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Judge Lecompte and the “Sack of Lawrence,”
May 21, 1856
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PART ONE: THE CONTEMPORARY PHASE

THE so-called “sack of Lawrence” of May 21, 1856, according to
Kansas traditions, was perpetrated by Sheriff Samuel Jones,
under orders of the United States District Court, presided over by
Chief Justice Samuel D. Lecompte (1814-1888). Only occasionally
has anything like a correct version of that day’s events been told.

On May 21, 1856, a posse of supporters of the territorial govern-
ment, many of whom were from Missouri, assembled on the ridge
west of Lawrence, at the call of United States Marshal Israel B.
Donaldson. His purpose was to have aid at hand to support him in
the service of official papers pertaining to his duties as officer of the
United States District Court. Leaving the main posse behind,
Deputy Marshal W. P. Fain served his papers in Lawrence, with-
drew, and, official duties being completed, the posse was disbanded.
At that time Sheriff Samuel J. Jones, of Douglas county, called the
men into his service, alleging the need of aid in making arrests and
abating nuisances under authority of the grand jury, the objectives
being the New England Emigrant Aid Company hotel, and the two
Lawrence newspapers, the Herald of Freedom, and the Kansas Free
State. The presses and office equipment of these newspapers were
destroyed, and the type thrown into the river. And before Jones’
mob departed, the house of Gov. Charles Robinson, southwest of
town, was burned, and an undetermined amount of damage in the
nature of looting and vandalism occurred. No Lawrence people
were killed, or seriously injured. This was the “sack of Lawrence.”

In order to justify the action of Jones, the Proslavery newspapers
alleged that Jones was executing the orders of the grand jury or of

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the United States District Court, Judge Lecompte's division. This claim of right under law, played directly into the hands of the Free-State party, in Kansas, and the newly organized Republican party in federal politics, which were engaged, for political purposes in the midst of the presidential campaign, in pinning all Kansas troubles upon the federal government, as represented by the Democratic party and the Pierce administration. In fact, the excesses of the presidential campaign are the major explanation of the so-called Kansas Civil War of 1856, with Bleeding Kansas as the principal stock in trade of the newly launched Republican party, composed of discordant elements whose only point of coherence was this one issue of opposition to the extension of slavery into the territories, epitomized by Kansas.

THE IMMEDIATE SETTING,
THE PRESIDENTIAL CAMPAIGN OF 1856

On March 30, 1855, the election of the first territorial legislature was held and Proslavery men won. According to the census taken preceding the election, settlers of slave state origin were present in a clear majority. Although facts are not available to provide proof one way or another, the reasonable presumption is that the so-called Proslavery party could have carried the election decisively. Upon that basis, the action of Missourians in invading Kansas and voting illegally, was an inexcusable blunder. The Free-State men repudiated the legislature as "Bogus," and capitalized upon the situation politically in the states. For that development the Proslavery party had only itself to blame.

The next step in Kansas local developments is a different matter. Free-State men called two conventions; at Big Springs, September 5, and at Topeka, September 19, 1855. The Big Springs convention organized the Free-State party as a political weapon to unite Free-State sympathizers of all shades of opinion upon the single issue. Another element controlled the Topeka convention, which decided to launch a state government movement, some going so far as to advocate setting it in operation in defiance of the territorial government, even if such action led to a test of force. More moderate counsels prevailed for the most part, however, in March, 1856, stopping with the overt act of installing the officers under the Topeka constitution and standing in readiness to take further action.1 A bill was introduced into the house of representatives to admit

Kansas into the Union under this constitution and government, headed by Charles Robinson, the political agent of the New England Emigrant Aid Company in Kansas.

While these events were maturing during the early months of 1856, the presidential campaign was moving rapidly into the nominating convention stage. The American party met at Philadelphia, February 22, and split on the slavery issue. This party was the political aspect of a violent nativist movement—100 percent Americans—hostile to foreign immigrants, especially to the Catholic population. Antiforeign and anti-Catholic riots had occurred in several places during the years immediately preceding this election of 1856. The American party had minimized the slavery question, as a secondary issue, but when the Philadelphia convention split, it meant that the sectional controversy based upon slavery gained the ascendancy even in the ranks of the political nativists, depriving the American party of its primary reason for existence.

The process of welding together all opponents of the Democratic party supporting the administration was well under way with the opening of the year 1856; Northern Whigs, anti-Nebraska Democrats, Freesoilers, and in some respects most important, Americans. Nathaniel P. Banks, an American, had been elected speaker of the house of representatives by the anti-administration coalition. The Republican party elements held a preliminary national convention at Pittsburgh, February 22. John C. Frémont, a Republican aspirant for the nomination, and Banks, were collaborating in the task of capitalizing upon the Kansas situation.

In relation to the nativist sentiment it is important to call attention to the manner in which the issue crossed party lines. Amos Lawrence, treasurer of the New England Emigrant Aid Company, was a major force in the American party in Massachusetts, and Robinson was the company’s political agent in the Territory of Kansas. In the Democratic party, Senator Atchison of Missouri was a nativist in sentiment and agreed with the Know-Nothings in his attitude toward foreigners, while opposing them as a political party, because the American party would divide and weaken the Democratic party. He co-operated in attempting to add the anti-foreign Clayton amendment to the Kansas-Nebraska bill, and was even accused of being the author of it. Thus Amos Lawrence and Atchison were in agreement on nativism as an attitude, but opposed in their views on how to implement it partywise, and were opposed also in attitude toward slavery. Confusion and contradiction in
ideas and emotions was the most characteristic feature of this
decade of the 1850's. Unless that fact is understood and fully
appreciated, the history of the decade is quite incomprehensible.

Frémont and Charles Robinson had been associated briefly in
California politics at an earlier time, and Frémont used this as an
excuse for writing to Robinson, agent of the New England Emigrant
Aid Company, about the current situation and the advantages of
cooperaion. That letter was published, but Frémont had not sent
it direct to Robinson. Banks acted as intermediary, writing to Rob-
inson a covering letter, dated March 19, which was not printed. 2
Banks urged the Frémont candidacy. "We are in expectation of
being able to do something in Congress," he wrote, "that will [be]
an effectual aid to Kansas. . . . The Kansas question will meet
its first decision in the House this week, and I think it will not be
against us." Upon two matters in particular Kansas did expect
favorable house action, the admission of Kansas under the Topeka
constitution, and, in the meantime, the seating of Andrew H. Reeder
in the house as delegate from the territory of Kansas.

The house did act on March 19, the day Banks dated his letter
to Robinson, in authorizing a special committee on the Kansas
troubles generally, and in reference to elections particularly. The
committee, composed of William A. Howard of Michigan, as chair-
man, John Sherman of Ohio, and Mordcai Oliver of Missouri,
opened its first session in Lecompton, April 18, and its second on
April 23, expecting hearings to begin at Lawrence the next day.

In the senate, Douglas had made a report on Kansas, March 12,
denouncing the New England Emigrant Aid Company, and the
Topeka state movement. Collamer of Vermont, presented a minor-
ity report upholding the Free-State cause and suggesting repeal of
the Kansas-Nebraska act or admission of Kansas. On March 17,
Douglas introduced his Kansas bill to enable Kansas to form a state
government and apply for admission upon attaining the minimum
population necessary for a congressman, and specifying six months' residence as the minimum qualification for voting.

In his correspondence from Washington, dated March 12, Horace
Greeley wrote of the Douglas report on Kansas: "No man could
have made his Report who did not mean to earn the gratitude of
the Slave Power. . . . I shall consider Mr. Douglas henceforth

2. James C. Malin, "Speaker Banks Courts the Free-Soilers: The Frémont-Robinson
this article, the Banks letter was printed and used for historical purposes for the first time.
The inaccurate and misleading title for the article as it appears, was the work of the
editor of the New England Quarterly.
an aspirant for the Cincinnati nomination. . . .” Two days later, Greeley repeated that the Douglas report was “his bold bid for Southern favor.”

