

# Washington Law Review

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Volume 19 | Number 3

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7-1-1944

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Leander T. Turner

Roger S. Greene

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### Recommended Citation

Leander T. Turner & Roger S. Greene, *Chief Justice Greene on Mob Law*, 19 Wash. L. Rev. & St. B.J. 115 (1944).

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# WASHINGTON LAW REVIEW *and* STATE BAR JOURNAL

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VOLUME XIX

JULY, 1944

NUMBER 3

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## CHIEF JUSTICE GREENE ON MOB LAW

### FOREWORD

On January 18, 1882, three men were hung by a mob in Seattle on what is now James Street between First and Second Avenues. Two of them had just been held for trial after a hearing before a justice of the peace for the murder the evening before of a popular Seattle citizen. They were seized by a mob in the court room and hurried to the place of execution, the sheriff and his deputies present being overpowered. The third was in jail awaiting trial for the murder of a policeman and was taken from the jail on the same day after the death of the first two, the jail doors being broken down by the mob. Prominent citizens of the city were members of the mob.

Most of the books relating to the early history of Seattle and Western Washington contain some account of the event—among others those cited in the note.<sup>1</sup>

Judge Roger S. Greene was then chief justice of the Territory and judge of the District Court of Washington Territory for the Third Judicial District, and lived in Seattle. He was present at the hearing before the justice of the peace, followed the mob to the place of execution and attempted at some risk to himself to rescue the men then in the hands of the mob, and partially cut the rope by which one of the men still living was suspended, but he was overpowered and the lynching completed.

At the April term following the lynching, a grand jury was called and Judge Greene gave to it the charge hereinafter set forth. No indictment was found by the grand jury. Probably there has been no case of like character in the nation in which members of such a vigilance committee have been punished. But, published in full in the press some three months after the mob executions, Judge Greene's charge must have had a sobering and helpful effect upon the citizens of Seattle, and in large measure counteracted the educational evils of the tragedy. There may have been more inspiring words written of the sacredness of our constitutional rights and the value and obligations of citizenship in this, our country, but if so, they have not come to my attention.

The court file which must have contained this charge and which

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<sup>1</sup>BAGLEY, HISTORY OF SEATTLE (Vol. 1) 298; BAGLEY, HISTORY OF KING COUNTY, 403; HANFORD'S SEATTLE AND ENVIRONS (Vol. 1) 197; PROSCH, CHRONOLOGICAL HISTORY OF SEATTLE, 280 (Unpublished MSS.); HUNT AND KAYLOR'S WASHINGTON WEST OF THE CASCADES (Vol. 1) 287; GRANT'S HISTORY OF SEATTLE (Ch. 6) 181; MEMOIRS OF ORANGE JACOBS, 129.

normally would still be in the office of the county clerk of King County has disappeared. Recently I found a printed copy of that charge clipped from the *Seattle Daily Chronicle* of April 11, 1882. Upon the margins of the clipping some slight typographical corrections are made in the handwriting of Judge Greene. Judge Greene gave it to me more than fifty years ago at the time when I had the great honor of being associated with him in the practice of law. This clipping is frail and beginning to come to pieces with age and unfit for use of the printer. Dr. Beardsley, librarian of the Law Library of the University of Washington, who has performed such signal service for the bar in his collections of data relating to the bench and bar of the Territory and of the early years of the State of Washington, to whom I have given this printed copy to be added to the collection in the Law Library, has kindly made a typewritten copy to be used for the purpose of this article.

Judge Greene's eldest daughter, Agnes, the widow of Mr. Arthur L. Veazie, lately a member of the bar of Portland, Oregon, has, at my request, written me a letter giving her remembrances connected with the tragic events above referred to. I had intended to use it for the purpose of making a brief statement, but I have found it so interesting and written so much in Judge Greene's own lucid style that I quote Mrs. Veazie's own words:

"At the time of the lynching I was at the beginning of my teens and attending the state university, which had then a preparatory department and was located on the original site at University Street. Instead of carrying a luncheon, my parents had arranged for me to eat this meal with the family of President A. J. Anderson, who resided on the campus.

"President Anderson had quite a family of boys and one daughter, the youngest child. At the table Charles M. Anderson, a man grown, spoke of having been out with a detail of the vigilance committee the night before, searching for the murderers of Reynolds and remarked that there would be a 'necktie party' if they were caught. His father rebuked his levity. This must have been on the day of the lynchings, but he had not yet heard of them. It was my first knowledge of the situation.

"Father had received some intimation of what was likely to happen and went down to the preliminary examination in Judge Coombs' court the morning of the 18th to try to prevent violence. I recall well his description of occurrences there so far as he was involved. As the examination closed he found himself a captive. A stout sheet had been suddenly thrown over his head. Father was, as you know, a strong man and was then in his prime—41. He fought himself free.

"Seeing Sheriff Wyckoff also struggling under a sheet, his first impulse

was to help him; but he feared to delay, and rushed after the mob. In the scuffle his glasses had been knocked off. Someone now handed them to him unbroken. He found the two men already hanging but at least one of them still alive. Pulling out his pocket knife, he tried to cut the man down.

