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**DEFYING DAVIS:
THE WALKER COUNTY REBELLION, 1871**

by Ricky Floyd Dobbs

Since, 1910, excepting comparatively recent voices of opposition, the dominant attitude toward Texas's Reconstruction experience has been that of Charles Ramsdell. In *Reconstruction in Texas*, Ramsdell emulated his mentor, William Dunning, producing a pro-Southern, almost delusional, tale of oppression at the hands of the Union Army and Radical Republicans. Fifty years of telling made Ramsdell's story a historiographic icon. New voices speaking up in the early 1960s, among them W.C. Nunn, stopped short of iconoclasm, merely dulling the harsher edges of Ramsdell's argument.¹

Ramsdell's highly selective use of sources weakens his argument, especially with respect to the Davis Administration. While willingly using governor's papers and correspondence when examining – in Ramsdell's view – more sympathetic characters such as Governor James Throckmorton (1866-1867), citation of such sources disappears completely under Edmund Davis. Ramsdell's failure to examine these sources seems an unwillingness on Ramsdell's part even to nod at any evidence that might exonerate Davis. In the process, Ramsdell fails to mention a series of armed insurrections against the Davis Administration in 1870-1871, which led to outraged public response to the administration. These events, among them a mob revolt in Walker County in early 1871, if viewed critically, actually seem to absolve the Davis regime of some sinister qualities ascribed to it by Ramsdell.²

If Ramsdell failed to mention these rebellions at all, later scholars did little to place them into context. Articles by Otis Singletary and Ann Patton Baenziger made glancing mention of the difficulties in Madison, Hill, Walker, Limestone and Freestone counties. The most extensive treatment of these disturbances appears in W.C. Nunn's *Texas Under The Carpetbaggers*. Relying almost entirely on competing newspaper accounts of the incidents, Nunn adds little interpretation or insight, writing off the clashes as evidence of the Davis Administration's excess.³

Carl T. Moneyhon's *Republicanism in Reconstruction Texas* (1980), while not mentioning the incidents, presented a new context in which to examine the response of the Davis Administration to violent challenge. Davis appears a pragmatic politician thrust into a no-win situation. His political survival demanded protection of constituencies which brought him to power – especially freed blacks and Unionists – while trying to convert new supporters through restoration of law and order to an unreconstructed Texas. This varied and sometimes conflicting mix of priorities brought Davis's administration into conflict with the citizenry. The Walker County revolt represents a microcosm of Davis's overall goals for his government

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and for Texas: preservation of key political constituencies, conversion of new supporters by implementation of law and order, and the establishment of Austin's primacy over local governments.⁴

Davis's reaction to events in Walker County followed similar uses of the militia and the State Police in Madison and Hill counties. These two incidents shaped Davis's response in Walker County. Dispatching 300 men to Madisonville to quell a "mob" of seven in November 1870 proved both embarrassing and expensive. The governor overreacted to hysterical reports of a pogrom against fellow Radicals in Madison and Grimes counties. The militia occupied Madisonville without incident until December, and the governor refused to punish the county's citizens. In January 1871, Hill County citizens "arrested" and detained State Police officers pursuing a local aristocrat's son accused of the murder of a freedman. Martial law and occupation came shortly thereafter, partly owing to Davis' repeated warnings – dating back to October 1870 – to Hill County citizens concerning civil disorder. The occupation ended when Adjutant General James Davidson – on his own initiative – fined participants, rather than impose the Militia Tax upon the whole county. This made martyrs of participants, causing Davis further embarrassment. When events forced Davis' hand in Walker County, he acted based on previous experience. He avoided overreaction by moving gradually. He warned Walker County citizens prior to sending troops. Finally, after the militia arrived in Huntsville, he kept a tight rein on his adjutant general to avoid improper application of the Militia Tax.⁵

When state District Judge J.R. Burnett opened court in Huntsville on January 11, 1871, Nathaniel Outlaw, Joseph Wright, Fred Parks, and John McParrish stood charged with murder. In December 1870, a Walker County grand jury had taken testimony from a freedman, Sam Jenkins, which implicated several whites in a case of assault. Soon thereafter, Jenkins' body was found a few miles outside Huntsville, riddled with bullets. Outlaw, Wright, Parks, and McParrish were arrested after an investigation by State Police Captain L.H. McNelly. Then, after a tense three-day trial, the prisoners awaited the verdict of Judge Burnett.⁶

Burnett later commented that he arrived at the courthouse filled with apprehensions. Counsel for the defense had presented their closing remarks the previous day, making an "inflammatory argument for the purposes of intimidating me," Burnett said. J.M. Maxey, a defense lawyer, warned the judge that a ruling against his clients would lack the "moral support" of the community. According to District Attorney W.E. Horne, the defendants' "learned, zealous, and over-active counsel" attempted to incite fury in the spectators. Burnett confirmed this, remarking that Maxey's partners – Baker and Hightower – incited the audience during the trial. "You see," wrote Burnett to Governor Davis, "what a low, mean, contemptible spirit the loyal officers of the state have to content against."

