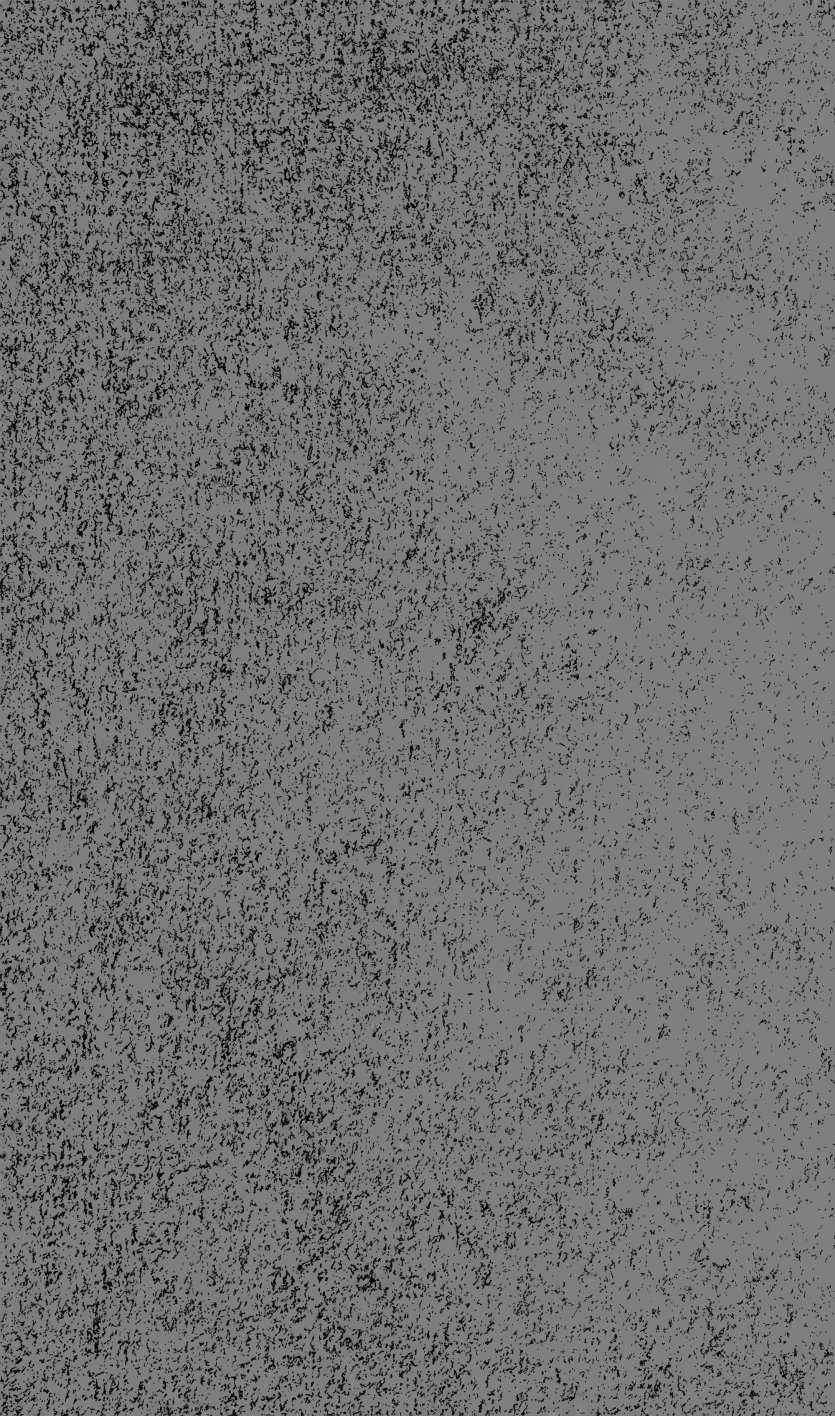


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A STATEMENT

OF THE FACTS, PERTAINING TO THE

PROCLAMATION OF MARTIAL LAW

**OVER PIERCE COUNTY, W. T., BY GOV. ISAAC
I. STEVENS AND THE PROCEEDINGS
OF THE COURT MARTIAL IN THE
ATTEMPT TO TRY CITIZENS
FOR**

T R E A S O N ,

**CONTAINING THE GOVERNOR'S VINDICATION AND THE
TRIAL AND DISCHARGE OF THESE CITIZENS.**

STELLACOOM, JUNE 24,

1856.

STATEMENT

OF THE COURT MARTIAL

COURT MARTIAL

NOTE.

Several persons in Pierce county W. T. were arrested by order of Gov. Isaac I. Stevens. A part of these persons he ordered to be tried by a Court Martial, composed of Volunteer Officers, on a charge of treason, but failing in this, a complaint was made to the civil authority and the persons so complained of have been examined and discharged, nothing being found against them.

Notwithstanding their discharge, certain persons still continue, to do the accused parties injustice, it is therefore determined to give the facts in the case, with the proceeding of both courts, that every one may have an opportunity to judge for himself, as to the guilt or innocence of the accused, and of the propriety or impropriety of proclaiming Martial law! Not disposed to do the Gov. the least injustice, his vindication for his course will be found in this paper.

SPRINGFIELD

1870

On the 9th day of March, Isaac W. Smith, acting Secretary of the Territory by order of Gov. Stevens proceeded to order L. A. Smith, John McLeod, Charles Wren and others in their vicinity, to leave their claims and reside either at Olympia, Nisqually or Steilacoom. McLeod, whose team had been pressed into the service, was consequently absent at the time, Mr. Sec. Smith, sent him a written order to the same effect.

After a hasty preparation, these persons moved to Steilacoom, on the 12th, leaving most of their property exposed to destruction, by whoever might chance to find it. After remaining several days in the village, Mr. Murry, one of those who had been ordered in, wrote to Gov. Stevens for permission to go home for a load of provision, but received no answer. All the proscribed persons, aware of the communication having been sent, were awaiting the result, until convinced that no answer would be given, determined to go without the permit. Mr. L. A. Smith, who had a large quantity of potatoes, learning that they were being destroyed, contracted them at much less than their current value, and went to his claim, expecting the teams there next day to take them away. The contracting parties on their way out, hearing that Smith's property had been destroyed, turned back, and the next day Smith was arrested. The same day Charles Wren who contracted his grain to the local Indian agent at Steilacoom, for the use of the department, was arrested immediately upon his arrival at home. John McLeod bearing the following letter was arrested the same day.

