



THOMAS EWING, JR.

**A KANSAS LAWYER
WHO KEPT KANSAS A
FREE STATE AND SAVED
LINCOLN'S PRESIDENCY
BY RON SMITH**

January 4, 1858, was raw and blustery, and made colder by a wind howling across the Missouri River and down the main street of Kickapoo, Kansas.

Thomas Ewing Jr., wrapped in a greatcoat, was not a man comfortable on a horse, and he rode slowly and awkwardly into the dirty, seedy tree-less town. Behind him were 30 other Free State men similarly bundled against the wind and cold. Each man was armed and like Ewing, each was intent on insuring that the election about to commence that day was fair.

Kickapoo was just across the lumpy ice-encrusted river from Weston, Mo.,¹ a hotbed of pro-slavery agitation. A small town with big ideas, Kickapoo lay in the middle of the struggle for what the eastern press labeled “Bleeding Kansas.” The town was chartered in 1854 by Missourians intent on rivaling Leavenworth in size and political importance. Like original Leavenworth, there was no central planning. The town looked as if God had dropped liveries, buildings, saloons, and a few houses from a great height and declared the result habitable. The town catered to the Missouri ruffians, who were ferried across the river and liquored up in the town’s clapboard saloons before voting as “one-day abolitionists.”

No one realized that the election that day was the beginning of the end of pro-slavery efforts in Kansas. Whether the territory would come into the Union as a slave state or free state was still in doubt. However, the vote that day would lead to major national events that kept Kansas a free state and set the stage for politicians in Kansas to create the state’s organic law, the Wyandotte Constitution, the following year.

That day in Kickapoo would also solidify the national reputation of one of the Free State leaders of Kansas. Thomas Ewing Jr.’s later civil war command would save Abraham Lincoln’s presidency.

How Kickapoo attracted this electoral prominence is a story unto itself.

Illinois Sen. Stephen A. Douglas sponsored the 1854 Kansas-Nebraska Act that created the Kansas territory. The Act changed how a territory would apply for statehood. Since 1791, all new state charters were determined by the Congress with slave states having a disproportionate influence in decisions.² Douglas had tired of the sectional bickering. Slavery concerns figured in every Congressional decision, from military policy to a transcontinental railroad. Douglas wanted the railroad, and to build one he needed slave state cooperation in the road’s funding. He demanded that fellow Democrat President Franklin Pierce sign the Kansas-Nebraska Act and allow territorial settlers to decide in local elections whether their new territory came into the Union as a free or slave state.

Pierce’s successor, James Buchanan, was a colleague of Douglas’ and handpicked by him. Buchanan agreed in principle to Popular Sovereignty and its implied free and open statewide vote before any constitution submitted by territorial men was adopted. Douglas’ 1854 bill had enthralled slav-

ery interests but galvanized a new and reactionary Free State party. Pro-slavery men viewed Kansas-Nebraska as the last opportunity to expand slavery beyond the Deep South and into the territories. Without such expansion, slavery would die of economic paralysis.³ Douglas gained a tactical victory with his bill, but also a formidable future adversary. Abraham Lincoln felt Kansas-Nebraska betrayed Southern promises not to extend slavery into the territories.

It might have been called Popular Sovereignty, but the government that formed on the plains of territorial Kansas resembled a banana republic. Between 1854 and 1861 in the Kansas territory, Americans saw a miniature civil war over political ideas. Kansas citizens (with outside agitation) created and fought over four constitutions, voted on one of them three different times, saw federal cavalry break up political meetings, enacted laws creating five different capital cities, suffered through the Panic of 1857, and watched President Buchanan clumsily try to deal with the panic by reneging on the credit the government allowed on the sale of government lands to homesteaders. Buchanan’s homestead bungling caused land prices to nose-dive, impoverishing landowners. The territory also spawned two separate legislatures – one antislavery, the other pro-slavery. Each lawmaking body served at the same time and each ignored the other’s laws. In response to the sacking of Lawrence in May 1856 by pro-slavery hooligans, John Brown and a small party took broadswords to five pro-slavery men, leaving mutilated bodies floating in the Pottawatomie Creek. One measure of the lawlessness of the time was nobody dared arrest Brown for the killings. Hundreds died in the years of fighting.⁴ If civil war wasn’t enough, during Bleeding Kansas there also was a major drought and a grasshopper invasion.

