

# CHARGE to the GRAND JURY

OF THE

## SECOND DISTRICT COURT,

Delivered at Beaver, Sept. 8, 1874,

BY

HON. JACOB S. BOREMAN,

U. S. Associate Justice.

GENTLEMEN OF THE GRAND JURY:

You are now legally empanelled as the grand inquest in and for the Second Judicial District of the Territory of Utah, and have taken a solemn oath to discharge your duties fearlessly, honestly and impartially. From the heavy responsibilities of that oath you cannot now escape. There is not one of you but who has, upon oath, said that he had no conscientious scruples in regard to finding indictments for any and all crimes specified in the laws of the nation and of the Territory.

It becomes my duty now to give you in charge, in general terms, the matters and offences which should occupy your attention, referring to the laws in regard thereto, and to urge upon you a thorough investigation of the facts of every alleged offence. You are not to, and it is not your province to, decide what is law and what is not; that is a matter for the Court, or your more immediate legal adviser, the Assistant District Attorney (Judge Wheden), to instruct and direct you in. You are to examine facts and not the law, and in your investigations you are not to summon nor have before you any witnesses for the defense. This is a rule far older than our nation and common throughout the nation. The Grand Jury is the accusing jury, the Petit Jury is the trial jury. Were you allowed to examine both sides of a case, you would thus deprive the Court and Petit Juries of the powers and duties allotted to them. You would thus remove cases from the court room to the grand jury room. I repeat, therefore, that the law allows you only to hear witnesses for the prosecution.

You are, gentlemen, virtually, a dual Grand Jury; for upon you devolves the double duty of investigating offences against the United States and offences against the Territory. It would be advisable, therefore, that you divide your investigations into two classes, corresponding to this division in the law—and first devote your time to investigating offenses against the United States, and when through with these, turn your attention to Territorial matters. In this, however, as in your general course of proceeding, you will act under the advice of the Prosecuting Attorney (Judge Wheden). The law authorizes him to visit your room at any time and to confer with you, and he can question witnesses; but neither he nor any one else, not a Grand Juror, should be present when a vote is taken upon any matter before you, nor should any opinion upon any case be given by any juror in the presence of the Prosecuting Attorney, nor in the presence of any one else not a Grand Juror.

You are called to act as a grand jury, now, in accordance with a late act of the Congress of the United States and not in pursuance of any Territorial statute. Over a year ago, I sought to enforce the laws through a grand jury without Congressional action, hoping that in so doing, I should be sustained by the people through their Legislature. In this I was greatly deceived, for the Territorial Legislature last winter scouted the idea of paying the officers, whom, in the absence of any one whatever authorized to act, I had appointed to summon the juries and to attend to the other duties of executive officer of the Court at that term. The Legislature thus showed an unwarranted hostility to the courts and a disgraceful opposition to the enforcement of the laws in Utah. Some of the members of that body and others in sympathy

with this repudiation of legitimate court expenses, took great pleasure in pointing (when it suited their purpose) to my action at that time in calling juries, as evidence that I had no difficulties in securing juries in my district. These same persons, however, well knew that I had secured such juries in spite of defective Territorial statutes and in spite of the unfriendly spirit of the local power; and they well knew that their assertion of there being no difficulties in the way of getting juries and enforcing the laws in this district were utterly untrue, and without any foundation whatever. Congress has, however, very lately and very justly come to our aid and placed the courts above the control of local and hostile authority. Such action of Congress would not have been necessary had not a spirit of disloyalty and persistent hostility to the General Government existed throughout this whole Territory. In doing this the government is not prompted by any spirit of persecution as some would have you believe. Nor will you find any federal official in this Territory, I believe, who would desire or countenance anything like persecution. The people in this Territory friendly to the Government, who have come to this Territory from various parts of the Union, as they have the right to come, desire only that the laws be respected here as elsewhere in the Union; that crime may be put down here as elsewhere, and not be allowed to stand defiant as it is doing and has done for years in this Territory. They want security for life and for property, a higher standard of morals, and equal and exact justice to all. When men talk to you that the government and its friends desire to persecute any people here for their religious opinions, they well know that their statements are bald falsehoods, and they well know that all that is desired is that crime shall not continually go unwhipped of justice. With men's religion, government has nothing whatever to do.

I shall now note and call your special attention to some of the more important United States statutes against crime.

