
THE JUANITA BROOKS LECTURE SERIES

presents

The 31st Annual Lecture

Clash of the Legal Titans:
The First Trial of John D. Lee

July 20 to August 7, 1875

by Richard E. Turley Jr.

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About the cover

A Special Note of Gratitude

“Pushing against the effects of a debilitating, chronic illness, my ‘little sister,’ Clarelle (Richardson) Kristofferson painted the portrait of John D. Lee.... Using [his] black and white photos to guide her, Clarelle poured tender feelings...onto her easel.... We are the richer. Clarelle, my eternal gratitude!”

~ Lorraine (Richardson) Manderscheid



Juanita Brooks was a professor at [then] Dixie College for many years and became a well-known author.

She is recognized, by scholarly consent, to be one of Utah's and Mormondom's most eminent historians. Her total honesty, unwavering courage, and perceptive interpretation of fact set more stringent standards of scholarship for her fellow historians to emulate. Dr. Obert C. and Grace Tanner had been lifelong friends of Mrs. Brooks and it was their wish to perpetuate her work through this lecture series. Dixie State University and the Brooks family express their thanks to the Tanner family.

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imaging projects, software development, the Family History Library, the Granite Mountain Records Vault, and FamilySearch.org.

He serves as a member of the executive committee of The Church Historian's Press, as a member of the editorial board for the Joseph Smith Papers project, as co-editor with Brittany Chapman of the Women of Faith in the Latter Days series, and as general editor of the Journals of George Q. Cannon series. He has authored or edited several other books, including *Massacre at Mountain Meadows* (New York: Oxford University Press, 2008) (with Ronald W. Walker and Glen M. Leonard); *Mountain Meadows Massacre Documents: The Andrew Jenson and David H. Morris Collections* (Provo, UT: Brigham Young University Press; Salt Lake City, UT: University of Utah Press, 2009) (with Ronald W. Walker); and *Victims: The LDS Church and the Mark Hofmann Case* (Urbana: University of Illinois Press, 1992).

He serves on the board of Utah Westerners, as a member of the Council on Religious Endeavors at Brigham Young University, and as a member of the committee for the Juanita Brooks Prize in Mormon Studies at the University of Utah. He has been president of the Genealogical Society of Utah and vice-president of the Small Museum Administrators Committee, American Association of Museums. He has served as a member of the committee for Fort Douglas Heritage Commons, a "Save America's Treasures" project at the University of Utah; the Utah State Historical Records Advisory Board, National Historical Publications and Records Commission; and the Copyright Task Force, Society of American Archivists.

Clash of the Legal Titans: The First Trial of John D. Lee

July 20 to August 7, 1875

by *Richard E. Turley Jr.*

The horrific Mountain Meadows Massacre of 1857 indelibly stained southern Utah history. It also led to one of the most celebrated trials in the annals of western America. In 1874, a grand jury indicted nine men for their roles in the massacre. Deputy marshals eventually arrested most of the men indicted. Of those arrested, one man turned state's evidence, and the rest spent time behind bars awaiting trial on murder charges. The first man arrested, John D. Lee, was the first, and — as it turned out — only man formally tried and executed for his role in the crime.¹

Lee's first trial ran from Tuesday, July 20, to Saturday, August 7, 1875, and ended in a hung jury. It also placed in the public eye two remarkable teams of lawyers recruited from Utah and Nevada — among the best legal counsel available in the region at the time. Few trials of the day attracted more attention.² Over the last 138 years, this clash of legal titans has been recounted again and again with varying degrees of detail, understanding, and accuracy.³

In *Massacre at Mountain Meadows: An American Tragedy*, Ronald W. Walker, Glen M. Leonard, and I only briefly mentioned Lee's first trial in our epilogue.⁴ Two works that others and I plan to publish in the future will recount the trial much more fully.⁵ Today, rather than duplicate those works, I would like to discuss three elements of the trial that provide context for understanding exactly what happened in this celebrated legal contest. Those three elements are (1) the characters, (2) the trial transcripts, and (3) the legal environment.

The Characters

Let's begin by considering the two teams of lawyers and the judge, the characters in this legal battle.

The Prosecution

We'll begin with the prosecutors in the case, who were William H. Carey, United States district attorney for Utah; Robert N. Baskin and David P. Whedon, assistant U.S. district attorneys; and Presley W. Denny, C. Myron Hawley, and Charles J. Swift, "of counsel for the People."⁶ Of these six, the most important were Carey and Baskin.

William H. Carey

William Carey began life in 1826 in the New England settlement of Turner, a town that grew up along the Androscoggin River in southwestern Maine. He received most of his education in his birth state, supplemented by two terms at the fledgling Yale Law School. Around age thirty, the aspiring attorney moved west to Galena, Illinois, where he became a member of the bar.⁷ About four years after Carey arrived in Galena, thirty-eight-year-old Ohio native Ulysses Grant also moved to that town to work as a clerk in his father's leather store.⁸ If a later newspaper account is to be believed, the two men became friends.⁹

Grant went on to fame and military glory in the Civil War before catapulting to the presidency of the United States, serving in that office from 1869 to 1877. Carey's achievements were more modest but still impressive. He served as a member of the Illinois State Constitutional Convention from 1869 to 1870 and of the Illinois legislature from 1870 to 1872.¹⁰ Such credentials qualified him well for a political appointment under the spoils system that then existed in the federal government,¹¹ and in 1873, perhaps because of his acquaintance with Grant,¹² he was appointed United States attorney for Utah Territory, serving until 1876.¹³

Carey arrived during a turbulent period of Utah legal history when some federal officials aimed to reconstruct polygamous Utah in the same way the federal government had reconstructed post-Civil War southern states. The Latter-day Saints, of course, held an overwhelming majority at the polls in the territory and felt their local laws and customs on marriage should prevail over those of distant officials in Washington. The political environment was thus polarized, with parties on both ends of the political spectrum often view-

ing the other as the enemy and moderates in between hesitating to raise their voices or being shouted down at times when they did.¹⁴

Utah had a two-party system in those days, but it was not the one prevailing today. Instead, devout Latter-day Saints supported what was termed “the People’s Party,” while citizens on the opposite political pole joined with “the Liberal Party.”¹⁵

When Carey was first appointed U.S. attorney for Utah, the territory’s nonvoting congressional delegate, George Q. Cannon, wrote to Latter-day Saint leader Brigham Young. “There is much speculation on the subject of his appointment, many imagining that it means mischief,” Cannon wrote. “But as Judge Carey was not consulted beforehand...it is scarcely probable that he would be selected to carry out a vindictive policy; besides, he is not a vindictive looking or acting man. We hear, however, that General [Ulysses] Grant feels bitter against Utah and her people.”¹⁶

President Grant took a hard line towards Utah, and as a Grant appointee, Carey was expected to be tough. But by the time of Lee’s first trial, some in the Liberal Party worried that Utah Territory’s U.S. attorney might botch the case — a concern that brings us to the other major figure on the Lee prosecutorial team, Robert Baskin.