"To the Commander of Volunteer companies, Pierce county W. T."

Mr John McLeod having made an agreement with me for the quantity of wheat he has on hand, the wheat being for the use of the friendly Indians, on the Steilacoom reserve, and it being required as soon as he can thrash the wheat and bring it to mill, you will therefore please render him such assistance as you possibly can, as it is absolutely necessary.

Steilacoom March 20th 1856.

SAMUEL McCaw.

Spec. Ind. Agt."

The following day, Henry Murry and Peter Wilson went to camp McLeod, to obtain permission, if possible, of the Commander of the Volunteer forces at that place, to go home for a load of provisions, were arrested immediately upon their arrival at camp and placed under guard.

McLeod, Wren, John McPhail, L. A. Smith and Henry Smith, were taken immediately to Olympia before the Governor, who ordered them to be taken to Ft. Steilacoom, with a request to Col. Casey, to place them in *close Confinement* and there retain them until the close of the war or until he should summon a Military Commission or Court Martial, to try them.

The next day after their arrest, Murry and Wilson were taken to Olympia, and after four days had elapsed, were granted an interview with the Governor. A few days after, at the solicitation of Dr. J. B. Webber, the following permit was given them:

"EXECUTIVE OFFICE TER. WASH. APRIL 7TH 1856.

Messrs. Murry and Wilson, have permission to go to Steilacoom, Dr. Webber agreeing to be responsible for their remaining there. They will not be allowed to leave Steilacoom, except under a permit, signed by me.

ISAAC I STEVENS Gov. and Com'd-in-Chief."

This order and permit, have not, up to this date, been revoked, and Messrs. Murry and Wilson, are still prisoners, although they have not been charged with anything. Mr. McPhail and Henry Smith have also, without charges being preferred against them, been retained as prisoners, allowed however, with a written permit, to return to Steilacoom on parole.

About the middle of April, Mr. Murry again addressed a note to the Gov., for permission to go home for provisions and was refused.

The prisoners who were confined in the guard house at Ft. Steilacoom, made application to Judge F. A. Chenoweth, for a writ of *Habeas Corpus*, whereupon Gov. Stevens declared Martial Law. (see last page.)

Finding that Col. Casey would not refuse to obey the civil law, and that the prisoners would be given up upon the service of the writ, Gov. Stevens removed them again to Olympia.

At the time appointed by law for holding^d the U. S. District Court for Pierce county, Judge F. A. Chenoweth was unable, from severe illness, to attend, and made a written request to Chief Justice Lander, to hold the said court in his stead. Judge Lander arrived at Steilacoom on the 5th day of May and finding that he would be forcibly prevented from holding court and being desirous to prevent a collision between the civil authorities and the volunteers, adjourned court until Wednesday the 7th, for the purpose of writing to the Governor and inducing him to revoke martial law. The Governor however refused to do so, and sought to instruct Judge Lander, that he might adjourn from any time until the next term of the court.

Judge Lander, conceiving he had done his duty, proceeded to the Court House and opened court in due form, and caused the Grand Jury to be empanelled and qualified. During this time, the court was interrupted by Lieut. Col. Shaw warning the Judge that he had orders to arrest him, to which the Judge made no reply, but directed the Dept. U. S. Marshal to enforce order in court and prevent any armed men (there being some twenty in the house and about forty without) from entering inside the bar. Col. Shaw still persisting in his intention and the Dpty. Marshal being unable to prevent their entry without the assistance of a posse (which the Judge refused to call, to prevent the effusion of blood) the clerk was ordered to record a fine of one hundred dollars against every man who came inside the bar with arms in his hands. The Grand Jury were also directed to retire to their room, and have not yet been discharged. Finding that Judge Lander could not be intimidated into submission, the volunteers under orders of Lieut. Col. Shaw, proceeded to force him from his seat, and the Clerk, John M. Chapman from his desk and taking both under an armed force, to Olympia, to answer before Gov Stevens for disobeying his edicts.

After two or three days, the clerk was discharged with the threat that if he ventured to do any more business he would be arrested and put in close confinement. [Judge Lander attempted to hold court at Olympia. Martial law was declared over Thurston county and he taken prisoner and sent to camp Montgomery.]

Immediately upon the removal of Judge Lander from the court house in Steilacoom, the members of the Bar and citizens met and each in the

most solemn manner condemned the transactions of the day as dangerous and despotic. Upon the receipt of this information, Gov. Stevens published the following vindication.

"The undersigned has had his attention called to a circular, expressing the views of the bar and of the citizens of Pierce county in regard to his recent actions as executive of the territory, in proclaiming and enforcing martial law in Pierce county.

"At a public meeting of the said bar and of the citizens, the course of the undersigned is pronounced despotic and unnecessary, and a solemn protest made against it as a most dangerous and unprecedented invasion of the rights of the judiciary, and as an act which called for the prompt interference and action of the national government.

"The views of said bar and citizens as embodied in resolutions, are prefaced by a statement of the facts, going to show that there was scarcely even a pretense of a cause for the action of the executive in suspending the functions of the court.

"This not only contains palpable errors of fact, but the whole paper is highly colored, and is calculated to give a wrong impression of the actual condition of affairs in that county.

"The undersigned deems it therefore due to the vindication of his own official action to present the reasons and facts, why in his judgment he was called upon by an over-ruling public necessity to proclaim and enforce martial law.

"On the 3d day of April, 1856, martial law was proclaimed in and throughout Pierce county by the undersigned for the reasons set forth in his proclamation in these words: (See 1st page.)

"What was the condition of the territory and of Pierce county at the time of issuing that proclamation, and what has been its condition for months previously?

"An Indian war had been raging, where neither age, sex or condition had been spared, whole families had been inhumanly massacred, alarm and consternation pervaded the whole territory. The settlers of the territory were in a state of siege, families living in block-houses with a few men, and the majority of citizens in arms, actively pursuing the enemy in order to end the war.

"There was however, an exception as regards "certain evil disposed persons" of Pierce county. They remained in security on their claims, receiving the visits of the hostiles, furnishing them with provisions, giving them information, acting as their spies, and in every way affording them aid and comfort. These persons lived on the outskirts of the settlements, in positions where the Indians had easy access to them, and on the line where were the depots of the military operations, and which was the base of the military movements.