Judge Burnett found McParrish, Outlaw and Wright guilty as charged but acquitted Parks. After ordering Captain McNelly to take the prisoners to the county jail to await sentencing, Burnett left the courtroom, followed quickly by Horne. McNelly began to search the prisoners prior to their transfer to jail. At this point the men struggled free, drawing hidden revolvers. Firing at McNelly and a State Police private, Tom Keese, the prisoners initiated a gun battle in the now deserted courtroom. McNelly received a wound in the thigh, while Keese was shot in the jaw. Two State Police privates standing guard outside the courthouse tried to go to McNelly's aid. An armed mob of Huntsville citizens stood in their way.

The prisoners escaped, though McNelly and Keese managed to wound both Wright and McParrish. Somehow, the wounded State Police officers knocked Outlaw down, preventing his escape. Wright and McParrish ran out onto the courthouse lawn where "horses saddled and bridled were conveniently placed for the boys to make their getaway." With aid from townspeople, the wounded escapees mounted horses at the square and rode off, shouting and shooting. Shots rang out from many directions. Alerted by the gunfire, Judge Burnett and Horne hurried toward the square. Dodging bullets aimed at them, the unarmed judge and prosecutor ran for cover. Within moments, the prisoners had vanished.

McNelly struggled to order a response. He commanded Sheriff Cyrus Hess to form a posse. Hess' efforts came to grief, however, as no citizens seemed able - or willing - to help. Wright and McParrish fled to safety somewhere in Walker County where they received medical attention. Here, rumor had it, they were protected by thirty to forty armed citizens. Attempts to wire Austin for aid failed because townspeople in sympathy with the convicts had cut the telegraph lines. Word of the incident would be slow to reach Governor Davis.⁸

These confused happenings precipitated the declaration of martial law in and occupation of Walker County. Had information reached Davis any sooner, it remains doubtful that action could have been taken any more quickly, given an already dangerous situation in Hill County, where similar civil unrest was underway. The outbreak of violence in Walker County had deeper roots than the events of January 11. Matters in the county had been complicated since before January 1870 by racial tensions and divisions within the local Republican Party organization. These uncertain circumstances allowed a climate in Walker County which easily bred violence and thus contributed to the happenings of January-March 1871.

The importance of the racial question in Walker County can be expressed by the use of statistics. In 1870, Walker County's population stood at 9,776. Since 1860, likely because of war-time immigration to the county, the population of blacks as a percentage of the total had increased from roughly fifty to nearly sixty percent. Another dramatic trend involved the tendency of blacks to move into the towns of Walker County after the

Civil War. This influx caused the black population of Huntsville to increase from barely a quarter of the total population to forty percent by 1870. As could be expected, whites viewed this rise in black population with apprehension. During the years 1865-1868, years of changing leadership in Austin, political affairs in Walker County remained firmly in the hands of "notorious disloyalists." Abuse of freedmen was widespread and tacitly condoned by civil authorities. When such abuses came to court, prosecution seemed pointless. A white man convicted of assault against a freedman in 1867 received a fine of one cent plus court costs. Threats against officers of the Freedmen's Bureau and other prominent Radicals came frequently and usually went unpunished.⁹

Black participation in the election of 1869, largely organized by white Radicals, assured that Edmund Davis carried Walker County by over sixty percent of the vote. The newly freed blacks, now parading about with Loyal League leaders, inspired concern among whites. Sam Jenkins, the black murdered in December 1870, had held leadership positions in the Loyal League and "made himself obnoxious to white people generally." Given its black majority, Walker County whites worked to maintain their hegemony, fearing any attempt to alter the *status quo*. As late as April, 1870 – despite Radical rule in Austin – systematic mistreatment of blacks by white officials continued. According to N.M. Dudley, Mayor Wilson of Huntsville displayed an unwillingness to punish whites accused of an assault upon a black man. Indeed, the injustice of the matter became amplified when the black victim had been forced to pay court costs.¹⁰

Racial issues dominated the political life of the county as well. In July 1870, following the approval of the Enabling Act, new racial controversies arose within the Republican Party leadership. At issue was Governor Davis' nomination of Mortimer H. Goddin, a member of the 1868-69 constitutional convention and prominent local Radical, as mayor of Huntsville. The state senate refused to approve Goddin's nomination, causing the mayoral hopeful to protest the senate's action to Davis. Goddin claimed that political enemies had sabotaged his appointment.¹¹