While Bleeding Kansas was about slavery, it was also about claim jumping and neighbors settling old scores. During this mayhem, Tom Ewing and his older brother, Hugh, came out to Leavenworth in 1856 to practice law and engage in land speculation in a rough and tumble river town. Leavenworth was the largest town between St. Louis and San Francisco at the time. With its location on a major river, it wanted to become the new St. Louis. More than a hundred lawyers were on the court rolls. The Ewing firm eventually included brother-in-law William T. Sherman and Daniel McCook, both well-known Ohioans. Hugh and Daniel McCook were Douglas Democrats, but 29-year-old Tom Ewing was drifting politically toward the Republican Party, which had laid a political egg in the 1856 presidential campaign of John C. Fremont. Many Kansans felt Fremont (often called “the Pathfinder”) could not follow a path to an outhouse, let alone the White House. Kansas Free State men were joining the Republican party in droves. Ewing favored William H. Seward for the 1860 nomination, but also appreciated the political views of a former Whig, Abraham Lincoln.

FOOTNOTES

1. Kickapoo was located on the river four miles north and west of the northern boundary of Fort Leavenworth.

2. The 3/5ths representation clause in Congress and the two Senators per state were constitutional compromises in 1787 that heavily influenced political decisions about the pro- or anti-slavery makeup of new states entering the Union in antebellum America.

3. More and more slaves in the same isolated economic area would drive down the value of slaves, which were the primary collateral for northern bank loans to southern slave interests.

4. For the size and scale of the bloodshed, if the same proportion were to die in present-day Kansas, the dead and wounded would exceed 20,000.

Four weeks before Ewing's 1858 ride into Kickapoo, a Free State convention was held at the Congregational Church in Lawrence. Tom Ewing later called that meeting the beginning of "the final struggle for freedom in Kansas." Prior to the meeting, lawlessness had prevailed throughout Eastern Kansas. Much of it centered around the September 1857 efforts by President Buchanan's political cronies, aided by pro-slavery editors and agitators, to convene a convention attended only by pro-slavery men. There, the Lecompton Constitution, intended to turn Kansas into a political satellite of Missouri complete with a slave code, was cobbled together. That was in spite of the strong majority of Free Staters now populating Kansas.

Territorial officials set a statewide ratification vote for Lecompton's provisions for December 21, 1857. The "war wing" of radicals within the Free State Party – men like Brown and James Montgomery – wanted nothing to do with what they considered the illegitimate ratification of the Lecompton Constitution. Any participation by free staters would give Lecompton too much credibility. The radicals preferred violence at the polls, picking a fight with the federal government that was sponsoring and protecting this bogus Missouri-style government on Kansas free state men. By goading the government to suppress abolitionist sentiments with force, martyrs would be created for their cause. Abolitionists believed the nation would rally to their anti-slavery cause, and promote that cause to higher national prominence.⁵

Free State moderates were concerned there might be violence. Admittedly, the December 21, 1857, pro-slavery election was not intended to be fair. Buchanan was pushing a minority viewpoint in the territory and pulling out the stops to get the pro-slavery Constitution adopted. His was the "higher purpose" doctrine in action – only Lecompton could save the Union from secession and division, and keep peace in his own cabinet, which contained several future generals in the Confederacy as well as Jefferson Davis. The December vote was an up or down effort to ratify Article VII, a referendum on whether to allow the buying and selling of slaves in Kansas. Free Staters called it a "turkey or buzzard" choice. Even if Article VII failed, there was no up or down vote on the rest of the Lecompton constitution, which allowed slavers to bring their property to Kansas and homestead with slaves as the labor force. The Lecompton document required state government to protect that institution.

