



Lizzie Andrew Borden (1860-1927)
Photograph c. 1889

EDITOR'S CHOICE

The Lizzie Borden Murder Trial: Womanhood as Asset and Liability (Fall River, 1892)

A. CHEREE CARLSON



Editor's Introduction: *In her provocative collection, The Crimes of Womanhood: Defining Femininity in a Court of Law, A. Cheree Carlson explores how cultural views of femininity exerted a powerful influence on the courtroom arguments used to both defend and condemn women on trial from the 1850s to the 1920s. Carlson examines six cases: all were popular trials that attracted widespread attention. Drawing upon trial transcriptions, newspaper reports, and popular accounts, Carlson incisively deconstructs the arguments of prosecution and defense, revealing how both sides wielded gendered arguments in their efforts to persuade all-male jurors. Although only one of her cases comes from Massachusetts, we are reprinting it here as our "Editor's Choice" selection.*

In 1892, Lizzie Andrew Borden went on trial, accused of killing her parents with an ax in a grisly double murder. A. Cheree Carlson, a professor of communication and women's studies, succeeds wonderfully in crafting an illuminating analysis of a case that remains hotly debated and continues to generate fascination among scholars and the general public alike.

* * * * *

Lizzie Borden took an ax,
Gave her mother forty whacks
When she saw what she had done,
She gave her father forty one.

— Traditional rhyme

Nearly every study of the Borden case includes this verse, and there is no reason for this chapter to stray from convention. That this bit of schoolyard doggerel can still occasionally be heard on the playground attests to the staying power of the legend of this woman. That it got the details completely wrong attests to the power of a narrative to survive despite its contradiction of the facts.

The presupposition of the rhyme is that Lizzie was guilty. A common presupposition of later research on her trial is that she “got off” because she was a woman. Both assumptions oversimplify the complex interplay of social forces that converged in Fall River, Massachusetts, in 1892. While it is true that Lizzie’s gender was probably an asset at her trial, it was not the only reason she was acquitted. In fact, gender norms were also used by the prosecution to make her look guilty. The basic qualities of femininity, as narrative elements, could be used to either end. It took the interaction of these with certain elements of class and social standing to make the pendulum swing in Borden’s favor.

Like any unsolved violent crime, the Borden case has inspired endless speculation. Did Lizzie do it? If not, then who? What was the motive? What happened to the weapon? These questions have been rehashed endlessly. Fingers have mainly been pointed at Lizzie Borden, who supposedly acted through greed or jealous hatred of her stepmother. Other writers have accused her sister, Emma; the servant, Bridget; Lizzie’s rumored lover; and a purported illegitimate child of her father who resembled the archetypal wild-eyed stranger.

It is not my goal to reexamine these issues; what “really” happened is not pertinent. Rather, the focus is on the rhetorical use of gender-related narratives to persuade the community of guilt or innocence. Gender was indeed an important theme during Lizzie Borden’s trial, but it was not the only theme used by the defense and it was probably not the only narrative used by the jury to free her.

The Borden case was mounted and argued almost entirely on the basis of circumstantial evidence: there was no direct evidence pointing to the guilt of any individual. There were no witnesses. There was no confession. There was not even a “smoking ax.” Someone had killed two people, that much was clear. The web of secondhand evidence only indicated possible killers, and the field was narrowed through human deduction. As a result, the only way to discover what “really” happened was to construct a symbolic reality that would be compelling to the audience being asked to judge the evidence. That determination would have very real consequences: the death penalty.

Of course, on the broadest level, all “reality” is circumstantial. The trial of Lizzie Borden shows us two opposing forces, each offering diametrically opposed explanations of the same circumstantial evidence. By examining these explanations, we can learn a lot about the methods through which realities come to exist.

THE CASE OF LIZZIE ANDREW BORDEN

In 1892, Fall River was a prosperous industrial town of about 75,000 people. Although there were new immigrants working in the cotton mills, for the most part residents were native to New England. Immigrants and Yankees lived in segregated communities that rarely mixed, a fact that was to have a noticeable effect on the search for suspects. The community was still small enough that people paid close attention to their neighbors. They knew each other, and each others’ business, fairly well. Yet there was apparently no hint as to what was about to happen to one of the most prominent families in town.

The Borden family might be described as Fall River nouveau riche. The family founder had apparently been a fish peddler, but his son, Andrew, parlayed an undertaking establishment into a large fortune. He was president of one bank and on the board of directors of another. He owned farms in the country and at least three houses in town. Despite this fortune, the Borden family continued to live in their original home, a modest house on a street that was well past its prime. This and similar frugalities had earned Andrew a reputation as a miser. His wife and daughters, on the other hand, were pillars of society and pursued a respectable round of meetings at Sunday schools, ladies clubs, and temperance leagues.

However, matters at home were more complicated than their public behavior would indicate. The Borden household consisted of five adults.¹ Andrew, the patriarch, was seventy years old. With him lived his second

wife, Abby, aged sixty-four, his daughters Emma (forty-two) and Lizzie (thirty-two), and their maid, Bridget Sullivan (twenty-six). Abby had joined the family when Lizzie was barely three. Although there is no evidence that she was a “wicked stepmother,” the girls disliked her. Neither called her mother; in fact, Lizzie referred to her as “Mrs. Borden.” Whenever Andrew gave Abby anything, the younger women would launch arguments about how giving property to a stranger would deprive his own daughters of their patrimony. The Borden household was not peaceful.

The house itself was also unusual. It had originally been designed as a duplex, and the Bordens had never remodeled the upstairs. The second floor had no hallways and the doors were locked in such a way that the daughters’ bedrooms and the guestroom could only be reached by the front stairs while the parents’ bedroom and servants’ quarters (on the third floor) could only be reached by the back stairs. The two “households” were increasingly segregated.²

This less-than-typical family life came to an end in July 1892. Early that month, Emma and Lizzie departed on extended visits to friends in another town, but Lizzie cut short her trip and returned alone. Upon her return, she began acting strangely. She first tried to purchase a known poison, but was turned away by the druggist. She claimed she needed it to clean her fur coat. She also paid a sudden visit to a neighbor and confided that she feared someone had been watching the house. Lizzie told her that she was convinced the family was in danger.

On August 3, the brother of Andrew’s first wife came to town for business reasons and persuaded Andrew to let him occupy the guestroom. Later writers would make much of the suspicious coincidence of the arrival of Lizzie’s blood uncle and subsequent events.

On August 4, Bridget became ill after breakfast and had to rush outside, overcome by vomiting. This did not prevent Abby from ordering her to wash all the outside windows. The men left the house on their respective business errands. While Bridget washed windows, the two other women were alone inside together for about an hour and a half. When Bridget was finished, she entered just in time to hear a knock on the door. It was Andrew Borden, back from downtown. As Bridget let him in, she heard Lizzie laugh from the top of the front stairs. She said Lizzie came downstairs and announced that Abby had been called away to visit a sick neighbor. This was the first of several contradictions between Lizzie and Bridget. Lizzie claimed at the inquest that she had said Abby had gone to the market. Whatever the story, Bridget took advantage of the mistress’s

absence to sneak up to her room to lie down. She was eventually aroused by Lizzie's cry of murder.

Lizzie's story was that after her father returned, she went out to the barn — to get iron to mend a screen, or to get iron to make fishing sinkers, or to eat a pear, or to actually carve sinkers — her story varied. She was outside for about a half an hour. Then she heard a scream, or a groan, or a suspicious noise, or no noise at all, and came inside. She found her father lying on the couch, murdered. She called to Bridget, and then hell broke loose.

Bridget was sent across the street to fetch help. When help arrived, Lizzie stated that she thought she had heard Abby return a while ago. Searchers went upstairs and found her in the guestroom, dead. Andrew had been struck with a sharp object twelve times with such ferocity that his face was gone. Abby's head had been hacked to pieces by nineteen blows from the same weapon. They had obviously been overtaken by some insanely strong, violent killer.

