

Colonel Edwin Vose "Bull" Sumner, center, dismisses the free-state legislature at Topeka, Kansas Territory, on July 4, 1856. This illustration of the controversial action first appeared in the July 26, 1856, issue of Frank Leslie's Illustrated Newspaper.

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# SCAPEGOAT?

## Colonel Edwin V. Sumner and the Topeka Dispersal

*by Durwood Ball*

**O**n July 4, 1856, Colonel Edwin Vose “Bull” Sumner dispersed the free-state legislature as it convened in Topeka, Kansas Territory. His controversial act intensified the heated congressional and public debate over federal policy, particularly the application of popular sovereignty, in that western territory and sparked an icy exchange with his old friend Secretary of War Jefferson Davis in August. Their correspondence, trafficked by the adjutant general of the U.S. Army, debated the nature of federal military intervention intended by President Franklin Pierce in Kansas and the propriety and legality of Sumner’s dispersal operation executed in Topeka. The Topeka dispersal and the Sumner-Davis exchange were the culmination of the first stage of federal military intervention, coinciding with Sumner’s command, in what became known as Bleeding Kansas.

This article explores four issues related to the colonel’s controversial act: (1) the application of *posse comitatus* (public power) to law enforcement in Kansas; (2) Secretary Davis’s critique of constabulary operations conducted by Sumner from late May to early July; (3) the dispersal operation in Topeka; and (4) Sumner’s extraction from Kansas. Although critical of the dispersal, anti-Pierce newspapers in the North also accused the president of scapegoating the colonel for the administration’s failures in Kansas. At every stage of the mayhem from spring through the Topeka incident, however, Secretary Davis had approved or defended Sumner’s deployment of federal troops in the form of posses to support law officers and as armed constabularies to disband partisan armies or gangs. The colonel’s correspondence with the War Department reflects that after he exited Kansas, he became defensive over the critical public reaction in the North to the dispersal. But what galled the colonel most of all was the professional humiliation over his replacement and removal, which he attributed to machinations of pro-Southern Missourians led by the powerful David R. Atchison.

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The author wishes to thank the Friends of the Free State Capitol for inviting him to Topeka to speak on the Topeka dispersal in the summer of 2008.

In early 1856, Colonel Sumner became ensnared by the sectional conflict over the Kansas-Nebraska Act passed by the U.S. Congress on May 25, 1854. Its authors had intended the bill to hand the divisive debate over the westward expansion of Southern slavery from Congress to bona fide settlers in those territories. Everyone assumed that Nebraska would become a free state, but proslavery and free-soil advocates mobilized to contest Kansas, which bordered Missouri, a slave state. Both sides believed that the future of slavery—its survival or its containment—was at stake.<sup>1</sup>

Kansas Territory's proximity to Missouri ensured a substantial proslavery majority among the new settlers. Despite that electoral advantage, Senator David R. Atchison organized his constituents to invade the polls in eastern Kansas and elect a proslavery territorial delegate to Congress in fall 1854 and an overwhelming proslavery majority to its legislature in spring 1855. Serving the interests of Atchison and the South, those representatives enacted a Draconian slave code that penalized all antislavery agitation in the territory and outraged free-soil supporters in the North. With Southern Democrats controlling most federal offices and the territorial legislature, alienated free-state settlers and activists organized to write a state constitution and elect a legislature and executive officers. In early 1856, with the blessing of Republican supporters, the free-state government would apply to Congress for statehood as a free Kansas.<sup>2</sup>

Touring Europe in the spring and summer of 1854, Sumner made no public declaration on the Kansas-Nebraska Act when he returned in September. As a federal army officer, he abstained from party politics, unlike some peers such as his idol Winfield Scott and

his enemy William S. Harney.<sup>3</sup> Promoted to colonel of the First U.S. Cavalry, one of Davis's new regiments, on March 3, 1855, Sumner organized his command at Jefferson Barracks, Missouri, that spring and then established his headquarters at Fort Leavenworth, Kansas, in June. After marching up the Oregon Trail during the fall, Sumner and the First returned to their post on November 2. Later that month, the partisan conflict rolled up to the gates of Fort Leavenworth.<sup>4</sup>

The confrontation between proslavery and free-state factions came to a head in late November 1855, when about fifteen hundred Missourians, responding to the governor's summons of the Kansas Territorial Militia to suppress an insurrection, besieged the principal free-state settlement of Lawrence.<sup>5</sup> Soon realizing his mistake, Governor Wilson Shannon telegraphed President Pierce

3. Jefferson Davis to James Buchanan, April 4, 1854, in *Jefferson Davis, Constitutional: His Letters, Papers, and Speeches*, ed. Rowland Dunbar (Jackson: Mississippi Archives, 1923), 2:349. Sumner's report is Edwin Sumner to Samuel Cooper, November 3, 1854, S-710, roll 506, *Letters Received by the Office of the Adjutant General (Main Series), 1821–1860* (Washington, D.C.: National Archives and Records Service, 1964), Microcopy No. 567, Letters of the Adjutant General's Office, 1780s–1917, Record Group 94, National Archives, Washington, D.C.; see also Alan Peskin, *Winfield Scott and the Profession of Arms* (Kent, Ohio: Kent State University Press, 2003), 112–16, 128–30, 206–15; Timothy D. Johnson, *Winfield Scott: The Quest for Military Glory*, *Modern War Studies* (Lawrence: University Press of Kansas, 1998), 135–36, 213–17; Durwood Ball, *Army Regulars on the Western Frontier, 1848–1861* (Norman: University of Oklahoma Press, 2001), 71–72, 82.

4. Colonel Harney had ordered Sumner and the First Cavalry to Fort Laramie. Sumner's unauthorized return to Fort Leavenworth prompted Harney to file charges of insubordination, but Davis upheld Sumner's decision. William S. Harney, Charges and Specifications Filed against Colonel Edwin V. Sumner, April 6, 1856, W140 (Edwin V. Sumner), CB1863, roll 63, *Letters Received by the Commission Branch of the Adjutant General's Office, 1863–1870* (Washington, D.C.: National Archives and Records Service, 1980), Microcopy No. 1064, Records of the Adjutant General's Office, 1870s–1917, Record Group 94, National Archives, Washington, D.C.; Edwin Sumner to Samuel Cooper, January 21, 1856, Fort Leavenworth, vol. 1, *Regimental Letters Sent, Fourth Cavalry, Entry No. 719, United States Army Mobile Units, 1821–1942*, Record Group 391, National Archives, Washington, D.C.; see also Edwin Sumner to Samuel Cooper, March 20, 1855, W140 (Edwin V. Sumner), CB 1863, roll 63, Microcopy No. 1064, Record Group 94, National Archives, Washington, D.C.; Francis B. Heitman, "Edwin Vose Sumner," in *Historical Register and Dictionary of the U.S. Army* (1903; reprint, Gaithersburg, Md.: Olde Soldiers Books, 1988), 1:936. For Davis's four new regiments, see Ball, *Army Regulars on the Western Frontier*, xx–xxi, 80–81; Russell F. Weigley, *History of the United States Army, The Wars of the United States* (New York: Macmillan, 1967), 187–89; and William C. Davis, *Jefferson Davis: The Man and His Hour* (New York: HarperCollins, 1991), 231–32. The First Cavalry's assignment to Fort Leavenworth resolved a quarrel between Colonel Newman S. Clarke and Sumner over the command of Jefferson Barracks. Sumner to Adjutant General Samuel Cooper, June 13, 1855, Jefferson Barracks, roll 64, W140 (Sumner), CB 1863, M1064, RG 94, NA.

5. The freeing of Jacob Branson from Sheriff Samuel Jones's custody was the immediate cause of the governor's summons. Accounts of the Branson rescue are in Monaghan, *Civil War on the Western Border*, 35–37; Thomas Goodrich, *War to the Knife: Bleeding Kansas, 1854–1861* (Mechanicsburg, Penn.: Stackpole, 1998; reprint, Lincoln: University

1. On background to the Kansas-Nebraska Act, see David M. Potter, *Impending Crisis, 1848–1861*, compl. and ed. Don E. Fehrenbacher, *The New American Nation Series* (New York: Harper and Row, 1976), ch. 9; Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 160–62; Paul W. Gates, *Fifty Million Acres: Conflicts over Kansas Land Policy, 1854–1890* (Ithaca, N.Y.: Cornell University Press, 1954), 3–4; and Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University Press of Kansas, 2004), ch. 1.

2. William E. Parrish, *Senator David Rice Atchison of Missouri: Border Politician*, *University of Missouri Studies* 34/1 (Columbia: University of Missouri Press, 1961), 162–71; Jay Monaghan, *Civil War on the Western Border, 1854–1865* (Boston, Mass.: Little, Brown and Company, 1955), 13–14, 18–20. Atchison promised to "mormonise" the free-state meddlers. See David Atchison to Jefferson Davis, September 24, 1854, in *The Papers of Jefferson Davis*, ed. Lynda Lasswell Crist and Mary Seaton Dix (Baton Rouge: Louisiana State University Press, 1985), 5:83–84; Etcheson, *Bleeding Kansas*, 53–58, 60–64. She discusses the creation of the Free State Party and government in ch. 4.

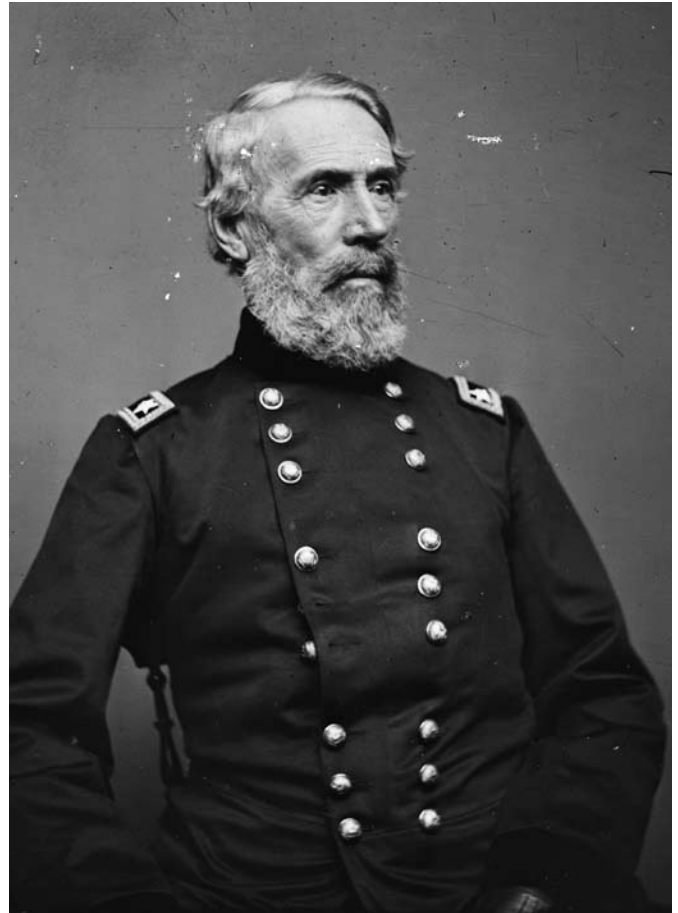
on December 1 for the “authority to call on the United States forces . . . to preserve the peace.” Three days later, fearing a bloodbath, Shannon appealed directly to Colonel Sumner at Fort Leavenworth. Initially, Sumner wanted to intervene to prevent an armed clash, but “mature reflection” compelled the old soldier to await the president’s order. Mustering every last drop of political influence and prestige, the governor successfully negotiated a grudging truce, and the Kansas militia retired to Missouri.<sup>6</sup>

Shannon’s request placed the president in a quandary. Pierce and the Democratic Party had invested massive political capital in the successful application of popular sovereignty in Kansas. The year 1856 was an election cycle, and Pierce decided to seek renomination by the Democratic Party, which would face fierce competition from the newly formed Republican Party. Pierce and his party’s success depended on making popular sovereignty work. The federal army was one of the law-enforcement tools at the president’s disposal. Colonel Sumner was the senior commanding officer of troops posted in Kansas Territory.