"Father was roughly pulled away, but whether by friends or foes I do not know—possibly by both. He heard cries of 'Shoot him! Shoot him!' and looked into leveled guns. Holding his open knife with the blade pointing forward, he walked through the crowd and went home. My brother has this knife with a nick in the blade. We heard later one strand of the rope was cut.

"Brother Roger came home from school that night, pale and frightened—the boys had told him father was killed.

"When father went down town next morning it was as if to a strange city. Former acquaintances and friends refused to recognize him. As I remember it, no one spoke to him that first morning. Father was deeply grieved and much depressed, for he was an exceedingly sensitive man. We heard of two men, and I remember only two, who ventured to defend father's course in discussions on the street—both men in the humblest walks of life. They were warned to keep their mouths shut.

"A personal letter of commendation from the late Bishop B. Wistar Morris of the Episcopal church, who lived in Oregon, gave father the greatest comfort. The good bishop also wrote two communications—or perhaps three—to the *Oregonian* calling attention to the dangers of mob violence.

"In Seattle the rector of the Episcopal church in a Sunday sermon took issue with his bishop, defending in strong language the lynchings and lynchings, some of whom were reputed to be leading members of his flock.

"The Oregon and Washington press generally, including the *Oregonian*, approved the acts of the mob, but the *Register* of Vancouver, Washington, and the *Times* and the *Mountaineer* of The Dalles were notable exceptions, and there may have been one or two others holding the same views but less outspoken.

"G. Morris Haller, who, with his father and mother, were family friends, printed a 'poem' in which he applauded the terrible event and referred to the trees with the scantlings—"They called them the guards of the grand old town.'

"Two days after the struggle in the courtroom Sheriff Wyckoff collapsed from a heart attack and died. In an eulogy delivered in the district court by Judge Thomas Burke in connection with resolutions, he attributed the sheriff's death to his recent trying experiences and I think this was the general belief. In the months following, several other tragic deaths occurred—drownings, suicide, etc.,—among men

said to have played prominent parts in the lynchings.

"I do not think father expected an indictment to result from his charge to the grand jury. He believed, and no doubt with reason, that some jurymen had been members of the mob. Not that he recognized anyone; his nearsightedness and preoccupation would have prevented that. He did note and speak of one man whose expression of rage and hate struck him.

"The charge was written under great tension and with profound emotion—a matter of duty and conscience which could not be evaded without loss of self-respect. I remember father talking over the matter with mother."

No man who knew Judge Greene would question the absolute accuracy of the statement made by his daughter in the last paragraph.

Great as scholar, lawyer, soldier, judge, citizen, Judge Greene was greatest as a man. Earnestly believing in the teachings of Jesus, I have not known any other man who so consistently lived on the level of his belief. He was an idealist, but his idealism was not only in words—it was embodied in his life.

At the end of this article, following the charge, will be found a brief biographical sketch relating to Judge Greene.

With the exception of formal parts and some statements of the record of the Washington courts demonstrating their efficiency in the trial of persons accused of crime, nearly all of the charge as written by Judge Greene follows. The omissions are of entire parts and that which follows is in Judge Greene's exact language.

LEANDER T. TURNER.

### THE CHARGE

Gentlemen of the Grand Jury: God has given the people of the United States many things to be thankful for, but nothing more clearly thank-worthy than the right and liberty of self-government. Our government is not only for the people, but of the people and by the people. Every department and function, every office and officer, originates with the people as their own idea, belongs to them as their own property, is established among them as their own choice and is subject to them as their own concern. In short, the government is their government, and its departments and methods are under their absolute control. Whatever is done is their act, and whatever is undone is their omission. If the commonwealth is governed well, the people are to be commended; if ill, they are to be blamed.

You and I are called by the people out from among themselves to perform certain duties in their scheme of government. We act for them. They have chosen us to represent them and they must abide the consequences of their choice. If we do ill, they may censure or degrade us, but that will not relieve them from the unhappy effects of their own

unwisdom. Responsible to them we are as servants to a master, but whatever we sow, be it wheat or tare, they reap. Theirs is our field of labor and theirs the crop it shall yield. God grant that we may put in such seed as shall bring them a rich harvest of honor, leaving not even a gleaning of shame.

The people of this country and territory, in rearing the castle of their liberties, have built into it the grand jury system as a bulwark against injustice. By the territorial legislature, it has been enacted, "That no person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury, except in cases of misdemeanor before a justice of the peace or before a court martial." A kindred provision contained in the Constitution of the United States is also in force here. \* \* \*

So you see, gentlemen, that both the voice of the people of the nation and the voice of the people of the territory call you to your present position of service and trust. You are summoned to do what cannot be done without you. You are made an indispensable organ of the government. And for the present juncture it rests entirely with you, whether certain things essential to good government shall be faithfully done. \* \* \*

Gentlemen, it is a deplorable and shameful thing to chronicle, but it is true, that since the people last assembled in their grand jury, there have been no less than five unlawful homicides in this city. First, the policeman, David Sires, while endeavoring to discharge his duty, was shot down dead. Afterwards, on the 17th of January last, one of our young fellow townsmen, George B. Reynolds, while walking, in the evening, peacefully along a public street, was waylaid and murdered by tramps. Next, on the 18th of January, two men, going by the names of Howard and Sullivan, who had been arrested, examined before one of your committing magistrates and were about to be committed to jail, charged with the murder of Reynolds, were at mid-day in the very presence of your magistrate, and when the examination was scarcely concluded, set upon by a lawless body of men, who snatched them from the lawful custody of your officers, thrust them out of your court room to a gibbet extemporized on the public square and there hanged them. And, lastly, on the same tragic 18th of January, before the two miserable victims last mentioned had been an hour dead, the same lawless body of men or others of like temper, broke into your county jail, dragged thence a man named Payne, of English birth and parentage, and perhaps a British subject, who had been committed there by one of your magistrates, charged with the killing of Sires, and hauling him down to the place of sacrifice, hanged him between the other two.

