

TESTIMONY CONCERNING LEWIS PAYNE

MRS. MARTHA MURRAY.

For the Prosecution.—May 19.

My husband keeps the Herndon House, corner of Ninth and F Streets, opposite the Patent Office, cat-a-cornered. The only one of the prisoners I recognize as having seen before is that man, [pointing to the accused, Lewis Payne]. I think I have seen him; his features are familiar to me, but I would not say for certain. He was two weeks in our house, and he left on the Friday, the day of the assassination. He left on the 14th day, about 4 o'clock. We have dinner at half-past 4, and this gentleman came into the sitting-room and said he was going away, and wanted to settle his bill; and he wished to have dinner before the regular dinner; so I gave orders for the dinner to be cut off and sent up to him. He went into the dining-room to eat his dinner, and I have not seen him since.

I do not recognize either of the prisoners as having visited this man. I remember that he once came in with two gentlemen to supper. I do not remember that any one spoke to me about engaging a room for this man. I am spoken to by so many that I could not remember any particular circumstance of that kind.

WM. H. BELL (colored).

For the Prosecution.—May 19.

I live at the house of Mr. Seward, Secretary of State, and attend to the door. That man [pointing to the accused, Lewis Payne] came to the house of Mr. Seward on the night of the 14th of April. The bell rang and I went to the door, and that man came in. He had a little package in his hand; he said it was medicine for Mr. Seward from Dr. Verdi, and that he was sent by Dr. Verdi to direct Mr. Seward how to take it. He said he must go up; then repeated the words over, and was a good while talking with me in the hall. He said he must go up; he must see him. He talked very rough to me in the first place. I told him he could not see Mr. Seward; that it was against my orders to let any one go up, and if he would give me the medicine and tell me the directions, I would take it up, and tell Mr. Seward how to take it. He was walking slowly all the time, listening to what I had to say. He had his right hand in his coat-pocket, and the medicine in his left. He then walked up to the hall toward the steps. I had spoken pretty rough to him, and when I found out that he would go up, I asked him to excuse me. He said, "O! I know; that's all right." I thought he might, perhaps, be sent by Dr. Verdi, and he might go up and tell Mr. Seward that I would not let him go up, or something of that kind. I got on the steps and went up in front of him. As he went up I asked him not to walk so heavy. He met Mr. Frederick Seward on the steps this side of his father's room. He told Mr. Frederick that he wanted to see Mr. Seward. Mr. Frederick went into the room and came out, and told him that he could not see him; that his father was asleep, and to give him the medicine, and he would take it to him. That would not do; he must see Mr. Seward. He must see him; he said it

in just that way. Mr. Frederick said, "You can not see him." He kept on talking to Mr. Frederick, saying, that he must see him, and then Mr. Frederick said, "I am the proprietor here, and his son; if you can not leave your message with me, you can not leave it at all." Then he had a little more talk there for a while, and stood there with the little package in his hand. Mr. Frederick would not let him see Mr. Seward no way at all, and then started toward the step and said, "Well, if I can not see him—" and then he mumbled some words that I did not understand, and started to come down. I started in front of him. I got down about three steps, I guess, when I turned around to him and said, "Don't walk so heavy." Then by the time I turned around to make another step, he had jumped back and struck Mr. Frederick. By the time I could look back, Mr. Frederick was falling; he threw up his hands and fell back in his sister's room; that is two doors this side of Mr. Seward's room. Then I ran down stairs and out to the front door, hallooing "murder," and then ran down to General Augur's head-quarters. I did not see the guard, and ran back again. By that time there were three soldiers who had run out of the building and were following me. When I got way back to the house, turning the corner there, I saw this man run out and get on his horse. He had on a light overcoat, but he had no hat on when he came out and got on his horse. I did not see his horse when he came to the house, and did not know he had a horse until I saw him get on it. I hallooed to the soldiers, "There he is, going on a horse!" They slacked their running, and ran out into the street, and did not run any more until he got on his horse and started off. I followed him up as far as I Street and Fifteen-and-a-half Street, and he turned right out into Vermont avenue, where I lost sight of him. He rode a bay mare; it was a very stout animal, and did not appear to be a very high horse. He did not go very fast until he got to I Street. I must have been within twenty feet of him, but at I Street he got away from me altogether.

I do not know what he struck Mr. Frederick Seward with. It appeared to be round, and to be mounted all over with silver, and was about ten inches long. I had taken it for a knife, but they all said afterward it was a pistol. I saw him raise his hand twice to strike Mr. Frederick, who then fell. I did not wait any longer, but turned round and went down stairs. When he jumped round he just said, "You," and commenced hitting him on the head; but I had hardly missed him from behind me until I heard him say that word.

I never saw this man about the door that I know of, nor did I see any person on the pavement when I came out.

Cross-examined by Mr. DOSTER.

I do not know how old I am; I guess I am between nineteen and twenty. I was at school four or five years. I have been at Mr. Seward's nine months, and am second waiter. The talk with the man was inside; he came in and I closed the door. He had a very fine voice.

I noticed his hair and his pantaloons, and I noticed his boots that night. He talked to Mr. Frederick at least five minutes while up there near his father's door, in the third story. He had on very heavy boots at the time, black pants, light overcoat, and a brown hat. His face was very red at the time he came in; and he had very black, coarse hair.

I saw the same boots on him the night they captured him, and the same black pants.

The first time I saw the prisoner after that night was on the 17th of April. They sent for me about 3 o'clock in the morning to go down to General Augur's head-quarters. A Colonel there, with large whiskers and moustache, [Colonel H. H. Wells,] asked me to describe this man. I told him he had black hair, a thin lip, very fine voice, very tall, and broad across the shoulders, so I took him to be. There were twenty or thirty gentlemen in the room at the time, and he asked me if any gentleman there had hair like him, and I told him there was not. He then said, "I will bring a man in here and show him to you." I was leaning down behind the desk so that I could not be seen. The light then put up, and a good many men walked into the room together. I walked right up to this man, and put my finger right here, [on the lip,] and told him I knew him; that he was the man. Nobody had offered me any money for giving the information, and no threats had been made to me.

When he struck Mr. Frederick Seward, and I ran out, I did not observe any horse; but when I saw him run out of the house, I followed him to I Street; it seems to me he went very slow, because I kept up with him till he got to I Street.

WILLIAM H. BELL.

Recalled for the Prosecution.—May 19.

[By direction of the Judge Advocate the handcuffs were removed from the prisoner Payne, who put on the dark-gray coat, and over it the white and brown mixed coat, and the hat identified by Colonel Wells.]

When he came to Mr. Seward's he had on that coat, and that is the very same hat he had on; one corner of it was bent down over his eye. He had on a white collar, and looked quite nice to what he looks now. He had the same look as he has now, but he looked pretty fiery out of his eyes at me, the same way he looks now.

SERGEANT GEORGE F. ROBINSON.

For the Prosecution.—May 19.

On the 14th of April last I was at the residence of Mr. Seward, Secretary of State, acting as attendant nurse to Mr. Seward, who was confined to his bed by injuries received from having been thrown from his carriage. One of his arms was broken and his jaw fractured.

That man [pointing to the accused, Lewis Payne], looks like the man that came to Mr. Seward's house on that Friday night. I heard a disturbance in the hall, and opened the door to see what the trouble was; and as I opened the door this man stood close up to it. As soon as it was opened, he struck me with a knife in the forehead, knocked me partially down, and pressed by me to the bed of Mr. Seward, and struck him, wounding him. As soon as I could get on my feet, I endeavored to haul him off the bed, and then he turned upon me. In the scuffle, some one [Major Seward] came into the room and clinched him.

