**OPENING STATEMENT**

**by**

**A. J. Jennings for the Defense in the Trial of Lizzie Borden**

May it please your Honors, Mr. Foreman and Gentlemen of the Jury: I want to make a personal allusion before referring directly to the case. One of the victims of the murder charged in this indictment was for many years my client and my personal friend. I had known him since my boyhood. I had known his oldest daughter for the same length of time, and I want to say right here and now, if I manifest more feeling than perhaps you think necessary in making an opening statement for the defense in this case, you will ascribe it to that cause. The counsel, Mr. Foreman and gentlemen, does not cease to be a man when he becomes a lawyer.

Fact and fiction have furnished many extraordinary examples of crime that have shocked the feelings and staggered the reason of men, but I think no one of them has ever surpassed in its mystery the case that you are now considering. The brutal character of the wounds is only equaled by the audacity, by the time and the place chosen, and, Mr. Foreman and gentlemen, it needed but the accusation of the youngest daughter of one of the victims to make this the act, as it would seem to most men, of an insane person or a fiend.

A young woman, thirty-two years of age, up to that time of spotless character and reputation, who had spent her life nearly in that immediate neighborhood, who had moved in and out of that old house for twenty or twenty-one years, living there with her father and with her stepmother and with her sister-this crime that shocked the whole civilized world, Mr. Foreman and gentlemen, seemed from the very first to be laid at her door by those who represented the Government in the investigation of the case.

We shall show you that this young woman, as I have said, had apparently led an honorable, spotless life; she was a member of the church; she was interested in church matters; she was connected with various organizations for charitable work; she was ever ready to help in any good thing, in any good deed; and yet for some reason or other the Government in its investigation seemed to fasten the crime upon her.

Perhaps some of you have read the drama of Richelieu, perhaps some of you have seen it played, and you remember that most dramatic scene, one of the most dramatic in all literature, where, when the king, in the exercise of absolute authority, without right or justice, sends to drag the pure and virtuous ward of Richelieu from his arms, how the old Cardinal draws that circle about her, and no man dares to cross it.

Just so, Mr. Foreman and gentlemen, the law of Massachusetts today draws about every person accused of this crime, or any other, the circle of the presumption of his or her innocence, and allows no juryman or jury to cross it until they have fulfilled the conditions required; until they show that it has been proved beyond a reasonable doubt that he or she is the guilty party, they are not allowed to cross the line and take the life of the party who is accused.

Now, Mr. Foreman and gentlemen, I want to say a word about the kinds of evidence. There are two kinds of evidence, direct evidence and circumstantial evidence. Direct evidence is the testimony of persons who have seen, heard or felt the thing or things about which they are testifying. They are telling you something, which they have observed or perceived by their senses. For instance, if this was a case of murder by stabbing, and a man should come before you and testify that he saw the prisoner strike the murdered person with a knife, that is direct evidence; that tends directly to connect the prisoner with the crime itself. Circumstantial evidence is entirely different, and I want to say right here, Mr. Foreman and gentlemen-I call your attention to it now, and I do not think that the Commonwealth will question the statement when I make it-that there is not one particle of direct evidence in this case, from beginning to end, against Lizzie Andrew Borden. There is not a spot of blood, there is not a weapon that they have connected with her in any way, shape or fashion. They have not had her hand touch it or her eye see it or her ear hear of it. There is not, I say, a particle of direct testimony in the case connecting her with this crime. It is wholly and absolutely circumstantial.

Now in certain cases circumstantial evidence may be as sure and certain as direct evidence, in some cases more so because the eye and ear deceive as well as circumstances and events; but, Mr. Foreman and gentlemen, there is no class of evidence known that under certain circumstances is so dangerous and misleading as circumstantial evidence. Our books are filled with cases where the accused has evidently been proven by circumstantial evidence to have committed the crime, and subsequent investigations or confessions have shown that he did not.

Circumstantial evidence has often been likened to a chain. These facts, which have to be proven in order to allow you to draw the inference as to her guilt or innocence, have been called links in the chain, and every essential fact, Mr. Foreman and gentlemen, every essential fact in that chain must be proved beyond a reasonable doubt-everyone of them. You cannot have it tied together by weak links and strong links. You cannot have certain facts in there, which you believe and tie them to some other facts of which you have a reasonable doubt. You cannot put them together. You must throw aside every fact about which you have any reasonable doubt, and unless with the links, which you have left, you can tie this defendant to the body of Andrew J. Borden and Abby Durfee Borden, you must acquit her. That is the law, and that is the law you have sworn to apply to the evidence.