Having failed to secure Goddin's appointment, the administration found itself in a quandary in Walker County. H.C. Oliphant informed Governor Davis that the local Loyal League had nominated freedmen to fill the offices of mayor and marshal of Huntsville. Oliphant frantically warned Davis of the potential reaction of local whites should the governor adopt the Loyal League list without question. Despite the recent senate defeat, the impassioned Oliphant urged Davis to insist on Goddin as mayor. Ironically, Oliphant's letter reached Austin the same day as a petition from the Loyal League. The League nominated Oliphant county treasurer and Goddin public weigher. As Oliphant had warned, the League nominated freedmen for mayor and marshal. The League petition also enclosed a resolution commending Mortimer Goddin and avowing the "confidence we as loyal

people place upon him." As a postscript, the League note added that Goddin never actually wanted to be mayor.¹²

As the Goddin incident might indicate, the Walker County Republican organization was at best divided, at worst in disarray. In spite of the county's black majority and the necessity of keeping it loyal to the party, white party leaders seemed reluctant to grant them a portion of local power. Beyond the racial question, the local party organization suffered from frequent clashes of personality and ambitions among its white leadership. Often at the center of clashes within the leadership clique lay the efforts of persons competing to gain Davis' favor. The value of Davis' approval hardly could be exaggerated in a town such as Huntsville, so dependent upon the state penitentiary patronage. With the passage of the Enabling Act in July 1870, which allowed the governor to appoint his own men to as many as 8,500 local and state offices, the administration became increasingly entangled in local affairs, including those of Walker County. This entanglement figured prominently during martial law and occupation. A description of these significant personalities could be helpful at this point.¹³

Judge Burnett seems the most powerful and influential of local officials. Appointed presiding judge of the Thirtieth District by Davis in early 1870, Burnett dominated politics within his district, which included Grimes, Walker, Madison and Polk counties. His frequent correspondence with Davis kept the governor informed on events in the area. His links with Davis made him the voice of the administration in his district, and Burnett utilized this power to keep other officials in line. The judge seemed to remove and replace county sheriffs almost at will. Burnett removed Sheriff W.H. Stewart who – despite his Freedman's Bureau service – seemed too sympathetic toward local whites. Judge Burnett replaced him with Cyrus Hess in early January 1871. Hess would be pleasing, Burnett told Davis, to all "law abiding citizens ... especially Republicans."¹⁴

One man who did not please Judge Burnett, yet who retained personal influence, was W.E. Horne, district attorney of the Thirtieth District. Also an appointee of Davis', Horne came from Georgia and served in the constitutional convention of 1868-69 at the youthful age of twenty-nine. Davis planned to assign Horne a frontier post, yet on the enthusiastic recommendation of Houston publisher J.G. Tracy, he kept Horne in eastern Texas. Though Burnett reported to Davis that Horne prosecuted the trial of Outlaw, Wright, and McParrish in an "able manner," the judge generally decried Horne's work. Burnett, while maintaining that he liked Horne personally, frequently complained of his subordinate's lack of energy and diligence.¹⁵

Among the Huntsville party leadership, Mortimer H. Goddin wielded considerable power. Before his abortive mayoral appointment, Goddin had been active in the party. At forty-one, the Virginia-born Goddin served as a delegate to the constitutional convention of 1868-1869. Prior to his conven-

tion service, Goddin served as an officer in the Freedman's Bureau. During the campaign in 1869, Goddin earned the distaste of many whites by his work with the predominantly black membership of Huntsville's Loyal League chapter. After Davis' election, Goddin continued to organize blacks within the county's Republican Party. By January 1870 his actions helped inflame anti-Republican feeling in Walker County, causing him to write Governor Davis. "They are trying to kill all your prominent friends here." Despite his near frantic tone, Goddin had reason to fear for the safety of Radicals in Walker County. Four whites tried to kill him in 1867 while he served in the Freedmen's Bureau. At the same time, he shared the frustrations of many of the beleaguered Radicals in the area. It seemed as though no one on the outside wanted to help. Following initial senate rejection of his mayoral nomination in 1870, Goddin angrily accused party rivals in Walker County of having conspired against him and of being "anti-Radical."¹⁶

Despite all perceived threats to his life and career, Goddin continued his work in the Loyal League. Each week he could be seen marching through the square in Huntsville with black League members, "drunk as usual." Goddin also held a commission in the First Regiment of the state militia in Huntsville. Ultimately, perhaps to preserve the reputation of the Republican Party among local whites, Davis managed to push through Goddin's appointment as mayor of Huntsville. Goddin served as postmaster and county judge as well. Despite such local influence, Goddin's contacts with Governor Davis grew fewer in 1870, especially as J.R. Burnett's influence increased.¹⁷

So an already charged atmosphere erupted into violence in Burnett's courtroom on January 11. With the escapees long gone and the telegraph temporarily out of commission, letters became the only means of communication with Austin and Governor Davis. Adjutant General James Davidson received a detailed report from Captain L.H. McNeely describing events. McNeely blamed Sheriff Hess and "outside parties" for allowing the prisoners to obtain weapons. Burnett wrote Davis offering as detailed an account of the situation as he could. Burnett, however, did not share McNeely's suspicion of Hess. "I believe that Mr. Hess is an honest man," the judge assured the governor, "but his carelessness in this case caused me to remove him." The new sheriff, James P. Butler, was a prominent local Republican, having served in the Union Army, the Freedmen's Bureau, as a delegate to the constitutional convention of 1868-1869, and as a member of the state Republican executive committee.¹⁸

