

JUDGE FREESE'S BAYONET COURT *

Alexandria County was in turmoil in 1861, and nowhere was it more evident than in the City of Alexandria, the county seat. To secure the City of Washington and to save it from falling into Confederate hands, the Federal Government initiated a massive military occupation of the county and all available troops were poured into the area. Between May 23rd and June 23rd, 1861, thirty-one fully organized regiments and three independent companies, totaling upward of 28,000 men were dispatched to occupy Alexandria County. In addition to these, about 4,000 District of Columbia militia under Col. Stone and about 4,000 U.S. troops were concentrated in the county for defense of the capital and as a pivot for future military operations.¹

Such an influx of troops, in normal times, would have created chaos in Alexandria, with its population (city and county) of about 12,652. But these were not normal times and the troops did not come as friends. The shooting of Col. Ellsworth of the occupying Zouaves, emphasized the tenor of the times. The disruption was intensified because Alexandria was without government or leadership. For several days prior to the invasion of Northern Virginia by Federal troops, it was well-known in Alexandria that they were coming. The statewide 6 to 1 support by referendum of the Ordinance of Secession had assured the Federal action. Confederate troops retired from the city, as did a large part of the population, in anticipation of the occupation. Among those leaving were the mayor, members of the city council, the county clerk, and almost all other county officers, including according to one source, night soil collectors. Law departed the city with the flight of nearly all the justices of the peace, constables, and police officers.

Union troops, intent on action, found a lifeless community. There was no need for a formal declaration of martial law, few were left to heed it, and the overwhelming strength of the occupying forces transformed the area into a sprawling armed Union camp which scarcely acknowledged the existence of the citizens who remained.

Soldiers with little to do as soldiers frequently will seek other diversions. Such was the case of Alexandria. Hotels, saloons, restaurants, and houses of

* This account has been extracted and condensed from the memoirs of Dr. Jacob R. Freese, provost-judge of Alexandria (Arlington) County during the Union occupation of 1861. The complete memoirs, *Secrets of the Late Rebellion*, was published by Crombarger and Co., Philadelphia, in 1862.—Editor.

¹ Additional articles of interest which deal with the Union occupation of Northern Virginia include: "Civil War Operations in Northern Virginia in May-June 1861," *Arlington Historical Magazine [AHM]* Vol. 2, No. 1, October 1961; "The Smith Minor Petition" (vote on the Ordinance of Secession), *AHM*, Vol. 3, No. 1, October 1965; "Civil War Forts in Arlington," *AHM*, Vol. 1, No. 4, October 1960; "Fort Scott," *AHM*, Vol. 2, No. 4, October 1964; "Fort Scott Revisited," *AHM*, Vol. 3, No. 1, October 1965; "In the Beginning" (Occupation), *AHM*, Vol. 1, No. 4, October 1960.

ill-fame became a major business activity of the community. The defeat which followed at Bull Run on July 21, 1861, produced even greater problems. Union troops were utterly demoralized, and commanders seemed for a moment to have lost all control over their men. Officers and men, instead of remaining in camp, flocked to Alexandria and Washington City to the wholesale neglect of military duties. Saloons and disorderly houses mushroomed to the discredit of military discipline.

General McClellan reached Washington City and assumed command of the Army of the Potomac on July 26, 1861, and on the 30th issued an order which he hoped would correct the problem: "The General Commanding the Division has with much regret observed that large numbers of officers and men stationed in the vicinity of Washington are in the habit of frequenting the streets and hotels of the city. This practice is eminently prejudicial to good order and discipline, and must at once be discontinued." The order had a salutary effect, if only by making officers and men more careful about leaving their posts without a pass. Things dampened for a week or two, then returned to high pitch. With the feverish activity around and about saloons, restaurants, and houses of ill-repute restored, Alexandria was beset with new problems—fighting and brawling in the saloons and on the streets, insults to persons walking the streets, thefts and robberies and similar misdemeanors became daily occurrences.

