is there anything to warrant that such an outbreak was contemplated by them, or that it was right to send an armed force there to injure them? Better go to them with kindly words and prayers than to slaughter them. Rather should they be pitied and prayed for. I am not here to say they did right in resisting writs; I believe they did wrong, but there was a good deal better way than that adopted to enforce the law.

There on the banks of the Weber dwelt a people, not a bad people. There had been some difficulty between them and the territorial officers, they should have delivered up the prisoners. I do not attempt to support them in this act of resistance.

On that bright June morning, when Burton and his posse arrived there, 600 glittering muskets on the bench south, and artillery pieces, sending to them an intimation that death might result to those in that camp, and what must have been their feelings at the reflection of another Mountain Meadow massacre. Is not there something in this case that would strike terror to this people, and make them think that was the last day the bright sun should shine upon them? Methinks there was a resolution come upon them that bade them lay down and shed their last blood before they would give themselves up to be slaughtered with the Mountain Meadows emigrants. By the requsition made upon the Governor there went out 300 persons, as it appears. Where did the rest come from? Is there a man in the box that would have volunteered to go on such an errand? And instead of there being only 300 men, there were twice that many. This army marched upon them. By and by a boy carries a message into the camp, calling for certain men, in thirty minutes. A bugle sounded, and they gather to the bowery, and the paper is about to be read, but scarcely had the last note of the horn been sounded, before there was heard upon the bench a rumbling noise, and crash into the bowery, filled with men, women and children, came a solid shot. I have not power to describe that fearful picture. It was a shot Burton did wrong; he had no business to fire that shot. For the sake of being charitable, I am willing to admit that one of the shots went over the camp. They tell us that, by some miraculous occurrence, the same gun, without being resighted, sent the second shot into the bowery, falling half the distance of the first shot. It is seldom the case that an artilleryman can hit the object the first fire, and if the shot goes over, he lowers his gun, so as to hit it the next time, and I think that is just what was the case here. Why should they use solid balls? Men do not play with sold balls. If their intention had been to frighten the people, why did they not fire blank catridges? That ball killed two women and carried away the chin of a third.

As to the time the firing commenced, I do not consider it of any great importance. I shall not take up the statements of witnesses separately in this matter. We are told by the Morrisites that the firing with small arms commenced shortly after the cannons had been shot; the defense states that the Morrisites began firing first. But Oakason testifies that he had to hunt some place to hide from the shots while on his way home, and I would rather have that man's testimony than almost any other on this point. He corroborates the testimony of the Morrisites. In the three days of the fight it does not appear that anything very important took place till the last day. These 600 men make a charge on the unarmed ninety-one—the noble 600. They go in and they come out, all that was left of them, left of 600. The Morrisites were out of ammunition. I say this, notwithstanding the testimony of the man who made a memoranda of getting ammunition. They charge up the lane. The Morrisites are disarmed and the white flag floating over the camp. I here criticize the testimony of some of the men on common sense. Croxall hints that the surrender was a sham, and Burton intimates the same thing by sending back for troops, yet in spite of this they swear that only six or seven men were there to guard the men. If that were true, I would have to believe Gen. Burton was an idiot. I believe that Gen. Burton went in there with more than 10, 15 or 50 men. I think his eagle eye and his caution would have taught him a better policy than that. I am surprised that Gen. Burton ever went in there with 100 men. If he has ever been in the United States service he was taught different from that, and this is certainly presumable if the surrender was looked upon with a suspicious eye. I know that men in a body look much larger than they really are to unexperiencd eyes, but I do believe he had at least 50 men with him. He went in there accompanied by his men.

It being after five o'clock, Judge Van Zile rested in his argument, and adjournment was taken until 9 30 o'clock to-morrow.

WEDNESDAY, March 5, 9 30 a.m.