As it will be your melancholy task to explore these dark and dreadful affairs, it is my privilege to offer you such considerations as seem likely

to animate and support you in your labor. In order to do this, I shall find it convenient, as I have already done, to refer to facts as I understand them to exist. But as I am not testifying as a witness before you, and as you are the exclusive judges of all facts to be found, you will not take what I say in this charge as evidence that any such events as I speak of have happened. If I refer to facts, it is simply that what else I have to say may be the more easily and clearly understood.

According to my information—and I have been at some pains to get at the facts—it appears highly probable, but not beyond reasonable doubt certain, to my mind, that the man accused of shooting Sires was the one who really did shoot him. No one saw the fatal shot fired save Sires and his assailant—or at least no one so near as to be able to give an account of the occurrence. Sires himself, in his dying declaration, was unable to say who shot him. Payne made some statements which, taken together, tend strongly to fasten guilt upon himself, but these admissions are not direct and were made under such circumstances as prevent their being to my mind perfectly reliable indications of guilt. The case is one of circumstantial evidence, and there is a possibility that a companion of Payne's was the guilty party.

Seattle was thrown into a turmoil by the news of the death of Sires. As soon as Payne was arrested, a movement was on foot to lynch him. For fear of the people, he was brought before the magistrate with the greatest privacy consistent with propriety and waived an examination. Two or three witnesses were nevertheless examined by the magistrate so as to enable him to fix the amount of bail. Now, inasmuch as the facts in the case were not fully developed before a committing magistrate, and no examination of all the witnesses in the case has ever been had by any public authority, and as it is, as I say, barely possible that Payne was actually innocent after all, I deem it my duty to direct you to enquire of the facts and if you find that anyone else than Payne fired that shot to bring in such a bill as the evidence you shall have before you may warrant.

Passing to the homicide of Reynolds, I have nothing to say, because I share the common belief that the men who caused him to die have themselves died. Regularly they should have been indicted, tried, convicted and sentenced at this term. But they have been hurried off without arraignment, without trial, without verdict, without sentence. Your province and mine has been invaded, it has been usurped, by somebody, and it is for you to inquire, By whom? By what authority? By what necessity?

Gentlemen, it is painful for me to say what I ought to say. It distresses me beyond measure, because while I fear God, I do also regard man. Those concerned in this summary business are men, and my

heart is kindly toward mankind. These men are my beloved fellow townsmen, with whom my lot in life seems permanently cast. They are my friends, my daily companions, whose courtesies to me are constant and innumerable, whose good opinion I prize, whose greeting I enjoy, whose troubles deeply affect me, and whose welfare I would gladly purchase at a sacrifice of my own. I believe I know my own heart and temper, when I say, I would willingly venture my life for their good. Besides I sympathize with you, too. Though some of you are not placed so intimately in contact with them as I, and may not have learned so thoroughly how estimable they are, yet I recognize among you those who must enter into and perhaps surpass my own sympathies and distress. I would, if I might, relieve you of your ungrateful task of listening and investigation. But you will not be without compensation. The richest compensation is when the conscience, which is the eye of the heart, reflects a near and approving God. That is reserved for those who climb the loftiest heights of duty. And what pinnacle can be more lofty than that elevated, rugged, broad-based and deep-seated, mountain-like range of conduct, which soars up and up above the mists and creeping things of earth, higher and still higher, until it glitters a universal landmark, snow-white in the eternal sunshine, clothed with the lustre which belongs to perfect purity and truth. Such conduct and such heights mark the border when a boundary line must be run between the private fortunes of those we love and the public welfare.

Let us look somewhat narrowly at what our fellow citizens have done. And for this purpose we may boldly talk of facts, that are common fame and common property. An evening or two before Reynolds was shot, an inoffensive citizen was stopped on one of the thoroughfares of Seattle by two foot-pads, who, pointing at him a revolver, ordered him to throw up his hands. Approaching footsteps alarmed the robbers so that no further violence was attempted. Within forty-eight hours, the like incident happened again and again, until the whole town was in a ferment of insecurity and rage. At last poor Reynolds' turn came. Then the popular indignation took instant shape for summary action. A committee of safety was formed, the streets were patrolled, the two culprits were arrested, and on the very night of their crime were passed into the hands of the sheriff. On the same night an attempt was made to take them back out of the sheriff's hands. The door of his office, whither he had gone with his prisoners, was beaten in by citizens bent on vengeance. With drawn pistols, he and two deputies stood at bay across the threshold. A parley ensued, resulting in the withdrawal of the attacking party, upon the promise of the sheriff that an examination should be had before a magistrate next morning. On the morrow the examination was had, and it was followed by its terrible sequel.