In connection with Douglas’ speech, upon his Kansas-Nebraska report and bill, the New York Tribune accused him of making a threat against the antislavery men: “We will subdue you!” The use of this phrase or anything of similar meaning was denied by Douglas, but to no avail. The New York Tribune printed a lead editorial, March 24, under that phrase as a text:

When the arch-traitor from Illinois recently vomited his rage upon the Senate in his declaration, “We intend to subdue you,” he only reechoed the warwhoop which, from the beginning of things, the principle of Evil in the world has forever shouted its warfare upon the Good.

The editor cited the Asiatic religions as recognizing that principle of the warfare of Good and Evil. Also: “To subdue the race of man, Satan crawled on his belly and ate dirt in Eden.” Then, as examples of the conflict of evil against good, reference was made to the Prometheus theme, the Pharaohs against Moses, and Judas against Christ, with application to the contemporary scene: “The Douglasses and Pierces of that day declared that, by the united instrumentality of Judas and the Doctors, they would subdue the Godlike on the Cross of Calvary.”

Reverting to Xerxes against the Greeks, the editor continued his alleged parallels with the Medieval church against Luther, the Stuart kings against Parliament, and King George against his American colonies, with victory in each case for “Good”: The godless crowd who resist man’s emancipation and enlightenment, who oppose every step of progress and cry out, “We will subdue you!” to the agents and agencies of social regeneration, diminish in numbers and force with the lapse of every century. . . .

Very early in the year, and prior to the actual organization of the Republican party nationally, Horace Greeley had written frankly from Washington to his managing editor, Dana, February 16, 1856: “We cannot (I fear) admit Reeder; we cannot admit Kansas as a State; we can only make issues on which to go to the people at the Presidential election.”

On May 19 and 20, Sen. Charles Sumner delivered a prepared speech, “The Crime Against Kansas,” including an indecent personal attack upon Senator Butler of South Carolina. On May 22, Representative Brooks, of South Carolina, a relative of the elderly Sena-


tor Butler, attacked Sumner, beating him with a cane. Although Sumner’s conduct was inexcusable according to any code of common decency, two wrongs did not make a right. Besides, Brooks’ assault made an antislavery hero of Sumner, diverting attention from the gravity of his offense. The dating of this excitement is critical to the Kansas story, because the Jones “sack of Lawrence” occurred May 21, the news reaching the East in the midst of the furor over Sumner, and with the Democratic and Republican national conventions coming up June 2 and 17, respectively.

The Pottawatomie massacre of five Proslavery men on the night of May 24-25, by John Brown, would appear to have been something that Proslavery men could have used to offset the Sumner and Lawrence excitement. It did not work out in that manner, however. The Proslavery men did not appear to have understood the possibilities of the art of propaganda, and the Free-State men suppressed and falsified the facts.5

On June 1, in the Plymouth Congregational church in Chicago, the Rev. J. E. Roy preached a sermon in which he attacked Douglas personally, charging him again, among other things, with the threat “We will subdue you!” On July 4, Douglas addressed a letter to Roy calling attention to the error of his charges:

I send this letter to you, instead of to the newspapers, for the purpose of giving you an opportunity of doing justice to me and to the cause of truth, which I trust you will regard a Christian duty, in the same pulpit where the injury was committed.

At first a private letter, it was soon released to the press, but the falsehood “We will subdue you!” once at large, could not be overtaken, and throughout the campaign the Republican press rang all the changes on the theme.6

THE JUDICIARY IN KANSAS

The Kansas-Nebraska act of May 30, 1854, had authorized territorial governments of the traditional type in the two territories, based upon the theory of three independent and equal departments, legislative, executive, and judicial. The judiciary, in turn, was created with powers identical with that branch in other territories. The jurisdiction was of a dual character, or mixed type, which was in itself in no respect different from former delegations of power.

5. Malin, John Brown and the Legend of Fifty-six. As the title of this book indicates, the central themes, the facts and the legend about the facts, are contrasted. As background for this treatment, much of the territorial history of Kansas was rewritten in the perspective of new manuscript materials.

It was the duty of the United States District Court for the territory to apply two bodies of legislation; the acts of congress applicable in the territory, and the acts of the territorial legislature. In Kansas this traditional arrangement afforded the basis of difficulties, because the Free-State party, challenging the legality of the election of the legislature of 1855, repudiated that body and all legislation enacted by it as illegal—bogus—and refused to obey the territorial laws, or recognize as legal the county governments and their officers, created by authority of the territorial legislature. Thus, a situation was created in which the Free-State people accepted the authority of the United States District Court and its acts when functioning under federal law, but questioned the right to enforce territorial “Bogus” law. By so doing, the Free-State men imposed upon themselves a dangerous course, and one that was pursued with only a limited success.7

At this point, it is in order to insert a word about the structure of the judiciary. The judge presided over the court. The attorney for the territory, and the district attorneys, were the law officers charged with the prosecution of violators of the law. The clerk of the court kept the records of judicial proceedings. The grand jury carried out investigations of law violation, with a certain co-operation of the judge and prosecuting attorney, but the action of the grand jury in voting indictments was an independent function, under the foreman as presiding officer, both the judge and the prosecuting attorney being excluded. Indictments must be prepared and signed, however, by the district attorney. Upon the voting of an indictment, it must be endorsed by the foreman as a “True Bill,” and presented in open court, when it became a part of the record of the court in the “Journal.” The prosecution before the court then became the responsibility of the district attorney. The marshal served processes, subpoenas, warrants, and made arrests. The sheriff was a county officer, having no connection with the United States District Court, unless, perchance, he might be deputized as a marshal, but if so, his duties would be performed as a deputy marshal, not as a sheriff. In the following discussion all these individual aspects of judicial structure, jurisdiction, and procedure, must be carefully differentiated by the reader, regardless of the confusion introduced by contemporary controversy.

In the case of the Wakarusa War of November, 1855, Governor

7. Malin, John Brown and the Legend of Fifty-six, Part Three, reviewed for the first time in Kansas history the problem of the judiciary, although primarily for its bearing on the Brown problem.
Shannon had called out the militia. The disorders flowing from that procedure brought instructions to the governor from Washington that in case military force was required in the future he should not call the militia, but was authorized to call upon the commandant at Fort Leavenworth for a detail from the regular armed forces stationed there.

In the incidents of April, 1856, when Sheriff Jones was engaged in serving warrants, April 19, particularly for S. N. Wood on account of the Branson rescue, as Wood had just returned to Kansas, some of the citizens of Lawrence interfered with him. He called upon the governor for aid, received a detail of regular troops, and made his arrests April 23. Upon the latter occasion Jones was acting as Deputy United States Marshal as well as sheriff. After nightfall of the same day Jones was shot by a Free-State man, but survived. The presence of Lieutenant McIntosh and his federal troops had not afforded protection.

The Howard committee, investigating Kansas troubles, had set April 24, and the Free-State Hotel in Lawrence, as the time and place for the contestants for the seat of territorial delegate to congress to present evidence. J. W. Whitfield sent a note, instead of putting in an appearance, saying “One of my chief witnesses (Sheriff Jones) has already been shot; on that account, others who are here have determined to leave. . . .” He stated also “I am and shall be unable to get my witnesses to attend the sitting of the committee at this place; they refusing, and with good reason, to expose themselves and run the risk of being assassinated whenever night shuts in, by a lawless band of conspirators.” Committee hearings were continued at the Free-State Hotel through May 12, except at Tecumseh, May 5-7, moving to Leavenworth for the May 14 session. Thus Reeder’s witnesses were heard at Lawrence, and Whitfield’s witnesses could be heard at Leavenworth or elsewhere. This congressional committee episode crystallized further among Proslavery men and Democrats, the idea of the Emigrant Aid Company Free-State Hotel as the symbol of Free-State and Republican party tyranny during the presidential campaign.