At the Lawrence convention, in a low modulated voice, Ewing argued with force and logic that the Free State fight must be at the ballot box, and he recommended Free Staters vote in the December election on the Lecompton Constitution. Even if the expected voting frauds occurred and Lecompton was ratified, constitutional provisions could be changed when those provisions did not represent majority will.

They should do what they could in December, but they should fully participate in the January 4, 1858, vote to elect officials who would take state office if Congress ratified the Lecompton document. Ewing's check and balance on a gov-

ernment created under a pro-slavery constitution was to operate it using free state elected officials. The January vote was an alternative means of Free Staters killing Lecompton without relying on a vote in Congress, but it required putting together a slate of Free State candidates and getting the word out to all the polling places in Kansas. To the radicals who advocated ignoring the elections and fighting the federal government, Ewing declared, "Such a course is rebellion and Buchanan will deal with it as rebellion." Ewing was not persuasive. The convention voted to boycott the December and January votes and not field a slate of candidates.⁶

Ewing and his moderate friends thought inaction was folly. It left the field solely to the pro-slavery party. He and a small group of moderates bolted the meeting and were determined to field a slate of candidates in spite of the convention's vote. In early December, Ewing made a deal with the Douglas Democrats in Kansas, a small party numerically inferior to the free staters. The Democrats and the free staters had the same stake in defeating the pro-slavery candidates. Ewing suggested through his prominent Democrat cousin, Hamp Denman, that Democrats should endorse the Free State ticket. George Brown was nominated as the Free State candidate for governor with William Y. Roberts for lieutenant governor. P. C. Schuyler of Burlingame was nominated as secretary of state and Andrew Mead, of Manhattan, for treasurer. Marcus Parrott, the anti-slavery South Carolinian, was nominated the state's first congressional delegate. Each pledged that if they later took office under the Lecompton Constitution, they would call another convention to create a new constitution and eliminate slavery. Tom Ewing was to manage the campaign. The bolter's committee falsified the results of their bolting campaign – reporting that the Free State convention had ratified the slate of officers when the convention had done just the opposite. Then Ewing and George Brown, editor of the *Lawrence Herald of Freedom*, paid a large sum from their own pocket to deliver the special edition of the newspaper and its slate of candidates throughout the territory.⁷

Ewing knew that he did not have to show the election frauds; the frauds were expected from Buchanan's men. He only needed to expose them to Free State supporters in Washington. That would be enough to taint Lecompton's legitimacy in Congress. Ewing convinced a surprising ally, territorial Gov. James W. Denver, where to expect the frauds. One was Kickapoo township, in Leavenworth County. Ewing convinced Denver that a small number of troops in key townships could control the violence and insure fairness. Denver was a Buchanan appointee, but he could hardly refuse Ewing's request because Ewing had endorsed Denver's request that the free state men participate in the elections. Denver approved troops in some, but not all, precincts. Because of its close proximity to Fort Leavenworth, Kickapoo was not on Denver's list. Few men were registered to vote there, however. Two days before the critical vote for state leaders under the Lecompton charter, Ewing wrote his brother, Hugh, who was

5. The same philosophy spurred John Brown to his ignominious raid at Harper's Ferry, Virginia, in 1859.

6. Description of Ewing's remarks from John A. Martin, Editor; "Proceedings And Debates Of The Kansas Constitutional Convention," To-

peka: State Printer's Office, 1920, p. 659; *Deal with it as rebellion*, LAWRENCE HERALD OF FREEDOM, Dec. 27, 1857.

7. Thomas Ewing Jr., *The Struggle For Freedom In Kansas*, COSMOPOLITAN MAGAZINE, 17 (1894): 3-5, 11 (hereinafter Ewing).

wintering in St. Louis, “I take a company of select men to Kickapoo and am bound to have fair play there”⁸

