a picture or view of reality. This picture is largely responsible for filtering the signals that come to man and for giving directive meaning and structure to them. Thus, two people may put radically different interpretations on the same information. This does not happen because one person has found the truth but rather because

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each person has filtered the information presented to him through his particular view of reality, selecting the parts that fit, rejecting all else. This view suggests that a person's ideology, in the sense that it is his philosophy of life, includes his assessment of the ideals, or values, he selects to guide his life. Values are also conceived to be attitudes that influence a person's behavior.

Value.--The concept of value has at least three distinct meanings. Historically, there are two basic theoretical approaches which may be identified. The first is based upon the assumption that worth resides in an object, that the object has an intrinsic worth or importance which is unrelated to the user of the object. The second puts forth the idea that objects do not have intrinsic worth, but that the object's worth is only a function of human perception. It naturally follows from such a theory that any given object could

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40Ibid.

41Support for this theory is provided by Jones and Gerard, and Campbell, among others, who believe a value to be synonymous with attitude because the attitude object has "valence" or "cathexis." A significant amount of attention has been directed to the value concept by field theory. Field theory neither denies the existence nor importance of objects, rather it attempts to assess their proper significance. As previously discussed, the individual ascribes worth to an object. In utilizing field theory terminology, he assigns a valence to the object. Thus, for this individual, an object with which he is familiar and for which the object has significance must carry either a positive or negative valence. See E. E. Jones and H. B. Gerard, Foundations of Social Psychology (New York: John Wiley and Sons, Inc., 1967), and D. T. Campbell, "Social Attitudes and Other Acquired Behavioral Dispositions," Psychology: A Study of a Science, ed. S. Koch (New York: McGraw-Hill, 1963), pp. 94-172.
be of great worth to an individual at one time, and worthless at another time. This view holds that the worth an individual ascribes to an object is the value of that object for that person. "Thus, a given object has as many values as there are humans with varying worth ascriptions to perceive it."\(^2\) The third meaning of value for many is viewed as a disposition of a person just like an attitude, but considered to be more basic than an attitude, often underlying it. Rokeach indicates, "a value is a type of belief, centrally located within one's total belief system, about how one ought or ought not to behave, or about some end-state of existence worth or not worth attaining."\(^3\) As Rokeach views them, then values are abstract ideas which may be positive or negative. They are unattached to any specific attitude object or situation and they represent an individual's beliefs which exemplify ideal modes of conduct and ideal terminal goals.\(^4\) Like all beliefs, a person's values may be conscious or unconscious, and are generally inferred through the

\(^2\)Cooper and McGough, "Attitudes and Related Concepts," *Attitudes*, p. 30. This position is supported by W. I. Thomas and F. Zuaniechi, *The Polish Peasant in Europe and America* (Boston: The Badger Co., 1918), p. 21. Here value is viewed as a sociological concept, thus value is a natural object that has acquired social meaning.

\(^3\)Rokeach, *Beliefs, Attitudes and Values*, p. 124.

\(^4\)A. O. Lovejoy, "Terminal and Adjective Values," *Journal of Philosophy*, XXXVII (1950), pp. 593-608. Examples of "ideal modes" are to behave with sincerity, justice, reason, and compassion. Some examples of "ideal goals" are security, happiness, freedom, and equality.
overt responses the person makes. The average adult probably has thousands of beliefs, hundreds of attitudes, but only a few dozen values. "A value system is an individual's over-all life aspiration (what he really wants to achieve) which on the one hand gives direction to his behavior, and on the other hand is a frame of reference by which the worth of stimulus objects may be judged."\(^{45}\) In the value system sense, it is an elaborate and articulated organization of attitudes.

We may conclude then that people often embrace many values which become interrelated to form a system which functions in such a manner as to influence the kind of stimuli they perceive and accept as being important. From this point of view, a person's system of values would appear, and this is a widely held position, to act as a significant determiner of behavior. This view corresponds generally with Asch's view that an attitude, "(1) . . . is a structure (having) a hierarchial order, the parts of which function in accordance with their position in the whole. (2) At the same time a given attitude is a quasi-open structure functioning as part of a wider context."\(^{46}\) Asch goes on to say that,

\[\ldots \text{an attitude has the character of a commitment to a policy. In this respect it represents a dynamic assessment of a given situation with reference to an end. One fundamental}\]


\(^{46}\)Asch, "Attitudes as Cognitive Structures," Attitudes, p. 32.
consequence of such an assessment is that certain facts become relevant, others less relevant and that certain data become crucial, others less important.\textsuperscript{47}

The formation of a perspective occurs when attitudes combine to form an interrelated structure. As such attitudes become a powerful determiner of behavior.\textsuperscript{48} Asch refers to clusters of attitudes as "points of view," or "perspectives," which indicate that a person has a unified way of viewing an object or experience.\textsuperscript{49} An individual's perspectives, then, may be viewed as functioning in such a manner as to control influences upon behavior.

\textbf{Opinion.}—Hovland, Janis and Kelley operationally define opinion, "as verbal 'answers' that an individual gives in response to stimulus situations in which some general 'question' is raised."\textsuperscript{50} If this is the case then "an opinion is a tentative perceptual set toward cognitive organizations or stimulus objects."\textsuperscript{51} The tentativeness

\begin{itemize}
\item \textsuperscript{47}Ibid.
\item \textsuperscript{48}It seems to this author that in the sense that the perspective is more powerful than the sum of its individual parts, this effect may be viewed as an "assembly effect bonus."
\item \textsuperscript{49}Asch, "Attitudes as Cognitive Structures," \textit{Attitudes}, p. 33.
\item \textsuperscript{51}Cooper and McGough, "Attitudes and Related Concepts," \textit{Attitudes}, p. 29.
\end{itemize}
of an opinion is dependent upon the fact that the individual reserves the right to reverse himself. Thus the individual realizes that the cognitive organization or stimulus object he now perceives as a "barrier" may be viewed at a later time as a facilitation. "Opinions play an important role in the thought process in that they represent cognitive summaries." With the simple definition that an opinion is a verbal expression of some belief, attitude, or value, Rokeach postulates a similar view; however, he emphasizes the aspect of determining which belief, attitude, or value the opinion reflects. Rokeach indicates that this is generally a matter of inference. The expressed opinion "I am opposed to the war in Viet Nam" may be a revelation of a covert attitude about war or an underlying attitude about religion. However, a verbal expression cannot be taken at face value, as a person may be unwilling or unable to reveal his underlying (real) beliefs, attitudes, or values. Consequently, "an opinion typically represents a public belief, attitude, or value, but may come close

\[52\text{Ibid.}\]
to private ones when verbally expressed under increasing conditions of privacy."53

Judgment.—Cooper and McGough54 describe judgment as either the process or the result of classifying stimulus objects into categories. Judgment may also be comparative as many judgments are not ego-related.55 By way of an example, I may judge one roach to be larger than another. Hopefully, such a judgment involves no "ego-involvement," no "affective property," and no "barrier" or "facilitation" character. If, however, I judge one person to be better than another, then, to the extent that a judgment-produced perceptual set has "ego-involvement," an "affective property," and "barrier" or "facilitation" aspects it can be thought of as an attitude.

Doctrine.—A doctrine is described by Coutu as meaning that which is taught. He puts the whole concept rather nicely when he indicates that it refers to that which we are taught and expected to believe, i.e., how things are done and what should be believed. Doctrines

53Rokeach, Beliefs, Attitudes, and Values, p. 125. Hovland, Janis, and Kelley (Communication and Persuasion, pp. 6-10) set forth this same idea.


55Thus not all judgments can be classified as social attitudes.
of the church, of the judicial code, of democracy, etc. are simply elaborate stimulus objects about which people have attitudes. "A doctrine is a highly involved logical system concerning complex phenomena to which a person subscribes or objects." A doctrine is a way of interpreting important phenomena and must be accepted or rejected. It is quite explicit in describing, by codification, the reasons for adherence and the ways in which subscribers should behave as a function of its validity. Doctrines function so as to maintain the status quo; thus they resist change in their habits of thinking about life. As a result, changes in doctrines do not usually come about quickly.

Bias and Stereotype. — Literally the word bias refers to that which is bent or oblique. A bias may be viewed as a mental leaning, or inclination, or a weak prejudice. A prejudice which does not carry conviction. Parents may be thought of, and rightly so, as biased in favor of their children. In this type of situation an outsider may expect this to one degree or another. An evaluation of the parent's attitude would reveal that it is based upon

56 Cooper and McGouth, "Attitude and Related Concepts," *Attitudes*, p. 27.


"incomplete, inaccurate, preconceived or deductive premises."

Generally, an individual will admit to his bias. This is much more difficult to do with a prejudice. Thus, a bias is little more than a weak prejudice, prejudices that do not carry great conviction or potency. A stereotype is a gregariously held belief which characterizes an attitude object in an oversimplified manner. The attitude object is viewed as preferring specific kinds of behavior which are judged to be either socially desirable or undesirable. For example, "All Italians carry knives," implies that Italians possess a value not shared by the person who is doing the stereotyping. Stereotypes are often based upon an element of truth but the stereotype remains unqualified in any way.

**Persuasion Communication.**—The success of judicial rhetoric through the logical, ethical, and emotional presentation of evidence is largely dependent upon the persuasive speaking ability of the advocates. However, other dimensions of the communication process may come into play. For example, the effectiveness of persuasive speaking is often influenced by the context or environment within which it takes place.\(^59\) If the communication is successful, it will in turn influence change in the environment. In his model Knower places persuasive speaking within the context of the culture in which it was born, and designates those individuals who use symbol

systems to arouse meaning in others as the focal point of the process. "Speech is learned behavior." It is acquired from the elders and peers of the culture into which one is born. This learning often effects change in attitudes, as well as behavior, and may come to alter the context in which future communication takes place.

Any realistic conception of persuasive speaking recognizes it as primarily a social process. It is impossible for any communicator to have absolute control of his communication. The speaker may do all in his power to adapt his message to a particular audience, "but its ultimate value will depend upon the cooperation of those receivers. Successful communications demand that they be capable of receiving and interpreting the symbolic behavior of the sender." Nonetheless, this position does, in fact, support Dexter's view that through persuasive speaking a chain reaction may occur which will cause attitude change, thus change in behavior, and finally, leading to an eventual change in environment. Dexter's practice, then, is consistent with leading scholars of his day, such as: Campbell, Blair, and Whately, who believed that changes could be brought about.

60Ibid., p. 182.


62Knower, pp. 185-186.
in the world through persuasion. He is also in agreement in suggesting that alteration of attitudes is a means to this end. For these reasons, the discussion will now turn to a consideration of the process of persuasion through which attitudes may be changed and subsequent behavior altered to make it more favorable to the speaker's position.

Persuasion and Attitude Change

An attitude is often referred to as "a perspective or a point of view, implying a . . . unified way of looking at data." As previously indicated, data, or new information, may exert important influences upon behavior. A prospective is a dynamic structure. It is composed of interdependent and mutually interrelated attitudes, values, beliefs, etc., which tend toward stability but which are subject to alteration and change. Thus, insofar as an attitude is a part of a wider system, it becomes necessary to

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63 John P. Haskoc, "American Contributions to Rhetorical Theory and Homiletics," A History of Speech Education in America, ed. Karl Wallace (New York: Appleton-Century-Crofts, Inc., 1954), p. 130. indicates that, "In 1806, John Quincy Adams was inducted as first Boyleston Professor of Rhetoric and Oratory at Harvard University." Also, according to the catalogue, by 1810 courses in rhetoric were required of all students. In light of the fact that Dexter graduated from Harvard in 1812, he was undoubtedly exposed to classical as well as contemporary theories of rhetoric. Therefore, it is quite possible that his consistency with Blair, Campbell, and Whately may have been the result of a conscious effort.

understand the major premises of the individual's world view, the fissures that may exist, and the function of a given attitude within its context. In view of the fact that it is a semi-autonomous system we need to trace its formation and change in relation to conditions directly relevant to it.

We may, for example, find that the formation of a given attitude will encounter resistance if it contradicts the wider system that tends to equilibrium, or that it will take shape to conform to the system. On the other hand, a change in a very cogent part may start a process that alters the system as a whole.

Asch goes on to indicate that,

In the extreme instance the encounter of a contradictory fact can undermine an attitude and produce a movement in the opposite direction. Such changes occur with relative infrequency, but when they do occur they mark serious points in history and in personal life.

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65 According to a poetic fable six blind men of Hindustan went to see an elephant and delivered six separate opinions on the beast. Each reported respectively that the elephant was something like a wall, a spear, a snake, a tree, a fan, and a rope. Much like our six blind men each of us has a highly selective "value screen" through which we view the world. In terms of this concept "world view" refers to how each individual views his world and his relationship to it. Six different people may, probably will, represent six different world views. In the case of the six blind men of Hindustan, had each noted the direction of his approach and the point at which he made contact with the elephant, the six reports might have been systematically coordinated and a correct, though incomplete, account of the animal might have emerged. For a more detailed analysis see: Felix S. Cohen, "Field Theory of Judicial Logic," Yale Law Journal, LIX (January, 1950), pp. 238-272.

66 Ibid., p. 34.

67 Ibid.
Consequently, even though attitudes tend to maintain themselves they may be changed or replaced. However,

for a given datum to produce such a drastic change it must have crucial bearing on the content of the attitude; this is why single data ordinarily do not suffice to topple an entire structure. It is more usual for contradictory facts to create doubt and thus pave the way for later change. Little may happen to the fixed view for the time being. The person may still speak as he has in the past, but he may become more curious and alert to ask questions and make new observations.68

In terms of the person’s cognitive system, therefore, there is a continual striving for consistency, a push toward congruous, harmonious, fitting relationships between the cognitive elements or between the thoughts, beliefs, values, and actions that make up a structure of cognitions about some object or set of events. Thus, when inconsistency occurs, some psychological tension is presumably set up in the individual, thereby motivating his behavior in the direction of reducing this inconsistency and re-establishing harmony.69 In effect, the cognitive process is constantly striving toward cognitive balance.

68Ibid., pp. 34-35.

69Leon Festinger, A Theory of Cognitive Dissonance (Stanford, California: Stanford University Press, 1957), pp. 1-2. General readings in this field lead me to believe that although it is generally true that a person will tend to make various aspects of his cognitive functioning consistent, it cannot be said that all systems achieve consistency. The human mind is so complex and has available to it so many compartmentalizations, rationalizations, and other defense mechanisms that the principle of cognitive consistency would in its purest form only be a uniformly accurate predictor of attitude change. With the realization that there are some limits to this principle, it is still a reliably predictive instrument.
It would appear, then, that the easiest way to change attitudes through persuasive speaking is to confront one's audience with facts contrary to their existing attitudes and beliefs. This in turn should cause doubt in the minds of the listeners concerning the validity of their attitudes; therefore, creating a state of disequalibrium in the minds of the audience becomes a major goal for the persuasive speaker. The problem, then, is to understand just how an adjustment is made between the ongoing structure and the new information so that equalibrium is again achieved.

All of the theoretical models to be considered deal primarily with changes toward the restoration of consistency. The models focus on different modes and specify a variety of different theoretical determinants of resolution. Taken in context, such an investigation can contribute to an understanding of the determinants of attitude change. The models all have as their starting point the principle of consistency, though the investigators use different terms to label them.70

Balance Theory.—The earliest formalization of consistency is attributed to Heider.71 His basic postulate is that if people seek

70 This study is not directed toward a goal of gathering imperical data, but rather is using social scientific theories to help better understand historical data. In taking a psychoanalytic approach to the trial it is my intention to be as eclectic as possible and use whatever theory is most helpful; however, I do not view myself as being bound by any of the theories.

balance as congruency between their beliefs and their feelings about objects, then their attitudes can be changed by modifying either the beliefs or the feelings. "Thus for Heider the concept of balance has Gestalt overtones and refers to intra-individual processes. A lack of balance results in stress and pressure toward change."\textsuperscript{72}

The consistencies in which Heider dealt were those dealing with the ways people viewed their relations with others and with the environment. The analysis was limited to two persons labeled P and O. P was the focus of the analysis with O representing another person and X identifying an event, idea, or thing. The object of the experiment was to determine how relations between P, O, and X were organized in P's cognitive structure and whether recurrent and/or systematic tendencies were evident in these relations. Two types of relation, liking, L, and unit, U, were distinguished. Heider proposed that P's cognitive structure representing relations among P, O, and X were either balanced or unbalanced. "In the case of triadic relationships between P, O, and X, balance obtains if all three of the signs are positive or if two are negative and one positive."\textsuperscript{73} A balanced state is obtained when P likes O, P likes X, and O likes X; or when P likes O, P dislikes X, and O


\textsuperscript{73}Insko, \textit{Theories of Attitude Change}, p. 163.
dislikes X. The fundamental assumption of balance theory is that an unbalanced state produces tension and generates forces to restore balance.

A concept closely resembling balance theory was set forth by Newcomb in 1953. Newcomb substituted A for P, and B for O. He also developed an intra-personal concept out of Heider's interpersonal concept. Newcomb postulates a "strain toward symmetry" which leads to a communality of attitudes between people (A and B) focused toward an object (X). The strain toward symmetry influences communication between A and B thus bringing their attitudes toward object X into congruency.

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74 Note should be made of the fact that a relation can be either positive or negative.


77 Insko, Theories of Attitude Change, pp. 165-166.

Osgood and Tannenbaum's Congruity Theory.--The principle of congruity, advanced by Osgood and Tannenbaum, deals with the problem of direction of attitude change.79 This theory assumes that judgmental frames of reference (attitudinal objects) tend toward maximum simplicity. Thus, since "all-or-nothing" judgments are simpler to make than refined ones, valuations exert continuing pressure toward polarization. "Extreme judgments have shorter latencies and are more characteristic of emotional, immature, uneducated persons."80 It is easier to categorize an attitude object as all bad or all good than as part bad and part good. Up to this point we have directed our attention to single attitudes. How does this theory deal with more than one attitude? When two attitudes are associated via an assertion, there is a movement toward equilibrium or congruity.

Journal of Abnormal and Social Psychology, XXXVIII (1953), pp. 327-335. General reading in the field seems to indicate that the consequences of balance theories have to date been rather limited. No systematic research program has been generated by Heider's model. The main finding is simply that the balance principle, like other Gestalt principles, operates widely and must be considered an important determinant of ideational dynamics. It is conceivable that some situations defined by the theory as unbalanced may in fact remain stable and produce no significant pressures to balance. For example, I like cows milk, and since cows like grass (according to balance theory), I must also like grass, for if I do not then I will experience the tension of imbalance. A second problem is that the model is not extended beyond the triad to represent the complexities of structure found in real cognitive processes.


80Insko, Theories of Attitude Change, p. 113.
This movement toward congruity is another example of the tendency toward simplicity. Osgood's congruity model describes this process as a basic way in which human thinking operates, i.e., sources we like should always support ideas we are for and denounce ideas we are against. When the existence of incongruity results in pressure to reduce it, the process is one of attitude change. When two attitude objects are brought into an incongruent relationship; the pressures to regain congruence leads to a change in the evaluation of one or the other, or both of them. For example, if Nixon, whom we admire (+), had made a favorable assertion about increasing income tax, which we dislike (-), the pressure would move us to evaluate Nixon less favorably and to view a rise in income tax more favorably. In effect, if both concept and source move toward a more neutral point, the result is less incongruity in the over-all cognition.

In his doctoral dissertation Tannenbaum was successful in demonstrating that persuasive communication is effective in changing evaluation and producing attitude change, depending upon the subject's initial attitudes toward the source of the communication and toward the object or issue. Thus, the congruity model approaches the study of the effects of persuasive communications by focusing on the links between sources toward which one has an attitude and objects toward which one has an attitude. When assertions made by persuasive

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communications produce incongruous relationships between the source and the object, attitudes change. They change in the direction of increased congruity depending upon the sign (+ or -) and extremity of the initial attitudes toward the two members of the linked pair.32

Theory of Cognitive Dissonance.—The third cognitive model for dealing with the effects of persuasive communication is Festinger's dissonance theory.33 This theory possesses the largest systematic body of data collected by any of the congruity models. The statement of dissonance theory is simple. It sets forth the principle that two elements of knowledge "... are in dissonant relation if, considering these two alone, the obverse of one element would

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follow from the other.\textsuperscript{84} Thus, if A implies B, then holding A and the obverse of B is dissonant. Dissonance, a motivational tension, is experienced when a person has cognitions among which there are one or more dissonant relationships. Cognitive elements which are not consonant or dissonant with each other are termed "irrelevant."

Festinger goes on to indicate that dissonance "being psychologically uncomfortable, will motivate the person to try to reduce dissonance and achieve consonance," and "... in addition to trying to reduce it, the person will actively avoid situations and information which would likely increase the dissonance."\textsuperscript{85} Further, the amount of dissonance associated with a specific cognition is a product of the importance of that cognition and of the one with which it is dissonant. Magnitude of dissonance is also a function of the proportions of consonant to dissonant cognitions. As the number and/or importance of dissonant cognitions increases relative to the number and/or importance of consonant cognitions, the magnitude of dissonance increases.

Generally, dissonance may be reduced by decreasing the number and/or importance of dissonant elements compared to consonant elements, or by reducing the importance of all relevant elements together. How dissonance is reduced depends on the resistance to change of relevant cognitive elements. Those cognitions with

\textsuperscript{84}Ibid., p. 13.

\textsuperscript{85}Ibid., p. 3.
relatively low resistance tend to change first. The resistance to change comes from the extent to which a change would produce new dissonance and from the joint function of the anchorage of the cognition in reality and the difficulty of changing reality. A number of interesting consequences follow from Festinger's dissonance hypothesis.

The dissonance model enables us to predict that all decisions result in dissonance to the extent that the object not chosen contains positive features which make it attractive, and the object chosen contains negative features which might have resulted in it being rejected. Thus after making a choice, people seek evidence to confirm their decision and so reduce dissonance.86

"There are circumstances in which persons will behave in a manner counter to their convictions or will publicly make statements.

86 D. Ehrlich, J. Guttman, et al., "Post-decision Exposure to Relevant Information," Journal of Abnormal and Social Psychology, LV (1957), pp. 98-102. Dissonance occurring after a decision or behavioral act may be reduced by exposing oneself to further information which will justify the decision made. Here the finding was that new car owners read ads about the cars they had recently purchased more than ads about other cars. Thus, people actively seek additional information (cognitions) in order to reduce dissonance. The phenomenon of differential exposure is important if we are to be able to comprehend the process of attitude change because through selective exposure a person can keep his current attitudes and protect his beliefs, values and self-image. We must therefore expect attitude change to be reduced to the degree that attention to persuasive communications is lessened through differential exposure. For further elaboration see D. Ehrlich J. Guttman, et al., "Post-decisional Exposure to Relevant Information," Ibid., or Festinger, A Theory of Cognitive Dissonance, p. 83."
which they do not really believe." Here is another situation
which is accounted for by dissonance theory. The dissonance model
thus deals with situations in which the person is forced, by reward
or punishment, to express an opinion publicly or make a public judg­
ment or statement which is contrary to his own opinions and beliefs.
In that situation where the individual actually expresses an opinion
or makes a judgment contrary to his own, as a result of reward or
threat, dissonance exists between the behavior of the individual
and his privately held beliefs. In the case of non-compliance
dissonance will exist between the behavior and the anticipation of
the reward or punishment.

The dissonance model also deals with exposure to information.
Since dissonance occurs between cognitive elements, and since infor­
mation may lead to change in these elements, the principle of
dissonance should have a close bearing on the individual's dealings
with information. In particular, the assumption that dissonance
is a psychologically uncomfortable state leads to the prediction

\[87\] Festinger, A Theory of Cognitive Dissonance, p. 84.

\[88\] Ibid., p. 88. In Festinger's and Carlsmith's experiment
"Cognitive Consequences of Forced Compliance," Journal of Abnormal
and Social Psychology, LVIII (1959), pp. 203-210), subjects were
offered either $20.00 or $1.00 for telling a third party that an
experience which had been quite boring had been rather enjoyable
and interesting. When measures of the subject's private opinions
about their actual enjoyment of the task were taken, those who
were to be paid only $1.00 for the false testimony showed consider­
ably higher scores than did those who were paid $20.00.
that individuals will seek out information which will reduce dissonance.\textsuperscript{89}

One would then expect that in the presence of dissonance, one would observe the seeking out of information which might reduce the existing dissonance. The degree to which this kind of behavior manifests itself would, of course, depend upon the magnitude of the dissonance which exists and also upon the person's expectations concerning what content any potential information source would yield.\textsuperscript{90}

All three consistency theories have implications for understanding the individual's response to persuasive communications as they focus on the ways in which persuasive communications disrupt cognitive structure and on the means which they provide for resolving inconsistency. Thus, attitude change may be analyzed in terms of a strain toward consistency and the acceptance of any communication which facilitates the attempt. In those situations where the individual is confronted with propaganda or social influence all of the models present complementary, if not overlapping, theories for understanding when attitude change will be facilitated. Dissonance theory, largely because of its emphasis on the individual's behavior in creating self-initiated dissonance as he engages in behavior discrepant from his cognitions, is singularly equipped

\textsuperscript{89}It should be noted, however, that if the level of dissonance is too high, then the individual may seek information to further increase the dissonance to a point where the decision is revoked. For further elaboration see Insko, \textit{Theories of Attitude Change}, p. 203.

\textsuperscript{90}Festinger, \textit{A Theory of Cognitive Dissonance}, pp. 126-127.
to explain the effects of situations where the individual is induced
to do or say something he does not want to do or say.

It may be concluded then that a method for changing attitudes
through persuasion is to present the audience with facts contrary
to the attitudes it presently holds with a goal of arousing doubts
concerning their validity. Thus, the arousal of doubt in the mind
of the listener through the presentation of facts that contradict
the listener's attitudes may be viewed as a meaningful goal for the
persuasive speaker.

Dexter does not direct any of his speaking to the dynamics
that account for the responses he seeks. As a result other sources
will be sought for this explanation. Cronkhite's, as well as
Fotheringham's, discussion of the process of persuasion will provide
an adequate answer to this inquiry. According to Cronkhite the
basic model, or paradigm, of persuasion may be viewed as that situa-
tion in which a persuader, in the case of this study Dexter, attempts
to cause a listener to perceive a relationship between two stimuli.
The first stimulus is referred to as the "object concept" or "object
stimulus." It is either relatively neutral, eliciting few and very
weak responses from the listeners, or is one that elicits behavior
from the listener which the persuader wishes to change. This is
called the object of persuasion.\(^9^1\) For example, a persuader might

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\(^{91}\)Gary Cronkhite, "Logic, Emotion, and the Paradigm of
be interested in changing a listener's behavior toward "what constitutes aiding and abetting," in which case "what constitutes aiding and abetting" would be the "object concept."

If the persuader wishes the listener's behavior to be a more favorable evaluation of his view of "what constitutes aiding and abetting," he may choose a second stimulus, the "motivational stimulus" or "motivational concept" which the listener already evaluates favorably. The object, here, is for the persuader to cause the listener to perceive a positive relationship between the object stimulus and the motivational stimulus.\footnote{Gary Cronkhite, Persuasion: Speech and Behavioral Change (New York: Bobbs-Merrill Company, 1969), p. 75.}

The process of choosing motivational stimuli or concepts to be associated with the "object concept" is quite complex, because there are so many types of motivational stimuli. After close analysis the functional motivational concepts appear to divide into four general categories: (1) personal safety, the listener is manipulated so as to view the persuader as upholding a position which does, or could, represent personal safety for the listener; (2) personal advancement, here the listener believes that the persuader's position is the most popularly held view and to disassociate himself with that view would cause loss of identification with influential people; (3) maintenance of identity, is closely related to the preceding concept. To the degree that the persuader can convince the
listener that he is or is not something, a liberal, the listener will attempt to conform to his own personal concept of how a liberal should act; and (4) consistency function—here the listener acts so as to make his attitudes toward a concept consistent with his beliefs about the relationship among them. In order to utilize the four motivational concepts successfully, the persuader must have a complete knowledge of the functions which his listener's attitudes perform and must be very perceptive and imaginative about the functions new attitudes may perform for him.

The above paradigm of persuasion, then, involves two operations. First, the individual who wishes to persuade must choose motivational concepts which are capable of consistently eliciting strong behavior from the listener. Secondly, he must exhibit the fact that those motivational concepts are clearly related to the object concept, in order that his listener will

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93 Ibid., pp. 76-78.

94 Cronkhite indicates that the persuader himself may also act as a motivational concept, as may other individuals he cites as being in favor of his proposals or points of view. The persuader is, in effect, associating himself with the object concept of making either a favorable or unfavorable assertion about it. To the degree that the listener responds to the persuader, then, he should respond to the concept with which the persuader associates himself. If the persuader disassociates himself from the concept, the listener will respond to the concept in a dissimilar fashion. This introduces a rather interesting point. Is it possible in the case of a trial for a listener, if he idealizes or holds the persuader (Webster) in high enough regard, to associate with his position despite the evidence against and/or the legality of that position?
respond to the object concept as intensely and consistently as he does toward the motivational concept.

Fotheringham's concept of the perception of choice gives an added dimension to Cronkhite's theory by introducing an aspect of persuasion seldom covered by other theorists. According to Fotheringham, the perception of choice, imaginary or real, is basic to the persuasive process as it often determines initial behavior. If the audience believes it has exercised its capacity to interfere with and alter cause and effect, it is more likely to believe in the action it subsequently takes. Thus the perception of choice generates harmony in the audience's beliefs, attitudes, and behavior. As a result, the listener's cognitive structures tend to maintain themselves by resisting change. The function of the persuasive message then is to create tension in either the cognitive and/or affective system of the listener. This tension has the capacity to generate movement within the system which will align behavior with the action recommended by the speaker. The primary purpose of the persuader then is not direct action, but rather the creation of a mental set from which direct action may be derived.

95 W. Fotheringham, Perspectives on Persuasion (Boston: Allyn and Bacon, Inc., 1966), p. 79.

96 Fotheringham's position closely parallels a similar view previously developed in the discussion of consistency theories.

97 Fotheringham, Perspectives on Persuasion, pp. 80-81.
Conceived in this way persuasion is not viewed as a "one-shot deal" but rather is seen as a campaign approach striving to stimulate action. The goals of the message are to facilitate comprehension, arouse feelings and belief, and to heighten retention, confusion, and uncertainty as a means for altering behavior in the audience so as to bring it in line with the speaker's position.

Because of the nature of the communication process the audience's perceptions of the speaker's meaning becomes a central task of persuasion. "Meaning or significance of things, of actions and of words, do not reside in them but is assigned or attached to them by people."98 The assumption is that meaning is in people and that the audience assigns meaning to messages and that the meanings they assign become major determinants of their subsequent behavior.99 Such a concept places considerable emphasis upon the audience's attitudes, which, in turn influence their perceptions and assessments of the message. Quite often a person's actions are not based upon the facts of the "real world," but upon his perception and structuring of the world. What a person is actually aware of in his perceptions of the world is not the world itself, but some representation of that world inside his own skin. To understand his behavior, we must first understand how he

99Sherif and Sherif, Attitude, Ego-Involvement, and Change, p. 83.
preceives and structures the world. To understand him, we must see the world through his eyes. Thus, it is the responsibility of the speaker, if he is to be a successful persuader, to view the world through the attitudes or from the perspective of his audience.

Limits of Communication Effects

In *Brave New World* Aldous Huxley projected a view which he hoped would make his readers aware of what he believed to be a growing tendency toward a standardized slavery fashioned after a Soviet-style dictatorial elite advanced by the technological advances of the western world. Huxley envisioned a world where material affluence would render men compliant while psychological technology would enforce their slavery. By using neo-Pavlovian conditioning and hyponopaedia all feelings and attitudes would be standardized. Thus, Huxley feels that only the temporary imperfection of our understanding of human behavior and our primitive methods for controlling it stand in the way of complete social control. In 1984 George Orwell presented variations on the same theme; while Vance Packard's best seller *The Hidden Persuaders* puts forth the

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notion that technological advances have already placed extremely effective tools in the hands of professionals seeking to manipulate people.\textsuperscript{102} Moreover, Packard indicates that these tools are being used, "often with impressive success, to channel our thinking habits and purchasing decisions, and our thought processes . . ."\textsuperscript{103} The danger as Packard sees it lies in the fact that typically such efforts take place on a subliminal level beneath our awareness. The appeals which so often move us, then, are, in a sense, hidden. Huxley, Orwell, and Packard, in holding the view that man is a helpless pawn of a power elite with increasingly powerful methods with which to render communication effects completely predictable, seem to be in agreement. Thus, complete social control would become a reality once communication could be carried on in an entirely scientific fashion, and when that happens human responsibility and freedom will have been destroyed.

There are those who look with anticipation on this era of social engineering. Two of the best known, Jerome Bruner and B. F. Skinner, are psychologists. Skinner, in his novel, \textit{Walden Two},\textsuperscript{104} through his protagonist, Frazier, indicates that the means

\textsuperscript{102} The term "professionals" here refers to advertisers, political campaigners, public relations counselors, and psychotherapists, etc.


of social control are at hand and wait only to be implemented by "planners" who will accept the responsibility for the rebuilding of society. Skinner argues that with increasing scientific understanding of human behavior comes increased opportunities for social control that should be seized with zeal, not rejected in fear. 105

Such views as those presented here seem to stress the efficiency of communication techniques without seriously considering the defenses people possess, or the lack of effective control they have over the environment in which people hear or read messages presented by these aspiring manipulators. There may be reason to worry about the conduct of some persuaders as Vice President Agnew suggests, but there may be far less reason for concern when we realize that the power of the spoken word to re-make society, or personal judgments, is much more limited than the eager social engineer would have us believe.

Personal Defenses Against Communication Effects

Because individuals possess a number of defenses against manipulative efforts they are far from being helpless pawns exposed to the powerfully efficient tools of the communication elite.

Selective exposure. — The most obvious of these defenses, and perhaps the severest limitation on the aspiring manipulator, is the freedom of the individual to turn off the television or put down the newspaper. While any communicator can produce hundreds of potentially effective messages, he cannot guarantee that the listeners he wants to reach will actually pay attention to his messages. People just do not pay attention to the large majority of the messages directed at them. By exercise of choice they expose themselves only to those messages they believe will provide information they need or will support the beliefs and attitudes they already possess. Our experiences determine our interests, and our interests dictate what we will attend to. Studies of voter behavior have confirmed that, while political information offered by speakers, radio, television, and newspapers is available to all people indiscriminately, exposure is selective. Republicans read Republican arguments and Democrats listen to Democratic speakers.\(^\text{106}\) Also, we can afford only so many hours a week to watch television or listen to the radio. As a result, we tend to select or plan the entertainment for those hours.

Inattention. — Despite the fact that a listener may be exposed, voluntarily or involuntarily, to new information there is no guarantee that the intended message will be received unless closely attended

to by the listener. Vernon indicates that, "an observer's perception of the field, or of any particular aspect of it, may be more rapid and accurate insofar as his attention is directed toward it." 107 The implication, here, is obvious—the observer will not perceive, either rapidly or accurately, that which he does not attend to.

Perceptual sensitivity and defense. 108 Laboratory experiments conducted by Postman, Bruner, and McGinnis discovered that certain words were more quickly identified by subjects, when flashed across a screen, who held values related to the words, while words unrelated to these values were either missed or were less quickly identified. 109 In experiments where sexual words were used, some subjects seemed to resist perception of such words while others "sensitized" to them perceived them more quickly than neutral words. 110

Selective remembering and forgetting. — A considerable amount of experimental evidence seems to be pointing to the fact that many

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108 This theory is accepted by the author on the basis of its logicalness; however, note should be made of the fact that there has been, to date, little empirical data to support its claims. The data available is very encouraging.


of the things we learn are soon forgotten. This does not necessarily happen simply because of the passage of time, but, as the studies indicate, because other experiences push out the original learning. It may appear that forgetting under these conditions is accidental, as opposed to intentional; however, in light of the fact that people have a tendency to expose themselves to experiences and ideas which they expect to be pleasant and reinforcing, a deliberate effort may be implied. An extremely offensive communication directed at our favorite candidate may make us eager to read about the candidate's warm reception by people we respect. This information will tend to produce "retroactive interference" which will push the unpleasant information into the shady recesses of our minds. Another aspect of selective remembering is the tendency to remember things the way we want to remember them. This distortion of information is largely attributed to the way motivational and emotional factors effect our reception. If we like a speaker, we are more likely to hear him say things we agree with, even if his position is, in fact, slightly different from our own. If we disagree or dislike him, we are likely to view him as supporting a position further removed from our own than it actually is. These phenomena have been called, by Sherif

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and Sherif "assimilation" and "contrast" effects. This same thing happens to information stored in our memory banks; we remember it the way we wish to remember it, making modifications in it in order to make it conform more closely to our interests and needs. "Very broadly speaking, the matter of recall is mainly a question of interest ... interests, regarded as a development of individual mental life, may decide what it is that a person remembers." Thus, our interests and needs may act without conscious effort to produce the defense of selective forgetting.

Consciously willed repression of information.—Consciously willed repression of information, the fifth personal defense, deals almost solely with information that threatens to produce anxiety. Normal people repress threatening information in much the same manner, but not to the same extent, as those suffering from mental illness. The existence of a certain amount of willed forgetting is evidenced by the experiences of normal people entering into a state of free association with an analyst.

112 "Assimilation" and "contrast" effects have been discussed by C. Hovland, O. Harvey, and M. Sherif in "Assimilation and Contrast Effects in Reactions to Communication and Attitude Change." Journal of Abnormal and Social Psychology, LV (September, 1957), pp. 244-252.


Private importance of belief.--As we have seen Rokeach pictures an individual's beliefs as existing on a series of levels. These levels are represented by a number of concentric circles which develop out of a center of primitive beliefs and extend to a periphery of inconsequential beliefs. The construction of such an elaborate system represents a considerable personal investment in a particular belief, thus the individual is more resistant to effects by communicators to change that belief. Sherif, Sherif and Nebergal have defined the private importance of a belief in terms of "ego-involvement" which, as they point out, determines the "latitudes of acceptance" and "latitudes of rejection" of a communication. If a listener strongly holds a position which is quite discrepant from that expressed by a communicator he will classify the message for rejection thereby defending himself against it; however, if the listener strongly holds a position which is favorable to that expressed, he will classify the message for acceptance.

115 As was previously explained inconsequential beliefs, the one's advertisers concern themselves with, are the easiest to change, but beliefs in each inner circle become successively more difficult to change until the innermost primitive beliefs are reached. These beliefs are practically impossible to alter.

116 Due to the nature and construction of the belief system the occasional success of persuaders in altering inconsequential beliefs can hardly be thought of as dangerous.

117 Sherif, Sherif, and Nebergal, Attitude and Attitude Change, p. 228.
Several studies have found that by defending one's belief by developing supportive arguments we immunize ourselves against subsequently encountered counter-arguments. For this reason, advocates who present their opponent's views as well as their own, as opposed to presenting only their own position, prove more successful in persuading their audiences and especially in preventing them from shifting when later subjected to the opponent's arguments. Thus, those who run into views that disagree with their own may find that the exercise of developing supportive arguments for their own views may provide an additional defense against later persuasive communications.

**Environmental Limitations**

Beyond these personal defenses against persuasive communications, there are features of the environment in which communication occurs that restrict its effectiveness. In other words, if some control can be exercised, by the persuader, over the listener's environment, the more likely his success. For this very reason a totalitarian leadership seeking to preserve its popular consensus

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will clamp down on the free distribution of information. Contrary ideas are at first suppressed by force and ultimately excluded because no one wants to hear them.

**Summary and Conclusion**

It is generally recognized that organized behavior is determined by the remote previous training of the individual and by the immediate preceding activities as well as by the stimulating situation of the moment. If we are to understand why a person, or a group of people, respond as they do we must first have an understanding of, and appreciation for, the theoretical basis fundamental to that action. To facilitate such an understanding this chapter has endeavored to present current as well as relevant social scientific theories. These same theories will prove to be instrumental in adding to our understanding of historical data, as well as helping to add insight into the processes of invention and arrangement used by Dexter.

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119 In the case of a trial this might be accomplished by the judge's decision as to what information, testimony, etc. will or will not be admitted as evidence.
CHAPTER III

A HISTORICAL PRELUDE TO THE YEAR 1830

The rationale behind the development of Chapter II and its emphasis upon social scientific theories expresses our belief in the extreme importance of a critic's understanding the audience before attempting to evaluate a speaker's presentations to that audience. The problem of audience analysis is directly focused upon by Marie Hockmuth Nichols, when she says:

Audiences neither come from a vacuum nor assemble in one. They come with pre-established systems of value, conditioning their perspectives. . . . The rhetorician discovers his potentials for persuasion in a wise regard for the prevailing attitudes in the audience. . . . The critic who attempts to discriminate among values without reference to audience is doing what a rhetorical critic really cannot do. Since the audience conditioned the speaker's choices in selecting the arguments, ordering them, and expressing them, the critic must inevitably consider whether the speaker chose wisely or ill in relation to the audience. . . . Let the critic know, then, the audience for which the speech was intended.¹

Herein can be found the rationale for this chapter. In order to make a realistic evaluation of the defense presented by Franklin Dexter in The White Murder Trial it is essential that the conditions which led up to the attitudes and situations prevalent

at the time of the trial be set forth and considered. It should be understood that any analysis of the social setting of the trial may proceed on two levels: the first encompasses an over-all evaluation of the social attitudes of the time, while the second is consideration of the specific situation for any given speech. Thonssen and Baird indicate that:

It is thus apparent that the rhetorical critic's task is in its primary character a research undertaking. Motivated by the desire to view a particular speech in its larger social setting, he reconstructs as far as the facts will permit the social milieu of the period. This reconstruction centers about two considerations: the tracing of the antecedents—historical, economic, political, social, cultural—which impinge upon the ideas set forth in the speech; and the examining of details and circumstances—including the audience—relative to the specific occasion on which the speech was given.²

We are concerned primarily in this chapter with the general and antecedent attitudes which were operative in the audiences typical of Massachusetts in the nineteenth century.³

Roger Brown, Professor of Social Psychology at Harvard University, tells us that attitudes do not exist as separate entities, but rather that they must be focused upon some object. If this is the case, then, attitudes must have a focal point.

What are the everyday senses of attitude and of motive which have started psychology on its own work? An attitude has always a focus; it may be a person, a group, a nation, a product, anything whatever really. When the focus is known


³Details and circumstances directly surrounding the trial will be discussed in Chapter IV.
to many, as in the case of statesmen, ethnic groups, and nations, the corresponding attitude can be used for the comparative characterization of many persons. The dimensions of characterization extend from positive (or favorable) through neutrality to negative (or unfavorable). Persons are thought of as occupying positions on this dimension corresponding to their disposition to behave favorably or unfavorably toward the focus. 4

In the present attempt at a "comparative characterization," two sub-categories suggest themselves in dealing with the general characteristics of the society. They are: (1) religious background and development, and (2) the basis and development of American jurisprudence. By relating the Puritan attitudes toward religion and law a theoretical basis will be established from which, it is hoped, an interpolation of nineteenth century criminological practices may be developed. Cognizant of the fact that such attitudes might vary greatly according to individual and/or section, we are concerned generally with the state in which The White Murder Trial took place, The Commonwealth of Massachusetts, and specifically, with the town of Salem.

Development of the Religious Beliefs in Massachusetts

Puritanism may be described as that philosophy of life, that code of values, that collection of attitudes and beliefs, that

4Roger Brown, Social Psychology (New York: The Free Press, 1965), p. 420. Here we chose to utilize Brown's concept of "the comparative characterization of many persons" in such a manner that the word "persons" is inclusive of institutions and/or ideologies. Such an alteration is not meant to change Brown's intent but rather to broaden his concept.
point of view, which was carried to Massachusetts by the first settlers of the new world. "Beginning thus, it has become one of the continuous factors in American life and American thought. Any inventory of the elements that have gone into the making of the 'American mind' would have to commence with Puritanism." It is, indeed, only one among many such elements. If one were to attempt to enumerate these traditions, he would have to mention such philosophies as the rational liberalism of Jeffersonian democracy, Hamiltonian conservatism, the Southern theory of racial aristocracy, the Transcendentalism of nineteenth century New England, and what is often referred to as frontier individualism. However, "among these factors Puritanism," observes Miller, "has been perhaps the most conspicuous, the most sustained, and the most fecund. Its role in American thought has been a dominant one, for the descendants of the Puritans have carried . . . the Puritan mind into a variety of pursuits. . . ." Furthermore, the force of Puritanism has been accentuated because it was the first of these traditions to be fully developed, and "... because it has inspired certain traits which have persisted long after the vanishing of the original creed.


6Ibid.
Without some understanding of Puritanism, it may safely be said, there is no understanding of America."7

Protestant Ethic

Historical Beginnings

Events in Europe, under the direction of Divine Providence, had for a long time been preparing the way for a colony of Christians in the wilds of America. The first permanent settlement in New England, by a civilized and Christian people, was the effect of religious persecution.

On November 11, 1620, the Mayflower containing one hundred and two persons cast anchor in the harbor of Cape Cod. The coming of that handful of Pilgrims to the stormy New England coast was the mightiest factor in the founding of Christian institutions in the new world.8

To explain the arrival of the Pilgrims, in order that we might feel the full impact of its meaning, it is necessary to trace the historic steps which led to that migration. This quest for liberty had long roots, reaching back into centuries of struggle for the rights of man.

7Ibid.

Cape Cod is connected to Wittenberg and Geneva by a straight historic line. "Justification by faith alone" looked like a harmless cluster of words, but they overturned ecclesiasticism as Calvin demanded spiritual worship and the rights of his people. Thus Luther and Calvin set forth the two great principles—man's true relation to God and men's relation with each other—which were destined to reform the world insofar as Christian democracy was concerned.

Henry the Eighth was the first monarch to encounter these doctrines in their full force. He broke with the Catholic church, "but only that he might be Pope,"9 and at the same time he denounced the Presbyterians, a rapidly growing sect which would not accept his doctrine. Henry was wholeheartedly neither one nor the other. The Pope excommunicated him.10 The Presbyterians defied him. By this time the doctrines of Wyclif were being widely adopted by the common people, and free Englishmen refused to submit to the king's persecuting edicts.11 But Henry died as he lived—by conviction a Catholic, a Protestant by prudence. And when the boy, Edward the

9Ibid., p. 105.


Sixth, came to the throne Catholic forms of worship were still the role of the realm.

During this period, Europe was agitated by the reform movement. Dissatisfaction was felt most strongly in France, the homeland of the young reformer, Calvin, and with those with whom he had come to make his home, the Swiss. As might be expected, the new doctrines were also taking deep roots in these same countries. They also had ever-increasing effect in England where the Protestant party was now in the majority. Crammer, on the urgency of Calvin, prepared an evangelical creed which the common people gladly accepted. The progress of the Reformation was rather stayed by the lack of competent preachers. The early death of the pious young kind opened the door for Mary, a bigoted Catholic by her training and by her alliance with the Spanish throne. Through her efforts the fires of persecution were lighted.\(^\text{12}\)

The Puritans, as those were now called who avowed the new doctrines and ways, made no compromise of their faith, but rather accepted the penalty for holding it.\(^\text{13}\) The persecutions drove many of the Puritans to find refuge in Germany and Switzerland. Here they came under the direct influence of the great reformers. They caught the spirit of the Reformation more fully and were more

\(^\text{12}\)Ibid.., pp. 56-57.

thoroughly grounded in those doctrines which were to bring in the
new day of Christian liberty.\textsuperscript{14}

There were two parties in the Puritan uprising in England:
one, the followers of Luther, and the other, the followers of Calvin.
The former had chosen gradually, and almost imperceptibly to recede
from the church of Rome; while the latter, more zealous, and con-
vinced of the importance of a thorough reformation, and at the same
time possessing much firmness, and high notion of religious liberty,
were for effecting a thorough change at once. What the followers
of Luther had done, in the work of reformation, fell far short of
the Calvinist's wishes. They still saw surplices, printed prayers,
organs, bishops, and altars, with most of the pomp which had belonged
to the papal church, and were but little impressed with the altera-
tions of doctrines and creeds. The Calvinists would cut loose
entirely from the Church and its ritual and adopt an independent
and democratic form of church government.\textsuperscript{15}

Even these, however, divided into two camps: those, namely,
who would model church life on principles of representative govern-
ment and those who tended to congregational independence in church
government. Thus the lessons learned in Germany and Switzerland
were about to shape the thought and life of the Church of England

\textsuperscript{14}John Fiske, \textit{Beginnings of New England}, p. 57.

\textsuperscript{15}Charles Thompson, \textit{Religious Foundation}, p. 108.
and ultimately to reach across the Atlantic and determine, there, religious freedom.

We now come to the story which determined the course of American history and established a way of life which is still felt today. In 1602, a number of the inhabitants in the counties of Nottinghamshire, Lancashire, and Yorkshire, "... by preaching of the gospel, became savingly acquainted with the truth. Their ignorance, prejudices, and errors, were so far removed, that they saw the vanity of their former superstitions;" they sought a more evangelical institution, and a purer church. A separation from the established church was the natural consequence. Two outstanding men are frequently associated with the Separatist church. One was the elder of the church, William Brewster. Brewster, a man of intelligence and capacity, had been in diplomatic service in Holland. His thoughts now turned to that land of freedom as a possible refuge for the little band of Puritans whose position in England was becoming more perilous and intolerable day by day. Associated with him and leader of the Pilgrim migration was John Robinson. When the limit of endurance had been reached he and Brewster led the way, in 1608, first to Amsterdam and then to Leyden. Despite the fact that the


Puritans were well received by the Dutch, life there was hard for the exiles. Poverty sorely pressed them; Dutch ways were foreign to them; but above all they were still Englishmen and longed for home. Many of them returned to England, preferring the chances of persecution in their own country to the hardships of a strange land. This and other similar actions resulted in the filtering out of the less courageous. Those who remained were more firmly of one mind, because their attitudes, beliefs and value systems were more closely knit. As time passed the exiles became persuaded that they should find a new environment where the genius of Puritanism might have a more unhindered development. Living in the land of the Dutch they become afraid that their attitudes and beliefs might become dimmed by accommodation to Dutch ideas and custom. Intermarriage could present a serious problem in that it might dull their sharp religious distinctions.

At about this same time there was a renewed interest in the American colonies. The year was now 1617. Highly promising reports were circulating as to the fertility and wealth of Virginia, and now the Puritan Separatists determined on a new plan. They would establish their new religion in a new land free from the unwanted influence of traditional European attitudes and beliefs. To this

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18Ibid., pp. 34-36.

19John Fiske, Beginnings of New England, p. 74; also see Morse and Parish, pp. 7-10.
end they appealed for a grant, first to the Virginia Company and then to the king. Discouraged in both cases they gave up the idea of obtaining a royal grant. Instead they entered into a partnership with a company of London merchants to raise the necessary funds for their journey. On November 11, 1620, Plymouth was founded.

We now come to the other branch of the Puritan migration. Those who went to Plymouth in the "Mayflower" were Separatists—Pilgrims as history has come to call them. They stood, as we have seen, for absolute divorce between the reformation of religion and the established Church. They made no compromise; absolute separation was the only cure for their ills. They had accepted suffering and a migratory way of life to protect their religious beliefs and values. But the majority of the people in England with Puritan tendencies were still members of the Church, and had no apparent purpose to leave it. They would reform, not from without, but rather from within. They still held firmly to one national church, one in doctrine and in organization. These people, sensitive to the need of change and convinced that the Church had drifted a long way from the apostolic model and from Christianity of the early centuries, had no thought of leaving. As a result they protested the Romish tendencies and fought for reform to the point of suffering and

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20 Ibid., pp. 74-75; also see J. A. Doyle, English Colonies in America, pp. 36-46.

21 Morse and Parish, p. 16.
martyrdom. During the reign of Charles the First matters grew worse. The established Church was more intolerant toward Protestants, milder toward Catholics. Charles added no new limits on Protestant worship, but he enforced, as never before, the existing laws. Under such conditions there could be only one end to the conflict between the High Church party supported by the king, and the growing number of Puritans who lost all hope of reform within the Church. A break was made.22

Passing over the various attempts of this group to secure charters and effect settlements on the New England coast as aside from our main purpose, we come to the famous grant of 1628 which was to lead to the settlement of Salem. John Endicott was the leader of the enterprise. As with the Pilgrims, a strong regard for their religious attitudes and beliefs motivated these people.23 The pressures of the new environment soon drew the Puritans of Salem toward the principles of the Plymouth colony.24 "So definite and strong was this drawing toward the Pilgrim colony that the Puritans went even beyond Plymouth in their maintenance and defense of the Separatist position."25 So matters continued until 1630, when a


24 Ibid., p. 95.

notable addition was made to the growing American colony by the large number of emigrants who accompanied John Winthrop. Winthrop was a conformist while in England, yet at the same time he displayed an unconquerable yearning for "gospel purity" and a freer life. He retained his loyalty to the church of his fathers but at the same time looked to something better. His deep attachment to the Church of England coupled with his deep conviction of a need for change is illustrated in a farewell address Winthrop left as a parting benediction:

Reverend fathers and brethren, howsoever your charities may have met with discouragement through the misreport of our intentions, or the indiscretion of some amongst us, yet we desire you would be pleased to take notice that the principals and body of our company esteem it our honour to call the Church of England, from whence wee rise, our deare mother, and cannot part from our native countrie, where she specially resideth, without much sadness of heart and many tears in our eyes; blessing God for the parentage and education, as members of the same body, and, while we have breath, we shall sincereely indeavor the continuose and abundance of her welfare.

Be pleased, therefore, reverend fathers and brethren, to helpe forward this worke now in hand; which, if it prosper, you shall bee the more glorious. It is a usuall exercise of your charity to reccommend to the prayers of your congregations the straights of your neighbours; do the like for a church springing out of your owne bowels; pray without ceasing for us, who are a weake colony from yourself.26

26John Winthrop, *Journal: History of New England* (Hartford: Published by Mr. Savage, 1825), p. 82. Perry Miller elaborates upon this point. He states that "Thus the issue between the two views, though large enough, still involved only a limited number of questions. On everything except matters upon which the Puritans wanted farther reformation, there was essential agreement. The Puritans who settled New England were among the more radical—though by no means the most radical that the movement produced—and even
These emigrants chose Charlestown and later Boston as their home. "The organization of the church there followed the pattern of the Salem church."²⁷

Thus, we have pursued the Christian lines of the emigration from England to the establishment of the colonies at Plymouth and Massachusetts Bay. The differences between them at the beginning were marked, not so much in principle, but rather in degree. Separatists, or Pilgrims, and Puritans both agreed in the pursuit of freedom from royal edicts as to worship and from ecclesiastical edicts determining doctrines to be believed and forms to be observed. They disagreed as to the action incumbent on those who would avow those principles. The Separatists would tolerate no compromise.

²⁷Charles Thompson, Religious Foundation, p. 131.
They recognized no hope for reform except in absolute separation from king and prelate alike. There was only one remedy for the ecclesiastical departure from gospel simplicity and purity—that was to abandon the Church which violated it. On the other hand the Puritans, holding with equal vigor the necessity of a reformation, were at first not hopeless of bringing it about within the church. But when Endicott's company, and later Winthrop and his emigrants left England they too, by virtue of removing themselves from the Motherland, were considered Separatists. In this migration a principle of selection was at work which insured an extraordinary uniformity of character and of purpose among the settlers. As a result, though minor differences were to persist for some time, the attitudes, beliefs, and values of the people of Salem and Massachusetts Bay were firmly established. Rooted in over one hundred and fifty years of suffering and pain the history of a people became likewise the history of a new religious liberty. Beliefs, attitudes and values born in and developed from such a background as this were sure to be felt in 1830.

At this point we would be wise to ask—What was the common purpose which brought these men together in their resolve to create for themselves new homes in the wilderness?

This is a point out of which much popular misconception has developed. It has been customary first to assume that the

Puritan migration was undertaken in the interest of religious liberty, and then to upbraid the Puritans for forgetting all about religious liberty as soon as people came among them who disagreed with their beliefs. However, this view is not supported by history. It is true that the Puritans may be charged with gross intolerance, but it is not true that in this they were guilty of inconsistency. The notion that they came to New England for the purpose of establishing religious liberty, in the sense that we understand the phrase, is incorrect. If we mean by the phrase "religious liberty" a state in which opposite or contradictory opinions on questions of religion shall exist side by side in the same community, and in which everybody should decide for himself how far he will conform to the customary religious observances, nothing could have been further from their thoughts.

The aim of Winthrop and his friends in coming to Massachusetts was the construction of a theocratic state . . . freed from the jurisdiction of the Stuart king, and so far as possible the text of the Holy Scriptures should be their guide both in weighty matters of general legislation and in the shaping of the smallest details of daily life. 29

The state they were to found was to consist of a united body of believers; citizenship itself was to be dependent upon church membership.

The Puritans were a theology-minded people. The doctrines of the Fall of Man, of Sin, of Salvation, Predestination, Election,
and Conversion were their meat and drink. "Yet what really distin-
guished them in their day was that they were less interested in
theology itself, than in the application of theology to everyday
life, and especially to society." Their interest in theology was
derived from a practical point of view. "They were less concerned
with perfecting their foundation of the Truth than with making their
society in America embody the truth they already knew. Puritan New
England was a noble experiment in applied theology." And that
theology, a direct outgrowth of hard line Calvinism, was to be the
foundation upon which the political theory, legal practices, and
economic development of a nation were to rest. "... religion
was the sole force dominating the life of early New England."  

For the most part the New England settlers were an argumenta-
tive lot. They were Calvinists and Baptists, Separatists and
Independents, Seekers and Congregationalists, who were agreed on
the sanctity of the Scriptures; but how God's words were to be
interpreted was a subject of continual dispute. The communities

31 Ibid.
that grew out from Boston were shaken by "hellish reviling," as Cotton Mather sorrowfully recorded in his Magnalia Christi Americana. Even the Quakers, who arrived in New England with their "poison of error," in 1656, were accused by Mather of freely using such epithets as:

thou fiery fighter and greenheaded trumpeter; thou hedgehog and grinning dog; thou bastard that tumbled out of the mouth of the Babilonish bawd; thou mole; thou tinker; thou lizard; thou bell of no metal; but the tone of a kettle; thou wheelbarrow; thou whirligig. O thou firebrand; thou adder and scorpion; thou louse; . . . thou Judas; thou livest in philosophy and logick, which are of the devil.34

Religion and Government.35--People of this sort required stern government, and the churchmen set out to provide it for them. Gradually they hammered out a theocratic form of government that placed the ruling power fully in the hands of the ministers.36 Less than fifteen years after the "Mayflower" landed, the Bay Colony

34Cotton Mather, Magnalia Christi Americana, II (Hartford: Silas Andrus and Sons, 1855), p. 531.


decided to limit the ballot to church members. This action was not taken because everyone belonged to the church but rather because the majority of the people did not. There was a danger that the godly nature of the new settlements might be lost. Religious dissension was severely punished. In 1631 Philip Ratliffe was sentenced to "be whipped, have his ears cut off, fyned 40 shillings and banished" for "uttering malitious and scandalous speeches against the govern­ment and the church of Salem."37 In 1635 church attendance was made compulsory. The next year it was ordained that no new church could be founded without the express consent of the magistrates. Thus a strange intermingling of liberalism and conservatism was having a profound effect on the development of the American way of life. The people were being taught that their first duty was no longer to the absolutist power centered in England, while at the same time their nascent liberties were being tightly restrained by the rising power of their own communal church.

With subtle and devastating skill the preachers worked out and implanted a theocratic form of government that looked to the pulpit as its main source of authority. "And Puritan ministers instructed their congregations in politics as well as religion."38

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Few disagreed with John Winthrop's judgment that "Democritic is, among most Civill nations accounted the meanest and worst of all forms of Government."^39 Few found fault with John Cotton's conclusion that "Democracy, I do not conceyve that even God did ordeyne as fit government eyther for church or commonwealth."^40 The constitution by which God intended man to be ruled was the Bible. In it moral virtue was to be found. Its pages contained an answer to every problem and a rule for all conduct. But its meaning had to be interpreted and this could be done only by God's elect. As Thomas Hutchinson noted "it be a devine truth, that none are to be trusted with public permanent authority but godly men."^41

"For a hundred and fifty years the leaders of colonial New England were preachers. In all our history no other vocational group has ever equalled the record of dominance achieved by the Massachusetts pulpiteer."^42 And what they achieved was most notable. At the outset the Mayflower Compact declared that sovereignty rested in the hands of the whole adult male population. This was quickly


^41Thomas Hutchinson, Ibid., Appendix II.

^42Robert Oliver, p. 8.
amended. John Cotton revised the rule to read "church members:" for "none should be Electors . . . except such as were visible subjects of our Lord, Jesus Christ, personally confederated in our churches." When property qualifications were also added almost ninety per cent of the New Englanders in the Theocratic period were disenfranchised. However, this was not contrary to their past history. Every generation is limited by its own heritage of tradition. Being primarily a product of the English traditions who among them could doubt the words of John Winthrop when he said "of the people . . . the best part is always the least, and of that best part the wiser part is always the lesser." Thus, the theology of the Puritan had a double effect. "It determined all his views of human conduct and life, and it gave him a political creed."^5

Role of the Preachers.--If one is to understand as well as appreciate the influence of the New England preacher in 1830 that understanding must come in terms of the historical posture of his vocation. "The intellectual leaders of New England were the clergy . . ." To the Puritans the preacher was literally a teacher. "The sermon was the

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^3Cotton Mather, Magnalia, I, p. 266.


^5J. A. Doyle, English Colonies in America, p. 7.

^6Arthur Schlesinger and Morton White, Paths, p. 12.
most typical and influential of the early American culture-shaping institutions." The sermons were basically theological in nature, yet it was theology directed toward immediate practical application.

For the Puritan people the Word of God served as their guide and rule-book for everyday life. "If there was any codification of Puritan beliefs, it was the Word of God." The Word of God was also their way to salvation. In many churches there were two long sermons on every holy day and again on Thursday morning and afternoon. The pulpit served as the chief means of disseminating public information and of exhorting the people to do the work of God. It is noteworthy that the churches were also used for town meetings. It is even more notable that "there were no clear distinctions between secular and religious topics or attitudes. . . . Under the Theocracy, church and state were one."

By 1775 there were 3105 churches in the thirteen colonies serving a population of 2.5 million persons. Congregations varied

47 Robert Oliver, p. 9.

48 See Daniel Boorstin, The Americans, pp. 10-15, for a perceptive discussion about the Puritan sermon.

49 Ibid., p. 18.

50 Robert Oliver, p. 10.

in size from a few to the two thousand that could crowd their way into Boston's South Church. The sermons usually ran for an hour, though it was not uncommon for the minister to turn the hourglass over to "take another glass." Generally, the sermons were written, or at least based on notes, and delivered from memory. Many, however, were completely extemporaneous. The popularity of the sermons is indicated by the fact that during the colonial period more than two thousand of them were published. Their composition was guided chiefly by William Perkin's *Art of Prophecying*, an English homiletic rhetoric easily found during this period. The congregations took the preaching seriously; moreover, the church served as the first school for the new settlers. Children, and adults alike, "... were expected to learn from the sermons how to think soundly, as well as what to believe." Nonetheless, the primary role of the church was to provide spiritual refreshment and to interpret theological doctrines. To the Puritans "Heaven" and "Hell" were real places and presented inescapable final destinations. God and the devil were an intimate part of their thoughts. "Sermonizing" was first a guide to their eternal well-being and secondly, a prescription for

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54 Robert Oliver, p. 11.
fulfilling their day-by-day duties. The sermons they heard, discussed, and read, supplemented by their morning, mealtime and evening prayers at home, provided solace for the colonials. "The church was, consequently, not only the meeting place and center of social life but also the active agent of the divine will, and colonial preachers were the chief agents of power and influence."55

For their times the preachers were generally intelligent men. Because of the nature of their role, it was inevitable that many of them were proud; more than a few were vain; and most tended to be dictatorial. This was due in part because their own superiority was manifest even to themselves. In part also because the entire community was organized around them and was largely subject to their direct or indirect influence. Beyond this several times a week they stood before packed congregations and in God's name told their parishioners what and how to think, and how to behave. Few public occasions occurred in which they were not the center of attraction. Few matters of life and death were not brought before them for judgment.

Puritan Economic Ethic.—The Protestant Ethic is one of the earliest attempts to explain the nature of, and to provide a rationale for, the development of our society. The Protestant Ethic and the Spirit of Capitalism was first published in 1904 and pointed to some

55Ibid., p. 12.
historic and contemporary features of society as it existed at that
time. It also suggested some of the possible origins of that
particular society. Weber's analysis was concerned with the rise
of a type of civilization which differed from the old agricultural
economy. Thus, Weber was explicitly concerned with how the lives
of previous individuals and movements affected civilization and its
organization. Specifically, Weber's analysis was concerned with
"... the psychological conditions which made possible the develop­
ment of capitalist civilization."
This capitalism was built
largely around the type of economic system which was based on
"... the deliberate and systematic adjustment of economic means
to the attainment of the objective of pecuniary profit." More
important, however, are some of the attitudes people held toward
certain values contributing to the development of this system,
especially religious values which constitute one institutional
sphere of the life of people. Weber's principal thesis is that
present industrialization and the spirit of capitalism would never
have been born had it not been for the development of the Protestant
Ethic. The central tenet of the Protestant Ethic is the concept of

56 Max Weber, The Protestant Ethic and the Spirit of

57 Ibid., p. 16.

58 Ibid., p. 17.
a "calling." Whether we accept Weber's analysis or not is unimportant at this point; however, what becomes quite obvious is that the religious attitudes, beliefs, and values of New England were reflected in the economic life of her people.

The very name of the basic category of Puritan economic and social organization indicates its religious significance: "calling." Men received a call from God, a divine command to live a certain kind of life. Most important was the general calling "whereby a man is called out of the world to be a child of God," to be one of His elect and to behave in this life as befitted one whom He had predestined to salvation. But there was also a particular calling, the specific occupation God designated for each individual as the

59 Almost everything has been said of Weber that can be said: he has "proved" his case to Ernst Troeltsch, Protestantism and Progress, p. 138, Talcott Parsons, The Structure of Social Action, pp. 500-578, and to Amintore Fonfani, Catholicism, Protestantism and Capitalism, p. 205; to H. M. Robertson, Aspects of the Rise of Economic Individualism, and Albert Hyma, Christianity, Capitalism and Communism, he has disastrously misplaced his evidence; R. H. Towney, Religion and the Rise of Capitalism, criticizes the thesis for isolating the religious phenomena from the broader social and cultural milieu.

60 It should be understood at the outset that the Puritan economic ethic contained within itself features subversive to the social order it was designed to support. The Protestant concept of calling and the older doctrine of the stewardship of wealth produced, and even encouraged, a form of economic mobility inconsistent with the idea of an ordered social hierarchy, and the resulting tension affected every man who seriously attempted to live his economic life according to orthodox ethical precepts.

way in which he should provide his own maintenance and serve the common good. Man not only had to have both callings but he had to exercise them together: as he practiced his particular calling as a lawyer or husbandman he should simultaneously practice the duties of his general calling as a redeemed Christian. Should the two callings ever come in conflict, the particular had to give way to the general. 62

... Whether general or particular, a calling was, as William Perkins defined it, "a certain kind of life, ordained and imposed on man by God for the common good,"63 and God understandably wanted it practiced exactly as He had ordained. Men could not choose any calling for themselves; rather they had to agree voluntarily to serve God on the terms He laid down. Since He had instituted callings so that each man might contribute in his own particular way to the common good, a man's calling, to be "lawful," had to add in some way to the public welfare. Living dishonestly in a lawful calling was bad, but living without any calling was disastrous. "If thou beest a man that lives without a calling, though thou has two thousand to spend, yet if thou hast no calling, tending to publique good, thou art an uncleane beast."64

62 Ibid., pp. 733-735.
63 Ibid., p. 727.
64 Ibid.
Again, men must try to see that they entered the calling that God had actually designated for them. Since He was efficient as well as omnipotent, the talents and inclinations He had given each individual indicated the calling He had chosen for them. Anyone who entered a calling not suited to his particular skills in effect defied the divine order. 65

Read this way the doctrine of calling provided one more justification for inequality among men, for social stability, and for social hierarchy. In Perkin's view the whole notion of calling rested on inequality: "Persons are distinguished by order, whereby God hath appointed, that in every society one person should be above or under another; not making all equal. . . . And by reason of this distinction of men, partly in respect of gifts, partly in respect of order, came personal callings." 66 God had given men different gifts and consequently different callings, their inability to function without each other making society both possible and necessary, and with it the existence of social hierarchy. 67

Every man content in his place, devoting himself diligently to the duties appropriate to it, and to it only, was hardly a new

65Ibid., pp. 735-736.
67Naturally, the minister, being the closest to God, was located at the top of the hierarchical structure.
Puritan teaching. Yet the very same doctrine by encouraging and even demanding that every man unceasingly and systematically pursue his livelihood, virtually forced him to get out of his place, to strive to grow richer, and in time possibly to pursue profit for its own, and not the Lord's, sake.

That such a change did take place, that continuous work for the glory of God ultimately became an irrational but "rationalized" pursuit of profit without limit, constitutes, the basic contention of Max Weber's work. Though the question of the real importance of Weber's thesis to modern capitalistic development lies beyond the scope of this discussion, much of what Weber theorized does help explain the development of the society the Puritans attempted to construct in New England and the true nature of the peculiar tension that inhered in Puritan economic life. Even if the Protestant ethic never did become the spirit of capitalism, proponents of that ethic may still have unwillingly promoted a social mobility that would play havoc with their ideal of social order.

New England Puritans tended to be even less indulgent towards activities outside a calling than did their English predecessors and contemporaries. The Massachusetts General Court early passed and enforced laws against idleness and required parents to bring their
children up in a warrantable calling, while the ministers labored so strenuously to promote diligence and industry, they sometimes seemed to lose contact with reality. As early as 1636, when everyone in Massachusetts had quite enough to do just trying to stay alive, the Rev. Hugh Peter was already lamenting that idleness would be the ruin of the commonwealth.

To be sure, the status of Prudence as a virtue went back at least as far as Aristotle, when a Catholic monk invented double-entry bookkeeping. But only Puritanism, or at least Protestantism, made the management of personal and business finances important works of religion and evidences of sanctification and therefore of salvation; a well-kept ledger really could be as significant a monument to God as a stained glass window.

Riches were not evil, nor was an advance in social status, but only covetousness and ambition, the desire for these things for their own sake rather than the glory of God. It all came down to a


69 Peter announced in a sermon on May 15, 1636, that "he feared idleness would be the ruin of both church and commonwealth" and later listed it as one of the three principal causes of the Antinomian crisis. Winthrop Journal, I, pp. 222, 249.
matter of motives and attitudes. And attitudes such as those which sprung from the concept of "calling" and its sub-ordinate tenets would play their part in The White Murder Trial.

With the philosophical basis for economic growth and development so closely tied to religious concepts, and with the immense influence religion played in government and political theory one might expect to see not only the theories but the practitioners of the theories grow closer together. Instead of developing, social divisions between ministers, magistrates, and merchants grew smaller as time passed. Long before the old charter fell many if not most of the Massachusetts magistrates were merchants. The men who originally filled the offices of governor and assistants had mainly acquired their wealth as members of the English landed aristocracy like Winthrop or as prominent lawyers like Bellingham, but once here some of them, such as William Pynchon, Simon Bradstreet and John Winthrop, Jr., turned to trading as well as farming. In addition, it did not take men primarily engaged in mercantile activities, such as Francis Willoughby and Edward Gibbons, very long to be elected to the magistracy. By 1673 the governor, John Leverett, and at least half of the remaining twelve magistrates were either merchants or deeply involved in mercantile ventures.70

The merchants as a class could not have opposed the magistrates without opposing themselves. 71

As for the ministry, merchants like Samuel Sewall, Anthony Stoddard and Thomas Brattle sent their sons into it, while the ministers returned the compliment by marrying their daughters to merchants and making merchants of their own sons. So far from being at odds, merchants, magistrates, and ministers through family connections and intermarriage formed one thoroughly interlocking community.

Religion and American Law

Of course not all lived according to the rules in books of casuistry. If they had, New England would not have needed laws or law courts. In judging the efficiency of the Puritan's social ideals we must not be more naive than they were. They demanded good work but they knew all men were sinful and that some men would commit overt sins; they preached love but did not deny the reality of hate. Even the regenerate were born anew only in part. Enough of their old nature remained to make authority and coercion necessary in the godliest society. Every Puritan who really believed the basic tenets of his faith expected outright lawbreaking and a good deal of conflict and friction that was ungodly but not specifically illegal.

The presence of such things in New England, in itself, does not

prove that Puritanism had no hold over the people. Society's values are defined by its judges not its criminals, and any people that set its standards at a decent height will fail to meet them completely.

Religion and the law have since Anglo-Saxon times been closely related. Literacy itself was virtually a monopoly of the Church until the time of the Renaissance and Reformation so that lawyers and churchmen were constantly in each other's company and not infrequently one man belonged to both groups. As will be seen the real significance of, and hence the need to emphasize, the religious history in relation to the common law development in Massachusetts is that while the common law was never completely dominated by the ecclesiastical canons it was never really free from their influence. In 1889, fifty nine years after the White Murder Trial, J. A. Doyle wrote,

It is not fanciful to trace a connection between the New Englander's theory of divine justice and government and his theory of human justice and government. In each province fixed laws were perpetually suspended or revised in order that the criminal might be punished more effectively and more promptly. Each view sprang largely from the same feeling, and that a praiseworthy one, an intense and vivid hatred of sin, a strong sense of its contagiousness. . . . Thus one cannot doubt that the theological conception reacted on the legal.72

English and American legal philosophy alike can be said, in their infancy, to have rested largely on the Law of Nature and the

Law of God. If we are to have a clear and contemporary view of law as it existed during the eighteen-thirties, then we must have an appreciation for the development of law up to that period.

Early American law was founded on an appeal from positive law to fixed standards of justice, to a "higher law" which prescribed the consequences to be attached by judicial action to particular relations. The concept of a law of nature, embracing a body of moral principles recognized always by men's reason as binding, and superior to positive law, was not peculiar to the colonist. This doctrine was acquired from classical antiquity. It was developed out of patristic and classical philosophy by medieval jurists based on Roman and canon law. In the Middle Ages theologians associated the concept of a law of nature with that of a law of God. Thomas Aquinas early postulated a "lex aeterna" derived from divine reason. Man's involvement in the "lex aeterna" constituted the law of nature. This natural law was considered as comprising the instincts of nature, often identified with the will of God, and the moral law of the Scriptures. The basic principles of the law of nature lasted without change due to the unchangeableness and perfection of Divine

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The position taken in this examination is that as a tree must develop naturally from its roots, so must an institution develop naturally from its foundation. The foundation of American law, here is presented as being primarily theologico-political in nature. As we shall see shortly, see p. 137, a distinction is now made between law, religion, and morals, however, this was not the case at the time of the White Murder Trial.
Reason, but the positive or human law, as it is sometimes referred to, was subject to the power of the state and therefore subject to change. By elevating natural law above the will of sovereigns and above positive law, churchmen sought to gain additional sanction for the civil jurisdiction of the clergy.  

In Puritan America, not only was the supremacy of natural law maintained and identified with the law of God, but the source of the law was found in the scriptures. This concept, upheld by the leading Protestant clergy, was good Calvinism. Even one of the staunchest opponents of Puritanism in England, Richard Hooker, urged that "laws human must be made according to the general laws of nature, and without contradiction to any positive law of Scripture, otherwise they are ill made." The American Puritans

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In reducing the medieval concept of the law of nature into its component parts, it is impossible to make any clear-cut distinctions between law founded upon reason and that founded on revelation. Human reason appears to be a derivative of eternal reason; and man's rationalism is founded upon dogma. Thomas Aquinas, *Summa*, Part II, i, Q. 91, art. 2.


76 John Calvin, *Institutes*, bk. I, pp. 7-8; bk. IV, pp. 8-10.

gave this theory concrete application as is evident by John Davenport's declaration in 1669, "The Law of Nature is God's Law." This same thesis constantly reappears during the eighteenth century.\textsuperscript{78}

Doctrines similar to these, generally held among the American clergy, seem to account for Jeremy Taylor's assertion that, "amongst us there are or have been a good many Old Testament Divines, whose Doctrines and manner of talk and arguments and practices have too much squinted towards Moses."\textsuperscript{79}

The scriptural influence in American Puritan policy is attributable to (1) the dominating position held by the clergy in New England, and (2) to the Old Testamentarian or Hebraic Renascence nurtured by non-conforming sects in America as well as in England.

Although the Protestant Reformation is generally regarded as being responsible for the reduction of power of the clergy in England, this was not the case in New England. Also it must be remembered that leading Reformers such as Knox and Cartwright maintained that ministers "should teach the magistrates how to exercise civil jurisdiction according to the Word of God."\textsuperscript{80} In the New England


theocracies the secular functions of the clergy were greatly expanded. In the Winthrop Journal a contemporary, writing of the conditions in Massachusetts Bay, observes that,

The preachers by their power with the people made all the magistrates, and kept them so entirely under obedience that they darst not act without them. Soe that whenever anything strange or unusual was brought before them, they would not determine the matter without consulting the preachers.81

Thomas Lechford pointed out that, "the ministers advise in making of laws, especially ecclesiastical, and are present in courts and advise . . . in framing of fundamental Lawes."82 During the period of legal origins in America the prestige of the New England clergy in civil affairs was unquestionably extremely high.83

The early history of the law in Massachusetts, primarily drawn from English common law and greatly influenced by the clergy, involved a struggle between the desire of the governing group for discretionary powers in administering justice, and the popular demand for security.