The judge continued to explain to Davis that a severe response to events in Walker County could prove counterproductive. Instead, to calm the situation, he requested the dispatch of an additional twenty state police. On January 17, Burnett wrote Davis again, reiterating his recommendation against draconian measures. Now, the judge stressed that "prudential considerations" demanded that Davis avoid the use of the militia. Only as a

last resort should the militia be called, Burnett insisted, as its high number of blacks could inflame the situation.¹⁹

Burnett remained wary of the townspeople. Captain Hightower, a defense attorney in the trial, supposedly sought to raise a mob to attack the legal authorities. Death threats were made against both Burnett and Horne. An actual attempt against Burnett's life failed on the night of January 12. A conspiracy led by the former sheriff, Stewart, whom Burnett had removed only a month before, appeared to be responsible, though no court action was ever initiated. The citizens' attitude toward authorities frustrated Horne, who wrote Davis on January 26: "There were so many sympathizers and aiders in the escape that I prefer stating who were not [involved]."²⁰

Burnett cited J.H. Benton and Colonel Abercrombie, both attorneys; also, Horne endorsed the actions of Dr. W.A. Rawlings and an employee at Rawlings' apothecary, Mr. Bush. Burnett cited a Colonel Watkins and Magruder Wynne as being helpful to the authorities. Watkins and Wynne unsuccessfully tried to gather a public meeting to denounce the actions of the mob. Perhaps in an effort to encourage continued expressions of citizen support for the administration, the *Daily State Journal* remarked: "It is fortunate ... that there are those in Walker County representing both wealth and intelligence, and not in sympathy with the Republican party who [nonetheless] sustain the court."²¹

Public sympathies sided with the escapees for a variety of reasons. Sam Jenkins' race and his "obnoxious" behaviors motivated defiance. Many questioned the trial's fairness. According to one Austin paper, Judge Burnett supposedly read from a lengthy written opinion, indicating that he prejudged the case. This supposedly accounted for the public's outraged reaction. Judge Burnett's opinion became such an issue that the *Daily State Journal* published it in full. The *Journal* pointed out that citizen attempts to justify violence failed to account for the apparent smuggling of weapons to the defendants beforehand. Burnett repeatedly asserted his own impartiality in the case. Assuring Davis that he deliberated "conscientiously," Burnett remained convinced of the defendants' guilt. Burnett's decision became a source of contention only after the Walker County disturbance became a state-wide *cause célèbre*. One of the incident's earliest mentions in a state-wide daily seems to confirm Burnett's honesty in the case.²²

Flake's Daily Bulletin printed news of the courtroom gunbattle without alteration from the *Navasota Ranger*. The item said of the Huntsville trial that "the evidence was so strong against them [the accused] that they were committed to jail." Ordinarily anti-administration, the moderate Republican *Flake's* seemed convinced that justice had been done in Huntsville.²³

By January 20, the news of the riot had reached Davis in Austin. He authorized Burnett to "inform the citizens of Walker County that these outrages that have taken place will bring upon them severe expense and

retribution....” The governor dispatched Colonel T.M. Gibbs, recently in Hill County, to Huntsville to coordinate a return to order. After promising Gibbs that he would “sustain” him fully, Davis quickly became irritated with the colonel’s inability to restore calm. Burnett, however, explained that Gibbs lacked manpower not resolve. The local militia were demoralized by “false reports” and public sympathy with the outlaws. On February 6 Burnett informed Davis that only outside troops would end the crisis, abandoning his previous reluctance to advise extreme measures. The judge recommended federal troops, but added that if such aid was impossible, then state troops should be sent from Washington or some other distant county. Judge Burnett now felt that matters in Huntsville took precedence over the matter of the escapees, Wright and McParrish. Captain McNeely, the judge told Davis, already felt that the pair had escaped to Louisiana or Arkansas.²⁴

Burnett, meanwhile, tended to the other areas of his district. Horne, the district attorney, was needed to assist him, but had gone to Austin. “If Horne will apply himself,” Burnett wrote Davis complaining of Horne’s conduct, he would do a fine job as district attorney. However, the judge confided his mistrust of Horne. Horne continued to irritate Burnett. On February 10, the judge wrote Davis rejoicing that “Walker County will be made to feel ... the enforcement of the laws.” Burnett devoted most of his brief letter to complaining about Horne. By February 16, the judge apparently had grown quite tired of his district attorney, who had yet to return from Austin. Burnett bitterly told the governor that he had appointed a district attorney *pro tempore* to help in Horne’s absence. Horne represented a “source of embarrassment” to Burnett. Matters at this date were simply too muddled for Davis to worry over Horne’s ineptitude. Burnett’s letters, however, did set the stage for Horne’s removal at the right moment. Burnett’s carping assured that the district attorney’s time was running out.²⁵

