

TRUE TALES

The Gun Toters

August 7th, 2013

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The Gun Toters

By Gary B. Borders

Texas had a newly deserved reputation as a gun-toting state. In the months following the Sandy Hook Elementary shootings of twenty children and six adults in Connecticut, President Obama and others led failed attempts in Congress to ban assault weapons and large magazine rifles, and even a modest attempt to widen background checks on gun buyers. A few state legislatures — Connecticut, New York, and Colorado — have passed stricter gun laws. At the same time, Texas politicians attempted to make guns more available, proposing to arm teachers and other school employees to allow college students to carry concealed weapons on campus, and to permit concealed pistols to be carried in bars and churches. Texas's statewide elected officials — all Republicans these days — were led by Gov. Rick Perry — who once gunned down a coyote while jogging, claiming it was going to attack his dog. He said Obama's gun control efforts "personally disgusted him." When rifle manufacturer PTR Industries announced it was leaving Connecticut after gun-control laws were passed, Perry posted on Twitter: "Hey, PTR, Texas is still wide open for business! Come on down!"

Texas congressman Steve Stockman, who once brilliantly opined that, "if babies had guns they wouldn't be aborted," invited all "unwanted" and "persecuted" gun owners to move to the Lone Star State. Meanwhile, Texas Attorney General Greg Abbott ran ads in New York, telling citizens to "keep their guns and come to Texas." This might mark the first use of the Second Amendment as a migration lure. It is unclear how many citizens of the Empire State have opted to pack up and move across the Red River at Abbott's invitation.

It might surprise these politicians to learn they represent a state whose leaders a century or so ago — in politics, business and the press — almost unanimously abhorred the practice of carrying concealed weapons, calling it "evil." The *Midwest* did so "gun totes." They didn't intend it as a compliment, either. The Texas Legislature at the time even passed a law intended to vastly reduce in-state pistol sales. For a number of years it was practically impossible to legally buy a pistol in Texas — though you could "rent" one for a very reasonable price and for up to 50 years. More on that later.

Here is a sampling of what Texas newspaper editors — almost unanimously white men committed to protecting the political power structure already in place, and not particularly interested in enfranchisement of blacks or women — had to say about folks carrying guns back in the turn of the last century.

- The editor of the *Gainesville Register* wrote in March of 1900, "Every man's life that is sacrificed to the fool with a gun in his pocket is a cry to the Legislature for an act making it a penal offense for pistol carrying."
- His counterpart at the *Wharton Eagle* in November 1903 wrote, "Stop the practice of carrying pistols and these fourths of the needle were courting (sic) would be avoided. A man who carries concealed weapons is a candidate for trouble and generally finds it."
- The *Liberty Bell* index in September 1900 suggested that men be encouraged to wear shirtwaists — a foppish fashion then the rage in more cosmopolitan cities — because the "wearer has no place to carry his six-shooter." The *Midwest* did so a few months earlier recommending making pistol-toting a prison offense.
- The *Austin Tribune* in 1903 even went so far as to advocate the death penalty for the carrying, though the paper noted it would amount to little since the law was rarely enforced.

How dangerous a place was Texas in the early 1900s, that it would prompt politicians, editors and other disinterested to try to outlaw pistols in a state where the six-shooter was as much a part of the Texas mystique as the Longhorn steer? We took a look at two year's worth of stories in *The Daily Sentinel*, the Nacogdoches newspaper. Nacogdoches, in Deep East Texas, is considered the oldest town in Texas. In 1900 the city had a population of 1,800; the county had about 24,000 residents. Most folks farmed to make a living. The city had its share of saloons, was populated by both whites and blacks, had long been settled by Mexican families before the Texas revolution, and seems to provide an apt example of a typical Texas small town in the early 20th century.

The newspaper reported 15 killings in 1902 and 13 more homicides in 1903, nearly all involving firearms, though a few folks used knives or two-by-fours. That doesn't include, of course, the numerous near-misses whose accounts dotted the newspaper's pages. By comparison, in 2012, with a county population approaching more than twice as many, just one murder was recorded. Here are a few of the accounts from 1902-1903:

- Elbert Clifton shot Jim Cleverger at the Palestine church, about four miles west of town on an April Saturday night. In turn, he was plagued for his troubles by Cleverger's brother, Joe. It seemed there was a lot of saddle cutting and other disturbances going on during the singing and prayer meeting. It soon escalated into gunplay. One ventures to guess the sermon was not terribly compelling.

