

Mountain Meadows Massacre: Collected Legal Papers
Edited by Richard E. Turley Jr., Janiece L. Johnson, and
LaJean Purcell Carruth

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Reviewed by Iantha Haight

In his review of *Massacre at Mountain Meadows: An American Tragedy*, Jared Farmer concluded by stating, “While Mormon history is markedly better because of their work, it will be much better still when historians put the massacre to rest and move on.”¹ Farmer has a point. Current scholarship has discovered as much of the truth of the events leading up to the massacre as we are likely to learn. The appearance of an eyewitness account from a dusty trunk in someone’s attic may someday add to our understanding, but the limit of new accounts appears to have been reached for the time being. But that does not mean we are ready to “put the massacre to rest.” Many questions remain, particularly surrounding the aftermath of the massacre. For example, what efforts were made to bring criminal charges against the perpetrators?

The monumental new publication *Mountain Meadows Massacre: Collected Legal Papers* lays a foundation for future legal scholarship related to the investigation and prosecution of the massacre participants. Editors Richard E. Turley Jr., Janiece L. Johnson, and LaJean Purcell Carruth spent thousands of hours gathering hard-to-find and, in some cases, previously unknown primary legal documents. It is amazing how records of an 1857 event that occurred in an obscure meadow of sparsely settled southern Utah came to be dispersed in repositories across the United States, ranging from the National Archives in Washington, D.C., and College Park, Maryland, to the Huntington Library in San Marino, California. The transcribed legal documents were published in *Collected Legal Papers*, which consists of almost one thousand pages of material in

1. Jared Farmer, review of *Massacre at Mountain Meadows: An American Tragedy*, by Ronald W. Walker, Richard E. Turley Jr., and Glen M. Leonard, *BYU Studies* 47, no. 3 (2008): 178.

two volumes. The first volume features documents related to the investigations, the failed 1859 efforts to indict the perpetrators, and the successful 1874 indictments. The second volume focuses on the documents related to the trials and subsequent appeal. Supplementary material at the conclusion of the second volume contains biographical sketches of important figures and a glossary of legal terms. The result is a publication that is accessible to scholars and interested readers alike, a coherent and suspenseful story of the legal action following the massacre, beginning with the early investigations of the crime and culminating in the execution of John D. Lee.

Turley, former managing director of the Church History Department and Assistant Church Historian for The Church of Jesus Christ of Latter-day Saints, graduated from law school at Brigham Young University, where he was executive editor of the law review and member of the Order of the Coif honor society. His legal training is evident in the thoughtful organization of the material into legal actions (investigations, indictments, and so forth) and in the summaries introducing each chapter, which provide background information and highlight key points. Johnson joined the project as a graduate student and used her work on the documents as the basis for her PhD dissertation at the University of Leicester in the United Kingdom.

The gems of the collection are the new trial transcripts created from the original shorthand notes from Lee's two criminal trials: "combined, they provide by far the most complete and most accurate record of the John D. Lee trials available" (717). Carruth, a rare expert in transcribing Pitman shorthand, transcribed the notes taken by court reporters Adam Patterson and Josiah Rogerson² and compared her transcripts with several contemporary transcripts. Carruth discovered that the previous transcripts had many errors, including missing content, incorrect words, and additions not contained in the originals. The transcript published in Lee's book *Mormonism Unveiled* and edited by Lee's attorney William W. Bishop is particularly problematic; Carruth's work revealed that testimony damaging to Lee had been altered or deleted.³ The editors

2. Adam Patterson and Josiah Rogerson took shorthand notes independently during the first Lee trial. Patterson took full notes of the proceedings of the second trial, but Rogerson's notes for only one plea in the second trial have survived. It is not known if he created a complete transcript for the second trial that has since been lost.

3. See John D. Lee, *Mormonism Unveiled; or the Life and Confessions of the Late Mormon Bishop, John D. Lee* (St. Louis: Bryan, Brand, 1887). According to

tabulated the two new transcripts with two of the other contemporary transcripts (the Boreman transcript and the Rogerson transcript) into a comparison text, or matrix. The matrix provides line-by-line comparisons, in a multicolumn format, of the several transcripts of Lee's trial and comprises approximately four thousand pages. The comparison matrix is available for free on the book's companion website, <https://mountainmeadowsmassacre.com>.

The editors meticulously describe the location and condition of the original documents. Carruth is also careful to note when words may have been crossed out or added at a later date; attorneys who understand the importance of a correct trial transcript will appreciate her attention to detail. Ideally, however, digital images of the original documents would have been posted to the book's website along with the trial matrix. The original documents have intrinsic value as historical artifacts apart from their substantive content. Despite the fact that few people can read the shorthand, images of these documents would be worthwhile and, at the very least, interesting for many readers. For example, some may be interested in viewing the page that has "a profile of a man with stubble smoking a pipe" (45 n. 36).