During these proceedings, the spring term of Judge Lecompte’s division of the United States District Court convened at Lecompton, May 5. Conflict of jurisdiction between the court and the congressional committee precipitated a crisis. A. H. Reeder was summoned to testify before the grand jury, defied the marshal, and was sup-

ported by a majority of the Howard congressional committee, before whom he was prosecuting his contest for the seat of delegate. In the perspective of hindsight, no insuperable obstacle appears in the scene that should have prevented a conference between the principals, to provide a schedule by which Reeder could have given the grand jury a few hours of his time to testify, without disrupting the proceedings of the congressional investigation. But such quiet and reasonable conduct would not have made political capital. On account of the prominence of the personalities involved in this particular incident, the whole situation deteriorated rapidly. It was during this period that Lecompte was accused of charging the grand jury on constructive treason. The treason indictments were voted, but not upon the doctrine of constructive treason, warrants were issued, and arrests were made.

Even though somewhat a diversion from the central issue of this study, certain facts must be placed in the record concerning the accusation against Lecompte about the treason charge to the grand jury. The matter was reported to the New York Tribune by "Bostwick" and printed, May 19, 1856, under a Lawrence, May 9, dateline. After reporting what purported to be the text of Lecompte's charge, Bostwick admitted: "Incredible as the above may seem it is nevertheless, as exact as I can from memory make it, and I assure you it made a deep impression on my memory." For almost a century Bostwick's version, admittedly written out from memory, was accepted and reprinted again and again, and Lecompte denounced upon the assumption that the language was Lecompte's; that it was an authentic document, free from any taint of error, misrepresentation, or fraud. Lecompte's actual charge to the grand jury is not incredible, but the use that was made of Bostwick's version would seem incredible, but for the record of it in books over nearly a century beginning with William A. Phillips' Conquest of Kansas (1856), and Mrs. Sara T. L. Robinson's Kansas: Its Interior and Exterior Life (1856).

United States Marshal Donaldson became convinced that force was necessary for the service of papers in Lawrence, and called a posse. Note should be made at this point that he did not apply to the governor for aid, but acted under the authority vested directly in him by act of congress to call upon citizens to act as a posse. It is this situation that provided the setting for the events of May 21 at Lawrence.

As of 1856, the business district, or principal part of the town
of Lawrence, did not extend south of Eighth street (Henry street), less than three blocks on Massachusetts street, and the intersection of Eighth and Massachusetts streets became the defense line in September, 1856, difficulties. Marshal Donaldson's posse assembled and established a camp ground, May 20, 21, on the ridge, possibly two miles west of the town, or where the ridge broadens west of the present university campus, and where a water supply from springs was available. Later the activities of the day moved toward the point of the hill overlooking the town. This was near Charles Robinson's house, which occupied a site on what is now the eleven-hundred block on Louisiana street. The posse was later disbanded, probably in the vicinity of the main camp. To that point in the day's events, there appears to be no important disagreements in the verifiable record.

Reports by Kansas Proslavery Newspapers

The next, or the Jones phase of the Lawrence episode, occupied a separate and distinct status. The Proslavery accounts related that Jones called the marshal's disbanded posse into his service as a sheriff's posse to execute processes, including orders from the grand jury to abate nuisances—the hotel, and the two presses. Some variants in the language and the significance thereof will be discussed later.

The reports of three papers are selected as examples, the Leavenworth Herald, the Atchison Squatter Sovereign, and the Lecompton Union. The regular Herald editor was Lucien J. Eastin, certainly one of the ablest men in territorial Kansas journalism, but when he was elected to the legislature he secured the services of H. Rives Pollard, a young Virginian, as associate editor. Pollard turned out to be a fire-eater, and was with the paper from April 13, 1855, to October 4, 1856. Thus the Herald for this critical period was not as conservatively and as ably edited as Eastin himself would have made it. The Squatter Sovereign was also largely in the hands of its junior editor, Robert S. Kelley, an extremist. The Lecompton Union, edited by A. W. Jones, would be found in a moderate position in relation to the Sovereign. In general the so-called Proslavery papers were as reliable as Free-State papers in handling the news, and in some cases more so.9

9. Malin, John Brown and the Legend of Fifty-six, chs. 3, 4, 7, 8; Grassland Historical Studies (Lawrence, The author, 1850), v. 1, chs. 6, 21; The Nebraska Question, 1853-1854 (unpublished). In the course of those books, attention has been given to the question of reliability of these papers, and particularly to the journalistic careers of Eastin, Kelley, Robert H. Miller, of the Liberty (Mo.) Tribune, and R. T. Van Horn, of the Kansas City (Mo.) Enterprise.
The Herald of May 24, 1856, devoted its leading editorial to the "News From Lawrence. Rumor with her ten thousand tongues has various reports from Lawrence, many of which are untrue, and others exaggerated. We shall aim to give the most reliable news, and such as we believe to be true." The resistance given to Sheriff Jones, and Reeder's defiance of the marshal, was represented as a declaration that Lawrence "would resist the laws unto death." And then followed a narrative of the marshal's and Jones' action. The next week, the leading editorial was again "Lawrence subdued . . .," but other news competed for attention, especially the first report, by way of the Westport (Mo.) Border Times of the Pottawatomie massacre.

Some commentary upon these editorials is in order. Although unequivocal in their Proslavery position, they were moderate in tone, and recognized the editorial responsibility for sifting the rumors from "ten thousand tongues." The two editorials differ in their attribution of motive. In the first the move into town to destroy the hotel and printing presses was assigned to the men; but in the second, the responsibility was placed upon Jones, who was said to have called the men as a sheriff's posse. Two points were not made clear. Jones was represented as having gone into town with about 20 men, but there is no accounting for the manner in which the larger body became involved. The second difficulty lies in alleging that Jones' objective was disarming Lawrence, but later, the explanation was made that in destroying the hotel and presses, he was doing so because they "had been declared nuisances by the Grand Jury of the County, and their destruction was in obedience to law." It is important to note that the court and Judge Lecompte were not implicated by this language. Such a wording may or may not be significant, but it is a fact nevertheless. Some later controversies were to turn upon the charge that Lecompte was personally and officially responsible. An incidental difference lies also in the accurate statement in the second editorial, that only the printing materials were thrown into the river, after the presses were broken up.

Both editorials are in agreement, however, on points that are significant to any interpretation of, not only this episode, but this period of the Kansas troubles. The focus of Proslavery animosity was the Emigrant Aid Company, and upon arms which were supposedly supplied by that organization or its associates. Both editorials emphasized the contention that private, as distinguished
from corporate, property was supposed to have been untouched, including Robinson's house. In this view of things, however, the fact was overlooked that the Kansas Free State was strictly private.

Still another error was in evidence in the first editorial, which designated the owner of the hotel as a "society." In fact, the New England Emigrant Aid Company was an incorporated business enterprise, promoted as such, whose shares of stock were sold to the public with the assurance that they would pay handsome dividends upon the investment, while aiding in making Kansas a free state. Amos Lawrence, the treasurer of the company, was more realistic, rebuked his associates for misrepresentations, and himself advised investors that they should look upon their purchases of shares as contributions to the cause. But Amos Lawrence did not get a hearing for his realism and sense of honorable business ethics. After the failure of the company as a business enterprise became evident, the fashionable method was to refer to it as a "society," in a philanthropic sense. The Herald editorial reflects that confusion which had already become widespread.