... unrestricted judicial powers were exercised by the Court of Assistants, that is, the magistrates—the Governor, Deputy-Governor, and twelve Assistants, annually elected by the freemen


82 Plaine Dealing or News from New England (Boston), November 3, 1667, p. 5.

83 A few of the outstanding clergy were John Cotton, the proponent of a Mosaic code of laws who with John Davenport helped lay the foundation of the Puritan theocracies, and Nathaniel Ward, the compiler of the Body of Liberties.
on the last Wednesday in Easter Term. Legal administration was brought more into line with English precedent in 1641 by a codification of the "Body of Liberties," or "Abstract of Laws," mainly adopted from the legal books of the Old Testament. Thenceforth a codified fundamental law existed to which the magistrates were bound. ...  

However, the very first article of the "Body of Liberties" provides that no man shall be deprived of life, liberty, or property except by a specific law established by the General Court or "in case of the defect of a law in any particular case by the Word of God." It was but a logical step for Rev. Stephen Johnson to assert in 1765 that where the authority exercised by the executive and the legislature exceeds the bounds of the law of God, the acts of those bodies be "ipso facto" void. Thus, despite the codification of the laws judicial power still remained closely controlled by the clergy.

The acceptance of the law of God as fundamental law can be held accountable for the identification in New England of law with morality, sin with crime. This concept of criminal administration was not unique in New England. In medieval Europe morals and beliefs both were subject to the church. In Anglo-Saxon England immorality was a subject of penal discipline and Ecclesiastical Court exercised broad disciplinary control over the moral life of the members of the

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84Perry Miller, The Puritans, p. 385.


Calvinism intensified this social discipline and was instrumental in raising the aim of the state to enforce the moral dictates of the church. In New England, largely because of the close affiliation of the church and court and because of the homogeneous nature of the community, it was possible to make almost every branch of the moral code a crime punishable by law.  

The doctrine maintained in New England is best expressed in the works of Thomas Shepard. "Law natural," he asserts, "is part of the law moral." He takes care that his doctrine shall not result in a displacing of divine command by the precepts of nature, as he declares that the natural principles once impressed upon the reason "now, by man's apostasy, are obliterated and blotted out." With this condition premised, he has no hesitancy in arguing that though by His absolute power God might have issued any laws He chose, those which He has voluntarily invested with moral sanctions are exactly those which right reason finds fitting and proper; they are not good merely because He commands them, but He commands them because they are good. 

It is becoming increasingly evident that prior to the Twentieth Century little, if any, distinction was made between law, religion, and morals. Let us from our Twentieth Century vantage point, explore the differences between these concepts, thus affording an opportunity to see how closely related they really are. Perhaps, then, we will have a better understanding of the earlier approach.

89Ibid., p. 198.
A Comparison of Law, Religion, and Morals.—Some of the complexity of the interrelationships between law, religion and morals has already been introduced by reference to belief systems, norms for action, and behavior. Identifying the crossroads in the paths of law and religion at the level of morals suggests two observations: (1) social behavior is oriented to and by various normative patterns of which law, religion and morals are part; (2) although law and religion may meet at the level of morals, the three are not to be equated with each other but rather the distinctiveness of each must be recognized. Consideration will be given first to the relations of law and religion, to morals, and second to the differences between law and religion.

Robert M. MacIver and Charles H. Page list several major types of norms which govern social behavior: religion, moral, law, ought not do wrong. This "ought" is enlightened by the religious understanding of man, the good for man in society, and is integral to the processes of legal reasoning and deciding between the differing claims of men. To the extent that the moral sense of injustice is generalized beyond the particular litigants and is premised upon understandings of man's ultimate reality, there emerges the possibility for a universal law related to religion in the context of morals.90

Law, on the other hand, is distinguishable from religion and morals. When viewed in terms of controlling behavior, law, as a system of rules, derives from many sources, but it is sanctioned by enforcement through the systematic application of the force of a politically organized society.\(^91\) The law cannot be a substitute for morality which depends in the final analysis upon the individual's convictions. Law is dependent upon a level of individual commitment to obey. But as a norm for behavior, it serves to regulate the affairs of men regardless of their convictions and sometimes in opposition to them.

Likewise, the law cannot enjoin men toward particular or general religious beliefs.\(^92\) This does not mean that law is limited custom and fashion.\(^93\) Religion and morals are to be distinguished in terms of the authority and sanctions attached to their respective prescriptions. Religion normally invokes a supra-social sanction for violation of norms authoritatively set forth by a source accepted as God's agent. The source of a religious norm is presented as divine authority and its sanction is supernatural. Thus religious norms are addressed indirectly to the social situation.\(^94\)

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\(^{91}\)MacIver and Page, Society, p. 175. Keep in mind the relationship previously discussed, pp. 128-129, between magistrates and ministers.

\(^{92}\)Ibid., p. 178.


\(^{94}\)Ibid., p. 170.
A norm is moral "when it promulgates standards of conduct that directly derive their sufficient justification from the human interpretation of good and evil." Human interpretations of good and evil, right and wrong, have not always been in accord with the norms of religion. Adjustments have resulted. However, standards of morality, as distinct from religious norms, find their source in the collective understanding of good and evil and are sanctioned by social action. The individual conscience is the final arbiter of moral action.

There is a basis for finding the starting point for a rapprochement of law and religion in the moral conscience. The conscience is the sense of injustice. It is the awareness of an individual to the external objective aspects of behavior and as such has no subjective dimension in human action; whereas, law teaches acceptable conduct and is creative of conditions for changes in attitudes. As organized religion becomes more secularized, it may be that the supernatural sanction for behavior will be increasingly destroyed so that social sanctions will become more predominant in conditioning moral conscience. Laws feed into the development of subjective moral convictions. Weber observed that there is no socially important moral commandment which would not

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95 Ibid., p. 171.
have been a legal commandment at one time.\(^{96}\) Just as racial integration in America will not be affected solely by the 1954 decision of the United States Supreme Court, the prospects of such integration were drastically hampered by the prior law which fostered the maintenance of a morality of white superiority.\(^{97}\) The extremes attempted by the Facists in Italy and the Nazis in Germany do not necessarily mean that because they failed, law does not affect moral convictions. Rather, it means that absolutism is fallacious in these respects as in others.

\(^{96}\)Max Weber, *On Law in Economy and Society*, ed. by Max Rheinstein (Cambridge: Harvard University Press, 1954), pp. 27, 340-341. Weber refers to the "community of memories" which supplants and has a deeper influence than the community of force in politically organized society. The law in part records, interprets and articulates these memories. See: Jerome Hall, *Living Law of Democratic Society* (Boston: Bobbs-Merrill Company, Inc., 1949), p. 100. Hall acknowledges that the formal source and the enforcement of the law is the maximum power center in the society and that the sanction of legal rules is enforced, ultimately, by physical power. But rules of law are "coalescences of the ideas, signified by the rules, with value; and this attribute is divisible into (a) conformity to ethical principles, and (b) self-rule—the distinctive quality of the law of democratic society."

However, law and morals are not identical. Legal norms may be a matter of expediency and devoid of moral content. Whether such norms have moral content will depend upon what the particular society deems "moral" at the time. It may be that the only moral requirement in the situation is that there be a law. In addition, the law deals with cases in which there is no moral guilt or where both parties are morally blameworthy. Legal responsibilities may be imposed on the basis of the interests of public order, safety or public policy. Further, the law does not condone all that it does not proscribe. Finally, the law does not include all morals.

98 See Rosco Pound, Jurisprudence, II (St. Paul, Minnesota: West Publishing Company, 1959), pp. 213-279, for an analysis of the relationships between law and morals—historically, philosophically, analytically and sociologically. Pound concludes that "in the making of rules of law and finding grounds of decision, in interpreting rules, in applying rules and grounds of decision, and in the exercise of discretion in the judicial and in the administrative process, there are three things to be regarded: (1) justice, the ideal relation between men; (2) morals, the ideal development of individual character; and (3) security. These three have to be kept in balance." (p. 278.) Cf. Hermann Mannhein, Comparative Criminology (New York: Houghton Mifflin Company, 1965), pp. 39-67.


100 Rosco Pound, Law and Morals (Chapel Hill: University Press, 1926), p. 73. This position represents the bottom rung of the ladder—the top rung represents total moral involvement.

Turning our attention to the distinction between law and religion we find that in the first place, law is distinguished from religion in the locus of its sanctions. The sanctions of the law are this-worldly; those of religion are other-worldly. The recourse for one who violates a legal norm is to satisfy the social demands of justice here and now; the one who sins against God is without recourse in this world. In the present concept of the Judeo-Christian tradition, the divine must act to effectuate a reconciliation. Consequently, in the case of the law, sanctions are socially imposed and enforced when action is determined to be deviant of the legal norms. In contrast, breach of religious norms subject the individual to sanctions which are matters of his belief system. This does not mean that religious sanctions are less real, but that, in the first instance, they are psychological rather than social. The bridge between the role of divine order and compliance with a religious norm based upon that order is found in the psychological processes of belief. A mature religious belief can develop a driving power in its own right which motivates action. Less than a mature religious belief may be a mark of an individual with less autonomy in his actions and reactions, but perhaps provide more impetus toward compliance with religious norms.\(^{102}\) Conformity is no longer socially imposed by an enforcement staff as in the case of law.

Deviation from certain religious norms may be the occasion for invoking group sanctions such as excommunication. Patently, an individual must have identified himself with an organized form of religion for such sanctions to be imposed. The imposition of sanctions by a religious group is a function of the political organization of the particular religious group with which the individual has identified himself. In this sense, the sanction represents the use of "force" of the collective to compel compliance with the laws of the group.103

Secondly, there is a difference in perspectives. Law focuses upon the constituting of social relationships whereas religion deals with the problems of meaning in the exigencies of the individual's existential situation. Law functions in the regulation of the exchanges between men and their groups. Religion involves man-to-man relationships but in the dimension of man's relation to a power greater than himself. The emphasis in religion is on the propriety of this latter relationship. Interhuman relationships are understood only in the light of God-man relationships. Thus whereas law is symbolized by the blindfolded meting out of justice to prevent human fraility from tipping the scales, religion is symbolized by the man who experiences God by faith while walking in his frailty.

These differences are the consequences of variations in the orientations of law and religion towards man and society. One views the individual in terms of his relationships; the other views relationships in terms of the individual. The lawyer deals in the rights, duties and freedoms of persons in relation to others; the clergyman responds to the eternal question of man as posed by the Psalmist, "What is man that those art mindful of him?" However, the stance of the lawyer, to view the individual from the perspective of the forms of social relationships, needs the insight which comes from the clergyman's view of society, from the perspective of the faith of the individual.

Law and religion have thus been examined in regard to the premises of their ideological orientations in response to the inquiry concerning the nature of their common concerns. The meeting ground of law and religion is seen to be integral to both of these realms of American social life. It is not merely a matter of historical precedent or accident. Rather, both law and religion are concerned with the nature of man and his environmental relationships as they are oriented toward an ideal. When transplanted into action, the paths of law and religion cross at the area of morals, of the articulation and actualization of the "right" in the relationships between men, and between man and nature.

There are differences and distinctions between law, religion and morals. They are not identical in sources of authority, sanctions, or perspectives. They are not mutually exclusive either. However,
at the point of the moral in law and religion there is an overlapping area of mutual concern which is common and germane to law and religion. They deal with the primary events and relations in human life. Thus, one might conclude that as man's belief systems underwent change, the influence of the clergy in political life lessened, giving way to a social situation which fostered independent thought in twentieth century jurisprudence. This movement prompted Hermann Mannheim to state that "Historically, the nineteenth century theory of the religious origin of the law (Maine) and the doctrine of crime as a pollution of the community has been abandoned by many modern writers." However, the White Murder Trial was held in 1830 when "the religious origin of the law and the doctrine of crime" were considered to be "... a pollution of the community..." This was a period when "the Church had popularized the notion that sin and crime were dangerous to the group and hateful to God." The distinction between law, religion and morals did not exist, and if it did, it was not widely held. J. A. Doyle has indicated that during this period "In New England no important movement could be disconnected from the religious life of the colony...".


As we have pictured him the New Englander was a hard working God-fearing man. For the most part he had little trouble relating to the church as it was the center around which his life revolved. Because he viewed the Almighty as a vengeful God and used the Old Testament as his guiding light he lived with, and in fear of, a set of self perpetuating ideas. The preacher guided the congregation toward God, but most often the New Englander found himself having these ideas reinforced as they formed not only the basis for his social and religious life but also permeated his economic and legal concepts as well. Robert Hess and Virginia Shipman "proceed on the assumptions (1) that the structure of the social system and the structure of the family shape communication and language; and (2) that language shapes thought and cognitive styles..."  

As a result of this constant reinforcement (learning) the belief

and value systems of people were formed. Consequently, these covert belief and value systems formed the foundation upon which specific attitudes would rest. Because of man's basic nature as a "time binder," and his ability to symbolize, many of these attitudes, beliefs and values were passed on to him from preceding generations. Furthermore, Knower indicates that, "passing on culture is passing on status quo and people tend to resist change as they have been given the values, attitudes and beliefs of past generations." Thus, we may conclude that due to the historical development of the area, Salem, in 1830, was strongly representative of the Puritan mind.


"Of considerable theoretical and practical importance is the question of whether or not behavior can be learned by an individual without the individual ever executing the behavior in any active or voluntary meaning of the act. In the original discussions of learning, it was frequently asserted and popularly held that practice makes perfect. Interestingly enough, even this popular assertion carried with it a large measure of error. For example, in such a simple situation as dart-throwing, when one recognizes that a high percentage of the early throws do not hit the target and that a high percentage of the later throws do hit the target, one would almost be justified in concluding that what one has learned is not what one has practiced.

Mowrer's position with respect to this question of the possibility of learning without doing is this: He feels that a habit is essentially the facilitation of an action that produces pleasant stimuli. If it is possible to produce these stimuli in the subject without the subject actively performing the act, then the act can be learned without being 'done.'"

109 Franklin Knower from a lecture in Psychology of Speech at Ohio State University, January 27, 1970.
Criminological Development

As one might expect any concept developed out of this period would be, by definition, reflective of the "New England Way." This is precisely the case with the development of the New England concept of criminology. The term "criminology," however, was, according to Bonger, first used by the French anthropologist Topinard, whose principal work appeared in 1879.\textsuperscript{110} "For writers of the eighteenth and early nineteenth centuries, whose main interest was in the punishment or treatment rather than the scientific analysis and observation of crime and criminals, the description 'penologist' ... would have been more appropriate."\textsuperscript{111}

The New England theory of penology during the early nineteenth century was based primarily on the "classical school" of criminological thought, but was still flavored by demonological concepts. The "classical school" usually associated with the name of the Italian scholar, Cesare Beccaria, and its later modification the "neo-classical school" are very similar as far as basic ideas and conceptions about the nature of men are concerned. Both represent a sort of free-will, rationalistic, hedonism that is essentially prescientific in any sense of the human behavior sciences.

\textsuperscript{110}The origin of criminology, as opposed to penology, was established approximately forty-nine years after the White Murder Trial.

Inspiration for many of the classical doctrines came from the writings of Thomas Aquinas, Martin Luther, Niccolo Machiavelli, Dante Alighieri, Jean Bodin, John Locke, Thomas Hobbes, Francois Voltaire, Jean Rousseau, and William Blackstone. From the above list of names it is evident that Beccaria wrote in a period the intellectual backgrounds, of which, on one side, had the Church Fathers and the doctrine of the divine right of Kings and on the other, the intellectualism and rationalism of the social contrast writers. During this period people were familiar with, and accustomed to, the general thought pattern suggested in the following outline:

1. An original state of Nature, or of Grace, or of Innocence.

2. Man's emergence from this state involved the application of his reason as a responsible individual:
   a) According to the Doctrine of the Fall (Sin-Garden of Eden), all mankind lives in suffering and pain, because the first human pair chose to disobey Divine injunction.
   b) Under social contract theories individuals come together and contract to form a society; that is, presumably, they survey the pros and cons—what to gain and what to lose—and come to deliberative agreement to live together in a society, each giving up something in order to get other benefits in return.

3. Acceptance of the human "will" as a psychological reality, a faculty or trait of the individual which regulates and controls behavior:
   a) In general, the will was "free"—that is, there were no limitations (except those obvious to common sense such as willing to fly, or to walk on water, and so on) to the choices an individual could make.

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112 Barnes and Teeters, New Horizons in Criminology, pp. 457-463.
b) "God" and the "Devil" could influence "will"—and so apparently could nature, i.e., impulses or instincts, yet in specific action of the individual the will was "free." Thus:

(1) Montesquieu finds that society is due to four impulses or desires: peace, hunger, sex, and social desires (sociability).

(2) Rousseau made desire for companionship the basis for the formation of society.

(3) Hobbes conceived of "fear" as elemental drive causing men to form societies and accept the necessary restraints. All these, apparently, affected the "will," yet in individual action the choice was free.

(4) Voltaire recognized that "will" may be strong or weak, thus influencing behavior, but still did not question the basic doctrine of "will," as motive or mainspring of human behavior.

4. Acceptance of idea that the principal instrument for control (affecting the will to behave) of behavior is fear—especially fear of pain.

5. Acceptance of "punishment" (i.e., infliction of pain, humiliation, and disgrace) as principal method of operating to create "fear" necessary to influence the "will" and thus to control behavior.

6. Acceptance of the "right" of society to punish the individual; and, in the period preceding Beccaria, transferring this right to the political state exclusively for execution. This follows logically with the state as the strongest practical authority.

7. Acceptance of and experience with some "code of criminal law," or better described as some "system of punishments for forbidden acts." With the growth and development of the national states, replacing the limited controls of the feudal chiefs, centralization in the realm of law, courts, and the police follows.113

Here we have the established ideas of the time. There was protest and dissatisfaction in reference to procedure and personal afronts; however, no attacks were leveled at the basic frame of reference of the thought patterns of the time. Baccaria sought to restate the conditions under which acts should be labeled crimes. He also sought to reformulate the nature of punishments. At no time did he question the psychology of the day or the current explanation for human behavior. He tried to protest against the inconsistencies in government and in the management of public affairs, and objected to the capricious and purely personal justice that the judges often applied, and to the severe almost barbaric punishments of the time. During this period the practice of discretionary penalties was commonplace. Judges doing what the law could not do often differentiated in terms of the circumstances and special considerations of a particular case. Thus, a judge could exercise his power to add to the punishments prescribed by legal penalties in keeping with his personal judgment of the circumstances involved. This type of arbitrary and tyrannical exercise of power, in which the judges took the part of one class in its struggle with members of other classes in a society rapidly becoming more fluid, was the basis against which much of the "protest" writing of the period was directed.

In view of the preceding discussion, it is interesting to look at Beccaria's thoughts as expressed in his own words in

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relation to some of the more basic principles of his system of justice:

a) The formation of a contractual society to escape war and chaos . . . 115
b) The source of law being the legislature, not the judge . . . 116
c) It is the true function of the judge to act only in the determination of guilt; penalties are matters of law . . . 117
d) The right of the state (i.e., the sovereign) to punish . . . 118
e) There should be a scale of crimes and punishments . . . 119
f) Pain and pleasure as basic of human motivation . . . 120
g) The "act" not the "intent" is the measure of injury done by crime . . . 121
h) Fundamental principle of criminal law rests on positive sanction . . . 122

These quotations highlight some of the important ideas set forth by Beccaria. Many others were emphasized as well. It was said for example, that prevention of crime was more important than punishment for crime committed; that punishment is desirable only as it helps prevent crime; that desirable criminal procedure calls for

116Ibid., p. 11.
117Ibid., pp. 13-17.
118Ibid., p. 12.
120Ibid., p. 31.
122Ibid., p. 32.
the publication of all laws so that the public may know what they are and so that they may be led to support their intent and purpose; that trials should be speedy; that in punishment severity should not have the greatest preventive effect, and that capital punishment should be abolished. Thus, the "classical school" is primarily characterized as "administrative and legal criminology." Its advantage lay in the fact that it established a scheme of procedure easy to administer. Theoretically, it made the judge only an instrument to apply the law, and the law undertook to prescribe an exact penalty for every crime and every degree of crime. Questions about the reasons for or causes of behavior, the uncertainties of motive and intent, the unequal consequences of arbitrary rules were all deliberately ignored for the sake of administrative uniformity. This, then, was the classical concept of justice—an exact scale of punishments for equal acts without regard for the nature of the individuals involved or special circumstance which might surround the case.

The classical school became popular in France in 1791 only thirty-nine years before the White Murder Trial. It is difficult

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123 Keep in mind the relationships existing between law, morals, and religion as well as those existing between the magistrates, merchants, and ministers. Thus, by not attaching the philosophical basis of criminal theory, Beccaria allows the legal system to do, theoretically, what the judge cannot.

124 Georg Vold, Theoretical Criminology, p. 23.
to estimate how widespread its influence was in Massachusetts by 1830; however, as we are well aware cultural change is generally slow\textsuperscript{125} and therefore we must conclude that it had not completely taken hold. Donald Taft indicates that, "Law and penal practices in . . . New England had a large medieval flavor."\textsuperscript{126} Thus, the spiritistic school of thought upon which the Massachusetts legal system was based still largely influenced penological practices. If we are to properly gauge the prevalent attitude of Massachusetts in regard to a criminological theory we must integrate a doctrine bordering on demonology which emphasizes the concept of punishment with the classical school of thought. The result is an administrative and legal criminology established by, and directed to the perpetuation of a religiously based culture. As Lois Merrill observed, "Identification of man-made law with God-made law kept the New Englander under a livelier sense of the evil of criminal acts . . ."\textsuperscript{127}

In summary, what were the general attitudes of the New Englander which would have influenced the speaking and effectiveness

\textsuperscript{125}It's significant to note at this time that the first penal institution in Massachusetts was not constructed until 1805. See Barnes and Teetes, New Horizons in Criminology, p. 467.


of Franklin Dexter? First, the people were hard working and God-fearing; their religious beliefs were derived primarily from Calvinism and had withstood the tests of migration and of frontier life.

Second, the ecclesiastical concepts which permeated Massachusetts society also represented the foundation upon which economic life rested. The people were extremely materialistic and believed that the accumulation of wealth, largely measured in property, gave evidence to the Lord of their fitness to enter heaven. Further, the majority of the laws were directed to the protection of personal property, and any act which endangered personal property elicited an attitude of religious indignation.

Third, the established form of government and concepts of political theory were established and largely influenced by the clergy.

Fourth, the most influential man in the community along with the merchant and magistrate was the minister. He was extremely active and was viewed by his congregation as a shepherd, representing the Almighty, doing His work, keeping watch over the flock. Oftentimes the families of the minister, merchant, and magistrate intermarried creating rather intricate family ties. This most often created a small ruling class responsible for the major decisions of the community—a class to whom the rest of the community must answer.
Fifth, not only did religion influence the social, economic, and personal lives of the people, it was, through the Old Testament, the basis for legal development as well. The majority of legally punishable crimes were also sins against the Church. Punishment was even possible for offenses not defined in any law. The theory of criminology or rather penology was based on demonism tempered by the classical school. The system emphasized the moralizing concept of punishment, and sentences (hangings, etc.) were made a public spectacle for the purpose of deterring spectators from the commission of crime. This was largely due to the fact that during the period under study the people did not, or could not, distinguish between law, religion and morals.

Dexter was undoubtedly perceptive enough to be aware of some of the many factors which influenced the attitudes of his target audience. What he did not perceive, and seemed unwilling to believe even after the trial, was that he had not adequately adapted his case to deal with the prevalent attitudes of the people.

In this chapter, we have examined, in an overview, the backgrounds for, and the attitudes of, the audience faced by Dexter. We have considered their general attitudes, their views toward law, and their concept of criminology. We are now ready to look at the specific incidents surrounding the White Murder Trial.
CHAPTER IV

THE MURDER OF CAPTAIN JOSEPH WHITE

The Families Involved

The Whites.--Captain Joseph White, a wealthy merchant, shipowner, and retired sea captain, was one of Salem's leading citizens, and an individual "... to whom great attention is paid..." The wealth came from the sea and was accumulated during the years that followed the American Revolution when farsighted men opened new routes of commerce. Captain White had a knack for turning a profit and in

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1William Bentley, The Diary of William Bentley (Salem, Massachusetts: Essex Institute, 1905), III, p. 391.

2Captain White's ships could be found in the West Indies, South America, the Mediterranean and Baltic, the East Indies, China and the South Seas. Further study of ship registers of the port of Salem from 1803 to 1826, located at the East India Marine Society of Salem, the Boston Board of Trade Reports to 1877, and The Annual Report of the Government /Boston: 1857/, shows a close relationship existing for a generation between the White and Knapp families as joint shipowners. During this time trade was most often carried on by small craft, for it was the practice of investors to save on insurance by owning vessels in common rather than staking a large sum on a single venture; as, for example, if a merchant, instead of building a ship and insuring his investment, should buy an eighth interest in eight different ships and insure himself.

The Knapps and Whites had other business relations. In 1792 the Knapp homestead was occupied by an uncle of Captain Joseph White. It was mortgaged to Captain Joseph White in 1825, and the mortgage was discharged by Stephen White, executor, in 1831.

In 1803 the schooner "Neptune" and the brigantine "Oliver Branch" were owned at times by Joseph White and commanded by
1790, during a period of great demand and high prices on the continent, he was actively involved in exporting corn to Europe. Although White was evidently a religious man who spent much time in solitude, "prayer and fasting," Dr. Bentley, White's close friend and spiritual advisor, found it necessary to reprimand him, September 23, 1788, for engaging in the slave trade. Dr. Bentley wrote in his diary that,

Captain Wm Fairfield, Felicity, Sch. sailed, according to the Clearance, for Cape de Verd Islands. It is supposed from the Cargo, this latter carried, and the character of the owner, that this Vessel is intended for the slave trade. The owner confesses he has no reluctance in selling any part of the human race.

At the time of his death Captain White was eighty-two years old. He lived in a stately mansion on Essex Street in, what was then, the best section of town. The house was staffed by three

Joseph J. Knapp. In 1804 Joseph White was the owner of the schooner "Fame" and in 1805 Joseph J. Knapp was her owner and master. In 1809 Joseph J. Knapp, Richard Crowninshield, and Joseph White owned the "Romp." In 1812 the schooner "Dolphin," the brig "Montgomery," and the ship "Alexander" belonged to Joseph J. Knapp, Joseph White, and Stephen White. In 1812-1813 the schooner "Helen" belonged to Joseph White, Stephen White, and Joseph J. Knapp. In 1826 the ship "Caroline," of which Joseph J. Knapp was master, belonged to Stephen White.

3The Diary of William Bentley, I, p. 159.

4The Diary of William Bentley, I, p. 104. The "Felicity" ships register for 1787 lists Captain Joseph White as principle owner.

5The house was designed by Samuel McIntyre and is represented to be one of his finest creations. It is now part of the Essex Institute and is one of the show places of the city. The house now known as the Pingree House, for a later owner, is located at 128 Essex Street.
servants: Lydia Kimball, the maid-of-all-work; Benjamin White, general servant and man-about-the-house; and Mrs. Mary Beckford, the captain's niece, was the housekeeper. Outside of the servants Captain White, a childless widower, lived alone; although, there was a time in earlier years when Mrs. Beckford's daughter, Mary White Beckford, the captain's "favorite grandniece" had lived with him. However, Mary, against the captain's wish, had in 1827 married Joseph J. Knapp Jr. "Captain White," recalls one contemporary, "had educated Mary White Beckford in a costly way and was expecting to leave her a fortune, but he disapproved the match with Captain Knapp and threatened, if they persisted in marrying, to turn him out of his employ and to cut off her inheritance." After Joseph and Mary became man and wife Captain White kept his promise. Nevertheless, a sufficient reconciliation was effected to give Mary and Joseph the run of the White mansion. In 1830 Joe and Mary were living on a farm Captain White had given to Mrs. Beckford in Wenham.

Stephen White, a nephew of the Captain's and his principal heir, was a member of the upper house of the Massachusetts legislature, and the brother-in-law of Joseph Story, Associate

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6 Captain White had a brother and a sister both of whom he out lived. Stephen White was one of the four living children of the brother, and Mrs. Beckford was the only child of the sister.

Justice of the United States Supreme Court and head of Harvard Law School. 8

**The Knapps.**—The Knapp family, headed by Captain Joseph Knapp Sr., a shipmaster and merchant, held a respected position in the town. They lived for many years on the south side of Essex Street, just east of the home of Captain White. Joseph Knapp Sr. and Captain White were frequently associated in business transactions. 9 Joseph J. Knapp Jr., Nathaniel Phippen Knapp, and John Francis Knapp, three of Joseph Knapp Sr.'s sons, were prominent figures in the trial. 10

Joe went to sea at an early age. By the time he was twenty years old he was Master of the brig "Governor Winslow," and at twenty-one he was registered as Master of the ship "Caroline." 11

In 1825 he was admitted as a member of the East India Marine Society of Salem. Membership in this organization was limited to those "who have actually navigated the seas beyond the Cape of Good Hope

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8 Although Justice Story remained in the background of the case, history will note that he made his presence felt.

9 See footnote two.

10 Joseph, known as Joe, was born in 1805. Nathaniel Phippen, usually called by his middle name, Phippen, was born in 1806, and John Francis, Frank, the youngest, was born in 1810.

11 See footnote two.
on Cape Horn, as masters on super-cargoes of vessels belonging to Salem.  

Phippen was unlike Joe and Frank in that he had never gone to sea. Instead, he went to Harvard, graduating in 1826. He was admitted to the Essex County bar in 1829 and was practicing law at the time of the White murder. Despite his apparent independence he lived with his father and his brother Frank.

"The first voyage made by John Francis Knapp," observes a contemporary author, "was in the autumn of 1822. Having robbed his father of a considerable sum of money about this time, it was deemed advisable, in order to hush up the affair, to send him on a voyage to the East Indies." Frank was twelve years old at the time. Much of the remainder of his life was to be spent at sea. The first recorded meeting between Frank and Richard Crowninshield occurred in June of 1827 when they both shipped out on the "General Endicott." In mid-November of 1829 Frank left the sea and remained unemployed for several months. During this time he renewed his friendship with Dick and George Crowninshield.


13 Phippen graduate from Harvard fourteen years after Franklin Dexter.

14/By his supercargo/, Wild Achievements, and Romantic Voyages of Captain John Francis Knapp. While Commander of the Ship General Endicott (Boston: Published for the Author, 1830), p. 2.

15 In their work Howard Bradley and James Winans give a different and unsubstantiated account of Frank's activities. Cf.
The Crowninshields. — Richard and George Crowninshield were members of a wealthy and prominent Salem family. One of their uncles had been Secretary of the Navy under Presidents Madison and Monroe, and a second uncle had later been offered that same post, but declined. Richard Crowninshield Sr. does not appear to have been one of the more outstanding members of the family, although he was moderately successful in business.  

Daniel Webster and the Salem Murder (Columbia, Missouri: Artcraft Press, 1956), pp. 16-17. They report that, (1) "When Frank was sixteen or seventeen years old he got acquainted with George and Dick Crowninshield;" (2) "... they induced Frank to steal three hundred dollars from his father so that the three ... could take a trip to New York;" (3) "They arrived in New York in May, 1827, and it was three months before they were arrested and sent to jail;" and (4) that "In January of 1830 he [Frank] left the sea." In regard to the first point, during the present undertaking the only meeting discovered between Frank Knapp and Dick Crowninshield was, according to the General Endicott's log, recorded in June of 1827 when they were ship-mates on the "Endicott." Thus, Frank would have been seventeen at the time of their meeting. Second, either as recorded above, the theft occurred in 1822 when Frank was twelve and Winans and Bradley are mistaken or the theft occurred as Winans and Bradley have reported when Frank was seventeen—after which time he went to sea. We know from the Salem ships records that Frank was at sea six years. Thus, according to this line of reasoning if Frank went to sea at seventeen he would have been twenty-three at the time of his trial. This is not compatible with the facts as Frank was twenty at the time of his death. The only other alternative is that Frank and Dick met at an earlier age which in light of the evidence is highly unlikely. Third, Winans and Bradley report that Frank was sent to jail in New York in August, however, according to the "Endicott" supercargo Frank sailed for London in June. Super­cargo, p. 3. Finally, again relying upon the report of the supercargo, "we sailed about the middle of October for Salem ... a passage of thirty-seven days," Frank retired from the sea in mid-November and not in January. According to the 1829-1830 clearance records of Salem this was the last voyage Frank was to make.

Richard . . . never drank, desiring to have his wits about him at all times. He was well educated, having been through a military school at Norwich, Vermont, and he made so presentable an appearance in society as to have succeeded . . . in engaging himself to a very estimable heiress.\textsuperscript{17}

Little is known about George's youth. At the time of the murder Dick and George operated a machine ship in Danvers.

\textit{The Murder, Events Leading to the Trial, and Audience Analysis}

The Murder

At six o'clock on the morning of Wednesday, April 7, 1830, Benjamin White, a servant in Captain White's house, found a downstairs window open. Ordinarily it was fastened from the inside, but a plank resting against the sill indicated that someone had entered from the back yard. The servant found nothing else disarranged until he entered Captain White's bedroom on the second floor. There he found Captain White murdered in his bed.

Captain White had gone to bed early the night before, as was his custom, and none of the family retainers had heard any commotion. Nor was anything missing, although silver, art objects, money, and other valuables were easily accessible.

\textsuperscript{17}Robert S. Rantoul, \textit{Personal Recollections}, p. 12.
Events Leading to the Trial
and Audience Analysis

The town of Salem is one of the most quiet places in the country. It is among the second class of cities in point of population, and among the very first in regard to the moral habits of its inhabitants.\(^\text{18}\)

The news "of such an atrocious crime, in the most populous and central part of the town and in the most compactly built street, and under circumstances indicating the utmost coolness, deliberation, and audacity, deeply agitated and aroused the whole community."\(^\text{19}\)

The community was shocked and alarmed. The April 8th edition of the Newburyport Herald reported that, "... a murder, under all the circumstances, so horrible, has never before, in our recollection, occurred in this County."\(^\text{20}\) Four days later the Essex Register wrote, "the sensation which has been created in town by the appalling disclosures is beyond description."\(^\text{21}\) On Friday, April 10th, the day after Captain White was buried, a meeting was held in the Town Hall "for the purpose of adopting some measures for the detection


\(^{19}\)The Works of Daniel Webster, VI (Boston: Little, Brown and Company, 1851), p. 42.

\(^{20}\)Newburyport Herald, April 8, 1830, p. 2.

\(^{21}\)Essex Register, April 12, 1830, p. 1.
of the perpetrators of the atrocious murder.\textsuperscript{22} The number of people which attended this meeting is not known; however, it was reported as being "an unusually full meeting of the citizens of the town of Salem. . . ."\textsuperscript{23} At this meeting a committee of vigilance was formed consisting of twenty-seven of the most prominent men in the town. The first meeting of the committee of vigilance was held on the same evening, "when votes were passed, to hold a session every evening and requiring each member . . . to hold himself in constant readiness to render any service. . . ."\textsuperscript{24} The nightly sessions of the committee were held in Stephen White's counting house. On May 8th White sent the following letter to Gideon Barstow the chairman of the committee of vigilance,

\begin{flushright}
My Dear Sir - I beg to place at the disposal of the Committee of Vigilance the enclosed sum of one thousand dollars, to be appropriated, under their direction, to defray the expenses already authorized by them in prosecuting the inquiries they have so promptly and judiciously instituted, to discover and bring to punishment the murderers of my late uncle. Any further sum, within the scope of my means, is at their service, to effect so just and praiseworthy an object.
\end{flushright}

\textsuperscript{22}Many of the details of the Committee of Vigilance activities may be found in a rare pamphlet, Appendix, A Brief Sketch of the Proceedings of the Committee of Vigilance. The only apparent copy in existence is the property of the Essex Institute. The Institute also owns three notebooks that were used to record the minutes of the committee's meetings. To date this material is uncatalogued and has recently been restricted to Essex Institute personal only. See Appendix, A Brief Sketch, p. 1.

\textsuperscript{23}\textit{Ibid.}

\textsuperscript{24}\textit{Ibid.}
Thus, an action committee was formed and funded. It appears that the entire investigation of the case was handled by the committee of vigilance as there is no evidence of professional detectives being used, and only incidental involvement of officers of the law in escorting prisoners across state lines.

As we have seen the normally quiet and peaceful lives of the townspeople was suddenly and without warning replaced by a frenzied horror. On April 20, 1830, two weeks after the murder, the editor of the Salem Gazette wrote:

We trust our fellow citizens will not suffer the lapse of time to check their efforts for the detection of the ruthless murderers. Every individual in this community has a personal interest in preventing their final escape, for if a crime of such monstrous turpitude can be perpetrated with impunity, no man is safe in his bed. A principle cause for the immunity we have hither to enjoyed from gross crime has been the well founded impression that escape was impossible, from the vigilance of our sharp sighted citizens. . . . Even if months or years pass away, without effecting the object for which they (Vigilance Committee) were chosen, their organization ought to be continued.26

The murder and the grizzly circumstances which surrounded it, contrasted so dramatically with the normal state of affairs in Salem that cognitive dissonance was quite apparently created in the minds of the townspeople. As days gave way to weeks, and no breaks came in the case, "... the citizens were led to fear that the same fate

25Letter from Stephen White, Salem, Massachusetts, May 8, 1830.
26Salem Gazette, April 20, 1830, p. 2.
Excitement and tension mounted steadily and for many days, "persons passing through the streets might hear the continual sound of the hammer, while carpenters and smiths were fixing bolts to doors and fastenings to windows." Excitement also engulfed the neighboring towns. From Cambridge, Oliver Wendell Holmes, then a student at Harvard, wrote to his friend Phineas Barnes:

Nothing is going on but murder and robbery; we have to look in our closets and under our beds, and strut about with sword-canes and pistols . . . Poor old Mr. White was, "stabbed in the dark," and since that the very air has been redolent of assassination.

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28 Ibid.

29 Ibid.

30 According to the front page of the April 9th edition of the Salem Gazette the heirs of Joseph White offered a reward of $1,000.00; the selectmen of Salem, $500.00; and Levi Lincoln, governor of the Commonwealth of Massachusetts, $1,000.00.

Eleven days after the murder Justice Joseph Story wrote to his friend Daniel Webster:

... an entire new direction was given to my thoughts by the horrible murder of Old Capt'n. White at Salem--You are aware that he died childless and that his principal heirs are Mr. Stephen White and my Sisters children--It is altogether the most mysterious and dreadful affair that I ever heard of--"Truth is stranger than fiction" has been often said--I never knew any case, which so completely illustrated the truth of the remark as this. Not the slightest trace has as yet been found by which to detect the assassins (for I am satisfied there was more than one) and we are yet in a darkness rendered still darker by the utter defeat of every conjecture--I have been obliged to go to Salem several times, and everything there seems inextricable confusion.

--I never knew such a universal panic.--It is not confined to Salem, or Boston, but seems to pervade the whole community.--We are all astonished and looking to know from what quarter the next blow will come.--There is a universal dread and sense of insecurity, as if we lived in the midst of a Banditti.

Mr. White left a Will.--He has given many legacies to his relatives; but the bulk of his fortune goes to Mr. Stephen White, who will get from 150 to 200 thousand dollars.--Three of my nieces will receive about 25,000 each--.

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32Letter from Joseph Story to Daniel Webster April 17, 1830. See C. H. Van Tyne ed., The Letters of Daniel Webster (New York: McClure, Phillips and Company, 1902), p. 153. Note Stephen White was Story's brother-in-law. This letter presumably was Webster's first knowledge of the White case, into which he was to be brought as a special prosecutor, and in which he was to deliver the most famous of his jury speeches. Further, it is significant for the reader to know that Story and Webster were good friends, for it appears Story was instrumental in bringing Webster into the case; he most certainly seems to have had good reason, and that reason according to Henry Cabot Lodge, Webster's most acclaimed biographer, was that "From no one did Mr. Webster receive so much hearty and generous advice and assistance as from Judge Story, whose calm judgment and wealth of learning were always at his [Webster's] disposal." Lodge goes on to indicate that most of the help that Story gave Webster was given in legal cases. Henry Cabot Lodge, Daniel Webster (Boston: Houghton, Mifflin Company, 1883), p. 108.
While the public mind was thus excited and anxious the community received a further jolt. On April 27th Joseph J. Knapp Jr. and his younger brother Frank reported that a bold attempt at highway robbery was made by "three footpads" while they were returning in a chaise from Salem to their residence in Wenham. They indicated that they had repelled their assailants, and gave a full description of the men to the committee of vigilance.

The attitude of the townspeople, and of the community in general, was one of fear and anxiety. This was due primarily to the fact that "Not the slightest clue to the murder could be found for several weeks, and the mystery seemed to be impenetrable." Such a prolonged period of continual stress heightened the need for a method by which the dissonance created by the murder could be reduced.

In spite of this discouraging state of affairs, and unknown to the general public, the vigilance committee was slowly collecting information.

The first suggestion of the probable guilt of two of the persons implicated, was made by a convict in the State Prison, at Charlestown. He gave the information to some gentlemen, who called at the prison a few hours after the news of the murder reached Boston. . . .

The prisoner's name was Joseph Fisher. He reported that when he had been a prisoner in the Salem jail, in 1827, he and a cellmate named Hatch had planned to steal an iron chest belonging to

33 B. F. Tefft, Webster, p. 203.

34 Appendix: A Brief Sketch, p. 1.
Captain White. Fisher had gotten the idea, "On the last Monday of May, 1827,"\textsuperscript{35} when he was asked to help some friends "make their 'damned eternal fortune'"\textsuperscript{36} by stealing the iron chest and killing White. Fisher declined the offer as it involved murder, but quite evidently, the thought of a chest full of gold lingered on. It was in connection with this plot, which was discussed at the Lafayette Coffee House in Salem,\textsuperscript{37} that he was "introduced to Mr. Palmer of New Orleans . . .," and that, "R. C. . . . showed . . . a dirk, nearly a foot long, with a large cross hilt."\textsuperscript{38}

On the fifteenth of April Stephen White received a letter informing him that there was a prisoner in the jail at New Bedford, seventy miles from Salem, confined there on a charge of shoplifting, who knew something about the murder. A member of the vigilance committee was immediately sent to New Bedford for the purpose of conferring with the prisoner, Hall, referred to in the letter. Hall turned out to be Hatch, and had been committed to New Bedford prison prior to the Salem murder. Hatch stated that, after his release from the Charlestown prison, on the fifteenth or twentieth of

\textsuperscript{35}Written statement by Joseph Fisher submitted to the Committee of Vigilance, Salem, Massachusetts, April 11, 1830, p. 1.

\textsuperscript{36}Ibid.

\textsuperscript{37}The Lafayette Coffee House was located just a short distance west of Captain White's house.

\textsuperscript{38}Joseph Fisher, Statement, p. 2.
February he and a friend frequented a gambling room in Salem which was operated by John Pendergrass. While at this establishment they had heard Richard and George Crowninshield, and a man named Selman talk about stealing the iron chest which belonged to White. Hatch went on to indicate that three years earlier, while in the Salem jail, he and a cellmate named Joseph Fisher had made plans to steal the same chest. The vigilance committee had already learned of this from Fisher, but had been unable to locate Hatch, who had been jailed under the name of Hall.

Although the committee continued to collect evidence it is apparent that the general public still was not aware of the progress being made, as the Salem Gazette reported thirteen days after the murder that, "In every instance in which suspicion has been excited as to any individual, investigation has made it manifest that there was no foundation for the belief of guilt." Apparently, in view of the fact that they were faced with a highly tense situation, and, also, that the attitude and mood of the people was getting dangerously low, the committee of vigilance decided that something had to be done even though there was not much in the way of evidence. On

39 Written statement by T. Hatch at New Bedford Prison submitted to the Committee of Vigilance, Salem, Massachusetts, April 17, 1830.

When Pendergrass was called before the committee of vigilance he reported that a fourth man by the name of Daniel Chase also took part in the conversation.

40 Salem Gazette, April 19, 1830, p. 3.
May 2nd Richard Crowninshield Jr., George Crowninshield, Benjamin Selman, and Daniel Chase were arrested for the murder of Captain Joseph White. The grand jury convened on the third of May at Ipswich and Hatch, having been moved from New Bedford Prison on a writ of habeas corpus ad testif, testified to the facts previously attributed to him. Collaborative evidence was presented by a number of other witnesses and on May fifth the grand jury returned bills in which Richard Crowninshield was charged with having struck the lethal blow and the others were charged with being present, aiding and abetting the murderer. At that time they were all committed to prison to wait the seating of a court that would have jurisdiction over the case.

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41 It appears that when the indictment was handed down there was no clear-cut evidence that involved any of these four men. At best, the evidence presented proved that they had: (1) been present when there was talk about stealing Captain White's iron chest; (2) that they made innuendo's against White's life; and (3) that on the night of the crime George Crowninshield, Benjamin Selman, and Daniel Chase were in Salem. At this time there was no evidence that Richard Crowninshield was in Salem that night.

The original bills may be seen at the Office of Clerk of the Courts, Essex County, Salem, Massachusetts. Although it took three weeks I was granted permission by Philip A. Hennessey, Clerk, to refer and use the official documents he has in his keeping. This material was the property of that office and was not part of the Essex Institute Collection.
Nine days after the indictment a letter addressed to
"Mr. Joseph Knapp, Merchant, Salem" was received by Captain Joseph
J. Knapp Sr. The letter read as follows:

Dear Sir,

I have taken the pen at this time to address an utter stranger, and strange as it may seem to you, it is for the purpose of requesting a loan of three hundred and fifty dollars, for which I can give you no security but my word; and in this case, consider that to be sufficient - My call for money at this time is pressing or I would not trouble you: but with that sum, I have the prospect of turning it to so much advantage, as to be able to refund it with interest in the course of six months--at all events, I think that it will be for your interest to comply with my request, and that immediately--that is, to put it off no longer than you receive this, and then sit down and answer and enclose me the money with as much dispatch as possible for your own interest. This, Sir, is my advice, and if you do not comply with it, the short period of time between now and November, will convince you, that you have denied a request, the granting of which will never injure you--the refusal of which will ruin you. Are you surprised, Sir, at this assertion? rest assured that I make it, reserving to myself the reasons, and a series of facts which are grounded on such a bottom as will bid defiance to property or quality - It is useless for me to enter into a discussion of facts which must inevitably harrow up your soul - No--I will merely tell you that I am acquainted with your Brother Franklin, and also the business that he was transacting for you on the 2nd of April last, and that I think you was very extravagant in giving one thousand dollars to the person that would execute the business for you - But you know best about that—you see that such things will leak out.

To conclude, Sir. I will inform you that there is a gentleman of my acquaintance in Salem that will observe that you do not leave town before the first of June, giving you sufficient time between now and then to comply with my request--and if I do not receive a line from you together with the above sum before the 22nd of this month, I shall wait upon you with an assistant. I have said enough to convince you of my knowledge and merely inform you that you can, when you answer, be as brief as possible -

Directing yours to Charles Grant Jr. of Prospect, Maine--

\[Letter from Charles Grant Jr. [John C. Palmer] Prospect, Maine, May 12, 1830.\]
This letter mystified Captain Knapp for he knew no one by the name of Charles Grant and had no acquaintances in Belfast, a town in Maine, two hundred miles north of Salem. Captain Knapp showed the letter to his son Phippen, to whom it also proved a riddle. Receiving a letter of this nature when so many in the town felt insecure and were apprehensive of danger, demanded immediate attention; as a result, the next day Captain Knapp and Phippen drove the seven miles to Wenham and showed the letter to Joe and Frank. Joe told his father that the letter meant nothing to him and requested his father to give it to the committee of vigilance. On Sunday the sixteenth day of May Captain Knapp turned the letter over to Gideon Barstow.43

The next day two more letters were brought to the attention of the committee of vigilance. The following letter, addressed to

"Hon. Gideon Barstow, Salem" was received by the chairman:

May 13, 1830

GENTLEMEN OF THE COMMITTEE OF VIGILANCE,—

Hearing that you have taken up four young men on suspicion of being concerned in the murder of Mr. White, I think it time to inform you that Stephen White came to me one night and told me, if I remove the old gentleman, he would give me five thousand dollars; he said he was afraid he would alter his will if he lived any longer. I told him I would do it, but I was afeared to go into the house, so he said he would go with me, that he would try to get into the house in the evening and open the window, would then go home and go to bed and meet me again about eleven. I found him, and we both went into his chamber. I struck him on the head with a heavy piece of lead, and then stabbed him with a dirk; he made the finishing

43Appendix: A Brief Sketch, p. 4.
strokes with another. He promised to send me the money next evening, and has not sent it yet, which is the reason that I mention this.

Yours, Sc.,

Grants

The second letter directed to the "Hon. Stephen White, Salem" was immediately brought, by White himself, to the attention of the committee. The letter read as follows:

Lynn, May 12, 1830

Mr. White will send the $5,000, or a part of it, before tomorrow night, or suffer the painful consequences.

N. Claxton, 4th.

Arrest of Palmer and the Knapps. — The Committee decided that it would be advisable to take some immediate steps to secure the author of the letter sent to Captain Knapp. Accordingly, on the eighteenth of May, they sent one of their members, Joseph Waters, an attorney, and a Boston police officer to Prospect, Maine. At the same time they also sent an anonymous letter addressed to "Charles Grant Jr., General Delivery, Prospect, Maine" informing him that his letter of May twelfth had been received, and that in compliance with his request, the sum of fifty dollars was enclosed, and that more would be sent

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44Letter from Grant Joseph J. Knapp Jr. Salem, Massachusetts, May 13, 1830.

45Letter from N. Claxton, 4th Joseph J. Knapp Jr. Lynn, mailed at Salem, May 12, 1830.
Waters arrived in Belfast on May 19, 1830. The post office was placed under surveillance and after six days, on May 24th, Waters wrote to the Committee,

The object of all our labors, is, I trust, at last obtained. The writer of the Belfast letter to Joseph Knapp, was arrested by Mr. Jones, at the Prospect post office this forenoon, and brought over to my chamber. He informed me, that his name was John C. R. Palmer, jr. and made a confession to me, of the manner in which he came into a possession of the knowledge of the murder, and of the reasons which induced him to write the letter. The magistrate will transmit to you, that part of his confession, which implicates the unfortunate Knapps. You will of course see the necessity of acting promptly and secretly in making the arrest of all concerned in it. The sensation, which will be produced by it in our community, must be very great.

As a result of the information supplied by Palmer warrants for the arrest of Joseph J. Knapp Jr. and John Francis Knapp were issued, and on the evening of May twenty-sixth, after being brought before Justice Savage for examination, they were committed to jail.

The whole number now in goal, charged with the murder of Mr. White, either as principals or accessories is seven, vize: Richard Crowninshield, George Crowninshield, Daniel Chase, Benjamin Selman, Joseph J. Knapp Jr., John Francis Knapp, and John C. R. Palmer.

Appendix: A Brief Sketch, p. 5. Similar letters were also sent by the Committee, addressed to the same person, to two other post offices in the vicinity of Prospect. These post offices were also under surveillance.

Letter from Joseph Water, Belfast, Maine, May 24, 1830. In his letter Water goes on to indicate that Palmer was extremely reluctant to supply any information until after he and his father had been assured that, if guilty, Palmer would be in no danger of prosecution if he turned States evidence.

Salem Gazette, June 4, 1830, p. 2.
In the meantime all necessary arrangements were made to transport Palmer to Salem, where, upon his arrival, June 3, 1830, he was examined by Justice Savage and subsequently committed to jail.

When Palmer entered the prison, he was conducted into the cell, immediately under the one, occupied by Richard Crowninshield, Jr., for the purpose of having an interview with other members of the Committee. In a few moments, a pencil tied to a string was dropped through a fissure in the wall, accompanied by a piece of paper, on which two lines of stanzas were written, and the person beneath was requested, if he knew the author of the piece, to add the other two lines. In a moment after a shrill whistle was heard, and the name of Palmer repeated.

The arrest of Joe and Frank Knapp galvanized the Reverend Henry Colman, minister of the Independent Congregational Church, into action. Whatever the motivation, whether paternal, inquisitorial, or ecclesiastical the minister was in the middle of things. On May twenty-eight he paid three visits to Joe and promised him immunity if he would put his confession in writing and testify for the government. During the last of these meetings Phippen came to Joe's

49Appendix: A Brief Sketch, p. 8.

50Reverend Colman turned out to be a star witness for the prosecution. Of him, Dexter said: "Whatever the government cannot otherwise prove, Mr. Colman swears the prisoner has confessed, and nothing more." Colman, a Dartmouth graduate, was forty-five at the time of the trial. He is reported to have been a tall impressive looking man whose presence demanded attention. Colman had known Captain White, and Stephen White was, as were Joe and Mary Knapp, whom Colman had married, a member of his congregation. From personal accounts of his life it appears that Colman tried to get as much mileage out of his involvement in the trial as he could. Despite this, or perhaps because of it, Colman was not a very well liked man.
cell and upon learning of Colman's intentions declared that it would be unfair for Joe to accept immunity unless Frank was willing. Phippen then accompanied Colman to Frank's cell to tell him that Joe was ready to confess in order to gain immunity but would not do so without Frank's consent. Frank's reply was a matter of later dispute. According to Phippen, Frank said, "I have nothing to confess, it is a hard case, but if it be as you say, Joseph may confess if he pleases. I shall stand trial." Colman testified several times and consistently contradicted himself; however, the most damaging of his versions, and the one the court accepted, was that, "Frank thought it hard, or not fair, that Joseph should have the advantage of making a confession, since the thing was done for his benefit or advantage." We shall hear more of this later. At this time Phippen exacted a promise that Colman would not see Joseph again without him. Both Phippen and Colman then made quick trips to Boston, the former to retain counsel for his two brothers,\textsuperscript{51} and the later

\textsuperscript{51} This effort by Phippen to secure an attorney for his brothers evidently failed for on August 25, 1830 in a statement made by Franklin Dexter he indicated that "Mr. Nathaniel P. Knapp applied to me by letter about the 12th of June last--to act as Counsel for his brothers. A few days after, I had an interview with him and Mr. Rantoul in which we had a general conversation on the evidence expected in the case," Franklin Dexter, \textit{Statement of Franklin Dexter}, Boston, August 25, 1830, p. 1. In his opening remarks of the trial Mr. Gardner indicated that his connection with the prisoners had been but of a few day for he had been substituted for another gentleman. The other gentleman was Mr. Rantoul and we will consider the bearing of this action on the trial later. This account is not compatible with Winan's and Bradley who indicate that Phippen had acquired legal help during his May 28th trip to Boston. Cf. \textit{Salem Murder}, p. 24.
to get written authority from the Attorney General to grant immunity for turning State's evidence. Colman reached the Attorney General at Dorchester sometime after midnight and got him to sign a document stating that if either of the Knapps or George Crowninshield was made a witness, the one testifying would not be prosecuted for Captain White's murder.52

Early in the day on May twenty-nineth Colman hurried back to Salem, to climax his dual role as friend of the family and agent of the committee of vigilance. Although he had promised Phippen that he would not go to jail to get the confession without him, the over zealous minister broke his word. When Phippen arrived Colman refused him admission to Joe's cell, but promised that later he would let him read the confession that Joe was about to sign.53

The confession read as follows:

Salem Gaol May 29. 1830.

I mentioned to my brother John J. Knapp in Feb. last that I would not begrudge one thousand doll's that the old Gent, meaning Captain Jos. White, of Salem was dead. He asked me why. I mentioned to him that the old gent. had a will which, if destroyed, half the property would come on this side, that Jos. J. Knapp Jr.

52 This promise of immunity was not extended to Richard Crowninshield as the state believed it already had sufficient evidence to obtain a conviction.

53 On Monday in the afternoon of May 31, 1830, two days after his first confession, Joe made a second statement which was signed in front of Gideon Barstow and Stephen Phillips, both members of the committee of vigilance.
is, to my mother in law, W. Bickford, that with the present will
the bulk of the property would go to Stephen White, that he had
injured me in the opinion of the old gent. and I had no doubt
had also prejudiced him against the family and that I thought
it right to get the property if I could. I mentioned to him in
a joking way that the old gent. had often said he wished he
could go off like a flash. We then contrived how it could be
done. One way was to meet him on the road but the old gent.
was never out at night—another was to attack him in the house,
but Frank said he had not the pluck to do it, but he knew who
would. I asked him who & he said he would see George & Dick
Crown. I told him well, I did not think they would but he could
go & see. He got a chaise with Wm. Allel & went to their house
as he said, I proposed it to both of them. George declined
going into the house, that is Capt. Ws. house, but he said as
Frank reported that he would meet him any where out doors but
would not go into the house. Dick said he would do it if Geo.
would back him, Geo. would not but Dick appointed a night to
meet Frank. They met two or three different times, once at the
Universalist meetinghouse, as my brother said, once in South
Salem by the South Field Bridge as I understood my brother, &
one at the Salem Theatre at the building, there was no play
that night, at their meetings my brother Francis Knapp told
him just what I had said. There was another meeting appointed
at Salem Common for the 2 of April. I went on the Common that
same eveng & met Rich. C. at 8 o'c. in the very centre of the
common. I told Rich. C. how matters stood & that I had taken
the will of Capt White either that day or the day before I took
the will out of his iron chest, it had the key in it, I turned
the key & took it out. I told him what I would give him, that
it should be just as my brother had represented, meaning that
I would give him a thousand dollars if he would fix him, meaning
Capt. White, Rich. C. then showed me the tools he would do it
with, which were a club & a dirk--The club was about two feet
long turned of hard wood, loaded at the end or very heavy I
presumed it was loaded & ornamented at the handle, that is
turned with beads at the end to keep it from slipping, I took
hold of it & think I lifted it. The dirk was about five inches
long the blade having a white handle as I think, it was flat
sharp at both edges & tapering to a point. I do not know
where he got the dagger but he said he turned the club himself.
I asked him if he were going that night, and told him what time
the old gentm. went to bed generally about ten or a little before.
He said no, he could not do it that night, that he must wait a
little he did not feel like it because he was alone & his
brother would not back him, but he said he would meet my brother

Jos. J. Knapp Jr.
another time. I do not know what evening it had got past nine and I left & went home to Wenham. I kept the will one or two days in my chaise box wrapt up in hay, it remained there until I heard of the murder & then I burnt it. I came down on Sunday & attended meeting. My brother said he saw Rich. C. that evening at the bottom of the common, the old Gentm. meaning Capt. W. went to Mr. Stones to tea this evening, my brother told Rich. C. that Capt. White was up there, who said he would catch him there if he, that is, Capt. W. did not come home before dark, he did come home before dark & they were disappointed. He expected to meet him in Chesnut Street. My brother mentioned that Rich. C. said he would dirk him in Chesnut Street if he met him. I went home Sunday night about dark, my brother came to the farm at Wenham on the next tuesday afternoon. I told him that my mother Beckford was at the farm and was to stay the night. She had come up because Mr. Davis wanted her assistance. I mentioned this to my brother & told him he had better tell this to Rich. Crowninshield. On the friday preceding I unbarred & unscrewed the window of Capt. White's house closing the shutters again—My brother said he would inform Rich. C. My brother left the farm about tea time in the chaise in which he came up——my brother made this remark as he went off, I guess he will go tonight. The next morning Wednesday 7th of April Mr. Stephen White's man came up in his chaise & informed us that the old Gentm. White was dead & mother Beckford said she would go right down with him. My brother Frank came up to the farm that day about noon, he asked if we had heard the news. We told him yes, & how we heard it, after dinner he told me aside how it occurred. He said that Rich. C. met him I think he said in Brown Street in Salem about ten o'clock in the evening & that he Rich. left him & came round through the front yard & round through the garden gate, pushed up the back window & got in by it & passed through the entry by the front stairs into Capt. White's chamber that he struck Capt. White with the club above named while asleep & after striking him he used the dirk and hit him several times with the dirk and covered him up and came off. I met my brother again in Brown Street or by the common, I think about eleven o'clock. He says Dick told him before he went in if he saw any money there he meant to take it when he came out. My brother asked him if he had got it, he told him no but he had fixed him. They seperated & went home——

This is all I know of the affair until I saw my brother again after he had seen Rich. C. again. I came down to Salem the afternoon of the 7th of April & staid in Salem a fortnight, my brother informed me that he had seen Rich. C. once or twice & that Rich. C. having seen the accounts of the number of stabs

Jos. J. Knapp Jr.
in the newspaper said that he had stabbed him but four times & Rich. C. remarked that he really believed there had been another person into the chamber, because he did not recollect making more than four or five stabs.

A fortnight or three weeks after the murder Rich. C. rode up with my brother Frank to the farm in Wenham, he staid there a little while & I gave him one hundred five frank pieces, which a few days before I had received from Guadalupe by Capt. Josiah Dewing. While Rich. C. was at the farm he told me the same story which my brother had done & said that he had done the deed. He remarked that he was pretty short & should want some more money soon he mentioned that it was a great pity we had not got the right will because he said if he had known that it had been in there he would have had it himself that night. Rich. C. that same evening informed me that he had put the club with which he killed Capt. W. under the Branch meeting house steps. My brother went to look for it since but could not find it. I suppose he did not look in the right place. I wrote a letter dated I think the 12th of May to Hon. Stephen White, at the house in Wenham on Sunday morning the 16th May signed either Grant or Clayton & another addressed to Gideon Barstow signed either Grant or Clayton. I cannot tell which was which, which letters I brought to Salem & gave them to Wm. Allen who said he would put them in the Post Office that evening. The purpose of the letter addressed to the Commee was that I the person signing the letter went into the chamber & struck old Mr. White on the head with a piece of lead & that I pierced him or stabbed him three or four times with a dirk & that Stephen White gave the finishing stroke, that he offered me five thousand dollars & had not sent any part of it. One of the letters was dated Lynn. I do not know which--The purport of the letter to Mr. White was that he must send me the five thousand dollars or suffer the consequences. I believe that was the amount of it. There were very few words. These letters I think were put into the office I think in the evening. Wm. Allen was at our house two or three days afterwards & told me that he had put them in. I do not think he knew the purport of them. I told that I had received an anonymous letter & that this would brush off the effect of it.

I know nothing of Chase or Selman in this business. I know nothing of Palmer or Carr nor ever heard any thing until since I came into the Salem Gaol.

I Joseph Jenkins Knapp Jr. of Salem, now in Salem Gaol on this 29th day of May, being Saturday have given the foregoing

Jos. J. Knapp Jr.
confession relating to the murder of Joseph White of Salem to Henry Colman minister of said Salem. It contains the truth & nothing but the truth. It is given without compulsion, solicitation or bribe & with no other promise from the said Colman or any other person than that of the Attorney Gen. shown me by said Colman promising to the individual who should make a full confession of the facts in the case, that he should be made a witness & being made a witness the Government pledge to him that he shall not be prossecturd for the offence. I declare solemnly that no other proposition has been made by said Colman & that I have engaged to him to answer any other questions touching this subject which may be addressed to me by competent authority, as far as my knowledge extends--

In witness whereof I have hereunto affixed my proper name I have also affixed it to every page of this confession being nine times in the whole--

The words with "Wm. Allen" & "that is Capt. White's house" on the first page & "five" on the 3rd page were interlined before signing. I have followed the reading of every line of this confession aloud by Mr. Colman before signing.

Jos. J. Knapp Jr.

Attent. Henry Colman

Salem Gaol Saturday 29th May 1830. 7 o'clock P.M.
There appeared Joseph Jenkins Knapp Jr. and in our presence acknowledged that the statement by him subscribed as above, contains the truth and nothing but the truth, the same having been fully and distinctly read to him aloud by us.--

Gideon Barstow
S. C. Phillips

However, before keeping his second promise to Phippen, Colman took the confession to the Committee who did not think it wise to allow Phippen to know what had been confessed. This decision was made in spite of the fact that the committee of vigilance allowed an
extensive summary of the confession to appear in the local papers. Joe's confession caused widespread and intense excitement not only in Salem but also in the surrounding communities. Everyone assumed that the mystery was solved, and that the prisoners would be quickly convicted.

It is interesting to note that from the time of the murder, April 6, 1830, until the arrest of the Knapps, May 26, 1830, a veil of secrecy surrounded the activities of the committee of vigilance. Very little information pertinent to the case was carried by any of the local or area newspapers, and the public, as we have seen, was completely unaware of any progress that was being made; however, with the arrest of Joe and Frank Knapp the committee of vigilance lifted its news blackout. Between the twenty-sixth of May and the first trial of Frank Knapp all of their findings were made public;

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55 A copy of Joseph Knapp's second confession is recorded in Appendix F. Robert Rantoul reports, in Personal Recollections, that Joe told Colman about the murder while Colman was "acting as his spiritual advisor." Such a disclosure would be privileged information to most men of the cloth.

56 This statement is a result of a survey of all local and area newspapers available in Salem, at the Essex Institute, in Boston, at the Boston Public Library, and in Worcester, at the American Antiquarian Society.

57 The word all might be a bit misleading. As a by-product of the present investigation certain information, apparently uncovered by the committee of vigilance but never brought to the attention of the public, has been rediscovered. The evidence tends to indicate that Stephen White was in his uncle's house on the night of the murder; however, in light of the fact that this information had no effect upon the trial it will not be dealt with in the present study.
however, little concern seems to have been given to the manner in which the material was reported. Accounts of the case, such as the following one, were carried almost daily:

Mr. Bennett, one of the editors of the New York Courier and Esquire is at Salem. . . .
He says:
"The history of the confederacy of plunder, robbery, and murder is one of the most singular that ever took place in this country. R. Crowninshield was the great leader of the gang. He was a cold, calculating, daring, desperate villain, possessed of energy of mind and resources of the most wonderful kind. Before Knapp made the confession he did under the hope of pardon, Crowninshield had made the most ingenious preparations to prove an alibi on his trial, and had his confederates remained firm, he would, it is supposed, have succeeded."58

An act of violence, never before paralleled in the long history of Salem, which was diametrically opposed to the belief and value systems of the people, had been committed. As a result of this act, and in combination with the news blackout, cognitive dissonance was created and had been allowed to steadily increase for over six weeks. During this period no relief from the mental strain of dissonance was provided. Fear and anger were widespread and the townspeople had plenty of time to dwell on the ghastly situation. A horrible murder had been committed and as far as the general public was concerned there was not even a single clue which might lead to the identity of the guilty party. When the news blackout was lifted the people were flooded with editorialized concepts of the murder and the events leading up to it. In most cases the material

58Newburyport Herald, July 30, 1830, p. 2.
released was identified as being substantiated by the committee of vigilance, the group which was solely responsible for the investigation of the case. The "committee" was composed of twenty-seven of the most prominent people in Salem. Thus, by association, most of the editorialized information carried with it not only the ethos of the committee as a whole, but also the ethos of each individual member of the committee. This information provided an outlet for the pent-up anxieties of the townspeople which manifested itself in the form of dissonance reduction. While the process of dissonance reduction was under way additional attitudes were framed in support of those already existing. As a result of the development of the supportive attitudes, the secondary attitudes attained a strong structural position within the cognitive system of the individual. All of these attitudes supported the dissonance reduction process and thus would, by definition, be based on and also support the editorialized view of the case as it was presented in the newspapers. This kind of publication, strongly condemned several times by the judges, greatly increased the difficulties of the defense. Thus, the actual conviction of the defendants would give final support to this process; however, if the defendants were released, dissonance reduction would cease and the individual would return to a heightened sense of motivational tension. From this point of view the trial

59 In this case primary attitudes would be those of a cultural nature which were based upon the individual's belief and value systems.
may be looked upon as a dissonance reduction phenomenon rather than, or, depending upon the circumstances of the trial, in addition to, a judicial search for truth.

Richard Crowninshield's Suicide. — For the most part Dick Crowninshield was calm and self-possessed, almost stoic, in face of his imprisonment. He spent much of his time reading and, according to his visitors pass-book, conversing with family and friends. It appears that his attitude changed little when he learned of Palmer's arrest and Joe's confession, but undoubtedly both of these events weighed heavily upon him. Dick was intelligent enough to realize that he needed legal advice and one day, about the middle of June, he spoke with Franklin Dexter who had been retained as chief counsel for the Knapps. No one knows exactly what was said during that meeting, but it is safe to assume that Dick consulted Dexter on

60Dick left letters to his father and sister which are reprinted in Appendix E.

61Note should be made of the fact that Joe confessed on May 29, and that Palmer was imprisoned on June 3rd. Both these events took place approximately two weeks before Dick hung himself.

62The meeting between Dick and Dexter probably occurred on June 14th. Cf. footnote 51. Dexter first heard from Phippen, a correspondence by mail, on the twelfth of June and went to Salem "a few days later," thus June 13th is eliminated as a possibility. As Dick's body was found on June 15, 1830, it is unlikely the meeting occurred on that day as Dick's activities for the day in question were reviewed by the jailer and he made no mention of visitors.
the subject of principles and accessories. Dexter most likely told Dick that under Massachusetts law an accessory before the fact could not be tried for a felony unless someone had first been convicted as a principal. In an earlier case, involving a burglary, Thomas Daniel had been indicted as the principal and James Phillips as an accessory before the fact. Daniels had died, and the Supreme Judicial Court of Massachusetts had declared that under such circumstances Phillips could not be prosecuted. Of the five judges participating in that decision, three were still on the Court.

In other words, Dick would be indicted as a principal and George, Joe, Frank, Selman, and Chase would be indicted as accessories. At this point Dick may have asked, "If I am not convicted, then the others can not be tried?" "That does not necessarily follow."

Dexter would have replied, "The government would then try to convict one of the others as principal in the second degree; however, I do not think they could do it."

On June fifteenth, at two o'clock in the afternoon Richard's body was found hanging in his cell. He had tied two silk handkerchiefs together, fastened one end around his neck, the other end to a bar of his cell window, and hanged himself. To accomplish what

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63 Robert S. Rantoul, son of Robert Rantoul who unofficially assisted Dexter, says in Personal Recollections that he learned from Edward Ellerton Pratt, brother-in-law of Rufus Choate, that Dick asked this question of Dexter on one of his visits to jail. Robert S. Rantoul, Personal Recollections, p. 11.

he did must have required extraordinary strength of will for when
he was found his feet were touching the floor, "from which his knees
were not more than a foot distant, it being necessary for him to
bend his limbs considerably in order to produce strangulation."65
As would be normal, under such a set of circumstances as those
surrounding Dick's hanging, the suicide was interpreted by most in
the town as conclusive proof of his guilt. It would be a natural
assumption from such a line of reasoning as this, that if one of
the accused was guilty, all were guilty. Considered in relation
to the situation and the prevalent attitudes of the people, the idea
that an innocent man would take his own life, even to save the lives
of his brother and friends, was pretty much out of the question.

Grand Jury Hearing

A special session of the Supreme Judicial Court of the
Commonwealth of Massachusetts was held on Saturday, July 10, 1830,
pursuant to an Act of the Legislature passed on June 5, 1830.66

65Salem Gazette, June 16, 1830, p. 2.

66The enormity of the White Murder in the minds of the
people of the Commonwealth had occasioned a special term of that
State's highest court. Obviously the people, whom the State
theoretically represents, could not or would not wait until the
regularly scheduled session of the court, but rather insisted
upon immediate action. In his opening remarks to the Grand Jurors
Chief Justice Parker gives us added insight as to how this crime
affected the people. He stated that, "This transaction [the
murder] was of a nature to excite alarm and agitation, not only
in the vicinity where it happened, but throughout the Commonwealth
and even beyond it." See Appendix B, p. 1.
The act specified that a Grand Jury Hearing should be held and that at least three justices as well as both the attorney general and the solicitor general should be present and attending the session. Chief Justice Isaac Parker, and Justices Samuel Putnam, Samuel Wilde and Marcus Morton were present, as was Attorney General Perez Morton and Solicitor General Daniel Davis, when the court met, and after the Grand Jury had been empanelled and sworn, his Honor Chief Justice Parker charged the jury. The following is a brief condensation of his address. He indicated that the chief task of the jury was not so much to inquire if a crime has been committed, though even that must be proved to you by legal evidence, as to seek out the perpetrators and present them, if discovered, to the bar of this Court for trial.

Parker announced his dislike of the unusual publicity that had been given the case when he said,

We cannot but regret the unusual publicity that has been given to the facts and circumstances which have transpired on this mournful subject. We shall see, I fear, that it will have had a tendency to impede the course of inquire.

He explained that the common law was such that, if a person committed the crime of willful murder, or was present, aiding and

67Supreme Judicial Court of the Commonwealth of Massachusetts, Grand Jury Hearings, Special Session, July 10, 1830. See Appendix B. Cited hereafter as Hearings.

68Chief Justice Parker, Hearings, p. 2. Here Parker does not leave an alternative, as to the number of people involved, in the minds of the jury, but rather indicates that more than one person was involved.

69Ibid., p. 3.
abetting in the commission of such a crime, or not being present, had been an accessory before the fact by counselling, hiring, or otherwise procuring the murder, the death penalty was mandatory.70

It may be a subject of inquiry, what constitutes presence within the meaning of the second branch of this enactment, "present aiding and abetting in the commission of such crime."

And the construction of this phrase, which is taken from the common law, has been settled in ancient times by wise and learned sages of the law. . . . By this construction it is not required that the abettor shall be actually upon the spot when the murder is committed, or even in sight of the more immediate perpetrator or of the victim, to make him a principal.

If he be at a distance, co-operating in the act by which to prevent relief, or to give an alarm, or to assist his confederate in escape, having knowledge of the purpose and object of the assassin,—this in the eye of the law is being present, aiding and abetting, so as to make him a principal in the second degree in the murder.

The distinction between a person thus situated and one who is denominated by the statute an accessory before the fact is, that the latter is not only in every sense absent from the scene of crime, but is not an immediate participator in it; he may not know the time when and the place where it is committed. He has previously, perhaps days or months before, hired, counselled or procured the deed to be done, but he has no immediate agency in the deed. His crime is deemed by the law to be as great as his who strikes the blow; . . . Thus the law punishes the accessory before the fact in the same manner as it punishes the actual perpetrator—they are alike murderers.71

Chief Justice Parker concluded his charge to the grand jury by indicating that,

There is at the common law a difference, and it is supposed to exist also under our statute, in regard to the form and the time of trial, between those who are called principals, and

70 Ibid.

71 Ibid., pp. 3-4.
accessories before the fact, it being held that unless there be a conviction of a principal there can be no trial of the accessory.\textsuperscript{72}

On July tenth, the Knapps, following the advice of Franklin Dexter, petitioned the Court in order that Robert Rantoul be allowed to serve as defense counsel. The petition was based on the grounds that: (1) Rantoul knew more about the case than anyone else, and (2) that, "the prosecutors have paid all the counsel in town except those who are engaged for the other Prisoners and we want to see and talk to the lawyers who are to plead our cause."\textsuperscript{73} The Chief Justice denied the petition.

Little is known of the proceedings of the Grand Jury Hearing as it was held behind closed doors. There appears to be no record of what transpired from July tenth to the twelfth, or from the fourteenth to the twenty-third.\textsuperscript{74} On July 13, before the grand jury had heard the case, Dexter requested of the court that, "they be

\begin{flushright}
\textit{\textsuperscript{72}Ibid., p. 4. The court held to this ruling during the present case. The ruling was changed by the Massachusetts Legislature in 1831.}

\textit{\textsuperscript{73}Letter from John F. Knapp to the Chief Justice of the Supreme Judicial Court, Salem, Massachusetts, July 10, 1830. The prosecution had used all of the Salem lawyers as consultants and the nearest place the Knapps could obtain counsel was in Boston. At best, such tactics are questionable. Also, as Boston is somewhat removed from Salem, the defense attorneys were at a definite disadvantage in that they were unable to keep abreast of spontaneous developments in the case.}

\textit{\textsuperscript{74}For a partial account of July 13, see 7 American States Trials 404.} \end{flushright}
instructed as to what evidence they should receive." Chief Justice Parker replied that,

With us the Court never instruct the grand jury upon the nature of the evidence to be heard before them. The law reposes confidence in the officers of the government; they are not supposed to procure an indictment against a man upon improper evidence.

Dexter next asked, on behalf of the defense, that he be given a list of the names of the witnesses to be produced for the prosecution. At this the Solicitor General assured the court that he would shortly provide the defense with such a list.

At the opening of the court on Friday, July 23, the Chief Justice remarked that there seemed to be an intention of publishing in the newspapers, the daily proceedings of the Court. He said that, "there may be no objection to publishing the state of the case as it advances; but there must be no publication of the events before the trials are concluded." ^76

The grand jury returned bills of indictment against John Francis Knapp, George Crowninshield, and Joseph Jenkins Knapp Jr. The prisoners were placed at the bar and the clerk read the indictment which charged that: (1) Frank murdered White with a bludgeon

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^75 Dexter is here, in essence, requesting that no affidavits or papers, containing distinct substantive testimony against the accused be sent to the Grand Jury. As Joe's confession had not yet been accepted by the court it would be considered improper evidence.