Letters and reports in the first volume show how the U.S. Army and the Bureau of Indian Affairs investigated the massacre. During the frontier days of the American West, the military frequently provided police support to local governments and, along with the Bureau of Indian Affairs, managed relations with Indian tribes. Some initial reports of the massacre, circulated by John D. Lee and probably others, blamed the incident entirely on the Indians. Geographical isolation, conflicts between federal and local leaders, and the onset of winter slowed the inquiry. Jacob Forney, superintendent of Indian Affairs for Utah Territory, was charged with collecting and returning the surviving children to their relatives in Arkansas.

The investigation languished after a grand jury summoned in Provo, Utah, in 1859 failed to secure indictments against the perpetrators. Renewed efforts in 1874 led to indictments against John D. Lee, Samuel Jewkes, William H. Dame, Ellot Willden, Isaac C. Haight, George Adair, Philip Klingensmith, John M. Higbee, and William C. Stewart. The editors present the indictments in a matrix for comparison (414–39).

Collected Legal Papers, "Unable to pay his legal fees, on September 30, 1876, Lee gave Bishop the rights to publish his yet-to-be-written autobiography, which he worked on while in prison and then sent to his attorney" (784).

A separate chapter is devoted to the legal proceedings against each defendant. Five of the nine men indicted were arrested (Lee, Dame, Willden, Adair, and Klingensmith), although only Lee was tried. The trials for Dame, Willden, and Adair were continued multiple times, and their indictments were eventually dismissed. Higbee, Haight, Jewkes, and Stewart successfully evaded arrest. The indictments against Higbee and Haight were eventually dismissed, Haight's after his death. The indictments against Jewkes and Stewart were never dismissed. Ironically, Jewkes later became a probate judge in Emery County, Utah.

Lee's two trials differed greatly from each other, with the most obvious difference being their length. The first trial lasted fourteen days and comprises 3,400 pages of the trial matrix, while the second trial lasted only five days and comprises about 600 pages. The prosecution called fewer than half of the number of witnesses for the second trial than it did for the first. The defense chose to call no witnesses at all during the second trial, relying on the argument that the prosecution had failed to meet its burden of proof.

Both the prosecution and the defense struggled to produce compelling witness testimony—unsurprising for an event that occurred almost two decades earlier and that most, if not all, witnesses wanted to forget. The prosecution was successful in the second trial because they were able to call witnesses who had firsthand knowledge of the events but were probably not involved in the actual killing—men such as the wagon drivers. The prosecution also focused their efforts in the second trial on Lee's personal guilt and abandoned their attempts to implicate leaders such as Brigham Young. Statements such as “I arraign Brigham Young, first as an accessory of this murder, because considering the power he had over this people, . . . no man, bishop, nor any other person . . . would have dared to have taken such an important step to do such an heinous act, if he hadn't a direct or implied sanction of the head of the church” and “[t]he whole evidence goes to show that the Mormon community down there were nothing but dumb cattle” were prominent in the first trial but absent from the second.⁴

Lee's defense was that he went to Mountain Meadows to rescue the emigrants; he could not, however, testify in his own defense. His

4. Richard E. Turley Jr., “John D. Lee, First Trial: Robert N. Baskin Closing Argument,” 3208, 3061 (Boreman Transcript), Mountain Meadows Massacre, 2016, <https://mountainmeadowsmassacre.com/wp-content/transcripts/trial1/22-Robert-N-Baskin-Closing-Argument.pdf>.

testimony would have been impeached by a statement he had signed prior to trial admitting his involvement in the massacre. Lee had submitted the statement to the prosecution in hopes of obtaining a deal. The deal did not materialize, however, supposedly because he failed to implicate Church authorities like Brigham Young.

A particularly interesting section of the book is the chapter in volume 2 devoted to the several different published versions of Lee's statement. This chapter provides a brief, helpful background for the various statements, and having the statements in one location gives the careful reader the opportunity to determine where Lee's attorney Bishop likely made edits. Lee's voice appears authentically in much of the text, and some of the details he provides question his veracity. For example, if Lee was the only man present to vocally object to the decoy plan, why was he asked to negotiate the details of the surrender with the Arkansas emigrants?

History speaks most compellingly when it speaks in the words of the people who were there. *Mountain Meadows Massacre: Collected Legal Papers* provides lucid access to some of history's long-dead voices, refining our understanding of postmassacre events and making the path ahead easier for scholars. The documents collected in the two volumes and the online trial matrix provide a basis for examining such issues as settler-Indian relations, relations between governments and minority religious groups, mass killings, frontier justice, and frontier trial practice. From the massacre itself to the investigations, manhunts, and trials; from the absence of Indian voices in the legal process to Lee's execution at the massacre site, the fallout of the Mountain Meadows Massacre is emblematic of the Wild West.

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