JUDGE VAN ZILE

Resumed his argument: There are a few more points I desire to mention; as to the number of men in the camp I have not much more to say; the evidence given by the witnesses for the prosecution in regard to this number I consider correct; one of the evidences of perjury is that every witness tells exactly the same story; this is a strange thing, and is one of the earmarks of trained witnesses; I do not accuse them of perjury, and I leave it to you to say, if it must be said, that the witnesses are to be called falsifiers or liars. My brother Tilford well said that a crowd of frightened panic-stricken men and women came out; you, gentlemen of the jury, brave men as you may be, would be frightened and panic-stricken in such a case; Burton rides in, and out of the crowd Morris steps; then it comes to the mind of every one of the Morrisites that they were all to be killed; they all thought it; with that idea, Morris or some one else asks permission to speak. To urge them to further resistance? No; I say that knowing he had to die, he determined to die like a man. Their arms were unloaded; if he wished them to fight again, why did he not say so; one witness says Morris cried "what I have taught you are eternal truths;" that was no time to preach a sermon if he wished further re[illegible] to be made; the witnesses state, and that his men moved towards the arms. If he was their leader would he go in one direction and they in the other? If the evidence had shown that Morris had concealed arms upon his body there might be a more justifiable killing; if he intended to rush for his arms would he have stood and looked into Gen. Burton's face while three shots were fired into his body? if he intended to make that rush would he have allowed women and children to have been mixed into the crowd? We are told that this was a very exciting time, by men who had been engaged in the battle for three days; if the men who went in there were frightened they are not fit to attack a brigade of bed bugs; Sheriff Brown did not say that he was frightened, and I venture to say he could have taken and bound Morris and carried him out of that fort despite all the efforts of the Morrisites, and would have doubtless done it had he been in command.

Another theory that convinces me they did not contemplate any resistance is the fact that they fell upon his body and wept and moaned over his fate; if they had designed resistance they would have fought with increased desperation. When Morris fell then the woman was introduced into the scene, with whose murder the defendant is charged; she heard Morris' words and stepped out, rashly it may be, and called Burton a bloodthirsty wretch and he shot her dead; they may talk about the evidence given by Mr. Bownan, but to me it seems the most truthful and honest testimony I ever heard.

We have called Mrs. Eliason who could not understand English, but who saw the motions, and also other witnesses, but I do not wish to take up much time in reviewing the evidence; I will therefore only notice some of the criticisms of the gentleman of the defense, first referring to the testimony of Mr. Bowman. It is said that Mr, Bowman saw Morris shot but did not see his wife fall; and here I refer to the different positions marked out by the testimony of the defense as the position of the wounded man; it is natural to say that he took the position which the prosecution have fixed. My friend argues that Mrs. Just says the man who rode a black horse did the shooting; I will refer to the testimony to show that General Burton did not ride a bright sorrel horse as Judge Tilford says he did, but a bay horse, and Mrs. Just says the man who shot Morris rode a dark not a black horse. Then my brother inquires what business Mrs. Cardon had in that camp; her testimony says she was told to go there as a doctress by one of Bishop West's brothers. Camomile has been attacked with great vehemence; I never knew him before he appeared on the stand, but I believe he told the truth; his statements have not been contradicted, nor has his testimony been impeached; if the defense could have found a man in this Territory who could have spoken aught against Dan. Camomile he would have been brought here, but that man cannot be found; he is asked if he did not say so and so to such a man in a saloon, and he said "no," and this statement has never been impeached and it cannot be. Then Mr. Hewitt, my friend says, is a fanatic.

The theory of the defense is that there was a rush for the arms; Morris was described as a middling sized man, but if we can believe the testimony of the defendant's witnesses, Morris occupied the ground nearly all over the camp; Burton says he saw no woman, yet Golding says she was close behind Morris; if she was, then Burton must have seen her; if Morris stood in front of Burton he would have had time to get by before the shooting was done; Burton could not have shot through the shoulder of Morris and hit Mrs. Bowman unless his pistol had a crooked barrel.

The testimony of the witnesses for the defense was then noticed by the speaker, with considerable minuteness. If Morris was running forward he would certainly have fallen forward, and the fact that he fell backward is conclusive evidence that he was standing still when the shooting was done, and not rushing at all. It seems to me that I have thus proved the evidence of the defense to have been at fault in many particulars; and, in conclusion, I say to you, that if the taking of life was necessary and the killing of the woman accidental, your verdict the facts, your verdict must be the opposite of acquittal; but I say that this was all unnecessary. If a man had taken the steps Gen. Burton did, I think a fuss and disturbance would have been his object; he should have gone down before daylight and taken possession of the fort, and stationed two or three men in each household; there was no necessity for shooting a gun.

