

2-13-1857

Message from the President of the United States, communicating, in further compliance with a resolution of the Senate of the 30th ultimo, information respecting the proclamation of martial law in the Territory of Washington, &c

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Recommended Citation

S. Exec. Doc. No. 47, 34th Cong., 3rd Sess. (1857)

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In further compliance with a resolution of the Senate of the 30th ultimo, information respecting the proclamation of martial law in the Territory of Washington, &c.

FEBRUARY 13, 1857.—Read, referred to the Committee on Military Affairs, and ordered to be printed.

To the Senate of the United States:

In further compliance with a resolution of the Senate of the 5th instant, requesting me to communicate transcripts of papers relative to the proclamation of martial law by Governor Stevens of Washington Territory, I transmit the accompanying report from the Secretary of War.

FRANKLIN PIERCE.

WASHINGTON, *February 11, 1857.*

WAR DEPARTMENT,
Washington, February 10, 1857.

SIR: The Secretary of State referred to this department, on the 5th instant, a copy of the resolution of the Senate requesting the President to communicate transcripts of papers relative to the proclamation of martial law by Governor Stevens of Washington Territory, and, in compliance therewith, I have the honor to submit herewith copies of all papers on the subject on the files of this department.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

To the PRESIDENT.

List of accompanying papers.

Extract from a letter of Brevet Major General John E. Wool to the headquarters of the army, June 3, 1856.

Transmitting proceedings of meeting of the bar of third judicial district, Washington Territory, May 7, 1856; and proceedings of mass meeting of citizens of Pierce county, Washington Territory, May 7, 1856.

Letter of Lieutenant Colonel Silas Casey to War department, May 12, 1856, enclosing copies of—

Letter of Governor Stevens to Lieutenant Colonel Casey, March 31, 1856;

Reply of Lieutenant Colonel Casey, March 31, 1856;

Letter of Adjutant General W. Vols to commanding officer at Steilacoom, April 2, 1856;

Letter of Governor Stevens to commanding officer at Steilacoom, April 3, 1856;

Reply of Lieutenant Colonel Casey, April 3, 1856.

HEADQUARTERS PUGET SOUND DISTRICT,
Fort Steilacoom, W. T. ay 12, 1856.

COLONEL: Inasmuch as there has been of late somewhat of a conflict between the executive and judicial authorities of this Territory, and my name having been used in the pamphlets published on both sides, I have the honor to enclose a copy of the correspondence which took place between Governor Stevens and myself, respecting those persons whom he had caused to be arrested for the crime of treason against the United States.

The remoteness of this station is such that I have thought best to anticipate any call that might be made for that correspondence.

Very respectfully, your obedient servant,

SILAS CASEY,

Lieut. Col. 9th Infantry, Commanding P. S. D.

Colonel S. COOPER,

Adjutant General U. S. Army, Washington, D. C.

Copy of letter from Governor I. I. Stevens.

EXECUTIVE OFFICE, WASHINGTON TERRITORY,
Olympia, March 31, 1856.

SIR: I have to request that you will keep in close confinement at Steilacoom the following persons—five in number :

Charles Wren, Sandy Smith, John McLeod, Henry Smith, John McField.

These men not only have returned to their claims, in violation of my orders, but their conduct since has been such, that Captain Maxon,

who seized them, has brought charges against them of treason. I shall have them tried for giving aid and comfort to the enemy, as soon as I can collect the evidence and order a commission.

The conduct of McLeod and Wren has especially been bad. The evidence against Wren is stated by Captain Maxon to be positive.

Even should the evidence be insufficient to convict one or more of them, the peace of the country requires that those not convicted be kept in close confinement till the end of the war.

We have no jails in the Territory, otherwise I would not put you to so much trouble.

I will endeavor, at the earliest practicable period, to provide a secure place for prisoners in Olympia.

These prisoners are now in charge of Lieutenant Pennington, of Captain Maxon's company, who will deliver them to you.

Yours, truly and respectfully,

ISAAC I. STEVENS,
Governor Territory of Washington.

Lieut. Col. CASEY,

9th Infantry, commanding Puget Sound district.

Copy of reply of Lieutenant Colonel Casey.

HEADQUARTERS PUGET SOUND DISTRICT,
Fort Steilacoom, W. T., March 31, 1856.

GOVERNOR: Yours of to-day's date has just been handed me by Lieutenant Pennington, of the volunteers, having in charge five men charged with treason against the United States, with a request that I would confine them in my guard-house.

