

## Judge Austin A. King's Preliminary Hearing: Joseph Smith and the Mormons on Trial

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### Locating the manuscript of the hearing

In preparing to go on a research trip with Dale Broadhurst in September 2001, I went through articles listings documents located in Missouri. One such article was written by the late Stanley B. Kimball entitled "Missouri Mormon Manuscripts: Sources In Selected Societies" published in *Brigham Young University Studies* (14 [Summer 1974]:465). It mentioned a court record in a collections held in Columbia.

We drove to the campus of the University of Missouri-Columbia. Dale researched microfilms of early Missouri newspapers and I went to the Western Historical Manuscript Collection. Here I saw the original manuscript of the testimony given in 1838 before Justice Austin A. King which was later published in *Document Containing the Correspondence, Orders*.<sup>1</sup> I asked if it was possible to have copies made from the manuscript and the assistant on duty said it would be okay. I then asked all of it and he said yes. After the trip I put in my request for a copy of the document and sent a check to cover the cost and soon received it in the mail. Then I set up a schedule to work on making a preliminary transcription of the complete manuscript. When completed it contained one hundred twenty-four pages.<sup>2</sup> The transcription was made during a three-month period from January to April 2002.

Judge Austin Augustus King was born in Tennessee in 1802 being appointed as a circuit judge of the fifth circuit in 1837. That Austin King may not have been the perfect judge for the hearing regarding the Mormons is readily admitted. Judge King may have had a conflict of

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<sup>1</sup> Missouri General Assembly, *Document Containing the Correspondence, Orders, &c. in Relation to the Disturbances with the Mormons; and the Evidence Given before the Hon. Austin A. King, Judge of the Fifth Judicial Circuit of the State of Missouri, at the Court-House in Richmond, in a Criminal Court of Inquiry, begun November 12, 1838, on the trial of Joseph Smith, Jr., and others, for High Treason and Other Crimes Against the State* (Fayette, Missouri: Printed at the office of the Boon's Lick Democrat, 1841), 150-51. The title of this work will hereafter be cited in the body of the text as 1841 followed by the page number.

<sup>2</sup> The original testimony is located in the Eugene Morrow Violette Collection, Collection Number 1033, Western Historical Manuscript Collection-Columbia, 23 Ellis Library, University of Missouri Columbia, MO 65201-5149. The first number cited in parenthesis is from my page by page transcription of this manuscript titled "Mormon Inquest Testimony, 1838," (excluding crossed through words), and the second reference is from the 1841 printing. Words added above the line are indicated by angled brackets <>. This transcription is in the possession of the author.

interest and antagonism against the saints.<sup>3</sup> Austin King became Governor of Missouri in 1848. King lived until 1870 when he died at the age of sixty-seven. At the time of the Mormon Inquest hearing he was thirty-six years old.

In 1841 the Missouri General Assembly published a lengthy compilation of one hundred sixty-three pages of material. This was printed in Fayette under the title, *Document Containing the Correspondence, Orders, &c. in Relation to the Disturbances with the Mormons; and the Evidence Given before the Hon. Austin A. King, Judge of the Fifth Judicial Circuit of the State of Missouri, at the Court-House in Richmond, in a Criminal Court of Inquiry, begun November 12, 1838, on the trial of Joseph Smith, Jr., and others, for High Treason and Other Crimes Against the State.*

The published text at times has different wording than the signed statements in the manuscript. A few corrections may have been made on the pages during the printing process. In a couple of places the order of the testimony was changed. There are variants in how the names are spelled of those who gave testimony. Three testimonies of Mormons were not published in the 1841 printing. The important aspect of this document is that it contains the original signatures of those who testified before Justice King. What is presented hereafter is a short summary from that document.

### **Background of events in Northern Missouri**

Much has been written concerning the difficulties between members of the Church of Jesus Christ of Latter Day Saints (or Mormons) and their nonmember citizens, friends, and associates leading up to armed aggression in northern Missouri in 1838.<sup>4</sup> I do not intend to deal with this area of the Missouri conflict except to say that at the time there was disagreement on how the Mormon Church was being operated by its leadership.

The church was headquartered in the city of Far West located in Caldwell County. There were excommunications of church members including church historian John Whitmer, for whom this organization is named, Apostle Lyman E. Johnson, and William W. Phelps, former editor of *The Evening and the Morning Star*. Resignations or withdrawals from fellowship occurred including Oliver Cowdery, the first person receiving baptism in the Mormon movement. All of the living brothers to John Whitmer, that is, David and Jacob Whitmer, their father Peter Whitmer Sr. and their families withdrew their fellowship from the church. Extended family member Hiram Page stopped attending the Mormon Church at this time. Those who were witnesses to the foundation work of the Book of Mormon never denied their testimony to that work but they had issues with the direction the church was heading. So there were already problems in the church.