The Squatter Sovereign, May 27, 1856, published its story, both editors apparently having been present, Col. (Dr.) J. H. Stringfellow, the senior editor, in command of infantry. Three points are important to this story, as related to the purpose alleged: 1. the surrender of arms; 2. the destruction of nuisances, the hotel and the printing presses, "they having been declared nuisances by the grand jury and ordered by the court to be abated, which was done"; 3. the disarming of citizens found with arms in their hands. The article closed with a unique glow of sanctity attributable only to the unpredictable fertility of Kelley's mind. One must know the boy intimately to appreciate him to the full, but the following must suffice:

During the stay in the town some cowardly assassins were discovered in the act of firing on the posse from concealed places, and as may be imagined, they met the fate they so richly merited. Except in these instances, there was no act of violence, and neither persons—though unarmed and at our mercy—nor property was molested, thus giving the lie to the charge "that our cowardice alone prevented our destroying the town of Lawrence at any time." With a force of seven hundred and fifty men, the town disarmed and at our mercy, we simply executed to the letter what the law decreed, and left as though we had been to church—by the way, there is no church in Lawrence, but several free love associations.

Note should be made of the fact that in Kelley's language, both the grand jury and the court, not Lecompte, were specified as responsible for the abatement of nuisances.
The Lecompton Union, edited by A. W. Jones, and published at the territorial capital, was aggressively Proslavery, but not as extreme as the Squatter Sovereign. Editor Jones accompanied the marshal’s posse, assembling first near Lecompton, May 20, and moving to the hill overlooking Lawrence late that afternoon. Additional forces arrived early Wednesday morning, May 21, altogether estimated at 500 men. Except for some difference in the hour of the day, the sequence of events was similar to other accounts. The remark was made in connection with the report of Pain’s arrest of three men, that “the town seemed almost forsaken.” Editor Jones then continued with a description of the Sheriff Jones role in the afternoon’s proceedings. Jones was represented as emaciated, as a result of his recent wound, scarcely able to sit upon his horse, but the hero of the men:

Jones had a great many writs in his hands, but could find no one against whom he held them. He also had an order from the Court to demand the surrender of their arms, field and side, and the demolition of the two presses and the Free State hotel as nuisances.

For emphasis, one other point should be quoted:

Before entering town, our commanders instructed each member of his company of the consequences befalling the violation of any private property. As far as we can learn, they attended strictly to these instructions. One act we regret to mention—the firing of Robinson’s house. Although there is but little doubt as to the real owners of this property, yet it was a private residence, and should have remained untouched. During the excitement, the Commissary, Col. Abel, of Atchison City, learned that it was on fire, and immediately detailed a company to suppress the flames, which was done. Once afterwards, we understand, Sheriff Jones had the flames suppressed, and the boys guilty of the act sent immediately to camp; but with regret we saw the building on fire that night about 10 o’clock. This we saw from camp, and cannot tell who set it on fire the third time.

The political narrative continued in highly partisan style, relating the dismissal of Governor Reeder on charges of speculation, his alleged bargain with the Free-State interest, his appearance in Washington claiming a seat in congress as delegate from Kansas, the congressional investigating committee sent out to test “the truth of these allegations,” with the result that “the first day of this session [of the investigation] witnessed the assassination of an officer of the law...” In the conflict over Reeder, the congressional committee gave protection to him in defiance of territorial authority. The people then decided, according to Editor Jones, to teach the “Aid Society” better use of their means, than building forts and arming and equipping men to shed the blood of their fellow beings and involve the country in civil war.
We have done what we have done, and would not have anything undone that was done and shall do no more if let alone—so let our doings go forth for the inspection and criticism of the nation.

At the close, Editor Jones recalled that he had forgotten to mention in its proper place—possibly this was a device of emphasis—"that the long conjecture of the Free-State Hotel being a fortress, was found to be true." And then followed a description of the roof, walls, and four port holes on each side, similar to descriptions printed earlier in the Free-State journals.¹⁰

FREE-STATE HOTEL

In view of the fact that the Free-State Hotel, built by the New England Emigrant Aid Company, became so conspicuously the focus of Proslavery hostility, it is important to introduce into the record some of the evidence about the manner in which Free-State people publicized that building. On January 25, 1856, a Kansas letter writer, "W," for the Boston Traveller, dated his communication from the Free State Hotel:

As I write, the heavy and measured tread of the sentinel, as he paces his beat on the roof above my head in the midst of a blinding snow storm, reminds me that I am at the very focus towards which all eyes are now turned. And well that may be. This nation, at least the northern portion of it, are not aware that they are standing on the very brink of a volcano, just ready to belch forth its destructive torrents. . . .

The correspondent "W" represented Lawrence as being liable to a surprise attack at any moment:

Gen. Robinson does not sleep at his own house, but takes his quarters here in this fort[ress], and sleeps sometimes in my room, while a company of soldiers are quartered in another near by. The roof of the building, three stories in height, has a parapet running all around it, pierced with loop holes, from which in a street fight there could be poured a most destructive volley of rifle balls.—The thorough look-out which is being kept, will, we think, prevent us being taken by surprise and so long as we are supposed to be well and completely armed and determined to die rather than be taken, to be hacked to pieces by demons with wood hatchets, they will not meddle with us.—But we need arms. We must have them. Ammunition; men; all the needs of war. To be prepared for war is the best guarantee of peace. . . ."¹¹

Why the “cloak and dagger” melodrama? Was there any real danger? Did the Free-State men actually keep up such a vigil? This is not the place to undertake a full examination of the evidence. Suffice it to say that little factual evidence is available to support

¹⁰ The Lecompton Union story of May 24, 1856, was reprinted in the New York Daily Tribune, June 7, 1856, and in William A. Phillips’ The Conquest of Kansas (Boston, 1856), pp. 504-509.

"W"s" crisis picture. Between the "peace treaty" closing the Wakarusa War and the April-May troubles, Kansas was remarkably quiet. On April 12, 1856, the Herald of Freedom, financed in part at least by the New England Emigrant Aid Company, and edited by G. W. Brown, printed an article, "The 'Free State Hotel' Finished." The construction work had started in April, 1855. In November when the Wakarusa War began it was unfinished, but, the article went on to explain, it benefited "our cause, even in its unfinished condition. . . . It was into this structure the people intended to retreat, if driven from every other position, gather around them their household treasures, and make a last desperate effort in the defence of their lives and liberties. But fate ordered otherwise."

The article did not explain, but there had been no armed attack upon Lawrence as the difficulties had been compromised. In the spring, work on the building was pushed to a conclusion, "and on this, the Twelfth of April, one year from the day the first spadeful of dirt was thrown up, the FREE STATE HOTEL is finished." Then followed the detailed specifications of the basement and three stories; "stairs leading to roof, which is flat, and affords a fine promenade and a splendid view of the surrounding scenery. There are thirty or forty port-holes in the walls, which rise above the roof, plugged up now with stones, which can be knocked out with a blow of the butt of a Sharp's rifle."

Of course, these two independent statements by Free-State writers do not prove that the hotel was a fortress; but they do, in an absolute sense, prove that that assertion was not a Proslavery lie. If it was not true, then it was a Free-State lie, invented by men closely identified with the most influential people then directing Free-State strategy at Lawrence. The publication of such statements to the world was rash, and a serious error of tactics, even if true, and if not true, a more severe censure is in order. This was not a melodrama played by a group of exuberant children in the barn loft on a summer afternoon. These were adults, supposedly responsible for their acts, and they were playing this tragic drama, not from the stage of a theater, but in real life and to a national audience. Only a few more days were to pass when, as in a Greek tragedy, once the participants had made their choices, events moved with a seemingly fatal precision to the inevitable culminating catastrophe, and the Proslavery men were to use Free-State boasts in their own defense as justification for destroying this alleged hotel-fortress.

NEW YORK TRIBUNE REPORTS

With the destruction of the Free-State presses in Lawrence, the Free-State cause in the territory was temporarily without a newspaper, except the Topeka Tribune. The cause was not without newspaper publicity, however, because there were a substantial number of letter writers for Eastern newspapers in the territory. Particularly important were those writing for the New York Tribune, among whom William A. Phillips, "Our Own Correspondent," was pre-eminent, and they injected reality into Greeley’s briefing of the situation to his editor, Dana, already quoted at greater length: "... we can only make issues on which to go to the people at the Presidential election."