In view of the reasons assigned by you for not confining them in some jail of the Territory, I consider it my duty to comply with your request. I trust that the charges against them will be investigated as soon as possible, in order that justice may be done in the premises. It will be impracticable for me to retain them long in custody.

Very respectfully, your obedient servant,

SILAS CASEY,
Lieut. Col. 9th Infantry, commanding Puget Sound district.

His Excellency I. I. STEVENS,
Governor Washington Territory, Olympia, W. T.

Copy of letter from James Tilton, Adjutant General W. T. Volunteer Forces.

OFFICE ADJUTANT GENERAL W. T. VOLUNTEERS,
Olympia, W. T., April 2, 1856.

SIR: Herewith enclosed you will find a copy of proclamation of the governor of Washington Territory, declaring martial law to exist in the county of Pierce, Washington Territory.

This is designed to prevent the taking by civil process, *habeas corpus*, or otherwise, the prisoners Smith, Wren, and the rest, lately sent to Fort Steilacoom for custody.

Should, however, no such process be served upon you, you are requested to suppress or not put in force the proclamation.

Very respectfully, your most obedient,

JAMES TILTON,

Adjutant General W. T. Volunteer Forces.

The COMMANDING OFFICER,

Fort Steilacoom, W. T.

Copy of letter from Governor I. I. Stevens.

EXECUTIVE OFFICE, WASHINGTON TERRITORY,
Olympia, April 3, 1856.

SIR: I have concluded to publish at once the proclamation enclosed to you in my letter of this date, and thus anticipate any action which may be had to defraud public justice of its dues.

Truly and respectfully, your most obedient,

ISAAC I. STEVENS,

Governor of Washington Territory.

The COMMANDING OFFICER,

Post at Steilacoom.

Copy of reply of Lieutenant Colonel Casey.

HEADQUARTERS PUGET SOUND DISTRICT,
Fort Steilacoom, W. T., April 3, 1856.

GOVERNOR: Your communication of to-day's date, as also that of Colonel Tilton, the chief of your staff, enclosing the copy of a proclamation issued by you, declaring Pierce county under martial law, have just been received. You state that the proclamation is designed to prevent the five prisoners in my possession from being taken by "civil process, *habeas corpus*, or otherwise."

When I consented to receive these prisoners, a few days since, from your guard, for safe keeping, it was my intention to keep them such reasonable time as the charges against them could be legally investigated. I doubt whether your proclamation can relieve me from the obligation to obey the requisitions of the civil authority. I request, therefore, that you will relieve me from their charge.

Very respectfully, your obedient servant,

SILAS CASEY,

Lieut. Col. 9th Infantry, Commanding P. S. D.

His Excellency I. I. STEVENS,

Governor of Washington Territory, Olympia, W. T.

Extract from a letter of Brevet Major General John E. Wool, to the Headquarters of the army, dated

HEADQUARTERS DEPARTMENT OF THE PACIFIC,
Benicia, California, June 3, 1856.

“From all the information I have received, I have no doubt I will be able to communicate by the next mail, the 20th instant, the gratifying intelligence that the Indian wars have ceased in the department of the Pacific. We shall have no enemies to contend with but the exterminators of the Indian race.

“Governor Stevens had placed the county of Pierce, Puget Sound, under martial law. The supreme judges of the Territory, not regarding the measure legal, held their court in the county as usual, when an armed force, acting under orders of Governor Stevens, arrested the chief justice in his seat, and the clerk. The citizens held meetings, when the conduct of the governor was denounced.”

* * * * *

“P. S. Herewith I transmit the proceedings of a meeting of the bar, &c., in Washington Territory, regarding the conduct of Governor Stevens. It will show how the governor is carrying on the war in his Territory.”

Proceedings of a meeting of the bar, third judicial district, Washington Territory, on the arrest of the honorable Edward Lander, chief justice of said Territory, and John M. Chapman, clerk of the district court, by an armed force, under orders of Governor Isaac Stevens; together with the proceedings of a mass meeting of citizens of Pierce county, Washington Territory.

NOTE.—On the 7th day of May, 1856, the Hon. Edward Lander, chief justice of Washington Territory, and John M. Chapman, esq., clerk of the district court of the United States of the third judicial district, were forcibly arrested in the court-house at Steilacoom, Washington Territory, while engaged in holding a United States district court for the county of Pierce, by a volunteer force, acting under instructions from Governor I. I. Stevens, and carried under guard to Olympia, the seat of the territorial government.

