

## CHARGE

*of Justice HOSMER, to the Grand Jury of the First Judicial District, M.T., delivered, December 5<sup>th</sup>, 1864. Published at the unanimous request of the Bar and Grand Jury*

GENTLEMEN OF THE JURY: -- The assembling of a grand jury in this new Territory, affords opportunity for a casual survey of the interests committed to its charge, The cause of Justice, hitherto deprived of the intervention of regularly organized courts, has been temporarily served by voluntary tribunals of the people partaking more of the nature of self-defence than the comprehensive principles of Common Law. It is no part of the business of this find fault with what has been done; but rather, in common with all good citizens, to \_\_\_\_ [?] the transactions of an organization, which, in the absence of law, assumed the delicate and responsible office of purging society of all offenders against its peace, happiness and safety.

Such societies, originating in necessity, have been common of late years in communities without law, and in which the penalties of law were not proportioned to the criminality of the offence. Their adaptation to the necessities of new settlements, has obtained for them an approbation so universal, that they are the first measures resorted to, by well-intentioned men to free themselves of that vile class of adventurers which infest all unorganized communities for purposes of fraud, robbery, and murder. In no part of our country have they labored more efficiently than here. No where else did they enter upon their duties, amid greater embarrassments. It was questionable, even when they commenced, whether they were numerically [?] equal to the task. The sources of official power had been monopolized by the very class which preyed upon society. The greatest villain of them all - with hands reeking with the blood of numerous victims - was the principle ministerial officer of the Territory, and had at his beck a band of wretches who had become hardened in their bloody trade years before they came here to practice it. In this coalition of affairs [?], there could be but one of two courses to pursue - to hand these offenders over to submit to their authority, and give this Territory over to misrule and murder. - Happily, the former course prevailed, and the summary punishment visited upon a few, frightened the survivors from the Territory, and restored order and safety.

Much as we may approve the means of self-protection thus employed, and the promptitude with which they were applied, our admiration ceases when they assert an authority deficient of law, and usurp offices which belong only, to Government itself. We give them all the credit they deserve, by according them praise for what they have accomplished; but they have fulfilled their work. To go farther is to commit crime, and to undo what has been so well done.

They are no longer necessary. No law abiding citizen wished their continuance. They should be at once and forever abandoned. Courts of law and equity - such courts as our Government and people, everywhere, throughout our great republic recognize as authority, are from this day forth, established in this Territory, clothed with ample power to investigate and punish all offences against the peace and safety of society. Let us then erect no more impromptu scaffolds. Let us inflict[?] no more midnight executions, Let us give to every how aggravated soever his crime, the full benefit of the freeman's right - an impartial trial by jury. Vigilantes and courts - and all good men can co-operate in fulfilling the grand purpose of the criminal law; that of bringing offenders to justice, without violating any of its provisions; but the very first element in such a warfare against crime, must be the general recognition of courts of law, as the great conservators of peace and safety. No resort to any other power is justifiable, or consistent with good government, except in such exigencies as that through which the people of this Territory have so signally passed.

Again, gentlemen, there is danger in the continuance of these organizations, to their framers. The temptation to pervert them from their legitimate objects is so great, that instances have occurred in other societies, where they have committed more flagrant offences against the laws, than those they were designed to prevent. There can be no morality or progress in a public sentiment founded entirely upon the principle of fear. It is a principle at war with all the principles which lie at the foundation of our Government. The sooner that society is rid of it, where it prevails, the sooner will it be animated by a strong and healthful affection for the government and its laws. In a community restrained by the operation of good laws, all subversive organizations are criminal in themselves, and should be among the first subjects to arouse the jealousy and stimulate the investigation of a grand jury. You will perceive the propriety of these remarks, gentlemen, at this time, when you consider that for every execution of an individual by any body of men, unauthorized by law, whatever their organization, it would be the imperative duty of this court, to charge you that they had been guilty of a highly penal offense, and to urge you to the utmost vigilance in your inquiries to expose them and present them for trial and punishment.

You, gentlemen of the jury, have been regularly empanelled and sworn to make enquiry into the crimes that have been committed in this country. Your duties are both delicate and responsible. Your oath requires that you present no person through "malice, hatred, or ill will." This needs no explanation. Another part of it, that "you will leave none unrepresented through fear, favor, or affection," more difficult perhaps of performance, is equally comprehensible. Another part of it, that you will leave none unrepresented "for any reward or promise of hope thereof," I will not comment upon, lest you might regard it as an imputation upon your integrity. A person