But who could that be? The Bordens were fanatical about keeping the house locked, although Lizzie admitted that the side door had been left open while she was in the barn. Forensic evidence later showed that Abby had died first, about an hour and a half before Andrew.³ She was in the guestroom and the only way out was down the front stairs. What madman could kill Abby, successfully hide from the two other women for over an hour in that tiny house, leap out again to kill Andrew, and escape undetected?

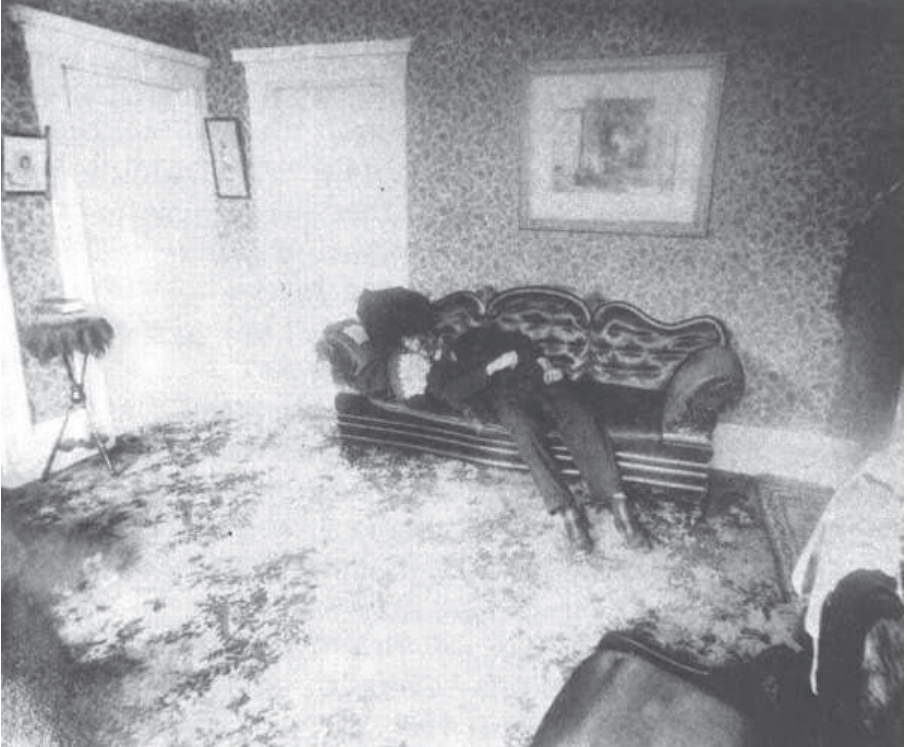
In the ensuing days, rumors ran rampant, but no suspects were arrested. The visiting uncle was an immediate suspect, but witnesses placed him well away from the scene at the time of the crime. Bridget was also suspected, but she was saved by her own "bad habits" — she had snuck away from her work to gossip with the neighbor's Irish maid at the time of Abby's death.⁴ Neighbors began to report having seen all manner of "strange" men loitering about the area.

The newspapers printed every rumor and speculation imaginable, except the possibility that the killer might not have been a man. The media clearly supported the stereotype that no woman would have that physical strength, let alone muster that amount of fury. Thus, the eventual arrest of Lizzie herself came as a double shock, for the accused was both an ungrateful child and a frail female. At this juncture, various narratives began to spin off in the press. Depending upon the politics of the venue, Lizzie's sex became advantage or disadvantage in the quest to prove her innocence.



The Body of Abby Borden

On Aug. 4, 1892, at 9:30 a.m. Abby Borden went upstairs. Maid Bridget Sullivan was outside cleaning windows. Sometime during the next hour, Borden was killed in the guest room by nineteen hatchet blows to the back of her head.



The Body of Andrew Borden

Around 11:00 a.m., Andrew Borden returned home. Bridgit Sullivan let him into the house. Lizzie visited with him briefly. Bridget went to rest in her attic room and Andrew lay down in the sitting room where he was murdered shortly thereafter. Bridget was woken by Lizzie's cry that her father had been killed.

At 2:00 p.m., dozens of police trooped in and out of the Borden home. Photos were taken. Doctors performed post-mortems on the bodies on the dining room table. These grisly crime scene photos became public in 1893, shortly after the trial.

Source: Famous Trials website (see p. 50).

RANK AND ITS PRIVILEGES

When one examines the trial itself, there is little doubt that a great deal was going on that had little to do with gender and a great deal to do with class and social connections. Fall River was a close-knit community, and the Bordens were prominent members. The judge at the first hearing had known the family, and was distressed to the point of tears at having to remand Lizzie to trial. The district attorney, Hosea Knowlton, had known Andrew Borden. Knowlton was called upon to lead the prosecution despite the relationship to the family. Another family acquaintance was Judge Albert Mason, whose duty as chief justice was to pick the panel of judges to preside at the trial. He promptly chose himself.

In addition, he selected Justin Dewey, a choice that raised a few eyebrows. Dewey had been appointed to the bench by then-governor George Robinson, who now happened to be the lead attorney on Borden's defense team.⁵ Robinson had also served on an important judiciary committee with Mason. The political ties between the defense and two of the judges might not have biased the court, but it certainly left the door open for such accusations.

Thus the prosecution was at a disadvantage before the trial had even begun. This might not have mattered in a routine case, but since the evidence against Borden was almost entirely circumstantial, the prestige of the defense was of no little importance. Every circumstance could be either a sign of guilt or a simple coincidence, depending upon the argument built from it—and the experienced, enthusiastic arguers were on the defense team.



Hosea Knowlton
Fall River District Attorney

THE CHALLENGE OF CIRCUMSTANTIAL EVIDENCE

In reconstructing the narrative of this trial, I will use a construct from Kenneth Burke, the *dramatist pentad*. Burke developed the pentad to serve as a “grammar” from which a critic could build tools to examine any instance of rhetoric. He grounded this in the most basic elements required

of a good narrative. Scene, act, agent, agency, and purpose are the five minimal elements that must be present in order for an audience to find a story believable. The casual reader may be inclined to view this as a sort of “who did what where” description of a plot. . . .⁶

The *dramatist pentad* provides excellent tools with which to examine the role of the arguer in molding circumstantial evidence. By its very nature, circumstantial evidence does not provide enough information to create a complete narrative. For one thing, there is a glaring gap in the element of the agent. Without a specific person whose character can be built upon, one cannot easily speculate on the purpose. This guts the narrative of a motivating force, leaving the rest of the elements “hanging” in a seemingly meaningless jumble. The incomplete narrative is especially threatening in a murder case. If there is no killer, justice cannot bring closure. If there is no discernable reason for the crime, then one is cast adrift with the knowledge that random violence could indeed strike anyone in the community.

The narrator’s artistry, then, is to assemble the facts that do exist, and use them in an enthymematic fashion to indicate how to “fill the blanks.” One might try to persuade the audience that limitations on the scene offer opportunity to only one agent. Another might attempt to construct a purpose that only one person could hold. The first narrative would be no more or less true than the second. The deciding factor is how believable the audience finds the resulting drama.⁷

GENDER AND THE PENTAD

Gender issues were a constant undercurrent during the trial. The prosecution knew this would be the case and attempted to defuse them from the beginning:

Today a woman of good social position, of hitherto unquestioned character, a member of a Christian church and active in its good works, the own daughter of one of the victims, is at the bar of this Court, accused by the Grand Jury of this County of these crimes.

