Judge Lecompte and the "Sack of Lawrence,"
May 21, 1856

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PART TWO: THE HISTORICAL PHASE

In part one, "The Contemporary Phase," of this study, Judge Samuel D. Lecompte's defense of his judicial career rested primarily upon his four letters—to Rep. James A. Stewart, to Sen. James A. Pearce, to Gov. John W. Geary, and to Caleb Cushing. He was not permitted a hearing upon any of the charges where prime documentary records could be presented or witnesses introduced and cross-examined.

Thus matters were left, so far as Lecompte was concerned, until 1873, when old wounds were reopened. This seems all the more remarkable, because Lecompte had maintained his residence in or near Leavenworth, had remained loyal to the Union, and after the Civil War had served as a Democrat in the state legislature in 1867 and 1868, after which he became a Republican during the campaign of 1868, and in 1874 was chosen chairman of the Republican congressional committee.

Upon the last mentioned occasion, and without any reference to the impending explosion, Sol Miller, editor of the Troy Kansas Chief, June 25, 1874, printed this paragraph:

If there still be persons who think that the world does not move, we refer them to the name of S. D. Lecompte, attached to the call for a Republican District Convention to nominate a Congressman for this District, and remind them that this is the same Judge Lecompte for whom Lecompton was named, and the very mention of whose name, less than twenty years ago, caused a shudder everywhere in the Free States. He is one of the pleasantest looking old gentlemen imaginable. It may serve to strengthen their faith in progress, to know that Gen. Stringfellow is a member in good standing of the Republican party.

One of the remarkable aspects of the post-Civil War period—remarkable if one takes seriously the "depravity" charged against the Proslavery "villains" of the territorial melodrama—is that once the slavery question was eliminated, former Proslavery people, including the more prominent leaders, lived as integral components of their communities, commanding the respect each deserved as an individual, unless, perchance, old controversies were revived. In

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that case Free-State people, with few exceptions, demanded a complete monopoly upon interpretation of the past.

The answer to the question of the reopening of the old wounds in the case of Lecompte is to be found in a complex situation, climaxing in 1873-1874, in a criminal libel suit, State of Kansas vs. Daniel R. Anthony, with Lecompte as the complaining witness.

The situation providing the immediate setting for the libel suit involved four episodes, more or less related: a controversy over enforcement of internal revenue laws; Cole McCrea's charges against Lecompte arising out of the territorial troubles; Lecompte's article on the advisability of limiting the President to one term; and Lecompte's relations with the Grange and farmers' discontent of 1873.

THE DIETRICH CASE

The tax on liquor was inaugurated during the Civil War as an internal revenue tax to aid in financing the war. It was one of the few internal taxes retained by the national government after the war, and was the object of a bitter and relentless campaign for repeal. In fact, there were many resemblances between this campaign and the antiprohibition campaign of the 1920's against the Eighteenth amendment. Corruption in administration led to the Whisky Ring scandals in 1875, which compromised even President Grant. The federal enforcement in Kansas was in the hands of George T. Anthony, a cousin of D. R. Anthony, and a political opponent within the Republican party. Lecompte was United States commissioner in Kansas and preliminary hearings for offenders prosecuted under federal law came before him to determine whether evidence seemed to justify binding them over for action by the grand jury at the next term of the United States court.

The case of Charles Dietrich, for rectifying liquor without a license, was heard in August, 1873, and he was bound over on $2,000 bond for trial at the next term of the circuit court. In the Leavenworth Daily Times, August 8, 1873, Col. D. R. Anthony denounced the prosecution of Dietrich on the ground that there was no desire to enforce the law, only to harass small offenders while the big violators, under a system of protection, became rich. Furthermore, in attacking the commissioner personally, Anthony charged that: "Lecompte true to his instincts and the tyrannical reputation he bears for crimes committed in the dark days of 1854 5 6 and '57, bound his victim over in accordance with the instructions he received, from the man he now acknowledges his master." Instead of being re-
required to appear in the United States district court in Leavenworth, Dietrich was required to appear before the United States circuit court in Topeka. ¹ Neither the guilt of Dietrich's action nor the correctness of Lecompte's official action are critical to the present story, but the language quoted above in characterization of Lecompte, became one of the counts in the libel action. The Dietrich case provided only the occasion for its use.

THE McCREA CASE

The revival of the controversy over Lecompte and the murder of Malcolm Clark by Cole McCrea, April 30, 1855, came about through a series of "Early Kansas" articles prepared by H. Miles Moore and published over a period of approximately a year, February, 1873, to January, 1874, in the Leavenworth Daily Commercial. Moore was a New Yorker, living in Weston, Mo., 1851-1855, a Whig in politics, and a member of the Leavenworth town company. He had acted with the Proslavery element, voting in Kansas on election days prior to his definite residence in Leavenworth which began in September, 1855. He had joined the Free-State party soon thereafter and was nominated attorney general, December 22, and elected January 15, 1856, under the Topeka constitution. Thus, at the time of the Clark-McCrea affair he was still a Weston resident, although a member of the Delaware Trust Land Squatters' Association because of a claim held in Kansas.

The murder of Clark had occurred during a Delaware Trust Land Squatters' meeting. As Moore related the incident, McCrea was not eligible to participate because he was settled on Kickapoo lands. Clark had served as marshal in the Delaware association and when McCrea interrupted after warning that he was not eligible to participate, an altercation ensued in which Clark was in the act of attacking McCrea when the latter shot and killed him. McCrea attempted to escape, was seized by the crowd and with difficulty taken to the guardhouse at Fort Leavenworth to save him from mob violence. After several months, McCrea escaped, but after a few years returned and was then living at Leavenworth.²

In the "Early Kansas" article of the week following the printing of the above account, Moore added further comments including the Leavenworth Herald May 11, 1855, account of an indignation meeting and incendiary resolutions of May 3, 1855, of sympathy for Clark and denunciatory of McCrea. In reprinting this material,

¹ Leavenworth Daily Commercial, August 8, 1873; Leavenworth Daily Times, August 8, 1873. Another "vinegar works" liquor case was reported in the Times, August 26.
² Leavenworth Daily Commercial, July 13, 1873.
however, Moore omitted names of living persons, particularly the references to Lecompte. The latter wrote Moore a letter, dated July 21, thanking him for his kindness, but taking the occasion to explain the errors in the old Herald story. This was substantially a restatement of his Stewart letter on the same points, relating how his role in that meeting had been misrepresented, and that, in fact, he had intervened to save McCrea, and he still thought he had done so. That story may be summarized, briefly. Judge Lecompte, who was then living at Shawnee Mission, was notified of a meeting to be held in Leavenworth the next day to decide upon action. On a half-hour's notice, Lecompte insisted, he caught the stage to the fort, and in the city intervened to persuade leaders to submit to legal processes. To that end, he thought that he had succeeded. He addressed the meeting and left thinking the crisis was over. Only afterward had he discovered what the meeting had done following his departure in adopting the resolutions in question, and the Herald's misrepresentation of his address to the meeting as an endorsement.³

Too late, Lecompte realized the mistake he had made in not entering into the contemporary record an immediate denial of the Herald story, his letter to Moore stating the circumstances—at any rate the circumstances as he saw them in 1873:

I intended to write the proper explanation for the next issue, but unhappily for a proper vindication of myself, I failed to think of the future and considering that the knowledge of those present would correct the falsity of the position assigned me, let pass the opportunity of correction, and they [thus] left, as a permanent record, a report of the proceedings, such as it is.

McCrea took strong exceptions to Moore's version of the affair and prepared an extended reply, published in the Leavenworth Daily Times, August 5, 10, 19, 24, 31, 1873. In printing McCrea's "Card," D. R. Anthony stated, August 5, that "We have no interest in the controversy, but, as Mr. McCrea thinks he has been grossly wronged and outraged by Mr. Moore, we give admission to his card of defense." McCrea referred to Moore as "a paid wretch in the employ of a newspaper claiming to be Republican," and to his history as "vulgar twaddle." In the second article McCrea compared Moore to a "snarling cur," and made even a more offensive comparison, but as the article deals primarily with Lecompte, the details of the Moore controversy are omitted here.⁴

McCrea pled self defense in justification of his shooting of Clark,

³ ibid., July 20, 27, 1873.
⁴ Leavenworth Daily Times, August 5, 10, 1873. The story of Moore and McCrea has been told elsewhere by the present author, under the title "From Missouri to Kansas; The Case of H. Mills Moore, 1852-1855."
and in defending his claim of right to participate in the squatters’ meeting of April 30, 1855, enumerated five points: the exercise of jurisdiction by the Delaware association in Kickapoo country; the resurvey of the Delaware-Kickapoo boundary which placed McCrea’s claim on Delaware land; retainer by William Braham, as his legal counsel; engagement by the real settlers, regardless of Proslavery or Free-State sentiment as their agent; election as Sachem of a secret Free-State society. McCrea’s narrative was so confused in places as to render much of it incoherent, and therefore it is impossible to be certain upon what ground McCrea claimed his right to participate in the squatters’ meeting as of April 30 in contrast with his claim of right as of August, 1873. In his “Early Kansas” articles, Moore had not recognized any aspect of such a claim of right by McCrea. On McCrea’s side, he accused Moore of heading a mob to deliver McCrea from the guardhouse at Fort Leavenworth into the hands of the mob to hang him. Moore’s “Journal,” however, proves McCrea’s accusation false.⁶

McCrea’s grievance against Lecompte is the major focus of the present story. In connection with the charge against Moore of heading a mob to hang him, McCrea charged that Moore and Dr. Bails appeared at the Fort with a writ of habeas corpus, purportedly sued out by McCrea, before Judge Lecompte—“the affidavit bearing the certificate of that most servile of ruffian tools. . . .” He accused Lecompte further of trying to force an indictment of McCrea from the grand jury in September, 1855, which was refused. Again in an adjourned session of the court, McCrea asserted that Lecompte secured a more pliable grand jury. Furthermore, he told a confused story of securing a change of venue under threats against Judge Lecompte.

Another offensive reference to Lecompte was made by McCrea in connection with his charge about Lecompte’s relation to the Howard committee which investigated the Kansas troubles in 1856: Now one more incident in the judicial life of this unjust and imbecile Judge, . . . the office-seeking Republican, and I have done with him. I now refer to his raising his hand against the very government of the nation when the wretch undertook to keep our country from knowing our wrongs.⁶

McCrea was not “done with him,” however, but, in the next installment of his reply to Moore, discussed the murder of William

⁵. Leavenworth Daily Times, August 10, 24, 1873; H. Miles Moore “Journal,” entries for April 29, 30, May 1, 2, 3, 1855, account for Moore’s activities. He was ill May 1, 2, 3, and confined to his bed, or to his room, most of the time. The Moore “Journal” is in the Coe collection, Yale University Library, and is used here with the written permission of the Yale University Library, dated February 26, 1953.
⁶. Leavenworth Daily Times, August 24, 1873.
Phillips, by a mob, and the murder of Hoppe by Fugit, charging that the latter was acquitted by Lecompte:

The judge is living in well-merited contempt about a mile south of the city.

. . . Not one of the mob [that killed Phillips] was ever brought before a grand jury by that most infamous of judges—S. D. Lecompte. But the strangest part is, that this judge, the most foul of proslavery lickspittles, expects to receive a reward from the Republicans. . . . He [Phillips] was finally murdered on the 1st of September, 1856, while his gentle wife was an inmate of a lunatic asylum from the effects of frights received in Kansas from ruffians under the encouragement and approval of Judge Lecompte. Is it not cruel to keep that devil in expectancy of office so long? Oh, God! did ever the judicial ermine rest on so foul a back? 

The only reaction of Moore to the McCrea articles was an entry in his journal, August 31, 1873: "McCrea has one in the Times a rich batch of lies and nonsense." It would seem that, on the basis of the articles, Moore had as good a case as Lecompte against McCrea and Anthony for libel.

