ESSENTIAL CIVIL WAR CURRICULUM

Espionage

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According to the Union army's official definition, which was based on international law, a spy was "a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy" in wartime. If caught, death by hanging was the traditional punishment for spies.[1] Espionage was not a crime under the civilian laws of either the United States or the Confederacy, so captured spies could only tried and punished by military tribunals, such as courts-martial or military commissions. During the Civil War, Congress gave U.S. Army courts-martial the power to try and punish by death spies who, in "time of war or rebellion," were found in or about forts or camps of the Army.[2] The Congress of the Confederate States gave Confederate courts-martial the same power to punish Union spies.[3] Under the international military customs of the time, however, spies were subject to execution without trial, and at least some suspected spies were summarily executed by both armies. The total number of spies executed during the Civil War is unknown.[4]

Not all spies were tried or executed after capture. In the discretion of the authorities holding them, they might be simply held in custody as political prisoners or

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[1] Article 88, Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, War Department, Adjutant General's Office, Washington D.C., April 24, 1863, in United States War Department, *War of the Rebellion: Official Records of the Union and Confederate Armies, 128 vols.* (Washington D.C.: Government Printing Office, 1880-1901, Series III, volume 3, p.148-64. (Hereinafter cited as *O.R.*)

[2] William Winthrop, *Military Law and Precedents*, 2nd edition 1920 (Boston: Little Brown, 1895), 765-66. As initially enacted in 1806, the power to try and punish spies only applied persons who were not U.S. citizens. Because the U.S. government took the position that Confederates were still U.S. citizens, in 1862 Congress amended the law to remove the reference to citizenship and make it clear that that Army courts-martial could punish spies during a rebellion.

[3] See *Articles of War for the Government of Armies of the Confederate States,* sec. 2, online at http://archive.org/details/articlesofwarfor00conf (accessed October 12, 2013).

[4] See, e.g., Allen C. Guelzo, *Gettysburg: The Last Invasion* (New York: Knopf, 2013), 93 (Confederate spy Will Talbot summarily hanged by Union cavalry during 1863 Gettysburg campaign); William B. Feis, *Grant's Secret Service: The Intelligence War from Belmont to Appomattox* (Lincoln: University of Nebraska Press, 2002), 5 (Union spy Oliver Rankin summarily shot in Tennessee). "The number of suspected spies executed by both sides is not known because of the lack of records and the secrecy that surrounded most executions." Thomas Allen, *Intelligence During the Civil War,* 14 (Central Intelligence Agency Public Affairs Office 2007), <https://www.cia.gov/library/publications/additional-publications/civil-war> (accessed October 21, 2013).

even treated as prisoners of war and exchanged for prisoners held by the other side.[5] In 1862, for example, a party of Union soldiers entered Confederate territory in civilian clothing on an official mission to destroy railroads. After capture, six were convicted by a Confederate court-martial of being spies and hanged. However, six of their comrades from the same mission were eventually granted prisoner of war status and exchanged.[6]

The terms "spy" and "scout" were often used interchangeably during the Civil War. In general, scouts engaged in military reconnaissance, either as soldiers or hired civilians, and were invariably male, while both men and women served as spies.[7] Soldiers captured in military uniform were generally treated as prisoners of war rather than spies, even if they were engaged in gathering military intelligence. Soldiers gathering information in disguise or under false pretenses, such as a Union scout caught wearing a Confederate uniform or civilian clothes, could be punished as spies.

To add to the confusion, some military units were called "spy companies," even though they were in fact ordinary cavalry units. In 1862, following the abortive Confederate invasion of New Mexico, a U.S. Army military commission in Santa Fe convicted a member of a Confederate spy company of being a spy and sentenced him to death. President Lincoln disapproved the sentence and ordered him to be held as a prisoner of war.[8] Ironically, during the Black Hawk War Lincoln had himself served in a mounted militia unit called the "Independent Spy Company."[9]

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[5] See, e.g, Mark E. Neely Jr., *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism* (Charlottesville, University of Virginia Press, 1999), 172; Mark E. Neely Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1991), 29, 76-7.