Robert N. Baskin

Robert Newton Baskin was born in 1837 in Jackson, Ohio, the son of respectable parents, including a father who had prospered financially and politically. When Robert was twelve, his father passed away, dimming the family’s economic prospects. Nevertheless, Robert received a fine education that included tutelage under a practicing lawyer and one year at Harvard Law School. Though he did not complete the two years then required for a law degree, Baskin returned to Ohio and entered into the practice of law with a respected attorney.¹⁷

In 1863, Baskin shot and killed a well-liked young man named Andrew West during a scuffle. Despite witness testimony that suggested self-defense, the shooting resulted in a second-degree murder charge, followed by a grand jury indictment for manslaughter, and finally a proceeding in which the prosecutor, according to a newspa-

per report, saw that the jurymen were all “of the same political party as the defendant” and “therefore decided to quash the indictment, rather than subject the county to the expense of a trial, which, with a jury so constituted, must be but a mockery of justice.”¹⁸

In 1865, Baskin was arrested again for the shooting. But as a local newspaper editor complained, “The Grand Jury...refused to find any bill against Baskin for killing West.” The editor surmised, “The refusal of the Grand Jury for the present term to find any indictment against Baskin cannot fail to excite strong suspicions that a majority of the Jury were influenced by party feeling in disregard of their sworn duty as Jurors.”¹⁹

Having avoided conviction in Ohio, Baskin immigrated to Utah, where he arrived in 1865 and became a member of the territorial bar the following year. Baskin also became a prominent member of the Liberal Party and a strong advocate of reducing Latter-day Saint control of Utah. The unrequited murder of one of his clients, which he attributed to Mormon leadership, cemented his staunchly anti-Mormon stance.²⁰

Violence and sex have long been recognized for their power to draw public attention, and Baskin used polygamy and the Mountain Meadows Massacre to challenge Latter-day Saint leaders, garner votes in Congress for anti-Mormon legislation, and appeal to the American populace to support his views. He drafted the 1870 Cullom Bill, and during a brief stint in 1871 as interim U.S. attorney, he, Judge James McKean, and Marshal George R. Maxwell had Brigham Young arrested for lewd and lascivious cohabitation and murder. These efforts were seen by both sides as political, a struggle between Utah’s two polarized extremes. Much to the chagrin of Baskin, McKean, and their associates, within a few months the U.S. Supreme Court handed down the case of *Clinton v. Englebrecht*, overturning the creative approach they had employed and leading to the freeing of Mormon leaders. President Ulysses S. Grant subsequently dismissed McKean as judge.²¹

The Liberal Party persisted, however, lobbying in support of the Poland Bill, which passed Congress in 1874, putting greater control of Utah’s criminal justice system in the hands of federal appointees and laying the groundwork for the first Lee trial.²²

The U.S. attorney for Utah, William Carey, was expected to prosecute Lee in this trial. But as mentioned earlier, some members of the Liberal Party worried that Carey might not succeed. Editor Fred Lockley of the Salt Lake Daily Tribune, which was then the Liberal Party's organ, considered Carey "weak and inefficient" as a lawyer. He wrote to his wife that Carey was "not the right man" to face the team of defense lawyers. When Baskin showed up in Beaver, Utah — the site of the trial—Lockley was relieved. "Baskin's appearance upon the scene is our salvation," he wrote to his wife. "He tells me Carey wrote for him to come.... Without this able and fearless attorney, the prosecution would have made a complete failure of the trial."²³

The Defense

Let's now consider the defense team in Lee's first trial. With Yale-trained William Carey as the U.S. attorney and Harvard-trained Robert Baskin assisting him, did John D. Lee's lawyers have a chance to successfully defend their client? Could the pioneering regions of the Great Basin in 1875 provide defense lawyers equal in skill and experience to those on the prosecutorial team? As it turned out, Lee amassed a daunting defense team of his own, one with a somewhat complex history.

His first attorney, James H. Brown of Beaver, died of a brain ailment and was soon succeeded by erstwhile Salt Lake Daily Tribune correspondent, occasional mineral prospector, and sometime lawyer Wells Spicer. Like Baskin, Spicer was a non-Mormon who believed Utah's Mormon power structure should be tamed.²⁴ At times, Spicer would prove more of a liability than an asset to the defense team, which over time grew into an unusual assemblage of attorneys with differing backgrounds, skill levels, and sponsorship.²⁵

Another potential liability for the defense was John Menzies Macfarlane who, if he didn't participate in the massacre itself, had a brother and stepfather who did.²⁶ The diverse group of defense lawyers, however, also included William Bishop, Enos D. Hoge, George C. Bates, and Jabez G. Sutherland, each of whom deserves some description.²⁷

William W. Bishop

William Wallace Bishop was born in 1836 in Pennsylvania and moved to Illinois in 1838. He was admitted to the Illinois bar in 1858. When the Civil War broke out, Bishop tried to enlist but was refused due to “eye troubles,” a problem that plagued him throughout his life.²⁸ After the war he made his way to Nevada, where he practiced law.²⁹ By February 1875, William Bishop was living in Pioche, Nevada, but he had expanded his practice to embrace Utah, including the second district court that sat at Beaver.³⁰ In April 1875, he was in court there defending Lee.³¹

Enos D. Hoge

Assisting William Bishop was Enos Daugherty Hoge, who was born on a Virginia plantation in 1831. Taken to Illinois in 1837 by his father, Enos Hoge (like many young men of his day) eventually journeyed to California in search of fortune, returning in 1856 to Illinois, where he studied law and joined the bar. After brief service in the Civil War, Hoge moved to Salt Lake City. In 1868, he was appointed associate justice of the Territory of Utah, an office he held for about a year before going into private practice. A non-Mormon like most of those on Lee’s defense team, he found sociality in the Independent Order of Odd Fellows.³²

George C. Bates

The most mercurial member of Lee’s eclectic defense team was George Clinton Bates, who was born in 1815 in Canandaigua, New York. Bates was admitted to the Michigan bar in 1834 and later served as U.S. district attorney in Michigan. In 1852, he moved to California, where he represented the federal government in admiralty and other claims, becoming independently wealthy in the process. In 1856, he returned to Michigan, later moving to Chicago, where the great fire of 1871 took most of his earthly possessions and nearly ruined him financially. Later that year, however, President Ulysses Grant appointed him United States district attorney for Utah.³³

Bates saw the work of Baskin, McKean, and others as politically motivated and legally flawed. He felt caught in the middle of a politi-

cal struggle between two extremes and was eventually sacked. As an 1878 biography then recounts, “In October, 1873, Mr. Bates became the attorney and counselor of the Church of Jesus Christ of the Latter-day Saints, of Utah, by the appointment of George A. Smith. He held this position until November, 1875, and, during that time, with his partner, J. G. Sutherland, successfully defended every civil and criminal suit brought into court against the Mormon leaders.”³⁴

Given Bates’s shift from public prosecutor to Mormon lawyer, the leading lights in the Liberal Party considered him a traitor who undermined their efforts to reduce Mormon power in Utah.³⁵ Over time, Latter-day Saint leaders, too, severed their relationship with him. Though at the time of Lee’s first trial Bates was on a retainer provided by church funds, church account books show no evidence of any specific payment to Bates or his law partner, Jabez Sutherland, for Lee’s defense.³⁶