In Austin, the administration had been under considerable pressure from the legislature over the recent declaration of martial law in Hill County. The senate called on Governor Davis to supply information and documents concerning affairs in Hill County and developments in Walker County. Governor Davis complied, and his report was presented to the senate on February 8.²⁶

The administration employed the *Daily State Journal* to give the Davis government’s version of the whole matter. On January 22, the *Journal* made public news of the jailbreak in Huntsville. By January 27, the story had been clarified sufficiently for the *Journal* to offer the first articulation of the administration line. Finally, after Davis’ report had reached the senate, the paper divulged all that was known, as well as documents concerning events in both Hill and Walker Counties.²⁷

In his report, Davis told the senate that he was unaware of any “parallel to this Walker County affair for overbearing lawlessness.” Conceding

that "many of the citizens of that county depreciate the act," Davis nonetheless criticized Walker County citizens for having "supinely stood by" as the outlaws escaped. Davis hedged on declaring martial law up until his report to the senate. Now he ardently threatened: "I am preparing to send troops into Walker County and martial law will be proclaimed therein, the guilty parties ... punished ... and the cost assessed upon the people of the county."²⁸

Governor Davis' reluctance to declare martial law seems influenced by a variety of factors. First, the roughly concurrent outbreaks of violence in Hill and Walker counties made action in both at once prohibitive. Second, Davis' usual *modus operandi* mandated a warning and time for Walker County's citizens to think better of the situation. A warning came via Judge Burnett in Davis' letter of January 20. Facing legislative scrutiny, Davis surely delayed to ascertain the legislature's attitude. When his report awaited consideration by the Senate Committee on Militia, a committee dominated by Radicals, it must have been clear that legislative approval would be forthcoming. Still, the governor waited until February 15 to send the militia to Huntsville. The senate committee issued its favorable report on February 17, barely forty-eight hours after Adjutant General James Davidson left for Walker County.²⁹

Davis issued Special Orders Number Eighteen to the adjutant general on February 15. Under these orders, Davidson made haste to Huntsville, proclaiming martial law as of February 20 – still allowing lag-time between martial law and the report of the Committee on Militia. Davis conferred authority upon Davidson to try citizens before a military tribunal if "justice can be better served." If any doubt or question arose concerning either objectives or procedure, Davis instructed Davidson to contact Austin for clarification.³⁰

Upon his arrival in Huntsville, Davidson established a court martial to convene on February 22 and succeeding days until the cases of more than twenty defendants could be processed. The court roll read like a litany of prominent Republicans from the area. Colonel T.M. Gibbs, of Grimes County, presided, assisted by Captains G.W. Farrow and Mortimer Goddin. Four lieutenants also sat on the court, B.F. Baldrige of Brazos County, G.H. Stacey of Walker, S.C. Graves of Grimes, and G.W. Jones of Houston County. W.E. Horne served as judge advocate. Davidson also set up a tribunal to try cases involving members of the militia and the State Police. This court martial was to meet in Anderson, Grimes County.³¹

The extent of the townspeople's complicity needed to be established before a decision could be made concerning the assessment of the Militia Tax. W.E. Horne informed Davidson on February 24 that action against the entire population might not be necessary or politically wise. "I have had evidence to satisfy me," the judge advocate wrote, "that the great majority and in fact the citizens generally of the county had no sympathy [with the

outlaws].” Horne’s report fell on deaf ears. Davidson imposed a tax of fifty cents on \$100 valuation upon the entire county. With the county’s total valuation in 1870 being \$1,452,380, Davidson’s tax raised approximately \$7621.09 to defray the expenses of martial law. This figure represents more than two thirds of the county’s tax revenue in 1870 and is fifty percent above the county’s total debt that year. Given these figures, however, martial law cost each person in Walker County a modest seventy-five cents.³²

Administration of martial law in Walker County proved difficult. The military government was rent by internal controversy; once by revelations forcing the removal of a member, and twice by resignations. The county sheriff also resigned amid the difficulties of helping enforce martial law.