Appointed to the infantry from civilian life in 1819, Sumner had demonstrated reliability, level-headedness, and courage during nearly four decades of service. He had distinguished himself in staff positions, instruction and training, frontier reconnaissance, armed combat, and post

of Nebraska Press, 2004), 74–76; Etcheson, *Bleeding Kansas*, 80–81; see also Wilson Shannon to William Richardson, November 27, 1855, and Wilson Shannon to Hiram Strickler, November 27, 1855, in United States Senate, *Message of the President to the Two Houses*, 34th Cong., 3rd sess., 1856–1857, Sen. Ex. Doc. 5, ser. no. 875, 53, 54–55. Shannon reported well-armed free-state resistance in Wilson Shannon to Franklin Pierce, November 28, 1855, United States Senate, *Message of the President*, 34th Cong., 1st Sess., 1855–1856, Sen. Ex. Doc. No. 23, ser. no. 820, pp. 27–29. As Shannon watched the “excitement” mount in Missouri, he wrote, “We are standing on a volcano . . . and no one can tell the hour when an eruption may take place.”

6. Edwin Sumner to Wilson Shannon, December 5, 1855, 1 a.m., Sen. Ex. Doc. 5, ser. no. 875, 59; Edwin Sumner to Wilson Shannon, December 5, 1855 [later in the day], *ibid.*, 59; Wilson Shannon to Franklin Pierce, December 1, 1855, and Franklin Pierce to Wilson Shannon, December 3, 1856, in United States Senate, *Papers Relating to Territorial Kansas*, 34th Cong., 1st sess., 1855–1856, Sen. Ex. Doc. 43, ser. no. 820, 26. Sumner fended off a subsequent appeal from Shannon. See Wilson Shannon to Edwin Sumner, December 6, 1855, and Edwin Sumner to Wilson Shannon, December 7, 1855, 34th Cong., 3rd session, 1856, Sen. Ex. Doc. 5, ser. no. 875, 59–61. “The Treaty,” negotiated by Governor Shannon, is in “Administration of Governor Shannon,” *Kansas Historical Collections*, 1891–1896 5 (1896): 246–47. Shannon reported his diplomacy to Pierce, December 11, 1855, Shawnee Mission, 34th Cong., 1st sess., 1855–1856, Sen. Ex. Doc. No. 23, ser. no. 820, pp. 30–33; see also Alice Nichols, *Bleeding Kansas* (New York: Oxford University Press, 1954), 70–71; Eric Corder, *Prelude to Civil War: Kansas-Missouri, 1854–61* (London: Collier-Macmillan, 1970), 52–54; and Parrish, *David Rice Atchison of Missouri*, 181–82.



Born in Boston, Massachusetts, in 1797, Sumner entered the U.S. Army in 1819. By 1856, when he became ensnared by the sectional conflict emanating from the Kansas-Nebraska Act, Sumner had achieved the rank of colonel of the First U.S. Cavalry. Sumner is pictured here between 1860 and 1863. Photograph courtesy of the Library of Congress, Prints & Photographs Division, Washington, D.C.

and departmental command. His long experience had also taught him the fickleness of federal military intervention in civil disturbances. In 1838 Sumner politely refused the Pennsylvania governor’s request that he intervene his dragoons against rioters in Harrisburg, the state capital, but while commanding the Ninth Military Department from 1851 through 1853 Sumner intermittently assigned regulars as a *posse comitatus* to aid law enforcement in the unruly New Mexico Territory. His promotion to colonel of the First Cavalry by Secretary of War Davis in 1855 was a reward for his long and faithful service in the army and his distinction in its mounted arm. In army circles, Sumner was known both affectionately and scornfully as “Bull” or “Bull

of the Woods,” respectively for his uncompromising enforcement of army regulations and discipline and for his thunderous parade-ground voice.<sup>7</sup>

The political stakes in Kansas, however, were steeper than any others Sumner had encountered elsewhere and required greater tact than any previous command had demanded of him. Engineering the success of popular sovereignty in Kansas and making the territory a slave state, thus politically strengthening the South’s power, were Pierce’s ticket to the Democratic nomination for a second presidential term.<sup>8</sup> Colonel Sumner’s regulars were among the federal tools that the president could apply to fulfill his Kansas policy.

Pierce’s challenge was to contain the oppositional free-state government, which Republicans and some free-soil Democrats in Congress championed as the legitimate body representing “bona fide” settlers of Kansas. A presidential message issued to Congress on January 24 and a proclamation released on February 11 defined the legal threshold of “treasonable insurrection,” ordered “all . . . unlawful combinations” in Kansas to “disperse and retire peaceably,” and threatened the deployment of “local militias” and even federal troops against any “organized resistance” to the Kansas territorial government. Four days later Secretary Davis instructed Colonel Sumner at Fort Leavenworth and Lieutenant Colonel Philip St. George Cooke at Fort Riley to fill the governor’s requisitions of federal troops

7. Heitman, “Edwin Vose Sumner,” 1:936. Biographies of Sumner are in Father Stanley [Stanley Francis Crocchiola], *E. V. Sumner, Major General, United States Army (1797–1863)* (Borger, Tex.: Jim Hess Printers, 1969); and William Wallace Long, “A Biography of Major General Edwin Vose Sumner, U.S.A., 1797–1863” (PhD diss., University of New Mexico, 1971). On federal military interventions, see for instance, Ball, *Army Regulars on the Western Frontier*, chs. 5–6, 8–9; Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789–1878*, Army Historical Series (Washington, D.C.: Center of Military History, United States Army, 1988); Francis Paul Prucha, *Broadax and Bayonet: The Role of the United States Army in the Development of the Northwest, 1815–1860* (Madison: State Historical Society of Wisconsin, 1953; reprint, Lincoln: University of Nebraska Press, 1967), chs. 4–5; Michael L. Tate, *The Frontier Army in the Settlement of the West* (Norman: University of Oklahoma Press, 1999), ch. 4; Jerry M. Cooper, *The Army and Civil Disorder: Federal Military Intervention in Labor Disputes, 1877–1900*, Contributions in Military History 19 (Westport, Conn.: Greenwood Press, 1980); William B. Skelton, *An American Profession of Arms: The Army Officer Corps, 1784–1861*, Modern War Studies (Lawrence: University Press of Kansas, 1992), 70–71, 297–304. Commanding in New Mexico at his brevet rank of colonel, Sumner acknowledged *posse comitatus* as the “law of the land.” For instance, see Edwin V. Sumner to Horace Brooks, October 29, 1852, Letters Sent, vol. 4 (8 NMex), Ninth Military Department, roll 1, *Letters Sent by the 9th Military Department, the Department of New Mexico, and the District of New Mexico, 1849–1890* (Washington, D.C.: National Archives and Records Service, 1979), Microcopy No. 1072, Records of the U.S. Army Continental Commands, 1821–1920, Record Group 393, National Archives, Washington, D.C.

8. Roy Franklin Nichols, *Franklin Pierce: Young Hickory of the Granite Hills* (Philadelphia: University of Pennsylvania Press, 1931), ch. 62.



In October 1855 forty-seven free-state delegates assembled in this building on Kansas Avenue in the infant city of Topeka and drafted what became known as the Topeka Constitution. Free-state voters ratified it at the polls in December and an election of state officers under the document was conducted on January 15, 1856. The U.S. Congress refused to admit Kansas as a free state under the Topeka instrument, but nevertheless the “first-state legislature,” which met briefly in March, decided to reconvene as scheduled on July 4, 1856, at “Constitution Hall” in Topeka. This two-story depiction of the structure, first published in A. T. Andreas’s 1883 History of the State of Kansas, is most likely more accurate than the rendering carried in Frank Leslie’s Illustrated Newspaper soon after the dispersal.

to act as a “posse comitatus” should “insurrectionary combinations” overwhelm the “judicial proceedings” and the “ordinary” enforcement powers of “the United States Marshals.” Sensitive to the American suspicion of standing armies, Secretary of State William Marcy cautioned Governor Shannon to requisition federal regulars as a last “resort.”<sup>9</sup> The president, however, had

9. Horace Greeley’s *New-York Daily Tribune* thought Pierce’s tough message was an effort to recruit Southern Democrats’ pre-convention support for his renomination in June: “The President’s Message,” *New-York Daily Tribune*, January 25, 1856. Shannon visited Washington, D.C., to press Pierce for federal troops. See “From Washington,” *New-York Daily Times*, February 16, 1856; “Further Kansas Affairs,” *Chicago Tribune*, February 16, 1856; “Kansas Matters—Action of the President” and “New Aspect of Kansas Affairs,” *Chicago Tribune*, February 18, 1856. Free-state leaders also requested the protection of federal troops. See James Lane and Charles Robinson to Franklin Pierce, January 21, 1856, *Kansas Historical Collections, 1889–1896* 5 (1896): 245–46. See also U.S. Senate, *The President’s Message on Disturbances in Kansas*, 34th Cong., 1st Sess., 1855–1856, Sen. Ex. Doc. 4, ser. no. 815, 6–7; Franklin Pierce, Proclamation, February 11, 1856, in “Governor Shannon’s Administration,” *Kansas Historical Collections, 1889–1896* 5 (1896): 259; Jefferson Davis to Edwin Sumner and Philip St. George Cooke, February 15, 1856, roll 37, *Letters Sent by the Secretary of War Relating to Military Affairs, 1800–89* (Washington, D.C.: National Archives and Records Service, 1963), Microcopy No. 6, Records of the Office of the Secretary of War, Record Group 107, National Archives, Washington, D.C. Davis enclosed these instructions in a note to Shannon. Jefferson Davis to Wilson Shannon, February 15, 1856, 34th Cong., 1st sess., Sen. Ex. Doc. 23, ser. no. 820, 37. Attorney General Caleb Cushing drafted Pierce’s proclamation. See Claude M. Fuess, *The Life of Caleb Cushing* (Hamden, Conn.: Archon Books, 1965), 2:152.

handed the control of federal troops in Kansas to the governor.

Pierce based his policy on federal law, historic precedents, and the "Cushing doctrine." On May 27, 1854, addressing enforcement of the Fugitive Slave Law, Attorney General Caleb Cushing had opined that the Constitution empowered presidents to deploy federal military forces as a posse to help "United State Marshals" enforce the judicial process—executing arrest warrants and enforcing court orders—in the face of organized domestic resistance. As a posse, federal troops served under the legally constituted authorities to enforce the laws of the land. The standard for what constituted "organized resistance" would inform Sumner's legal interpretation of the free-state legislature in summer 1856.<sup>10</sup>

Colonel Sumner disagreed with the Pierce administration's military policy in Kansas. In Davis's instructions, the president had limited federal troops to supporting as a posse the law-enforcement efforts of marshals and sheriffs. However, anticipating new invasions in the spring, especially from Missouri, Sumner wanted some latitude to intervene against "all armed bodies, coming either from Missouri or from a distance, north or south," to maintain order and preserve the peace. As a politician, the president wanted to avoid the appearance of targeting, with a federal military constabulary, citizens of any political stripe, particularly Atchison's Missourians. Speaking for Davis, Adjutant General Samuel Cooper reiterated to Sumner that he had authority to "judge" neither the "disposition" nor origin of any organized party, "whether armed or unarmed." He could only answer the governor's "requisition for a military force" to overcome "armed resistance . . . to the

10. Davis's instructions cited the federal acts of "28 of February 1795" and "3 of March 1807." Jefferson Davis to Edwin Sumner and Philip St. George Cooke, February 15, 1856, Washington, D.C., roll 37, M6, RG 107, National Archives, Washington, D.C. Cushing, a Massachusetts Democrat, argued that the U.S. Constitution obligated the federal government to protect slave property in the states and territories. See Fuess, *The Life of Caleb Cushing*, 2:144–45, 158–59. Coakley discusses the Cushing doctrine and its immediate precedents in *The Role of Federal Military Forces in Domestic Disorders*, 128–33; see also Tate, *The Frontier Army in the Settlement of the West*, 80–83. Secondary accounts of U.S. Army involvement in Kansas law enforcement are in Marvin Ewy, "The United States Army in the Kansas Border Troubles, 1855–1856," *Kansas Historical Quarterly* 32 (Winter 1966): 385–400; Durwood Ball, "'Petty Embroilments of Armed Constabulary Duty': The United States Army in Law Enforcement during the Kansas-Missouri Border Wars, 1856–1860" (master's thesis, University of New Mexico, 1984); Durwood Ball, *Army Regulars on the Western Frontier, 1848–1861* (Norman: University of Oklahoma Press, 2001), ch. 9; Tony R. Mullis, *Peacekeeping on the Plains: Army Operations in Bleeding Kansas* (Columbia: University of Missouri Press, 2004).