With free staters boycotting the December 21st election, Lecompton carried decisively, but over one half of the votes in favor of Article VII (the slavery article) came from three townships – Oxford, Shawnee, and Kickapoo. At Kickapoo on January 4, 1858, there was hope for a different outcome. Ewing and his men kept to themselves for awhile, stamping their feet against the cold, blending in, watching the small ferry move back and forth across the river. Each trip brought more Missourians over to vote. Some were teenage boys. Ewing was soon recognized and excitement grew. Several Missourians crossed the street and confronted Ewing, threatening to run the Free Staters out of town, or worse. Two of the men waving pistols under Ewing’s nose introduced themselves as Horace Greeley and William H. Seward, bragging they had just voted for a pro-slavery legislature and if Ewing did not like it, the ruffians would kill him. C.F. Currier, the chief clerk of the territorial House of Representatives from Lecompton, nervously pulled Ewing aside and suggested he get his men off the street to avoid gunplay.⁹

Although he was the target of jeers, oaths, and rotten garbage, Ewing kept his wits. He gave his own pistol to a friend and ordered everyone but Currier to head back up the road and keep alert, and to return quickly at the sound of gunfire. More than one man had been beaten to death by ruffians over mere rumors. Missourians demanded to know why the most prominent Free State attorney in Leavenworth was roaming Kickapoo’s main street. Ewing ignored them but also used the power of rumor, letting it be known that abolitionist firebrand James H. Lane’s militia was nearby and if free staters were harmed, the militia would build a bridge over the Missouri River with the ashes of Weston, Mo. Ewing might be bluffing, but the Missourians knew of Lane and his rattlesnake temperament.

The day moved along. Ewing watched the long line of Missourians walk into the voting office, swear to their Kansas residency, and vote. Several got into line two or three times after trips to nearby saloons. At the end of the day, Ewing and Currier got into line and were the 550th and 551st voters. Ewing knew county records showed only 300 registered voters in the township. After they voted, the polling place closed. Under a shower of garbage and taunts, Ewing rode off.¹⁰

Franklin Pierce had appointed John Calhoun, of Boston, the chief land officer for Kansas in 1854. Calhoun was also the chief election officer in charge of the vote counts. Pro-slavery elements had never before won a Kansas election without fraud.

After the January 4 vote, word came that the Free Staters would control the House by 14 seats.¹¹ When word leaked that the pro-slavery party had won those seats, Free State men knew a new fix was in. When Calhoun announced that more than 900 votes were cast in Kickapoo, Ewing swung into action. He wired the facts about the Kickapoo voting irregularities, and Calhoun’s pronouncement to Free State strongholds across the territory. Anger erupted. Calhoun fled to Washington, just ahead of a mob with ropes.

Ewing, a non-legislator, demanded to address an emergency session of the territorial legislature now dominated by free staters. Ewing urged they create an investigating commission for voting fraud, which they enacted promptly. Gov. Denver could have vetoed the bill, but Denver was just as disgusted with Calhoun as any Free State man. Ewing was named to chair the commission and given subpoena powers. As he took office, he received word that President Buchanan had welcomed Calhoun’s representations as to the legitimate vote count, and demanded that Congress admit Kansas with its new pro-slavery constitution and slate of officers. Ewing swore out arrest warrants for the Missourians he saw vote and Free State deputies swung into Kickapoo and Delaware townships to arrest the men for perjury.¹²

Ewing’s concerns about violence in Kansas were real. Among the 16,000 registered Kansas voters, fewer than 1,000 were registered pro-slavery men. Denver was also concerned and wrote Buchanan, suggesting another constitutional convention to ease Free Staters anger. Buchanan ignored him. Ewing was afraid the recklessness of radicals like Lane, Charles Jenkinson, Montgomery, and Brown, would goad Buchanan into suppressing Free State meetings using the army. Lane wanted a shooting war with the federal government and he raised the decibel levels in his anti-Lecompton rhetoric. More was riding on this Lecompton issue than just politics. Tom Ewing wrote his brother, Hugh, “I fear we shall have a season of violence and probability of civil war, which would ruin us all.”¹³

Tom Ewing began his investigation by subpoenaing a Calhoun henchman, Jack Henderson. Ewing expertly elicited a confession from Henderson that Henderson had forged the election returns at Delaware Crossing precinct on Calhoun’s orders. Ewing expected the same had occurred at Kickapoo. Another Calhoun employee, Lauchlan MacLean, swore under oath that Calhoun had taken the Kickapoo returns with him to Washington. On the second night, in a back alley meeting with a stranger who kept his features covered, Ewing was given information that MacLean had hidden a large box of ballots under a woodpile outside the territorial offices. Ewing quickly

8. “Fair play” from Thomas Ewing Jr. to Hugh Ewing, January 2, 1858, in the Thomas Ewing III, Lecompton Constitution Mss, Kansas State Historical Society (KSHS).