Between the two of us we got him to the door, or by the door, and he, unclenching his hands from around my neck, struck me again, this time with his fist, knocking me down, and then broke away from Major Seward and ran down stairs.

I saw him strike Mr. Seward with the same knife with which he cut my forehead. It was a large knife, and he held it with the blade down below his hand. I saw him cut Mr. Seward twice that I am sure of; the first time he struck him on the right cheek, and then he seemed to be cutting around his neck. I did not hear the man say any thing during this time.

I afterward examined the wounds, and found one cutting his face from the right cheek down to the neck, and a cut on his neck, which might have been made by the same blow, as Mr. Seward was partially sitting in bed at the time; and another on the left side of the neck. Those were all I noticed, but there may have been more, as it was all bloody when I saw it. Mr. Seward received all his stabs in bed; but after the man was gone, and I went back to the bed, I found that he had rolled out, and was lying on the floor.

I did not see Mr. Frederick Seward down on the floor; the first I saw of him was after the man was gone; when I came back into the room he was inside the door, standing up. The man went down stairs immediately after he unwound his arm from around my neck, and struck me with his fist. I did not see him encounter Mr. Seward.

After he was gone we picked up a revolver, or parts of one, and his hat.

[A slouch felt hat was exhibited to the witness.]

I should judge that to be the hat; it looks like the one found there.

[A revolver was exhibited to the witness.]

That is the revolver picked up; I did not see this part, [the ramrod, which was disconnected.]

[The hat and revolver were both offered in evidence.]

[At the request of the Court, the guard was directed to place the hat on the head of the prisoner, Payne, to see if it fitted him or not, which was done, Payne smiling pleasantly. It was found to fit him.]

Recalled for the Prosecution.—May 19.

[The accused, Lewis Payne, clad in the coat and vest in which he was arrested, and the hat found at Mr. Seward's, was directed to stand up for recognition.

He looks more natural now than he did before. I am not sure about it, but I think that is the man that came to Secretary Seward's house on the night of the 14th of April, a little after 10 o'clock. The pistol that was picked up in the room after he left was loaded. I examined it.

MAJOR AUGUSTUS H. SEWARD.

For the Prosecution.—May 26.

I am the son of the Hon. William H. Seward, Secretary of State, and was at his home in the city on the night of the 14th of April last. I saw that large man, with no coat on, [pointing to the accused, Lewis Payne,] at my father's house that night.

I retired to bed at half-past 7 on the night of the 14th, with the understanding that I was to be called about 11 o'clock to sit up with my father. I very shortly fell asleep, and so remained until awakened by the screams of my sister, when I jumped out of bed and ran into my father's room in my shirt and drawers. The gas in the room was turned down rather low, and I saw what appeared to me to be two men, one trying to hold the other at the foot of my father's bed. I seized by the clothes on his breast the person who was held, supposing it was my father, delirious; but, immediately on taking hold of him, I knew from his size and strength it was not my father. The thought then struck me that the nurse had become delirious sitting up there, and was striking about the room at random. Knowing the delicate nature of my father, I shoved the person of whom I had hold to the door, with the intention of getting him out of the room. While I was pushing him, he struck me five or six times on the forehead and top of the head, and once on the left hand, with what I supposed to be a bottle or decanter that he had seized from the table. During this time he repeated, in an intense but not strong voice, the words "I'm mad, I'm mad!" On reaching the hall he gave a sudden turn, and sprang away from me, and disappeared down the stairs. When near the door of my father's room, as I was pushing him out, and he came opposite where the light of the hall shone on him, I saw that he as a very large man, dark, straight hair, smooth face, no beard, and I had a view of the expression of his countenance. I then went into my room and got my pistol. It may possibly have taken me a minute, as it was in the bottom of my carpet-bag, to find it. I then ran down to the front door, intending to shoot the person, if he attempted to return. While standing at the door, the servant boy came back and said the man had ridden off on a horse, and that he had attacked the persons in the house with a knife. I then realized for the first time that the man was an assassin, who had entered the house for the purpose of murdering my father.

I suppose it was five minutes before I went back to my father's room. Quite a large crowd came around the door; I sent for the doctors, and got somebody to keep the crowd

off before I went up to his room. It might not have been five minutes, but certainly three, before I got back; I think nearer five.

I was injured pretty badly myself, I found, when I got up stairs again. After my father's wounds were dressed, I suppose about an hour, and after my own head had been bandaged, I went in and saw my father, and found that he had one very large gash on his right cheek, near the neck, besides a cut on his throat on the right-hand side, and one under the left ear. I did not examine my brother's wounds; in fact, I went into his room but for a short time that night. I did not know how badly hurt he was. The next day he was insensible, and so remained; and it was four or five days before I saw what his wounds were. I found then that he had two wounds; one was on the scalp, that was open to the brain, and another one over the ear. After the pieces of the fractured skull were taken out, it left the covering of the brain open. It was such a wound that I should have supposed could have been made with a knife, but the surgeons seemed to think it was made by the hammer of a pistol. I heard that a pistol was picked up in front of the house, but I did not see it. I saw the hat that was found, and think I should recognize it.

[A slouch hat was exhibited to the witness.]

I am quite certain that is the hat. I did not see it the night it was picked up, but the next day it was taken out of the bureau-drawer, where it had been put the night before, and shown to me.

The surgeons think it was a knife with which I was struck, and after the servant boy told me what the man had been doing, I supposed so myself, though at the time I thought I was being struck with a bottle or decanter. Not having any idea that it was a man with a knife, I did not think any thing about it.

I feel entirely satisfied that the prisoner at the bar, Payne, is the same man that made the attack on that night.

Cross-examined by Mr. DOSTER.

This is not the first time I have seen the prisoner since the attack; I saw him on board the monitor the day after he was taken. He was brought up on the deck of the monitor, and I took hold of him the same way I had hold of him when I shoved him out of the room, and I looked at his face, and he had the same appearance, in every way, that he had the few moments that I saw him by the light in the hall; his size, his proportions, smooth face, no beard, and when he was made to repeat the words, "I'm mad! I'm mad!" I recognized the same voice, varying only in the intensity.

SURGEON-GENERAL JOSEPH K. BARNES.

For the Prosecution.—May 19.

I was called on the night of the 14th of April, a few minutes before 11 o'clock, to go to Mr. Seward, the Secretary of State. On arriving at his house, I found the Secretary

wounded in three places; Mr. Frederick W. Seward insensible and very badly wounded in the head; the rest of the family I did not see, as I was occupied with them. The Secretary was wounded by a gash in the right cheek, passing around to the angle of the jaw; by a stab in the right neck, and by a stab in the left side of the neck.

Mr. Frederick Seward was suffering from a fracture of the cranium in two places; he was bleeding very profusely, exceedingly faint, almost pulseless, and unable to articulate. The wounds seem to have been inflicted by some blunt instrument—the butt of a pistol, a loaded bludgeon, or something of that kind.

Mr. Seward, the Secretary of State, had been progressing very favorably. He had recovered from the shock of the accident of ten days previously, and was getting along very well. His right arm was broken close to the shoulder-joint, and his jaw was broken in two places; but the serious injury of the first accident was the concussion.

The wounds of Mr. Seward were of a very dangerous character, and he is still suffering from them.