Jabez G. Sutherland

One of the leading members of Lee’s defense team was Jabez Gridley Sutherland, who was born in upstate New York in 1825 and spent his youth in that state and Michigan as it evolved from a territory into the twenty-sixth state of the union. A young man of considerable talent, he was admitted to the bar without attending law school and was appointed by Michigan’s governor as a county prosecutor. In 1850, while in his mid-twenties, he became the youngest member of Michigan’s state constitutional convention. Two years later, he was elected to the state legislature. In the 1860s, he served as judge of the tenth judicial district, and in 1870 as a member of Congress.³⁷

In 1873, he visited Salt Lake City to see his friend George C. Bates. Sutherland’s health had taken a turn for the worse, and he hoped Utah’s climate would do him good. Rapidly improving after his arrival, he decided to settle in the territory, and he and Bates became law partners.³⁸

“The fame of Sutherland’s ability as a lawyer had preceded him only in moderate degree,” Orson F. Whitney’s *History of Utah* notes, “but it was not long before it was known that he was in the foremost rank of the profession. Almost from the first he was recognized as

a learned attorney, and was conceded a leading place in the bar of Utah.... Judge Sutherland was retained by President Brigham Young, and for a long time was legal adviser of the Church.”³⁹

On July 17, 1875 — three days before Lee’s first trial — Salt Lake Daily Tribune representative Fred Lockley wrote to his wife, “It is feared that Carey is not the right man for this work. Sutherland carrie[s] too many guns for him, and will be apt to beat him at every point.”⁴⁰ Baskin’s arrival, of course, helped soothe Lockley’s feelings.

All told, for a case taking place in the frontier town of Beaver, Utah, in 1875, the legal talent brought to bear in this case was considerable.

The Judge: Jacob S. Boreman

The highly publicized contest, of course, needed a referee, a judge. The judge of Utah Territory’s second judicial district was Jacob S. Boreman, who was born in Virginia in 1831 and obtained a college education that included a year of study at the University of Virginia law school. He became city attorney in Kansas City, Jackson County, Missouri, in 1861 and later judge of that city’s court of common pleas, probate court, and criminal court. He served in the Missouri legislature before being appointed by President Ulysses Grant to be associate justice of the supreme court of Utah Territory, a role that also made him one of Utah’s district court judges.⁴¹

An article in a Pioche, Nevada, newspaper before Lee’s first trial described Jacob Boreman as “a prompt, energetic man, who has no fears of the Church of Jesus Christ of Latter-day Saints, nor of anything else; he is anxious to do his duty as a Judge and as a man. No attorney who practices before the Court can fail to respect the Judge for his promptness, energy, courtesy and ability. As a man he has strong prejudices, makes up his mind very speedily upon every proposition that is submitted to him, and when his mind is once formed he is like the Scotchman, willing to be convinced, ‘but where is the man that can convince him.’ The followers of polygamy have an opponent in Judge Boreman that brings trouble to their councils throughout this Judicial District.”⁴²

The Trial Transcripts

These, then, were the lawyers who sat or stood near the front of the courtroom during the trial. On the surface, recounting the trial would seem a simple matter of following these players through the legal drama in the pages of the trial transcripts, the second element I wish to address today. But as Shakespeare wrote in the famous soliloquy of his character Hamlet, “there’s the rub!”⁴³ It turns out that the transcripts of Lee’s trials, which have been the basis of scholarly and literary accounts of his legal proceedings for over a century, are flawed, having undergone their own drama, one that went on mostly behind the scenes.

Largely unaware of that drama, scholars over the years have relied on the transcripts to piece together what happened in these legal proceedings. Juanita Brooks, after whom this lecture series is named, was a tenacious historian well ahead of her time who worked assiduously to piece together the events of the massacre. Her landmark volume *The Mountain Meadows Massacre* devotes about three pages to Lee’s first trial and cites to a copy of the transcript at the Huntington Library, a copy she assumed to be accurate but that we now know to be deficient.⁴⁴

Were Juanita Brooks alive today, she would have access to materials that were not available to her at the time. In 2009, for example, Ronald W. Walker and I published *Mountain Meadows Massacre: The Andrew Jenson and David H. Morris Collections*, a large format volume containing images and transcriptions of documents that Brooks had strenuously sought but been denied.⁴⁵ In another effort to make additional sources on the massacre available to the public, some of my other colleagues and I have been working for several years to publish a new set of trial transcripts as well. Let me explain why this has been necessary.

Two reporters covered both Lee trials. One was Adam Patterson, who reported the trials for the court. The other was Josiah Rogerson, a court reporter who essentially covered the trials for Latter-day Saint leaders.⁴⁶ Each reporter took notes of the trials in Pitman shorthand — most of which still exist — but the two sets of shorthand sometimes differ from one another because of additions or

omissions of the reporters or variances in how they heard the lawyers and witnesses.⁴⁷ Still, together these contemporaneous shorthand notes provide the most accurate record of what was actually said and done during the trials.

In the fall of 1876, Rogerson took his shorthand notes to Brigham Young and asked what to do with them. “We want them all transcribed in full,” Young answered, “for which we will pay you.”⁴⁸ Young died the next year, however, and at the request of Young’s successor, John Taylor, Rogerson agreed instead to make a “digest or synopsis of [the] Lee trial.”⁴⁹ By February 1884, Rogerson still had not finished but wrote, “I have brought the transcript down to less than one third — in the number of words, that there are in the shorthand notes.”⁵⁰

Yet he wasn’t finished. In fact, he continued working on the project until well into the twentieth century. Long after Taylor’s death, Rogerson wrote Latter-day Saint leaders, “I wish to make a sworn affidavit as to the correctness and fullness of my Transcript; deliver my short-hand notes to Prest. [Anthon H.] Lund, our Historian, getting the whole thing off my mind, and thereby, keeping and fulfilling my promise to Pres. Brigham Young Sr.”⁵¹ Even later, he compared his transcript to one commissioned by Judge Jacob Boreman and asserted, “My short-hand notes are the fullest and most accurate of the first Lee trial...together with the addresses and speeches which are all in full in MY Transcript,” an assertion not supported by the evidence.⁵²

Moreover, nineteenth- and early twentieth-century historiography was not what it is today, and trends emerge in Rogerson’s edits. At one point, for example, he tried to shift the focus of the massacre from being the responsibility of many white southern Utah men to being the crime of one — John D. Lee. Where Rogerson’s shorthand reads that “white men incited” an attack, his transcript reads, “John D. Lee marshalled and led” it.⁵³ As Rogerson explained in one letter, Bishop’s closing remarks were important to keep in the edits because they ably defended “the accusation that the members of the [Nauvoo] Legion were at the head of the perpetrators of the M. M. Massacre” — an accusation he did not like but turned out to be true.⁵⁴