^76 Hearings, p. 5. Here Parker uses the word trials which would tend to indicate that there would be more than one trial. Yet he was aware, see footnote 72, that if the principal was not convicted the whole business would end.
and that George and Joe were accessories before the fact; (2) Frank murdered White with a dirk and that George and Joe were accessories before the fact; and (3) that Dick and Frank assaulted White, that Dick murdered him with a bludgeon, and that Frank was present, aiding and abetting, that Dick killed himself so that he could not be held to answer for the murder, and that Joe and George were accessories before the fact.\textsuperscript{77} To this indictment the prisoners pleaded not guilty, and at the request of the Knapps, Franklin Dexter and William H. Gardner were assigned as their counsel.\textsuperscript{78} Samuel Hoar, of Concord, Ebenezer Shillaber, of Salem, and John Walsh, of Salem, were assigned as counsel for George Crowninshield. Tuesday, July 27, was assigned for the trial.

Frank had been charged as a principal, in the second degree, and Joe as an accessory, before the fact, in the murder. As things stood Dexter was confident, almost certain of an acquittal. In a most businesslike manner he penciled in his trial notebook, "The charge has now come in, there is nothing conclusive in them."\textsuperscript{79} In his opinion the state had failed to make a charge against his clients

\textsuperscript{77}\textit{Hearings, "Indictment,"} pp. 6-8.

\textsuperscript{78}For a brief biographical sketch of the defense lawyers, see Appendix D.

for murder. Now, at least, faced with specific charge, and given another week in which to prepare the defense, Dexter had reached a crucial point of decision at which he must choose his prime strategies of defense. Immediately, perhaps instinctively, while sitting in the court listening to the indictment being read, he had silently compared the charges with American law and found "nothing conclusive." Under the law, the prosecution could not make their charge hold up. Subject to later refinement, or change, Dexter had immediately decided to ground his major line of defense in American Law. Dexter must have felt the prosecution would be shaken when they realized the weakness of the case they had prepared against his clients.

Daniel Webster for the Prosecution

Agreeable to adjournment, the court met at 9 o'clock on the morning of Tuesday, July 27, for the trial of John Francis Knapp. As soon as the court had been formally opened, Leverett Saltonstall, President of the Essex Bar, announced that Chief Justice Parker had died. The court, after hearing resolutions from Saltonstall and Morton, in respect to the Chief Justice, adjourned for one week. 80

This delay led to an important change in the apparent course of the trial. There is no doubt that those who were interested in

80Supreme Judicial Court of the Commonwealth of Massachusetts, Commonwealth v. John Francis Knapp (1830), pp. 1-3. Case reported as transcribed by Octavious Pickering. See Appendix C. Cited hereafter as First Trial.
the success of the prosecution were happy to have the delay. There seems to have been a growing feeling that additional evidence, as well as new legal talent, was needed to assist the aging prosecutors. Joseph Story and his brother-in-law, Stephen White, must have been seriously concerned. Both had an intense personal interest in the case, and the more difficulties they witnessed, the greater became their concern.

Daniel Webster had recently returned to Marshfield from a hard Senate session. Webster now at the height of his career, he had this same year given his Reply to Hayne, was tired and looking forward to a little rest and the company of his new wife. However, he could not deny so good a friend as Story and Harriet Martineau tells us that three days before the trial was to reconvene,

A citizen of Salem, a friend of mine, was deputed to carry the request. . . . Mr. Webster was . . . at his farm by the seashore. Thither, in tremendous weather, my friend followed him. Mr. Webster was playing checkers with his boy. My friend was dried and refreshed, and then lost no time in mentioning "business." Mr. Webster writhed at the word, saying that he came down hither to get out of hearing of it. He next declared that his undertaking anything more was entirely out of the question, and pointed, in evidence, to his swollen bag of briefs lying in a corner. However, upon a little further

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81 After the Grand Jury Hearing the prosecution, which had based its case upon Joe's turning State's evidence, realized that Joe probably would not testify.

82 At the time of the trial the Attorney General was eighty and the Solicitor General was almost seventy.

83 Boston Sunday Globe, March 26, 1905, p. 4.
explanation and meditation, he agreed to the request. He made himself master of all that evidence my friend could communicate, and before daybreak was off through the woods. At the appointed hour Mr. Webster was completely ready.24

On July 30, John R. C. Palmer wrote, "... the general opinion seems to be, that the chance for the prisoners, has become more desperate, at least twenty-five per cent, in consequence of Mr. Webster being engaged against them. ..."25 It seems that Mr. Webster was in Salem no later than July 30. By appearing for the prosecution Webster seems to have given an added measure of validity to that side of the case, as well as causing those people who might not have decided upon the guilt or innocence of the defendants to adjust in favor of the prosecution.

Webster was the principal architect of the prosecution, and therefore was one of the most significant figures of the trial. His ability, reputation or antecedent ethos and past activities linked him strongly with the people. The residents of Salem had suffered. They had lived with fear, anxiety, and suspicion for too long. The facts in the case were all out. They knew about Joe's confession and that Richard Crowninshield had committed suicide to evade justice. In their minds the trial would be little more than a formality. The dissonance reduction process had now been set in motion and "the


town was all on the side of the prosecution. . . ." Webster not only had the support of the people, he had connections with local and nationally prominent figures, as well as the clear mind, the cool judgment, and the comprehensive grasp of a legal genius. By virtue of his stature, Webster occupied a stronger position than any other person connected with the trial, including the judges.

Webster's being admitted to the case was a serious tactical defeat for the defense. The counsel for the defense did not object to Webster's participation until Joe's trial; however, by then precedent had been established. One of Dexter's first defensive moves, when Webster was first introduced to the Court, should have been to point out that Massachusetts vested prosecuting responsibility in the law officers of the Government, and that those law officers were present. But Dexter was taken by surprise when Webster was introduced and as a result Webster was admitted to the case on behalf of the prosecution. With Webster out of the case there is little doubt but that Dexter would have won the acquittal.87

86 Robert Rantoul, Personal Recollections, p. 6.

Dexter had also clearly erred when he accepted the solicitor general's statement that he would be given a list of the witnesses that would appear for the prosecution. Dexter needed the list quickly. By delaying the list the prosecution could hold up the development of the defense. This was an opportunity they were not likely to forego, no matter how honorable their intention. Dexter should have requested that the court provide him with the list.

Three other events seriously darkened Dexter's prospects. First, the court had ruled that, "the Court will not assign as counsel for a prisoner, one who is only an attorney of the Court of Common Pleas." Consequently, Dexter's appeal of the Chief Justice's decision was not carried and Robert Rantoul, who lived in Salem and who had worked on the defense from the very beginning, was not allowed to enter the case. Second, with the death of Parker there was no longer a Chief Justice to preside over the court. The state legislature decided not to appoint another Chief Justice at that time and Putnam, having the longest record of service, was appointed Senior Justice. Putnam made his home in Salem and had experienced, first hand, the murder as well as the panic that had followed. As a result of such exposure he might tend to view the case from a different perspective than Parker would have.

Finally, the initiative in Salem was kept by Webster, who obviously had control over the population. Popular excitement was

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88 *Massachusetts Reports*, XXVI, "Pickering," IX.
running high and on the last day of the Grand Jury Hearing the charges along with the coroner's report were published in the newspapers. There was no reply, from the accused, to be published. The charges were speedily distributed throughout the surrounding area, and their effect was frightful. The accusations, read and discussed everywhere, were accepted as proven fact. Webster spoke for many when he said: the accused became monsters, more terrible than anyone had first thought.

The judges took exception to this impermissible breach of personal rights, but outside of making their feelings heard, they did little more. Dexter did not trouble himself to counter these actions. He believed he could disprove them. Unfortunately for his clients, he did not figure the people's attitudes into his calculations, and he underestimated the effect that unproven charges could have upon the jury.

Meanwhile Dexter put the finishing touches to the defense. Gardner and Rantoul, his principal counsel, assisted him with the legal aspect. Afterwards, Rantoul said that the defense was brilliant.\textsuperscript{89} Dexter built upon the foundation of his initial thoughts. He still aimed to break down the prosecution point by point placing his faith completely in the belief that the best legal argument would win the day. This being the case, then, all Dexter

\textsuperscript{89}Letter from Robert Rantoul, December 18, 1830.
had to do was to create a "reasonable doubt" in the minds of the jury and he would secure an acquittal.
CHAPTER V

THE TRIAL OF JOHN FRANCIS KNAPP

Antecedent Events

On Tuesday, August 3, 1830, the trial resumed. Some hours before the trial began heavy chains were strung around the square in order to prevent horse-drawn traffic from entering, tanbark was spread on adjoining streets to deaden sound, and persons with an eye to please the crowd and make some quick change sold refreshments. From accounts reported in the Essex Registrar and Salem Gazette it appears that the courtroom was too small to hold the crowds that tried to gain entrance.2

When the prisoners were placed at the bar, a reporter wrote:

J. Francis Knapp sprang forward first with a quick and vigorous motion, more like a bound than a step. J. Jenkins Knapp followed

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1As previously noted John Francis Knapp received two trials. The first trial ended in a hung jury. In the present analysis we will concentrate on the evidence presented in the second of the two trials. The evidence is substantially the same as that received in the first trial but offers the added advantage of giving us access to: (1) some new evidence, and (2) variations from evidence given in the first trial.

2Essex Registrar, August 9, 1830, p. 2; Salem Gazette, August 6, 1830, p. 2; August 13, 1830, p. 2; August 20, 1830, p. 3; and August 24, 1830, p. 3.
rather languidly, and Crowninshield came last with a quick easy air, and thus stood before me three young men, well and rather genteely dressed, and of fair presence.3

The court was presided over by Justices Putnam, Morton, and Wilde. Justice Shaw withdrew himself from the case as he had been consulted on part of the prosecution.

The attorneys for the prosecution were well-chosen. Daniel Webster was the speaker of the group and its leading spirit. He was ably supported by Attorney General Perez Morton and Solicitor General Daniel Davis. At the very outset the prosecuting attorneys entered a plea of nolle prosequi4 on the indictment on which the prisoners had been previously arraigned, and read a new indictment to them. The new indictment added the charge, "that a person to the jurors unknown gave a mortal wound with a bludgeon, and that J. F. Knapp was present, aiding and abetting; and that Joseph J. Knapp and G. Crowninshield hired and procured such persons unknown, and J. F. Knapp to commit the felony," and also "that a person to the jurors unknown gave several mortal wounds with a dirk, and that J. F. Knapp, was present, aiding and abetting," etc.5 The addition of these charges would force a fundamental readjustment of the defense's case and as a result Dexter immediately asked the court

3New Hampshire Sentinel, August 5, 1830, p. 2.

4Nolle prosequi is a formal notice by the prosecutor that prosecution in a criminal case will be partly or entirely ended.

5Trial Transcript of John Francis Knapp, p. 6-7.
whether the nolle prosequi which had just been entered could be struck, and the prisoners tried upon the original indictment. The court ruled against this request. No sooner had Dexter sat down than Gardner stood and informed the court that on the thirteenth of July the defense had requested a list of those witnesses used by the prosecution at the Grand Jury Hearing, so ordered by the court, and that to date, twenty one days later, no such list had been received. The implication, though not stated, was that as a result the defense had been delayed in the construction of its case. The court directed the prosecution to supply the defense with the list it requested. It was such quick moves as these that prompted Samuel L. Knapp to write, "Every inch of ground was contested by the prisoner's counsel with great ability and eloquence."

To this indictment Frank Knapp pleaded not guilty. At the request of Mr. Dexter the court ruled that since Joseph Knapp and George Crowninshield were indicted only as accessories before the fact, they were not obliged to plead until a principal had been convicted.

After nineteen peremptory challenges and eleven for cause, a jury was impaneled and sworn. The indictment was then read to the jury, and the attorney general presented the opening statement for the prosecution.

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The Anatomy of a Dispute

A trial in its simplest form may be viewed as little more than a formalized representation of a dispute, established to eliminate physical violence. As such, it is possible for the researcher to break down the dispute, trial or debate, into its functioning parts. When this occurs, once the anatomy of the dispute is understood, formal analysis of the dispute can be quickly and easily facilitated. The functioning parts of a dispute as viewed in the present study are: presumption; burden of proof, legal and psychological; the burden of going forward with the debate; and consideration of questions, issues, and points of decision.7

Presumption.—In every trial situation one of the disputants always preoccupies, figuratively stands upon, an idea, etc. that the other party thinks he should not be occupying. All trials concern an actual or figurative piece of ground. Unless some actual or figurative piece of ground is preoccupied, there can be no dispute as there would be no established order or pattern of relationships that may be challenged. Thus, for a trial to occur, the occupancy of a piece of argumentative ground must be contested.

7For a more detailed discussion see Douglas Ehninger and Wayne Brockriede, Decision by Debate, pp. 81-97.
The technical term for this preoccupation of a piece of argumentative ground is presumption. There are two main senses in which the word "presumption" is used by lawyers, and the fact that they are closely connected with each other makes it desirable to distinguish carefully between them. In the first place, a presumption sometimes means nothing more than a conclusion which must be drawn until the contrary is proved; secondly, and more frequently, it denotes a conclusion that a fact, called the "presumed fact," exists which may, or must, be drawn if some other fact, called the "basic fact," is proved or admitted. The difference between the uses of the term thus depends on the presence or absence of a fact which can constitute the basis of the presumption in question. 8

At present, we are concerned with the word "presumption" in its first sense. As such, it is simply employed as a means of stating the effect of the relevant rules with regard to the incidence of the legal and evidential burdens of proof. 9 When it is said that an accused person is presumed to be innocent, all that is meant is that the prosecution is obliged to prove the case against him beyond reasonable doubt. "This is the fundamental rule of our criminal


procedure.\textsuperscript{10} The party who at the beginning of the debate stands on the disputed ground is, therefore, said to have the presumption, i.e., the defense in the present study had the presumption.

However, if we are truly to understand presumption as a concept, we must realize that it does little more than describe a situation that exists and simply points out the prevailing order of things. To indicate that one of the parties in dispute has the presumption does not mean that his position is legitimate or illegitimate or that he should or should not hold it. In other words, presumption is always descriptive, never evaluative.

Legal Burden of Proof.—The American scholar J. B. Thayer stressed the fact that the term "burden of proof" is commonly used in two senses:

(i) The peculiar duty of him who has the risk of any given proposition on which parties are at issue,—who will lose the case if he does not make this proposition out, when all has been said and done; (ii) the duty of going forward in argument or in producing evidence, whether at the beginning of a case, or any later moment throughout the trial or discussion.\textsuperscript{11}

Insofar as presumption is the preoccupation of argumentative ground, legal burden of proof is the obligation undertaken by the


\textsuperscript{11}James B. Thayer, Preliminary Treatise on Evidence (Boston: Little, Brown, and Company, 1898), p. 355. His first "sense" refers to the legal burden of proof and his second "sense" to the burden of going forward with the debate.
party who advances the claim which challenges that occupancy.¹²
Unlike presumption, which merely describes, the burden of proof evaluates and recommends. And because it does evaluate, the burden of proof involves assuming risk. Thus, the prosecutor, in the present study, takes a risk every time he advances assertions, for, he must be able to prove the justice of the state of affairs he seeks. This is a risk not simply because failure to make good his claims means that it will be impossible for him to achieve his stated goal, but also because defeat may cause him to lose status.

There is no risk in description. Descriptions are merely reports. But when the advocate, criticizes and recommends, he takes the risk that he will not be able to prove his criticism justified or his recommendations sound. Therefore, the burden of proof may be defined, for our purposes, most accurately and usefully as the risk involved in advancing a proposition.

A discussion of the difference between the burden of proof and the burden of going forward with the debate, which we will consider next, brings us to an often misunderstood matter. While the burden of going forward with the debate constantly shifts in an alternating fashion between the contesting parties, the burden of proof does not.¹³ From the beginning to the end it always rests with him who challenges the status quo. Unlike the burden of proof,


¹³Ibid., p. 3.
it is not a subsequent or contingent obligation. The burden of proof represents the risk involved in initiating the action by putting forth the original proposition. Since the prosecution put forth the proposition it must accept as its permanent and unshiftable obligation the task of living with whatever risk that entails. But far beyond that, its obligation requires that it, the challenging party, maintain its proof throughout the entire debate at a level that exceeds equilibrium. Unlike the defense, the prosecution cannot theoretically be satisfied with a balance or standoff. Although a draw in proof may subject the existing order to severe tests, in the final analysis it leaves that order unaltered, with the original occupant still in control of the contested ground. To make good its claim the prosecution must do more than threaten, it must effect a fundamental rearrangement. During the course of the case it is understood that the defense must from time to time go forward with the debate by advancing proof or refutation. This requirement, however, represents only a temporary shift in the center of gravity of the controversy, not a shift in the primary obligations of the parties. These obligations are constant. The prosecution must strike and maintain throughout a level of proof sufficiently above equilibrium to effect the rearrangement he desires. The margin of proof above equilibrium represents the unshiftable obligation he assumed in initiating the action. Anything less than this is generally referred to as a miscarriage of justice.
Psychological Burden of Proof.—The term "psychological burden of proof" cannot be found in books of law, yet it is a principle which should be assimilated into the system of jurisprudence. The psychological burden of proof is a highly variable factor largely dependent upon the attitudes and beliefs of the audience. Its establishment occurs during a trial when an audience, individually or collectively, decide, prior to hearing the evidence as presented in court, the guilt of the defendant. In this way the audience is responsible for shifting the presumption away from the defendant, thus, making it necessary for the defense to prove the defendant's innocence. If for some reason the defense does not realize that the psychological burden of proof is operative, or if it neglects to move to counter it, the type of proofs needed to establish guilt could conceivably fall in the category of circumstantial evidence. In the present study the psychological burden of proof was assigned by the audience to the defense; thus, Frank Knapp was considered guilty by many, if not all, the townspeople. Such action may occur despite the judges overt concern for impaneling an impartial jury. The judge can do no more than caution the jury to keep an open mind, but such action may be minimal if the jury has already formed attitudes and opinions as to the defendant's guilt.

Burden of Going Forward with the Debate.—All is calm and at rest--the world is quiescent until the prosecution declares that, "John Francis Knapp is guilty of ______." By advancing this
The proposition the prosecution initially disturbs the situation. Moreover, its proposition specifies the exact burden of proof that it, as the party standing outside the disputed ground, must now be prepared to assume. However, the prosecution alone cannot start the dispute. If the defense, without replying, surrenders its position, no interchange can take place, even though a proposition has been advanced. Rather, a new order would be established quickly and peacefully. The debate begins only when the defense answers the prosecution's challenge by saying, "we deny the proposition. Prove that such is the case." This reply operating with the prosecution's challenge, produces the controversy, by forcing the prosecution to do more than mouth assertions. Now the prosecution is required to produce proof to support the proposition it has advanced.

If at this point, on the other hand, the prosecution were to say, "We have no proof—let's forget the whole thing," it obviously would fail to make good on the risk it took in initiating the dispute. Under such circumstances, not only would any impartial judge be forced to declare against the prosecution, but, as a practical matter, it would lose all hopes of reaching its goal. Therefore, if the prosecution is to attain the end for which it began the debate in the first place, it must make good its claim. It must do as the defense asks and present proof designed to show its expediency and justice. In other words, the prosecution must go forward with the debate.
The first obligation the prosecution must satisfy in discharging its obligation of going forward with the debate is to construct what is technically called a prima facie case. Simply, a prima facie case is a case that any reasonable judge would consider strong enough to stand on its own, until refutation is offered against it. 14 If the prosecution cannot make good its claim at least to this extent, it can hardly expect a further hearing.

In a second, and equally important, phase of this process the defense as well as the prosecution participates. For when the prosecution has successfully made out a prima facie case, its obligation is for the moment discharged. In the present study murder is viewed as "the unlawful and intentional killing of a human being with premeditation malice aforethought and not in self defense." 15 The essential elements in constructing a prima facie case would then be: (1) that there was an unlawful and willful killing of a human being; (2) that the killing was committed with premeditated malice aforethought; and (3) that the killing was not in self-defense.

Now the defense must bestir itself. If it is to maintain its place on the contested ground, it must counter the prosecution's


prima facie case strongly enough so that it can no longer stand
without additional support, or without the prosecution's showing
the invalidity or irrelevance of the defense's attacks upon it.\textsuperscript{16}

Assuming that the defense does attack successfully, then
the burden of going forward with the debate shifts back to the
prosecution. It is once more their duty to offer proof or refuta-
tion so that their prima facie case may be reconstituted and their
case strengthened. But the prosecution's action only calls for a
new response from the defense, to which the prosecution must again
reply. And so the trial, debate, goes, with each party alternately
bestiring the other into action, until the evidence and proofs have
been exhausted. Then, and only then, can he who has by this process
of alternating action and counteraction achieved a preponderance of
proof, thus establishing his right beyond the point of reasonable
doubt, be awarded the decision.

\textbf{Question.}—The question is generally viewed as that element in a
dispute that arises directly out of the clash between the proposi-
tion and the answer that is made to it. Since the question is the
joint product of the proposition and the answer made to the proposi-
tion, its form and content are determined by the form and content
of these two elements. For example, the prosecution's assertion,

\textsuperscript{16}Cf. James O'Neill, Craven Laycock and Robert Scales, 
\textit{Argumentation and Debate} (New York: The MacMillan Company, 1917),
pp. 33-38.
"That John Francis Knapp is guilty of being present, aiding and abetting in the murder of Captain Joseph White," coupled with the reply of the defense, "We deny that John Francis Knapp is guilty of being present aiding and abetting in the murder of Captain Joseph White," gives rise to the question presently under consideration. Was John Francis Knapp present, aiding and abetting in the murder of Captain Joseph White?

**Issues.**—Once the proposition and answer have been established and the question thus delineated, the party which advances the proposition, the prosecution, thereby assuming the burden of proof, must proceed to construct a prima facie case. Since this case must be of sufficient strength to stand until refutation is offered against it, it will nearly always contain the major contentions by which the challenging party proposes to support his claim.

Again, by way of example, the prosecution in developing its prima facie case advanced the following contentions: (1) that there was a conspiracy, of which John Francis Knapp was a part, to take the life of Captain Joseph White; (2) that Frank Knapp was present in Brown Street during the murder; (3) that Brown Street is a place from which aid could be given; and (4) that the murder was committed between ten and eleven o'clock. Since these are the strongest contentions the prosecution can set forth, they are also the contentions the defense must attack if it wishes to undermine the case or weaken it to the point that the prosecution must come to its defense.
At this point the defense attorney has several options open to him: (1) he may contest any or all of the issues; (2) he may choose one of two general methods of attack or combine the two approaches. He may argue that the prosecution has not satisfactorily proved its claims and attempt to refute the prosecution's proofs; or he may initiate constructive contentions of his own; or he may attempt both procedures; and (3) he may also select the proofs for his constructive arguments. Dexter utilized all of these methods, as we shall soon see, in his defense of Frank Knapp.

Similarly, as the prosecution's proposition, combined with the answer of the defense, gave rise to the question in which the dispute as a whole centers, so does each of the contentions in support of the prosecution's prima facie case, combined with the defense's denial, give rise to a narrower and more specific kind of question. These more specific questions, arising out of the principal contentions set forth in the prima facie case as denied by the defense, are referred to as issues. The issues in the present case under study were:

1. Was the murder committed between ten o'clock and midnight;
2. Was there a conspiracy, of which Frank Knapp was a part, to take the life of Captain Joseph White;
3. Does the term present, in the phrase present, aiding, and abetting mean being at a specified or understood place;
4. Was Frank Knapp present on Brown Street; and
5. Is Brown Street a place from which aid could have been given.
The Third Issue is definitive, while the remaining four issues are designated.

The questions raised by the issues bear upon the central question directly and immediately. How one answers them will automatically determine how he answers the question itself. No intervening steps of reasoning or inference are necessary, and any specific question which does not bear directly on the central question no matter how important it may seem, is not, in the proper sense of the term, an issue. Because of its direct bearing on the central question, each issue is vital to the life of the challenger's cause and is in itself capable of determining the success or failure of that cause. Thus, formally defined an issue may be viewed as a question which is so vital to the life of the challenger's cause that unless it is answered in his favor his cause as a whole fails. Any specific question that does not provide an immediate answer to the central question is not an issue; any contention that the challenger may fail to prove and still make out a case is not an issue.

Now, if the party who advances the challenge must establish all of the issues to make his cause succeed, the party who denies the charge, the defense, need win but a single issue to destroy that cause entirely. If the defense can create reasonable doubt at only one point he may, if he so chooses, leave the other issues untouched and still succeed in the eyes of a reasonable judge.
While the prosecution must win on all the issues, whether it will be called on to submit proof beyond the point of constructing a prima facie case depends on the actions of its opponent. A distinction between actual and contested issues is, therefore, to be recognized. Actual issues are those questions growing directly out of the central question, which the prosecution must prove at least to the point of making a prima facie case. The contested issues are the actual issues to which the challenger must bring additional support because his attempts to prove them have been more or less successfully countered by the defense. Actual issues are never a matter of choice, whereas, contested issues always result from choice. Dexter mounted an attack, perhaps as a matter of insurance, which was directed at all of the issues. Such diversification of attack was, however, a matter of strategy rather than necessity.

Points for decision.—The decision in a debate is properly determined, traditionally, by the answers to two questions: (1) did the party advancing the challenge succeed in making a prima facie case on all of the issues? and (2) if so, did it successfully maintain a preponderance of proof on each of the issues his opponent chose to contest? If the answer to both of these questions, as we presently view the system, is "yes," then the decision belongs to the challenger. If the answer to either or both is "no," then the decision belongs to the party who denies the charge. Because these questions decisively determine the success or failure of the contesting causes,
they are known as the points for decision. On the points for
decision rather than on any vague impressions concerning the merits
or demerits of the cause as a whole, judgment should be rendered.

In the United States whenever a case comes to trial it is
conducted in this manner with the theoretical assumption that no
other factors enter into the decision-making process. From a purely
practical point of view this is a rather naive assumption, and in
point of fact, our judicial system is a contradiction. By way of
an example, it is close to impossible to obtain, or for that matter
to determine, if a jury is objective. Yet objectivity on the part
of a jury is one of the standards upon which our present judicial
system is built. Sound theory is not always compatible with the
world of practical affairs. Therefore, if the present study is to
add anything beyond a theoretical analysis, it will be necessary,
as we have done in the previous chapters, to go beyond convention,
and to continue to view the trial simply as one part of a dynamic
and on-going situation which encompassed an entire community—its
traditions, beliefs, attitudes and value systems.

The Trial Begins in Earnest

The Attorney General, Perez Morton\(^1\) made the opening state-
ment for the prosecution. He began with an attempt to build a bridge

\(^1\)See Appendix C, p. 361.
of common ground and mutual concern for the public safety between the prosecution and the jury. This tactic was intended to create a favorable atmosphere for his arguments to follow:

All, who are to take a part on this interesting occasion, have a painful duty to perform. To see a young man, in the vigor of his days, brought to the Bar of his country, to answer for a crime. . . . But we ought not to forget, that a faithful discharge of our respective duties, is paramount to every other consideration. Public justice, as well as public safety, requires it at our hands; and so far as my duty requires, I will endeavor to discharge it with fidelity, and so far as yours extends, I feel confident that it will be discharged with candor, firmness, and impartiality. . . . it affords satisfaction to say, that much credit is due to the Committee of Vigilance, chosen on the occasion, for their unwearied exertion to obtain that end. There is, however, one cause of blame which attaches to their laudable efforts, and that is their having suffered to be made public so much of the results of their inquiries . . . [however] we all know the avidity with which editorial paragraphists wish to anticipate public information, upon every interesting occasion.18

Further, by acknowledging the efforts of the committee of vigilance, and in essence, shifting the blame for prematurely releasing restricted information to the public, from them to the press, Morton hoped to capitalize upon the fact that this group was behind his cause; thus, benefiting from their prominence by association.

Morton went on to remind the jury of the shock and frustration the town had experienced after the murder, and of the fact that "... the perpetrators of this atrocious murder remained, for a long time, veiled in darkness and mystery," despite the efforts of the authorities. Only by the "... mysterious ways of devine [sic]

18Ibid., pp. 361-362.
Providence . . ." had the guilty parties been discovered. The Attorney General devoted the next two paragraphs of his opening address to point out to the jury how the efforts of the prosecution were in essence fulfilling scriptural dictate. By implication he suggested that the jury had a responsibility to both their fellow townspeople and God to share in that task. This tactic, the association of the prosecution with the highest order in the universe, was designed to play upon, what Rokeach has termed, the authority beliefs of the jury; thus, establishing a greater common ground between jury and prosecution.

On his authority Mr. Colman had received the voluntary confession of Joseph Knapp, Jr., but when Joe Knapp was called to testify before the grand jury, he had refused on the advice of his counsel.

But as the inquiry before the Grand Jury may not be considered as calling him as a witness upon the trial, I shall, in the course of the examination of the evidence, again call him as a witness, and if he again refuses to testify, every one will acknowledge, that the pledge of the Government will be completely redeemed, and his promised protection will be forfeited, and he must stand on his own original responsibility.

The attorney general proceeded on the assumption that the actual murder had been committed by Richard Crowninshield. He said the government did not expect to prove that the prisoner at the bar actually gave the blow or the stabs that caused the death of

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19Supra, Chapter II, p. 54.

20Appendix C, pp. 363-364.
Captain White, "for he who, it appears, did the deed ... has gone and hanged himself." 21

But he continued,

It is ... altogether immaterial, whether the prisoner at the Bar, actually gave the mortal blows, providing he was present, aiding and abetting the person, who inflicted them. It was not necessary for the abettor to do anything, provided he was ready to do it. . . . the Government are first bound to prove the corpus delicti, that is, that the deceased Mr. White came to his death by the hand of external violence. . . . we shall then . . . prove . . . that the death was effected by a wicked conspiracy and combination of individuals, of which the prisoner at the bar was one . . . and to this point, we shall offer Joseph Jenkins Knapp, jr. If we cannot prove this vile conspiracy and combination to murder the deceased by the disclosure of this accomplice in the crime, by the blessing of God we may prove it by other testimony in the case. And if in the opinion of the Court we shall be able to shew that such a conspiracy existed, another principle of law will be relied on, that when a conspiracy to do an unlawful act is proved, the acts of any one of the conspirators, done in effecting the object of their combination may be given in evidence against any other of the conspirators. 22

Thus, the prosecution had taken the articles set forth in the indictment and abstracted directly therefrom the assumptions which were basic to the issues upon which they were to base their case:

<table>
<thead>
<tr>
<th>Prosecution asserted that:</th>
<th>Defense rebutted:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The murder was committed at ten-thirty in the evening.</td>
<td>1. The murder was not committed at ten-thirty, but rather between 2 and 4 a.m.</td>
</tr>
</tbody>
</table>

21 At this point the attorney general again introduced concepts drawn from the Bible. See Appendix C, p. 364.

22 Appendix C, pp. 336-337.
2. There was a conspiracy, of which John Francis Knapp was a part, to take the life of Captain Joseph White.

3. John Francis Knapp was present, aiding and abetting and that present is defined as being at a specified or understood place.

4. John Francis Knapp was present in Brown Street at the time of the murder.

5. Brown Street was a place from which John Francis Knapp could have given aid to the murderer.

And so it went through all the claims which the prosecution had put forth as proof of the central question. Mainly Webster took the same data offered by Dexter and by using the topics of paradox and by attributing motives as warrants, he drew the claims listed above. His warrant types were for the most part authoritative, often depending upon his own credibility as a source, and motivational, which depended upon the value and emotional structure of the audience which expressed a hostility toward the defense.

During the Grand Jury Hearing, Dexter had responded to many of these same issues. He had disputed many questions of fact, but
his main defense then, as now, was that, unless all of the charges were proven, Frank Knapp must go free.

Dexter had thus based his claims upon American Law and Precedent. But the prosecution did not really try to shake this position in its opening statement. Instead they warned the jury against the legal correctness of some of the proposition which were to be set forth by the defense and then shifted to a different argumentative ground, using an entirely different warrant as support for their claims: "We shall charge him with nothing but what the law in every man's breast condemns." The type of issue, then, was stated by Dexter as being a legal issue, and the case should be judged by the letter of the law and legal precedent. The prosecution implied that the issue was legal, but then they advanced a different kind of law as a basis for judging the case. In effect, the prosecution, guided by Webster, was attempting to make the issue juridical, depending upon the jury's judgment of Frank Knapp's activities as good or bad, instead of legal or illegal. Was this approach to be the central point of accusation of the prosecution? Morton did not state it as such in his opening address, and we must await the unfolding of further events before specifying the precise foundation underlying the whole case of the prosecution.

It had by now become clear to Dexter that both he and the prosecution were basing their cases upon rival interpretations of the law and justice. Yet, there was more, much more, operating during the White Murder Trial than the mere legal procedure in
which Dexter had grounded his defense. William Gardner\(^{23}\) presented the opening statement for the defense and in it he directed his attention to, but never came to grips with, the one operative force, outside the judicial process, which had the power to dictate the outcome of the trial. Of a three page opening statement the defense devoted an aggregate of two paragraphs to the existing attitude of the townspeople. Gardner began his statement by cautioning the jury not to let the enormity of the crime and the general alarm which it excited prevent a full and free exercise of their judgment. He urged the jury to remember that the presumption should be for, rather than against the prisoner. "The whole community has been in a state of the greatest excitement, and is ready to fix its suspicions upon any individual, who might be singled out." He called the attention of the jury to the state into which the public mind had been thrown by the publication of the Confession of one of the persons implicated in the murder, and then alluded to the strong biases which existed against the defendant.

So determined seems to be the community to establish the guilt of the persons accused, that it is almost hazardous to appear in their defense. The cry of the people is for blood.

The rhetorical situation had created a psychological Burden of Proof. Regardless of the fact that the prosecution was responsible for the legal Burden of Proof, the psychological Burden of Proof clearly

\(^{23}\)Ibid., pp. 412-414.
rested with the defense. The prosecution had to prove Frank Knapp was guilty, while the town had already judged him so. The defense had the job of proving him innocent. Despite the fact that the judicial model existed, that the legal structure was available, another force, possibly more powerful than logic or reason, made its presence felt. It was, perhaps, the surfacing of the concept that man does not think in terms of proofs or syllogisms, but rather that man often reacts psychologically to traditions, preconceived notions, prejudice, beliefs, attitudes, and how many other things that we in the Twentieth Century have yet to identify. Logic and reason, too often, are born as justificatory devices. Dexter was aware of the hostility that existed, but as we shall see he underestimated the gravity of the situation.

The Corpus Delicti

The first task of the prosecution in establishing its prima facie case was to prove: (1) that a murder had taken place, and (2) that the murder was not in self-defense. For that purpose the prosecution was to call Benjamin White, Lydia Kimball, and Dr. Samuel Johnson to testify. Normally this would have been little more than a legal procedure; however, Dexter, aware that Webster would try early in the case to establish data on which he could later draw, decided to employ the same tactic. To that end Dexter successfully employed a vigorous cross-examination of key witnesses.
Ground or Lower Floor
of the house
of the late Joseph White.

A — Window Entered
B — Chamber occupied by Capt. White,
        over the Keeping Room.
Ground or Lower Floor
of the house
of the late Joseph White.

A—Window Entered
B—Chamber occupied by Capt. White, over the Keeping Room.

MEMORANDUM.
A—Howard Street Church
B—Faley Coffee-House
C—J. A. Sothwick's House
D—T. Downings House
E—Hopewell and Stope
F—J. Potter's House
G—D. Underwood's House and Barn
H—D. Bray's House
I—Residence of J. White, Esq.
K—M. Newport's House
L—Mr. Foley's or Faudergent House.

J. P. Saunders, Surveyor.
The Witness Benjamin White testified that he was one of three live-in servants, the other two being Mrs. Beckford and Miss Kimball, that worked for Mr. White. On Wednesday, April 7th, at six a.m. he had entered the kitchen, and upon opening the shutters of the east window saw that the back window of the northeast room was open and a plank was put up to it. On going up the back stairway to Mr. White's chamber he saw that the door from Mr. White's room to the front hallway was open, and that Mr. White was murdered.

His face was very pale—the bedclothes were turned down. Captain White's chamber was over the South West parlor, the keeping room. The house faces South on Essex St., and is three stories high.

White's chamber had two doors and four windows, "two Southern, one Western, and one Northern looking into the yard."

Webster then called John P. Saunders, a surveyor, who swore that the plans of Captain White's house and premises were correct.

The Witness, White, continued his testimony. Mrs. Beckford was at Wenham on the night of the murder. She had gone about noon that day.

I did not notice the state of the windows that morning, but the blinds were open and the room was light enough to see

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24Appendix C, pp. 369-371. The word "Witness" is underlined in order to help the reader more easily identify testimonial evidence.

25John P. Saunders was one of the members of the Committee of Vigilance.
when I entered. 26 Mr. W. went to bed that night rather later than usual, about 20 minutes before 10—.

At the west end of the house there is an avenue and two doors. In order to get to the opened window, one would have to pass along the west end of the house, go through one of the garden gates, around the buildings, and then proceed through the garden. 27 White also indicated that on the afternoon before the murder he and Mr. White visited the farm in Beverly and returned home about five o'clock.

Cross-examination.—White further testified that no one had called at the house on the evening previous to the murder—prior to retiring, "I found the window which was entered fastened—knew that it was so by putting my finger over and feeling the screw—it had not been unbarred to my knowledge, before the murder." 28

According to White, Joseph Knapp had been at the house once or

26 The condition of the windows is important. The defense will refer to the fact that the front windows were open in support of Phippen Knapp's testimony in the First Issue. The prosecution will base its claim for the Fifth Issue on the state of the west windows of Captain White's chamber.

27 The word "avenue" was applied, during this period, to lanes, alleys, or any outside passage not rising to the dignity of a street. Benjamin Leighton, a witness, will shortly refer to a farm lane as an "avenue."

White's testimony on this point is correct if someone entered the premises from the west; however, it is also possible to get to the window in question by coming from the east and Newbury Street. It is surprising that Dexter should have let this point pass unnoticed.

28 Appendix C, p. 371.
twice within the two month period prior to the murder and Frank Knapp very seldom went there. "It was not Mr. White's habit to keep a light or fire in his room during the night."

Re-direct examination by Government. — "I had seen Joseph Knapp there within 2 or 3 weeks previous to the murder . . . he had free access to all the rooms. . . ."  

As soon as Benjamin White finished his testimony Dexter entered a motion that all witnesses except the one under examination be excluded from the courtroom. Webster objected, but his objection was overruled and the motion was carried. In theory Dexter's motion was sound and his strategy clear—each witness would have to testify as to what he actually saw or heard. There would be no opportunity for a witness to adjust his testimony to agree with the testimony of other witnesses. So far Dexter was ahead on points, he had had both legal questions decided in his favor. However, the wisdom, as well as the effect, of this last motion can be seriously questioned in light of the uncontrolled newspaper coverage of the trial proceedings. In fact, the ruling of the court was

29 When recalled near the end of the trial White will swear that Joseph Knapp was in the house at Essex St. two weeks prior to the murder.

30 Hereafter referred to as Re-direct.

31 Appendix C, p. 371.
being blatantly circumvented by the press in order that it might supply the throngs of agitated and concerned townspeople with information. God's law had been broken. An atrocious murder had been committed and the murderers still had not met their retribution. The town of Salem, indeed the entire north shore, had been living in a state of continued dissonance and as time passed the dissonance steadily increased. A pressure cooker situation existed and the people looked for word from the court which might provide relief.

The Witness Lydia Kimball substantiated Benjamin White's testimony. She was a domestic in the employ of Captain White at the time of the murder and had been for sixteen years. Her room was directly over Captain White's. On the evening of the murder she had retired, after Captain White, shortly before ten o'clock.

In Captain White's room all the shutters were open except one half of the one nearest his bed, which was a front window—that day when I made the bed all the blinds were open. . . . I could generally tell when he was awake, if I myself was so, by a kind of cough or hem which he had when awake. . . . I don't recollect hearing him early in the night.

Cross-examination.—Captain White went to bed a little before ten on the night of the murder. "I heard him close his door." No one called at the house that day after one o'clock.

The Witness Dr. Samuel Johnson\(^{32}\) was called and sworn. Dr. Johnson had been called to Captain White's house about six in the morning. He found White lying on his right side nearly

\(^{32}\text{Ibid.}, \text{ pp. 372-373.}\)
diagonally to the bed with "... a mark of considerable violence on the left temple. I noticed that the bedclothes were laid slantwise, square across the body, and diagonally to the bed." The witness then informed Mr. Stephen White that an inquest should be called. The results of the inquest indicated that death could have occurred between ten o'clock and midnight. The cause of death could have been either the wound on the head, or the stabs. The instrument which made the wound on the head was likened to a loaded cane—a smooth instrument, that could inflict a heavy blow without breaking the skin. The wounds in the side were made by an instrument resembling a dirk. During the second examination thirteen stabs were detected. There was no appearance of a struggle. At the request of Mr. Stephen White, Dr. Johnson examined the house. "The (first floor) window was open. I saw two footprints, both directed towards the wall of the house. There were no marks of wet feet, but a little dampness on the floor where it had rained in."

In his cross-examination Dexter successfully drew material information from the witnesses as to the facts: (1) That no one had called at the house after one o'clock in the afternoon; (2) that neither Joseph nor Frank had been at Captain White's house for several weeks prior to the murder; (3) that the window through which the murderer was thought to have entered the house was locked when the servants retired; (4) that Captain White had retired shortly before ten o'clock and that no unusual sounds were heard coming from his room; and (5) that it was not the Captain's habit
to keep a light or fire burning after he retired. This information would later be combined with other relevant facts offered into evidence by the first three witnesses and serve as data in support of claims to be advanced by Dexter in the defense of his client. From all appearances Dexter apparently wanted to beat Webster at his own game. As a result, the approach the defense was to take was almost wholly dictated by Webster; therefore, in order for us to understand Dexter's defensive strategy we must first understand Webster's method of attack.

Webster based the structure for advancing his claims on his previous analysis of the issues. Thus, the claims, like the issues, were organized much like a series circuit in electrical devices is wired. Webster developed a chain of arguments in which each claim was necessary to the establishment of the series. If the series was allowed to develop to its natural end, the jury would pass a verdict of guilty. The defensive position was simple and clear. All Dexter had to do was cut the chain in one place, at one issue, and Webster's case legally could not stand.33

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33 Dexter's strategy or trial plan, as it will sometimes be referred to is completely set forth in the Trial Book of the Defense. As the trial developed Dexter made a sufficient amount of marginal notations in the Trial Book so as to enable the reader to draw firm conclusions as to his thinking. Further insight was added by Dexter's practice of outlining all of the possible counter arguments he believed the prosecution could advance against his claim. In addition, he often jotted down what effect he believed different proofs had on the jury and how they would affect the prosecution's, or defense's, case.
Before proceeding any further note should be made of the fact that the proceedings of a trial do not necessarily present the testimony in a coherent sequence of events; therefore, when necessary, that order has been altered to facilitate clarity.

The First Issue
Was the murder of Captain Joseph White committed at ten-thirty in the evening?

For the Prosecution: Morton, Webster.
Witnesses: Benjamin White, Lydia Kimball, Dr. Samuel Johnson, Dr. Oliver Hubbard.

For the Defense: Gardner, Dexter.

For proof of the First Issue, Webster proceeded as follows:

(1) The findings of the coroner's autopsy were reported. The Witness Dr. Samuel Johnson testified: (a) He had been called to Captain White's house at about six o'clock in the morning, and an autopsy was performed about one hour later. A second examination took place thirty-six hours after the death. (b) The results of the inquest indicated that death could have occurred between ten o'clock and midnight. The Witness Dr. Oliver Hubbard, who had assisted Johnson in the second examination, testified that the murder had occurred before midnight. To reinforce the plausibility of the time of death as stated by Dr. Johnson the prosecution felt it necessary to establish the time that Captain White had retired. The Witness Benjamin White testified that White went to bed at about twenty minutes before ten. The Witness Lydia Kimball indicated that on
the night of the murder she had retired, after Captain White, shortly before ten o'clock. The coroner's report coupled with the fact that Captain White had retired just prior to ten o'clock led the prosecution to establish the time of the murder between ten o'clock and midnight. Next Webster attempted to establish the exact time of the murder. (2) Frank Knapp was seen on Brown Street at half past ten. Here Webster used circular reasoning as proof to support his claim. He indicated that the First Issue was so because of the Fourth issue; and, in turn, that the Fourth Issue was so because of the First Issue, i.e., Captain White was murdered at ten thirty, because Frank Knapp was seen in Brown Street at that time; Frank Knapp was seen in Brown Street at ten thirty, because Captain White was murdered at that time. The argument did not move forward, only around.

The defense countered that the murder had not occurred at ten thirty, but rather that Captain White had been murdered between three and four in the morning. In his cross-examination of Dr. Johnson, Dexter successfully drew material information concerning the condition of the body and the time of death. Johnson testified:

1. The first inquest was held about seven in the morning, with the second examination taking place about thirty-six hours after death.

2. There was no appearance of more than one weapon having been used in making the stabs.

3. The body was nearly cold—the human body retains its heat for some time, if covered up.
4. From all the circumstances, my first opinion was, that it had been done three or four hours, i.e., between three and four in the morning.

In rejecting Webster's claim that the murder occurred at half past ten, Dexter developed a two pronged attack:

1. counterproofs - The Witness N. Phippen Knapp\textsuperscript{34} testified that he had passed Captain White's house at ten fifteen and had seen a light on in the Captain's chamber. The Witness William F. Gardner\textsuperscript{35} testified that he had been at a party at Mr. Deland's house which had broken up at ten thirty. On his way home he passed White's house and "heard no noise, nor anything, which attracted my attention." The Witness Henry Deland testified that he had stepped out for some air at ten forty and had not seen nor heard anything which attracted his attention to Captain White's house. The Witness Solomon Giddings testified that he had passed White's house at eleven o'clock on his way from the water front "and saw and heard nothing, which attracted my attention."

2. counterproposal - The Witness James Savoy\textsuperscript{36} testified that at three forty on the morning of April seventh

\textsuperscript{34}Appendix C, p. 429.

\textsuperscript{35}Ibid., p. 433. Captain White's house was flanked on the east by Gardner's house and on the west by Deland's. Deland's house was on the corner of Essex and Newbury Street and his windows looked into Captain White's front, side and back yards.

\textsuperscript{36}Ibid., p. 437.
"some person turned out of Captain White's yard and came up the street towards me. He came as far as Mr. Gardner's yard and then turned and ran. I saw him running down as far as Walnut St." The Witness Silas Walcutt had been out on April seventh between three and four and saw a man in Derby St. The man turned and quickly moved in the opposite direction when he saw Walcutt.

The counterproofs advanced by the defense indicated that Captain White's house seemed quiet and peaceful between ten and eleven o'clock. Nothing out of the ordinary appeared to be going on and if strangers had transgressed certainly one of the passers-by would have seen them. Dexter had undercut Webster's argument. Yet, his strategy demanded that he go farther. He had established by the prosecution's own witness that the murder had most likely occurred between three and four in the morning. On top of this he supplied the jury with evidence that a strange man who ran off at the very sight of people, had been seen coming out of Captain White's yard. Here, then, was the substance upon which he advanced the defense's counterproposal that Captain White had been murdered between three and four in the morning. As a product of its dual

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37 If the man seen by Savory went down Walnut Street to Derby Street and walked east, he could have been seen by Walcutt.

38 Appendix C, p. 438.
attack the defense rejected the claim that the murder had taken place at ten thirty and advanced its contention that White had been murdered between three and four o'clock. The prosecution, however, reminded the jury that it was advancing cumulative proofs that had to be viewed as a whole, rather than individually. As far as Webster was concerned the murder had taken place at ten thirty and evidence drawn from the Fourth Issue would further reinforce his claim.

At this point the attorney general stated that the prosecution had proven that the murder had been committed and that it was not in self-defense. They would next prove that there was a combination to commit the murder, and to that purpose the prosecution's first witness would be Joseph J. Knapp, Jr.

The Second Issue
Was there a conspiracy, of which John Francis Knapp was a part, to take the life of Captain Joseph White?

Sub-Issues

(a) Did Frank Knapp endeavor to direct public attention from himself?

(b) Did Joseph Knapp pay Richard Crowninshield one thousand dollars to murder Captain White?

(c) Did Richard Crowninshield commit suicide because he was afraid of the ultimate outcome of a public trial?
For the Prosecution: Webster

For the Defense: Gardner, Dexter.

When asked if he was willing to be sworn, the Witness Joseph J. Knapp answered in the negative. The attorney general next asked the reason for his refusal, but Dexter objected. The court ruled that Joe was not obliged to state his reasons for refusing, but that since he did refuse to testify the pledge made to him by the government was now recalled. Now, Dexter, a master of timing, acted on a statement made earlier by the attorney general. The move was pure and simple. The attorney general, in his opening statement, had made a disparaging remark as to the ethical practice of the defense when he had stated that Joseph Knapp would refuse to testify "in pursuance of advice of counsel." In an attempt to keep the prosecution from discrediting the defense and also to keep the court from drawing any erroneous conclusions as to their conduct, or tactics, Dexter categorically denied the charge. The other defense attorneys quickly followed suit. At this point in the trial, Dexter's rhetorical purpose was not necessarily to gain an acquittal, but rather to preserve and elevate the image of the defense.

By his refusal to testify it appears that Joseph sentenced Frank and himself to death. If he had testified, the government would have extended him immunity. His confession would have clearly
shown that Frank was at home in bed at the time of the murder and as a result Frank could not have been prosecuted as a principal. The law would have looked upon him as an accessory before the fact, and the law, until 1831, stated that a principal had to be convicted before an accessory could be brought to trial; thus, the State's case would have collapsed and both Joseph and Frank would have been released. At least, looking at the law, as it was written, from a purely theoretical point of view one hundred and forty years later, that's how it should have worked out. However, theory and practice, in life and in law, often differ dramatically.

The Second Issue was a very heavy charge against the defendant, and Webster moved swiftly to the attack. Having proved that there had been "an unlawful and willful killing of a human being" and that the "killing was not in self-defense," the prosecution was now faced with the task of proving that the killing was committed with "premeditated malice aforethought." This, the prosecution would do, by proving that a conspiracy existed between the Knapp's and the Crowninshield's to murder Captain White. To that end the Witness Benjamin Leighton\(^39\) was called by the prosecution. Leighton testified that:

1. On Friday, April 2nd, at two p.m. he had heard the following conversation take place between Joseph and Frank Knapp - "Joseph said, 'When did you see Dick?'''

\(^{39}\)Ibid., pp. 374-377.
"Frank said, 'I saw him this morning.'" "Joseph said, 'When is he going to kill the old man?'' Frank answered, 'I don't know.'" "Joseph said, 'If he does not kill him soon, I will not pay him.'"

2. One evening about three weeks after the murder, at nine o'clock, Frank and a stranger drove to Wenham in a chaise. While the stranger waited outside, Frank had a private conversation with his brother, Joe, that lasted "an hour."

The next Witness Rev. Henry Colman was called and testified that he had not personally known Frank Knapp until the twenty-eighth day of May when he had gone with Phippen Knapp to Frank's cell. The purpose of the visit was to obtain Frank's assent to Joseph's confession. Colman reported Frank as saying "he thought it hard, or not fair, that Joseph should have the advantage of making a confession, since the thing was done for his benefit or advantage." Again utilizing perfect timing, Dexter objected to any continuation of the

40 Phippen, to reconcile Frank to Joseph's confession, told him that if Joseph was convicted there would be no chance for him (Joseph), but if he (Frank) was convicted, he might have some chance for procuring a pardon in light of his youth. This is the ground upon which Dexter will rest his forthcoming objection.

41 Throughout the trial Colman constantly re-defines and confuses his testimony relating to this point. Cf. Appendix C, p. 378, 411-413. Phippen Knapp reports a different version. Cf. Ibid., p. 427.
confession. By the testimony of the prosecution's own witness Phippen had offered Frank a direct inducement if he would confess.

The point was important, for the alleged confession was the groundwork for the whole line of argument that Webster intended to follow; if the confession was not admissible evidence, then the prosecution would be deprived of valuable backing for its warrants.\textsuperscript{42} The court, after due consideration, decided to hear arguments from counsel.

To support the warrant for his claim that the confession was admissible evidence Webster referred to general principles of law: (1) Confessions of a party are evidence against him, except in those cases where they have been obtained by improper influence. (2) The only exception is, when a confession is obtained by menace, or hope of favor. (a) There is no proof of any encouragement, or any threat. (b) There is no evidence to show that the confession was not entirely voluntary. Webster concluded by indicating that in view of the fact that no confession had been asked of the defendant, but since certain facts had come to light in the course of conversation, the government was entitled to the benefits of those facts.

\textsuperscript{42}During the entire trial Webster very cleverly used the fact that Joseph confessed as weight to support his claim that there was a conspiracy, yet, the confession was never entered as evidence because it would also prove Frank was an accessory before the fact. Webster could not use Joseph's confession, but he could use Colman. And Colman was willing to testify that certain facts in his possession, facts identical to those in Joseph's confession, had been confessed to him (Colman) by Frank.
The defense contended, however, that the confession fell within the exception to the rule. This was the same rule that the prosecution had used in support of its warrant. Here, Dexter engaged one of the strongest methods of attack at his disposal—turning the tables. He took the complete unit of proof advanced by his opposition, reinterpreted the material, supported it with sufficient backing, and developed an entirely different claim. In so doing, Dexter turned to the law and precedent. As to the law, (1) he indicated that the general rule dealt with confessions as evidence, unless they were obtained by means of improper influence; (2) according to Blackstone, Foster and others, this kind of evidence was the weakest and most liable of all—the idea that a person charged with a capital crime would confess without any influence being used was absurd; (3) if the confession proved anything under the law, it must be the guilt of the prisoner—if it were mere consent to Joseph's confession then it would not be evidence. Turning to precedent, an area which the prosecution had avoided, the defense supported its warrant by citing: Foster, 343. Phill. Ev. 86. 2 Stark. 48. Phill. 80 and note. 1 Leach C. L. 325 and note.43

While Dexter was refuting Webster's legal case, proving such warrants to be perfectly legal, he added an apparently unnecessary argument that related to the importance of the exact words with which the inducement had been made. Such added flourishes

43Appendix G, p. 379.
were typical of both sides during the trial, and might be of nineteenth-century argument in general; i.e., to prove unquestionably a warrant that clearly undercut the prime claim of the opposition, and then unnecessarily shift to another, and then another warrant and claim, in order to attempt several more successful rebuttals. At times one gets the impression that the nineteenth-century forensic speaker depended upon sheer mass of argument.

The court, Justice Putnam dissenting, ruled that anything said by the prisoner, after what Phippen said to him regarding the hope of pardon, was not admissible. This was the third major procedural point decided in Dexter's favor, and it was what appeared, at the time, to be an important one.

At this point the court directed the witness to state all that was said in relation to encouragement, whereupon he testified that,

Phippen had told Francis more than once in the course of the conversation that there might be a hope of pardon. There was not the least encouragement given to him, either by me or in my hearing to relate facts within his own knowledge.\(^{44}\)

Colman, accompanied by Dr. Barstow and Mr. Fettyplace, both members of the Committee of Vigilance, had gone to the Howard Street Church on the twentieth of May and found the club under the north steps. Webster inquired as to how the witness had come to know about the club. Dexter - "I object to this question. The finding of the

\(^{44}\)Ibid., p. 382.
club is all that can be given in evidence."\textsuperscript{45} The objection was overruled—the court felt that it was competent for the government to prove that the club was found in consequence of information supplied by the prisoner. Rev. Colman resumed. "Frank Knapp gave me precise directions where to find the club, and I found it as near as possible, in the place pointed by him."\textsuperscript{46}

Thus far Dexter had been successful in curtailing the Rev. Colman's testimony. What little testimony of Colman's had been admitted in evidence did not seriously jeopardize Frank Knapp. At worst Frank had knowledge of the hiding place of the club, and even this was yet to be questioned. Of course, thanks to the exuberance of Rev. Colman, the negligence of the Committee of Vigilance and the overzealousness of the press, the testimony which the court had ruled inadmissible as evidence had been well reported by the press. It is extremely unlikely that there was a single person in the area who was not familiar with the entire body of evidence, including the jury. However, as far as Dexter was concerned, the judicial process was being served in the courtroom and a legally correct decision would be handed down. His entire strategy to this point rested on the theoretical correctness of the application.

\textsuperscript{45}\textit{Ibid.} Dexter's objection was based upon the belief that the defendant's answer would incriminate him by his confession of the fact, and no part of the confession was now admissible as evidence.

\textsuperscript{46}\textit{Ibid.}
of the judicial model. The court had directed the jury that its decision was to be based upon the evidence presented in the court, and further that they were to keep an open mind and be completely objective. Unfortunately, lawyers, at times, fall victim to their own rhetoric. Dexter was paying too little attention to what was happening aside from the legal proceedings. He had lost sight of the attitude of the jury and the mood of the townspeople. At any rate, as far as the legal battle was concerned, he had things well in hand.

The first part of the trial had been fought out primarily upon a tactical level. The prosecution had attempted to get its assembled data accepted as fact, in order that subsequent warrants and claims could be set upon a secure base. Dexter hoped to defend against these data, weakening the base before the prosecution could move to connect a bit of information to any claim. Thus the tactical argumentative struggle over the first part of the trial had been waged on the line of whether the facts would be accepted by the jury.

But what of higher strategy? By what paths should the prosecution or defense seek to win the jury to its side? The broad and massive doctrine of American Law had been at once marked by both sides as the primary objective to be captured. Law divided the issues clearly and could possibly prevent any attack from the rear where speed of argument could win, or attack of attrition

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47 Supra, pp. 205-213.
where sheer mass of argument might win. The Law and its great tributary, precedent, offered sure means of carrying the war into the heart of the opposing side and rending it asunder. Thus, it appeared that victory would belong to whomever made the most effective use of American Law.

Once American Law had been chosen as the primary objective, neither prosecution nor defense could move along its line of strategic advance until the law had been gained. This is the case because the warrant of a case appears to be incidental to the explicit claim made in an argument, but without the general assumption which is expressed by the warrant, the facts of a case cannot be connected to any claim, nor can the relationship between the data and claim be validated.

To capture the "chessboard king" of American Law, each side needed to employ a tactic powerful enough for this task. In other words, the warrant needed to be sustained with strong backing—the backing for a warrant being employed to certify the acceptability of the assumption which is expressed by the warrant, i.e., the purpose of any support for a warrant is to "psychologically underwrite" the acceptability of the warrant, from which the ultimate claim will be drawn. Hence, Dexter advanced slowly behind the law ever ready to cite statutes and precedents to justify his position. His plan was to point out persistently that unless the prosecution could prove each and every issue his client, under the law, would
have to be judged not guilty. On the other hand, Webster advanced
the idea that the court should not take notice of the single charge,
but should look upon the charges as a whole for taken in their
entirety they would convict Frank Knapp.

The Witness John G. R. Palmer48 was called next. It was by
his testimony that the prosecution intended to prove that the murder
was the result of a conspiracy in which the Knapps and the Crownin-
shields were engaged. Palmer testified that:

1. He had seen Frank at the Crowninshield's in Danvers on
   the second of April at two o'clock in the afternoon.49
   a) Frank and Allen had come together on a pair of
      white horses.
2. Richard walked off accompanied by Allen while George
   and Frank spoke privately for about two hours.
3. After Frank and Allen had gone, George and Richard
   asked me to join them in murdering Captain White.
   a) They offered me one-third of the money they were to
      be paid.
   b) Joseph Knapp was to pay them one thousand dollars
      for the murder.

48 Appendix C, pp. 382-384.

49 Compare this with Ben Leighton's testimony, Supra, p. 374.
The prosecution's witnesses place Frank in Wenham and Danvers at
the same time.
4. Joseph Knapp's object in the murder was to have a will destroyed. 50
   a) He wanted the will destroyed because Captain White had left his estate to Stephen White.
   b) Joseph would get the will and destroy it, at the time of the murder, as he had access to both the housekeeper's (Mrs. Beckford) keys and the trunk in which the will was kept.

5. Frank came back to Danvers at about seven o'clock that same evening. Richard left with him in the chaise. Their destination was the Lynn Mineral Springs Hotel.

6. Richard gave me four five franc pieces after the murder.

7. On April ninth George told me he melted the dirk at the factory the day after the murder for fear of the Committee of Vigilance. 51

8. While at Belfast, I wrote a letter to Joseph J. Knapp. 52

50 It is interesting to note that this is the only testimony submitted by the prosecution to establish the motive for the murder. Keep in mind, however, that though inadmissible as evidence in this case, Joseph's Confession had been published. Thus, it was not necessary for Webster to do much of what his responsibility as a lawyer would have dictated.

51 This is most interesting as the day after the murder was the eighth of April and the Committee of Vigilance was not formed until late on the evening of the ninth.

52 Supra, Chapter IV, p. 173.
Webster then showed a letter to Palmer which, he said, was the one that he had written. Dexter - "I object to reading the letter."
The Court - "Its bearing upon the prisoner should appear."

Webster now advanced an entirely new claim. According to the prosecution Frank had endeavored to divert public attention from his involvement in the conspiracy, as disclosed in Palmer's letter, by causing two other letters to be written.\(^{53}\) Sometimes in the process of verifying evidence a series of several proofs is necessitated. In such a chain, the evidence needing certification becomes the claim of a prior proof; if the evidence of that proof needs verification, it becomes the claim of still another proof, etc., until some informative statement is believed by the audience. Webster was now, himself, in such a position and had advanced a portion of one of eight subsequent claims that were individually designed to provide data for the first issue. Data for sub-issue (a) as well as the First and Fourth Issues were provided by the Witness William H. Allen\(^{54}\) who testified that:

1. On Sunday the sixteenth of May between five and six o'clock, at the request of Joseph J. Knapp jr., he had deposited the letters in question at the Salem Post Office.

\(^{53}\)Supra, Chapter IV, pp. 174-175.

\(^{54}\)Appendix C, p. 384.
2. Joe had indicated that he was concerned about the contents of a letter his father had received, and subsequently turned over to the Committee of Vigilance, and wanted to "nip this silly thing in the bud."

3. Allen had accompanied Frank to Danvers on the second of April after Frank proposed to visit the Crownin-shields. They had ridden there on two white horses.

4. George and Frank talked while Dick, at Allen's request showed him the factory. George and Frank did not request to be left alone.

5. Frank's usual dress was a dark frock coat, a glazed cap with a large star on top, and a camblet cloak.

The Witness William Osborne, owner of a livery stable in Salem, produced records that indicated:

1. Frank often hired horses to go to Wenham and Danvers.

2. On the second of April both Frank and Allen had rented saddle horses and rode to Danvers.56

3. That same day, in the evening, Frank had a chaise originally signed out to "Spring."

a) This charge was altered - the word "Spring" had been erased and the word "ride" substituted.

55Appendix C, pp. 386-387.

56The destination was entered in the ledger.
4. Frank did not hire from the sixth of April (the day before the murder) until the nineteenth of April.

5. On April twenty-fifth Frank hired a horse and gig.
As it stood Osborne's testimony supported corresponding portions of both Palmer's and Allen's testimony.

The Witness Thomas Hart\(^57\) worked for Joseph Knapp and lived on the Wenham farm. The prosecution intended to use Hart's testimony to support portions of Leighton's statement. Hart stated:

1. On Saturday evening around the twenty-fifth of April at about seven o'clock Frank Knapp came to the house in a chaise and stayed a little more than "half an hour."
   a) Joseph Knapp went out with Frank to the chaise and remained a quarter of an hour.
   b) "I think I heard the voice of a third person in the chaise."\(^58\)

2. Joe and Frank came into the house, went into a room by themselves, and stayed about ten minutes.

3. Around the first of May, Joe gave me some 5 franc pieces to buy meal with.

\(^{57}\)Appendix C, pp. 387-388.

\(^{58}\)From that portion of Leighton's and Hart's testimony that referred to a third man being present at the April 25th meeting Webster in his closing argument developed two claims: (1) that the third man at the meeting was Richard Crowninshield, and (2) that the meeting was held so Joe could pay Richard the one thousand dollars for the murder. Further Webster contended that Joe paid Richard in 5 franc pieces.
The Witness Judith Jaques stated that on Friday evening, the second of April, at about ten o'clock, she had observed a group of three men standing by the ropewalk steps. One of the men was pointing towards Captain White's house and one had, in his hand, what appeared to be an instrument of music. If these three men were Frank Knapp, Joseph J. Knapp Jr., and Richard Crowninshield, Miss Jaques' testimony would tend to further the testimony already given by Palmer regarding the whereabouts of Frank and Richard on the evening of April second; thus, giving additional support to the first issue.

So far what the prosecution had presented in regard to the Second Issue was not very impressive; therefore, in an attempt to further support the main issue Webster concurrently advanced three sub-issues. However, in developing the sub-issues he was clearly ignoring the question. He was applying actual warrants to irrelevant claims, thus, drawing attention from the relevant claim, the one at issue. To this end Webster was employing diversionary proofs. The fallacy of diversionary proofs consists of starting with a claim at issue and then meandering gradually to some related but different claim that is more easily established.

59 Supra, pp. 382-383.
Sub-issue (a) - Frank Knapp endeavored to divert public attention from his involvement in the conspiracy.

In regard to sub-issue (a) the prosecution advanced the following claims: (1) Frank Knapp caused two letters to be written—as was testified by Allen.60 (2) The Wenham robbery story was false—after Mr. Phillips61 read Joseph Knapp's account of the Wenham robbery, Webster supported the claim by advancing an authoritative proof which centered on himself.

Sub-issue (b) - Joseph Knapp paid Richard Crowninshield one thousand dollars to murder Captain Joseph White.

As evidence supporting the claim of sub-issue (b) Webster advanced three lines of reasoning: (1) Joseph Knapp had just received five hundred dollars in 5 franc pieces. To this the Witness Josiah Dewing addressed himself. His testimony was supported by the Witness Joseph Shatswell.62 (2) The Crowninshields were seen spending 5

60ibid., p. 384. Here Allen indicates that Joseph asked him to mail the letters not Frank, but keep in mind that the prosecution stated in its opening statement (See Appendix C, p. 368) "that when a conspiracy to do an unlawful act is proved, the acts of any one of the conspirators, done in effecting the object of their combination may be given in evidence against any other of the conspirators." Thus, evidence detrimental to Richard Crowninshield or Joseph Knapp can be used in a like manner against the defendant. Also Dexter has not objected to this practice.

61Appendix C, pp. 390-392. Mr. Phillips was one of the members of the Committee of Vigilance.

franc pieces. The Witnesses Mr. and Mrs. Lummas testified that on April twenty-fourth or fifth "some persons" passed a 5 franc piece at their inn. The Witnesses David Marston, George Smith and George Felton all swore that they had seen George Crowninshield spend a 5 franc piece,63 and John W. Treadwell, cashier at the Merchants Bank, that 5 franc pieces were not commonly used as money.64 (3) On the evening of April 25th Frank drove Richard Crowninshield to Joseph's house in Wenham so Joseph could pay Richard for the murder. Richard was paid in 5 franc pieces. As proof of this claim Webster relied on the testimony of Leighton, Hart, and Osborne already in evidence.65

Sub-issue (c) - Richard Crowninshield committed suicide because he feared the ultimate outcome of a public trial.

Sub-issue (c) was supported by four proofs: (1) The Witness Mr. Palfray,66 editor of the Essex Register, testified that on the twenty-first of May his paper published the complete disclosure of Joseph J. Knapp Jr., i.e., Joseph Knapp's confession which materially

63Ibid., p. 289.

64The implication is that anyone spending 5 franc pieces would draw attention. His testimony was intended to reinforce Marston, Smith and Felton.

65Supra, pp. 374, 383, 386.

66Appendix C, p. 392.
involved Richard Crowninshield in Captain White's murder. (2) The Witness John McGlue placed Richard in the vicinity of Captain White's house at eight-thirty on the night of the murder. (3) The Witness Benjamin Horton swore that Richard had a dirk which fit the description of the size dirk thought to have been used in the murder. (4) According to Palmer's earlier testimony Richard Crowninshield believed the townspeople suspected him of being involved in the murder and had talked about leaving town. Thus, ended the prosecution's case in regard to the first issue.

As for the direct evidence bearing on the existence of a conspiracy, it encompassed six witnesses: Leighton, Colman, Palmer, Osborne, Hart and Jaques. Colman's testimony had been all but eliminated by the ruling of the court. The Osborne, Hart, and Jaques testimony either reinforced or extended that of Leighton and Palmer. In addition, Dexter had also successfully drawn admissions from both Osborne and Jaques which immediately identified deficiencies in the prosecution evidence. Osborne admitted that Frank had always done a considerable amount of riding to Wenham, Danvers and the Mineral Springs. The fact that his father had failed on the sixth of April could account for the fact that he did not ride again until the nineteenth of April. Osborne also indicated that his method of determining destinations and the time of day that a party left the stable was not very accurate. Jaques testified that she had walked past the group of men on the steps
of the ropewalk rather fast and could not identify any of them. For the most part Dexter did not seem to be too concerned with these witnesses.

Of the six witnesses advanced by the prosecution to provide direct evidence of the conspiracy, its proof now rested on two of them, Leighton and Palmer; or rather it rested on Leighton alone, for without his testimony Dexter knew Palmer's would not be admissible. By his own testimony Palmer had a conversation with the two Crowninshields in the absence of the defendant. In order for Palmer's testimony to be either acceptable by a rational jury or admissible against Frank Knapp a conspiracy would first have to be established between Frank Knapp and the Crowninshields. Nonetheless Dexter was prepared to move against both Leighton and Palmer—he would attempt to destroy the credibility of both men. In this way he would be striking at the very base of the authoritative proof, as the authoritative proof is advanced for the purpose of verifying the credibility of the source.

Dexter, in cross-examining Leighton, drew additional testimony from him, which he, in turn, turned back on the witness. Dexter's strategy was to help Leighton impeach his own testimony. During cross-examination, Leighton\(^6\) testified:

1. He had not said anything to anyone about what he had overheard because he had not thought of it.

\(^6\)Ibid., pp. 375-377.
2. On the twenty-second of July he had been asked by Mr. Waters and "another gentleman" if he recollected telling Mr. Starrett that he knew something about the case. "I told them I did not. . . . They bothered and frightened me. I told Mr. Waters I did not recollect it telling Mr. Starrett anything, but if he would come up the next day, I would tell him all that I knew. I then remembered what I have testified, but did not calculate to tell anything about it. . . ."

3. Leighton did not see Mr. Waters again for ten days, until he met him at Lummus' tavern. At this time he was again questioned. "Then I recollected what I had told Starrett, and told them the story I have told today."

4. After telling Starrett, "They think I don't know anything about it, but I know a little more than they think I do. . . . Starrett did not ask me what I knew, did not ask me what I overheard."

5. Prior to his statement to Waters, Leighton knew about the rewards, and also that Waters was holding a warrant for his arrest in the event he did not testify.

6. "The first time I saw Frank Knapp have a dirk, was after he was attacked at Wenham Pond, after the murder."

In addition Dexter called the Witness Daniel Potter who testified that he had had two conversations with Leighton about the murder. Leighton indicated, both times, that on the day he overheard the conversation he had testified to, Frank came to Wenham soon after breakfast. The Witness Stephen Field having overheard the conversations substantiated Daniel Potter's testimony as fact. The Witness Major Petty testified that he had been employed by George Crowninshield, in the early part of April, to trim trees. While at work Richard and two young men Petty didn't know, one a man about the

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69Appendix C, p. 421.
size of the prisoner, came near. "I heard the name of one called Allen. . . . The time of the day was . . . after dinner." Dexter hoped by utilizing counterproofs in this manner he could effectively refute Leighton's testimony on the point of time without directly attacking it. In this way the effect of impeaching the credibility of the witness by his own words would not noticeably clash with the counterproofs but rather they would tend to reinforce each other smoothly, and at the same time expose an inconsistency in the testimony of the prosecution's main witnesses. If Leighton was mistaken about the time Frank had been in Wenham he might be mistaken about other aspects of his testimony. However, if his testimony was correct and Frank was in Wenham at two o'clock, then, both Allen and Palmer were mistaken as they testified Frank was in Danvers at two o'clock. The end result of this effort had to be gratifying for Dexter. He had successfully undermined each of the inconsistent positions, weakened the prosecution's case as a whole, and impeached the credibility of at least one of the prosecution's witnesses. Thus, Dexter with Leighton's help, or Leighton with Dexter's help, made short work of the cornerstone upon which the prosecution rested its case.

Dexter used basically the same tactics with Palmer70 as he had with Leighton with the exception of one noticeable difference. This time he did not emphasize a subtle relationship between

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70Appendix C, pp. 385-386.
self-impeachment and the use of counterproofs. The cross-examination of the witness was directed at self-impeachment and was masterfully handled, for Palmer testified that:

1. During the past three years he had moved about quite a bit, and had used the names Carr, Hall, and George Crowninshield.

2. "I lived at Thomastown 2 years." (A state prison.)

3. When questioned as to his knowledge of the stealing of Mr. Sutton's flannels from Danvers he refused to speak for fear of incriminating himself.

4. He had been brought to Salem from Belfast, Maine in irons and had been retained for the past two months in a condemned cell until his testimony at which time he had been set free.

5. "I have been told that I should not get the reward and have no expectation of it--perhaps I expected part of the reward when I wrote to see if Joseph Knapp was connected with the murder."

6. "After the Crowninshield's proposed that I join them in the murder they told me it was only a joke and I believed them until after the murder."

The counsel for the prisoner then entered into evidence the copies of two warrants against J. C. R. Palmer—one dated the eighth of June, by which Palmer had been arrested and committed for further examination, upon the same charge as that against the defendant; and, one dated the tenth of June, by which Palmer had been committed, by the magistrate, to answer that same charge, at the present term of court. This was only the second time documentary proof had been entered into evidence in the trial.\textsuperscript{71} Next, Dexter read a copy of

\textsuperscript{71}The first use of documentary proof was made by the prosecution when it introduced Osborne's records.
a record, of the Court of Common Pleas of Maine, of a conviction against Palmer for "breaking shop, with intent to steal." The judgment was guilty and the sentence was confinement for two years, at hard labor, in Thomastown State Prison. The Witness Thomas P. Vose, commissary of the State Prison, supported the validity of the record of the Court of Common Pleas of Maine.

The Witness William Babb stated that he kept a house of entertainment called, for its proximity to Salem and Boston, the "Half-way House." Palmer had stayed there on the ninth of April and was unable to pay his bill for the night's lodging. He signed a promissory note using the name George Crowninshield.

The Witness James W. Webster, of Belfast, Maine, testified that he had known Palmer for the past eight years and that "As to his general reputation for truth I don't know that he has any at all. His general character is not good." The Witness William F. Angier, also from Palmer's hometown, gave the same account of Palmer's character.

Dexter did not spend much time or energy in trying to refute the three sub-issues, rather by choosing to ignore them he advanced a "so what" method of attack. Although the sub-issues could, at

72If Palmer had been arrested in Massachusetts instead of Maine, his testimony, by law, would not have been allowed.

73Appendix C, p. 420.

74Ibid.
best, be interpreted as involving Joseph Knapp and Richard Crowning­
shield they in no way involved Frank Knapp. Unfortunately, the jury
may not have had Dexter's insight and perhaps it would have been
wise for him to have acknowledged, in his closing statement, the
fact that he had deliberately chosen to ignore the sub-issues. This
was at most a minor tactical error. The sub-issues were not legally
relevant to the issue at hand.75 As a matter of fact, they tended
to confuse and lead the jury astray. In dealing with the conspiracy
issue Dexter had directed his attack at the credibility of the two
witnesses upon whose testimony the entire conspiracy rested. Although
the prosecution had been able to produce many witnesses, most of whom
testified in regard to the sub-issues, they had been unable to support
any of Leighton's testimony and only extraneous pieces of Palmer's.
Indeed, Leighton had, under oath, contradicted himself and while
Palmer's testimony had been internally consistent his character and
motives had been proven to be questionable. Dexter had destroyed
the credibility of both men and in so doing made short work of this
issue.

75 Although the sub-issues were not legally relevant, they
were cognitively relevant for the jury.
An Alibi for George Crowninshield

In an attempt to support his claim that there was a conspiracy between the Knapps and the Crowninshields, Webster tried to place George Crowninshield in the vicinity of the crime. A group of Witnesses testified that they saw George in Salem on the evening of the sixth of April, going about town. Richard Burnham saw him with two companions, one of whom looked like Daniel Chase, on Essex Street at about eight o'clock. Shortly before nine Joseph Anthony saw George and Chase with a third, whom he did not know, going from Essex Street to Central Street. Thomas W. Taylor, at about quarter after nine, saw George with an unrecognized person pass down Newbury Street towards Williams Street. Benjamin Newhall saw George, between half-past nine and ten o'clock, pass down Williams Street with another person. Newhall knew Frank Knapp well, but he did not recognize George's companion.

For its part, the defense provided George with an alibi to show that he was not in Salem that night as an accomplice, but as

76In the final analysis, this section has little bearing on the outcome of the case under study. It is included to help maintain the sequence of chronological events as well as to provide some minor insight into Dexter's method of argument.

77Appendix C, p. 393.

78Ibid., p. 394.

79Ibid.
one engaged in his ordinary pursuits and in collecting a debt. To that end John Needham, Matthew Newport, Benjamin Salman, and John McGlue testified. Again, Dexter had taken the data supplied by the prosecution and used it as a foundation upon which his claim came to rest.

The Third Issue
What does present, aiding and abetting mean?

For the Prosecution: Webster
Witnesses: none

For the Defense: Dexter
Witnesses: none

As the Third Issue was primarily one of definition, which necessitated a ruling by the court, the court agreed to hear arguments from the counsel.