After Joseph Smith and Sidney Rigdon arrived in March 1838 the place for the gathering was at Far West. Rigdon expressed his views concerning church dissenters in June and on the fourth of July, during the celebration and the laying of the cornerstones for the proposed Far West Temple; he gave the oration that publicly set the tone of what was to be forthcoming.

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<sup>3</sup> See a memorial for the Legislature of Missouri as cited in *History of the Church of Jesus Christ of Latter-day Saints* (Salt Lake City: Deseret Book Co., 1959), 3:247-48 under the date of 24 January 1839.

<sup>4</sup> See for example Stephen C. LeSueur, *The 1838 Mormon War in Missouri* (Columbia, MO: University of Missouri Press, 1987).

Rigdon effectively declared the church independent from mobs and villains. In his own words, published by the church press, he ended with this declaration:

We take God and all the holy angels to witness this day, that we warn men in the name of Jesus Christ, to come on us no more forever, for from this hour, we will bear it no more, our rights shall no more be trampled on with impunity. The man or the set of men, who attempts it, does it at the expense of their lives. And that mob that comes on us to disturb us; it shall be between us and them a war of extermination, for we will follow them, till the last drop of their blood is spilled, or else they will have to exterminate us: for we will carry the seat of war to their own houses, and their own families, and one party or the other shall be utterly destroyed.—Remember it then all MEN. . . . We this day then proclaim ourselves free, with a purpose and a determination, that never can be broken, "no never! no never!! NO NEVER."!!!<sup>5</sup>

The oration was then published as a pamphlet. It was recommended that the saints obtain a copy of it. The *Elders' Journal*, a church publication, expresses its approval in making Sidney Rigdon's speech available in the following words:

The oration delivered on the occasion, is now published in pamphlet form: those of our friends wishing to have one, can get it, by calling on Ebenezer Robinson, by whom they were printed. We would recommend [sic] to all the saints to get one, to be had in their families, as it contains an outline of the suffering and persecutions of the Church from its rise. As also the fixed determinations of the saints, in relation to the persecutors, who are, and have been, continually, not only threatening us with mobs, but actually have been putting their threats into execution; with which we are absolutely determined no longer to bear, come life or come death, for to be mob[b]ed any more without taking vengeance, we will not.<sup>6</sup>

One of the rumors heard prior to the court hearing was that there was a group of Mormons called Danites. On 4 September 1838 John N. Sapp made an affidavit saying he left the Mormons on 15 August and was a member of the Danites (1841, 17). There was also a statement made by Philip Covington, an acting justice of the peace in Daviess County, which adjoined Caldwell County, who said that on the 18 October Mormons went to Gallatin and robbed a store which included the local post office and told the citizens to leave the county (1841, 43).<sup>7</sup> Another letter of 23 October to the governor mentioned that the above mentioned store of Jacob Stollings had been robbed and burned including the post office that was located in the structure (1841, 49).

What became known as the Danites was organized at Far West in June 1838 and at the

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<sup>5</sup> *Oration Delivered by Mr. S. Rigdon, on the 4th of July, 1838* (Far West: Printed at the Journal Office, 1838), 12.

<sup>6</sup> *Elders' Journal* 1 (Aug. 1838):54, Far West, Missouri. See also Ebenezer Robinson, ed., "Items of Personal History of the Editor," *The Return* 1 (Nov. 1889):170-71, Davis City, Iowa.

<sup>7</sup> The date of the statement was printed as 22 September 1838 rather than the correct month of October.

time were primary concerned with those who had excommunicated or dissented from church policy. Many church leaders were involved in making policy and were headed by the church's first presidency consisting of prophet-president Joseph Smith with spokesman Sidney Rigdon and Joseph's older brother Hyrum Smith. This was the highest priesthood/church quorum and the ultimate authority in church matters. In July, at Adam-ondi-Ahman, known as Diahman (spelled Diahmon in the record of the hearing), additional members were added to the Danites. On Election Day, 6 August, at Gallatin a fight occurred between local citizens and Mormons who were planning on voting. Among the Mormons were a number of Danites who called upon fellow members to assist them.

George M. Hinkle was a colonel in Caldwell County militia and for a time in charge of the local militia. The majority of citizens living in the county were Mormons. The church high council on 10 March 1838 resolved that those holding preaching licenses, between eighteen and forty-five years old, who were not officiating in their office "be subject to military duty."<sup>8</sup> How many Mormons were involved in unlawful activities in the Caldwell County militia or in the Far West or Adam-ondi-Ahman companies of Danites is not a part of our examination. Every Mormon male was not a Danite.