9. Ewing, *supra* note 7. David G. Taylor, Business and Political Career of Thomas Ewing Jr.: A Study of Frustrated Ambition (PhD dissertation, University of Kansas, 1970, p. 70).

10. Ewing, *supra* note 7.

11. Report on the Result of the vote of December 21, 1857 and Jan. 4, 1858, Territorial Kansas Online, Kansas State Historical Society, last accessed at http://www.territorialkansasonline.org/~imlskto/cgi-bin/index.php?SCREEN=view_image&document_id=100002&file_name=k301923

12. That Ewing addressed the legislature, see Ewing to his wife, Ellen Cox Ewing, January 12, 1858, Ewing Papers, KSHS. Ewing’s “voting frauds board” was created by Kansas statutes, 1857 Territorial Session Laws, chapter 27, Section 1.

13. Denver letter to Buchanan, January 16, 1858, Buchanan Manuscript Collection, Historical Society of Pennsylvania, Philadelphia; for Buchanan and the Lecompton effort, see Marcus Parrott to John Hutchinson, January 15, 1858, William Hutchinson Manuscript Collection, Kansas State Historical Society; TEJr. to his father, January 15, 1858, Thomas Ewing Jr. papers, Kansas State Historical Society; “season of violence” from “TEJr. to Hugh Ewing, January 10, 1858, Thomas Ewing Jr. papers, KSHS.

wrote out a subpoena and search warrant. Sheriff Sam Walker served the warrant, found MacLean at the Lecompton office and demanded to know where the ballots were. They looked under the woodpile and the ballots were there. An entire city directory of names was crudely spliced into the list of Kickapoo voters. When they went back to arrest MacLean for perjury, he had disappeared into the western prairies of Kansas.

Ewing immediately telegraphed Stephen A. Douglas about their evidence of voting fraud. Popular sovereignty had been subverted. A disgusted Douglas had had enough perversion of his legislation. His party was known as Douglas Democrats, not Buchanan Democrats. Douglas vowed he would undo Buchanan, even if it divided his party. Douglas stormed onto the Senate floor and charged that key men of Kansas (alluding to Ewing) were “coming to Washington” to assist the investigation of the “Lecompton doings.” Buchanan charged Douglas with grandstanding and then played hardball. Senators and congressmen were showered with presidential favors and patronage if they would avoid support for any lengthy investigation. The reactionary firebrand rhetoric of the war intensified that spring in Washington. On March 3, 1858, New York Sen. William Seward spoke on the “irrepressible conflict between the two antagonistic systems, slave and free labor.”¹⁴ A day later and in response, Sen. James Hammond, of South Carolina, snapped that the North “dare not make war on cotton. ... Cotton is king!”¹⁵ Fistfights erupted on the floor of Congress. Ewing’s name was prominent in the discussions around Washington for a month, priceless advertising for an attorney. The Senate narrowly passed the bill ratifying the Lecompton Constitution, but it was defeated in the House.¹⁶ An attempt in May 1858 was made to bribe Kansans with a massive lands bill, “the English Bill,”¹⁷ if they would reconsider their vote on Lecompton, and vote again to approve the constitution with a fair vote. The Emporia Kansas News wailed, “with paltry acres, unprincipled men have sought to purchase our manhood?” The English bill failed. Lecompton’s final twitching ended.

From the defeat of Lecompton came a new constitutional convention in Kansas. A year later, the free state territorial legislature appointed a convention that produced the Wyandotte Constitution, a Free State document whose bill of rights has specific language forged from the pressures and problems of Bleeding Kansas where an oppressed majority were trying to hold off the naked power of their own federal government. Wyandotte is still our organic law. Under it, Tom Ewing was elected chief justice of Kansas with the largest vote of any territory-wide candidate.