There is no language, gentlemen, at my command, which can better measure the solemn importance of the inquiry which you are about to begin, than this simple statement of fact. For the sake of these crimes and for the sake of these accusations, every man may well pause at the threshold of this trial and carefully

search his understanding and conscience for any vestige of prejudice, and, finding it, cast it aside as an unclean thing.⁸

Having said this, however, Moody almost immediately used depictions of Lizzie's family life that could only be taken as signs of guilt if the defendant was female. The jury, warned that gender should not be used to find Borden innocent, was encouraged to use it to find her suspicious. Moody promised that future witnesses would testify to various details of the story, but made the effort to include remarks that showed that Borden's relationship to her family was "unnatural":

You cannot fail, I think, to be impressed in this respect with what will appear as to the method of living of this family. It will appear later on in the evidence that, although they occupied the same household, there was built up between them by locks and bolts and bars, almost an impassable wall.⁹



The Borden Home in Fall River, 1892

Source: Edwin H. Porter, *The Fall River Tragedy: A History of the Borden Murders*, Fall River: Press of J. D. Munroe, 1893, p. 3.

In this case, the scene begins literally with the odd floor plan of the Borden home. The prosecution took it as meaningful that the house was so arranged that the elder and younger family members lived separate lives. Soon, those physical arrangements were cast as a mirror for a matching “spiritual” separation. “Scene” in the prosecution narrative was “family.” And the Borden family embodied many elements that could tempt a daughter to murder. Moody set the stage for that transformation by repeating, verbatim, words that a witness would testify to later. When Abby Borden was once mentioned to Lizzie as her “mother,”

I know of nothing that will appear in this case more significant of the feeling that existed between Mrs. Borden and the prisoner than a little incident which occurred not long after the discovery of these homicides. When one of the officers of the law, while the father and the stepmother lay at the very place where they had fallen under the blows of the assassin, was seeking information from the prisoner, he said, “When did you last see your mother?” “She is not my mother. She is my stepmother. My mother is dead.”¹⁰

Later testimony would fill out the portrait begun by Moody. Underlying this line of argument was the subtle expectation of the proper role between mother and daughter. The first Mrs. Borden had died when Lizzie Borden was not quite three years old. Abby Borden had been the only mother she had known. Yet she was able to speak of hating her, even as she lay dead. This showed disrespect for both motherhood and the dignity of the dead. Here, implied Moody, was a clear sign that Borden was not “natural.”

The prosecution called two witnesses to testify that Borden detested her stepmother. A dressmaker quoted her calling Abby Borden “a mean good- for-nothing thing”: “I said: ‘Oh Lizzie, you don’t mean that?’ And she said: ‘Yes, I don’t have much to do with her; I stay in my room most of the time.’”¹¹ A second witness who had traveled to Europe with Borden in 1890 claimed she made a similar statement about an unhappy home. The prosecution argued that they were trying to show that Borden’s alienation was long-standing. Bridget Sullivan testified that the family did not eat meals together. She also stated that the women took care of their own rooms and that the stepmother never cleaned the daughters’ rooms and vice versa. Emma Borden was asked about both the arrangement of the house and her sister’s odd way of addressing her stepmother. Knowlton went to great lengths to pinpoint the exact moment

that Lizzie Borden stopped calling Abby Borden “mother.” It appears that Andrew Borden made his wife a present of half-interest in a house where her sister was living. This expenditure apparently caused jealousy.

Q: Did that make some trouble in the family?

A: Yes.

Q: Between whom?

A: Between my father and Mrs. Borden, and my sister and I.

Q: And also between you and your sister and your stepmother?

A: I never said anything to her about it.

Q: If you will observe the question, I did not ask you that; it is a very natural answer, I find no fault with it. Did it make any trouble between your stepmother and Lizzie and you?

A: Yes, sir.¹²

Andrew Borden was troubled enough that he bought another property and gave it to his daughters as a peace offering. Whether it was a successful one was hard for Knowlton to learn.

Q: And do you say that the relations were entirely cordial between Lizzie and your stepmother after that event?

A: Yes, I do.

Q: Have you ever said differently?

A: I think not.

Q: Did your sister change the form of address to her mother at that time?

A: I can't tell you whether it was at that time or not.

Q: She formerly called her <‘Mother:’ didn't she?

A: Yes, sir.

Q: She ceased to call her “Mother:’ didn't she, practically?

A: Yes, sir.

Q: And wasn't it about at that time that she ceased to call her “Mother”?

A: I don't remember.

Q: Wasn't it five or six years ago?

A: It was some time ago.

Q: What address did she give her after that time?

A: “Mrs. Borden.”

Q: And up to the time when she changed she had called her

“Mother”?

A: Mostly.

Q: From her childhood?

A: Yes, sir.

Q: And don't you recall that was sometime in connection with the transaction in relation to the house?

A: No, sir, I do not know when it was.¹³

Emma had been much less vague at the inquest, so Knowlton had her testimony there read in court, in the guise of refreshing her memory. “I will read another question: ‘That, however, did not heal the breach, whatever breach there was? The giving the property to you did not entirely heal the feeling?’ Answer: ‘No sir’”.¹⁴ Emma responded that she only meant that it had not healed her own feelings and did not include her sister's in that reply.

Knowlton chased after the topic a bit but was wise enough not to badger the witness, who, after all, was one of the victims in this crime. He had gotten enough for his purposes, however. He now had a bridge between Borden's ill will toward her stepmother and a potential character flaw. Borden was at odds with her family over a piece of property. She allowed simple greed to interfere with family harmony.

Knowlton would use this in his argument for purpose: Borden killed out of greed. He would later argue that she had become aware that Abby was a potential rival for her inheritance and wanted her out of the way. She was greedy enough to reject the woman she had called mother since childhood over half a house. Once she was capable of breaking that sacred feminine bond, she was probably capable of anything. In his closing remarks, Knowlton hammered the scenario home for the jury:

We must now go into this establishment and see what manner of family this was. It is said that there is a skeleton in the household of every man, but the Borden skeleton — if there was one — was fairly well locked up from view . . . But there was a skeleton of which we have seen the grinning eye balls and the dangling limbs. It is useless to tell you that there was peace and harmony in that family. We know better. . . . That correction of Mr. Fleet at the very moment the poor woman who had reared that girl lay dead within ten feet of her voice was not merely accidental. It went down deep into the springs of human nature. . . . Mrs. Borden was the only mother she had

ever known, and she had given to this girl her mother's love and had given her this love when a child when it was not her own and she had not gone through the pains of child birth, because it was her husband's daughter. And then a quarrel — what a quarrel! A man worth more than a quarter of a million of dollars wants to give his wife — his faithful wife who has served him thirty years for her board and clothes, who has done his work, who has kept his house, who has reared his children. . . a little homestead where her sister lives. How wicked to have found fault with it. How petty to have found fault with it. Nay, if it was a man sitting in that dock instead of a woman, I would characterize it in more opprobrious terms than those.¹⁵

The prosecution built a narrative that led into what Burke would call a “scene/agent” ratio between pentadic elements. This ratio deals with the relationship between person and place. Given a certain scene, one expects to find a certain type of personality abiding there. The main thrust of such an emphasis is that the scene requires agents who are its “dialectical counterpart.”¹⁶ In other words, for a narrative to function, the scene demands a certain type of character, one that matches the surrounding circumstances. There was the father, wealthy, but with a reputation as a skinflint. There were the daughters, arguing with him over property. In a family full of conflict over material things, a woman might come to value material things more than her family.

The defense was aware that this strategy was potentially damaging—after all, only two agents stood to inherit from the deaths, and one of them, Emma, had an alibi. Thus they took pains during the cross-examination to create a less tense vision of family relations. Robinson took special care in questioning the maid, Bridget Sullivan, since she was the only outsider living in the house. His manner of leading up to the issue was quite clever; since he did not know what she would say, he circled the subject instead of asking direct questions.

Q: How long had you been at the house living there?

A: Two years and nine months.

Q: Did you have any trouble there in the family?

A: No, sir.

Q: Not at all?

A: No, sir.

Q: A pleasant place to live?

A: Yes, sir, I liked the place.

Q: And for aught you know, they liked you?

A: As far as I know, yes.

Q: Treated you well?

A: Yes, sir, they did.

Q: It was a pleasant family to be in?

A: I don't know how the family was; I got along all right.

Q: You never saw anything out of the way?

A: No, sir.