"There is grave cause of belief not only that these persons fraternized with the hostiles, but that they were the main original cause of the war, and at a meeting last Christmas they determined to keep up the war confident that they would be gainers by it.

"All these are matters of public notoriety and have been for many months. The attention of the undersigned was called to it immediately on his return by acting governor Mason, who expressed the judgment, that at least they should be at once ordered in, and removed from the theater of active operations.

"His attention was afterwards called to it by that "veteran and energetic" officer, Lieutenant Col. Casey, commanding the military district of Puget Sound, and who had been informed by an Indian prisoner from Leschi's camp that the movement of the troops had been communicated to Leschi by one of these "evil disposed persons."

"The undersigned was unwilling to resort to harsh measures unless an imperious public necessity demanded it, and he limited his action to calling the attention of the military to those men, and to direct that they be carefully watched.

"The murder of White and Northern's decided what was his duty in the emergency. These murderers had their hiding places in the Nisqually bottom, and drew supplies from these "evil disposed persons." They were met and greeted by them in friendship with the blood yet on their hands.

"The undersigned accordingly determined to order them in as a preliminary step, and to execute this duty, he secured the services of a most prudent and efficient man, Isaac W. Smith Esq., the acting secretary of the territory.

"The order was executed with kindness and moderation. Several days were allowed to take away their effects. They had the choice of residence, Olympia, Ft. Nisqually, or Stellacoom, and arrangements were made to furnish them with provisions.

"So great was the public indignation at this time, that it was an indispensable measure of precaution in order to protect the lives of these persons from the justice of an outraged community.

"The arrest of these "evil disposed persons" had the most happy effect upon the friendly Indians, who believed and knew that they had stirred up the war and confederated with the hostiles. The friendly Indians began to have confidence in an authority which treated all enemies as enemies, even though some had the skins of white men.

"In defiance of these orders, these settlers returned to their claims, and re-established intercourse with the Indians. The military officers sent them in, stating that they had acted as spies and had paralyzed their operations.

"Accordingly they were sent to the station at Stellacoom under charges, and Lt. Col. Casey received them.

"It may be asked here, how it was that these men were able to keep up intercourse with the hostiles under the circumstances.

"These men have Indian wives and families, who have connexions, in the hostile bands, fathers, brothers, and other near relatives, and so far as the undersigned is informed, they sympathize with them in the war. These "evil disposed persons" are mostly the retired servants of the foreign corporations in our midst, and they have a deadly antipathy to the dominant, that is the American power here.

"In connection with these reasons of public necessity for proclaiming martial law, it will be pertinent to correct some of the mis-statements of the circular.

"It is not true that Lt. Col. Casey refused to receive the prisoners. He did receive them, but when the writ of *habeas corpus* was about to be issued, and the undersigned in consequence proclaimed

martial law, he asked to be relieved of their charge, doubting whether the proclamation could relieve him from the obligations of obeying the requisitions of the civil authority.

"Nor is it true, as stated in the circular, that all the persons under charges were at Olympia, a portion were at Steilacoom, and the remaining persons ordered in were either at Steilacoom, or Ft. Nisqually, within the limits of Pierce county.

"Nor is it true, as stated in the circular, that the Indians have been so far subdued, as that these persons could not communicate with them. The hostiles have infested the Nisqually bottom within the last fortnight, and they could have access to these settlers without much difficulty, whatever was the number of troops operating against them, unless each of these persons was under a constant guard, and his family under guard also.

"These are facts well known to all persons acquainted with the Topography of the country, and the situation of the claims of these persons.

"Nor is it true that the proclamation was sent only to a few Military officers. It was posted up publicly at Steilacoom, and was known to every citizen of the county.

"When the undersigned learned that a writ of habeas corpus was about to issue to free these "evil disposed persons" from the power of the Military, he determined to meet it by the proclamation of martial law.

"The writ of habeas corpus could not only be issued in favor of the persons in confinement at the Station near Steilacoom, but also in favor of those on parole, at Nisqually, Steilacoom and Olympia. The result would have been to paralyze the military in their exertions to end the war, and to send into their midst a band of Indian spies and sympathisers. There would have been at once a conflict and lives would have been lost.

"It is true that since the proclamation of martial law a great change for the better has taken place in the condition of the war. Through the vigorous action of all the troops, regulars and volunteers, the Indians have been repeatedly struck, many have been killed and taken prisoners, and the hope is indulged that in a few weeks the war may be ended.

"Yet every reflecting man must see that this is the critical period of the war, when it is to be determined whether the war can soon be ended, or whether the contest is to be continued another year. Within the last fortnight, houses and barns have been burned in the county of Thurston. The Indians have announced their determination to lay waste the settlements. Those east of the Cascades have declared they would transfer the war to the Sound, a measure to be apprehended in view of the known fact that they have had the services of one band of sixty men, commanded by the son of the Yakima chief, Owlh. It is no time for the nefarious practices of Indian spies and sympathisers.

"At this critical stage, therefore, the undersigned learned with great surprise that the court was to be held by Chief Justice Lander; and he was the more astonished at the reasons given by the Chief Justice in the letter from him to the undersigned, which is referred to in the circular.

"The undersigned had given, as the circular states, orders to Lieut. Col. Shaw to examine the condition of things, and to advise him of the earliest practicable period it would be safe to revoke martial law.

"The report of Col. Shaw was, that it was indispensably necessary to enforce martial law. A letter from him will accompany this paper, giving his reasons therefor.*

"The reasons of public necessity for holding the court, as set forth in the letter of Chief Justice Lander and in the circular, though they do not touch upon the principle of the case, need to be referred to as illustrative of the spirit of the whole transaction. It is said that one of the cases was a suit of the United States vs. the former Collector of Puget Sound and ought to be tried. Now this case was originally brought before the courts of Thurston county, and a change of venue was had to Pierce county, in Judge Chenoweth's district, on sworn affidavits that Chief Justice Lander was prejudiced and would not try the case fairly. The other most important case was changed from Thurston to Pierce for the same reason.

"As to the danger of collision which is referred to, it may be said the event showed no such danger. The armed force was small. A great portion of the citizens of Pierce county are in the field against the enemy, and are well advised of the necessity of the step taken by the executive.