"Presidential Terms of Office"

The third episode that contributed to the Lecompte-Anthony libel suit arose out of an article written by Lecompte and printed in The Kansas Magazine, September, 1873, "Presidential Terms of Office." Lecompte argued for the right of the people to elect a man for as many terms as they thought fit. The judge pointed out that the issue was usually raised in the midst of a campaign by the adherents of the candidate to be benefited. But he insisted that there was a principle involved that should be considered independently of any particular candidate or party. The constitution placed no limits, and from patriotic motives Washington had set a precedent of two terms, but nearly a century had passed during which the republican principle of government had become well established in the United States, and had become widely recognized in the Old World. All arguments against re-election without limits he reduced to two: "The first, that of an adherence to an old practice because it was so; the second, that of a doubt of our capacity to maintain the great fundamental principle, popular sovereignty."

Lecompte's argument for a change in the custom of the two-term rule affords an admirable glimpse into the quality of the judge's mind and personality: "The general adoption of this sentiment [the two-term rule] would be the most complete quietus to progress that could be conceived. It is utterly inconsistent with the idea of human advancement, and can find no advocates amongst the be-

7. Ibid., August 31, 1873.
lievers in the yet untold wonders of human capability.” Of course, there was a fly in the ointment. The New York Herald, a Democratic organ, had already come out against a third term for Grant. Although Lecompte denied any interest in Grant for a third term, yet he suggested that if Grant’s future conduct did not forfeit public confidence, and on the contrary, further enhanced it by 1876, the two objections named should not stand in the way of a third term.

The Topeka Telegraph commented favorably on Lecompte’s article, but in his Times, August 29, 1873, D. R. Anthony used this notice as the text for a scathing editorial:

During the old border ruffian troubles Judge Lecompte was the most obnoxious of all the federal appointees in Kansas. He prostituted the judicial ermine to do the dirtiest work of the slave power. He went to such extremes that his name became infamous and is to-day execrated by the friends of humanity throughout the country. In later years the Democracy failed to recognize his claims for office, he therefore deserts his old party associations and for the past few years has called himself a Republican. We do not object to his voting the Republican ticket, but we do object to his proclaiming himself the oracle of the party.

Judge Lecompte now prostitutes himself to do the work which no honorable Republican will do.

We have no unkind feelings towards the Judge, but we must beg him to keep quiet and not make the Republican party responsible for his wild subservient nonsense. Who is running the Kansas Magazine?

LECOMPTÉ’S “CARD” OF WARNING

For Lecompte, this seemed to be the last straw. He issued a “Card” of warning “To D. R. Anthony and Cole McCrea,” published in the Commercial, September 3, 1873, referring to the “grossly defamatory articles,” which had appeared in the Times. He pointed out four possible courses of action: to take redress into his own hands; to reply in kind; to submit without protest; and to institute libel proceedings. Although disagreeable, only the fourth course could he consider adopting:

But before doing so I prefer to give you both this open warning. I therefore do now advise you that I shall adopt the course indicated if there shall be any repetition of such use of my name.

I need simply add that the law gives you the privilege of showing the truth of the matters alleged in justification.

If you are satisfied that you can maintain the truth of such charges then this warning need not deter you.

I will scarcely say that I am not to be understood as intimidating any suit for damages. I want none. I propose to treat it as the law treats it—as a crime against order and society to be punished.

The Times did not subside immediately and reprinted, September 7, from the Paola Spirit a commentary on Anthony’s editorial on the
judge's presidential terms article under the headline, "An old Shyster." What the Spirit said was that "It [the editorial] very properly deals out a few hard knocks to one old shyster in the following language"—and then quoted Anthony on Lecompte.

LECOMPTE'S RELATIONS WITH THE GRANGE

The Times of September 10, went a step further, providing the fourth episode in the background of the libel suit:

The Grangers of the county, we are informed, met in council at High Prairie, on Saturday last. Judge S. D. Lecompte, the U. S. Judge who declared the Lawrence Hotel a nuisance, and the Judge who tried and cleared Fugitt, was in attendance. There was a large representation. Lecompte moved, as the sense of the meeting that it was inexpedient to make county nominations, which was carried. A delegate, however, pitched into the Judge and exposed his subserviency. The Council reconsidered the resolution and by an almost unanimous vote resolved to co-operate with the farmers' movement.

If they nominate an independent ticket we hope they will nominate their best men.

After this eruption, Anthony became quiet until December 23. The defalcation by the Leavenworth county treasurer had created a crisis. The Council of the Patrons of Husbandry had met December 20 to consider action, and authorized Lecompte to present their program to the meeting of the board of county commissioners, December 22. Anthony took exceptions to this choice and announced his opinion in an editorial December 23:

It was extremely unfortunate for the Grangers that they selected a tool of the old Border Ruffians to speak for them. Judge Lecompte is naturally a subservient, lazy man, the very last one that ought to have been selected to act as the exponent of the farming element. The Judge is by training and instinct opposed to the Granger policy, and had he not failed in his profession he would scorn to stand by the sons of toil. He never paid any tax himself, and is therefore the last man that should speak for taxpayers. . . .

THE LIBEL SUIT FILED

Anthony's newspaper rival, the Commercial, December 25, reviewed the background of the libel case, the McCrea articles, Lecompte's warning, the silence of the Times, then Lecompte's appearance on behalf of the county Grange, December 22, and the Anthony editorial the following day, concluding that there was little in the editorial itself that should have precipitated a libel suit, but it was the cumulative effect that "so exasperated the Judge that he, on yesterday [December 24], filed a bill of complaint. . . ." The Commercial revealed where its heart lay by the concluding sentence: "Judge Lecompte is an excellent citizen and an estimable
McCrea had already set by the articles of the preceding August and September, which largely repudiated Moore's own writing on "Early Kansas" printed during the summer. Moore himself appears to have undergone at least a partial transformation. During the preceding summer, Moore had been generous toward Lecompte and the friendly exchange of courtesies had ensued in Moore's "Early Kansas" articles. But on December 28, the day after Moore had accepted the defense of Anthony, the Commercial printed his installment of "Early Kansas" dealing with the "Sack of Lawrence." In that article, Moore depended upon second hand reports from Lawrence that he had recorded in his "Journal" in May, 1856, attributing the destruction of the hotel and presses to "orders from the First District Court." He then reprinted the text of the notorious "indictment or information against the newspapers and free state hotel," and then added this comment:

I wish I had the names of all the members of that grand jury who made the above recommendations, that I might give the people of Kansas as well as themselves if alive the benefit of this advertisement, they should be preserved, that they might be execrated by the present generation. The chances are that some of them at least if now residing in this State, are holding Federal or State appointments. I regret to say that the judge of that court approved the recommendation of that infamous grand jury, and issued the order for the abatement of those nuisances, so-called. . . .

One might ask whether fulfillment of Moore's professional obligations to his new client required such a change of front in his responsibilities to his readers for truth in history?

Anthony began pleading his case through the Times by printing documents on the William Phillips case taken from the archives of the district court of territorial vintage:

The papers published, it seems to us, prove conclusively that Lecompte was the Jeffries of those dark days of blood. Can anyone knowing the facts of the brutal treatment inflicted upon Phillips and of Lecompte's judicial action in the premises doubt that the latter was the "tool of the Border Ruffians?"

The original papers in the above case are now on file in the Clerks' office in this city. The indictment of the Grand Jury, declaring the Free State Hotel and the two Free State papers in Lawrence nuisances, cannot be found. They have probably been abstracted from the records of the court. In these later days, there are obvious reasons why many officials would very naturally desire their destruction. The old guard of Free State men will appreciate the reading of the documents.8

The preliminary hearings on the Anthony case began in police court, before Judge Samuel B. Williams, January 5 (Monday), and

8. Ibid., January 4, 1874. The particular documents printed were not returned to the clerk's office, and are now in the "H. Miles Moore Papers," Manuscript division, Kansas State Historical Society.
continued through January 10, 1874. The prosecution placed in evidence copies of the Times containing the articles named in the complaint and rested its case. The defense occupied the remainder of the time. The Times ridiculed the prosecution:

Lecompte dilated on his numerous grievances, told what a perfect burden his life had been, pictured his deep misery to the Court, till his knees began to weaken and great crocodile tears chased each other down on either side of his blushing nose.

Referring to the arguments of the counsel on both sides, the account continued: "When these buncombe speeches had rippled away into complete nothingness, the witnesses were called."

Space does not permit a full report of the evidence and commentary from both the Times and the Commercial during the week of these hearings. The points that appear most pertinent to the main theme of this paper must be selected for brief review. On the second day, when the parade of defense witnesses began, Lecompte challenged the procedure proposed by the defense. The defense held that all that was necessary to prove was that prevailing public opinion held that Lecompte was guilty as charged by Free-State men. Lecompte insisted that the defense must be limited to the specific charges and establish them by positive proof. As the Commercial reported it:

The Court held that the acts of injustice, oppression and tyranny alleged to have been committed by Judge Lecompte must be supported by specific proof of each allegation and remarked that the public opinion formed at that time was most likely colored by the partnership [partisanship?] of the actors.

Straightened by this ruling, the amount of evidence adduced bore somewhat the same proportion to the number of witnesses examined, and the time consumed, that the bread should in the Falstaffian view, to the amount of sack with which it is to be consumed.

Little factual evidence indeed was offered, but in spite of the ruling much was said of Lecompte’s bad reputation. In the cross examination of Anthony, he fell back upon such phrases as “best information,” “general sentiment,” “do not know,” “comparatively,” and “universal opinion.” James Legate’s testimony, as a witness called by the defense, proved of particular interest, and was reported in contradictory fashion by the Times and Commercial. He had been a member of the Douglas county grand jury in May, 1856. The Times interpreted him as saying that the grand jury did bring in a bill, by a vote of 13 to 4, declaring the hotel a nuisance, and also found bills against the newspapers, and that Sheriff Jones “publicly proclaimed that he did it [abated them] under the authority of the Court.”
The Commercial reported Legate as saying “that the general talk at Lecompton was that Judge Lecompte would not make the order—and that the Deputy Sheriff that headed the mob at the time of the destruction, declared that it was done by order of the grand jury.” Because of differences about what Legate had said, he was recalled the next day and repeated his statement as reported by the Commercial—the deputy sheriff asserted that the destruction was carried out by order of the grand jury. Lecompte testified that he had not issued an order to abate nuisances, and reviewed his other judicial acts in denial of the charges made against him during territorial days, and repeated in the hearings.

McCrea was recognized as the star witness, but when called to the stand proved a nonconformist. The Commercial described the scene:

Cole McCrea knew of no good in or about Judge Lecompte, and appeared to enjoy saying so. As it was found impossible to get catechetical answers to the questions put to this witness, he was finally left in possession of the floor, and told a good deal of what he knew about Kansas.

Col. Anthony listened with exemplary patience, and was able to suggest one or two immaterial items. . . .

When McCrea abandoned the floor, the court was compelled to adjourn on account of the lateness of the hour.

Twice during the hearings the question arose about the records of the territorial judiciary. On the second day, the Times reported:

The records of the court while under Lecompte’s management were sent for and found to be either missing or mutilated to such an extent that nothing could be gleaned from them. Lecompte wanted the records to be used as testimony, and the defense pleaded their insufficiency and asked to prove the imbecility and corruption of Lecompte’s court by parole testimony.

The Times report of Legate’s testimony had him say that:

All the records of this court were burned [probably meaning Douglas county records] at the time of Quantrell’s raid on Lawrence, and a law had to be passed by the Legislature for the benefit of attorneys practicing in this court.

. . . .

These allegations are entered into the narrative at this point, but come up for verification later.9

Judge Williams’ opinion stated that the defendant admitted publication, but defended it on the ground of truth, and denied malice. Williams held, however, that the truth was not proven, and the malice was not conclusively proven. There was a strong presumption therefore of guilt, and the defendant was bound over for trial, on $500 bail.