During the court martial’s investigation, evidence came to light damaging Judge Advocate Horne’s credibility. A member of the grand jury, which in December 1870 had taken testimony from Sam Jenkins, presented a written statement to Davidson detailing a conversation he had had with Horne shortly after Jenkins’ death. “Well, I must confess I was not surprised this morning when I heard of his death,” Horne supposedly said. When asked to clarify himself, Horne replied: “Did you notice the animus manifested by the damned old scoundrel when he gave his testimony before us yesterday evening?” “He has set himself up,” Horne allegedly continued, “as a target ... I have always noticed that when a man makes a target of himself ... someone shoots ...”³³

This revelation resulted in Horne’s removal as judge advocate. An embarrassed, contrite Horne wrote Adjutant General Davidson to explain himself. Horne did not deny the conversation; rather, he attempted to portray it as his effort to “play detective.” It represented an honest effort to gain local confidence, Horne explained; once close, Horne felt he could improve his effectiveness as a prosecutor. “I have paid more dearly both in purse and mental anguish [than most who have worked in the area],” Horne pleaded. After defending himself, he resigned, though his removal already represented a *fait accompli*. In his letter of the same date to Governor Davis, J.R. Burnett remarked that Davidson had labored “under considerable embarrassment” owing to the lack of an effective judge advocate. Burnett also utilized the opportunity to complain about Horne’s service as district attorney.³⁴

Ultimately, two more members of the martial law administration resigned. A member of the court martial, Lt. G.H. Stacey, resigned in early March, after most of the trials had been completed. “I feel a delicacy in filling the responsibility,” Stacey wrote Davidson, “and cannot render my decision in accordance with my feelings.” No indication appeared in Stacey’s letter of what prompted him to resign. A second resignation took place the week previously when J.P. Butler, who had replaced Sheriff Hess, quit on the grounds of his own “incompetence.” No indication was made of any circumstances which prompted Butler’s resignation. Only Judge

Burnett's terse approval of Butler's action and his notation that he "con-curs" with Butler's reasoning gives any indication of the nature of the events which prompted Butler's resignation.³⁵

Trials were now the order of the day in Huntsville. The trials of Cyrus Hess, the former sheriff, and Nathaniel Outlaw proved the most lengthy and detailed of the court martial's proceedings. The court martial tried nearly twenty other defendants for offenses ranging from having untied the horse of a fleeing prisoner to failing to heed the call of the sheriff for a posse. Standard procedure of the court involved an arraignment of the prisoner, at which time the accused entered his plea. Often, the defendants also entered a "plea of jurisdiction" challenging the court martial's authority over civilians.

Cyrus Hess stood before the court on charges of incompetence – that he inadequately protected the prisoners – and negligence which resulted in their escape. To both charges the former sheriff pleaded not guilty. Hess also challenged the jurisdiction of the court citing the *habeas corpus* provisions of both the state and federal constitutions. Among the witnesses called by the prosecution were Judge Burnett and Lt. McNelly. Burnett claimed that Hess had ignored his warning that there might be trouble and had not taken adequate measures. McNelly, whose suspicions of Hess already have been documented, also testified to the sheriff's negligence. The court found Hess guilty on the second charge – that of negligence – but not guilty on that of incompetence. Still, the penalty remained severe enough. The court fined the hapless former sheriff \$250, committing him to jail until the fine had been paid.³⁶

Nathaniel Outlaw's murder trial rehashed the facts presented the month before. Outlaw was again found guilty and sentenced to five years. Adjutant General Davidson angrily reproved the court, accepting its verdict, but viewing the light sentence against Outlaw with "unqualified disapprobation." Davis chastised the adjutant general for attacking the court martial decision. By March 12, Davis pardoned Outlaw, claiming doubts about Outlaw's guilt and concern that it had been based largely on circumstantial evidence.³⁷

Flake's Daily Bulletin took Davis to task over the pardon of Outlaw. Claiming that Davis' action proved him an unjust ruler, the Galveston paper excoriated the governor, angrily charging Davis with sneaking "out of the results by pardoning a man he knew to have been illegally condemned." *Flake's* did not doubt Outlaw's guilt, but it disagreed with the court martial's jurisdiction. Outlaw sued Governor Davis and Davidson in 1872, claiming false imprisonment. A judgement came in his favor, declaring the martial-law proclamation illegal and unconstitutional, awarding the accused murderer \$20,000. A new trial was granted, resulting in the upholding of martial law and dismissal of the award to Outlaw.³⁸

George W. Rather and Thomas Walker allegedly aided in the escape of Joseph Wright. Rather supposedly unhitched Wright's horse at the

square. Walker allegedly provided the escapee with a horse and a shotgun. Both men were found guilty. Rather received the lighter sentence of the two: \$100 fine and thirty days in jail. Walker received a \$500 fine and was jailed until payment. Both defendants were represented by Abercrombie and Benton, who petitioned the governor for a remittance of their fines. Rather's family simply could not afford to pay, and Walker represented his widowed mother's only means of support. The petitions to the governor bore the signatures of Walker County Republican leaders H.C. Oliphant and D.W. Howard, as well as members of the court martial. By late March, the governor had granted not only remittances, but full pardons to both.³⁹