[6] See General Order No. 54, Headquarters [Confederate] Department of East Tennessee, Knoxville, June 14, 1862, in *O.R.* I, 10, pt. 1, 637-8; Russell S. Bonds, *Stealing the General: The Great Locomotive Chase and the First Medal of Honor* (Yardley, PA: Westholme Publishing, 2007), 236-61; 310-15. Saboteurs were often punished as spies during the Civil War, although gathering information was secondary to their primary goals of destroying enemy property. . It is unclear why the six who were exchanged escaped the gallows. Bureaucratic inertia on the part of the Confederate government appears to have played a role. In June 1862 a Confederate court-martial sitting in Knoxville, Tennessee, condemned as spies seven of the soldiers involved in the raid. Further court martial proceedings were suspended due to a Union military threat to Knoxville, and all the prisoners evacuated to Atlanta, Georgia, where the seven who had already been convicted were hanged, but no new trials held. Confederate General P.G.T. Beauregard, who assumed command of the military Department of South Carolina and Georgia in August, seems to have lost interest in trying the remaining prisoners, and in early December 1862 he ordered them and 16 other prisoners to be sent from Atlanta to Richmond, Virginia, for exchange. See G.W. Lee to Brigadier General Winder, December 3, 1862, in *O.R.* II, 5, 777-8.

[7] See Feis, *Grant's Secret Service,* 4-5; Allen, *Intelligence,* 14; Edwin C. Fishel, *The Secret War for the Union: The Untold Story of Military Intelligence in the Civil War* (Boston: Houghton Mifflin, 1996), 278. For examples of women in Civil War espionage see, e.g., Ann Blackman, *Wild Rose: The True Story of a Civil War Spy* (Westminster, Maryland: Random House, 2005); H. Donald Winkler, *Stealing Secrets: How a Few Daring Women Deceived Generals, Impacted Battles, and Altered the Course of the Civil War* (Naperville, IL: Cumberland House, 2010); Feis, *Grant's Secret Service,* 165.

[8] Order Disapproving Death Sentence of Jose Maria Rivas, October 25, 1862, in Roy P. Basler, *The Collected Works of Abraham Lincoln*, 10 vols. (Springfield, IL: Abraham Lincoln Association, 1953),5: 475. On the San Elizario Spy Company of the Confederate army in New Mexico, see Martin Hardwick

By modern standards, the espionage in the Civil War was highly decentralized. Neither the United States nor the Confederacy had a single agency devoted to the collection and analysis of intelligence information. Without professional intelligence services, Civil War spies were always amateurs, serving either for pay or out of personal loyalty to one side or the other. In the first year of the Civil War, the South had an advantage in recruiting spies due to the large number of confederate sympathizers in Washington, D.C., many of whom held government jobs that gave them access to useful military information, or were socially connected to Union officials who shared damaging information with their supposed friends.[10] However, this early Confederate advantage was later counterbalanced as Union armies advanced into the Confederacy, where the local African American population provided a ready source of information on the enemy.[11]

Most civilian spies on both sides were recruited by military commanders in the field to serve the needs of their specific organizations. The money to compensate spies came from "secret service" funds administered by the Union and Confederate War Departments. Payments varied, depending on the risks individual agents faced, the expenses they incurred, and the value of the information they provided. A civilian scout who faced little danger might be paid $50 per mission, while spies who operated behind enemy lines and provided valuable information might be paid up to $500. When the Army of the Potomac hired full-time civilian spies after 1863, their base salary was two dollars per day, with raises to three or four dollars for the most effective agents.[12] By way of contrast, a private in the Union Army was paid $13 per month.