That condition of things in Seattle, which would allow such a matter as the presence and action of two highwaymen to throw the peaceable townsfolks off their balance, was like all human conditions, complex. It had elements too many to count. Good and bad were intermingled. First, and greatest—not strange to say—the love of our people for peace and good order is intense. It is accompanied by a disposition to flame out upon any attempt to mar or interrupt it. The spirit of adventure that loves to escape the common rut—not a bad spirit rightly directed—is strong in all the populations of the far west, and is not wanting among us. Hunger for fame is common to all mankind. Things forbidden have their zest, and stolen waters their sweetness, here as elsewhere. Very familiar to us are the history and example of the vigilance committee of San Francisco, whose deeds, excusable perhaps under the peculiar circumstances of their commission, are now, as the mistiness of time gathers over them, assuming heroic proportions, and are coming to be indiscriminately regarded as furnishing a pattern and excuse for every popular expression of hot resentment. Then there is the history of Seattle itself. The unlawful combination of citizens in 1853, which lynched one man just across the street from this court-room, furnished the precedent for that of 1854, which lynched two men, and these each a precedent for that of 1882, which lynched three. Nearly thirty years have elapsed since those early scenes of violence, but they contributed their moulding force to the young community, and the spirit which permitted them and which did not then meet, and has never yet met, with any stern and condign rebuke from the people, has lived along among us unthought of but ready to leap out of its ambush upon occasion. Then there was the national epidemic of irritation against assassins, and particularly Guiteau, from which Seattle suffered in common with all good citizens throughout the union; and there were the random comments upon courts in general and in particular, and their officers and juries, their procedure and methods, with which the press and all social circles teemed, and which made the Guiteau trial their text.

Nothing has done more to loosen the affections of the people all over the country, from their own established modes of administering justice, than the loose, inconsiderate, unsifted and unproved imputations cast from among the people upon the people's juries and the people's courts. I would not shield the courts, their officers or juries from proper criticism, however sharp. Judges, juries, sheriffs, attorneys, police and methods must, in a country like ours, be exposed freely to the fire of public discussion. Furnace heat will not hurt the gold. It will purge it and make it shine out. Let all that cannot stand this test be burned. This country is not governed by a monarch, who, for self-protection must intrench and garrison his tribunals against assault.

Our courts are the people's courts, which the people constitute, over which the people are sovereign, and which they have a sovereign's right to criticise. I do not say, that because a man is juror or judge the tongue of malignity can spit its venom at him with impunity, but I do say, that any word of criticism honestly uttered in the interest of justice, however black and damning its imputation, is the citizen's right. That is the only way in which, in a country governed like ours, the public can be aroused and educated and organized and led up to correct defects and abuses in the courts. This is past when courts needed to protect themselves against such a free ventilation of opinion. It may be bad to have the confidence of the people in their institutions shaken; but if criticism be free and brisk, both against the critics and the criticized, confidence will not be greatly shaken in that which is not shaky.

It rests with the critics of our judicial bodies and methods, however, to point out very definitely the defects that dissatisfy them, and to suggest proper curative measures. The staple complaints of the newspapers, that no one who has formed an opinion can sit on a jury; that the setting forth of the crime in an indictment is an excessively technical thing, extremely unlikely to be found practically to fit the case for which it was intended; that cases are postponed unreasonably till witnesses are flown and justice has died of old age; that trials are too protracted and operate as unreasonable delays of justice and as an exorbitant tax upon the people—all these, if they were true, would furnish good ground why the people should remodel their laws regulating judicial procedure, but none for attempting to right things by occasional explosions of violence. Such blind mad drives at iniquity, hit or miss, are like the utterances of a teacher gone crazy, to whom his pupils listen unable to gather the lessons he would teach. But all these complaints are absurdly inapplicable to Washington territory and this district.

[At this point Judge Greene makes quite a full statement relating to prosecutions of criminal cases and the results thereof in the courts of Washington Territory, demonstrating the efficiency of the courts.]

No, gentlemen, the excuse which is tendered, that this lynching was the assertion of the sacred right of revolution—that it was the people's revolutionary protest against imbecile courts—will not do. A revolutionary protest by whom? By the people. Against whose courts? The people's. Why the very protesters are the material of the grand and petty juries, who decide all questions of fact, all questions of guilt or innocence, absolutely and without appeal. They are the courts. Are the people protesting against themselves? Was that which animated them in their violence the spirit of those who, approved by all the sober and the wise, assert for just cause the sacred right of insurrection? Was

that their spirit when they shattered the sheriff's door to wrest from the lawful custody of their own officer the two prisoners he was holding for their sakes? And when they stood facing over that threshold the pistols of the sheriff and his aides, was theirs the spirit of Pym and Hampden and Samuel Adams and George Washington?

There could have been no reasonable doubt on the 18th of January last in the mind of any sensible man, unswayed by passion, but that if justice were left to take its ordinary course, the guilty men would have been safely kept and certainly brought to the gallows. Did ever a guilty man escape merited doom, when the whole current of public opinion set dead against such a crime as his, and the wrath of the entire community was focused upon him? Did ever a jury, in this territory anywhere, acquit contrary to positive and overwhelming evidence? Was not the last case of homicide which went to a verdict in this county, five years ago, most summarily disposed of by conviction and death sentence, and was not the convict in due course executed? Then, as I recollect it, the clamor was that courts and juries hereabouts were too vigorous, and that an accused person did not have a fair chance to show his innocence.