On January 29, 1861, when Southern senators from seceding states withdrew from Washington in the wake of the 1860 national election, the Kansas territory that Ewing had helped preserve as a free state came into the Union as the 34th star in the flag.

The civil war erupted that spring. During the Civil War, by different routes, each member of the Leavenworth law firm of Sherman, Ewing, and McCook became generals in the Union Army. Sherman finished the war an international hero. Hugh Ewing led a brigade at Antietam and one of Sherman’s division’s throughout the Vicksburg and Chattanooga campaigns. Daniel McCook fought at Shiloh on the staff of his brother, Maj. Gen. Alex McCook. Dan went on to raise the 52nd Ohio Infantry regiment and distinguished himself as a brigade commander at Perryville but was mortally wounded leading his brigade over rebel parapets at Kennesaw Mountain, Ga., in June 1864.

Tom Ewing resigned his position of chief justice in 1862 to raise the 11th Kansas Infantry regiment. With no military training, Col. Ewing fought the regiment well at the Cane Hill and Prairie Grove battles in northwest Arkansas, battles credited historically with preserving southwest Missouri and northwest Arkansas for the Union. Due in part to that service, Abraham Lincoln promoted Ewing to brigadier general in early 1863 and assigned him to command the difficult District of the Border, which included eastern Kansas and western Missouri, a hotbed of guerrilla activity.

William C. Quantrill’s devastating raid on Lawrence on August 21, 1863, killed 150 unarmed male citizens – including a few teenage boys. Among the gravely wounded was Louis Carpenter, whom Tom Ewing had appointed as the first reporter of the Kansas Supreme Court. Carpenter’s wife threw herself over his body until another gunman pulled her off and calmly shot Carpenter again. Their house burned, taking with it some of the court’s law books. So many men were dead nobody was left to build coffins. Many of the dead were buried in a mass grave.

Ewing called the attack a “fiendish atrocity,” and reacted by issuing Order No. 11, ordering 10,000 civilians and guerrilla sympathizers moved by force out of four western Missouri counties into Arkansas, the largest nonracial forced movement of Americans in the country’s history.¹⁸ The measure was harsh but necessary to keep angry Kansans from launching a “jayhawking” bloodbath across Missouri that would rival Sherman’s later march through Georgia. While Order No. 11 killed any hope of achieving Ewing’s major ambition, a U.S. Senate seat, it saved Kansas towns from any further guerrilla attacks.

Ewing’s crowning wartime achievement came in 1864. He was assigned as deputy commanding general for the Department of Missouri, under Gen. William Rosecrans in St. Louis. The war in 1863 had gone badly for the Confederacy. Confederate victories at Chancellorsville and Chickamauga could not offset major Union victories at Vicksburg, Gettysburg and Missionary Ridge. Lincoln sought re-election in 1864 in order to “finish” the war, but high casualties in the Union

14. DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN*, p. 191 (2005).

15. *On Admission of Kansas, Under the Lecompton Constitution, Speech before the U. S. Senate*, March 4, 1858.

16. KENNETH M. STAMPP, *AMERICA IN 1857, A NATION ON THE BRINK* at 309, 312, and 319 (New York: Oxford University Press) (1990).

17. *Unprincipled men*, EMPORIA KANSAS NEWS, May 15, 1858. In-

roduced by Indiana congressman William English, “the English Bill,” was an attempt by moderate democrats to salvage something from the Lecompton affair.