The military officers who received the reports of spies and scouts were also amateurs in the sense that, with one exception noted below, no staff organization in any army on either side was assigned full time to the gathering and analysis of intelligence. The usual practice in both the Union and Confederate armies was to report all intelligence information directly to the commanding general, who not only had read all the raw reports but also acted as his own intelligence analyst, deciding which reports were reliable and which could be disregarded. In the Confederate Army of Northern Virginia, for example, several members of General Lee's staff were involved in receiving intelligence reports at various times, and forwarding them to General Lee.[13] On the

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Hall, *Sibley's New Mexico Campaign*, University of New Mexico Press 2000 edition (Austin" University of Texas Press, 1960), 32, 54, 200.

[9] Rodney O. Davis, 'Success … Which Gave Him So Much Satisfaction': Lincoln in the Black Hawk War", in *Lincoln Fellowship of Wisconsin Historical Bulletin* 52 , (1996): 199.

[10] See, e.g., Fishel, *Secret War,* 56-70; Ernest B. Fergurson, *Freedom Rising: Washington in the Civil War* (New York: Knopf, 2004), 113-16.

[11] See, e.g., Glenn David Brasher, *The Peninsula Campaign & the Necessity of Emancipation: African Americans & the Fight for Freedom* (Chapel Hill: University of North Carolina Press, 2012), 90-1, 126-8, 163-9; Allen, *Intelligence*, 26-9; Fishel, *Secret War*, 5, 73, 120-1, 436-40.

[12] See Feis, *Grant's Secret Service*, 66-7; Fishel, *Secret War*, 192, 248, 294-5.

[13] William A. Tidwell, James O. Hall and David Winfield Gaddy, *Come Retribution: The Confederate Secret Service and the Assassination of Lincoln* (Jackson: University of Missouri Press, 1988), 106-8. This work is a detailed study of Confederate intelligence organization and operations. The authors do not quite

Union side, during his campaigns against Vicksburg in 1862-63, General Grant relied heavily on a spy network organized by Brigadier General Grenville Dodge. Intelligence gathering was not Dodge's primary duty, however, since he was also in command of Union forces around Corinth, Mississippi.[14]

In July 1861, Major General George B. McClellan took command of the Army of the Potomac, the Union's main field army in the eastern theater of war. Soon after taking command, McClellan attempted to create a competent intelligence organization by turning to Allen Pinkerton, head of a famous private detective agency in Chicago. McClellan became acquainted with Pinkerton in the late 1850s, when McClellan worked as an official of the Illinois Central Railroad and Pinkerton's firm provided security services for the Illinois Central and other railroads. Under a government contract to provide intelligence services to the Army of the Potomac, Pinkerton came to Washington to personally supervise the operation. Pinkerton used the cover name "Major E.J. Allen," though he was never in the military.

Pinkerton's 24 detectives were primarily successful in counterintelligence operations, that is, catching Confederate spies in Washington, most notably by breaking up the spy ring operated in 1861 by Washington socialite Rose Greenhow. In the opinion of one historian, Pinkerton's organization succeeded in neutralizing the South's ability to use secessionist sympathizers in Washington.[15] Several of Pinkerton's agents, including some women, were also sent as spies to the Confederate capital at Richmond and a few other areas under Confederate control. On one of the missions to Richmond, Timothy Webster, one of Pinkerton's best detectives, was caught by Confederate authorities and hanged. Espionage missions by Pinkerton's agents were always temporary; he never tried to establish a permanent network of spies in Richmond or anywhere else in the Confederacy. Also, Pinkerton and his agents had little knowledge of military affairs. As a result of these weaknesses Pinkerton's reports to General McClellan were often wildly inaccurate. In particular, Pinkerton routinely over-estimated the strength of the Confederacy's armies.[16] General McClellan accepted these erroneous reports, and in some cases inflated them further, and used them to constantly demand reinforcements.

