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PRELUDE TO TRIAL AND TEARS, PART A, Sept 4

►Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in Reconstruction Texas*, 4 Tex. A&M L. Rev. 95 (2016).

During the summer of 1870, Madison County was wracked by violence against freedmen. Tensions reached their peak on July 21, 1870, when a band of disguised men staged a jailbreak on the Madison County jail, releasing two murderers. In response, State Police Private, John H. Patrick, a Republican with ambitions for higher office, assembled a group of Black militias and began confiscating guns from any person carrying them, under color of the 1870 Act. Patrick's confiscation order, along with the fact that Blacks were enforcing laws against whites, led to widespread public outrage.

A local deputy sheriff formed a posse with the ostensible purpose of arresting Patrick, but an actual intent to foment violence against politically active Blacks and Republicans, based on the claim that Blacks had joined Patrick's militia unit with the intention of murdering whites. The posse sought Patrick at his home, but he was in Austin where a disciplinary hearing had been convened to look into his actions. The group instead killed two militia leaders.

In response to this incident and other chaos in the county—including militia members being killed, shot, and attacked, and freedmen being whipped by whites, Governor **Davis ordered forty state police and three-hundred state guards into Madison County to restore order**. Many of his opponents viewed these actions as tyrannical, and the event damaged the reputation of the state police and the Davis administration statewide.

In response to concerns about the effectiveness of the 1870 Act, and likely partially as a result of the confusion in Madison County, the Texas Legislature drafted a bill in 1871 that prohibited the carrying of any "pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife . . . [without] reasonable grounds for fearing an unlawful attack on his person . . ." The bill punished first offenses with confiscation of the weapon and a fine between \$25 and \$100 (approximately \$500-\$2,000 with inflation) and up to sixty days in prison for a second offense.

The law's exception allowing publicly carrying a firearm when in fear of unlawful attack was further narrowed by requiring the defendant to show that the danger was "immediate and pressing," and "of such a nature as to alarm a person of ordinary courage," that "the weapon was borne openly and not concealed beneath the clothing," and that the claimed danger did not have "origin in a difficulty first commenced by the accused." This clarified that the exception did not apply when a person had carried a firearm due to a generalized fear of crime, but rather only when a specific threat existed. The penalties for the 1870 Act were also amended to provide for confiscation of the weapon and imprisonment for up to 90 days for subsequent offenses. The law granted the governor the power to exempt counties from the carry prohibition if they were dubbed a frontier county "liable to incursions of hostile Indians." The law also included exceptions for people carrying weapons on their own property or in their place of business, members of the militia in active service, law enforcement officers, and the transportation of arms in the baggage of travelers.

The bill titled "An Act to Regulate the Keeping and Bearing of Deadly Weapons," was introduced by Republican Representative Frederick Grothaus on January 24, 1871. The bill passed out of the Judiciary Committee 5-3, receiving primarily Republican support. On March 9, 1871, the House passed the bill by a margin of 60-12, with all twelve Black representatives voting in favor of the bill. On March 29, 1871, the Senate passed the bill by a 20-4 margin with support of both of the State's Black Senators. In both chambers opposition to the law consisted primarily of Democrats, and conservative Republicans, who had served in the Confederate Army. Governor Davis signed the bill on April 12, 1871.

The new prohibition on public carry was widely enforced across the State, especially by the state police. Line police officers consistently sent their superiors reports of arresting those carrying weapons. Local law enforcement also participated in arresting those carrying weapons illegally. In fact, Governor Davis declared martial law in Limestone County, in part because of the aftermath of a shootout between police and a man they were trying to arrest for carrying a pistol. Davis specifically mentioned the citizens' failure to obey the law against carrying pistols and other weapons as a reason for the declaration.

While state and local law enforcement worked to carry out the ban, many citizens resisted. Some tried to circumvent the law by posing as state or local law enforcement that were exempted from the public carry restrictions. It was difficult to know who was lying, but in at least one case an imposter who was discovered carrying a revolver was arrested and fined.

Similarly, a few state police officers who were terminated for misconduct continued to fraudulently act as officers and on occasion were arrested for illegally carrying firearms. Some efforts to enforce the law turned violent, including the Lampasas Massacre of 1873, the deadliest single incident in the brief existence of the state police. Four state police officers were murdered by members of a local cattle-rustling gang when they attempted to arrest a gang member who was violating the public carry bans. Despite this resistance, law enforcement efforts to enforce the public carry prohibition continued.