9. The reports of the preliminary hearings appear in the Times, January 6, 7, 8, 9, 11, 1874; and in the Commercial, January 6, 7, 8, 9, 11, 1874.
The Libel Trial

After a series of continuances, the libel suit came to trial December 8-12, 1874 (Tuesday through Saturday), with a verdict of guilty, the sentence being pronounced December 18. Anthony's appeal to the Kansas supreme court was denied and the mandate of that court was filed in the Leavenworth criminal court, March 4, 1875. Furthermore, on December 8, 1875, a resolution of the board of county commissioners remitted all costs against Anthony.10

The *Times* summary of the testimony was extensive.11 Again the prosecution presented only the evidence as contained in the publications complained of, and Lecompte's personal statement in his own behalf. No witnesses were called. Of the long list of defense witnesses the *Times* insisted "not one of them failed to answer yes when questioned in regard to his [Lecompte's] former name, as being infamous, and that of a tyrant . . . ; and at one instance in the trial he became excited, and jumped up and exclaimed, 'I did try to make Kansas a slave State!'" That summary appears to be an accurate indication of the basis upon which the defense rested. The *Times* insisted that it had only published the truth about his reputation and had done it without malice. Two months later, Anthony stated again his difference with the ruling of the court:

. . . Lecompte's deeds in the early days of Kansas have passed into history. Nothing can now be said that will change that history. . . . No one could, to-day, prove by living witnesses, that which occurred twenty years ago. It is an absolute impossibility. Most of the witnesses are dead. Yet, in the late trial for libel, the court ruled that we must prove every fact the same as we would in case of a transaction of the past month. . . .12

The testimony of two of the most prominent of the witnesses for the defense from Lawrence further emphasizes the issue of the nature of legal proof in relation to libel. James Blood testified, as summarized by the *Times*, that "the character of Lecompte in the early days of Kansas was very bad; that he had not personally seen anything out of the way in Lecompte's doings, but it was common talk that he was not doing his duty as United States Judge." And Charles Robinson "had heard in the East that Lecompte was a tyrannical man, but had not seen any of it since he came to Kansas."

The *Commercial* reported the libel trial only briefly. Concerning the first day's proceedings it stated that Lecompte "made a plain and

11. Leavenworth *Daily Times*, December 9-13, 1874. The case file for this case has not been found in the archives of the district court in Leavenworth county.
12. Leavenworth *Daily Times*, February 14, 1875.
comprehensive statement of his judicial action during the early days of Kansas, and devoted his statement to showing that he was not an imperious or subservient man, and that his character at that time was not such as represented by Anthony in his paper.” On the other side, the Commercial characterized the defense testimony as of “a rambling character, and more important as a review of the history of the pro-slavery days in Kansas than a means of conveying any material intelligence or information to the jury. The whole testimony has once appeared in print [in connection with the preliminary hearings], and it is unnecessary to reproduce it again.” The next reference to the trial in that paper was on Saturday, December 12, after the case had gone to the jury, but prior to the verdict:

Several attorneys spoke in the case, but the forensic efforts were confined to the remarks of H. Miles Moore and the prosecuting witness. The speech of H. M. M. lasted nearly two hours, and exhausted both the speaker and jury. As to the summing up of the argument and testimony of the case by Judge Lecompte in his own behalf, it was considered by all hearers to be the most eloquent and impressive speech ever delivered in that court room.

Lest some might argue that the Commercial was prejudiced in its estimate of Lecompte’s efforts, Moore’s “Journal” entry for the night of December 11, without punctuation, is also eloquent and is invaluable:

I made my speech in the Anthony case about 1½ hours I thought I made a good speech & all said so Judge Lecompte followed in one of the ablest & most eloquent appeals I ever listened to I think we are beat the only hope is a hung jury waited a half hour & court adj till 10 to night I broke my sleeve button I am very tired.

On Saturday, and after the verdict of guilty was rendered, Moore’s “Journal” entry reported: “Saw Anthony he thinks I did all that could be done as I broke my sleeve buttons he presented me a nice solid gold Pr Masonic emblems.” But by December 18, when Judge Byron Sherry pronounced the sentence of $500 fine and costs, Moore had recovered his fighting spirit: “Anthony was red hot. It was a terrible blow, & I think unjust judgement. The idea of a white man being fined for libel on old Lecompte for his misdeeds of 54, 55, 56, & 7. Oh Gods such an outrage on humanity.”

Colonel Anthony was totally unrepentant. The Sunday Times, December 13, contained a leading editorial on “The Verdict,” with the assertion that popular reaction was almost unanimous that the verdict of the jury was “unwarranted by the facts.” He argued that:

These well-known facts have passed into history and were so indelibly impressed upon the minds of the people that all the juries and verdicts in the land could not change the record. . . .

We are proud of the fact that an enlightened, intelligent and truthful people condemn the verdict as unjust. They need, however, have no fears that it will deter The Times from the advocacy of the principles of freedom, or prevent The Times from exposing fraud and corruption as fearlessly in the future as it has in the past. If the verdict has had any effect upon us it is to impress upon us the necessity of making The Times more outspoken and independent for the right.

Also, with the Sunday Times, December 13, Anthony began publishing a column under the title “A Chapter of Kansas History,” each issue devoted to reprinting an account of Lecompte’s conduct during territorial days. In that issue the “chapter” was taken from the Howard committee testimony (p. 963) on the Phillips and McCrea episode. In those days, when a Sunday paper was published, it was not usually customary to print one on Monday, so the next issue was Tuesday, December 15, when the portion was taken from A. D. Richardson, Beyond the Mississippi (p. 64). On December 16, an extract from John H. Gilpin, Geary and Kansas (Philadelphia, 1857), told of the Buffum-Hayes case; on December 17, from the same book, the Douglas county session of Lecompte’s court in May, 1856. As an introduction to the last named item, December 17, Anthony stated:

The jury, under this charge [of constructive treason], indicted the “Free State Hotel,” at Lawrence, as a nuisance. The “sacking of Lawrence” was done under the authority of law, and “the approbation of the Chief Justice.” The Grand Jury, at Lecompton, had indicted them as nuisances, and the Court had ordered them to be destroyed.

Lecompte was the then Judge of the First District Court. To all those who heard Lecompte’s evidence in the court room last week this article will be interesting testimony. The actors in those days of crime must stand or fall by the record which they then made.

On December 18, Anthony continued his chapters in Kansas history, reprinting the conclusions of the majority from the Howard committee report. On the same day the Times was gratified to be able to reprint a long article from the Chicago Tribune on the libel suit, which took the ground that the case was “invested with much more than local importance.” The Tribune’s setting for the case was as follows:

For years past, however, Judge Lecompte has been a Republican, and the recognized leader of one of the factions of the Republican party. As Mr. Anthony the editor of the Leavenworth Times, has been for a long time the leader of another faction, a bitter personal enmity has existed between the two, which has been manifested on every opportune occasion during the past three years. Anthony had the advantage in controlling a newspaper, and at last provoked the suit.
The Tribune concluded that the verdict was guilty "notwithstanding the fact that the witnesses for the defense sustained all the charges made by Mr. Anthony." Although the sentence had not yet been pronounced, the Tribune commented on Anthony's defiance, that the Times printed:

articles even more savage than those which produced the suit for libel. Mr. Anthony has one advantage upon his side, namely, the sympathy of the community, and also of a majority of the people of the State, who have not forgotten the position Judge Lecompte occupied towards free Kansas in the years of her history from 1854 to 1857. His Republicanism is hardly of sufficient age to wipe out those memories.

Although gratified by the Tribune's view of the case on most points, Anthony objected sharply to the allegation of personal enmity between himself and Lecompte and about the latter being the leader of a Republican party faction:

We simply took exceptions to a man of Lecompte's record thrusting unpopular ideas upon the Republican party, and also thought that he was too ready to bind over for trial parties charged only with the trivial, technical violation of the Revenue laws, ... and where it is evident that arrests were made to give officials their fees.

The Times claimed credit for breaking up that sort of persecution, and for contributing to the breakup of the bankrupt court ring. To illustrate the contention that there was no personal ill-feeling, Anthony reminded his readers that he had employed Lecompte in the Haldeman case, and paid him $150 although he had contributed nothing to the case.

All this had transpired prior to the session of the criminal court at which Judge Sherry, on December 18, pronounced sentence. The following day, still unrepentant, Anthony declared: "The English language cannot describe a more infamous character than that which reputation, history, and public opinion accord Lecompte. The Times will continue to be the advocate of right and justice."

By that time the state was being heard from, and on the same day, the Times began publishing a column of commentary from Kansas newspapers, all favorable to Anthony. The Olathe News Letter reported rumor that Lecompte's "speech and not the evidence secured the verdict." The Louisville Reporter concluded: "It would tax our ingenuity too much to guess what the Times could have said about the old border ruffian to libel him, unless it accused him of having been a decent and honest man in those times." Sol Miller's Kansas Chief attributed the verdict to bitter enemies and the sheriff
stacking the cards. The Oskaloosa *Independent* likewise presumed that the verdict reflected "the outgrowth of ill-will toward Anthony rather than a vindication of Lecompte, and in any event is a huge burlesque upon justice and the facts of history." The Leavenworth *Herald*, after expressing itself rather freely, pretended fear of a libel suit, and so closed its comments. The *Times*, December 20, published a second series of comments, these from the Ottawa *Journal*, the Solomon *Gazette*, the Garnett *Plaindealer*, the Iola *Register*, and the Wyandotte *Gazette*. The *Gazette* was sure the verdict was "all wrong, and the jury must have been idiots." Along with this installment was another chapter of Kansas history chosen from W. O. Blake's, *The History of Slavery and the Slave Trade* (Columbus, Ohio, 1863), pp. 752-754. On December 22, the special year's-end edition, came still another chapter in Kansas history, this time from Gihon's *Geary and Kansas*, including the alleged Lecompte charge of the grand jury on constructive treason. Along with it was reprinted the first and second series of Kansas press notices.

Over Christmas, Lecompte was given a short rest, but December 27 brought a third series of press notices, with an introduction asserting that "every paper, Democratic and Republican, which has thus far expressed an opinion, is on the side of the liberty of the press, and most emphatically against Lecompte, the jury and the judge"—only persons exposed for shortcomings, or corruption, or with guilty consciences sustained Lecompte. Several opinions of unusual violence appeared in this column: the *Doniphan County Republican*, Troy: "decided by a jury of nincompoops or partisans in favor of Lecompte"; the Holton *Express*: "The mystery to us is how a jury outside the infernal regions, . . . could bring in a verdict against the Colonel . . . "; the *Howard County Ledger*, Elk Falls, declared that Lecompte "was an old political harlot"; and the *Woodson County Post*, Neosho Falls: "We should judge from the published evidence that it would be hard to tell a lie on old Lecompte without accusing him of possessing some of the attributes of a gentleman of honor."

Not all, however, were so violent. The Topeka *Times* thought that "Judge Lecompte will in the end lose more than he will gain. . . ." The Manhattan *Nationalist* conceded that "Lecompte may be a good man now, but he was unquestionably an infernal scoundrel in the old days that tried men's souls." After its first sharp reaction, the Oskaloosa *Independent* reported "There is quite a general sentiment in Leavenworth city that the verdict . . . was
just;” but the editor differentiated, that if considered a vindication of Lecompte, that opinion was wrong, although if considered as an expression that Anthony’s attack was uncalled for and out of place, on that point there was room for honest difference of opinion. Another Independent (n. p.) asserted categorically that: “We think the editor of the Times ought to let Lecompte alone. If he has repented of his wrong doing, let him die in peace and obscurity.” To this Anthony replied: “The joke is, the old Border Ruffian judge now claims to have done more than any other man towards making Kansas a free State.”