I saw Major Seward in the room; but I did not treat any of the wounded persons professionally, except Mr. Seward.

DOCTOR T. S. VERDI.

For the Prosecution—May 22.

I am a physician. On Friday night, the 14th of April, about half-past 10 o'clock, perhaps a little sooner, I was summoned to the house of Mr. Seward, the Secretary of State. I saw the Hon. William H. Seward, Mr. Frederick Seward, Major Augustus H. Seward, Mr. Robinson, and Mr. Hansell, all wounded, and their wounds bleeding. I have left Mr. Seward about 9 o'clock that evening, very comfortable, in his room, and when I saw him next he was in his bed, covered with blood, with blood all around him, blood under the bed, and blood on the handles of the doors.

I found Mr. Emrick W. Hansell on the same floor with Mr. Seward, lying on a bed. He said he was wounded. I undressed him, and found a stab over the sixth rib, from the spine obliquely toward the right side. I put my fingers into the wound to see whether it had penetrated the lungs. I found that it had not, but I could my fingers probably two and half inches or three inches deep. Apparently there was no internal bleeding. The wound seemed to be an inch wide, so that the finger could be put in very easily and moved all around. It was bleeding then, very fresh to all appearances; probably it was not fifteen or twenty minutes since the stab had occurred.

Cross-examined by Mr. DOSTER.

Mr. Frederick Seward was conscious, but had great difficulty in articulating. He wanted to say something, but he could not express himself. He knew me perfectly well. He had a smile of recognition on his lips, and as I looked upon his wound on the forehead, he

was evidently impressed with the idea that the severest wound was in the back of the head, and he commenced saying, "It is, it is," and would put his finger to back of his head. I examined the wound, and found that his skull was broken, and I said to him, "You want to know whether your skull is broken or not?" and he said, "Yes." He was sensible for some time; but probably in half an hour went into a sleep, from which he woke in about fifteen or twenty minutes, and we attempted to put him to bed. Then he helped himself considerably. We put him to bed, and he went to sleep, in which he remained for sixty hours; he then improved in appearance, and gradually become more sensible.

I saw terror in the expression of all Mr. Secretary Seward's family, evidently expecting that his wounds were mortal. I examined the wounds, and immediately turned round to the family and said, "I congratulate you all that the wounds are not mortal;" upon which Mr. Seward stretched out his hands and received his family, and there was a mutual congratulation. This was probably twenty minutes before Doctor Barnes arrived.

Mr. Seward had improved very much from his accident, and was not in a critical condition when this attack was made. The effect of the wounds he received on the night of the 14th was principally from loss of blood, which weakened him very much, and made his condition still more delicate and difficult to rally from the shock. The wound itself created more inflammation in the cheek that had been swollen by the injury received before, and rendered the union of the bones more difficult. It is not my opinion that the wounds received by Mr. Seward tended to aid his recovery from his former accident; that idea got afloat from the fact that the cheek was very much inflated and swollen, and that by cutting into it, it would probably recover faster; but I never entertained and never expressed such an opinion.

ROBERT NELSON (colored.)

For the Prosecution.—May 20.

I live in Washington; I used to live in Virginia.

[A knife shown to the witness.]

That looks like the knife I found opposite Secretary Seward's house, on the Saturday morning after he was stabbed. I gave it to an officer at the door first, and afterward to that gentleman, [pointing to Surgeon John Wilson, U.S.A.].

Cross-examined by Mr. DOSTER.

I do not say that it is the same knife, but it looks like the one I found in the middle of the street, right in front of Secretary Seward's house, between 5 and 6 o'clock in the morning.

DR. JOHN WILSON.
For the Prosecution.—May 20.

[The knife shown to Robert Nelson was exhibited to the witness.]

This is the knife I received from the colored boy who has just left the stand. He gave it to me in the library of Mr. Seward's house, about 10 o'clock on Saturday morning, the 15th of April.

THOMAS PRICE.
For the Prosecution.—May 19.

On Sunday afternoon, the 16th of April, I picked up a coat in a piece of woods that lies between Fort Bunker Hill and Fort Saratoga.

[Two coats were here submitted to the witness.]

This is the coat. It is a white and brown mixed cloth. I discovered traces of blood on the sleeve; that is how I recognize it. I found it about three miles from the city, in the direction of the Eastern Branch.

There is a road from one fort to another, and the coat was found in the piece of woods on the eastern side of the road.

COLONEL H. H. WELLS.
For the Prosecution—May 19.

I had the prisoner, Payne, in my custody on the 17th of April, the night of his arrest. He had on a dark-gray coat, a pair of black pants, and something that looked like a skull-cap.

I took off his coat, shirt, pants, vest, and all his clothing the next day on board the monitor. He had on a white linen shirt and a woolen under-shirt, minus one sleeve; a pair of boots with a broad ink-stain on them on the inside.

[A box containing various articles of clothing was exhibited to the witness.]

These are the articles. There is a distinct mark on them by which I recognize them. I described to the prisoner at the time what I supposed as his position when he committed the assault, and told him I should find blood on the coat-sleeve in the inside. Spots of blood were found in the position I described.

[The witness exhibited the spots referred to.]

I found spots, also, on the white shirt-sleeve. I called Payne's attention to this at the time, and said, "What do you think now?" He leaned back against the side of the boat and said nothing.

[The articles were offered in evidence.]

I asked him where he had got his boots. He said he bought them in Baltimore, and had worn them three months. I called his attention to this falsehood, as it was apparent the boots had only been slightly worn. He made no reply to that.

I took the boots away with me, and sent one of them to the Treasury Department, to ascertain, if possible, what the name was.

Cross-examined by Mr. DOSTER.

I did not threaten the prisoner at any time. I think it is very possible I called him a liar. I saw stains of blood on the coat that was brought to me from Fort Bunker Hill. I called the prisoner's attention to the fact, and said, "How did that blood come there?" He replied, "It is not blood." I said, "Look and see, and say, if you can, that it is not blood." He looked at it and said, "I do not know how it came there."

CHARLES H. ROSCH.
For the Prosecution.—May 19.

I was present when the prisoner, Payne, was searched.

[A bundle of articles, including a pair of boots and a pocket-compass, was handed to the witness.]

All these articles were taken from the person of that big man there, [pointing to the accused, Lewis Payne.]

The pocket-compass he himself handed to Mr. Sampson, and Mr. Sampson handed it to me. I recognize the boots; they were pulled off in my presence.

SPENCER M. CLARK.
For the Prosecution.—May 19.

[Submitting to the witness a pair of boots.]

I had one of these boots yesterday for examination. I then discovered the name, which has now mostly disappeared under the effect of the acid I had put upon it.

When I received the boot, it had on the inside a black mark, made apparently to cover writing. I examined it with a microscope, and found that it was one coat of ink overlaid

on another. I then attempted to take off the outer coat to see what was below, and partially succeeded. The name appeared to me to be J. W. Booth. The J and W were distinct; the rest of the writing was obscure. I can not speak positively of a think that is in itself obscure, but it left very little doubt upon my mind that the name was Booth.

Cross-examined by Mr. DOSTER.