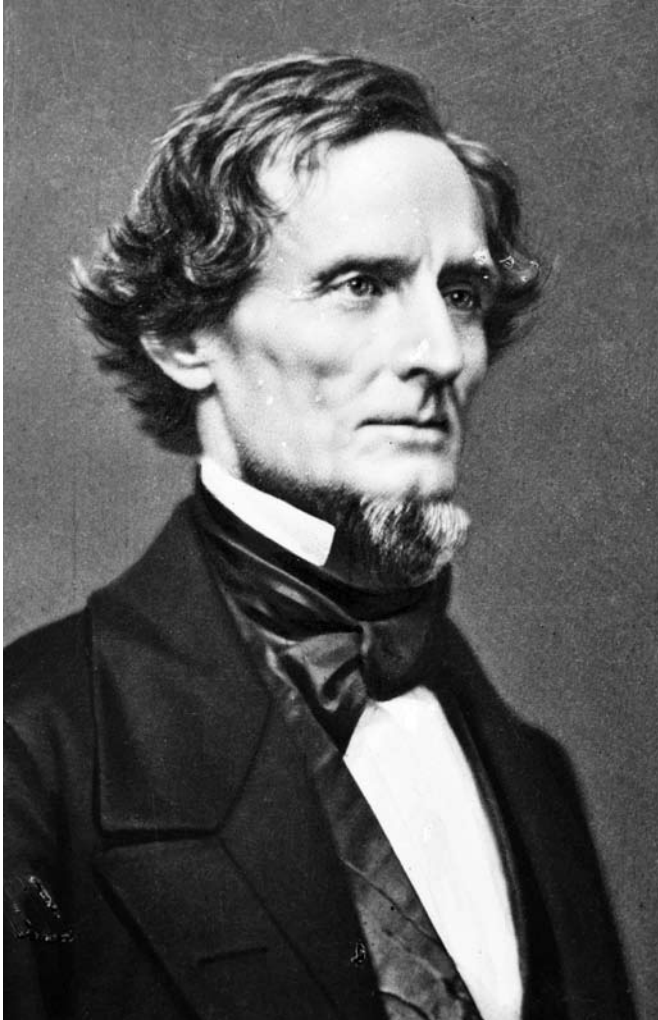
laws and against the peace and quiet of the Territory."<sup>11</sup> Sumner's worry was that territorial authorities, all of whom were Democratic, would launch his regulars exclusively against free-state settlers, their political opposition, but allow Missourians, their allies, to roam and plunder freely.

Sumner and Governor Shannon likewise diverged over army assistance to legally constituted civil authorities. When in Lawrence on April 23 a free-state assassin shot Democratic sheriff Samuel Jones, who was assisted by seven regulars, Sumner earnestly advised the governor not to summon the Kansas militia, called them "partisans," and galloped to the scene, at Shannon's request, to calm tempers. The previous winter, Shannon had begged the president for federal military assistance, but immediately after the Jones shooting, the governor groused to his boss, Secretary Marcy, about his administration's complete dependence on Sumner's regulars.<sup>12</sup>

To prove his mettle, Shannon tried to dispense with Sumner's troops. When U.S. Marshal Israel B. Donelson

11. Samuel Cooper to Edwin Sumner, March 26, 1856, 34th Cong., 3rd sess., 1856, S. Ex. Doc. No. 10, ser. no. 878, 2. The president's message to Congress, his proclamation, and Davis's instructions all warned against "aggressive intrusion" or "invasive aggression" from Missouri and elsewhere. Edwin Sumner to Samuel Cooper, March 8, 1856, United States Senate, *Report of the Secretary of War*, 34th Cong., 3rd Sess., 1856, Sen. Ex. Doc. 10, ser. no. 878, 1–2. On February 21, 1856, the *National Era* criticized the president for empowering Sumner to act only "in the case of insurrection among the people of Kansas" and not against invasions from Missouri. See "Kansas Affairs in the Senate," (Washington, D.C.) *National Era*, February 21, 1856.

12. Jones visited Lawrence successively by himself, with a civil posse, and with a military posse: Samuel Jones to Wilson Shannon, April 20, 1856, Lecompton, in "Correspondence of Governor Wilson Shannon," *Kansas Historical Collections, 1886–1888* 4 (1890): 408–9; William Preston, J. Anderson, and W. Donaldson, Affidavit sworn before Justice of the Peace J. W. Shepard, Douglas County, April 28, 1856, *ibid.*, 410; Wilson Shannon to Edwin Sumner, April 20, 1856, *ibid.*, 409; Sara T. L. Robinson, *Kansas: Its Interior and Exterior Life* (Boston, Mass.: Crosby, Nichols, 1857), 197. Sumner detailed Lieutenant James McIntosh and six enlisted men as a posse "to sustain him [Sheriff Jones] in the legal exercise of his authority." Sumner cautioned McIntosh not to "resort to violence if it can possibly be avoided." Edwin Sumner to James McIntosh, April 22, 1856, *Report of the Secretary of War*, 34th Cong., 3rd sess., 1856, Sen. Ex. Doc. 10, ser. no. 878, 3–4. Sumner also advised the people of Lawrence that "he was sending a small detachment to Lawrence with the Sheriff of Douglas County." See Edwin Sumner to Mayor of Lawrence, April 22, 1856, *Kansas Historical Collections, 1889–1896* 5 (1896): 262. McIntosh describes the shooting of Jones in James McIntosh to Wilson Shannon, April 30, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 418–19. Edwin Sumner to Wilson Shannon, April 24, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 410; Edwin Sumner to Samuel Cooper, April 24, 1856, 34th Cong., 3rd sess., 1856, Sen. Ex. Doc. No. 10, ser. no. 878, 6; Wilson Shannon to Edwin Sumner, April 25, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 411; Wilson Shannon to William Marcy, April 27, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 407–8.



Jefferson Davis was the most notable secretary of war between John C. Calhoun and Edwin M. Stanton. He and Sumner served together in the First U.S. Dragoon from 1833 to 1835, when Davis resigned his commission. Book ending his time as secretary of war, Davis served as one of Mississippi's senators, from 1847 until 1851 and 1857 until 1861. That year he became president of the Confederate States of America, a position he held until 1865, when Robert E. Lee surrendered to Union forces and Davis was captured. Photograph courtesy of the Library of Congress, Prints & Photographs Division, Washington, D.C.

summoned a civilian posse to serve federal warrants in Lawrence, Sumner exhorted the governor to dismiss the men—Missouri “partisans,” as the colonel accurately described them—predicting serious trouble if they entered Lawrence behind a marshal or sheriff. But Shannon refused, and the incredulous Sumner reported their exchange to Secretary Davis.<sup>13</sup> Ten days later on May 21, this posse of five to eight hundred men sacked

13. Governor Shannon tried to justify allowing the civilian posse in a letter to the president. Wilson Shannon to Franklin Pierce, May 31, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 414–15; see also

free-soil Lawrence. This brigandage coincided with the savage caning of abolitionist senator Charles Sumner, a cousin to the colonel, by South Carolina Representative Preston Brooks on the Senate floor in the U.S. Capitol. Both acts of violence fueled sectional fires and further jeopardized Pierce's political prospects.<sup>14</sup>

Sumner's report of May 12 panicked President Pierce when it was laid on his desk on May 23. He immediately telegraphed Shannon to disband the marshal's posse and to see the legal “process in the hands of the marshal quietly executed . . . with the force of Colonel Sumner.” But that same day, from the War Department, Secretary Davis praised Sumner's restraint; his role was simply to answer the governor's summons—not to break up the marshal's posse unilaterally.<sup>15</sup> Pierce's dispatch to the governor, however, would transform the army's mission in Kansas from posse service to military constabulary duty—much to Davis's displeasure. As a legal posse, regulars served court officers: the marshals or sheriffs. As an armed constabulary, federal troops often patrolled or scouted eastern Kansas without the legal cloak of federal marshals or county sheriffs executing the business of the courts. This kind of military operation in domestic

Edwin Sumner to Wilson Shannon, May 12, 1856, and Edwin Sumner to Samuel Cooper, May 12, 1856, 34th Cong., 3rd sess., 1856, Sen. Ex. Doc. 10, ser. no. 878, 7–8. Lieutenant McIntosh described the posse to Colonel Sumner in James McIntosh to Edwin Sumner, May 21, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 435–36.

14. Sumner received appeals for protection from Lawrence residents and from the Howard Committee, a U.S. House committee investigating Kansas election fraud. See C. Topliff, W. Roberts, and Jno. Hutchison to Edwin Sumner, May 11, 1856, 34th Cong., 3rd sess., 1856, Sen. Ex. Doc. No. 10, ser. no. 878, 8; William Howard to Edwin Sumner, May 16, 1856, *ibid.*, 37; Edwin Sumner to Wilson Shannon, May 12, 1856, *ibid.*, 7–8. Free-state sympathizers wondered why Sumner did not protect Lawrence. See “Citizens of Topeka” and “Sack of Lawrence,” *Daily (St. Louis) Missouri Democrat*, May 31, 1856; and “War in Kansas,” *National Era*, May 29, 1856. The preliminaries to the sack of Lawrence are described in Johnson, *Battle Cry of Freedom*, 157–58; Monaghan, *Civil War on the Western Border*, 52–53; and Etcheson, *Bleeding Kansas*, 104–5. For the attack on Senator Sumner, see David Donald, *Charles Sumner and the Coming of the Civil War* (New York: Alfred A. Knopf, 1960), 294–97; Edward L. Pierce, ed., *Memoir and Letters of Charles Sumner* (Boston, Mass.: Roberts Brothers, 1877), 2:2; and Stanley, *E. V. Sumner*, 5.

15. Pierce literally flip-flopped during the morning of May 23. He first telegraphed Shannon for information on the progress of the marshal's posse but reminded the governor to requisition federal troops only “after the marshal has met with actual resistance in the fulfillment of his duty.” See Franklin Pierce to Wilson Shannon, [first] telegraph, May 23, 1856, in United States Senate, *Presidential Message Communicating Correspondence of John W. Geary, the Late Governor of Territory of Kansas*, 35th Cong., 1st sess., 1857–1858, Sen. Ex. Doc. 17, ser. no. 923, 15. Shortly afterward, the president reversed himself upon reading Sumner's report of May 12, which Davis had just laid on his desk. Franklin Pierce to Wilson Shannon, [second] telegraph, May 23, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 414; Jefferson Davis to Edwin Sumner, May 23, 1856, United States Senate, *Instructions to Military Officers*, 34th Cong., 1st Sess., 1855–1856, Sen. Ex. Doc. No. 97, ser. no. 823, 5.

society smacked of “dragoon government” and rankled Davis’s constitutional scruples.<sup>16</sup>

The sack of Lawrence unhinged Kansas. During the night of May 24, abolitionist John Brown and a handful of followers retaliated by savagely murdering five proslavery settlers near Pottawatomie Creek. Hundreds of Missourians streamed over the border to hunt the killers, and partisans on both sides attacked, murdered, and plundered their enemies. As Sumner dispatched cavalry squadrons to disperse armed gangs at Shannon’s direction, he raged to Adjutant General Cooper, “If the matter had been taken in hand at an earlier date, as I earnestly advised the Governor, the whole disturbance would have been suppressed without bloodshed.” The partisan contest had escalated to a violent “guerrilla” war, which his regulars might have to suppress with “force.”<sup>17</sup>

Now on the political defensive, Shannon presented Sumner an operational plan to clear roads and check invasions with regular troops. When bushwhackers wounded one of his troopers and two horses near Lawrence, Sumner rode into the field on June 2 to supervise the five squadrons—about two hundred and fifty men—now assigned to constabulary duty. Two days later, the governor issued a law-and-order proclamation threatening with arrest by federal troops all unauthorized “military organizations” that failed “to disperse and retire peaceably.”<sup>18</sup> Among the partisan armies

16. These armed constabulary operations in Kansas embarrassed Davis. On May 21 and 22, he had reassured President Pierce that regular troops were serving strictly as posses to aid “the constituted authorities.” No federal troops were directly “making arrests” of violators of Kansas territorial laws. Pierce passed this information to the House of Representatives, which had asked for the information. See Jefferson Davis to the President, May 21, 1856, pp. 54–55, vol. 6, roll 6, M127, RG 107, National Archives, Washington, D.C.; and Jefferson Davis to the President, May 22, 1856, in United States House, *Message from the President*, 34th Cong., 1st Sess., 1855–1856, H. Ex. Doc. 106, ser. no. 859, pp. 1–2.