Webster maintained that to constitute a presence, it was sufficient if the accomplice was in a place, either where he could

\[80\]Ibid., p. 423.

\[81\]Ibid., p. 424.

\[82\]Ibid., p. 425.

\[83\]Ibid., p. 438.

\[84\]As Webster's argument was not reported in Trial Transcript of John Francis Knapp it was necessary to go to another source. See Massachusetts Reports, Vol. 26 Pickering Vol. IX. Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts (Boston: Brown, Little and Company, 1864), pp. 504-528.
render aid to the perpetrator of the felony, or where the perpetrator supposed he could render aid--i.e., being present is thus defined by the prosecution as being at a specified or understood place. If they selected the place to afford assistance, whether it was well or ill chosen for the purpose was immaterial. The perpetrator would derive courage and confidence from the knowledge that his associate was in the appointed place. To support his claim Webster, relying on precedent, cited: Chief Justice Parker,®5 1 East. P.C. 350. 351., 1 Lord Hale 440, Dalt. cap. 93, Compt. 25 a., Dalt. cap. 34, B Coron. 172, Co. P.C. p. 64, 2 Hale 4. 13., 13 Hale 7. 10., 21 East. 4. 71., 1 Hale 439., 4 Hawkins 201. 202., and 1 Hale 441.®6

Webster also urged, that "when it is proved" that (1) a conspiracy to commit murder existed, (2) that the conspirators had committed the crime, and (3) that one of the accessories went toward the place where the murder was committed--"the presumption is that he went near enough to answer the purpose in view, unless he rebuts the presumption by evidence to the contrary."®7

In regard to presence, Dexter contended that to make a man a principal by aiding and abetting in a felony, he must be in such a situation at the moment when the crime was committed, that he

®5Appendix B, pp. 338-339.

®6Appendix C, pp. 366-368.

®7Massachusetts Reports, p. 516.
could render actual or immediate assistance to the perpetrator, and that he be there by agreement, and with the intent to render such assistance—i.e., the man must be constructively present. He cited: Chief Justice Parker, 2 Stark 7. 8., Foster, 350., 1 Hale c. 34., Hawkins b. 2. c. 29., Russell 29. 627. 1025., 1 Hale 533., 1 Hawkins 34., 1 Hale 463. Russell 325, 2 Hawkins 442. b. 2. c. 29., Aaron Burr's case, 4 Cranch 490., and Trial 426.88

In regard to the arguments presented by counsel the court handed down two rulings and so instructed the jury. The rulings read as follows:

1. To be present, aiding and abetting the commission of a felony, the abettor must be in a situation where he may actually aid the perpetrator; it is not enough that he is at a place appointed, where the perpetrator erroneously supposes he might render aid.

2. Proof that a person conspired to commit a murder subsequently perpetrated, is not in itself to be taken as legal presumption of his having aided, but it is to be weighed as evidence tending to prove the fact. But if it is proved that there was a conspiracy, and that one of the conspirators was in a situation in which he might have given aid to the perpetrator at the time of the murder, it is a legal presumption that he was there to carry into effect the preconcerted crime, and it is for him to rebut the presumption by showing that he was there for a purpose unconnected with the conspiracy.89

On this Issue Dexter and Webster had met head on, each man grounding his argument in precedent, and the court had ruled in favor of Dexter's interpretation of the law. This was the fourth legal ruling

88 Appendix C, pp. 412-414.

89 Massachusetts Reports, p. 496.
out of four rulings that Dexter had carried. His defensive strategy
seemed to be working and the legal argument to this point was clearly
his. So far Dexter had followed his original trial plan which evi-
dently was not oriented toward coming to grips with the psychological
Burden of Proof. The people were highly agitated with Dexter's
success as were they with the thought that a known murderer might
go free. "It would be a sad joke," wrote a reporter, "if the
immortal Daniel . . . should not succeed in getting a culprit hanged
who everyone knows deserves it."90

The Fourth Issue
Was Frank Knapp constructively present
on Brown Street?

For the Prosecution: Webster.
Witnesses: Stephen Mirick, Peter E. Webster, John A. Southwick,
Daniel Bray, Jr., Miss Elizabeth Potter, Isaac H.
Fotheringham, Joseph Burns, Joseph Dewing, John F. Webb,
John W. Treadwell, Michael Shepard, Perley Putnam,
Joseph White, Jesse Smith.

For the Defense: Dexter.
Witnesses: Daniel Bray, Jr., William Peirce, Asa Wiggins, Israel
Ward, Stephen Osborne, Ebenezer Shillaber, Charles E.
Page, Moses Balch Zachariah Burchmore, John Forrester,
Nathaniel Phippen Knapp, Captain Joseph J. Knapp, Sr.,
Samuel Knapp.

The final two Issues brought the case closer to home, since
they were based upon Frank's activities on the night of the murder.

90 New Hampshire Patriot and States Gazette, August 12, 1830,
p. 1.
If Dexter could create the slightest doubt regarding Frank's alleged activities, then he might elude them altogether.

Webster opened the Third Issue by offering evidence that Frank had been seen on Brown Street. The Witness Stephen Mirick\textsuperscript{91} testified:

1. On the evening of April sixth at quarter of nine he had seen a man standing at the post in front of Daniel Bray's house.

2. When anyone came down Brown Street the stranger went into Newbury Street, and then turned so as to meet him at the corner; and, if anyone came down Newbury Street, he went into Brown Street, and turned to meet him in the same manner.

3. When he left for home at nine thirty, the stranger was still at the post.

4. The stranger wore a dark frock coat which came around him very tight, and was full at both the top and bottom.

5. "I had a fair view of him. I did not observe his face at all. I did not know him."

6. He had never seen the prisoner until he was brought before the Grand Jury. "It is my belief that he (Frank Knapp) was the man at the post."

\textsuperscript{91}Appendix C, pp. 395-396.
Before Webster could dismiss the witness the court questioned him as to whether his belief was derived from personal observation, or from what he had heard from others. The witness answered: "From both..." The Court - "From your own observation alone, do you say, it was Frank Knapp?" Answer - "No I should not. Can't say positively, from my own observation. But the size and height of the man, I saw, correspond very nearly to the prisoner." As a result of its questioning the court ruled that what the witness had derived from others was not evidence. Webster was left with a nameless stranger—the witness had impeached the most important part of his own testimony. Nonetheless, the witness had served his purpose. The jury had heard his testimony and Webster knew full well that what may be easily removed from a record is never removed from the mind. Every added doubt contributed to the psychologically established guilt of the defendant.

The Witness Peter E. Webster\textsuperscript{92} testified that on his way home at nine-thirty he had passed two men in Howard Street and "took one of them to be Frank Knapp." He did not notice the other person. The Witness John A. Southwick\textsuperscript{93} swore that at ten-thirty on the evening in question he had passed a suspicious man sitting on the rope walk steps who dropped his head each time Southwick passed. Southwick observed him for ten or fifteen minutes. The

\begin{itemize}
\item[{\textsuperscript{92}}]Ibid., pp. 397-398.
\item[{\textsuperscript{93}}]Ibid., pp. 398-401.
\end{itemize}
man was wearing a brown camblet cloak\textsuperscript{94} and a glazed cap. Southwick entered his house, stayed ten minutes and then came back out just as Captain Bray passed. Bray indicated that he had also seen a suspicious man who then appeared at Mrs. Shepard's house and walked down to a post opposite Captain Bray's front door. From Bray's second floor front window, Bray watched while Southwick stood back; he observed another man join the first man at the post. They both moved off to the west and on looking out the west window Bray and Southwick saw one of the men run across the street, around ropewalk corner and down Howard Street. The other man went toward the Commons. The Witness Daniel Bray\textsuperscript{95} testified that the circumstances were as Southwick had given them; however, Bray said he met Southwick at ten-thirty. He could not tell the man he first saw was the prisoner but, "the size and general appearance agree very well." The Witness Elizabeth Potter\textsuperscript{96} had seen a man standing at the corner of Howard Street dressed in light pantaloons, cinnamon drab, and a dark coat. The Witness Isaac H. Fotheringham\textsuperscript{97} testified that as he left Elizabeth Potter's house, at ten-thirty, he had observed two men

\textsuperscript{94}Not to be confused with a frock coat.

\textsuperscript{95}Appendix C, pp. 401-402.

\textsuperscript{96}Ibid., p. 402.

\textsuperscript{97}Ibid., pp. 402-403.
at the corner of Howard and Brown Streets. One of them was dressed in a dark coat, light pantaloons and a hat.

Next, in an attempt to reconcile the fact that the man alleged to be Frank Knapp had been seen in both a frock coat and a camblet cloak the prosecution called the Witness Joseph Burns. Burns testified that he operated a livery located in St. Peter Street in which Joseph J. Knapp, Jr. put up horses. Joseph had been there the week before the murder. He usually left both a cap and a cloak hanging in the entry of the stable.

From this testimony Webster would have the jury believe that Frank Knapp and Richard Crowninshield were actively engaged in their conspiracy from eight forty-five until after the murder. Evidently, the two men met earlier and then separated. Richard committed the murder while Frank waited for him in Brown Street. During this time Frank made at least two trips to Burns' livery to change clothes. After the murder Richard, coming from Newbury Street, brought the murder weapon to Frank who was seen running into Howard Street, presumably to hide the weapon in the Howard Street Church, while Richard left to the east—apparently across the Commons.

98Ibid., pp. 403-404.

99The testimony relating to Newbury Street is important because even though there were two passageways, with a gate at each, which went from Brown Street to Essex Street, it would have been nearer to go from the Ropewalk steps to Captain White's house by Newbury Street.
Again, Dexter was to use the cross-examination to supply data from which he could advance his claim. The Witness Peter Webster admitted that he took the man in Brown Street to be Frank Knapp by "his air and walk," that he had neither spoken to or seen the man, and that he could not positively identify who the person was without seeing his face. Likewise, Southwick had "judged it to be Frank Knapp from the general appearance of the man."100 Southwick was not sure that the man he saw on the ropewalk steps, and the man he later saw at the post was the same man; nor, did he remember the dress of either man, except that the man on the ropewalk had on a glazed cap without fur trim. In addition to this, while testifying before the Grand Jury he had identified the man on the ropewalk steps as Selman and had not mentioned Frank Knapp's name. Dexter did not cross-examine Elizabeth Potter or Joseph Burns, but while examining Isaac Fotheringham, Fotheringham admitted that his "first impression was, that it [the man he saw] was Mr. Southwick." Next Dexter called Daniel Bray to the stand for the defense. From Bray's testimony for the prosecution it appeared that the second man had come from Newbury Street, thus, he might have been coming from Captain White's house. The Witness Daniel Bray testified that if the man had come from the north side of the Commons he would have seen him from the second floor window, but from that position he would not have noticed

100 During the Second Trial Southwick swore the man he had seen in Brown Street was Frank Knapp.
if the man had come from one of the several paths on the South Common. "I could not tell whether he came round the corner or across the Common." The Witness Ebenezer Shillaber, counsel for Richard, testified that he had had a conversation with Southwick regarding the man in Brown Street. "I asked him whether, for aught he knew, the person who came from Newbury-street might not have been Frank Knapp, and the person in Brown-street Richard Crowninshield? He said he could not tell, but for aught he knew, it might be so." Thus, from the data obtained by effective use of the cross-examination, wisely supported by defense witnesses, Dexter was able to reveal the inherent weakness of the prosecution's claim. Webster had attempted to support his claims with authoritative warrants, yet he had neglected to supply adequate support for those warrants. Also the scope of his claims did not correspond to the scope of his evidence. The prosecution's witnesses could not positively identify Frank Knapp as the man they had seen; as a result, the prosecution was left with a man who dressed like and had the same build and general appearance as Frank Knapp.

It appeared, at this point, all that connected Frank Knapp with Brown Street was the fact that his dress resembled the dress of the man seen in Brown Street. This, it would appear, fell short of the high-sounding claims the prosecution had advanced. Dexter, still not satisfied, and in order to undermine even the slightest

101Appendix C, pp. 421-422.
supposition, called four additional witnesses. The Witness William Peirce\textsuperscript{102} testified that his usual dress, at the time of the murder, was similar to the prisoner's. It was a common dress, and almost all the young men wore glazed caps. Peirce testified further that on the night of the murder "I was in Brown street, for I live there."

The Witnesses Asa Wiggins and Israel Ward, both tailors in Salem, testified that camblet cloaks were the dress of the day and were very popular. Wiggins and Ward alone had made over one hundred such garments in the six month period prior to the murder. The Witness Stephen Osborne,\textsuperscript{103} a hatter, testified that during the year preceding the murder he had sold sixteen hundred caps and over two hundred of that number were glazed leather. "It was a common article of dress last winter."

Dexter had done all that the law required, he had created a reasonable doubt as to whether Frank Knapp was in fact in Brown Street. In addition he had shown that at least one other person the same size and dress as Frank, William Peirce, had been there.

Because of the importance of the Fourth Issue, Dexter next determined to establish an alibi for Frank for the evening of the murder. The alibi would be established in two parts: (1) by accounting for Frank's actions from seven to ten, and (2) by accounting for his actions after ten o'clock.

\textsuperscript{102}Appendix C, pp. 417-418.

\textsuperscript{103}Ibid., p. 418.
1. Frank's actions from seven to ten.

To that end Dexter called the Witness Charles E. Page\textsuperscript{104} who testified that he "saw the prisoner on the 6th of April, about 7 o'clock P.M. in Essex street, near the Salem Hotel." Page, Forrester, Burchmore, and Balch were all asked into the Hotel, by Frank, for "some refreshment." After about five minutes Page left the others. The Witness Moses Balch\textsuperscript{105} supported Page and testified, in addition, that he saw Frank again between eight and nine at Remond's, in Derby Square. All five men, Page, Forrester, Burchmore, Knapp, and Balch, left Remond's at about nine o'clock and went to walk in Essex Street.\textsuperscript{106} Balch stated that he "left the prisoner at the corner of Court and Church streets, about 10 o'clock to go home . . . he went down Church street. I wore a glazed cap at that time." The Witnesses Zachariah Burchmore\textsuperscript{107} and John Forrester\textsuperscript{108} substantiated Page and Balch's testimony.

Here, then, was the first half of Dexter's attempt at constructing an alibi for Frank. The Burden of Going Forward with

\textsuperscript{104}Ibid., pp. 433-434.

\textsuperscript{105}Ibid., p. 434.

\textsuperscript{106}Keep in mind Brown and Essex Streets were places of assignment.

\textsuperscript{107}Appendix C, p. 434.

\textsuperscript{108}Ibid., p. 435.
the Debate had shifted to Webster. In his cross-examination of the four defense witnesses, Webster was able to establish that a doubt existed, in the minds of Balch and Forrester, as to what night it was that they were together. The witnesses were clear that it was either the fifth or sixth of April. Burchmore firmly believed that it was April sixth, while Webster was unable to move Page. He was positive of the date—it was the evening of the murder. Webster had created a doubt as to the credibility of the testimony of at least two and possibly three of the defense witnesses; however, in his re-direct Dexter was able to establish, from Balch, Burchmore, and Forrester, that the weather on the night they were together was over-cast and rainy. Earlier testimony had been entered by the prosecution which established as fact that the evening of April fifth was bright and clear, while April sixth was over-cast and rainy. Dexter's tactic was clear—by determining the weather conditions on the night the young men were together he had in turn established the date as April sixth.

Webster quickly retaliated in his attempt to impeach the credibility of the defense witnesses. The prosecution could clearly show that the defense witnesses were not clear as to what day they had been together. The Witness Joseph White,109 Stephen White's son, testified that in a conversation he had recently had with Charles Page, Page indicated that he was not sure exactly what day he had been with

109Appendix D, p. 453.
the defendant. The Witness Perley Putnam\textsuperscript{110} testified that Burchmore had told him he was not positive that he saw Frank Knapp on the evening of April sixth. The Witness Jesse Smith\textsuperscript{111} swore that in a conversation he and Balch had, Balch said he was not certain which night he had been walking with the prisoner. Dexter did not bother to cross-examine these witnesses to any great degree, probably because he felt that the information established in his previous re-direct was a sufficient answer.

2. Frank's actions after ten.

The Witness Joseph J. Knapp, Sr.,\textsuperscript{112} testified that:

a) He was in the house on the night of the murder before ten o'clock.

b) Frank "entered my front northern parlor about 5 minutes after 10, and asked me if he should bolt the door. I told him no, for Phippen was out."

c) Frank's chamber was in the west end of the third story and in order to come out of his room, one would have to pass Captain Knapp's door.

d) "I did not go to bed till after 2 o'clock. No person moved in the house that night, except Phippen, when he came in."

\textsuperscript{110}Ibid., p. 454.

\textsuperscript{111}Ibid.

\textsuperscript{112}Appendix C, pp. 435-437.
Affidavits, submitted by Robert Rantoul, were then read stating that Samuel H. Knapp, a brother of the prisoner, would testify, if present, that on the night of the murder, the prisoner came home about ten o'clock. Frank opened the door of Samuel's room and spoke to him, at ten past ten, for a few minutes. Samuel then heard the defendant go immediately to his own room, and as he supposed, to bed. The Witness Nathaniel Phippen Knapp\textsuperscript{113} testified that on the night in question his father had gone home at about nine-thirty. At about ten o'clock Phippen stopped home for an umbrella as it had started to shower. He returned home at one thirty and stayed up all night working on his father's assignment. He did not see Frank until seven the next morning.

To counter the second part of Frank's alibi, Webster again tried to impeach the credibility of the defense witnesses. The Witness Michael Shepard\textsuperscript{114} testified that in a conversation he had with Captain Knapp, Knapp said that Frank came home and went to bed at half past ten "so Phippen told me." The Witness John W. Treadwell\textsuperscript{115} swore that he had a similar conversation with Captain Knapp and that Captain Knapp only thought that Frank had come in at his usual time. The Witness John H. Webb\textsuperscript{116} testified that he had asked

\textsuperscript{113}Ibid., p. 429.
\textsuperscript{114}Ibid., p. 441.
\textsuperscript{115}Ibid.
\textsuperscript{116}Appendix D, p. 451.
Samuel Knapp, on the eighth of June, if he knew when Frank came home the night of the murder. "He was not at home when he (Samuel) went to bed." Evidently, Webster was not completely satisfied with his attempt at impeaching the credibility of the witnesses. Thus, he next presented testimony by the Witness Joseph Dewing117 to the effect that Frank had stated he could go into and come out of his father's house without being noticed. The Witness John F. Webb reinforced Dewing's testimony.

On the merits of the evidence presented Dexter had tried to prove that Frank Knapp was not on Brown Street the night of the murder, but rather spent the evening with other young men and then went home to bed. Webster had attacked Frank's alibi but he had little to support his charge except what his witnesses had heard. And that is at best questionable evidence.

In his defense against the charges of the first four Issues, Dexter smoothly handled the fervent responses of the witnesses without the least semblance of passion, a pose which did much to enhance the type of data which depended upon speaker opinion and asserted information.

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117Ibid., p. 454.
The Fifth Issue
Is Brown Street a place from which aid could have been given to the murderer?

For the Prosecution: Morton, Webster.
Witnesses: Daniel Bray, Nathaniel Kingsman, Phillip Chase, Abraham True.

For the Defense: Gardner, Dexter.
Witnesses: Josia P. Saunders, Stephen F. Fuller, Nathaniel Kingsman.

The Fifth Issue was by no means a minor one for either side, for the prosecution had to carry it in order to validate its position on Issue Four. If Brown Street was not a place from which aid could have been received by the murder then Frank Knapp's presence there would have no bearing on the case. On the other hand, if the defense could break or weaken the prosecution's chain of argument at this point, it could possibly carry the Fourth and Fifth Issues, thus creating a sizable gap in Webster's case.

In opening this portion of the case Webster said it would be remembered that Benjamin White, the first witness, stated that all the occupied sleeping rooms of Mr. White's house had windows on the north or west sides or both. The government wished to prove that the corner near which the stranger had been seen, was a very convenient spot for observing Mr. White's house and perceiving when the lights visible through those windows were extinguished.118 The

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118 Webster's attempt to place the stranger in a position from which these windows could be seen was dealt with in the Fourth Issue. Note should be made that the stranger was seen in front of Bray's house and just east of the northeast corner of Howard and Brown streets at the ropewalk steps.
Witness Daniel Bray\textsuperscript{119} testified that after the murder he had gone up on Downing's front steps\textsuperscript{120} and could see all the north and west windows of Captain White's house. The Witness Nathaniel Kingsman\textsuperscript{121} swore that a few days after the murder he went into Brown Street to determine in what part of that street he could distinguish the window in Captain White's chamber.

I could see the window from the south-east corner of Mr. Downing's house, at the corner of Howard and Brown sts. I could see the north window of Captain White's sleeping chamber, and that of the chamber above... As far west as the next house to Mr. Downing's, which is the one in which I reside, and is 18 or 20 paces farther up, I could still see the window, and also in all the intermediate space.

The witness continued, before Webster could stand him down, "But East of the south-east corner of Mr. Downing's house I could not see it Captain White's chamber."

The Witness Phillip Chase\textsuperscript{122} testified that he had observed Captain White's chamber window from three quarters of the way west of the north-east corner of Howard and Brown streets, "but on Downing's steps I could see it very plain."

The Witness Abraham True\textsuperscript{123} supported the previous testimony.

\textsuperscript{119}Appendix C, p. 402.

\textsuperscript{120}Downing's house is on the northwest corner of Howard and Brown Streets.

\textsuperscript{121}Appendix C, p. 404.

\textsuperscript{122}Ibid.

\textsuperscript{123}Ibid., pp. 408-409.
Dexter, in his cross-examination, attempted to have the prosecution's witnesses expand upon their previous testimony. His tactic worked for Bray testified that, "The windows could not be seen from the Rope Walk steps, or from Shepard's post, or from the post near my house, or while walking down under the fence on the South side" of Brown Street. Both Kingsman and True supported Bray's elaboration. Dexter then set out to reinforce the data that he had obtained during his cross-examination, with testimony from defense witnesses, in order to create a base from which he could advance his claim. The Witness Nathaniel Kingsman\textsuperscript{124} modified his previous testimony given in behalf of the prosecution by swearing that he could see the window in Captain White's chamber distinctly "20 paces W. of the S.E. corner of Downing's house." The Witness Jona Saunders testified that the distance from Brown Street to Essex Street through Captain White's garden was approximately 295 feet. The Witness Stephen F. Fuller, also a surveyor, supported Saunders, and went on to testify that,

\begin{quote}
nothing could be seen of Mr. White's house from the rope walk steps; nor from the post by Mrs. Shepard's house; nor from the post by Capt. Bray's house; nor from any part of the space between the two posts on the south side of Brown street, except that through a small opening between Mr. Potter's and Mr. Henderson's houses, a part of the rear of Capt. White's house but not the part in which he slept. Between the avenue from Brown street to Essex street, and Capt. White's house there are houses and other buildings; but from some parts of the avenue the upper windows may be seen.
\end{quote}

\textsuperscript{124}\textit{Ibid.}, p. 438.
Thus, ended the Fifth Issue. The prosecution's case was faltering badly for the defense, keeping within the basic framework of the judicial structure had matched or bettered them on every issue. If Webster were going to win the case, he would have to move quickly. The prosecution's case was fragmented and Webster's proofs, as they stood, did not cause the Issues to reinforce each other. A catalyst was needed. The main thrust of the prosecution's argument depended upon the success of Colman as a witness. His testimony in turn could catalyze the prosecution's case and carry it alone in its powerful wake. But Colman's testimony had been lost, or had it? Indeed, if things were left as they were, despite the mood of the mob and the attitude of the jury, defeat seemed certain. The prosecution decided, therefore, to try again to have Colman's testimony admitted. Instead of their usual straightforward approach, they would try a flanking maneuver. Of course, the defense would not be forewarned of this tactic.

We now enter the crucial phase of the trial—the final struggle between Webster and Dexter. These two great figures now towered over Massachusetts and until Dexter was struck down the entire northern scene was dominated by their personal duel on a grand scale. Both men were at the height of their powers, and their skill and oratory in forensic debate gripped and focused public attention on the proceedings in Salem. Webster was the natural fighter, exhilarated by challenge and at his best in conflict. Dexter was a subtile and ingenious backstage manager of evidence,
who preferred to move from one secured position to the next, taking
risks only when necessary and without zest.

Dexter's plan was still to turn back the prosecution's
accusations, thus discrediting the accusers, and gaining the
acquittal which would set his client free. Against him, the prosecu-
tion advanced a new concept of guilt. They argued that the single
issue was immaterial and that their case must be judged only after
looking at all the proofs as a single body. Beyond the prosecution's
difficulty with unseating a rigidly defined concept of proof, they
were having trouble holding their indictment together. On the other
hand, Dexter persistently clung to the judicial model utilizing law
and citing precedent whenever possible. He took the prosecution's
evidence apart and re-assembled it in such a manner so as to cover
them, not his client, with the discredit. Each day by logic and
appeal he countered the government's accusations and slowly advanced
his assault on American Law.

Dexter possessed a certain strategic comprehension. He did
not possess that rhetorical outlook which took all things in, and
which is the quality of all great speakers, but he had an intense
clarity of view and promptitude to act, and he was forceful and
often moving. From the beginning of the trial, Dexter's design
was for a slow attritious advance on American law. His facts, his
rebuttal, his data would converge on that position and break the
central warrant of accusation. Accordingly, the citadel of law
was invested and upon it he built his defense. American Law formed
at once his main defensive and offensive outpost. The initial success of Dexter's legalistic strategy veiled its inherent weaknesses. He believed so strongly that the law was impregnable that he built at first neither alternative defenses nor laid plans for an orderly retreat if his first line of defense should prove after all to be untenable. He had advanced a massive, Maginot Line type of defense, impregnable to a frontal assault, but vulnerable elsewhere. If the prosecution should change its ground and try a flanking sweep or an attack from the rear, all might be lost. So far, all was well.

Another Argument on Colman's Testimony

Ever since the beginning of the trial proceedings, Webster and the government had been prepared to change their strategy and shift their legal ground in their argument regarding the admissibility of Colman's testimony. The American Laws regarding confessions were, however, written and particular, and it was becoming increasingly clear to the prosecution that they were failing to prove Frank Knapp guilty by staying within ordinary rules of evidence.

After the prosecution had presented its last witness Webster moved for a re-hearing on the admissibility of that part of Colman's testimony which had been excluded. The government had not had the slightest expectation that it would be excluded. "The question of admissibility had arisen suddenly and had been decided without sufficient argument. . . ." Webster further contended that if
Colman's testimony was admitted and it was later found to be improper and unlawful, the verdict could be set aside and no harm would come to the prisoner. But if, in consequence of excluding the testimony, the prisoner was acquitted, the government could not move a new trial even if it was found that the testimony should not have been excluded. "The whole band of conspirators, with their confessions of the murder spread over the whole world, would be at large with perfect impunity." 125

Dexter replied briefly to Webster's argument again relying upon American Law and Precedent to support his position. He held that Webster's request for a re-hearing "was incorrect because a full court is present, from which there is no appeal. ... No bills of exceptions could be filed. The point settled now was settled once and forever." Here he cited 16 Pickering 155.

After some deliberation, Justice Putnam ruled that the court was clearly of the opinion that it would be proper to hear arguments upon the question. It might, at least, produce unanimity in the opinion of the court.

The whole argument turned upon a single question: Did Frank consent to Joe's making a confession? This was argued for many hours. Justices Morton and Wilde ruled that the prisoner's confession should be excluded. The consent amounted to a confession and would be

125Webster made many loaded statements such as these obviously with the intent of arousing the jury and audience.
strong evidence against him. It was not a voluntary confession. Further, said Justice Wilde, "his subsequent confession ought to be excluded also. The rule is that when a confession has been improperly obtained, all subsequent confessions are inadmissible." Justice Putnam dissented, and reluctantly ruled that "the opinion of the court is that the confessions of the prisoner are rejected." 126

Webster Shifts His Ground

The prosecution, for effect, had held back its strongest tactical move until last. After this decision Webster stated that the court had misapprehended the views of the prosecution. The prosecution never proposed to offer the assent of Frank Knapp as evidence, they had never included it in the case. "The government knew that he did not assent." Webster now moved the court to call the witness and ask him the direct question concerning this confession. The prosecution also proposed, if the court would admit it, to prove that Frank Knapp never did consent that Joseph should confess.

Dexter protested—Webster had skirted his line of defense—that the prosecution was aware that this evidence existed and they had intentionally kept it back. They preferred trying the old plan

126 Appendix C, p. 410. I have omitted most of the argument for two reasons: (1) because the reports are not very complete, and (2) because, as it turned out, this decision had no effect upon the trial.
once more. "They found that it would not do and they have now taken
this new point." It seemed to be a measure of severity that no
prisoner had ever before experienced in a court of justice.

If the witness is now called, I will not say that his testimony
will be changed, but he understands the position of the cause;
he knows the importance of the evidence he is to give, and he
is under the strongest inducement which could possibly influence
an honest man to vary his testimony.127

Justice Wilde said he regretted that the question now proposed
had not been asked of the witness before, because it would have saved
much labor, discussion and time. The court went wholly upon the
ground that an assent had been given by Frank, and the influence
producing that assent had been the cause for the rejecting the confes-
sions. But if no such assent had been given, the public were not to
be deprived of the use of such testimony through the negligence or
inadvertence of the counsel for the government. If the prisoner had
answered yes upon the question of assent, his confession could not
have been received. If he had declined to assent, most clearly it
could be used, and was not liable to the objection urged by his
counsel. At this point Rev. Henry Colman was recalled. The Court.
"Did the prisoner refuse to assent to the arrangement made, as
proposed by Phippen Knapp, that Joseph Knapp confess?" Answer.
"There was neither assent nor refusal."

Dexter argued, to no avail, that the prisoner's assent must
be implied if there was no direct refusal; "the court could not say

127Ibid.
that the prisoner did assent, and therefore the evidence would be admitted." In reporting this portion of the trial, the New Hampshire Patriot and State Gazette observed,

The "godlike" has already forced the Supreme Court of Massachusetts to take back and revoke one solemn decision; and under him there can be little doubt the culprits will be convicted and condemned. . . . Let it no longer be considered that the case of an individual depends upon right and justice, but upon whom he has engaged for counsel, and upon the magnitude of the fee paid to some pretended giant of law.128

The Rev. Henry Colman was a well known figure in Salem and highly respected by the townspeople. Indeed, some of the members of the jury and a large number of the people in the gallery were members of his congregation.

Colman's ethical appeal can be measured only in terms of his times, and Salem, as we have seen, was a community heavily endowed with religious traditions. Since the settling of the United States the New England preacher had been the center of communal life, and Colman was not the type of man who took his position lightly. To these people Colman represented a physical manifestation of their religious beliefs. He could not be mistaken, everyone knew he was Joseph Knapp's spiritual advisor, and he would not tell a falsehood.

With the decision of the court clearly behind him, Webster produced the new evidence which he had been unable to submit to the

128New Hampshire Patriot and State Gazette, August 9, 1830, p. 2.
court earlier. It was not actually new evidence at all. The Witness Rev. Colman testified that:

1. Frank told him the murder had taken place between ten and eleven o'clock.
2. Richard Crowninshield was alone in Captain White's house.
3. "I asked him if he was at home that night. He said he went home afterwards."
4. Frank told him about the club and under which steps it was hidden—he also indicated that the dagger had been melted down at the factory.

The effect of Colman's testimony was to corroborate the evidence which had been given by the prosecution's witnesses before the jury. His brief remarks catalyzed the Issues and added badly needed support to their faltering proofs. It was most fortunate for the prosecution that Colman had received from Frank Knapp material relevant to three out of the five main Issues. Indeed, the constant reiteration that the testimony was additional evidence produced a strong effect upon the Jury, and they now paused to reconsider their position.

The defense was in a very tenuous position, but all was not yet lost. The adverse effect of Colman's testimony could be minimized if the defense could discredit the foundation upon which the testimony rested. Dexter called the Witness Nathaniel Phippen Knapp

129Appendix C, pp. 426-432.
to provide testimony he hoped would cast doubt on Colman's credibility. Phippen testified:

1. On the evening of May twenty-eight he had visited, first his brother Joseph and then his brother Frank.

2. After leaving Joseph's cell and before entering Frank's cell, "he (Colman) said, Mr. Knapp, I wish that you would not disturb the club, I will get a witness, and go and get it myself, for my own security."

3. He was present at a conversation between Colman and the prisoner. The prisoner made the statement, "I have nothing to confess. It is a hard case, but if it is as you say, Joseph may confess if he pleases. I shall stand trial."¹³⁰
   a) Nothing was said about the club in Frank's cell.
   b) Nothing was said about the time when the murder was committed.

4. Colman said that he had been to Joseph's cell two or three times that day.

5. On the following Saturday the witness ran into Colman near the Half-Way House.¹³¹ Colman was on his way to

¹³⁰ Cf. this with Colman's version of the same statement, Supra, p. 240.

¹³¹ Colman was returning from Boston where he had gone to see the attorney general to get the State's consent to extend amnesty to the prisoner that confessed. Phippen was going to Boston to see Dexter.
see Joseph. Phippen requested him to wait until he (Phippen) could be there. Colman agreed, but did not wait.

6. He then said, I am not sure I got that story of the club from Joseph or Frank, but I believe from Joseph. I told him he did not get it from Frank. He then said that he did not know but that he had been misunderstood about this by Mr. S. White, and asked me to take a note to him, to correct the impression. 132

7. He met Colman the following Monday and Colman told him he had seen Stephen White and that he had not been misunderstood.

8. Three or four weeks later Colman visited Phippen's office. "I have called on you, Mr. Knapp, to refresh my recollection of the interview with your brothers." After some conversation he indicated that Frank had told him about the club. Phippen denied that that was the case and Colman became very excited. At that moment Dexter entered the office and tried to calm Colman down.

9. He did not visit Frank at the request of the family as Rev. Flint was Frank's spiritual advisor.

Webster did not concern himself, in the cross-examination, with this aspect of Phippen's testimony; instead he presented a

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132 Colman later admitted that he wrote this note. His memory of the interviews with Joseph and Frank should have been better on the day after they took place than in August, yet he swore at the trial that Frank told him where to find the club.
counter-witness. The Witness George Wheatland\(^{133}\) testified that in a conversation he had had with Phippen, Phippen stated:

1. Colman was an intimate friend of the family and saw Frank at the request of the family.
2. "I asked Phippen if Mr. Colman had asked Frank any questions. He said he did ask him some, and that Frank answered, 'I don't recollect what the question was, or the answer.'"

From the turn of events it is evident that Webster did not feel that Phippen's testimony had damaged Colman's credibility. At any rate Wheatland's testimony would give the jury something to think about.

Dexter realizing the severity of Wheatland's testimony vigorously cross-examined the prosecution's witness; however, he would not, or could not, budge from his stated position. However Wheatland did admit that he had expressed a hope that the prisoner would be hung. "I have said they were guilty." Thus, Dexter was successful in showing that he was a biased witness.

**The Attorneys Summarize**

Because of the nature of the crime and the far reaching effect it had on the community the trial attracted great crowds of people. The Salem Gazette reported that,

the Court room has continually been thronged and filled, and multitudes have retired from inability to gain entrance . . .

\(^{133}\)Appendix C, pp. 439-440.
we observed that the windows of the houses near the Court House are filled with attentive listeners. Hundreds of individuals were also gathered around the house...\textsuperscript{134}

Now that all the evidence was in on both sides, everyone felt that he was about to witness the great climax of the trial in an oratorical battle between the two chief attorneys. Dexter, who had started the trial as the underdog, had lost a decided advantage when Webster had shifted his ground. As a result the significance of the closing address became increasingly important.

Prior to considering Dexter's speech in the White Murder Trial, we should give some thought to the nature of his audience. For the most part the townspeople wanted Frank Knapp to be found guilty. This attitude was widely reflected in the positions the newspaper took after the first trial of Frank Knapp ended in a hung jury. The Boston Courier referred with contempt to those subtle gentlemen of the bar "who prefer that a rogue should entirely escape, than be punished contrary to technicalities."\textsuperscript{135} The Lynn Record said,

We are strongly inclined towards the belief that lawyers are productive of more evil than good, and that it would be better in all cases of deviation from the laws, that the cause should be submitted to the judge and jury, which is all that is required to obtain a just verdict.\textsuperscript{136}  

\textsuperscript{134}Salem Gazette, August 13, 1830, p. 1. \textsuperscript{135}Boston Courier, August 13, 1830, p. 1. \textsuperscript{136}Lynn Record, August 13, 1830, p. 2.
On August thirteenth the Salem Gazette reported that, "the anxious interest of the public in the trial has gone on increasing from the beginning to the end,"\(^{137}\) and on August twentieth that, "the circumstances and incidents of this tragedy intrinsically possess a deep interest engrossing the attitude and affecting the feelings of us who reside in this vicinity."\(^{138}\)

On several occasions during the first trial the court had insisted that there be no publication of evidence until the case was closed; but before the second trial got started, several pamphlet reports of the evidence were placed on sale and a number of newspapers devoted entire issues to the testimony that had been given during the first trial. In the second trial, therefore, each witness knew what testimony had been given by others. The Yeoman's Gazette of Concord suggested that "street fever" infected the nerves of some of these witnesses. "A few witnesses knew positively facts at the second trial on which they were silent or doubtful at the first trial."\(^{139}\) Clearly, the people of Salem were striving for dissonance reduction. The strain and tension of living under such pressure for over four months was starting to manifest itself predominately in the overt behavior of the townspeople.

\(^{137}\)Salem Gazette, August 13, 1830, p. 1.

\(^{138}\)Salem Gazette, August 20, 1830, p. 3.

\(^{139}\)Concord Yeoman's Gazette, August 20, 1830, p. 1.
Also, from our previous analysis of events leading up to the year 1830, we know that both his immediate audience of Salem citizens and his secondary audience, members of the state bar and legislature in Massachusetts, would have been highly materialistic, subject to deep seated religious beliefs, extremely conscious of social hierarchy and pressures, and painfully aware of clearly distinguishing between right and wrong. Also, under normal circumstances, they were used to having all their major decisions made for them by their political and religious leaders. They would have been favorable to patriotic, romantic, and religious appeals.

Certainly the immediate audience was emotional. Their emotion, however, was directed against Dexter and his client. Incensed by the brutal murder of a respected neighbor and townleader, these jurors could have had little sympathy for the prisoner at the bench. Dexter's decision to defend Frank Knapp, coupled with the popular belief that he was trying to use the law to free a known murderer, had undoubtedly led to a marked dip in Dexter's ethos appeal with the immediate audience. Against this background, Dexter presented his concluding appeal in behalf of his client.

He began by pointing out "the extraordinary array of counsel, active and inactive, brought in aid of the government," and the "efforts that have been made by those who could take no other part in the prosecution." He went on to question why this should be the case?

If there is legal evidence against the prisoner, can there be a doubt that he will be convicted? And if there is not, is a
verdict of condemnation to be wrenched from you by talent and eloquence which the ordinary course of a criminal trial would fail to procure . . . 140

In this way Dexter cautioned the jury not to allow the prosecution to usurp their privilege of free choice by unduly influencing their decision. In so doing, he fixed the entire burden for the verdict squarely upon the jury. But if the jury was to be aware of the tactics of the prosecution, then they would also have to be made aware of the climate of the trial. This he tried to do.

There is, however, a more dangerous influence in this case . . . . We care less for the array of counsel than for the array of the community against him . . . . We have greatly feared the effect of this hostile atmosphere on the testimony. We have feared, and found, that in such a state of excitement no man could take the stand an indifferent witness. He is to be esteemed a public benefactor on whose testimony the prisoner is convicted, and he who shrinks from the certainty expected of him, does it at the peril of public displeasure and reproach . . . . we fear that it may even seem strange that we should claim for the prisoner that presumption of innocence which the law affords every man. But it is not the less your duty to extend it to him . . . . You must be satisfied by the evidence in the case, beyond reasonable doubt, of the truth of the whole and of every material part of the charge as it is here laid against him. 141

This is a powerful but dangerous rhetoric, when viewed against the background of the public attitude toward the defendant. Dexter was not identifying with, but rather instructing, the jury as to what it should and should not do. Also, by berating the townspeople for their attitude he was placing himself in a somewhat precarious position. Even though he obviously was not referring to the jury when

140 Appendix D, p. 455.

141 Ibid.
he attacked the community, chances are the jurors strongly identified with their neighbors. Simply because one wore the title "juror" did not mean that he was immediately divorced from his emotional involvement with friends and relations.

Dexter then told the jury that the "new doctrine" of law which the prosecution had advanced was "a doctrine subversive of the very foundation of all criminal law . . . an obsolete and savage rule of law . . ." Thus, if the general guilt of the prisoner was established, there would be a presumption of law that he was a principal offender, placing the burden of proof on him to show that he was guilty to a lesser degree.

At this point Dexter had reverted back to his trial plan and was attempting to ground his position firmly in American Law and precedent. After establishing the weakness of the legal position the prosecution had taken, Dexter attempted to show the jury why they should rule in favor of the defendant. To that end he clearly stated the exact charge against the prisoner:

What then is the crime of which the prisoner stands indicted? It is that he was present, aiding and abetting in the murder. Not that he is guilty of the murderous intent or that he procured the murder to be committed, but that he was present at the perpetration of it, and gave his assistance to the murderer.

Next, Dexter began to construct the earthwork which would support his claim. He readily admitted that actual presence was not necessary to constitute the prisoner a principle. Further, he admitted, that any place from which actual physical aid could be
given in the commission of the murder would constitute presence within the meaning of the law. In other words:

To make a man an aider and abettor in a felony he must be in such a situation at the moment when the crime is committed that he can render actual and immediate assistance to the perpetrator, and that he must be there by agreement, and with the intent to render such assistance.

This being the case then the entire outcome of the trial rested upon a single question: "Was the prisoner, with such intent, under such an agreement, in such a situation that he could render actual aid at the moment when the murder was committed?"

Aware of the weakness of the evidence of the prisoner's presence in Brown Street, especially as it stood in the first trial, the prosecution had relied heavily on the aid of the conspiracy to support its claim that Frank was present on Brown Street, i.e.--they reasoned, Frank was in Brown Street because he was involved in the conspiracy to murder Captain White; Frank was involved in the conspiracy to murder Captain White because he was on Brown Street. Here Dexter attempted to show the illogicality of circular reasoning; it begged the question because at no time was proof advanced. But what of the proofs advanced:

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142The Issues are presented in the same order that Dexter arranged them in his closing address.
Sub-Issues
(a) (b) (c)

Direct evidence of conspiracy
Leighton's testimony
Palmer's testimony

Not materially related to main issue.

Internally inconsistent.
Not a credible witness.
Leighton and Palmer contradict each other.

Leighton and Palmer are confirmed only as to the immaterial circumstances of their testimony--on the important points they stand alone and unconfirmed.

Dexter made a clever tactical arrangement here moving from easily refuted points to more difficult ones. Under each Issue, he proceeded as he had done during the trial. He defended on the basis of: legality.

Conclusion: "The most, then, that can possibly be inferred from this evidence, bad as it is, is that the prisoner was an accessory before the fact. . . ."

The First Issue - Time of Murder

Two men thought to be the murderers were seen in Brown Street at ten thirty, thus fixing the time of the murder.

If the time of the murder is not established at ten-thirty the entire case fails. Quick summary of evidence. Little new offered. The two strangers were neither identified nor seen going to or coming from Captain White's house. "A murder was committed that night in the next street, and this is all the proof that these were the murderers."
Under each Issue Dexter proceeded as he had done during the trial, except he was now brief and summarized his contradictions of the prosecution's arguments.

Dr. Johnson confirmed time of death at between three and four. Dr. Hubbard initially agreed. Four witnesses had occasion to pass Captain White's house between ten and eleven and observed nothing out of the ordinary. Witness saw man come out of Captain White's yard between three and four. Man ran when observed.

**Conclusion:** "The government must satisfy you beyond reasonable doubt that either the murder was committed at half-past ten, or that the prisoner was the man who left the house at half-past three. You can not believe both."

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**The Fourth Issue - Frank in Brown Street**

**Minick and Webster**

Unimportant—They identified prisoner by dress alone. Improbable that murderer would linger on a corner an hour before the crime.

**Use of disguise.**

A man does not disguise himself by wearing his habitual dress.

**Material witnesses**

**Southwick**

Identified person on ropewalk steps by dress alone. Told Shillaber "for aught he knew the man in Brown St. might be Richard Crowninshield, and Frank Knapp the other"—he could not tell who they were. During the Grand Jury Hearing identified man on ropewalk steps as Salman.

**Bray**

Contradicted his own testimony from first to second trial.

**Colman**

"What the government cannot otherwise prove, Mr. Colman swears the prisoner has confessed and nothing more." Confused—impeached his own testimony. Contradicted by
Alibi (advanced by defense)  
First half of alibi is consistent and confirmed by three witnesses.

Second half of alibi is impeached by testimony of certain conversations.  
Of all kinds of evidence reports of conversations are the most uncertain.

Conclusion: "But what is the amount of all these confessions? If true, they prove indeed that he (Frank) knew too much of this guilty deed. But they imply no presence at it."

The Fifth Issue - Aid in Brown Street

Three criteria established by the late chief justice to determine aiding and abetting. Was Frank there:

(1) to prevent relief to the victim  
Man seen in Brown Street did not take a post where he could have been aware of its approach. He could not observe Captain White's house. The best post would have been in Essex Street.

(2) to give alarm to murderer  
Same reasoning as above.

(3) to assist murderer to escape  
"One man on foot can no more help another to run away, than one can help another to keep a secret."

Dexter added little that was new, but repeated and summarized the heads of what had been said by him before.

Conclusion: "And now, gentlemen, as the last question in this cause, you are to say on your conscience: Are you satisfied beyond a reasonable doubt that the man in Brown Street, wherever he was, could have given any effectual aid in the actual commission of the murder, and selected that as the most proper place for that purpose? If you doubt
about that upon the whole evidence, do your duty and acquit the prisoner. Such is the law; let it answer for its own deficiencies, if it be deficient, and trust that those who have that power will amend it if it needs amendment."

Here Dexter's purpose went beyond merely summarizing an issue. He was clearly trying to offer the jury a way in which it could find in favor of the defendant, and still avoid the stigma of pronouncing such a verdict. To that end he offered them a deficient law.

After occupying nearly four and one-half hours Dexter concluded by employing both ethical and pathetic appeals.

The prisoner is very young to be placed at the bar for such a crime. But, young as he is, I ask no mercy for him beyond the law. For every favorable consideration and sympathy consistent with the law, I would urge upon you his youth, his afflicted family, and the seduction of the evil example of others. By these, and all good motives, I would urge you not to sacrifice him against the law, that those more guilty than himself may be reached through him. His life is in your hands and in the hands of each one of you. May you, and each of you, give no verdict and consent to none but such as your hearts can approve now and forever.

In his closing statement, Dexter stood solidly on American Law. Such was the ground he had marked out for his defense and had labored for four exhausting weeks to capture and hold. But the prosecution had suddenly changed their strategy and maneuvered to outflank Dexter's nearly impregnable first line of defense. Suddenly he stared defeat in the face. The game had changed. No longer was his rhetorical purpose to maintain the sanctity of the law. It was clearly his client's life that was to be won or lost. Despite

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143 Essex Registrar, August 23, 1830, p. 1.
Webster's shift, he retained the law as his main line of defense, but neglected to extend defenses beyond that Maginot Line to protect against Webster's final attempt to bypass it completely.

Instead of abandoning his trial plan at the last minute, Dexter's concluding argument was almost completely logos centered. He interspersed the testimony effectively in his concluding speech. He selected and utilized legal precedents and other extrinsic evidence in such an effective manner as to make them appear almost as if they had been written in reference to the White Murder Trial. He successfully discredited the witnesses of the prosecution while defending his own. Dexter spoke lucidly without extensive notes, running over one by one his answers to every Issue of the charge. He was quiet and restrained, not vehement or emotional. He held his audience by his incisive logic. From a critical standpoint his final statement must be judged a superior piece of forensic discourse for its precise and thorough discussion of single points.

Although his attempts at ethical proof would have been of questionable effect on the immediate audience, incensed as it was at his position, he effectively cast himself as one who was performing only by reason of the highest possible motives, i.e., his love of the law. He created an image, therefore, of a lawyer of society, trying to prevent it from making a horrible mistake. It is reasonable to assume that he actually perceived himself in that light, and not without some justification.
He did not utilize the emotionalism of the day very effectively and in most cases avoided pathetic proofs. However, he did invite the jury to join with him in rising above the passion of the moment and return a verdict which would transcend the emotional climate. His choice of language was good, and he projected the plight of the prisoner with telling imagery.

Webster followed Dexter. It was fitting that the final speech for the prosecution should be delivered by Daniel Webster. More than any other single individual he would be responsible for the success or failure of the prosecution's case. From what little we know regarding the preparation of Webster's closing argument it appears that he made every effort to structure it to meet the needs of his immediate audience. Harriet Martineau reports that Webster asked one of the citizens of Salem assigned to assist him: "Do you know of anything remarkable about any of the jury?"\textsuperscript{144} Presumably, as a result of the answer obtained from this and similar questions, coupled with his own observations, he formed his strategy. To insure success he would base his arguments primarily upon ethical and pathetic appeals, using logical appeals as required.

Webster's opening remarks, intended to be a direct response to Dexter, were designed to dissuade the jury from thinking that he had been called to the prosecution because of his vast prestige, as

\textsuperscript{144}Harriet Martineau, \textit{Retrospects}, p. 169.
well as to create a common ground between the prosecution and the jury. To that end he advanced a strong ethical appeal:

I am little accustomed, gentlemen, to the part which I am now attempting to perform. Hardly more than once or twice has it happened to me to be concerned on the side of the Government in any criminal prosecution whatever; and never, until the present occasion, in any case affecting life.

But I very much regret that it should have been thought necessary to suggest to you that I am brought here to "hurry you against the law and beyond the evidence." I hope I have too much regard for justice, and too much respect for my own character, to attempt either; and were I to make such attempt, I am sure that in this court nothing can be carried out against the law, and that gentlemen intelligent and just as you are, are not, by any power, to be hurried beyond the evidence.

Thus, Webster did all that he could to establish his ethos.

In his now famous exordium Webster exhibited an extraordinary dramatic force while relating his account of the murder and an analysis of the working of a mind seared with the remembrance of a horrid crime. By utilizing the proper blend of imagery and visualization he was able to generate a passage of considerable pathos. Webster began by painting a picture of the motivational force behind the deed:

It was a cool, calculating, money-making murder. It was all hire and salary, not revenge. It was the weighing of money against life; the counting out of so many pieces of silver against so many ounces of blood.

An aged man, without an enemy in the world, in his own house, and in his own bed, is made the victim of a butcherly murder for mere pay.145

The deed was executed with a degree of self-possession and steadiness equal to the wickedness with which it was planned.

145Note the contrast of concepts between this and the preceding paragraph.
The circumstances now clearly in evidence spread out the whole scene before us. Deep sleep had fallen on the destined victim, and on all beneath his roof. A healthful old man, to whom sleep was sweet, the first sound slumbers of the night held him in their soft but strong embrace. The assassin enters, through the window already prepared, into an unoccupied apartment. With noiseless foot he paces the lonely hall, half lighted by the moon. He winds up the ascent of the stairs and reaches the door of the chamber. Of this he moves the lock, by soft and continued pressure, till it turns on its hinges, and he enters, and beholds his victim before him. The room was uncommonly open to the admission of light. The face of the innocent sleeper was turned from the murderer, and the beams of the moon, resting on the gray locks of his aged temple, showed him where to strike. The fatal blow is given, and the victim passes, without a struggle or a motion, from the repose of sleep to the repose of death! It is the assassins' purpose to make sure work, and he yet plies the dagger, though it was obvious that life had been destroyed by the blow of the bludgeon. He even raises the aged arm, that he may not fail in his aim at the heart, and replaces it again over the wounds of the poniard! To finish the picture, he explores the wrist for the pulse! He feels it, and ascertains that it beats no longer! It is accomplished. The deed is done. He retreats, retraces his steps to the window, passes out through it as he came in, and escapes. He had done the murder. No eye has seen him, no ear has heard him. The secret is his own, and it is safe!

Ah, gentlemen, that was a dreadful mistake! Such a secret can be safe nowhere. The whole creation of God has neither nook nor corner where the guilty can bestow it and say it is safe... True it is that Providence hath so ordained, and doth so govern things, that those who break the great law of Heaven by shedding man's blood seldom succeed in avoiding discovery... Meantime the guilty soul cannot keep its own secret. It is false to itself, or, rather, it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it... The secret which the murderer possesses soon comes to possess him... It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstance to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed; there is no refuge from confession but suicide, and suicide is confession.
In this passage Webster exhibits the power, skill, eloquence, shrewdness and cleverness which combined to make him famous. By drawing the material for this extremely powerful pathetic appeal directly from Joseph J. Knapp's confession, Webster was able to circumvent the ruling of the court and introduce inadmissible evidence into the trial without giving Dexter an opportunity to object or produce any additional evidence. Too often this passage is praised for its dramatic quality and its chief purpose is overlooked. Since Frank was being tried as aiding the perpetrator, it was necessary to convince the jury that Richard Crowninshield committed the murder, but the proof of that fact was not good. The jury might reject Frank's confession, and there was no other proof that Dick was even in town after seven thirty on the night of April sixth.

In his closing arguments Dexter had all but instructed the jurors that it was their duty to reach a decision in the case only after weighing "the law and the testimony." In so doing he had made the jury conscious of the prejudicial atmosphere surrounding the trial. Dexter's point was not arguable; but, if Webster could override Dexter's concept of law, he would be able to use Dexter's position as the basis for his (Webster's) argument and still capitalize on the emotional state of the audience.

It is said that "laws are made, not for the punishment of the guilty but for the protection of the innocent." This is not quite accurate, perhaps, but, if so, we hope they will be so administered as to give that protection. But who are the innocent whom the law would protect? Gentlemen, Joseph White was innocent. They are innocent who, having lived in the fear
of God through the day, wish to sleep in His peace through the night, in their own beds. The law is established that those who live quietly may sleep quietly; that they who do no harm may feel none. The gentlemen can think of none that are innocent except the prisoner at the bar, not yet convicted. Is a proved conspirator to murder innocent?

Again, in an attempt to justify the feelings of the community and in order to create a marriage between the emotional and the legal aspects of the case, in the minds of the jurors, Webster stated:

"The public feeling of the community is misrepresented, . . . the only zeal felt on this occasion is that men may not be exposed to murder in their own houses unarmed, and that they should be quite in the pursuit of their

Having accomplished all that he had set out to do, Webster moved into a review of the evidence advanced in the case. To counteract the natural reluctance of ordinary citizen to bring in a verdict of guilty which would result in a sentence of death, he concluded with an ethical and pathetic appeal which was compelling.

There is no evil that we cannot either face or fly from, but the consciousness of duty disregarded. A sense of duty pursues us ever. It is omnipresent, like the Deity. If we take to ourselves the wings of the morning, and dwell in the uttermost parts of the sea, duty performed, or duty violated, is still with us, for our happiness or our misery. If we say the darkness shall cover us, in the darkness as in the light, our obligations are yet with us. We cannot escape their power, nor fly from their presence. They are with us in this life, will be with us at its close; and in the scene of inconceivable solemnity, which lies yet farther onward, we shall still find ourselves surrounded by the consciousness of duty, to pain us wherever it has been violated, and to console us so far as God may have given us grace to perform it.

Thus, Webster concluded one of the most dramatically forceful appeals to be advanced in the court of law during the Nineteenth Century.
The cause was submitted to the jury at one o'clock on Friday afternoon, the twentieth of August. At six o'clock the jury returned a verdict of guilty. On the morning of September 28, 1830, at sixteen minutes before nine the drop fell and John Francis Knapp was hanged by his neck until dead. Crowds of from four to five thousand persons witnessed the event in the yard outside of the Salem jail, while "vendors sold flags and pennants, 'goodies and fruits' among the curious who included many women and children." 

At times it is difficult to determine when dissonance reduction actually occurs, but for Justice Putnam, and probably most of the citizens of Salem, it occurred on the twenty-fourth of August. After passing sentence on Frank Knapp the judge addressed the prisoner as follows:

"... our peaceful city stood aghast at this dreadful deed. The very foundation of our society seemed to be shaken—and the shock was not confined to this vicinity or State, but extended throughout the land.

Suspicious too horrible for utterance were excited in the breasts of reflecting men. The sense of security which the Law inspires, was in a great measure lost. No man's house was considered a safe castle—and men seemed for a time disposed to trust to their own arms, rather than to the protection of the Law for their safety.

In light of this statement, and with knowledge of the case, one is compelled to conclude that the primary function of this trial was to facilitate dissonance reduction on the part of the community,

146 Boston Courier, September 30, 1830, p. 2.

147 Ladies Miscellany, September 29, 1830, p. 103.
and not to serve justice. It seems clear from this analysis that from a legal point of view, Dexter presented the most coherent, logically oriented case; yet, the fact remains that he lost. There are many reasons which might account for this. It appears that Dexter labored under the impression that the sole task of the defense was to forward logical proofs that would meet the test of abstract validity. His strategy rested on the belief that if he could become master of the judicial modus operandi, which is based on the rational idea of the inductive process, victory would be assured. By keeping judicial procedure and law uppermost in his mind Dexter lost sight of his audience. As a result he did not realize that the attitude of the audience had placed the psychological Burden of Proof on the defense. Unlike Webster, Dexter failed to adjust to the audience in his closing argument and based his speech primarily on logical appeals. It conformed to his trial plan, was a logical extension of it, and as such failed to meet the needs of the rhetorical situation. Thus, Dexter failed to shake the already established psychological guilt that the citizens of Salem felt toward the defendant. A psychological guilt which was fundamental in facilitating the reduction of cognitive dissonance.
CHAPTER VI

CONCLUSIONS

John Francis Knapp had just turned twenty when his life was taken by the State. As guilt or innocence is an operational definition particular to the jury, one that cannot be changed, to ask if Frank Knapp was guilty is an irrelevant question. However, aside from being a typical example of a case of manifold circumstantial evidence laced with numerous ramifications involving subordinate testimonial evidence, and interesting as such, The White Murder Trial also stands as a practical test between a legal and a rhetorical argument.

In order to be a fair test it is necessary first to determine if there was, indeed, a legal case to be made. There is no question, but that the answer is, yes, there was a compelling legal defense. In terms of the law as I am interpreting it, if a change of venue had been obtained, or if the trial had been delayed until the regular session of court, there is reason to believe that Frank Knapp may have avoided a verdict of guilty. It is even questionable that he would have been tried as a principal if Richard Crowninshield had lived. Richard Crowninshield and Joseph Knapp were the principal offenders. However, Richard had taken his own life, and Joseph had
been in Wenham the night of the murder. In order to convict Joseph, whom no one doubted was guilty, a principal had to be convicted first, and it was for that purpose that Frank Knapp was sacrificed. To break the law is a crime. But to call murder that which falls unequivocally outside the written terms of the Statute of Murder does not justify a conviction. Frank Knapp was charged as a principal; however, the evidence proved, at best, he was an accessory before the fact. After seriously considering these and other aspects of the case it is clear that Dexter saw and recognized the compelling legal argument in favor of the defendant.

No one knew better than the State that Frank Knapp had not committed the act of a principal. They were, however, genuinely convinced of his involvement, and concerned that both he and Joseph would go free. Webster's legal case was based almost entirely upon circumstantial evidence. After assessing the situation he adjusted his approach and determined to present a rhetorical argument.

Thus, The White Murder Trial offers a compelling legal argument juxtaposed by an equally compelling rhetorical argument.

1When the defendant's confession was admitted as evidence, by the State, in the trial of Joseph J. Knapp it confirmed the fact that Frank Knapp was not at the scene of the murder, thus he could not have been a principal. Dexter argued that Frank's conviction as a principal had been improper. It was now too late to help Frank, but this did not prevent the point from being raised in defense of Joseph. If Frank had not been convicted properly then there was no principal and Joseph, as an accessory before the fact, could not be tried. The argument was clear, sound, and legally correct, but the citizens of Salem wanted Joseph Knapp's life and they did not allow legal correctness to stand in their way.
The present case study affords an opportunity from which conclusions and generalizations may be advanced relevant to this and similar speaking situations.

As we have already observed, Dexter did recognize the legal argument, and within the paradigm of legal argument he developed it to its fullest potential.

From the very beginning of the proceedings, Dexter was overly-impressed by the undoubted strength of his case under American Law. This confidence led him to look upon the law as the pivot upon which the outcome of the trial would turn. He came quickly to believe that if he could capture the law for the defense and then hold the ground against the prosecution, he would be able to erect an impregnable defense.

Thus, during the inventive-creative stages of working up his plan, Dexter came to diagnose his entire case as a legal issue. If the charges were to be answered from a strictly legal point of view, then Dexter's justifying motive, of necessity, would be the legality of his position with reference to the law as it appeared in the statute books or was administered by the courts.

Once Dexter chose a legal angle-of-attack upon the charges, this choice would have caused a unique psychological integration or perception of the case and its facts to take place in at least four dimensions: (1) selection of data; (2) organization of data; (3) association and discrimination among various data; and (4) the criteria of judgment applied to various data and argumentative
alternatives. Accordingly, once Dexter had selected the law as his major line of defense, his subsequent field of inventive-creative maneuver was restricted. Such a narrowing of the rhetorical alternatives occurs because once a specific defensive strategy is selected, then the specific defensive tactics follow from logical necessity as the nature of the initial rhetorical commitment dictates the nature of the argumentative follow-through.

As delivered, Dexter's defense is most noteworthy for its precise and thorough discussion of single points. He was especially effective when dissecting the prosecution's case. He spent hours taking apart their charges, bringing up from his retentive memory point after point of the evidence against his client, weighing it and placing it in proper perspective. He presented an intricate argument, distinguished more by sheer mass and comparable to some of the efforts of Clarence Darrow.

In addition, it was often Dexter's technique to "unhorse" his adversaries rather than try to shout or wear them down. When the prosecution peeled off reams of bombast and paraded platoons of witnesses, he often made their collective pyrotechnics seem unconvincing by stating quietly and simply the point at issue. For example, when the sub-points of the Second Issue were in danger of clouding the real question through a complex manipulation of witnesses, Dexter finally took the time to outline the main issue. When the prosecution wandered far afield, he chided them for digressing. When they took refuge in abstruse technicalities,
he appealed to the common sense of the court. In short, Dexter had what might be called a "legal sense of tactics." Well trained in the law, he grasped legal situations quickly, thought them through logically in terms of the prerogative and statute law, spoke in the simplest English, and seldom tried to hide a weakness behind a barrage of words or legal phraseology.

Taken as a whole, Dexter's defense is marked with harmony of language, thought, and purpose. The broad principle which unified the rhetorical resources of his arguments was the rule of law. Consistently he focused the attention of the court upon the law as a guide for interpretation of his client's actions. This feature is even more striking because Dexter, like the Nineteenth Century lawyers, spoke at a time when much American oratory was still being influenced by the effects of Roman rhetoric, separated from invention and arrangement and burdened with ornament and excruciating detail.

On the negative side, Dexter's defense was weakened by a number of significant tactical errors.

1. Dexter failed to forestall the trial until the regularly scheduled session of the Supreme court. Whether he moved too slowly, if at all, is not known. In any case, the unfortunate result for the defense was that it was forced to present its case at a time when the people were extremely agitated.
2. The defense was delayed for ten days in obtaining a list, from the prosecution, of witnesses the prosecution intended to present.

3. Dexter's failure to move against Webster's entrance into the case must be reckoned as Dexter's most grievous tactical error. The law clearly stated that the government could only be represented by two officials, and they had already been designated as the Solicitor General and the Attorney General.

4. Dexter failed to point out to the jury the fact that Webster was using much of his evidence to support facts which had not been entered into evidence in the case, but which had become common knowledge through the efforts of the press.

5. The inability of the defense to have the court effectively enforce its ruling regarding the publication of the trial proceedings.

Dexter's crucial decision to base his client's defense on the law and logical appeals, and the subsequent skill of that defense, raise an important question for the critic: Should the critic accept Dexter's strategic assumptions, his point of view, and proceed to analyze and criticize the defense as he delivered it? The answer to this question would appear to be - No. Dexter was well aware that the trial could mark a turning point of grave importance in his career. He knew that he dared not fail, and he believed that his
best chance of success lay in a defense based solidly on the law. Dexter was no beginner when it came to argumentation and debate; hence it is almost inconceivable that he would have designed a poor, stupid, or naive defense. Therefore, if the critic were to accept Dexter's assumptions, if he were to develop the criticism from Dexter's own angle-of-attack, then the critic would be inevitably led, from logical necessity, to assess nothing more or less than what was done by Dexter. Clearly an acceptance of Dexter's "starting places" of argument would lead straight into an appraisal of Dexter's logical argument, emotional proofs, arrangement, and style as delivered. In short, if the critical judgments of Dexter's speaking were to proceed from his own assumptions as to the best trial strategy, then the critic would follow an unbroken circle of judging Dexter's tactics on the basis of Dexter's own strategy. Such a methodology of criticism would give any speaker high marks, unless the man were completely inept. The essence of rhetoric is sound strategy, tactics tend to be secondary.

This much is clear, Dexter's entire defense, as conceived on the basis of American Law, is compelling; indeed, he lost with it by only a small margin. Any criticism of his defense would find it to be legally, logically, and rhetorically near-perfect. Weaknesses can be found in it only at the level of microscopic detail, and these defects are all trivial. Moreover, the strengths of his defense are, in a sense, also trivial because they too follow from his over-all strategic decisions. Taken as a forensic argument
which disputed questions of fact and law, Dexter's work could serve as nothing less than a model for students of this genre of discourse. However, to take Dexter on his own terms would be to miss the major rhetorical lessons of the trial. He must be criticized, instead, on the basis of his invention, i.e., his strategy. He must be criticized on the basis of whether he did indeed construct the strongest possible case from among the nearly infinite number of alternatives which were open to him as an advocate.

The alternative which Dexter did select as his primary line of defense was the law. Through the course of both trials he advanced American Law as the leading principle to which all his efforts were connected and subsidiary, and which pointed like a beam of light through his entire plan. As Arnold points out, this kind of unity and emphasis is effective:

Such centricity in composition has merit in almost any oral discourse but it contributes special force to forensic argument, where facts of human action and their relations to accepted systems of rules and policies are the basis of judgment. Harry Caplan has used the phrase "the complete economy of the entire speech," to suggest this degree of centricity required in effective pleading.²

Dexter undoubtedly achieved a high degree of unity and systematic emphasis. He created during the proceedings of each day of the trial a complete economy of argument, in which the principle of American Law was advanced as his justifying motive. By the time

the prosecution reached the final Issue, it was clear that Dexter was winning. The stage was thus set for the prosecution's deadly change of strategy--Webster's shift which argued for the admittance of Colman's testimony due to a misinterpretation, on the part of the court, of the prosecution's argument. Despite this move Dexter still kept his defense anchored upon its original ground. As a result, he enjoyed the concentration of all his forces upon a single warrant, which yielded rhetorical advantages similar to those of interior lines in military warfare; however, his defense was so concentrated that the prosecution, once it broadened its attack, now struck at an open, vulnerable enemy.

None can asperse the precept behind this conception of the case, or the ensuing methodology of execution. It utilized all of Dexter's personal resources and the peculiar strengths of the available documents and witnesses; it followed closely the accepted idea that at the American Bar, the ground of argument was generally limited to precise law and statute, and struck hard at the essence of the charges put forth by the prosecution. The strategy overlooked one overpowering weakness. It was a Maginot Line type defense, extremely vulnerable to flanking movements. Dexter won battle after battle as the prosecution broke the thrust of their charges in frontal attacks against his main defense. But he lost the war because he failed to cover his defensive line with alternative strategies, which could have been made into emergency defenses if his legal position became threatened. Dexter staked everything on one idea.
Believing his position, under the law, to be impregnable, he stubbornly adhered to his original plan and supported his arguments primarily with logical appeals. When the prosecution shifted ground on him, he was caught unprepared, unable to retreat or maneuver. Dexter lost because his model of legal reasoning was not responsive to the audience.

What could he have done to create a legal-rhetorical case? The ordinary lawyer collects facts, analyzes evidence, and makes his appeal. There are few who use history, psychology, politics, and philosophy in order to show the true underlying significance of the cause. In this sense, Dexter's entire defense was ordinary. For example, the larger danger of convicting Frank Knapp was not amplified and fully developed. If Frank Knapp was convicted outside of the law, all suspects of a crime would stand on the same ground. The precedent would be set for any and all. Justice would be destroyed, the legal system and its courts would be taken over by the State, the Constitution and the Government would be paralyzed; and, in the paralysis, the people would see their individual power dissolve.

In other words, what Dexter needed to do, above all, was to include in his defense strong reasons for acquittal which had deep personal importance for the jury. Seen this way, Dexter's defense simply did not put forward appeals which were, in the end, meaningful to the people. Instead of speaking directly or indirectly to either their personal well-being or their long-term welfare he based the
majority of his case upon questions of fact and law. He gave the jury dry legal arguments, supplemented by manifold logical arguments, all of which had scant powers of motivation.

If the jury had been made to agree that Frank Knapp's fall entailed their own ruin, they might have made his fate a point on which to stand. At any rate, a strong rallying point had to be created if Dexter seriously expected the jury to decide contrary to public opinion. Yet, he did not try to stimulate the jury on the basis of deep-seated springs of motivation. If he could have shown that the conviction of his client was only the first step in the acquisition of personal freedom under law, the jury may have seriously considered action contrary to the socially supported position. Yet, this idea, which should have formed a consistent, underlying theme of Dexter's defense, was mentioned only sporadically from time to time during the trial and was never fully developed.

As the lawyer has come to learn over the years, one of the most important rhetorical problems for the defense is to advance strong reasons for acquittal which have deep personal importance to the jury. The paramount task is to make the jury want to decide the case for the defense. Points of law and argument merely give the jury a reason for doing what the advocate has already made him want to do through the presentation of his persuasive message. In Dexter's case his strategy was based upon the generalized concept of the judicial model as well as upon the assumption that the most persuasive argument that could be advanced had to be supported by
logical appeals. The judicial model is theoretically represented by a rational concept of the inductive process. Jurors are asked to keep open minds and to refrain from reaching any decision until both sides have presented their cases. However, it can be argued that such an open-minded approach to decision-making may be more an ideal than a reality; since, instead of a logical establishment of criteria for determining guilt or innocence, and a systematic businesslike assessment of what is reasonable, the jury begins by determining guilt or innocence. Only after this decision has been made does the jury decide which of the logical arguments presented during the course of the trial it will accept in support of its position. As seen in this light logic is, then, little more than a structural method of justification which the jury uses to support its claim.

If the judicial model as Toulmin\(^3\) and Perelman\(^4\) suggest exemplifies the nonformal mode of reasoning then it can likewise serve as a model of the decision-making process which each individual enters into. From this jurisprudential model, which combines legal and rhetorical aspects of argumentation, we can conclude that man does not think or reason in terms of formally valid systems of logic, but rather that he advances a claim and then searches for logical arguments which support his claim. The amount of support sought


will depend largely upon the amount of justification needed for the claim. The present study tends to indicate that the amount of justification needed may well be a product inversely proportionate with the degree of cognitive dissonance produced on the part of the audience. In a situation where there is extreme dissonance it seems reasonable to assume, then, that the most persuasive message may not necessarily be the most logically oriented one, nor need it be; rather, the most persuasive message will be that message which most closely parallels the emotionalized attitudes of the audience, regardless of appeals. Thus, the tendency to evaluate arguments in a manner consistent with attitude will be positively related to the strength of the attitude. When an individual's attitude is intense, his evaluation of relevant arguments is most likely to be modified by his attitude in the direction of consistency with the attitude. For example, as the anti-Knapp attitude becomes more intense, the jury will tend to accept more anti-Knapp arguments as logically sound and to reject more pro-Knapp arguments as logically unsound. Empirical support for this notion is advanced in studies by Feather,5

McGuire,6 Thistlethwaite,7 Miller8 and Stone.9 Thus, there is considerable evidence that an individual's attitude toward the content of an argument influences his judgment of its logical soundness. The most persuasive interpretation of this concept is advanced by Mary Henle:

It is a plausible hypothesis that these influences [attitudinal] do not distort the reasoning process, as has frequently been stated or implied—indeed that they do not act at all on the reasoning process—but rather that they affect the materials with which thinking works. . . . (a) It may be that a strong attitude toward, or emotional involvement with, particular material is in part responsible for the difficulty which many unsophisticated subjects experience in distinguishing between drawing a conclusion that is logically valid and one that is believed to be correct. . . . If this suggestion is correct, the more personally relevant the material employed, the more difficult it will be to accept the logical task. . . . (b) An attitude can select from among the possibilities that the material presents, singling out for example, one among several possible meanings.10


If this is, indeed, the case then it may be concluded that the most persuasive message is that message which clearly parallels the emotionalized attitudes of the audience, while offering enough logical, or near logical appeals, to allow for justification of the claim advanced. This, in turn, emphasizes the concept that proof is only proof if accepted as such in the mind of the listener.

In The White Murder Trial we have a case of manifold circumstantial evidence with numerous ramifications involving subordinate testimonial evidence which resulted in a conviction. Using this case as an example, the absolute necessity of proper audience analysis becomes paramount. If the lawyer is to be successful within the judicial system it would appear that his first concern should be audience analysis, and his second, adaptation to the logical dictates inherent in the system. We might conclude, then, that the primary flaw in Dexter's strategy was a reversal of these priorities. This may be explained in light of the fact that The White Murder Trial was only Dexter's second major case. He was primarily a legal scholar who was most familiar with the law from a theoretical point of view, and as such, he developed a case acceptable in terms of law school standards. By practicing the letter of the law it was his judgment that he would be safe, but when one applies modern attitude theories the weaknesses of Dexter's case become apparent. Webster, on the other hand, was a legal practitioner and had learned through
experience how to win cases. This coupled with the tremendous influence Webster's image had on the trial left Dexter at a definite disadvantage.

I have suggested that the essence of Dexter's defense was the convergence of all his forces of discourse through logical appeals towards a legal basis for decision in the case. During the entire trial lasting two months there are no digressions, no wasted thoughts. From his stasis, he developed a defense so effective that it nearly defeated the prosecution, so well-constructed that it practically defies negative criticism, except at a trivial level. I have also suggested that there is in his defense much that is striking as proof, especially his closing statement with its thorough and meticulous discussion of single points. However, Dexter was simply outmaneuvered by Webster on the strategic level. He set himself firmly upon the law and stubbornly clung to that position until he saw his position undermined. His argument on the law was tenacious and strong, but his inflexibility must be regarded as the negation of rhetorical generalship.

When the hour for the verdict arrived, nearly all illusions had vanished. Dexter knew that he had lost the fight and would be defeated; however, his able and often eloquent defense clearly places Dexter in the main-stream of American public address as an able practitioner of the art as it was in the Nineteenth Century. To be sure Dexter was extremely capable as a lawyer, but he simply
made too many basic rhetorical errors to be granted a place alongside such speakers as Webster, Clay and Calhoun.

Dexter deserves rather a place in American public address at the head of that class of such near-greats as Story, Choate, and Hoar. His defense is interesting to the rhetorician or historian of public address for its thorough and unified argument from a single principle. He exemplifies the best methods of effective rebuttal and cross-examination. And, in his closing statement, he shows how a near-great speaker can rise for a moment to the height of eloquence.
APPENDIX A

MESSRS. DEXTER, GARDNER, AND RANTOUL
THE DEFENSE ATTORNEYS

The common chronological facts of the lives of Dexter, Gardner, and Rantoul are recorded with fundamental agreement by a number of authorities. It would add little, and would serve our purpose in no way to attempt an exhaustive synthesis of those facts here. It would seem more valuable for us to refer briefly to some of the more important aspects in passing, and to pause a bit longer on those events or incidents which would seem most likely to have had an influence on the speaking or legal career's of each of these gentlemen.

Franklin Dexter

Birth and Youth. — Dexter's father, Samuel Dexter, Jr., a Harvard graduate studied law in Worcester under Levi Lincoln, was


2Lincoln was Governor of Massachusetts at the time of the White Murder Trial.
a member of the General Court, Member of Congress, United States
Senator, Secretary of War under John Adams, followed Oliver Walcott
as Secretary of the Treasury, and served as Secretary of State so
that he could administer the oath to John Marshall as Chief Justice
of the United States Supreme Court. On retiring from office Dexter
became famous as an advocate before that same court. Dexter's circle
of friends numbered among it the most prominent and able men of his
time. After his death, May 4, 1816, John Adams said: "I have lost
the ablest friend I had on earth in Mr. Dexter."3 His mother,
Catherine Gordon Dexter, was of English origin. Franklin Dexter
was born in Charlestown, Suffolk County, Massachusetts, November 5,
1793, into a community of New Enganders, heavily imbued with Puritan
tradition.

His parents decided early that he should receive extensive
education. This decision seems to have been motivated as much by
the prominent position held by the family and by the social signifi­
cance attached to good education as by the precautious intellect
possessed by the child.

Education and Later Life.—Dexter received his early education
in the public schools, and, proceeded to Harvard College where he
graduated, with distinction, in 1812. He read law with Samuel Hubbard4
and was admitted to practice in the Common Pleas Court in Suffolk
County in September, 1815, and in the Supreme Judicial Court in

3Clarence W. Bowen, Samuel Dexter of Woodstock, p. 7.
It is interesting to note that Daniel Webster studied under
Christopher Gore, and further that, the professional associates and
friends of Mr. Gore were the leaders of the Boston bar when it had
many distinguished men whose names hold high places in the history of
American law. "Among them," Lodge tells us, "were Theophilus Parsons,
Chief Justice of Massachusetts; Samuel Dexter, the ablest of them
all . . .; All these and many more Webster saw and watched, and
he left in his diary discriminating sketches of Parson and Dexter,
whom he greatly admired. . . ." Henry Cabot Lodge, Daniel Webster,
pp. 28-30.