Gen. Montgomery Takes Command

Such was the condition of things in Alexandria when, in August 1861, Brigadiér General William R. Montgomery was detached from his regiment, the First New Jersey Volunteers encamped near the Seminary, and assigned to the command of Alexandria as Military Governor. General Montgomery, who was then about 60 years of age, was a West Point graduate and had served as a career Army officer for most of his life. His background and demeanor, however, were ill-suited for the new post. He has been described as the perfect gentleman, well-mannered, mild, quiet, gentle, unobstrusive, and exceedingly kind. He had a reputation of disliking to refuse requests for favors asked of him, and, according to one source, appeared to receive more pleasure in granting a favor than that received by those who were recipients of his largess. Among the military he had acquired a reputation of being averse to imposing punishment of any kind.

Upon assuming command in Alexandria, General Montgomery was besieged with requests for favored treatment by many in the community, and, in the absence of a court system, was asked to settle disputes which arose daily among the citizens, and to determine the culpability and punishment of a long string of disorderly soldiers who had abused Alexandria's citizens and created brawls in the streets.

Where he had the authority, Montgomery granted the requested favors,

including a number sought by militant secessionists who remained in the city. When it came to adjudicating a case and imposing punishment on others, according to a subordinate, General Montgomery would almost have preferred to take the punishment upon himself. Montgomery's relaxed management of the city and its problems was not unheeded by the local populace, and reports of ill-treatment of slaves and of pro-Union whites by the secessionist-oriented elements of the city were not uncommon.² Unionists observing the state of the community blamed Montgomery and branded him as "a rebel in disguise."

Faced with the complex problems of the city and the growing criticism of his management, General Montgomery directed his Assistant Adjutant General, Dr. Jacob R. Freese, to prepare and submit a plan for governing the city. Freese, a thirty-five year old medical doctor, had been an active businessman all his adult life and for the four years immediately preceding the war had been editor and proprietor of the Trenton, N.J., *State Gazette*, one of the leading newspapers of that state. Freese, a long-time close friend of President Lincoln, Secretary Seward, and Secretary Cameron, and a frequent visitor to Alexandria, was the logical person to be charged with the assignment, both from the point of view of his managerial background and from his political connections.³

Dr. Freese submitted his plan the day following General Montgomery's request. He called for the organization of a Provost Court, over which some officer would preside as provost-judge to hear and adjudicate cases brought before him. To arrest offenders and to enforce the orders of the Provost Court, Dr. Freese proposed that the sentinels on duty in the city be reconstituted as a provost guard with a provost-marshal at their head. The provost-guard and the provost-marshal, suggested Freese, would be subordinate to the provost-judge, who, in turn, would be subordinate to the military governor. The military governor would have the option of approving, amending, or reversing the decisions of the provost-judge.

A Provost Court Established

Gen. Montgomery considered the plan carefully, approved it, and informed a protesting Dr. Freese that henceforth he would be Judge Freese of the provost-court. Capt. Griffiths, a Pennsylvanian who was senior captain of the companies then on duty in Alexandria as sentinels, was appointed provost-marshal and two of the guard companies designated as the provost-guard. As a concession to Dr. Freese who complained that

² A list of "Disloyal Persons in Alexandria, Virginia" may be found in Record Group 59, "Political Prisoner Records" contained in the Civil War Papers, U.S. Department of State, maintained by the National Archives.

³ An order prohibiting the use of Confederate currency in Alexandria as issued by Dr. Freese for Gen. Montgomery appears in a reproduction of *The Local News*, a substitute for the *Alexandria Gazette* whose owners had fled the city, appearing with "History of Printing in Arlington County," *AHM*, Vol. 1, No. 3, (1959), page 18.

his duties as assistant adjutant general were too time consuming to allow for the additional task, Gen. Montgomery assigned him two additional clerks for the adjutant's office and one to keep the records of the court.

The Alexandria Court House was cleaned and fitted out as the provost court. A large building on the outskirts of the city, locally known as the slave pen because it had been used for the detention of slaves, was cleaned and fitted out as a guard house.⁴ The Alexandria jail was whitewashed and put back into operation for the first time since the Union occupation. A building in town was acquired for the provost-marshal's office and as quarters for the guards.

Thus, provost law came to Alexandria city and county.