It appears that Joseph Smith in part directed Mormon troops. John Cleminson recalled that Lyman Wight believed that the Mormons could settle the difficulties themselves (53; 1841, 116). Whether armed Mormon men were considered under the banner of Danites, the Army of Israel, being part of a militia, or defending their families, what we have here are Mormon troops who considered their actions as defending their rights. It is not a question of whether these troops were legal or not. To the Mormons they were going to retaliate and take revenge upon the enemies of the kingdom of God.

These courses of events lead to leadership problems in the organizational history of the church apostles. In October 1838 David W. Patten (who was known as Captain Fearnought) commanded a company of soldiers and went to Gallatin and committed acts of destruction. He was later killed in a battle with Captain Samuel Bogart at Crooked River. Two apostles left [the] church over activities that at the time were sanctioned by church leaders. Thomas B. Marsh, president of the Quorum of the Twelve Apostles made an affidavit on 24 October 1838 discussing what church members had done and their threats against Mormon dissenters. Apostle Orson Hyde concurred with what Marsh wrote (1841, 57-59).<sup>9</sup>

Charges and counter charges have been told about who did acts of aggression towards citizens of Missouri and also to the Mormons. These recollections before Judge King were given closer to the events than later published explanations. It appears from my examination that most of the testimony came from those who were still church members with the exception of John Whitmer who had been excommunicated eight months prior to the hearing.

This was a court of inquiry or preliminary hearing sometime called a trial. The hearing was held over a period of eighteen days, from 12-29 November 1838. If there was enough evidence against the defendants they were to be brought to trial. In this case evidence was to be presented before a grand jury. This hearing related to purported guilt on the Mormon side of the question and not on the side of wrong doings of local residents upon the Latter Day Saints. For example, no hearing was held relating to Missourians killing Mormons at Haun's Mill.

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<sup>8</sup> Donald Q. Cannon and Lyndon W. Cook, eds., *Far West Record: Minutes of The Church of Jesus Christ of Latter-day Saints, 1830-1844* (Salt Lake City: Deseret Book, 1983), 146.

<sup>9</sup> See also Marsh to "Brother and Sister Abbot," 25 October 1838, copy in Joseph Smith Letterbook 2:18, LDS archives. Orson Hyde added to the letter that he had left the church.

The inquiry represented only one side of the recent disturbances. It was the State of Missouri verses Joseph Smith and the Mormons. The examination started with fifty-three defendants charged "with the several crimes of high treason against the State, Murder, burglary, arson, robbery & larceny" (1; 1841, 97). During the days of the hearing; eleven more Mormons were added making a total of sixty-four defendants. Some of these individuals were later released. Some persons who gave their testimonies remembered the dates of events that took place while most did not. What the witnesses affirmed appear to be genuinely believed by each individual.<sup>10</sup>

A large part of testimony told about the Mormon troops making raids on small towns in Daviess County. The number of troops mentioned in testimony appears to be an estimate based upon the perception of each individual. On 18 October 1838 Lyman Wight led about eighty men to Millport and burned some houses while David W. Patten commanded another eighty troops (some estimated they were from one hundred to one hundred fifty) to Gallatin. The battle at Crooked River was between the forces led by David W. Patten and the state troops commanded by Captain Samuel Bogart.

The testimonies given at the examination can be broken down as follows: of the forty-two witnesses twenty-two were or had been Latter Day Saints. This included seven who had been Danites. The longest testimonies of those who were members of the Danites were that of Sampson Avard, Reed Peck, and Burr Riggs. Those men who had never been Danites and who gave lengthy testimony were: William W. Phelps, George M. Hinckle, and John Corril. In addition near the end of the examination seven witnesses testified in behalf of the defense including fifteen-year-old Nancy Rigdon, daughter of Sidney Rigdon. The state had twenty non-Mormon witnesses who testified.

Witnesses were examined concerning the activity of Mormon troops led by David Patten to Gallatin. Some testimony was given relative to the settlement of Millport and to a lesser degree to Grindstone Fork. The hearing concerned itself mainly with the events that took place at Gallatin and Millport in Daviess County, the Danite band, the fight with state troops led by Captain Bogart, and the reported intentions of church leaders. Justice Austin King certified "that the several witnesses herein before examined, were severally sworn by me according to law, and their examination taken by me, in the presence of the prisoners, and reduced to writing under my direction, and signed by said witnesses respectively, after the same was read over to them" (1841, 150-51).

Ebenezer Robinson, who was one of the defendants, gave a description of the building where the court of inquiry was held. His recollection, given fifty-one years later, gives us an insight into the conditions under which these testimonies were heard:

At Richmond we were taken into the court house, which was a new unfinished brick building, with no inside work done except a floor laid across one end, some 16 or 20 feet wide. There were two large fire places built in the wall where the floor was laid. A railing was built across the room at the edge of the floor, and we were quartered inside the railing as our prison, with a strong guard

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<sup>10</sup> This observation is contrary to what Hyrum Smith and Sidney Rigdon, members of the First Presidency, stated in 1843. See *Times and Seasons* 4 (1 July 1843):253; 4 (1 Aug. 1843):278, Nauvoo, Illinois; also Edwin Brown Firmage and Richard Collin Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830-1900* (Urbana: University of Illinois Press, 1988), 75.

inside and outside the building.