Meeting of the bar.

Immediately upon the removal of Hon. Edward Lander and J. M. Chapman, esq., from the district court-room, Colonel Wm. H. Wallace requested the members of the bar to remain. Those in attendance, consisting of Messrs. Wallace, Gibbs, Clark, Pease, Hewitt, Murden, Kendall, and Evans, on motion, organized by the appointment of William H. Wallace, esq., chairman, and George Gibbs, secretary.

B. F. Kendall, esq., being called upon, stated the objects of the

meeting to be a consideration of the extraordinary proceedings of the arrest of the judge and clerk by an armed force, acting under instructions of Governor Isaac I. Stevens, and under pretext of a proclamation of martial law over the county of Pierce. Mr. Kendall, on the conclusion of his remarks, moved the appointment of a committee of three to draft resolutions expressive of the sense of the bar at this outrage against law and judicial authority. The motion was adopted, and Messrs. Gibbs, Evans, and Pease, were placed upon said committee.

On motion, the chairman of the meeting was added to the committee, and the meeting then adjourned until 2 p. m. of the same day.

Adjourned meeting.

Accordingly, at 2 p. m., the members of the bar again met, when the chairman of the committee on resolutions made the following report:

A meeting of the bar has devolved upon this committee the task of giving expression to the sentiments entertained by that body of the gross outrage this day inflicted upon the court and bar of this district, by the exercise of military power over civil authority.

This day marks an era in territorial history. For the first time in the annals of our country does the exhibition present itself of an armed force marching into a court of justice, and while the presiding judge thereof is in the exercise of judicial authority, the court is overawed, its judge taken from the bench, its clerk arrested, the records seized, and they removed by an armed force out of the county in which by law the court was to be held. In view of these circumstances, we deem it our solemn duty to make a statement of the facts, submitting it with confidence to the judgment of the world.

A war existing against Indian murderers and marauders in this Territory, it would have been a subject of gratulation if the gallant volunteers in its service had been employed in punishing those Indians, rather than in sustaining lawless violence and in the infliction of outrages upon our courts and people. For so violent an assumption of power we conceive that some little basis of reason should be found to justify it. But it becomes our duty to assert that no such reason exists, and that the proclamation of martial law was unnecessary, inexpedient, illegal, and void; to sustain which declaration the following statement of facts is confidently relied upon. It is our wish to treat this subject, not in a spirit of excitement, although that would be fully justified by the circumstances, but with coolness and moderation. Satisfied as we are that the bare statement of the facts is sufficient, we need no appeal to passion or prejudice.

Several citizens of Pierce county, one of the most populous in the Territory, who had been ordered in from their claims to the town of Steilacoom, on suspicion of intercourse with the hostile Indians, and had subsequently returned to their homes, were arrested, without process of law, in the latter part of March, by a force of volunteers acting under direction of Governor Stevens, and having been first carried to Olympia, in the county of Thurston, were by the governor

remitted to the military post of Fort Steilacoom, with a request to the commanding officer to detain them on a charge of *treason*. Colonel Casey having replied that he could not hold them in defiance of civil authority, and the persons arrested having sent to the nearest judge, who resided in Island county, a distance of about a hundred miles, for a writ of *habeas corpus*, Governor Stevens, on the 3d of April, issued a proclamation in the following words :

“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.”

This document, it will be observed, alleges no other motive than that the persons so arrested without warrant, and by the sole authority of military force, were about to sue out the great *writ of right* to relieve themselves from illegal confinement.

It is to be observed that there was at this time, in the county of Pierce, three companies of United States troops, under command of a veteran and energetic officer. There were also one or more volunteer companies engaged in scouting, the Indians had been driven from the settlements to take refuge in the woods, and if any danger had ever existed of communication between these persons and the enemy it had ceased.

Following upon the heels of this extraordinary document, which was *without seal* and *without attestation*, which found no other publication than the transmission of written copies to a few military officers, the persons so charged were taken once more from the county of Pierce and removed by a military guard to Olympia, out of the district where martial law had been proclaimed. Yet, notwithstanding this removal of the suspected parties, the proclamation was continued in existence, and the volunteer officers directed to enforce it.

After a few days some of the persons so arrested were permitted to return on their parole to Steilacoom, while the others were and are still in custody at the seat of government, and as is reported and believed are to be tried by a military commission of volunteer officers,

to be held in Pierce county, on a charge of treason against the United States.