4Samuel Hubbard was born in Boston in 1785 and graduated
from Yale in 1802. He established an extremely successful practice
in Boston and in 1842 he was appointed judge of the Supreme Judicial
Court. He continued on this bench until his death in 1847.
December, 1818. On September 28, 1819, he married Catherine Elizabeth, daughter of Judge William Prescott of Boston. They had five children. Dexter established his practice in Boston, that same year, and soon became eminent at the bar. He was associated at various times as partners with Charles Greeley Loring, William Prescott, William H. Gardner, and George W. Phillips. In 1819, the year after his admission to the bar of the Supreme Court, he was selected to deliver the annual Fourth of July oration before the authorities of the town of Boston. That he should have been chosen at the age of twenty-six to perform such a distinguished duty attests to the ability and promise with which he began his professional career. In 1825 he was a representative from Boston serving again in 1836 and 1840. In 1825 Dexter was also a member of the Common Council of Boston, and in 1835 he was a State Senator. He took an interest in military affairs, and was for some time commander of the New England Guards. In 1841 he was appointed by President Harrison as United States District Attorney for the Commonwealth and retained this position for four years exhibiting, according to Judge Sprague, "the most exact appreciation of the duties of his station, and every qualification for their performance." In 1848 he was a lecturer at Harvard Law School, and in 1849 he was reappointed District Attorney by President Taylor, but only held office a short time.

Dexter possessed a rare taste for fine arts, and was a good friend and admirer of Washington Allston. His contributions to literature are numerous, and indicate good taste and culture. The pages of the North American Review give evidence of his interest in the Arts and his gifts as a critic.

Dexter's activities as a trial lawyer were admittedly limited when compared to the dockets of his contemporaries, yet despite this he was one of the first to be sought in important cases, or when great points of law were to be discussed. The first occasion upon which he came prominently before the public was the trial of Theodore Lyman (12 American States Trials, 327) for a criminal libel upon Daniel Webster in the Jackson Republican, October 29, 1828. Dexter was retained for the defense, which he conducted with great ability. The jury was unable to agree upon a verdict and a nolle prosequi was subsequently entered on behalf of the Commonwealth. The case attracted national attention owing to its political attributes. In 1830 as counsel for the defense of the two Knapps in connection with the murder of Joseph White, he once again stepped into the foremost rank as an advocate. In 1840 Dexter was associated with another Boston cause celebre, when he defended Mrs. Kenney who was on trial for

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5In 1836 he served on the Select Committee of the Legislature, established to revise statute law.
the murder of her husband. In this case Dexter won an acquittal. It was during this case that William T. Davis first saw Mr. Dexter. Davis allows us the only available description of Dexter. He describes Dexter as having a "Grecian head covered with curls of hair almost black, the sharp cut features and brilliant intellectual eye, which made him in appearance the ideal of an orator and man." Davis goes on to indicate, that,

In form and presence he [Dexter] belonged to the class of which Rufus Choate and Daniel Daugherty were also conspicuous types, and of the three, if Choate possessed more fire and fluency of eloquence, and Daugherty more of classical imagery, to Dexter must be accorded the merit of grace and elegance which marked him as a gentleman and scholar.

Although Dexter was conspicuous among his contemporaries for his sound legal knowledge, possessing outstanding ability as an advocate and equipped with every qualification for public life, his achievements fall far short of his intellectual promise. The possession of independent means obviated the necessity of continuous and sustained effort in the field of law and posterity can only judge him by his record in the three great cases with which his name is associated.

From 1849 until his death in Beverly, Massachusetts, August 14, 1857, Dexter devoted his remaining time to travel and literary study.

William Howard Gardner

Gardner's father, Reverend John Sylvester Gardner, a gentleman of Welch extraction, served as rector of the Trinity Church in Boston. His mother Mary was also of Irish-Welch parentage.

Despite Gardner's apparent prominence and success there is little biographical material available about him. Although there have been many geneologies and family histories written, which are available at the Massachusetts Historical Society in Boston, concerning the name Gardner, none seem to deal with the family in question. We do know, however, that Gardner was born in Boston, and that he


7Ibid., p. 569.
graduated from Harvard in 1816. He studied law at the Harvard Law School, and was admitted to the Suffolk bar on October 11, 1819. Gardner established his law practice in Boston and married a daughter, her name is unknown, of Col. Thomas H. Perkin of Boston. Gardner died in 1882.

Robert Rantoul

Birth and Youth.—Rantoul's father, Robert Rantoul and his mother were both of French ancestry. Robert, born in Beverly, Massachusetts, August 13, 1805, is reported to have been a "puny" child and through life a "confirmed dyspeptic." His complexion was dark and sallow, his eyes black, and his hair, originally black, became steelgray in his "early prime."

Education and Later Life.—At the age of fourteen, on September 8, 1819, Rantoul entered Phillips Andover Academy, and in 1822 he was admitted to Harvard College where he graduated valedictorian of his class in 1826. In his freshman year he was instrumental in founding a student's club for debate called the AKPIBO O YMENOI. On leaving college Rantoul read law first with Hon. John Pickering of Salem, and then with Hon. Leverett Saltonstall and was admitted to the Common Pleas Court in 1829, the year before he was to become involved in the White Murder Trial. In 1827 he was again instrumental in founding a debate club, which, the following year, was to form the basis for the Lyceum system in that area. He established his first law practice in Salem and remained in that town until he took residency in Gloucester. Rantoul lived in Gloucester until 1838 and served as that town's representative to the General Court during this period. On August 3, 1831, he married Jane Elizabeth Woodbury who gave him two sons. From 1837 to 1843 he held a seat on the first State Board of Education. In 1839 Rantoul removed his residency to the place of his birth, Beverly, and his law practice to Boston. In 1843 he became Collector of the Custom for the Port of Boston and Charleston, and from 1845 to 1849 he followed and preceded Dexter as the United States District Attorney for the Commonwealth. In 1850, he was an original corporator and director of the Illinois Central Railroad and in April of 1852 he appeared in the defense of Thomas Sims, the first fugitive slave surrendered by Massachusetts under the new act of 1850. Rantoul was honored by Hon. Charles Sumner, on announcing his sudden death to the Senate of the United States, and by Hon. Horace Mann, who made the same announcement in the House of Representatives. Rantoul died in 1857 at the age of forty-seven.
APPENDIX B

GRAND JURY HEARING

At the Supreme Judicial Court for the Commonwealth of Massachusetts, holden at Salem, on the second Tuesday in July, A.D. 1830, pursuant to an Act of the Legislature, passed June 5, 1830,

Present,

Hon. ISAAC PARKER, LL.D., Chief Justice.
Hon. SAMUEL PUTNAM, LL.D.,
Hon. SAMUEL S. WILDE, LL.D., Justices.
Hon. MARCUS MORTON

The Grand Jury being empaneled and sworn, the following charge was delivered to them by his Honor Chief Justice Parker.

Gentlemen of the Grand Jury,—

This Court is convened out of its ordinary season in virtue of a special appointment of the Legislature made at its last session, and you have been summoned here by the same authority, and having had the oath administered to you, which is prescribed by law to qualify you to act in the capacity of Grand Jurors, you now have become the Grand Inquest of the Commonwealth for the body of this County of Essex, with all the power and duties which pertain to that body when attending the ordinary sessions of this Court in relation to such cases as come within the purview of the statute above referred to.

The jurisdiction given to the Court by this Act of the Legislature, extends to all crimes and misdemeanors which may have been committed within the body of this County before the passing of this Act; such as may have occurred since that time are to be left to the usual administration of justice at the succeeding regular term of the Court.

Notwithstanding the general terms in which the jurisdiction is given, comprehending all crimes and misdemeanors, there is reason to believe that the chief purpose of the Legislature in establishing
this term, was that judicial inquiry should be made into a trans-
action of a most afflictive nature which took place in this town some
months since.

This transaction was of a nature to excite alarm and agita-
tion, not only in the vicinity where it happened, but throughout the
Commonwealth and even beyond it.

An aged and respectable citizen, living in the centre of this
populous town, so long remarkable for its tranquillity, peace and
order, he being surrounded by all those circumstances which usually
give security to the property and person, has been assassinated in
his bed, probably in the depth of sleep—his skull fractured by a
blow from some heavy weapon—his body pierced with many wounds—and
this was done with such secrecy that not a trace for a long time
appeared to be left, by which the perpetrators of so horrid a deed
could be discovered. No wonder that the shock felt here was so
great; it has vibrated through the whole community.

Murder is under all circumstances an appalling crime, it
exhibits in the perpetrator the deepest stain of depravity of which
human nature is capable. But when in the stillness of night, during
the hours of repose, the assassin invades the quiet mansion—steals
into the chamber of sleep—and converts that sleep into death by one
fell blow, and as if insatiate of blood seeks the heart of the victim,
which had already ceased to beat—there is no stoicism, no philosophy,
hardly any religion which can repress those feelings of terror, those
expressions of horror, which such a tragedy is calculated to produce.

I speak thus of the crime because it is notorious. We all
feel alike about it, nor is there any occasion to suppress the feeling,
but it must be regulated and kept within just bounds.

You are convened here not so much to inquire if a crime has
been committed, though even that must be proved to you by legal
evidence, as to seek out the perpetrators and present them, if
discovered, to the bar of this Court for trial. It is the duty of
the Court to warn you against suffering your indignation for the
crime to affect your inquiries for the offenders. The popular voice
justly cries out for vengeance, but it is only upon the guilty it
ought to fall.

There is danger in all great excitements that the mind may
be thrown off its balance, that the process of inquiry may be too
rapid to be sure, that the suspected may readily be believed to be
guilty, that prepossession may supersede proof. How apt are we all
upon hearing of the commission of some great crime to listen greedily
to every circumstance which has a tendency to fix the guilt upon
some individual, to shut our ears against exculpatory facts, and to pass sentence of condemnation before any hearing and without any trial.

This is a state of mind which disables us from acting impartially in the office of judge or juror. We are to stand indifferent between the Commonwealth and the accused; ever to presume that he is innocent until we have proof that he is not. We are to sift and weigh all the facts produced in proof with a hope that they may all be consistent with his innocence. A Grand Jury especially, who by the very nature of their duty are prevented from hearing the accused, or any evidence in his favor except what may be drawn from the witnesses produced against him, should be cautious not to act hastily, or upon slight evidence.

They ought to be satisfied before they agree upon an indictment, that the evidence as it appears before them, is sufficient to convict him of the imputed crime, for if it should not be sufficient under those circumstances, what probability is there of a conviction when the party shall be put upon his full defense, with the privilege of adducing counter evidence in his favor, and of counsel to enforce it? And no citizen ought to be exposed to the anxiety and ignominy of accusation for a capital offence if there be no probable proof of his guilt.

It is a most happy characteristic of our system of criminal justice that it requires deliberate and patient investigation. Let those who complain of the slowness of its pace, consider, that it is framed for the protection of innocence as well as for the punishment of guilt, and that more rapid movements might involve in ruin those who might afterwards be found not to have deserved it. Occasions like the present sometimes arise when a just indignation at some enormous crime pervades the whole community, and the officers of justice are loudly called upon by the public voice to hasten the exercise of their functions, and to purify the land of the blood with which it has been stained, by an early condemnation of the supposed perpetrator; but the law moves not from its course, it gives time for deliberation, for the return of sober thought which has been suspended by agititation and excitement,—it calls for proofs,—it gives reasonable opportunity for defence,—it proceeds warily and cautiously— and decides only when it may be presumed there is little room to doubt the rectitude of its decision, and this is all which can be attained by human tribunals, for fallibility is stamped upon every thing human.

Under the guidance however of a wise Providence, and with a due observance of legal formalities and rules, we may trust ourselves even with the lives of our fellow beings; for the law has committed them to our charge, and if we severally discharge our duty with honest hearts and with the use of all the light bestowed upon us,
we shall stand approved to our consciences and to the Great and Just Judge whose ministers and servants we are.

There is more than common occasion for recommending the exertion of your powers to throw off all preconceived opinions, and to bring your faculties to the examination of the evidence which will be submitted to you with entire self collectedness and impartiality. The extraordinary character of the crime has seized upon all imaginations, and pre-occupied many judgments. An unusual publicity has been given to such discoveries and disclosures as have from time to time been made.

The self execution of one who has been supposed the immediate agent of the cruel deed, has given additional force to opinions before perhaps strongly conceived.

Gentlemen! It is on such great occasions that superior wisdom is called for. In the ordinary course of crime, the machinery of justice will work steadily and regularly, with only its customary superintendence. But when great and astonishing events occur, which call for judicial investigation—when the public mind is agitated and disturbed, and the popular voice is audible, crying for vengeance, it is then that those who are clothed with the robes of magistracy, or who otherwise become functionaries of the law, are to divest themselves of human passions—to elevate themselves above the dense atmosphere which surrounds them, and imitate, in their humble measure, the wisdom and impartiality of the God of Justice!

Gentlemen! We cannot but regret the unusual publicity that has been given to the facts and circumstances which have transpired on this mournful subject. We shall see, I fear, that it will have had a tendency to impede the course of inquiry; but we trust you, who represent the country in the first stage of this solemn proceeding, will assume the attitude of impartial judges of the evidence; that you will diligently inquire and true presentment make; that you will be influenced neither by prejudice nor favour; that you will present things truly, as they come to your knowledge, according to the best of your ability and understanding.

It is not necessary upon the present occasion to discuss the various classes of homicide, in order to distinguish that which is justifiable, as in self defence—that which is the effect of sudden provocation, which may be manslaughter,—and that which is the effect of malice aforethought, which is murder.

If it shall turn out in evidence that the house of the deceased was entered in the night time—that he was slaughtered in his bed; whether the object of the perpetrator was plunder, revenge, or the hope of reward from others who may have incited the deed, it is murder of the deepest die in regard to those who may have given
the death wound, and any who may have been present, aiding and abetting the crime.

Such is the common law, and such is the provision of the statute of this Commonwealth, which enacts that if any person shall commit the crime of wilful murder, or shall be present aiding and abetting in the commission of such crime, or not being present shall have been accessory thereto before the fact, by counselling, hiring, or otherwise procuring the same to be done, every such offender who in the Supreme Judicial Court shall be duly convicted of either of the felonies and offences aforesaid shall suffer the punishment of death.

It may be a subject of inquiry, what constitutes presence within the meaning of the second branch of this enactment, 'present aiding and abetting in the commission of such crime.'

And the construction of this phrase, which is taken from the common law, has been settled in ancient times by wise and learned sages of the law, and that construction adopted and sanctioned by successive judicial decisions down to the time of the adoption of our Constitution, so that the legislature which enacted this statute, without doubt referred to this construction when they framed it.

By this construction it is not required that the abettor shall be actually upon the spot when the murder is committed, or even in sight of the more immediate perpetrator or of the victim, to make him a principal.

If he be at a distance, co-operating in the act by watching to prevent relief, or to give an alarm, or to assist his confederate in escape, having knowledge of the purpose and object of the assassin,—this in the eye of the law is being present, aiding and abetting, so as to make him a principal in the murder.

The distinction between a person thus situated and one who is denominated by the statute an accessory before the fact is, that the latter is not only in every sense absent from the scene of crime, but is not an immediate participator in it; he may not know the time when and the place where it is committed. He has previously, perhaps days or months before, hired, counselled or procured the deed to be done, but he has no immediate agency in the deed.

His crime is deemed by the law to be as great as his who strikes the blow; it is often in a moral point of view greater, as it may combine a greater number of desperate and diabolical motives, without the influence of which the crime would never have been committed. It denotes the savage heart of the murderer, without his bold and daring hand. It puts in peril his own soul, and the souls of others, who, but for him might have gone free from the
guilt of blood. Thus the law punishes the accessory before the fact in the same manner as it punishes the actual perpetrator—they are alike murderers.

There is at the common law a difference, and it is supposed to exist also under our statute, in regard to the form and the time of trial, between those who are called principals, and accessories before the fact, it being held that unless there be a conviction of a principal there can be no trial of the accessory. This difference, if it exist, is a relic of the unwise refinement of ancient times, there being no good reason why an accessory before the fact to a crime proved to have been committed, should not be tried and punished, although the principal may have escaped, by death or otherwise, the punishment which awaited his crime in this world.

But if occasion should arise to examine this point, and the common law should not be found to have been varied by our statute, the legislature will probably afford a remedy for future cases.

I have thus, gentlemen, I believe discharged all the duty of the Court, in this stage of its proceedings, in regard to the principal subject which will require your attention. If before the passing of the act under which we assemble, other offences cognizable in this Court shall have been committed, and not yet have been before a grand jury, you are authorized but not required by the statute to inquire into, and present them. In regard to such cases as well as to any questions of law which may arise upon the subject on which I have given you the charge, you will have the advice and assistance of able and experienced officers of the government, whose duty it is to facilitate your investigations, and to reduce the result to such form of presentment as the nature of each case may require.

Gentlemen—Your duty and ours may be arduous and embarrassing—that it may be discharged with clear understandings and firm hearts let us look to the dispenser of all light and wisdom for his blessing upon our endeavours.

The customary prayer was then offered up by the Rev. Mr. Cleaveland, and the Court, having been thus opened, was addressed by Franklin Dexter, Esq., of Boston, as one of the Counsel for the prisoners in the following motion:

Dexter. Before the grand jury go out, I would respectfully move, that they be instructed as to what evidence they should receive. This was done in a celebrated case;—that of Aaron Burr.

Chief Justice. That case is remarkable for that, and another circumstance, not known to our law, that is, the challenge of grand jurors. With us the Court never instruct the grand jury
upon the nature of the evidence to be heard before them. There will be a revision of their doings and it is unnecessary to go into the inquiry before hand.

Solicitor General. It is a sufficient answer to the suggestion of the gentleman, that in the case alluded to, Chief Justice Marshall said that "it was usual and the best course for the court to charge the jury generally, and to give their opinion on incidental points as they arose, when the grand jury themselves should apply to them for information.

Dexter. It is true that the remark was made by Chief Justice Marshall, but he did send special instructions to the grand jury before the question arose. He did direct that "no affidavits nor papers, containing distinct substantive testimony against the accused should be sent to the grand jury."

Chief Justice. It would be a very inconvenient practice. The law reposes confidence in the officers of the government; they are not supposed to procure an indictment against a man upon improper evidence.

It is the opinion of the Court that they cannot go out of the usual course. They think it would be a good rule for the officers of the government to adopt, to offer no evidence to the grand jury, which they would not be willing to offer in Court.

Dexter. Before the jury retire, I wish to inquire if the English practice does not prevail here, to indorse the names of the witnesses examined before the grand jury upon the indictment.

Sol. General. We have a better practice, and that is, to return the names of the witnesses examined before the grand jury, and that makes a part of the record of the case.

The Court then adjourned to Thursday morning, at 9 o'clock. Thursday morning the Court met and adjourned to 3 o'clock, P.M. Afternoon, met and adjourned to Friday morning, at 8 o'clock.

July 23rd, FRIDAY MORNING.

At the opening of the Court, the Chief Justice remarked that there seemed to be an intention of publishing in the newspapers, the proceedings of the Court from day to day. Such publications must necessarily be imperfect, and perhaps mischievous. The Court is, therefore, decidedly of opinion that the proceedings ought not to be thus published, as they would give only imperfect information. What passes one day may be essentially altered or modified by the doings of a subsequent day.—There may be no objection to publishing
the state of the case as it advances; but there must be no publication of the evidence before the trials are concluded.

The Grand Jury came into Court with the bills which they had found.

The prisoners, John Francis Knapp, George Crowninshield, and Joseph Jenkins Knapp, junior, were then placed at the bar and the following indictment was read by the Clerk.

INDICTMENT

COMMONWEALTH OF MASSACHUSETTS

Essex, ss. At a special term of the Supreme Judicial Court, begun and held at Salem, within and for the said county of Essex, by virtue of an act, entitled "An Act to provide a special term of the Supreme Judicial Court, within and for the County of Essex," on the third Tuesday of July, in the year of our Lord one thousand eight hundred and thirty.

The Jurors for the said Commonwealth upon their oath present, that John Francis Knapp, of Salem, in the county of Essex, mariner, not having the fear of God before his eyes but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year of our Lord one thousand eight hundred and thirty, with force and arms, at Salem aforesaid, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth then and there being; feloniously, wilfully and of his malice aforethought, did make an assault; and that he the said John Francis Knapp, with a certain deadly weapon made of hard wood, and loaded in the head thereof with lead, called a bludgeon, of the value of twenty cents, which he the said John Francis Knapp in his right hand then and there had and held, the aforesaid Joseph White in and upon the left side of the forehead, extending over the left temple of him the said Joseph White then and there feloniously, wilfully and of his malice aforethought did strike, penetrate, wound and fracture, giving to the said Joseph White, then and there, with the bludgeon aforesaid, in and upon the left side of the forehead, extending over the left temple of him the said Joseph White one mortal wound of the length of three inches, and of the width and depth of two inches; of which said mortal wound the aforesaid Joseph White then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Francis Knapp, him the said Joseph White in manner and by the means
aforesaid, feloniously, wilfully and of his malice aforethought, did kill and murder; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute, in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present, that George Crowninshield, of Danvers, in the county aforesaid, machinist, and Joseph Jenkins Knapp junior, of Wenham, in the county aforesaid, mariner, before the felony and murder aforesaid, in the manner and by the means aforesaid, was done and committed, to wit, on the second day of April, in the year aforesaid, with force and arms at Salem aforesaid, in the County aforesaid, feloniously, wilfully and of their malice aforethought, did counsel, hire and procure the said John Francis Knapp, the felony and murder aforesaid, in manner and by the means aforesaid, to do and commit; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid upon their oath aforesaid do further present, that the said John Francis Knapp, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year of our Lord one thousand eight hundred and thirty, with force and arms at Salem aforesaid, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that he the said John Francis Knapp, with a certain deadly weapon called a dirk, of the value of fifty cents, which he the said John Francis Knapp in his right hand, then and there had and held, the aforesaid Joseph White, in and upon the left side of the body, and in and to the heart of him the said Joseph White, then and there feloniously, wilfully and of his malice aforethought, did strike, penetrate, stab and wound, giving to the said Joseph White then and there with the dirk aforesaid, in and upon the left side of the body and in and to the heart of him the said Joseph White, several mortal wounds and stabs of an inch in length, and a quarter of an inch in width, and six inches in depth, of which said several mortal wounds and stabs he the said Joseph White then and there instantly died; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that before the felony and murder aforesaid, in manner and form last aforesaid, was done and committed, to wit, on the second day of April, in the year of our Lord aforesaid, the aforesaid Joseph Jenkins Knapp junior, and George Crowninshield, with force and arms, at Salem aforesaid, in the county aforesaid, feloniously, wilfully, and of their malice aforethought, did counsel, hire and procure the said John Francis Knapp the felony and murder aforesaid, in the manner and by the means last aforesaid, to do
and commit:—against the peace of the Commonwealth aforesaid, and
contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do
further present, that one Richard Crowninshield junior, late of
Danvers, in the county aforesaid, machinist, and John Francis Knapp,
of Salem aforesaid, in the county aforesaid, mariner, not having the
fear of God before their eyes, but being moved and seduced by the
instigation of the devil, on the sixth day of April, in the year
aforesaid, with force and arms at Salem aforesaid, in the County
aforesaid, in and upon one Joseph White, in the peace of the said
Commonwealth, then and there being, feloniously, wilfully, and of
their malice aforethought, did make an assault, and he the said
Richard Crowninshield junior, with a certain deadly weapon, made of
hard wood, and loaded with lead in the head thereof, called a
bludgeon, of the value of twenty cents, which he, the said Richard
Crowninshield junior in his right hand then and there had and held,
in and upon the left side of the forehead, over the left temple of
him the said Joseph White, then and there feloniously, wilfully and
of his malice aforethought, did strike, penetrate, wound and fracture,
giving to the said Joseph White, then and there, with the bludgeon
aforesaid, in and upon the left side of the forehead, over the left
temple, of him the said Joseph White, one mortal wound, of the length
of three inches and of the width and depth of two inches; of which
said mortal wound he the said Joseph White, then and there instantly
died. And so the jurors aforesaid, upon their oath aforesaid, do say,
that the said Richard Crowninshield junior, him the said Joseph White,
then and there, in manner and form last aforesaid, feloniously, wil­
fully and of his malice aforethought, did kill and murder, against
the peace of the Commonwealth aforesaid, and contrary to the form
of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do
further present, that afterwards, to wit, on the fifteenth day of
June, in the year aforesaid, the said Richard Crowninshield junior,
with force and arms, at Salem aforesaid, in the county aforesaid, as
a felon of himself, feloniously, wilfully and of his malice afore­
thought, did kill and murder himself, so that he the said Richard
Crowninshield junior, cannot be further proceeded against or held
to answer for the felony and murder last aforesaid.

And the jurors aforesaid, upon their oath aforesaid, do
further present, that the said John Francis Knapp, at the time the
said felony and murder in manner and form last aforesaid, was done
and committed, feloniously, wilfully and of his malice aforethought,
was then and there present, aiding and abetting the said Richard
Crowninshield junior, the felony and murder of the said Joseph White
in the manner and by the means last aforesaid, to do and commit.
And so the jurors aforesaid, upon their oath aforesaid, do say,
that the said John Francis Knapp, the aforesaid Joseph White then
and there in the manner and form last aforesaid, feloniously, wil­fully and of his malice aforethought, did kill and murder, against the peace of the Commonwealth aforesaid and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that Joseph Jenkins Knapp junior aforesaid, and George Crowninshield aforesaid, before the felony and murder of the said Joseph White, in manner and form last aforesaid, was done and committed, to wit, on the second day of April in the year aforesaid, with force and arms at Salem aforesaid, in the county aforesaid, feloniously, wilfully and of their malice aforethought, did counsel, hire and procure the said Richard Crowninshield junior, and the said John Francis Knapp, the felony and murder aforesaid, in the manner and form last aforesaid, to do and commit; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A true bill— EBEN'ER SHILLABER, Foreman.

PEREZ MORTON, Attorney General.

A true copy as on file—


To this indictment they severally pleaded "Not Guilty." And at the request of John Francis Knapp and Joseph Jenkins Knapp, Franklin Dexter and William H. Gardner, Esquires, of Boston, were assigned to them as Counsel; and Samuel Hoar, Esq. of Concord, and Ebenezer Shillaber, Esq., of Salem, were assigned to George Crowninshield as Counsel, at his request.

Tuesday, July 27, was assigned for the trial.

The prisoners desired separate trials, and if any other Indictment had been found, requested that it might be read to them.

Another Indictment was then read, charging Richard Crownin­shield, junior, as principal, and setting forth his death by suicide, and alleging that John F. Knapp, Joseph J. Knapp, jr. and George Crowninshield, were accessories before the fact.

After this Indictment was read and before any plea was recorded, Mr. Hoar suggested to the Court, that it might be doubtful whether the general plea of not guilty, could be received to both indictments at the same time. He said he was not sure that the general plea was not the only one, but requested a little time for investigation.
The Chief Justice observed, that he knew of no defence which might not be given in evidence under the general issue, but that the Indictment might lie, without entering any plea at present.
APPENDIX C

FIRST TRIAL OF JOHN FRANCIS KNAPP

TUESDAY, July 27.¹

The Court met at 9 A.M. agreeably to adjournment—present, Judges Putnam, Wilde and Morton. As soon as the Court was opened, Hon. Leverett Saltonstall, President of the Essex Bar, rose, and addressed the Court as follows:

"May it please your Honors:

Since the adjournment of this court, an event has taken place, which fills our hearts with sorrow, and will be felt throughout the Commonwealth, as a great public calamity. I need not more distinctly allude to the death of the beloved, the honored, the venerated Chief Justice, whom we have been accustomed to see presiding here—who has so many years been an ornament to this bench. A few days since, we beheld him in the seat he has so long filled with the highest reputation—we heard from him a charge to the Grand Jury, distinguished for its clear, thorough and able exposition of the law in relation to the important subjects which were to come under their consideration, and for its pertinent and forcible instructions to them upon their duty. We saw him preside with his accustomed ease and dignity. Only four days since, we saw him in this place, apparently in perfect health, in the full enjoyment of all his bodily and mental faculties, and displaying his admirable wisdom and discretion in the discharge of his official duties. By a sudden, a striking, a solemn dispensation of Divine Providence, he has been removed, and the places which knew him here; will know him no more.

¹"Commonwealth v. J. F. Knapp" as recorded by Octavius Pickering, 1830. The original transcript is part of the Essex Institute Collection and is as yet uncatalogued. Pickering who died October 29, 1868, was the state reporter for the Supreme Judicial Court of Massachusetts and served in that capacity during the last eight years of his Honor Isaac Parker and the first ten years of Judge Shaw (1822 to 1840), who succeeded Parker in July, 1830.
Under these circumstances, the members of the Bar of Essex, feeling deeply a bereavement so sudden, have, in concurrence with our learned brethren from other Counties, who are honoring this Court with their presence, thought that this afflictive event should not pass unnoted here, in this scene of his last official, professional labors. They have adopted resolutions expressive of their veneration of the character of the deceased, and their grief at his loss, and have requested me to offer them to the notice of this Court, and to ask respectfully that they may be placed on their record, and that this Court would adjourn in consequence of this bereavement, which at present occupies all our thoughts. This duty I perform with melancholy satisfaction, in testimony of our affectionate respect to his memory, which is entitled to all respect from the community, to whom his best services have been always devoted.

It would not become me at this time, in this public place, to undertake to delineate minutely the character of the deceased before those who have so long been associated with him in his official duties and in social intercourse, who knew his worth so well, by whom he was so much beloved and respected—who will deeply deplore his death—to whose feelings it would be more grateful to contemplate the virtues of their eminent friend in the stillness of retirement, than to listen to any public eulogium, however just.

A great man has fallen. The late Chief Justice has held the most important office in the Commonwealth a longer period than any of his predecessors, having been more than twenty-four years a judge, and more than sixteen years the presiding justice of the Court, and with a constantly increasing reputation and usefulness. He was an associate of distinguished men who have gone before him—of the "learned, able and upright Chief Justice Dana, whose long and useful administration in this Court ought to be remembered with gratitude"—of Sedgwick and Sewall—above all, of the illustrious Parsons, who relied much on his learning, and his sound and correct judgment. Fortunate will it be for his fame, if as just and beautiful a tribute should be offered to his character, as he bestowed on that of his great predecessor.

It is unnecessary for me to speak of his qualifications for his high trust, to those who have been his associates in office. Feeling deeply its importance, his great object was to fill with respectability and usefulness, so conspicuous a station. Though he always took a lively interest in whatever interested the community, every thing else was subordinate to the prompt and faithful discharge of his official duty. To this he was devoted. His labors were almost unremitted, and probably hastened the event which we now so deeply lament.
Few men have possessed higher qualifications for the office he filled, and the judicial career of few has been marked by deeper traces of wisdom and learning. Labored eulogium of the deceased is not necessary—he has himself erected a memorial to his fame, more durable than marble. His legal decisions will remain, a proud monument to his memory—a monument of his great learning, his patient investigation, his clear and discriminating mind, his forcible and logical reasoning, which amounted almost to demonstration, of his perspicuous and classical style, and of the great result of his labors and his life—the settling the law on the sure and broad foundation of justice and equity, which was his great aim.

In that important and difficult situation, a Nisi Prius Judge, he conducted the business of the Court with great ease to himself, and satisfaction to the bar and the suitors. The younger members of the profession, and those of us not young, whose admission to the bar of this Court was under him, will never cease to remember that kindness and urbanity which encouraged us to persevere in our course.

But eminent as he was as a magistrate, it is as a man we shall most love to contemplate him. In private life and manners, he was pure and faultless—so cheerful, social, benevolent, affectionate, and truly liberal, and yet never for a moment losing sight of the true dignity of his high office—for true dignity, the dignity of the Chief Justice did not depend on the artificial aids of ceremonious etiquette or solemn reserve. He loved to diffuse happiness around him. His frank and ingenuous disposition and temper irradiated the whole circle, which he cheered by his presence. We saw the dignified and learned judge, displaying the utmost simplicity of manners, and purity of heart and life. But he has gone—leaving to his family the rich inheritance of a spotless fame, and to the Commonwealth, the learning, labor and wisdom of a long judicial life. In the midst of his labors and his usefulness, he is called from us, but we trust he is called to his reward in a better world. While we were expecting the aid of his learning and experience, in the important trials before us, he is suddenly removed from all earthly scenes! The loss of such a man is incalculable.

But we will not repine at the dispensation, however severe. Let us rather be grateful for the rich blessing we have so long been permitted to enjoy. Let us be grateful for his brilliant and useful judicial career, and that he has done so much honor to the Commonwealth, over whose highest tribunal he has so long presided.

Above all, let us imitate his devotion to duty, his deep sense of responsibility, his Christian faith and pietie, that when the summons shall come to us, we also may be found ready.
With those remarks upon the melancholy event which has vacated the highest seat on this bench, the proceedings of the Bar are respectfully submitted to the Court."

At a meeting of the members of the Essex Bar, held at the Court-House, during the Special Term of the Supreme Judicial Court, July 27, 1830,

Resolved, That the members of this Bar, deeply impressed by the solemn dispensation of Divine Providence, in the sudden removal by death of Chief Justice Parker, from the Bench of the Supreme Court, since its recent adjournment, would do injustice to the feelings of their hearts, if they refrained from a public expression of the profound sentiments of respect and veneration they entertain for his private and official character, as well as of their strong emotions of sorrow for the bereavement sustained by the Bar, the Bench, and the whole Commonwealth. The purity and integrity of his private life and manners, his various acquirements and extensive learning, his public services and arduous labors, in expounding the laws, during a Judicial career of twenty-four years, have secured for his memory and name, public gratitude and affectionate remembrance. While we deeply lament that he has been thus suddenly removed from the community, his friends, and his family, in the full vigor of his faculties, in the maturity of his wisdom, and at the height of his usefulness, we are consoled by the recollection that he has been faithful in his day and generation, and has by his labors conferred lasting benefits upon posterity.

Resolved, That the members of this Bar, in token of respect for his memory, will, during the present term of this Court, wear the usual badge of mourning.

Resolved, That the President of this Bar be requested to communicate these Resolutions to the Honorable Justices of this Court, with our request that the same may be entered on the Records thereof, and further that this Court may be adjourned to such time as the Court may be pleased to order.

By order of the Bar.

EBEN'R SHILLABER, Sec'y.

Immediately after Mr. Saltonstall took his seat, Perez Morton, Esq. the venerable Attorney General, addressed the Court in the following terms:

"May it please your Honors,

"It is with a degree of melancholy satisfaction that I express my sincere belief, that these resolutions of the Bar of Essex would be
cordially accorded to by every member of the Bar in every County of the Commonwealth; as well as to every sentiment contained in the very able and justly merited introduction.

"Believing that this deeply afflicting event will render your Honors indisposed to proceed to the important business of the County at this time—and knowing that it is the disposition and desire of the Gentlemen of the Bar, that the interesting trials now pending, should for the present be postponed, I venture to move, in conformity to the wishes of the Bar of Essex, that this Court now adjourn to such future day as may best suit the convenience of your Honors."

Judge Putnam, senior Justice of the Supreme Court, made the following reply:

"The surviving members of the Court reciprocate, with deep sensibility, the affectionate address of the members of the Bar—alike honorable to them and respectful to the memory of our deplored Chief.

"The community may imagine, but we know and feel the loss which words cannot express.

"He was taken away in the midst of his intellectual strength and judicial labours.—But a few hours have passed since he commenced the immensely important business which has called us together, with a charge to the Grand Jury, clear and impartial as was his great mind. We trusted that he would have led and guided this momentous business to a just result.

"But Almighty God, in his inscrutable Providence, hath otherwise decreed.

"Let us pause—to gather up our depressed spirits—imploring the Divine assistance in the performance of the duties which may devolve upon us."

The Resolutions of the Bar were then ordered to be entered on the records of the Court, when the Court was adjourned to Tuesday next, the 3d of August, at 9 o'clock, A.M. Both the Grand and Traverse Juries were directed to appear at that time.

TUESDAY MORNING, August 3.

Present, Putnam, Wilde and Morton, Justices.

The Attorney General entered a nolle prosequi upon the Indictment which had been found against the prisoners, upon which they had
been arraigned; and the following Indictment was returned by the Grand Jury:

COMMONWEALTH OF MASSACHUSETTS.

Essex, ss—At a special term of the Supreme Judicial Court, begun and holden at Salem, within and for the said county of Essex, on the third Tuesday of July, in the year of our Lord one thousand eight hundred and thirty, by virtue of an act of the Legislature of the said Commonwealth, entitled "An Act to provide a Special Term of the Supreme Judicial Court, within and for the County of Essex."

The Jurors for the said Commonwealth upon their oath present, that John Francis Knapp, of Salem, in the county of Essex aforesaid, mariner, not having the fear of God before his eyes but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year of our Lord one thousand eight hundred and thirty, with force and arms, at Salem aforesaid, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth then and there being, feloniously, wilfully and of his malice aforethought, did make an assault; and that he the said John Francis Knapp, with a certain deadly weapon made of hard wood, and loaded with lead in the head thereof, called a bludgeon, of the value of twenty cents, which he the said John Francis Knapp in his right hand then and there had and held, the aforesaid Joseph White in and upon the left side of the forehead, over the left temple of him the said Joseph White, then and there feloniously, wilfully, and of his malice aforethought did strike, penetrate, wound and fracture, giving to the said Joseph White, then and there, with the bludgeon aforesaid, in and upon the left side of the forehead, extending over the left temple of him the said Joseph White, one mortal wound of the length of three inches, and of the width and depth of two inches; of which said mortal wound the aforesaid Joseph White then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Francis Knapp, the aforesaid Joseph White, then and there, in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute, in such case made and provided. And the jurors aforesaid, upon their oath aforesaid, do further present, that Joseph Jenkins Knapp Jr. of Wenham, in the county aforesaid, mariner, and George Crowninshield, of Danvers, in the county aforesaid, machinist, before the said felony and murder was committed in manner and form aforesaid, to wit, on the second day of April, in the year aforesaid, with force and arms at Salem aforesaid, in the County aforesaid, feloniously, wilfully and of their malice aforethought, did counsel, hire and procure the said John Francis Knapp, the felony and murder aforesaid, in manner and form aforesaid, to do and commit; against the peace of the
Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid upon their oath aforesaid do further present, that the said John Francis Knapp, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year aforesaid, with force and arms at Salem aforesaid, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that he the said John Francis Knapp, with a certain deadly weapon called a dirk, of the value of fifty cents, which he the said John Francis Knapp in his right hand, then and there had and held, the aforesaid Joseph White, in and upon the left side of the body, and in and to the heart of him the said Joseph White, then and there, feloniously, wilfully and of his malice aforethought, did strike, penetrate, stab and wound, giving to the said Joseph White, then and there, with the dirk aforesaid, in and upon the left side of the body, and in and to the heart of him the said Joseph White, several mortal wounds and stabs, half an inch in length, a quarter of an inch in width, and six inches in depth, of which said several mortal stabs and wounds he the said Joseph White then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said John Francis Knapp, the aforesaid Joseph White, then and there in manner and form last aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder; against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that Joseph Jenkins Knapp jr. aforesaid, and George Crowninshield aforesaid, before the said felony and murder was committed, in manner and form last aforesaid, to wit, on the second day of April, in the year aforesaid, with force and arms, at Salem aforesaid, in the county aforesaid, feloniously, wilfully, and of their malice aforethought, did counsel, hire and procure the said John Francis Knapp, the felony and murder aforesaid, in manner and form last aforesaid, to do and commit—against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that one Richard Crowninshield jr. late of Danvers, in the County aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth, but then and there being, feloniously, wilfully and of their malice aforethought, did make an assault; and that he the said Richard Crowninshield junior, with a certain deadly weapon called a bludgeon, of the value of twenty cents, which he, the said Richard Crowninshield junior in his right hand then and there had and held, in and upon the left side of the forehead, over
the left temple of him the said Joseph White, then and there feloniously, wilfully and of his malice aforethought did strike, penetrate, wound and fracture, giving to the said Joseph White, then and there, with the bludgeon aforesaid, in and upon the left side of the forehead, over the left temple, of him the said Joseph White, one mortal wound, of the length of three inches and of the width and depth of two inches; of which said mortal wound he the said Joseph White, then and there instantly died; and that he the said John Francis Knapp, then and there, feloniously, wilfully and of his malice aforethought, was present, aiding and abetting the said Richard Crowninshield junior, the felony and murder aforesaid, in manner and form last aforesaid to do and commit; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said Richard Crowninshield junior, and the said John Francis Knapp, the aforesaid Joseph White, then and there, in manner and form last aforesaid, feloniously, wilfully and of their malice aforethought, did kill, and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on the fifteenth day of June in the year aforesaid, he the said Richard Crowninshield junior, with force and arms, at Salem aforesaid, in the County aforesaid, as a felon of himself, feloniously, wilfully and of his malice aforethought, did kill and murder himself, so that he the said Richard Crowninshield junior cannot now be further proceeded against, or held to answer for the felony and murder of the said Joseph White last aforesaid.

And the jurors aforesaid, upon their oath aforesaid, do further present, that Joseph Jenkins Knapp junior aforesaid, and the said George Crowninshield, before the said felony and murder, in manner and form last aforesaid, was done and committed, to wit, on the second day of April in the year aforesaid, with force and arms, at Salem aforesaid, in the county aforesaid, feloniously, wilfully and of their malice aforethought, did counsel, hire and procure the said Richard Crowninshield junior, and the said John Francis Knapp, the felony and murder last aforesaid, to do and commit; against the peace of the Commonwealth aforesaid and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that one Richard Crowninshield junior, late of Danvers, in the county aforesaid, machinist, and John Francis Knapp aforesaid, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April, in the year aforesaid, with force and arms at Salem aforesaid, in and upon one Joseph White, in the peace of the said Commonwealth, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that he the said
Richard Crowninshield junior, with a certain deadly weapon, called a dirk, of the value of fifty cents, which he the said Richard Crowninshield junior, in his right hand, then and there had and held, in and upon the left side of the body, and in and to the heart of him the said Joseph White, then and there feloniously, wilfully and of his malice aforethought, did strike, penetrate, stab and wound, giving to said Joseph White, then and there, with the dirk aforesaid, in and upon the left side of the body, and in and to the heart, of him the said Joseph White, several mortal wounds and stabs, each of the length of half an inch, and of the width of one quarter of an inch, and of the depth of six inches, of which said several mortal wounds and stabs, he the said Joseph White, then and there instantly died; and that he the said John Francis Knapp, then and there feloniously, wilfully, and of his malice aforethought, was present, aiding and abetting the said Richard Crowninshield junior, the felony and murder last aforesaid in manner and form last aforesaid, to do and commit; and so the jurors aforesaid, do say, that the said Richard Crowninshield junior, and the said John Francis Knapp, the aforesaid Joseph White, then and there in manner and form last aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards, to wit, on the fifteenth day of June, in the year aforesaid, the said Richard Crowninshield junior, with force and arms, at Salem aforesaid, in the county aforesaid, as a felon of himself, feloniously aforesaid, in the county aforesaid, as a felon of himself, feloniously, wilfully and of his malice aforethought, did kill and murder himself, so that he the said Richard Crowninshield junior, cannot now be further proceeded against or held to answer for the felony and murder last aforesaid.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the aforesaid Joseph Jenkins Knapp junior, and the said George Crowninshield, before the said felony, and murder in manner and form last aforesaid, was done and committed, to wit, on the second day of April, in the year aforesaid, with force and arms, at Salem aforesaid, in the county aforesaid, feloniously, wilfully, and of their malice aforethought, did counsel, hire, and procure the said Richard Crowninshield junior, and the said John Francis Knapp, the felony, and murder last aforesaid, in manner and form last aforesaid, to do and commit against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that a certain person (whose name to the jurors aforesaid is yet unknown) and John Francis Knapp aforesaid, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on the sixth day of April,
in the year aforesaid, with force and arms, at Salem aforesaid, in
the county aforesaid, in and upon Joseph White, in the peace of the
said Commonwealth, then and there being, feloniously, wilfully, and
of their malice aforesaid, did make an assault, and that the said
person unknown, with a certain deadly weapon called a bludgeon, and
of the value of twenty cents, which he the said person unknown, in
his right hand then and there had, and held, the aforesaid Joseph
White, in and upon the left side of the forehead over the left temple
of him the said Joseph White, then and there feloniously, wilfully
and of his malice aforesaid, did strike, penetrate, wound and
fracture, giving to the said Joseph White, then and there, with the
bludgeon aforesaid, in and upon the left side of the forehead over
the left temple of him the said Joseph White, one mortal wound of
the length of three inches, and of the width and depth of two inches;
of which said mortal wound he the said Joseph White then and there
instantly died; and that he, the said John Francis Knapp, then and
there feloniously, wilfully, and of his malice aforesaid, was
present aiding and abetting the said person (to the said Jurors
unknown), the felony and murder last aforesaid to do and commit:
and so the Jurors aforesaid, upon their oath aforesaid, do say, that
the said person (to the Jurors aforesaid unknown), and the said
John Francis Knapp, the aforesaid Joseph White, in manner and form
last aforesaid, feloniously, wilfully, and of their malice aforesaid,
did kill and murder, against the peace of the Commonwealth
foresaid, and contrary to the form of the Statute in such case
made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do
further present, that the aforesaid Joseph Jenkins Knapp, junior,
and the aforesaid George Crowninshield, before the felony and murder
last aforesaid was done and committed, to wit, on the second day of
April, in the year aforesaid, in the County aforesaid, feloniously,
wilfully, and of their malice aforesaid, did counsel, hire, and
procure the said person (to the Jurors aforesaid unknown), and the
said John Francis Knapp, the felony and murder last aforesaid, in
the manner and form last aforesaid, to do and commit, against the
peace of the Commonwealth aforesaid, and contrary to the form of the
Statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do
further present, that a certain person (whose name to the Jurors
foresaid is yet unknown) and John Francis Knapp aforesaid, not
having the fear of God before their eyes, but being moved and seduced
by the instigation of the devil, on the sixth day of April, in the
year aforesaid, with force and arms, at Salem aforesaid, in the
County aforesaid, in and upon Joseph White, in the peace of the said
Commonwealth then and there being, feloniously, wilfully, and of their
malice aforesaid, did make an assault; and that the said person to
the Jurors aforesaid unknown, with a certain deadly weapon called a
dirk, of the value of fifty cents, which he, the said person to the
Jurors aforesaid unknown, in his right hand then and there had and held, the aforesaid Joseph White, in and upon the left side of the body and in and to the heart of him, the said Joseph White, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, stab and wound, giving to the said Joseph White, then and there, with the dirk aforesaid, in and upon the left side of the body, and in and to the heart of him, the said Joseph White, several mortal wounds and stabs, each of the length of half an inch, and of the width of a quarter of an inch, and of the depth of six inches, of which said several mortal wounds and stabs, he the said Joseph White, then and there instantly died; and that he, the said John Francis Knapp, then and there, feloniously, wilfully, and of his malice aforethought, was present, aiding and abetting the said person (to the said Jurors unknown), the felony and murder last aforesaid, in manner and form last aforesaid, to do and commit. And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said person (to the Jurors aforesaid unknown), and the said John Francis Knapp, then and there, in manner and form last aforesaid, the said Joseph White feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the Statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the aforesaid Joseph Jenkins Knapp, junior, and the said George Crowninshield, before the felony and murder last aforesaid, was done and committed, to wit: on the second day of April, in the year aforesaid, with force and arms, at Salem aforesaid, in the County aforesaid, feloniously, wilfully, and of their malice aforethought, did counsel, hire, and procure the said person (to the said Jurors unknown), and the said John Francis Knapp, the felony and murder last aforesaid, in manner and form last aforesaid, to do and commit, against the peace of the Commonwealth aforesaid; and contrary to the form of the Statute in such case made and provided.

A true Bill,  
EBENEZER SHILLABER, Foreman.  
PEREZ MORTON, Attorney General.  
A true copy as on file—  

Upon which they were arraigned, and John Francis Knapp pleaded Not Guilty.

Before the others pleaded, Mr. Dexter suggested that they were indicted only as accessaries, and therefore were not obliged to plead before the conviction of a principal.

The Court said they need not now plead.
The Attorney General then moved that Mr. Webster might be permitted by the Court to take part in the cause on behalf of the government, stating briefly the reasons.

The Court said there could be no objection at all.

Franklin Dexter and William H. Gardiner, Esquires, of Boston, were assigned as Counsel for the prisoner, at his request.

Counsel for the Commonwealth—
Hon. Perez Morton, Attorney General;
Daniel Davis, Solicitor General;
Daniel Webster.

Joseph J. Knapp, jr. and George Crowninshield were then remanded.

Mr. Dexter said, before the trial proceeded, he wished to understand whether the nolle prosequi which had just been entered, could be struck off hereafter, and the prisoners tried upon that indictment?

Putnam J. Certainly that cannot be done.

Mr. Hoar inquired if the second indictment, read a few days since, had been nol. pros'd.

Webster. If there is any other indictment against the prisoner, it is matter of record, and Counsel may have access to it.

Gardiner. Before the jury is impannelled, I have a motion to make. When the prisoner was arraigned on the former indictment, application was made by his Counsel to have a list of the witnesses examined before the Grand Jury, endorsed upon the indictment, according to the English practice. It was answered by the Solicitor General, that it was our practice to return a list of the witnesses to the Clerk's Office; and he was understood to say that such a list would be returned, that the Counsel might know who were to be witnesses in each case. Such a list has not been furnished. I have a letter addressed to the Attorney and Solicitor General.

Mr. Webster objects to the reading of the letter.

The Court inquired of Mr. Gardiner what was the object of reading the letter.

Gardiner. We wish even at this late hour to be furnished with a list of the witnesses on the part of the Commonwealth. The prisoner has a right to know what witnesses are to be called against
him. He may be obliged to send to a great distance for counter testimony, or to procure copies of records.

Att'y General. The law does not require a list to be furnished, except in treason. What we stated was, that we filed the names of all the witnesses in all the cases.

Putnam J. The Court did not so understand it. We understood that the Solicitor General promised a list of witnesses for each case separately. It is reasonable that the prisoner should be furnished with such a list. We think it his right.

The jury was then impannelled, as follows:

Ephraim Annable, Hamilton, sworn.
John Ayer, 3d, Haverhill, sworn.
George Barker, Marblehead, peremptorily challenged.
Joseph Bartlett, Newbury, sworn.
Gilbert Barker, Saugus, peremptorily challenged.
Robert G. Bennett, Beverly, challenged for cause.
Nehemiah Berry, Lynn, peremptorily challenged.
Nathaniel Brown, Salisbury, sworn.
Issachar Burnham, Essex, peremptorily challenged.
Temple Cutler, Lynn, peremptorily challenged.
Joseph Bartlett, Newbury, sworn.
Gilbert Barker, Saugus, peremptorily challenged.
Robert G. Bennett, Beverly, challenged for cause.
Nehemiah Berry, Lynn, peremptorily challenged.
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Nathaniel Brown, Salisbury, sworn.
Issachar Burnham, Essex, peremptorily challenged.
Temple Cutler, Lynn, peremptorily challenged.
Andrew Russell, Ipswich, peremptorily challenged.
Ichabod B. Sargent, Amesbury, sworn.
William Smith, Lynnfield, peremptorily challenged.
Benjamin Stone, Marblehead, challenged for cause.
John Tenny, Bradford, challenged for cause.
Asa Todd, Gloucester, sworn.

Solomon Nelson, Esq. was appointed by the Court, Foreman of the Jury.

The Clerk then read the Indictment. [See page 6.]

The Attorney General then addressed the Jury, as follows:—

Gentlemen of the Jury,

Since the adjournment of the Court, the Counsel for the Government have procured the services of a gentleman pre-eminent at the Bar, to assist in the management of this Cause, and at my request, from his superior physical strength, as well as for his acknowledged supremacy in the powers of mind, he has taken the more arduous duty of closing the Cause, leaving to me the easier one of opening it.

All, who are to take a part on this interesting occasion, have a painful duty to perform. To see a young man, in the vigor of his days, brought to the Bar of his country, to answer for a crime, that implicates his life, however guilty he may appear, will necessarily create feelings of regret, if not of compassion in every beholder of the spectacle. But we ought not to forget, that a faithful discharge of our respective duties, is paramount to every other consideration. Public justice, as well as public safety, requires it at our hands; and so far as my duty requires, I will endeavor to discharge it with fidelity, and so far as yours extends, I feel confident that it will be discharged with candor, firmness, and impartiality.

The charge against the prisoner at the Bar, is for the murder of the late Mr. Joseph White—a murder of no ordinary character—a murder the most cold-blooded, unprompted, and atrocious that has ever yet stained the annals of our Commonwealth, if not of any other country—a murder in the commission of which every personal security and safety which the Law specially guaranties to the citizen in the asylum of his dwellinghouse, and in the recess of his bed-chamber, has been outraged and violated.

It is not to be wondered at that such a crime should have produced an uncommon excitement among the citizens of the place of its atrocity, for who of them could have felt himself safe in retiring to his rest, unless the authors of this abominable murder were detected and punished. And it affords me satisfaction to say, that much
credit is due to the Committee of Vigilance, chosen on the occasion, for their unwearied exertions to obtain that end. There is, however, one cause of blame which attaches to their laudable efforts, and that is their having suffered to be made public so much of the results of their inquiries; for nothing can be more improper and injurious to the cause of public justice, than editorial remarks on the relation of facts upon untried crimes: but it may be some apology for the Committee that the public mind had become so anxious and so full of inquietude, that it was nearly impossible to withhold most of the various facts, which their investigation had furnished; and we all know the avidity with which editorial paragraphists wish to anticipate public information, upon every interesting occasion.

The perpetrators of this atrocious murder remained, for a long time, veiled in darkness and mystery, notwithstanding the efforts to detect them. The circumstances under which it appeared to have been committed were such as naturally created suspicions against the inmates of the family; for it was found that nothing had been taken away, that no actual violence had been committed in entering the house, that the iron bar, with which the window where the assassin entered was usually fastened, was taken down and carefully placed against the side of the window. I say, these circumstances occasioned a necessary inference to be drawn, that some one, familiarly acquainted with the interior of the house, was either the murderer, or an abettor or accessory to him.

The first suspicion fell upon the son of Mrs. Beckford, who was the niece and housekeeper of the deceased; but on inquiry it was found that he could have no concern in it, not having been in a situation to render it possible.

The breath of scandal, spread, no doubt, as since appears to have been his intention, by the prime instigator of the murder, to cover his own atrocity, imputed this deed of death to the favorite nephew and principal heir of the deceased, Mr. White; but the filial and parental like affection which was known to subsist between this uncle and nephew, the acts of kindness and beneficence of the former, and the grateful attachment of the latter, and, with those who knew the man, the honor and integrity of his mind and heart, so often evinced by the voluntary suffrages of his fellow citizens of the county, soon dissipated this ephemeral slander, leaving, however, on his honorable mind an embittered regret, that any one, for a moment, could suppose him capable of so dark and horrid a crime.

Still, gentlemen, the perpetrators of this heinous offence continued wrapped in secrecy, for although he who did the deed was heretofore indicted for the murder, yet that indictment was found upon circumstantial evidence, and the testimony of a convict from the State Prison, as to those circumstances. But not a conjecture was whispered, that I ever heard, against the real authors of the
murder, until a letter was handed to the Committee, under the signature of one Grant, but really written by Palmer, whom you will have as a witness upon the stand, dated at Belfast, May 12th, postmarked May 13th, directed to J. J. Knapp, not having the addition of junior to it; and, by that means, it was handed to the Committee by the father, for whom it was not intended. We are not now about to give any account of the contents of this letter, but only to say, that in consequence of it, and by some address of management by the Committee, Palmer was arrested at Belfast, as having some concern in the murder, or as having knowledge of the persons who were the perpetrators, and the two Knapps were arrested, charged with being deeply implicated in the fact.

Suffer me here, gentlemen, to pause, and make a moral reflection. This letter of Palmer, and the manner of its falling into the hands of the Committee, I consider as one of those mysterious ways of divine Providence, which lead to the detection of secret murderers; and it may be remarked, as a general truth, that it seems to be the will of Heaven, conformably to its own law, "whoso sheddeth man's blood, by man shall his blood be shed," that the secret murderer should not escape detection, and punishment even from a human tribunal, whatever may be his retribution in the world to come. And not unapt is the language of the great delineator of the human passions, used on a similar occasion, put into the mouth of his Hamlet, whose father had been secretly murdered, and who was, by an ingenuous device, endeavoring to detect the murderers, when he says, "Murder, though it have no tongue, will speak with most mirac'lous organ"—and in that case it did speak, through the stings and goads of conscience of the Queen, his mother.

Gentlemen, a few words more, by way of preliminary, and before I introduce the evidence, as it respects my own conduct in this case, in my official capacity.

After the two Knapps were arrested, at the request of several respectable citizens of Salem, I authorized in writing the Rev. Mr. Colman to receive the free and voluntary disclosures of any one of the individuals charged, without naming any one; and giving him authority to say that on condition of his disclosing the whole truth and nothing but the truth respecting the murder, I would call him as a witness on the trial, and that being a witness, he would have the implied pledge of the Government, not to be prosecuted for that offence. In consequence of this authority, Mr. Colman received the voluntary disclosure of J. J. Knapp, jr. in writing: accordingly, to redeem the pledge on the part of the Government, I have called him before the Grand Jury, at this term, as a witness, to give evidence as he has disclosed: but, by the advice of his Counsel, he refused to testify there, saying he was not bound to criminate himself; but as the inquiry before the Grand Jury may not be considered as calling him as a witness upon the trial, I shall, in the course of
the examination of the evidence, again call him as a witness, and if he again refuses to testify, every one will acknowledge, that the pledge of the Government will be completely redeemed, and his promised protection will be forfeited, and he must stand on his own original responsibility.

The Counsel for the Government do not confidently expect that the evidence which will be given you, will justify the belief that the prisoner at the bar actually gave the blow on the head, or the stabs in the heart of the deceased, for he, who, it will appear, did the deed, wretched man, like his great prototype, who betrayed the Saviour of the world for thirty pieces of silver, smitten with the stings of conscience, has gone, and hanged himself; though less scrupulous than Judas, he has never returned the wages of his iniquity.

It is, however, altogether immaterial, whether the prisoner at the Bar, actually gave the mortal blows, provided he was present, aiding and abetting the person, who inflicted them. He is charged both ways.

And this naturally brings us to the consideration of the law of Abetments.

By the very ancient common law, before the reign of Henry 4th, of England, he alone who gave the stroke was considered as the principal offender, and those who stood by in aid and assistance of him who actually committed the felony, were held to be only accessories; and these aiders and abettors at the time of the felony, had the same right, that accessories before the fact now have, that of not being tried till he that struck the blow should be tried and convicted; so that if he who actually committed the murder, died before he was tried and convicted, those who were present, aiding and assisting, could never be tried, and of course escaped punishment. But this principle was found to be so repugnant to the common understanding of mankind, that in the time of Henry 4th, all the judges of both benches concurred in altering that principle of the ancient common law, and settled it more conformably to reason and morality, common sense and public justice, by making the abettor at the fact a principal.

Had these judges advanced one step further towards common sense, and decided, that when he that gave the blow, and he that abetted him had died, or was otherwise not capable of being tried and convicted, the accessory before the fact (the felony or murder being proved), should be amenable to justice, as for a substantial offence, they would have left their common law much more perfect on this subject than it now is; for in moral turpitude the guilt of him who hires the assassin to do the deed, and absents himself, is of a darker grade, in my apprehension, than his who has the courage to do it.
The celebrated Mr. Peel, in the bill which he brought before the House of Commons, contemplating amendments or alterations of some of the rules of the common law, makes this very case one of the amendments, and constitutes the offence of an accessory before the fact in felony a substantive crime, and triable independently of the principal, under certain conditions.

Whether our statute against murder will not be ruled by this Court to have altered the common law in this respect, as was suggested to be possible in the opening Charge of our lamented Chief Justice at this term, whose afflicting death is so deeply felt, will be tested, if it should ever become necessary in these trials. Permit me here to read his lucid opinion on this point. [See Grand Jury Proceedings, Appendix B, pp. 339-340.]

But at present we are considering the case under the principles of the common law, as it now stands, and from the time of Henry 4th, to the present day, the common law is settled, that, as Lord Hale observes, "all that are present, aiding and assisting, are equally principals with him that gave the stroke, whereof the party died; for though one gave the stroke, yet in interpretation of law, it is the stroke of every person that was present, aiding and assisting, and though they are called principals in the second degree, yet they are principals; and therefore if there be an indictment of murder against A., that he feloniously struck B., whereof he died, and that C. and D. were present, aiding and abetting to A. in the felony and murder aforesaid, and A. appears not, but C. and D. appear, they shall be arraigned, and receive their judgment, if convict, though A. neither appears, nor be outlawed. And he further says, if A. be indicted as having given the mortal stroke, and B. and C. as present, aiding and assisting, and upon the evidence it appears that B. gave the stroke, and A. and C. were only aiding and assisting, it maintains the indictment, judgment shall be given against them all, for it is only a circumstantial variance, for it is the stroke of all that were present, aiding and abetting; he cites Mackally's case.

I will read also from 1 East. P. C, 350, 351, to the same point:

"In appeal where several are present at the fact, and one only actually does it, and the others abet him, the Plaintiff may either elect to suppose in his declaration that all did the fact, or shew the special matter. For in these cases all the parties are principals, and the blow of one is in law the blow of all. For which reason an indictment that A. gave the mortal blow, and B., C., and D. were present and abetting, is sustained by evidence, that B. gave the blow, and A., C., and D. were present and abetting. Upon the like indictment, evidence that E., though not named therein, gave the blow,
and that A., B., C., and D. were present and abetting, would be sufficient; or even that a person unknown gave the blow." And 1 Hale 440.

You perceive, therefore, Gentleman, that it is altogether immaterial in law, whether the prisoner now on trial gave the mortal blow, or was only aiding and abetting to him who gave it—and that the indictment may charge him either way.

There are three kinds of abetments to felonies.—The first is an abetment at the time the felony is committed, that is, being present, aiding, and assisting or consenting to him who actually commits the felony; and this constitutes a principal offender.

The second is an abetment before the felony is committed, by counselling, hiring and procuring the felony to be done, and being absent when it is committed, and this constitutes an accessory before the fact.

The third is an abetment after the felony is committed, and that is harboring, concealing or maintaining the principal offenders or their accessories before the fact; and this constitutes an accessory after the fact.

The prisoner at the bar stands indicted of the first kind of these abetments, that is as a principal offender, and if he be not convicted, by the common law as it now stands in England, the accessories before the fact cannot be tried, and must escape punishment.

It is therefore necessary to consider what, in law, constitutes an abettor at the time the murder is committed; and according to Lord Hale, to make an abettor to a murder a principal in the felony, two things are requisite.

The first is, he must be present.

The second is, he must be aiding and abetting. I will read you the authorities on both these points. As to the first, being present—

"As to the first: if divers persons come to make an affray, &c. and are of the same party, and come into the same house, but are in several rooms of the same house, and one be killed in one of the rooms, those that are of that party, and that came for that purpose, though in other rooms of the same house, shall be said to be present.—Dall. cap. 93. p. 241.

The Lord Dacre and divers others came to steal deer in the park of one Pelham. Rayden, one of the company, killed the keeper in
the park, the lord Dacre and the rest of the company being in other parts of the park, it was ruled, that it was murder in them all, and they died for it.—Crompt. 25. a. Dalt. ubi supra, 34 H. 8. B. Coron. 172.

The like in case of burglary: though some stood at the lane's end or field-gate to watch if any came to disturb them, Co. P. C. p. 64. II H. 4. 13. b., yet they are said to be burglars, because present, aiding and assisting to the burglary.

So if A. being present, commands B. to kill C., and he doth it, both are principals.—13 H. 7. 10. a.

If many be present, and one only gives the stroke, whereof the party dies, they are all principals, if they came for that purpose.—21 E. 4. 71. a."—1 Lord Hale, 439. 4 Hawk. 201, 202.

As to the second point:—

"And consonant to this is Mr. Dalton, p. 241, in these words: "Note also, that if divers persons come in one company, to do any unlawful thing, as to kill, rob, or beat a man, or to commit a riot, or to do any other trespass, and one of them, in doing thereof, kills a man, this shall be adjudged murder in them all that are present, of that party, abetting him, and consenting to the act, or ready to aid him, although they did but look on."—1 Hale, 441.

"When the law requireth the presence of the accomplice at the perpetration of the fact, in order to render him a principal, it doth not require a strict actual immediate presence, such a presence as would make him an eye or ear-witness of what passeth.

"Several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him; some to commit the fact, others to watch at proper distances and stations, to prevent a surprize, or to favour, if need be, the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law present at it. For it was made a common cause with them, each man operated in his station at one and the same instant towards the same common end; and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to insure the success of their common enterprize."—Foster, 349.

Which is, if he be consenting to the felony, or ready to aid him who does it, although he does but look on. If they have the same object in view, if they came for the same purpose. It is the intention of the mind therefore, that constitutes the abettor to a felony, if he be present in contemplation of law, though he do nothing.
And now gentlemen, let us hearken to the testimony; and the
Government are first bound to prove the corpus delicti, that is, that
the deceased Mr. White came to his death by the hand of external
violence.

Having proved the death by the hand of external violence, we
shall then proceed to prove to you that the death was effected by a
wicked conspiracy and combination of individuals, of which the
prisoner at the bar was one, to destroy the life of the deceased,
and to this point, we shall offer Joseph Jenkins Knapp, jr., to redeem
the pledge of the Government given for his protection, on condition of
his testifying the whole truth and nothing but the truth on this
trial. He refuses to testify. And now Gentlemen, every one must
be satisfied that the pledge of the Government, given for his protec­
tion, is fully redeemed; he has now forfeited that proffered protec­
tion, and stands accused as an accessory before the fact to this
murder—he has an unquestionable right to take the stand he has, for
the Constitution of the Commonwealth provides, that no subject shall
be compelled to accuse, or furnish evidence against himself.

As we cannot prove this vile conspiracy and combination to
murder the deceased by the disclosure of this accomplice in the crime,
by the blessing of God we will prove it by other testimony in the case.

And, if in the opinion of the Court we shall be able to shew
that such a conspiracy existed, another principle of law will be
relied on, that when a conspiracy to do an unlawful act is proved,
the acts of any one of the conspirators, done in effecting the object
of their combination may be given in evidence against any other of
the conspirators. Phillips on Evidence, [76.]

Attorney General. After proving the murder, I shall move
that J. J. Knapp, jr. be brought into Court as a witness.

Putnam, J. I have no objection. He may be sent for while
the witnesses to the facts of the murder are examined.

Mr. Gardner. Something was said in opening, by the Attorney
General, about a view. The Counsel for the prisoners wish for such a
view by the Jury, of Mr. White's house and the premises.

Putnam, J. We once refused it in Boston, and we see no reason
for granting it now. There are many practical inconveniences attend­
ing it. We know not what impressions and influences the Jury may
receive while out of doors.

The Court then ordered J. J. Knapp, jr. to be brought in, but
the Counsel for the prisoners objecting, he was ordered to be kept in
some convenient place until wanted.
Benjamin White was then sworn, and testified: He was a servant of Capt. White. On Wednesday morning, 7th of April, about 6 o'clock, I came down into the kitchen, and on opening the shutters of the eastern window, saw the back window of the North Eastern room open, and a plank put up to the window. I went into the front room, but saw no appearance of any one having been there. I then went to Miss Kimball's (the maid servant's) room, and told her, and then went into Mr. White's chamber at the back door, and saw that his door, opening into the front entry, was open, and that he was murdered. I then went down, and told Miss Kimball that Mr. White was gone. His face, when I first saw him, was very pale—the bed-clothes were turned down. I think I saw some blood upon the side of the bed, or on his flannel. I then went to Mr. Mansfield's door, who lived opposite, and knocked—then to Mr. Deland's, then to Dr. Johnson's, and then to Mr. Stephen White's. About three weeks before the murder, Stephen Stratten came into the yard, between 10 and 11 o'clock in the evening, and asked me if I knew who that man was—

Mr. Dexter objected to this conversation, and the Court said it was not evidence.

On the afternoon before the murder, I was at the farm, in Beverly, with Mr. White—we were there several hours; came home a little before night, about 5 o'clock.

The window which I found open, was up 21 or 22 inches—the shutter, which opened very hard, was open some way, and it was sometimes left open two or three days together—the window was fastened by a screw, and the shutter by a bar. I found this bar standing by the right side of the window.

Mrs. Beckford is a niece of Capt. White, and lived with him. She is a middle aged lady. Miss Kimball, a domestic, and myself, were all who lived in the house with Mr. White—his chamber was over the South-West parlor (the keeping room),--the house faces South, on Essex-street, is three stories high—Mr. White's chamber has two doors, one opening from the end entry, and the other from the front entry—it has also four windows, two Southern, one Western, and one Northern looking into the yard.

Mr. Webster then called J. P. Saunders, Esq. the Surveyor, who swore that the plans of the house and premises were correct. Mr. Webster then explained these to the Jury.

(Witness continued,) I was at the kitchen window when I saw the back parlor window up—that room was very little used. The rooms commonly used were the S. W. parlor—Mr. W's chamber over that—the maid's over Mr. W's. Mrs. Beckford's chamber over the kitchen, and mine over Mrs. B's. The chambers on the eastern side were unoccupied, except when strangers were at the house. Mrs. B. was at Wenham on the
night of the murder—she went away about 12 o'clock that day. The window which was opened, and at which the plank was put, was the one nearest the back door. Mr. W. went to bed that night rather later than usual, about 20 minutes before 10—his usual hour was about 9. He was 82 years old and in some measure deaf—the left ear was deafer than the right; he has often told me—

Dexter objects to any thing that Mr. White said, as merely hearsay.

Webster. Our object is to prove the habits of Mr. White, from the observation of the witness, and from what he had heard Mr. White say.

By Court. What he said is not admissible.

Witness resumed. The head of his bed was against the Eastern wall of the chamber, near the door which opened into the front entry, so that any one entering that door would come behind Mr. W. if he was lying upon his right side.

Mrs. Beckford's furniture was in the back parlor, which was entered. In Capt. W's chamber there are shutters to all, and blinds to the front and western windows—I did not notice the state of the windows that morning, but the blinds were open and the room was light enough to see when I entered.

I knew that Mrs. B. was going to Wenham, for she had spoken of it 2 or 3 days before. I went to bed the night of the murder immediately after Capt. White went. It was about a quarter before ten o'clock. I went without a light. I left Miss Kimball raking up the fire, and as I went up I looked into the keeping parlor at the clock. There is an avenue and two doors on the west end of the House, and to get at the opened window, one must pass along that end, through the avenue, through a garden gate, round the buildings and up the garden to it. There are no blinds to my chamber—there is a shutter at my east window but none at the west.

Cross-Examination. —Mr. White went from the kitchen to his sitting room, and through his room to bed. After he had retired I knew what o'clock it was, because I looked at the clock. No one called at the house on the evening previous to the murder—do not know that Mr. W. sat up late expecting any one. The street door was usually kept fastened all the evening, except the latter part of it, for when Mr. W. came in he used to leave it unfastened till he went to bed. The relatives, Mr. S. White's family and Mrs. Beckford's friends, passed in and out without knocking—I saw Joseph Knapp there once or twice within two months before the murder. Frank Knapp very seldom came there. Mr. W. never kept his lamp burning all night. It was not Capt. White's habit to keep a light or fire in his room.
during the night—there were shutters to all his windows, and to the
north window shutter there is a bar, and this is the only one which
has a bar. The weather, when I went to bed, was over-cast. The
shovel and tongs had been removed from the chamber and there was no
poker there—there was one in the room below. There is nothing
between my chamber and Capt. W.'s but an entry and stair case—I
heard no noise during the night—I don't recollect telling any person
that some gentlemen were there or that any one was expected on the
day of the murder—I don't know who had been there during the day—
did not hear or see Mr. W. after he went up stairs—Miss Kimball had
nearly raked up the fire when I went up—I did not hear her go to bed
nor see a light in her room when I went up—I saw Frank Knapp a day
or two after the murder—he sat up with the body and was in the house
some time every day—I sat up with him one night and don't remember,
who else ever sat up with him—he assisted at the funeral. There was
nothing missing from the house after the murder, and there was money
in Mr. W's chamber, about a week before the murder. I found the
window which was entered fastened—knew that it was so by putting
my finger over and feeling the screw—it had not been unbarred to
my knowledge, before the murder.

Re-examined by Government.—I had seen Jos. Knapp there
within 2 or 3 weeks previous to the murder—he usually came when
Mr. White was not at home, about 4 in the afternoon—he married a
daughter of Mrs. Beckford—he had free access to all the rooms when
the family were out—we usually kept fastened both front and back
doors—Joseph came into both.

Webster. Before any other witness is called, I wish to under­
stand the rule of Court about the exclusion of witnesses from the
Court room, and that it may operate equally upon both parties. (The
Court had excluded Joseph J. Knapp, jr. as above.) Such exclusion
is I am aware the English practice, but not I believe that of our
Courts.

Dexter. I must insist that all the witnesses be excluded.

By Court. All who have been summoned and expect to testify
must not be present during the examination of any witnesses. We
consider it the right of the prisoners.

Lydia Kimball (a domestic) was then sworn. I did not hear
any noise during the night—the man came to my door and told me that
some one had been into the house, for that the back window was up;
I went down into the front room to see if any thing had been stolen;
told him to go up and tell Mr. White—he came down and told me to be
calm—that Mr. W. had gone to the eternal world—he then went to call
the neighbors—I did not see Mr. W. till I was called before the
Jury of Inquest. Mrs. Beckford left the house on Tuesday, the day
previous to the murder, about 1-2 past 11 o'clock—she told me, a
day or two before, that she was going to Wenham--Mrs. Knapp came
down for her. I went to bed that night rather before 10. There are
blinds and shutters to my room; the blind on the west side was shut,
but all the others, and all the shutters, were open.--In Capt. W's
room all the shutters were open except one half of the one nearest
his bed, which was a front window—that day when I made the bed all
the blinds were open, except the western ones, and I have not seen
them since. It was Mr. W's usual habit to have all the shutters open
but the half one I have mentioned. He usually went to bed about
9 1-2. I lived with him more than 16 years. I could generally tell
when he was awake, if I myself was so, by a kind of cough or hem he
had when awake, which was usually in the latter part of the night--I
don't recollect hearing him ever early in the night--I had nothing to
do with the room which was entered—it was Mrs. B's, and not much
used—the chambers over that side of the house were unoccupied.
Capt. W. was deaf in his left ear.

Cross-examined.—I think Capt. White went to bed a little
before ten, on the night of the murder—the northern window of his
chamber was shut and barred in the winter and opened in the spring—I
can't say exactly what time it was unbarred this spring—my room is
over Mr. White's and has the same number of doors and windows—no
one called at the house that day after one o'clock—the gentleman
who called then did not say he should call again. Capt. W. did not
lock his door usually, but there was a key in it—I generally heard
him shut it—I did that night—he usually put his candle on the
table between the windows.

Dr. Samuel Johnson, called and sworn.

I was called about 6 o'clock, to Capt. White's—was told that
he was murdered. I went, and entered with Mr. Stephen White. I went
to Capt. White's chamber, and found him lying on his right side, or
nearly so, and nearly diagonally to the bed. There was a mark of
considerable violence on his left temple. I noticed that the bed
clothes were laid slantwise, square across the body, and diagonally
to the bed. He lay with his feet towards the left lower post of the
bed, and his head towards the right head post. His head was towards
the closet, and on the right side, on the pillow; on throwing off
the bed clothes, I saw that the back of his left hand was under his
left hip, and there was considerable blood on the bed; he also had
bled a little from the nose. Nothing further was then done. I told
Mr. Stephen White that an inquest should be called. In presence of
the Coroner's Jury, the shirt was stripped off, and the body exposed.
We found five stabs in the region of the heart, three in front of the
left pap, and five others, still farther back, as though the arm had
been lifted up, and the instrument struck underneath it. I examined
a number of the stabs with a probe, and found that it would penetrate
from one to three inches. It was my belief at the time, that either
the wound on the head, or the stabs, would have caused death. The
wound on the forehead was not very perceptible, except to touch. Upon feeling I could perceive that the bone was fractured. I was convinced at the time, that it was sufficient to cause death. Afterwards, a more minute examination was made; the scalp was removed, and we found a fracture of an oval shape, in the temple, 3 3-4 inches long, and 2 1-2 inches broad. A portion of the temple was broken in, some fractures extending upwards, towards the back of the head, and another down, towards the face. Upon opening the chest, it was found that two of the wounds had penetrated the walls of the heart, without reaching the cavity—I have no doubt that either would have produced death. The instrument which gave the blow on the head was probably some smooth instrument, like a loaded cane, that would give a heavy blow, without breaking the skin, and the instrument used in giving the wounds in the side, was probably a dirk. On the second examination, we found thirteen stabs, six in front, and seven farther back, about three inches from the others, near to the spine. We found three of the ribs fractured, most probably done by the hilt of the dirk. There was no appearance of a struggle, it appeared a case of instant death. I was desired by Mr. Stephen White, to look on and see the iron chest and trunk examined, and also the foot print and window. The window was open. I saw two foot prints, both directed towards the wall of the house. There was a plank set up, diagonally, the bottom of it about two feet from the sill. There were no marks of wet feet, but a little dampness on the floor, where it had rained in.