On November 7, 1862, Lincoln relieved George McClellan from command of the Army of the Potomac, and Allen Pinkerton's organization departed with McClellan. Returning to Chicago, Pinkerton took with him most of the records of his intelligence operations. For a few months in late 1862 and early 1863, John Babcock, one of Pinkerton's former agents, was employed by General Burnside, McClellan's successor in

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prove their thesis that the Confederate government was involved in the assassination of President Lincoln, but it is a useful source on the organization and clandestine operations of the Confederate government.

[14] Feis, *Grant's Secret Service* 125-8, 165-7.

[15] Fishel, *Secret War*, 75.

[16] SeeIbid., 53-5; 89-129; 148-9; Stephen W. Sears, *George B. McClellen: The Young Napoleon* (New York, Ticknor & Fields, 1988) 5, 107-10.

command, to take Pinkerton's place. Babcock was competent, but handicapped by the absence of Pinkerton's files and lack of resources in general. [17]

True reform in the intelligence operations of the Army of the Potomac did not occur until early 1863 when General Joseph Hooker assumed command of that Army after Burnside's defeat at Fredericksburg. As part of his reorganization of the Army of the Potomac, Hooker created a permanent Bureau of Military Information as part of his staff. Headed by Colonel George H. Sharpe, by April 1863 the Bureau was manned by a full-time force of 21 military and civilian agents, including John Babcock, who decided to join the new organization. While the civilians primarily spied on the Confederate capital at Richmond, Sharpe sent the military agents, disguised in Confederate uniforms, to penetrate enemy army camps and organizations. Veteran soldiers could provide more accurate information on the strength and capabilities of the Confederate military than Pinkerton's civilians.

In addition to reports from spies and scouts, Sharpe's Bureau also gained information from the interrogation enemy prisoners, local informants, refugees from slavery and deserters from the Confederate army. The Bureau's staff combined this information with reports from cavalry patrols, intercepted messages, and observations of soldiers in lookout posts of the U.S. Signal Corps to develop an overall picture of the enemy's situation at any particular time, and report their conclusions to the commander of the Army of the Potomac. During the Civil War, the Army of Potomac's Bureau of Military Information was the closest thing to a modern, professional military intelligence organization to be developed. [18]

One of the Bureau's most important triumphs took place during the Battle of Gettysburg when, during a meeting of Union generals on the night of July 2, 1863, Colonel Sharpe was able to report, based on interrogation of prisoners taken in the first two days of the battle, that every regiment in General Lee's Army of Northern Virginia had taken part in the fighting except those of General Pickett's division. From this report, General Meade, then commander of the Army of the Potomac, knew that Pickett's division was the only reserve force the enemy had and that if an attack by it could be defeated, the Union would win the battle. That is exactly what happened on July 3, when "Pickett's Charge" was repulsed.

In the spring of 1864 the Army of the Potomac, now led by General Ulysses Grant, fought its way south to the outskirts of Richmond, eventually settling into a nine month siege of Petersburg, Virginia. The siege allowed the Bureau of Military Information to make contact with the most experienced and effective spy ring of the Civil War, a pro-Union group informally led by Elizabeth Van Lew. Miss Van Lew was

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[17] See Fishel, *Secret War*, 257-9. Pinkerton's records were regarded as the private property of his company, and have been lost. After the War, Pinkerton wrote a memoir entitled *The Spy of the Rebellion* (Chicago: A.G. Nettleton, 1883), presumably based on these records, but historians generally regard the book as unreliable.
[18] See Ibid., 287-300.

probably protected by her descent from a wealthy Richmond family; Confederate authorities could not bring themselves to believe that one of their own elite would actually betray their cause. Van Lew and her followers began developing their espionage skills by bringing relief supplies to Union prisoners of war in Richmond, who also gave them intelligence information. From there they graduated to helping the prisoners escape.