17. Edwin Sumner to Samuel Cooper, May 28, 1856, *Kansas Historical Collections, 1886–1888 4* (1890): 437; Edwin Sumner to Assistant Adjutant General, Department of the West, May 28, 1856, Fort Leavenworth, *ibid.*, 436; Wilson Shannon to Edwin Sumner, May 27, 1856, *ibid.*, 237. Judge Sterling Cato described the Pottawatomie murders to Shannon in Sterling Cato to Wilson Shannon, May 27, 1856, *ibid.*, 419–20. Secondary descriptions of the murders are Stephen B. Oates, *To Purge this Land with Blood: A Biography of John Brown*, 2nd ed. (Amherst: University of Massachusetts Press, 1984), 134–37; Davis S. Reynolds, *John Brown, Abolitionist: The Man Who Killed Slavery, Sparked the Civil War, and Seeded Civil Rights* (New York: Alfred A. Knopf, 2005), 171–73. The most recent analysis of Brown’s motives is in Robert E. McGlone, *John Brown’s War against Slavery* (New York: Cambridge University Press, 2009), 11–16, 73–80, 114–40.

18. Edwin Sumner to Samuel Cooper, June 2, 1856, *Kansas Historical Collections, 1886–1888 4* (1890): 438; Edward Newby to Wilson Shannon, May 31, 1856, *ibid.*, 390; Wilson Shannon to Edwin Sumner, June [n.d.], 1856, *ibid.*, 440–41; Wilson Shannon, Proclamation, June 4, 1856, *ibid.*, 442–44.

disbanded personally by Colonel Sumner was one that coalesced around John Brown and another even larger proslavery outfit led by Kansas delegate to Congress John W. Whitfield. In both cases, Sumner, not the deputy marshal in tow, read the president’s and governor’s proclamations to the assembled men and ordered them to go home. However necessary in the field, Sumner’s process violated a legal protocol of *posse comitatus*: the deputy marshal should have read the proclamation, and Sumner should have acted against the mobs only when they failed to obey the dispersal order.<sup>19</sup>

The constabulary operation initiated by Shannon and described to him by Sumner infuriated Secretary Davis. On June 19, after reading Sumner’s report and a copy of Shannon’s plan, Davis critiqued the governor’s federal military constabulary in a brief drafted for the president. The secretary absolved Sumner of committing troops to disperse “insurgents” and uphold the “law” immediately following the Pottawatomie Massacre, but he blasted Shannon for exceeding his instructions—for failing to exhaust the “judicial process” and the marshal’s “ordinary powers” before he requisitioned federal troops “to disperse lawless combinations.” Stationing squadrons where “violence had occurred, or . . . [was] apprehended” transformed Sumner’s regulars into “an armed police,” service that was both unconstitutional and illegal. Nor should federal regulars “be quartered in settlements or villages with a view to such employment.” Sumner was acting on Pierce’s hastily written “dispatch” of May 23 and the governor’s proclamation “to suppress commotion and party strife in the territory,” but, according to Secretary Davis, neither action was the “intention” of the president’s proclamation or the War Department’s instructions.<sup>20</sup>

19. John Brown recounted Sumner’s dispersal in a letter to his family: John Brown to Wife and Children, June [n.d.], 1856, in *Meteor of War: The John Brown Story*, ed. Zoe Trodd and John Stauffer (Cambridge, Mass.: Brandywine Press, 2004), 85–87. Sumner reported this operation to the adjutant general: Edwin Sumner to Samuel Cooper, June 8, 1856, *Kansas Historical Collections, 1886–1888 4* (1890): 439–40. Major Sedgwick described the affair to his sister: John Sedgwick to sister, June 11, 1856, *Correspondence of John Sedgwick, Major-General* (New York: Printed for Carl and Ellen Battelle Stoeckel by the De Vinne Press, 1902–3), 2:7–9. Neither Sumner nor Sedgwick mentioned Brown by name. Both officers were far more surprised to see Delegate Whitfield riding with Missouri partisans. Kansas historian James C. Malin puzzled over Sumner’s release of Brown in *John Brown and the Legend of Fifty-Six* (Philadelphia: The American Philosophical Society, 1942), 85 n.b., 85–88. Shortly after Sumner confronted him, Whitfield arrived in Washington, D.C., on June 20, 1856. See “Gen. Whitfield,” *New York Daily Times*, June 21, 1856.

20. Shannon ordered Sumner to “drive” back the Missourians as late as June 14; see Wilson Shannon to Edwin Sumner, June 14, 1856, *Kansas Historical Collections, 1886–1888 4* (1890): 445. First Lieutenant McIntosh described his constabulary operations: James McIntosh to Daniel Woodson, June 13, 1856, *ibid.*, 391. For Davis’s brief, see Jefferson Davis to the President, June 19, 1856, pp. 75–76, vol. 6, roll 6, Microcopy



Democratic “doughface” Franklin Pierce of New Hampshire served only one term as president, from 1853 until 1857. An indecisive president, Pierce tended to respond favorably to whatever or whoever was directly in front of him. He sought but failed to capture his party’s nomination for a second term in the midst of his Kansas troubles of 1856, losing out to James Buchanan, a Democrat from Pennsylvania who established another pro-Southern administration when he moved into the White House in 1857. Drawing courtesy of the Library of Congress, Prints & Photographs Division, Washington, D.C.

In the first week of June, Pierce lost the Democratic presidential nomination to James Buchanan, his minister to England. The Buchananites persuaded the lame-duck Pierce to make changes in Kansas. Democrats feared wholesale Southern secession should the Republican Party win the presidency. The restoration of peace and the success of popular sovereignty in Kansas would demonstrate to Americans that the Democrats could still

No. 127, Record Group 107, National Archives, Washington, D.C. These armed constabulary operations in Kansas embarrassed Davis. On May 21 and 22, he reassured President Pierce that regular troops were serving strictly as posses to aid “the constituted authorities.” No federal troops were directly “making arrests” of violators of Kansas territorial laws. Pierce passed this information to the House of Representatives, which had been outraged over the use of military posses by Sheriff Jones and his deputies in Lawrence during April. See Jefferson Davis to the President, May 21, 1856, pp. 54–55, vol. 6, fr. 35, roll 6, M127, RG 107, National Archives, Washington, D.C.; and Jefferson Davis to the President, May 22, 1856, United States House, *Message from the President*, 34th Cong., 1st Sess., 1855–1856, H. Ex. Doc. 106, ser. no. 859, pp. 1–2.

govern the country and heal sectional division. The sack of Lawrence and the subsequent murder and mayhem had convinced Pierce to replace Governor Shannon, whom he blamed for the domestic explosion. Although Sumner’s constabulary operations restored stability to eastern Kansas by mid-June, he was replaced by Brevet Major General Persifor F. Smith, colonel of the Regiment of Mounted Riflemen. Smith was a loyal Democrat, had married into a slave-owning family in Louisiana, and had befriended Pierce during the Mexican-American War. His background recommended him to Northern and Southern Democrats as an officer who would command Kansas with Southern and the Democratic Party’s interests in mind.<sup>21</sup>

On June 23, before absenting himself on “personal business,” Governor Shannon handed Colonel Sumner one final unpleasant mission. The previous spring the Free State Party had called a “Grand Mass Convention at Topeka” to precede the assembly of the free-state legislature on Independence Day. Shannon instructed Sumner to “disperse” that body—“peacefully if you can, forcibly if necessary”—should it try to convene. Citing and glossing specific statutes, Shannon explained at length that the free-state legislature was illegal, even insurrectionary, under Kansas territorial law and thus was legally subject to dispersal, by force if necessary. With the fall election approaching, the president was under pressure from Southern Democrats to apply his office to uphold the legitimate Kansas territorial government and prosecute its illegitimate free-state rival. At Fort Leavenworth, Sumner requested that court officers be present in Topeka and “have writs drawn and served on every one of them [the free-state legislators] the moment

21. Nichols, *Franklin Pierce*, 475. Rumor was that Colonel William S. Harney, an avowed Democrat and a slave owner, would replace Sumner, a professional enemy; see “The Kansas War,” *New York Times*, June 17, 1856; and “The War in Kansas,” *New York Daily Times*, June 12, 1856; see also Jefferson Davis to Persifor Smith, June 27, 1856, p. 160, vol. 38, M6, RG 107, National Archives, Washington, D.C. Persifor Smith to Franklin Pierce, January 23, 1857, roll 5, microfilm, series 3, *Papers*, Franklin Pierce, Library of Congress, Washington, D.C.; T. F. M., “Persifor Frazer Smith,” in *Dictionary of American Biography* (New York: Charles Scribner’s Sons, 1935), 17:331–32. Colonel Sumner reported the general restoration of peace to the adjutant general: Edwin Sumner to Samuel Cooper, June 23, 1856, *Kansas Historical Collections*, 1886–1888 4 (1890): 444–45. Sumner was praised in “General Intelligence,” *New York Evangelist*, July 3, 1856; and “Affairs in Kansas,” *New York Daily Times*, July 1, 1856. Free-state governor Charles Robinson later spoke favorably of Sumner’s constabulary operations in “Address of Governor Robinson,” *Kansas Historical Collections*, 1875–1880, 1–2 (1881): 122. On Pierce’s loss to Buchanan, see Potter, *The Impending Crisis, 1848–1861*, 259–60; Nichols, *Franklin Pierce*, 468–69.

they get together." He promised to "handle the affair personally" if the "public law officers" refused to appear. Should the free-state legislature convene in Topeka and enact laws, Colonel Sumner feared, Atchison's Missourians would invade eastern Kansas, this time to smash Topeka.<sup>22</sup>

Sumner initially dispatched Major John Sedgwick to Topeka, but Daniel Woodson—acting governor in Shannon's absence—insisted that the colonel attend in person. From Fort Leavenworth, Sumner wired Adjutant General Cooper: "If it is possible to disperse them [the free-state legislators] without violence it shall be done." In all, Sumner congregated five cavalry companies and two artillery crews in Topeka. On July 3 Woodson issued his own proclamation, promising to uphold those of the president and governor "at all hazards." Encamped on Topeka's outskirts, Sumner conferred with Woodson, Judge Sterling Cato, U.S. District Attorney Andrew J. Isaacs, and U.S. Marshal Donelson. These federal authorities confirmed to a free-state "deputation" that their elected representatives "could not meet for any purpose." Sumner concurred—if the free-state legislature officially convened as a legislative assembly and publicly declared itself the legitimate representative body of Kansas, he would be obligated to execute the dispersal order issued by the territory's legally constituted authorities. Later that day, both houses of the free-state legislature "'resolved' to assemble" despite the colonel's warning.<sup>23</sup>

On the morning of July 4, 1856, settlers crowded the streets of Topeka to celebrate Independence Day, and free-state leaders began orating on the "propriety of the Legislature[']s convening." Partway through the morning, a tall, wiry man sporting "iron-grey whiskers," dressed in "jeans pants, vest and coat" and shaded by a "dirty" straw hat, sauntered from Sumner's camp

southeast of town. Joined by Judge Rush Elmore, he threaded his way to Topeka's Constitution Hall, home to the free-state legislature. Marshal Donelson, who had assembled the posse that sacked Lawrence in May, climbed the steps to the hall. In the house, he asked the "presiding officer" for permission to read the three proclamations—Pierce's, Shannon's, and Woodson's—in his possession. He then handed this duty to Elmore, whom he deemed a better public speaker. Also read aloud was a note from Sumner, who reiterated his intention to prevent the legislature's assembly under the governor's order. After listening, the convention shunned the marshal and returned to its business. Some ten minutes later, with Elmore in tow, Donelson exited Constitution Hall, replaced his beat-up hat, strolled back to camp, and told Sumner, "There will be a fight."<sup>24</sup>

Colonel Sumner immediately ordered his troopers to prepare. Shortly before noon, he put his entire battalion in motion. A wild-eyed free-soil man, "pushing [his] way through the masses" toward Constitution Hall, yelled, "The 'regulars' are coming." Sumner's unit, about two hundred and fifty men, rounded the Garvey House Hotel, swung onto Kansas Avenue, and trotted north to the hall. Bull Sumner, fifty-nine years old, rode at their head. In the free-state house, the Reverend Pardee Butler stated emphatically, "Mr. President, I have one word to say—Resolved, that this meeting have no intention of resisting Col. Sumner." Butler's motion carried unanimously.<sup>25</sup>

When Sumner reached a position opposite Constitution Hall, he bellowed orders in a "sharp, shrill voice" that ricocheted "through Kansas avenue, and all around the State House." As officers and sergeants echoed his commands, the cavalry companies filed briskly and precisely to his left and right. The battalion deployed in three platoons: one drawn up in front of the building, another stationed even with it but "further up the street," and the third positioned "several paces back" and between the other two. The artillery crews stationed

22. C. K. Holliday et al., "Circular," June 9, 1856, in "Affairs in Kansas," *New York Daily Times*, July 1, 1856. Wilson Shannon to Edwin Sumner, June 23, 1856, *Kansas Historical Collections, 1886–1888 4* (1890): 422–23; Edwin Sumner to Daniel Woodson, June 28, 1856, *Kansas Historical Collections, 1886–1888 4* (1890): 446; and Johnson, *Battle Cry of Freedom*, 188. Tony Mullis notes that slow communications between Kansas and Washington, D.C., hampered Sumner's ability to keep Davis abreast of developments in the field and to receive timely instructions or clarifications from the War Department. Both Sumner and Shannon seemed reluctant to use the new telegraphic system that had reached western Missouri. See Mullis, "The Dispersal of the Topeka Legislature: A Look at Command and Control (C2) during Bleeding Kansas," *Kansas History: A Journal of the Central Plains* 27 (Summer 2004): 70–75.

