Gentlemen of the Grand Jury:

Your presence in that box today, the duties which devolve upon you, and which you have sworn to perform, the character of your panel itself, and the very circumstances which surround yourselves and the court, are worthy of more than ordinary remark.

To no person can this truth come home, with more of force and vividness than to him whose duty it now is, to address you. It may not therefore be improper that we should first take a calm, dispassionate yet plain and candid view of the circumstances which surround the court, yourselves and all officers of justice. It would be an affectation, worse than useless, for the court to pretend to ignore, those great national events, which have resulted in the establishment of this court and of that governmental system of which we are a part. Those mighty events whose influences have interpermeated every relation of the citizen and tinged with light or shade the filaments which constitute the warp and woof of every life. The impression produced upon every mind by the fearful scenes enacted on the Stage of American History during the past eight years cannot soon be forgotten by any. He who has stood by the foaming

cataract and watched the resistless voice-
less power which grapples with the mightiest
obstacles and hurls them into the veiled
depths of helpless hopeless destruction, knows
the shivering dread with which he turns away
from the sight of the terrible power, and
for days hears the shout of the triumphing
monster in his ears, half fearful of his own
safety. Our Niagara has long poured its seething
torrent at our feet. The rock upon which our
nation is builded still rises firm and proud
above the abyss.

To pretend at this time to ignore
the facts by which we are surrounded, and
whose influences are so keenly felt by every
intelligent citizen, would ~~argue~~ indicate
a timidity to which this court is a stranger,
and would richly merit, the pity of friends
and the contempt and scorn of enemies. —

The position whose active duties the Court
this morning assumes, is one to which he
is entirely new - and one which he ap-
proaches with feelings of peculiar embar-
assment. It is probable that never before
in a state of the American Union was a
court ever held under like peculiar
circumstances, with equal dif-
ficulties and obstacles in its path
or which may be thrown there —

CHAUTAUQUA COUNTY HISTORICAL SOCIETY 2013

younger by far, than almost any practitioner at the bar of this circuit, of necessity lacking that familiarity with legal forms and practice which only years of experience can give; unfamiliar with that common law of procedure, in this state, which has come down, from generation to generation at your bar, until its mandates have become even more potent than the words of the statute, and with a bar almost to a man, hostile to the court in political sentiment, he is fully aware of all the difficulties which meet him ad liminum — at the very threshold — in the discharge of his duties.

Added to this is that prejudice, bitter widespread and intense, which asks for no cause and yields to no reason, the prejudice which exists against any one who is not a native of the state, but in the magnificent self gratulation of the inhabitant of the Celestial Empire, is simply, "a mere outside barbarian".

Still farther at the hands of the bar, the Court must meet another prejudice, of a peculiarly professional character, — a prejudice of a character which few can

appreciate outside of its ranks — a prejudice arising from the part taken by the Court in changing the practice and procedure in the State, and the fact that it is a position conferred not by the vote of the general assembly, or by appointment of the Governor, but for the first time bestowed by direct vote of the people of North Carolina —

All these obstacles and prejudices the Court well knows — none better — lie in his pathway. The duties of this position, conferred upon him by the free vote of a free people, he has accepted in good faith, as a sacred trust, and as such he has sworn, and expects, to perform them faithfully, firmly and honestly. And just here he may be allowed

CHAUTAUQUA COUNTY HISTORICAL SOCIETY 2013

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

IV — Crimes against Public Morals —

1 — Rape — — 8 [illegible] —

2 Bigamy — — Adultery

Fabrication

V — Crimes against Property

1 — [illegible]

2 — Burglary

3 — Carrying — — [illegible]

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

Traddress to 1st Dist J.

1

[illegible]

[illegible] Such conduct would betray a timidity to which this court is a stranger, and would richly merit the contempt of all. Such a course [illegible] which the Court has never [illegible] thought entertained as a possible hypothesis. The position whose active duties & this morning assume, is one conferred upon me by the people of the State without solicitation or desire upon my

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

2

CHAUTAUQUA COUNTY HISTORICAL SOCIETY 2013

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

By careful painstaking exertion and
exacting attention with the co-operation
of the sun and the facilities which
are afforded for reference and for the
trial cases in the Court, I hope
that I shall be able to reach a
correct result in both cases, and
I will endeavor to do so —

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2019

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2019

the titles in existence and the new rela-
tion of employer and employee, master
and servant in the sense of the Common
law [illegible] substituted in its stead. [illegible] he
[illegible] it [illegible] present [illegible]
[illegible] to [illegible] of one third
of people of the State [illegible] could
[illegible] expected. [illegible] a little
[illegible] the change [illegible]
[illegible] consider the
[illegible] political philosopher and
[illegible] the [illegible] citizen. Instead of
[illegible] the [illegible] the [illegible]
[illegible]
[illegible]
[illegible]
[illegible] existent evil.