Cross Examined. The inquest was holden about an hour after I went to the house. The second examination took place 36 hours after death. The stabs were grouped; one group of five was within the compass of three inches. On the first examination, the wound on the head was not very perceptible, except to the touch. On the second examination, it was more prominent; there then appeared to be more air in the cellular membrane.

The foot prints, I believed at the time, were made by the person when he put up the plank; they were not near together, and were those of a right and left foot. There was no appearance of more than one weapon having been used in giving the stabs. The front wounds gaped more than the others, and were 3-4 of an inch wide. The first examination (that before the Jury of Inquest was held), was hasty. The head was then lying on its right side, partially, but not fully, and a little back. I suppose the arm was drawn back when the stabs were given, because it covered them when I first saw him. The body was nearly, but not quite, cold, and there was no pulse. The human body retains its heat for some time, if covered up. Mr. White was an old man, but he was rather fleshy. The blow on the head, by checking the circulation, probably prevented the loss of blood. From all the circumstances, my first opinion was, that it had been done three or four hours. There was, however, nothing to
to prevent its having been done six or eight hours. My first impres-
sion was that he had lost more blood than we afterwards found he had.

The Attorney General then called Joseph J. Knapp, Jr. as a
witness, and inquired of him, if he was willing to be sworn. He
answered in the negative, and the Attorney General was proceeding to
inquire the reason, which was objected to by Mr. Dexter.

The Court said he was not obliged to state his reasons for
refusing. It is only necessary that this should be understood, so
that there may be no difficulty hereafter. The Government say they
have pledged themselves not to proceed against him if he would
testify; he does not testify, and now that pledge is recalled.

Webster. We wish to proceed according to the usual course.
I should suppose that he should be sworn, and then he may answer that
he cannot testify without criminating himself.

Dexter. He does not complain of the course pursued.

Webster. His counsel say that he can have no right to
complain, and the Government are content.

Dexter. It was stated by the Attorney General, in his open-
ing, that Knapp would refuse to testify, in pursuance of advice of
counsel. I feel it my duty to state distinctly that I have never
given such advice.

Gardner. And I have never given such advice.

Attorney General. But other counsel have had access to the
prisoner.

Dexter. The only other counsel who has had access to him,
is ready to make the same statement.

Benjamin Leighton, sworn.

I have lived with Mr. Davis, at Wenham, at the house where
Mrs. Beckford and Joseph J. Knapp, jr's. family live, since the 6th
of October last. Knapp's family came there to live a few days after
I went. About a week before Capt. White was murdered, I went down
to the lower end of the avenue, got over the wall, and sat down by
the side of the gate, that is across the avenue. I sat a few minutes,
and then heard men talking the other side of the wall. I looked
round through the slats of the gate, and saw the two Knapps coming
down the avenue. When they came near the gate, Joseph said, "When
did you see Dick?" Frank said, "I saw him this morning." Joseph
said, "When is he going to kill the old man?" Frank answered, "I
don't know." Joseph said, "if he does not kill him soon, I will not
pay him;"—then they turned back, and I did not hear any thing more. This was about two o'clock in the afternoon; I had been to dinner. It was the Friday before Capt. White was murdered, I think;—it was within the week previous to the murder. They did not know that I was there; I was waiting for Mr. Davis, to go to work.

I shall be 18 years old the 30th of next December. I am under no mistake about the conversation; I am sure of the persons. Jos. J. Knapp, jr. has lived in the house where I lived. John Francis Knapp came to the house frequently.

Frank came up to Wenham one evening, after the murder, in a chaise, about 9 o'clock; this was about a fortnight or three weeks after the murder. I believe Mrs. Beckford was living there then. There was a gentleman in the chaise at the door; I did not know him, but he was a slim man, not so thick as Frank Knapp. I went to the door when the chaise drove up—Frank got out and went in, and asked if his brother Joseph was at home. Joseph Beckford said he was. Joseph Knapp met Frank at the inner door, and they went into the room together, and shut the door. They were together, I should think, an hour; nobody was in the room with them. Frank Knapp knocked; I went to see who was at the door. The other person sat in the chaise all the time; they did not give the horse any thing; they both drove away together, down the avenue; I could not tell which way they went.

Cross Examined.

The house is about fifty rods from the road; I heard the conversation near the gate to the pasture, at the lower end of the avenue. I had just come from dinner; Mr. Davis was in the house at the time. Joseph and Frank were standing by the gate, near the house, as I passed down the avenue—when I got down the avenue, they came down. I was sitting under the wall, to wait for Mr. Davis, and to take a little nooning, I mean a little rest. I passed them and went down the avenue, went through the gate, and hastened, and sat down behind the wall. I did not say any thing to Mr. Davis about the conversation I had heard. I have been called upon to tell what I knew about it, by Mr. Waters and another gentleman I did not know; they sent for me to come to Mr. Waters's office; I told them I could not recollect, at that time, that I had ever told any thing about it. I did not tell them I knew nothing about it. I was in his office in the forenoon and afternoon, and staid at the Lafayette Coffee House at noon.

The gate, where I left the Knapps standing, is in front of the house, and opens into the avenue. I went down the avenue towards the pastures, not towards the road, went out of the avenue over the wall, by the gate. This gate could not be seen from the place where the Knapps stood. The house makes one side of the avenue, which is
narrower at that place. The gate, at which the Knapps were standing, is about forty feet from the house. The gate, where I got over, is 50 rods from the house. They could not see me when I got over the wall; the house hides the place, and stands out into the avenue, or the fence retreats. I know they could not see me get over the wall, because I have tried since. I tried, because if they did see me, and knew I heard them, I was afraid they would kill me.

I first saw Mr. Waters a week ago last Thursday: I was summoned by a man from Lynn, and carried to Mr. Waters's office. They asked me if I recollected telling Mr. Starrett any thing. I told them I did not. I believe I did not tell them I did not know any thing about it. I went to Mr. Waters's office about 11 o'clock, and staid till 2. Mr. Starrett was there, and they talked with him. They asked me if I knew any thing about Frank Knapp. I told them I did not. I was asked if Richard Crowninshield had been at the farm, and I said I did not know him. They asked me if I had told Starrett any thing about it, and I told them I did not recollect telling him any thing. I did not then remember that I had told Starrett anything about it, and I told them so. They bothered and frightened me talking to me, and I could not remember. Mr. Starrett told Mr. Waters that I had told him something, but I could not recollect it, and told them so. They said Mr. Starrett and Dr. Kilham were in the shop when I said so. I told Mr. Waters I did not recollect it, but if he would come up the next day, I would tell him all that I knew. I then remembered what I have testified, but did not calculate to tell anything about it. I went to Mr. Waters's office again in the afternoon, about 5 o'clock. From 2 to 5 I was at the Tavern. Mr. Starrett and Mr. Waters were at the office in the afternoon. Mr. Starrett asked me if I could not recollect what I said in his shop. I told him I could not. They said Dr. Kilham and Mr. Starrett were in the shop, and heard what I said. They did not question me any further. I staid there till sun about an hour high; I was there an hour or more. They did not tell me any thing would be done to me, if I did not tell what I knew, but said I must come to Court.

I told Starrett, because I spoke before I thought. I saw Mr. Waters again last Saturday, at Lummus's tavern, in Wenham. He came there with Mr. Choate and Mr. Treadwell. They wanted me to tell what I knew. I told them I had been down to Salem, but could not recollect then; I was in a strange place, and frightened. They talked to me so, that I could not recollect. Then I recollected what I had told Starrett, and told them the same story I have told today. I believe they asked me but once. I told them at once what I knew. They did not tell me they had a warrant against me. Mr. Davis afterwards told me they would carry me off, if I did not tell all I knew; they did not threaten me.
The day I heard the conversation between the Knapps, I was going to splitting rocks. They were on one side of the wall and I on the other. I looked round beyond the wall, and through the slats of the gate. I did not wish they should not see me. They were half way between the house and the gate when I heard their voices, and looked round to see who they were. They walked down to within three or four feet of the wall. I heard nothing else, that I could understand. They stood by the wall two or three minutes, and then went back. It was after they stopped that I heard what I have testified. I did not tell the conversation to any body before the murder. I could not think, till after the murder, what it was about. I staid by the wall till the Knapps had passed out of sight. Mr. Davis came down after I had gone to work.

On the evening when Frank came to Wenham, with another person, it was dark, and the chaise top was up. I could see that the man, who sat in the chaise, was a slim man.

Re-Examined.—On the day after the murder, I went into Starrett's shop, and he said, "what is the news about the murder?" I said, they think I don't know any thing about it, but I know a little more than they think I do. I spoke before I thought. I was unwilling to say any thing more because if they got hold of this, I was afraid they would kill me. Frank used to be round me, with his dirk, and pricking me with it—he did this more than once, and other persons saw it. Thomas Hart saw it. The first time I told the conversation to any body, it was to Hart, and it was not long ago. I next told it to Mr. Waters. I told Starrett I overheard something, but did not tell him what. This was when going home from Salem; before this, I had told Hart, down in the field. No threat has been used to make me testify. I was frightened when I was carried to Mr. Waters's office, for I was taken suddenly, and from the field—they carried me by the Court House, but the Grand Jury had been dismissed. The officer read the summons to me when he took me.

Cross Examined again.—The first time I saw Francis Knapp have a dirk, was after he was attacked at Wenham Pond, after the murder. Starrett did not ask me what I knew, did not ask me what I had overheard. I am afraid now, if the Knapps get clear, they will kill me. I heard there was a reward offered. I told Mr. Starrett before I heard of the reward, but did not tell the conversation till afterwards. I did not know what the reward was.

Rev. Henry Colman, sworn.

I had no personal acquaintance with the prisoner until the 28th of May, when he was examined before Justice Savage. On the afternoon of that day, I went to his cell with his brother, Phippen Knapp, at his (Phippen's) request. When we went in, Phippen said, "Well, Frank, Joseph has determined to make a confession, and we
want your consent." I am not able to give the reply of the prisoner, in his precise words, but the effect was, that he thought it hard, or not fair, that Joseph should have the advantage of making a confession, since the thing was done for his benefit, or advantage. I now give his words, as nearly as I can recollect them. He said, "I told Joseph, when he proposed it, that it was a silly business, and would only get us into difficulty." Phippen, as I supposed, to reconcile Frank to Joseph's confession, told him, that if Joseph was convicted, there would be no chance for him (that is for Joseph), but if he (Frank) was convicted, he might have some chance for procuring a pardon. He then appealed to me, and asked me if I did not think so? I told him "I did not know, I was unwilling to hold out any improper encouragement."

Dexter. We object to any continuation of this confession. It is now in evidence, that Phippen, with a view to reconcile Frank to Joseph's confession, told him, that if he were convicted, he might have a chance of pardon. This was a direct inducement to a confession.

The Court said they would hear the Counsel for the Government.

Webster. It appears to me exceedingly plain, that his confession is admissible. It is a general principle of law, that the confessions of a party are evidence against him, except in those cases where they have been obtained by improper influence. There is no doubt about the rule, the difficulty is in the application. We propose to prove the confession of the prisoner. Against this, generally, there can be no objection. Then, if this case be within the exception to the rule, it is for the other side to shew it. We deny it, altogether. We say the only exception is, when a confession is obtained by menace, or hope of favor. In this case, there is no proof of any encouragement, or any threat. There is no evidence to show that the confession was not entirely voluntary. This person, Phippen Knapp, went to the cell of the prisoner, and told him that his brother, who was confined upon the same charge, had confessed, and asked his assent to that confession. The prisoner knew of no confession, whether it would affect him or not. His brother (Phippen) thought it expedient to ask his assent to his brother's confession. There is no other fact in the case. No confession was asked from him; but in the course of the conversation, he stated certain truths. The Government is entitled the benefit of those truths, unless he protects himself by some known rule of law.

The books tell us, that to exclude confessions, it must be shewn that they were made under the influence of fear, or the hope of reward. What is the evidence in this case? Did they say to the prisoner, it would be better for him to assent to Joseph's confession? Just the reverse. It would be worse for him, but on the whole, it
would be better. There was no intimation that it would be better for him to assent. What promise or encouragement was there? Not the least, but just the reverse.

What we now propose to prove, is the confession of the prisoner himself. It is not enough that he thought it would be better for him to confess. That is no objection to a confession. Everybody thinks it would be better to confess, or confession would never be made. The question is, whether the confession was the spontaneous operation of his own mind; if so, then it was voluntary, and we must have it. The Court can only look to what was held out to him. Any other course would be to leave fact and follow hypothesis.

The object of the conversation was to reconcile him to a worse state of things. But this is not the strong view of the case. The prisoner was under the influence of no hope, under the influence of no fear, under the influence of no persuasion. If there ever was a voluntary confession, on the face of the earth, this was one.

Gardner. We contend that this confession comes within the exception to the rule. The general rule is, that confessions are evidence, unless they are obtained by means of improper influence. If there be any influence, however slight, the confession cannot be used.

This is, at best, the weakest kind of evidence. The idea is absurd, that a person, charged with a capital crime, will confess, unless some influence is used. And it is laid down by Blackstone, and by Foster, and other writers, that it is the weakest kind of evidence; the most liable of all to be mistaken. The witness, in this case, cannot give the words of the prisoner, except in part. His testimony consists partly of the words of the prisoner, and partly of his own inferences.

We do not differ in principle, but in fact. Frank was told, if Joseph confessed, there would be more chance for his (Frank's) procuring a pardon. It is not necessary for us to shew the degree of influence used. (Cites Foster, 343. Phill. Ev. 86. 2 Stark. 48. Phill. 80 and note. 1 Leach C. L. 325 and note.)

Dexter. In books on evidence, confessions are sometimes called the weakest evidence, and they are sometimes stated to be the strongest.—One reason why they are called the weakest kind of evidence, is because the witness cannot give the precise words, but only their effect. Such a confession is no confession at all. To bind the prisoner, we must have his words.

If this confession goes to anything it must be to the guilt of the prisoner, if it was a mere consent to Joseph's confession,
then it is not evidence. The natural import of the words, as they came from the witness, was, if Joseph is convicted, he will have no chance; if you confess and are convicted, there will be a hope of pardon. This holds out a direct inducement to confess. This is the natural import of the words. The legal effect may be different, but the prisoner is not a lawyer.

Webster, in reply. The import of the words was not such as has been argued. But it was saying Joseph has no hope but in confession, you have some. The thing to be avoided in Joseph's case was a trial, and he was by disclosure to avoid that trial. It was asking him to consent to Joseph's confession as something perilous for him, but the only salvation for his brother. I have a right to ask for the confession until it is proved, that some threat or some promise was made. I propose to ask the witness for Frank's confession of facts within his own knowledge, wholly unconnected with Joseph's confession. And unless he was told, that it would be better for him to make such a confession it is admissible.

The Court delivered their opinions seriatim.

Morton J. The witness was proceeding to relate the confession of the prisoner, when some expressions came out, as it is contended by the counsel for the prisoner, which would make the subsequent conversation improper evidence. Confessions are not always evidence against a prisoner. Experience proves that men are sometimes led to confess what is not true. It is a general rule that confessions are admissible; the exception to the rule is when confessions are obtained by means of threats or promises, when made under such influence, they are inadmissible.

It was supposed that the witness was about to go on and state the disclosure of Joseph, and the question to the prisoner was whether he assented to it. This, if it implied his own guilt would be important evidence, if not, then it would be irrelevant.

It seems to me very clear that there was a direct inducement held out to him to confess, because he did not assent to Joseph's confession before it was said to him, that there might be some chance for pardon. I am therefore well satisfied that such an inducement was held out, that the conversation should be excluded.

But it seems to be the object now to show statements made at the same time, besides assenting to Joseph's confession.

It seems to me that the same inducement would operate through the whole conversation; whether it would extend to a subsequent conversation or not, it is not necessary to decide. I am therefore of opinion, that not only his assent to Joseph's confession, but any declaration made at the same time must be rejected.
Wilde, J. I am of the same opinion; though it is a case of considerable difficulty. I do not place my opinion on the nature of the evidence, as was urged by the counsel for the prisoner. The rule of evidence in all cases, capital, as well as others, is the same, that the slightest influence of hope or fear, is sufficient to exclude the testimony. Then what influence was there in this case? It was the object of Phippen Knapp to obtain the prisoner's assent to Joseph's disclosure. Phippen remarked to the prisoner that there would be no chance for Joseph, if convicted, but for the prisoner there would be a chance for pardon, and appealed to the witness, who declined giving an opinion, because he would not hold out any improper encouragement. His assent would be an implied admission of his participation in the guilt. This must necessarily be evidence of a confession, whether direct, is not the question; if of any description, then it comes within the exception.

The next question would be upon the testimony to the admission of facts stated by the prisoner as within his own knowledge. If inducement is held out to the prisoner at one time, and he afterwards confesses, that evidence is to be rejected.

Putnam, J. I entertain a somewhat different view of this question. I lay out of the case all consideration of the weight of the evidence.—The Government offer to prove the confession of facts tending to shew that the prisoner was guilty of the charge against him. Such evidence is either the very best or the very worst; if the confession was made without hope or fear, it would be the best evidence.

Confessions are generally evidence. Then is this case within the general rule? Neither fear nor hope existed in this case. The object in going to Frank's cell was to ascertain if he would consent to Joseph's confession. And it is said, that if he assented to Joseph's confession, this would be evidence against him. But it seems to me most evident that it is not so. The object of the Government now is, to prove some independent confession of his own.

It was not the subject of the conversation, whether Frank should make a confession. It seems to me we stop in limine. It is not the question whether he consented to Joseph's confession, but if he stated any fact within his own knowledge, without the inducement of hope or fear. And it seems to me that there was no inducement to confess, held out to him. Any confession made at that interview, should, I think, be admitted.

It is the opinion of the Court that any thing said by the prisoner, after what Phippen said to him, is not admissible.

Mr. Colman, resumes.
It was just at the close of the interview, that Phippen appealed to me. He had told Frank, more than once, in the course of the conversation, that there might be a hope of pardon.

The Court direct the witness to state all that was said in relation to encouragement.

Early in the interview, Phippen said that Joseph had decided to make a confession, &c., (as above,) and afterwards repeated this, and appealed to me. Frank then asked me to use my influence, or interest, for him. I told him that I could promise nothing, but that I thought his youth would be in his favor.

I have stated all the encouragement that was given. There was not the least encouragement given to him, either by me or in my hearing, to relate facts within his own knowledge. Soon after this interview, I found the club under the North steps of the Church, in Howard-street. I went there on the 20th of May, about 1 o'clock, with Dr. Barstow and Mr. Fettplace. The steps are of wood—under the lower one there is a rat hole—in it I found this club—which see in the Plate, in Appendix.

Webster. Who told you it was there?

Dexter. I object to this question. The finding of the club is all that can be given in evidence. This question is introduced to criminate the prisoner and therefore it is not admissible; for it is criminating him by his confession of that fact, and no part of the confession is evidence. (Cites Leach, Cr. Law, 300.) I call the attention of the Court to the principle, which is to give his confession against him, which has already been ruled out. (Cites, Phill. 83.) In this passage is the origin of the doctrine.—(Leach, 300. 2 Stark. 50.) The case cited by Starkie does not support him, and it is against the principle.

Court. We are very clear that it is competent for the Government to prove that this club was found in consequence of information from the prisoner.

(Mr. Colman resumes.) Frank Knapp gave me precise directions where to find the club, and I found it as nearly as possible, in the place pointed out by him.

John C. R. Palmer, called.

Gardner. We object to him, on the ground of want of religious belief.

Court. You have your choice of the mode of proof, but if you inquire of him you cannot prove it in any other way.
Witness sworn to answer.

Gardner. Do you believe in the existence of Divine Providence, and in a future state of rewards and punishments.

Answer. I do.

Witness then sworn in chief.

Webster. We now expect to prove a conspiracy, between the two Knapps and the two Crowninshields, to commit this murder; having done that, we propose to prove acts done by all, in pursuance of the common design.

Gardner objects to this course, because it is never pursued except in conspiracy and treason.

The Court. We are satisfied with the course pursued by the Government.

Palmer. I have seen the prisoner at Crowninshield's, in Danvers. The first time, he came on the afternoon of the 2d of April, about two o'clock, with a young man named Allen—they came on two white horses. I saw the prisoner in company with George Crowninshield. Did not see them in the house; I saw them from the window of the chamber; they walked away together. I did not see them again till after four. Richard was with Allen. All four returned about 4. Allen and Frank then went away on horseback. George and Richard immediately came into the chamber where I was.

Dexter objects to asking what agreement the Crowninshields said they had made with Frank Knapp.

Court. The Government intend to prove a conspiracy—they may begin at either end.

There was then a conversation between us about the proposed murder of Captain White—both George and Richard spoke of it.—George, in the presence of Richard, proposed to me to take a part in this murder. The object of the murder was something that Frank Knapp had told them. The motive held out to me was one third of the $1,000 they were to receive from Joseph Knapp. Richard said it would be easy to meet him that night, and overset Mr. White's carriage, for George said he had gone out to his farm. Joseph Knapp's object in the murder was to have a Will destroyed. George said to me that I was poor, and in want, and had no funds, and that this would be a good time to supply that want. George said that the housekeeper would be away at the time of the murder. Frank came again on that day, about 7 o'clock in the evening, in a chaise, and alone. He stayed then over half an hour. Richard went away with him in the
same chaise. I did not see Frank afterwards, till this time, but
Richard came home about 12 o'clock that night. I do not know by what
conveyance. I left Danvers the next day, which was Saturday. The
Will was to be destroyed by Joseph Knapp, who could get the keys
from the housekeeper, and have access to the trunk in which it was
kept. I understood that the Will was to be destroyed at the time
of the murder. This Will Joseph wished to have destroyed, because
it gave all Mr. White's estate to a Mr. White, then living at the
Tremont House, in Boston. I next saw the Crowninshields at their
house, in Danvers, on the night of ninth of April. When Richard
went away with Frank in the chaise, as above stated, he said he was
going to the Lynn Mineral Spring Hotel. On the 9th of April, I went
about 12 o'clock to the Crowninshields' house, and spoke under the
chamber window to George, who opened it, and asked who was there.
I told him, and asked him to come down. He came down, and asked if
any one was with me. I told him no. He then let me in, and asked
me if I had heard the news in Salem.

I staid there a short time, and then went that night to
Lynnfield Hotel, where I put up. Next day I went to Providence, and
staid two days. On the evening of the 27th, I saw the Crowninshields
again at their house, about 10 o'clock. I stayed till 29th. Richard
gave me four 5 franc pieces; I asked him to let me have it, and
promised to return it. I then went to Lowell, then to Boston, then
to Roxbury, then to Belfast by water, with Capt. John Boyle. While
at Belfast, I wrote a letter to Joseph J. Knapp.

Dexter.--I object to reading the letter.

Putnam J.--Its bearing upon the prisoner should appear.

Webster.--It was received by his father, and the prisoner
to divert suspicion, caused two other letters to be written.

Court.--Let these first be proved.

Wm. H. Allen, sworn.

I put these letters into the Salem Post Office, on Sunday
afternoon, May 16th, between 5 and 6, at the request of J. J. Knapp Jr:
He gave them to me, and said that his brother Phippen and his father
came up to Wenham the day before, and brought an anonymous letter
from a fellow down East, and which contained a devilish lot of trash,
such as 'I know your plans, and your brother's, and will expose you
if you don't send me money.' He said that they had a good laugh upon
it, that he requested his father to give it to the Committee of
Vigilance. "What I want to see you now for, is to have you put these
letters into the Post Office, in order to nip this silly affair in the
bud." He said several other things, but I don't remember all. He said
that his mother Beckford was getting old.
Gentlemen of the Committee of Vigilance.

Hearing that you have taken up 4 young men on suspicion of being concerned in the murder of Mr. White I think it time to inform you that Steven White came to me one night and told me if I would remove the old gentleman, he would give me 5,000 dollars; he said he was afraid he would alter his will if he lived any longer. I told him I would do it but I was afeared to go into the house, so he said he'd go with me, that he would try to get into the house in the evening and open the window, would then go home and go to bed and meet me again about 11. I found him and we both went into his chamber. I struck him on the head with a heavy piece of lead and then stabbed him with a dirk, he made the finishing strokes with another. He promised to send me the money next evening, and has not sent it yet, which is the reason that I mention this.

Yours &c.

Grant.

(This letter was directed on the outside to the "Hon. Gideon Barstow, Salem," and put into the Post Office, on Sunday evening, May 16th, 1830.)

Lynn, May 12, 1830.

Mr. White will send the $5,000 or a part of it before tomorrow night, or suffer the painful consequences.

N. Clazton 4th.

(This letter was directed on the outside to the "Hon. Stephen White, Salem Mass.," and put into the Post Office in Salem, on Sunday evening May 16th.)

(Allen resumes)--I went to Danvers, with Frank, on the 2nd of April, on horseback--on white horses.

Palmer recalled and cross-examined.

On the night of the murder I was at Babb's, the Half-Way House in Lynn. I was there from 7 in the evening, till 9 in the morning, and then went to Lynnfield, to meet John Dearborn, of Chester, N. H. We had appointed a meeting there. I expected to go to New York with him to go into business--I had no particular business in view. I first came to Salem 3 years ago, and from there went to Danvers to see the C's. I had an invitation from George at New York. I came back to Salem last March. I can't tell every place
I have lived in between my visits to Salem— at New York part of the time and at home in Belfast. I lived at Thomastown 2 years. I was there occupied in cutting stone for the State. I don't know who employed me in behalf of the State. While in Salem, at the Lafayette Coffee House, I bore the name of Carr—preferred that name at the time—stayed at the Coffee House 2 weeks. While at Danvers I lived with the C's in their room, apart from the rest of the family. I came from jail to day. I have been there since June last, and have been visited by Mr. Colman, Mr. Stephen White, my father, &c. I was brought up from Belfast in irons. I made the disclosure from my own wish, and was not compelled to do it. I knew the flannels were stolen in Danvers—saw it in the paper—(he declined answering any more about the flannels.) I told Mr. Waters that I did not want Counsel. While at Babb's I bore the name of George Crowninshield. I have been told that I should not get the reward and have no expectation of it—perhaps I expected part of the reward when I wrote the letter which I wrote to see if Joseph Knapp was connected with the murder. I was told by the C's, that it was only a joke when they proposed it, and did not think them serious until after the murder.

Re-examined by Government. I have never complained of the officers of Government, and have refused a pardon from them in this case.

Wm. H. Allen recalled.

Frank proposed the visit to the C's. We first met Dick—he invited us in, and in a few minutes George came in. Dick went to show me the factory and we separated from George and Frank at the house. After going through the factory George and Frank rejoined us, and after talking a few minutes Frank and I left them and came home. We visited them also once last winter.

One evening, about 3 weeks after the murder, Frank and I met Dick in Bath street. I thought they might have something private and was walking away, when F. said "stop a minute and I'll join you."

Cross examined.—Dick and I were in the factory 15 or 20 minutes. Frank did not request to be left alone with George. We were separated 1-2 or 3-4 of an hour.

Re-examined.—Frank's usual dress was a dark frock coat, and a glazed cap with a large glazed star on the top, and a camblet cloak.

Cross-examined.—Glazed caps and camblet cloaks were a common dress. I wore such a one. Wm. Peirce also had a glazed cap, and a Scotch-plaid cloak.

William Osborne, sworn.
I keep a livery stable in Salem. Francis Knapp has been accustomed to hire horses of me. The charges on my book against him from April 1, are as follow:

April 1. Horse and Gig to Lynn Mineral Spring. April 2. Saddle horse to Dustin's, in Danvers. William H. Allen had a saddle horse same afternoon. Francis Knapp had a chaise same day, in the evening. I find the charge of horse and gig to Spring altered, the word Spring erased, and ride substituted. I think the alteration was made by Francis Knapp, it is in his hand writing. April 3. Saddle horse to Wheeler's, which is about half a mile from Dustin's, and the same distance from Crowninshield's. Do not recollect the time of day. The last charge on that day is a saddle horse to Francis Knapp, to Wheeler's. April 5. Saddle horse to Wenham. April 6. Horse and Gig to _______. This is in my own hand writing. Do not know where he went. No price is put down. Have never ascertained where he went. April 19. Horse and Gig to Wenham. April 21. Horse and Gig to Wenham, and over that I find the name of Joseph J. Knapp. April 23. Horse and Gig to Wenham. April 24. Horse and Gig to Wenham. This is the last charge on the book that day—there are eleven previous charges. April 25. One half horse and Gig. April 27. Horse and Gig to Wenham.

Cross-examined. I make charges when horses are given out. Don't know when Francis Knapp came from sea. He rides considerable. Don't know where they go. I leave a blank till I ascertain. Always trusted him. March 30. Horse and Gig to Wenham. March 29. Half of the charge of Horse and Gig to Spring. March 28. Quarter of charge of Carryall. He hired horses and chaises frequently. Not often hired horses in the evening, but did afternoons. Can't tell much about the time of day by my method of charging. The father of the prisoner failed on the 6th of April. No charge to prisoner from that time to April 19. There are on my book ten charges before his on April 5. I have four white saddle horses, and others used occasionally. I have one horse, called Nip-Cat, of sorrel color, slim, and a smart trotter—rather remarkable.

Thomas Hart, sworn.

I live with Mrs. Beckford, at Wenham, and am hired to work on the farm. I went there on the 9th of last April, and was hired by Capt. Joseph Knapp. Mrs. Beckford came there to live about the 15th of April, and Frank Knapp about the 28th.

One Saturday evening, about 25th of April, Frank came there. Mr. Davis and Joseph Knapp had been to Salem, and had returned about half an hour. Frank came about 7 o'clock, knocked, and Joseph Beckford went to the door, and asked him how he came there at that time of night. Joseph Knapp went out with him to the chaise, and remained a quarter of an hour. I think I heard the voice of a third person in
the chaise. They then came into the house, and went into a room by themselves, and stayed about ten minutes. The chaise came a little after 7, and stayed a little more than half an hour. Mr. Davis and Benjamin Leighton were there. It was dark, dull, cloudy weather. Frank had on a cambelt cloak, and leather cap. Frank went in where Joseph was, and no one went with him. I was in Mr. Davis's kitchen. Joseph, on the Tuesday after this Saturday, gave me some 5 franc pieces to buy meal with. It had been dark half an hour, I should think, when Frank came. Joseph and Frank were pretty near the chaise, while talking together, and near the N. W. corner of the house. I heard three voices, which all came from where the chaise was. They did not move from that place while talking. F. Knapp has worn a dagger, and I have seen him several times prick Benjamin Leighton with it, while out in the field. And one night after we had gone to bed, Frank came up and pricked Ben through the bed clothes, Ben asked him not to, and he said "lay still, you will not feel it after a little time."

Ezra Lummus, sworn.

I live in Wenham, and keep a public house there, about a quarter of a mile below where Mrs. Beckford lives. I saw Dick Crowninshield at my house for the first time, in the latter part of March. He and a young man, I didn't know who, came to my house on that day--left their chaise--went away and were gone sometime. The man with Dick Crowninshield had on dark clothes and a glazed cap, I think.

Ten days or a fortnight after the murder, on Saturday, I believe, Dick Crowninshield came again with a person whom I did not know. I was not at home when they came, but found them there. They paid their bill with a 5 franc piece, and my wife brought it to me for examination, and I gave the change to Dick. They then went away--I cannot fix the hour precisely, but should think that it was about half past 9 when I came in--they stayed but a very short time after that--not more than 5 or 10 minutes. I can't exactly describe the man who was with Dick, but he was about my height, and rather stout--stouter than Frank Knapp I think.

Cross-examined. I knew at the time that the coin was a five franc piece.

Mrs. Lummus, sworn.

Some persons were at our house about the 24th or 25th of last April, and passed a 5 franc piece, I think it was the latter part of the week, and on a misty and rather cold evening. Wood was brought in and a fire made up. I carried the 5 franc piece to my husband. I can't say, positively, whether this was before or after Mrs. Beckford came to live in Wenham--or before a certain robbery, heard of there.
Cross-examined.—I did not know either of the young men. One had a dark dress, but I don't know how the other was dressed. I am not certain that this was before the Knapps' robbery. It is my impression that it was.

Josiah Dewing, sworn.

I came home from sea last spring, and brought from 3 to 4000 5 franc pieces. About 500 were for Joseph Knapp, jr. and were brought from Point Petre, Guadaloupe, and paid to him. So far as I know, all but his went into the bank, as a deposit. The distribution of them was about the 21st of April last, and I have the receipt of Joseph for his portion.

Cross-examined.—I have been a ship-master several years. It is nothing unusual to bring home 5 franc pieces. Don't recollect bringing home any lately, on any other occasion.

Daniel Marston, sworn.

I know George Crowninshield, and in the course of last spring I received from him two 5 franc pieces. This was on Saturday, the day before his arrest.

Cross-examined.—I keep a victualling cellar. Five franc pieces are not a common currency. I do not often take them—not so often as I do hard dollars.

George Smith, sworn.

I attend Mr. Chandler's grocery store. On the evening before the Crowninshields' arrest, I received from some person, and in the presence of George Felton, a 5 franc piece.

Cross-examined.—I have frequently received them from other persons.

George Felton, sworn.

I know George Smith—I went into Mr. Chandler's store with George Crowninshield, when he paid Smith a piece of silver.

Joseph Shatwell, sworn.

Capt. Dewing brought home some 5 franc pieces for Joseph Knapp, jr. last spring and they were paid to him. Those that belonged to the owners were deposited in the Mercantile Bank, and remain there now.

Cross-examined.—I have had them come home frequently. I take about three hard dollars to one 5 franc piece. I have traded
to Guadalupe five years, and the return has principally been in 5 franc pieces.

Stephen C. Phillips, sworn. I was one of the Committee of Vigilance. The two Knapps came before the Committee at their request to give an account of a robbery, said to have been attempted upon them at Wenham.

Dexter. I object to any proof of this robbery.

Webster.—It is always competent to prove, what persons under suspicion do, to divert that suspicion. I cite to this point. 1 Stark. 492-493.

Dexter.—Such evidence is just as if that of a generally bad character was given to the Jury—besides, it is not within the rule laid down by the Court in relation to anonymous letters. This is, also, a distinct crime.

By Court.—It is now proposed, by the Counsel for the Government, to prove that the prisoner got up a fictitious robbery. This is objected to, on the other part, because it is a distinct offence, and has no relation to the crime now charged.

It is now clear, that the Government may prove that the Defendant took measures to divert suspicion from himself, and it would seem to follow, that any evidence which tends to this point is admissible. The Court will take care in charging the Jury to give such evidence its proper direction, and its weight will be left to them.

Mr. Phillips proceeds.—I have known Jos. Knapp some years, but have never known Frank. On Tuesday, 27th of April, it was stated in town that the Knapps had said they had been attacked at Wenham. The Committee thought it proper to make inquiry into this affair. The Knapps appeared before them, on the evening of 27th. I took minutes of their statements. I have these now with me, and can state more fully by referring to them. They are in my own hand writing. The questions were chiefly addressed to Joseph in the presence of Frank. I believe these minutes were read over to them, for this was our general practice.

Court.—These minutes may be used as a memorandum to refresh your recollection and if they are proved to have been read, they will become evidence.

Nath'l Kinsman, sworn.
I am one of the Committee, and was present on that evening. They were read to the prisoner and his brother, and they assented to them.

Court.—They may then be read.

Mr. Phillips.—Joseph was the narrator.

"Tuesday Evening, April 27, 1830. Left Salem at half past 8 o'clock, in a chaise for Wenham. About twenty minutes after 9 o'clock, within a few rods of Wenham Pond Hill, so called (this side of the pond), saw 3 men, in the middle of the road, walking towards us. The two on right and left seemed to step forward a little, leaving the centre one in the rear. The centre one stepped up and took the horse by the bridle, with his left hand, and seemed to be taking out an instrument with his right, an appearance of an ivory dirk handle. This fellow was dressed in a dark short jacket (a sailor's jacket), cloth cap, not glazed, did not notice pantaloons--dressed like a sailor, but did not act like one. White men--had two black marks (smouches) on their cheeks, to resemble whiskers--not real whiskers. The fellow who seized the horse, said "How do you do?" or something of the kind. Then he said, "Where are you going?" or, "where are you bound?" My brother answered, "I will let you know, d___d quick"--and my brother then drew his sword-cane. In the mean while, I struck the one who came up on the right, with the whip. This last fellow took hold of the handle of a trunk, at the moment I struck him. I struck him across the right cheek. The fellow on the other side, at the same moment, made a motion to shove the trunk across the chaise. The fellow whom I struck with the whip, wore a long coat, dark, without bright buttons, hat, no whiskers; was a stout man--all pretty good sized men. The one who came up on the other side of the chaise was very tall and square, stout whiskers, apparently false, black hat, straight coat of a dark color. Francis made his reply to the man who held the horse, and immediately drew his sword cane and made a pass at the fellow who came up on the left. As he struck, the fellow sprang back. Francis then sprang out of the chaise and made another pass at him--the fellow ran, and got over the stone wall, before he could reach him. The fellow who came up on the right, passed round back of the chaise, and then made off over the wall in the same direction as the other. The fellow, who held the horse's head, ran off at the same time, and in the same direction. All went over stone wall, or left hand side of road towards Wenham Pond. Francis Knapp then returned to the chaise--and just as they were starting, heard a shrill whistle. We heard the mail stage pass, just as we got to our house. Think the fellows, or scouts employed by them, may have heard the mail stage coming along; and therefore whistled to alarm the rest. Perhaps whole detention did not exceed three minutes. Old house near spot (distant say, as far as from here to common) occupied by an old woman--doubtful character--am inclined to suppose it a house of ill fame; this old woman was yesterday twice...
on our premises—Called once for milk—Was never at the place before. Her name is Wheeler. I left farm in afternoon and was probably seen to pass by people in this house. The fellow, at whom Francis Knapp made a pass, leaped over wall, without touching it."

Frank added that the fellow leaped over the wall without touching it. He also said that if he should be attacked again he was prepared to give them cold lead. These men described by the Knapps, corresponded to some men who had been suspected. The men seen in Brown street were described,—I believe the one as having on a coat and the other a short jacket and cap. Concerning these last, we had, at that time, but little information.

Cross-examined.—We had before inquired, particularly, about the dress of certain suspected persons. The appearance of persons described by the prisoner, bore some general resemblance to persons publicly described. The Committee consisted of 27 members and we met every night for some weeks. No leading questions were put to the prisoner, by the Committee during the examination.

Warwick Palfray, jr. sworn and shewn a newspaper containing an account of the robbery.

I am the Editor of the Essex Register, and published this number. It is dated May 3, 1830. I know the Knapps perfectly well, and having heard several reports in circulation respecting the robbery in Wenham, I applied to them for an account of it. They gave it to me at the News Room, and on my return to my office, I reduced it to writing, and published it as I received it from their mouths. I did not show it to them after it was written. I think Joseph J. Knapp, jr. gave me the particulars. Mr. Palfray then repeated the particulars, as recited by Mr. Phillips.

Cross-examined. Had no doubt at the time, that the statement was true.

Nehemiah Brown, sworn. I am the Keeper of the Salem Jail. On the fifteenth of June, a little before two o'clock in the afternoon, I had occasion to go into George and Richard's room, to carry notes. Called at Richard's room, but had no answer. After calling for him a second time, I looked over the top of his door, and saw him hanging at the grate. Called turn-key and went in. He was hanging by two handkerchiefs. Took him down. Called in physicians. They attempted to restore life, but without success. I then sent for a Coroner.

The Attorney General then read the inquisition on the body of Richard Crowninshield, jr. The verdict of the jury was felo de se.
Mr. Brown cross-examined. The Rev. Mr. Colman visited the cells of the two Knapps. Which first do not know—but both on the same day. Richard Crowninshield's Counsel had constant access to him, when they chose Richard Crowninshield was usually supplied with newspapers.

Mr. Palfray called again. I published a number of the Essex Register on twenty-first May, containing the disclosure of Joseph J. Knapp, jr.

Cross-examined. I published an article respecting the finding of the flannels in Danvers. Should think it was three or four days before Richard Crowninshield's death.

Richard Burnham, sworn.

On the evening of the murder saw George Crowninshield, with two others, in Essex-street, near Franklin Building, about sixty rods from Capt. White's house—near Newbury-street. They were going towards the eastward. One of the persons with him was Chase. Did not know the other. It was about eight o'clock.

John McGlue, sworn.

On the night before the murder, saw Richard Crowninshield, jr. standing opposite Capt. White's house. Found him standing there. He was not doing any thing. I was going up along, on the south side of Essex-street, and when I came up to the brick house next to Dr. Barstow's, I found him standing near a post, he had his head turned up, so as to look up towards Coffee House, or that way, so that I could see side of his face. Think that where he was standing was a little higher up than the house of Capt. W. It was about half past eight in the evening. Crowninshield walked up with me, as far as the Post Office. Asked me, if I was going further. I told him no, and he continued on.

Cross-examined. Lafayette Coffee House is west of Capt. White's house, a short distance. Richard Crowninshield, jr. was opposite upper end of the house. He might have been there an hour, for all I know—did not see him till I came up. Do not know whether there was a party of girls opposite. This was Monday night. Richard Crowninshield, jr. was by brick building next to Dr. Barstow's.

Benjamin S. Newhall, sworn.

I saw George Crowninshield on the evening of the murder, April sixth, passing down Williams-street. It was a little before 10 o'clock. There was a person with him, whom I did not know. He had on a glazed cap. Do not know particularly other parts of his dress. He was a little shorter than George.
Cross-examined. It was between half past 9 and 10 o'clock.

Thomas V. Taylor, sworn.

I saw George Crowninshield on the evening of the murder, at from fifteen to twenty minutes after nine, passing by door of my store in Newbury-street which runs down by the Common. A man was with him, whom I did not know. Store in northwest corner of Franklin Building. He was on the east side of Newbury-street. Some person spoke to him at corner of Newbury and Essex streets, and asked him, where he was going. George said, "You know, all the way down town."

Cross-examined. He was going down towards Williams-street, from Capt. White's house. When I first saw him, he was in Newbury-street going towards Williams-street. Do not know whether he came up or down Essex-street.

Joseph Anthony, sworn.

On the evening of murder, I saw George Crowninshield going from Essex-street into Central-street. Two other persons were with him. One was Chase; the other I did not know. George had on a short jacket and fur cap. They were talking, as they passed.

Benjamin Horton, sworn.

A year ago last spring, I saw Richard and George Crowninshield at Lynn Mineral Spring Hotel. Chase was sitting near Richard Crowninshield. Saw dirk in Richard Crowninshield's bosom. Dick told me it was his nurse child.

Prisoner's Counsel objected to the statement of what Richard Crowninshield said. The Court observed, that they could not see, but that it might tend to prove that Richard Crowninshield usually wore a dirk, that instrument being alleged to have been used in the murder, and they therefore thought the evidence admissible.

The Witness proceeded. Richard Crowninshield commonly carried it with him. I examined it, and should think the blade was from five or six inches long. The handle was bone or ivory. Had a cross hilt about three quarters of an inch long. Called on them about a fortnight after murder, to see if they would say any thing about murder. Saw Richard Crowninshield near workshop. He went into the house, when he saw me. Afterwards came out, and we bid each other "Good morning." George came out soon after, and asked, when I came from Portland, and if any kind of gaming could be carried on down there, as he and Dick thought about going down there—said they intended to go down, but meant first to make a raise at Election. Inquired of me about steam-boat. Showed me some false props, they had been making. I agreed to meet them on the next Thursday evening, at Salem
Hotel. They were arrested on the following Sunday. I had received information in Boston, that I was suspected of the murder of Capt. White. I immediately wrote a letter to Dr. Barstow about it, but received no answer. Went to Hotel, saw there the two Crowninshields and Chase. They were whispering among themselves. Every body seemed to look at me with suspicion. I wanted to see if they (the Crowninshields) knew any thing, and made them think I would go with them. Said they had good game all winter at their room in South Salem.

Cross-examined. Mr. White suggested to me the expediency of going out to Danvers, to see the Crowninshields. Went to see if they would tell me who murdered Capt. White, but did not tell them so. Went partly on my own account. Told Mr. White, in Boston, that I thought of going out to Danvers, to see the Crowninshields. I wanted to see if they would say any thing about murder. It was after conversation with Mr. Stephen White, but don't know whether he or I proposed it first.

Don't know how I came to be suspected. Know no cause—heard a check was drawn by Mr. White for $1000 on a Bank in Boston. I had asked Mr. Stephen White to loan me $50, which he did. Having occasion to pay Mr. Leavitt $1.37, I asked him to change this check. He could not, and went into the Bank, at the back door, as the front was shut. I borrowed money of Mr. Stephen White two or three months before the murder. Mr. Theophilus Sanborn said, I had a check of Mr. White for $1000. On the night of the murder I was at Windham, 14 miles from Portland.

Cross-examined. When in Portland saw that a reward was offered. It was Thursday morning, at about 10 o'clock. I was not to have any thing, if I obtained information from Crowninshields.

Stephen Mirick.

I live directly opposite to the corner of Mrs. Andrew's yard, on the north side of Brown street. About 15 minutes before 9, on the evening of the 6th of April, I saw a man standing at a post, directly opposite my shop, on the opposite side of the street. He stood with his arms on the post, and facing the common. I had a fair view of him. I did not know him. He remained there apparently waiting for some one—this led me to be more particular, in noticing him. He stood thus, till the bell rang for nine, changing his situation a little. After the bell rang, I went out as usual and shut my shutters, but did not put up the slide to my door, so that I might see if any one came to meet him. He walked back and forth twice, certainly, if not more. When any one came down Brown street, he went into Newbury street, and then turned so as to meet him at the corner; and if any one came down Newbury street, he went into Brown street, and turned to meet him in the same manner. From this post he could see up Newbury and Brown street, about as far up one street as the other.
I stood to see if any one should come to meet him. He remained there till 20 or 30 minutes after nine. I did not see him go away, and he was there when I shut up and went home. He had on a frock coat which came round him very tight, was very full at top and bottom; it was of a dark color. I can't say, what he had on his head. I did not observe his face at all. I never saw the prisoner till he was brought before the Grand Jury. It is my belief that he was the man at the post.

Dexter.—Objects to mere belief.

Webster.—In questions of identity, it is always admissible. (Stark. 127.)

Webster. Have you, as you know, or believe, seen that person since?

Ans. I think I have seen him since.

Webster. Where have you seen him, and what name did he bear?

Ans. I think I saw him when he was brought up before the Grand Jury, and when he was brought up, once or twice since. I think it was Francis Knapp. Can't swear positively, but I believe it was he.

Court. Was this belief derived from personal observation, or from what you have heard from others?

Ans. From both—that is, from my observation at the time, and from the description of the person seen that evening.

Court. From your own observation alone, do you say, it was Frank Knapp?

Ans. No I should not. Can't say positively, from my own observation. But the size and height of the man, I saw, correspond very nearly to prisoner. His dress is different now.

Webster. I suppose, we may ask, what description of dress has been given to him.

Court. His belief arises from two sources. What he had from others, is not evidence.

Cross-examined. I saw the prisoner when he was brought up to be arraigned, week before last, on Tuesday I think. Don't know what part of the day. The first time, I saw him, was one day, when he was brought in to hear indictment. I was in County-street—the prisoner was in a chaise. There were three chaises; he was in one
of them, do not know which. Saw him get out of the chaise at the
door. Did not see him, in this room.

He had on a light coat—they were all pointed out to me, as
they rode up. Don't know who pointed them out.

Re-examined. Prisoner, at the Bar, is the same person who
got out from the chaise, and was pointed out to me, as Francis Knapp.

Cross-examined. I can't say whether I asked which was Frank
Knapp. I heard some person, who stood by, say this is such an one,
and this is such an one. Believe, I did not inquire, which was
Frank Knapp, or speak to any one.

Peter E. Webster, sworn.

I live in Bridge-street, corner of Pleasant-street. My place
of business is in Essex-street, nearly opposite Newbury-street. I
have occupied for purposes of trade several buildings. Always have
more or less property about Branch Meeting house. Occupy the cellar
of it. I went home about half past 9 in the evening of April 6th;
from half past 9 to 10. I generally go to Post Office first. I
went through Howard-street on my way home. About a quarter of the
way down Howard-street, saw two persons—overtook them, at the bottom
of street, near new road. They were walking about the middle of the
street. This is a narrow-street. They were walking down towards
river. Passed them at the lower end, where it goes out. I took one
of them to be Frank Knapp, and mentioned it once or twice. Did not
think any thing about it, more than if I had seen any body else.
Have always known Frank Knapp for a dozen years. When at home gener­
ally see him every day or two. He is sometimes at sea. I passed
nearest to him, and I supposed him to be Frank Knapp. I then took
him to be Frank, and I have never altered my mind. The other person
I did not notice. They were walking slowly. I turned to the right.
They were going same way. They followed me. When I last saw them,
they were about a dozen or twenty rods from the bottom of the street.
They did not pass my house. Did not see them, after they got to the
rise of the hill. Capt. Knapp, the father, lives in Essex-street,
near my store. The prisoner stays at his father's, when at home.

Cross-examined. I did not see the face of the man. Knew him
by his air and walk. Passed within 6 or 8 feet. Did not speak to
him, nor he to me. I sometimes speak, and sometimes do not speak to
him when I meet him. Both men had dark wrappers, and glazed caps.
Night was cloudy, and a little damp. Don't know Richard or George
Crowninshield. I know it was sixth April. Took notice of the men,
because unusual to see men, in that street. Don't know, that it is
a street, where assignations are made. I mentioned it to Mr. Foster,
Cashier of Asiatic Bank. Do not recollect how soon. Do not know,
whether before the Knapps were taken up, or afterwards. I thought
it was Frank, whom I saw there, before they were taken up. Told
Mr. Foster one of them was Frank Knapp. The Post Office generally
opens at half past nine. My usual hour of going to Post office, was
a little after nine.

Could not say positively who the person was, without seeing
his face. Thought they were waiting for somebody because they walked
so slow. I know that night—recollect the appearance of the night
on account of the weather. I sometimes go home other way. I did not
go that way the night before. Do not recollect what the weather was
the night before. Heard of murder next morning. Sometimes take five
franc pieces—not very common—take more or less every week.

John A. Southwick, sworn.

I live in Brown street, next house but two to the westward
above rope walk. Mr. Downing's house makes the corner of Howard
street. On the evening of the murder, I left my father's house in
Essex street, about half past ten to go home; as I passed up by rope
walk, I saw a young man sitting there; as I passed him, he dropped
his head. I stopped at Downing's door, then walked back, I think
that time, then returned to Downing's house, and then to my own.
Dropped his head every time I passed him. I felt very sure it was
Mr. Knapp. Passed him three times, when on the steps; he had a
brown camblet cloak, and glazed cap. I then took that person to be
Mr. Knapp. I was brought up along side of him, within a few houses
of him, from his boyhood. When I passed the third time, I went into
my house—my wife was up. One time, when I went in, I spoke to her.
The same person was in my mind, all the evening, after I saw him.
I came out of my house, and walked to the corner of Downing's house,
looking for this person, down Howard street, when Capt. Bray came
up. He asked, what I was out there, so late for. Told him, I had
seen a person, on rope walk steps, and about there, that looked
suspicious, or whom I thought suspicious. He said he had seen one
also, and pointed up to old Mrs. Shepard's house, and said there he
is now, on the opposite side of the street, further up. Looked and
saw a person standing there. He came down by us, and went to the
post nearly opposite Capt. Bray's door, and leaned over the post.
When he passed us, we were near Downing's house, on that side. This
man passed down on the opposite side. We walked down some ways,
perhaps as far as Dr. Johnson's house. While he was at the post,
we went in, at the west end of Bray's house, and went into the
house, at the end door. Front door is on the north side of the house,
the side nearest post. Went into his chamber. When we went in, only
half of one shutter open, I stood back. Mr. Bray watched. In a
short time he said, another one has come up. Now they have passed
along to the west corner of the house, and that induced him to go
to the window to look out. Saw one of the persons running across
the street. (Here the witness referred to the plan which had been
exhibited to the Court.) He run round rope walk corner. The other
went down towards Common. Thought he went round corner. Then Mr. Bray and I came out, went down Howard street, round up Williams street, and back home. We parted in front of Bray's house. Mentioned to my wife, what I had seen. Told her, I had seen a person, that I supposed was Frank Knapp, without making any further observation. Do not recollect dress of person leaning on post.

Cross-examined.—The time, when I first saw this person, was about half past ten. I know, because I knew at what time I left my father's house. It is two or three minute's walk. My impression is, that I looked at my watch when I was at my father's, and thought it was time to be walking up. It was about half past ten.

The man upon the steps was two or three feet off, when I was nearest to him. I did not speak to him because I had nothing to say to him, and he hid his face. Perhaps I should not speak to him three quarters of the time, when I met him, owing more to his manner than mine; he rather evaded speaking; I don't know that I saw his face; his dress was a camblet cloak, I can swear to it.

I judged it was Frank Knapp, from the general appearance of the man. He was not wrapped up, for I could see that he sat cross legged. It was a cloudy night but moon was at the full. I don't recollect its raining; it did not rain then; it was misty at times.

I did not see the man on the steps get up and go away; but it is on my mind that it was the same man I saw at the post. I did not think it important to go out, though it looked suspicious in the man to drop his head when I passed and to be sitting on the steps at that time.

I have no doubt he had on a glazed cap; did not see any fur about the cap. I went out the second time from suspicions expressed in the house, when I told what I had seen. They said in the house, they should like to have me go out, though I had said who I thought the man was. I have not known that Howard Street is a place of assignations for the last six months. I cannot say that I suspected the man was there for that purpose. I cannot say what I suspected him of. When I met Capt. Bray, I told him my suspicions. He said there was a suspicious looking person on the other side the street by the post. Don't recollect seeing the man by the post 'till Capt. Bray pointed him out to me. He did this when we were standing by Downing's house. We saw him pass down the street. Can't say whether the man Capt. Bray pointed out to me had a cloak and cap. I thought it was the same I had seen on the steps, because I had seen no other in the street. I had the same suspicions about the man who walked down the street that I had of the man on the steps. Don't recollect stating before the magistrate that I took the person on the steps for Frank K. from nothing but his dress.
I cannot describe the dress of the person who came up and joined the man standing at the post, when we were in Capt. Bray's chamber. The post might be six or eight feet from the window. I can't swear to the dress of either. My impression is that one of them had on a light coat. Can't recollect the other's dress.

I don't recollect that I have told any person that I could not tell who the person was on the steps. Have no recollection of telling any person that I could not distinguish. I never said the man on the steps was Wm. Peirce, but compared him to Wm. Peirce in size and appearance. I don't recollect telling Capt. Bray that he looked like Wm. Peirce; never told him I tho' t the man was Wm. Peirce.

I cannot tell how the man running across the street was dressed; I knew it was one of the same persons, because they appeared to be watching, and engaged in the same business.

We were looking out of the window 4, 5 or 6 minutes. I can't say the dress spoken of is a common dress, but many young men wear glazed caps and camblet cloaks.

I cannot tell when I was first examined before the Committee of Vigilance, or that I ever was particularly. I have been sent for and questioned about this matter; cannot say whether before or after the Knapps were arrested.

The observation of Capt. Bray, that the man had gone to the West end of the house, was made before I looked. I did not continue to look, but looked away. When I was looking out of the W. window, and saw one of the men running to the Eastward, I did not know where he went to.

I never said either of those persons was Crowninshield or Selman or Chase.

I was at Ipswich before the Grand Jury; did not state to them, that I supposed the person, that I saw on the steps, was Frank K. I was sworn to tell the whole truth. I did not say that it was Selman or that it was not. I said I thought that it looked some like Selman.

When I passed the man on the steps, I went half way to the Common; the first time I passed him I went as far as Downing's corner, then turned and went back half way to the Common, then repassed him and went home. I was watching the man 20 minutes before I went into the house; stayed in the house a few minutes; Capt. Bray and I watched him 5 or 6 minutes; we were in Bray's house 6 or 8 minutes; in going down Howard street, we went pretty quick the first part of the way; looked over into the burying ground by the Branch meeting-house, to see if the person was there; we stayed together.
perhaps two minutes after we came back, then went home. I did not
hear the clock strike after I got home; it was about 10 minutes past
eleven by the time-piece, when I got home. I have not said that I
heard the clock strike eleven that night.

Daniel Bray, jr. sworn.

I live in Brown street, and in the lowest house on the S.
side.

On the evening of the 6th of April I was passing down Brown
St. from St. Peter's St. and when I passed the 4th house, I saw a
man dressed in a dark full frock coat, dark pantaloons and shining
cap standing at a post. The frock was very full at bottom.

I was on the North side of the street and he on the S. As
I passed on I saw another man looking or peeping down Howard Street,
who I found was Mr. John Southwick. I think I asked him what he was
about there so late. He said that when he went into his house a man
was sitting on the rope-walk steps. I turned round and observed,
"there stands the man now." (I could see him very plainly up toward
Shepard's house—it was so light.) Mr. Southwick then said that he
did not like the looks of the man when he went in. I walked on with
him close to the rope-walk, and stood so as to get out of the wind,
when the man passed along on the South side and took his station at
the post next the bounds between my house and that of Mrs. Andrew.
I asked Southwick to go with me into my house, to see what he was
about. We passed about 20 ft. from him and entered my west door,
and went up into my chamber, because the sliding shutters in the room
below were closed, and we could not unclose them without noise. I
looked out of the window and by pressing my face against the glass,
I could see the man at the post, and never lost sight of him while
he stood there, which was 5 or 6 minutes, when another man came from
Eastward—in the middle of the road and not on the side-walk. I saw
him when he was 150 or 200 feet off. From my window, I could see
down Brown-street, and the Common, so the man must have come through
Newbury-street, or we could have seen him sooner. He came up to the
post close to the other without bowing, as near as he could get, and
stopped. They then went together into the street 10 or 11 feet toward
the N. W. and stood there not more than a foot apart, and not more
than a minute. I could then see them better from the Western window.
The man that came from the E. had on light clothes—he then run as
hard as he could down Howard-street. The other at the same time
started off in the opposite direction, and was out of sight towards
the E. I know he did not go up Brown-street, for he turned round
and went to the East. When we got into the street we could see no
one. We then went down Howard-street immediately, and as soon as we
came to the Grave-yard, we looked over the fence several times, but
saw nothing;—we looked over the fence repeatedly. Before we got
down to the New Road we saw a light open waggon with a man in it
passing along that Road towards Beverly. We went on round through Williams-street and came home. I don't know the prisoner now—but did know him 4 years ago. I have seen him since in prison, and at the bar. I can't tell whether he was one of those I saw that night; the size and general appearance agree very well. I had heard the clock strike 10, and should think that it was 30 or 40 minutes after when I met Southwick. After the murder I went up on Downing's steps, and could see all the North and West windows of Capt. White's house, and a light in the chamber where he slept—the windows of the room over that, those of the room on the same floor over the kitchen, and those of the room over this. These cannot now be seen because of leaves on the trees.

Cross-Examined.—The steps of Downing's house is the only place where I looked from. The windows could not be seen from the Rope Walk steps, or from Shepard's post, or from the post near my house, or while walking down under the fence on the S. side. I saw the man before I came to Southwick and it appeared singular that one should be standing there. He did not then tell me that it was Frank Knapp, but he has since told me. I believe after the arrest. I did not then hear Southwick say that the man looked like William Peirce, and believe I did not hear him say so when examined by Justice Savage.

Mrs. Southwick, sworn.

On the night of the murder Mr. S. came home after 10, went out again and returned just before or just after 11. I had looked at the time-piece just before.

Capt. Bray, recalled by Counsel for Prisoner.

My dress was a dark frock coat, dark pantaloons. Southwick's was reddish pantaloons, and we both wore hats.

Miss Elizabeth Potter, Sworn.

I live in Brown Street. The evening of the night of the murder, about half-past ten, I saw a person standing at the corner of Howard Street, looking down Howard Street. He turned and looked towards the house, when I opened the door. The house is nearly opposite the rope-walk.—His dress was light pantaloons, cinnamon drab, I thought, and dark coat; I don't recollect what he had on his head. I know Mr. Southwick and do not think it was he.

Isaac H. Fotheringham, Sworn.

I was in Brown Street on the evening of the sixth of April. I was at Mr. James Potter's, nearly opposite the rope-walk. It was
about half-past ten o'clock, when I came away; I looked at the clock. When I opened the door, I saw a person walking up the street slowly. He had passed the door when I opened it. He turned and looked over, and remained there after I walked up the South side of the street. He was on the opposite side-walk, within a few paces of the rope-walk, when he first stopped. He then advanced a little farther, and that brought him to the corner of the rope-walk on Howard Street. I went on the same side of the street, and looking back, thought he was joined by another person. One of them was dressed in a dark coat and light pantaloons and hat. The person who joined him must have come up Howard street or Brown Street, or I should have seen him. They were standing there the last I saw of them.

Cross-Examined.—My first impression was, that it was Mr. Southwick; but afterwards came to a different conclusion, because I thought he was too tall, and if it had been Southwick, I thought he would have spoken to me. I thought his pantaloons were of a cinnamon drab color.

Joseph Burns, sworn.

I was born in old Spain; have lived here about 25 years. My place of business is in St. Peter street. I keep horses to let—my stable is near the head of Brown street. I know Francis Knapp. Had a conversation with him in the stable, after the murder, and after the Committee of Vigilance was appointed. It was just after the Wenham robbery. He came into the stable, and asked if any body was in the stable besides me. I told him no. He asked me whether I had any loft, or place upstairs; I told him yes. He said "the best way is for us to go up, as I want to say something particular to you." We went up—then he asked me if I knew any thing about Capt. White's murder. I told him "no— I wished to the Lord I should, because I would make it known pretty quick." He said the Committee had heard I was out on the night of the murder, till about 10 o'clock; and, said he, "if you saw any one, any friend, out that night in the street, don't you let the Committee know it, for they will try to pump something out of you." He said his brother Joseph was a friend of mine, and he himself too was a friend to me. He said the Committee wanted to pump me, to see if they could catch me, in one thing or another. I then said that I knew all the members of the Committee, and if they wanted me any time, I was ready to answer them to any thing. Then I asked Knapp what he thought of the Crowninshields, who were in jail. Mr. Knapp said they were as innocent of that as he and I. I asked him who did it, then? He said Capt. Stephen White must be the one. I said, "don't you tell me such a thing as that. I know Capt. Stephen White, and have known him ever since he was 18 or 19 years old." Then he put his hand under his waistcoat, where he had a dirk, and showed the handle. I said, "d__n you, I
don't care for you, nor twenty dirks." Then he said that he was a
friend to me, and had come to give me this information, that I need
not get into difficulty. I know Joseph J. Knapp, jr.—he used to
come to my stable to hire, and to put up horses. He was there on
the week before the murder. He sometimes wore a cap, and sometimes
a hat. He usually left one of them there. He wore also a cloak, or
surtout, and likewise left one or the other of these. His clothes
were sometimes left in the entry, and sometimes in the chaise, and
I put them into the entry.

Nathaniel Kinsman, called again.

I reside in Brown street. A few days after the murder, I
went out to see from what part of that street I could distinguish
the window in the chamber of Capt. White. I could see the window
from the south-east corner of Mr. Downing's house, at the corner of
Howard and Brown sts. I could see the north window of Capt. White's
sleeping chamber, and that of the chamber above. I have no doubt
that I might have seen the windows in the chamber of Mrs. Beckford,
but my object then was to ascertain whether I could see the window
in Capt. White's chamber. There is no building to interfere with
the range of the second story. As far west as the next house to
Mr. Downing's, which is the one in which I reside, and is 18 or 20
paces farther up, I could still see the window, and also in all the
intermediate space. East of the south-east corner of Mr. Downing's
house, could not see it.—There is one passage way from Essex street
to Brown street. It is not public—it comes through to where the
Sun Tavern used to stand, and is nearly as far west as the Church.
There are two passage-ways, with a gate to each, which you must open.
It would be nearer to go from the Ropewalk steps to Capt. White's
house by Newbury street, than through either of these.

Cross-examined. I could see the windows very plain, without
getting upon the steps of Downing's house.

Philip Chase, Affirmed.

Early after the murder of Capt. White, I heard of a suspicious
man's having been seen on Rope Walk steps. Thought he might be
watching. I went to see if any thing could be seen from steps. A
little to the west from the opening of Howard Street, I could see
Capt. White's chamber window. I think it was rather more than half
way across Howard Street, that I first saw the window. But on Down­
ing's steps could see it very plain. Don't know how far West of the
steps I might have seen it.—Could see range of windows.

Cross-examined. I don't know which was Mrs. Beckford's
chamber, don't know that I examined that. I had no suspicion, of
any particular person having been concerned in murder, when I went
to look at this window. It was before the Knapps were arrested. I
had no suspicions of the Knapp's, before I heard of the Wenham robbery.

Mary Jane Weller, sworn.

I know George Crowninshield. About three weeks before the murder, he was at my house. It was in the morning. I went into his room where he slept. Mary Bassett and I found a dagger under the pillow of Mary's bed. He had been sleeping with Mary that night. I asked George why he carried a dirk. He said it was because it had once saved his life, and some Salem fellows were going to flog some Danvers fellows. On the evening of April 6, between 10 and 11 o'clock, he came to my house. I heard the Clock strike 11 after he came in. Saw him there next morning. I went out and heard of the murder. Then went into George's Room and told him. He appeared to be alarmed, and Mary was alarmed. I wanted to go down to Capt. White's to see the body, and asked Mary to go. George was unwilling to have her go. He told me that morning not to say anything about that dirk; he said every scrape was laid to the Crowninshields. He stayed there all day, and did not go away until the evening. The hour he came at, was between 10 and 11. He had been accustomed to come there at dark, and to go away again, and come back between 12 and 1. He had stayed there once all day, a very cold day. This time, he said he had a bad headache, and laid abed nearly all day. He asked if we went down, not to say anything, about his being there, and not to say anything about the dirk. Went away about dark, day after the murder. The dirk was about as long as a case knife—it had an ivory or bone handle.

Cross-examined. Counsel for prisoner. What sort of weather was it the next day?

Witness. You know, as well as I do, I am not going to answer any such silly questions. I've told my story and I don't want to be made fun of.

Hon. S. C. Phillips, called again. Cannot recollect, that I ever received five-franc pieces, they are sold as merchandise, not much used as a currency. They go by tale.

Cross-examined. I am a merchant, the usual currency is bills or checks.

Miss Catharine Kimball, sworn.

I was at Capt. White's house, on the next day after the murder. I found the Key of his chamber door, under the sofa covering. It is a common door Key. Mrs. Stanley was with me, don't recollect, what she did with it. I think, though I am not positive that Mr. Deland was present.
Benjamin White, called again. The last time Joseph J. Knapp, jr. was at Capt. White's house, before the murder, was Sunday before. Mr. Knapp was with him. Took tea there. Capt. W. not at home. He took tea at Mrs. Stone's, Chesnut Street. Mr. Knapp did not come, till towards night. Mrs. Knapp came first.

Cross-examined. The plank, found under the window, came from before the garden gate. It is just beyond the shed. It opens into the yard fronting Essex Street. You go along the yard to garden gate.

Re-examined. Plank so near door step that one might step on it from the door.

Cross-examined. The small gate was not usually fastened, but generally shut. I was examined by Committee of Vigilance, as if suspected.

Henry R. Deland, sworn.

I was at the house of Capt. White, on the day after the murder, after the body was laid out. I saw the key of the chamber on the sofa. We looked for it to fasten the door. Miss Kimball was there. I called at Capt. White's house, on the day before the murder, between half past 12 and 1. Lydia Kimball came to the door.

Hon. Gideon Barstow, sworn.

I went with Mr. Colman, on the 29th May, at his request, to the Meeting house, in Howard Street. Mr. Colman went to the further steps of the house, put his hand under the step, and drew out the bludgeon, and said this killed Capt. White. Five franc pieces form a small portion of our currency. Do not recollect receiving but one. They are considered as merchandise, and generally pass at a discount.

Jedediah H. Lathrop, sworn.

I live in Beverly on the farm owned by Capt. White. He was there on the day before he was murdered. His young man came with him. It was after dinner. He returned home, about five o'clock. The next time before that, he was there on Friday April 2. He came up in his wagon. He then came up after dinner. Usual hour for dining one o'clock. He started to come home, about sunset. Generally went through Danvers. Would go across North Bridge. But whether he went that way, on that day, do not know.

Jonathan Very, sworn.

I live with Mr. Osborn, and have the care of his Stable. I know Francis Knapp very well. One time Francis came to me, and asked
me, if I would bring him a horse and chaise behind, or near the Court House. He gave no reason for it. I brought the horse and chaise, between the Court House and Mr. Chase's. Nobody got in with him. Do not know which way he went. It was between 1 and 2 o'clock. I had just come from dinner. Some grain was brought up from wharf same day. Had been drawing grain. This was the last day of our drawing it. It was on the Friday afternoon before, that we began to draw it. I never carried a Chaise to him before.

Cross-examined. He asked me to harness Nip Cat, in the chaise, and bring him as soon as I could.

William Osborn, called again.

I have with me a bill of the grain, bought of Mr. Hacker. It is dated second of the fourth month. We began to remove the grain on the same day, and finished drawing it on Tuesday.

Cross-examined. Am positive, that the day we finished drawing the grain was Tuesday.

William E. Hacker, affirmed.

I made an agreement with Mr. Wm. Osborn for the sale of a quantity of oats to him on the 21 of April last, and he commenced taking them away immediately. He took away the last of them on Tuesday April 6th.

Cross-examined. I know that the agreement was made on the second of April and that they were several days in measuring the oats.

John W. Treadwell, Esq, sworn.

I am cashier of the Merchants Bank. Five franc pieces are not a common coin—rather an article of merchandise. They are a favorite bank coin, and we generally keep them in the vaults, till we can get a premium upon them. Mrs. Beckford was a niece of Capt. White, an only sister's daughter, and housekeeper in his family. She had two daughters, one married to Joseph J. Knapp, jr. the other to Mr. Davis of Wenham. Capt. W. had nephews and nieces, children of his late brother Henry. Mr. Stephen W. and family were at Boston last winter at Tremont house.

Cross-examined. I am one of the committee of Vigilance. The committee consulted Mr. Choate as Counsel. They did not retain any other Counsel, to my knowledge. They did think proper to take an oath not to divulge their proceedings. I do not know how the expenses of the committee were paid. A letter was received from Mr. Stephen W. offering them $1000—to pay expenses, if their investigations should not lead to the detection of the murderers.
William Osborn, called again. I commenced removing the oats, bought of Mr. Hacker on the day I made the agreement, and finished the Tuesday following.

Cross-examined. It was on that day that Ostler mentioned to me that he carried a chaise to the Court house for Frank Knapp, and I thought strange of it. The horse he had was Nip-cat.

J. C. R. Palmer called again.

And inquired of more particularly as to prisoner's visit to the Crowninshields on 9th of April.

George asked me at that time if I had heard of the murder, and said they had no hand in it. Richard afterwards asked me if I had heard of the "music" in Salem? He said, people supposed they had some hand in it—they said they should leave home. I told him I thought it a bad plan if they were suspected. George told me he took his dirk down to the machine shop and melted it down; for a committee was appointed to examine houses, and it would be a bad sign to have it found. Richard agreed to meet me at Lowell on the first of May. He said he had to finish some cloths and could dispose of them and get some money and go to New York. He gave me $5—bill on Newburyport Bank.

Cross-examined.--I never have stated that the murder was committed with a hatchet—I said I found a hatchet in the machine shop and threw it into one of two places, did not recollect which. I told Jones I had seen a hatchet and suspected it had been used, because I saw an account in the newspapers that the murder was probably committed with a hatchet—I put it away so that it might be found if called for. It had the handle newly sawed off and had clay on the head of it, but was just like any other hatchet. George said he had melted the dirk because a committee was appointed. I am positive that this was on the 9th of April.

David Starrett, sworn.

I live in Wenham and keep a store there. I heard of the robbery of the Knapps, last spring. There was nothing done to detect the robbers. I saw the prisoner at my store on the afternoon before the murder, about 4 o'clock. My store is about one quarter of a mile from Joseph Knapp's house.

Abraham True, sworn.

I live in Williams street, pass through Brown street several times every day. I took particular notice, soon after the murder, of Capt. White's house, and the back windows of the two upper stories are perfectly visible from Brown street when the trees are not
covered with leaves. I am a retail grocer, do not take a dozen 5 franc pieces in a year.

Cross-examined.--The windows are not visible from all parts of Brown street, but they may be seen from Howard street and several rods above, westerly. They cannot be seen from the rope walk steps, but can be seen from a point six or eight feet west of the steps, I should think. The western windows of the front chamber may also be seen.

A majority of The Court having decided that the confession of the prisoner could not be given to the jury, Mr. Webster submitted to the Court an application on behalf of the Government for a re-argument of the question.

The Court were very clearly of opinion that it would be proper to hear an argument, not being unanimous in the opinion already expressed.

On the part of the Government, it was contended, that the confessions of the prisoner were proper evidence to be submitted to the jury, on several grounds.

1. The assent to J's. confession, which was asked of the prisoner, was not such a confession as comes within the protection of the principle of law.

2. What was said by Phippen Knapp to the prisoner, even if said with a view to draw out a confession, is not such a threat, or promise, or encouragement as the law requires.

3. The hope of favor, whatever it was, was addressed exclusively to obtaining his assent to J. J. Knapp's disclosure, and had no application expressed or implied to facts within his own knowledge.

The Counsel for the prisoner confined themselves chiefly to a reply to the arguments urged by the Counsel for the Government, contending that

1. The prisoner was given to understand that his brother's confession was to be made only on condition of his assent; and if he assented, then he would have a hope of pardon.

2. Consenting that his brother should confess was virtually his own confession.

3. If therefore any improper inducement was held out to him to consent, not one word of any subsequent confession can be evidence.

The Court adhered to their former opinions, stating more fully the grounds of them.

After this decision, Mr. Webster stated to the Court—that the question appeared to be not fully settled, and proposed to call the witness and ask him certain questions of a different character from those already proposed to him. He proposed to ask the witness whether the prisoner did assent to J's confession, suggesting that it would probably appear that he never did assent.

Wilde J. That would materially vary the case.

Morton J. It would be most important evidence. My opinion was founded on the supposition that he assented.

Dexter. It seems to me that the time is passed when the witness can be called. He was asked to state all the conversation that related to encouragement and he said he had done so. To call him now would be a measure of severity to which the prisoner ought not to be subjected.

Wilde J. It is much to be regretted that the question now proposed to be put had not been asked. Both Judges founded their opinion upon the supposition that the prisoner's assent was given. If such were not the fact, if the encouragement did not produce its effect, we see no reason why his subsequent confessions should not be admitted.—The Counsel could have no intention in pursuing this course. Feeling a great degree of confidence in the admissibility of the evidence, as the facts stood, it probably escaped attention. This course may be an inconvenience; but we are all of opinion that we ought to hear the witness, to ascertain if there is any important fact not before the Court.

Mr. Colman, called again.

Wilde J. It becomes necessary to ask one question which was not proposed to you before. The fact the Court wish to ascertain is, whether, before the confession, there was any assent to the proposition made to the prisoner by his brother Phippen Knapp?

Ans. There was neither assent nor refusal.

Morton J. The fact, upon which my whole opinion turned, that is, the prisoner's assent to his brother's confession, is varied. It is now said that there was no assent. The burden of proof is upon the prisoner to show that the case is within the exception to the
general rule. As the evidence now stands, it does not appear that there was any improper influence. There is no evidence of assent.

Mr. Colman goes on.

I had been informed that the murder was committed at a very early hour in the evening—I thought it incredible, and asked the prisoner at what time it was done. He told me between 10 and 11. I had been incredulous about there having been but one person in the house. He told me, that Richard Crowninshield alone was in the house. I asked him if he was at home that night. He said he went home afterwards. I asked him, in regard to the weapon—the place where it was concealed. He told me under the steps, as before, and said that if I went there, I should find it. I asked what became of the dagger or daggers,—I am not certain which. He replied that it or they had been worked up, at the factory.

Cross-examined.—The principal part of the conversation was between Phippen and Frank. I went into the cell a little before 7 o'clock, and suppose that I came out at 1-2 after 7. This was Friday afternoon 28th of May, I first visited him—I had never spoken to him before. I had some conversation with him at another time at his window. I went immediately from the cell of Joseph to that of Frank. Phippen was not in Joseph's cell with me. While I was in the latter, some one knocked at the door.—I looked out at the scuttle of the door and saw Phippen—he asked to come in. I told him 'not yet.' I had not finished my business with his brother. I went to Boston to see the Attorney General. I started for Boston about 10 P.M. and arrived at the Attorney General's between 12 and 1 o'clock.

I was at Joseph's cell 3 times on that day, and again on the day following—once with Dr. Barstow, and Stephen C. Phillips, Esq. I recollect beyond a doubt, which time I went from Joseph to Frank's cell—it was after the 3d visit to Joseph's, and the same evening, on which I visited the Attorney General. Frank was told that Joseph had decided &c. as before, and nothing more. I did not hear it stated, that Joseph had made a full confession. I never said that I would not mention, what Joseph had told me unless Frank consented to the disclosure. I never stated to Frank that there was no chance, if both refused to confess. I never told him that there was evidence enough to hang both. He never stated, that he had no confession to make. I already knew that the club was under the church steps, but which steps I did not know, until Frank told me. I don't recollect telling the prisoner that Palmer was arrested, or that application was made for his pardon. I don't recollect that it was stated to Frank that Palmer would receive a pardon, though I think it not improbable, that it was stated. The jailer had called and told us that it was time to go, and repeated his call;
then Phippen appealed to me, and Frank said, "I suppose you will use your influence," &c.