Other portions of Rogerson's transcription expand speakers' rhetoric. For example, during a closing argument in the first trial, William W. Bishop, Lee's attorney, tried to discount the damaging testimony of witness Annie Hoag. Rogerson's shorthand of Bishop's speech records, "Her statement I think was the most remarkable [that is, unbelievable] statement [I] have heard in my life." In his transcription, however, Rogerson amplifies the text to read, "Her statements are so monstrous, that, coming from a woman, as they do, we cannot believe them true."⁵⁵

While Rogerson was laboring on his transcript, Patterson, the other court reporter, moved to San Francisco, where he died in 1886.⁵⁶ Meanwhile, trial judge Jacob Boreman decided that he wanted to publish a book about the case. Since Patterson was unavailable, Boreman commissioned reporter Waddington L. Cook, a former student of Patterson, to make a transcript from Patterson's shorthand.⁵⁷

As it turned out, Cook found Patterson's shorthand difficult — in places even impossible — to read.⁵⁸ He therefore contracted with Josiah Rogerson and requested his assistance in the project, asking Rogerson to bring his own shorthand notes, which were more decipherable than Patterson's. The two of them completed the project, often relying on Rogerson's notes.⁵⁹ In short, the so-called Boreman transcript is not a faithful transcription of Patterson's shorthand as some have assumed.

Therefore, writers who have depended on the Rogerson and Boreman transcripts have risked relying on the unreliable. At best, without new transcripts, scholars today cannot be sure which portions of the transcripts are accurate reflections of what went on in court and which are not.

With the new transcription, prepared over thousands of hours by shorthand transcriber LaJean Purcell Carruth, and other legal documents that she, Janiece Johnson, and I will be publishing, students of the massacre will have a more complete and reliable picture of what happened at the trial than ever before.⁶⁰

The Legal Environment

The third element I want to discuss today is the legal environment at the time of the trial, a subject I partly addressed in introducing the lawyers. Why was there such national interest in a crime that transpired almost eighteen years earlier in a remote region of southern Utah? In part, of course, the answer lies in the horror of the atrocity: the slaying of some 120 unarmed men, women, and children at close range. In addition, public curiosity about and disdain toward Utah and its peculiar people had reached one of its peaks in 1875.

Ann Eliza Webb — Brigham Young's "wife no. 19," as she styled herself — was busy lecturing in the east about the evils of polygamy and squarely placing the blame for the Mountain Meadows Massacre on the shoulders of her famous ex-husband.⁶¹ "Ann Eliza," the *Beaver Enterprise* reported, "is electrifying the congregations of the Puritan churches in the New England States with her expositions."⁶²

Besides that, George Q. Cannon, Utah's territorial delegate to Congress, had recently come under fire from Robert Baskin, who as a Liberal Party candidate had come in a distant second to Cannon in recent elections. Baskin's energetic efforts to disqualify Cannon may have influenced the House Committee on Elections, which voted to expel Cannon for marrying in violation of the 1862 Morrill Anti-Bigamy Act — legislation that Abraham Lincoln had signed but elected not to enforce and that Latter-day Saints had ignored, viewing it as unconstitutional. Cannon retained his seat for the time being, but the tension between Baskin and him would continue for years.⁶³

An eastern newspaper, after highlighting these and other Utah news events, concluded, "We have faith to believe that Mormonism is doomed to an early death. No administration, no congress, no territorial governor, no federal judges can withstand the force of an enlightened public opinion. It needs but the acquittal of the Mountain Meadow assassins to fill the cup to overflowing, and then the real work of purification will commence in earnest."⁶⁴ The paper saw John D. Lee's murder trial — especially the possibility that he might be acquitted — as the last straw that would lead an enlightened public to bring about the complete demise of The Church of Jesus Christ of Latter-day Saints.

With the broad range of evidence available to us today, we are better able than our predecessors to assess the legal environment at the time of the trial. We admire Juanita Brooks for her pioneering work on the Mountain Meadows Massacre and marvel that she did as well as she did with the sources available to her. As might be expected, of course, she missed a few points. In describing the first trial, for example, she wrote, “The prosecution, while intent upon convicting Lee, was also eager to extend the guilt to others and to show that the whole thing was church inspired, with the guilt going all the way back to Brigham Young and his immediate subordinates.”⁶⁵ This is an accurate summation, except for the statement that the prosecution was “intent upon convicting Lee.” Substantial evidence suggests that the prosecution did not want to convict Lee in the first trial because the Liberal Party had more to gain from a hung jury.⁶⁶

The Ogden Junction pinpointed the trial’s political significance. “Lee’s long confinement and the course taken with him in a military prison,” its Mormon editor wrote, “were designed to squeeze out of him something that would appear to criminate” either Brigham Young or George A. Smith, top leaders within the church. “If they cannot be implicated,” the editor asserted, “the whole charm and force of the proceedings are dissipated. Lee and Dame are not wanted. Brigham Young, alone, will satisfy the blood-yearning of the hounds who are yelping about ‘excitement’ and ‘disclosures’ and ‘important developments.’”⁶⁷

One of Lee’s attorneys, William Bishop, in his efforts to represent Lee’s interests, offered prosecutors a carrot they hoped would indeed lead to Young. When Bishop arrived in Beaver he quickly realized that local sentiment opposed Lee, and he determined that the best course for his client was to turn state’s evidence — to confess in hopes of a lenient plea arrangement. Bishop explained that “there seems to be a fixed determination on the part of all — even those wh[o] professed to be Lee’s friends at one time, to let him be sacrificed.... We find every avenue to a fair trial barred, our client deserted and alone.”⁶⁸

Bishop thought that Lee could punch his ticket to freedom by making a confession, and the prosecution appeared willing to

cooperate. Prosecutors, however, had expectations — perhaps not fully understood by Lee’s attorneys — that such a confession must implicate high Mormon leaders. Lockley reasoned that if Lee said “Brigham Young, or George A. Smith or Daniel H. Wells, or all of them, were accomplices in the butchery, this good will be attained, many worthy Saints will be led to withdraw their allegiance from a Church stained with so much innocent blood, and the feelings of our citizens will also be stirred up to demand of Congress the passage of an act that will enable the courts of Utah to visit justice upon the heads of criminals.”⁶⁹ In short, linking Young to the massacre was viewed as a way of weakening Latter-day Saint political control in Utah and furthering federal legislation to restrict Mormon rights in the territory.

Lee prepared a confession, but it fell short of prosecutors’ expectations, and they refused to accept it. Lee’s murder case then proceeded to trial, with some of those who were disappointed in the confession hoping the trial might now accomplish what the confession did not.⁷⁰

For all these reasons, John D. Lee’s first trial was a news sensation, with both national and international attention focused for a few weeks on Beaver, a small mining community in the pioneer regions of Utah Territory in the far western reaches of North America just six years after the completion of the transcontinental railroad allowed reporters to reach the trial venue with comparative ease. Lee’s first jury trial, then, was a show trial, one in which the lawyers played as much to reporters and a vast newspaper audience as they did to the members of the jury.

How successful was John D. Lee’s first trial as a show? At times, it was electrifying, and the courtroom audience seemed riveted and horrified by the testimony of witnesses and engaged by the lawyers’ clashing. At other times, the legal wrangling and showmanship became so prolix and technical that it made for a boring presentation. At one point, a juror even appeared to fall asleep.