The Government of the United States owns all the lands of this Territory, to which they have not given title or authorized to be located or entered. Yet we find that men all over this Territory, for years past, have been plundering these lands of the timber. And the legislature itself has had the effrontery to convey vast tracts of land and timber to certain individuals, its favorites, when that Legislature had no more title nor right so to do, than you now have; and, indeed, the Legislature had no more right to transfer this land and timber, than the adversary of mankind had to the kingdoms of the world which he offered to our Savior. It is your duty therefore to find indictments against all who have cut off or destroyed or removed any of such timber from any public lands. And in this, as in every other matter, it is your duty to summon all witnesses who you are informed or have reason to believe, know of such offence having been committed.

In regard to the entry of lands also I would call your attention to the fact that no man has the right to enter more than one tract and whoever hires another man to enter for him is committing an offence and should be punished. A few unscrupulous men may thus defraud the Government of vast tracts.

It is your duty to examine into every case of mail robbery or tampering with the mails in this District, that may come to your knowledge.

The same may be said in regard to counterfeiting.

It is likewise your duty also to examine into every case of violation of the United States revenue laws. There are cases of this kind in the district, to which I call your attention.

It becomes your duty also to investigate the matter of illegal voting and indel such as have violated the law of Congress in this respect. Illegal voting cannot be stopped except the parties so voting be checked and taught to know that they must respect the laws. There is no Territorial statute to punish illegal voting and hence all such cases come under the United States statutes, or they are not punishable at all. The Territorial election law is the best adapted to cover fraud of any election law I have ever known, but it cannot

up all fraud and in many cases where there has been illegal voting it can be detected. Where the facts do not make out a case, in this or in any other matter, of course you cannot indict, but must drop it.

The United States statute against polygamy or bigamy will require your attention. It was passed in 1862 and its existence and binding force has been well known from that time to the present; yet it has not been respected, and every possible means has been used to prevent its enforcement. It is now daily violated in this Territory, and the people have been, by the false teachings of their leaders, led to ignore it. These leaders from Brigham Young down have taught that plural or polygamous marriages were legal, when that law against polygamy stared them squarely in the face and they well knew that such teachings were not true. Brigham Young's subsequent actions plainly show this. He, as you have no doubt seen from the public prints has lately acknowledged the illegality of these plural marriages. His answer in the divorce suit of Ann Eliza Young against Brigham Young has been published in three leading Salt Lake City papers, the *Herald*, and the *NEWS*. He there in that answer upon oath denies the marriage and then admits that she is his plural or "celestial" wife, but gives two reasons why that plural marriage was illegal: First, that when it took place he had a legal wife, Mary Ann Angell, and still so has; and, second, that Ann Eliza at the time of said marriage and still has a legal husband living. If his marriage with Ann Eliza was illegal because he had a lawful wife at the time, one whom he married in 1834, in Ohio, then every other plural marriage of his since 1834 was and is illegal and void. And this being true in his case, he cannot have the hardihood and audacity to teach his people that it would not be so in their cases. That answer of Brigham Young is a stinging indictment of his thirty years' teachings and practices and is a bald and plain repudiation of the legality of plural marriages, and he swears to that answer. Another of these leaders has made a similar statement and repudiation of polygamy, of which no doubt you are aware.

Here the enormity of the outrage upon a confiding people begins to appear; they have been purposely deceived for years. These leaders have been bold to assert the lawfulness of plural marriages for many years, but now, when brought face to face with the law, in court, they have not dared to assert its legality and honestly plant themselves upon that ground, but upon oath deny the legality thereof, and repudiate it. Perhaps you have been told (as I have heard that such false teaching is circulated) that those were legal documents and that therefore the false statements were excusable. Such a thing will do very well to tell to ignorant people, and they may be deceived thereby, but it will not do for the more intelligent people. Of all places on earth, a court of law is the place in which no man should make a false statement. Courts seek the truth in every case and every party coming into court is bound to detail the truth and nothing else. Because a man is in court, he is not justified in swearing to a falsehood, and if he is an honest man he will not do it.

As to the legality or illegality of polygamy, however, it does not matter whether Brigham Young or any other polygamist acknowledges or repudiates the crime. Polygamy is a crime, whether admitted or not by these persons. It cannot be a part of a man's religion: there is nothing in it which gives glory to God; and it is no where taught that crime is a religious duty. Bigamy or polygamy, whichever you choose to call it, is not only a crime, but a loathsome ulcer upon the body politic, and is degrading to every one who enters into it, and it degrades and pollutes the whole society where it exists. As far as my observation and information goes, the women are generally hostile to it and are only deluded into its criminal meshes by misrepresentations and false teachings and counsellings. Of course there are exceptional cases in regard to this matter, and some women, here and there, may be found, who would tell of the beauties of polygamy. So in the South formerly, some slaves could be found who would proclaim the blessings of slavery. These women have been taught,