Two 3 pail iron kettles for boiling our meat, and two or more iron bake kettles, or dutch ovens, for baking our corn bread in, were furnished us, together with sacks of corn meal and meat in the bulk. We did our own cooking. This arrangement suited us very well, and we enjoyed ourselves as well as men could under similar circumstances. We spread our blankets upon the floor at night for our beds, and before retiring, we sang an hymn and had prayers, and practiced the same each morning before breakfast. . . .

Tuesday, Nov. 13, A space on the south end of the floor in the court house was appropriated for the use of the court, which convened on that day, with Austin A. King on the bench, and Thomas C. Burch, state's attorney, when the prisoners named above, together with those confined in the court house, were arraigned for trial, viz: . . .

All the above named prisoners were severally charged with high treason against the state, murder, burglary, arson, robbery and larceny.

The charge of murder was made on account of the man that was killed in the Bogart battle, wherein one Missourian and three of our men were killed. Fortunately, most of our brethren who had participated in that battle had left the state, consequently only a few of our fellow prisoners had anything to do with that unfortunate affair.<sup>11</sup>

George M. Hinkle wrote to William W. Phelps (both witnesses before Judge King): "When the Court of Enquiry held its session in Richmond, I did not turn State's evidence, but was legally subpoenaed, as you know."<sup>12</sup> One such subpoena made out by Judge King near the end of the examination reads:<sup>13</sup>

The State of Missouri to James Blakely Nathaniel Blakely, James B. Turner, Laburn Marion, John Lockard Timothy Lewis Greeting, you are hereby commandid that setting aside all excuse, and delay you be and appear forthwith before me at the Court House in the town of Richmond there and there to give evidence and the truth to say on a certain examination & inquiry there and there pending before me wherein the State of Missouri is plaintiff and Joseph Smith Jr and others are defendants on behalf of the state. Herein fail not at your peril. Given under my hand this 21<sup>st</sup> day of November 1838.

Austin A King  
Judge &C

### Summary of testimony of Mormons

First and foremost in the court of inquiry was the examination of Sampson Avard. Avard

<sup>11</sup> Robinson, "Items of Personal History of the Editor" *The Return* 2 (March 1890):234.

<sup>12</sup> Hinkle to Phelps, 14 Aug. 1844, *The Ensign* 1 (Aug. 1844):31, Buffalo, Iowa Territory.

<sup>13</sup> Greg and MarJane Christofferson Collection, Irvine, CA. Used by permission. Of those commanded to appear before the court James B. Turner, John Lockhart (spelled Lockard on document), and Timothy Lewis gave testimony before Judge King circa 26 November 1838.

was baptism into the church and ordained an elder in 1835 by Orson Pratt.<sup>14</sup> Later Avard was ordained a high priest and participated at one June 1838 high council meeting in the city of Far West. Avard held the rank of Brigadier General and was one of the leaders in the Danite order but not the individual in charge of the organization. In July he was present when Joseph Smith received a revelation for the Twelve Apostles.<sup>15</sup> At the hearing Avard produced a copy of a reported Constitution and also a copy of a warning to dissenters that was signed by 83 individuals. This last document warned Oliver Cowdery, David Whitmer, John Whitmer, William W. Phelps, and Lyman E. Johnson to depart out of Caldwell County. Of those warned only William W. Phelps, postmaster of the town, became repentant and stayed in Far West while the others fled.

Sampson Avard indicated in his testimony that those becoming Danites entered into a covenant. After raising their right hand they repeated:

In the name of Jesus Christ the son of God, I do solemnly obligate myself ever to conceal & never to reveal the secret purposes of this society called the daughter of Zion; Should I ever do the same I hold my life as the forfeiture ( 3; 1841, 97).<sup>16</sup>

At a meeting held in the schoolhouse the church presidency, Joseph Smith, Sidney Rigdon, and Hyrum Smith blessed the officers of the Danites.<sup>17</sup> Avard mentioned that Joseph Smith said "it was necessary this band should be bound together by a covenant that those who revealed the secrets of the society should be put to death" (2-3; 1841, 97). Avard recalled, "At the Election last August a report came to Far West that some of the brethren in Davis [Daviess County] were killed. I called for 20 volunteers to accompany me to Davis [Daviess] to see into this matter. —I went and about 120 mormons accompanied me to Adam Ondi Ahman. Mr Joseph Smith Jr in company, when we arrived there I found the report exag[g]erated, none were killed" (3; 1841, 98). At a later date Joseph Smith dropped Avard from his position.