[illegible] gentlemen, the successors of
the humble followers in the footsteps of those
who for nearly a century have sat there
in the grand [illegible] of the Supreme Court

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

1 [illegible] and
[illegible]
2 [illegible] self-[illegible]
[illegible]
[illegible]
[illegible]
[illegible] of [illegible] the [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] reading
[illegible]
[illegible]
[illegible] circumstances
[illegible]
[illegible] American
[illegible] be said [illegible]
[illegible]
[illegible] age, —
[illegible] place in the jury-box
[illegible] the bench.
It invaded every [illegible] of life and perverted the stream of justice at its very fountain-head. Let us see to it gentlemen that the same is not written of today and believed as an incontrovertible truth by the generations who are to come after us.

©CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

10

CHAUTAUQUA COUNTY (NY) HISTORICAL SOCIETY 2013

11

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

1—

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

13

[illegible] crime [illegible] straightway
[illegible] each crime, with the name of the
[illegible] of the prosecutor, [illegible] names of
the [illegible] the [illegible] of the
[illegible] rough
draft.

Make your rich but thin, & make
each in equal crime.

Give the methods [illegible] which
such
[illegible] made use of ~~in each case~~.

1st By testimony or information of one
person who knows the crime either see-
ing it or in some way [illegible] produce
evidence of the existence of such
[illegible] such institution
of the grand jury, this mode of search,
& its [illegible] efficient
ness, though it is less important than
formerly. Jurors if necessary - they must
be drawn [illegible] from different parts of the County, the
provisions of the [illegible] they are subpoenaed
to [illegible] some glorious Statutes against
public [illegible] to the peace and dignity
of the State which may have occur-
red in their [illegible] neighborhood.

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

CHAUTAUQUA COUNTY HISTORICAL SOCIETY 2013

[illegible] such cases the [illegible] evidence [illegible] the Court [illegible] [illegible] case.

You are not entitled to use any [illegible] evidence for the defence before you, but if such evidence is introduced you are bound to hear and give it due weight in your considerations.

The Solicitor will advise you in regard to the admissibility of evidence. Should any questions upon that arise in your deliberations.

You are to inquire in regard to crimes committed in the county.

The jurisdiction of the Superior Court in criminal matters is defined by the latter clause of Section 15th of Article IV of the Constitution in these words.

The Superior Courts shall have exclusive original jurisdiction of all civil actions whereof exclusive original jurisdiction is not given to some other Court; and of all criminal actions in which the punishment may exceed a fine of fifty dollars, or imprisonment for one month.

The crimes of which this Court has not exclusive jurisdiction according to the present laws are very few and insignificant. It is probable that this number will hereafter be reduced by legal

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

16

Enactments. But at present the old classification of Crimes continues with only a change in the mode of punishment.

Certain changes in the selection & character of crimes have been made, which though not absolutely necessary for your guidance, it may yet be well to specify. The number of crimes known as Capital felonies has been greatly reduced. The number of crimes punishable with death, by the provisions of the Revised Code was eighteen. That such a number of crimes should be counted as capital felonies in this State, in 1860 is worthy of something more than ordinary remark. There was no State of the American Union, no nation of the civilized world which could pretend to rival North Carolina in the number of capitol - Even Turkey with her sanguinary code could boast of less than half the number of capital felonies which the laws of North Carolina then prescribed. Only one State of the American Union had one fourth the number, twenty-seven of them had only one private crime punishable with death and the same was true of that great ~~Mother~~ Source of our laws the Mother Country, two of the States of our

17 Union and three of the nations of Europe and abolished capital punishment entirely except for treason. North Carolina alone stood forth pre-eminent in the persistency with which she adhered to the sanguinary punishments of a barbarous age and resisted the advances of a humane and Christian civilization, with eighteen different capital offences spread at large upon her statute book!

This number is reduced by the Constitution to only four possible ones, and only two of these have been made capital offences by the act of the Legislature, to wit, Murder and Rape.

Murder - by the old Common law definition was the unlawful killing of a human being with malice aforethought.

The narrowness of this definition has from time to time caused its extention, more generally by the liberal construction of the judges than by statutory enactment, until it includes the following cases.

1- When perpetrated without authority of of law, and with a premeditated design to effect the death of the person killed, or of any other human being.

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

18

2— When perpetrated by any act immi=
nently dangerous to others, and evincing
a depraved mind, regardless of human
life, although without any premedi-
tated design to effect the death of any
particular individual

3 — When perpetrated without any
design to effect death, by a person
engaged in the commission of a
felony —

All such killing, gentlemen of the Grand
Jury is Murder and you will so present.

Homicide is justifiable when committed in
1— Resisting an attempt to commit a felony
upon the or in the dwelling house of
another,
2— When committed in the lawful defence
of the person, husband, wife, parent
child, master or mistress or servant
under a reasonable apprehension of
the commission of a felony.
3— When necessarily committed in the
apprehension of a felon or in sup-
pressing a riot, or in lawfully keep-
ing and preserving the peace.

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

1/ Homicide is excusable when committed by accident and misfortune, in performing a lawful act in a lawful manner, by lawful means, and with a lawful intent or—

2— When committed upon sudden and sufficient provocation, with no undue advantage, nor by the use of any dangerous weapon, nor in a cruel and unusual manner.