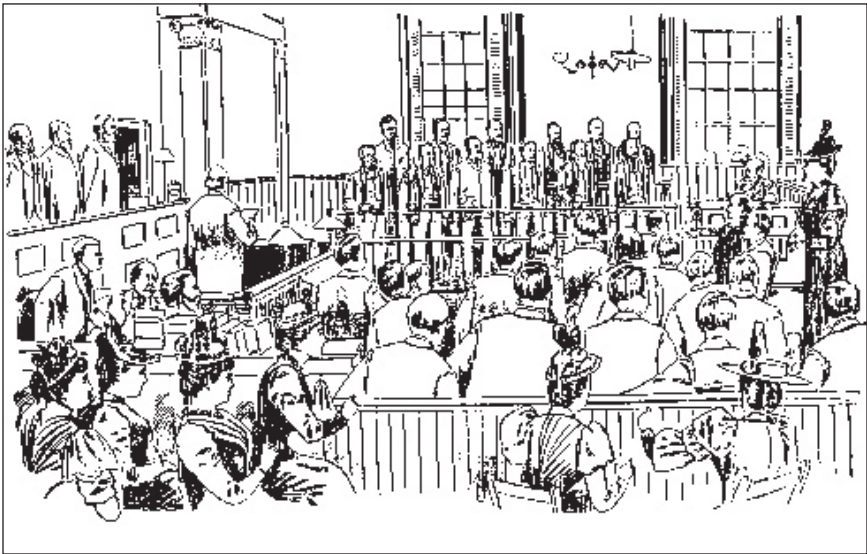
Q: You never saw any conflict in the family?

A: No, sir.

Q: Never saw the least, — any quarreling or anything of that kind?

A: No, sir, I did not.

Q: And during the whole time that you were there? You were



Courtroom Scene, June 20, 1893

According to the University of Massachusetts' online Lizzie Borden / Fall River Case Study project (ccbit.cs.umass.edu/lizzie/intro/home), "the *New York Times*, like other major metropolitan newspapers at the turn of the century, covered the trial throughout its duration. This trial was one of the first to be covered by the AP press, so it was covered across the country — even by newspapers which did not have staff present at the trial."

there two and a half years, I think you said?

A: Yes, sir, two years and nine months.

[...].

Q: How was it this Thursday morning after they came downstairs? . . . Who spoke?

A: Miss Lizzie and Mrs. Borden.

Q: Talking in the sitting room?

A: Mrs. Borden asked some question and she answered very civilly. I don't know what it was.

Q: Who answered civilly?

A: Miss Lizzie answered.

Q: Answered properly, all right?

A: Yes, sir.

Q: When you heard them talking, they were talking calmly, the same as anybody else?

A: Yes, sir.

Q: There was not, so far as you knew, any trouble that morning?

A: No, sir, I did not see any trouble with the family.¹⁷

Since there was a possibility that Sullivan had seen quarrels, he began by asking her about whether it was a good situation for *her*. Thus, if relationships were remarkably bad, he could stop. He then spent some time asking about the family in general. Only when it was fairly certain that things had gone smoothly did he ask about Borden's demeanor on the day of the crime. Even though Knowlton couldn't get Sullivan to state that the women were friendly, he got her to admit that they did not fight. Lizzie Borden was polite and civil, if not exactly affectionate.

Her affections, it appeared, were saved for her father. Jennings made sure to question Emma Borden on how well those two got along. She testified to an especially sentimental token of love — a ring that Lizzie had given Andrew fifteen years earlier. He wore it constantly — in fact, it was the only piece of jewelry he ever wore. He was buried with it. He apparently did not even own a wedding ring as a token for Abby, but Lizzie's ring he kept religiously.¹⁸

This narrative was taken as a sign that father and daughter were close. Even if Borden had hated her stepmother, how on earth could she have brought herself to kill her father? Borden's proper filial love was her alibi for the second killing, and weakened the claim that she would have committed the first. Since the scenic narrative of a family in conflict came

mainly from sources outside the family circle, while the narrative of love and devotion came from within, the defense could hope that the latter would have more credibility.

The prosecution pursued the link between Borden's reconstructed character and her violation of roles. They had used the link between scene and agent to construct a scenario that allowed for an upper-class woman to be a potential criminal. Once they had painted her as an unwomanly character, greedy and disrespectful of the dead, they called witnesses to prove that her actions mirrored that character. This represents a move to the "agent/act" combination: narratives expect certain kinds of behaviors from certain kinds of people. Again, assumptions based on traditional views of Borden's class and gender would not work in the prosecution's favor. One did not expect a female to be an ax murderer.

The only way to counter this was to show that there was a difference between being female and being a "woman." Thus, Knowlton took pains to inform the jury that Borden did not act womanly immediately after the murders. Women are supposedly emotional by nature, and Lizzie Borden had just been thrust into a situation that would reduce any normal woman to tears. Borden was not only *not* tearful, she was remarkably calm and collected. The prosecution was dismantling the image of Borden as too feminine to kill. The defense was aware of this strategy and attempted to block it at every turn, as seen in this exchange:

Q [BY KNOWLTON]: Mr. Harrington, without characterizing, can you describe her appearance and manner during this conversation?

MR ROBINSON: Wait a moment—what she did and what she said.

MASON, C. J. [THE CHIEF JUSTICE]: If the witness observes the question carefully he may answer it.

MR ROBINSON: Your honor very properly says if he discriminates carefully he may answer properly. The difficulty is he may give his judgment upon her state of mind from what he saw; that is the difficulty with it.

MASON, C.J.: The question does not call for it, and the witness appears intelligent. Having his attention called to it that he is to do nothing but to answer the question, he may answer it.

[After some byplay, the question was reread to the witness.]

A: She was cool—

MR ROBINSON: Wait.

MR MOODY: Well, that is the difficulty.

THE *WITNESS*: Well, it is rather a difficult thing to get at, sir.

MR MOODY: By leading a little, perhaps I can get at it,

MR ROBINSON: It should be stricken out, it is not a completed answer.

MR. KNOWLTON: It is not completed because you stopped him.

[Knowlton was allowed to proceed.]

Q: During any part of the interview was she in tears?

A: No, sir.

Q: Did she sit or stand during the talk with you?

A: She stood.

Q: During any part of the interview was there any breaking of the voice, or was it steady?

A: Steady.¹⁹

Although it was sometimes difficult to get to the subject, the prosecution took every opportunity to point out that Borden was remarkably levelheaded that day. Hers was not the traditional portrait of a daughter too bowed by grief to function.

The most potentially condemning narrative related to gender, however, was one that had been born in the early half of the nineteenth century. Unfortunately for Borden, it was a character that she fit almost perfectly. In the early years of medical jurisprudence, there had been few reliable tests for poison. It wasn't until the 1830s that even arsenic could be detected, let alone more exotic concoctions. As the science developed tests, more and more murders by poison were discovered — and the murderers were, in large number, women.

Although the actual number of murders probably did not rise, in the popular imagination, death by poisoning was seen as a major risk. Poison was the weapon of choice for unhappy wives. If a genteel woman *were* to commit a murder, the jury would accept poison as a weapon much more easily than an ax. The prosecution was no doubt aware of that and was ready with an argument related to Borden's visit to a drugstore the day before the murders. She had come when the shop had been crowded and was recognized by more than one person. She attempted to buy prussic acid (hydrogen cyanide) but left quietly when she was told that she needed a prescription for it. The opening statement avowed that it was no coincidence that Borden would try to purchase a deadly poison at that

particular moment. Knowlton asked the jury to consider why a woman would want such a thing.

This is one of the moments when a carefully planned prosecution argument runs head-on into an issue having much more to do with judges than with juries. When the prosecution called the druggist to testify, the defense moved to rule out his testimony, before he could give it, on the grounds that it was immaterial — the Bordens had not been poisoned.

The jury was sent out while the lawyers argued. The prosecution claimed that the evidence was to show, along with a visit to her friend where Lizzie stated that she thought someone was trying to poison her family, her murderous frame of mind. The defense countered that it was perfectly legal to buy prussic acid; just because it could be used as a poison didn't mean that Borden was going to use it that way. The example of rat poison was used; people bought dangerous chemicals for household use all the time.