“May it please your honor,” Baskin addressed the judge, “this testimony is very important. I see that one of the jurors seems to be napping.”

The napping juror apparently opened his eyes, and Boreman said, “They are all wide awake.” Then the testimony continued.⁷¹

As litigators know, the judge in a jury trial can dramatically influence the outcome by his or her decisions on admission of evidence and the handling of objections. The Nevada newspaper I quoted earlier explained that Boreman had “no fears of the Church of Jesus Christ of Latter-day Saints,” was a man of “strong prejudices,” and opposed “the followers of polygamy” — a term that included not only Lee but many Latter-day Saint leaders.⁷² His background and bias were reflected in his judicial decision-making. Lawyers reading through the trial transcripts may be struck by how frequently Judge Boreman’s decisions favored the prosecution and how rarely they favored the defense.

Politically, Boreman aligned himself with Liberal Party members and backers. On July 10, 1875, Fred Lockley wrote to his wife that he spent the “morning discussing [the] approaching trial with Boreman, Carry, . . . Maxwell and Stokes.”⁷³ Carey, of course, was the prosecuting attorney for the trial. Maxwell was the federal marshal and Stokes one of his deputies. All were interested in reducing Mormon political control in Utah.

When oral argument in the trial began, Sutherland, as well as Lee’s other lawyers, worked hard to acquit Lee, though Spicer got so tangled up in his arguments at times that he bordered on incompetence. Baskin, wanting to make as much political hay as possible, repeatedly leveled accusations at Brigham Young and George A. Smith, who were not on trial. Sutherland repeatedly argued to Judge Boreman that Baskin’s accusations were irrelevant to the case being tried. Skilled trial lawyers reading the trial transcript might smile at Baskin’s accusations, which were brilliantly designed to accomplish his political objectives. Defense lawyers’ objections merely gave him an opportunity to repeat his assertions in front of reporters hungry for interesting stories.

Indeed, on the side of the prosecution, Baskin put on the biggest show, grilling witnesses and doing what he could to further the political interests of the Liberal Party and to undermine the credibility of Latter-day Saint leaders in Salt Lake. On the side of the

defense, the intellectual leader seemed to be Sutherland, who for the most part sparred skillfully with Baskin and at times seemed to baffle Judge Boreman, who paused to consult legal sources or ask questions to be certain he understood the law. Except for Spicer, the rest of Lee's team avoided major faux pas. For the prosecution, Carey put on a respectable performance in spite of the early fears about his bungling the case.

In a trial about a sobering topic that included so much vivid testimony about murder and gore, there were a few moments of irony. While cross-examining star prosecution witness Philip Klingensmith, defense attorney William Bishop pressed to know what inducements the prosecution had offered to get him to testify. To the surprise of the courtroom audience, Klingensmith produced a well-worn letter from his breast pocket, which the prosecution took in hand. In his newspaper report, Lockley colorfully described what happened next:

Very gingerly the prosecuting officer unfolded the paper, and half a dozen learned heads gathered around to see what would come out. Presently a broad guffaw arose which was promptly suppressed by the Court.

"What are you unearthing there?" inquired Sutherland of [assistant U.S. attorney David] Whedon, speaking across his table.

"It's a document from your crazy partner," was the reply.

The document turned out to be an 1871 letter from George C. Bates, the former U.S. district attorney who was now defending Lee. The letter sought to get Klingensmith to testify against the Mountain Meadows murderers. According to Lockley, "The laugh was on the defense — they had found a large sized mare's nest, and they turned their backs upon the discovery with edifying alacrity."⁷⁴

The trial transcript tells a different story. It shows that Baskin worked hard to keep the letter out of evidence, arguing that Bates "was not the prosecutor at that time" and that although Bates "might not" have been Lee's attorney at the time, "he might have been attorney to some of those parties implicated." Replying for the defense, Hoge argued that when the letter was written, Bates was *de facto*

U.S. district attorney for the territory, the “office that Carey has now.” Boreman sided with Baskin, saying, “I don’t think it ought to be admitted under any circumstances.”⁷⁵

The most damaging testimony in the trial came from Philip Klingensmith, who had participated in the Mountain Meadows Massacre but had turned state’s evidence. He related horrifying details of the murders, shocking court goers and newspaper readers alike. The defense did what it could to undermine this star witness’s credibility.

Klingensmith said he could not avoid participating in the massacre because he feared punishment, even death, for not following orders. A tense moment in the trial came when the defense called Samuel Jackson as a witness, likely with the intent to undermine Klingensmith’s credibility about people being punished for defying orders. Jackson purportedly traded with the emigrants in defiance of a ban on trade but did not suffer punishment.

When Jackson took the stand, Baskin first questioned his eligibility to testify.

“Have you been in the room, Mr. Jackson, while the examination has been going on?” Baskin asked.

“Yes, sir,” the witness answered. Subpoenaed witnesses were not allowed in the courtroom to hear the testimonies of other witnesses lest it taint what they might say.

“Were you subpoenaed?” Baskin pressed.

“No, sir.”

“Do you live in this town?”

“Yes, sir,” he replied, returning to the question of whether he had been in the courtroom. “I have been in here considerable.”

The defense lawyers explained that he was not on the original witness list because they did not know they would need to call him until Klingensmith mentioned him by name during his testimony. At that point, Sutherland said, he asked someone to contact Mr. Jackson and ask him to stay out of the courtroom thereafter. “I supposed from that time forward he had not been in here,” Sutherland explained.

“I have seen him in here,” acknowledged the judge, “but I wasn’t aware of his being a witness or I would have called attention to it.” He asked Jackson if he had been in court since Klingensmith testified.

“Yes, sir,” he admitted.

“Under the rule we adopted the other day,” Boreman directed, “he will have to be excused.”

Sutherland reminded Boreman of a discussion at the beginning of the trial about not excluding potential witnesses who happened to attend court.

Hoge asked the witness. “Were you notified at any time, Mr. Jackson, to leave the room?”

“No, sir,” he replied. “I was not.”

“I understood you to say he was,” Boreman said to Sutherland.

“I said I notified some of my parties to have him notified,” Sutherland explained, “and I thought it was done.”

Baskin asked Jackson, “Didn’t you know there was such a rule of the court made as to excluding witnesses?”

“Yes, sir,” he answered. “But I didn’t know I was wanted.”

“I don’t like to exclude anyone,” Boreman frowned, “but he will have to be excused.”

“If you recollect,” Bishop pleaded, “we stated at the time our list was called over, we could not tell what witness we should want.” Defense counsel “supposed” the witnesses were all out of the courtroom, and “it would be a hardship on the defense” not to be able to examine this witness.

Boreman asked if the witness would be examined on something discussed while he was in the courtroom.

“I do not know,” Bishop said.

The discussion finally came to an end when Bishop said the only point the defense hoped to prove by him was that he “lived in the country at that time” and “traded the emigrants some grain.”

“We will withdraw our objection,” Baskin said.

