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The War Comes Home to Indiana
By STEPHEN E. TOWNE

In early March 1863, an officer in Terre Haute, Ind., ordered two veteran Army sergeants to cross into Clark County in nearby eastern Illinois to carry out a peculiar, though increasingly common, order: arrest a group of Union Army deserters. It wasn’t an easy assignment: the men found swarms of deserters, but also met armed resistance from local residents who were fostering the runaway soldiers, and were even shot at a few times.

By then, Illinois, Indiana and Ohio were lousy with deserters. Union Maj. Gen. William Rosecrans, commander of the Army of the Cumberland in central Tennessee, reported that 30,000 soldiers from those states were absent from his army, most of whom had fled due north. Soldiers had slunk away from the Army in droves, tired of the war that dragged on and on. Many of them had been encouraged to desert by family, friends and neighbors at home – the region had a high population of Southern sympathizers and antiwar Democrats – who, in a concerted letter-writing campaign directed at soldiers, lashed out at President Lincoln’s recent Emancipation Proclamation and other administration measures to conquer the rebel states. Writers vowed to protect deserters from arrest, adding that they were organized, armed and ready to defend them.

In response, Army commanders issued orders to capture the deserters. Post commanders in the Old Northwest, today called the Midwest, sent small detachments of troops into small towns to hunt down, arrest and return deserters – as they did in the Clark County operation. But as the two sergeants soon learned, things were rarely so simple: the restive region was the front line of civil war in the North.

After successfully capturing several deserters, the Army sergeants took them to a village inn to rest before returning to Terre Haute. That night the mother of one of the deserters sought the legal advice of a local attorney, who told her to obtain a warrant from a sympathetic justice of the peace to arrest the sergeants themselves, for kidnapping. The next morning, the Clark County sheriff arrived at the inn, arrested the sergeants and took them and the captured deserters to Marshall, the county seat.

On Sunday morning, March 8, Judge Charles H. Constable heard the complaints of the deserters. Constable asserted that the sergeants had no authority to cross the state line to
make arrests and had violated Illinois' "state rights." He held them on bonds to appear in court and answer to the charge of kidnapping. He then released the deserters.

The Maryland-born Constable had been a prominent attorney in Illinois for years, having ridden the judicial circuit with Abraham Lincoln. He and Lincoln had been friends and fellow Whigs, the latter writing letters of recommendation for him. But in the early 1850s Constable complained of Whig Party ingratitude to its longtime servants. Lincoln resented the fling at his party and the two nearly came to blows. Soon after, Constable joined the Democratic Party and later was elected judge in the heavily Democratic area.

Word of the arrest of the sergeants and release of the deserters soon reached Army headquarters in Indianapolis. Col. Henry B. Carrington, post commander in the city, sprang into action. He wired both the War Department in Washington and his immediate commander, Brig. Gen. Horatio G. Wright, of the Department of the Ohio at Cincinnati. Wright also wired Secretary of War Edwin M. Stanton about this alarming instance of civil interference in military matters. He planned, he wrote, to rearrest the deserters, free the sergeants and arrest the judge and hold him in military custody. No countermanding orders came from Washington. Given the green light, Wright ordered Carrington to send a strong force to Marshall to make the arrests and "liberate" the sergeants.

Carrington took charge of the expedition himself. A Connecticut-born, Yale-educated attorney from Ohio with close ties to Treasury Secretary Salmon P. Chase, he had been appointed colonel of the newly formed 18th United States Infantry Regiment in the early months of the war. In August 1862, the department assigned him to oversee the mustering of Indiana volunteer troops in Indianapolis, where he employed his keen organizational skills to raise new units. And he was already well aware of the problem of deserters: in December, he had discovered that soldiers in camps around Indianapolis were members of secret political organizations that aimed to obstruct the war effort and encourage desertion.

Alert to the political stakes of the Illinois matter, Carrington planned his actions carefully. He first sent a detachment of troops to rearrest the deserters in Clark County. To arrest Constable, he took pains to ensure the secrecy of his movements, instructing the Indianapolis telegraph office to transmit no messages mentioning him. A force of 200 infantrymen and 25 dismounted cavalry troopers (the latter dressed in civilian clothing) departed Indianapolis on a special train on the night of March 11, loading west of the city to avoid observation. Reaching Terre Haute after midnight, they disembarked, ate an early breakfast and, on a freezing night on icy, rutted roads, began a march across the state line to Marshall, about 15 miles away.