that polygamy was not wrong, when those so teaching were fully aware of its enormity, as their subsequent actions now show. The corrupting influences of this institution are seen on every side. Woman, in Utah, is more oppressed, more degraded, more unhappy, than anywhere else in the whole United States. And the moral sensibilities of the men are becoming blunted and brutalized, and their children are losing their finer feelings and having their natures ruined for nobler and higher aspirations. Some men no doubt enter into bigamy or polygamy from conscientious convictions, but such cases are rare and always amongst the most ignorant. Polygamy indeed will not bear the test of light, the test of intelligence. It thrives only in the midst of ignorance. Hence you see the bitterest hostility to free schools in this Territory on the part of the leaders of this people. There is not a free school in this Territory. Such a thing ought not to be; it is a burning shame. Crime loves and revels in darkness and the people ought to repudiate all leaders who seek to keep them and their children in ignorance. Of course it will do, as I said before, to teach ignorant and superstitious people that polygamy is not crime and that the Government wants to crush out their religion, but I think American ideas are gaining ground and the time is fast passing away when such ideas will prosper in Utah.

Some pretend to claim that the law against polygamy is unconstitutional. If they really think this to be so and are honest, they will not seek to avoid an indictment and trial but will admit the fact, plant themselves upon that ground which they are so confident is tenable, and take the case to the Supreme Court of the nation and have it settled. If they are honest in their views, they will not spirit away witnesses and endeavor to clog every investigation.

The Government of the United States is the mildest ever yet instituted upon earth. It is the legitimate outgrowth of the Christian civilization of our day, and one of its grandest and noblest features is its hostility to any establishment of religion by the State, and its assurance of the utmost freedom of religion to all. The people of the United States are, as I said before, hostile to polygamy because it is a crime and a most degrading crime, fit only for the darkest and far away ages, long anterior to the dawning of Christian civilization. The Constitution of the United States is opposed to any established religion; opposed to the union of Church and State, in Utah or anywhere else in the whole nation, and the people will not rest until, nowhere in the broad domain of this Union, can such a vile growth exist.

The people of the United States are opposed to murder, whether you call it Blood Atonement or anything else. They do not recognize the right of any church or any body or class of people, except the State to put to death any man, woman or child. The civil power alone has this right. Murders are not as frequent lately in Utah as formerly. There is more light shining and the strong influences opposed thereto are being felt more and more every year. The day we hope for such things is passing away. The people of the United States will go as far in supporting and sustaining the people of Utah in their religious rights and privileges as they would for any other people, and the day is not far distant when polygamy and other crimes perpetrated in the name of religion will be buried with the past; and the masses of the people of Utah see that the government and people of the United States are their truest friends and the firmest friends of religious freedom that the world has ever seen. They have no bitterness against the Mormon people, and would gladly see them prosper, except as to polygamy, union of Church and State, Blood Atonement and the like. No country in the world to-day realizes so much of religious freedom as the American people. It is the love of the largest and most absolute religious freedom and the generous Christian charity of the nation which have so long delayed the putting down of polygamy in Utah. The people of the nation have hoped and believed that the people of Utah themselves would see the enormity and hideous character of this crime, and rise up against it and put it down. They have borne with the errors of this people for a

generation past, but there has seemed to be not the slightest desire to crush it out amongst the rulers of this people, and forbearance must cease. The government has now put the matter into your hands, gentlemen. You are part on one side—part on the other, and the government gives the people of the Territory one more trial in the matter; and I am well satisfied that if you do not do your duty as you have solemnly sworn to do, it will only give cause for further legislation and a much more rigorous law will be enacted. The government and the people of this nation are determined that polygamy shall die, and it is the most egregious folly for the polygamists and their friends to try to prevent it. It is the supremest nonsense for eighty thousand or a hundred thousand people to array themselves against forty millions of people upon a question like this one. The government is in earnest, and it is well for the people to realize this fact. The theory of American law is that society must be elevated, not be dragged down. I make these and other remarks that would not be necessary in the States, but are necessary here, because some two-thirds of the people of this Territory are of foreign birth or are the children of such, and have never been outside of the Territory, and consequently know almost nothing of American ideas and principles.

Utah has no statute law upon marriage—it stands here as at common law. And every plural marriage in Utah is virtually a clandestine marriage. As there is no statute upon marriage, and no ceremony is required, none need be proved. No record or register of marriage is required to be kept, and none therefore need be proved. The general particularity is not necessary in proving marriage where there is no statute as there generally is where marriage statutes exist.