Instructions to the provost guards called upon them to arrest any drunken person, be he citizen or soldier, whom they observed to be disturbing the peace of the city in hotels, saloons, on the streets, or elsewhere. Certain misdemeanors were also defined. Those arrested were to be taken to the officer-in-charge of the guard house who would review the complaint against the accused. If the complaint was such that a further hearing appeared necessary, the individual was locked up until the next sitting of the provost-court. If the charges were particularly serious, the offender was to be taken immediately to the provost-marshal who would then report the facts to the provost-judge. At the option of the provost-judge, the offender would be held in the county jail "until the court was ready to try his case."

Conduct of the Court

Dr. Freese presided over his court daily, except Sundays, between ten a.m. and noon, although some days the court reportedly extended late into the afternoon. To instill the necessary respect in the residents of the occupied city, Dr. Freese arranged for a somewhat overbearing daily ritual. Every court day, Dr. Freese's horse, saddled and bridled and with a pair of loaded pistols in the holsters, would be brought to Gen. Montgomery's headquarters at precisely 9:30 a.m. At exactly 9:45 Dr. Freese would come out of the Adjutant's office in full uniform, mount the horse and ride at a full gallop down the street to the Court House a quarter of a mile away. Upon dismounting, Freese would stride into the Court House and be seated on the bench. Guards, prisoners, and spectators were already waiting for him and each guard was standing at attention with a loaded musket and fixed bayonet. The theatrical and military setting of the provost-court earned it the title of "Judge Freese's Bayonet Court," in New York journals.

Once the court was called to order, the clerk would announce it open

⁴ Testimony of Gen. John P. Slough, Military Governor of Alexandria, and others concerning the military administration of that city (February 1864), especially the operation of the prison known as the "slave pen," will be found in the incomplete records of the Joint Select Committee on the Conduct of the War, 37th and 38th Congresses, retained by the National Archives.

for business and would hand Judge Freese a list of all the prisoners at the bar and the charges against them. The judge would call them in sequence, hear the testimony of the arresting provost-guard and any other witnesses, and then announce sentence. The decisions of each day were recorded by the clerk for inspection and revision of Gen. Montgomery on a daily basis. Most sentences were minor, and were equal to the time already spent in the guard house awaiting trial. More serious cases resulted in fines and jail sentences.

Civilian Cases

The newly-formed provost-court would have attracted little attention if it had devoted itself to offenses committed by members of the armed forces. But, in the absence of other legal establishments in Alexandria, Dr. Freese determined that the court would extend military justice to the civilian community as well. As will be noted later, this decision proved fatal to the tenure of the court.

One of the first civil cases before the court was that of a hardware merchant, an old resident of Alexandria, who was charged with assaulting the superintendent of the city gas works, a New Englander who had lived in Alexandria for only a few years. The assault, it was charged, grew out of an argument between the two men—the hardware merchant being a secessionist and the superintendent being a Union man. After hearing the testimony, Dr. Freese fined the hardware merchant \$500 and delivered a lengthy address in which he advised that future assaults upon Union men, whether by word or by act, would result in punishment of even greater severity.

Another decision by the court which assured Alexandrians of Dr. Freese's attitude, stemmed from a complaint by Gen. Montgomery. The General reported that as he was passing along King Street, "two females dressed as ladies" overtook and passed him. As they passed they gathered up their skirts and held them away from him and gave sign of derision and contempt. In exploring the matter, Dr. Freese learned that while the men of Alexandria were treating Union personnel with respect, the women and children of secessionist households showed various signs of contempt toward the Union forces. The children, particularly, called the Union guards vile names and threw stones at them. To stem this rebellious attitude, Dr. Freese announced in open court that henceforth the husband, father, brother, or nearest male relative of the woman or child committing such an offense, would be tried and sentenced for the offense. Only if the woman was a courtesan or the child had no father or adult father, would the offender be held responsible and punished. (Shortly after this decision was announced, a guard complained that a child had called him vile names and thrown stones at him. The child's father was arrested and sentenced to ten days in jail. In pronouncing sentence, Dr. Freese announced that the next person arrested for a like offense would receive a sentence doubly, if not quadruply, as great.)