Avard said he did not know if the members of the first presidency ever took the Danite oath. He also mentioned an anecdote that Joseph Smith gave about the Dutchman's potatoes:

about a captain who applied to a Dutchman to purchase potates [potatoes], who refused to sell, the Capt[ain] then charged his company several different times not to touch the Dutchmans potatoes. In the morning the Dutchman <had> not a potatoe left in his patch (5; 1841, 98-99).

Further in his testimony Sampson Avard said that Captain David W. Patten with about 100 men went to Gallatin and removed goods out of the store of Jacob Stollings and took them to the storehouse in Diahman in the care of Bishop Vincent Knight.

Those who opposed the operations of the Danites included John Corrill, William W.

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<sup>14</sup> Orson Pratt to "Dear Brother" [John Whitmer], 18 Nov. 1835, *Messenger and Advocate* 2 (Nov. 1835):224, Kirtland, Ohio.

<sup>15</sup> H. Michael Marquardt, *The Joseph Smith Revelations: Text and Commentary* (Salt Lake City: Signature Books, 1999), 292; LDS D&C 118 (8 July 1838).

<sup>16</sup> John Corrill said he was at one of the meetings "where an oath in substance the same as testified <to> by Dr Avard was administered" (30; 1841, 110).

<sup>17</sup> Based upon the testimonies of Avard (2; 1841, 97); John Corrill (30; 1841, 111); and Reed Peck (55; 1841, 117).

Phelps, and former member John Whitmer. What started out as [a] secret society to cleanse the church of undesirables afterwards turned into an organization of defense and retaliation against nonmember Missourians. Most nonmembers including the governor were considered being part of a mob bent on having the Mormons leave the state.

John Corrill said he was at a Danite meeting where the officers of the society were blessed by the first presidency in their calling.<sup>18</sup> Joseph Smith said "he wished to do nothing unlawful" and told them to obey the presidency (30; 1841, 111).

George M. Hinkle talked with Joseph Smith and "told him that this course of things of burning houses & plundering by the mormon troops would ruin us, that it could not be kept hid and would bring the force of the State upon us, that houses would be searched & stolen property found." Hinkle said that Smith replied in a rough manner "to keep still, that I should say nothing about it, that it would discourage the men & he would <not> suffer me to say any thing about it" (38-39; 1841, 126).

Hinkle received an order from Judge Elias Higbee to order out the militia of Caldwell County. Joseph Smith reduced Hinkle's command and took charge of the forces. George Hinkle recalled:

I have heard Jos[eph] Smith Jr say that he believed Mahommet [Mahomet] was a good man, that the Koran was not a true thing, but the world believed Mahommet as they beli[e]ved him. & that he believed Mahommet a true prophet (42; 1841, 128).

James C. Owens testified Joseph Smith "observed that he didn't intend to obey the laws any longer, that he had had a great many writs served on him, & that he was of age, and did not intend to have another served on him" (47; 1841, 113).

Jeremiah Myers said he was in the last expedition to Daviess County (in October 1838) and was "summoned from my home in the east part of Caldwell county, by my militia officer to go to Far West" (67; 1841, 131). He went and Captain Fearnought [David W. Patten] took a company of men and went to Gallatin. Myers was told there was a mob there. That evening he saw the goods that had been removed from the store in Gallatin and they were at the bishop's storehouse. The goods were called consecrated property.

Samuel Kimble gave testimony that he heard Joseph Smith say in a speech to a large company under arms:

It was impossible to please a mob, that he had applied to the Governor, and he understood the governor said he could do nothing for us, he said that the whole state was a mob, and that the governor was nothing but a mob, & if he come upon them he would make war upon him. he cursed the state as a damn mob & that God would damn them. he observed that the people might think he was swearing, but that the Lord would not take notice of it (82; 1841, 138).

Addison Greene mentioned that he was in the spy company. He was taken prisoner and

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<sup>18</sup> On John Corrill see Kenneth H. Winn, "'Such Republicanism as This': John Corrill's Rejection of Prophetic Rule," in Roger D. Launius and Linda Thatcher, eds., *Differing Visions: Dissenters in Mormon History* (Urbana: University of Illinois Press, 1994), 45-75.

then released before the fight with Bogart (108; 1841, 144).<sup>19</sup> William W. Phelps, who recently rejoined the church after being excommunicated, remembered at one time attending a meeting held in the spring of 1838 where Sidney Rigdon spoke:

as early as April last, at a meeting, in Far West, of 8 or 12 persons, Mr Rigdon, arose and made an address to them in which he spoke of having bourne persecutions & law suits & other privations, and did not intend to bear them any longer. that they meant to resist the law, and if a sheriff came after them with writs they would kill <him>. and if any body opposed them they would take off their heads. Geo W Harris who was present observed, you mean the head of their influence I suppose. Rigdon answered, he meant, that lump of flesh & bones called the skull or scalp (83; 1841, 121)

Abner Scovel, whose testimony was not published in 1841, said he heard Joseph Smith say he would conquer the people by the sword of the Spirit; also "what do we care for the laws of the land <is> so long as there is no person to put them in force." Scovel said the following concerning the rebaptisms of William W. Phelps and Frederick G. Williams:

Soon after the time that Phelps & Williams was baptized, (about the last of June <or July> last) I heard Sidney Rigdon say, in Far West, that if Phelps or Williams apostatised again, or <set up against the government or kingdom>, the Lord would kill them in half an hour, or would put it into the hearts of his saints to kill them (49).