23. Daniel Woodson to Edwin Sumner, June 30, 1856, *Lecompton, Kansas Historical Collections, 1886–1888 4* (1890): 438; Edwin Sumner to Samuel Cooper, July 1, 1856, *ibid.*, 446; Edwin Sumner to Daniel Woodson, *ibid.*, 447; Daniel Woodson, Proclamation, July [n.d.], 1856, *ibid.*, 449–50; Edwin Sumner to Daniel Woodson, July 2, 1856; Robert

Ransom to William Beall, July 2, 1856; and Robert Ransom to William Beall, July 3, 1856, vol. 1, Regimental Letters Sent, Fourth (First) Cavalry, Entry No. 719, Cavalry, United States Army Mobile Units, Record Group 391, National Archives, Washington, D.C.; "From Kansas: Breaking up of the Free State Legislature," *New York Herald*, July 16, 1856; Special Correspondent, July 3, 1856, quoted in "Important from Kansas . . . Preparations for Sumner's Coup d'Etat," *New York Daily Tribune*, July 14, 1856.

24. James Redpath, July 4, 1856, quoted in "The Fourth of July at Topeka," *Chicago Tribune*, July 15, 1856; Monaghan, *Civil War on the Western Border*, 66–68; Etcheson, *Bleeding Kansas*, 116; Goodrich, *War to the Knife*, 140.

25. [Unnamed correspondent], July 6, 1856, quoted in "Kansas Correspondence of the Atlas," *Boston Daily Atlas*, July 28, 1856.



A powerful Democratic politician, David Rice Atchison orchestrated the pro-Southern program to make Kansas a slave state. Atchison was born and educated in Kentucky but spent his adult life in western Missouri, where he commenced the practice of law in 1829. He served in the U.S. Senate from 1843 to 1855 and then seemingly turned his full attention to advancing the interests of slavery. Although he initially praised President Pierce's commitment of federal troops to Kansas, Atchison and his allies soon turned against federal military involvement and began working for Colonel Sumner's ouster.

their pieces to sweep the street and lit their slow matches, the smoke rising lazily in the hundred-degree heat. The surgeon unsnapped and opened his instrument case.<sup>26</sup>

On the colonel's order, the cavalry advanced rapidly until the horses were practically chomping and slobbering in the faces of the free-state militia drawn up before the hall and under a homemade banner, which broadcast, "OUR LIVES FOR OUR RIGHTS." Sumner stared fiercely at the militia boy beating his drum defiantly, and ordered him to cease. Giving way to the regulars as

26. Redpath, July 4, 1856, quoted in "The Fourth of July at Topeka," *Chicago Tribune*, July 15, 1856; [William A. Phillips], July 4, 1856, quoted in "Kansas: Dispersion of the Free-State Legislative Convention by United States Troops," *New York Daily Tribune*, July 19, 1856.

free-state leaders had instructed, the militia commander ordered his men to "dress left" and file away "in double quick time." The parting crowd cheered their devotion and courage.<sup>27</sup>

As Sumner let his troopers settle, a committee of the free-state convention approached him. Its spokesman assured him that neither the convention nor the militia intended "resisting the United States Troops." Sumner replied that his mission was to prevent the "Legislature" from convening, not to "disarm the militia" or to disperse the popular "Convention." He would immediately "retire" his battalion when his duty was done. The news triggered a round of huzzahs for Sumner. Dismounting his horse, the colonel climbed the steps to Constitution Hall and strode smartly into the crowded house, "followed by a large number of the members, a crowd of citizens, abolition troops, ladies, &c. amidst shouts, yells and confusion." Near the threshold to the house chamber, "Mrs. Gaines" and "another lady" immediately stepped in front of Sumner, "extended their 'snowy digits,'" and broke his momentum with civil pleasantries. The gentleman kindly "took each of them by the hand," but the officer firmly replied, "Ladies, I am sorry to interrupt you; but I must attend to my duty." Mrs. Gaines informed the colonel that the ladies had presented the banner to the militia "on this day of our would be independence." Colonel Sumner gallantly responded, "Madame, I hope you will be independent," and proceeded to the "platform."<sup>28</sup>

Bull Sumner's approach brought a hush to the house. When offered a chair at the desk, he "jocularly asked" whether the free-state legislators "wanted to make him their speaker." This morsel of humor raised "a hearty shout and laughter" from the floor. After a few private words with the "gentlemen" immediately around him, Sumner took the seat offered him. Samuel F. Tappan, assistant clerk to the house, called the chamber to order

27. Redpath, July 4, 1856, quoted in "The Fourth of July at Topeka," *Chicago Tribune*, July 15, 1856; [Phillips], July 4, 1856, quoted in "Kansas: Dispersion of the Free-State Legislative Convention by United States Troops," *New York Daily Tribune*, July 19, 1856; [Unnamed correspondent], *St. Louis Republican*, July 7, 1856, quoted in "From Kansas: Breaking up of the Free State Legislature," *New York Herald*, July 16, 1856. This Leavenworth, Kansas, correspondent argued that the free-state militia, "formed in front of the House" to resist the marshal and any civilian posse summoned by him, justified "the presence of Col. Sumner's command."

28. Redpath, July 4, 1856, quoted in "The Fourth of July at Topeka," *Chicago Tribune*, July 15, 1856; [Phillips], July 4, 1856, quoted in "Kansas: Dispersion of the Free-State Legislative Convention by United States Troops," *New York Daily Tribune*, July 19, 1856; [Unnamed correspondent], July 6, 1856, quoted in "Kansas Correspondence of the Atlas," *Boston Daily Atlas*, July 28, 1856. All three accounts describe Sumner's interview with the committee in front of Constitution Hall. Redpath's and Phillips's reports cite the colonel's exchange with

and began taking roll. He announced all names twice; Caleb S. Pratt took roll a third time. Thirty-four house members were in town that day; seventeen responded; the house lacked a quorum. To exercise their defiance, however, those members present agreed to forge ahead with the peoples' business, and Tappan dispatched the sergeant-at-arms to round up the absentees, many of whom had fled Constitution Hall when Sumner's battalion advanced up Kansas Avenue.<sup>29</sup>

At this point, when this free-state "assemblage" tried to call its members to order as the house, Colonel Sumner sprang from his chair to halt the legislative formation, illegal under Kansas law. Under his interpretation of the law, he could not allow the convention to take the first step over the legal threshold to insurrection. To the assembly he declared:

Gentlemen, I am called upon this day to perform the most painful duty of my life. Under the authority of the President's Proclamation I am here to disperse this Legislature and therefore inform you that you cannot meet. I therefore in accordance with my orders command you to disperse.

God knows I have no party feeling and will hold none so long as I hold my present position in Kansas. I have just returned from the borders where I have been sending home companies of Missourians and now I am here to disperse you. Such are my orders that you must disperse. I now command you to disperse. I repeat that this is the most painful duty of my whole life. But you must disperse.

From the floor, Judge Philip C. Schuyler asked, "Are we to understand that the Legislature is dispersed at the point of a bayonet?" Sumner replied, "I shall use the whole force in my command to carry out my orders."

the free-state "ladies," although the reported dialog varies between their versions. The crowd that trailed in Sumner's wake is noted by [Unnamed correspondent], *St. Louis Republican*, July 7, 1856, quoted in "From Kansas: Breaking up of the Free State Legislature," *New York Herald*, July 16, 1856.

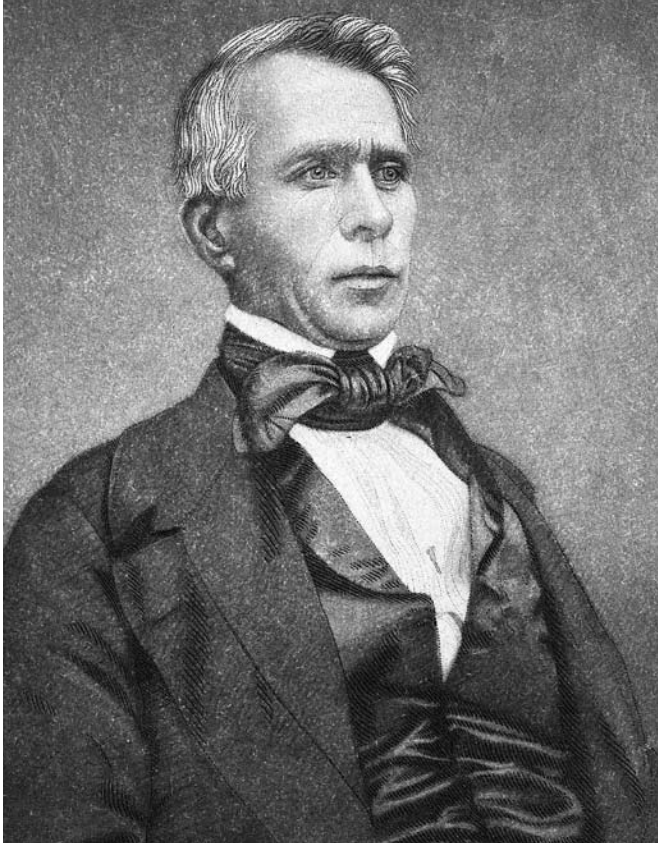
29. Redpath, July 4, 1856, quoted in "The Fourth of July at Topeka," *Chicago Tribune*, July 15, 1856; [Phillips], July 4, 1856, quoted in "Kansas: Dispersion of the Free-State Legislative Convention by United States Troops," *New York Daily Tribune*, July 19, 1856; [Unnamed correspondent], July 6, 1856, quoted in "Kansas Correspondence of the Atlas," *Boston Daily Atlas*, July 28, 1856. Phillips notes Sumner's "speaker" comment and the onlookers' mirth.

With that clarification, Colonel Sumner returned to his seat, and the representatives and spectators began to leave. With the chamber mostly empty, Sumner left Constitution Hall and mounted his horse.<sup>30</sup>

Bull Sumner probably wanted to exit Topeka at a trot, but someone—a "law and order man" according to *Chicago Tribune* correspondent James Redpath and very likely Marshal Donelson—reminded him about the senate meeting upstairs. So Sumner stepped down, marched into the building, and climbed the stairs to the second floor, where he confronted the upper house. Its few members arrayed themselves in a "semicircle" before the colonel, who reiterated his dispersal order. No one responded. To end the silence, the impatient Sumner exclaimed, "Gentlemen, do I understand that you consider yourselves dispersed?" Thomas G. Thornton, the senate president, "coolly" replied: "I cannot answer, nor can any other member of the Senate. The Senate is not in session." Proper forms, standards, and protocols meant the world to Sumner. His intention, stated publicly to the free-state committee, was to prevent not the assembly of popular conventions protected under the U.S. Constitution but the formation of the legislative body declared illegal by legislative statute and executive proclamation. Now, in the upper chamber, he had transgressed his own legal standard—the free-state conventions formally organizing as legislatures—for dispersing the free-state assemblies.<sup>31</sup>

30. The most detailed accounts of Sumner's declaration to the house are Redpath, July 4, 1856, quoted in "The Fourth of July at Topeka," *Chicago Tribune*, July 15, 1856; [Phillips], July 4, 1856, quoted in "Kansas: Dispersion of the Free-State Legislative Convention by United States Troops," *New York Daily Tribune*, July 19, 1856. Phillips also recounted the house dispersal in his *Conquest of Kansas by Missouri and Her Allies: A History of the Troubles from the Passage of the Organic Act until the Close of July 1856* (Boston, Mass.: Phillips, Sampson and Co., 1856), 403–5. Edwin Sumner's message to the house, July 4, 1856, in "Topeka Movement," *Kansas Historical Collections, 1913–1914* 13 (1915): 235. Other briefer accounts of the house dispersal are [Unnamed correspondent], July 6, 1856, quoted in "Kansas Correspondence of the Atlas," *Boston Daily Atlas*, July 28, 1856; and [Unnamed correspondent], *St. Louis Republican*, July 7, 1856, quoted in "From Kansas: Breaking up of the Free State Legislature," *New York Herald*, July 16, 1856.