Three editorials in the New York Daily Tribune, May 26, 1856, dealt with the news from Lawrence, and Kansas. The first announced that:

"The King is dead—Live the King!" Lawrence, the heroic focus and citadel of Free-State principles and efforts in Kansas, has been devastated and burned to ashes by the Border Ruffians; but most of its inhabitants still live. . . . A few bare and tottering chimneys, a charred and blackened waste, now mark the site. . . .

This editorial closed with the assertion:

All this devastation and butchery, be it remembered, have been performed in the name and by the authority of the Federal Union. . . . But it is the United States Marshal who directs and impels the operations by which Lawrence has been destroyed and Kansas subdued. . . .

The second editorial went further in developing the theme:

The responsibility of arson and murder which last winter Gov. Shannon declined to take, has been assumed this Spring by the United States officials, Judge Lecompte and Marshal Donaldson . . . with the full concurrence of President Pierce. . . .

. . . With two such learned and scrupulous lawyers at the head of the movement as Judge Lecompte and President Pierce, to say nothing of the occasional advice of Cushing and Marcy, there cannot be a doubt that the town of Lawrence has been burned down, and more or less of the inhabitants butchered, all strictly according to law—at least Border Ruffian law. . . .

Mr. Pierce will thus present himself to the Cincinnati Convention as a candidate for re-election, sprinkled from head to foot with the blood of the Free-State men of Kansas, and his whole person illuminated and lighted up with the blaze of their burning houses.

The following day came another editorial in the New York Tribune, based upon a Chicago Tribune story as a text, the latter being reprinted in the news columns. Emphasis should be focused upon the differences between this editorial and those of the day before.
The process of retreat, if not retraction, from the assertions of total destruction was begun. Furthermore, the Kansas fugitives who reported the Chicago Tribune story had not actually seen what had occurred at Lawrence.

On May 30 the first mail correspondence, direct from Kansas, was published in the New York Tribune, under a date line of Leavenworth, May 22:

The war has at last begun. The legal bands of men, empowered by Presidential and Territorial authority to "subdue" the settlers of Kansas because they dared to interfere with the policy of making it a Slave State, have inaugurated their work by an act of reckless and merciless wickedness. A citizen of Lawrence, Mr. Wm. Hutchinson, has just come in this morning. He saw the scene of violence from the opposite side of the river, and learned the particulars from some men who had been in the posse, and who crossed the Kaw and left the scene of horror in disgust.

The report continued by speculating upon the extent of the destruction by explaining that as the hotel and presses were in the closest built part of the town, the whole of the town would have been burned. Again, none of these informants had actually seen the town in ashes. Furthermore, the internal evidence suggests that Hutchinson was one of the fugitives whose story provided the basis for the Chicago Tribune article printed two days earlier.

The Missouri Democrat's (St. Louis) story, "An eye-witness" account, was printed in the New York Tribune, May 30. The description of the events of May 21 to the point of Jones' afternoon visit followed approximately the standard sequence, and at that point "commenced the scenes disgraceful to humanity, destructive to Kansas, and the end of which God only knows." Demanding the surrender of cannon and Sharps rifles: "Jones stated he had several times been resisted in that place—attempts had been made to assassinate him—and he now declared that he was 'determined to execute the law if he lost his life.'" Pomeroy insisted that the Sharps rifles were private property, but delivered the cannon. Jones then notified Colonel Eldridge, the operating proprietor of the hotel, to remove his furniture by five o'clock because the building was to be destroyed, "that he was acting strictly under orders. The Grand Jury at Lecompton had declared the hotel and presses at Lawrence a nuisance, and ordered him to destroy them." While the furniture was being removed Jones disposed of the presses, the main body of the posse having entered the town: "Jones promised in the commencement that no private property should be destroyed. But
houses were broken open and rifled of whatever suited the fancy of the mob. . . ."

The destruction of the hotel was then described, but the letter writer brought into the narrative other activities, among which, the role of Former Sen. David R. Atchison and Colonel Jackson deserves special attention.

G. W. Brown's house was twice set on fire, but the blaze was extinguished:

If his house had burned, several others must certainly have been destroyed, and there would have been danger of burning nearly half the town. Many of the mob were bent on destroying every house in the place. . . . Atchison, it is said, advised moderation. Col. Jackson, of Georgia, with many others, were opposed to the burning of the hotel. . . .

Later in this article an important admission of error was made: "The report that a Free-State man was killed at Lawrence, on the 21st, I think a mistake."

On Saturday, May 31, the Tribune editorialized upon the Kansas letters printed the previous day, which, it alleged "supplied at length a connected and authentic account of affairs in Kansas down to the sack of Lawrence. . . ." After recounting the treason indictments and the gathering of the posse, reference to "occasional murders" along with accusations against Governor Shannon, the events of the day, May 21, were recounted, and in relation to the hotel concluded:

. . . as Judge Lecompte's Grand Jury, the same that found indictments for high treason, had declared it as well as the printing-offices a nuisance, and on that ground he was determined to destroy it and them. . . . The printing-offices were also destroyed, the types being thrown into the river, and the house of the editor of one of the papers set on fire, as also the house of Governor Robinson. . . . All the houses in the town were entered and plundered, and it was with great difficulty that some of the more discreet among the leaders of the mob prevented the destruction of every house.

In the nine days' operations of this law-and-order posse, exclusive of the outrages at Lawrence, fourteen men have been shot at, two killed, and two desperately wounded, . . . and women treated with shocking barbarity.

The New York Tribune did not print a Sunday paper, so Monday, June 2, brought a Lawrence story with a May 21 date line—"the partial destruction of Lawrence by an armed Russian mob," the letter being signed "Potter." Also there was a story, under a St. Louis, May 26, date line—"Lawrence is destroyed, at least a great part of it. . . ." But there was no editorial upon these week-end news

13. Another study needs to be made of the role of Atchison, along with an examination into the origin and the authenticity of the reports of his speech or speeches.
arrivals. That came Tuesday, June 3, in a nine-point summary of the Lawrence episode:

Our accounts by mail from devastated Lawrence, down to the day after the descent upon it of the Pro-Slavery army under Sheriff Jones and Marshal Donaldson, are now complete. . . . [Fugitive and antislavery material has been printed.] And now we desire to call attention to the leading features of the whole transaction, as established by the concurrent testimony of the witnesses and narrators from all sides—namely,

1. The question which has distracted and devastated Kansas is purely one of Slavery or Freedom. Remove this bone of contention, and there would be no shadow of contest, and no motive for any. . . .

2. The Free-State party are not struggling for equality and fraternity between Whites and Negroes. A minority of them would prefer that the Law should know nothing of a man's color in connection with political rights; but the majority, who are mainly from the Western States, have decided not to expose themselves to the false accusation of being “negro-thieves” or “negro-worshippers,” and have enacted that the Free State of Kansas shall be open to settlement by Whites only.

3. The attack upon Lawrence was purely wanton and malicious. There were no persons in it that the Territorial authorities really wanted to arrest.

4. No shadow of resistance was offered to this array from first to last. . . . Most of the furniture [of the hotel] appears in the interim to have been removed.

The offices of the two Free-State newspapers were sacked and their printing materials thrown into the river. Governor Robinson's house was fired and burned, “but not by authority,” says a Pro-Slavery bulletin.

5. There being absolutely no resistance to any of these outrages, only two persons were killed. One was a man who was in Gov. Robinson's house when it was fired, and who thereupon ran out, and, not halting when required to do so, was shot by the incendiaries. The other was a member of the posse, who fired a rifle-ball at the chimney of said house, and thereby dislodged a stone, which fell on his head, and finished him.

