

liverance from the danger that encompassed him. In that hope I have been disappointed. As if the salvation of the state depended upon the conviction of this unfortunate man—whose situation, one would think, an inquisitor might deplore—the district attorney has gone out of his way to bring down vengeance upon him; and one of the court has told you that he is a traitor, and you ought to find him so.

In a case where justice might be expected to be softened into clemency, and even to connive at acquittal, where every generous sentiment must take part with the accused, and law might be thought to fear the reproach of tyranny, if it should succeed in crushing him—in such a case the established order of trial is deserted, a pernicious novelty is introduced, the court is called upon to mix itself in your deliberations, to mutilate the defense of the prisoner's counsel, to harden your consciences against the solicitations of an enlightened mercy, and to sacrifice the prisoner to gloomy and exterminating principles, which would render the noble and beneficent system of law, for which we are distinguished, a hideous spectacle of cruelty and oppression. For the sake of the country to which I belong, as well as of my client, I will not only protest before you against these principles, but will examine and speak of them with freedom; restrained only by the decorum which this place requires.

In my argument to the court I showed that if it be done treacherously it is treason; but that if the commander act from any motive not corrupt, no indictment can touch him. if the fort be as impregnable as Gibraltar, and be garrisoned with 50,000 men, and it is surrendered to a force of half that number, from motives of fear, the commander cannot be punished as a traitor. What can be more strong to show that upon an indictment for adherence, the law looks into the heart, and adapts its penalties accordingly? Has that authority been answered?

In the case of Stone, which was parallel with the point, the court said expressly, if the heart be pure it matters not how incorrect the conduct. So the counsel argued; and