

**Gentlemen of the  
Grand Jury**

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GENTLEMEN OF THE GRAND JURY  
*The Surviving Grand Jury Charges from Colonial, State,  
and Lower Federal Courts Before 1801*

Stanton D. Krauss, editor

A VIEW OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA  
*Second Edition*

William Rawle with Foreword, Introduction,  
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THE FETHA NAGAST  
*The Law of the Kings*

Abba Paulos Tzadua, translator, and Peter L. Strauss

# Gentlemen of the Grand Jury

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The Surviving Grand Jury Charges from  
Colonial, State, and Lower Federal  
Courts before 1801

VOLUME I

*Edited by*

**Stanton D. Krauss**

PROFESSOR OF LAW

QUINNIPIAC UNIVERSITY SCHOOL OF LAW

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*To Cristie, Davey, Zacky, and Benjy*



# The Grand Juror's Oath

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You shall diligently Enquire, and true Presentment make, of all such Things & Matters as shall be given You in Charge, or shall come to your knowledge, concerning this present Service. The Queen's Counsel, your Fellows & your own, you shall well & truly keep secret. You shall present nothing for Malice, or evil Will you bear to any Person; neither shall you leave any thing unpresented for Love, Favour, Affection, Reward, or any hopes thereof; but in all things that shall concern this present Service, You shall present the Truth, ye whole Truth, & nothing else but ye Truth, according to the best of your skill & knowledge.

Court of General Sessions and General Gaol-Delivery, Province of South Carolina, 1706

You will diligently inquire, and true presentment make, as well as all such matters and things as shall be given you in charge, as of those things which you know to be presentable here. The United States' counsel, your fellows' and your own, you shall keep secret. You shall present no one through envy, hatred or malice; nor will you leave any one unpresented through fear, favour, affection, reward, gain, or any hope thereof: but you will present all things truly as they come to your knowledge, to the best of your understanding.

United States District Court, District of Pennsylvania, 1791





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# Introduction

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Over the past two decades, I have read every publicly available eighteenth century American newspaper published in English and French and the surviving papers (published and unpublished) of seventeenth and eighteenth century American judges. I have also examined the books and pamphlets published here during those years. My object has been to learn what I could about American law from the colonial period through the Federalist era.

These volumes include transcriptions of every complete, partial, or summarized grand jury charge known to have been given before 1801 in what was, or would become, this country, except those delivered by members of the United States Supreme Court, which have already been published in *The Documentary History of the Supreme Court of the United States, 1789–1800* (Maeva Marcus & James R. Perry eds. 1985–2007). They also contain transcriptions of handwritten drafts of charges that may or may not have been delivered and of a number of other documents relating to grand juries, most of which concern disputes between judges and grand juries over the extent of their respective authority.

To enable the reader to estimate the minimum contemporary circulation of items published during this period, I have listed every pre-1801 book, pamphlet, or newspaper in which I know they appeared, in whole or in part. However, the word “minimum” here bears emphasis. Many eighteenth-century newspapers are missing, and there is no way to know which of these reports (or others not represented in this book) they contained. Further, it was common for publishers to exchange copies of their papers with newspaper publishers in other cities, and for those out-of-town prints, as well as privately subscribed journals, to be available for public inspection. Finally, private correspondence and word of mouth could have spread news of things said in court well beyond the groups of people who directly heard them or read about them in print.

These documents address a surprisingly wide array of topics. These include politics, foreign and domestic policy, religion, local social and economic development, and the status of local roads and schools, as well as the rules of criminal procedure, evidence, and the substantive criminal law. As a result, this book will be of great value to historians, lawyers searching for the original understanding of the Bill of Rights, and ordinary Americans interested in our country’s history.



# Editorial Method

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I have created a title for each document in this collection. The title of every grand jury charge contains (when known) the name of the judge who delivered the charge, the territorial extent of the jurisdiction of the court in which (and the jury to which) the charge was given, and the date on which the address was made.<sup>1</sup>

I have also provided a transcription of each of these speeches. If the address appeared in print during the eighteenth century, I have transcribed a published account. When the charge was printed in a book, that is the source on which I have relied. If it only appeared in pamphlet and newspaper format, I have transcribed the pamphlet. If it simply appeared in newspapers, I have transcribed the earliest extant published report.