The testimony of Scovel helps us determine when the rebaptism of these men occurred. Both Phelps and Williams lost their offices in the church. They were told in a revelation to Joseph Smith, "in consequence of their transgressions, their former standing has been taken away from them And now if they will be saved, Let them be ordained as Elders, in my Church, to preach my gospel."<sup>20</sup> On 26 July Phelps was called upon to draw up a petition to remove the county seat to Far West.<sup>21</sup> The Scriptorium Book of Joseph Smith recorded for 5 August, "Br. F. G. Williams was among the number, who being rebaptized a few days since was this day confirmed."<sup>22</sup>

In his testimony Phelps said he attended a meetings where Rigdon and Smith "meant to have the words of the presidency to be as good, and as undisputed as the words of God. and that no one should speak against what they said" (84; 1841, 121). It was told of another meeting that if anyone spoke against the presidency they would turned over into the hands of the "brother of Gideon."

William Phelps said he heard from David Patten "that Rigdon was writing a declaration, to declare the Church independent." Phelps said he replied to Patten, "I thought such a thing

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<sup>19</sup> Compare with a short statement made by Greene on 17 March 1840 in Clark V. Johnson, *Mormon Redress Petitions: Documents of the 1833-1838 Missouri Conflict* (Provo, Utah: Religious Studies Center, Brigham Young University, 1992), 220.

<sup>20</sup> Marquardt, *Joseph Smith Revelations*, 293. The revelation was given on 8 July 1838.

<sup>21</sup> Dean C. Jessee, ed., *The Papers of Joseph Smith: Journal, 1832-1842* (Salt Lake City: Deseret Book, 1992), 2:262.

<sup>22</sup> *Ibid.* 2:264.

treasonable, to set up a government within a government. he [Patten] answered it would not be treasonable if they could maintain it" (87; 1841, 122). Phelps heard Joseph Smith tell the anecdote of the Dutchman's potatoes. Phelps said he also heard Joseph Smith remark that there was a store at Gallatin and a grocery at Millport. Phelps understood that Captain Fearnought (David W. Patten) should take a company of men and go to Gallatin and take the goods out of the store and bring them to Diahman and burn the store. Also Lyman Wight to take a company to Millport and Seymour Brunson take a company to Grindstone Fork.

The other two testimonies given during the examination that were not published in 1841 were those of Robert Snodgrass and George Walter. Snodgrass said he heard Joseph Smith say in Far West a number of months previously "That the time had now come that the Saints should <rise &> take the kingdom, <and they should> do it by the <sword of the> Spirit, and if not, by the sword of power" (35).

George Walter, who was examined at length, said he heard Joseph Smith say in Far West that he believed that Mahomet "was an inspired man, and had done a great deal of good." Walter gave bail for Lyman E. Johnson, a dissenter and former apostle, who had been driven from Far West. On leaving town Johnson was fired upon. "Jos[eph] Smith Jr accused me of lying, of harbouring the mob, of being too intimate with the dissenters" and also carrying news to Richmond and other places. Smith said "it was a time of war, and to permit persons who are right in among them to go out and carry news, would never do and it should be stop[p]ed, if not in any other way, they would do it by taking their lives." (36). Joseph Smith further said, "the militia was nothing but a mob, <that> the state of Missouri was a mob. & that the Governor himself was a mob character." Smith also said, according to Walter, "that it was time to lay religion aside and take up <their> guns" (37-38).

In addition to Sampson Avard six other Danites were examined at the hearing. Reed Peck said in June 1838 George W. Robinson and Philo Dibble "invited me to a danite meeting, I went. The only speaker was Dr Avard who explained the object of the meeting, and said that its object was that they might be perfectly organized, to defend <them>selves against mobs. that we were all to be govern[e]d by the presidency, & do whatever they required. and uphold them that we were not to judge for ourselves whether it were right or [w]rong that God had raised us a prophet who would judge for us, & that it was proper we should stand by each other in all cases" (54; 1841, 116). Peck learned that "Jared Carter was captain General of the band." Reed Peck was present when the officers were introduced and blessed by the presidency and indicated that Avard did not explain what he was teaching to the church presidency probably because it was a secret society. In October Peck said:

I heard Jos[eph] Smith Jr in a speech say, in refference [reference] to stealing, that in a general way he did not approve of it, but that on one occasion our Saviour & his disciples stole corn in passing thro' the corn fields for the reason that they could not otherwise procure any thing to eat. He told an anecdote of a Dutchmans potatoes, and said in substance that a colonel or captain was quarter[e]d near a Dutchman from whom he wished to purchase some potatoes, who refused to sell them. the officer then charged his men, not to be cau<gh>t stealing the dutchmans potatoes but next morning he found his potatoes all dug (56; 1841, 117).