I have charge of the engraving and printing in the Treasury Department. I took off the outer coat of ink by the use of oxalic acid. Where the lower coat of ink has remained exposed to the air longer than the upper coat, it is possible to take off the upper and leave the lower or inner coat undisturbed. The reason the latter part of the name in this case was more obscure than the first, is because I left the acid too long on the outer coat, and it attacked the lower one. The upper coat is separated from the lower by washing with water as fast as it is dissolved. The acid is put on under a magnifier, and the moment the outer coat disappears, and the under one begins to show, I destroy the acid. An examination at the moment the outer coat dissolves and is washed away, shows the lower coat of writing. I supposed the lower coat had been exposed to the air longer than the outer, and made an effort to test it, which proved that it was so.

The boot was given to me by Mr. Field, Second Assistant Secretary of the Treasury, who told me it had belonged to Payne. I expected to find the name of Payne, but I thought I plainly discovered the "th" at the end, when the name *Booth* came to my mind. That was before I had clearly determined upon the B. I should hesitate to swear positively to any thing so obscure as an obliterated signature, but I entertain very little doubt that the name is J. W. Booth. There is no process, that I am aware of, to restore the name. The writing can not be said to be erased; it has been acted upon by the acid which destroys the color of the ink.

EDWARD JORDAN.

For the Prosecution.—May 19.

I am a solicitor of the Treasury. I was requested to look at the ink-marks on that boot after it had been subjected to chemical preparations by Mr. Clark. By examining the writing through a glass, I came to the conclusion that the name written there was "J. W. Booth."

Cross-examined by Mr. DOSTER.

I did not know to whom the boot belonged, or where it came from; and I had no suspicion why it was in Mr. Clark's possession. I was accidentally passing the room of the Assistant Secretary of the Treasury, when Mr. Clark said, "I have something curious to show you, I wish you would look at it," or words to that effect. The first letter, "J," was very distinct; the W and B were less so. I thought the outline of the writing was quite visible and determinable, but to say that it was distinct would not be true. I was asked what I thought the name was. My reply was, I thought it was the name of a very distinguished individual.

By the JUDGE ADVOCATE.

I arrived at the conclusion that it was name of J. W. Booth before I had received any intimation as to what it was supposed to be.

STEPHEN MARSH.

For the Prosecution.—May 19.

That boot was shown to me by Mr. Field, Assistant Secretary of the Treasury, yesterday. On examining it, I thought I could make out certain letters on it. At first I could make out "J. W. B—h," then I thought I could trace a *t* next to the *h*; thus: J. W. B—th. I could not be positive as to the intervening letters; I examined them only with the naked eye, but in regard to the letters I have mentioned, I have no doubt at all. In the intervening space, between the *B* and *th*, there was room for two or three letters.

Cross-examined by Mr. DOSTER.

The boot was handed to me by Mr. Field in his room. I was told to examine it, and see if I could make out what name appeared to be written there. I did so, and the result I have stated.

LIEUTENANT JOHN F. TOFFEY.

For the Prosecution.—May 17.

On the night of the 14th or the morning of the 15th of April last, it might have been a little after 1, as I was going to the Lincoln Hospital, where I am on duty, I saw a dark-bay horse, with saddle and bridle on, standing at Lincoln Branch Barracks, about three-quarters of a mile east of the Capitol. The sweat was pouring off of him, and had made a regular puddle on the ground. A sentinel at the hospital had stopped the horse. I put a guard round it and kept it there until the cavalry picket was thrown out, when I reported the fact at the office of the picket, and was requested to take the horse down to the head-quarters of the picket, at the Old Capitol Prison. I there reported having the horse to Captain Lord, and he requested me to take it to General Augur's head-quarters. Captain Lansing of the Thirteenth New York Cavalry and myself took it there, where the saddle was taken off, and the horse taken charge of.

[A saddle was shown to the witness.]

I should think that was the saddle; I know the stirrups. When I got to General Augur's head-quarters, I found that the horse was blind of one eye. Whether he had fallen or not I do not know, but as I rode him down I noticed that he was a little lame.

From the Lincoln Hospital to the Navy Yard Bridge is fully a mile.

[The saddle was put in evidence.]

Cross-examined by Mr. DOSTER.

The horse was on a sort of by-road that leads to Camp Barry; it turns north from the Branch Barracks toward Camp Barry to the Bladensburg road. I found him by the dispensary to the hospital. He had come running there, but from what direction I do not know.

Recalled.—May 18.

I have been to General Augur's stables on Seventeenth and I Streets, and there recognized the horse I found.

See also testimony of

Louis J. Weichmann	pages 113, 118
Miss Anna E. Surratt	page 130
Miss Honora Fitzpatrick	page 132
John T. Holahan	page 139
Mrs. Eliza Holahan	page 132
Major H. W. Smith	page 121
Capt. W. M.	page 123
Wermerskirch	
R. C. Morgan	page 122

DEFENSE OF LEWIS PAYNE

MISS MARGARET BRANSON.

For the Defense.—June 2.

I live at No. 16 North Eutaw Street, Baltimore. I first met the prisoner, Payne, at Gettysburg, immediately after the battle there. I was a volunteer nurse, and he was in my ward. He was very kind to the sick and wounded. I do not know that he was a nurse, nor do I know that he was a soldier. As nearly as I could remember, he wore blue pants, no coat, and a dark slouch hat. He went there by the name of Powell, and by the name of Doctor. The hospital contained both Confederate and Union soldiers. I was there about six weeks, and left the first week in September. I do not remember whether Powell was there the whole of that time.

I saw him again some time that fall or winter, at my mother's house. He was there but a very short time; only a few hours, and I had very little conversation with him.

Q. Did he say to you where he was going?

Assistant Judge Advocate BINGHAM. The witness need not state; what he said to her is altogether incompetent evidence.

Mr. DOSTER. May it please the Court, I intend to set up the plea of insanity, as I have already stated, in the case of the prisoner, Payne. It is very true that, under all other pleas, declarations of this kind are not considered competent evidence for the defense, but the declaration of a person suspected of insanity is an act, and therefore admissible.

Assistant Judge Advocate BINGHAM. That is all very true; but the proper way to get at it is to lay some foundation for introducing the declarations in support of the allegation that the party was insane. In this case no foundation has been laid.

Mr. DOSTER. I claim that the whole conduct of the alleged murderer, from beginning to end, is the work of an insane man, and that any further declarations I may prove, are merely in support of that theory and of that foundation as laid by the prosecution.

Assistant Judge Advocate BINGHAM. According to that, the more atrocious a man's conduct is, the more he is to be permitted to make a case for himself by all his wild declarations, of every sort and to everybody, at every time and at every place. If he only manages to get a knife large enough to sever the head of an ox as well as the head of a man, rushes past all the friends of a sick man into his chamber, stabs him first on one side of the throat and then on the other, and slashes him across the face, breaks the skull of his son, who tries to rescue him, yelps, "I am mad! I am mad!" and rushes to the door and mounts a horse which he was careful to have tied there, he may thereupon prove all his declarations in his own defense, to show that he was not there at all.