I have now done all I have undertaken in this case; I have tried to escape the character of a persecutor; I come to ask you to draw legitimate conclusions from certain evidence. I only ask you to carefully consider the evidence. The laws of our country must be enforced; if any of these laws have been violated, it is your duty to find a verdict of guilty; the law comes even from the mouth of God himself, "Thou shalt not kill," and is as much a law to-day as it was when given to Moses upon Sinai; if the law has been violated, give a verdict in accordance with it, and if not by all means acquit the defendant.

JUDGE SCHAEFFER

Then read his instructions to the jury, which were somewhat lengthy and devoted mainly to the legal definitions of murder and manslaughter, and upon what grounds the defendant should be acquitted. Altogether the charge was very fair and impartial. At its conclusion, the jury, in charge of a deputy marshal, retired to consider upon the verdict, and the Court took a recess until 2 p.m.

Judge Schaeffer's Charge.

Following is Chief Justice Schaeffer's charge to the jury in the Burton trial:

People vs. R. T. Burton. Indictment for murder.

Gentlemen of the Jury:—You have faithfully and patiently listened to the evidence and the arguments of counsel in this important case, and it now devolves upon me to direct your attention to such principles of law as are deemed applicable to the case, with the view to assist you in arriving at a just verdict.

The indictment under which the defendant is being tried, charges the defendant with killing Mrs. Bowman, in a manner and under circumstances and with motives which, if true, make the killing murder in the first degree. Under this indictment you can find the defendant guilty of murder in the first degree, if you believe from the evidence that all the material facts necessary to constitute murder in the first degree have been proven beyond a reasonable doubt; or, in case you do not find the defendant guilty of murder in the first degree, you can, under this indictment, find the defendant guilty of murder in the second degree; if you believe from the evidence that all the material facts necessary to constitute murder in the second degree have been proven beyond a reasonable doubt, or in case you do not find defendant guilty in either the first or second degree, you can, under this indictment, find the defendant guilty of manslaughter, if from the evidence you believe the facts necessary to constitute manslaughter have been proven beyond a reasonable doubt.

If you find the defendant guilty of murder you must specify in your verdict whether it is murder in the first or second degree, and if you find the defendant guilty of manslaughter you must so state in your verdict. The Territorial act of 1852 which was in force at the time of the alleged killing for which the defendant is being tried, provides that "whosoever kills any human being with malice aforethought either expressed or implied, is guilty of murder." Manslaughter is the unlawful killing of a human being without malice.

Malice aforethought is, therefore, the chief characteristic, the grand criterion by which murder is distinguished from any other species of homicide, and it is therefore necessary to inquire concerning the causes in which malice has been held to exist. It should, however, be observed that when the law makes use of the term "malice aforethought," as descriptive of the crime of murder, it is not to be understood merely in a sense of a principle of malevolence to particulars, but as meaning that the circumstances as are the ordinary symptoms of a wicked, depraved, and malignant spirit; a heart regardless of social duty and deliberately bent on mischief; and in general, any formed design to commit a crime may be called malice. And therefore, not only such killing as proceeds from premeditated hatred and revenge, against the person killed, but also in many cases such killing as is accompanied with circumstances that showed the heart to be perversely wicked, is adjudged to be malice aforethought, and consequently murder.