Inevitably, different printed reports of a speech contained minor differences in typeface, style, punctuation, spelling, and word order. I have made no effort to identify them. Rather, in a footnote at the end of each charge, I have simply listed the different publications that are known to have printed essentially the report transcribed in the text. This note also identifies newspapers that only published excerpts from the transcribed report. However, when the accuracy of a published report of a judge's speech was disputed, or when different accounts supplement one another, I have transcribed several reports in their entirety.

Some of the handwritten charges explicitly state that they were delivered, and when. Others do not. The latter speeches, which may never have been given (at all, or as written), appear in these volumes as "Undated Charges" in Appendices at the end of the relevant Chapters. These Appendices also contain transcriptions of documents that are not charges, principally documents memorializing judge-jury disputes about the extent of a grand jury's authority.

I have left the original spelling, typeface, and (with a few exceptions, noted below) punctuation intact throughout.<sup>2</sup> However, with respect to both printed sources and manuscripts, there are certain changes that I have made in the texts being transcribed. I have replaced broken-line dashes with dashes consisting of a solid line. I have followed the modern convention of placing quotation marks in the text at the beginning and end of a quoted passage in lieu of the earlier practice of putting quotation marks at the margins of each quoted line. I have also replaced antiquated contraction marks: words with con-

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1. January 1 replaced March 25 as the beginning of the legal year in England and its North American colonies in 1752. However, in these titles, I have rendered earlier years in the more modern New Style.

2. Spacing is another matter. I have followed the modern convention of using a single space after punctuation, rather than the idiosyncratic practices of the various seventeenth- and eighteenth-century writers represented in these volumes. Sometimes, however, a text indicates a pause by leaving a significant gap between words, with no punctuation whatsoever. In these instances, I have inserted an em space between the words.

traction bars are fully written out and pound signs appear as apostrophes. Marginal notes and endnotes are rendered as footnotes. I have substituted lower-case letters for footnote numbers or symbols used in the source material; numbered footnotes, as well as ellipses and (unless otherwise indicated) text within angle brackets, are mine. Footnotes and reference marks aside, I have lowered all superior letters to the line.

Manuscripts raise unique editorial problems, because I cannot replicate the exact appearance of the written page. A few examples should suffice. Unless I create an impenetrable thicket of footnotes (and make these volumes far more expensive to publish), my transcriptions can't capture the (potentially significant) difference between deletions made by blackening words out, drawing a single line through them, and drawing a "line" of spirals through them. Nor is it practical for me to interline the myriad words so written in the manuscripts. Finally, idiosyncratic reference marks are, unsurprisingly, not always available on modern computer software.

I have therefore adopted a number of special editorial rules with respect to manuscripts. First, I have replaced some of the more elaborate reference marks with simpler images or capital letters. Second, I have used paragraphing to identify groups of citations within a footnote and to clarify which citation indicates the source of language quoted within a footnote. Third, where the author has indicated uncertainty about word choice by writing one word above another, the transcription reads "(upper word)/(lower word)." Fourth, with respect to charges that appear to have been delivered only once, I have omitted all words deleted in the manuscripts and added all words interlined in the manuscripts without indicating their mode of insertion.

Another set of practices applies only to manuscripts of charges that may have been given more than once. When the author inserted language into the text by means of a reference mark (and this seems only to have been done in these manuscripts), the transcription follows suit. (Massachusetts judge Robert Treat Paine's recycled charges contain so many passages inserted in this manner that, to make them more intelligible, I have used small type to identify both language intended for insertion via reference mark and its accompanying reference mark.) I have employed footnotes to identify other language inserted in these manuscripts when that appears the most sensible way to include it (e.g., when a piece of paper is fastened to a manuscript page with no indication where the words on the paper were to be introduced into the text) or when it makes the transcription more comprehensible. Deletions originally made by means of brackets (which, again, appear only to be found in charges that were revised and reused) are so rendered in my transcriptions. Finally, Massachusetts judges Nathaniel Peaslee Sargent and Francis Dana made some deletions by "x"ing out entire passages in previously-delivered charges: my transcriptions display those deletions as words crossed out with a single line.

One last transcription problem is unique to the written charges of Pennsylvania judge Edward Shippen. Shippen indiscriminately used a period or a dash to signify the end of a sentence. (Occasionally, he ended sentences with no punctuation whatsoever.) It is sometimes difficult to discern which of these two marks he had made. I have used a dash when I believe he meant a pause less than a full stop, and a period when I believe he meant to signify the end of a sentence.

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