Morris Phelps told about attending two Danite meetings. At the second meeting he took objection to taking spoils or plunder and said he never attended a Danite meeting since. He also

heard Joseph Smith talk about the Dutchman's potatoes (28-29; 1841, 110).

Witness Burr Riggs discussed the time he was at Diahman when he "saw a great deal of plunder brought in, consisting of beds. & bed cloths, I also saw one clock, and I saw 36 head of cattle drove up & put in a pen. all the above property was called consecrated property." Riggs heard from John L. Butler "that they had taken the cattle from the citizens of the Grindstone fork, and said he had made a valuable expedition" (73; 1841, 134). Burr Riggs also mentioned, "When Patten was raising his company to go against Bogart. he remarked that it (Bogarts company) was said to be militia, but it was a cursed mob, and that in the name of the Lord he would go and disperse them" (76; 1841, 135).

Finally Ezra Williams (son of Frederick G. Williams), who had just turned fifteen years old since the start of the hearing, testified and said he was in Captain Patten's company "when he took Gallatin, and rob[b]ed the store, the goods were packed off a great many of them before the men on their horses, my Captain often gave me some, which I packed off before me to Diahmon, they were deposited in a house on the river bank" (107; 1841, 144).

### **Summary of testimony of non-Mormons**

The non-Mormons who gave testimony during the examination discussed events that occurred in Millport and being taken prisoners by the Mormons. They also told about the attack upon Captain Bogart, and the taking of goods from the store of Jacob Stollings at Gallatin. Charles Bleckley and James Cobb were both examined and said they observed Joseph Smith, Lyman Wight, and George Robinson on horseback looking at the burning of a house at Millport (77-78; 1841, 136).

James B. Turner said the day after Millport was burned he saw Joseph Smith, Hyrum Smith, Lyman Wight along with two others. A Mr. Cobb the mail rider said, "see what the damn Mormons, have done," referring to the burning and Hyrum Smith asked him how he knew it was the Mormons. "Lyman Wight said their cause was just" and they were acting on the defensive (97; 1841, 139-40).

Elisha Camron said he was taken prisoner and informed Lyman Wight they were raising a militia in Clay County and there was no mob out there (77; 1841, 136). A rebuttal witness, Asa Cook, said he told a man who said he was a Mormon that "we were no mob, but militia" (120; 1841, 149). Andrew Job said he was taken prisoner by Captain Fearnought (David Patten). While traveling Job saw ten houses on fire between Millport and Diahman. Job also said Ebenezer Page told him that the mob was burning their own houses and would blame the Mormons. The next morning Lyman Wight told the prisoners that they had four hours to leave the county. Afterwards Job found various articles taken from the residence of his stepmother at the house of Lyman Wight (69-70; 1841, 132-33).

Jesse Kelley testified that a company of Mormons led by Alexander McRay took him and Addison Price prisoners. McRay told them if they did not wish to flight they needed to leave the state. They were released shortly after (79-80; 1841, 137). Addison Price concurred with Kelly's testimony as being taken prisoner and said that McRay, captain of the company, raised his right hand and warned him in the name of God to leave the county and he had better leave the state. The company said they were militia and bore a white flag (80-82; 1841, 137-38).

Captain Samuel Bogart said that on the evening of 24 October he met with several Mormons and read to them his order of General Atchison. Bogart supposed that they would inform the Mormons of Caldwell Count the character of his company (27; 1841, 108). Wiatt

Craven, who was in Captain Bogart's company, mentioned that Parley P. Pratt and David Patten made an attack upon them and Craven was wounded. Craven said the Mormons approached and both parties commenced firing about the same time and he was taken prisoner. Moses Rowland and several Mormons were killed during this battle (24-25; 1841, 109).

Testifying also was John Lockhart who was in Bogart's company being one of two picket guards. The guards hailed the other company that was the Mormon company and told them to lay down their arms but they did not (102-104; 1841, 142). Nehemiah Odle, Sr. was also in the battle of 25 October between Captain Bogart and the Mormons. Odle said Parley P. Pratt participated but he did not know who fired first (26; 1841, 108).