It may be said that those who killed Howard, Sullivan and Payne were driven to it by a sense of duty. But no act contrary to law is justifiable or excusable on the mere ground that it is done pursuant to a sense of duty. A sense of duty which does not grow out of facts actually existing and affording a reasonable warrant for it, or out of an honest and reasonable belief in facts such as would, if existing, be its justification, is not a sound sense of duty. If the courts of the third district were actually, by their nervelessness and inefficiency, rendering the lives of the people insecure, and the people themselves were not to blame for this condition of things, then any portion of those aggrieved might be justified in any uprising actually and reasonably necessary for their own protection. Or if the people were not responsible for the efficiency of their courts and had good reason to believe and did believe that through their courts they were being made the innocent victims of nerveless oppression, and so believing did no more than would have been necessary to protect themselves had the oppression been real, then they might be excused. But the facts are as I have shown. There was really no inefficiency in the courts nor any color for mistake about them. The records of the courts are as freely open to all as to me. The people were the chief actors in them. The people owned and engineered them. The common people not only occupied in them the position of exclusive judges of fact in all cases of crime, but reserved to themselves and actually were exercising, in all such cases, the final and absolute power of declaring through their jurors, in conformity with rules established by themselves, what the verdicts

should be on law and facts combined. Assuming, as a man sometimes claims for himself, that a sane man or a sane body of men, may be afflicted with a sense of duty impelling them to act in a manner contrary to law and reason, I say that such a man or men cannot be excused by society for such acts. Society cannot without suicide allow such a man to put his bald, naked conviction in practice. As soon as he acts upon it, he becomes an offender against the state, to be dealt with, not according to what he may think is law and right, but according to what is law and right. I don't care how strong such an irregular conviction of duty may be, even though the man may claim it to be the voice of God within him, yet if it constrain him to unlawful practices, he must be quenched as a firebrand amid combustibles. He is an infernal machine, liable to go off at any minute and disorganize society or demolish some precious life. You, yourselves, must have passed upon this very question in several notorious cases, yet fresh in your minds. There was Freeman, who had or claimed to have a conviction, that to worship his Father in heaven he must like Abraham offer up his son. And so he slew his son. There are the Utah polygamists, who stubbornly believe that not to marry many wives is to anger the great Head of their church. And there is Julius Charles Guiteau, seized with the inspiration that the wrath of Jehovah will consume him if he does not, without too much delay, assassinate James Abram Garfield. You do not need to be told the one rule that must govern all such cases. A man's bare convictions, however honest and earnest he may claim them to be, will never avail to save him from punishment whenever his practice is contrary to law.

Every one of us who holds office in this territory, every one of us who ever has held such office, every one of us who has ever been an officer in the army of the United States, every one who is a naturalized citizen of the United States, has taken a solemn oath to support the Constitution of the United States. You, yourselves, as grand jurors, have just now yourselves so sworn. Those of us who have thus expressly sworn and those of us who have not expressly so sworn but who live as citizens under the benign protection of the flag of the United States, were bound on the 18th of January last and are now and hereafter bound to cherish, uphold and maintain at all hazards in favor of and against all persons, that Constitution, and the rights guaranteed thereby. Let us refresh our memory with some of those rights—*"No person"*—hearken, gentlemen, to these memorable words, worthy of a great and roomy-hearted people—*"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury."* Ah, gentlemen, how is it that Howard, Sullivan and Payne have been held to answer and you uncalled on? But let us read on—*"nor be deprived of life, liberty or property*

*without due process of law.*” Is a committee of safety one of the legal institutions of this territory or city? Are its secret sessions, its undivulged membership, its self-voted dictatorship, its indiscriminating judgments which make all homicides murder, its *ex post facto* legislative fiats, its bitter scoffs at executive clemency, its rash and pitiless and brutal executions, are these due process of law? “*In all criminal prosecutions, the accused shall enjoy the right to a speedy and impartial trial by jury of the state or district wherein the crime shall have been committed, which district shall have previously been ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.*” Did even Sullivan and Howard have anything like the trial, the preparation, the fairness here guaranteed? Whoever their triers were they had no voice in choosing them. They were allowed no challenges. They were granted no jury. Where were the “impartial jury?” And how about poor Payne, who for aught you and I know might have shown himself innocent? \* \* \*

How cheap to us these rights are. They are our heirlooms to be preserved and transmitted to our children. They seem to ourselves, gentlemen, so free and secure that we half forget they are our own. We are apt wholly to forget that they belong equally to others. Yet we touch them at every moment; we inhale them at every breath; they are like the glorious air of heaven to us, so secure, so life-giving and so free. As, while we are engaged with other things, the air is forgotten, until from some mishap we ourselves begin to feel what it is to smother, and then with desperation we fight for it; so do we think little of these rights until we ourselves begin to choke and gasp because to us they are denied. But these cheap and common rights have cost something. For a constitution embodying them, our forefathers staked life and fortune at Runymede. For such a Constitution, our Revolutionary fathers bled and died. And all over our country are men—soldiers once, citizens now—myself among the number, who have fought for the Constitution they bequeathed and who, to hand it down to our children entire, with all its precious rights in it, untarnished, unperverted, not a line nor a word erased, are ready at any time to die.