6. The value of the property destroyed by the posse in Lawrence is vaguely estimated at $100,000. The principal sufferers are the owners of the Free State Hotel. . . . Gov. Robinson's loss is heavy; that of the newspaper offices is total.

7. The posse was made up in good part of the seven or eight hundred Southerners, collected from South Carolina, Alabama and Georgia, and led into Kansas two months since by Major Buford . . . but not many residents of Missouri, so far as has yet been ascertained. Thus Missouri has been relieved by her Southern sisters in the work of subduing Kansas.

8. All this has been done in the name of Law, and under the authority of the United States. . . . [Chain of command allegedly responsible: Pierce, Douglas, Shannon.]

9. The leading object of the Ruffians clearly is the expulsion from Kansas, by violence and terror, of the bolder and more outspoken portion of the Free-State settlers, the complete subjugation of the residue. . . .

People of the Free States! will you consider?
The instance of charges that women were treated with "shocking barbarity," made in the May 31 editorial, is one of the rare instances of that kind. The nature of the offences were not specified. In that connection, one commentary is in order. Throughout the whole of the Kansas-Missouri border troubles, crimes against women, or even charges of such, by either side were virtually nonexistent. In a region disorganized by bitter controversy as this area was, and over so long a period of time, such an undisputable fact becomes one of the remarkable aspects of border troubles, and should give partisan controversialists pause. Just how much "disorder" did actually occur, and to what extent did it endanger the rank and file of citizens intent upon establishing a farm or business in Kansas?

By the June 7 issue, the editorial retreat of the Tribune was virtually completed, and to divert attention and save face a new rationalization was advanced. The occasion was the printing of the Lecompton Union story of the Lawrence affair printed by that paper May 24, and summarized earlier in this article. After urging Tribune readers to read the Union account, the editor continued:

When the news first came by Telegraph that Lawrence had been attacked and burned, we thought the outrage must arouse the country; but, now that we have learned that there was no shadow of resistance to the Ruffians, and that their destruction of the great Hotel and the two printing offices were judicial acts, based upon the finding of a Grand Jury, it seems to us that the outrage was graver and the iniquity more heinous than if the whole town had been burned in or after a fray, as at first reported. We dare the journals which favor the Border-Ruffian interest to copy this bulletin of their Kansas ally [The Lecompton Union].

Having been obliged to admit that Lawrence had not been burned, and that influential men, called Border Ruffians, had used their influence to restrain the mob and to save not only the town, but even the printing equipment and the hotel, a number of embarrassing questions were raised. If armed resistance was not a part of the program, why had the Free-State men carried on a campaign for approximately a year to collect money for cannon, Sharps rifles, ammunition, to organize and drill military companies, and, as their own writers claimed, construct the hotel in such a manner as to serve as a fortress in which they could make a last desperate stand? How could nonresistance now be made a major virtue? Furthermore, now that the first sensational charges had broken down, why were the Free-State men singling out the judiciary and Judge Lecompte as a particular scapegoat, along with pinning the responsibility for Kansas troubles upon the federal government at
Washington for presidential campaign purposes? Was it that the writers were ignorant of law, of judicial organization, of judicial procedure, as well as careless of facts?

The technique employed by the Tribune editorials has been given a name in the mid-twentieth century—the Big Lie technique. The form is always the same, a simple, blanket accusation, total in its coverage: "Lawrence . . . burned to ashes. . . ." Step by step that was narrowed down to the point where only two buildings were identified as destroyed, the hotel, and Robinson's house. At first, a large number of the inhabitants were reported killed, but finally the admission was made that not one Free-State man in Lawrence lost his life. But the first startling accusation, not the corrections, lodged in the public mind. Various contradictory news stories followed, and after the facts became available, the Tribune continued to publish sensational falsehoods. Its correspondent in Kansas wrote, May 31, printed June 11:

Lawrence wore a changed aspect when I entered it yesterday, to what it used to wear as the citadel of Freedom in Kansas. It was not only in the blackened ruins of the buildings that had been burned or in the destruction and loss that had been sustained by the inhabitants, but it no longer wore the look of security and energetic prosperity.

**Presidential Campaign Politics Again**

In June, 1856, the national nominating conventions met. The Democrats met at Cincinnati, June 2, and nominated James Buchanan, of Pennsylvania. The Republicans met, June 17, at Philadelphia and there completed the coalition with antislavery Americans (Know-Nothings), nominating Frémont, according to the plans outlined in the Banks and Frémont letters to Charles Robinson. Kansas had nine delegates seated in the convention, and they were conspicuous, though not influential in the convention scene. But the Kansas issue as personifying the antislavery impulse was the only major one upon which the otherwise incongruous antiadministration factions could unite. Kansas was essential to the campaign until November.

The bill to admit Kansas as a state under the Topeka constitution was immediately brought forward, and under the Banks speakership, passed the house, July 8. In the Democratic-controlled senate, Robert Toombs, of Georgia, proposed an amendment to the Douglas bill of March 17, which was so framed as to "save faces" all around, and to concede the essential points to the Free-State contention. It proposed a fair settlement, which would have removed the Kansas
issue from the presidential campaign. That was the purpose of the Pierce administration. The senate debate focus on this issue came June 25 to July 2. Northern men brought about its defeat, and "Bleeding Kansas" continued as the campaign issue. The tactical weakness in the case for the administration lies in the fact that the Toombs compromise, or something equivalent, was not proposed in December, 1855, after the Wakarusa War, and immediately upon the convening of congress. But that had not happened, and therefore is not history.

**Colfax Charges and Lecompte Defense**

On June 21, 1856, in the United States House of Representatives, Schuyler Colfax, of Indiana, delivered a one-hour speech, his point of departure being an amendment he offered to the army appropriation bill, the house being in committee of the whole. The amendment proposed that congress disapprove the code of laws adopted by the legislature of the territory of Kansas; disapprove also the manner in which they had been administered, and declared that until affirmed by the congress, no part of the military force of the United States be employed in aid of their enforcement and that no citizen be required, under their provisions, to act as a part of a *posse comitatus* under any officer acting as a marshal or sheriff in the territory of Kansas. Although his speech was directed primarily at the code of laws, Colfax turned first to attack the manner in which they were administered and enforced. Murder after murder had been committed, he charged, "but you have not heard of one single attempt by any court in that Territory to indict any one of those murderers . . . neither the territorial nor the General Government inquire into the crimes they have committed. . . ." Phelps, of Missouri, interrupted to inquire whether or not the Free-State men refused to obey the courts—"Those very witnesses, who are in opposition to those laws, refuse to go before the [grand] jury and testify as to those offenses of which they are cognizant." Colfax replied that "The Free-State people of Kansas recognize all the United States courts in that Territory, and they render full allegiance to the United States authorities." He charged that the chief justice, Lecompte, in his charges to the grand juries, had not, so far as he had heard, ever called attention to the murders, and to the fact that the murderers were at large and honored by the territorial authorities. Phelps pressed his point against Colfax's evasion but the latter pleaded encroachment upon his limited time and proceeded with his attack upon Lecompte.
Colfax adopted the technique first of enumerating things he did not impute to Lecompte; lack of moral character, or lack of judicial ability, or willful and corrupt violation of his oath—those points, he asserted would be answered authoritatively by a vote for Lecompte’s impeachment. Colfax declined to comment upon Lecompte’s Draconian severity “against all who advocated freedom for Kansas.” By this negative technique, Colfax accomplished his intended smear, without leaving any opening for a reply. He then turned to positive charges, pointing to self-interest on the part of territorial officers, including Lecompte, in charters granted by the territorial legislature. Colfax then quoted from the National Intelligencer, Washington, June 5, the report of Lecompte’s alleged charge to the grand jury on constructive treason. In criticism of such a concept of constructive treason, Colfax quoted the provisions of the United States constitution on treason, thus setting up a straw man and knocking him down.