After much arguing, the court allowed the jury back in to hear testimony from other witnesses (such as a druggist, a chemist, and a furrier) to determine whether prussic acid was indeed used to clean furs or whether it had some other reasonable nonmedical use. Interestingly, although all these witnesses were stumped as to any such use, the court ruled that they did not credibly establish the prosecution's point, and the drugstore clerk was not allowed to testify. What the jury must have thought — hearing all those witnesses talking about the uses of prussic acid and then never seeing the witness who could make the link to Borden — cannot be guessed. We are left only with the tantalizing hint that Borden might have been trying to commit a feminine murder, after all.

The prosecution attempted to dismiss Borden's gender before pursuing arguments that were still gender based. The defense, on the other hand, was careful to bring up Borden's gender directly and frequently. The assigned rhetor or presenter for arguments in this vein was attorney A.J. Jennings. As a close friend of the family, he supposedly had special insight into Borden's character, which he called upon when crafting his vision of her as a traditional, God-fearing, Sunday-school-teaching gentlewoman. He made sure to mention his special knowledge in his opening remarks:

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.²⁰

Jennings's use of his masculinity as a defense of his subsequent behaviors echoed his use of Borden's femininity as an excuse for her. Thus began the task of reconstructing agent. Borden had to be viewed by the jury as the type of person who would not kill. At the same time, the defense had to make every unknown person in the neighborhood look like the type who would. The first task was fairly easy, for Borden had a prior history of hewing to feminine stereotypes:

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.²¹

As author Janice Schuetz has aptly noted, Borden was more properly a woman in the mold of the "new woman" rather than that of the older, more traditional feminine narrative.²² She was unmarried but not a "spinster": She had been to Europe, had a good sense of the latest fashion, and belonged to female social clubs. She was unemployed, but not domestic; she pursued church and temperance work with diligence but did not spend much time with her own family. Readers today would probably find this normal, if not admirable, but it was still slightly suspect behavior in Fall River, which had not yet caught up with such new fashions. In fact, the prosecution used Borden's apparent self-sufficiency as a sign that there was something wrong with her.²³ In response, the defense relied on what domestic elements of her personality could be delineated. The premise was that no genteel upper-class woman would even conceive of committing a violent crime.

The defense did not allow the prosecution's description of the family scene go unchallenged. Their strategy, however, was slightly off center, in that instead of trying to show that Borden did not hate her stepmother, they attempted to show that she loved her father. Given that this was an all-male jury, such a tactic was strategic. No one on the jury was a

stepmother, but everyone had at least the potential to be a father. There would be uncomfortable dissonance in even the possibility that a daughter could turn upon her male protector. That dissonance would make the jury more likely to try to make Borden fit the traditional mold.

In addition to Emma Borden's tale of family devotion, the defense added descriptions from outsiders. Each of Borden's female friends was asked about her church membership and what endeavors she pursued in connection to it. Borden's character outside the family circle was used to bolster the notion that she would not suddenly be hateful inside that circle. The combination of these perceptions — churchgoing lady and dutiful daughter — threw a shield around her character even before the arguments turned to the events of the day of the murder.

As to those events, the defense made clear attempts to show that Borden was not the unnaturally cold woman that the prosecution had painted. In an interesting move, they used only the transcript of Bridget Sullivan's testimony rather than recalling her to the stand, perhaps because she had been such a good prosecution witness earlier. They recalled the stenographer from the district court to read some of Bridget Sullivan's testimony at an earlier hearing. The exchange showed a very different Borden:

[Quoted from record]

A: She says, "come down quick. Father is dead." She was leaning against the screen door.

Q: Was the screen door open then?

A: I don't know, I could not say. She was leaning against the inside door that locks, the large door.

Q: Not the screen door but the regular door?

A: Yes, sir.

Q: How did she seem?

A: She seemed to be excited more than I ever saw her.

Q: Was she crying?

A: Yes, she was crying.²⁴

So, immediately after discovering her father dead, Borden acted like a normal woman. For some reason, Sullivan had forgotten this. The defense had a great deal of such testimony read to the jury, impugning the memories or veracity of earlier witnesses. They did not rely upon those resources alone. When cross-examining Dr. Seabury Bowen, the family physician who had been among the first to arrive, the defense carefully elicited from



Lizzie Borden Trial Jury

him that Borden was on the sofa, with the other ladies “fanning her and working her over.”²⁵ Eventually one of them fetched him to give Borden some medicine, first bromo-caffeine (a popular headache remedy) and later morphine, to calm her down.

This information served two purposes. First, although Bowen himself paid little attention to Borden at first, the ladies were watching her. And these women, by nature more attuned to the needs of their sex, knew that she was upset enough to need a drug. Thus, the jury heard that the characters who know women best knew that she was properly distraught.

In addition, this evidence set the stage for excusing almost all of Borden’s later, unusual behaviors. She was drugged, apparently, at that incriminating inquest. Adams even tried to get Bowen to state that bromo-caffeine could cause hallucinations, but Bowen did not cooperate. Still, morphine was a pretty good excuse for being calm and low-key when one’s parents have been murdered. Just in case the jury still did not get the

point, a friend of Borden's who went with her to the funeral reported that she cried over her father's remains in the viewing room.

The defense team worked diligently to establish that Borden's character was traditionally feminine. She was a good church member, a loving daughter, a fragile spirit, and someone who wept appropriately. This was important, for it lessened the likelihood that violence would ensue from her character. It was not enough, of course. For one thing, Borden was the only agent present that day with no alibi whatsoever. Also, being womanly did not mean that she was entirely incapable of committing the crime.

The prosecution asked Dr. Draper, one of the forensics experts, whether the fatal blows could have been struck by a woman of ordinary strength. He said yes, and the defense could not get him to hedge that answer in any way. In addition, Knowlton reminded the jury that there had been plenty of female murderers in history, including a woman in Massachusetts who poisoned all of her relatives to gain an inheritance.²⁶ Gender was a good argument, but even an all-male jury had to see that it was not a perfect excuse.

In other words, the defense did not rely on the stereotypic tactic of "she could not do it because she was a woman" but was also careful to call upon other narratives and apply them to other possible agents who were in the vicinity of the Borden house around the time of the murders. The creation of other agents, combined with their characterization of Borden, offered the jury a few alternative ways to fill in the blanks of the story.

The defense called a number of witnesses, from a neighbor who had heard someone threatening Andrew Borden months before the crime to a man who saw an unfamiliar buggy tied up in front of the Borden house the morning of the murders, the driver simply sitting in it. There were other concrete sightings of possible agents. Two male witnesses sharing a house near the Bordens' encountered a stranger sitting on the sidewalk in front of their gate the evening before the crime. A strange man, not drunk, yet not responding, sitting where he could see the Bordens' house, could just be a hobo, but then again, the timing was certainly coincidental.²⁷

The next day, a town doctor saw an equally strange figure on the same street: a pale young man walking very slowly, staring at his feet.²⁸ A woman passing by noted that she, too, had seen a strange young man, but in a more ominous position. He was leaning against the gatepost of the Borden house. She couldn't describe him at all but knew that he was not the visiting Mr. Morse. Now the jury could envision a weird stranger wandering the neighborhood. The murders looked like the work of an insane person, and here was an agitated, wandering stranger on the scene.

Another possibility was offered by an ice-cream peddler. He claimed that he saw a woman walking in the yard of the Borden house, perhaps even coming from the barn. . . . What was a strange woman doing in the Bordens' yard?