Mr. DOSTER. It is claimed here that there is no foundation laid for the plea of insanity. In the first place, all the circumstances connected with the assassination show the work of insane men. The entrance into the house of Mr. Seward was by a stratagem which is peculiarly indicative of insane men. Then the conduct of Payne, after he entered the house, without the slightest particle of disguise, speaking to the negro for five minutes—a person that he must know would be able to recognize him thereafter; the ferocity of the crime, which is not indicative of human nature in its sane state; his leaving all the traces which men usually close up behind him. Instead of taking away his pistol and his knife and his hat, he walks leisurely out of the room, having plenty of time to take these away, and abandons them; he takes his knife and deliberately throws it down in front of Mr. Seward's door, as though anxious to be detected; and then, instead of riding off quickly, as a sane man would under the circumstances, he moves off so slowly that the negro tells you he followed him for a whole square on a walk; and afterward, instead of escaping either to the north, on the side where there were no pickets at the time, (for it was shown he had a sound horse,) or instead of escaping over the river, as he had ample opportunity of doing—because if he could not get across the Anacostia Bridge, he might have swam the river at any point—he wanders off into the woods, and finally comes back to the very house which, if he had any sense, he knew must be exactly the house where he would be arrested—where there were guards at the time, and where he must have known, if he had

been sane, that he would immediately walk into the arms of the military authorities. He goes to this house in a crazy disguise; because who in the world ever heard of a man disguising himself by using a piece of his drawers as a hat, supposing that a sane man would not discover the disguise. Finally, there is the conduct of this person since he has been here on trial—the extraordinary stolidity of this man, as opposed to the rest of the prisoners; instead of showing the slightest feeling, he has displayed an indifference throughout this trial. You yourselves noticed that at the time of that solemn scene, when the negro identified him he stood here and laughed at the moment when his life was trembling in the balance. I ask you, is that the conduct of a sane man? There are, besides, some physical reasons which go hand in hand with insanity, and corroborate it, of a character more delicate, and which I can not mention now, but which I am prepared to prove before the Court at any time. I say that the most probable case of insanity that can be made out has been made out by the prosecution, in the conduct of this prisoner before the assassination, during the assassination, at the time of his arrest, and during the trial.

Mr. CLAMPITT. May it please the Court, I do not rise for the purpose of denying to the counsel for the accused, Payne the right to set up the plea of insanity, or any other plea that he thinks proper; but I do rise for the purpose of indignantly proclaiming that he has no right to bring before this Court the house of Mrs. Surratt as a rendezvous to which Payne would naturally resort. There is no evidence which has shown that he would naturally go to her house for the purpose of hiding or for the purpose of screening himself from justice.

The Commission sustained the objection of the Judge Advocate.

WITNESS. I do not know where he went to from my mother's. In January of this year, he came again to our house. He was dressed then in citizen's dress of black, and represented himself to be a refugee from Farquier County, Va, and gave his name as Payne. He took a room at my mother's house, staid there six weeks and a few days, and left in the beginning of March. He never, to my knowledge, saw any company while there. I never saw J. Wilkes Booth, and do not know he ever called upon Payne.

MARGARET KAIGHN.
For the Defense.—June 2.

I am servant at Mrs. Branson's. I have seen the prisoner, Payne, at Mrs. Branson's boarding-house; he came there last January or February, and remained till the middle of March. I remember he asked a negro servant to clean up his room, and she gave him some impudence, and said she would not do it. She called him some names, and then he struck her; he threw her on the ground and stamped on her body, struck her on the forehead, and said he would kill her; and the girl afterward went to have him arrested.

DR. CHARLES H. NICHOLS.
For the Defense.—June 2.

By Mr. DOSTER.

- Q.* Have I at any time given you any indication of the answers I expected you to give before this Court?
- A.* You have not.
- Q.* State what your official position is, and your profession.
- A.* I am a doctor of medicine and superintendent of the Government Hospital for the Insane, which position I have occupied for thirteen years.
- Q.* What class of persons do you treat in your hospital?
- A.* Insane persons exclusively. The bulk of the patients I treat are composed of sailors and soldiers.
- Q.* Please define moral insanity.
- A.* When the moral or affective faculties seem to be exclusively affected by the disease of the brain, I call that a case of moral insanity.
- Q.* What are some of the principal leading causes that produce moral insanity.
- A.* My impression is that insanity is oftener caused by physical disease than moral causes, and that the fact that insanity takes the form of moral insanity is apt to depend on the character of the individual before he becomes deranged.
- Q.* Is active service in the field, among soldiers, at any time, a cause of moral insanity?
- A.* It is; but not a frequent cause. I have known cases of moral insanity [to] occur among soldiers.

Q. Has or has not insanity increased very much in the country, and in your hospital, during the present war?

A. It has.

Q. Has it not increased much more, proportionately, than the increase in the army?

A. It has.

Q. How is the increase accounted for?

A. By the diseases, hardships, and fatigues of a soldier's life, I think, to which the men were not accustomed until they entered the service.

Q. Are young men who enlist more exposed to insanity than men who enlist in middle life?

A. I am not sure that they are. My impression is, that young men accommodate themselves to a change in their manner of life rather more readily than men of middle age.

Q. What are some of the leading symptoms of moral insanity?

A. The cases are as diverse as the individuals affected. If a man, for example, believes an act to be right which he did not believe to be right when in health, and which people generally do not believe to be right, I regard that as a symptom of moral insanity.

Q. Is depression of the spirits at any time considered a symptom of insanity?

A. It is.

Q. Is great taciturnity considered a symptom?

A. It is a frequent symptom of insanity, but I can conceive that great taciturnity might exist without insanity.

Q. Is a disposition to commit suicide and an indifference to life considered a symptom?

A. It is.

Q. Is great cunning and subtlety in making plans concomitant of insanity?

A. The insane frequently exhibit extraordinary cunning in their plans to effect an object.

Q. Is it or is it not possible for a madman to confederate with other madmen or sane men in his plans?

A. I would say that it is not impossible, but it is infrequent for madmen to confederate in effecting their plans.

Q. Do madmen never confederate in their plans?

A. Very seldom.

Q. Is or is not a morbid propensity to destroy, proof of insanity?

A. Not a proof, but it is a very common attendant upon insanity.

Q. Is it not a symptom of insanity if one, apparently sane, and without provocation or cause, commits a crime?

A. I should regard it as giving rise to a suspicion of insanity, but not of itself a proof of it.

Q. Is not all conduct that differs from the usual modes of the world proof of insanity?

A. I will answer that by saying that no single condition is a proof of insanity in every instance, but that an entire departure from the usual conduct of man would be considered as affording strong ground to suspect the existence of insanity.

Q. Are madmen not remarkable for great cruelty?

A. My impression is that madmen exhibit about the same disposition in that respect that men generally do.

Q. Do or do not madmen, in committing crimes, seem to act without pity?

A. Those are commit criminal acts frequently do.

Q. If one should try to murder a sick man in his bed, without ever having seen him before, would it not be presumptive proof of insanity?

A. It would give rise, in my mind, to the suspicion that a man was insane. I should not regard it as proof.

Q. If the same person should besides try to murder four other persons in the house without having seen them before, would it not strengthen that suspicion of insanity?