31. Redpath, July 4, 1856, quoted in "The Fourth of July at Topeka," *Chicago Tribune*, July 15, 1856; [Phillips], July 4, 1856, quoted in "Kansas: Dispersion of the Free-State Legislative Convention by United States Troops," *New York Daily Tribune*, July 19, 1856; Phillips, *Conquest of Kansas by Missouri and Her Allies*, 405–6. Senate members subjected Sumner to "more parleying and cross-questioning than would have been expected," according to [Unnamed correspondent], July 6, 1856, quoted in "Kansas Correspondence of the Atlas," *Boston Daily Atlas*, July 28, 1856. See also [Unnamed correspondent], *St. Louis Republican*, July 7, 1856, quoted in "From Kansas: Breaking up of the Free State Legislature," *New York Herald*, July 16, 1856. This correspondent likewise notes the exchange between Sumner and Marshal Donelson and the free-state senators.



*The violent political partisanship in Kansas swamped the modest talents of Wilson Shannon during his stormy tenure as territorial governor from September 1855 to August 1856. Shannon first appealed to President Pierce and Colonel Sumner for military intervention to avert bloodshed in and near Lawrence in December 1855; during the next six months the governor and the colonel frequently clashed over the proper relationship between civilian and military authority.*

That realization embarrassed the colonel and left him momentarily speechless, but Marshal Donelson stepped forward. He imperiously demanded a “pledge” from “each” member that none would attempt to reconvene the senate. Should anyone try, he would arrest every last senator. Thornton’s response, a request that the colonel allow the senate to “converse” and render its decision, possibly belied his claim that the upper house was not in session and unwittingly returned the colonel to solid legal ground. Old Bull, now irritated with both Donelson and Thornton, emphatically reiterated: “No; my orders command me to prohibit you from convening. I must command you not to assemble, and the Senate must consider itself dispersed.”<sup>32</sup>

32. Redpath, July 4, 1856, quoted in “The Fourth of July at Topeka,” *Chicago Tribune*, July 15, 1856; [Phillips], July 4, 1856, Lawrence, quoted in “Kansas: Dispersion of the Free-State Legislative Convention by United States Troops,” *New York Daily Tribune*, July 19, 1856.

Receiving an affirmation, Sumner exited the chamber. As he descended the stairs, correspondent William A. Phillips said, “Colonel, you have robbed Oliver Cromwell of his laurels.” Old Bull glared back. Redpath later suggested that the comparison to Cromwell, who had broken up the English Parliament in the mid-seventeenth century, revealed to Sumner “the full enormity of the orders he had been compelled to obey.” His posture erect and eyes straight ahead, Colonel Sumner walked resolutely out the front door, down the steps, and back to his battalion.<sup>33</sup>

As he mounted his horse for the last time, the crowd gave Colonel Sumner “three cheers,” an acknowledgment that the governor had imposed this odious mission on him. Bellowing “Forward! March!” Sumner shoved off, undoubtedly relieved to accomplish his mission without igniting a “disrespectful [sic]” exchange of words or an eruption of violence. After three more cheers for Republican presidential candidate John C. Fremont, a few free-state bystanders tried unsuccessfully to shush “three groans” for President Pierce, lest Sumner think they were aimed at him and the army, but the regulars filed back down Kansas Avenue to their camp with scarcely a backward glance.<sup>34</sup>

The following day, Colonel Sumner and his battalion escorted Woodson and other federal authorities back to Lecompton. During the stopover, Sumner visited a nearby First Cavalry camp where the marshal was jailing his free-state prisoners. Among the men held there was Charles Robinson, the free-state governor, who was under arrest and awaiting trial for treason. Sumner met with Robinson, who denounced the “administration” and labeled the dispersal an “outrage.” During his visit, the colonel learned that Donelson had ordered the camp’s commanding officer to “read” all letters addressed to the federal prisoners. The “shocked” Sumner countermanded Donelson’s “restrictions” and

33. Redpath, July 4, 1856, quoted in “The Fourth of July at Topeka,” *Chicago Tribune*, July 15, 1856; [Phillips], July 4, 1856, quoted in “Kansas: Dispersion of the Free-State Legislative Convention by United States Troops,” *New York Daily Tribune*, July 19, 1856; Phillips, *Conquest of Kansas by Missouri and Her Allies*, 405–6. No other correspondent noted Phillips’s Cromwell remark to Sumner.

34. Redpath, July 4, 1856, quoted in “The Fourth of July at Topeka,” *Chicago Tribune*, July 15, 1856; [Phillips], July 4, 1856, quoted in “Kansas: Dispersion of the Free-State Legislative Convention by United States Troops,” *New York Daily Tribune*, July 19, 1856; Phillips, *Conquest of Kansas by Missouri and Her Allies*, 405–6. Sumner proudly brought to the adjutant general’s attention the respect shown him by free-state legislators and revelers in Topeka: Edwin Sumner to Samuel Cooper, July 7, 1856, Fort Leavenworth, *Kansas Historical Collections, 1886–1888* 4 (1890): 439–40.

instructed Captain William S. Walker “hereafter . . . to report immediately whenever, in his judgment, improper commands were given him as jailor.”<sup>35</sup>

Arriving at Fort Leavenworth on July 6, Colonel Sumner wrote and filed his official report on the Topeka dispersal the following day. His hope—shared by Davis—was to withdraw from domestic constabulary service the portion of the First Cavalry operating in eastern Kansas and take that battalion up the Oregon Trail, as a part of Colonel William S. Harney’s Sioux Expedition, but Major General Smith, appointed to command the Western Department on June 27, had arrived during Sumner’s absence. He overruled Harney; pacifying Kansas was the president’s and the Democratic Party’s priority. The First Cavalry would stay in eastern Kansas. Smith—and Pierce—ruined the graceful exit that Davis had planned for Sumner. With no command to lead, Bull Sumner left Fort Leavenworth on July 14.<sup>36</sup>

Even as he exited Topeka, Sumner’s culpability in the dispersal was already an issue among correspondents and onlookers. Redpath and Phillips opined that the colonel, however honorable, was no less a “tool” of the Pierce administration than were Shannon, Donelson, and other Democratic appointees in Kansas. The editor of the *National Anti-Slavery Standard*, comparing Sumner to Cromwell, explained, “Our military dictation . . . is perpetrated in a Republic, under forms of law and a written Constitution.” The *Chicago Tribune’s* editor expanded the historical analogies to Napoleon Bonaparte and Napoleon III: “The purpose of both was to crush out the popular will; free legislation; free speech.” With his deployment of Sumner’s regulars, President Pierce

35. Robinson recalled this conversation in a letter to Sumner: Charles Robinson to Edwin Sumner, July 7, 1856, in “Kansas Affairs,” *New York Daily Times*, July 25, 1856. The Walker incident is described in [Unnamed correspondent], July 6, 1856, quoted in “Kansas Correspondence of the Atlas,” *Boston Daily Atlas*, July 28, 1856.

36. Sumner’s Topeka report is Edwin Sumner to Samuel Cooper, July 7, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 448–49. Edwin Sumner to Samuel Cooper, July 13, 1856, roll 63, W140 (Edwin V. Sumner), CB 1863, M1064, RG 94, National Archives, Washington, D.C.; Persifor Smith to Samuel Cooper, July 14, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 457–58. In this letter, Smith assigned Sumner’s Topeka dispersal high marks. To his friend George B. McClellan, Joseph E. Johnston, the First Cavalry’s lieutenant colonel, described Sumner as in “high dudgeon” and feeling “ill-used by an ungrateful administration” when he exited Fort Leavenworth. See Johnston to McClellan, August 10, 1856, quoted in Mullis, *Peacekeeping on the Plains*, 181–82. On Sumner’s desire to campaign, see Mullis, *Peacekeeping on the Plains*, 199. On June 20, 1856, Davis ordered Harney to close his Sioux Expedition; see George Rollie Adams, *General William S. Harney: Prince of Dragoons* (Lincoln: University of Nebraska Press, 2001), 145.



Colonel Sumner filed his field reports with Adjutant General Samuel Cooper, who forwarded to the secretary of war those letters containing valuable information. Speaking for Davis in March 1856, Cooper reiterated to Sumner that he had authority to “judge” neither the “disposition” nor origin of any organized party, “whether armed or unarmed.” He could only answer the governor’s “requisition for a military force” to overcome “armed resistance . . . to the laws and against the peace and quiet of the Territory.”

intended to impose the “authority” of the Southern “Oligarchy” on Kansas and the West.<sup>37</sup>

Redpath’s and the *Tribune’s* excoriation of Sumner was the exception among free-soil correspondents and editorialists, for they generally distinguished the colonel from Pierce, Davis, and Shannon. On July 7, two days after a conversation with Sumner in Lecompton, Robinson addressed to him a letter published in the *New York Daily Times* later that month. The free-state leader assured Sumner that his declamations of the Pierce administration and its Kansas territorial officers “cast no reflection or censure” on him. “As an officer,” Sumner had “strictly

37. Redpath, July 4, 1856, quoted in “The Fourth of July at Topeka,” *Chicago Tribune*, July 15, 1856; [Phillips], July 4, 1856, quoted in “Kansas: Dispersion of the Free-State Legislative Convention by United States Troops,” *New York Daily Tribune*, July 19, 1856; “The Kansas Legislature,” *Chicago Daily Tribune*, July 15, 1856.

obeyed the orders of your superior, the Commander-in-Chief, and could not have done otherwise" unless the colonel "resigned" his "commission." No matter what odium the American people flung at the Pierce administration, "all parties must concede to you, personally," Robinson explained, "the character of an honorable, impartial, highminded [*sic*] and efficient officer." Following that praise, Robinson narrated a lengthy history of the president's and Missourians' crimes committed against the "real settlers of Kansas" since the passage of the Kansas-Nebraska Act in 1854.<sup>38</sup>

A second defense of Sumner galloped in from another direction. The Topeka dispersal intensified congressional scrutiny of the Pierce administration's Kansas policies. In spring 1856, the Republican-controlled House had dispatched a committee, chaired by Michigan representative William A. Howard, to investigate allegations of proslavery election fraud in Kansas. The committee majority found that poll-crashing Missourians had elected the Kansas Territorial Legislature just as the free-state movement claimed, and thus condemned Pierce's deployment of the army to enforce laws passed by that "bogus" body. The *Howard Report*, combined with the Topeka dispersal, compelled the Senate to pass, on July 21, a resolution demanding to know whether the War Department had instructed commanding officers in Kansas to break up "any meeting of the people of that Territory, or to prevent, by military power, any assemblage of the people of that Territory." Nine days later, Davis replied that his office had issued "no such orders," attaching seven official items to prove his point. Among those documents were his original orders to Sumner and Cooke issued in February, Cooper's clarification for Sumner sent in March, Davis's approval of Sumner's course dispatched on May 23, and Davis's July 19 endorsement inscribed on Sumner's Topeka report. President Pierce submitted Davis's report to the Senate on August 5.<sup>39</sup>

Davis's denial only stirred the hot coals of congressional outrage. To any knowledgeable representative,

senator, or pundit Davis's attachments made clear that Colonel Sumner had "obeyed his instructions to the letter." The incensed editor of the *Boston Daily Atlas* reminded the president, "Col. Sumner is an old soldier, and knows what it is to be a strict constructionist." Indeed, Davis's response was disingenuous, for his letter of May 23 to Sumner iterated "the denial of the existence of the [Kansas territorial] government" as one kind of resistance against which the governor might deploy regular troops. The very existence of the free-state legislature was a shrill declaration of such denial.<sup>40</sup>

Northern editorialists admonished Pierce and Davis for appearing to lay the culpability for the Topeka dispersal squarely on Colonel Sumner, one of the army's most distinguished senior officers of northern birth. They impugned the administration's response as "a contemptible quibble," "artful dodging," "mendacious meanness," and "backing and filling." From Buffalo, one outraged *New York Daily Times* reader, who signed himself "Lawrence," labeled Pierce and Davis "heartless hypocrites" and accused them of "now endeavoring to crush a gallant and faithful officer" so that they might "escape the unpopular responsibility for the act." Lawrence noted that Davis had purposely held back Pierce's telegraphed dispatch, dated May 23, in which he admonished Shannon to employ the regulars in all peacekeeping and law enforcement missions. The editor of the *New York Daily Times* likewise assailed the Pierce administration's "characteristic cowardice and treachery." The editor wrote, "He [Davis] throws the whole responsibility for that gross violation of the Constitution and the law upon Col. Sumner."<sup>41</sup>

"Lawrence" and the *Times* editor suggested radical action. Either Davis should "order a Court-Martial" of Colonel Sumner for "a gross violation of duty" and for assuming "powers not intrusted to him," or Sumner ought to "demand a Court of Inquiry concerning the serious charges that it [the Pierce administration] insinuates against him." Both pundits dared Davis to bring Sumner to trial by his army peers. The hearings would expose, they insisted, the administration's diabolical

38. Charles Robinson to Edwin Sumner, July 7, 1856, quoted in "Kansas Affairs," *New York Daily Times*, July 25, 1856. Robinson stated his praise of Sumner in his *The Kansas Conflict* (New York: Harper, 1898), 296. An untitled editorial in the *New York Daily Tribune*, July 10, 1856, noted Sumner's "reluctance" and "utmost consideration" during his performance of "this revolting service" ordered by his "superiors." The author, possibly abolitionist editor Horace Greeley, wrote, "Of course, he had no alternative but retirement from the public service."