Now, gentlemen, I am plain with you. This matter is before you, and you know many men who are living in violation of this law, and you have sworn to indict in every case where the facts warrant you. It is your duty to send for witnesses, and make searching examinations of all cases. You know as well as I do that one charge made against the people of Utah is that they will swear that they will do a thing and then not do it; that they will swear to indict for every crime, but when it touches their friends or their ideas of what the law ought to be, they will perjure themselves by refusing to indict such persons. You are now to show to the world that this is true or false. Not one of you was required to sit upon this jury if he had conscientious scruples against finding indictments for polygamy and other crimes. You have each and all sworn that you have no such scruples.

I shall now pass to Territorial matters and call your attention to offences against the Territorial statutes: Among the first of these offences is that of murder, manslaughter and the like. Last fall there was committed almost within the corporate limits of this city, one of the most diabolical murders that could be perpetrated. In the fields, near this city, at night, a man, named John Howarth, was brutally shot down at the cabin door of Morgan L. Pedan. I most urgently call your attention to the case and hope that you will probe it to the very bottom and bring to justice the cowardly assassins who committed it. There is the Winn and other cases of murder to which I also call your attention.

Besides these there are old cases which have never been investigated. Among these is the Mountain Meadow massacre. Many years ago the whole nation was shocked at this most foul, shocking and cowardly massacre. It was one of the most cruel butcheries ever known to civilized society. It occurred in this district, and the people of the United States have long and patiently waited for an investigation thereof, and for the punishment of the instigators of and the participants therein. No such investigation has ever taken place; no man has been brought to justice or punished for it. Yet the witnesses are not hard to find; they are still abundant. The children who were not butchered were distributed to various parties throughout the Territory, and the property, goods and clothing of those who were butchered were also distributed out. No crime had been alleged against those murdered men and women. After leaving Salt Lake City they were harassed and not allowed to

purchase the necessities of life, and people were forbidden to sell or give such to them. This course was followed up until the emigrants reached Mountain Meadow, when the demon-like work was finished by their wholesale massacre. The blood of those innocent victims cries out to you to-day for justice, and the stain of that innocent blood will forever rest upon the people of this Territory until they wash their hands of the awful crime and bring to justice the cowardly villains who had the cruelty to commit such a black and bloody deed. You, gentlemen, have it now in your power to bring to justice these outlaws and vindicate the cause of that long-delayed justice. The oath which you have taken makes it obligatory upon you to probe this matter to the bottom, and give it a most searching investigation, if you have regard for your oaths, for the name and fame of the people of this Territory; if you have any respect for the cause of justice, you will bring out to the light this blackest of villainies, and bring to justice every man who was there, or in any way, either before or after, was accessory to the crime. As I said in regard to polygamy, I say in regard to this crime, that if you will not investigate it, your course will only give Congress the more reason for making the laws in Utah still more rigid; for this horrible offence must be investigated and the guilty must be punished. If you quail before any outside influence—if you are too cowardly to be men and before God to do your duty, others will be found who will do their duty without regard to what other men may say or do. That brand of infamy cannot be allowed to remain longer upon this Territory. Show to the world, then, that you have the manhood and are brave enough to investigate this and every other crime, and bring to trial at the bar of justice every villain in the land.

[Here the Court went into detail in regard to the various offences specified in statutes, calling special attention to the more important, as robbery, larceny, adultery, lascivious cohabitation, etc; and called the Grand Jury's attention to the fact that where the facts did not warrant an indictment for bigamy, it was their duty to indict for lascivious cohabitation.]

Now if there be any matter which I have or may have overlooked and you desire information thereon, it will be given to you by the District Attorney or by the Court. The foreman of the inquest is authorized to administer oaths to witnesses. When you desire a witness send the name to the clerk and a subpoena will be issued forthwith and served. If any witness be subpoenaed and fails to appear, bring the matter to my attention and attachment will issue for him.

As soon as you meet, elect one of your number clerk, to take down testimony and to keep a record of your proceedings. Your oath requires that you keep secret the entire proceedings of the Grand Jury, not only to-day but for all time, unless some competent court requires such testimony in cases of perjury or some similar case, and then only such facts can be divulged as is required in that case then being tried. You will therefore keep secret your proceedings and should any one of your number divulge matters transpiring in your deliberations, it is your duty to indict such party for perjury. You have no right under the oath which you have taken, to talk to any one about what is going on in the Grand Jury room. Nor can you tell how any juror has voted on any question or case before you. Should any outside person try in any way to control or influence your action upon any matter coming or likely to come before you, bring the matter to the knowledge of the court and such party will be dealt with, as the law requires, for contempt or otherwise.