When the Leavenworth Times came out in a new format in January, 1875, the Solomon City Gazette congratulated Anthony on his achievement, in spite of the libel suit brought “by the notorious Lecompte, of border ruffian fame. . . .” The Ellsworth Reporter also extended its congratulations, and suggested that if such a new dress was in consequence of being convicted of libel, there were other Kansas newspapers that ought to be convicted. But Anthony was particularly pleased by the editorial of the Hiawatha Advocate, “an out and out partisan sheet, that honestly endorses every act of the White Leaguers,” and one which should be read “by Lecompte, judge and jury.” Extracts from this editorial follow:

the verdict is one which is calculated to act as an injunction on the liberties of the press, everywhere, we are provoked to say that, in our estimation, a more flagrant, unjust and heinous verdict has never been returned to any court in Kansas. . . . If Anthony was guilty in this case, then the whole editorial fraternity, from California to Maine, is guilty, and may be successfully prosecuted. It has ever been a wonderment to us that a man whose history is black with all manner of crimes, who, in the darkest days of Border Ruffianism, was the cheapest deputy of the hell-born embassy that sought to establish human slavery on our free soil, should be made the Chairman of the Congressional Committee of the State.14

Soon the Commercial found itself the defendant in a libel suit. Anthony had no love for D. W. Houston, and recalled that the Commercial had “gloried in the fact that old Lecompte sued and got a verdict,” yet he believed that the case “ought to be unceremoniously kicked out of court. . . .”15 In the legislature a bill was pending to abolish the criminal court in Leavenworth county and merge it with the district court as in Atchison, Douglas, Shawnee, and other counties. Anthony joined in the campaign. But the Commercial pointed out that in the legislature of 1874, as a member of that body, Anthony had opposed such a bill. Why had he changed sides?—

15. Ibid., February 7, 1875.
Before proceeding to the next step to be considered in the instructions, attention is called to the dictionary distinction between the words "character" and "reputation." The character of a person refers to the combination of qualities that are inherent in him, and in his conduct, while his reputation is opinion about him held by others regardless of whether or not it is true, or accords with his character. Thus when the issue was joined on the question of the truth of the charges as published, these differences in the meaning of words were critical. Judge Sherry's language was not happily chosen, but his meaning is not to be mistaken:

That evidence of reputation admitted by the Court to go to the jury, is to be considered by them only in reference to such of the libelous matters in the information as alleged by reputation, and is not to be considered by them as any evidence in support of direct charges against the said Samuel D. Lecompte.

That the proof having been made by the State of the publication of the libelous matter and the defendant setting up truth thereof, in justification [,] the burden of proving the truth is on the defendant, and also that it was published with good motives and justifiable ends.

Anthony was in error when he contended that nothing could change the verdict of history. He was confusing historical actuality with written history. True, nothing could change events that had already transpired—historical actuality—but written history was subject to error, and in this case the error could be demonstrated, and the record corrected. He was confused also on the usage and meaning of the words character and reputation. Thus, the character of a historical person is historical actuality, a past fact that cannot be changed, while reputation is a judgment of others about character (actuality) and reputation may be modified. When extensive written records of the transactions of history are available, historians can usually reconstruct historical actuality with such a degree of certainty and fidelity as to revise substantially the errors of first versions of written history, or in the case in point, the reputations attributed by contemporaries to the characters of historic persons.

This difference between character and reputation was far more important to Anthony himself than he appears to have realized. Anthony himself was a positive personality, who had made many bitter enemies. If his contention was correct about reputation and written history, then he himself would suffer at their hands, because his own reputation was not above reproach. Thus fortunately for both Anthony and Lecompte, the historical actuality as represented in their characters was not as bad as contemporary written
history and reputations would have posterity believe. Indeed, seldom are the facts as bad as the evil report spread about them.

**Sol Miller, Anthony, and Lecompte’s Defense**

Sol Miller was one of the outstanding men of Kansas journalism. He founded the White Cloud *Kansas Chief* in 1857, moved it to Troy, July 4, 1872, and published it until his death. A loyal Republican always, yet Miller was independent, fearless, and blunt, wielding power because he was respected even by those who opposed and hated him. He played the game of politics and of journalism according to the prevailing rules, and with ability. Sometimes Miller wrote significantly and at a high ethical level; at other times he wrote in bad taste; and sometimes he was obscene. Without regard to the prestige and power of any man, if Miller disagreed, he spoke his piece and to the point. Certainly he did not stand in awe of Anthony. His relations with Anthony may be documented by two illustrative paragraphs in the *Chief* for June 26, 1873:

D. R. Anthony was thrashed, last week, in the streets of Leavenworth, by a book agent. As there is no ordinance in Leavenworth against kicking a dirty dog in the streets, even though he be Mayor of the city, the man was not arrested.

And again:

One thing that we admire in D. R. Anthony is, that he never goes back on a friend. His best friend is the Devil, the father of lies; and Anthony never goes back on a lie.

With that gentle prelude, as the stage setting, Miller’s reactions to the Lecompte-Anthony libel suit may be reviewed without any illusions:

Our love for Anthony is not like unto the love of Jonathan for David; but these libel suits against newspapers are hard tuggings at a teat, and precious little milk. We thought Judge Lecompte was too smart for that. ¹⁷

When the verdict was returned in December, 1874, Miller observed that:

Considering that Anthony has many bitter enemies, and that the Sheriff who had the picking up of jurymen hates him as hard as Lecompte does, the cards were decidedly against him. We sympathize with him—the County does not pay the costs of the trial. ¹⁸

The following week, however, Miller had pondered the issues involved and delivered a challenging sermon on public ethics under the text: “Shall a Man Never be Forgiven?”

¹⁷. The *Weekly Kansas Chief*, Troy, January 1, 1874.
Perhaps in strict justice, D. R. Anthony should not have been convicted of libel for saying what he did about Judge Lecompte; but in reading his denunciations of the Judge, and his copious extracts from history to back them, the question arises, shall a man never be forgiven, if he once takes a wrong position, and does bad acts?

Nobody presumes to say that Judge Lecompte dealt out justice as he should, when he ran that department of the Territory of Kansas, and his name was by no means savory among Free State people; even the Judge himself is aware of this fact, and has remarked to that effect, when conversing upon the subject. But are there not excuses sufficient to palliate his conduct in some degree? Judge Lecompte was born, reared and educated in the South. He spent all his days amidst the institution of Slavery, and was taught to believe it a Divine institution, and as sacred in law as the Constitution of the United States itself. He was appointed at a period of intense bitterness on the Slavery question, and came here with all his prejudices on the question. He was appointed for the purpose of carrying out a certain line of action, and no doubt fulfilled his mission more faithfully than was pleasant or wholesome for Northern men. But if Lecompte did this, we must remember that he was backed by both Presidents Pierce and Buchanan, Northern men, and by Gov. Shannon, also a Northern man. Why shall the past be raked up against Lecompte, who believed in the cause in which he was engaged, and forget the part taken by those Northern men, who directed Lecompte’s actions, but who were not actuated by sincere motives? Although Lecompte’s acts may have encouraged outrages, and prevented the punishment of those who committed them, yet we have never heard that he engaged in any of them himself—indeed, we have always taken him for a man whose disposition was averse to ruffianism.

When Slavery was defeated, and Kansas admitted as a Free State, Lecompte quietly accepted the situation, remained in the State, and yielded obedience to the laws. When his Southern friends rebelled, he did not go with them, but remained loyal, and if he was even suspected of disloyal sentiments, we have never heard of it. Rebels, both Northern and Southern, have been forgiven [Amnesty Act, 1872], and are again beginning to crowd the Halls of Congress. We cannot see the justice of continuing to throw stones at Lecompte, for acts committed before the rebellion—especially by men who have so many sins of their own for which they need forgiveness and forgetfulness. We do not pretend to justify or apologize for the acts of Judge Lecompte in the early history of Kansas; but if he has been convinced of his error, and is endeavoring to atone for it, we say, let him alone.19

Miller’s editorial drew an appreciative note from Lecompte, and an arrangement by which he prepared a defense of his career as territorial judge in Kansas under the title, “The Truth of History,” which was printed in the Kansas Chief, February 4, 1875. After reading what Lecompte had to say, Miller introduced the communication with the following editorial, which went rather further in concessions to the writer than the earlier editorial:

Most of our inside reading space, this week, is occupied by Judge Lecompte’s review and defence of his official life, as Judge of Kansas Territory. Several

19. Ibid., January 7, 1875.
weeks since, we published an article, in which we contended that, however censurable some of the Judge's acts may have been, we did not regard him as so bad a man as he had been represented to be, and that in consideration of his subsequent good behavior, he was entitled to forgiveness. This prompted the Judge to ask if we would grant space in our columns for a review and defence of his official conduct, and if so, what space would be allowed. We replied that it was a rule with us to give every man who desired it a fair showing in this paper, and that he might occupy as much space as he deemed necessary to do himself justice. What he has to say on the question is before the reader.

Judge Lecompte's statements are most complete and clear upon every point, embracing, we believe, all the acts or alleged acts for which he has been so bitterly denounced for almost twenty years. He does not shirk any question, nor beat about the bush, but defies proof, either by living witnesses or authentic records, to prove that any of the charges were true or just. If there be any who have evidence to the contrary, now is the time to produce it.

We are among those who once believed, that if Judge Lecompte did not directly countenance and encourage Pro-Slavery outrages, his leaning was so strong on that side of the question, that advantage was taken of it by those who did commit the outrages. This was the impression we received before coming to Kansas; and after coming here, we heard nothing to correct the impression. Reports of committees, and the tone of what purported to be true histories, all pointed in the same direction. The Judge's political friends did not seem to make an effort to refute the charges, which was regarded as admitting their truth. Having since met him upon several occasions, his appearance, bearing and style did not seem to us to be those of a man who had a taste for ruffianism; and his after conduct has been that of a peace-loving and law-abiding man. We therefore thought, that if he had been open to censure for past acts, it was time they were forgiven, if not forgotten.

But, according to his own story, the Judge is himself responsible for having so long rested under the odium of those charges. He tells us, in this article, that when investigating committees, officials and reporters were charging him with gross crimes, he took no measures to vindicate himself; that only once, before this time, has he ever offered, in print, to defend himself—and the first time, we presume, he did not enter into a thorough review. So that, we may say, now is the first time that he undertakes a full defence of himself. He ought not, then, think so badly of the press. We are honest in our belief that he was open to censure; and other editors, from the same sources of information, doubtless honestly believed the same thing. One generation that held him guilty is rapidly passing away, and their children have been brought up in the same belief. It may be, that if the Judge had undertaken his vindication while the bitterness of the strife still existed, it would have been looked upon as simply intended for effect, and have failed of its object. Perhaps now is a more appropriate time to speak out; but still, as all statements heretofore made have been on the opposite side, it is not at all strange that public sentiment was against him.

We are glad that Judge Lecompte was induced to place a review of his official acts upon record, by seeing a desire on our part to be fair and just, and that he chose our columns for his purpose; for it is the other side of a question of Kansas and national history, which should be made correct and perfect
while there are living witnesses of the facts. The statements seem to be fair, and must be regarded as true, until the contrary is proven.

Except for four paragraphs, Lecompte’s “The Truth of History” letter has been reprinted in the Collections of the Kansas State Historical Society, 1903-1904, v. 8, pp. 389-405, which makes it generally accessible. With the details of the occasion for the defense before the reader, he may read and judge for himself the reasonableness of Lecompte’s presentation of his case as it applies to the many episodes in controversy. The present consideration must be restricted to the paragraphs omitted in the reprint, without the customary signs of omission, or explanations, and to the Sheriff Jones episode.

The two opening paragraphs of “The Truth of History” were deleted in the reprint. The first was not important, except as explaining something of the occasion for the original publication in the Chief—an acknowledgment of courtesy for kindness received. The second paragraph must explain itself:

There has been so much comment of an opposite kind in the papers of the State, upon the course of the Leavenworth Times toward me, that the slightest indication of fair dealing on the part of an editor awakens warm gratitude, and arouses the almost latent hope that the Press has yet left a dormant magnanimity that will not suffer injustice and outrage always to triumph. While your article falls much short of rendering me justice, it evinces a spirit from which I may well expect justice, upon a full understanding of the facts. These have been so shamefully perverted, and so studiously substituted by mischievous misrepresentation, that I should be over-fastidious in complaining of mere lack of rightful appreciation of myself. I think I entertain too correct an estimate of the allowances to be made for impressions deeply formed, to fall into so grave an error as to wage a controversy against decently expressed opinions, however erroneously I know them to be.