39. United States House, *Howard Report*, 34th Cong., 1st Sess., 1855–1856, H. Rpt. 200, ser. no. 869; Jefferson Davis to Franklin Pierce, July 30, 1856, 34th Cong., 1st sess., 1855–1856, Sen. Ex. Doc. No. 97, ser. no. 823, 1.

40. Jefferson Davis to Edwin Sumner, May 23, 1856, Washington, D.C., 34th Cong., 1st sess., 1855–1856, Sen. Ex. Doc. No. 97, ser. no. 823, 5; "Mendacious Meanness," *Boston Daily Atlas*, August 7, 1856.

41. "Col. Sumner and the Administration—Who Is Responsible for the Dispersal of the Topeka Legislature?" *New York Daily Times*, August 13, 1856; and "Colonel Sumner," *ibid.*; "Mendacious Meanness," *Boston Daily Atlas*, August 7, 1856; "Kansas in Congress: The [Artful] Dodgers of the Administration," *New York Herald*, August 9, 1856; "More Backing and Filling at Washington," *New York Herald*, August 7, 1856; "Mean," *Milwaukee Daily Sentinel*, August 13, 1856.

designs on Kansas and “the secret machinery by which the Administration first finds tools for its purposes, and then crushes them for their obedience.”<sup>42</sup>

On the other side, the proslavery response was mixed. An editorial in the New Orleans *Daily Picayune*, which reported on the Senate’s resolution and Davis’s endorsement, categorized the free-state legislature as “insurrectionary.” That illegal body had every intention of exercising its “bogus State constitution” and defending it “by arms against the Territorial authorities,” Sumner’s regulars included. The editorialist was confident that “proofs” of free-state illegalities would be forthcoming from federal authorities, Sumner among them, to exonerate the Pierce administration. But hard-line Southerners believed that the president ought to allow the “law and order” forces, whether from Missouri or Kansas, to smite the abolitionist “scoundrels” in the free-state movement. The *Macon Weekly Telegraph* in Georgia accused Sumner and the regulars of shielding “the assassins [*sic*] in their work of blood and pillage.”<sup>43</sup> As he labored to keep the peace and enforce the law in Kansas, Colonel Sumner was aware of proslavery discontent with his operations.

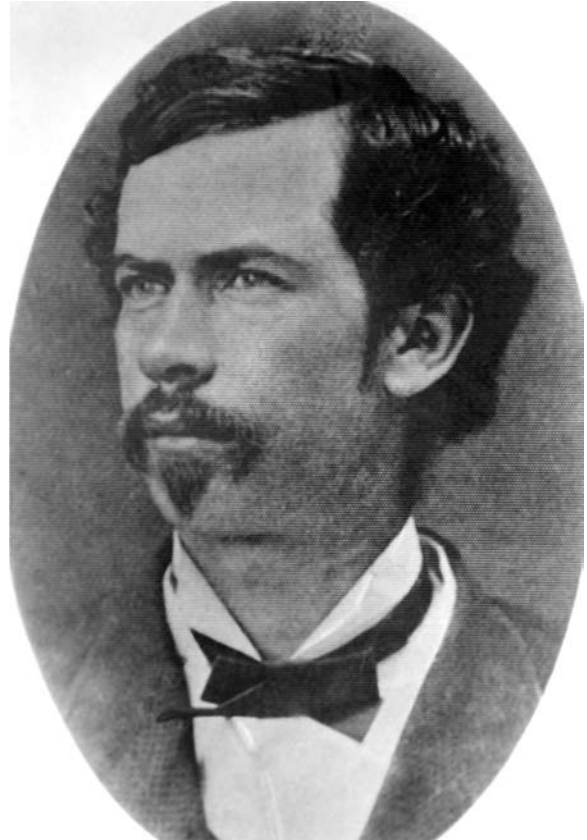
Written on July 7 at Fort Leavenworth, Sumner’s report was straightforward and pithy and placed the best possible spin on his delicate and unpopular mission. He had deployed troops to Topeka, he explained to Adjutant General Cooper, in direct response to summonses from Governor Shannon and Acting Governor Woodson. Once in Topeka, Sumner deferred all legal interpretation to the civil authorities. Acting Governor Woodson, in consultation with the other civil officers present, decided to prevent the free-state legislature, an illegal body under Kansas law, from convening. After free-state legislators refused to dissolve their assembly on the marshal’s command, Woodson summoned the army, and Sumner executed the dispersal orders. Sumner remarked, “I consider myself very fortunate in having accomplished my object without using an angry word, or receiving one in the slightest degree disrespectfull [*sic*].”<sup>44</sup> Here was the federal army’s moral force, urged by Davis in February, effectively applied to a volatile civil episode.

Sumner’s report, an after-action narrative, reassured Davis. The secretary’s official endorsement, written on

42. “Col. Sumner and the Administration—Who Is Responsible for the Dispersal of the Topeka Legislature?” and “Colonel Sumner,” *New York Daily Times*, August 13, 1856.

43. Editorial, *New Orleans Daily Picayune*, August 12, 1856; “The U.S. Army in Kansas,” *Georgia Telegraph*, September 23, 1856.

44. Edwin Sumner to Samuel Cooper, July 7, 1856, *Kansas Historical Collections*, 1886–1888 4 (1890): 448–49.



*As territorial secretary and acting governor, Daniel Woodson was a willing political tool of the proslavery cause in Kansas. It was Woodson, in Governor Shannon’s absence, who was forced to determine how best to disperse the free-state legislature, scheduled to convene in Topeka on July 4, 1856. Sumner initially dispatched Major John Sedgwick to Topeka, but Woodson insisted that the colonel attend to this matter in person.*

July 19 as Congress debated Pierce’s Kansas policy and the Topeka dispersal, sought to protect the colonel and the War Department. Sumner’s sober account demonstrated to the secretary’s satisfaction that “circumstances, not disclosed in previous reports, existed to justify him in employing the military force to disperse the assembly at Topeka.”<sup>45</sup> Sumner had done his duty—he had dissolved the free-state legislature on the governor’s and acting governor’s orders—he was in the clear.

Sumner’s narrative also gave Secretary Davis legal rope with which he could hang the embattled Shannon, the weakest link in the political chain. Davis clearly regretted the depths to which Shannon and Woodson had drawn the army into “the duties of a constabulary force.” In his endorsement’s second sentence, Davis

45. Secretary Davis, endorsement to Colonel Sumner’s Topeka report, July 19, 1856, extract in Cooper to Sumner, July 21, 1856, *Kansas Historical Collections*, 1886–1888 4 (1890): 452.

raised the legal issue of whether “the Governor had found the ordinary course of judicial proceedings, and the powers vested in the United States marshal, inadequate to effect the purpose which was accomplished by the employment of the troops of the United States.” In other words, after Marshal Donelson failed to disperse the free-state legislature on the first try, did he attempt and fail with a civilian posse a second time, before he requisitioned federal troops? Davis wanted the colonel to “comment” on this technical detail.<sup>46</sup>

The prickly Bull Sumner first saw Davis’s response to the Senate resolution—and thus the secretary’s endorsement on his Topeka report—in the newspapers while he was vacationing with his family on bucolic Frenchman’s Island in Oneida Lake, New York. Unclear from his correspondence is the extent to which Sumner bought into the scapegoating scenario argued by the anti-Pierce press. Instead of simply detailing the marshal’s process in Topeka as Davis suggested, however, Sumner drafted an elaborate “comment” that justified categorizing the free-state legislature as “insurrectionary” under the president’s proclamation and preempting “the serious consequences” that would surely attend its convention as a legislative body and its passing of legislation for all Kansans. The language in this response indicated that Sumner had deliberated with Acting Governor Woodson the legal issues arising from Shannon’s dispersal order.<sup>47</sup> The depth of Sumner’s engagement in those discussions, which were the legal provenance of civilian authorities, appeared constitutionally improper to Secretary Davis.

Sumner then vented to Cooper on another related matter, his extraction from Kansas in early July. His “measures” in Kansas, he inveighed, had “borne hard” against both sides. He was undoubtedly aware of the complaints lodged against him with the administration and in the press, but he suspected Atchison’s people of turning the president against him: “The Missourians were perfectly satisfied so long as the troops were employed exclusively against the Free-State party; but when they found that I would be strictly impartial, that lawless mobs could no longer come from Missouri, and that their interference with the affairs of Kansas was brought to an end, then they immediately raised a hue-

and-cry that they were oppressed by the United States Troops.”<sup>48</sup> That outburst was the closest Sumner ever came to declaring free-state—and anti-Atchison—sympathies during his Kansas command. Sumner’s fulmination confirmed to Davis the necessity of removing Bull Sumner from the partisan hothouse of Kansas Territory and redeploying him to fight Indians.

Unlike the Northern newspapers flogging the scapegoat analysis, Colonel Sumner knew the source of his political troubles. By late May, he had become so unpopular in western Missouri that Atchison’s followers had begun circulating a petition “praying for the immediate removal of Col. Sumner.”<sup>49</sup> What had happened to Sumner’s standing among the Missourians, who knew him well from his long service on their frontier? First, although initially praising Pierce’s commitment of federal troops to Kansas, ultra-Southerners and Atchison himself soon turned against federal military involvement and began haranguing the president to let the “Law and Order Party” enforce territorial law and corral the free-state movement. They soon realized that Sumner’s neutrality or independence was an impediment to their Southern campaign in Kansas. Second, the Atchison people became apoplectic when Shannon and Sumner, for unknown reasons, allowed the free-state legislature to conduct business, which included swearing in the government’s officers in Topeka, on March 4. That tolerance raised doubts among Southern Democrats about Shannon’s and Sumner’s commitment to suppressing free-state treason. Third, in June Sumner blockaded the roads from Missouri to Kansas to law-and-order forces but left unguarded the Iowa and Nebraska borders traversed by free-soil settlers and merchants. That inequity enraged Missourians.<sup>50</sup>

No less thin skinned, Secretary Davis bristled at Sumner’s insolence. His long endorsement of Sumner’s letter of August 11 systematically identified the colonel’s various legal trespasses. What language in the president’s proclamation granted Sumner the authority “to use force . . . for the dispersion of an ‘illegal legislative body’”? Sumner had the power, Davis lectured, to

48. *Ibid.*, 451.

49. “Affairs in Kansas. Wilson Shannon,” *Saturday Evening Post*, May 31, 1856. The report of the petition came from a correspondent in Jefferson City, the Missouri capital.

50. Parrish, *David Rice Atchison of Missouri*, 195. For Southern newspapers that supported Pierce’s military intervention, see “Kansas and the Administration,” *Memphis (Tennessee) Appeal*, March 12, 1856; “The Kansas Question—Stand by the Constitution and the Laws,” *Little Rock (Arkansas) True Democrat*, March 18, 1856. By late April, the *Squatter Sovereign*, Atchison’s mouthpiece in Kansas, declared

46. *Ibid.* Davis criticized Shannon’s military policy in a cover letter to which he attached Sumner’s correspondence with the governor: Jefferson Davis to the President, July 3, 1856, pp. 79–80, vol. 6, roll 6, M127, RG 107, National Archives, Washington, D.C.

47. Edwin Sumner to Samuel Cooper, August 11, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 450–51.

intervene when lawless acts were fully realized—not when “serious consequences” were “anticipated.” And completely dumbfounding Davis was the colonel’s “wholly inappropriate” condemnation of “Missourians.” The colonel could “make no discrimination,” Davis scolded, “founded on the section of the country from which persons might or had come.”<sup>51</sup> To the secretary, Sumner’s denunciation smacked more of personal pique than of professional assessment and probably confirmed the Pierce administration’s doubts about his political reliability.