Gentlemen, our Constitution has been dipped in the most precious of all fluids, it has been kyanized in the bluest blood of all the race—the blood of freemen who are kings. Instruments so treated cannot decay. But they are still liable to be broken up. It is our charge to preserve our Constitution from breach.

True it is, that constitutions and laws are not made in the interest of highwaymen. But he who upholds Constitution and law against even the slayers of murderers, is not thereby revealed the friend of mur-

derers, nor the enemy of the people. Constitutions and laws are framed in the interest of the people, who love innocence and hate guilt, and conscious of their integrity, their paramount power, their reliable and inflexible temper and their hatred of guilt, can afford to wait with patience till the tests of innocence have in all their series, been generously applied to the accused and seen to fail.

I take these things to be true, death should follow murder. Death should not follow that which is not murder. There should be some impartial, unimpassioned tribunal, to determine whether a man is guilty or innocent, and whether guilty of murder or of some less grade of crime. A self-constituted body of men, whose proceedings are not open to the public or to which the public are not invited, and whose names are published, is palpably an unsafe tribunal to pass upon questions of property, much more upon questions of life and death. When such a body assumes to decide such questions it insults and assaults the people, who, by Constitution and laws and open courts and exposed juries, drawn from those inhabiting the place of crime guarantee impartial determination of the truth. Dispassionateness is the probity of a court, and publicity is the voucher of its probity. Government is stable in proportion as those who govern are just. Government is acceptable to the governed in proportion as it is seen to be just. If, therefore, a government is to be both stable and just, it must deal with offenders so openly and fairly that its justice is plain to see. To every just government the peace of the people is dear. Therefore, every just government will take pains to display its justice. A body of men, whose names are undisclosed and who act secretly as a department of government, summarily and finally to adjudge guilt, whether they are a committee of safety or an inquisition, can never deserve nor have the confidence of any people, nor fail to interrupt the public peace.

Deeds like those of the 18th of January may tend to suppress foot-pads; but do they tend to suppress mobs? And which are the greater evil, foot-pads or mobs? Which are the more dangerous to life, liberty and property of individual citizens? Which more endangers the life of the commonwealth? And whether is more valuable the life of the commonwealth or the life of the individual? Such a local flash of vengeance as we witnessed on that day is like a blast of dynamite. It has a temporary effect to make certain forms of crime shun the perturbed spot. It has a tendency to scatter, but not to burn out crime. For a little while, it makes rogues of a certain sort afraid of the inhabitants of a certain place, but it inspires no dread of law as law. How can it? The terror of it consists in its disruption of law. It does not work on the conscience of the criminal class as does the spectacle of a mighty and magnanimous people, strongly reverent of law themselves and

sternly exacting like reverence of it from others—a people patient to hear all that a puny prisoner, caught in its terrible grasp, has to say for himself—and yet keen to lay guilt bare and inexorable to punish it.

Gentlemen, it is not a question of personal safety of the residents of Seattle, but a question of the supremacy of the law and Constitution. Precious as is the life of an unoffending citizen, precious as is the life of an officer of the people moving in his line of duty, are these precious things more precious than the Constitution? Shall the Constitution be broken in order to prove one's estimate of the value of life? Was that the spirit twenty years ago, when the lives of a million innocent citizens were voluntarily staked and hundreds of thousands of lives freely paid down, to preserve the Constitution inviolate? Does not the political enormity of killing Sires and Reynolds under our political system arise from the fact that life was taken contrary to the fundamental law of the land? Is not this it, that Sires and Reynolds were bereft of life, without legal cause, or complaint, or presentment, or trial, or verdict, or sentence—in short, without due process of law? And is not that enormity reproduced on a more fearful scale, when the reputed murderers of these citizens are deprived of life by a like breach of the Constitution? Every citizen has in the Constitution a guarantee of life. The slayers of Sires and Reynolds struck down that guarantee. In so doing, they struck at the life not of Sires and Reynolds alone, but at the life of every citizen, for they smote down the shield that covers the lives of all. \* \* \*

The death of Geo. Reynolds furnished an incomparable opportunity for Seattle to exhibit in bold relief not only the severity but the self-restraint and magnanimity of a strong and virtuous people; but alas it served only to show a part of the city caught up, as it were, by two despicable wretches, and—at least so far as mere breach of Constitution is concerned, precipitated into the same sink of folly and guilt into which those wretches had first fallen themselves. Gentlemen, I would by no means be understood to place the act of our citizens upon the same plane of turpitude as that of those assassins. But both acts had this in common: Both broke the Constitution. See what our citizens did: They suspended the laws; they nullified the Constitution; they contemned the courts; they invaded and took possession of a part of a public building; they seized by fear and force and destroyed property of the tax-paying public; and under pretense of putting down robbery, they thus robbed and they killed.