"The undersigned did unquestionably suggest to Chief Justice Lander the adjourning of the court till June, at which time it was believed the necessity for martial law would have passed away, and he did venture the expression of the opinion that the power thus to adjourn the court was fairly to be implied from the wording of the statute.

"The undersigned having come to the conclusion that martial law was indispensable to protect the lives of the citizens, for reasons set forth in this paper, determined to enforce it by the arrest of the Judge and Clerk, which was done with moderation and decorum by Lieut. Col. Shaw.

"It is simply a question as to whether the executive has power, in carrying on the war, to take a summary course with a dangerous band of emissaries, who have been the confederates of the Indians throughout, and by their exertions and sympathy can render, to a great extent, the military operations abortive. It is a question as to whether the military power, or public committees of the citizens without law, as in California, shall see that justice is done in the case.

"And he solemnly appeals to the same tribunals before which he has been arraigned in the circular, in vindication of his course, being assured that it ought and will be sustained as an imperious necessity growing out of the almost unexampled condition of things.

Olympia, May 10, 1856."

ISAAC I. STEVENS,
Governor Territory of Washington

* Col. Shaw says that he did preface a note to the Gov. that martial law could be dispensed with but afterwards becoming convinced of its necessity, he recommended it be enforced.

Instead of these "evil disposed persons" being "exceptions," there were at the time of their arrest and still are several families living in different parts of the county, and in exposed situations, who have never been interrupted. The Indians have preferred a system of thieving,

rather than the more dangerous one of murder, and the settlers that have staid steadily at home, since the first wild burst of savage frenzy that moved the Indian at the commencement of the war, have succeeded in saving their property. The murder of White and Northcraft is the exception and the band of Indians that committed this deed have ever since contented themselves, with secreting in the woods, stealing and destroying property where there was least danger. And instead of these "evil disposed persons greeting" the murderers of White and Northcraft in friendship, a prosecuting witness, Mr. Galagher, establishes the fact that Mr Smith went *forthwith* and gave the information to the volunteers, as will be seen by the conversation between Mr. Wells, Commissary at Camp Montgomery, and the witness, as given in evidence before U. S. Commissioner.

It is a fact that other citizens of the territory, some of them in exposed situations and in the vicinity of where those murders were committed, were then on their claims and with the spirit that has characterized the hardy pioneers, not only of this community, but of the whole American people, chose to remain and defend their homes to the last.

As to the time allowed for removing their effects, we insert the following letter, which was sent to Mr. McLeod.

"WASHINGTON TERRITORY, MARCH 9 —

Sir:

I am instructed by the Governor to require you to remove to Fort Nisqually, without delay, with your family. I shall be absent for a day or two, and like to find you in readiness to remove on my return.

Very respectfully yours,

ISAAC W. SMITH, Acting Sec. W. T."

But desirous that the whole matter go before the public unbiased, we forbear further comment.

The proceedings of the Court Martial and of the examination before the Commissioner, are exact copies of the original records.

COURT MARTIAL.

CAMP MONTGOMERY W. T., MAY 20TH 1856.

Proceedings of a General Court Martial or Military Commission, convened at Camp Montgomery Washington Territory, by virtue of an order from Isaac I. Stevens Governor of the Territory of Washington and Commander-in-Chief of the volunteer forces thereof.

12 O'CLOCK M. MONDAY, MAY 20TH 1856.

The Court met pursuant to the said order. Present,

Lieut. Col. J. S. HURD, Aidcamp to Commander-in-Chief
 Major H. J. G. MAXON, Southern Batl. 2nd Regt. W. T. V.
 Capt. C. W. SWINDLE, 2nd Regt. W. T. V.
 Capt. W. W. DELACY, 2nd Regt. W. T. V.
 Lieut. A. SHEPHERD 2nd Regt. W. T. V.

VICTOR MONROE, Judge Advocate
 QINCY A. BROOKS Recorder.

The order convening this Court not being present, the Court adjourned until to-morrow at 12 o'clock M.

CAMP MONTGOMERY, 12 O'CLOCK M. MAY 21st. 1856.

The Court met pursuant to adjournment. The following is the order constituting this Court and which was omitted to be inserted in yesterday's proceeding, to-wit:

"Special Order, Office Adg't. Gen'l. W. T. V. Olympia May 16th 1856.

A General Court Martial, or Military Commission will assemble at Camp Montgomery, on the 20th of May 1856, for the purpose of trying such persons as may be brought before it.

(Signed)

JAMES TILTON, Adg't Gen.

By order of the Gov. and Com'd-in-Chief W. T. V."

"Members of the Commission, Lieut. Col. Hurd, Maj. Maxon, Capt. DeLacy, Lieut. Shepherd, Supernumerary, Lieut. S. B. Curtis, W. T. V. Judge Advocate, Victor Monroe. (Signed) JAMES TILTON, Adg't Gen. W. T. V."

Present, Lieut. Col. Hurd, Major H. J. G. Maxon, Capt. C. W. Swindle, Capt. W. W. DeLacy, Lieut. A. Shepherd and Supernumerary S. B. Curtis.

Present also the Judge Advocate and Recorder. The Recorder, at the request of the Judge Advocate, read the order convening this Court. The Recorder, at the request of the Judge Advocate, read the charges and specifications of charges against Lyon A. Smith, Charles Wren and John McLeod. The Judge Advocate then made a written application (A) appended to these proceedings, asking an adjournment of the Court, in order to obtain authority to amend the charges. Thereupon the Court was cleared for deliberation and after mature deliberation, the Court adjourned until one o'clock P. M.

CAMP MONTGOMERY W. T., 1 O'CLOCK P. M. MAY 22d 1856.

The Court met, pursuant to adjournment. Present, Lieut. Col. J. S. Hurd, Maj. H. J. G. Maxon, Capt. C. W. Swindle, Capt. W. W. DeLacy, Lieut. A. Shepherd and Supernumerary, Lieut. S. B. Curtis. Present also Judge Advocate and Recorder. The Judge Advocate presented a 4th specification ordered by the Commander-in-Chief, which was ordered by the Court to be filed and which is annexed to the original specifications.