Here were alternative agents, at least one, and perhaps two, seen by credible witnesses. In case that wasn't enough, there was a farmer who stated that he saw a wild stranger in the woods. Since the witness spoke only French, his testimony was translated and read:

This witness will testify that on the 16th day of August, at his farm, about four miles north of City Hall, while traveling into the woods for the purpose of cutting poles . . . he heard the words "poor Mrs. Borden" repeated three times, and immediately saw sitting upon a rock behind a wall and some brushwood, a man. He spoke to the man in French twice, but received no answer. [Then] the man took up from the ground by his side a hatchet, such as is used in shingling houses, and shook it at him. He stepped back and put his own axe up in an attitude of defense. They remained in that position some few minutes, when the man turned, leaped over a wall and disappeared in the woods. . . . The witness noticed upon his shirt spots of blood. He notified the police what he had seen and heard.²⁹

All the essential elements are there, mad behavior, blood, an ax, even a direct mention of a victim's name. If ever a good alternative killer could be offered, this wild man was it. Of course, as the prosecution pointed out, he appeared four miles away and twelve days after the crime. The evidence was excluded, but not until the next day. Like the narrative of "Lizzie the Poisoner," "The Wild Man" was a story that the jury was told and then asked to discard, thus giving each side possession of a story told that might or might not have affected the jurors.

The primary goal of this tactic was to provide better agents to fill in the blank in the narrative of the crime. This was done partly through mitigating the scene as set by the prosecution, so that mother-hating Borden could be reborn as father-loving Borden. If the jury bought that argument, then it would be hard for them to accept that Borden, as agent, could commit a violently brutal ax murder. Even if she had gone mad, her sudden reversion back to sane, cooperative, bereaved woman in the hours afterwards would be a violation of character; the mad are not cured in an instant. On the other hand, the acts perpetrated on that day were clearly marked by savagery.

The agent required would have to be a savage as well, or at least someone with no mercy. That ruled out most stereotypical women. A person from outside the family who quarreled with the patriarch, or a mad man with no motive at all, were better fits with the type of crime.

The defense kept up the subtle references to Borden's gender all the way through the testimony. This meant that Robinson, who was elected to close the case, could refer to it even as he was ostensibly discussing the circumstantial evidence. He reminded the jury that it was their duty to take charge of the defendant's fate, but this charge attained new importance when it was given over to twelve men to look after a woman:

In no case except a capital case is the oath framed in that way. "Whom you shall have in charge." And Lizzie Andrew Borden, from the day when we opened this trial until this hour, has been in your charge, gentlemen. That is the oath you took. And not alone with you, Mr. Foreman, or any one of you, but with each and all of you. You have her in charge. . . . Now that is your duty. She is not a horse, she is not a house, she is not a parcel of land, she is not the property of anybody, but she is a free, intelligent, thinking, innocent woman, in your charge.³⁰

The lady has been entrusted to the protection of the "gentlemen" of the jury, who must decide her fate. If they accept the many descriptions of her good, Christian character, then the least that they owe her is a careful consideration of the evidence. As Robinson noted, all that was required was a reasonable doubt as to her guilt. The defense had sown all the doubt it could, from attacking physical evidence related to scene (the unlocked side door, the lack of blood on Borden), agency (the lack of a definite weapon), and purpose (defusing her motive) to providing alternate agents. All they needed was for the jury to decide that the connection between act and agent was too slender a thread upon which to hang a woman.

Although the narratives created on both sides used gender-based arguments, these were clearly not the only issues pertinent to the case.³¹ Additionally, the jury had to be convinced that it was significant enough to use in a decision. Here is when it becomes clear that Borden had an additional quality that made the difference in her case: her status and family connections.

After the two sides closed their arguments, it was the duty of the court to instruct the jury about rules of evidence, the issues pertinent to a verdict, and the process by which they should come to a decision on

those issues. The court gave that task to Justin Dewey. As noted earlier, Dewey was a friend of Robinson, and even owed his career to a political appointment made when he was governor. Although he had this conflict of interest, Dewey could have defused suspicion by following the strict letter of the law when instructing the jury. Instead, he did something that raised eyebrows across the legal community for years to come: he argued for the defense. Only one part of Dewey's charge will be quoted here, but it is representative of the speech.

After an explanation of the difference between the role of an "essential" fact and a "helpful" fact in circumstantial cases, Dewey wished to provide examples. He briefly explained that an "essential" fact was that Borden was home that day, since she could not possibly have committed the crime were she not present. To illustrate "helpful" facts, he used two examples from the prosecution's case, and spoke at length to provide alternate explanations for them. After properly noting that the presence of a weapon in the house is not direct evidence, Dewey reminded the jury that the killing could have been done by some other instrument, although the prosecution had made no such concession. He then demolished a piece of evidence that the prosecution had claimed was vital, presenting the alternative explanation in great detail:

Take another illustration. I understand the government to claim substantially that the alleged fact that the defendant made a false statement in regard to her step-mother's having received a note or letter that morning bears an essential relation to the case, bears to it the relation of an essential fact And so the counsel in his opening referring to that matter, charged deliberately upon the defendant that she had told a falsehood in regard to that note. . . . Now what are the grounds on which the Government claims that that charge is false, knowingly false? There are three — one that the man who wrote it has not been found, second that the party who brought it has not been found and third that no letter has been found, and . . . upon those three grounds you are asked to find that an essential fact — a deliberate falsehood on the part of the defendant — has been established.

Now what answer or reply is made to this charge? If, as the Government claims, she had killed her step-mother some little time before, she had a period in which she could turn over the matter in her mind. She must naturally anticipate . . . that the question at no remote period would be asked where

Mrs. Borden was, or if she knew where she was. She might reasonably and naturally expect that that question would arise. . . . What motive had she to take upon herself the responsibility of giving utterance to this distinct and independent fact of a letter or note received with which she might be confronted and which she might afterwards find it difficult to explain, if she knew that no such thing was true? . . .

But it is said no letter was found. Suppose you took *{sic}* at the case for a moment from her stand-point, contemplate the possibility of there being another assassin than herself, might it not be a part of the plan or scheme of such a person by such a document or paper to withdraw Mrs. Borden from the house? If he afterwards came in there, came upon her, killed her, might he not have found the letter or note with her, if there was one already in the room? Might he not have a reasonable and natural wish to remove that as one possible link in tracing himself? . . . [D]oes the evidence satisfy you as reasonable men beyond reasonable doubt that these statements of the defendant in regard to that note must necessarily be false?³²

Thus, in his charge to the jury Dewey openly made use of the outside assassin theory, thus reinforcing the defense's position.

This pattern continued as the charge proceeded: the prosecution's argument was touched upon, the defense's discussed in great detail — always with a clear preference for the defense's explanations. He provided possible innocent reasons as to why Borden refused to testify and dismissed her statements of hatred for her stepmother as the typically overwrought dramatizing that a young girl might do.³³ The fact that Borden was a woman in her thirties did not seem to Dewey that she might be beyond childish outbursts. The stereotypic notion that women were naturally childish and innocent was clearly a centerpiece of his argument.

After having cast doubt upon huge pieces of the prosecution's case, he reminded jurors that even the smallest doubt was grounds for acquittal. That one of the judges in the case would so clearly prefer the defense narrative no doubt carried great persuasive force. After all, one of the most basic elements embedded in legal culture in the United States is the "belief in the neutrality and objectivity of the law."³⁴ If Dewey was going to use Borden's gender to give her the benefit of the doubt on hostile statements about her stepmother, then it must be the right thing to do.

Thus, the gender-based arguments used by the defense were bolstered by the preferential treatment given by Dewey in his charge. If the jurors were moved emotionally by the image of Borden as dutiful daughter, Dewey had just provided them with a number of rational arguments in favor of following that emotion. The charge apparently made the task easy; in less than an hour, the jury returned a verdict of “not guilty.” Later arguers have spent an entire century wrangling and have not been able to make such a clean decision.

Conclusions

It is clear that the verdict in the Borden case represents a decision based upon narrative rationality. Since there was little or no direct empirical evidence that pointed to a specific individual, any connections to Borden, whether to show guilt or innocence, had to be woven into a drama that the jury could use to inform their decision. Indeed, any case of circumstantial evidence requires excellent storytelling on the part of the lawyers involved.