Boreman ordered the defense to proceed, and the attorney began questioning the witness. After establishing that Jackson lived in Cedar City in September 1857 and saw some of the emigrants there, the defense asked, “Did you have any transaction with them?”

Prosecutors guessed at the direction of the defense questions and immediately objected. To them, it seemed the defense wished to disprove there was an order forbidding trade with emigrants. The witness “may have traded with them in violation of this general order,” Baskin offered. Just because someone violated “that order does not prove they did not make it,” Carey echoed.

Hoge clarified the defense’s intent. Klingensmith had testified about the orders and said that anyone violating them “was to be cut from the church.” Jackson’s testimony would “go to disprove” Klingensmith’s claim.

In a rare instance of siding with Lee’s lawyers, Boreman overruled the prosecutors, telling the defense attorney, “You may ask the question anyway.”

After all the jarring over this witness, his testimony, when it was finally allowed, proved anti-climactic.

“Did you have any business transaction with these emigrants?” defense counsel asked the witness.

“I can’t remember,” he replied.

“Did you sell them any wheat or provisions there?”

“I can’t remember, sir.”

“That is all,” answered Lee’s lawyer.

It had been much ado about nothing.⁷⁶

Since the trial ended in a hung jury, could the same thing be said about it? Was it much ado about nothing? Certainly not from a political standpoint, since it was a tremendous success for the Liberal Party. The legal maneuvering of Baskin and Carey — combined with the failure of the largely Mormon jury to convict a fellow Latter-day Saint known to have lured massacre victims to their deaths — raised a public uproar and renewed calls for legislation and vengeance against members of Utah’s dominant religious group. As a show trial, it was a cause célèbre.

As a legal proceeding, though it did not lead to the conviction of John D. Lee, a key conspirator in the massacre, it did draw attention to the horrible crime committed against the victims. It also presented important testimony that laid the foundation for the second trial, one that led to Lee's conviction and eventual execution. Lee's second trial, and the events that preceded and followed it, are fascinating in and of themselves. Then again, Lee was just one among dozens of southern Utah men who participated in the crime. What became of them?

Those are all stories for another day.

Thank you.

ENDNOTES

1. Ronald W. Walker, Richard E. Turley Jr., and Glen M. Leonard, *Massacre at Mountain Meadows: An American Tragedy* (New York: Oxford University Press, 2008), 230.
2. Before the trial began, the *Salt Lake Daily Tribune* reported, “Several leading newspapers of the East and the West will be represented at the trial, and full reports will be published which will be read by millions of our citizens.” “The Approaching Lee Trial,” *Salt Lake Daily Tribune*, June 29, 1875.
3. See, for example, Robert H. Briggs, “A Seething Cauldron of Controversy: The First Trial of John D. Lee, 1875,” *Journal of Mormon History* 39, no. 1 (Winter 2013): 1–35; Sally Denton, *American Massacre: The Tragedy at Mountain Meadows, September 1857* (New York: Alfred A. Knopf, 2003), 221–27; Will Bagley, *Blood of the Prophets: Brigham Young and the Massacre at Mountain Meadows* (Norman: University of Oklahoma Press, 2002), 290–97; William Wise, *Massacre at Mountain Meadows: An American Legend and a Monumental Crime* (New York: Thomas Y. Crowell, 1976), 265–66.
4. Walker, Turley, and Leonard, *Massacre at Mountain Meadows*, 228, 230.
5. See the forthcoming volume, tentatively titled *After the Massacre*, promised in Walker, Turley, and Leonard, *Massacre at Mountain Meadows*, xii, and Richard E. Turley Jr., Janiece L. Johnson, and LaJean P. Carruth, eds., “Mountain Meadows Massacre: The Collected Legal Papers” (unpublished manuscript, Dec. 13, 2013), Microsoft Word and Adobe PDF files.
6. Jacob Smith Boreman, notebook, July 23, 1875, 1:236–37, Huntington Library, San Marino, CA. “During the day [July 22, 1875], the prosecution added to its force of counsel by addition of C. M. Hawley, a son of ex-Judge Hawley; he is a young man of fine ability and much legal experience — as an advocate he has few equals for a man of his age. Presley Denny, of the firm of Denny & Swift, was also added as an attorney for prosecution. Mr. Denny is a man of more than average ability, a close student and a brilliant, logical speaker, and so well informed upon Utah matters that he will give great weight to the prosecution.” W. W. Bishop, letter to the editor, July 21, 22, 1875, in “The Lee Trial,” *Pioche Daily Record*, July 25, 1875.
7. “William Carey,” in A. T. Andreas, *Andreas’ Historical Atlas of Dakota* (Chicago: R. R. Donnelley and Sons, Lakeside Press, 1884), transcript available at <http://files.usgwarchives.net/sd/andreas/biography/lawrence.txt>.
8. “Ulysses S. Grant Chronology,” Keya Morgan Collection, Ulysses S. Grant Homepage, <http://www.granthomepage.com/grantchronology.htm> (accessed Dec. 14, 2013).
9. Elder B., Jan. 19, 1876, in “Washington,” *Salt Lake Daily Tribune*, Jan. 26, 1876, asserts that they “used to swap jackknives and slide down old Grimes’ cellar door — when they were boys,” a claim that seems anachronistic at best.
10. “William Carey,” in Andreas, *Andreas’ Historical Atlas of Dakota*.

11. On the development of the spoils system in the United States, see Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815–1848* (New York: Oxford University Press, 2007), 328–34. On the spoils system during the Grant administration, see Davis Bitton, *George Q. Cannon: A Biography* (Salt Lake City: Deseret Book, 1999), 205–6.
12. That is the suggestion of John Gary Maxwell, *Gettysburg to Great Salt Lake: George R. Maxwell, Civil War Hero and Federal Marshal among the Mormons* (Norman, OK: Arthur H. Clark, 2010), 167n75.
13. William Carey to George H. Williams, Jan. 31, 1873, Letters Received from District of Utah, General Records of the Department of Justice, Record Group 60, entry 56, National Archives and Records Administration, Washington, D.C.; “Another Change,” *Salt Lake Daily Herald*, Apr. 1, 1876.
14. See Geo. C. Bates to Attorney General, Jan. 6, 1872, Letters from Utah, Source-Chronological files, General Records of the Department of Justice, Record Group 60, National Archives; Velt G. Erickson, “The Liberal Party of Utah” (master’s thesis, University of Utah, 1948); Donna L. Dickerson, *The Reconstruction Era: Primary Documents on Events from 1865 to 1877* (Westport, CT: Greenwood Press, 2003), 279–90.
15. Erickson, “Liberal Party of Utah”; Edward W. Tullidge, *History of Salt Lake City* (Salt Lake City: Star Printing, 1886), 428–30.
16. Geo. Q. Cannon to Brigham Young, Dec. 12, 1872, Incoming Correspondence, Brigham Young Office Files, Church History Library, The Church of Jesus Christ of Latter-day Saints, Salt Lake City, UT.
17. John Gary Maxwell, *Robert Newton Baskin and the Making of Modern Utah* (Norman, OK: Arthur H. Clark, 2013), 31–32.
18. Maxwell, *Robert Newton Baskin*, 37–39.
19. Maxwell, *Robert Newton Baskin*, 39–40, emphasis in original.
20. Maxwell, *Robert Newton Baskin*, 53–55, 61, 84, 91–95, 108.
21. Maxwell, *Robert Newton Baskin*, 113–19; R. N. Baskin, *Reminiscences of Early Utah* (Salt Lake City: Tribune-Reporter, 1914), 28–31, 38–39.
22. Maxwell, *Robert Newton Baskin*, 119–22.
23. Frederic E. Lockley, “Memoirs of an Unsuccessful Man,” unpublished autobiography of Frederic Lockley, 1901, p. 209, Frederic E. Lockley Collection, Huntington Library; Frederic Lockley to [Elizabeth Metcalf Campbell Lockley], July 17, 22, 1875, Lockley Collection; Maxwell, *Robert Newton Baskin*, 128.
24. “Utah,” *Sacramento Daily Union*, Nov. 17, 1874; Lynn R. Bailey, *A Tale of the “Unkilled”: The Life, Times, and Writings of Wells W. Spicer* (Tucson, AZ: Westernlore Press, 1999), 11–22; Utah Territory, Box Elder County, Corrine, 1870 U.S. Census, population schedule, 18; Advertisement, *Salt Lake Daily Tribune and Utah Mining Gazette*, May 24, 1871; *Utah, Its Territorial Policy, and Its Relation to the Federal Government* (s.l.: s.n., ca. 1871) in Letters to Executive, General Records of the Department of Justice, RG 60, National