The Judge Advocate asked leave to amend the phraseology in the second specification, substituting the word "were" for "was" in the 4th line, and in the 8th line the word "they" for "he." Whereupon the Court was cleared for deliberation and after mature consideration, the Court ordered the proposed amendments to be made. A copy of the 4th specification having been delivered to Lyon A. Smith, Charles Wren and John McLeod, the orderly sergeant, brought into Court, Lyon A. Smith. The Judge Advocate read aloud to the prisoner, the order convening this Court and the charges and the specification of charges (marked B. appended to these proceedings) and asked him if he had any cause of challenge, to any member of the Court mentioned in the warrant order, to which the accused answered he had no objection to any member of the Court. The Judge Advocate administered the oath prescribed by law, to all the members of the Court and to the Supernumerary, and the President Lieut. Col. J. S. Hurd, administered the required oath to the Judge Advocate.

The prisoner asked to be allowed as council Wm. H. Wallace, B. F. Kendall and Frank Clark Esqrs. Whereupon the Court was cleared for deliberation,

and after mature deliberation granted the request of the prisoner, and allowed said gentlemen to act as his council.

The prisoner by his council then offered a written protest or plea (C) to the jurisdiction, appended to these proceedings. The Judge Advocate having asked for time to reply to the plea of the prisoner, the Court adjourned until to-morrow at 8 o'clock A. M.

CAMP MONTGOMERY W. T., 8 O'CLOCK A. M. MAY 23^d 1856.

The Court met pursuant to adjournment. Present, all the members of the Court, Supernumerary, Judge Advocate and Recorder.

Lyon A. Smith, the accused, also present. Upon reading the proceedings of yesterday, the prisoners made the following written request:

Mr. President,—L. A. Smith requests that the plea to the jurisdiction be copied into and form a part of the record of the trial. L. A. SMITH.

The Court was cleared for deliberation and after consideration the Court ordered the plea to be entered on the record and is as follows, viz

Mr. President,—Lyon A. Smith protests against the competency of this Commission or Court Martial, for want of jurisdiction, on several grounds,

1st. The allegations and charges set forth in the specifications, constitute the crime of treason, which can alone be tried in the civil courts of the United States.

2d. Citizens cannot be tried either by Courts Martial or Military Commission.

3d. This is not a legally constituted tribunal, inasmuch as the Volunteer forces of this Territory are not organized under the Militia law of this Territory, or under any law of the United States and that this Court has been ordered by a person incompetent, legally to do so.

4th. That neither Militia or Volunteer forces, until mustered into the service of the United States, are amenable to or authorized to institute any Military Court, as they have no authority conferred by the constitution and laws of the United States or by the statutes of this Territory.

5th. That the order for this Court Martial or Military Commission, makes it a special Commission and does not designate the persons to be tried by said Commission. Lyon A. Smith.

The Judge Advocate, then read the following paper, marked (D) viz

Mr. President and gentlemen of the Court,—The allegations and charges set forth in the specifications against L. A. Smith the accused, are that he did knowingly harbor, protect and assist with victuals, ammunition, shelter, sympathy and friendship, certain marauding bands of hostile Indians, waging unlawful war in Washington Territory, against the United States. And any person guilty of such an offence is subject to the jurisdiction of a Court Martial or Military Commission, whether he be a citizen or alien.

This is a legally constituted tribunal, having been called by Isaac I. Stevens, Governor of the Territory of Washington and Commander-in-Chief of the Volunteer forces of the territory, now in the field, called out by his proclamation and co-operating with the regular forces against the common enemy, now waging war in said Territory against the United States. The said Isaac I. Stevens in his capacity as Commander-in-Chief being perfectly competent to call out such forces. The warrant order for this Court Martial or Military Commission does not make it a special commission, but on the contrary, it is a general commission, to try all persons that may be brought before it, and under the charge and specifications filed against the accused, he has been regularly brought before this court.

It is therefore asked that the protest or plea of L. A. Smith filed, may be overruled and that he be required to answer over. V. MONROE.

Judge Advocate.

Whereupon the court was cleared for deliberation and after a short time spent in consideration, the court was opened, the prisoner brought in and the

President announced that the decision of the court would be made known at 1 o'clock this afternoon, to which time the court then adjourned.

CAMP MONTGOMERY W. T. 1 O'CLOCK P. M. MAY 23^D 1856.

Court met pursuant to adjournment. Present, all the members, Supernumerary, Judge Advocate, Recorder and L. A. Smith the accused. The court was then cleared for deliberation and after mature consideration the court gave the following opinion, viz.

The charge against Lyon A. Smith is "aiding and comforting the enemy." We are of the opinion that such an offence constitutes the crime of treason, and that this court has no jurisdiction as a military court to try and punish a person for such an offence.

We are however of the opinion that this court was ordered by a competent authority, and that it is legally and constitutionally created and has jurisdiction of such crimes as are cognizable by military tribunals.

The court then adjourned until Monday May 26th 1856. at 1 o'clock P. M.

LIUT. COL. JARED S. HURD. Pres.

Maj. H. J. G. MAXON. S. B.

Capt. C. W. SWINDAL, 2d Regt. W. T. V.

Capt. W. W. DELACY, W. T. V.

ANDREW SHEPHERD.

CHARGES AND SPECIFICATION OF CHARGES AGAINST LYON A. SMITH.—CHARGE
—*Aiding and Comforting the Enemy*

1ST SPECIFICATION.

In this that during the period between the 1st of June 1855 and the 20th of April 1856, the said Lyon A. Smith did in divers ways, exhibit friendship for and did give aid in furnishing shelter to certain Indians at war with the United States, during a part of the above period.

2^D SPECIFICATION.

In this that the said Lyon A. Smith did pretend to a right to be neutral in a war in which he, as a citizen of the U. S., was bound to give aid to the Military of the United States, and that he neglected to give information relative to the movements of marauding bands of Indians engaged in unlawful war, when he could have given such information conveniently, but did not until the possibility of such information being useful to the Military of the U. S. had ceased from lapse of time.

3^D SPECIFICATION.

In this that the said Lyon A. Smith was cognizant of the designs of certain Indians to make war upon the citizens of the U. S. in Washington Territory, and did not use any endeavors to prevent such unlawful war, nor inform the authorities of said Territory of such designs.

(Signed) JAMES TILTON, Adgt. General W. T. Vol.

By order of the Gov. and Commander-in-chief.

4TH SPECIFICATION.