A. I think it would.

- Q.* If the same person should make no attempt to disguise himself, but should converse for five minutes with a negro servant, walk away leisurely, leave his hat and pistol behind, throw away his knife before the door, and ride away so slowly that he could be followed for a square by a man on foot, would not such conduct further corroborate the suspicion of insanity?
- A.* I think it would. It is a peculiarity of the insane, when they commit criminal acts, that they make little or no attempt to conceal them; but that is not always the case.
- Q.* If the same person should cry out, while stabbing one of the attendants, "I am mad, I am mad," would it not be further ground for suspicion that he was insane?
- A.* Such an exclamation would give rise, in my mind, to an impression that the man was feigning insanity. Insane men rarely make such an exclamation, or a similar one, and they rarely excuse themselves for a criminal act on the ground that they are insane.
- Q.* Do not madmen sometimes unconsciously state that they are mad?
- A.* They do sometimes, but it is not frequent that they do.
- Q.* Do you not remember cases in your experience where madmen have told you they were mad?
- A.* They frequently do it in this way: An individual knows that he is regarded as insane, and if taken to task for any improper act, a shrewd man will excuse himself on the ground that he is an insane man, and therefore not responsible.
- Q.* If the same person that I have mentioned should, although in the possession of a sound horse, make no effort to escape, but should abandon his horse, wander off into the woods, and come back to a house surrounded with soldiers, would that not be additional ground for the suspicion that he was insane?
- A.* I should regard every act of man who had committed crime, indicating that he was indifferent to the consequences, as a ground for suspecting that he was insane.
- Q.* If the same person should return to this house I have spoken of, with a piece of his drawers for his hat, at a time when he saw the soldiers in its possession, would not that be additional proof of insanity?
- A.* I can hardly see what bearing that would have upon the question of insanity.
- Q.* I understood you to say before that madmen seldom disguise themselves. The disguise in question consisted of a piece of drawers being used as a hat. I ask whether that disguise may properly be presumed to be the disguise of a sane or an insane man?

- A.* It would depend upon the circumstances. It is a common peculiarity of insane men, that they dress themselves in a fantastic manner; for example, make head-dresses out of pieces of old garments. They do it, however apparently from a childish fancy for something that is fantastic and attracts attention; and I do not recollect a case of an insane person dressing himself in a garment or garments of that kind for the sake of disguising himself.
- Q.* If this same person, after his arrest, should express a strong desire to be hanged, and express great indifference of life, would that be additional ground for suspicion of insanity?
- A.* I think it would.
- Q.* Would it be further ground for suspicion if he seemed totally indifferent to the conduct of his trial, laughed when he was identified, and betrayed a stolidity of manner different from his associates?
- A.* I think it would.
- Q.* Please state to the Court what physical sickness generally accompanies insanity, if any there is.
- A.* I believe that disease, either functional or organic, of the brain, always accompanies insanity. No other physical disease necessarily, or perhaps usually, accompanies it.
- Q.* Is long-continued constipation one of the physical conditions that accompany insanity?
- A.* Long-continued constipation frequently precedes insanity. Constipation is not very frequent among the actual insane.
- Q.* If this same person that I have described to you, had been suffering from constipation for four weeks, would that be considered additional ground for believing in his insanity?
- A.* I think it would. I think some weight might be given to that circumstance.
- Q.* If the same person, during his trial and during his confinement, never spoke until spoken to, at a time when all his companions were peevish and clamorous; if he never expressed a want when all the rest expressed many; remained in the same spirits when the rest were depressed; retained the same expression of indifference when the rest were nervous and anxious, and continued immovable, except a certain wildness in his eyes, would it not be considered additional ground for believing in his insanity?
- A.* I think it would.

- Q.* If this same person, after committing the crime, should, on being questioned as to the cause, say he remembered nothing distinctly, but only a struggle with persons whom he had no desire whatever to kill, would not that be additional ground for suspicion of insanity?
- A.* I think it would.
- Q.* What are the qualities of mind and person needed by a keeper to secure control over a madman?
- A.* Self-control.
- Q.* Are not madmen easily managed by persons of strong will and resolute character?
- A.* Yes, sir; they are.
- Q.* Are there not instances on record of madmen who toward others were wild, while toward their keepers, or certain persons whom they held to be superiors, they were docile and obedient, in the manner of dogs toward their masters?
- A.* I think the servile obedience which a dog exhibits to his master is rarely exhibited by the insane. It is true, that the insane are comparatively mild and obedient to certain persons, when they are more or less turbulent and violent toward other persons.
- Q.* Would it not be possible for such a keeper, exercising supreme control over a madman, to direct him to the commission of a crime, and secure that commission?
- A.* I should say that would be very difficult, unless it was done in the course of a few minutes after the plan was laid and the direction given. I should say, generally, it would be very difficult.
- Q.* Is not the influence of some persons over madmen so great that their will seems to take the place of the will of the madman?
- A.* There is a great difference in the control that different individuals have over insane persons, but I think it an error that control reaches the extent you have described, or the extent, I may add, that is popularly supposed.
- Q.* Do you or not recognize a distinction between mania and delusion?
- A.* A certain distinction, inasmuch as delusion may accompany any form and every form of insanity, and mania is the name given to a particular form, which may or may not be accompanied by delusion.

Q. Are not instances of insane delusion more frequent during civil war than any other kind of insanity?

A. My impression is, that cases in which delusions are entertained are not as frequent. Insanity is of a more general character—so far as my experience goes, has been during the war, among soldiers—than it usually is.

Q. Does or does not constant dwelling on the same subject lead to an insane delusion?

A. It frequently does, I think.

Q. If a body of men, for instance, who owned slaves, were constantly hearing speeches and sermons vindicating the divine right of slavery, burned men at the stake for attempting to abolish slavery, and finally took up arms to defend slavery, when no man was really attacking it, would not that be evidence that some of these men were actually deluded?

A. I think it would; but it does not follow that the delusion is what technically denominates an insane delusion, arising from disease of the brain, and for which a man is not responsible.

Q. If one of those same men who owned slaves, and believed in the divine origin of slavery, and had fought in its defense, and believed that he had also fought in defense of his home and friends, should attempt, on his own motion, to kill the leaders of the people, who he believed were killing his friends, would not that conduct be esteemed a fanatical delusion?

Assistant Judge Advocate BURNETT. Unless Mr. Doster can give us some idea when this species of examination will be brought to a close, we must here interpose objection. It certainly has nothing whatever to do with the case. He is imagining facts that do not exist, and he is examining upon a basis that he has not laid, and it is certainly irrelevant and foreign to the issue. Will Mr. Doster state if he is nearly through with his examination?

Mr. DOSTER. The course of examination that I propose is not a great deal longer. I mentioned the other day that it is impossible for me to secure the attendance of witnesses from Florida. Regularly, I ought not to have called Dr. Nichols before these witnesses had been here and had been examined. I have been unwilling to detain Dr. Nichols here, and have endeavored to go over the whole ground with him, so that I need not call him twice, as I would have to do if I were to call these witnesses from Florida first.

WITNESS. If I may be allowed, I would like to give an explanatory answer. I have given just a categorical one to all the questions that have been asked me, I believe; I am, personally, and as an expert, very much opposed to giving an opinion in respect to hypothetical cases, for the simple and best of reasons, as I conceive that I have none, and I could give no definite opinion upon the facts implied in the questions submitted to me.

Every case of insanity is a case of itself, and has to be studied with all the light that can be thrown upon it, and it is impossible for me to give an opinion upon a hypothetical case.

DR. JAMES C. HALL.
For the Defense.—June 13.

This morning I spent three-quarters of an hour in an examination of the prisoner, Lewis Payne. I first examined him with regard to his physical condition. His eye appeared to be perfectly natural, except that it appeared to have very little intellectual expression; but it was capable of showing a great deal of passion and feeling. I discovered a remarkable want of symmetry in the two sides of his head. The left side is much more developed than the right. His pulse I counted twice carefully; I found it to be a hundred and eight, which is about thirty strokes above a natural healthy pulse. In other respects his health seemed to be good, with the exception of another habit, which I believe, the Court is informed of—namely, constipation. His general muscular development is perfectly healthy.