Eight others were arrested and tried by the court martial for failing to obey the summons of Sheriff Hess to form a posse. In the case of Benjamin Courtadt, the evidence seemed inconclusive. Testimony cast some doubt on the notion that Hess had sought his aid. Still the court martial found Courtadt guilty and fined him \$100. Governor Davis, upon the recommendation of Davidson, ultimately pardoned him. The remaining seven defendants stood trial together. Of these, five were convicted and fined \$100 each. Defendant C. Breffield received a remittance of his fine by the court martial to \$10, because his excuse for not responding to Hess' call involved a medical problem. Despite his claim that he never received a summons from Hess, defendant G. Luff's sentence stood as did that of John Garrett, who pled that his age – eighteen – and his lack of a horse prevented his helping Hess.⁴⁰

On March 6, after the completion of the trials, Davidson issued orders withdrawing Colonel Gibbs, his Grimes County troops, and the militia units from Houston County. Captain M.H. Goddin assumed command of the mixed force of State Police and local militia and enforced martial law until all the Militia Tax had been collected. Strict regulations were given Goddin to avoid harsh treatment of the citizenry. All questions concerning his orders must be cleared by Davidson via telegraph. Davidson's orders prohibited the use of force except in extreme circumstances and then only after consultation with Austin.⁴¹

The use of militia to quell the Walker County disturbance of 1871 sheds light upon the processes and priorities of the Davis administration and helps to refute the assumptions of traditional Reconstruction historians about the rule of the Radical Republicans in Texas. On a broader level, Edmund Davis acted to protect his political constituencies, gain new support through acting to halt lawlessness, and centralize power in Austin. With respect to details, the governor's actions were based on past experience in Madison and Hill counties: seeking to avoid overreaction, warning errant populations of his willingness to use force, and preventing subordinates from acting independently of his command. Rather than a capricious dictator, Davis appears a pragmatic politician seeking to prevent a loss of political power, hoping to build a broader political base, and avoiding alienation of the Texas populace.

NOTES

¹Charles W. Ramsdell, *Reconstruction in Texas* (Austin: University of Texas, 1970 [orig. New York: Columbia, 1910]). W.C. Nunn, *Texas Under the Carpetbaggers* (Austin, 1962). Hereinafter cited as "Nunn."

²Ricky Floyd Dobbs, " 'A Slow Civil War': Resistance to the Davis Administration in Hill and Walker Counties, 1871" (M.A. thesis, Baylor University, 1989), vi, vii. Hereinafter cited as "Dobbs."

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⁴Carl H. Moneyhon, *Republicanism in Reconstruction Texas* (Austin, 1980). Hereinafter cited as "Moneyhon." Dobbs, pp. 121-123.

⁵Dobbs, pp. 49, 56-79, 119-124.

⁶W.E. Horne to E.J. Davis, 1/26/1871, in *Message of Governor Edmund J. Davis, with Documents in Relation to Lawlessness and Crime in Hill and Walker Counties* (Austin, 1871), p. 20. Hereinafter cited by document, *Documents*, page number. *Daily State Journal* (Austin), January 27, 1871. Nunn, pp. 80-81.

⁷*Texas v. Cyrus Hess*. J.R. Burnett testimony, Court Martial Proceedings, Adjutant General's Records, Texas State Archives (TSA), Austin. Hereinafter cited as "Court Martial Proceedings." W.E. Horne to E.J. Davis, 1/26/1871, *Documents*, p. 21, J.R. Burnett to E.J. Davis, 1/12/1871, *Documents*, p. 24.

⁸Memoir of C.T. Rather in D'Anne Crews, ed., *Huntsville and Walker County, Texas: a Bicentennial History* (Huntsville, 1976), p. 139. Hereinafter cited as *Huntsville*. W.E. Horne to E.J. Davis, 1/12/1871 and J.R. Burnett to E.J. Davis, 1/12/1871, both in *Documents*, pp. 20, 22. L.H. McNelly to James Davidson, 1/13/1871, Adjutant General's General Correspondence, TSA, Austin.

⁹Department of Interior, Bureau of the Census, *Ninth Census of the United States* (1870), I, pp. 66, 274. Hereafter cited as *Ninth Census* (Abstract). Paul J. Sugg, "Freedmen's Bureau in Walker County, 1866-1868," Unpublished MS, Sam Houston State University, Huntsville, Texas, pp. 5-6, 8. Hereinafter cited as "Sugg."

¹⁰U.S. Congress, House, *Report on Elections in Texas* Hs. Ex. Doc. 266, 41st Congress, 2d Session, XII, pp. 24-26. *Huntsville*, p. 139. N.M. Dudley to E.J. Davis, 4/25/1870, Governor's Correspondence (Gov. Cor.), TSA, Austin.

¹¹M.H. Goddin to E.J. Davis, 7/20/1870, Gov. Cor., TSA, Austin.

¹²H.C. Oliphant to E.J. Davis, 7/23/1870 and Loyal League of Walker County to E.J. Davis, 7/23/1870, both in Gov. Cor., TSA, Austin.

¹³Rupert Richardson, Ernest Wallace, and Adrian N. Anderson, *Texas: the Lone Star State*, 4th ed., (Englewood Cliffs, NJ, 1981.), p. 259.