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PRELUDE TO TRIAL AND TEARS, PART B, Sept 5

AS TOLD BY MADISON COUNTY CITIZENS:

►►MCHC VOLUME II

In the fall of 1870, a gang of desperadoes moved into Madisonville to eliminate a State Police Captain named Patrick, who lived in the town. Patrick was accused of using undue authority over criminal and civil matters pertaining to the residents of Madisonville. It was believed that the state police used excessive force without thoroughly investigating a situation and Patrick had been branded the culprit.

Instead of finding Patrick, the gang found a man named Tinsley, who they thought was a member of Governor Davis' state police. It was initially reported that Tinsley was tied to a tree and shot, and that two other state policemen were also killed. Captain Patrick's wife with hearing of the report and fearing for her husband's life, dashed off a letter to him about the desperadoes. Patrick was apparently in Austin at the time of the incident. Mrs. Patrick wrote that the desperadoes "have sworn that they intended to kill every "G.Damn" Radical in Madison County and then go down and clean out Grimes County."

Governor Davis, after hearing erroneous reports sent fifty state policemen and 300 state guardsmen to Madisonville, along with Adjutant General James Davidson. When Davidson arrived in Madisonville, he found that the reports had been exaggerated. Actually, the desperadoes were only seven men; S. Baston, Elisha Baston, John Jamison, Jack Rogers, Seeley Singleton, Tider McIver and Mat Burney.

The men were seen chasing Tinsley on November 4, 1870, across the prairie on horseback and it was never determined if Tinsley was caught. The gang returned to Madisonville the following morning and found John Copeland and four other freedmen milling around in front of Captain Patrick's home. The gang opened fire on the freedmen, but were soon stopped by Mrs. Patrick's pleas. The freedmen had taken refuge in the Patrick home after the firing started. Moments later, John Copeland tried to escape from the house and was killed instantly by a hail of bullets. The other four

freedmen escaped. Once the actual story came out, the police were recalled by Governor Davis and the town became relatively peaceful once again.

►► In 1954, Joel M. Jenkins wrote about his great-grandfather, Daniel M. Larrison, in the Madisonville Meteor: It has been previously noted that Madisonville was a “wild and wooly burg” in the 1850’s, and Norman G. Kittrell remarked that he even feared the town’s sheriff. He recalled that as a child accompanying his father through Madisonville, prior to the Civil War, he shied away from the sheriff. “I think he had two pistols, and he needed them in that county at that time. I was afraid of him as if he had been a bear, and I clung tenaciously to my father’s side”

As Madisonville grew in the late 1850’s, politics took on an added interest. The earliest political rally of significance was held in Madisonville in 1859. A brush arbor was erected one block south of the town square and General Sam Houston spoke to a gathering of people about his candidacy for Governor. Approximately 250 people, drawn from a ten-mile radius around Madisonville, “came on foot, on horseback and in wagons” to get a glimpse of their idol. General Houston was highly applauded and, later, the people of Madison County voted heavily for his election.

►► In 1936, Mrs. Lizzie Leonard interviewed two of the senior citizens of Madisonville, John R. McIver (age 87, b1849) and John James (age 84, b1852), to obtain information on the early history of Madisonville. The two men related to Mrs. Leonard how they remembered Madisonville in 1857. The jailhouse stood on the southwest corner of the square and was built of logs, two stories high. There was no door for the first floor. The prisoners were taken upstairs to the second floor by a ladder leaning against the building, and then let down to the first floor through a scuttle hole.

On the west side of town, Job S. Collard operated a general store. It was located on the site of the old First National Bank building. In the middle of that block, another building stood which was later used for the first elections after the Civil War. Mrs. Leonard wrote about the election as it was told to her: “Ropes and chains formed an isle from the shack to the grove of trees in the square. Armed Black men guarded the entrance. It took four days to hold the election. It was the only voting place in the county and polled about 250 votes. The election was held by a Black man sent down from New York by the Republicans. The town was under Marshal [sic] Law with a standing army of Blacks”.