In late 1863, an escaped prisoner contacted General Benjamin Butler, who commanded a Union-controlled enclave southeast of Richmond, and described Van Lew's operation to him. Butler made contact with her and passed her intelligence reports on to the War Department in Washington. When the Army of the Potomac arrived before Richmond in June 1864, Sharpe, who had been promoted to Brigadier General in February, then took over control of Van Lew's organization as well as other espionage activities in Richmond. Some of the agents working for or with Van Lew occupied very sensitive positions in the Confederacy, including a railroad official able to report on (and sometimes delay) supplies to Lee's army, a servant in the household of Confederate President Jefferson Davis, clerks in the Confederate War and Navy Departments, and a clerk at Libby Prison, where captured Union officers were held.[19]

Both the United States and Confederate governments also engaged espionage and other clandestine activities in foreign countries. In June 1861 Confederate Secretary of the Navy Stephen Mallory sent Commander James Bulloch to Liverpool, England, a major shipbuilding center. Bulloch's mission was to secretly buy or build warships that would capture or destroy merchant vessels flying the U.S. flag. A major challenge for Bulloch was to avoid violating Great Britain's Foreign Enlistment Act, which made it unlawful to "fit out" a warship for use in a conflict in which Britain was neutral. An English law firm advised him that so long as a ship was not armed in British territory, it was legal to build it in Britain, an interpretation eventually upheld by British courts.[20]

Bulloch's first effort set a pattern for future success. Hiring a Liverpool firm to build a steam ship based on plans for a Royal Navy gunboat, he spread the cover story that it was destined for the Italian government, and named the *Otero*. The *Otero* sailed, with a British captain and crew, to Nassau in the Bahamas, where it was secretly armed with cannon from a supply ship and formally commissioned as the Confederate States Ship (CSS) *Florida*, placed under the command of a Confederate naval officer, and began a successful career raiding Union commerce. Bulloch's second project was the construction and arming of the CSS *Alabama*, the most successful Confederate commerce raider of the Civil War. After construction in a shipyard near Liverpool under the cover

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[19] See Ibid., 552-6; Allen, *Intelligence,* 20; Elizabeth R. Varon, *Southern Lady, Yankee Spy: The True Story of Elizabeth Van Lew, a Union Agent in the Heart of the Confederacy*(New York, Oxford University Press, 2003), 98-191; Feis, *Grant's Secret Service* 237-41.

[20] See Craig L. Symonds, *The Civil War at Sea* (Westport, CT: Greenwood Publishing, 2009), 66-8; Coy F. Cross II, *Lincoln's Man in Liverpool: Consul Dudley and the Legal Battle to Stop Confederate Warships* (DeKalb: Northern Illinois University Press, 2007),18-23, 84-6; Chester G. Hearn, *Gray Raiders of the Sea: How Eight Confederate Warships Destroyed the Union's High Seas* Commerce (Camden, ME: International Marine Publishers/McGraw-Hill, 1992), 6-8.

name *Enrica*, she surreptitiously left British waters for the Portuguese Azores, where she was armed from a supply ship and commissioned in the Confederate Navy under the command of Captain Raphael Semmes. Of eight Confederate warships built to attack Union maritime commerce, six were constructed in Great Britain. Together they destroyed 284 Union merchant vessels worth $25 million. [21]

Lacking a foreign intelligence service, the U.S. government relied on State Department diplomats in Europe to obtain proof that the vessels under construction were destined to become Confederate warships, and argued that it violated British obligations as a neutral power under international law to allow them to sail from British waters to prey on Union commerce. Reflecting the amateur character of these efforts, U.S. consuls in Liverpool, the Bahamas and elsewhere, whose primary duties were to promote American commercial interests and protect U.S. citizens overseas, were also given the task of obtaining proof that the Confederates were building warships in violation of British neutrality. In this they only partially succeeded.[22]