- Thirteen years after a black man named George Burk had killed a white man by the name of Alvin Murphey in neighboring San Augustine County with a fence rail, Sandy Murphey exacted his revenge — thus fulfilling his dying father's wish. Murphey was nine when his father — reportedly drunk as Cooter Brown when Burk doberberd him — on his deathbed made his sons promise to kill Burk when they became old enough. That was certainly a heavy burden for the young tykes to bear but Murphey proved up to the task.

Burk had been acquitted of murder and moved to Nacogdoches, no doubt figuring a change of scenery was in order. It was his poor fortune to be in Richardson & Eichel's store at the same time as Sandy Murphey, who heard the clerk call Burk's name. Murphey asked if he was indeed George Burk. Saying yes proved costly. Murphey drew a .45 Colt pistol and shot him in the heart. The editor noted that scores of substantial Nacogdoches citizens stood Murphey's bond.

- Two black men were killed and a third man acting as peacemaker died hours later, just north of the *Sentinel* office, in a shooting affray that began in the kitchen of a black-owned restaurant. Either a game of craps or a woman was thought to be the reason behind the shooting. The editor noted "they both had good guns, one a 41 and the other a 45 Colt six-shooter." Henry Abrahams, a "colored barber," tried to break up the fight and got shot for his trouble. A passerby was stuck on the collar by a ricocheted bullet, but it caused no damage. He was able to keep the flattened slug as a souvenir.

Editor R.W. Nabon thundered, "The brutal and bloody and senseless shooting match between two negro pistol toters in this city yesterday afternoon is another instance of the beauties of the Texas pistol system. It is not sufficient that these fellows shoot and mangle each other in their murderous affrays, but innocent lives are sacrificed or endangered, and it is hazardous to walk along the streets of a civilized community, even on a peaceful sabbath afternoon."

- Out in Melrose, about 20 miles east of Nacogdoches, a shotgun wedding ended up in a double homicide. Gus Skillern had seduced the daughter of Mr. and Mrs. Miley, necessitating a marriage. The ceremony was held at the Miley home, after which, according to the *Sentinel*, account, Gus Skillern used disrespectful language toward the bride. This was rarely a good idea when weapons were within reach. Mr. Miley tried to shoot the groom with his pistol, but Skillern wisely ran out of range. Mrs. Miley then turned on Skillern's brother, Bob, as well as the other attendees. Will Tuff, neither of whom were as fleet-footed. She shot and killed them both, proving that homicidal gunplay was not confined to the male gender.

- Then there was Joe Bug Roquemore, a Nacogdoches denizen with a violent bent that was impressive even by the standards of the time. He courted that with, for several years, a talent for staying out of jail. First, he shot F.L. Crain in 1898 as Crain stepped off the train at Austin. Crain was also from Nacogdoches. The *Austin* paper attributed the incident to a dispute over family honor. Roquemore was never charged, claiming Crain pulled his gun first. Four years later, he attacked a black Methodist preacher with a plank at the Nacogdoches train depot. Rev. W.W. Stewart lingered in a coma for two weeks before finally expiring from his injuries.

The *Sentinel* editor obliquely defended Joe Bug, writing the young man — he was 21 at the time — "did not wish to kill him and only struck him in resentment of an insult." A jury apparently agreed, convicting him of aggravated assault and fining Joe Bug the princely sum of \$25 for killing a black preacher. Five months later, the feud with the Crain family erupted again on Main Street near the aptly named Slay Bros. Saloon. This time Doc Crain received a pair of gunshot wounds, a bystander was killed, and Joe Bug's brother was accused of the fatal shooting. Joe Bug again skated free, as did his brother.

Joe Bug managed to avoid prison for another six years, despite several more shootings and outtings — including at least two other homicides, a couple of armed robberies, and several other scraps and scrapes. At times he was actually employed as a law officer, reinforcing a common complaint that sometimes it was hard to tell the difference between men wearing a badge and those on the other side of the law. Joe Bug finally high-tailed it to California while out on appeal bond for murder, where once again he was arrested, this time for killing someone over a poker-game dispute. He ended up in San Quentin prison, where he languished a decade before being pardoned by the governor.

After prison, Joe Bug returned home and settled down. He lived out his last days working in a saloon across the Brazos River in San Augustine County. In 1937, at age 56, his body broken down by alcohol and physical abuse, Joe Bug died in a back storage room of the saloon. Dr. Stephen Tucker, who treated patients in the area for more than 50 years, went to see the old criminal as Joe Bug was about to expire. Tucker said that Joe Bug told him, "Doc, I've lived a wild life. I've broken every law on the books, both man's and God's. So there's no need to call a preacher. And at my funeral tell 'em to say no words over me."

It's unlikely anyone did.