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PRELUDE TO TRIAL AND TEARS, PART C, Sept 6

►► Petition to Governor

January 31, 1873, To His Excellency E. J. Davis, Governor of Texas,

We the undersigned citizens of Madison County would most respectfully represent to your Excellency that our county is in a state of lawlessness, to that extent the peaceable and law-abiding citizens no longer under their present states feel safe either in life or property. The law seems here a farce. The outlaw, gambler and rioter being the only persons that are free from danger, can express their opinions. There are a large number of criminals now infesting the county charged the gravest offenses such as murder etc., who go where they please, seemingly free of any dread of arrest, and menacing the lives and property of good and quiet citizens, until the peace-loving citizens are so intimidated that they fear to denounce them, or give any information concerning them; and if by chance some of them are arrested, they laugh to scorn the power of the law, for they know they will be allowed to escape without punishment. It is publicly known that an officer with a warrant in his pocket for the arrest of a party known to be guilty of an atrocious murder has been in company with, perhaps traded with the party, and yet has never offered to arrest him.

To illustrate the sad state of affairs, would state that here a few days since a man shot a freedman. Complaint was made and a writ issued for the arrest of the criminal, and placed in the hands of the Sheriff. Some days elapsed and no effort being made to arrest this man, he was emboldened to come into Madisonville, the County seat. He was pointed out to the Sheriff and even a citizen volunteered to the Sheriff, that if he (the Sheriff) would deputize him, he would arrest the criminal, and yet the man was not arrested, and allowed to remain several hours, and quietly return to his home. Still one more illustration—On the eve of the recent election the Registrar sent here was in quiet conversation with some man came up and without any provocation stabbed the Registrar. This man was arrested and Vernon J.P. examined the case, and on clear proof of these facts held the prisoner to bail for \$2000.00 in default of which to be placed in confinement.

The Sheriff took charge of this party and placed him under view in sympathy with such lawlessness and he was permitted to go to the grocery or anywhere else he pleased, until such time as his friends could procure a horse when he mounted him without molestation and rode off. But the strangest feature, in this case, is the fact that this man now walks our street day by day, although he has never been tried for this offense, or given any bond; yet, is permitted to go at large, seeming the best friend of the Sheriff elect.

We can fill many pages in recapitulating such total disregard of law, but do not desire to be tedious. This dereliction of duty on the part of our officers has so emboldened criminals, that it has culminated in again having the courthouse with all the records of the county, entailing great pecuniary loss on the county as well as individual citizens, and under this state of facts many of us feel that there is no alternative but to abandon our homes and seek a more quiet county, where life and property are not left to the mercy of outlaws. But unwilling to take this step without one effort to redeem our county from such lawlessness, and knowing that the law gives your excellency the power to appoint a Special Police force for the suppression of crime and maintenance of law, we, therefore, most respectfully petition your excellency to empower Judge J. R. Burnett with the authority to appoint a Captain, and to furnish Judge Burnett with one hundred blank commissions for a Special Police to aid in restoring order to our county; they are to give the necessary bond to be approved by the Judge of our District Court; they to serve only until peace and order are restored to our county, without pay or compensation of any kind.

Our reason for asking this is, that we are poor and cannot in our impoverished condition incur heavier taxes to pay Special Police such from another county and furthermore know the ones who are guilty, and their whereabouts, when strangers seek to arrest them would fail, from the fact that so soon as they appeared in the county these fugitives from justice would leave the county for a time only, to return when the danger is passed.

We would most respectfully but urgently urge upon your excellency to take under advisement our petition, and we would most respectfully ask of your excellency to confer with Judge Burnett, the bearer of this petition.

And would further beg leave to the state to your excellency that our county is a new and a poor one in pinch of material wealth, and that we have had one excellent court house burned before, and that we in our impoverished condition, cannot for a long time be enabled to build another unless we are aided, and under the present aspect of affairs, no citizen will be willing to have a court room over their building for fear that it would be burned; and under these dark prospects we have nowhere to look for aid, but to the State. We therefore would most respectfully ask of your excellency to lay our condition before the Legislature with the request that they may pass an act of relief for this county, by giving to the county, the taxes for a term of three (3) years to enable them to rebuild a courthouse.

We will in conclusion only add that a favorable consideration by your excellency of this petition, will receive the grateful remembrance of all the good citizens of this county. (Note: See Picture 5 of 5 for list of 35 signatures to this petition)

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