During the Civil War the Confederate State and War Departments regularly carried out clandestine operations in, and from, Canada, then part of the British Empire. These operations intensified after May 1864 with the arrival in Canada of two new Confederate commissioners, Jacob Thompson, representing the State Department and Clement Clay of the War Department. Many Confederate prisoners of war had found refuge in neutral Canada after escaping from Union prison camps. Drawing on this pool of military and naval personnel as well as civilian agents, Thompson and Clay launched an aggressive campaign to carry out active hostilities against the Union from Canadian territory, including an attempt to free Confederate prisoners of war held on Johnson's Island in Lake Erie, an attack on the town of St. Albans, Vermont, and an attempt set part of the city of New York on fire.[23]

As in Europe, the main U.S. response to this activity was to call upon its consuls in Halifax, Montreal, Quebec and other Canadian cities to act as counterintelligence agents and report Confederate activity to Washington. For this purpose, U.S. Secretary of State Seward asked the British government for permission to increase the number of consular posts in Canada.[24] More serious action followed when U.S. authorities could get their hands on spies operating out of Canada. John Y. Beall, a Confederate naval officer, led a party of Confederate agents from Canada to hijack a steamboat on Lake Erie as part of a plan to free Confederate prisoners of war. Later he attempted to derail a passenger

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[21] See Symonds, *War at Sea* 68-84; Hearn, *Gray Raiders* 8, 52-4, 153-60.

[22] See, e.g., Howard Jones, *Blue and Gray Diplomacy: A History of Union and Confederate Foreign Relations*(Chapel Hill: University of North Carolina Press, 2010), 191-20 ; Cross II, *Lincoln's Man,* 26-138; Hearn, *Gray Raiders'* 56-9, 102-09

[23] See, e.g., John Boyko, *Blood and Daring: How Canada Fought the American Civil War and Forged a Nation* (Toronto, Knopf Canada, 2013), 159-19; Clint Johnson, *"A Vast and Fiendish Plot:" The Confederate Attack on New York City* (New York: Kensington Publishing, 2010), 113-230; Cathryn J. Prince, *Burn the Town and Sack the Banks: The Confederates Attack Vermont* (2006); Tidwell, *Come Retribution,* 171-208.

[24] Boyko, *Blood and Daring,* 162-33; Tidwell, *Come Retribution,* 173-4; 189-91.

train in upstate New York. After being arrested in civilian clothing on the U.S. side of Niagara Falls, he was hanged after being convicted by a military commission of spying and violating the laws of war.[25] Captain Robert C. Kennedy of the Confederate Army participated in the 1864 attempt to burn New York City. Arrested in Detroit while dressed as a civilian, he was taken back to New York for trial by a military commission. Convicted of spying and violating the law of war, Kennedy was hanged.[26]

It is not clear to what extent the Confederate central government in Richmond approved of all the clandestine activities carried out under Thompson and Clay. Today, some of these would be regarded as acts of terrorism. From 1865 to today, many have also speculated that Confederate secret agents were involved in the assassination of President Lincoln, though most historians regard such accusation as unsupported by the evidence. Overall, espionage and other intelligence activities did not have a decisive impact on the outcome of the Civil War. Intelligence information could influence the outcome of specific battles, for example by reinforcing General Meade's decision not to retreat after the second day at Gettysburg. However, intelligence was not a factor in planning and executing major campaigns on either side.[27] During the final campaign leading to Lee's surrender, for example, General Grant had access to excellent intelligence sources through the Bureau of Military Information and the Van Lew spy ring in Richmond. However, there is no evidence that these Union advantages brought the surrender at Appomattox closer by a single day.

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[25] See General Orders No. 17, Headquarters Department of the East, New York City, February 17, 1865, in *O.R*,. II, 8, 279-82; Allen, *Intelligence*, 46.

[26] See General Orders No. 24, Headquarters Department of the East, New York City, March 20, 1865, in *O.R.*, II, 8, 414-16.

[27] The only arguable exception was the discovery by Union soldiers of a lost copy of General Lee's deployment order during the 1862 Antietam Campaign. However, this intelligence coup for the Army of the Potomac was solely a matter of luck,