

the responsibility upon others. It is a thing defined in the following words: "Express malice is, when one of sedate, deliberate mind and formed design, doth kill another; which formed design is evidenced by external circumstances discovering that inward intention; as lying in wait, antecedent menaces, former grudges and concerted schemes to do him some bodily harm."

Thus, jurors, you see what it is you have to find, and also what is the evidence of its existence. You have to find a fact—the condition or state of the mind at and before the killing, and the formed design of that mind; and you see also how that state of the mind, and that formed design must be exhibited. The "lying in wait," the "former grudge," the "previous threat," or the "concerted scheme to do the party mischief,"—these, or some of these, are the external circumstances which must appear in evidence, before you are warranted to find the state of mind and the formed design which make a killing capital murder. Both must precede the act; and neither can be implied by the law. It is your work to find both, and yours only.

You have all heard, perhaps, of the case of Jackson, indicted for the murder of Laidlaw in the St. Louis Criminal Court. There was much false clamor by thoughtless, inconsiderate men (who knew nothing of the case as it appeared in court by the evidence) touching the result of that case. I refer to it, not to deal with that clamor, ignorant as clamor is apt to be, but to illustrate the distinction in our law between the degree of murder, made by statute. In that case, as in this, there was no eye-witness to the killing; there as here, the circumstances of the killing were unknown. There, as here, the dead body was found on a road, called the King's highway, but not so great a thoroughfare as the Boonslick road. The evidence was all circumstantial evidence, as in this case. The State relied upon the circumstantial evidence to connect Jackson with the killing, and it was deemed sufficient by the circuit attorney for that purpose; and, in fact, it did not only connect him with the killing, but also excluded a killing by any other person. On that state