- Archives and Records Administration; One Spicer, Apr. 8, 1875, "Beaver," *Salt Lake Daily Herald*, Apr. 14, 1875; "Wells Spicer," *Pioche (NV) Daily Record*, June 8, 1875. On the death of James H. Brown, see Spicer, Nov. 26, 1874, in "Our Beaver Letter," *Salt Lake Daily Herald*, Dec. 1, 1874; Spicer, Nov. 2[9], 1874, in "Our Beaver Letter," *Salt Lake Daily Herald*, Dec. 2, 1874; Spicer, Nov. 31, 1874, in "Our Beaver Letter," *Salt Lake Daily Herald*, Dec. 5, 1874; "Second District Court," *Salt Lake Daily Tribune*, Dec. 6, 1874.
25. F[rederic] L[ockley], July 30, 1875, in "Judge Spicer's Address," *Salt Lake Daily Tribune*, Aug. 3, 1875; "United States Commissioners," *Salt Lake Daily Tribune*, July 4, 1876.
26. On the uncertainty of John Menzies Macfarlane's role in the massacre and the certainty of his brother Dan's role, see Walker, Turley, and Leonard, *Massacre at Mountain Meadows*, 260. John's widowed mother, Anabella Sinclair Macfarlane, married massacre lynchpin Isaac C. Haight. Caroline Keturah Parry Woolley, *"I Would to God": A Personal History of Isaac Haight*, ed. Blanche Cox Clegg and Janet Burton Seegmiller (Cedar City: Southern Utah University Press, 2009), 47, 56.
27. Boreman, notebook, July 23, 1875, 1:237.
28. William W. Bishop to James A. Watt, Mar. 8, 1861, Otis Marston Collection, Huntington Library; "W. W. Bishop's Death," *San Francisco Chronicle*, Aug. 27, 1890.
29. Advertisement, *Hamilton (NV) White Pine Daily News*, May 27, 1870.
30. Advertisement, *Beaver (UT) Enterprise*, Feb. 18, 1875.
31. "Second District Court," *Salt Lake Daily Herald*, Apr. 6, 1875.
32. *History of the Bench and Bar of Utah* (Salt Lake City: Interstate Press, 1913), 102; *Utah since Statehood: Historical and Biographical* (Chicago: S. J. Clarke, 1919), 2:876–79; "Judge Hoge Dies at His Home in City," *Salt Lake Telegram*, July 27, 1912; "Judge Enos Dougherty Hoge," *Improvement Era* 15, no. 12 (Oct. 1912): 1142.
33. *American Biographical History of Eminent and Self-Made Men*, Michigan vol. (Cincinnati: Western Biographical, 1878), 16–17.
34. Bates to Attorney General, Jan. 6, 1872, Letters from UT, SC files, RG 60; *American Biographical History of Eminent and Self-Made Men*, Michigan vol., 16–18.
35. See "Compounding Felony," *Salt Lake Daily Tribune*, Mar. 3, 1875. Bates's views on the Englebrecht case would not have endeared him to either Baskin, who prosecuted the case, or McKean, who tried it. He implied that both federal officials were not well read in the law and were out of step with prevailing legal theory. See "Statement of United States District Attorney Bates," *Deseret News*, May 8, 1872.
36. Retainer payments to Bates appear in Trustee in Trust Ledgers, vol. 11, p. 556, Church History Library. Lee wrote to George A. Smith in February 1875, asking him to enlist Sutherland to join his defense team. John D. Lee

to George A. Smith, Feb. 20, 1875, George A. Smith Papers, Church History Library. Smith responded in March, expressing goodwill but distancing the church from Lee's legal concerns: "In your note from Camp Cameron you state that you have employed Judges Spicer, Sutherland and Genl. Bates to defend you. I dont believe that you can find more reliable or better qualified attorneys in the Tery. I hope that you may obtain a fair and speedy trial which you & your friends so much desire." George A. Smith to John D. Lee, Mar. 8, 1875, Letterpress Copybook 13:706, Brigham Young Office Files, Church History Library.

37. *History of the Bench and Bar of Utah*, 102–3; Orson F. Whitney, *History of Utah*, vol. 4 (Salt Lake City: George Q. Cannon & Sons, 1904), [529]–30; "Judge Sutherland is Dead," *Deseret Evening News*, Nov. 20, 1902.
38. Whitney, *History of Utah*, 4:530–31; *History of the Bench and Bar of Utah*, 103; "Judge Sutherland is Dead."
39. Whitney, *History of Utah*, 4:531.
40. Lockley to [Lockley], July 17, 1875, in Lockley Collection.
41. Jacob S. Boreman to Charles Lanman, May 7, 1875, WA MSS, B644, S-2355, Beinicke Library, Yale University, New Haven, CT; *History of the Bench and Bar of Utah*, 97; "Eminent Jurist is Called by Death," *Salt Lake Tribune*, Oct. 8, 1913; "Mark of Respect to Judge Boreman," *Salt Lake Tribune*, Oct. 10, 1913.
42. Cactus, letter to the editor, July 13, 1875, in "The Lee Trial," *Pioche (NV) Daily Record*, July 17, 1875.
43. *Hamlet*, ed. David Bevington and David Scott Kastan (New York: Bantam Books, 2005), act 3, scene 1, line 66.
44. See Juanita Brooks, *The Mountain Meadows Massacre*, 2d ed. (Norman: University of Oklahoma Press, 1962), 191–93.
45. Richard E. Turley Jr. and Ronald W. Walker, eds., *Mountain Meadows Massacre: The Andrew Jenson and David H. Morris Collections* (Provo, UT: Brigham Young University Press; Salt Lake City: University of Utah Press, 2009).
46. For Patterson's swearing in as court reporter, see F[rederic] L[ockley], July 12, 1875, in "Lee's Trial," *Salt Lake Daily Tribune*, July 15, 1875. For Rogerson's role as a reporter, see Josiah Rogerson to the First Presidency, Mar. 9, 1905, First Presidency, Miscellaneous Documents, 1887–1918, Church History Library.
47. Patterson's notes are in the Huntington Library. Rogerson's are at the Church History Library. The only Rogerson shorthand extant for the second trial is a single legal plea.
48. Rogerson to First Presidency, Mar. 9, 1905, First Presidency, Miscellaneous Documents.
49. Josiah Rogerson to Jno. Taylor, Dec. 8, 1883, First Presidency, John Taylor Presidential Papers, 1877–1887, Church History Library.
50. Josiah Rogerson to Jno. Taylor, Feb. 27, 1884, Taylor Presidential Papers.