All homicide — every killing of a human being which is neither murder as before defined, nor justifiable nor excusable homicide — is Manslaughter, and you will so present.

Rape

Rape is the illegal carnal knowledge of a woman forcibly and without her consent.

1— The non-consent of the woman is the essential ingredient of this crime. This non-consent may be the result, either of positive force overcoming resistance, or want of age to

20 to render legal consent impossible on being less than ten years old, insanity idiocy, ignorance as to the character of the act, or the effect of any anesthetic ~~narcotic~~ or intoxicating agent, ~~or~~ destroying for the time being the apprehension of the female and rendering resistance impossible —

The carnal knowledge of a female by one not her husband under any of these conditions is Rape and ~~yet~~ will so present.

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

Larceny

"Larceny", says Coke, "by the Common law is the felonious and fraudulent taking and carrying away by any man or woman of the mere personal goods of another" and by Blackstone it is defined to be "the felonious taking and carrying away of the personal goods of another."

A late authority of high repute for accuracy says "Larceny is the taking of personal property, accompanied by fraud or stealth, and with intent to deprive another thereof."

A still more perfect definition is that given by Mr Bishop, as follows: "Larceny is the taking and removing by trespass of personal property which the trespasser knows to belong either generally or specially to another, with the intent to deprive him of his general or special ownership therein."

Comment on

There is no distinction between grand

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

and petit Larceny in this State.

By statute the fruits and products of the earth and matters connected with the realty but seperable from it by any ordinary means are made the subjects of Larceny.

The Court would call your attention, gentlemen, to the fact that this crime, generally in the form of petty pilfering is fearfully prevalent in our state, and seems to be rather increasing than diminishing in the frequency of its occurrence.

War and more especially civil war, or revolution naturally results in lessening the sanctity of private property, from the many violations of such rights which must of necessity occur in its prosecution. This is particularly true when great armies must be subsisted by forced contributions, when taxes in kind are laid, ~~and when~~ when confiscation prevails, and the whole country is laid under contribution and feels the great demoralization of war. The war of the rebellion was an exception to this rule -

Fortunately the strong arm of military power extended over every portion of the state prevented the organization of that system of brigandage and wholesale pillage by the desperate and lawless characters which war had left without occupation, ~~and has been the case in a~~ which has followed in the wake of almost every revolution whether successful or not.

The scarcity which has prevailed ever since the war, resulting partially from the impoverishment of the war itself, and partially from the series of unfavorable seasons which succeeded it, by which thousands have been reduced to the verge of starvation, has tended greatly to demoralize public sentiment in this respect. Want and hunger are prolific nurseries of vice and crime. Unemployed labor is a combustible material which is more dangerous to public safety than any other.

Added to those ~~the~~ causes is the fact that thousand of our people, unaccustomed to self-direction and self-control, accused to the care of themselves and their families have been thrown

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

upon their own resources, without any opportunity for preparation, or power to subsist a day except by their own labor. That these men and women should be improvident, thriftless, and in many instances should resort to theft is simply the most natural of human events. It is not only the force of present events but the logical effects of Slavery. The taking of the masters goods and chattels by the slave was not theft. It was no crime by any code of morals which human ingenuity could frame. There was no change of ownership resulting therefrom, and the morning logic of a race detected the weak point in every line of argument designed to support that conclusion. Again the unrequited labor of the slave was the producing agent of the masters wealth. The instincts of humanity — as unerring as the revelations of divine wisdom — show a justice beyond and above the statute which gave property in man, and said to the slave — "a part of this is mine by right of the event which gave it existence". Is the same irresistible logic continued in its application? It is not the fact does it result in crime today? It is but the harvest of evil which the sin of Slavery has entailed upon the Country.

CHAUTAUQUA COUNTY HISTORICAL SOCIETY 2013

The only source of surprise is that the evil is not far greater than it is.

This evil however must be checked at once. Punishment must be made certain and sure. And men must be taught to regard the sanctity of private rights more carefully and scrupulously than heretofore. The very prevalence of this crime is an aggravation of every offence, and awakens your especial vigilance. This crime must be stopped. Want must be cured for by the State. Pauperism must be no excuse for crime; and want must not excuse the thief—

~~Perjury is the wilful taking of a false~~

Perjury.

Perjury is the wilful giving under oath in a judicial proceeding or course of justice, of false testimony material to the issue, or point of inquiry.

There is no other crime, gentlemen, akin to this, and it has always been properly considered of all crimes the most repulsive and

detestable. Of necessity coolly and deliberately perpetrated, with all the solemnities attending a judicial inquiry, its perpetration murders the cool and hardened villain. Abhorrent to every honorable and manly feeling, no worse crime could be prevalent in any community and no other crime shows an equal moral depravity.

It is with sorrow that the Court calls your especial attention to the fact that, universal opinion & good and honest men shows this crime to be costly on the American morals.-

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013