I questioned him first to test his memory. I found that it acted very slowly. He appeared to answer my questions willingly, but his mind appeared to be very inert, and it took some time before he would give me an answer to a very simple question, though he did not seem to be at all reluctant in giving me the information I was seeking for. His intellect appears to be of a very low order; and yet I could not discover that there was any sign of insanity. His mind is naturally dull and feeble, and, I presume, has not been cultivated by education.

I asked him certain questions which I thought would draw out his moral nature and feelings, and the conclusion to which I came was, that he would perform acts, and think himself justified in so doing, which a man of better moral nature and of a better mind would condemn.

Q. Did you or not state the case to him of a person committing the crime with which he is charged, and ask his opinion in reference to the moral right to commit it?

A. I did. I mentioned it as a supposed case, and he said he thought a person in performing such an act as I described would be justified. "I wish you would give me some reason," I said, "why you think he would be justified; why you think an act which I think wrong, and which everybody else thinks wrong, could be justified." His answer amounted to this, that he thought in *war* a person was entitled to take life. That was the reason he assigned why he thought such an act could be justified.

I should say that, from the whole examination, there was reasonable ground for suspicion of insanity. It seems to me that no man could, if he were perfectly sane, exhibit the utter insensibility that he does and did in my presence. I do not think there was any attempt at deception. He answered the questions, so far as his mind would permit him, plainly and clearly, without any attempt at deceiving me or misleading me. I can not give a positive

opinion that he is laboring under either moral or mental insanity. To decide on a case of this kind, one ought to see the person at various times and under various circumstances. I never saw this man before.

Cross-examined by the JUDGE ADVOCATE.

I can not discover any positive signs of mental insanity, but of a very feeble, inert mind; a deficiency of mind rather than a derangement of it; a very low order of intellect. His memory appears to be very slow in acting.

Q. Did he or not seem to have a distinct recollection of his crime, and also of the motives and course of reasoning—

Mr. DOSTER. I object to that question.

WITNESS. I did not refer to it as the crime committed by himself. I asked him what he would think of a man who committed a crime such as he was charged with, and he said he thought he would be right in doing it. I carefully avoided applying the act or crime to himself, personally; I merely spoke of it as a supposititious case. I did not think it would be right for me to receive any confession from him, and I rather avoided extorting it. I by no means regard atrocious crime as *per se* evidence of insanity.

Q. Do you regard insensibility under crime or indifference to the results of crime as indicating insanity?

A. Where a man commits crime habitually and without any adequate motive or provocation, I should be disposed then to suspect insanity. If there is an absence of motive and an absence of provocation, and if it is done habitually, these are the conditions. A single act I should be very reluctant to form an opinion upon.

Q. If a man, engaged in arms as a rebel against the Government of his country, is found assassinating its Chief Magistrate and the members of its Cabinet, would you or not regard these circumstances as indicating sufficiently the presence of motive to save him from the imputation of insanity?

A. Yes, he might have a motive. I can readily conceive that a man might think he had a sufficient motive and a sufficient justification for it.

Q. Do I or not understand you to say, Doctor, that, from the whole examination you have made, you regard the prisoner, Payne, as sufficiently sane to be a responsible being for his acts?

A. I have not altogether made up my mind on that. I do not think that the single examination which I have made would suffice to decide the question. I think there is enough to allow us a suspicion that he may not be a perfectly sane and responsible

man. I can give no positive opinion on that point. His intellect is very feeble and inert.

Q. The extent, then, to which you go, is that there is ground for suspicions? You do not express any such opinion?

A. I do not express a positive opinion that he is either morally or mentally insane, but that there is sufficient ground, both from his physical condition and his mental development, for a suspicion of insanity.

Q. Do you rest that suspicion largely on his course of reasoning, and the conclusion he drew from the case which you supposed?

A. Yes, sir; I should think that was the result either of insanity or very badly cultivated mind, and very bad morals.

Q. Might it not be wholly the result of very bad morals?

A. It might entirely. I attach some importance to his physical condition. It is generally known that persons who are insane, habitually, with few exceptions, have an unusual frequency of pulse. His pulse is thirty odd strokes above the normal standard.

Q. He was aware of the purpose for which you had your interview with him, was he not?

A. I introduced myself by telling him that I was a physician, and that the Court had directed me to examine his condition, and I referred to some matters connected with his health.

Q. Did he seem to be under any excitement?

A. Not the least. He was perfectly calm, and at times smiled. He did not seem to be playing a part at all. He appeared to answer the questions honestly and truthfully, so far as I could judge; but his memory is very slow, and it is very difficult to get from him an answer to a very simple question. I asked him in regard to his birth and his residence. He could not remember the maiden name of his mother. He said her first name was Caroline, but he could not remember her maiden name.

But I have known sane persons who forgot their own names. The celebrated John Law, of this city, would go to the post-office and be unable to call for a letter in his own name.

JOHN B. HUBBARD.
For the Defense.—June 3.

By Mr. DOSTER.

I am at times in charge of the prisoner, Lewis Payne, and have at times had conversation with him.

Q. Please state the substance of that conversation.

Assistant Judge Advocate BINGHAM. That I object to.

The JUDGE ADVOCATE. Is this conversation offered as a confession, or as evidence of insanity?

Mr. DOSTER. As evidence of insanity. I believe it is a settled principle of law that all declarations are admissible under the plea of insanity.

Assistant Judge Advocate BINGHAM. There is no such principle of the law, that all declarations are admissible on the part of the accused for any purpose. I object to the introduction of the declarations of the prisoner, made on his own motion.

The JUDGE ADVOCATE. If the Court please, as a confession, of course, this declaration is not at all competent, but if it is relied upon as indicating an insane condition of mind, I think it would be better for the Court to consider it. We shall be careful, however, to exclude from its consideration these statements so far as the question of the guilt or innocence of the particular crime is concerned, and to admit them only so far as they may aid in solving the question of insanity raised by the counsel.

WITNESS. I was taking him out of the court-room, about the third or fourth day of the trial, and he said he wished they would make haste and hang him; that he was tired of life, and would rather be hung than come back here in the court-room. And about a week ago he spoke to me about his constipation; he said he had been constipated ever since he had been here. I have no personal knowledge of the truth of this.

Cross-examined by the JUDGE ADVOCATE.

I communicated this statement to Colonel Dodd or Colonel McCall, and I believe to General Hartranft, and to no one else.

JOHN E. ROBERTS.
For the Defense.—June 3.

By Mr. DOSTER.

I am on duty around the prison, but have no special charge of the prisoner, Lewis Payne, more than the others. I have had a little conversation with him. After the coat and hat were taken off him, on the day that Major Seward was examined, I had to put his irons back on him, and he told me then that they were tracking him pretty close, and that he wanted to die.

COLONEL W. H. H. McCALL.
For the Defense.—June 3.

By Mr. DOSTER.

I have charge of the prisoner, Payne, in connection with Colonel Frederick and Colonel Dodd; we have eight hours' duty out of the twenty-four. My duty makes me cognizant of the conduct of the prisoner in his cell, and to the best of my knowledge he has been constipated from the 29th of April until last evening; that was his first passage. I never had any conversation with him on the subject of his death.

MRS. LUCY ANN GRANT.
For the Defense.—June 12.

By Mr. DOSTER.

Mr. DOSTER. I am about to call two witnesses, and to prevent any objections being made, I will state that the reason for calling them is to show that the prisoner, Payne, three months before the alleged attempted assassination of Mr. Seward, save the lives of two Union soldiers. It is the very essence of insanity that one violates the "even tenor" of his previous life; and therefore, if I can show that three months before the alleged attempted assassination this person exercised a degree of honor and benevolence, which he afterward violated and turned into ferocity and malignity, it will give a high degree of probability to the plea, and his subsequent conduct can only be explained by his being under the control of fury and madness.