Two of the three closing paragraphs of the letter were omitted in the reprint, the third from the last and the final paragraph, giving the next to the last paragraph the closing position in the reprint. These omitted paragraphs follow:

I can not, of course, carry on with any combination of the press of the State a controversy in this matter. I could not if I would, and I would not if I could, carry on such a controversy even with the editor of the Leavenworth Times. How can I with a combination, great or small? If it give them pleasure to continue upon me, and through me, upon truth, and upon the Court, the jury, the creatures of the law, a course of aggression, of insult, and of wrong, I see no alternative but submission, just as the individual can but submit to the mob, from mere physical inability to resist its outrages. Only when, as in the instance which forced me to self-vindication, can I, should it be persisted in, undertake again to invoke farther redress. I have borne much of it from the same source, since the trial by which I have been vindi-
cated. I have done so, because I felt disposed to allow something to a feeling of exasperation, and am extremely reluctant again to invoke legal protection. But I think now, that I have borne as much as may be excused on that score, and I take occasion to say, in conclusion, that, claiming no exemption from just criticism of my opinions, of my acts, of my qualifications, for any trust to which I may aspire, or to which it may legitimately be supposed that I do aspire, I do not propose to submit to continued calumny. That a horse has been stolen from me, and the thief prosecuted to conviction, is no reason why I should submit to be robbed of all the horses I might own. The same law that subjected the thief to the penitentiary, subjects the libeler to a fine not exceeding one thousand dollars, or imprisonment not exceeding one year.

If I may be pardoned the abuse, of a partial paraphrase, of one of the grandest utterances of New England's chiefest orator, God grant that when my eyes shall be turned to behold, for the last time, the sun in Heaven, I may not see him shining on the broken and scattered remains of homes made desolate by any act of mine, whether in the tyrannical exercise of an accidental power; by the indulgence of an ill-regulated and unbridled lust; by tainted the air at large or of the home circle by false and calumnius aspersions; by casting over the hearth or heart of mother, wife or child the dark gloom of provoked or unprovoked homicide of father, husband, brother or friend.

Because the four paragraphs dealing with Lecompte's review of the Sheriff Jones episode are pertinent to the present study, they are also reprinted here:

Another accusation against me has been to the effect that the destruction of the Lawrence hotel and press was made under my authority. To this I can but offer unqualified denial, and an absolute defiance of any particle of proof from living witnesses or of record. Not until long after did it ever reach my ear that my name was in any manner connected with it, except that a newspaper article was sent to me describing my courts as scenes of drunken debauch, and myself as having been seen riding down to Lawrence astride of a whisky barrel, and directing operations. To such things I could scarcely have been expected to give denials. It did, however, in more serious forms, get into print, and even into so-called histories, as that of "Geary and Kansas," by Gihon (the only man whom I have ever known who struck me as coming up to the full significance of licksplitter), that Sheriff Jones proclaimed in the streets of Lawrence, at the time, that the destruction of the property mentioned had been ordered by the court.

On the preliminary examination of the case against Anthony, James F. Legate distinctly disproved any such declaration by Jones. I know of nobody who will say that Jones ever made any such declaration. I have no idea that he ever did. All I can say is that, if he did, he stated what is unqualifiedly false. If he or any other living man should say that, by any order, oral or written, I directed such destruction, he would say what is unqualifiedly false. If he or any other living man should say that, by act or word, I had ever intimated any such thing, he would say what is unqualifiedly false. If he or any other living man should say that, by act or word, I had ever given an expression to a sentiment of approval of the destruction of this or any other property, he
would say what is unqualifiedly false. If he or any other living man should say that he ever heard me express any other sentiment regarding it than unqualified condemnation, he would say what is unqualifiedly false.

What more can I say? If it be true that I did, directly or indirectly, by word, by intimation, by order, by connivance, by immendo, advise, counsel, direct or approve of all or any of the wrongs then perpetrated, I trust that God almighty shall paralyze my arm as I write, so that this disavowal shall never reach the public eye. What more can I say? Where is the order? where was the trial, where the conviction upon which such an order could have been based? Do the records show it? Does anybody remember it? Has anybody ever seen it? How heartless, how base such aspersions!

There were presentments by the grand jury of the hotel, and, I believe, of the press that denounced the laws and defiled and counseled resistance to them. There may have been issued by the clerk of the court citations to the owners to appear in court and show cause why they should not be abated as nuisances. I know not that there were. It was not my duty to know, but that of the district attorney. If he ordered them, they would have been issued by the clerk. There may have been many writs in the hands of the marshal for service, and I presume there were; for I do know that it was to aid him in the service of the writs, which he stated his inability to serve without aid, that he made the foundation for his proclamation ordering a posse. It was his duty to serve the process of the courts. If he could not without aid, it was his duty to summon aid. This he did, and with this I had nothing to do. The public meetings assembled in Lawrence so understood; else wherefore is it that all their correspondence and resolutions and conferences through committees were addressed to and carried on with the governor and with the marshal? Why was not I ever addressed? Was it that they lacked confidence in me? Why, then, was not this somewhere disclosed in the course of the various movements to which the events gave rise? Nowhere in all the publications of the time will it be seen that my name was mentioned, except in the purely gratuitous and, as I have shown, absolutely groundless and false assertion that my authority justified the subsequent wrongs.20

In this defense, more clearly than in the Stewart letter of 1856, Lecompte differentiated himself as judge, and the district court, from the grand jury, and from other officers, each acting within legally defined jurisdictions. Two important points he did not clarify; his use of the phrase “presentments by the grand jury,” and the actual status of Sheriff Jones in the whole proceeding. Lecompte’s defense was strictly legalistic and negative. By that is meant, that he imposed upon himself the limitation of showing that as judge, he was not responsible and was not even consulted. On the positive side, he refrained carefully from accusations against others. As a legalist, his rights and duty in his own defense ended in his own vindication. The task of proving who was guilty, he left to others.

In the course of Lecompte’s Kansas Chief letter, as in some other

of his writings, he revealed his knowledge of literature. In this case, he quoted aptly from Shakespeare, and in such a manner as to demonstrate his intimate familiarity with the great plays. Surely, those who visualize Judge Lecompte as a Border Ruffian astride a whisky barrel are obliged to revise substantially their picture. In December, 1873, when he filed the libel suit, Lecompte was 59 years of age, and on December 12, 1874, when the verdict against Anthony was delivered by the jury, he could look upon it as a birthday anniversary gift to be celebrated the next day, Sunday, December 13. He was commonly referred to as an old man, "Old Lecompte," and for that time, 60 was relatively a more advanced age than in the mid-20th century. Denied by public prejudice and intolerance many of the satisfactions which otherwise might have been his lot, he found companionship with greater minds through the medium of literature.

The reaction to Sol Miller's act of giving aid and comfort to Lecompte in his Kansas Chief was swift and direct. As the reader may have noticed already, editors of the 1870's were quite uninhibited in the language employed in controversy, and Anthony was among the freest and most fertile in his usage of words and devices intended to convey a certain disapprobation of a victim. On February 6, Anthony's Times observed:

The Saintly Lecompte, Deacon Houston [The Commercial], and Sol Miller, have signed a tripartite agreement, in which they promise to stand by one another in every difficulty. Lecompte will sling Shakespeare at the enemy, Houston will pray for him, and Miller will "cuss" him. We are afraid the good and pious Deacon is in bad company.

Three days later Anthony related that:

The Saintly Lecompte bought one hundred copies of the Troy Chief containing his article on "The Truth of History." He presented them to a newsstand in this city. Two copies have been sold, and those to a blind man, who asked for "something religious like, you know for my wife." He has not been heard from yet.

Miller's retort courteous came in the very next issue of the Chief, February 11, 1875.

The Leavenworth Times, instead of pitching into editors who are disposed to give Judge Lecompte a fair hearing, had better devote itself to the main question. The Judge has warped it to Anthony right lively. It is nice and pretty, as long as the papers throughout the State denounce the verdict in the libel case, and Lecompte for bringing the suit, giving the Times occasion to

21. Two quotations were from Macbeth. One from Act III, scene 1, line 91, began "Ay, in the catalogue ye go for men." Another was from Act IV, scene 2, line 51, Son: "What is a traitor?" Lady MacDuff: "Why one who swears and lies." The third quotation was from Cymbeline, Act III, scene 4, line 85, beginning: "Slander, whose edge is sharper than the sword."
copy all these opinions; but those who presume to give the other side an opportunity to be heard, are very naughty.

The idea of Sol being called "naughty"! He had been called so many more virile names! What a masterpiece of understatement to put Anthony in his place! But Anthony gave Lecompte attention in three places in his issue of February 14. He advised the "saintly Lecompte to keep cool," but pointed out what the Garnett Plain-dealer had said:

He makes, of course, a fair showing for himself, but it seems strange that a man has to go into print to explain his conduct of twenty years ago, to a people among whom he has lived all these years. As he threatens more libel suits, it is not a safe subject to comment upon.

The second mention was a reprint of an article from the Osakaloosa Independent suggesting to Sol Miller that he get Jeff Davis to write a vindication of himself as a patriot, and Lincoln as a tyrant; and when that was done, and all of which he can as readily do as Lecompte can blot out the history of Kansas in the past or the terriptude of his record then made, the thing will be complete. . . . It will be vastly more pungent and entertaining than the story of this one-horse border-ruffian judge. . . .

We wish Lecompte no harm, but all the good possible. We have never yet seen him to know him, and can consequently have no kind of personal feeling against him. We think he ought to be encouraged and aided in every "good word and work," and in the road to reformation, and not be badgered and abused. But his record as judge of the territory of Kansas was simply infamous.

The Independent placed upon Lecompte the major role in Kansas border ruffianism, recounting count by count against him:

These are facts as notorious as any in history, and no man can disprove them. Judge Lecompte was not only a party to these judicial outrages and neglects, but was the head and front of the whole thing.

We would respect the Judge very much more if he would honestly confess that he was led away by the excitement of the times, and permitted himself to become a partisan and a party to these things, and after confession ask clemency of the public. Such a course would be honorable, dignified and truthful. But an attempt at "vindication" only leads us to fear his reformation is not real, but a sham to gain some selfish end. Truth is the first requisite of true reform, as it is of real nobility and genuine manhood.

This afforded the occasion noted earlier when Anthony declared that "Nothing can now be said that will change history," and then concluded:

Our minds may be prejudiced, and that is perhaps the reason why we think old Lecompte may have been a purer and better judge than the one who now fills that position in our Criminal Court.

We want one thing distinctly understood, and that is, that all we have said about Lecompte was that history and his general reputation proved him guilty of the crimes named.
JAMES CHRISTIAN'S STORY

The silence of Proslavery men is one of the most remarkable aspects of all these controversies. One of the few to break the silence, and fortunately for history, was James Christian. A lifelong Democrat, he did not change sides as so many did, out of either convenience or conviction, after the Civil War. Christian compelled the genuine respect of Republican Kansas of the 1870's. Only occasionally did he make excursions into the explosive area of territorial history, but when he did, he spoke in no uncertain terms and the enemy listened, although subsequently, his testimony was almost uniformly ignored by writers on Kansas history. As a law partner with James H. Lane during the later part of the territorial period, the firm handled legal business for both sides in the same manner as ambidextrous law firms do in the mid-20th century. 22 His acquaintance was first hand with both men and measures. As a result of the agitation growing out of the Lecompte-Anthony libel suit, he prepared an article which was published in the Western Home Journal, Lawrence, May 27, 1875, under the title, "The First Sacking of Lawrence." The part of the Christian account bearing on the Jones phase recounted that Jones entered the town with fire, torch and cannon, commenced to plunder houses, destroy printing presses, beat down the old Free State Hotel in defiance of all law, ending the day by burning Gov. Robinson's dwelling with its contents, just for amusement. Those who were not here upon that day can form no conception of what transpired, and even those that were here had little knowledge of what was in contemplation. . . .

Almost every man, woman and child ran and left their houses open completely panic stricken. I believe there was but two women who remained in town during the day, my wife and Mrs. Fry.