¹⁴J.R. Burnett to E.J. Davis, 1/?/1871, Gov. Cor., TSA, Austin.

¹⁵Moneyhon, p. 240. J.G. Tracy to E.J. Davis, 1870 (?), Gov. Cor., TSA, Austin. J.R. Burnett to E.J. Davis, 1/12/1871, *Documents*, p. 22.

¹⁶Moneyhon, p. 240. Sugg, p. 7. *Huntsville*, p. 140. M.H. Goddin to E.J. Davis, 1/17/1870, and M.H. Goddin to E.J. Davis, 7/28/1870, both in Gov. Cor., TSA, Austin.

¹⁷*Huntsville*, p. 140. James Davidson to M.H. Goddin, 3/4/1871, Militia Correspondence, TSA, Austin.

¹⁸L.H. McNelly to James Davidson, 1/13/1871, Adjutant General's General Correspondence, TSA, Austin, J.R. Burnett to E.J. Davis, 1/12/1871, *Documents*, p. 22. Sugg, p. 4. Moneyhon, p. 137.

¹⁹J.R. Burnett to E.J. Davis, 1/13/1871 and 1/17/1871, *Documents*, p. 23.

²⁰J.G. Boyle to James Davidson, 3/4/1871, Court Martial Proceedings, TSA, Austin. Boyle, as judge advocate, informed Davidson that he thought evidence insufficient to prosecute Hightower. J.R. Burnett to E.J. Davis, 1/17/1871, and W.E. Horne to E.J. Davis, 1/26/1871, both in *Documents*, pp. 21, 25.

²¹W.E. Horne to E.J. Davis, 1/26/1871, and J.R. Burnett to E.J. Davis, 1/17/1871, *Documents*, pp. 21, 25. *Daily State Journal* (Austin), January 27, 1871.

²²Huntsville, p. 140. *Daily State Journal* (Austin), February 12, 1871. *Tri-Weekly State Gazette* (Austin), March 3, 1871. Nunn, p. 82.

²³*Flake's Daily Bulletin* (Galveston), January 23, 1871.

²⁴E.J. Davis to J.R. Burnett, 1/20/1871. Governor's Letterpress, Letter 58, TSA, Austin. J.R. Burnett to E.J. Davis, 2/6/1871, Gov. Cor., TSA, Austin.

²⁵J.R. Burnett to E.J. Davis, 2/6/1871, 2/10/1871 all Gov. Cor., TSA, Austin.

²⁶*Journal of the Texas Senate*, February 7-9, 1871, 12th Legislature, Records of the Texas Senate, TSA, Austin. Hereafter cited as *Senate Journal*.

²⁷*Daily State Journal* (Austin), January 22, January 27, and February 10, 1871.

²⁸Governor's Report, *Documents*, p. 1.

²⁹E.J. Davis to J.R. Burnett, 1/20/1871, Governor's Letterpress, Letter 58, TSA, Austin. *Senate Journal*, February 17, 1871.

³⁰Special Orders Number 18, February 15, 1871, MS in Court Martial Proceedings, TSA, Austin.

³¹Special Orders, February 22, 1871 and Special Orders Number 18, Court Martial Proceedings, TSA, Austin.

³²W.E. Horne to James Davidson, 2/24/1871, State Police Correspondence, TSA, Austin. Nunn, 84. *Ninth Census* (Abstract) I, pp. 1, 66 and III, pp. 254-257.

³³Statement of J.M. Smiether, 2/27/1871, Court Martial Proceedings, TSA, Austin.

³⁴Special Orders, February 28, 1871, and W.E. Horne to James Davidson, 2/18/1871, both in Court Martial Proceedings, TSA, Austin. J.R. Burnett to E.J. Davis, 2/28/1871, Gov. Cor., TSA, Austin.

³⁵G.H. Stacey to James Davidson, 3/2/1871, Court Martial Proceedings, TSA, Austin. J.P. Butler to James Davidson, 2/24/1871, Gov. Cor., TSA, Austin. Butler's resignation letter came to Davis by way of Davidson, bearing a scribbled note from Burnett.

³⁶*Texas v. Hess*, Court Martial Proceedings, TSA, Austin.

³⁷*Texas v. Outlaw*, and Davidson to Court Martial, no date (3/1871?), both in Court Martial Proceedings, TSA, Austin. *Daily State Journal* (Austin), March 12, 1871.

³⁸*Flake's Daily Bulletin* (Galveston), March 21, 1871. Nunn, p. 84.

³⁹*Texas v. Rather* and *Texas v. Walker*, Court Martial Proceedings, TSA, Austin.

⁴⁰*Texas v. Courtadt* and *Texas v. Breffield, et. al.*, Court Martial Proceedings, TSA, Austin.

⁴¹James Davidson to M.H. Goddin, 3/6/1871, Militia Correspondence, TSA, Austin.