Another controversial decision by Dr. Freese involved a prominent slave-holding family in the city. A neighbor complained that the wife of the slave-holder had been beating two slaves as punishment for looking out the windows at passing soldiers. After hearing the case, Dr. Freese announced that his court was a court governed by "equity" rather than "law," and that it was his duty to protect the lives, natural rights, and property of every inhabitant of Alexandria. In defining the term "inhabitant," Dr. Freese indicated that while his court possessed no power to dissolve the relationship between master and slave, it would not recognize slavery in any form and that any assault on a slave would thereafter be adjudged equally with an assault on a free white person. Dr. Freese ordered the slave-holder to release custody of the two slaves and to allow them to seek employment as domestics elsewhere in the city, with full right to retain or dispose of resultant earnings as they wished. He warned that in future cases of this nature, "for every stroke laid upon a slave hereafter, without justifiable cause, the master will receive a like number, or other punishment equal thereto."

Another case involved a farmer accused of selling groceries beyond the Union lines at Munson's Hill. The farmer, a native of Sussex County, N.J., protested that he was loyal to the Union and that his father had been a member of Congress. He denied "giving aid and comfort to the enemy." Dr. Freese ruled that, the denial notwithstanding, he believed the farmer to have been engaged in such trade. He ordered the farmer to return to New Jersey for the duration of the war. If after one week of this order the farmer was found on his farm or in the county, Dr. Freese stated, the farmer would be rearrested and brought before the court on the pending charges.

Another type of case brought before the "bayonet court" related to the property rights of disloyal persons. In the hasty evacuation of the city in the wake of the Union occupation, homeowners and shop keepers had entrusted the care of their effects to friends and neighbors. Soon after the provost-court was established, manufacturers and merchants began to come to Alexandria to attend to debts due them from the absent merchants of the city. In a hallmark decision of the provost-court, Dr. Freese referred to those who had "fled behind enemy lines" as absconding debtors. He ruled that in the case under consideration and in all such cases in the future, three disinterested persons would be appointed to fix a value on the goods left behind by such debtors and that the provost-marshal, with the approval of the court, would deliver to creditors that amount of goods or property necessary to meet the debt, court costs, and the amount of money necessary for the creditor to take the goods to a fair market other than Alexandria.⁵

⁵ The text of Dr. Freese's controversial decision on creditors' rights to "abandoned property" in Alexandria will be found in "Administration of Justice in the Counties of Fairfax, Alexandria (Arlington) and the City of Alexandria—II," *AHM*, Vol. 2, No. 2 (1962).

Objections to the Court and Support of It

From the day the provost court opened in Alexandria it drew the opposition of secessionists of that city and all whom they could influence in Washington City. A number of objections to the practices of "Judge" Freese arose. He preferred to rule on cases through what he called common sense, rather than the rules of law. He refused to accept Virginia laws or the precedents of any state or court. He would not allow Southern attorneys to appear before his court unless they swore an oath of allegiance to the United States. He had voiced strong opposition to slavery and, although he had no power to free slaves, readily took them from their masters to be held in trust by another party selected by him. But perhaps the most frequently heard objection to his court practices was based on the fact that Dr. Freese was not a lawyer, and as a doctor was violating the laws and customs established in many states by lawyers and doctors whereby no one is authorized to practice in either profession until he had complied with the rules and regulations prescribed by law for admission to such practice. Freese dismissed this complaint, pointing out that to adhere to it would be a relinquishment by the people of a basic principle of freedom, namely the right to choose their own servants. (He neglected to note that his appointment rested solely with Gen. Montgomery and not with the people of Alexandria.)

Those raising objections to Freese and his court had little difficulty in finding influential lawyers in Washington City who agreed that the illegally constituted court and its "doctor-judge" should be suppressed for the "honor of the profession." They were joined by pro-secessionist lawyers in the city and soon their petition reached President Lincoln. Lincoln reportedly advised them that

I have known Dr. Freese as a first-class physician for some years and have only known him as a judge for a few months: but from the way he administers law-doses to these Alexandrians, I am beginning to think that he is even a better judge than a doctor. He may not understand the legal technicalities and rules of the courts quite as well as some lawyers I know of—present company, of course, always excepted—but he shows in his decisions a wonderful deal of common sense which is far better than rules of law or technicalities. What they say of the doctor reminds me of a story which is told of a man who said he could not cure chills and fever, but was "death on fits," and wanted all his patients to have fits, when he would cure them at once. Most of our lawyers and judges are death on technicalities, but can't cure the commonest ills to which society is subject; whereas Dr. Freese is curing the ills of Alexandria so rapidly and so successfully, that it will soon be one of the most healthy and one of the most thoroughly Union cities in the whole country. I would not interfere with

him or his court for the world, and don't think anyone else should.