accused of a crime, reserves still another and important privilege through the medium of your oath, and that is that you will make no disclosures of testimony, except when called upon to do so in a court of justice. The most perfect protection is this given to the character and reputation of the accused person - a protection which should never be withdrawn, until a jury is fully convinced of his guilt. This oath, gentlemen, is, of itself, illustrative of the exact justice with which the law seeks to deal with those who are old and bad enough to violate it. There is no vengeance in it. It neither pursues or punished from sinister considerations. Justice with us, like the heathen representation, is blindfold, that she may not see where the blow must fall, but she holds the scales with equal poise and the sword is in readiness to inflict condign punishment upon him who is found wanting. She seeks only to answer, in a rational manner, the demand of every good man, who feels that his own nature had been belied by the commission of crime. She aims to do right. The offender is punished because he had disturbed the harmony of society. If his crime has been that of murder, it is not only the destruction of a life, but it is the offences against God - against morality - the terrible example thus furnished, and the danger to society of permitting such a crime to go unpunished, that the law considers. Death is inflicted because no lighter penalty could answer the demand for justice, and not merely for the purpose of taking human life. So with the subordinate or lighter offences.

The punishment proportioned to each has greater reference to the society that has been outraged, than to the miserable individual upon whom it is inflicted. He, indeed, whether on the scaffold or in the solitude of prison, is but the instrument which the law employs, to shadow forth its judgments upon minds yet uncontaminated by guilt and crime.

As the result of this grand fabric of punishments, peace and safety are preserved - crime seldom occurs - and all fears and anxieties incident to an unorganized condition of society vanish before the benign and omnipresent spirit of the law. No one doubts, gentlemen, that it is the desire of all good men, that a society, conformed in its manners and its customs, its laws and observances, to that which they have left in the States of the Union, should grow up in this Territory, and exercise and influence for good for all time. No one doubts that this may be produced, if courts and juries co-operate with moral agencies in purifying society of those evils which lie at and are continually sapping the foundations of rational happiness. Much-very much of our future character as a people, depends upon the manner in which crime is met at the commencement. You can all bear witness to the fact, that where men are themselves indifferent to the various influences usually employed for their protection and refinement, crime and disorder are sure to prevail; religion is neglected; the Sabbath is customarily profaned, and society itself becomes irresistibly the minister to all lower and baser passions of our nature.

Few moral enterprises, gentlemen, are more difficult of achievement than that of reforming a people who have habitually yielded to the sway of vice and immorality. A steady and uniform application of law to every offence, in such an exigency, is the surest resource, and to that we must look for the corrective to those abuses which come under your consideration. Your part in scourging these evils from our midst depends not so much upon the amount, as to the quality of your labors. If by your action, the violators of law and corrupters of society understand that they cannot ply their vocations with impunity, there will soon be an end to many of the disturbing influences which now defy both law and order. The criminal code of this territory, like the codes of most of the States of this Union, provides for the punishment of all classes of crime, from those that are most grievous and aggravated, down to the petty offenses generally incident to a state of civilization. Let me urge upon you, gentlemen, the importance of giving to every subject that may possibly affect the peace, the morals, the purity and safety of this territory, your earnest and conscientious attention. Remember that it is intended, that anything and everything which breaks down and sets a nought the established usages of civilized society, comes within the purview of a juror's oath - and that if our statutes are deficient, the oversight of jurors may have a salutary influence upon the labor of legislators. You can, by timely action, purge this district of many of those petty evils which now corrupt it. Of this character, especially, are those offences embraced under the names of prize-fighting, gambling, Sabbath-braking, and all that category of offences that spring up spontaneously in unorganized communities. Would it not surprise you, gentlemen, to hear that any of the older States has elapsed from a state of high morality into a condition marked by the moral enormities? Why should they exist here? Is there less to occasion a blush on the brow of an American citizen at the exhibition of a prize-fight on Sabbath day, in the new Territory of Montana, than in the more highly chastened society of New England? Shall we wonder less, amid the pure atmosphere of the Rocky Mountains, at the improprieties which meet our observation on every hand, on each succeeding Sabbath - at the street actions - the music - the prize fighting - than we would find the same in the streets of New York or Philadelphia? Let us labor, gentlemen, to correct these gross immoralities.

On reference to the statute prescribing the nature and punishment of crime, I find nothing which requires me to charge you specially upon any of the offences therein detined, and I am happy to add, that as a result of the means of self-protection employed by the people of the territory, there are no persons in custody against whom any heavier charges can be sustained than those that are punishable by fine and imprisonment. The task before you, gentlemen, is therefore relieved of any of those embarrassments, which necessarily surround every enquiry involving the possible sacrifice of human life.

I am apprised by the District Attorney of the United States, that he knows of no offenses requiring your attention.

To assist you in the discharge of your duties, you will have the advice of the District Attorney of this judicial district.

Gentlemen, you compose the first Grand Jury ever assembled in this new territory. Your deliberations will invite the attention and challenge the criticism of all classes of citizens. Do not, I adjure you, disappoint the expectations of all good men. Consider how much you have to do towards establishing the moral purity of this new territory, and while you allow those unfortunates who are charged with crime, all the benefit of humane and just laws, ever remembering that even in the hands of God himself, Mercy is the concomitant of Justice, do not forget how much may be lost to society by your indifference or

neglect.

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