The cavalry, on borrowed mounts, rode ahead with orders to prevent word of the troops' advance's reaching Marshall. They also had orders to filter into the courtroom and secure seats commanding the room, the day the sergeants' hearing was scheduled.
Carrington and the infantry marched into Marshall after daylight and quickly surrounded the courthouse in the town square, allowing none to enter or leave the building. No one inside was aware of the troops outside. A regular Army captain who accompanied the expedition later wrote that we “took them completely by surprise.” Four civilian-clad troopers accompanied the colonel into the building, as he was expected to appear for the sergeants that day.

In the courtroom, the country prosecutor was just finishing his remarks to the special grand jury convened to indict the sergeants. The two soldiers were present and, signaled by the troopers, rose from their seats and walked over to their comrades. Colonel Carrington then stood up, politely introduced himself and informed the court that the courthouse was surrounded and Judge Constable was under arrest. Court adjourned.

While an affable Constable hosted his captor to lunch, the “loyal people” of Marshall happily treated the soldiers to an impromptu meal. By midafternoon the troops began their march back to Terre Haute with their prisoner. But by this time, an estimated 700 people—presumably from the “disloyal” part of the local population—had gathered in town, many of them armed and hostile and who fired indiscriminate shots. But no collision occurred.

During his captivity in Indianapolis, Constable stayed in a hotel and had the freedom of the city on his word as a gentleman. His arrest neatly accomplished, an intense debate commenced about what to do with him: should he be tried by civil court or military commission?

The conversation involved some of the highest-ranking regional and national leaders, including Caleb Blood Smith, Lincoln’s former secretary of the interior who had stepped down to take the federal judgeship in Indiana, and John Palmer Usher, the incumbent secretary of the interior who happened to be visiting his Terre Haute home. Usher wrote to Lincoln urging stern punishment for the president’s erstwhile friend Constable, noting particularly the rise in the Northwest of the secret group called the Knights of the Golden Circle, which was known to be arming to resist the new draft law and the arrests of deserters.

The judge advocate for the Department of the Ohio and legal adviser for General Wright, Maj. R.M. Corwine, voiced the Army’s grave concern about the increasing incidence of civil interference with military matters, especially the arrest of deserters. He pointed out that local judges in Ohio and Indiana had, for partisan reasons, obstructed arrests. This “growing abuse” had to be stopped, and he advocated that Constable be tried by military commission.

But others wanted him before a civilian court, and the Republican leaders in Indianapolis had decided to forgo a military commission trial against a backdrop of violent events in Indiana and Illinois. Deadly clashes between troops and armed groups intent on...
protecting deserters occurred throughout the Northwest. Partisan rancor in the legislatures verged on bloodshed. In the far-flung reaches of those states, opposition to the war was growing and challenged federal and state authorities' ability to maintain order. In the end, they decided to avoid provocative action, even at the risk of Constable's getting off lightly.

Constable went under guard to Springfield, there to have a hearing before a federal district court judge, Samuel H. Treat, a conservative Democrat appointed to the bench in 1855. After a preliminary hearing on April 7 in which the federal prosecutor made only a desultory case, Treat dismissed the charge and released Constable. The two sides were, for a moment, at rest.

In the days to come, however, Maj. Gen. Ambrose E. Burnside would assume command of the Department of the Ohio and institute a crackdown on dissenting speech and combat unrest with military arrests and trials. His policy served only to fan the flames of partisan opposition and invigorate Democratic opposition to the war effort, exactly what the Republicans in Indianapolis sought to avoid.

In the coming months, Constable's arrest became a cause célèbre for Illinois Democrats who opposed Lincoln's war. But soldiers and Republicans targeted him for abuse, and his strongly Democratic judicial circuit was the scene of much war-related violence. In August 1863, a deadly gun battle occurred in Danville between soldiers and antiwar groups. In January 1864, soldiers home on furlough "mobbed" Constable on the streets of Mattoon and forced him to take an oath of loyalty to the United States. Days later, a bloody gunfight broke out at Paris between soldiers and organized bands. In March, Constable held court in Charleston on the day of the infamous deadly ambush of soldiers on the courthouse square by armed antiwar partisans; in the melee he fled for his life.

Constable continued to serve as a judge, though after Republican victories in the 1864 election, his circuit was significantly reduced. He died in 1865.

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