Secretary of War Simon Cameron, also an old friend of Dr. Freese, dismissed complaints against the court's practices and was quoted as saying that "I wish we had just such a court and just such a judge in every city we've conquered from the rebels. They would do more towards extracting the venom of these secession serpents than all our armies combined." Cameron also dismissed reminders that Dr. Freese was not a law-trained man. According to Cameron, "That only makes me think the more of him. A lawyer is anybody's man who'll pay him a fee, and the one who'll pay the best is apt to get from him the best service, no matter on which side he is employed, but a doctor has only to cure the case in hand, and can have no conflicting interests; and from the way Judge Freese is pulling out the teeth of those secession scoundrels, by taking from them the means to do harm and transferring it to the pockets of those to whom it justly belongs, and who will use it to sustain the Union cause, I am satisfied that he is just the man for the place and on no account would I do anything to suppress either him or his court."

Opponents of Dr. Freese found responsive ears in their appeals to Attorney General Bates (of Missouri)⁶ and Postmaster Montgomery Blair (of Maryland).⁷ Aside from their personal sentiments and those prevailing in their states in regard to slavery, both men were lawyers with a special interest in maintaining the "dignity of the profession," and both made repeated pleas to President Lincoln for the abolishment of Dr. Freese's court. Blair urged that the suppression of the court would greatly aid Lincoln's cause in the border states.

While pressure continued to be placed on the President and the Cabinet to abolish Dr. Freese's court, other efforts were being directed toward Gen. McClellan. McClellan had been quite critical of the court and frequently had dispatched an aide to visit Gen. Montgomery with orders to adjust the situation.

The final crushing blow to the "bayonet court" came with the publication in the Northern press of Dr. Freese's judgment of the contested property suit mentioned earlier. The publicity given to the case aroused

⁶ ". . . Attorney General Edward Bates was a gentleman of the old school, short in stature, gray-haired, rather shy and reserved in manner and not much seen in Washington society. Mr. Bates was of a philosophic turn of mind and a close observer of man and nature; and, when one had made his intimate acquaintance he was found to be a most delightful talker." *Washington in Lincoln's Time*, by Noah Brooks, Collier Books, New York, 1962. p. 47.

⁷ "Montgomery Blair, Postmaster General, was rated as the best-read man in Lincoln's Cabinet, and he was well versed in literature ancient and contemporaneous; but his manners were awkward and unattractive. In politics he was a relentless mischiefmaker; and, like his brother Frank, he was apparently never so happy as when he was in hot water or was making water hot for others. He was the stormy petrel of Lincoln's administration." *Ibid*, p. 48.

opposition from elements Dr. Freese was later to describe as "the entire pro-slavery, secession-sympathizing element of the Northern States." Attorney General Bates, armed with the new backing and the angry words of the press, insisted that as Attorney General he was responsible for the courts conducted by the U.S. Government and that he alone should have the decision regarding the status of the Alexandria court. He made no secret of his desire to abolish it.

Lincoln summoned his old friend Dr. Freese to the White House. He voiced his fears that Bates would resign unless Bates was given the final decision on the existence of the Alexandria provost court. Lincoln was concerned at the political set-back his Administration would suffer if one of his Cabinet resigned. He urged Dr. Freese to call on Bates to fight for the life of the court. Freese went into a long session with Bates in an effort to win the Attorney General to his side. Bates remained inflexible. He insisted that there was no law by which the existence of the court was authorized, and therefore it should cease operations at once. Dr. Freese admitted that the court was illegally constituted, but insisted that a military court in Alexandria was a necessity in preserving the peace of the city in the absence of the state, county, and municipal courts. He explained that these courts had ceased to exist when court officers had fled Alexandria at the time of the Union occupation of the county. Bates insisted the court had no legal existence and voiced the belief that it was better to wait for justice than to violate known rules of law in trying to obtain it.