In this that on the tenth day of March 1856, the said Lyon A. Smith, Charles Wren and John McLeod were ordered by Isaac I Stevens, Governor and Commander-in-chief of the volunteer forces of Washington Territory, to retire from their land claims (situated in the country inhabited and infested by said marauding Bands of hostile Indians, waging unlawful war against the United States) and to take up their residence, until the termination of Indian hostilities, in either the town of Olympia or Steilacoom or Ft. Nisqually, that the said Smith, Wren and McLeod did withdraw from their said land claims, but afterwards without authority or permission, returned to their homes to re-establish unlawful communication and intercourse with said hostile Indians by relieving them with victuals and ammunition and knowingly harboring, protecting and holding correspondence with them.

(Signed) JAMES TILTON, Adgt. General W. T. Vol.

By order of the Commander-in-chief W. T. Vol.

Not being able to obtain the remainder of the proceedings of the Court Martial, it is impossible to publish it. On the 29th day of May, Capt. W. W. DeLacy, a member of the Court Martial, who without hearing any testimony, makes oath that he verily believes the persons (naming those they had been attempting to try) have been guilty of aiding the enemy and prays that the charge be inquired into.

U. S. COMMISSIONER'S COURT.

<p><i>United States</i> vs <i>Charles Wren,</i> <i>Lyon A. Smith</i> <i>and John McLeod.</i></p>	}	<p>CHARGE. "<i>Giving aid and comfort to the Indians with whom the United States are at war.</i>"</p> <p><i>Before J. M. Bachelder, U. S. Commissioner, 3d Judicial district Washington Territory.</i></p>
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W. W. DeLacy having made oath against the defendants named, as will appear by the affidavit filed herein, in words and figures following, that is to say, "W. W. DeLacy personally appeared before me this 29th day of May, A. D. 1856 and made the following affidavit: that Charles Wren, Lyon A. Smith and John McLeod, between the 1st day of October 1855 and March 1856, as he verily believes were in the habit of giving aid and comfort to the Indians with which the United States were at war, he therefore prays that said charge may be inquired into by the court. (Signed) W. W. DeLacy.

Subscribed and sworn to before me, this 29th day of May A. D. 1856.

(Signed)

F. A. CHENOWETH, Judge."

And the said Judge (F. A. Chenoweth) having ordered a warrant to issue, directed to the U. S. Marshal of said Territory for the arrest of said Charles Wren, Lyon A. Smith and John McLeod returnable before James M. Bachelder, U. S. Commissioner, in and for the third Judicial District of said Territory, and thereupon, and before the issuing of said warrant, the said Charles Wren, Lyon A. Smith and John McLeod, did give themselves up to the said Marshal, and duly appeared before the said Commissioner, attended by their council.

And now, Saturday May 31st 1856, the affidavit filed herein is read to the said defendants and a copy of the list of witnesses, to be examined on the part of the United States, is served upon the defendants.

And it appearing to the commission that the United States District Attorney of the Territory was not present, Victor Monroe, Esquire, was appointed to act as District Attorney *pro tem*.

Archibald Taylor, produced and sworn.

Do you know anything of the defendants having committed the crime charged?

Ans. I do not.

Lieut. Silas B. Curtis (of Capt. Maxon's company W. T. V.) produced, sworn and examined.

Do you know these defendants?

Ans. I do.

Were you at the house of either of these defendants on Christmas night?

Ans. I was not.

Do you know of your own knowledge of either of these defendants having aided the enemy?

Ans. I know nothing but circumstantial evidence.

State what.

On the 20th of March I went up there to McLeod's with a wagon. Saw

a potatoe hole freshly opened and mocasin tracks near it. McLeod was not there—saw him at Murry's—spoke to him—asked him if he staid at his place. He said he staid at the barn. He said he knew of no Indians about there. We staid thereabout until Mr. McLeod was arrested. Guns were occasionally fired about McLeod's house. Saw McLeod go into the timber several times. After his arrest, the next day, hooting and the report of a gun, was heard in the direction of the timber.

Where were those guns fired, and do you know who fired them?

Ans. I do not know. It was between the 20th of March, and the first of April, he used to go into the timber.

What conclusion did you form as to the communications of McLeod, with the Indians?

Question objected to, by defendants, and objection sustained.

Joseph Thibeau, appeared, and was excused from further attendance at the request of District Attorney.

There being no other witnesses in attendance, upon the application of the District Attorney, adjourned until Monday, the 2d day of June at 9 o'clock.

MONDAY, JUNE, 2d. 1856.

Met pursuant to adjournment. Elwood Evans Esq., appeared and filed a certificate of his appointment by Hon. F. A. Chenoweth, Judge &c., to represent the United States, in the present examination.

William Clute, produced, sworn and examined.

State what you know of this matter.

Charles Bell and myself, went from camp on Christmas, to go to Sandy Smiths, Lyon A. Smith is the man I mean. He is known every where as Sandy Smith. Went to Mr. Murry's Mr. Murry was lying on the porch with his feet frozen. Wren, Sandy Smith, Ross and Bell with us, went over to Smiths. While there, Wilson and another man came in. Soon an Indian came, Winyea by name—Came for "*cultis*."—had no gun—had on, green blanket—said he was alone. I went out—saw other Indians on horseback. Went in—saw Winyea, putting money into a purse. I told Wren we ought to arrest this Indian. He said he thought it unsafe, as they were without arms, and the Indians were armed. In the morning saw John McLeod. He said Indians came to his house, and he gave them some potatoes.

Peter Butler, produced, sworn and examined.

I was at work at Wrens. I heard a party of Indians, coming as I thought. I told Mr. Wren so. We armed ourselves—soon some one knocked at the door—Wren asked who it was. Indian answered, Slackamas. I advised Wren to open the door. Wren did so. Slackamas and others came in—said Leschi, wished him to talk to the *tyee*, about peace. They said they did not desire the friendly Indians to come to their camp, as they could not believe them.

Dr. Wm. F. Tolmie, produced, sworn and examined.

State what you know of your own knowledge, about this charge against the prisoners.