Now these facts might be classed, perhaps, under the four heads of motive, weapon, exclusive opportunity, and conduct and appearance of the defendant.

Now, Mr. Foreman, we contend that, with the evidence that has already appeared in this case, and what will be shown to you, there is absolutely no motive whatever for the commission of this crime by this defendant. They have not a scrap of evidence in the case but that, which was given by Mrs. Gifford, and you have heard also the evidence of Bridget Sullivan.

But it may be said that it is not necessary to prove the motive. Somebody killed them; what motive did somebody else have? We cannot tell, Mr. Foreman and gentlemen. One of these persons that is killed is this girl's own father. And while in direct evidence, where the person was seen to kill, where they have been directly connected with the killing, it is of little or no importance whether a motive is shown or not, yet where, Mr. Foreman and gentlemen, you want the motive in order to have it as one of the links of the chain which connects the crime with. this defendant, it becomes of tremendous importance. And we shall show you, if not already shown, that this defendant lived there quietly with her father; that the relations between them were the relations that ordinarily exist between parent and daughter. We shall show you by various little things, perhaps, that there was nothing whatever between this father and this daughter that should cause her to do such a wicked, wicked act as this.

And I want to say right here, Mr. Foreman and gentlemen, that the Government's testimony and claim, so far as I have been able to understand it, is that whoever killed Abby Durfee Borden killed Andrew J. Borden; and even if they furnish you with a motive on her part to kill the stepmother they have shown you absolutely none to kill the father. Absolutely none; unless they advance what seems to me the ridiculous proposition that she, instead of leaving the house after killing the mother, waits there an hour or an hour and a half for the express purpose of killing her own father, between whom and herself there is shown not the slightest trouble or disagreement whatsoever. In measuring the question of motive you have got to measure it in this case as applied between the defendant and her father, because, as I understand it, the Government claim that whoever killed one killed both.

Now as to the weapon, Mr. Foreman and gentlemen, I do not know as it is necessary for me to say much about that. The blood that was shown upon the axes, which were guarded so carefully at first in this case, as shown by the evidence, has disappeared like mist in the morning sun. The claw-headed hatchet that Dr Dolan was so sure committed this deed at the Fall River hearing, so sure that he could even see the print, which the claw head of the hatchet made in the head of Mr. Borden, has disappeared from the case.

And, Mr. Foreman and gentlemen, I contend that as to the weapon, they have either got to produce the weapon which did the deed, and, having produced it, connect it in some way directly with the prisoner, or else they have got to account in some reasonable way for its disappearance.

Now as to the exclusive opportunity I do not propose to spend very much time farther, Mr. Foreman and gentlemen, in regard to the opening of this case. The attempt has been made here to surround this house, completely close it in. You have seen it; you have seen how it is shut in; you have seen the opportunities that anyone would have to escape through it. And, Mr. Foreman and gentlemen, I want to call to your attention right here that there has not been a living soul, in all this search and investigation that has been made about the whereabouts and the doings of Mr. Andrew J. Borden upon that morning, there has not been a living soul put on the stand here to testify that they saw Andrew J. Borden come down street from his house. From his house to the Union Savings Bank he has been absolutely invisible. Was it any easier for him to be [unseen] than it would be for somebody escaping from this house if they walked quietly away? But we shall show you, in addition to that, that there were other strange people about that house; people who have not been located or identified. We shall show you that the Government's claim about Miss Lizzie's not having been out to the barn is false and that this-well, if it was not for the tremendous importance, I should be tempted to call it cakewalk of Officer Medley in the barn, exists in his imagination alone.

As to the burning of this dress, we shall show you that it did have paint upon it, according to the statement which was made by Miss Lizzie in the testimony of Alice Russell; that it was made sometime in May; that soon after it was made this was got upon it; that the dress was soiled and useless, and that it was burned there right in the broad light of day in the presence of witnesses, with windows open, with the inside door open, with officers on every side of that house.

And so, Mr. Foreman and gentlemen, without spending further time, we shall ask you to say whether the Government have satisfied you beyond a reasonable doubt that she did kill not only her stepmother, Abby Durfee Borden, but her loved and loving father, Andrew Jackson Borden on the fourth day of August last.