18. The actual number of refugees is unknown but estimated by census records of the day to between 10,000 and 20,000. See Walter E. Busch, *General You Have Made the Mistake of your Life* (masters dissertation, California State University).

army in 1863, and horrible losses in early 1864, made Lincoln unpopular. Senior Confederate officers knew all the Confederacy had to do was hang on and bleed the Union armies in 1864 until the Democrat nominee, George McClellan, could be elected and sign a promised armistice, leaving the administration's war goals unfinished and preserving slavery intact within the old South.¹⁹

In May 1864, two great coordinated invasions were launched by Union forces to finish the Confederacy. Grant's movement into Virginia pinned down Robert E. Lee around Richmond, but with enormous casualties.²⁰ Sherman's march into Georgia to seize Atlanta was less costly in dead and wounded, but agonizingly slow. Gen. George Crooks' army in the Shenandoah Valley kept Confederate generals Lee and Joe Johnston from resupplying each other. Sherman took Atlanta on September 1, which caused great rejoicing in the North but did not break the Confederacy's spirit. If in addition to heavy Union losses another rebel army broke loose into the North and caused havoc, an embarrassed Lincoln could still lose reelection. The only southern option for such a break-away invasion lay west of the Mississippi River.

Gen. Sterling Price, a Mexican war veteran and former Missouri governor, outfitted a 15,000-man Confederate force of mounted infantry and unarmed conscripts. On August 28, 1864, four days before Sherman took Atlanta, Price began his invasion from Camden, Arkansas. The plan was to march through Missouri to St. Louis, burn the city's wharves and military stores, and arm his conscripts with weapons from the St. Louis arsenal. The campaign would demonstrate that the South was still alive and Union forces were unable to stop them, achieving the political embarrassment on which the Confederacy's last hopes lay. The chance of success was good. There were only 6,500 Union troops scattered in dozens of places between Price and St. Louis.

Before Union forces could concentrate, they had to know which route Price was taking towards St. Louis. In late September, Rosecrans sent Tom Ewing into southeast Missouri to telegraph back first-hand intelligence on Price's route. Ewing rode the trains south to Ironton, Missouri. At a small earthen fort in the Arcadia Valley near Pilot Knob, Ewing found himself the senior officer commanding 800 federal infantry, cavalry and twelve cannon. Rebel cavalry under Jo Shelby cut off a Union retreat and Ewing was surrounded by Price's army. Surrender of Fort Davidson was demanded by Ewing's old political enemies,²¹ but Ewing had black civilians in the fort and he was concerned the confederates might kill them like they did black soldiers at Fort Pillow, Tenn. Further, as the author of Order No. 11, Ewing had a price on his head.

Instead of bypassing Fort Davidson, Price ordered a frontal assault. It was the first battle of the invasion. The assault, if easily accomplished, would see southern morale soar and send a devastating message up the line as to what St. Louis could expect. Price's men lined up and charged. The fort's cannons spewed canister in ear-splitting roars, and four companies of Shiloh veterans from the 14th Iowa Regiment, caused awful casualties in the rebel lines from their well-concealed rifle pits. More than 1,500 Confederates – the cream of Price's force – were shot down in a single afternoon. Ewing lost less than 200 men. At midnight, Ewing led his force out of the fort and through Confederate lines and made a successful fighting withdrawal to Rolla, Mo.²²

His force shattered, Price could not complete his intended plan for St. Louis. He turned west and, on October 23, was defeated at the Battle of Westport in Kansas City. Three days later, at the Battle of Mine Creek north of Fort Scott, in our state's only conventional civil war battle between organized armies, Price's remaining mounted infantry were shattered by the largest Union cavalry charge of the American Civil War.

The battle of Pilot Knob was hailed as the Thermopylae of the West by eastern writers. Ewing was its hero. But the war went on and his star soon faded. However, one man knew what Tom Ewing had done for the nation. When Lincoln first elevated Ewing to brigadier general, Thomas Ewing Sr., a Lincoln friend and advisor, second-guessed the appointment of his non-military son to the Kansas posting. "What did you name the Brat a Brigadier General for?" he asked Lincoln. Lincoln knew what the outcome of the Battle of Pilot Knob meant to his re-election, and Tom Ewing's part in it. At a social event, Lincoln pulled the elder Ewing aside and asked, "What do you think of your Brat now?"²³

While friends would refer to Ewing as "General Ewing" throughout his post-war life, he never wrote any military memoirs. As a lawyer in Washington, he helped the Johnson Administration avoid impeachment by lobbying the key vote against impeachment, Kansas Sen. Edmund Ross, who served under Ewing in the 11th Kansas regiment. Ewing helped build railroads in Kansas, and then moved back to Ohio and served two terms in Congress. His opponents labeled him a pro-southern sympathizer in later campaigns, forgetting his toughness issuing Order No. 11 and his crucial stand at Fort Davidson. Abraham Lincoln was not around to set Ewing's critics straight.