A number of witnesses told about the stolen goods taken from the store of Jacob Stollings in Gallatin. Patrick Lynch mentioned that he was a clerk in the store. Lynch said he saw the Mormons at a distance and he locked the door of the store. He saw the Mormon troops taking goods from the store. Later the merchandise was found in Diahman. Among the items taken were a ledger, three daybooks, and notes of hand. The books were not recovered "but the notes I found in the house of bishop Knight, at Diahmon, in the possession of his wife, except the notes on mormons." Later Lynch returned and found the storehouse burnt which housed the post office and the treasurer's office (110-11; 1841, 145).

Joseph H. McGee said it was on Thursday, 18 October when the Mormons came to Gallatin. His shop was broken open and George Worthington's saddlebags were taken, also two quilts, a coat, and other clothing that belonged to McGee. Items belonging to other individuals were also removed. McGee saw the Mormons removing goods out of the storehouse and packing articles on their horses. A short time later he saw the place in smoke and flames. McGee said he heard Parley P. Pratt order the men to take the goods prior to the house being set on fire (101-102; 1841, 141).

Another witness, Thomas M. Odle, stated that on Saturday (20 October), after Gallatin was burned, a company of twelve men came to John Raglin's house in Daviess County where he lived. They said their object was to drive the mob from the county and that he must go. He was told to be gone next morning or they would take his life. Mrs. Raglin was also told to leave. The men said they had been driven long enough and would defend themselves and they intended to make it a war of extermination (64-65; 1841, 130).

George W. Worthington testified that it was about Thursday, 18 October, that the Mormons took Gallatin. About 100 Mormons, he later learned under the command of Captain Patten, rushed the town. Worthington lived about a half mile from Gallatin. He said the Mormons took a horse, saddle, and bridle that belonged to John A. Williams. They did not take his mare but took his gun. Later Worthington looked toward the storehouse and saw smoke in the roof and soon after flames burst out from the top. He left his home that evening leaving his property in his house. His home was burned and property gone. At a subsequent time he saw his property in a storehouse and some in a house said to be bishop Knight's in Diahman (98-100; 1841, 140-41).

Porter Yale said he was at Gallatin when the Mormons made an attack upon it and burnt it. They took some guns from his father's house. He went with the Mormons to Diahman and they kept him there two or three days. There were about 100 Mormons that were there. He saw a great deal of plunder brought into Diahman and it was called consecrated property (104-105; 1841, 142-43).

### **Outcome of preliminary hearing**

After Judge Austin A. King heard the testimony of the witnesses he discharged twenty-nine of the defendants because of the lack of sufficient evidence. Twenty-four Mormon prisoners were considered guilty of arson, burglary, robbery, and larceny in Daviess County and as the offences were bailable they could post bail until the next term of the Daviess County Circuit Court. But the court believed that Joseph Smith and four other Mormons were guilty of overt acts of treason in Daviess County. Smith together with Lyman Wight, Hyrum Smith, Alexander McRay, and Caleb Baldwin were to answer the charge in March 1839. Sidney Rigdon was charged with treason committed in Caldwell County. They were committed to Liberty Jail in Clay County. Since the death of Moses Rowland occurred in Ray County it was believed that Parley P. Pratt, Norman Shearer, Darwin Chase, Luman Gibbs, and Morris Phelps were guilty and they were to be held in the Ray County jail.

In January 1839 Sidney Rigdon represented himself in his plea of habeas corpus saying he was innocent of high treason. He was able to give bail and was released but he stayed in Liberty Jail for protection for ten days before leaving the state.<sup>23</sup> The other petitioners remained confined as prisoners.

At a March 1839 conference, individual names were presented for excommunication from the church. This included six men who testified at the hearing.<sup>24</sup> A few months later Joseph Smith and his fellow Mormon prisoners were allowed to escape from custody and flee to Quincy, Illinois. This was one reason why further legal processes were made in an effort to get Joseph Smith extradited back to Missouri. But this is another story.

What occurred in Missouri during those trying times was a sad state of affairs. There was no restoration of homes and property for either the Mormons or the Missourians. The insurrection surely assisted Governor Boggs to help the early settlers in their efforts to get rid of the Mormons. Petitions for help from the local citizens resulted in the extreme measure of Executive Order number forty-four issued by Boggs on 27 October 1838. It took another executive order, issued 137 years later, by Missouri Governor Christopher S. Bond to heal the wounds made in 1838.

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<sup>23</sup> See Richard S. Van Wagoner, *Sidney Rigdon: A Portrait of Religious Excess* (Salt Lake City: Signature Books, 1994), 254.

<sup>24</sup> "Extracts of the Minutes of Conferences," *Times and Seasons* 1 (July 1839):15, Commerce, Illinois, conference held on 17 March 1839 at Quincy, Illinois; republished in *Ibid.*, 1 (Nov. 1839):15.