Under the same Territorial act before referred to, "when the murder is perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious and premeditated killing, or when a murder is committed in the perpetration of, or attempt to perpetrate, any arson, rape, robbery, burglary or mayhem, it is murder in the first degree." The unlawful killing of a human being with malice aforethought, other than that which constitutes murder in the first degree, as above stated, is murder in the second degree. You will observe, therefore, that manslaughter is principally distinguished from murder in this: That although the act which occasions the death is unlawful or likely to be attended with bodily mischief, yet the malice aforethought, either expressed or implied, which is of the essence of murder, is presumed to be wanting in manslaughter. When the act is deliberately done with a deadly weapon, and is likely to be attended with dangerous consequences, no considerable provocation appearing, the malice requisite to constitute murder may be inferred; for the law infers that the natural or probable effect of an act deliberately done is intended by the actor; when the act is deliberately done and is unlawful and is of a character ordinarily productive of great bodily harm, it will subject the doer to the charge of murder whenever death comes from it; but if the act is not dangerous in itself, yet is unlawful, and unexpectedly death comes as a consequence, the offense is not murder but may be manslaughter. So if the act is one of a nature to be lawful, if properly performed, and it is performed improperly and death comes from it unexpectedly, it is not murder, but it may be manslaughter. The warrant put in evidence bearing date and attested June 11, 1862, purporting to have been issued by this court, and requiring the arrest of Joseph Morris, John Banks and others for the offense of wilfully, forcibly and without lawful authority imprisoning one William Jones, required their arrest on a criminal charge it was then felony. Said warrant was a valid process, and the service thereof was a duty imposed on the officer to whom it was directed and delivered. If you find from the evidence that the defendant was, at and from the time of the issuing of said warrant, a deputy marshal of this Territory, and that said warrant was delivered to him to be served, and that in attempting to arrest said Joseph Morris, John Banks and others therein named to be arrested, or either of them, he was forcibly resisted to prevent such arrest, and that to prevent the escape of said Morris, by means of such resistence the said Morris was killed, such killing was justifiable. The defendant as deputy marshal; if resisted in the execution of a lawful writ, would be authorized to arrest the persons so resisting him without process, and in such case he would have the same power as though a warrant had been issued by a court of competent jurisdiction requiring such arrest. Accordingly if you find from the testimony that the defendant was a deputy Territorial marshal on the 15th of June, 1862, and that he then had in his hands the said warrant for service and that the persons whom he took into his custody as prisoners had immediately before been engaged in resisting him in his attempt to execute said writ, the defendant was not only authorized to take such persons into custody, but it was his duty to do so. If an officer successfully resist those who seek to obstruct and hinder him from the lawful execution of his duty, he is justified even should the lives of his assailants, their aiders and abettors, be necessarily taken in overcoming such resistance. In every case the officer should proceed with due caution, but it is not necessary that he should retreat, and he may proceed to extremities upon a reasonable necessity in order to execute his duty. Whenever, by his conduct, a party sought to be arrested on a lawful warrant, puts in jeopardy the lives of any, attempting, under its authority, to arrest him, he may be killed and such killing would be excusable. If you find from the testimony that Jos. Morris was killed by the defendant or under this defendant's order, and that at the time the circumstances were such as to excite the fears of a reasonable person that Joseph Morris, and others acting in concert with him, were about to do great bodily harm and injury to the defendant and others acting under his command, in his or their endeavors to execute said warrant, and if you further find from the testimony that the defendant in so causing the death of said Jos. Morris really acted under the influence of such reasonable fears and not in a spirit of revenge, such killing was justifiable. The necessity of taking human life need not be actual, arising from imminent danger, in order to excuse the slayer, but he may act upon appearance which gave him reasonable cause to believe that the danger is actnal and imminent, although it may turn out that he was mistaken. His guilt must depend upon the circumstances as they appeared to him as a reasonable man. Homicide, in resisting an assault not made with a felonious intent, is excusable where the danger created by the assault is to life or serious bodily harm of a permanent character, and where it cannot be prevented by other means in the power of the slayer, so far as he is able to judge at the time. In estimating the circumstances which will justify or excuse the taking of human life, the slayer may properly consider, among other appearances of danger, the previous character and reputation of his assailant for violence and lawlessness or otherwise, and hence in this case the defendant, at the time of the homicide might, in connection with other circumstances, take into consideration his knowledge and information of the previous reputation of Joseph Morris and his followers and of the influence which he exerted over them, as well as what he knew or was told of their antecedent acts, and the consequent probabilities of a united effort of any on their part, at the instance of Morris, to resist