Now, I put it to you, which is more dangerous to property, liberty and life, which more corrupting to public morals, which more destructive of society itself, occasional instances of undisguised crime, done in secret by one or two outlaws, or such a pretentious flaunting outrage upon the Constitution as that which nearly the whole town of Seattle

looked upon with horror or applause on the 18th of January?

Gentlemen, if we as American citizens, have any real or permanent right to share in the government of this territory or nation, it is because we are able to and do rule our own spirits. Thus we have a right to insist that all others, our fellow-citizens, rule theirs, and they ruling theirs, have a right in turn to insist on our subjection to our own. There is a discipline in all commonwealths which commands that every citizen subordinate himself to the will of the whole as expressed in constitution and law. Vast interests, all interests, the very life of government, the existence of society depends upon the preservation of that discipline. Breach of it renders everything committed in breach of it crime. Those engaged in the Seattle outbreak are guilty of such a breach of discipline.

I am not disposed to take the harshest view of what they did. I regard their work as the work of a mob—a heated and infuriated mob—and therein lies, to my mind, the greatest palliation of their deeds. Was it not a mob? According to those who think that merchants, professional men, well-to-do citizens, men moving in the highest social circles and members in good standing of the churches cannot be components of a mob, it was not a mob. According to the idea of those, who think that a body of men of which the nucleus and most active portion was a part or the whole of a self-constituted legislature, court and executive combined, self-styled a committee of safety—I say according to the notion of those who think that such a body could not be a mob, it was not a mob. But according to the idea of the secluded and passionless dictionary maker, it was a mob. Webster says that a mob is “a collection of people for some riotous and unlawful purpose.” Here was indisputably “a collection of people.” And it was undeniably for an unlawful purpose. It was riotous, moreover; for it set as naught the very rules, by which of all rules it should have been restrained, namely the Constitution and the laws. The simple truth would seem to be that this collection of people was a mob, of which the whole or a fraction of the committee of safety formed the most active and central part. The doings of that dreadful day were as I estimate them, the outburst of a popular rage, which reverberating from heart to heart, had reached most extravagant heat. Daniel Webster says of such popular fury, that it is more forcible than lightning, earthquake or tempest. Men quiet and law-abiding on all ordinary occasions—none more so—were on that day estranged from their own selves. They gave loose rein to their emotions; they abandoned their usual occupations; they permitted themselves to be dashed by a common impulse along a common course; they let themselves be caught up like so many grains of sand and whirled into riotous excess by a fierce sirocco of passion. Our citizens are not ruffians. They did no more



than any of us might have done had we been similarly moved. We have all of us done some insensate thing or other some time in our lives. *Semel insanivimus omnes*. But they nevertheless broke Constitution and law.

Now our law—your law—says, that when a man, on great provocation, in a transport of sudden passion, not having had reasonable time to cool, unlawfully kills another, he is guilty of manslaughter, and not of any higher grade of crime; but if he coolly and deliberately and conscious that what he is doing is unlawful, purposely and unlawfully takes another's life, he is guilty of murder in the first degree.

Gentlemen, what shall be the end of these things? Those later cases of lynch law at Ironton, Ohio; Logansport, Indiana; Franklin, Kentucky; Del Norte and Pueblo, Colorado; Prineville and Linville, Oregon, and Kansas City, have any of them any casual connection with the transactions here, or are we merely the first unfortunate sufferers from a general epidemic of political distemper which is crime? How about the three thousand young people of our city who are swiftly growing up to fill places of trust and influence, and to take here and elsewhere their share in all human concerns? They have heard at their homes, on the streets, and at their schools, by their playmates and their elders, by strangers and by friends, by kinsfolk and by parents, the incidents of the 18th of January recounted and discussed over and over again, and with almost unanimous commendation. They have many of them read the public prints. A lasting impression has been made on them, and an irreversible bent given to their character as members of society.

How long will it be before Seattle shall witness another outbreak? A community that has once burst the harness of authority is more likely to do it again. It is a team that has once run away. It is a herd that has once stampeded. Besides, there is a turbulent joy in license, and especially in license that is cruel. Man is a creature of appetite, whom blood either gratifies or sickens. History shows that the pleasure of homicide is so nearly akin to the grosser forms of animal indulgence that it can hardly be distinguished save by the way it is procured. I do not say that any dear friend of yours or mine has felt the motion of that pleasure, but you may be sure that some in the crowd around that gibbet did. Those who once have enjoyed it are not likely to forego it when a safe opportunity offers it to them again. Security against such repetition is only to be had by annihilating the opportunities or by rendering them in the highest degree unsafe. Such opportunities perhaps cannot under a republican form of government be annihilated, but they can be made extremely dangerous to embrace. Masses of men can be kept in awe the same as individuals. Faithful and implacable enforcement of the law against guilty ringleaders is adequate to do

this, and naught else is. If the people in their courts do not put forth the requisite effort they will assuredly be tormented by recurrences of disorder. They will be to a greater or less extent a prey to bandits and to mobs. Woe betides the citizens of that commonwealth which has not strength and will to be the only and ample redresser of their wrongs. Laxness and spasm are alternations of the same sickness. Pitiable is the prospect of that racked and demented community which sees no recourse for its peace but to fly alternately to a court whose hand is putty, and a mob whose food is blood.

