

little of the facts. As to those people who oppose capital punishment, it is sufficient to say that by the laws of this Territory, a man who is opposed to capital punishment is deemed unfit to try a man for murder. The laws also permit a jury in a capital case to recommend that the punishment be imprisonment for life. In Davis's case the jury declined to so recommend. The deliberate judgment of twelve unprejudiced men and the positive letter of the law ought to be of more worth than the loose surmises of uninformed persons or the desires of a weak and maudlin sentimentalism.

The crime for which Davis is to be punished was proven to be most atrocious. He had married his wife more than twenty years before he killed her. She had borne him nine children. Her people were respectable. She had been a hard-working woman; she had done far more to support their large family than he had. He had been addicted to drunkenness and had abused her. Two weeks before the killing he had threatened to take her life and had so frightened her that at two o'clock at night she had fled to Sheriff Pope for protection. A quarrel had taken place on the day of the killing. She was killed in the night time, while lying on the bed in their one-roomed house. The blood from her wounds had run upon the pillow, the sheet and down upon the floor. Two children, one a little girl of three, the other a babe, were sleeping in the bed with her. On the floor of the room in a corner, four boys, aged respectively seven, nine, eleven and fourteen years, were asleep. She was struck twice on the side of the head by a revolver; each blow crushed in the skull. Death was probably instantaneous, at any rate unconsciousness was. The gown she had on, the pillow, and the bed clothes showing the position in which she died were in court. The revolver with which she was killed was hanging the evening before the killing in its scabbard on the wall. A letter written the very day of the killing and not many hours before it came out in evidence. In it the wife, writing to her sister, spoke of her wretched life, her husband's conduct, said that she was in fear of her life, and that she was coming with her younger children to her sister, to see if she could work there and support them. It was the letter of a good woman. The killing took place that night in that room where six children were sleeping. Not one of them was awakened by it. In the morning the wife was missing. The husband told the children that she had gotten up mad in the night and gone off. That day he had the two older boys raking up the yard (an unheard of thing) and putting the dirt in an empty potato hole by the side of the house. He turned the water ditch into this hole during the day. That evening about supper time he told his second son, who with his older brother had slept at the corral, that he would tell him something that he must keep secret or it would hang him, and that was that his mother had taken poison during the night and was dead, that she had asked him to bury her three miles away in a field and he had done so, adding: (I quote the exact words) "She died like a lady and I buried her like a

gentleman." The son soon after this got away from the house and went over into the town to see his older brother. He had told this brother and an officer. The father as soon as he heard of his son's going, mounted a horse and fled. He was discovered two days later on the reservation, thirty miles from home. In the meantime the boys and the neighbors searched, and at last found the woman's body in the potato hole; fresh dirt and the rakings of the yard were above the body. The night robe had been taken from it. It lay in a position as if thrown hurriedly in the hole. The night robe and the bed clothes were found hidden in a barrel. Davis on cross-examination admitted that he had killed his wife, had washed the blood stains from the floor, had thrown the body in the hole, had hidden the bloody clothes, had caused the yard to be raked and had told the contradictory stories. His defense was ingenious and the ground was well chosen. Court was two hundred miles from the place of the killing, Vernal. A Dr. Butler, who had lived there had died a while after the killing. Some said his death was from accident. Others that it was suicide. Davis's defense was this: He had for some time been suspicious of Butler, and this evening was watching him. He saw Butler come to his house, saw a light struck, saw the light then go out. He rushed to the house, found the door locked, burst it in, grasped his revolver, saw a man, struck at him, the blow hit his wife, but the man escaped. He said there was much noise. This story was shown to be false by three facts. (1) The woman had been struck twice, as the two holes in her skull showed. (2) None of the children had heard a sound or were awakened. (3) The prosecution happened to be able to show and did show that Dr. Butler on this evening was not at Vernal, but had gone to Salt Lake City, and had left his practice in charge of another physician.

This is the crime the evidence showed. It showed absolutely nothing against the wife's character. This is probably the most hideous and heinous crime ever committed in Utah Territory. Mr. Warner, his attorney, would decline, I feel sure, to recommend a commutation of Davis's sentence. If this man is pardoned or if his sentence is commuted, the public ought to know what sort of criminal it is, who has aroused the executive clemency and compassion, and that is the reason I write this letter, because I conducted the trial and know the facts.

Very sincerely yours,

JOHN M. ZANE.

SALT LAKE, Aug. 21, 1894.

#### MORMON BATTALION'S EXPERIENCES

On Sunday, January 31st, 1847, several of our men visited the town of San Diego, five miles from our encampment. They reported seeing a schooner, two men-of-war and a merchant vessel anchored in the harbor, and that General Kearney the day before had sailed up the coast for San Francisco. The few soldiers in San Diego only had one-fourth rations of flour. The ship load of provisions from the Sandwich Islands had not arrived. Rumor in camp was that Captain Hunt had written to General Kearney

stating the condition of the Mormon Battalion being destitute of clothing and barefooted with no provisions except beef, and that without salt. The general promised on the honor of a gentleman to be back in five or six weeks and would his best to carry out Colonel Allen's plans and furnish us with supplies, etc.

Orders were now for Colonel Cooke to march us to San Luis Rey mission and go into quarters there. We arrived on the 3rd of February, and immediately commenced to clean out the mission rooms to quarter in. We were nearly a week doing this, for, like the San Diego mission, the rooms were filthy and full of fleas, while the exterior was white and beautiful.

On the 11th of February the drill commenced, occupying two hours each day. On the 14th Lieut. Oman, with ten men and mules, was sent up the country to bring in flour; and on the 19th he returned with two thousand one hundred pounds of coarse, unbolled flour—the best perhaps there was in the country of its own make.

On March 14th an express came from General Kearney to our colonel asking him to send one company to San Diego to garrison that place. Accordingly the next morning company B left for that post, where they arrived on the 17th. The next day Sergeant William Hyde and eighteen men, myself among the number, were appointed by our captain to take charge of the fort situated on a hill one fourth of a mile from town. The fort was a circular one made by marines. They had dug a ditch and set up a line of large wine casks, filled them with dirt and gravel. Against these casks they had thrown up from the trench a heavy embankment of earth, rocks and gravel. There were seven cannon placed so as to command the town and surrounding country. Inside of this fortification stood a building in which we quartered. On the top was a swivel gun, so hung as to be easily turned and brought to point in any direction.

Sunday, April 4th, Elder Hyde, our sergeant, preached. Many of the citizens, and officers and sailors of the vessels in the harbor, were in attendance. Great attention was paid. On the evening of the 14th of April Elder William Garner, one of my messmates, baptized a marine soldier of the U. S. frigate Congress. This perhaps was the first baptism in California performed by an Elder of Israel in this dispensation. Commodore Stockton commanded the Congress. About this time the ship Barnstable from San Francisco brought forty barrels of flour for Company B, with instructions from Colonel Cooke to Captain Hunter to give full rations of flour and a pound and a half of beef daily to each soldier.

By this time we were so destitute of clothing, and having no money to buy more, we were forced to cut up our tents to make shirts and pants. At last pay day came, when each soldier drew his six months' pay, \$42 each.

On the streets of San Diego was a man begging for food. He claimed to have been one of Fremont's men; said he had been traveling in the Rocky Mountains for seven years. He was the worst looking person I ever saw. He was disabled in one of his shoulders and had a wound on his head. Some