According to Christian, Jones ordered Eldridge to remove his furniture, he refused, but the crowd carried out the most valuable part, piling it in the street somewhat damaged in the haste. Then Christian turned to vindication of Lecompte:

Right here I want to correct a false impression that was started upon that day, that has done gross injustice to a good man. I mean Judge Lecompte. Jones informed several of our citizens that he had a writ from the District Court to destroy the hotel as a nuisance, and he held in his hand a paper that he pretended to be the writ, but did not show it. I asked him to let me see it. He laughed and said: "Don't be too inquisitive." I said: "You know very well you have got no writ, and you ought not to place the court in a false position." He remarked: "They don't know any better." It was heralded all through the East that the Jefferys of Kansas had issued a writ to destroy the hotel and printing offices as nuisances. There never was anything farther from the truth. I was present in court at Lecompton, some time previous, when the grand jury

22. Lawrence Republican, May 27, 1858.
brought in a report concerning the hotel, and recommending its abatement as a nuisance, when a lawyer by the name of Reid, I think, asked the Judge for an order for its destruction. Lecompte looked at the fellow with astonishment, and remarked to him: "Mr. R., do you seriously make that motion as a lawyer?" The fellow answered, "I do." Lecompte told him he should do no such thing, that the thing was unheard of as a legal proposition, that he had no more authority to issue such an order than he had to order a man taken out and shot. The ruffian made some insulting remark to the Judge, when his friends took him by the arm and led him out of the court room, the fellow still cursing and calling the Judge an Abolitionist in disguise. I was in the party, and intimately acquainted with the leading officials, and I know that there never was a man more basely lied upon than Judge Lecompte, except it be Gov. Shannon. The genuine pro-slavery leaders looked upon both these men as being a little tender-footed on the question of the day, because they put Democracy before proslaveryism, and the opposition party had an interest and purpose in slandering these men, owing to their conspicuousness, the one being Governor and the other Chief Justice of the Territory. Many other little incidences... have passed out of remembrance.

LECTURE OF 1879

In 1875 the Kansas Editorial Association launched the Kansas State Historical Society. In 1876 F. G. Adams became its secretary and executive officer, and among the activities that he promoted were lectures on Kansas history delivered by the actors in that history. On January 4, 1878, Lecompte accepted an invitation to speak at some future time, but on January 12 he advised Adams that, because of engagements it would be better to delay the fixing of the time and place. Lecompte confessed "that I feel a natural and I am sure pardonable wish to do something in the way of disabusing the public mind, and the truth of history, of some misapprehension of the early politicians of Kansas and of myself as the most conspicuous object of those misapprehensions." As the Society had no funds Adams reminded Lecompte, February 12, 1879, that the arrangements must be carried out without expense to the Society, but suggested he apply to the railroad for passes in order to reduce his personal outlay. Lecompte reported that, although he would appreciate a pass, he would not make it a condition. Charles Robinson was president of the Society and the lecture was held in Topeka, at the Baptist church, near the State House, on February 24, 1879. The Topeka Daily Blade of that date called attention to the event in the following paragraph:

Judge Lecompte is the oldest Kansas Judge. He was the most conspicuous of the members of the Judiciary during the Territorial period. He it was who, as a United States Judge, had the duty of expounding the odious laws passed

23. Correspondence of the Kansas State Historical Society "Incoming," v. 2, pp. 166, 197; v. 4, p. 131-133; "Outgoing," v. 3, p. 329.
by the pro-slavery legislature of 1855. In this way he became very obnoxious to many Kansas people. He has lived long enough to have outlived the interests of those times, and he has accepted the invitation of the State Historical society to lecture this evening upon the subject of "The Territorial Judiciary"; a subject which he is better able to handle than anybody else. He should have a full house. . . .

The following day the session was reported briefly in the same paper:

The lecture of Judge Lecompte last night before the State Historical society, was attended by a fair sized audience, and was well received. The Judge is one of the oldest citizens in Kansas, a consummate lawyer, a fair speaker and a pleasant gentleman. He was introduced last night, in a few well chosen remarks, by Ex-Governor Robinson, who also made a short talk at the close of the Judge's lecture.

The Topeka Commonwealth, February 25, reported the Lecompte lecture at greater length. In introducing the judge, the reporter said that Robinson gave a brief account of the manner in which Judge Lecompte with others, in the spring of 1856, stood guard for the protection of the Governor while a prisoner at Leavenworth, and saved him from the hands of a mob of pro-slavery men who had determined to take Governor Robinson's life.

In his lecture, Judge Lecompte gave a forcible description of the condition of the population coming first into Kansas from all parts of the country, all becoming at once partisan in the slavery question, a partisanship which very soon became intensified into acts of violence on both sides.

Lecompte referred to the Missouri advantage of distance which enabled them to carry the election of the legislature in 1855, but the reporter represented him as saying:

The judiciary were in duty bound to carry out the laws enacted by the Legislature, without questioning the fairness of the election. . . . the Free State men . . . looked upon him as a monster, and ascribed to him acts which he never did, and charged him with judicial decisions, which he never rendered. He gave an account of his effort to save Cole McCrea from mob violence at Leavenworth, in 1855, when at the same time he was charged by the Free State Press with having endeavored to incite the mob to the very act which he persuaded them not to commit. Even the Congressional Committees' report, in 1856, placed him in the same false position.

Then turning from the content of the lecture, the Commonwealth observed that "Judge Lecompte is a clear and forcible speaker, and he was listened to with attention, the audience evidently being convinced of the sincerity of the view taken by him now, in looking back upon the trials of the early Territorial times." One more incident must be mentioned: "At the close of the lecture, Colonel Ritchie asked a question or two, which indicated that he and the lecturer are not now much nearer alike in opinion than twenty-two
years ago.” Except for this element of discord injected by Ritchie, the evening appears to have been passed in “sweetness and light.”

Robinson's closing remarks held that the election of the first legislature was an invasion, not an election, that Free-State men were in the majority, and that they justly refused to recognize the laws, and naturally looked with disfavor upon the judicial officers who came to enforce them:

He said he was glad that it was permitted to so many of the actors in those early times of excitement and trouble to come forward and explain to each other the positions they occupied, and to have the errors that had gone upon the record corrected. He thanked Judge Lecompte for having accepted the invitation of the society to deliver a lecture under its auspices.

Thus the experiment in giving Lecompte his opportunity to be heard passed off without any serious untoward incident. Both Adams and Robinson, although not compromising their own point of view, were endeavoring sincerely to keep the scales balanced evenly and in good taste.

THE QUARTER-CENTENNIAL CELEBRATION, 1879

At Lawrence, local annual old settler meetings were inaugurated in September, 1870, continuing without interruption until 1878. At the meeting of 1877, a decision was reached to skip one year and make the meeting of 1879 a quarter-centennial celebration on a state-wide scale. In this manner Lawrence took the lead away from other centers of old settler organization. The Osawatomie area had organized in 1872, and Franklin county in 1875.24 The Leavenworth Old Settler Association had been organized August 8, 1874, H. Miles Moore, secretary.25 Kansas had been busy making history. Now, in the 1870's, the older generation under the name of “Old Settlers,” began the “Battle of Kansas History.” In the making of Kansas territorial and Civil War history, the participants operated under the Free-State or Antislavery as against the Proslavery banners. In the later warfare, they fought each other, another Kansas Civil War, over credits and interpretation.

The quarter-centennial celebration of the organization of the territory of Kansas was a two-day event held at Bismarck Grove, along the Union Pacific railroad, near Lawrence, September 15, 16, 1879. Charles Robinson was president, and among the vice-presidents announced was Samuel D. Lecompte. He was present, his name appearing among the registrants, but he did not speak, and

apparently made no appearance before the public. Obviously the occasion was a celebration of the defeat of the cause for which he had stood. Gen. Benjamin F. Stringfellow, of Atchison, was invited but did not attend. His letter explained that he was prevented by circumstances over which he had no control, and which made him a "slave."

Col. D. R. Anthony was present, and delivered an address, which included the following compliments to his fellow citizens of Leavenworth:

I hope we will remember the "lesson" that was read to us yesterday, the "Lesson of Kansas." Let us not forget it. Let us see to it that history records the truth. Do not allow history to record a lie. Let it not be forgotten, that twenty-five years ago the army, the navy, the courts, and the whole power of the national government and its appointees were invoked to make Kansas a slave State. No federal judge or other official dared disobey the commands of the slave power. When the Hon. Samuel D. Lecompte, Judge of the United States District Court at Lecompton, delivered his famous charge, defining "constructive treason" to the United States grand jury then in session, and when the grand jury indicted the Free State Hotel at Lawrence as a nuisance, and then under command of a United States Marshal proceeded with a posse comitatus to batter down that hotel with cannon, sacking and then firing it, the court remained silent as the grave while this outrage was perpetrated, and not till long years afterward did he even attempt to explain his then apparent silent approval of the vandalism of his marshal, grand jury and court officials. President, Congress, Territorial Governor, Judges, Courts and Federal officials dared not lift a hand to prevent the destruction of that Free State Hotel. Let these facts go down into history, and don't let us attempt to wipe them out. We could not if we would; we ought not if we could.

Anthony hated with the same vigor he put into his other activities, which made him so potent a force in Leavenworth history. The last sentence in the above quotation was a paraphrase of Lecompte's own language from the second paragraph of his Kansas Chief letter, which Anthony was throwing back at him. As president of the old settler association, and official host, Robinson undertook again, but not so successfully, to keep the proceedings on a high level of mutual courtesy, an aspect of charity in his character that has usually been overlooked, obscured possibly by the bitter controversies of succeeding years to which he became a party.26

HISTORIES

At the hands of several people who have written general histories of Kansas, Lecompte has not received fair treatment. Only Leverett W. Spring, professor of English at the University of Kansas, in his

26. The proceedings of the quarter-centennial celebration were edited by C. S. Gleed, and published under the title, The Kansas Memorial (Kansas City, Mo., 1880). See pp. 10, 55, 102-106, and 234.
Kansas, The Prelude to the War for the Union, published in 1885, extended to him even partial justice. Spring’s blunders were difficult to explain. He was a friend of Charles and Sara Robinson, who knew better. In relation to the notorious accusation about the charge to the grand jury on constructive treason, Spring did Lecompte the justice to quote from a letter of December 31, 1884, in which Lecompte explained his position, and again denounced the alleged charge to the grand jury as an invention of the imagination of the Free-State reporters. But on the subject of the “sack of Lawrence” no new statement of facts was introduced. Spring wrote that the Douglas county grand jury “found bills of indictment against two newspapers . . . and against the principal hotel of that town, which some extraordinary obliquity of vision transformed into a military fortress, ‘regularly parapeted and port-holed for the use of cannon and small arms’” (p. 118).

Later he erroneously involved Marshal Donaldson (the name should have been Sheriff Jones) by saying:

Marshall Donaldson and his advisers, though some of them belonged to the legal fraternity, reposed an astonishing confidence in the virtues and prerogatives of the famous grand jury of Douglas County. Scorning such intermediate steps as citations, hearings, opportunities for explanation or defense, and the like, they wrecked a hotel and threw two printing-presses into the river, upon the authority of a bare grand jury presentation.

He then quoted from Lecompte’s letter to Stewart of August 1, 1856:

That presentment still lies in court. No time for action on it existed—none has been had—no order passed—nothing done, and nothing ever dreamed of being done, because nothing could rightly be done but upon the finding of a petit jury.