I know that Mr. Burge one night last winter, came to my house for a horse, to go to Steilacoom, to let Capt. Keys know that Indians had been to Mr. Smiths. In February last, McLeod came to tell me that Leschi, had left his house that morning, and desired him to come to me. I do not know how long he was there—Leschi desired peace, and wished McLeod to say that he had always been friendly to the whites. Leschi wished me to go out with McLeod to see him, but revoked the wish through fear that soldiers would come, while he was waiting, Mr. Wren came in and said Leschi and others, had been at his house and desired peace. Mr. McLeod went to Steilacoom with me, to tell the officers at the Post. I heard from Mr. Burge that Indians had been at Mr. Smiths—Mr. Burge said merely, that the Indians had been there, and I inferred from his conversation that Wren, Smith and McLeod, wanted aid from Steila-

coom. Our Shepherds of the Puget Sound farms were out in that region, guarding their sheep and were not molested. Mr. Murry was taken as an American, and lived there. McDonald who lived at McLeod's, and now lives at Victoria Vancouver's Island, said to me, that McLeod had offered him twenty five dollars, to report these Indians to the Post at Steilacoom.

Isaac W. Smith, (acting Secretary of the Territory,) produced and sworn.

State what you know of your own knowledge in regard to these defendants.

I was sent by the Governor, to order these men in from their claims. Sandy Smith remarked he thought it hard, to drive him in from his claim. After arriving at Olympia, I asked him, Smith, if he would shoot an Indian, if he saw one. He said no. That he desired to let the Indians alone if they would him. The day I went out from Olympia, the body of Northcraft was found, and I saw it.

I think Smith told me he saw the Indian who had been supposed to have murdered Northcraft. When I was ordered out I was told to take a large force on account of danger from Indians.

Cross examined by defendants.

Mr. Northcraft was killed near Yelm prairie, ten or twelve miles from the defendants. Mr. White nearer Olympia. Captain Ford and Mr. Gosnell told me they had traced the Indians in the direction of the country in the neighborhood of Wrens, Smiths and McLeods.

Henry Smith, sworn.

I know the prisoners at the bar. I saw an Indian at Sandy Smith's house on Christmas day. I do not know that they gave the Indians anything. Mr. Smith asked the Indian where he came from. He said from the Puyallup. He asked the Indian what he wanted. He said he thought Sandy Smith was at Nesqually, and not living at his place. Mr. Smith asked what he wanted, if he thought no one was living there. He said he was only looking around. I left Smiths and went over to Murrys. McLeod came next morning, and said some Indians had been at his house the day before. He said Leschi was there. This was the morning after Christmas. I thought they came to steal whatever they could. He was there when I left. This Indian is reported to be one of Leschi's band. McLeod said he offered a man twenty dollars, to go into Steilacoom, and report the Indians there, and he was afraid to go. I do not know of any Indians having visited Wrens. McLeod told me after that, that some Indians came there, expressing a desire to make peace. These defendants were not disturbed; when Sandy Smith left, his house was broken into.

Peter Wilson, produced, sworn and examined.

I know these defendants. I saw one Indian at Smith's house on Christmas day, an old Indian called Winyea. Said he came from Puyallup. He said he thought Smith had moved to Nisqually, and came to see. I left him there. I know nothing else, having lived at Steilacoom.

Charles H. Bell, produced, sworn and examined.

I know the defendants.

Do you know of these men or either of them, having given any information food or other aid to the hostile Indians?

I know nothing of the matter. I belong to Captain Maxons company. I was living at Mr. Wren's. I was arrested with Mr. Wren—saw Mr. Smith arrested—saw nothing at Mr. McLeod. I lived at Wrens twenty five days—saw no Indians there during that time. I belonged to Capt. Wallace's company. I was at Mr. Smiths on Christmas, and saw Indians—there were more than five in number there, who came in the night, and stopped some five minutes—I did not know either of them. The Indians spoke in their own tongue, and I could not understand them. The Indian came in, lighted his pipe, and talked with Mr. Smith's wife, an Indian woman, and left. Sandy Smith was there, but said nothing. I know nothing of Indians having visited McLeod's house—never heard McLeod say anything about the matter. I have stated all I know on the subject.

The District Attorney here gave notice, that he had examined all the witnesses which were in attendance, and asked for an Alias Subpœna, to the marshal, for the following persons, to-wit: William Campbell, Mari Hagit, George Gallagher, William Legg, F. Gravaile, James Burk, William Goddard Gordon O. Taylor and Willam Lackin, which was issued, returnable to-morrow Tuesday morning at ten o'clock, and then adjourned, until Tuesday morning at ten o'clock.

TUESDAY JUNE 3d. 1856.

William Campbell, produced sworn and examined.

I know nothing of my own knowledge in regard to either of these parties having afforded aid and comfort to the Indians. Nothing but what I have heard at camp or from Indians. Was at Wren's house and at McLeod's. Saw Indian tracks back of McLeod's on a little prairie, say three miles distant. The Indians had killed a beef, it was in the latter part of March, and the beef had been killed some four or five days before; in fact some of the meat was still there.

That country would not be safe for me. Hostile Indians were found within a few miles, a camp of them were found about six miles from there. It appeared that the Indians were travelling there, backward and forward all the time. The Indians had stolen horses on Yelm prairie from Longmire's and Brail's. By their tracks we followed them up—they crossed a creek, and the water was still riled. We soon found a horse which they had left. We were now going from the locality of these men's places. I should call this hostile country—I mean where they lived. I have seen them on their claims from time to time, when I deemed it hostile country.

John McPhail produced sworn and examined.

I was at McLeods house on Christinas night—an Indian came in and soon after others—nine in all—one always talked. McLeod asked the Indian about how the war began, what occasioned the beginning. He said they (the whites) wanted to take the chief up to Olympia, and keep him there—they did not like that, and so they began the war. They were there more than two hours. There were four of us there—Jessee Varner, Angus McDonald, McLeod and myself. I make out nine Indians. They came about twelve o'clock at night. We were playing cards. McDonald went to the door to get some fire-wood, and the Indians met him at the door. McDonald is now at Vancouvers island; he went there in January. We stopped playing cards while they were there. The Indians did no harm there and went off. They stole nothing, I never heard of it. I was not present or do not know of any other visits by Indians.

George Gallagher, produced, sworn and examined.