To counter Bates' concern over the residual problems inherent in the continued operation of the illegally constituted court, Dr. Freese offered to post a \$100,000 bond to be used to indemnify anyone whom the U.S. Supreme Court deemed had been wronged by the action by the provost court. He indicated that the money could also be used to pay damages to any person the Supreme Court subsequently ruled to have been wrongfully punished.

Bates declined the offer and insisted that as long as he remained Attorney General and was responsible for the U.S. Court system, he would not consent to the continuance of Dr. Freese's court.

Dr. Freese revisited President Lincoln and related his unsuccessful efforts with Attorney General Bates. The President indicated he was in a quandary as to how the situation could be resolved, and suggested that Dr. Freese call upon the Secretary of War, Mr. Cameron.

Dr. Freese called on Cameron and related what had happened. Cameron angrily denounced the Attorney General as "a damned old traitor, and if he is not one, his tongue belies him." He voiced the opinion that Bates and Blair were "wolves in sheep's clothing" and indicated he had already expressed these views to the President. He told Freese that he had thought of resigning from the Cabinet rather than remain in the company of such

"rascals and traitors."⁸ Cameron instructed Dr. Freese to continue the operation of the court and to "let come what would."

Dr. Freese again called on the President to report his conversations with Cameron. About a week later, Gen. Montgomery received a visit from an aide to Gen. McClellan. The aide delivered McClellan's "special wish that the court have nothing further to do with civil cases or any cases touching on the subject of slavery in any way." The aide also used the occasion to deliver an order from Gen. McClellan requiring the court to refund to the Alexandria hardware merchant the fine of \$500 which he had been required to pay as a fine for his assault upon the Union man.

Gen. Montgomery and Dr. Freese went into conference. Dr. Freese voiced his opinion that the secessionists of Alexandria and their sympathizers in the North, particularly Bates and Blair, had gained complete control of the matter. Dr. Freese was of the opinion that the best course would be to close the court.

Gen. Montgomery considered the military aspects of the matter. He noted that the court had been organized upon his order without first consulting with Gen. McClellan or the President, and for this reason he would prefer to close it voluntarily rather than be compelled to do so by McClellan or the President.

Gen. Montgomery penned the necessary order and the following day Dr. Freese read the order to the court, and explained why it had been issued.

The order was irrevocable and thus closed at once and forever the "bayonet-court" of Alexandria County, Virginia.⁹

⁸ "By the late fall of 1861, the procurement corruption in the (War) Department began to be a public scandal. While not personally corrupt, Cameron seemed singularly insensitive to the swindling going on throughout the services of supplies. . . . The President heard the stories and considered making a change. Cameron soon afforded him an added cause as well as an excuse. The Pennsylvania boss, radical in his political attachment, put in his annual report a manifesto favoring immediate emancipation of the slaves. This blow to his Border State policy moved the President to send Cameron across the seas to honorific retirement as Minister to Russia." *Abraham Lincoln and the Fifth Column*, by George Fort Milton, Collier Books, New York, 1962. p. 45.

⁹ AGO General Order 95, of August 5, 1862, appointed Maj. Levi C. Turner as "associate judge advocate for the army around Washington" and ordered "all cases of military arrests in the District of Columbia and the adjacent counties of Virginia, specially assigned to him for investigation and determination." Three days later the Secretary of War ordered "all U.S. Marshals and Superintendents or Chiefs of Police in any town, city or district . . . arrest and imprison any person or persons who may be engaged, by act, speech, or writing, in discouraging volunteer enlistments, or in any way giving aid and comfort to the enemy or in any other disloyal practice against the United States." Arrests were reported immediately and Turner became an important instrument in bringing to justice those accused of treasonable or subversive activities. On March 27, 1863, John C. Underwood was appointed District Judge for the Eastern District of Virginia and a year later opened his court in Alexandria, by then the seat of the "loyal" government of Virginia under Gov. Francis H. Pickens; with the creation of West Virginia, Underwood's jurisdiction was redesignated the "District of Virginia." In that capacity, he prosecuted confiscation cases against the citizens of Alexandria, Fairfax, and Loudoun counties who were alleged to be adherents of the Confederacy.