The most interesting factor in this case was that although both sides did a great deal of storytelling based upon nineteenth-century stereotypes related to gender, they went about it in very different ways. While the defense frequently stated boldly that Borden’s gender made her an unlikely suspect, the prosecution ostensibly ignored the issue and instead used forms of reasoning that tied their arguments to gender without directly mentioning it. Although the latter version would gain more political points in today’s ostensibly gender-free courts, the fact that the tactic was used and rejected in the late nineteenth century is instructive.

The prosecution’s narrative shows the importance of maintaining believable character development in a story as well as methods of creating consistency against all odds. The Borden case was replete with evidence that brought the dramatic elements of scene to vivid life. The jury could be presented with facts related to everything from the color of a dress to what the maidservant had to eat for breakfast. There were photographs of bodies, diagrams of the layout of the house, and scientific analyses of bloodstains galore. What the evidence didn’t show was anything that could directly link to Borden. There was a huge gap in the story where the role of agent should have been. The prosecution needed to close that gap by constructing Borden’s character so that her agency was apparent. The simplest manner to achieve this goal would be to paint the suspect’s character in a negative light and hammer away at motive, so that agent and

purpose would be made crystal clear to the jury. That simple strategy was completely cut off by the circumstances surrounding the crime.

Since the Bordens were a leading family in Fall River, and Lizzie Borden one of its leading lights in church and charitable causes, it was not enough for the prosecution to simply invent a plausible motive and drop it into the narrative. No jury was going to accept that an upper-class gentlewoman could turn into an ax murderer and back again to lady in the space of a few hours. This would conflict with every stereotype they had about gentlewomen, and with not a few they probably held about madwomen.

Instead, the prosecution approached the identity of the agent gradually. Since the evidence concerning scene was the strongest, prosecutors used a description of scene to ground their argument. By stressing the disharmony of the Borden home, they hoped to convince the jury that it was reasonable to expect a woman reared in such a home to develop less-than-harmonious tendencies. Since auditors of a story expect the agent to be consistent with the scene, the prosecution could then use that groundwork to argue that Borden was exactly the kind of woman who might become a killer.

They even took pains to address the next inconsistency that could have arisen between agent and agency. The gender stereotypes operating in forensics at the time dictated that women could kill; however, they killed in a feminine manner. Axes are not feminine weapons. In the opening address and in a few other places, the prosecution tried to create consistency by showing that Borden had tried to obtain a more feminine weapon: poison.

It was a case of scene overpowering the other elements. Since no one would sell her poison, she had to find another way. Of course, this story element was truncated by the court, but it shows that the prosecution was aware of the need to address the issue. The overall goal of using scene in this manner was to ground the story in the undisputed elements of the drama so that their more creative interpretations would better resonate with the jury. They took the more negative elements of the feminine stereotype (greed, resentment of a stepmother, passive) and attempted to prove that Borden fit that pattern better than she did the positive elements.

Apparently, it was too subtle. Not only did it fail with the jury, but later commentators on the case, quick to castigate the prosecution for making sexist arguments, ignored the prosecution's use of gendered premises. When the defense argued character, they did it boldly and made direct connections to Borden as agent. The pattern was more traditional: "This agent is a woman, a woman could not hack her father to death, therefore

this agent is innocent.” The audience sees gender where it expects to see it. Since no one expects gender to be tied to scene, except perhaps in the case of a feminine “domain” like the sewing room, one does not automatically use gender to make connections between scene and agent.

Still, the prosecution’s resulting narrative, although unconventional, had great internal consistency. Once one accepted the notion that an odd family could produce an odd daughter, the rest of the tale could easily be interpreted exactly as the prosecution desired. Unfortunately, the most authoritative source to address the jury — Judge Dewey—used the opportunity to reconstruct the evidence in his own manner, and that makes it impossible to evaluate whether the lawyer’s narratives on one side versus the other were more meaningful to the jury.

Judge Dewey’s “charge” offered a complete retelling of the story based upon his own notions of evidence, which were strongly colored by his own vision of Borden’s character. Although it is clear that he was relying on gender stereotypes, his persona as the neutral voice of the law guaranteed that the jury would take his premises as “truth.” He had already decided that she did not fit into the center of the drama, so the jury couldn’t decide otherwise without challenging his authority.

Despite the fact that the court influenced the final result, there is still much to be learned by examining the battle between the legal teams. One thing that the use of the pentad reveals is the power and flexibility of narrative elements such as gender in the crafting of tales for the jury. The defense chose to use gender in the most conventional way. Feminine gender was applied directly to the image of Borden as agent. She lived up to the nineteenth-century standard of femininity well enough that she emerged as a delicate, affectionate daughter. In this drama, she was clearly innocent.

In contrast, the prosecution took up the same tools but applied them first to scene, then to act, so that Borden as agent would emerge slowly. She violated the nineteenth-century standard of femininity well enough that she emerged as a cold-hearted, greedy female. In this drama, she was clearly guilty. Neither side had a radically different view of womanhood. Each was certain that the all-male jury would share their premises. . . . Although the prosecution lost, the district attorney put together as good an alternative narrative as contemporary sensibilities would allow.

Interestingly, as time has passed, the tables have turned somewhat. At the time of the verdict, “few newspapers did anything except rejoice at the outcome.”³⁵ So ingrained was the conventional narrative that no one criticized its use, not even the female reporter assigned by the *New*

York Times.³⁶ Due to cultural changes and the recognition that women are as prone to primitive impulses as men, the notion that a woman is constitutionally incapable of violent crime has been shattered.

HJM

Reproduced with the permission of the University of Illinois Press. Excerpted from A. Cheree Carlson, *The Crimes of Womanhood: Defining Femininity in a Court of Law* (Champagne, IL: University of Illinois Press, 2008). Excerpted from Chapter 5, pages 85-110.

Notes

¹ Since there are multiple Bordens referred to in the case, I have taken the liberty of referring to them by their first names.

² What the maid, Bridget Sullivan, thought about these living arrangements is unknown. She had been with the family for three years as a general servant. Her position is best illustrated by the fact that the Borden daughters called her “Maggie,” which was the name of the previous maid. All Irish servants, apparently, were interchangeable. She was sometimes even referred to in the press as Maggie, which only added to the general confusion surrounding the situation.

³ This was determined by noting differences between the two bodies in the amount of coagulated blood and the amount of food digested from breakfast.

⁴ This does not entirely free her from suspicion. There is a conspiracy theory that has Lizzie killing Abby while Bridget establishes her alibi. Then Emma supposedly kills Andrew while Lizzie cleans up.

⁵ Massachusetts law required that three judges be present in a capital murder case. The third judge, Caleb Blodgett, was apparently not controversial. In addition to Robinson, Lizzie was represented by Andrew Jennings, the Borden family lawyer. These two were aided by Melvin Adams, chosen by Jennings for his skill at cross-examination. On the prosecution sat Knowlton, aided by William Moody. Although Moody had a good reputation, this was his first murder trial. An excellent, genealogically oriented volume by Hoffman traces the various careers and connections of nearly all the principals in the Borden case, including the professional relationships of the lawyers. See Paul Dennis Hoffman *Yesterday in Old Fall River* (Durham, NC: Carolina Academic Press), 2000.

⁶ Kenneth Burke, *A Grammar of Motives* (Berkeley: University of California Press), 1962. Burke introduces the pentad and discusses ratios on pp. 3-20. Editor's Note: The Burkean Pentad is a well known analytical framework widely used in rhetoric and communications theory. According to scholar Thomas Gardner, "Burke has influenced a number of different fields, most notably literary and dramatic criticism and rhetoric. He is encountered in English departments, Drama departments, and Communication Departments that teach rhetoric. There is a Kenneth Burke society that meets concurrently with the National Communication Association."

