

at Salt Lake City, Salt Lake County, Utah Territory, one hour after sunrise, and continue until sunset of said day; and that your petitioner may have such other and further order in the premises as justice may require.

EDWARD M. BYNON.

J. R. MOBRIDE,  
P. L. WILLIAMS,  
WM. H. DICKSON,  
Attorneys for Petitioner.

Judge O. W. Powers appears on behalf of Col. Page. He interposed a demurrer on the ground that the petitioner had made no case, and the arguments commenced on Monday, January 13th.

#### MR. VARIAN'S SUGGESTIONS.

The following is the letter of District Attorney Varian to Governor Thomas, and referred to in the latter's message to the Legislature:

To the Governor:

In view of the sitting of the Legislature at an early day, I have deemed it advisable to direct your attention to some provisions of the penal code, which, it would seem, require consideration, and perhaps amendment.

The pressure of public and professional duties has prevented me from giving the matter the attention it deserves, and I am therefore only able to point out some specific provisions defining certain offenses and providing penalties. The references herein are made to Vol. 2, Compiled Laws, 1888.

Your attention is directed first to the crimes of robbery, grand larceny, burglary, counterfeiting and forgery—pages 583, 622, 617, 621, 619, and sections 4469, 4644, 4622, 4637, 4638, 4631. It is to be noted that the penalties for these offenses are the same, i. e., from one to ten years' imprisonment.

In my judgment, a distinction should be made between these offenses. Robbery is always attended with menace or violence to the person, and burglary may include this element. The perpetration of either of these crimes indicates of necessity a physical courage and reckless disregard of consequences in the offender which makes him a very dangerous enemy to society; he executes his design prepared and determined to wound or slay the citizen if occasion requires. Therefore, the penalties imposed for the commission of such crimes should be proportionate to their magnitude, and as severe as is consistent with humanity. Certainly they should not be the same as those for larceny, which is not attended in its execution with violence and danger to human life.

Counterfeiting and forgery are crimes of great magnitude, their successful accomplishment requires abilities of an unusual and high order, together with a skill acquired only by years of special training and study. The rewards to the successful criminal are prospectively great, and the risk of detection correspondingly small. The difficulties in the way of detection and punishment are so great that an inviting field for

operation is presented to those having the requisite skill, address and nerve.

Forgery is justly viewed as a crime of great magnitude, and the laws for its suppression are very severe in all civilized States. The penalties provided in this Territory are insufficient, and the legislature should remove it from the class of larceny.

Second—Murder, page 579, Section 4455. The law divides this offense into degrees, but in its imposition of penalties, is strangely at variance with well-digested systems of legislation on the subject.

Thus: Voluntary manslaughter is punishable by imprisonment for a term not exceeding five years; murder in the second degree for a term of not less than five nor more than fifteen years, and murder in the first degree, by death or imprisonment for life.

In my judgment the difference between the degrees of murder does not warrant such a difference in the penalties. In the progressive crimes of felonious homicide, the minimum penalty for one, should begin with the maximum for the less offense. That is to say, the minimum penalty for murder in the second degree should begin with the maximum penalty for voluntary manslaughter, and should extend to imprisonment for life, or at least, for a long term of years. The alarming increase of this class of crimes in our Territory of late, seems to require special attention to this subject. I think the penalty for voluntary manslaughter and murder in the second degree, is inadequate; the penalty for the first should extend to ten years, and for the second from ten to life.

The provisions of the statutes authorizing the court, upon recommendation of the jury, to impose imprisonment for life, in lieu of the death penalty, in convictions of murder in the first degree, is not inconsistent with these suggestions; this provision is only designed to operate in special cases, and only in the discretion of the court.

I also direct attention specially to the last paragraph of subdivision 3, section 4461, page 580.

This makes homicide justifiable when committed in a *sudden heat of passion*—caused by an attempt to rape the wife, daughter, sister, mother or other female relation or *dependent*, or to defile the same, or when the defilement has actually been committed.

The inconsistency and absurdity of these provisions are apparent. The law is general and universal that a man is justified in taking human life to prevent the commission of any felony, including, of course, rape. Any person, relative or stranger, would not only be justified in killing one who was attempting a rape—but morally delinquent, should he fail to do so, if the necessity of the case required it. Why then add an element to the law of justifiable homicide, which should not exist, under this statute to justify the taking of life; the slayer must show that he acted under a *sudden heat of passion*; in other words to justify the plain performance of a

duty, he must first work himself into a rage. It is probably true that in the application of this law courts and juries would disregard this limitation, but its plain incongruity with criminal jurisprudence and our penal code demands its elimination from the statute.

As to the last clause of this paragraph, I think the attention of the Legislature should be directed to the absolute license to commit murder herein given. The law hereby says to any person, you may lawfully kill any man who has defiled, (not raped) any of your female relatives or *dependents*. This would seem to include any member of the family.

While adultery and fornication, including seduction, are not punished by any government, so far as I am advised, with death—here, the private citizen may, in a sudden heat of passion, as judge and jury try the supposed offender, and constitute himself the executioner, to enforce his own decree. This statute is *monstrous*, absolutely wicked in its evident disregard of the rights of society and the sacredness of human life. Everywhere it is generally conceded that the defilement of the nearest of blood relatives is sufficient provocation or cause to induce the *sudden heat of passion*, which the law, in its tenderness for the weakness of human nature, deems sufficient to reduce the offense to manslaughter. But if the law does not *justify* in such cases, it excuses and extenuates in part.

By this statute, however, you will observe, a man may (if he gets mad) constitute himself the avenger of the honor of any female relation or dependent, no matter how far removed. It should be stricken from the statute book, as a disgrace to the civilization of the age.

Third—False Pretences—page 628, section 4677.

This offense is now punishable by imprisonment in the county jail, not exceeding one year, and by fine.

To succeed in obtaining property by false pretences requires a skill, address and power of design, not possessed by the ordinary thief. In my opinion, the penalty should be increased, and proportioned as in cases of larceny. Certainly there seems to be no good reason why the man who steals \$50 in money or property, should be sent to prison for ten years, while he who obtains perhaps thousands of dollars by means of fraudulent and false pretences and misrepresentation is punished only as a misdemeanor.

I suggest that this offense be divided into felonies and misdemeanors, depending on the amount of value obtained. In all cases when the property obtained is of the value of \$50 or more, make the crime a felony, and punish it as grand larceny is now punished. In all other cases impose the penalties now provided for petit larceny.

Trusting you will be able to give the foregoing suggestions your consideration, I remain very respectfully,

CHAS. S. VARIAN,

U. S. Attorney.

SALT LAKE CITY, January 8th, 1890.