The United States judge assigned to this judicial circuit being detained at home by severe illness at the time when by law the term of the district court was to be held, the Hon. Edward Lander, chief justice of this Territory, who resides in the adjoining district, at the special written request of Hon. Judge Chenowith, undertook to hold said court, and on Monday, fifth of May, instant, arrived at Steilacoom and opened the court in due form. Having been informed, however, on his way to the court, by Lieutenant Colonel B. F. Shaw, commanding a volunteer force under authority of the governor of this Territory, that if he attempted to hold said court he would be forcibly prevented. Judge Lander, in order to prevent a collision between the executive and judicial authority, suggested that he would simply open and adjourn the court until Wednesday, that the governor might be advised to withdraw his proclamation.

About three days previous to opening court, Colonel Shaw, commanding the volunteer forces, who had received written instructions from Governor Stevens to enforce martial law until further orders, being directed at the same time to inform him immediately if in his opinion it was no longer necessary, had written by express to the governor, stating that no occasion existed in the county for its continuance, informing him that important business was to be transacted before the court, and recommended that, in consequence, the proclamation be abrogated. Judge Lander now himself wrote to Governor Stevens, informing him of the course he had taken; that there were important causes to be tried before the court; one of which, the suit of the United States *vs.* the former collector of Puget Sound, ought to be tried; that there was imminent danger of a collision between the civil authorities and the military, and recommending that martial law be at once abrogated, especially as the present condition of the county seemed not to require it.

In reply, Governor Stevens, on the 6th instant, while declining to withdraw his proclamation, suggested that Judge Lander adjourn his court to the first Monday in June, and informed him that he had examined the law and found no difficulty in his adjourning from any time to the next term of court.

Upon the receipt of this information, Judge Lander, having done his duty as a citizen in endeavoring to prevent the expected collision, proceeded to fulfil those of his judicial office by opening court at the appointed time, accompanied by the clerk, United States deputy marshal, and sheriff; he went to the court-house, opened the court by proclamation, in usual form, and caused the grand jury to be empanelled and sworn. During this time a company of volunteers, (many of them citizens of Oregon, although enrolled in this Territory,) drawn from Clark county, on the Columbia river, entered the courtroom with loaded rifles, and drew up without the bar; another company was kept in reserve without to assist them if necessary. Judge Lander then directed the deputy marshal to prevent the entry of any armed men within the bar; but the commanding officer having announced that he acted under orders from Governor Stevens, directed

his men to arrest the judge and clerk. In obedience to that order they entered the bar, the deputy marshal being unable to prevent it, and arrested the judge in his seat; the judge stating that he only succumbed to force, and declined calling upon the *posse comitatus*, because he wished to avoid bloodshed. Judge Lander and the clerk, J. M. Chapman, were then removed by the military from the courthouse, and, on the same day, taken out of the county and carried to Olympia. The records of the court, which were at first seized, were subsequently returned to the deputy clerk.

During this time the citizens present, though manifesting a deep feeling of indignation at the transaction, refrained from any disorderly or violent acts. The conduct of Judge Lander was, throughout, dignified, firm, and worthy of his high position, and was, we are satisfied, dictated only by a strict sense of duty.

Upon these facts, the committee report the following resolutions:

Resolved, That we look upon the act this day perpetrated by an armed force, under the authority of Governor I. I. Stevens, in arresting the judge and clerk of this judicial district, as an outrage, which, if tamely submitted to, would be entirely subversive of our liberties.

Resolved, That as members of the bar, we solemnly protest against this assumption of power by the executive; that the doctrines of our profession teach us that there is no warrant for such a procedure; that the course of the executive is without a precedent in law or justice, and that it is a violation of every principle of constitutional privilege and liberty.

Resolved, That the proclamation of Governor Stevens, suspending the writ of *habeas corpus*, was an improper exercise of authority, and a usurpation unheard of in the history of our country; that the right of *habeas corpus* is one of those dearest to our people, the right more powerfully protected by then ational Constitution than any other; its suspension being an exercise of authority only conferred upon Congress with extreme restriction, and not inherent in any *officer* in our national confederacy.

Resolved, That the governor's proclamation, in showing that certain parties were arrested on a charge of *treason*, in itself shows the necessity of a court of law for the trial of such prisoners; a military commission or court martial being incompetent to try men charged with such offences.