51. Rogerson to First Presidency, Mar. 9, 1905, First Presidency, Miscellaneous Documents.
52. Josiah Rogerson to the First Presidency (Joseph F. Smith, Anthon H. Lund, and J. R. Winder), Apr. 1905, First Presidency, Miscellaneous Documents.
53. J. G. Sutherland, in Philo T. Farnsworth, testimony, *United States v. John D. Lee*, Josiah Rogerson transcript and shorthand notes, comparison in Turley, Johnson, and Carruth, "Mountain Meadows Massacre: The Collected Legal Papers."
54. Rogerson to Taylor, Feb. 27, 1884, Taylor Presidential Papers.
55. William W. Bishop, closing argument, *United States v. John D. Lee*, Rogerson transcript and Shorthand notes, comparison in Turley, Johnson, and Carruth, "Mountain Meadows Massacre: The Collected Legal Papers."
56. "A. S. Patterson Dead," *Deseret Evening News*, Aug. 23, 1886.
57. Rogerson to the First Presidency, Apr. 1905, First Presidency, Miscellaneous Documents; W. L. Cook to Juanita Brooks, Feb. 9, 1946, Juanita Brooks Correspondence, Huntington Library; W. L. Cook, affidavit, May 1, 1947, Papers of W. L. Cook, 1875–1876, Library of Congress, Washington, D.C.
58. "Following this speech came Judge Spicers address to the jury, part of...the first of which is not reported & the remainder is so illegible that it is impossible to make an intelligent transcript of it." W. L. Cook, note regarding Wells Spicer, closing argument, *United States v. John D. Lee*, Jacob S. Boreman transcript, second trial, in Turley, Johnson, and Carruth, "Mountain Meadows Massacre: The Collected Legal Papers."
59. Rogerson to the First Presidency, Apr. 1905, First Presidency, Miscellaneous Documents; W. L. Cook, note regarding E. D. Hoge, closing argument, *United States v. John D. Lee*, Boreman transcript, first trial, in Turley, Johnson, and Carruth, "Mountain Meadows Massacre: The Collected Legal Papers."
60. Turley, Johnson, and Carruth, "Mountain Meadows Massacre: The Collected Legal Papers."
61. "The Mountain Meadows Massacre," *Canton (OH) Stark County Democrat*, Aug. 19, 1875. By November 1875 her exposé of polygamy, *Wife No. 19*, was advertised as "nearly-ready for publication." "Wife No. 19," *Salt Lake Daily Tribune*, Nov. 7, 1875; Ann Eliza Young, *Wife No. 19, or the Story of a Life in Bondage, Being a Complete Exposé of Mormonism, and Revealing the Sorrows, Sacrifices and Sufferings of Women in Polygamy* (Hartford: Dustin, Gilman, 1875).
62. "Ann Eliza vs. Alimony," *Beaver (UT) Enterprise*, Apr. 30, 1875.
63. "Congressional Contest," *Salt Lake Daily Herald*, Nov. 17, 1874; Maxwell, *Robert Newton Baskin*, 157–61; Bitton, *George Q. Cannon*, 194–200; "The Polygamous Delegate," *Washington, D.C., National Republican*, Jan. 22, 1875. On the Morrill Anti-Bigamy Act, see *The Statutes at Large, Treaties, and Proclamations, of the United States of America*, ed. George P. Sanger (Boston: Little, Brown, 1863), 12:501–2; *Journal of the Senate of the United States of America, being the Second Session of the Thirty-Seventh Congress; Begun and*

Held at the City of Washington, December 2, 1861, in the Eighty-Sixth Year of the Independence of the United States (Washington, D.C.: Government Printing Office, 1861), 748; Gary Vitale, "Abraham Lincoln and the Mormons: Another Legacy of Limited Freedom," *Journal of the Illinois State Historical Society* 101, nos. 3–4 (Fall/Winter 2008): 269; Leonard J. Arrington, *Brigham Young: American Moses* (New York: Alfred A. Knopf, 1985), 295.

64. "The 'Twin Relic,'" *Rutland (VT) Daily Globe*, Apr. 6, 1875.
65. Brooks, *Mountain Meadows Massacre*, 191.
66. See our forthcoming volume, tentatively titled *After the Massacre*.
67. "The Trial at Beaver," *Ogden (UT) Junction*, July 17, 1875.
68. "Mountain Meadow Massacre," *Salt Lake Daily Herald*, July 18, 1875; F[rederic] L[ockley], July 13, 1875, in "Lee's Trial," *Salt Lake Daily Tribune*, July 16, 1875.
69. L[ockley], July 13, 1875, in "Lee's Trial," *Salt Lake Daily Tribune*, July 16, 1875.
70. William W. Bishop, letter to editor, July 21, 1875, in "The Lee Trial," *Pioche (NV) Daily Record*, July 25, 1875; "Mountain Meadow Massacre," *Salt Lake Daily Herald*, July 18, 1875.
71. R. N. Baskin and Jacob S. Boreman, in Philip Klingensmith, testimony, *United States v. John D. Lee*, in Turley, Johnson, and Carruth, "Mountain Meadows Massacre: The Collected Legal Papers." This portion is missing entirely from the Patterson shorthand, though it appears in Rogerson's shorthand and both transcripts.
72. Cactus, letter to the editor, July 13, 1875, in "The Lee Trial," *Pioche (NV) Daily Record*, July 17, 1875.
73. Frederic Lockley to [Elizabeth Metcalf Campbell Lockley], July 10, 1875, in Lockley Collection.
74. F[rederic] L[ockley], July 26, 1875, in "Remarks on the Lee Trial," *Salt Lake Daily Tribune*, July 29, 1875.
75. Legal arguments, in Philip Klingensmith, testimony, *United States v. John D. Lee*, in Turley, Johnson, and Carruth, "Mountain Meadows Massacre: The Collected Legal Papers."
76. Samuel Jackson, testimony, *United States v. John D. Lee*, in Turley, Johnson, and Carruth, "Mountain Meadows Massacre: The Collected Legal Papers."