His post-war work as a leading greenback supporter and railroad developer expanded his horizons. After a failed run for governor of Ohio in 1880, Ewing practiced law in New York City but maintained his professional ties with the bench and bar in Kansas. In an address to the Kansas Bar Association convention in 1890, and at a time when there were far more

19. General James Longstreet wrote A. R. Lawton, The Confederacy's quartermaster general on March 5, 1864, "If we can break up the enemy's arrangements early and throw him back, he will not be able to recover his position nor his morale until the Presidential Election is over, and we will have a new President to treat with." Longstreet to Lawton, Official Records of the Civil War, Vol. 32, Part 3, p. 588.

20. Union losses in the Army of the Potomac at the Wilderness, Spotsylvania and Cold Harbor were so high the War Department suppressed the true state of the losses, over 60,000 dead and wounded Union soldiers in less than five weeks of fighting.

21. Price's adjutant demanding surrender of Ewing was L. A. MacLean, who evaded Ewing's arrest warrant in Lecompton when he tried to unlawfully hide the falsified 1858 Lecompton voting ballots.

22. Fort Davidson near Pilot Knob and Ironton Missouri is one of the more scenic areas of Missouri, and the battlefield is as well preserved as any.

23. "Brat" was Thomas Ewing Sr.'s nickname for his namesake son. The remarks are noted in papers of Thomas Ewing III, February 26, 1896, found in box 214, Thomas Ewing Collection, in the Library of Congress.

trials than today, Ewing suggested the need for a state civil procedure code and a less than unanimous jury verdict law to alleviate a court system plagued with hung juries. His proposals were enacted in 1964 and 1976.

Later, of all his accomplishments, he would cite the defeat of the Lecompton Constitution as his most important work.

In 1896, after Ewing's death in New York City, retired Kansas Supreme Court Justice Samuel Kingman, who served with Ewing on the state's first Supreme Court in 1861, wrote:

His moral character was of the best; no bad habits marred the beauty and symmetry of his life. He was honest, not merely honest in keeping his word and meeting his obligations, but honest with himself. He had strong convictions and stood by them manfully. He had great ambition but he never permitted it to dominate the integrity of his life. His life was his own ... and he never pawned it for the gratification of his ambition. I was his senior in years, in nothing else. In the course of nature I ought to have preceded him. He has passed from earth while I still linger here feebly to bear witness to his worth. Citizen, jurist, soldier, statesman, friend. I grieve that I cannot lay a worthier tribute upon his grave.²⁴

In 1976, the Kansas Bar Association commemorated the importance of the Leavenworth law firm of Sherman, Ewing,

and McCook by placing a plaque at the corner of 2nd and Delaware Street, where the old firm once stood in a rickety wooden building. It was a small tribute to this larger than life leader of the early Kansas bench and bar. ■

About the Author

Prior to joining Smith, Burnett, Larson & Butler LLC in 2005, Ron Smith served as general counsel to the Kansas Bar Association and was counsel for the Community Development division of the Kansas Department of Commerce. He was a brown-water Navy veteran during the Vietnam conflict, a 1973 Kansas Wesleyan graduate and a 1976 graduate of Washburn University School of Law. After law school he practiced briefly in Great Bend, then served as deputy secretary of administration for Gov. John Carlin. While at the bar association, Smith was responsible for the association's lobbying program and its ethics and professionalism programs, and is still active in professionalism activities of the Bar. In October 2008, the University of Missouri Press published Smith's biographical history of Thomas Ewing Jr., a notable Kansas free state advocate and general in the Union Army during the civil war.



24. Samuel Kingman, "Memorial To Justice Thomas Ewing, Jr.," 56 Kansas Reports (1896): xiv.



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