But the whole story was told in a satirical vein, holding up the whole proceeding to ridicule. Even the gestures of justice to Lecompte, Atchison, Buford, and Jackson, were lost, except upon the most discerning readers, in the facetious context of the whole treatment. The story of May 21 required some explicit pointing up to guide the unwary reader through the complexities of the highly controversial material. Spring himself was confused, apparently, by legal terminology, and used the words indictment and presentment. Under some circumstances they are used interchangeably. Probably Lecompte had erred in using the word presentment in his Stewart letter, but that must be discussed later. But with all these strictures on Spring’s handling of the “Sack of Lawrence,” his treatment is less objectionable than any others in the general histories.
JUDGE LECOMPTE AND THE "SACK OF LAWRENCE"

By the time this book was published, in 1885, the controversy (or controversies) over Kansas history was burning with the fury of a prairie fire before a northwest gale. On one side were Robinson, Thayer, and others of the Emigrant Aid Company group, and on the other the admirers of John Brown and Jim Lane. These unfortunate animosities gave point to that masterpiece of understatement by the Topeka Daily Capital on the occasion of Professor Spring's resignation to accept a professorship at Williams College in Massachusetts: "The loss of the professor would be more generally mourned if he had not attempted to write a history of Kansas." 28

THE PORTRAIT

In 1887 F. G. Adams, secretary of the Kansas State Historical Society, asked Lecompte for a portrait for the files of the Society. Lecompte declined, writing a long letter reviewing his point of view in the territorial troubles. He differentiated between Adams and the Society, acknowledging Adams' "generous disposition" in all their personal relations.

Thanking you again, most profoundly, for your individual consideration, I close with the assurance that I have no desire that my photograph or picture should grace, as perhaps a score of personal friends might deem, or disgrace, as the hosts who have confederated to my destruction would adjudge, the halls of the Historical Society of the state. 29

Adams was much disturbed by Lecompte's reply and wrote immediately suggesting his willingness to have the letter published in a Topeka newspaper:

It has never been my privilege to have much personal intercourse with you, but I have long known of the great respect, and kind interest with which all who have known you best have regarded you; and I know that such, even though they may have differed from you have been pained to observe the harsh criticism of which you complain. 30

Immediately Lecompte gave his consent to publication but warned that "I should expect to have it made the occasion of reopening controversy and strife. . . ." Adams reconsidered, and offered instead of publication, to locate the Kansas Chief letter published in 1875 and enter a reference to it in the index of Kansas material kept by the Society: "This will subserve your main desire,—that you shall not, through the records of the Kansas Historical

29. Extracts printed in the Collections of the K. S. H. S., v. 8, pp. 388, 390, footnote. The original is in the "Correspondence" of the K. S. H. S., Topeka.
Society—go down to history with but a one-sided showing of your career as the first Kansas Chief Justice. . . ."31 Thus ended the episode, but no portrait of Lecompte was forthcoming, and none is now in the possession of the Historical Society, except as he appears in the group picture of the legislature of 1868.

Reprinting the Kansas Chief Letter

Historical research has sometimes been referred to cynically as digging up bones out of one graveyard and reburying them in another graveyard. That metaphor seemed peculiarly applicable to the several Lecompte defenses. His Stewart and Pearce letters of 1856 were forgotten completely by the 1870's. Thus his Kansas Chief letter published in 1875 appeared to be new. But that statement of the case was not generally accessible even to contemporaries. Even though F. G. Adams was as well informed as anyone on Kansas history, in 1887, he was not aware of Lecompte's Stewart, Pearce, or Kansas Chief letters. In 1902 G. W. Martin, secretary of the Kansas State Historical Society, wrote to Mrs. Charles Robinson:

An unfortunate thing in recording history is that those who get whipped never write history. Since I have been here I have begged and begged John Martin to write a paper on the personal characteristics of the proslavery leaders. Only last week in looking through a newspaper file of 1875, I came across a half column extract from an article published in the Troy Chief from Judge Lecompte. I made a minute of it, and put it away saying that I was going to have some proslavery matter in the next volume [of the Collections].32

True to his word, Martin did exactly that, and reprinted Lecompte's "The Truth of History," from the Kansas Chief, under the title "A Defense by Samuel D. Lecompte," and with an explanatory note: "as an act of historic justice."33 In a footnote was printed also a biographical sketch and a summary of the Adams-Lecompte correspondence concerning the portrait. Omitted, however, was any reference to the exchange over publication of Lecompte's letter of March 7, 1887. Omitted also, as explained earlier in the present article, were four paragraphs of the letter. But at any rate, for the first time the major portion of the Lecompte defense became available in a form suitable for general reference. Without a substantial historical background for Lecompte's statement, however, the full force and substantial accuracy of his version were not generally appreciated. Captivity to a firmly established tradition was too strong.


THE RECORDS OF THE UNITED STATES DISTRICT COURT FOR THE
TERRITORY OF KANSAS

Why has the history of the United States district court for the territory of Kansas remained in such a state of controversy as has been detailed in the course of this article? One important reason was that the records were thought to have been lost. In the course of the Anthony libel proceedings, the Times, January 4, 1874, reported that:

The original papers in the . . . [Phillips] case are now on file in the Clerks' office in this city. The indictment of the Grand Jury, declaring the Free State Hotel and the two Free State newspapers in Lawrence, nuisances, cannot be found. They have probably been abstracted from the records of the court. In these later days, there are obvious reasons why many officials would very naturally desire their destruction.

The Times, January 4, 1874, proceeded to publish documents relating to the Phillips case. Later, during the preliminary hearings in the Anthony case, the Times, January 7, reported that "The records of the court while under Lecompte's management were sent for and found to be either missing or mutilated to such an extent that nothing could be gleaned from them." A suggestion was made that interested parties had removed papers for self-protection, the innuendo being that Lecompte was guilty. But the same report also stated that "Lecompte wanted these records to be used as testimony, and the defense pleaded their insufficiency and asked to prove the imbecility and corruption of Lecompte's court by parole testimony." In the same connection Legate testified that "all the records of this court were burned at the time of Quantrill's raid on Lawrence. . . ." In 1911, when the Leavenworth county courthouse burned, all records were again reported destroyed.

Truth is often stranger than fiction, and in spite of all the reports to the contrary, the records of the United States district court for the territory of Kansas are substantially complete. It is possible that the largest loss occurred in the Leavenworth courthouse fire of 1911, but most, if not all of the book records were saved. The documents which the Leavenworth Times, January 4, 1874, published were not returned to the clerk, but were retained by H. Miles Moore, and are now to be found in his papers acquired by the Kansas State Historical Society in 1908. Some of the territorial records are in the archives of the United States district court and of the state supreme

34. The present author made a general survey of the records in the storage vault of the district court at Leavenworth. An inventory of all the records in the courthouse would be necessary to be sure about details. The case files for Leavenworth county cases were not located.
court at Topeka. As the court traveled from county to county in circuit during most of the territorial period, exercising jurisdiction equivalent to the state district courts after 1861, some such records may have been turned over to clerks of these district courts, in the respective counties, after 1861. Apparently that is what happened in Leavenworth county, except that more than the records of that county accumulated there because Chief Justice Lecompte resided there rather than at the territorial capital, Lecompton.

The largest single body of records of the court, however, have a different history. During the winter of 1932-1933, when preparations were being made for razing the old federal building at Topeka, the accumulation of federal records of all kinds stored in the upper story were about to be sold for waste paper, when the State Historical Society intervened and secured their transfer to its custody—seven truck loads of paper. A sorting of that material revealed, among other things, the existence of most of the judicial archives of the United States district court for the Territory of Kansas. From another source, at about the same time, “Record A, 1855-1859” (the journal of the court), for the first division of the first district, that of Judge Lecompte, earlier deposited at Leavenworth, came to the State Historical Society.35 This court material was sorted and given its preliminary organization for research purposes by the present author. Only the John Brown study has been published from this material. The record of the court as bearing upon the Lawrence episode is presented here for the first time.

Before taking up this particular case, however, the points of the criminal code essential to legal procedure in the case must be summarized. In the “Bogus” Laws of 1855, chapter 129, article III, “Of Grand Juries and Their Proceedings—Practice and Proceeding in Criminal Cases,” it was provided that grand juries should consist of not more than 18 summoned, nor less than 15 sworn. The prosecuting attorney was to attend, when required by the grand jury, and might attend on his own motion to present information, and in either case would examine witnesses, and give legal advice, but he and all others should not be present when the grand jury voted upon any matter before them. A concurrence of at least 12 grand jurors was necessary for voting an indictment, upon which the foreman must make the endorsement, “A true bill”; and when less than 12 concurred, the foreman must make the endorsement “Not a true bill.” Indictments voted must then be presented in open court, and in

the presence of the grand jury be filed there, and remain as records of the court—the journal of the court.

In article IV of the same chapter, 129, it was provided that indictments were not invalid merely because of certain omissions or defects in the form. Warrants for the arrest of a person indicted might be issued by the court, or the judge of the court in which the indictment occurred, or by any judge of the supreme court, but “by no other officers, . . .”

Quite properly, the first step in considering the particular case is to examine “Record A,” the minutes of the proceedings of the court itself. Each and every item of business presented to the court, or action taken by the court, was entered in this manuscript book. For the month of May, 1856, no entry whatever appeared relating to the Free-State Hotel, or to the printing offices at Lawrence. Of course, Lecompte had said that in his Stewart letter of August 1, 1856, but he was not believed.

The second step is to examine in detail every sheet of paper identifiable as having to do with the grand jury of Douglas county for May, 1856. Three pieces of paper are on file that refer to the objects in question—A complete manuscript copy of the document so notoriously exploited in history as the indictment or presentment of the hotel and the printing offices, with the name of Owen C. Stewart, foreman of the grand jury, at the end. But the document and the signature are in the handwriting of a clerk. A second copy of the document, also in the handwriting of a clerk, lacks the last sentence and the name of the foreman. A third document, a fragment of a sheet of paper, contains the final sentence, missing in the above, and the signature, both in the handwriting of Owen C. Stewart. The second version mentioned, and the genuine Stewart signature are reproduced in the accompanying photographs.

Note should be made of the fact that this document was not in the form of an indictment; no persons were cited as owners or operators of the premises complained of; the document had been signed by the foreman of the grand jury, not by the district attorney. It had not been endorsed by the foreman, “A true bill,” as required by law; and there was no endorsement indicating that it had been presented in open court. These were not merely technical defects; taken together, they were fundamental defects which rule it out as even approximating an indictment, or even a binding legal document emanating from a grand jury. Inanimate objects cannot be indicted in any case, only legal persons responsible for a nuisance. With these facts in evidence, it is astounding that Lecompte,
in his letter to Stewart, August 1, 1856, used the word "present-
ment." On the other points in his explanation he was correct so
far as he went, but evidently he had not refreshed his memory by
an examination of the records of his court as a basis for writing the
Stewart letter. He could have made so much a better case.

It was the function of the prosecuting attorney to prepare and sign
an indictment ready for action by the grand jury. The presence
of the signature of Owen C. Stewart, the foreman of the grand jury
in the place where the signature of the district attorney should
have appeared branded this document on its face as anything but
an indictment, or "a true bill." No legal persons having been speci-
fixed in the alleged indictment, no warrants could have been issued,
and none could have been issued on a legal indictment except by
a judge. To go any further would seem to be engaging in the
proverbially useless pastime of flogging a dead horse. Yet for
nearly a century, Kansas, and professional historians, and the legal
fraternity have taken seriously the legend about this document.
How long can people remain captive to so obvious a hoax? Even
in its printed version, before the public for almost a century, the
substantial defects of the document were plainly apparent.

Upon several occasions, and upon a number of subjects, grand
juries had made recommendations for the good of the community
as they saw it. That was all that was done on this occasion; a
recommendation prepared and signed by the foreman, and proba-
bly voted by the grand jury, although there is no record on that
point. That, and nothing more, is what the document purports to
be. Of the several of such recommendations found in the records
of the court, this is the only one that was not accepted and treated
at its face value. In both parts of the second paragraph, the lan-
guage is explicit—"we respectfully recommend . . . ."

In the second district, Judge Cato presiding, the district court
met in Anderson county, April 28 to May 1, 1856, and after com-
pleting the other business before them, the grand jury expressed
their sentiments in the form of two recommendations; the increas-
ing political tension, and abuse of the land laws. On the former sub-
ject: "we . . . recommend to that portion of our fellow citizens
. . . that do not believe the laws of the Territory are legal to at
least abide them until a respectable majority of them see proper
through their legislature to have them altered." 30 The recommenda-
tion of the Douglas county grand jury is in the same category, and
possessed no more force than those of Anderson county.