Gardner offers this analysis of Burke's pentad: "Burke essentially devoted the entire volume, *Grammar of Motives*, to refining and applying this model to philosophical traditions, plays, poems, constitutions, and novels. He renders the model both more complex and more useful by developing the notion of ratio That is, at any given moment in the object of examination, the scene might outweigh the act, or the act consume the scene. The shifting ratio among the elements of the dramatist pentad is not, in Burke's application, merely a happenstance deriving from the piece under examination, flowing naturally from a plot for instance, but it is also determined by the choices made by the analyst as to what lens to use. From one vantage point, the scene might appear to dominate, while zooming in within the scene, the agent grows in proportion to the scene. So, the application of the pentad is very much a dialogic process between critic and subject." Thomas Gardner, *The Media Rhetoric of Law and Order: How ABC Framed the Mumia Abu-Jamal Story* (Lewiston: NY, Edwin Mellen Press, 2010).

⁷ The official report of the murder trial can be found in Frank Burt, ed., *The Trial of Lizzie A. Borden. Upon an Indictment Charging Her with the Murders of Abby Durfee Borden and Andrew Jackson Borden. Before the Superior Court for the County of Bristol* (Boston: 1893). Boston Public Library Microfilm, <http://lizzieandrewborden.com>. (accessed Aug. 29, 2005.) It is available on microfilm at the Boston Public Library. The *New York Times* also covered the trial. More technologically inclined readers can find complete transcripts of the official record of the trial, as well as other digitized documents, at <http://lizzieandrewborden.com>. This article cites the digitized version of the transcript, which was made from the original documents by Harry E. Widdows for the Lizzie Borden Society in 2001. Due to the poor quality of the originals, Widdows had to type and proofread the entire document by hand, so I have cross-checked any portions quoted directly in this chapter with other available editions in case he made transcription errors. There are many edited volumes collecting the various documents, and several are cited in the bibliography. The reader is warned, however, that most editors selected primarily the documents that best proved their claim as to who was guilty of the crime. In order to get a reading of the entire trial, one has to consult multiple editions.

⁸ Trial transcript, quoted in Frank Burt, ed., *The Trial of Lizzie A. Borden, Vol. 1*, p. 47.

⁹ Burt, Vol. 1, p. 51.

¹⁰ Burt, Vol. 1, pp. 50-51.

¹¹ Burt, Vol. 2, p. 1169.

¹² Burt, Vol. 2, p. 1556.

¹³ Burt, Vol. 2, pp. 1557-58.

¹⁴ Burt, Vol. 2, p. 1562.

¹⁵ Burt, Vol. 2, pp. 1774-76.

¹⁶ Burke, *A Grammar of Motives*, p. 9.

¹⁷ Burt, Vol. 1, pp. 254-257.

¹⁸ Burt, Vol. 2, p. 1530.

¹⁹ Burt, Vol. 1, pp. 564-65.

²⁰ Burt, Vol. 2, p. 1305.

²¹ Burt, Vol. 2, p. 1306.

²² Janice Schuetz, *The Logic of Women on Trial* (Carbondale: Southern Illinois University Press, 1994), p. 65.

²³ Fall River was not especially parochial in this instance. In the 1890s, the medical establishment questioned the femininity of the “new women” to the point of branding them potential lesbians. See Carroll, Smith-Rosenberg, *Disorderly Conduct: Visions of Gender in Victorian America* (New York: Alfred A. Knopf, 1985), p. 265.. Interestingly, in later years, Borden was accused of a scandalous lesbian relationship with an actress.

²⁴ Burt, Vol. 2, p. 1594.

²⁵ Burt, Vol. 1, p. 325.

²⁶ Burt, Vol. 2, p. 1775.

²⁷ Burt, Vol. 2, pp. 1353-59.

²⁸ Burt, Vol. 2, p. 1372.

²⁹ Burt, Vol. 2, p. 1455.

³⁰ Burt, Vol. 2, pp. 1620-21.

³¹ One additional issue not explicitly about sex but with gendered implications was the question of how Lizzie could have committed the murders without getting blood on her clothing. Assuming that Bridget Sullivan’s testimony was accurate, she saw Lizzie in between the two murders and noticed nothing out of the ordinary. In order to kill Abby, appear to Andrew and Bridget in a clean dress, then kill Andrew, and finally appear to Bridget and the neighbors in another clean dress, Lizzie would have had to change clothes twice — no mean feat for a woman wearing the complicated clothing of the era before zippers and Velcro. The testimony about dress in the trial touches upon gender in an amusing manner. Since it was a serious question whether Lizzie had handed police the clothing she was really wearing that morning, nearly every witness was asked to describe what she had been wearing. The male witnesses had a difficult time when asked whether a dress was blue or blue and white, whether it looked like silk or cotton, and whether it had striped, diamond, or “sprig” pattern on it. When one female witness said a dress looked like Bedford cord, she was asked what material it was

made of by the male layer. Her mystified reply was that Bedford cord was made by Bedford cord (corduroy). The women sometimes had to explain it to the jury.

³² Burt, Vol. 2, pp. 1901-03.

³³ Burt, Vol. 2, p. 1894.

³⁴ Susan Sage Heinzelman, "Women's Petty Treason: Feminism, Narrative, and the Law," *Journal of Narrative Technique* Vol. 20, no. 2 (1990): 90.

³⁵ Pearson, Edward, ed, *Trial of Lizzie Borden* (Garden City, N.Y.: Doubleday, 1937) p. 76.

³⁶ Pearson, p. 76.

NOTE ON PRIMARY SOURCES

The murders of Andrew and Abby Borden occurred in 1892, before fingerprint technology became a routine method of police investigation. By today's standards, the police work in the Borden murders appears crude, sloppy, and disorganized. The evidence that remains today comes from various sources, such as the inquest and trial testimony as well as collections of artifacts in private and non-profit sources.

The Fall River Historical Society has a large collection, including photographs, letters, personal papers, Abby's hair swatch, the "handleless hatchet" (presented as the possible murder weapon), and even the bloody pillow shams.

The records and notes of Lizzie's defense attorney, George Dexter Robinson, have never been publicly released. They remain locked at the Springfield, Massachusetts, law firm he founded. The firm has successfully resisted all efforts to gain access to these files. While some Borden enthusiasts feel that this is the last great hope of solving the crime, the firm cites attorney-client confidentiality in their refusal to turn over the documents to researchers. Instead, Borden scholars are relegated to examining the public records that have been available since the trial.

Source: Lizzie Borden Museum and Virtual Library at
www.lizziebordenmuseum.com

Resources for Teachers

For websites with an excellent selection of primary sources relating to the case, see: The Fall River Historical Society (<http://www.lizzieborden.org>) along with www.lizziebordenmuseum.com and the *Famous Trials* website at www.law.umkc.edu/faculty/projects/ftrials/lizzieborden/bordenhome.html

The *Lizzie Borden* website hosted by the University of Massachusetts, Amherst (<http://ccbit.cs.umass.edu/lizzie/index.html>) provides classroom material to explore the trial and for students to discover results for themselves.

The literature on the Lizzie Borden murder case is enormous. The following offers a brief selection: Gabriela Schalow Adler, *Our Beloved Lizzie: Constructing an American Legend* (University of Rhode Island, Ph.D. Dissertation, 1995); Jules R. Ryckebusch, ed. *Proceedings: Lizzie Borden Conference* (Portland, Maine: King Philip Publishing Co., 1993); Frank Spiering, *Lizzie: The Story of Lizzie Borden* (New York: Random House, 1984); Kathryn Allamong Jacob, "She Couldn't Have Done It, Even If She Did. Why Lizzie Went Free," *American Heritage* 29 (Feb/March 1978): 42-53; Cara W. Robertson, "Representing Miss Lizzie: Cultural Convictions in the Trial of Lizzie Borden," *Yale Journal of Law and Humanities* (Summer 1996): 351-416; David Kent, ed., *The Lizzie Borden Sourcebook* (Boston: Branden Publishing, 1992); and Christine Berni, "Taking an Axe to History: The Historical Lizzie Borden and the Postmodern Historiography of Angela Carter," *Clio* (1997) 27(1): 29-55.