Resolved, That the peaceable manner of the citizens of Pierce county, in submitting quietly and without resistance to the outrages of this day inflicted upon them, shows conclusively that no necessity exists for martial law; no exigency requires it; no public necessity invokes its aid.

Resolved, That the judiciary of our county is the palladium of our best rights; that its protection from outrage is one of the first duties of a public officer, its subversion a most despotic assumption of authority; that it is a separate branch of our institutions, independent of and not subservient to the *executive*, and that the act of Governor Stevens, this day consummated, is a violent outrage upon the rights of this people.

Resolved, That we unanimously tender to Chief Justice Lander our sympathies on this trying occasion; that his manly course in holding the court until surrounded by an armed *posse*, and forcibly removed from the bench, merits our thanks for their zealous effort to protect the court-house from invasion, and to maintain the dignity of the bench.

The report and resolutions were unanimously adopted; and, on motion, the secretary of the meeting was instructed to forward a copy of the same to the President of the United States, our delegate in Congress, the members of the Committees on Judiciary and Territories of both Houses of Congress.

On motion, it was resolved that the members of the bar participating in this meeting express their concurrence by appending their signatures to these proceedings.

W. H. WALLACE, *Chairman*.
 GEORGE GIBBS, *Secretary*.
 ELWOOD EVANS,
 C. C. HEWITT,
 FRANK CLARK,
 B. F. KENDALL,
 WILLIAM C. PEASE,
 E. O. MURDEN,
 H. A. GOLDSBOROUGH.

Mass Meeting.

A meeting of the citizens of Pierce county, Washington Territory, was held at the court-house in Steilacoom, on the 7th of May, 1856, to take into consideration the outrage committed by the executive of this Territory upon the civil rights of its citizens. Thomas M. Chambers, esq., was called to the chair. E. Schroter was chosen secretary, and E. M. Meeker assistant secretary.

On motion, W. H. Wallace spoke at some length, stating the object of the meeting to be the consideration of the outrage committed upon the civil rights of the people of this Territory by the violent and illegal seizure of the chief justice and the clerk of the court of this Territory by the orders of the executive.

On motion of J. M. Bachelder, George Gibbs, esq., also stated in a brief and forcible manner his views on the same subject.

On motion, the chair appointed Messrs. Samuel McCaw, R. S. Moore, Hugh Patterson, W. R. Downey, and W. M. Kincaide, as a committee to draft resolutions expressive of the sense of the meeting on the occasion. The committee reported the following resolutions:

Whereas, Isaac I. Stevens, governor of Washington Territory, has proclaimed martial law over the county of Pierce, in said Territory, and has this day by an armed force interrupted the proceedings of the United States district court, by arresting the judge and clerk thereof, while in the legal discharge of the duties imposed upon them by their respective appointments; therefore, be it

Resolved, by the citizens of Pierce county assembled, That in declaring martial law over this county in order to suspend the writ of *habeas corpus*, the governor has violated the civil rights of the citizens and trampled their dearest privileges under foot. That, while nearly all the citizens of this county have volunteered and served faithfully in this war, now being carried on against the Indians, we have seen no feeling manifested that justified the assumption by the executive of all civil law and the suspension of all legal protection.

Resolved, That Chief Justice Lander, in the discharge of his official duties, has exhibited every disposition to avoid any collision between the executive and judicial authorities, consistent with the position in which he was placed by the Executive of the United States, and his manly course has won our sympathy and regard.

Resolved, That in the seizure of the chief justice of this Territory, while on the bench in the quiet discharge of his duties, we recognize a usurpation of authority unheard of in the annals of our free republic, an indignity cast upon our courts of law and upon a free people, ever holding themselves amenable to the civil authorities.

Resolved, That the tyrannical and despotic acts of the executive of this Territory are such usurpations of law and authority as require the interposition of the supreme authority of the United States; and that the secretary of this meeting be directed to transmit copies of these resolutions to the President of the United States, to our delegate in Congress, to the Committees on the Judiciary and on Territories in each House of Congress, with a request that they will take such action thereon as may protect the people of this Territory from future usurpation, and in the exercise of their civil rights and personal liberties.

S. McCRAW, *Chairman*.

R. S. MORE.

HUGH PATTERSON.

WILLIAM McKINCAID.

WILLIAM R. DOWNEY.

The resolutions were unanimously adopted, and the meeting adjourned without day.

THOMAS M. CHAMBERS, *Chairman*.

E. SCHROTER, }
E. M. MEEKER, } *Secretaries*.