36. "Papers" of the United States district court, K. S. H. S., Topeka; Malin, John Brown
and the Legend of Fifty-six, pp. 558, 559.
Judge Samuel Dexter Lecompte
(1814-1888)

This photograph is an enlargement of a postage-size picture of Judge Lecompte. It appeared on a panel of legislative photographs in the collections of the Kansas State Historical Society showing members of the Kansas House of Representatives of 1868. Although a search was made, no individual portrait of Judge Lecompte has been found.
The grand jury, sitting for the said term of the 1st District Court, in and for
the county of Douglas, in the Territory of
Nebraska, do lay the said, to the Honorable Court,
that from Lawrence has before them shown
that the newspaper known as the "Heart of
Freedom," published at the town of
Lawrence, has from time to time issued
publications of a most inflammatory
and scurrilous character, charging the loyalty
of the territorial constables, and tending
and endeavoring to procure assistance
to the same, denouncing the popular
mind and enduring life and activity
among, even to the extent of advising
assassination, as a last resort.

Also that the paper known as the
"Free State" has been similarly unfair
and has recently repeated the resolution
of a public meeting in Johnson County
in the Territory, in which resistance to
territorial law "has its blood" has
been agitated upon, and not fully
condemned their statement, as a
principle. Also that we are satisfied
that the building known as the
"Free State" Hotel in Lawrence has
THE DOUGLAS COUNTY GRAND JURY RECOMMENDATION, MAY, 1856

The two pages reproduced here represent two fragments of manuscripts which, when pieced together, provide a complete text of the controversial recommendation of the Douglas county grand jury of May, 1856, relative to the Emigrant Aid Company hotel and the two newspapers at Lawrence. In the first fragment the final words "its destruction" were crossed out. Evidently, composition, or copying was interrupted at this point, reflecting divided counsels. The amended wording was less extreme than that deleted. Of special interest is the fact that the language of the substitute is in the handwriting of O. C. Stewart, the foreman, and over his signature. The conclusion seems warranted that Stewart sided with the advocates of moderation.
Daniel Read Anthony, I
(1824-1904)

Col. Daniel Read Anthony, native of Massachusetts, arrived in Kansas in July, 1854, with the first official party sponsored by the Emigrant Aid Company. He left Kansas in August, but returned in 1857 to settle permanently in Leavenworth. His was a colorful life in politics, military service and journalism. His family, now in the third and fourth generations, continue to publish the Leavenworth Times which Colonel Anthony bought in 1871.
CONCLUSION

What was the status of Sheriff Jones on May 21, 1856? That of mob leader, nothing more, nor less. True, he held legally the office of sheriff of Douglas county, but he had no authority in the premises upon which he was alleged to have acted; either in relation to the United States district court, to Lecompte as presiding judge, or to the grand jury. The United States marshal and his deputies were the only officers who could have acted even if the allegations relative to the court and to the nuisances had been true. They had completed their legal duties and had dismissed the posse. That terminated any proceedings emanating from the court. Jones, as sheriff of Douglas county, had no legal status whatsoever in relation to matters alleged. As an irresponsible mob leader, Jones disgraced his office as sheriff.

Of all the statements in print about the incidents associated with May 21, 1856, the story related by James Christian is the only one that strikes bluntly at the truth of the matter. Of course, Christian was writing from memory, 19 years after the event, but the core of what he wrote rings true. Furthermore, it squares substantially with the law, and with the documents so far as they go. Furthermore, absence of documentary proof of Lecompte’s innocence cannot be held as suspicion of guilt. Of course, documentary evidence does not exist to disprove a thing that never happened. The burden of proof is on the accuser, not the defendant. Anthony’s charge of mutilation of records and destruction of incriminating evidence must be dismissed upon this ground as well as upon the fact that essential records of positive action by the United States district court, in spite of the hazards of neglect over a century, prove remarkably complete.

A large part of the difficulties of territorial Kansas, conflicts of authority, were inherent in the situation. In accordance with American tradition, territorial government had been designed to protect the citizen, through a system of checks and balances, against arbitrary authority. The governor, the legislature, and the judiciary were predominantly equal and independent departments. Within the judiciary, the judges, the prosecuting attorneys, the grand jury, and the marshal were delegated independent action, each in its own jurisdiction. President Pierce’s orders to Governor Stanton not to call out militia, did not apply to the marshal, who did so legally although inadvisedly. As Lecompte pointed out in his Kansas Chief
letter, he was not consulted during the preliminaries leading to the “sack of Lawrence”; the negotiations being carried on between the citizens of Lawrence and the marshal and the governor. Yet when the situation had deteriorated to a state of civil disorder, Lecompte, the man who had not even been consulted, and who was without authority to intervene, was held responsible for the action of a mob. Acting under instructions from Pierce, Governor Geary, in September, 1856, assumed virtually the powers of a dictator, leading to conflict with the independent judiciary. And Washington was too far away to understand. Pierce’s attempt to remove Lecompte, and thus make him the scapegoat, put the issue more directly.

The history of territorial government as an object of study has never received the serious attention of historians. Until that task is adequately executed, from the Ordinance of 1787 to the controversies over the admission of Alaska, Hawaii, and Puerto Rico, the Kansas episode cannot be placed in its proper perspective. For example, in many respects, the territorial legislature of Nebraska was more disorderly than that of Kansas. There, in 1857, a member of the legislature with a revolver, and the encouragement of the galleries, held the speaker and the sergeant at arms at bay, until someone had the presence of mind to move an adjournment. The issue at stake was the location of the capital.

Or the Mormon question in Utah presented more prolonged difficulties, including the Mormon war, than did slavery in Kansas. The safeguards against the abuse of power repeatedly led to the breakdown of territorial government under stress of crisis, yet the question of remodeling the system was never squarely faced, not even when the temporary new departure of government by commission was applied to Puerto Rico and to the Philippine Islands after 1900.

As the territorial judiciary in applying local law operated under the codes of legal procedure, civil and criminal, enacted by the territorial legislature, and based upon Missouri’s system, they became the focus of intense hostility, especially the code of criminal procedure. Yet it is important to point out that when the Free-State men gained control of the territorial legislature of 1858, pledged to repeal the whole of the “Bogus Laws,” the legislators failed to do so. New codes of legal procedure were adopted, that of civil procedure being based upon Ohio’s code, and that of criminal procedure being based upon Missouri’s code. The Free-State legislature of 1859 made further modifications of the code of crimi-

nal procedure but the Missouri code still remained the basis, and continued so under statehood.

In this context, the repeal of the “Bogus Laws” needs a fuller explanation. The Free-State legislature of 1858 drew down upon itself the furious denunciation of the more radical wing of the party, who charged, among other things that: “They occupied three-fourths of their session in granting special privileges to speculators.” Of course, that was just the charge that Free-State men had made against the “Bogus Legislature” of 1855, and that of 1857. Colfax had given particular emphasis to this point in his attack in congress upon Lecompte, in 1856. There is reason to believe that resentment against monopoly over private legislation was originally the major basis for Free-State denunciation of the Proslavery capture of the legislature of 1855. The Free-State aspect of the slavery issue was so largely organized afterward as to suggest that in part at least it was really a rationalization of that disappointment, and then came the presidential campaign of 1856.

The Free-State legislature of 1859 set out to redeem, in part, the reputation of the party, chapter 89, section 1, asserting boldly: “All laws of the Territorial Legislature, passed previous to the first day of January, A.D. 1857, are hereby repealed.” Section 2, declared: “All laws of a general nature, passed at the regular session of the Territorial Legislature, in the year A.D. 1857, except . . . [those defining county boundaries] are hereby repealed.” But section 6 must not be overlooked: “This act shall not be construed to affect or interfere with vested rights, but such rights shall be and remain as secure as if this act had never been passed.” And section 7 emphasized the issue of private in contrast with public laws by providing: “This act, except section six, shall take effect and be in force from and after the first day of June next; section six shall take effect immediately.” Thus the assertion of the protection of vested rights became operative prior to any part of the act relating to repeal, and asserted a continuity that overrode expressly the sections on repeal. The Free-State party held its book-burning celebration on the basis of section 1, with a bonfire of the Statutes of 1855. But the vested rights were protected from the flames by section 6; Free-State men having bought out control of such “Bogus” enterprises as the Atchison Town Company, and the Leavenworth, Pawnee, and Western Railroad Company, etc. Furthermore, as the old codes of public laws were repealed, and new

38. Kansas Crusader of Freedom, DeMophan City, March 6, 1858, from The Kansas News, Emporia.
ones enacted, without any proviso for transfer of cases from one regime to another, the Free-State legislature had, in effect, voted a general amnesty for all crimes committed prior to June 1, 1859.\textsuperscript{39} Among other things, if there was any possible manner in which criminal or other responsibility could be attached to the act of destruction of the Free-State Hotel and the printing presses, the amnesty enacted by the Free-State legislature covered that also.

The setting is now prepared to bring the discussion back to the New England Emigrant Aid Company and its hotel which was not a vested right within the meaning of the repeal statute of 1859. The problem is an aspect of that of “foreign” and domestic corporations and conflict of legal jurisdictions, a preview of the issues being presented more and more insistently by a corporate business world. The New England group interested in carrying on business in the territory of Kansas had first applied for a charter in Massachusetts prior to the enactment of the Kansas-Nebraska act. So far as Kansas was concerned, it was a “foreign” corporation being operated not only for profit, but also expressly for the purpose of contributing to the determination of Kansas institutions—in their more boastful moments, the incorporators expressed the purpose of controlling Kansas institutions and molding Kansas into the image of Massachusetts. What means of control did the legislature of Kansas possess over a corporation chartered in another state? There were others that occupied a less conspicuous position, but which were more flagrant swindles. The Proslavery monopoly on domestic corporations was one answer. In later years, the Kansas legislature was aggressive in its efforts to apply controls over “foreign” corporations: railroads, farm equipment, oil, and insurance companies, and enacted a blue sky law. Even mob action, threatened or executed, was not unknown in the later battles against out-of-state corporations.

The major purpose of these concluding paragraphs is to afford historical perspective that may place the particular events upon which this study centers into a more comprehensive structure of relationships. In this manner, possibly, the traditional mode of reacting emotionally to the mention of the slavery controversy may be challenged effectively. Only upon release from captivity to such emotion-conditioned traditions can people reason from facts at an intellectual level.

In a way, Lecompte was his own worst enemy, and certainly he

\textsuperscript{39} Malin, John Brown and the Legend of Fifty-six, p. 712, 713.
was not given any effective aid by his friends when it might have been decisive. James Christian’s analysis was remarkably accurate in picturing Lecompte as caught between two fanatical and unscrupulous extremes, one as vindictive as the other. But Christian did not come to his defense in 1856, although 1875 was better than never. By saying that Lecompte was his own worst enemy is meant that he seemed to have been so constructed as to be quite unable to defend himself effectively even when the evidence on his side was clear and unequivocal. Possibly, because the truth was all so obvious, and the charges so outrageously unreasonable, both in fact and in interpretation, Lecompte could not understand how other people’s minds could fail to see truth. In his letter to H. Miles Moore during the summer of 1873, he took substantially this ground in explaining why he had defaulted in his correction of the Herald article on the McCrea case, and admitted his error. But still in 1873 and later in the Kansas Chief letter of 1875, he did not explain himself adequately. He still failed totally to understand how captivity to an idea, no matter how absurd, can paralyze all critical faculties and make unreason appear reasonable—especially, when identified, at least nominally, with a moral issue as a desired end.

Well may the historians of Kansas recall Madame Roland’s exclamation of disillusionment called out by the excesses of the French Revolution: “Oh Liberty, what crimes are committed in thy name!” The celebrations of the quarter, the semi, and the three-quarter centennial anniversaries of the organization of Kansas partook so conspicuously of slanderfests. May the centennial anniversary be different? To be sure, the historical story must be told in full, in perspective, and without malice, but “Judge not, that ye be not judged.” Rather, it were better, in true humility, to recognize as did Lecompte in his letter to Stewart, in 1856, as relates to the judicial function, a feeling of “awe and apprehension of inadequacy [on the part of] anyone not vain to rashness.”