You have been sworn upon this Grand Jury, gentlemen, because the court has reason to believe from your statements, that you will act impartially in all matters before you. No person shall be by you presented by indictment on account of ill-will, fear, favor or affection; nor can you leave any one unrepresented for any like reason. The Grand Jurors must be just—must be impartial—it is the only safety to society, and any other course leads only to eventual ruin. And I will add, that no man or woman shall ever, in this court, so long as I preside over it, be punished if the facts do not show him or her to be guilty of the offense charged; and no one, if proven guilty, will, so far as the Court is concerned, be likely to escape punishment if the facts clearly show him

or her to be guilty; and no one, if proven guilty, will, so far as the Court is concerned, be likely to escape punishment if the facts clearly show him to be guilty.

You will be attended to in your deliberations by one or more of the marshals or bailiffs, and they will be near at hand always to attend to such official duties as you may require of them, but they are not to be in your room during the transaction of business, and cannot be allowed in your room at all, except to pass in and out in the discharge of their duties.

You make your own adjournments from day to day, but cannot make a final adjournment, except by consent of court. When ready to dispose of a case and you have agreed to find an indictment, report the case to the District Attorney and he will prepare the indictment for you. No indictment can be found except upon the concurrence of twelve of your number, and every indictment should be signed by the Foreman, and indorsed "A true bill," which said endorsement should also be signed by your foreman. The names of all necessary witnesses should also be endorsed upon the indictments, especially the name of those upon whose testimony the indictment was found.

The late act of Congress referred to, requires you to examine the case of every person in prison, or waiting examination; and the cases of parties out on bond should also be examined, and the parties be either indicted or not indicted. They should be disposed of one way or the other and not left to hang for subsequent action.

This law also requires you to examine into the condition of all public prisons in the District and you are entitled to free access through all such places, and can send for witnesses to aid you by their evidence. This act of Congress also requires you to examine into every case of willful and corrupt misconduct in office of public officers of every description, and to do so you are entitled to free access to all official books, and this applies to United States officers and also to Territorial officers.

Hoping and trusting that you will, as freemen, show your individual independence and fearlessly and fully discharge the duties devolving upon you, I close this charge, assuring you that it shall be my duty and pleasure to aid you in every possible way required by law, to further the objects for which you have been called together.

Your foreman being sworn, the Marshal will conduct you to your room.—*Beaver Enterprise*.

TOOELE CITY, Sept. 11th, 1874.  
*Editor Deseret News:*

At 8 o'clock p. m. of Sept. 7, Gen. Maxwell and Deputy Kingsley started for Salt Lake. They did not go far, and soon returned to the "Liberal" head quarters (Oquirrh House), proprietor E. S. Foote, "Liberal" candidate for Representative to the Legislative Assembly from (late) Tooele County (but now) "Republic of Tooele." On inquiry about his, Max's, return, it was said the night was too dark, which, however, was not the sole cause. He, Max., had news that there would be a warrant of arrest for Judge Rowberry, and Max. wanted the honor of arresting and bringing to your town the refractory Judge of the "Republic." General Max. and Judge Rowberry being "old chums," the General did not want any one else to do the job, thinking the Judge would be better treated by him than by any of his numerous deputies. During the whole of the 8th Max. and deputies were at the capital, ever and anon taking a spin from head quarters down to the City saloon, taking a smile, telling a few jokes, taking another, and relating a few reminiscences of the late war, of hairbreadth escapes and bloodless encounters with the obstreperous, in all of which General Max. invariably took a prominent part. During a ride with Judge Rowberry, Max. said, "Judge, I have information that to-morrow I shall have the papers for your arrest."

At 10.30 a.m. of Sept. 9, Judge Rowberry called on Max. and asked him to take a ride to Salt Lake. Max. said, "Judge, I can't go, for I expect an execution by stage, and I must attend to it." Judge Rowberry then asked Max. at what time on the 10th he would be in his office. Max., on consideration, said, "Judge, call when convenient."

On the morning of the 10th Judge Rowberry presented himself at the U. S. Marshal's office, in Federal Court Buildings, Salt Lake City, but there was no General there to welcome him, not even a deputy to greet the heavy weight from Tooele. After staying a short time and no arrest made, the heavy weight chartered a street car and went north.

A short time after I learned that there was no warrant out, and that Max. had been misinformed in relation to the matter. Judge R. still walks the streets with impunity, and looks as smiling as is usual for one of his calibre.