Colfax then reviewed his version of the indictment and arrest of Charles Robinson and others for treason, their confinement, denial of bail, etc.:

When the defenders of these proceedings ask us to trust to the impartiality of courts, I answer them by pointing to this charge, and also to the judicial decrees of the Territory, by authority of which numbers of faithful citizens of the United States have been indicted, imprisoned, and harassed—by authority of which the town of Lawrence was sacked and bombarded—by authority of which printing presses were destroyed, without legal notice to their owners, and costly buildings cannibalized and consumed without giving the slightest opportunity to their proprietors to be heard in opposition to these decrees; all part and parcel of the plot to drive out the friends of freedom from the Territory, so that slavery might take unresisted possession of its villages and plains.

Colfax then attacked the jury system, charging the packing of juries by the sheriffs and marshals—again ignoring Phelps’ challenge to show to what extent Free-State men refused to recognize the courts or to serve on juries or to testify before grand juries or in open court. Colfax later took up separate sections of the territorial code. On freedom of the press, he declared:

Probably under this provision, as well as the charge of high treason, George W. Brown, editor of the Herald of Freedom, at Lawrence, has, after his printing press has been destroyed by the order of Judge Lecompte’s court, been himself indicted, and is now imprisoned, awaiting trial. . . .

Note that this charge was introduced by the word “probably.”

Then, calling attention to the section of the territorial code authorizing the hiring of convicts, Colfax predicted that, unless executed for treason, Charles Robinson, with ball and chain, could be hired
out to Governor Shannon, to perform menial labor; “And Judge Lecompte, would have the privilege, too, and would, doubtless, exercise it, of having Judge Wakefield as his hired serv. . . .”\(^{14}\)

On July 23, 1856, toward the end of a long speech on “The Slavery Question,” Rep. James A. Stewart, of Maryland, came to the defense of Judge Lecompte:

If the President or Chief Justice Lecompte has transcended the limits of his official duties, with criminal intent to oppress the most obscure citizen, why not boldly, and as true patriots, bring up your impeachments? Why snarl at them, when you have the right to make out your bills of indictment? I submit, if it is right, fair, or manly, to assault official authority, and attempt to bring it into disrepute, when you have ample remedy, by putting them on their trial, giving them the power of vindication; and this you decline?

I have said that I believe the President has fearlessly discharged his duty, and the country will so esteem it. I happen to know Judge Lecompte. He is, I doubt not, a fearless, firm, and impartial officer, and I am sure will discharge his high duties faithfully and promptly. I am satisfied, in his responsible station, he will meet all its requirements as the exigencies of the occasion may deserve. He is not a man to be badgered or browbeaten. He is a sound lawyer, and I take it, will so carry himself in his honorable position, as to defy any well-grounded charge of breach of duty. It is abominable to endeavor to tarnish his official standing by mere partisan allegation. I dare say similar testimonials may be borne as to all the territorial judges and officers.

Stewart took the ground that the controversy was a “tempest in a teapot,” and continued: “Where has there been intolerable oppression in Kansas, and where have all the remedies been resorted to?” His point was that for such wrongs as were alleged there were legal remedies:

Congress has not been petitioned for redress by these Topeka constitution and revolution mongers. The legality of the proceedings of the Kansas Legislature may be tried before the courts. The much-abused Kansas-Nebraska act, in the twenty-seventh section, provides an appeal from the court in Kansas, from Judge Lecompte’s, if you please, to the Supreme Court. You can test the frauds that you say have disturbed you, by bringing the whole subject before the Supreme Court of the United States. This you can do, even under the habeas corpus proceedings, recognized by the said section. If, then, there has been fraud, outrage, violence, and if the Legislature itself is unauthorized, and its whole proceedings void, why is not the legal and orderly method, and the only satisfactory one, except the ballot-box, resorted to, in place of revolution, anarchy, and bloodshed? By pursuing this mode, order and regularity in all our proceedings are observed. Because this has not been done, I am right in assuming that the founders of the Topeka constitution are clearly in the wrong, and upon their own heads, with their conduitors, does all the responsibility rest. . . .\(^{15}\)

15. Ibid., pp. 982-983, at 989.
The amazing thing is that the responsibility was fastened upon Judge Lecompte, and that no one in the territory, not even the Proslavery men, came to his defense in the newspapers, during the summer of 1856, to explain the errors, and set the record straight in such a manner as to exonerate Lecompte. Certainly, no lawyer, Proslavery or Free-State, practicing in the district court of Kansas, or acquainted with judicial procedures, but knew the major facts and was quite aware that they did not support the charges. The Free-State men referred to Lecompte as the American Jeffries. On the contrary, he had been reluctant to exceed the legal authority delegated to a judge, but upon occasion had done so in order to protect Free-State men. Had Lecompte done the things in his official capacity, which Free-State men insisted he should have done, he would indeed have qualified as an American Jeffries tyrannizing over Proslavery men. The only thing antislavery and Proslavery men would have been satisfied with in Kansas during this period would have been aggressive partisanship in promoting their respective causes. In relation to most of their charges against Lecompte, from both sides, the focus of the grievance against him was that he refused to adopt that abuse of the judicial function. In other of the differences between them the issue turned upon principles of policy that were legitimately subject to honest difference of opinion. Upon occasion, all men are liable to errors of judgment, and Lecompte was no exception, but even in that area caution needs to be exercised in rendering verdicts, because such historical verdicts may in fact only convict the historian of an unconscious captivity to prejudice, and at the same time vindicate Lecompte.

In 1856 Samuel D. Lecompte was 41 years of age, with well-established political and professional connections in his native Maryland. The Colfax attack upon him in the congress, and Stewart’s defense, afforded him an opportunity to make a public explanation of his official acts in Kansas. This defense took the form of a letter to Stewart, dated August 1, 1856, which was released to the press. Among the several contemporary printings, it appeared in the St. Louis Republican, September 18, and in the Kansas Weekly Herald, Leavenworth, September 27, 1856. It was never made available generally to students of Kansas history, however, because it was omitted from the documents printed by the Kansas State Historical Society in its Collections, v. 4, although a copy was an integral part of the archives of the office of the territorial governor.¹⁶

¹⁶ See the explanation of this omission, Kansas Historical Collections, v. 4, p. 603. Contrary to the statement in that note that it was a private letter, the fact should be
The letter is too long to summarize here, and furthermore, it dealt with the whole of Lecompte’s judicial career to that date. Some of the setting must be presented, however, although the focus of this discussion is the single episode of the “sack of Lawrence.” In review of his tenure of judicial office, Lecompte recited that he had arrived in Kansas early in December, 1854, with his wife, five children, and two Negro women, and he had not been out of the territory or out of his district, except as specified in detail. He recognized different categories of charges against him and gave brief attention first to the indefinite and anonymous ones:

That there is not a solitary specific charge by any individual of character, or, indeed, by any individual of name, might be relied upon as sufficient reply to these questions.

I think I could safely rest upon the mere absurdity and palpable falsity of some of those anonymously made, to discredit all, at least until, in a tangible form, they shall have been presented by some responsible person.

Surely to every one who knows me, the report that I was seen in a wagon with a cannon and a barrel of whiskey, heading a company of the Marshal’s posse, carries its own refutation.

Other similar instances reported in the New York Tribune or like places, such as the packing of the McCrae jury and the constructive treason charge to the grand jury, he would pass over. Of a different category, however, were the charges made by Colfax in his speech in congress and the report of the Howard committee on Kansas troubles, appointed by the house of representatives. Only recently had he seen a copy of the Colfax speech, and he had seen only what purported to be the conclusions of the committee. The third of these Howard committee conclusions was quoted: “That these alleged laws have not, as a general thing, been used to protect persons and property, and to punish wrong, but for unlawful purposes.”