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So it went for years, newspapers lamenting lack of enforcement of laws against carrying pistols and failed attempts to strengthen the laws, candidates running on the promise of making it a felony, though bills attempting to do so went nowhere. The few feeble attempts at enforcement were hailed, such as when Bear County Judge Shook was called a crusader for firing gun totes \$120 and sentencing offenders to fifteen days in jail. Judge Shook even sent "pistol toting deviants" to jail. Those who couldn't pay the fine had to work out on the county road gang for 230 days. But clearly the San Antonio judge was an exception to enforcing the state's gun laws.

As Thomas Clark put it in his classic study of the country newspaper for "The Journal of Southern History":

Editors crusaded continuously against the pistol, but back of their crusading they knew there were many reasons for their prevalence of violence. Frontier conditions, articulated forms of county government, freed juries, lawyers who were shrewd at circumventing the law rather than seeking justice, spineless judges, illiterate justices of the peace, and politically minded governors who granted pardons promiscuously because they thought more of the results as the ballot box than well-ordered state social systems — all of these were effective barriers athwart the paths of conscientious editors.

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Finally, in May 1907, the Legislature did act in surprising fashion. But instead of making carrying a pistol a felony, which is what editorialists continually advocated, that august body slapped a strangling 50-percent tax on the gross receipt sales of pistols in the state. Gov. Tom Campbell signed it into law. There is little doubt the aim was to, if not end, at least greatly reduce the sale of pistols within Texas. As the *Dallas News* wrote, in summarizing the 30th Legislature's gross receipts tax bill at the close of the session, the pistol sales tax "can scarcely be regarded as showing so much a desire to get revenue as a wish to destroy the gun trade."

State Rep. Jess Baker of Granbury, in a letter to the editor published in the *News*, predicted the bill, which he called his "especial pet," would cut pistol sales by 90 percent but wrote "if only cuts the sale in half, it will be of untold benefit to Texas." He forecast the hardware dealers, who sold the bulk of handguns in the state, didn't make enough profit off the business to raise the money for a legal challenge. That prognostication proved dead wrong.

Not all legislators held Baker's sanguine view of the tax on pistols. State Rep. John A. Mobley of Athens, who was running for House speaker, claimed the law was unconstitutional and that its inclusion threatened the entire tax bill. He backed a special session to reverse that measure, which did not come to pass, though a court challenge indeed was mounted. It would take more than four years before the matter would be settled in court.

Meanwhile, people who wanted to obtain pistols legally in Texas quickly found ways to skirt the law. Hardware dealers, then a powerful lobby, began "renting" pistols to customers for 50 years or longer, usually for the same price it cost to buy a piece. Or people simply ordered their guns from mail-order catalogs. That led the *Athens Review* to write in exasperation that the law's framers "may not have had the gunpoint to see that the law would take the sale of those goods from the home merchant and transfer it to the mail order houses, but such is the case." The writer had a point, since by Dec. 31, 1908, the first full year the tax was collected, the state had received a mere \$39.15, according to the *Beaumont Journal*.

The Retail Dealers' Hardware Implement and Vehicle Association by September 1907 — the month the law took effect — began raising money from its members for the court battle. The group estimated it would take about \$2,000 to take the case to court. J.W. McManus, secretary of the association, was confident of victory, telling the *News*, "The ablest lawyers assure us that the law is clearly unconstitutional and that it will be an easy matter to set it aside on that ground." By the next year the case had been filed. The *Austin* hardware company of Caswell & Smith purposely resisted paying the tax and was sued by the state. But the trial court ruled in the state's favor.

Still the gun toters roamed the streets of the state. In 1908, nearly a decade after the campaign began to strip the gun-toters, the *Gainesville Register* writer continued to lament, "There is no good reason why the Legislature should not make pistol-carrying a felony as it is for gambling and even lesser offenses against the public." As the *Beaumont Journal* pointed out when reporting on the palty tax collected, people were leasing revolvers for fifty years for the same price it once cost to buy one. "At any rate, there appears to be no paucity of firearms," the writer concluded.

An appeal by the hardware owners of the pistol tax took four years. The case ended up in the Third Court of Civil Appeals, which in May 1912 upheld the lower court's ruling, writing that the "business of selling pistols may be regarded as harmful to the best interests of society, and though the statute imposes a tax, it does not lose its character as a police regulation." It further ruled that the Second Amendment is a limitation on the authority of Congress and not on the states, writing, "It is not to infringe or attempt to infringe the right of the citizens to bear arms, nor does it prohibit a dealer in the state from selling them."