As for yourselves, gentlemen, you cannot undo what evil has been done. But that current of sentiment and feeling which sets toward evil yet to be, can be stemmed, overtopped, overwhelmed and reversed. Here is scope for individual virtue. We must take our stand individually to compass the welfare of the people and let them come along who will. Individual fidelity is at the bottom of all fidelity in the aggregate. An instance of singular, but unlooked for and unobtrusive integrity may be long in coming to light, but when revealed it appeals with matchless power to the conscience, and mightily moulds the attentive minds of men.

The popular sentiment that justifies lynching has never been squarely confronted in this community. Now is the time for us individually and collectively to grapple and overthrow it. It was not on the morning of the 18th of January that the Constitution was most in peril. It is now when the pressure is strong upon you to approve the doings of that day.

Gentlemen, it is human to desire popularity. I desire it and so do you. But the popularity we crave is, as Lord Mansfield, himself one of the bravest and most independent of men, puts it, "that which follows and not that which is run after. It is that popularity which sooner or later never fails to do justice to the pursuits of noble ends by noble means." O, for a touch of Spartan, Roman, English virtue! O, for the patriotism of 1776 or 1861! Do we not know that, for men of our stock, a country without a constitution is no country at all; and that to rupture the Constitution is to expose the fireside; and that to desert the Constitution is all the same as to desert the flag. A battle is impending between the forces of good on the one side, and the forces of evil on the other. The field is here, the time is now. Honor lies not so much in victory as in the choice of sides. To you is offered the position of the head of the column on the side of the Constitution and law. Will you take it? You have taken it. Your oath is your irrevocable acceptance of detail for that duty. The head of the column may seem weak. Do all that it can it may not be able to accomplish much. It may go down. But a host invincible follows. I mind me of one who 1800 years ago stood up for right and truth—leader

of the ages, and fell—Jesus of Nazareth. It is said he rose again. The head of the column may go down, but it will rise again. A just man falleth seven times and riseth up again. Right is inevitable victor. To fight it is to strengthen it; to repel it is to insure its recoil. To side with the right is to share honor and victory. Gentlemen, as far as I lawfully may, I will gladly associate myself with you in this conflict. In all lawful ways I will accompany and assist you. I do not say to you "Go and do what is right!" I do not say to you "Go!" I say "Come!"<sup>2</sup>

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<sup>2</sup> BIOGRAPHICAL NOTES ON ROGER SHERMAN GREENE: Roger Sherman Greene came of New England colonial stock; but his father's family traced their lineage further back to Sir Henri Greene, who was lord chief justice of England in the 14th century. On his mother's side he was a great-grandson of Roger Sherman, one of the "signers." He was born in Roxbury Highlands, now a part of Boston, Mass., December 14, 1840, the eighth of the 12 children of Rev. David and Mary Evarts Greene.

He entered Dartmouth College as a sophomore at 15 and was graduated in 1859.

Upon graduation, he studied law in the offices of Governor Coolidge of Vermont and of his uncle, Hon. William M. Evarts, of New York. He was admitted to the New York bar in May, 1862, to the Illinois bar in January, 1866, and to practice in the Supreme Court of the United States March 1, 1869.

He enlisted in the Union army in 1862 and the following October was mustered in as second lieutenant of Company I, 3rd Missouri Infantry, of which his oldest brother was captain. He participated in Sherman's unsuccessful attack on Vicksburg in December and in the capture of Arkansas Post, an operation so costly that at its close Lieut. Greene found himself in command of the remnants of two companies. He was promoted to first lieutenant by commission dated March 11, 1863. In Grant's assault on Vicksburg he was seriously wounded. Upon recovery he was promoted to the captaincy of Company C, 51st Colored Infantry, and remained in this position until honorably discharged November 15, 1865, although for much of the time he was assigned to staff duty as judge advocate and as military engineer.

He practiced law in Chicago from 1866 until appointed associate justice of Washington Territory with residence at Olympia, by President Grant in 1870. He was reappointed by Grant in 1874 and by President Hayes in 1878. In 1879 Hayes made him chief justice of the Territory and he moved to Seattle. He was reappointed in 1883 by President Arthur.

In 1887 he re-entered private practice and was a member successively of the firms of: Greene, Hanford and McGraw; Greene, McNaught, Hanford and McGraw; Greene and Turner; Greene, Turner and Lewis; Greene and Griffiths. In 1887, he was awarded the Doctor of Laws degree by the University of Washington.

From 1905 to 1912 he was standing master in chancery of the U. S. Circuit Court at Seattle, and subsequently standing master in chancery of the U. S. District Court at Seattle.

Judge Greene was a member and ordained minister of the Baptist Church; a Republican; an active advocate of woman suffrage; member of the G.A.R., Loyal Legion, Washington Pioneer Association, Seattle Bar Association, King County Bar Association, Washington State Bar Association, American Bar Association, and of various civic, philanthropic and scientific bodies. He authored many important statutes passed by territorial and state legislatures, was chairman of the Rivers and Harbors Committee of the Chamber of Commerce and has been called the father of the Lake Washington ship canal. He was a member of the commission of 15 who framed the Seattle Charter; was founder and president of the Seattle Humane Society and also of Seattle General Hospital. He died February 17, 1930, and is buried in Washelli Cemetery, Seattle.