WITNESS. I live on the Waterloo Pike, Warrenton, Virginia. I recollect having seen one of the prisoners before; that one with the gray shirt, [pointing to the accused, Lewis Payne.] I saw him some time about Christmas in the road in front of our house; he was in charge of three Union prisoners. It was at the time of General Torbett's raid; after he had passed through Warrenton, on his return to Washington. Some men—rebel soldiers, I suppose, from their uniform—were going to kill these prisoners, and I remember seeing

this man try to prevent it. He told them that he could not defend all, but if they killed or captured the one he had in charge, they would do it at the peril of their lives. They left the road then, and I do not know what became of them afterward, but I know one of the prisoners was killed, for a Confederate soldier wanted to bring him into my house, and I was scared nearly to death.

Cross-examined by the JUDGE ADVOCATE.

I never saw the man before or since; but he is the same man, I am certain. I should know him anywhere. He was dressed in a dark gray uniform, and some of the men called him "Lieutenant." I understood from a citizen to whom I was speaking about him trying to save those Union prisoners that his name was Powell.

JOHN GRANT.

For the Defense.—June 12.

By Mr. DOSTER.

I am the husband of Mrs. Grant, who has just left the stand. I was about three hundred yards from my home, when the affray began in front of my house, on the first of last January. I rushed home as quickly as I could, when the pistol firing commenced; and I saw that that man [Payne,] whose name I understood was Powell, saved the lives of two Union soldiers.

TESTIMONY IN REBUTTAL

SURGEON-GENERAL J. K. BARNES.

For the Prosecution.—June 14.

In association with Dr. Hall and Surgeon Norris, I have made an examination this morning of the prisoner, Payne, and find no evidence of insanity—none whatever.

The evidences of sanity which struck me as present in his case are his narrative of himself, of the places he has been at, of his occupation, the coherence of his story, and, the most important evidence, his reiteration of his statements of yesterday and of his first examination this morning. That is considered a very severe test. It is called the Shakspearian test, and is one of the severest.

Cross-examined by Mr. DOSTER.

I should consider the Shakspearian test a test for both moral and mental sanity.

I have not of late years had a large experience in cases of insanity; but some years ago I was in charge of the insane wards of a large hospital.

I was present when the prisoner answered Dr. Hall's question as to his moral responsibility for this crime, and heard him say that, under certain circumstances, he considered such a crime justifiable.

DR. JAMES C. HALL.
Recalled for the Prosecution.—June 14.

This morning, in connection with Dr. Norris and Dr. Porter, we had an examination of the prisoner, Lewis Payne, and since the recess of the Commission, Dr. Barnes, the Surgeon-General, joined us, and we examined him again.

I asked very nearly the same questions I proposed to him yesterday, for the purpose of seeing whether he would give me answers consistent with those which I then received, and I found that they were very accurately the same, and he answered to-day with rather more promptness than yesterday.

I think I am now prepared to say that there is no evidence of mental insanity. Payne's mind is weak and uncultivated, but I can not discover any sufficient evidence of mental insanity.

Cross-examined by Mr. DOSTER.

- Q.* What are you prepared to state as to his moral insanity?
- A.* We asked him the question to-day whether he believed in a God. He said he did, and that he believed he was a just God. He also acknowledged to me that at one time he had been a member of the Baptist Church. I asked him the question, which I believe I repeated to the Court yesterday, whether he thought that private assassination, practiced upon an enemy in public war, was justifiable. After some little hesitation, he said that he believed it was.
- Q.* Is it or not esteemed an evidence of a fanatical delusion that a person believes to be right what everybody else believes to be wrong?
- A.* In some instances it would; but I can readily conceive that there are persons whose minds and morals are such that they would believe a crime similar to that which he has committed to be justifiable and proper, even a duty.

DR. BASIL NORRIS.
For the Prosecution.—June 14.

I am a surgeon in the regular army. This morning, in association with the Surgeon-General of the army and Dr. Hall, I made an examination of the prisoner, Payne, and I arrived at the conclusion that he is not insane.

His look is natural, and his speech perfectly natural, and his manner natural; that of a man sane. There is nothing in his appearance, or speech, or manner that indicates to me that he is a man of unsound mind. In my opinion, there is nothing to indicate the presence either of moral or what may be called mental insanity. We asked him a number of questions. His reasoning faculties appeared to be good, and his judgment good, to which I attach great importance.

We could not learn of any thing in his past life, so far as we have been able to gather his history, that would indicate insanity. We learned but very little of his past history; but so far as his life has been disclosed since he has been here, his conduct and conversations, nothing that he has done, has indicated to me that he was an insane man.

Cross-examined by Mr. DOSTER.

I am not familiar with cases of insanity, but I have seen some cases, and have visited institutions for the insane. I would form my opinion of a man very much as any other person.

It is not usual for madness to escape the scrutiny of physicians on a single interview, or on two interviews. I think there is something always in the appearance of man, in his manner or in his speech, that would arouse a suspicion of a physician, or indeed of any intelligent person, even on one interview.

I have heard of cases of men who have been examined for months at a time before their madness was discovered, but none have come to my knowledge.

I do not think the conduct of the prisoner in my presence was the conduct of a madman during a lucid interval. It will be found upon scrutiny that the conduct of a madman in a lucid interval differs from the ordinary conduct of men. Upon careful examination, there will be some indication always, in my opinion, that to several medical men, or several intelligent men, will be observable. I would regard it as a very exceptional case if this man should be insane. I believe it is possible that this man might be a monomaniac on a subject not broached to him this morning; but yet a monomaniac will almost invariably—in a conversation with strange persons, strike upon that subject that he had the delusion on—that subject upon which he was insane. It is my opinion that a monomaniac, in an examination of half an hour even, by strange persons especially, would strike upon the subject on which he was deluded; that he would speak upon the subject on which he was a monomaniac. I believe there are cases on record of monomaniacs who have gone whole weeks without referring to the subject on which they were insane; but I have never seen such cases.

ASSISTANT SURGEON GEORGE L. PORTER.

For the Prosecution.—June 14.

I was associated with Surgeon-General Barnes and other medical gentlemen in an examination of the prisoner, Lewis Payne, and our conclusion was that he was a sane man, and responsible for his actions.

He has been under my eye ever since he has been confined here. I have made inspections twice each day since the 30th of April; and his conduct and conversation during that period have been such as to impress me that he is a sane and responsible man. I have not observed any indication of insanity.

Cross-examined by Mr. DOSTER.

I believe that the law does not recognize moral as distinct from mental insanity. Moral insanity is where the mind of a person is perverted on moral subjects; mental insanity has regard to the intellectual more than the moral faculties. The symptoms of moral insanity are common to all cases of insanity.

Insane persons have generally some physical symptoms which I find wanting in this case. I have examined this man twice each day, and I found that his pulse, as a general rule, was lower than the pulse of the others. Recently, I have examined him by the watch, and find that his has not been so frequent as that of the other prisoners. Last night it was eighty; this morning it was eighty-three or eighty-four. Another symptom of insanity is want of sleep, restlessness. In this case it has been particularly noticeable that while the other prisoners were awake when I made my inspections in the evening, I almost always found this man asleep.