I said, this is your deliberate assent (to Joseph's disclosure), he said, 'I don't see that it is left for me to choose. I must consent.' I have stated all that I so well recollect, as to be willing to state under oath. I think I stated to Mr. Stephen White in Boston, at the Tremont House, and also at the office of Phippen Knapp, when Mr. Dexter was present, that Frank had confirmed Joe's confession.

Phippen Knapp was present during the whole interview and might have heard it. I didn't tell Mr. Stephen White that Frank had told me where the club was. I have no recollection of telling any one where it was, till I had found it, except that I spoke of it to Phippen Knapp as we came up from the Jail. I told him that I should rely upon his honor that he should not go for the club.

On Saturday, 29th May, a little before 1 o'clock, I found the club. I went to Frank's cell at the request of Phippen Knapp—his conduct was an example of filial and fraternal affection. At the request of Joseph, when I went out of his cell, I asked his father and brother Phippen to go to him. Frank did not tell me that he knew where the club was, of his own knowledge, or that any one told him it was there. He answered the question directly.

Here the testimony on the part of the Government closed, and the defence was opened by Mr. Gardner, junior Counsel for the prisoner.

Mr. Gardner, in introducing the grounds of defence, which he expected to establish for the prisoner, referred to his situation as being peculiarly embarrassing. His connection with the prisoner had been but of a few days, and he had been, perhaps unfortunately for the prisoner, substituted for another gentleman, who was fully competent to do justice to his cause, by reason of his intimacy with the friends of the prisoner, and his familiarity with the neighborhood of the place where the murder was committed. He readily assented to the truth of the remark of the Attorney General, that this murder was most atrocious. He thought that the man must be very bold, who would deny it. But he cautioned the Jury not to let the enormity of the crime, and the general alarm which it excited, prevent a full and free exercise of their judgment. He urged them to remember, that the presumptions should be rather for, than against, the prisoner, particularly under the peculiar circumstances in which he was placed. He was a young man, about 19 years of age, brought up in the bosom of this peaceful community, and now, for the first time, placed at the bar of his Country, and to be tried for his life. The whole community was in a state of the greatest excitement, and ready to fix its suspicions upon any individual, who might be singled out.
The Attorney General has informed you, that even the honorable relation of the deceased did not escape suspicion. Reports, the most unfounded, the most calumnious, have been set in circulation against even him. Large rewards were offered by the State, the Town, and the family of the deceased, for the detection of the murderers, and a most extraordinary tribunal was formed, under the name of a Committee of Vigilance, consisting of twenty-seven persons, and these selected from the most respectable portion of the community, holding their nightly sessions in secret, and despatching their agents through the State, and beyond the State. He likewise referred to the manner in which the prosecution had been conducted. It was backed, he said, by nearly all the talents of the bar of the County. Even the Legislature has been stirred in this matter. A special law has been passed for the very purpose of this trial. Justice was thought to move with too slow a pace. Both the Attorney and Solicitor General were directed to attend. But they were thought not enough, for besides all the Bar of this County, there was brought into the Cause a gentleman, whom he considered as the most eloquent orator in his age and country. He came fresh from his victory at the South, with his brows wreathed with the laurels he had won in the Senate Chamber, to overpower the Jury with his eloquence, and to "nullify" the prisoner's defence.

Mr. Gardner again alluded to the deep and general sensation, produced by this atrocious murder, particularly on account of the age and station in society of the victim of the assassination, but it was the right of the prisoner to ask, that the law should keep the even tenor of its way, whatever be the station of the party.

He called the attention of the Jury to the state into which the public mind had been thrown by the publication of the Confession of one of the persons implicated. So determined seemed to be the community to establish the guilt of the persons accused, that he might almost say, it was hazardous for him to appear in the defence. The cry of the people is for blood. He considered it truly an alarming state of things, if to be accused, was to be convicted, if rumors, generated by suspicion, were to be the evidence upon which the life of the prisoner was to be put in jeopardy. But he had no fear on this account. He did not despair of a fair trial, even in this case. He recollected other periods of violent excitement, when the law interposed her shield, to protect the accused against the influence of popular feeling. He referred to the cases of Selfridge's acquittal, and to the trial of the British soldiers, who were concerned in the Boston massacre.

He then alluded to the strong biasses, which might be supposed to have some influence upon the minds of the most honest witnesses in this case. There is a danger in human testimony, in human judgment. Witnesses testify under mere impressions. It is almost impossible that the imagination should not, in some degree, aid in filling up
the outlines of fact. These considerations should be felt by the Jury, in bringing their minds to the weighing of the testimony in this case. The prisoner's awful situation required the Jury to divest themselves of all prejudices, and to shut out from their minds everything concerning the cause, which they had not heard from the witnesses in the Court-room. It was their duty to try the cause, precisely as if they had never before heard of the murder, and if in coming to a result, they should be in the least degree influenced by outdoor impressions, they would violate their oaths. The evidence brought against the prisoner, should be conclusive. The Government is bound to prove, beyond all doubt, that the prisoner is guilty in manner and form, in which they have charged him.

He then distinguished the several classes of offenders connected with the crime of murder. First, he who strikes the blow, being the principal in the first degree. Second, he who is aiding and abetting, being the principal in the second degree. Third, he who hires and procures, and is considered the accessory before the fact. All these are subjected to the same punishment. How was the prisoner charged in the Indictment? First, as the person who struck the blow—next as being present, aiding and abetting the person who struck the blow. This person, in some of the counts, is alleged to be Richard Crowninshield, jr., in others a person unknown. This is the distinction of the Common Law. He who is a principal in the second degree, in England, is, under the Statute, an accessory before the fact. The Government was bound to prove, that the prisoner gave the blow, or was present, aiding and abetting the murderer. He thought the real inquiry was, whether the prisoner was there, aiding and abetting the murderer. The evidence which the Government had produced, is of a very weak nature, and is liable to great error. They first attempt to prove a conspiracy; then, in support of that, they show you, that the murder was committed—that three men were in the vicinity of the place of the murder, at the time it was committed. They also show a combination of a great number of facts. But all these avail nothing, unless they bring you irresistibly to the conclusion, that the prisoner gave the blow, or was present, aiding and abetting the murderer. He stated that these circumstances are so connected together in this conspiracy, if the Jury should come to the conclusion that one is untrue, the whole case must fall to the ground.

He then referred to one or two cases of circumstantial evidence, as illustrating this principle. (The case of the uncle, mentioned by Lord Coke. 1 Stark. 502—3 & 5.) Even when a party has confessed, there are cases which show that innocent men have been executed upon their own confession.—(2 Stark. 43, and note. 4 Bl. 357.)

The whole evidence of the conspiracy rests on two conversations. One, overheard by Leighton, between the prisoner and his
brother, at Wenham, the other heard by Palmer, between the Crowninshields. So far as these conversations tend to any thing, it is to
disprove the charge. As to the weight of this testimony, he intended
to show that these witnesses were not entitled to credit. The Govern-
ment having proved a conspiracy, they prove the murder, and ask you
to infer, that it was done in pursuance of a conspiracy. Their whole
evidence, if it proves any thing, shows the prisoner to have been an
accessory before the fact. The circumstances of the club and dirk
might have been communicated by others to the prisoner. All the
other circumstances in the case afford no presumption that he was
aiding and abetting. As to the evidence, relating to personal
identity, he referred to Crow's case, in the Appendix to Phillips's
Evidence, p. 78. Sir Davenport's case in State Trials.

The only question is, was John Francis Knapp constructively
present? Even if he were in Brown-street, he was not present, except
by a mere fiction of law. To make a man liable as constructively
present, he must be in a capacity to render assistance, and must be
there for that purpose, and must actually assist. To show that the
man in Brown-street could not be considered in law, as present, he
referred to some cases in the books, relating to the subject of
constructive presence. He stated, that no person, knowing a felony,
can be said to be present, at the commitment of felony, unless he
be where he can aid, with the intent and ability concurring, and is
actually aiding, at the fact. In this, as in other questions of law
that have arisen, there is not so much difficulty in ascertaining the
principle, as in applying it. (He cited 2 Stark. 7, 8. Charge of
Chief Justice Parker. Foster, 350. 1 Hale, c. 34, p. 439. Hawkins,
b. 2. c. 29. Russell, 29, 627, 1025.)

Lord Dacre's case is better reported by Moore, p. 86, 2
Stark. Ev. 7, 8, and cases there cited. 1 Hale, 533. 1 Hawkins, 34.
Russell, 1025. 1 Hale, 463. Russell, 325. 2 Hawkins (442) b. 2,
c. 29. Aaron Burr's case. 4 Cranch, 490. Trial, 426.

The whole tendency of modern cases on this subject has been
to narrow the principle. Russell and Ryan, 343 and 25. King vs.

Mr. Gardner went on to state that they proposed to introduce
evidence to shew that the man, seen in Brown-street, was not the
prisoner at the bar, but some other person; that the prisoner was
in a different place during the evening; and that Brown-street was
not a situation in which aid and assistance could be given to the
murderer.

Mr. Dexter stated that there was one question which he wished
to present to the Court, and that was whether principals in the second
degree at the common law, were not made accessories before the fact,
by our Statute of 1784, c. 65, and entitled to all the privileges of accessories before the fact, in the form and time of trial. This Statute is entitled "An Act against accessories to crimes and felonious assaulters," and describes principals in the second degree at the common law, and declares that they shall be considered as accessories before the fact. He cited Stat. 1804, c. 123. This Statute is not repealed by the general repealing Act of 1805, c. 88. And the law does not favor repeals by implication.—2 Cranch, 23, 386. 3 Wheat. 631. 5 Wheat, 96. 6 Dane, 588.


The Attorney General and Mr. Webster said the Statute of 1784 was virtually repealed by the Statute of 1804, and that if it were not, the description of accessories before the fact, in that Statute, was not the common law definition of a principal in the second degree. The words "being present" are not used in that Statute. 6 Dane, 588—9.

The Act of 1784, c. 65, means being absent. As the law stood when that Act was passed, a man who should hire, procure, abet or assist, was an accessory. A man who should abet, &c. "being present," was a principal in the second degree.

The witnesses for the prisoner were then called.

Jona. P. Saunders, Esq.

The distance from Brown-street to Essex-street, through the garden of Capt. White, is about 295 feet.

I have no affidavit, made by J. C. R. Palmer, before me. I saw it last in the possession of Palmer. He had it when I left his cell. It was sworn to before me. I cannot tell in whose hand writing it was; don't know how much it contained. I received it folded, with Palmer's signature, and did not see its contents, but merely administered the oath. I have never seen it since. I don't know in whose possession it is now.

Daniel Bray, Jr.

I have stated that when I first saw the second man, he was in the middle of the street. I have not examined to see which way he could have come. If he had come from the north side of the arched gate of the Common, I could have seen where he came from, but not if he came from the south side. I could have seen him 15 feet farther south than I did. There are several paths across the Common, leading
to both sides of the arch. I first saw this man 100 or 150 feet off. I could not tell whether he came round the corner or across the Common.

Cross-examined. From where I was I could see any one come out either side the arched gate. If the man had come round the corner, on the side walk, I could not have seen him until he was within 4 or 5 feet of the other man at the post. I don't think I saw him when he first came in sight. The post is 10 or 15 feet from the N.W. corner of the house. When the men were standing at the post, the one most westerly was perfectly in sight, the other could be seen by pressing my face hard against the glass.

Nehemiah Brown.

I was in Palmer's cell when he was sworn to a paper. I don't know what became of it, but think that it was left with him.

Joseph Burns.

Frank Knapp's dirk had a plated handle, which looked like silver. I am not certain whether or not it had a guard. It had a cross piece on the handle. It was not drawn. I don't know how long the handle was.

Wm. H. Allen.

I have known Frank Knapp from childhood, and have been intimate with him. I can't say whether he had a dirk before the Wenham robbery. The first time I saw it was about the time that dirks were selling in Salem. I have no dirk, myself, but I have known a few young men who have had them—this was sometime after the murder. [He identifies the dirk shewn him.] This was Frank's. Mr. Newhall made it for him.

Benjamin Leighton.

Frank's dirk had a gilt handle, with a little jog to prevent its going into the scabbard. The one produced looks like it.

Dudley S. Newhall sworn, and dirk shewn him.

I was making this when prisoner came into my shop and wished to purchase it, and I sold it to him on the day before the Wenham robbery. I was making it for my own amusement. It was several days before it was delivered, that he said he should like to buy it. This is not my regular business—I am a Jeweller. There was a particular demand for dirks at that time.

William Peirce, sworn.
My usual dress at the time of the murder was similar to prisoner's. It was a plaid cloak and a black glazed cap. This was a common dress.--Almost all the young men wore glazed caps. Before the murder, it was not usual to wear dirks. Since that time many use sword canes, but I don't know as to dirks.

The appearance of my cloak was very different from a camblet one—it was a dark green color and shaded.

Cross-examined. I was not on the Rope Walk steps on the night of the murder, but I was in Brown street, for I live there. I don't know what time—I did not stand leaning over a post.

Asa Wiggins, sworn.

I am a Tailor. Camblet cloaks were the most common last winter.—From the 1st of September to April, I made 24. I did not make any plaid cloaks last winter. I made as many mandarins as I did cloaks.

Israel Ward, Jr. sworn.

I am a tailor, and made about 50 cloaks last winter. Two thirds of this number of blue and brown imitation camblet—the other third principally of German camblet. I made also a few of cloth, and two or three of plaid.

Cross-examined. I have made clothes for the prisoner, and between the 20th and last of January I made him a frock coat, of olive or dark brown color, single breasted, snug about the body, and quite full in the skirts.

Re-examined. I have made similar garments for others—probably from the same piece of cloth. I did not make so many mandarins last year as I did the year before—then I made about 30. The prisoner's frock was made in the fashion of the day.

Stephen Osborne, sworn.

I am a hatter, and live in Salem. Within the last year I have sold 1600 or 1700 head coverings—more than 500 caps, of all kinds, within the year ending about three weeks since; and of glazed and leather caps, 200 in all. I know the cap produced, and sold one like it to the prisoner, as much like it as two articles can be. I have sold 200 of the same general appearance as this, men's and boys. There are other hatters in this town. It was a common article of dress last winter.

Cross-examined. Of this particular kind I sold last winter from 1 to 3 dozen—none of the same kind to boys.
Re-examined. I have sold from 1 to 3 dozen of this kind, but without fur, and the rest of the 200 were of glazed leather, but had not a star like this, on the top.

The counsel for the prisoner here read copies of two warrants against J. C. R. Palmer—one dated the 8th of June, by which he was arrested and committed for further examination, upon the same charge as that against the prisoner; and one of July 10, by which he was committed by the magistrate to answer to the same charge, at the present term of this court.

They then read a copy of a record of the Court of Common Pleas of Maine, of a conviction of Palmer for breaking a shop, with intent to steal—the judgment and sentence, which was confinement to hard labor for two years, in Thomastown State Prison.

William Babb, sworn.

I keep a house of Entertainment, called the "Half-way House," between Boston and Salem. I know Palmer, but from the time he was at my house until last Friday I have not seen him. I am not certain when he was at my house; my impression is, that he came there on the 9th of April, and went away on the morning of the 10th. I heard of the murder on the 7th, in the after part of the day, I think. He never slept there at any other time, unless he got into the house unknown to me. My impression is, that it was after the murder, that he slept there. I am not positive that I had heard of the murder before. I know that it was the 9th, because I had a man (George Green) who "took too much," and I turned him away, and he signed a receipt the next morning. Palmer came out while he was signing and asked for his bill, and said he had no money. It was at this time, I think, and the receipt is dated the 10th.

Green was paid for 4 days labor. He worked on the 10th, and left the house on Sunday, the 11th. I am not certain that Green was present. He is now covered up in the earth.

Palmer called himself George Crowninshield, and left with me a plaid silk handkerchief, marked with that name, and offered me a note for the amount of his bill, signed George Crowninshield, and said that he should be along in a day or two, and would pay the bill. I asked him if his name was George Crowninshield—he kept his head down very much, and I said, "you don't resemble the family; I know Richard very well—but you may be a younger brother"—he said "it might be the case." I carried back the note and threw it on the desk, because my wife said that it was good for nothing. I went out, came back and never saw the note afterwards. I don't know what became of it.
Cross-examined. The receipt I left at my house. I saw it last Friday. I can't swear that the receipt was dated the 10th, and if it were I can't swear that this was right. But I am positive that it reads 10th. The time of day was 7 or 8 P.M. when he came there, and it was after 7 in the morning, after the usual time of going to work, that he went away. I can't fix the time any nearer. I don't know which way he came. He went to the east.

    Thomas P. Vose, sworn.

I live in Thomastown, and am commissary of the State Prison. I know Palmer; he was sometime in the prison. This is he now present.

    James W. Webster, sworn.

I live in Belfast, (Me.) I have known Palmer these eight years. As to his general reputation for truth I don't know that he has any at all. I have always heard a bad character of him. I have heard perhaps an hundred people say, that he would not be believed at all, in any case in which he was interested. His general character is not good.

    William F. Angier, sworn.

I live at Belfast and was admitted to the practice of the law about a week ago. I have known Palmer 8 or 9 years. I have never heard his general character for truth and veracity questioned.

The Counsel for the prisoner proposed to ask the witness if he would believe Palmer under oath?

The Court said that was not a proper question. They then proposed to ask, what was the public opinion about him as to other crimes. This question, the Court said could not be put.

They then proposed to ask whether he was not a common liar? This question was ruled to be inadmissible.

They proposed to inquire if it was not the general belief that he had been guilty of perjury?

This question was not admitted.

They proposed to ask, if his general reputation was not such that he would not be believed on oath?

The Court held it not to be a proper question.

    Alfred Welles, sworn.
I reside in Boston, and import hard ware and fancy goods. I sell arms. I have sold small arms, such as pocket pistols and small dirks, in greater quantities within two months than usual. I have had orders from Salem for quantities—from Mr. Johnson. After the murder I received orders for short dirks from respectable persons here and in Boston, as long as I had any left. My drawers were emptied of these instruments once or twice within two months.

Major Petty, sworn.

I live in Danvers, about a quarter of a mile from Crowninshield's. I remember being at work for George Crowninshield, trimming a couple of trees. I can't tell whether before or after the murder. While at work, Richard and two young men, whom I didn't know, came up to us, I heard the name of one called Allen. I can't say whether the prisoner at the bar was one of them—one was a man about his size, and one of them had a whip, but I don't know how they came. The trees which I was trimming were within 8 or 10 rods of the house. These young men went towards the house, and George went with them. I can't tell, whether they went into the house. The front door was open. I am pretty sure that I saw two on the steps, but I am not sure who went in. They were gone but a short time, and came back to within one and a half, or two rods, of the place where I was at work—all four together, I heard talking, but couldn't hear what was said. I could if I had attended. I think that George and one of the others went a little before the rest, when going to the house, but I should say not a rod ahead—all four came back together. They stayed perhaps 10 or 20 minutes, and then started to go to the factory together. The time of day was, as nearly as I can recollect, after dinner. I can't say whether Mr. Allen was the man.

William H. Allen, recalled.

The first time I went, I saw a man at work—it was 6 or 8 weeks before the murder.

Petty resumes.

I was not trimming trees in February, merely cutting them away, so that the meeting house might be seen. I should say that this was in April. I can fix the time by the work I was then employed on. I did not see the young man any more on that day. There was frost in the ground at this time.

Cross-examined. This was not in March—I should think that it was in the fore part of April. I don't know whether it was just before or just after the 6th of April. I think I heard George call one of them Allen.

Ebenezer Shillaber Esq., sworn.
I have had a conversation with Mr. Southwick respecting the man in Brown street. I enquired of him after the arrest of the Knapps, about the men he saw in Brown street. He told me he recollected seeing a young man there. That he went into Bray's house with him, and that after having got there they saw another join the first. Mr. Southwick said that he could not see so well as Bray could, he said that he thought that the man who came from Newbury street was taller than the man who was in Brown Street.

Webster objects to asking what Southwick said except in contradiction of what he has stated on the stand.

Wilde, J. I never knew the rule restricted: what the witness said is to be given at length, and then if any facts differ it will appear.

Webster. It must appear that he has stated something inconsistent with what he stated on the stand.

Dexter. Southwick stated that the man on the steps was Frank Knapp. The height of Richard Crowninshield may be shewn.

Putnam, J. The question should be asked generally. You cannot ask as to any point, to which he has not been inquired of. Non constat that if asked, he would not have given the same account that he has now given on the stand. He ought to have an opportunity of giving his account, before you discredit him.

Gardner. We propose to ask the witness, generally, what description Mr. Southwick gave to the witness, of the persons whom he saw in Brown Street.

Jus. Putnam. The witness may retire, if the Counsel for the prisoner desire to ask Mr. Southwick. If Mr. Southwick has given different reasons for his belief, as to the identity of the persons in Brown-street, than what he has given in Court, the fact may be shown.

Witness. I don't recollect, whether Mr. Southwick gave me any description of the persons whom he saw in Brown-street. I asked him whether, for ought he knew, the person who came from Newbury-street might not have been Francis Knapp, and the person in Brown-street Richard Crowninshield? He said he could not tell, but for aught he knew, it might be so. I had no conversation with him about the man on the steps. My only object was to satisfy myself, that it might have been Richard Crowninshield in Brown-street.

Cross-examined. I was Counsel for Richard and George Crowninshield, when I made the inquiry.
Mrs. Burns, sworn.

On the night of the murder of Mr. White, I saw Selman and Chase at my house. It was about 8 o'clock. They came in a chaise. They tied their horse in the yard, and went away. Mr. Burns was not at home. Chase came back again about half past 9—stopped about five minutes for Selman, then took his chaise and went away. Selman came back about five minutes after Chase had gone, and asked for him. A young man was with Selman, at the bottom of the yard. I did not know who it was.

Selman said he expected Chase to call for him there. He then went away, and returned in about a quarter of an hour, to see if Chase had called for him. The last time they were there, the young man that was with him left a message to tell Chase, when he should come, that he should be at Pendergrass's.

Webster objects to this evidence, as the declaration of a party.

Putnam, J. The object of the evidence is to account for George Crowninshield during that evening. Supposing this young man was he, the Court think this a reasonable mode of proving that he was at a particular place, by shewing that he agreed to be there, and then shewing that he was there.

Witness resumes. My husband's stable is in St. Peter-street. Pendergrass's is in South Salem, over the bridge, and that was the appointed place of meeting.

Cross-examined. I know George Crowninshield. I did not know the voice of the one who spoke to Selman—he did not speak loud, but in a tone of moderate conversation.

John Needham, sworn.

I saw George Crowninshield, on the night of the murder, in South Fields, the first time about 7 o'clock, at the News Room, at Pendergrass's. Richard Crowninshield paid the rent for that room. Chase, and a young man, introduced to me as Col. Selman, came in, and George a few minutes after. They stayed there about half or three quarters of an hour, and then went away, all together. I saw them again there between 9 and 10 o'clock. Chase then came alone in a chaise, and George Crowninshield and Selman came on foot afterwards. George was there all the time, except about ten minutes, that I was out. Joseph Burns, Austin and Osborn were also there, and stayed some time. Chase and Selman went off together, in the chaise, and afterward George, Austin, Osborn and myself came away together. I said that I was going home the nearest way and George said, "I'm going to Mary's, and will go with you." We went by Malloon's Mills.
When I got to the gate of our house, at the corner of High and Summer-streets, we parted. This was before 11, because I went to bed immediately, and soon after heard the clock strike eleven. Mother asked me whom I spoke to at the gate, and I told her George Crowninshield.

Cross-examined. At this Reading Room we took many papers, and its general use was for reading. Richard Crowninshield paid for the papers. We had some from Alabama, and the "Truth Teller," from New York. Sometimes we had gambling of all kinds. I should have played, if I had had the means. I was employed to make the fire, keep the key, and light the lamps. Richard Crowninshield paid me, but no particular sum—when I needed a little change, he gave it to me. The rent was $12 a quarter, and the quarter would have ended the 11th of May, but he did not keep the room, for when the constable came there, he gave it up.

There is a game called props. I have never seen any other played. Ours was not a gambling house—a gambling house is a cheating house.—There was some liquor kept there sometimes.

Matthew Newport, sworn.

I keep a victualling cellar at the corner of Union and Derby-streets. George Crowninshield and Benjamin Selman came there on the night of the murder, between 8 and 9 o'clock, and stopped about 10 or 15 minutes. They inquired if John McGlue had been there.

Joseph Fairfield, sworn.

I live in Danvers and keep a public house. I saw George on the evening of the 6th of April about 9 o'clock with Chase and Selman at my house. They stopped there about 10 or 15 minutes, came in and took something to drink, two glasses of brandy and one glass of gin. They came and went in a chaise towards Salem.

William Austin, sworn.

I saw George Crowninshield on the night of the murder at Pendergrass's about half past 9. I am a tanner and currier. George Crowninshield came about half past eight. He stopped in Pendergrass's shop a little while, then went into his room. I was there with him—when he went away he went towards Marblehead. He came out with me and John Needham. I and Osborn came over the south bridge. Joseph Burns and two others were there that night besides. I did not know who they were. The clock struck 11 just as I got home. I live in Boston street. I did not know Selman and Chase at that time. It takes me about 19 minutes to walk home from the "reading room." I have walked it since about as fast as I did that evening. Chase and Selman went away five or ten minutes before I did. After they went
away, Osborn and I proposed to go. George Crowninshield and John Needham came out when we did. They came immediately behind us—as we turned towards the south bridge, they turned up the hill.

Benjamin Selman, sworn.

I saw George Crowninshield on the night of the murder. I came over to Salem from Marblehead with Mr. Chase. We went up to the factory and saw George Crowninshield. Chase wanted to see him, and I wanted to see Clark Read in Salem. We went into the factory and saw George between 5 and 6 o'clock. George wanted to go to Salem to see John McGlue, to get some money. He went with us in the chaise. We stopped at the tavern opposite to Dustin's in Danvers, and then came to Salem. George got out at the post office. Chase and I went into Burns' with the chaise. After leaving the horse at Burns' shed, I then came out and met George opposite the post office. George proposed taking a walk. We went to Pendergrass's and stopped near an hour. We got there about half past 7, and staid till after 8. We then came over into Salem, and went down to the Franklin building on the common, and Chase found a friend there—a female—and went away with her, and said that he would join me in 15 minutes at Burns' stable. I then went with George down to Newport's cellar, and staid there near an hour. George said that he wanted to see Mr. McGlue who owed him some money—'twas 9 o'clock when we came away, and then came up to Franklin building again. I wanted to see Read, and he said he would go with me. Read's is in Williams street, he stopped at the gate and waited for me there near half an hour. We then went through Brown street to Burns' stable, without stopping in Brown street. We went to Burns' shed and found the chaise was gone. I knocked at the door and asked Mrs. Burn's if Mr. Chase had been there, she said he had been gone 15 minutes. She did not know where. I went up into Essex street in front of the Coffee house and waited a few minutes, and then went over to Central street, when the clock struck 10. George then went over the bridge, while I went and told Mrs. Burns' that I was going over the bridge if Chase called, to tell him George was with me.

When I got there, Chase was there with a chaise, and said he had been waiting half an hour for me, and said he had agreed to be there. I took a cigar and staid till a quarter after 10. We then took our chaise and went home to Marblehead. We left George Crowninshield in the yard and got home 5 or 10 minutes before the clock struck 11. It is four and an half miles from Salem to Marblehead. I have been in Jail 85 days on suspicion of having been concerned in the murder. I had on a hat and Chase had a glazed leather cap.

Clark Read, sworn.

I live in Williams street. Mr. Selman came to my house just after 9 o'clock on the evening of the 6th. I was just going to bed
and was nearly undressed. He staid there 10 or 20 minutes. I went down to the door with him and saw a person there who spoke to me, and who I thought was Chase. At the time he said Chase would be waiting for him, but did not say that he was at the gate.

Nathaniel Phippen Knapp, sworn.

Do you know what has been testified in this case.

Answer. I have been told as to one point, as to finding the club.

I have heard something that Mr. Colman has testified—but only casually in the street, and this was confirmed by Mr. Dexter. The person who told me in the street was I believe Mr. Miller. I can't remember that any other person has told me. Mr. Dexter has told me that Mr. Colman had stated that it was by the prisoner's direction that the club was found.

Mr. Dexter at his own request, sworn to make true answers, states:

After Mr. Colman had been examined, as I went down stairs the witness met me and asked me if Mr. Colman had said that he found the club by the prisoner's direction. I answered immediately that he did.

P. Knapp resumes. I heard nothing else—not a word.

Mrs. Sally Needham, sworn.

John Needham is my son, he came home on the night of the murder about 15 minutes before 11. I heard him speak to some person at the gate. I asked him who he was talking with. He had come into my chamber to light his lamp.

Cross-examined. I knew the time because I have a watch in my chamber, and heard the clock strike, and I looked at the watch when I went to bed.

(N. P. Knapp resumes.) I was present at a conversation between Mr. Colman and the prisoner, at his cell. I went to the prison with Mr. Colman, and went to my brother Jo's cell. When we came out from there, I went to my brother Frank's (the prisoner's) cell. As I was going in, I observed that Mr. Colman looked anxious to be admitted, and I asked him if he would go in. He said yes, and came in. There was a conversation at the door of Joseph's cell. He said, Mr. Knapp, I wish that you would not disturb the club, I will get a witness, and go and get it myself, for my own security. After we went into my brother Frank's cell, I addressed him in this
Mr. Colman says that the Committee have evidence enough to convict you and your brother, that the only chance of salvation is for you to confess; that Palmer has applied for a pardon, on condition of being a witness, and that a promise of pardon has been despatched to him from the officers of Government; that the messenger would pass through town that evening in the mail stage, and that if they did not confess before the mail stage passed through, it would be too late; that if either of them would confess, the committee would stop that message, and apply for a pardon in favor of him, whichever it might be. I told him, also, that the sub-committee had severally assured my father that Palmer knew every circumstance relating to that transaction, and that the only chance to save his sons was to induce them to confess. I then asked Mr. Colman if what I had related as coming from him was not true? He said yes, and then went on to state, "I have seen your brother (addressing prisoner.) I have made him these assurances, and offered him a pardon in case he would be willing to confess. I also assured him that if he committed anything to me in confidence, it never should be revealed, unless he should choose to become a witness. I am authorised by the Committee to offer this pardon to either of you." I then said, "Mr. Colman thinks Jos. had better confess, for if you should be convicted after his confession, you would have a greater chance of pardon than he would." I applied to Mr. Colman, and asked him if he did not think so. He said "yes, undoubtedly—your youth will be very much in your favor—your case will excite great sympathy, especially if it shall appear that you were persuaded to do what you did by your elder brother." He then said, "but I don't insist on the preference, I leave that for you to settle between you. My brother hesitated, and said nothing. Mr. Colman then said, "you know the condition, if you stand a trial, you will both be inevitably convicted—if either of you chooses to confess, he will save himself. If Jos. confesses, and you should be convicted, you will have a good chance of pardon, but if Jos. should be convicted on your confession, his chance would not be so good. At all events, your chance will be much greater than if you stood a trial, and were convicted on Palmer's testimony." He then reminded him that he had but a few moments to choose. My brother then said, "I have nothing to confess. It is a hard case; but if it is as you say, Jos. may confess if he pleases. I shall stand trial." I recollect nothing more than that. Nothing was said about the club in Frank's cell, in my presence and hearing. This conversation in the prisoner's cell, was on Friday evening after the arrest on the 28th of May. Mr. Colman stated to me that he had been at Jo's cell that day two or three times. Nothing was said in my presence or hearing about the time when the murder was committed. After he had been into Jo's cell, before his third visit, Mr. Colman said he made those visits, by request of the Committee, not by request of me, or any of my friends, but against our wishes. When we came out of the cell, Mr. Colman said he was going to see the Committee. Nothing further was said at that time. He said, at 8 o'clock the same evening, that he was
going to Boston with Mr. Treadwell, to see the Attorney General. This conversation, I think, was at my office. I next saw Mr. Colman on Saturday forenoon, near 10 o'clock, this side of the Half-Way-House—he was coming to Salem alone in a chaise. When I met him he asked me to leave my chaise and get into his. Henry Field was with me. I got into Mr. Colman's chaise—he then told me he had seen the Attorney General, and showed me a promise of pardon, or of a nol. pros. if confession should be made, to either of the prisoners, excepting one who was named, Richard Crowninshield, Jr. He asked me to turn back and go down to Salem with him,—said he was going to see my brother Joseph. I told him I could not go back then, and asked him not to go to see my brother without me. He said he would not go without me; he said he would wait till I returned. He then said, I am not sure I got that story of the club from Joseph or Frank, but I believe from Joseph. I told him he did not get it from Frank, for he said nothing about it. He then said he did not know but that he had been misunderstood about this by Mr. S. White, and asked me to take a note to him, to correct the impression. Mr. White was then in Boston. Mr. Colman said I should find him in the Senate chamber. It was a short note, written in pencil in the chaise. I took the note—went to Boston—went to the Senate chamber, and did not see Mr. White. As I was hurried in my business, I returned to Salem, and think I gave it back to Mr. C. I arrived in town about 3 o'clock, and went to the door of my brother Joseph's cell, and requested admission of Mr. Colman, who was in the cell at the time. He refused, and said I could not come in. Mr. Brown (the jailor) allowed me to ask the question, though he would not admit me. Mr. Colman said "You cannot come in, I have not finished my business," or something to that effect. He said he would meet me at my office as soon as he had done. He came to my office, bringing with him a paper, about 5 o'clock—it may have been a little before or a little after—this was Saturday. I asked him to shew me what he had in his paper; he said he would not, except in presence of witnesses. He said he would go and get some witnesses and then read it to me, or go down and see the committee and read it before them. He said he should be at Dr. Barstow's, and when he was ready he would send for me. In a little while Dr. Barstow's son came to me and I went down. I found Mr. Colman there with Dr. Barstow, Mr. Merrill, and Mr. Saltonstall. He then said he could not shew it to me, for the committee thought it not proper that I should see it. I believe nothing more was said between me and Mr. Colman.

I met Mr. Colman the Monday following, in Central-street, in a chaise. He stopped his chaise, and beckoned to me to come to him. I went. He said, you may make yourself easy on the subject we were conversing about last. I have seen Mr. Stephen White, and have not been misunderstood. The next was at my office, three or four weeks after; a week after the death of Richard Crowninshield. I believe it was the 20th of June. Mr. Dexter was not present when the conversation began. Mr. Colman said, I have called on you, Mr. Knapp, to
refresh my recollection of the interview with your brothers. I may be called as a witness, and I wish to state the conversation accurately. After some observations, I don't recollect what, he alluded to the club. I denied that my brother said any thing about it. He said, well, you will probably be a witness, and will have an opportunity of giving your account of it. This was said with considerable excitement, when Mr. Dexter opened the door. He tried to calm Mr. Colman, who said he had been contradicted; but that he did not surely get the information from Joseph, and he would go and get some witnesses, and ascertain how it was.

My father failed 7th of April. The instrument is dated 7th of April. I was occupied in preparing it on the evening of the 6th. My brother, the prisoner, rode less after the failure. I had cautioned him about it in consequence of the failure. This was after the 7th of April. He was in the habit of riding much. My brother wore a glazed cap, like this in every particular. I remember the dirk—I never saw my brother have any before this.

I was up all night of the 6th of April, preparing, with Mr. Waters, my father's assignment. I went home at half past one o'clock. I left my office at sometime after nine, with my father. I went to Mr. Waters's house, stayed there till a few minutes before ten, then went with Mr. Waters to his office, in Washington-street. My father went home. A few minutes before ten, went to Mr. Waters's office. We were at his office 10 minutes, perhaps. We did nothing but strike a light and get a book. From there we came directly down Essex-street, to go to Mr. Waters's house again; on the way, we stopped at my own house to get my umbrella. It rained when we left Mr. Waters's office, and when I got to the house. When I came out, it had ceased raining. I went to Mr. Waters's house, and stayed there till one o'clock. I got from the house, also, a key of one of the doors, that I might come in from Mr. Waters's house. I went directly home. When I got home, I found my father in the entry—he had just come in himself. I told my father he had better retire, and I sat up all night, and finished my writing. I saw nothing of the prisoner during the night. I saw him the next morning, about 8 o'clock.

Frank's usual hour of going to bed was 10 o'clock. He was the most regular person in the family in this respect. My father's house is in Essex-street, a few rods below Newbury-street. I passed Mr. White's house at 1-4 past 10, and saw a light in his chamber. I heard the clock strike 10 minutes before we arrived at Mr. Waters's office—stayed there about 10 minutes. I believe I called Mr. Waters's attention to the light, but I am not certain. I was in Derby-street or the street above it, when the clock struck 10.

Cross-examined. When I went to the prisoner's cell with Mr. Colman, I went from my brother Joseph's cell. We went to
Joseph's cell together, to make the statements to Joseph, that the Committee had made to Mr. Colman, to see whether he would confess. This was on Friday evening, between 6 and 7 o'clock. I had not been to the cell of either brother before. We both went into Joseph's cell, and a conversation was had about confessing. I don't know whether Joseph agreed to become a witness for the State.

It was not positively agreed that he was to become a witness for the State; it was agreed on certain conditions. The conditions were, that he should have the preference. It was not agreed that he should have the preference, unless his brother chose that he should. I understood that Joseph's becoming States' witness depended upon Frank's consent. Mr. Colman said he should go to Joseph's cell at this time, and I asked him to let me go with him, to which he agreed.

I went into the prison with him. I cannot recollect from what place. When I left Joseph's cell, it was my purpose to go to Frank's cell. I presumed Mr. Colman intended to go out of the prison, but as I entered the door of Frank's cell, I thought he wished to come in, and I asked him to come in. I went to Frank's cell from Joseph's, to see if he had any objection to taking a trial, and suffer his brother to take the benefit of Mr. Colman's proposal. It was agreed in Joseph's cell, that I should go to Frank with this message. There was no agreement about the time or place to see Mr. Colman, and report Frank's answer.

If Frank assented, I don't know that I was to do any thing. I went to see what he had to say about it—don't recollect what I was to do if he assented—don't know that I was to report to Mr. Colman. I knew Mr. Colman was going to the Attorney General or the Committee, but don't recollect how he was to be informed of Frank's assent. I don't remember whether before going to Frank's cell, Mr. Colman said any thing about going to the Attorney General. It was a very few minutes after I left Joseph's cell, before I got into Frank's. During this time, we had the conversation concerning the club. I had been in Joseph's cell all the time that Mr. Colman had been there—heard all the conversation between Joseph and Mr. Colman. I was there 10 or 15 minutes; at this time, I presume, I heard all that was said, because nothing was said in a whisper. There was an understanding that Joseph should turn States' evidence, but if Frank did not assent, it should be offered to him. Joseph would not accept that offer unless Frank would assent. I understood he was determined not to assent to Mr. Colman's proposition, unless Frank were willing—don't recollect how it was arranged that Mr. Colman should find that out.

When Mr. Colman told me not to get the club, I was in front of the door of Joseph's cell. I heard nothing said about the daggers, in Frank's cell—do not recollect hearing any thing said about its being a hard thing that Joseph should "have the privilege
to confess, since the thing was done for his benefit." Frank said it was a hard case—a hard alternative. I will not swear that he did or did not say this. I don't recollect that it was said that it was a hard case, since the thing was undertaken on Joseph's account. I will not swear that it was not said—I will swear that I did not hear any thing said about melting up the daggers. There was no secret conversation between Mr. Colman and Frank. I have no doubt that if it had been said "the thing was done on Joseph's account," I should have heard it. I can swear I did not hear any thing said about its being done on Joseph's account. I heard nothing said about its being "a silly business," nor that it would bring him into difficulty. I heard nothing said about the time my brother went home on the night of the murder. Mr. Colman was standing up, and I sat down near my brother. Nothing was said about the dagger, or melting up the daggers—nothing was said about the club—nothing was said about its being a "silly business;" nor that the business was undertaken on Joseph's behalf. I will not swear that this was not said.

I will not undertake to swear that he did not say "I told Jo it was silly business, and would only get us into difficulty." I will swear that he did not say that he went home after the murder,—or "afterwards." I can swear that there was no conversation about the time of the murder—that Mr. Colman did not ask him about the time of the murder—that nothing was said about the dirk, and nothing about the club. I heard nothing said then about Howard street Church steps. I did not hear any body say any thing to Mr. Colman that day about the bludgeon. I did not hear any thing said in Frank's cell about it by him. Mr. Colman told me he trusted to my honor not to get the bludgeon. I am not certain I heard any body say to Mr. Colman where the club was. I think it must have come to my knowledge in my brother Jo's cell that the club was under the steps. I did know it when I came from my brother Jo's cell. I think I must have got the information from Mr. Colman. I never knew under what particular step this club was—nor under which flight of steps. I never have known under what steps it was found. When we came away he said he should go to see the Attorney General. This was after we left Frank's cell. It was not said before. I recollect that I was to go and ask Frank's assent, but not how, I was to communicate the result to Mr. Colman. Nothing was said by Frank about the person who proposed the murder—nor how many were in the chamber at the time. I expected Mr. Colman was to testify to just what happened, and to be called myself to testify to the same conversations. I did expect to differ from him about the club. I understood that only one brother had hopes to be admitted as a witness by confessing. Mr. Colman offered pardon to Frank, that he might have the opportunity, if he chose, to become a witness. Mr. Colman left it to them to agree which should turn State's witness. It had not been agreed that Jo should have the preference. If Frank did not assent, Jo was not to be State's witness.
When I met Mr. Colman, coming from Boston, he stated to me that he might have made a mistake about the club, and wished me to take a note to Mr. White. I did not ask Mr. Colman not to mention that Frank had confessed about the club. The conversation was introduced by him. I did not read the note. I thought it important to correct the error, but I did not inquire where Mr. White lodged. I went to the Senate Chamber, but the Senate was not in session—I went into the other House, he was not there. I had particular business and could not wait. I first heard of the murder between 6 and 7 o'clock the next morning. I met a friend of mine, who informed me that Mr. White had committed suicide. Albert G. Browne told me.

Something has been said about my father's house being broken open. The prisoner said he found the room doors open, and the closets and desks open. Said he did not know who had done it. I don't know but my brother first discovered it. We never missed any thing from the house.

My brother, the prisoner, had been an acquaintance of the two Crowninshields 3 or 4 years back. He had been to New York with them.

Re-examined.—The day I met Mr. Colman near the half-way house, I went to Boston to see counsel for my brothers. I was in a hurry to get back to Salem to see Mr. Colman. I did not go to bed at all on the night of the 6th April. The prisoner belongs to Dr. Flint's society, who has visited him in prison. Before I got into Salem, when coming from Boston, I met a friend who had a fresh, smart horse. I exchanged with him that I might get home sooner.

Cross-examined again.—I wanted to get to Salem because I was afraid Mr. Colman would get in to see my brothers; they had had no counsel. I was not directed by counsel to tell them to say nothing. I had fixed an hour to be in Salem (think 2 o'clock) with Mr. Colman, as he wished me to be back, and I told him I would be in at that hour if I could. When I met him he wanted me to turn about; he agreed not to go to see Joseph till I got back. My reason for asking him not to go till I got home was I chose to go with him—that is sufficient. I wanted to see that he conducted fairly. I wished to be satisfied that the arrangements would be safe. I did not wish to take counsel on that point. I wished to be present when the letter from the Attorney General was offered to Joseph. Mr. Colman agreed to wait till my return. When I returned, I found Mr. Colman at the cell.

Solomon Giddings, sworn.

I reside in Beverly and was in Salem on the night of the murder. I passed Mr. White's house about 11 o'clock and saw and
heard nothing, which attracted my attention. I was going from the wharves to Beverly, and the clock struck 11 while I was in Essex street.

William F. Gardner, sworn.

I live in the next house to Capt. White's. I passed there 25 or 30 minutes after 10 in coming from Mr. Deland's, which is the next house to Capt. White's on the other side and on the corner of Essex and Newbury street--there was a party there that night, which was just breaking up at that time. I heard no noise, nor anything, which attracted my attention. Mr. Deland's windows look into Capt. White's front yard. Then 3 persons with me.

Stephen D. Fuller, Surveyor, sworn.

The plan made by me is correct. I have been a surveyor 14 years, live in the city of Boston. The distance from Essex street to Brown street through Capt. White's garden, is about 300 feet. Explains upon the plan the various obstructions between Brown street and Mr. White's garden, and the difference between his plan and that made by Mr. Saunders.

Nothing could be seen of Mr. White's house from the rope walk steps; nor from the post by Mrs. Shepard's house; nor from the post by Capt. Bray's house; nor from any part of the space between the two posts on the south side of Brown street, except that through a small opening between Mr. Potter's and Mr. Henderson's houses, a part of the rear of Capt. White's house but not the part in which he slept. Between the avenue from Brown street to Essex street, and Capt. White's house there are houses and other buildings; but from some parts of the avenue the upper western windows may be seen.

Charles G. Page, sworn.

I saw the prisoner on the 6th of April, about 7 o'clock, P.M. in Essex street, near the Salem Hotel--Forrester, Burchmore, Balch and I were together, and he asked us into the Hotel to take some refreshment. We stayed there about 5 minutes, then came out, and I left them. I am a student of Harvard University. Glazed caps were at that time worn by almost all the students who belong here. Our caps were mostly bought in Boston. Sixteen of my Salem classmates have them. Camblet cloaks are also very common among students.

Cross-examined. I recollect the night, for on the morning after the murder I was accounting for myself, as was natural, and thinking what company I had been in. I had some doubt as to what evening this was, when I was first called upon. I then did not recollect the circumstances by which I could fix the time, but have
recalled them since. I have never said that I did not recollect, but when first called upon I wished time for consideration.

Moses Balch, sworn.

I live in Lynde street. On the evening of the murder, I think, but I am not positive, I was with the prisoner, and Burchmore, and Page, and Forrester. I first saw him in Essex street, between 6 and 7 o'clock. I was with him 3/4ths of an hour. I saw him again between 8 and 9. He came into Remond's, in Derby Square. Burchmore, I think, and Forrester, and Page, were with me when he came in. We left that place about 9 o'clock, and all went to walk in Essex street. I left the prisoner at the corner of Court and Church streets, about 10 o'clock, to go home. My impression is that he went down Church street. I was with him all the time, from 9, until near 10. Forrester left us at the corner of the Franklin Building.

I know that dirks were very common after the murder. I know one or two young men who wore them before. I wore a glazed cap at that time.

Cross-examined. I cannot say positively that this was on the night of the murder. It was either on Monday or Tuesday evening. I cannot tell any nearer.

Gardner. What was the weather on Tuesday evening?

Webster. I object—this question should have been put during the examination in chief.

The Court over-ruled the objection, and witness resumes—

The evening on which we were walking was dark and cloudy. We were at Remond's, smoking, when Frank came in. Remond's is an oyster-house. We were at the Salem Hotel the first part of the evening. When I got home, the folks had gone to bed; so it must have been 10 when I left the prisoner.

Zachariah Burchmore, jun. sworn.

On the evening preceding the murder, I went with the prisoner, and Page, and Forrester, to the Salem Hotel, about 7 o'clock. We staid there about 1-4 of an hour, and the prisoner left us. About an hour after, Forrester, Balch and I were sitting and smoking at Remond's, when he came in—about half past 8. We all went out together just before 9. I don't remember whether Forrester went out with us, or before. We walked in Essex street about half an hour, and I left him about half past 9, at Franklin Building, or opposite.
Cross-examined. To the best of my belief, this was on the night of the murder.

Re-examined. I am not sure whether it was before or after the murder; but my belief is that it was the same night.

I generally wear a hat.

Cross-examined. I can only recollect that it was on the evening that we were in the Hotel that I saw the prisoner. I don't remember what the weather was.

John Forrester, Jun. sworn.

I took a walk with the prisoner, I think, on the evening of the murder. I met him in company with Balch, Burchmore and Page, and was introduced to him—this was about 7 o'clock. I was with him about 20 or 30 minutes. We went to the Salem Hotel. He left us, and I saw him again in about an hour at Remond's.

Cross-examined. It was on the night of the murder, or the night before, or the night after, that I walked with the prisoner and the others. I never walked with them all but once.

Judson Murdock, sworn.

I live in Brighton, and keep a public house, and saw a man whose name I have since understood was Palmer, but he then wrote his name J. C. Hall. He came there on Monday 3d of April, at 9 in the morning, I do not know from where, and stayed till the next day at 3 or 4 P.M. and then went towards Boston on foot. It is 5 miles from Brighton to Boston—from there to Charlestown 5 miles—and about 13 miles to the Half-way House.

Joseph J. Knapp, sworn.

I am the father of the prisoner, and made an assignment of my property on the 6th of April. I was at home that night a little before 10. I came from Mr. Waters's house in Derby street. I saw the prisoner just after 10. He entered my front northern parlor about 5 minutes after 10, and asked me if he should bolt the door. I told him no, for Phippen was out, and I should wait for him. I told him that I was very glad that he was at home in good season. He asked me if I wanted any assistance. I told him no. I asked how the weather was, and he said that it blew fresh from the east. I asked him if he knew the time, and he told me that it was just 10. He then retired to his chamber, and left me in the parlor. I did not go to bed till after 2 o'clock. His chamber was in the west end of the 3d story. There is only one stair-case up to the 3d story. My door opens into the entry. To come out of Frank's
chamber, one must pass my door. He usually keeps his cap, when in
the house, upon the window of the keeping room. I saw it there that
night; he threw it there when he came in. No person moved in the
house that night, except Phippen, when he came in. I saw Frank
again the next morning, between 7 and 8 o'clock, when he came from
his chamber. He usually put his boots in the kitchen; I don't know
where he put them that night. His usual hour of coming home was
about 10; he was very regular. He will be 20 years old next month.
My son Phippen was with me until near 10. I left him at Mr. Waters's
house. I again saw him about 20 or 25 minutes after 10, when he
came in to take the key, that he might enter after he had finished
his business. He was assisting Mr. Waters in making an assignment
of my property, and he rejoined me just after 1 o'clock. He went
to bed before I did, and at about 2, immediately after he came in.
I did not see either of my sons in the chamber that night.

Cross-examined. I saw Mr. Michael Shepard that night, at
my son's office, about 1-4 after 9 o'clock. I did not see him after
that time. When I went home I had come from Mr. Waters's house,
about 10 minutes before 10 o'clock, and left my son with Mr. Waters.
I saw Mr. Shepard again the next day; I am not certain where, whether
at his house or in the street. I believe that it was at his dwelling-
house after breakfast. I had no conversation with him about Frank's
being at home on the evening previous. I next saw him the same day,
at the Mercantile Insurance Office, but had no conversation with him
about it then. I saw him also again in the evening of the same day,
abreast of the Asiatic Bank. I then had a conversation with him,
and told him that my son was at home before half-past 10 o'clock.
We had then no particular conversation, excepting he asked me if
could credit what was in circulation—the arrest that had been made.
Joseph and Frank had been arrested then. The Crowninshields had been
arrested before. I remembered so as to tell Mr. S. all that happened
the night before.

I have mistaken the questions—that conversation took place
after the arrest.

I saw Mr. Shepard on the evening of that day at the Asiatic
Bank. Nothing was then said about the time that Frank was at home.
The first conversation on that subject with Shepard might have been
the day of the arrest, or the day after the arrest of Joseph and
Frank. I am sure that they had been arrested when I had this conver-
sation with Mr. Shepard, abreast the Oriental Insurance Office. It
was on the evening of the arrest, and no other person was present.
This was the only conversation I had with Mr. Shepard on the subject.
Mr. Shepard introduced it. I told Mr. Shepard that my son was at
home in bed before half-past 10 o'clock, and that I was at home so
as to know when he came in. I told him I knew that the clock had
not struck 10 when I left Waters's house, and that he was at home
and had retired before 20 minutes after 10. I told him that Frank
came in and asked whether he should bolt the door. I did not tell him that I recollected seeing Frank throw his cap upon the window-seat.

I don't recollect any conversation with Mr. J. W. Treadwell, about the time that Frank came home on the night of the murder, and have no knowledge of ever having talked with Mr. Treadwell on the subject; or of having said to him that I did not know what time Frank came home; or of having said, that "they said he came home at half past ten." I did nothing about the assignment till Mr. Shepard went away; he was to be my assignee. We talked about business in the street.

I was sitting up late to prepare a schedule of property. I did not see the assignment till the next day, when I signed it. I was collecting memorandums and papers necessary for the assignment.

Aaron Foster, sworn.

I live in Beverly and am the toll keeper at Beverly Bridge. I saw Frank Knapp pass the bridge some time after the murder with a sorrel horse, I think—I can't recollect his passing before the murder with such a horse. I know it was after the murder, because after he had paid toll he snapped his whip and said, this is the horse to go over the ground. It occurred to me that though he was a relative of Capt. White he did not care much for his death, and that if he had had this horse he might have escaped from the Wenham Robbers.

Cross-examination. I knew Richard Crowninshield jr. very well. The time I saw Frank pass the bridge, was after the robbery; there was a young man with him who gave me a 5 franc piece. Of these we receive very few, sometimes 2 or 3 a week—sometimes 2 or 3 a day—sometimes more.

Re-examined. I did not know the young man in the chaise with him, and I did know Richard Crowninshield jr.

James Savary, sworn.

I board at the Lafayette Coffee House. I work for the Salem and Boston Stage Company. I was in the street on the morning of the 7th of April. I went about 20 minutes before 4 o'clock from the Lafayette Coffee House to the stable in Union street. I saw some person turn out of Capt. White's yard and come up street towards me. He came as far as Mr. Gardner's yard and then turned and ran. I was then between the two Peabody's houses. I saw him running down as far as Walnut street. As far as I can judge he was a man about my size. It was dark and misty. He had on a dark dress.
Nathaniel Kinsman, called again.

I have testified to an observation I made of the windows on the second or third day after the murder, I could then see the whole of Capt. White's chamber window distinctly, 20 paces W. of the S.E. corner of Downing's house. I paced off the distance to ascertain.

Silas Walcutt, sworn.

I lived with Caleb M. Ames' in lower end of Daniel street, on the 6th of April. It leads into Derby street. I was out on the morning of the 7th between three and four. I was going to call Mr. Ames who lives in Palfrey's Court, because one of his horses was cast in the Stable. When I was going up the Court, I saw a man nearly opposite Mr. Prince's house in Derby street. He was walking easterly when he saw me, he then turned round and walked back westerly seven or eight rods off. The last I saw of him was when he was just above Mr. Prince's house. He was a middling sized man. The morning was pleasant though rather foggy.

John McGlue, called again.

At the time of the murder, I owed Richard Crowninshield jr. some money. I do not know how much. Perhaps it was $30 or $40. It was for work he had done at the factory for me. It was for caps and turned axletrees. He asked me for the money before, and after the murder. He wanted fifteen or twenty dollars. I did not then pay him any part of it. On the Friday night before he was taken up, I paid him $7. He called me out, and I went down to the Franklin building, and he told me, if I would pay him, he would let me have it back, if I wanted it—I told him I would pay him on the next week. After murder he came to Newport's to find me and I gave him an order for $10. He told me a man was going to give him money and did not. This was Friday before he was arrested. Thon George came for some money and asked for me.

Warwick Palfrey jr. called again.

I published in my paper of Monday an account of the finding of some flannels, in Danvers, which was on the Saturday previous to the publication. Richard Crowninshield jr. hung himself, I believe, on the next Wednesday.

Nathaniel P. Knapp, called again.

When my brother started for Wenham, at the time of the robbery, I was not at home. I don't recollect hearing them speak of arming themselves before they went. I never heard a syllable of their saying jocosely, they might be robbed. I never said I did.
I never gave a different account of Mr. Colman's conversation. I never gave a different account of the light in Mr. White's chamber.

For the Government.

George Wheatland, sworn.

On the day before the arrest of the Crownshields, 10 o'clock, A.M. Phippen came to my office. Said I, "let's hear about the robbery at Wenham." He replied that there had been a number of strange circumstances lately, and mentioned the affair of the house in Bridge street, and gave some account of the 'robbery'—said that when his brothers went off that evening, thinking they might be attacked, Frank took his sword cane and made a parade about his pistols, but finally went without them.

A few days after the murder, he said that on the night of the murder he saw a light in Capt. White's chamber. He staid in his office till near 10, then went down to consult Mr. Waters, at his house. He went up with Mr. Waters to his office, and stayed there till near eleven o'clock. He could not tell when it was he saw the light, as he passed Capt. White's house four times. He spoke of the interview between himself, Mr. Colman and Prisoner. I asked Phippen why Mr. Colman went to Frank's cell. He stated that Mr. Colman was a very intimate friend of the family, and married Joseph. That he went to Joseph's cell, and Mr. Colman told him that he was engaged then. He said that when he went in, Joseph had been telling Mr. Colman, every thing, and he (Phippen) told Mr. Colman they must go, and tell Frank what they had been about. He said, he mentioned to Frank, that Joseph was going to confess. That it would be better as Joseph had a family, and Frank if convicted would stand a better chance to get a pardon. I asked Phippen if Mr. Colman had asked Frank any questions. He said he did ask him some, and that Frank answered. I don't recollect what the question was, or the answer. I told him, that it would be enough to make Frank a principal. I told him that the confession was premature. He said that it made no difference, as they had evidence enough already to convict Dick as a principal.

Cross-examined. I don't remember the question Mr. Colman asked. I don't know whether it related to the weapon being found, or his being in Brown street, but think it did to one or the other. Phippen had told me that Frank was in Brown street, but I do not know whether he got it from Frank or Jo. I do not know the reason why I thought it would prove him a principal. I have told this, to only one person, I believe, Mr. Stickney of Lynn. I cannot swear it was one of those things which I have stated. I was asked by Mr. Webster, whether the question was about the club, or about Brown street. I told him, it related to either one or the other. I can't positively say, whether I have expressed a hope, that the prisoner would be hung,
but I think I have. I have said they were guilty. I thought Joseph Knapp was premature, because I heard that Palmer did not implicate the Knapps.

Rev. Mr. Colman, called again.

I heard the testimony of Mr. Phippen Knapp, but it does not lead me to alter my own. My first interview with Joseph J. Knapp, jr. was on Friday, 23th of May, at the examination before Justice Savage, at the prison. I went afterwards to see him, with the approbation of the Committee of Vigilance, and staid with him till near one o'clock. I went again about three o'clock, at his request. Mrs. Knapp also requested it. I remained with him till four. Joseph desired me to ask his father and brother to come to him with me. I went to Mr. Knapp's, senior, for them. He wished me not to go, because it would be said Joseph was making a confession. He desired me to see Phippen. I went to his office, and he was not there. I waited 15 minutes for him, saw him coming in St. Peter-st. from the jail. I went to meet him—as we stood talking, Mrs. Beckford and Mrs. Knapp went to the jail. While I stood by the chaise, Joseph Beckford came out, and said Joseph wanted to see me. I declined. Very soon, Mr. Brown came again for me. I then went, and Joseph made a full disclosure. While I was there, Phippen came to the cell, and requested me to admit him. I declined, till I had finished, then admitted him. Phippen said, it must not be made, unless Frank consented. I then went into Frank's cell, &c as before stated.

On my return from Boston, on the next day, I met Mr. Phippen Knapp near the Half Way House, as he has stated, in a chaise with a gentleman. I beckoned to him, and asked him to come to my chaise. He asked me if I had said any thing as coming from Frank. I told him I thought I had to Mr. Stephen White, who was in Boston, and whom I had seen that afternoon. I wrote a note, in pencil, to Mr. White, requesting him to consider Joseph as authority for what I had told him.

Mr. Knapp desired that I would not go to see his brothers till his return. I promised to wait till one o'clock, and did wait till three, and then went.

Cross-examined. As we came out of the jail, Mr. Phippen Knapp went to the cell of Joseph, to tell him, as I supposed, that Frank assented—I thought so. When I went to the jail with Mr. Dexter, I told him I had no doubt about Frank's having given me direction where the club was to be found; but went with him to Joseph, about the club. I asked Jos. whether he had told me particularly where the club was. This is my impression. I do not recollect the precise words. I cannot recollect whether I told him I wanted him to answer me a question, and that I wanted only a negative answer.
Michael Shepard, sworn.

I had a conversation with Capt. Knapp senior soon after the murder, while passing from the offices to my store, and I asked if Frank associated much with two young men that I suspected. He said that he did not, but had kept very good hours of late, and that on the night of the murder Frank came home and went to bed at 1-2 past 10 o'clock—"so Phippen told me" said he. Capt. Knapp did not tell me as from his own knowledge at what time Frank came home. This was before the arrest of his sons, and I think before the arrest of the Crowninshields, and while we were walking from the site of the old Sun Tavern to the head of Union street.

He did not tell me that he was at home that evening and knew at what time Frank came in. I don't recollect that he told me that he came in at 5 minutes after 10 o'clock. He did not tell me of the conversation between Frank and him about bolting the door, nor that he heard the clock strike ten before he left Waters's house.

Cross-examined. I did not ask him as to his own knowledge concerning what time Frank came in, and don't think that I put any question to him except as to his son's associating with these two young men.

John W. Treadwell, called again.

On Friday morning, the 23th of May, I had a conversation with Capt. Knapp senior. I took him into the private room at the Bank, and told him that I was entirely satisfied of the guilt of his sons, and advised him to go to the jail, and get a confession from one of them if he wished to save either. He said he would go. I then asked him if he knew where Frank was that night. He said no. I then put the question "at what time did he come home?" He said "I don't know, but I believe about the usual time" and added that he himself was up that night till very late arranging his papers.

Mr. Shepard again.

Capt. Knapp was at that time probably a good deal agitated. He had found it necessary to assign his property. I however saw nothing unusual. He was a little disturbed and perhaps mortified.

George M. Teal, sworn.

I live in Danvers, and attend the Bar at Dustin's. I saw the man now called Palmer there at about 6 o'clock P.M. on the 9th of April. He staid there near an hour and a half. It was the day after Capt. White's funeral. I was told to watch him as a suspicious person. He left there about 7 o'clock.
Stephen Brown, sworn.

I lived at the Hotel in Lynnfield last April. I saw Palmer there on Wednesday before 'the fast.' He came there about 9 in the morning, and stayed until 7 or 8 o'clock on Saturday morning, except that he was away on Friday afternoon.

Cross-examined. I saw him in the bar room on Saturday morning, and he talked as if he had been at a public meeting in Salem on the night before.

For the Prisoner.

Elizabeth Benjamin, sworn.

I am a domestic at Capt. Knapp's senior. On the night of the murder, Frank must have slept at home, or I, who make the bed should have remarked it. I saw him come down in the morning as usual. I myself went to bed about 9 o'clock. Phippen did not go to bed that night. I found him in the morning writing in the keeping-parlor. I got up about 5 o'clock in the morning. I heard of the Wenham robbery, and know that Joseph and Frank went away on the night of that robbery, after dark.---There was nobody at home when they went. The shutters of the parlor were still closed when I came down in the morning, and the lamps were burning, and nothing appeared unusual.

N. Phippen Knapp, recalled.

I remember conversing with Mr. Wheatland a few days after the report of the confession. I inquired of him about Counsel for my brothers, and he made some suggestions. The principal part of the conversation was by him. I am positive I said nothing such as he has stated concerning the Wenham robbery. On the night of this robbery I went to the Beverly Lyceum, and on my way I met my two brothers, Samuel and Frank, in separate chaises. In regard to their arms, Frank, after this robbery, said that it was fortunate that he had his sword cane, and this was what I told Wheatland, and nothing else. I don't know that I even mentioned pistols to him. Some night after, Frank did take a pistol by the advice of the family. I do not recollect that I had any conversation with Mr. Wheatland about the robbery, but if I did, I have now stated the amount of it.

After I came from Waters's, on the night of the murder, I conversed sometime with father, and then went into the cellar to get something to eat, and while I was gone, father went to bed. I then wrote till day break, copying the assignment.
I never gave any other account of the light in Mr. White's chamber, than I have already given on the stand. I did not tell Mr. Wheatland what took place in Frank's cell, as he stated.

Henry Field, sworn.

On the night of the Wenham robbery, Mr. N. Devereux and myself went to the Beverly Lyceum, and soon after we got there, Mr. P. Knapp came in, and told me that he had met his two brothers.
APPENDIX D

SECOND TRIAL OF JOHN FRANCIS KNAPP

Saturday Morning, August 14.

Present, PUTNAM, WILDE, and MORTON, Justices.

The former jury having been unable to agree upon a verdict, John Francis Knapp was again placed at the bar for trial upon the same indictment. The following jury were impannelled and sworn, to try the prisoner:

- Samuel N. Baker, of Ipswich, Foreman
- Orlando Abbot, of Andover
- Timothy Appleton, of Ipswich
- Stephen Bailey, of Amesbury
- Jacob Brown, of Hamilton
- William D. S. Chase, of Newbury
- Stephen Caldwell, of Newburyport
- Phineas Elliot, of Haverhill
- John Ladd, of Haverhill
- Thomas Merrill, of Topsfield
- Amos Shelden, of Beverly
- Moses Towne, of Andover

The same Counsel were assigned the prisoner.


The testimony adduced was substantially the same as before, with the following additions:

The following is an outline of the Solicitor General's opening of the case.

He commenced by explaining the several counts in the Indictment. He referred to the painful and distressing duty he had to perform in the share assigned him in the management of the cause. As to the important and responsible duty of the Jury, he encouraged them to advance to that duty with fortitude and impartiality, as a
reason for which he assured them that they would derive all necessary advice and direction from the Court.

He adverted to the excitement which the horrid nature of the crime, and the circumstances with which the commission of it was attended, had created. He would disown any country where the same cause did not produce a similar effect. He portrayed in vivid colors, the unheard of and diabolical motives by which the perpetrators of it were prompted; and justified and vindicated all the measures which had been pursued by the Government and the citizens of Salem, to detect the assassins of the deceased, and to bring them to condign punishment; and reprobated in strong language the reproaches that had been cast upon them by the friends of the prisoner, and his accomplices; and compared their attempts to suppress all inquiry, and all efforts to prevent the detection of the murderers, and the infamous slanders upon some of the first men in the county, who had embarked in the associations to expose and punish the authors of this unheard of and diabolical combination, as of a grade of malignity and atrocity little short of the murder itself.

The Solicitor General then proceeded to define and explain the nature of the crime of murder; that it was the greatest offence that can be committed against the law of nature—that it was punished with death by all laws human and divine—that death was the only adequate punishment for the crime—that its aggravations were twofold; it set at defiance the laws of nature, of society and of God; and that the injury and sacrifice to the innocent victim, exceed all that the imagination can paint or describe—it sent him into the presence of his Maker without the notice of an instant; with all his imperfections on his head; without the privilege of uttering a single prayer for mercy from that throne whence we must receive it, or perish. The Solicitor General here adverted to the impious doubts and sentiments of those who denied the power of human governments to inflict capital punishments for any crime whatever, however malignant or atrocious; and pronounced their opinions upon this subject to be nothing less than setting up their wisdom in opposition to the wisdom of the all-wise and all-powerful Lawgiver and Judge of the universe—and nothing less than a direct disobedience of that sacred and divine law which declares "that ye shall take no satisfaction for the life of a murderer who is guilty of death, but he shall surely be put to death, for the land cannot be cleansed of the blood that is shed therein, "but by the blood of him that shed it."

The Solicitor General then proceeded to state the facts which he expected to prove is support of the prosecution, which were—That a conspiracy, instigated by the most paltry, as well as the most diabolical motives, was formed to assassinate the deceased—That this conspiracy originated with Joseph J. Knapp, Jr., as long ago as the month of February last—That it was first proposed by him to his
brother, the present prisoner—That he avowed the object to be, to
destroy the will of the deceased, by which the bulk of his property
would pass to relations other than the mother of his wife, who was
a niece to the deceased—This wretch then proceeded to declare that
he would give $1000 to any person who would commit the murder—The
present prisoner immediately and without hesitation or compunction
assented to this infernal proposition; joined the conspiracy, and
afterwards became one of the most active agents in carrying it into
execution. The two Crowninshields were immediately applied to; and
they joined in the conspiracy. The act of inflicting the fatal blow
was assigned to Richard Crowninshield, and by him inflicted—and the
price of blood was paid to him. The present prisoner accompanied
him, and became a principal with him in the perpetration of this
horrid deed. The plan of operations was matured on the 2d of April
preceding the murder, which was perpetrated on the evening of the
sixth of April, under circumstances so appalling, as to defy adequate
description. This is the outline of the case preceding the evening
of the 6th of April, the time when the murder was committed;--the
particulars of all which will be detailed by the witnesses for the
Government.

As before stated, the arrangements were completed on Friday,
the 2d of April. The most important facts that will be proved are
the following:--

That on that evening, Joseph J. Knapp, Jr., Richard Crownin­
shield, and the present prisoner, met on the common in Salem—that
Richard Crowninshield then exhibited to Jos. Knapp the weapons he
had prepared for the execution of his murderous purpose; they con­
sisted of a dirk, and a bludgeon, the latter of which he then stated
he had made with his own hand. It had been previously arranged that
Jos. Knapp should unbar and unscrew the window in a back apartment
in the house, which he had the means of doing, from his connection
with the family, without obstruction or suspicion—that this prepara­
tion was accordingly completed—the facts and circumstances concerning
which will be clearly stated by the Government's witnesses.

It will further be proved to you, gentlemen, that about 10
o'clock on the evening of the 6th of April, Richard Crowninshield,
and the present prisoner, met in Brown-street; that they remained
together a short time, with a full and perfect understanding and
knowledge on the part of the present prisoner that Richard Crownin­
shield was to proceed immediately to the house of the deceased and
commit the murder; that Frank Knapp, the present prisoner, engaged
to, and did remain in Brown-street, during the time the murder was
committed, with a full knowledge and consent on his part, of the
intention of Richard to commit the murder; that he remained in Brown
street for the purpose of rendering every assistance to the principal
perpetrator which accident or the incidents accompanying the trans­
action might render necessary—and under such circumstances, as will
leave no reasonable doubt in your minds, that he was a principal in the second degree in the murder, for which he stands charged in this indictment.

The Solicitor General proceeded to state, that his only object in the course he should pursue in opening the cause, would be to explain the evidence which was now to be offered the Jury, and the law by which the Jury were to be governed in its application to the case of the prisoner, with the utmost clearness and simplicity, and in such a manner as would best assist the Jury in the progress of their duty. He further observed,

It is manifest from the foregoing statement and explanation, that it is most important the Jury should have a clear understanding of the law upon the subject of principals in the first, and principals in the second degree, in cases of murder. And he referred to the following principles of law, which he quoted and read from approved authorities and writers on criminal law:—

Whether a person is a principal in the first or second degree, is a question of law, to be decided by the Court. 2 Stark. on evidence, 6, note (v). 4 Burr, 2076.

A principal in the first degree, is the absolute perpetrator of the crime, actually present, and who inflicts the deadly blow. 2 Stark. 6. Hale, 615, 616. 2 Hawk. c. 29. s. 11.

A principal in the second degree is one who is present, aiding and abetting the fact to be done.

In the construction of the statute of this Commonwealth, as to what constitutes presence, within the meaning of that statute, our late venerable and lamented Chief Justice, in his charge to the Grand Jury, at the present term of this Court, states to them, that

"It is not required that the abettor shall be actually upon the spot, when the murder is committed, or even in sight of the immediate perpetrator, or of the victim, to make him a principal.

"If he be at a distance, co-operating in the act, by watching to prevent relief, or to give an alarm, or to assist his confederate to escape, having knowledge of the purpose and object of the assassin, this, in the eye of the law, is being present, aiding and abetting, so as to make him a principal in the murder."

The following are the authorities and cases which substantiate the position laid down by the late Chief Justice. To prove one to be a principal in the second degree, it must be shown, first, that he was present: second, that he was aiding and abetting. 2 Stark. 7.
But it is not necessary to show that he was actually standing by, within sight or hearing of the fact. Not an eye or an ear witness. 2 Stark. 7. 1 Russ. 30. Foster, 349, 350. 1 Hale, 537.

As where one commits the murder and the other keeps watch or guard at some convenient distance, to prevent surprise, or to favor the escape of those immediately engaged. Foster, 350.

If several set out upon a design to murder, and each take the part assigned him, they are all present, in contemplation of law, when the fact is committed. 2 Stark. 7. Foster, 350. 1 Hale, 439. Kel. 111.

In general, if a party be sufficiently near to encourage a principal in the first degree with the expectation of immediate help or assistance in the execution of the felony, he is, in point of law, present. 2 Stark. 8. 1 Hawk. c. 32. s. 7.

If several go on a design to commit burglary, and one only enter the house, and the others stand at the garden gate, or the lane's end, to watch, they are all, in law, principals. 2 Russ. 913. 1 Hale, 555. 2 Hawk. c. 29. s. 8.

Lord Dacre’s case, who went to steal deer. One of the company killed the keeper, Lord Dacre and the rest of the company being in other parts of the park. And it was held that it was murder in them all; that all were present. It was sufficient that, at the instant the facts were committed, they were of the same party and upon the same pursuit of those who did the facts.

As to aiding and abetting, these words include every species of assistance, either by the acts or the assent, or readiness to further the general purpose. 2 Stark. 10. Foster, 350.

For if any one comes for an unlawful purpose, although he does not act, he is a principal.

This allegation implies assent to the principal act, and must be proved by some act, done in furtherance of the commission of the crime, or that he was keeping watch, or that he was associated with the rest, in the common illegal object, in the furtherance of which the crime was committed. 2 Stark. 12.

It is sufficient that the principal is encouraged from the hopes of immediate assistance from the abettor, whether he be in view of the fact or not. Hawk. b. 2. g. 29. s. 8. Salk. 334-5.

If a person be present in the commission of a murder, though he takes no part in it, yet if it be done in private, as in cases of secret assassinations, and he does not endeavor to prevent it, nor
apprehend the murderer, these circumstances may be left to the Jury as evidence of consent and concurrence in the act. 2 Stark. 12. Foster, Disc. 3. s. 5.

For the Government.

Judith Jaquith, sworn.

On Friday evening, the 2d of April, about 10 o'clock, I was passing down Brown street, from a meeting which I had been attending in the Vestry of the first Baptist church, in Marlborough street. When I got to Capt. Kinsman's house, I saw a group of men standing by the rope-walk steps, and one of them was pointing towards Capt. White's house. As I passed by Mr. Downing's gate, I saw that there were three persons, one sitting down, and one standing each side of him. The one who stood on the eastern side had something in his hand; I could not tell what it was, but at the moment thought it an instrument of music, or something of that kind. As I passed, the one that was sitting took it out of the hand of the other, and put it behind his back, and I passed on. The two persons standing had on cloaks, or wrappers, with capes, and the one sitting had on a hat, and a surtoute without a cape. I could not tell what the instrument was.

Cross-examined. I saw no other person in the street than those three individuals. I walked fast by them, did not run. I told of it the next day; have mentioned it something like a hundred times. I was not summoned to attend on the former trial of this cause. When I first saw them pointing, I was by Capt. Kinsman's house; when I saw them concealing the instrument, I was by Mr. Downing's house. I know it was Friday evening. I mentioned it the next day. I thought what I saw was an instrument of music. There is a meeting every Friday evening thro' the year. I always attend.

Lewis Endicott, sworn.

I had a conversation with Joseph J. Knapp, jr. in January last, about the time that Capt. White had an ill turn. He said if he had been in town, Mrs. Beckford would not have sent to Boston for Mr. Stephen White, for he could destroy all his own notes. He said that Capt. White had made a will, and that Mr. Stephen White was not executor, but Mr. John W. Treadwell alone; that black and white would not lie; that Mr. Lambert was the only witness. I asked him if he had seen the will; he said he had. I asked him if Capt. White did not keep his will locked up? he said yes; but there was such a thing as having two keys to a lock.

Cross-examined. He said there was only one witness to the will.
Miss Sanborn and Miss Kimball, on this trial stated, that, on the morning after the murder, a cloak was left at Capt. White's house by a young man, whom they did not know, who said "This is my brother's cloak." It was afterwards proved that this cloak was left by Stephen Stratton, a servant of Mr. White.

For the Prisoner.

Daniel Potter, sworn.

I have conversed twice with Leighton about the murder. Once last Friday afternoon while the jury were out. He then said that Frank Knapp came to Wenham soon after breakfast, on the day that he overheard the conversation that he had testified to. As I questioned him, some one told him to stop. I saw him again two hours afterward. He said Frank was viewing the farm that morning; he said nothing of the conversation that he had heard.

Cross-examined. I live in Salem;—am a blacksmith. My meeting with Leighton was accidental. I had a bet on the last trial,—on the verdict while the jury was out the first time. I have none now.

Stephen Field, jun. sworn.

I overheard the conversation between Leighton and Potter, as he has testified to it. I had no conversation with Leighton myself.

Rev. James Flint, sworn.

The prisoner's father is a member of my society. About two or three weeks after the prisoner's arrest, I visited him in his cell, and have continued to visit him. I have known him seven or eight years.

Stephen P. Webb, sworn.