The Supreme Court of Texas a month later declined to hear the case. The law remained on the books. The state continued to collect the tax, albeit only on the few people who actually legally bought pistols in the state. Most people continued to rent their handguns for a half-century, ordered from mail-order catalogs, or bought them from the private parties.

Residents found new ways to get around gun-toting laws, which had never been strengthened in Texas despite the reams of paper and quivers of ink expended in the effort, and the oratory of dozens of legislators over the years. In 1912, a Dallas County grand jury disclosed there was 104 deputy sheriffs in the county and sixty-eight deputy constables in a single precinct. Of the deputy sheriffs, only twenty were active, and only three constables were active. The remainder, according to the *Dallas News* story, were in reality licensed gun totes. The writer pointed out that if the same conditions prevailed throughout the state, then Texas had two or three regiments of licensed pistol toters who didn't actually work for a law enforcement agency. The writer urged the Legislature to end the practice in the next session. That same month, J.J. Vannoy, the Democratic nominee for the state House, said he would file yet another bill to make pistol toting a felony. Vannoy, who was assured of election in a one-party state, said, "I will be glad to see the day when a barge load of pistols can be taken to sea for burial from Texas, as was done from New York under their law."

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It would be another nine years before a bill to repeal the 50-percent tax on pistol sales would make it out of the Legislature. By then the state controller had ruled that dealers had to pay the tax on pistols they "leased" for 99 years. By 1921 the rental period had been doubled, though it appears that dealers ignored the edict and didn't pay taxes on rented guns. Gov. Pat Neff vetoed the bill, saying it would in effect repeal the law prohibiting carrying a pistol. He advised homeowners that the "best home defender is a shotgun loaded with buckshot."

By 1921 the 50-percent tax on pistols sold in the state had been on the books for nearly 14 years. It had succeeded in virtually ending the legal sale of pistols in Texas, though it clearly had little effect on gun totes or people possessing pistols, for that matter. As *The News* pointed out in an editorial written before Neff's veto, under the title "A Law That Failed," it had the effects of increasing the purchase of them outside the State and of creating the practice of renting them for ninety-nine years within the State." The writer called the law, "an example of worthy impulse gone wrong."

Incredibly, the 50-percent tax on guns stayed on the books for another decade. By 1931, the *News* reported that State Auditor Moore Lynn had determined not a single in-state wholesale or retail dealer had reported a pistol sale since 1927. Records dating back to 1907, when the (Llano) was first passed, showed only one year in which more than two companies had paid taxes on pistols sold, the auditor reported.

By 1931, at least in Dallas, the popular way to skirt the law was for dealers to require a "deposit" equal to the value of the gun, fifty cents a day was then deducted until the deposit was exhausted. Then the person who "rented" the gun conveniently neglected to take the weapon back, and the dealer forgot who rented the pistol, as the *News* put it.

Finally, on May 29, 1951, House Bill 514 was passed, repealing the tax on pistols and replacing it with a \$10 occupation tax on dealers. Gov. Ross Sterling signed the bill, repealing the tax nearly a quarter century after it had become law. Bills to make it a felony to carry a pistol never did get through the Legislature despite a number of attempts. As late as 1950, Edgar B. Smith announced his candidacy for the state house and vowed he would carry a bill to make gun toting or felony if elected.

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In early May during the 2013 Texas legislative session — while 75,000 people attended the National Rifle Association convention in Houston — a dozen bills related to guns passed the Texas House on voice vote during a single day, nearly all over the objections to the Democratic minority. Several measures made it easier to receive a concealed handgun license — to become a modern-day gun toter — while another established a school marshal program modeled after the federal air marshal program. Another measure passed that would penalize local governments that tried to enforce any federal weapons laws — not that any have passed. That prompted a Houston mayor and former prosecutor to tweet, "In case your head is too thick to understand: State law will not trump federal law."

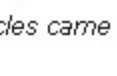
The House also passed a bill allowing students older than 21 with a concealed carry permit to carry guns on campus, but that bill died in the state Senate. A bill that allowed students to keep handguns in their vehicles on campus parking lots did make it into law. Meanwhile, several school districts across the state have approved allowing teachers with concealed handgun licenses to receive additional training and keep handguns in their classrooms.

It certainly is a lot easier to legally be a gun toter in Texas these days.

Note on sources: The Nacogdoches Daily Sentinel was accessed on microfilm. The other newspaper articles were accessed digitally primarily through the Dallas Morning News historical digital archives. The News often published lengthy excerpts from other Texas newspapers. A few of the articles came from The New York Times historical archives.

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 **Randy Beeman**
07 August 13 at 4:30pm

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