Davis’s sensitivity to Sumner’s Missouri reference was not solely legalistic. A slave-owning Mississippian, the secretary had helped secure passage of the Kansas-Nebraska Act, and he supported Kansas becoming a slave state. By association, Sumner’s attack on “Missourians” was finger wagging at Atchison, an old and dear friend with whom Davis had attended Transylvania College in the early 1820s and served in the U.S. Senate.<sup>52</sup> Davis and Atchison shared the cause to advance the fortunes of the slave South in the United States.

In a second letter, Sumner, a veteran army infighter, shrewdly demonstrated that his and Woodson’s course in Topeka had been no radical departure from administration policy in Kansas. Federal authorities had already branded the free-state government “insurrectionary,” for they had arrested many of its “principal officers,” Charles Robinson included, for “treason.” And did not preempting violence or unrest fulfill one of the charges the secretary iterated in his orders? Sumner explained, “As I understood the letter of instructions of February 15, 1856, it was expected that peace would be maintained in the Territory by the moral force of the presence of the troops; and in order to do this, it was necessary to be very vigilant in anticipating combinations that would have

become uncontrollable.”<sup>53</sup> Once committed in earnest by Shannon, Sumner’s regulars had repeatedly intercepted and dispersed free-soil and proslavery gangs or militias before they executed heinous or criminal acts.

Plunging forward, Sumner again invoked Davis’s instructions to defend the Topeka dispersal. The colonel had not usurped the civil power; both Shannon and Woodson had declared the free-state assembly an “unlawful legislative movement” and an “insurrectionary” meeting. They ordered Sumner to Topeka, and when the free-state legislature “disregarded” the marshal’s order to adjourn, Woodson filled Donelson’s requisition for federal troops. Sumner asked, “Under these circumstances could I have acted differently without a palpable violation of my letter of instructions of February 15, 1856, which requires the commanding officer to interpose the troops whenever called by the Governor to do so?” After all the legal jousting, Sumner had defended himself with one of Davis’s cherished principles: the Topeka dispersal, whatever its legal justification or propriety, was the consequence of decisions made by civil authorities, not army officers.<sup>54</sup> Colonel Sumner had simply carried out the orders of his civilian superiors.

But the secretary was unsettled—legitimately so—on another legal point. None of the federal principals—Woodson, Cato, Isaacs, Donelson, or Sumner—had documented in Topeka the sequence of events or decisions that led to the army’s deployment to Constitution Hall on July 4. Sumner cited no written order from Woodson, who had been “personally present in [his] camp desiring the interposition of the troops.” Donelson, Woodson, and Sumner had enacted the requisite legal ritual—verbally.<sup>55</sup> Sumner’s failure to secure a formal written requisition at this critical juncture left Davis no documentary cover against the inevitable suspicions of a proslavery cabal and against political attacks on him and the president. Sumner had dropped the reins.

Sumner’s Topeka dispersal and Davis’s response to the Senate resolution became entangled in the congressional budget process that summer. Already inflamed by the Howard Commission’s report, the Republican-dominated House attached to the army appropriations bill a rider forbidding the president from enforcing laws enacted by the “bogus” Kansas Territorial Legislature with federal troops, but the Senate, still controlled by

that federal troops alone stood between the “abolitionists” and their destruction by the “*malitia* [sic]”; see “War in Kansas,” *Squatter Sovereign*, April 29, 1856. Missouri complaints against Sumner include *St. Louis Republican*, quoted in “News from the Plains,” *New York Daily Times*, June 27, 1856. Writing from Westport, Missouri, on June 12, 1856, a correspondent to the *Jefferson (Missouri) Inquirer* reported that Sumner had read “the riot act to an infuriated mob” in western Missouri, his words giving them “cold comfort”; see “Correspondent of the *Jefferson Inquirer*” in (Washington, D.C.) *Daily National Intelligencer*, July 2, 1856.

51. Jefferson Davis, “indorsement” to Colonel Sumner’s letter of August 11, 1856, in Davis to Samuel Cooper, August 27, 1856; see also Davis’s earlier “indorsement,” extract in Samuel Cooper to Edwin Sumner, July 21, 1856, *Kansas Historical Collections, 1886–1888* 4 (1890): 451–52.

52. William J. Cooper, *Jefferson Davis, American* (New York: Alfred A. Knopf, 2000), 268–70; Davis, *Jefferson Davis*, 20; Parrish, *David Rice Atchison of Missouri*, 3–4.

53. Sumner to Samuel Cooper, August 31, 1856, Syracuse, *Kansas Historical Collections, 1886–1888* 4 (1890): 452–53.

54. *Ibid.*, 453.

55. *Ibid.*



Kansas, represented in this cartoon as "Liberty, the fair maid of Kansas," is ravished by the Buchanan and Pierce administrations and the Democratic leadership in Congress, who are portrayed here as one in the same with the border ruffians of Missouri.

Democrats, rejected the amendment. So the session adjourned on August 18 without passage of the bill. Praising the backbone of House Republicans, the *New York Daily Tribune* asked, "Of what use is the army now?" Pressed by Indian wars across the West and a vigilante movement in San Francisco, the president called a special session of Congress, which quickly passed the army appropriations bill omitting the restriction.<sup>56</sup>

During the spring and early summer of 1856, Sumner did his duty in Kansas Territory; he fulfilled his legal obligations in *posse comitatus*. Despite his distrust of the Democratic political machine in the territory, he faithfully served Governor Shannon and the federal courts as Secretary Davis had instructed him in February and March. He promptly provided posses and armed constabularies at Shannon's request. After the Pottawatomie Massacre, Shannon began omitting the civil-posse stage in *posse comitatus* and committing federal regulars directly to armed constab-

56. Nichols, *Franklin Pierce*, 479–80. "XXXIVth Congress: An Extra Session," *New York Daily Tribune*, August 22, 1856; Editorial (critical of the army) and editorial (explaining army appropriations bill), *New York Daily Tribune*, August 25, 1856. Federal troops had helped disperse or control filibuster enterprises originating in San Francisco, but Brigadier General John E. Wool never committed regulars to break up the Second Vigilance Committee, which invested San Francisco in spring and summer 1856. See Ball, *Army Regulars on the Western Frontiers*, ch. 5.

ulary duty, in which civilian law-enforcement officers were often absent from regular-army units. That evolution in the federal military mission aggravated the legalistic Davis, who sharply criticized Shannon's constitutional transgressions in briefs written for President Pierce. To be fair, federal authorities, if they had the intention, could field no neutral civilian posses in Kansas. Since late April, Sumner believed that the civilians, mostly Missourians, called by the marshals or sheriffs were too partisan and untrustworthy and that the governor should rely exclusively on federal troops to fill the posses. They alone, the colonel argued, commanded obedience in bitterly divided Kansas. By late May, Shannon and Sumner agreed that pacifying Kansas began with checking the invasions by Missourians, the very men who had filled the marshals' posses in December and May. Skipping the civil-posse stage in *posse comitatus* was a pragmatic choice made by the hard-pressed Sumner and Shannon.

At the same time that he criticized Shannon, Secretary Davis applied *posse comitatus* to defend Sumner's command of federal troops in the Kansas disturbances. Davis's briefs written in June and July and his endorsement scribbled on July 19 express his general satisfaction with the colonel's decisions in May and June. Two points worked in Sumner's favor. First, in *posse comitatus* the commanding officer's role was to answer his civilian

superiors' requisitions for military assistance, not to judge the necessity for fielding military posses. From Shannon's and Sumner's reports, Davis clearly saw that the colonel had faithfully filled the troop requisitions of Governor Shannon, even after the sack of Lawrence had deflated the Pierce administration's and Sumner's confidence in his judgment and effectiveness. Secondly, Sumner's prominent role in the break up of Brown's free-state army and Whitfield's proslavery force, and in the dispersal of the free-state legislature, clearly discomfited the secretary of war. Davis was irritated at Shannon's failure to fulfill the protocols of *posse comitatus*, but when he had sifted the information reported to him, the secretary acknowledged to the president that the lawlessness and violence in Kansas generally demanded the intervention of Sumner's regulars.

For all intents and purposes, Secretary Davis indeed relieved Sumner from federal constabulary duty in Kansas. His reasons, however, were not those usually cited: Sumner's "painful duty" remark at Topeka; his "too great leniency" on free-state partisans; his unlawful dispersal of the free-state legislature; his free-state sympathies.<sup>57</sup> The decision to replace Sumner with Smith—more a political calculation than a professional criticism—had been made soon after the Democratic Party Convention, several weeks prior to the Topeka dispersal. As a hard-boiled regular-army officer, Bull Sumner was too independent and inflexible for President Pierce and Southern Democrats, who were desperate to resolve the partisan conflict in the South's favor. They knew that Sumner shared no interest in their political cause, making Kansas a slave or, at least, a Democratic state. Davis, however, highly esteemed Sumner as a professional officer and hoped to redeploy him and some units of his First Cavalry to the Great Plains, where they could reconnoiter the country and campaign against the Indians.

Indeed, after Sumner left Kansas, Major General Smith deployed federal troops primarily to protect Leecompton,

57. E. T. Carr, "Reminiscences of Ft. Leavenworth, 1855–1856," *Kansas Historical Collections, 1911–1912* 12 (1912): 381; Elvid Hunt, *History of Fort Leavenworth, 1827–1937*, 2nd ed. (Fort Leavenworth, Kans.: Command and General Staff School Press, 1937), 94; Samuel F. Tappan, "E. V. Sumner," p. 5, Libraries and Archives Division, Kansas Historical Society, Topeka; Wilder, "Story of Kansas," *Kansas Historical Collections, 1897–1900* 6 (1900): 340; Mullis, *Peacekeeping on the Plains*, 183; Ewy, "The United States Army in the Kansas Border Troubles," 394–95; Burke Davis, *JEB Stuart: The Last Cavalier* (New York: Wings Books, 1957), 39; Ball, "Petty Embroilments of Armed Constabulary Duty," 37; Ball, *Army Regulars on the Western Frontier*, 177; Stanley, *E. V. Sumner*, 204; Long, "Biography of Major General Edwin Vose Sumner," 162; John G. Nicolay and John Hay, *Abraham Lincoln: A History* (New York: The Century Company, 1890), 1:436, 2:2; Nichols, *Franklin Pierce*, 478.

the territorial capital, from free-state attack and let the Law-and-Order Party enforce territorial law and harass free-state settlers. In the law-enforcement vacuum created by Sumner's departure, however, the free-state guerrillas ironically defeated the Missouri movement in the field during what became known as the August War and consolidated and widened the free-state movement's beachhead in Kansas. By the fall of 1857, free-soil settlers became the territorial majority and captured the Kansas Territorial Legislature in the fall elections.<sup>58</sup>

A loyal army man, Sumner corresponded only with Adjutant General Cooper; he never took his quarrel with Davis to the newspapers. By performing his duty—obeying the orders of his civilian masters—Sumner likely expected the War Department to defend him and history to uphold his professional reputation. Neither Davis nor Pierce tried to court-martial the colonel, and, in general, Pierce's policy failures in Kansas neither tarred nor blemished Sumner's professional record. The colonel entered the Civil War with a reputation for professionalism, devotion, honor, and courage.

Sumner's quarrel with Davis appears to have been a tempest in a teapot during their long acquaintance. Davis's wife, Varina, recalled that the old soldier had "made [no] pretence of leaning toward southern opinions" to win his appointment to the First Cavalry. During February 1858, the colonel "frequently" called on the Davises in Washington, D.C., when his former secretary was bedridden with eye inflammation. Davis gratefully received Sumner, who read aloud books, newspapers, and magazines and chatted about "army matters" and other issues. That same year, Davis reported favorably to his successor, Secretary John B. Floyd, on the applications of Edwin Vose Sumner, Jr., and Samuel Storrow Sumner for appointment to the army and to the United States Military Academy respectively. In the latter case, Davis praised their father's "long and valuable services." Neither application was successful.<sup>59</sup> [KH]

58. Etcheson, *Bleeding Kansas*, chs. 6–7; Ball, *Army Regulars on the Western Frontier*, 178–80, 182–83.

59. Varina Davis, *Jefferson Davis, Ex-President of the Confederate States of America: A Memoir by His Wife* (New York: Bedford Company, 1890), 1:577. For the Sumner sons' applications, see the calendar entries for January 23, 1858, and December 10, 1858, in Crist and Dix, *Papers of Jefferson Davis*, 6:560, 589.