I left Mr. Deland's house, which is next to Capt. White's, on the evening of the murder, at 1-2 past 10 o'clock; Did not see or hear any thing unusual. From the appearance of the pavement, it had rained a little, though it did not rain at that time.

James Savary, sworn.

In addition to his former testimony, this witness stated, that he thought the person who came out of Mr. White's yard, was the prisoner;—He said "I mentioned it to a person, that I was carrying to overtake the Boston stage a few days afterward. I also mentioned it to Mr. E. Maxon, at the Coffee house, the morning after the murder.
John Chapman, sworn.

The weather on Monday evening before the murder was very pleasant. It was a clear moonlight night. There was a public meeting at the South Meeting House. It was a very full meeting.

Affidavits were read, stating that Samuel H. Knapp, a brother of the prisoner, would testify, if present, that on the night of the murder, the prisoner came home about ten o'clock, and opened the door of the chamber where he was, and spoke to him at 10 minutes after ten, and then he spoke to the prisoner, and that he heard the prisoner go immediately to his own room and as he supposed to bed.

For the Government.

Perley Putnam, sworn.

On Friday, week before last, I asked Burchmore, what he expected to testify to. He said he did not expect to be able to testify to any thing. It was before he had been examined; on the 5th or 6th of this month. I asked him if he was positive that he saw Frank Knapp on the evening of the murder. He said he could not swear that he did. That was the amount of the conversation. I had another conversation with him last Monday morning, when I came to the Custom house. I told him that I had been reading the trial, and that his testimony did not amount to much. He said he was not positive that he saw Frank Knapp on the evening of the 6th April.

Cross-examined. He did not say he had any new recollection. I asked him no question which would lead to that answer. I did not question him at all.

Rev. Bailey Loring, sworn.

John Forrester junior, has lived with me, at Andover, a year, except occasionally, when he visited his father in Salem. A week before the trial commenced, two gentlemen, whom I understood to be Mr. Rantoul, and Mr. N. Phippen Knapp, came to my house to see Forrester. I said to him, do you know any thing about the murder? He said that, about the time of the murder, he was in Salem, and was walking with Frank Knapp and some other young men. I asked him if he could recollect what night it was. He said it was on that night or about that night. I asked him if Page could not recollect the night; he said he could not, and that the gentlemen who came up wanted him to go to Salem, to meet the others to bring up some circumstance to refresh their recollections. They told him, if he did not come, they would summon him.

John F. Webb, sworn.
I conversed with Samuel H. Knapp, before he went to sea, about the prisoner. He was in the counting room, the 8th of June. I asked him if he knew when Frank was at home the night of the murder? He said he did not. He was not at home, when he (Samuel) went to bed.

Cross-examined. I recollect my precise question to Samuel. It was as I have before stated, with the same answer.

Joseph White, sworn.

I know Charles Page. We are both members of College. I have conversed with him about the murder. On the 19th of this month, I was riding to Cambridge with Page. On the road, he said that it was Monday, or Tuesday or Wednesday evening, that he was with the defendant, and he could not tell which. He said he had been summoned as a witness, that he wanted to go to New York but could not on that account. I was not in Court when he testified, I was out of town at a friend's house and read his testimony in the printed report.

Cross-examined. Mr. Stephen White is my father.

Dr. Abel L. Peirson, sworn.

On Thursday, 8th of April, I was requested to examine the body of Capt. White. Doctor Johnson, some of my pupils, and several spectators were present. It was the first time that I had seen the body after the murder. The wounds on the head have been correctly described by the other physician. On examination, we found two groups of wounds on the body. There were six stabs, three inches from the left pap, and near together, each of which measured exactly half an inch in length, and gaped about a quarter of an inch, and resembled somewhat the figure made by a parenthesis \( \text{parenthesis} \). About six inches further down, there was another series of wounds seven in number. These wounds were all mere slits, having the edges together, and not gaping at all. One of them was three quarters of an inch in length: the other varied from half to three quarters. Four or five wounds penetrated the substance of the heart, though none of them reached the cavity. The second group of wounds had a downward direction, nearly at right angles with the first. The (diaphragm was perforated by them.) The fifth, sixth and seventh ribs were broken, by the blows which formed the first group of wounds. These two series of wounds diffused in so many particulars, that I inferred that they were made by different instruments. The instrument by which the ribs were broken must have been about five inches in length, as the ribs were probably broken by the guard or hilt, and it did not appear to have been long enough to reach so far as the instrument that passed through the diaphragm.
Cross-examined. I cannot explain satisfactorily the different appearance of the wounds, without supposing two instruments.

Jesse Smith, jun. sworn.

Moses Balch has told me at two several times, that he could not tell the time of night that he left the prisoner. He once said it was about 20 minutes or half past nine, but he could not tell. The second time, he said it must have been about 10 o'clock, but that he was not certain. He did not tell me that it was on the night of the murder—all he knew about it was, that he was walking with the prisoner on Monday or Tuesday evening, he did not know which.

Cross-examined. He said Charles Page was with them and he could tell. Since the last trial I have told him what he told me before, that he left the prisoner about half past nine, and he said he did not recollect it. He said that he had always said it was about 10. He has said since that his recollection agreed with that of the prisoner.

Joseph Dewing, sworn.

About twelve months ago, in the West Indies, I had a conversation with the prisoner. He said, he had gone into his father's house at an early hour and retired, and after the family had retired, he had left the house and been absent till day light.

John F. Webb, called again.

The prisoner has frequently told me, that he could go into and out of his father's house in the night without any body's knowing it.

William Mansfield, jun. sworn.

I was at the town meeting at the town hall on the ninth of April. Richard Crowninshield sen. was there.

Cross-examined. The meeting was at 7 o'clock. Notices were posted in the day time; I should think in the forenoon. The general meeting was dissolved at half past nine. Between 11 and 12 the watch was set, and the last persons left the hall.

Dr. Johnson called again by prisoner's counsel.

I did not observe such a difference in the appearance of the wounds as to lead me to believe that more than one instrument had been used.
Mr. Dexter then addressed the Jury as follows:—

Gentlemen of the Jury,

You have now heard all the evidence on which you are to form your judgment of life or death to the prisoner. He stands before you for that judgment under terrible disadvantages. I will not repeat to you what has already been stated on that subject. I have neither time nor strength to expend on any thing but the law and the evidence. You see around you proofs of the power against which the accused has to struggle in his defence. You see the extraordinary array of counsel, active and inactive, brought in aid of the government, or withdrawn from the reach of the prisoner. You have witnessed the efforts that have been made by those who could take no other part in the prosecution, to fasten upon him the evidence of guilt; and you may anticipate the power and eloquence with which the case is to be closed against him. Gentlemen, why is all this? While the official prosecutors are competent to discharge the duties of their office, why are they surrounded and replaced by this extraordinary assistance? Is there any thing in this cause that threatens to turn aside public justice from its proper victim?

If there is legal evidence against the prisoner, can there be a doubt that he will be convicted? And if there is not, is a verdict of condemnation to be wrenched from you by talent and eloquence, which the ordinary course of a criminal trial would fail to procure? But, Gentlemen, it is enough that you perceive all this. I need not farther caution you against its power. There is, however, a more dangerous influence in this case—one that you are not in a situation to perceive, but which presses most heavily on the prisoner. We care less for the array of counsel than for the array of the community against him. We should not fear even such efforts as we expect here, if the case could be fairly brought before you in evidence. But we have greatly feared the effect of this hostile atmosphere on the testimony. We have feared, and found, that in such a state of excitement, and when such arrangements have been made for the success of the prosecution, no man could take the stand, an indifferent witness. He is to be esteemed a public benefactor on whose testimony the prisoner is convicted, and he who shrinks from the certainty expected of him, does it at the peril of public displeasure and reproach. If proof of this were needed, it might be found abundantly in the variance of the evidence on the two trials of this cause. But this is a small part of the evil; the cause has been tried and the witnesses examined and re-examined long before a jury was impannelled; and this last reinforcement of evidence, is but proof of what has been done before for the conviction of the prisoner.

After all that has been said abroad, we fear that it may even seem strange that we should claim for the prisoner that
presumption of innocence which the law affords every man. But it is not the less your duty to extend it to him; and this presumption is not only that he is innocent of all moral guilt in this matter, but even if this shall fail him, still that he is innocent of the particular crime charged in the indictment. You must be satisfied by the evidence in the case, beyond reasonable doubt, of the truth of the whole and of every material part of the charge as it is here laid against him. I say this, gentlemen, because a new doctrine of the law has been advanced to meet the difficulties of this case. We have been told that the prosecution will contend that if the general guilt of the prisoner has been established, there is a presumption of law that he is a principal offender; that the burden is thrown on him to show that he is guilty in a less degree. It is enough for us to say, that this is a doctrine subversive of the very foundation of all criminal law; that it strikes at the root of that humane provision, that no man's guilt is to be presumed, and that it is unsupported by any authority which has been or can be adduced. It was attempted, indeed, at the last trial to support it by the analogy of that rule, which, when a homicide is proved, presumes malice to constitute it murder. But life is not to be taken away by analogy; much less by the analogy of an obsolete and savage rule of law, on which, however it may stand in the books, neither Court nor Jury has ever dared to act. No man was ever yet convicted of murder in this country on that bloody presumption; and a jury that should convict upon it, would deserve to be hanged upon their own verdict.

What, then, is the crime of which the prisoner stands indicted? It is, that he was present, aiding and abetting in the murder. Not that he is guilty of the murderous intent, or that he procured the murder to be committed, but that he was present at the perpetration of it, and gave his assistance to the murderer.

These are the facts of which you are to be satisfied by the evidence you have heard before you can return a verdict against him. But we admit the law to be well settled, that an actual presence is not necessary to constitute the prisoner a principal. We admit that any place from which actual physical aid can be given in the commission of the murder, is presence within the meaning of the law. I need not cite to you the cases on this subject. They have been repeatedly examined and compared.

We claim that this is the result of all of them, and that beyond this the doctrine of constructive presence never has been carried; that to make a man an aider and abettor in a felony, he must be in such a situation at the moment when the crime is committed that he can render actual and immediate assistance to the perpetrator; and that he must be there by agreement, and with the intent to render such assistance. All these circumstances—the intent—the agreement, and the actual power to assist in the commission of the crime, must concur, to make one really absent from the immediate scene of it
constructively present. No previous consent or inducement—no encouragement at the moment, short of the hope of actual and immediate physical assistance, is sufficient for that purpose. This then, and this only, is the question that you are to try on the evidence you have heard, and from your own view of the scene of the murder:— Was the prisoner, with such intent, under such an agreement, in such a situation, that he could render actual aid at the moment when the murder was committed? With this view of the case, I will now ask your attention to the evidence on the part of the prosecution.

Sensible of the weakness of the evidence of the prisoner's presence in Brown-street (especially as it stood on the first trial) the prosecutors have relied much on the aid of the conspiracy. There are two views in which this may be considered. If by a conspiracy is meant that the prisoner had before consented to, or contrived the murder, the evidence is most material. It goes directly to one of the facts necessary to constitute him present, for he could not be there to aid unless he were a party to the scheme. To so much of the evidence on this point no objection can be made. But a much more extensive and less legitimate use has been made of this conspiracy. On the ground that a conspiracy being once established, the acts and declarations of any one confederate are proof against the rest,—all the proceedings of the elder Knapp and of the two Crowninshields have been made evidence against the prisoner. Even their individual acts subsequent to the murder have been brought in, and an attempt has been made to introduce the separate confession of Joseph Knapp. On this point we take the law to be clear, that the acts and declarations of one conspirator, in the absence of the others, is no proof against him of anything but of the object of the conspiracy. They cannot be used to enforce the proof that the conspiracy existed, or that the defendant was a party to it, but simply to show its design. And, although the evidence has been admitted, because it was difficult to distinguish its tendency until it was heard, you are to receive it no farther than is warranted by this rule of law. If then, as the prosecutors contend, the evidence of Leighton is sufficient to indicate the object of the conspiracy—if the words he so ingeniously overheard can, as is said, mean nothing, but that the two Knapps and Richard Crowninshield had agreed that the latter should murder Captain White, then all the remaining proof of the conspiracy is superfluous. The only object for which it could legally be used was accomplished at the first step. The Wenham Robbery, the Robbery of the Knapps' house, the preceding letters of Joseph Knapp to Stephen White and to the committee, and such other circumstantial stuff that has been introduced, may be used to aggravate the general appearance of the whole transaction, but they have no bearing on the case of the Prisoner. The letters may be proof that Joseph Knapp was guilty, but what is that to the Prisoner? He is not to stand or fall by the subsequent and independent acts of Joseph. Why are these evidence against him, more than Joseph's confession given to Mr. Colman? They are but confessions made after the fact and without
the knowledge of the Prisoner. As to the robbery, it may have been real or pretended. But whether real or pretended, what has it to do with the murder of Capt. White? Not a particle of extrinsic proof of its falsehood, or of its connexion with that event has been produced. It has served as a basis for much irony and indignant denunciation; but it was believed by Mr. Palfray who published it, and by the Committee. And yet you are called on from its intrinsic incredibility to convict the Prisoner, not only of the falsehood of that story, but as a corollary of the murder of Mr. White. Considering these things as of no weight in the cause, I shall pass by them without further remark. Some other circumstances may be dispatched in the same manner. The conspirators wore daggers—the proof is that the Crowninshields habitually wore them before the murder—and that the Prisoner never had one until long after. And whether he then wore it for murder, or in boyish bravado, you may judge from Layton's account of the manner in which he used it upon him. Pleased with his new weapon, he "pricked me Bull Calf till he roared;" and how much of Layton's testimony is to be ascribed to that, is matter of no great consequence, so incredible is the whole.

So of the five franc pieces. The proof is that Joseph received five hundred on the 21st of April—and that George and Richard Crowninshield spent nine between that time and their arrest—nine five franc pieces! Richard was to receive, according to Palmer, one thousand Dollars for the murder! and we are called upon to account for nine of these pieces, when the whole five hundred would not have been half of the price agreed to be paid. And why should not the whole five hundred have been paid? and if they were, why are not more than nine traced to the Crowninshields? The coin, besides, is no uncommon one—they carry no ear mark—the witnesses tell you they pass currently—commonly—here. They are the regular return from Point Petre; and in large quantities, they go into the Bank—in small quantities, they go into circulation. But suppose it otherwise, how does this prove Francis Knapp guilty of this murder? Is he shown to have any of this pernicious coin? All the evidence about them is of the nine spent by the Crowninshields and that Joseph Knapp gave Hart three to buy meal for the family. Besides, the proof of any communication between Joseph and Richard after the murder completely fails. When were these five franc pieces paid to Richard? The whole evidence is, that about the last of March, Richard Crowninshield stopped at Lummus's tavern with a stranger who asked if Capt. Knapp had been there lately;—they left their chaise and walked away together. Afterwards, about the 20th of April, Richard and another person, stouter than the prisoner, called at Lummus's in the evening and spent a five franc piece.—Hart and Layton testify that somewhere about that time Frank Knapp came in a chaise to Wenham with a stranger who sat in the chaise at the door an hour or an hour and a half. They differ very much in their accounts of the transaction, but neither pretends to know or believe that the stranger was Richard; or that any money was paid. In fact, money could not well have been
paid at that time in five franc pieces without observation. Neither Hart nor Layton observed any thing like it. All they know is, that there was a long conversation between the two Knapps in the house and between them and the stranger at the door. They saw nothing and heard nothing to show what was the subject of those conversations.

One word about George Crowninshield; he has been shown by the government's witnesses to have been in Salem that evening and to have gone to bed at the house of Mrs. Weller about eleven. The prosecution has proved an alibi for him and we shall not disturb it. On the contrary we have shown you by evidence, which is unnecessary to recapitulate, that he came to Salem with Selman and Chase on other business, and we have traced him from place to place through the whole evening. It seems to be the object of the government to show that he could not be the man in Brown street. We agree that he was not; but we think it material to show you also that neither was he anywhere in the neighborhood of Mr. White's house at the supposed time of the murder. The testimony of Selman, corroborated as it is at every step, establishes that fact. Whoever then, was the man in Brown street, he was the only one in the vicinity of the house, and that will become a material fact when we consider the purpose for which he was there.

Much use was made on the former trial of the testimony and books of Osborne, the stable keeper. It appears by them, that the prisoner was in the daily habit of riding, and often to Danvers, and to Wenham, early in the month of April. That he went to Danvers on the 2d of April, as testified by Palmer and Allen, and afterwards on the same day hired a chaise to go to the Springs. That on the 6th of April he went to Danvers and after that did not ride till the 19th. We see little than can fairly be inferred from all this but that there was a frequent intercourse between the Prisoner and the Crowninshields,—a circumstance undoubtedly unfavorable though slight, and between him and his brother Joseph's family, a matter from which nothing can be inferred. Two or three circumstances however, attending these rides, have been selected as highly suspicious. In the first place the frequency of them just previous to the time of the murder and the interruption of them just after. If the books are examined it will be found that these rides are as frequent in the months of February and March as in April, making due allowance for the difference of weather. The Prisoner returned from sea in January and he appears to have hired Osborne's horses almost every day from that time until the 6th of April. That evening was marked by the failure of his father, as well as by the murder of Capt. White,—a circumstance quite sufficient to account for the discontinuance of his visits to the stable, and also for another fact, somewhat relied upon.

The place, it seems, for which the chaise was hired on the 6th of April, is still blank in the book. Now Mr. Osborne testified
that it was the habit of the prisoner to fill out and rectify the charges against him by his own memorandum book; but this he had no opportunity of doing after the 6th until the 19th; and it does not appear that he ever was asked where he had been on the 6th; so too of the entry on the 2d. The chaise was hired for the springs; but those words were afterwards struck out, and to ride put in their place, in the prisoner's hand-writing. But the first words are not so erased as to be concealed; they are merely crossed out with a single line of the pen; and this was in conformity with the practice permitted by Mr. Osborne, who tells you he had perfect confidence in the prisoner, and suffered him to have free access to his books to make his own charges. One circumstance more, and I have done with these minor points.

It is thought very strange, that on the 6th the prisoner ordered his chaise brought to the Court-house, instead of getting in at the stable. A hundred innocent reasons may be imagined for that, while it is hardly possible to think of one in any way connected with the murder. He was much more likely to be noticed if seen getting into a chaise in Court street, than at the stable, because one was a usual, the other an unusual thing. The fact that he had a chaise was as much known at the stable; and if he wished to conceal the direction in which he rode, a much simpler expedient would have answered the purpose. Why did he not start the contrary way, and drive round the town until he could escape unnoticed? He may have had an errand in Court street; he may not have wished to be seen leaving the stable on the day of his father's failure. It is so simple a thing that any reason is enough, and none need be sought for. But the most indifferent acts of the prisoner have been traced out with inquisitorial diligence, and magnified into proofs of crime. Is there any thing in all these circumstances inconsistent with the prisoner's innocence? It is not enough that they are consistent with his guilt. Before circumstantial evidence can amount to proof, it must be impossible to explain it without supposing guilt. So far, certainly, all may be as well explained without that supposition. And yet, from the way in which these things have been heretofore insisted on, it would seem that they were looked upon as conclusive evidence. It seems to be enough if the prisoner can be found any where or doing any thing on the day of the murder, which might, by any supposition, connect him with it. A thousand suspicions it has been well said, do not make one proof. And what are these but possibilities? There is not one among them that deserves the name of a probability. A thousand such possibilities would hardly make one suspicion.

But one thing that has a little more shew of proof, or rather of suspicion, must be disposed of, before we come to the direct evidence of the conspiracy. I mean Mr. Burns's story. Burns is a Spaniard; and although I would not discredit him on that ground alone, I cannot have the same confidence in his oath, I should in
that of one of our own citizens. He hardly speaks English intelligibly, and there is some doubt whether he was finally understood as he meant. His story is intrinsically improbable, and he has discredited himself by his own contradictions. He tells you the prisoner called at his stable and asked if he were alone; being assured that no one was there, he wished to be yet more private, and asked if he could speak with him in the chamber. And all this secrecy was to tell Burns, that the Committee had heard that he [Burns] was out on the night of the murder, and that they suspected him—and that if he saw any friends that night, he had better hold his tongue about it, and that Joseph Knapp and the prisoner were his friends; and then follows an idle tale about the prisoner's accusing Stephen White of the murder, and then threatening Burns with his dagger because he would not believe it. Now what possible object could the prisoner have in all this but to bring himself into suspicion? No one had at that time whispered a suspicion against him. Burns had not pretended to have seen or heard any thing of him that night, near the scene of the murder. But it may be asked, what motive could Burns have to fabricate this story? It is in vain to deny that there is a sufficient motive. We have seen the operation of it on more than one witness, and that Mr. Burns is above its influence I see no special reason to believe. You observed the manner in which he testified,—how zealously he defended Mr. Stephen White from the aspersions of the prisoner,—and how impossible it was for the Counsel to obtain any thing from him but impertinence by the mildest cross-examination. Such a man as Burns well understands what is the source of favor in this trial. He as well as others sees that the prisoner is a helpless and friendless culprit, pursued by all the wealth and respectability of the town. And can you see in this no motive that could lead such a man as Burns to claim his share in the merit of his conviction?

But be his story ever so probable, you cannot believe it—he swore positively on the first trial that this happened after the Wenham robbery, and on this he has sworn positively that it was nearly three weeks earlier—he has described the prisoner's dagger as totally unlike any one he ever had, and differently at his two examinations. Let him and his story go for what they are worth—I trust that the prisoner is in no danger from them.

I come now to what is called the direct evidence of the conspiracy. It rests on two witnesses, Leighton and Palmer; or rather it rests on Leighton alone, for without his testimony that of Palmer would not be admissible. Palmer pretends only to have had a conversation between the two Crowninshields in the absence of the prisoner. For that purpose Leighton overhears the two Knapps tell each other the whole story, while he listens behind a stone wall. Now it may be supposed that this very deficiency in Palmer's story
is proof of its truth. No so. Palmer's story was first told and put in writing to convict Richard Crowninshield, and it would well enough stand alone for that. But when Richard was out of the way, and Frank became the principal, a connecting link was wanting; and to furnish this is Leighton's office.

And what is Leighton's story? Of all the gross improbabilities that ever were laid at the foundation of a cause, this is the most gross. It is just the clumsiest contrivance of a play, where the audience is informed of what has taken place behind the scenes by the actors telling each other what they have been doing together. If it were told with the utmost consistency, could you believe it for a moment? Why, gentlemen, do but listen to it. He tells you that Frank Knapp came to Wenham about ten o'clock (and Potter says he told him he came there immediately after breakfast, which would be about seven)—that he and Joseph were together all the morning in the fields, and that after dinner he left them together talking at the gate by the house, while the witness went down the avenue to his work. There was abundant opportunity, then, for them to talk in private about what most concerned them; but after the witness had passed through the gate at the end of the avenue, and taken his place behind the wall, he heard voices in the avenue; without rising, he peeped through the gate, and saw the two Knapps about twenty-five rods off, coming towards him; that they ceased talking until they arrived within three feet of the wall, and then began this dialogue: Said Joseph, "When did you see Dick?" "This morning." "When is he going to kill the old man?" "I don't know." "If he don't do it soon I won't pay him,"—and they then turned up the avenue and walked away; and this is all the witness heard.

Now is any thing more than a bare statement of this story necessary to show its falsehood? For what purpose, under Heaven, could the Knapps have postponed all conversation on this most interesting subject till that very time? They had been together all the morning; they were plotting a murder; and Frank had been that very day to see the perpetrator; and yet neither Joseph had the curiosity to ask, nor Frank the disposition to speak of the matter, until just as they reached the place of Leighton's ambush; and there in an abrupt dialogue of one minute's duration, they disclose the whole secret, and walk back again. Not a word more is heard by the witness. The conversation evidently began and ended with these words. Really it is too miserable a contrivance to deserve much comment. But there is a remarkable mistake about this story which stamps it with falsehood. Leighton fixes the conversation on Friday the second of April. And why on that day? Because he knew, as well as every person who has read the newspapers, that on that day Frank did see Richard. But unluckily he fixes him at Wenham at the very hour in which it now appears, from the testimony of Allen and Palmer, that he was at Danvers. Leighton says that Frank came to Wenham at
ten, and said he had seen Dick that morning; but it now appears that Frank did not go to Danvers until two o'clock, and at that very hour Leighton pretends to have heard this conversation at Wenham. Again, Palmer tells you that at that interview at Danvers, the plan was first proposed to the Crownshields—that George spoke of it to Richard and himself as what he had just heard from Frank; and yet from this dialogue at Wenham it seems that Joseph was impatient at the long delay of Richard. "When is Dick going to kill the old man?" "If he don't soon I won't pay him." How are these things to be reconciled? Leighton tells you too that he never mentioned this conversation until after the murder. And why not? Why, forsooth, "he did not think of it." He had heard a plain palpable plot of murder contrived by his own master, and yet he did not think of it! He did not tell it to Mr. Davis when he joined him at his work, nor to Hart who slept in the same room with him; and when he hinted after the murder to Starrett, at two different times, that he "knew something," and had "overheard something about the murder," Starrett had not the curiosity to ask him what it was! He is directly contradicted by Hart, both at the time when he told him of it and as to the circumstances of Richard's supposed visit to Wenham. Hart says he never heard of this conversation until after Leighton's examination at Salem, and that Leighton told him the Committee brought out a warrant to commit him to jail if he did not tell what he knew—facts both of which Leighton denied on the stand. Now what account does he give of the manner in which his evidence was brought out? He says he was summoned to attend court, taken out of the field where he was at work, and carried to Mr. Waters's office—he was kept there forenoon and afternoon, more than four hours, closely questioned and threatened, but he told nothing. Why did he not tell? On the first trial he swore he remembered well enough, but did not choose to tell—to be sure he swore both ways about it, but he finally said he did remember and would not tell; and on this statement a most ingenious argument was built by the counsel in his favor. "He would not betray his employer; improper as it was to deny what he knew, he had fidelity enough to refuse." But on this last trial he takes all that back; he swears positively he did not remember a word about it. Equally regardless of his own oath and the argument of the counsel, he denies the whole. He says it all came into his mind about two days after his return to Wenham—the very words. What brought it to his mind he cannot tell. Now what credit can you give to this boy and his story? But one of the most remarkable improbabilities of it is yet to come. He says he told the gentlemen at Mr. Waters's office that if they would come to Wenham the next day, he would tell them all he could remember. That was on the twenty-second of July. Now do you believe it that were true they would not have gone? When every body in Salem was inquiring about the murder, and some of the gentlemen at Mr. Waters's office had been doing nothing else for months before, and when they had taken all these pains to extract from Leighton what he knew, do you believe that after such a promise they would neglect to follow him up? And yet he tells you he heard nothing
from them until ten days after that time. Then they came to Wenham and he told them all about it. Now, gentlemen, if you had seen as much as we have of the diligence of the Committee and Sub-Committee in looking up testimony in this cause, you would not think this the least improbability in Leighton's story. Consider how important his testimony is. Without it, Palmer's, and the whole evidence of the conspiracy, would be useless. It is the very corner stone of the prosecution. And yet it was not thought worth looking after for ten days immediately preceding the trial. Again; we shall be asked, what motive has Leighton to swear falsely? and we answer, Fear, favor, and hope of reward. He was told at Water's office he should be made to remember—he said he was threatened with a warrant, and he knows of the immense rewards that have been offered. He remembers the pricking with the dagger, and he swears now to you that if Knapp escapes hanging, he expects he will kill him. Under all these circumstances, I put it to your consciences to say if you can take this boy's word against the life of the prisoner. If you disbelieve it, then you must wholly reject Palmer's testimony, and all evidence of what was said and done by any one but the prisoner, or in his presence. There is absolutely no other evidence to connect the prisoner with Joseph or the Crowninshields in this matter.

But who is this Palmer, this mysterious stranger who has been the object of so much curiosity and speculation? He is a convicted thief. We produce to you the record of his conviction of shop-breaking in Maine. He is an unrepenting thief, for he tells you on the stand he cannot speak of the stealing of Mr. Sutton's flannels in Danvers, committed since his discharge from the State Prison, without criminating himself. Mr. Webster (the witness) tells you his character among his neighbors in Belfast is as bad as it can be. He tells you himself that he has passed in his wanderings from tavern to tavern, sometimes by the name of Palmer, sometimes that of Carr, sometimes that of Hall (the alias of the notorious Hatch) and sometimes that of George Crowninshield. The latter name he gave at Babb's house when he was called on to settle his bill; and whether he settled by a note he cannot remember; but Mr. Babb remembers that he did, and signed that note George Crowninshield! And now came Mr. Palmer a witness before you? He was arrested as an accomplice in the murder at Prospect; committed to Belfast jail; brought up by land from Belfast in chains; put in to a condemned cell in Salem—remained in jail two months, neither committed for trial, nor ordered to recognize as a witness; but kept for further examination at his own request, until he is brought out and made a free man on the stand. Now what is this man's credibility? If his conviction had been in Massachusetts he would have been incompetent; he could not have opened his mouth in court. But the crime is the same—the law violated is the same—and the infamy and the punishment are the same in Maine as in Massachusetts—and his credibility is the same. Add to that conviction, his subsequent theft, falsehood and forgery, and you have left in him but a bare possibility that he may speak
the truth. As to his temptation to testify against the prisoner, you see how he was brought here, under what liabilities he stands, and what is the price of his discharge. He tells you himself that, though a disinterested love of public justice first moved him to inquire into the matter; he thinks he deserves some little pecuniary reward for his exertions; and doubtless he thinks that reward will depend something on the success of them. But what is his story? It is that being himself concealed at the house of the Crowninshields in Danvers, he saw Frank Knapp and Allen come there on Friday, April second, about two o'clock; that Frank and George walked away together, and after their return Frank and Allen rode off—that the Crowninshields then came into the chamber where he was, and George detailed to him and Richard the whole design and motive of the murder as a matter then for the first time communicated. Now perhaps there is nothing intrinsically very incredible about this story, except its too great particularity. If it be false, it is so artfully engrafted on the truth, that Frank Knapp was there at that time, and had an interview with George alone, that it would be almost impossible to detect it. Palmer too must be allowed the credit of ingenuity, whether his story be true or false. It is impossible for any one in his situation to have testified with a more artful simplicity. And I admit too, that he has had the good sense to tell no unnecessary falsehood. The only instance in which he has tripped, is his saying that George Crowninshield told him on the ninth of April that he had melted the daggers the day after the murder for fear of the Committee of Vigilance; whereas, that committee was not appointed until late in the evening of the ninth. How that little impossibility is to be disposed of is not very material. But this conversation is too particular. Like Leighton's, it goes too much into all that the case requires. Why should the Crowninshields tell all this to Palmer without first sounding him? He says he rejected their offer immediately. Would they risk detailing the whole plan to him before securing any indication on his part of assent? Nay, after having communicated it to him and after he had refused to have any part in it, would Richard have gone on to execute it? He was not a man to trust his life to the keeping of such a witness as Palmer, who had refused to become an accomplice.

There is one circumstance in which the story is a little too ingenious. George speaks to Richard and Palmer of Stephen White as a certain Mr. White that lived at Tremont House in Boston; and then witnesses are brought in to prove that Mr. Stephen White actually lived there at that time. This is too shallow. Did not the Crowninshields, with their Salem connexions, know Stephen White by name? There is not a man in the county that does not know him. This is meant to look like corroboration; but it looks much more like contrivance. Now such a story from such a man deserves no manner of credit unless corroborated by other testimony. Is Palmer corroborated? In the immaterial circumstances of his story in which he had the sense to tell the truth, and no temptation to lie, he is
confirmed by other witnesses. But on the only important point he stands alone and unconfirmed. The conversation between him and the Crowninshields rests, and must of necessity rest, on his single statement. But it has been said that his letter corroborates his story. How can that be? Would he be such a fool as to swear now to any thing inconsistent with his letter of which we had a copy? The mere fact that his testimony is consistent with his own letter amounts to nothing. But does that letter contain any thing which he might not well have known whether his story be true or false, and which is now confirmed by any other witness? Not a word. It states that he knew what J. Knapp's brother was doing for him on the 2d of April, and that he was extravagant to give a thousand dollars for such a business; and that is all. The rest is but vague and meaningless menace. Now it is undoubtedly true that Frank Knapp was at Danvers on the second of April, and had a private conversation with George; and that Palmer was at Danvers and saw him. And that single fact is the only one contained in the letter which is corroborated by any other witness. That he was there to engage the Crowninshields in this business and that they were to have a thousand dollars, comes from Palmer himself and from him alone. Even Leighton's story though intended to corroborate it, contradicts it by inconsistency in time, and in the age of the plot. But he says nothing of the thousand dollars. But why should Palmer venture to mention a thousand dollars if that was not the sum offered? And why should he have written the letter at all, if he knew nothing about Frank's business at Danvers? The solution is easy. It supposes, indeed, some skill in Palmer, but we have seen enough of that. Consider when this letter was written. Not until after the arrest of the Crowninshields. If he had really heard this plot laid, why did he not give information of it immediately on hearing of Capt. White's death, and of the immense rewards offered for the discovery of the murderer? He tells you he wrote that letter to bring the matter to light; from a pure love of public justice. Public justice has been rather a hard mistress to Palmer; but he is not the less faithful to her. Now why did not that love of public justice induce him to inform against the Crowninshields and Knapps before any body else suspected them, and while public justice had some thousands of dollars to give him to obliterate the remembrance of her castigations? He had the whole matter in his own breast. He had heard every word of the plot. If they were guilty he had information enough to lead to their detection. Yet he waits five weeks after the murder and a fortnight after the arrest of the Crowninshields and then writes this letter to Knapp, demanding money—but in fact, as he tells you, to get evidence against him. Is this credible? But what led him to suspect the Knapps? What was more easy? He probably knew that J. Knapp's mother-in-law was an heir of White—he saw F. Knapp in private conversation with George Crowninshield four days before the murder, and he saw in the papers that the Crowninshields were arrested as the murderers. It required less than Palmer's shrewdness to put these things together. As to the thousand dollars it may be his own
pure invention;—there is no other evidence of it;—or it may be that he heard the Crowninshields say after Frank left them that they expected a thousand dollars without saying from what source. His letter is therefore no corroboration at all. It does not contain a fact proved by any body but himself except that Frank was at Danvers on the second; nor is Palmer's story on the stand corroborated by any other witness in a single fact, that had not been published in every newspaper in the State, weeks before he testified.

This is the evidence of the conspiracy. I have but two remarks to make on it. If you could believe it on such evidence, the only effect of it would be to shew that Frank Knapp was an accessory; and it makes nothing said or done by J. Knapp or the Crowninshields evidence against the prisoner. For the very proof relied on to establish the fact of the conspiracy proves equally well all that of which such acts and declarations are legal evidence; that is, the design and object of the conspiracy.

The most, then, that can possibly be inferred from this evidence, bad as it is, is that the prisoner was an accessory before the fact; and that if he were in Brown street at the moment of the murder, and in a situation in which he could give assistance, there would be a presumption that he was there for that purpose. We are willing to meet the government on that ground. We deny that he was there; and we deny that the man who was there could by possibility have given any assistance.

Two men were seen in Brown street at half past ten, of whom one is alleged to have been the murderer, and prisoner the other. But what proof is there that the murder was committed at that hour? If that fails, the whole case fails. Was there any thing in the conduct of the men to shew it? One man was seen waiting half an hour in Brown street, and a little before eleven he was joined by another who came either from the common or from Newbury street; and might as well have come from one as from the other, as he was first seen in the middle of the street. The man that came from the eastward did not run; he walked directly up to the other, held a short conference with him; they moved on together a few feet--stopped again; talked a few moments and then parted; one stepping back out of sight and the other running down Howard street. Of the two witnesses that saw them, Bray thought they were about to rob the grave yard; Southwick suspected; but what to suspect he did not know, and his wife suspected that he had better go out again to watch them. A murder was committed that night in the next street, and this is all the proof that these were the murderers. A club indeed was afterwards found in Howard street; but neither of these men had any visible weapon.

What say the doctors? Dr. Johnson says he saw the body at six and then thought it had been dead between three and four hours—
Dr. Hubbard now thinks longer; but says at the time he agreed with Johnson. There is pretty strong proof that the murder was in fact committed about three o'clock.

Savary saw a man between three and four come out of Capt. White's yard and walk up Essex street; but meeting the witness he turned about and ran down as far as Walnut street. Walcutt about the same time, and near the lower end of Walnut street met, probably, the same man, coming towards him; on seeing him he turned about and walked the other way. Now which was most likely to be the murderer, the man who might have came either from Newbury street or from the Common, at eleven, or the man who was actually seen to leave White's yard at half past three, and twice turned back, and once ran away to escape observation? But here we are met with a dilemma on the second trial. What I have stated was the whole of Savary's testimony on the first trial. He was then asked whether he had ever heard of that man since and he said, no. Now he is asked whether he has seen that man since, and to the utter astonishment of every one, after giggling like an idiot, he says he thinks it was the prisoner! And this is seriously taken up by the counsel for the prosecution, and Dr. Peirson is examined to prove that the stabs were made with different instruments. You have heard his reasons for it. His opinion is that some of the lower wounds, being longer than the upper, must have been made by a broader dagger or a sword cane; these lower wounds were oblique and of various lengths, but he thinks that a dagger however sharp at the edges, driven obliquely into the body, will not make a wound longer upon the surface than the breadth of the dagger. This seems very much like saying that the human skin may be pierced, but cannot be cut. It is certainly contrary to common observation if not to common sense. Dr. Johnson says he saw no proof of more than one sharp instrument. But for what possible purpose, if Frank Knapp had met the murderer in Brown street, and heard that the deed was done at eleven, should he have gone into the house again, and stabbed the dead body? Like another Falstaff did he envy the perpetrator the glory of the deed and mean to claim it as his own? or was it for plunder? No— for the money was not taken. The two suppositions that the prisoner was engaged in the murder at half past ten, and that he visited the house at half past three, are totally irreconcilable. We deny that he was in Brown street, and we will take all the risk of Savary's testimony. This is but one of the many examples of the rapid growth of evidence in a popular cause. Savary's first story was true; he has told it so from the first day after the murder, and it is confirmed by Walcutt; but this last edition of it is as foolish as it is wicked, and needs no refutation or comment to those who saw and heard him on the stand; the manner was as indecent as the matter was absurd. The government must satisfy you beyond reasonable doubt either that the murder was committed at half past ten, or that the prisoner was the man who left the house at half past three. You cannot believe both; and can you say that you are satisfied of either? Is there not a great, a very reasonable
doubt of both? You must not convict the prisoner between the two. You must be as well satisfied of one as if the other did not exist. Which then will you take? That he was the man seen by Savary? If Savary were honest and credible, you would have but his opinion from a glance in a dim and misty night (for it grew more dark and cloudy towards morning); a thing certainly not to be relied upon, standing alone, as it does. Was the murder committed at half past ten? What is the proof of it? and what was the man doing in White's yard at half past three? and why did he run when he was seen? Which acted most like a murderer, the man that came into Brown street, or the man that ran from the yard? Which was the hour most appropriate to so horrible a deed? That at which a party was breaking up at Mr. Deland's, the next house to White's, or the still hour before daylight, when no person was abroad but by accident? And what is the fair result of the doctors' opinions on the view of the body? All these things concur to fix the murder on the man who left the yard in the morning. If you believe that was Frank Knapp, if you can say on your oaths that Savary's testimony satisfied you of it beyond a reasonable doubt, be it so—but it will satisfy nobody else. I have no fear of it.

There remains then, only the supposition that the murder was committed at half past ten; and then the question is, Was the prisoner the man in Brown street? And on this point we have the most deplorable examples of the fallibility of human testimony, and of the weak stand that even common integrity can make against the overwhelming current of popular opinion. The witnesses are four, Webster and Southwick swore the same on both trials; Bray and Myrick have varied most essentially. As it now stands, Myrick and Webster are of little importance; Myrick saw a man in a frock coat who he now thinks was the prisoner, standing at the corner of Brown and Newbury streets from twenty minutes before to twenty minutes after nine. The man appeared to be waiting for some one; and when any person approached his post he walked away and then turned and met him; he did this several times. Now whether that was or was not the prisoner is not in itself of any importance. It is hardly to be believed that a man who was to be engaged in a murder at half past ten would be seen lingering near the spot for forty minutes at the early hour of nine. It would, if true, be no unfavorable circumstance. For what purpose connected with the murder was he there at that hour? Did the murderers take their measures so ill that one was on the watch for the other in a public corner near the scene of the murder an hour and a half before the time? Besides, where are the persons whom Myrick saw meet the prisoner at the corner? he spoke of several. Why are they not found and produced? It is impossible they should not be found. We have been loudly and gravely called upon to produce the man in Brown street if Frank Knapp was not he.

It is thought very strange that if it were not he, some friend of justice should not come forward and own himself to be the man, at
the risk of taking the prisoner's place at the bar as a principal in the murder. So, too, it was asked, if Richard Crowninshield was not the man that joined him in Brown street, why don't the prisoner show where Richard was? And yet we are told that the prisoner stood half an hour at a corner, and was met by various persons, but not one of those persons is produced to prove it. When it is the very question, whether it was the prisoner or not, and Myrick tells you himself that others saw him where they certainly would have recognized him. Now it is a principle of law that no evidence is good, which of itself supposes better in existence, not produced. Myrick's evidence, then, is good for nothing, until those who met the prisoner at the post, are produced. Besides, how did Myrick recognize him? He had never known him—he never knew him until he was brought up for trial—nearly four months after the night of the murder, and in a different dress. He was then told, by a bystander, which was Frank Knapp. Being asked at the first trial, who he thought the man at the corner was, he said he thought it was the prisoner, not from what he had observed, alone, but partly from what he had heard about him. Now this was obviously no evidence at all. What a man thinks from what he hears, is nothing. What he hears, is no evidence; and still less, what he thinks about it. But at this trial, Mr. Myrick makes another step: he says he thinks it was the prisoner, from his own observation alone, making allowance for the difference of dress. Now how much of an allowance that is, depends on how much of the appearance of a man, seen four or five rods off by a perfect stranger, in a light, but cloudy evening, consists in his dress. It can consist of nothing but dress, figure, and manner.—Mr. Myrick's evidence, therefore, amounts to this and no more: "I think the prisoner's figure and manner the same as those of a man I saw four months ago, under the circumstances above described." This is so slight, that the difference in his testimony is not worth mentioning, except to show the growing tendency of the whole evidence.

About the time that Myrick leaves the prisoner in his frock, at the corner, Mr. Webster overtakes him in Howard street, in a wrapper. He passed him without much observation; he did not see his face, but he thinks it was the prisoner. It is of no consequence whether it was or not. The probability, from the change of dress, is that it was not. And this reminds me of a remark made on the last trial, that such differences and sudden changes of dress were to be expected for the purposes of disguise when such business was on foot. With great deference to the learned counsel, it seems to me highly improbable. What is the evidence on this point? The prisoner is supposed to have had on his usual frock and cap, at the corner, from a quarter before to a quarter after nine; at half past nine to have walked in Howard street, in the same cap and a wrapper; to have sat on the steps of the rope-walk, in his own cap and camblet cloak at half past ten, and in five minutes after, to have been seen in the same street, in his frock. Now I agree with the
learned counsel, that on such an occasion, disguise is to be expected; and farther, that it is entirely incredible any one should go undisguised. But what disguise is here? The wrapper does not, indeed, correspond with any known dress of the prisoner; but in every other situation in which he is seen, he is recognized by his usual dress, and by that alone. Now it is incredible enough that a man should, in a light evening, be out in his usual dress, to commit murder in his native town; but that he should think to disguise himself by putting on and off his own cloak, as well known as his own coat, and thus be seen in two of his habitual dresses, is a little too much to ask you to believe. Why not assume one effectual and complete disguise? Or, if he feared being seen too often in one dress, why not put a strange cloak over a strange coat? And why wear his own cap the whole evening? The counsel has said this was a murder, planned with great skill—nothing could be more unskilful than the prisoner's part, if he was there.

But let us come to the more material part of this testimony. Mr. Southwick swears positively to having seen the prisoner on the rope-walk steps at half past ten, in his own cap and cloak—that he passed him three times, and watched him twenty minutes. He has known the prisoner from childhood. He did not speak, though he felt very suspicious of him. That he went into the house and took off his coat and came out again, and the man was gone. He met Mr. Bray, who pointed out a man standing at Shepard's post, on the other side of the street, in a frock and cap like the prisoner's. Bray and he stopped and observed him till he left Shepard's post, walked down the opposite side of the street, and passed them and stood at the post under Bray's window. They then crossed over and entered Bray's house, passing within twenty feet of him. Southwick says he did not recognize the man in the frock coat, but supposed him to be the same he had seen on the steps, because there was no other person in the street; and because he had the same suspicions of him!—Now this testimony of Mr. Southwick is open to two or three important objections. In the first place, if Frank Knapp were on the steps to aid in a murder, at that moment in execution, and expecting to be joined by the murderer, would he have permitted Southwick to pass him three times and watch him twenty minutes? He knew Southwick as well as Southwick knew him. Southwick says he dropped his head each time, so that he could not see his face. So there is a foolish bird that puts its head in a hole and thinks itself safe if it cannot see its pursuers. Murderers are apt to be more cautious. He says he knew it, then, to be Frank Knapp, and told his wife so. But though he thought the man, he and Bray saw, was the same, and both wondered what mischief he could be about, he never told Mr. Bray who he thought it was. Is that possible? Yet, both he and Bray agree in it. But the greatest impossibility of all is, that he should not have recognized the prisoner, if it was he, in his usual dress, while walking down the opposite side of this narrow street. Chadwick tells you it was so light, he easily distinguished Mr. Saltonstall, farther
off, the same evening. Now how inconsistent is this story with the supposition that that was the prisoner. He knew Frank Knapp familiarly, he saw him and recognized him in his cloak on the steps—he saw a man on the opposite side of the street five minutes after, who he, for some reason, not connected with his appearance, thought was the same: and yet though that man wore the usual dress of the Prisoner, and walked down the street by Southwick, when it was light enough to distinguish persons across the street, and though Southwick passed within twenty feet of him to go into Bray's house, he did not recognize him as the prisoner. Again, he thought the man in the frock was the same as the man in the cloak; he knew the man in the cloak was Frank Knapp, yet he and Bray wondered who the man in the frock could be, and Southwick never thought of telling Bray it was Frank Knapp. Now if Southwick's testimony were believed, it not only would not prove that the prisoner was the man at the post, but it would prove almost conclusively that it was not. It is impossible that Southwick should not have known him if it were he, and should not have told Bray if he knew him on the steps. Besides Southwick is contradicted by Mr. Shillaber—he told Shillaber that "for ought he knew the man in Brown street might be Richard Crowninshield, and Frank Knapp the other—he could not tell who they were." And how does Southwick explain this? he says Mr. Shillaber's question was, "might not be the man that came from Newbury-street be Richard Crowninshield?" A probable question indeed for Richard's Counsel to ask! But one word more with Mr. Southwick.—When Chase and Selman were indicted for this murder, he went before the Grand Jury as a witness at Ipswich—he there swore that the man he saw in Brown-street was about the size and height of Selman, and said not one word about Frank Knapp! On this testimony, and that of Hatch the convict, was Selman indicted and imprisoned as a felon, eighty-five days; until another Grand Jury assembled, and as Hatch's oath was inadmissible, and Southwick had turned his testimony against Knapp, Selman was discharged. Now when was there any thing more abominable than this except in form? It is not to be sure within the reach of the law, but how is it in conscience? He swears now that he then knew it was Frank Knapp; and yet he indirectly swore then that it was Selman, and what is the contemptible evasion by which he tries to escape! Why, that it is true that he was about the size of Selman, and he was not asked whether it was Frank Knapp! If he tells truth now, he knew then, that by one word of truth he could clear Selman of all suspicion of being in Brown street; and he wilfully suppressed that truth. Now why is he a more credible witness than if he had been convicted of perjury? It is said he told his wife it was Frank Knapp. She says so, and it may be true; but it is not the very best corroboration. It is not of one half the weight of the fact that he did not tell it to Bray. Still that only goes to the identity of the man on the steps. It leaves the man at the post still nameless, and that is the important question. Southwick does not pretend to identify him. Besides, where was his cloak? It seems that Joseph Knapp left his cloak at Burns' stable
in St. Peters' street, and it is suggested that Frank might have got there the one that he wore. But Southwick swears the cloak was a brown camblet and Joseph's is a plaid. Besides how could he have gone to Burns' stable without meeting Bray, who came down St. Peters' street?

Now this, with the addition of a statement from Bray, that he could not tell who the man in Brown street was, though he was about the size and shape of the prisoner, and wore a cap and full skirted coat, such as the hatters and tailors say Frank Knapp and a hundred others wear, was absolutely all the evidence on the first trial that the prisoner was in Brown street. Two remarkable facts have happened since; one is that Mr. Bray, one of the most honest witnesses in the cause, has on this trial, to the same question, answered that he had no doubt the man he saw in Brown street was the prisoner. Now I have no disposition to accuse Mr. Bray of any intentional mis-statement or over-statement; but here is a direct and flat contradiction. One week he says, "I have seen the prisoner in jail and in court, and I cannot say he was the man in Brown street;" and the next week he says, "I have seen him in jail and in court, and I have no doubt he is the man." And I am interrupted to say that this is no contradiction. Let the gentleman reconcile it as he can; I do not misquote the witness; such is and such was his testimony. Nay more; though he said that he had thought more of it since the last trial, and become more certain—a strange way of correcting an opinion formed on what was seen four months ago—he said too that when he first saw the prisoner in jail he recognized him by his dress and motions. Now there is no reconciling these things, let them be explained as they may. Both cannot be true;—which will you believe? That he does or does not recognize him? Mr. Bray is one of the Committee of Vigilance—let that go for what it is worth and no more. But which is most likely to be right? his first testimony, the result of the reflection of three months, before he knew what would be the event of the trial? or that result connected by the revision of a week, when he knew that the first trial had failed on that very point? I repeat that I accuse Mr. Bray of no wrong. But I cannot acquit him of that subjection to the power of imagination which has brought others here, as honest as himself, to swear positively to things that never did and never could happen. We shall see that presently. We claim his first as his true testimony. He cannot say that it was the prisoner who was in Brown street. He did not know the prisoner until he saw him arrested on suspicion of this crime. He then went to see him to compare his appearance with that of the man he had seen in Brown street nearly two months before. Of what value is an opinion, formed under such circumstances? And which of his two statements would it be most safe for Mr. Bray to stand by? Can any man, with such means of judging, say with propriety he has no doubt? The rest of Bray's
testimony I need not repeat; I have already stated the substance of it in speaking of the time of the murder, and it is not material on this point.

The other, of the two remarkable facts which I have mentioned, is a most wholesome lesson as to the credibility of the testimony in this case, and the value of circumstantial evidence. It is worth hours of argument, and peals of eloquence. It is a fact, a stubborn fact; and there is no explaining it, nor getting away from it. Miss Lydia Kimball and Miss Sanborn, two elderly respectable females, as credible persons as any that have testified, have, under the influence of the madness that seems to have possessed almost every body in Salem, testified distinctly and positively to a thing as within their own knowledge, which is absolutely impossible. They both swore that on the morning after the murder, a person whom they did not know, brought into Capt. White's house an old cloak, and left it, saying, "this is my brother's cloak." Miss Kimball can't say it was the prisoner who brought it, for neither of them knew him at that time, but Miss Sanborn thinks he had a cap on. And Miss Katherine Kimball says that Joseph Knapp afterwards took the cloak as his own. Now here seemed to be confirmation strong. Here was the prisoner, driven by the folly that always attends guilt, carrying into the very house of the murder the disguise he had worn the night before. How perfectly this corresponded with the testimony of Burns that Joseph Knapp left his cloak at the stable, and with the suggestion of the counsel that Frank Knapp had gone there to get it as a disguise! How wonderful is the force of circumstantial evidence! Men may lie, but circumstances cannot! Now what is the fact about that cloak? It was Joseph's cloak; Stratton, Stephen White's coachman, went out to Wenham with a chaise that morning to bring in Mrs. Beckford, and she brought that cloak in with her. Stratton left Mrs. Beckford at Joseph White's, but by accident carried the cloak to Stephen White's in the chaise. And he afterwards folded it up and carried it to Joseph White's house. He was the stranger with the cap, that did not say, "this is my brother's cloak,"--for how could he say so? he knew it was Joseph Knapp's cloak. Now what becomes of the truth of Miss Kimball's and Miss Sanborn's story, and of the force of circumstances? "Circumstances cannot lie,"--but women, and men too, that swear to them, may be mistaken--and, with the help of a heated imagination, and a few leading suggestions, may honestly invent the most outrageous fictions. Now this was detected by mere accident. We questioned Lathrop about it--he did not know--but he said Stratton brought Mrs. Beckford in from Wenham. We called for Stratton--he was not to be found--his examination was postponed until the prosecutors had put in their additional testimony. We called for him again, and then the whole matter was distinctly admitted. And this is the way that evidence is got up against the prisoner. And how much more of equally plausible testimony might be explained away in like manner we shall never know. Not a single
fact in the cause is better vouched than this,—few so well; and yet the only material part of it is utterly false.

Now take Bray and Southwick, the only material witnesses; make what allowances for error you think ought to be made, and can you say you are satisfied that the prisoner was in Brown street?

There is one more piece of evidence that may apply to it; and that will bring me to an enquiry important for other reasons. I mean the testimony of Mr. Colman.

But let us first look for a few moments at the proof of the prisoner's alibi. It is applicable to two different times. The first between seven and ten, and the second after ten. The first depends on the testimony of Page, Balch, Burchmore and Forrester. Now Page says he knows it was Monday or Tuesday evening; he said on examination he knew it was not Saturday, because he came home from college that day, and spent the evening at home. Burchmore is positive it was on Tuesday; and though uncertain before, has since remembered that he told Wm. Pierce so the day or day but one after the murder. We offer Pierce as a witness to the fact. Balch and Forrester both strongly believe that it was on Tuesday, and all agree it was cloudy though light and Monday was fair and bright. Now what is there against this? It is said they have expressed doubts and uncertainty heretofore. This is no contradiction; three of them give now only their belief; but it is a very strong one in all—Burchmore however is positive, and he gives a good reason for it—and good proof of his correctness. Here stands William Pierce ready to swear that Burchmore told him so the next day or the day after; we cannot examine him, and the prosecutors will not. We have a right then to take it as proved by Pierce. But it is said that on the evening spoken of, Frank said he had a horse from Osborne's, and none is charged on that evening, and one is charged on Saturday evening; and this is thought sufficient to overthrow the whole testimony. But he may have had a horse and not be charged with it—or he may have told a falsehood when he said he had one. You remember the purpose for which he said he was going out of town; perhaps he chose to make a pretence of riding the better to conceal his motions; it all depends on the accuracy of Osborne's books; Osborne was not examined on that point. But after all it is of no importance, except to shew that Myrick and Webster are mistaken, and they are not very material witnesses.

The other branch of the alibi, is more important, because it embraces the supposed time of the murder. Capt. Knapp, the father, swears that he went home a few minutes before ten, and that Frank came in and went to bed a few minutes after. And there is a particularity about this account that marks it either as truth, or as wilful and cunning perjury; and Capt. Knapp's character is enough to shield him from such a charge. He says he commended Frank's return at the
prescribed hour; that Frank asked him if he should bolt the door, and he said no; that Phippin was out; that Frank seeing him looking over his papers (for he failed the very night), asked if he should help him—then threw his cap on the window seat near his own hat, and went up to bed—Capt. Knapp set up till after one, and Phippen Knapp returned at that hour, and sat up the rest of the night. Samuel H. Knapp's evidence is that a few minutes after ten, the prisoner opened his chamber door, spoke to him, and then went into his own room; and nobody heard him leave the house afterwards. He came down to breakfast as usual in the morning. Now this is impeached by testimony of certain conversations and statements of Capt. Knapp and Samuel H. Knapp. It is said Capt. Knapp told Shepard that Frank came home and went to bed before half past ten, "as Phippen told him,"—if he said, as I told Phippen, that would corroborate instead of contradicting him. And it is said farther that he told Treadwell that he did not know what time Frank came home, but believed about the usual hour. And that Samuel H. Knapp told Webb he did not know at what time Frank came home. Now these are not contradictions: and their apparent inconsistency depends wholly on the accuracy with which these conversations are remembered and reported. Of all kinds of evidence reports of conversations are the most uncertain. You have seen in this very case, that neither counsel, nor the reporters, nor even the judges agree as to the words used by the witnesses on the last trial of this cause, only a week since—although the greatest attention was paid and careful notes were taken. Then what is the probability that accidental conversations which took place two or three months ago, can now be accurately stated? Which is most probable; that Capt. Knapp remembers the facts he states so circumstantially, or that Shepard and Treadwell remember his words? And he is confirmed by Phippen Knapp and Eliza Benjamin as far as they could know.

But there is one piece of evidence that meets all the deficiencies of this case with a wonderful felicity. Whatever the Government cannot otherwise prove, Mr. Colman swears the prisoner has confessed and nothing more. Of half an hour's conversation with the prisoner he cannot remember a word but what turns out to be indispensable to the case of the prosecution. I no more mean to accuse Mr. Colman of wilful mis-statement than I do Mr. Bray, or Miss Kimball, or Miss Sanborn. But he is ten times as likely to be mistaken as either of them. The old cloak story was, until exploded, ten times more credible than Mr. Colman's account of the confession—the witnesses for ought we know are equally respectable in character, and the testimony intrinsically more probable. What but the contagion of an unexampled popular phrenzy could have so eluded these women? They have not been more exposed to it than others. But Mr. Colman has been living in its focus and breathing its intoxicating air for months. No man in the community has been so much excited by this horrible event as Mr. Colman. No man has taken a more active part in enquiring into its mysteries. Shall he then
claim an exemption from the power that has either prostrated the integrity or strangely confounded the memory of witnesses as credible as himself? He had visited Joseph's cell three times that very day before he went into Frank's, and at the last time, passed directly from one cell where he had received a full, verbal confession, to the other, where he now thinks he heard what he has testified. To a man, so excited as he was, and is to this day, here is ample cause for confusion and mistake. The witness is a clergyman, and whatever credibility that office may claim for him, I am willing he should enjoy. In my mind it is no more than belongs to any man of honest reputation; and on one account something less, for I cannot think the clerical office so well fits a man to endure and resist the excitement to which the witness has been subjected, as a secular employment. It is the experience of the world, that clergymen, when they mingle in worldly business, are more powerfully acted upon by it than others. Now every material word of his testimony is contradicted by Mr. N. P. Knapp, the prisoner's brother. He went into the cell with Mr. Colman, and must have heard all that was said: he had not been in Joseph's cell during any part of his confession, and was not therefore liable to any misunderstanding. His attention was early called to it by a dispute with Mr. Colman about the club, and by consultations with counsel for his brother's defence. He has always borne an unsuspected character. Mr. Colman himself testifies to the propriety of his conduct before the trial;—he trusted him with the knowledge of the place where the club was hidden, and depended on his honor not to remove this witness of his brother's guilt; and the trust was not betrayed. Now here stand two witnesses, equal in character, directly opposed to each other on a matter known only to themselves and to the prisoner.

It is said, Mr. Knapp is contradicted by Mr. Wheatland; that is, Mr. Wheatland swears that in casual conversations held some months ago, Mr. Knapp made statements to him contrary to what he now swears. I have already remarked on the value of this kind of evidence. It depends on the thing least of all to be depended on—the accuracy with which words are remembered. The change of a word changes the whole meaning. Make the case your own. Can you pretend to remember casual conversation held with your neighbors three months ago, so that you can now swear to them? And if they should now swear to the facts differently from your present recollection of those conversations, would you charge them with perjury? Or do you think, if we had an investigating committee of twenty-seven, and the whole bar and population of Salem, looking up evidence for the prisoner, we could not find witnesses who have understood or misunderstood Mr. Colman to give accounts different from what he now swears to?—With such means any man may be contradicted. But Mr. Wheatland candidly tells you on this trial, that he cannot speak with certainty as to these conversations, how much related to what was said by Joseph, and how much to what was said by Frank. That once admitted, the whole force of the contradiction is gone.
Mr. Knapp cannot be mistaken about this matter. It is impossible that, after having employed counsel for the defence before the magistrate, and being busy in procuring counsel for the defence at the trial, and being himself a lawyer and understanding the danger of such evidence, he could have heard Frank confess away his life without remarking and remembering it. I say, confess away his life: for though even these confessions, if true, cannot harm him as principal, he was then chargeable as an accessory and on such a charge they would have been fatal.

Mr. Colman on the contrary is most liable to be mistaken about it. Having had repeated conversations with Joseph, before and after, on the same subject, it would be wonderful if he could accurately report, as he undertakes to do, the very words of Frank. It would be wonderful if he could separate the substance of the interviews. He did not, as he says, expect to be called as a witness against Frank. Mr. Knapp did expect to be examined, because he had early intimation of Mr. Colman's mistake about the club. Now take the contradiction of Mr. Knapp, such as it is by Wheatland, on the one hand, and Mr. Colman's liability to error on the other; put equal characters into the two scales, and which will preponderate? One must be wrong. It is unnecessary and would be wicked to charge either with perjury; but there is a mistake between them that no supposition can reconcile. If you are not already satisfied which was most liable to err, look at the intrinsic probabilities of the stories.

The prisoner is a young but not a timid man. You have seen enough of his bearing on this trial, to judge whether he would be likely to be surprised into a confession, and he was not surprised, for he had been examined and had counsel. Mr. Colman was a perfect stranger to him, not even known by sight. Now one of these witnesses tells you that the prisoner disclosed his whole guilt to a perfect stranger at first sight, without reluctance or hesitation, in direct answers to as many questions, and without threat, promise or encouragement, while the other says, he only said it was hard that Joseph should make any confessions about him, but that he had nothing to confess and should stand his trial. Which of these things is the more probable? And is it probable that N. P. Knapp, a lawyer, who was then providing for the defence of his brother, should have permitted him to make these confessions without interfering? I have said that Mr. Colman had confessions of the exact facts which the case required and no more. See how that is, and how probable it is. The prisoner makes no general confession; claims no right, and expresses no hope, to be admitted States' evidence. But to four distinct questions respecting the details of the murder, he gives four direct answers criminating himself. Now what were those answers? That the murder was committed between ten and eleven—a fact as you have seen wholly without other sufficient evidence, but all important to the case. That Richard Crowninshield was the actual
murderer. A thing without the shadow of other proof, except that McGlue saw him the evening before near White's house, and looking away from it. That the club was hidden under a certain step of the Branch meeting house—the only proof that the club had any thing to do with the murder—and that the dirk was worked up at the factory—and lastly that Frank was absent from home at the time—to fortify the Brown street evidence and destroy the alibi. And there is one fact about this last which deserves notice: Mr. Colman in giving his reasons for asking these questions, said he had heard that the friends of the prisoner said he was at home that night at the time of the murder. This is strong confirmation of the alibi, for Mr. Colman had heard of it the second day after the arrest. But is it not remarkable that so little should be remembered of a half hour's conversation and that so very distinctly? Is it not remarkable, that finding Frank so communicative, Mr. Colman should not have gone on to verify Joseph's whole confession in the same way? He tells you he has Joseph's confession covering nine sheets of paper, and yet, though Frank answered so freely, he had the curiosity to ask him only these four questions. It is truly incredible.

Now what improbability is there in N. P. Knapp's account of this interview? Not the least. He agrees with Mr. Colman, that Frank said it was hard that Joseph should confess, and he cannot positively swear that what Mr. Colman adds as to its being done for Joseph's benefit, did not follow, because he remembers the first part of the sentence, and he may have forgotten the rest. But he swears that, to the best of his belief, it was not so. As to the four questions and answers, he swears positively that no such things were said; because, if said, he must have remembered them. And is not this a perfectly proper distinction? His account too of the conversation with Mr. Colman, on the turnpike and in Central street, of the note to Mr. Stephen White, and of all the other circumstances relating to the subject, is perfectly consistent, natural and credible.

But what is the amount of all these confessions? If true, they prove, indeed, that he knew too much of this guilty deed. But they imply no presence at it; all, but his own absence from home, are facts that he might, and some that he must have learned afterwards from others. And what does the fact, that he was absent from home, prove? At most, it is but a circumstance corroborative of the Brown street evidence. He may have been there, or he may have been elsewhere. The form, indeed, in which we have the confession from Mr. Colman, might imply that he was absent, knowing of the deed. 'I went home afterwards:' but, obviously, this all depends on the exactness with which the words are remembered. Suppose only a slight change, and the dialogue to run thus: 'When was the murder committed?' 'Between 10 and 11.' 'Were you at home then?' 'No—I did not go home until after that time.' Now this would contradict the alibi, but would not contain any implication of his partaking in, or knowing of the murder at the time. And when an implication depends on such
slight differences, it is no evidence at all. And I repeat, what
is the probability, if any confessions were made, that they were
made in the words now delivered, when Mr. Colman has forgotten both
words and substance of all the rest of the conversation?

One point only remains: but it is the great and important
one. Believe the Prisoner—if you will believe any thing on such
testimony as Leighton's and Palmer's—a conspirator and a procurer
of the murder—believe him in Brown-street at half past ten, and
that the murder was committed at that hour, against the manifest
weight of all the evidence but the confession. Believe the confes-
sion too, and the whole of it, improbable and contradicted as it
is; and, whatever the Prisoner may deserve in your moral judgment,
he stands as clear of this indictment as a principal, present,
aiding and abetting, as Joseph Knapp does, who was in bed at Wenham.
And here, gentlemen, if you ever come to this part of the case, you
are to be tried as well as the prisoner. He is to be tried for his
life, and you for a character which will last as long as life. The
time will soon come when this trial will be coolly and impartially
examined. It is on record forever. The murmur of applause that
will follow a verdict of guilty from the multitude that now surrounds
you, will soon subside; and another and a more enduring voice will
then inquire whether you have been faithful to the law, and to your
oaths and consciences, or to the impatient cry of popular resentment.
Remember one thing—the reasons for a conviction can never seem so
strong to you as now, but if there are reasons for an acquittal on
the law, they will gain strength in your minds every day of your
life, though it may be too late to listen to them. Let us go back
then to the acknowledged law of the case. No matter what the
prisoner has done or agreed to do; if he was not at the moment when
the murder was committed in a place where he could give actual
immediate assistance, and there for that purpose. It has indeed
been contended that it is enough that the parties thought the place
a proper one, for the purpose—such is not the law, but here it is
the same thing—for how can you judge that they thought it a fit
place, unless you yourselves think it so. It is the only criterion
in this dark affair, of which you see, as it were, only the dial
hand, and know not how it is moved or regulated.

Could the man in Brown street give that help to the murderer,
without the hope of which, the murder would not have been committed?
This is a question of fact for you to try on the evidence and the
view. You must be satisfied of this beyond any reasonable doubt, or
your verdict of Guilty, will be against yourselves. Now, what assist-
ance did the case admit. It was a secret assassination. If the
prisoner had been actually present in the room or in the house, that
alone would be enough. The mode of assistance would then be obvious.
It would have been the part of the accomplice to beat down the strong
old man, if he waked before the fatal blow; to murder any one of the
inmates who should approach the chamber—give an alarm, or intercept
the retreat. But when you find but one accomplice, and him at a
distance in another street, you must enquire why he was there. You
must be satisfied that he was posted there with some power, and
therefore with the purpose, to aid. It becomes material to inquire
particularly what aid he could afford. The late lamented Chief
Justice, in his charge which has been read to you, delivered with
special reference to the facts of this case, says, if he was there
to prevent relief to the victim, to give an alarm to the murderer,
or to assist him to escape, then he was present aiding and abetting.
These are the only modes of assistance which occurred to him or
which can be imagined by anybody. What other aid could the murderer
have anticipated? of what other aid did the crime admit? Let us
examine the place and the evidence with reference to these and see
if either is possible. Was he there to intercept relief? If so,
he would have taken a post where he could be aware of its approach.
But did he so? It is said the murderer entered the house at half
past ten. At that hour and for twenty minutes after, the prisoner
is said to have been sitting wrapped in a cloak on the steps of the
Ropewalk, not watching others but hiding his own head from observa-
tion. From that time until five minutes before he was joined by the
murderer, he was still farther off, leaning on a post at Shepard's
house. How could he know whether relief was approaching or not?
He could not see the house from any one spot where he was seen that
evening. Any one who passed him, would have to turn two corners
before he would be near White's house. Now he could see nothing
but Brown street and nobody but those who passed through it. If
any one passed there, what was he to do? Was he to knock him down,
upon the possibility that he might be going to turn into Newbury-
street, and then might turn into Essex-street, and then might go up
that street towards White's house? On such a possibility was he to
protect the murderer by an act that would infallibly create alarm
to no purpose? The supposition is absurd. He could not intercept
relief, because he was not where he could be aware of it. Could he
give an alarm? An alarm of what? You see that he could not know
of the approach of danger. If the enterprize had failed, Richard
might have been discovered, overpowered and removed, before his
accomplice could have been aware of any difficulty. But if it had
been his object to intercept relief, or to give an alarm if he could
not intercept it, where would he have been? At that point from
which relief might be feared, and where early and certain intelli-
gence of it might be had. Where was that? Certainly in Essex-
street. Who would come to the relief? The inmates of Capt. White's
own house or of the adjoining houses of Deland and Gardner, or of
the opposite houses, or some casual passenger. Now, against all
these, the post of observation was in Essex-street, and near the
house. Or if he wanted to watch the adjoining streets, why not
stand at the corner of Newbury-street? Why not any where but at
the places where he was seen during the whole time?
But one thing remains. Could he in Brown-street help the murderer to escape? If he had been waiting with a swift horse, to convey him away, that might do. But one man on foot can no more help another to run away, than one can help another to keep a secret. One could only embarrass and expose the other. Was he then to defend him in his flight? Resistance was not to be depended on or expected; besides, the accomplice was unarmed, and of what avail would he have been in Brown-street, where no force could be expected, unless the alarm had become general. Much of this argument consisted of reference to the plans and cannot be reported. Now we call on the Prosecutors to satisfy you of some one mode in which aid could be afforded. On the former trial two ways only were suggested. First, that Richard might have gone into the garden early in the evening, and waited for a signal from Frank in Brown-street to indicate the time when the lights were extinguished in Capt. White's house. And second, that Frank was in Brown-street to see that the coast was clear in Howard-street, that Richard might go there to hide the club. Now these things, absurd as they seem, were really said and insisted on. And they are the best hypotheses that the best of counsel can make for the government. We want no better proof of the utter weakness of the point. If Richard was in the garden under the very windows, would he want Frank to tell him when the lights were put out? He could have watched every inmate of the house to his bed—he could have traced every light up the stairs until they were extinguished in the chambers.—He could have heard every noise, and know when it ceased in the sleep of those within. As to Frank's watching Howard-street, it would be enough to say that he was watched all the time, and that he did not once look down Howard-street. Frank had been standing from five to ten minutes at Bray's post where he could not see a foot into Howard-street, and then Richard having finished his conference, without any caution or examination started and ran into that street with the speed of a deer. Did this look like watching? And for what purpose was Howard street to be watched? That Richard might hide his club in a particular place selected—a club that nobody had ever seen and that could not be traced to him if found.

For what purpose then was the man in Brown-street? We are not bound to prove or to guess. But if it was the prisoner, and if the stories of the plot are true, he might have been there to know in season whether the enterprise had succeeded; its failure might have been most material to be known to the contrivers before the inquiry had gone far. If plunder was expected he might have been there to share it. Neither of these things would make him a principal, for neither would be aiding at the time.

And now, Gentlemen, as the last question in this cause, you are to say on your consciences, are you satisfied beyond a reasonable doubt that the man in Brown-street, whoever he was, could have given any effectual aid in the actual commission of the murder, and
selected that as the most proper place for that purpose. If you doubt about that upon the whole evidence, do your duty, and acquit the Prisoner; such is the law, let it answer for its own deficiencies, if it be deficient, and trust that those who have the power will amend it, if it needs amendment.

Gentlemen of the Jury, these are the prisoner's last words; his counsel have done and said all that they have found to do and say in his behalf. The rest is for the government, the court, and for you. You are to be assailed with a powerful argument by the learned counsel who is to follow me. Admire the eloquence—admire the reasoning—but yield nothing to it but admiration, unless it convinces your understandings that the evidence you have heard, without regard to any thing said or written elsewhere, ought to satisfy you of the fact that the prisoner was where he could aid in this murder, and by such presence did aid in it.

The prisoner is very young to be placed at the bar for such a crime. But, young as he is, I ask no mercy for him beyond the law. For every favorable consideration and sympathy consistent with the law, I would urge upon you his youth, his afflicted family, and the seductions of the evil example of others. By these and all good motives, I would urge you not to sacrifice him against law, that those more guilty than himself may be reached through him. His life is in your hands and in the hands of each one of you. May you and each of you give no verdict and consent to none, but such as your hearts can approve now and forever.

After Mr. Dexter had concluded his argument, Mr. Webster addressed the Jury.¹

¹For an account of Webster's closing address see: Daniel Webster, Speeches and Forensic Arguments, I (Boston: Published by Tappan and Dennet, 1843), pp. 450-489.
APPENDIX E

JOSEPH'S SECOND CONFESSION

Salem Gaol Monday afternoon 31st May 1830.

I, Joseph J. Knapp Jun., do declare in presence of Gideon Barstow and Stephen C. Phillips as follows—

Sometime in January, on one day in the afternoon I went into Capt. White's chamber, found the iron chest locked with key in it, and unlocked it, it contained some silver plate and a paper wrapper sealed, cut the wafer with a pen knife and found that it contained a will—read it—it contained a legacy to W. Beckford of $16,000. The witnesses to the will were Joseph Lambert, Thomas Downing Jr., and Joseph G. Waters. Don't recollect particularly the other provisions. Suppose that it was written by W. Joseph G. Waters—as he told me on the day on which Capt. White's will was read to the heirs after his death that he had made two wills for him. After I had exam'd the will, I sealed it again and put it back in the trunk, knew that the old Gentleman when he was taken sick two years ago had stated that his will would be found in the iron chest—At this time I think my brother was not at home—

Sometime, say a fortnight afterwards I bought a quantity of Prussic acid, some aqua fortis and also some unguentum my brother in law Beckford said it was good to kill canker worms. I bought it for that purpose, being winter time made no use of it at that time and I have not since used it for any improper purpose, Jos. Beckford I suppose had it now—

I have understood from Rich C. that he had no light when he entered the house, he told me that he found the plank by gate of the garden, and himself put it against the window. I myself think there was not any blood upon the doors as has been supposed—

Jos. J. Knapp Jr.
Nothing occurred to hasten his departure from the house. He did not open the iron chest, he said he did not touch anything—said he was not in the house more than ten minutes, he left the house about half past ten. There was no wagon employed that I ever heard of—R. C. said he walked home. He told me that he was in house alone that he made the wounds himself, and that if there were more than 4 or 5, some other person must have inflicted part of them—he told me he melted up the dirk the next morning at his factory. He said he did not get any blood at all on his clothes—I think he had no distinct idea of the number of stabs he said Capt. White never moved—he said he felt his pulse and found that it had ceased to beat—he carried the dirk in his bosom and the club up his sleeve these were his only weapons.

I don't think my brother ever was at the gambling house in South Salem. I never was there—My brother (Frank) slept at home on the night of the murder—

On the day on which I opened the window, I took the key out of the chamber door and tucked it under the covering (near the edge) of the sofa.

The Wenham robbery was a mere hoax—

I do not know what between my brother Frank and the Crowninshields on the 2d April when Frank and Allen rode up there on horseback. I hardly expected the murder would be perpetrated, thought they would not dare to undertake it—

Jos. J. Knapp Jr.
I have understood that my brother first proposed the murder to George Crowninshield. George said he would not mind meeting him, the old man, on the road or in the street but he would'nt attack in the house.

I had only one interview with Rich C. before the murder. That was on the common as before stated, I went there with my brother about o'clock in the early part of that evening. I went with my brother to ride on horseback, rode beyond the sign of the Eagle, past Wheeler's and returned without stopping—got back about 8 o'clock. Rich Crowninshield had previously told my brother that he would meet him on the common at 8 o'clock. I told my brother that I would go down with him. When we got there R. C. was not there, we waited half an hour—he then came alone from head of the common—he said he didn't feel exactly like it that night, that his brother would not back him and he didn't feel like going alone—I was in Salem on Sunday but not again till after murder—

I never had but one interview with Richard C.—d after the murder—it was in the evening he came into the house into the front room, he came with my brother don't know where he found him—he stopped about half an hour—

Joseph Beckford, and Davis know nothing at all of this affair—

It was on Sunday evening that it was designed to attack Capt. White in Chestnut Street on Sunday evening 4th April. I knew he was going and mentioned it to my brother, who told R. C.

I have received communications on paper through the from both George and Richard Crowninshield.

Jos. J. Knapp Jr.
R. C. has written to me to enquire whether I thought Palmer's testimony would be taken. I answered that I thought it would be. He replied that he guessed not. They both mentioned they thought it would not be taken and that it would go rather hard with them if it should be taken. They enquired what was going on out doors. What the crowd was looking at and George C-d said he had Palmer locked up in his room about a week that he had been passing counterfeit money and it was about the time this business was going on--

My brother Frank told me two or three times that I had better let the business alone—that I was looking altogether on the bright side, and did not consider the danger I was running—I told that I had weighed the matter pretty well as I thought, and that I would run the risk, of it--

In testimony of the truth of the foregoing statement I have hereunto subscribed my name, having signed it also at the foot of every preceding page.

Jos. J. Knapp Jr.

In presence of

Gideon Barstow
S. C. Phillips


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