In the course of his denial Lecompte said “I put against it an unequivocal and contemptuous denial, and denounce it as a wanton and gross slander. . . .” Then in addition to the general denial, Lecompte reviewed one by one the more prominent cases in his court by name, describing the circumstances and disposition of each. He described how he had taken the initiative in action on more than one occasion to keep the peace and to insure justice regardless of party. Also, he reminded the public of how he and General Richardson had slept in the passage in front of Charles Robinson’s door in Leavenworth to protect him from violence.

pointed out that Lecompte’s letter of October 6, 1856, was an official reply to Governor Geary’s official inquiry, and the Lecompte letter to Stewart was an enclosure incorporated into that reply to Geary, and thus, regardless of its original purpose, it became an integral part of Lecompte’s official letter of October 6, which should have been printed in the “Executive Minutes of Governor Geary.”
A challenge was made to the Howard committee, and to Colfax:

Let the records of the Courts of my District be examined, let my judgment be re-opened and canvassed, let every judicial act be tried. Let every criminal trial be reheard, and let every individual sentiment be spread out, and I am content to abide the result.

There is a mode of trial, and they know it. Mr. Colfax alluded to it in his speech in Congress. Let them impeach me. The committee threatened it when here, and on account of the process from my Court against Ex-Governor A. H. Reeder. I could not, indeed, but feel dishonored by it—its expense might, indeed, be ruinous . . . but . . . I feel that its result would repay in infinite satisfaction. It is very true that I might anticipate perjury to be added to the turpitude of deliberate falsehood, but I must abjure a long fixed faith in God and truth before I could fear any combination of such atrocities before an honorable and enlightened tribunal.

In this part of the letter, Lecompte made an extended analysis of the issue of treason and his charge to the grand jury, showing how the idea of constructive treason was illegal. In this Lecompte was in full agreement with his detractors, only Lecompte insisted that the charge of constructive treason was purely a Free-State invention. Lecompte had made the mistake of giving the charge to the grand jury orally, but he insisted that “The indictments as found will show that both the District Attorney of the United States, who prepared, and the grand jury, who found them, understood me as I have stated. . . . For their soundness I shall cheerfully submit them to be tested by the highest authorities.”

Then turning to the Colfax charge relative to the “sack of Lawrence,” Lecompte quoted him in full and pointed out that the laws of the United States defined the authority of the courts in Kansas and “It was under the authority of the Marshal thus rightfully exercised, and not of the Court, that his posse went to Lawrence.”

As to the rest of the charges, this is all that occurred. The Grand Jury sitting at the time made presentment of the presses and of the hotel in Lawrence, as nuisances, and that presentment still lies in Court. No time for action on it existed—none has been had—no order passed—no decree made—nothing done, and nothing even dreamed of being done, because nothing could be rightly done but upon the finding of a petit jury.

At two points in particular in his letter Lecompte undertook to be facetious, but succeeded only in showing bad taste. These deviations were only minor, but regrettable from the standpoint of what otherwise was a rather able defense. In the final paragraphs, Lecompte challenged Colfax to specify cases, give the names of persons unjustly treated. In the course of his castigation of Colfax for his irresponsible charges and unethical tactics on the floor of congress, Lecompte asked:
But why not, Mr. Colfax, manfully and directly charge moral depravity and adduce the facts to sustain it? Why disclaim, but by innuendo and directly make deadly thrusts? The facts do not exist.

In closing, Lecompte called attention to the unfavorable conditions under which a judge found it necessary to work in Kansas: novel cases, unsettled conditions, travel in circuit, little access to law books, and little aid from the bar:

The mixed system provided by Territorial and Federal legislation—a jurisdiction like that of County and Circuit Courts of the States, with the addition of that conferred upon the Circuit and District Courts of the United States—will not fail to impress with awe and apprehension of inadequacy any one not vain to rashness.

**Conclusions**

Later in the year, when Geary became governor, he addressed letters of inquiry to the judges in Kansas asking for an accounting of their stewardship. As a matter of legal principle, Lecompte questioned the right of the executive branch to treat the judiciary as “his subordinates in office,” but, out of “high respect,” and a desire for the “restoration of order,” Lecompte, in a letter dated October 6, 1856, reviewed the judicial record of Leavenworth county, the records for the other counties not being available at that place. A postscript related to the disposition of the treason cases in Douglas county, and the reasons for releasing the prisoners on bail. It was upon this occasion that a copy of his letter to Stewart was made a part of his report.

Lecompte was not a man to be intimidated, and besides challenging Geary’s right to interrogate the independent judiciary, he defined and defended his rights on other counts:

As to the charge of “party bias,” if it means simply the fact of such bias, I regard it as ridiculous; because I suppose every man in this country, with very few exceptions, indeed, entitled to respect either for his abilities, his intelligence, or his virtue, has a “party bias.” I am proud of mine. . . .

If it be intended to reach beyond that general application, and to charge a proslavery bias, I am proud, too, of this. . . . I love the institution as entwining around all my early and late associations; . . .

If it means more than the fact, and to intimate that this “party bias” has affected the integrity of my official action, in any solitary case, I have but to say that it is false—basely false.17

As an outgrowth of the Geary-Lecompte quarrel later in the year, which centered upon the Hayes-Buffum murder case, Lecompte composed two letters of defense, one to Sen. James A. Pearce of Maryland, dated December 23, 1856, and one to Caleb Cushing,

attorney general of the United States, dated January 9, 1857, but
neither reviewed the issues of the “sack of Lawrence.” The Pearce
letter did, however, challenge indirectly, the President’s constitu-
tional power to remove him. As in challenging Geary, the issue
raised was the independence of the judiciary. 18 In the letter to
Cushing, Lecompte challenged Pierce’s attempt to remove him
without preferring charges, or holding hearings to determine facts.
The defeat in the senate of the confirmation of his successor left
Lecompte in office, but without the opportunity of vindication.

Kansas territorial history has been written upon a premise that
vitiates most conclusions about it—the overriding assumption that
Kansas would have been made a slave state but for the antislavery
crusade. Those acquainted with the theater of the 19th century
will recognize the stereotype melodrama routine—the rescue by the
hero of the heroine from ruin at the hands of the villain by a tense
split-second margin. When Kansas became a free territory and
later a free state, that outcome was taken as proof positive of the
validity of the premise, and of the cause-effect sequence. The whole
procedure is unsound as scientific method, and a travesty on pro-
cedural logic. No conclusive evidence has ever been brought for-
ward to prove that Kansas would or would not have been a slave
state in any case; or even if it had been nominally a slave state, to
demonstrate what the nature of the slave society would have been
in this geographical setting of space and time. Excluding for the
moment the moral issue, what conditions, if any, were there in the
situation, as of the 1850’s, that would have made slavery a desirable
or undesirable institution in Kansas? What changes were taking
place in the structure of society, independently of slavery—mechanical
versus muscle power? What was the status of slavery and
trends in the United States and elsewhere in the world? Once such
questions are raised, the whole structure of Kansas history, or United
States history centering on the Kansas question of the 1850’s, col-
lapses like a house of cards.

As a matter of historical method, the historian has no right to
enter upon the investigation of any historical subject except as an
object of study in its own right. Every presumption he encounters
in the search for fact, relationship, and interpretation must be sub-
jected to rigorous analysis to test its validity. Only when he has
 canvassed the whole situation, to the extent of his available re-
sources, is he ready to draw conclusions from his study, subject to

18. Ibid., pp. 726-729; Senate Ex. Doc. No. 60 (serial no. 881), 34 Cong. 3 Sess.
(1859-1857).
rigorous tests for flaws in every aspect of his plans for organization, of facts, and of his reasoning from them. Above all, he must be ever willing to admit that, upon the basis of the evidence available, there are many questions to which he does not know the answer. To some of these questions, an answer is impossible. He must be willing to join with Lecompte in admitting a feeling of "awe and apprehension of inadequacy [on the part of] anyone not vain to rashness."