I was one of the party who warned these persons in. I had charge of half the company. I was present at Mr. Smith's place. I now mean the first warning immediately after the murder of White and Northcraft. It was some time about the middle of March, say from the 10th of that month. I was at Smith's house before that time. He stated in my presence, that a party of Indians passed that way on the morning after the murder of White and that they crossed Muck creek, and pointed out to me the place of their crossing. When he saw the party, he had supposed that they were volunteers and went toward them to give them information as to the best crossing. He had not gone far, before he saw they were Indians and knew the crossing as well as he. They rode up to him. I think he said there were eleven in the party. They had a blue horse they were leading, and on one or more of their horses they had little packs, which he said he took to be Northcraft's sacks for oats. He stated also that the Indians said that it was White's horse and that White was killed. This occurred before they were warned in. We told Smith that they were to be warned in. This was not the order which was executed by Mr. Sec. Isaac W. Smith. This was the expedition under charge of Mr. Doty, who was detained at Steilacoom. Smith stated that he started for camp imme-

diately after the Indians left him—to both Camp Montgomery and Fort Steilacoom. On my getting to Camp Montgomery that night, Mr. W. P. Wells told me that Sandy Smith had been there and given the information he said he would do.

Mr. Wren, Mr. Smith being present, asked me at Steilacoom, after they came in, what my advice would be about going back to their claims. I told him it would be unwise to return without permission of the Governor. I thought he would be liable to be shot by some of the volunteers. He then asked, what can we do? He wanted to get in some crops, and I think some produce.

I proposed their organizing a company to report to Governor Stevens, and add to their number others above suspicion to make up the necessary force to go to the claims of each other until their crops were all in. He expressed his entire willingness in the plan suggested.

The whole country, at this time, was in a state of war, and the settlements abandoned. There were many signs of Indians in this locality. I was one of a guard to protect wagons—we deemed a guard necessary. After conducting the wagons to a safe point as we thought, we left to go to Mr. Smith's house. We met Mr. Wren, he told us that if we wished to find Indians we could find them at a point of timber, to which he pointed, he thought we could find them there. He was alone looking for horses. He told us that they had run a man who was after Murrey's cattle, into a house. At the time I speak of, these men and their families were on their claims—a few days afterward I found Mr. Smith there.

It appearing by the return of the Dpty. U. S. Marshal that he had served the alias subpoena issued on the 2nd June and returnable this day, and that Francis Gravaile, Mari Haguét and William Legg had been duly served therewith and did not appear as therein summoned, on motion of the acting U. S. District Attorney, *It is ordered* that a writ of attachment be directed to the U. S. Marshal to take the said persons, and bring them forthwith before the Commissioner, and it appearing that the Marshal would require till 1 o'clock P. M. of Wednesday to serve the said writ, the Commissioner then adjourned the examination until Wednesday the 4th of June at 1 o'clock P. M.

WEDNESDAY, JUNE 4th 1856.

William Legg, produced, sworn and examined.

I was at Wren's house in April last. On Christmas day last I saw ten Indians on the Canadian prairie at LeTour's house. He is a Canadian, now at work for Dr. Tolmie. It is four or five miles from Wren's. Among those Indians was Leschi, Lula and Slackamas. These were all I knew. I talked with them. I was lying in bed and they broke open the door and rushed into the house. They told me they wished to make a treaty, and did not wish to fight at all. They staid above an hour. This was between 8 and 9 o'clock at night. I have been at Wren's house and have never seen any Indians there. The Indians told LeTour that they were coming into Elk prairie if a treaty was not made, and that they were going to give the whites a fair fight. This is all I know of the matter.

Wesley Gosnell, produced, sworn and examined.

I know nothing except what friendly Indians have told me.

By the return of the Marshal, this day made, it appearing that Mari Haguét and Francis Gravaile could not be found, the District Attorney here closed on the part of the United States.

And now on motion of acting U. S. District Attorney, it is ordered that the defendant, Charles Wren, be discharged from further custody of the U. S. Marshal on the charge preferred on the affidavit herein filed, and that the said defendant be allowed to go hence without day.

And after argument of Council being had, the Commissioner held the matter under advisement as regards the two defendants, John McLeod and Lyon

A. Smith, and then adjourned until Thursday morning, the 5th of June, at 9 o'clock.

THURSDAY, JUNE 5th, 1856.

And now, June 5th 1856, after mature deliberation upon the foregoing evidence, and the argument of the Council herein had, it is ordered by the commissioner that the said John McLeod and Lyon A. Smith, be discharged from the custody of the U. S. Marshal, on the charge preferred in the affidavit herein filed, and that the said defendants be allowed to go hence without day.

PROCLAMATION.

"Whereas in the prosecution of the Indian war, circumstances have existed affording such grave cause of suspicion, such that certain evil disposed persons of Pierce county have given aid and comfort to the enemy, as that they have been placed under arrest and ordered to be tried by a military commission; and whereas, efforts are now being made to withdraw, by civil process, these persons from the purview of the said commission.

Therefore, as the war is now being actively prosecuted throughout nearly the whole of the said county, and great injury to the public, and the plans of the campaign be frustrated, if the alleged designs of these persons be not arrested, I, Isaac I Stevens, Governor of the Territory of Washington, do hereby proclaim **MARTIAL LAW** over the said county of Pierce, and do by these presents suspend for the time being and till further notice, the functions of all civil officers in said county.

Given under my hand at Olympia, this third day of April, eighteen hundred and fifty-six, and the year of Independence of the United States the eightieth.

ISAAC I. STEVENS."

After the proclamation of martial law, the subsequent seizure of the Judge and Clerk of the Court, and the attempt to try citizens by a court martial, there had been no material change in affairs, when the abrogation which is appended, made its appearance. The prisoners were still pressing for a writ of *Habeas Corpus* to bring them to trial before the proper authorities. In fact, the U. S. Marshal was, at the time of the abrogation, in search of Col. Shaw, to arrest him for disobedience of said writ.

"Whereas, certain persons charged with giving aid and comfort to the enemy, in the existing Indian war were arrested by my orders for the purpose of bringing them to trial before a Military Commission; and whereas to prevent the execution of the design of certain evil disposed persons to take from the custody of the military, the persons so charged, martial law was declared successively in the counties of Pierce and Thurston, and whereas, the persons so charged have been retained in military custody and have been brought before a Military Commission, and are now on their trial for the offense above mentioned, and whereas, there is no longer any necessity, for the existence of Martial Law in said counties;

Therefore be it known, that I, Isaac I. Stevens, Governor of the territory of Washington, do hereby abrogate martial law in the said counties of Pierce and Thurston.

Given under my hand at Olympia this 24th day of May, in the year of our Lord eighteen hundred and fifty six, and the year of Independence the eighthieth.

ISAAC I. STEVENS,

Gov. Ter. Washington."



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