

The Trial & Hanging of David O. Dodd

“A Political Pawn”

A modest library has been written about the execution and legend of David O. Dodd (1846-1864), and Dr. Carl H. Moneyhon has added another and quite thorough contribution focusing primarily on the legend of the Dodd drama.¹ And this writer has written previously about this subject, but it's the purpose of this essay to expand even further upon the actual trial of Dodd.²

In fact, the defense of Dodd fell to a pair of very experienced lawyers, William M. Fishback of Fort Smith and T.D.W. Yonley of Little Rock. How were they selected? Why did they accept employment? And how did they undertake the defense?

In answering these questions it is critical not only to review the circumstances surrounding the arrest and trial of Dodd, but also to outline the historical context in which they took place. To be sure, the trial did not occur in a vacuum, but was played out at the very epicenter of the entire Reconstruction landscape of war-torn Arkansas in late 1863 and early 1864. One of the main themes of this article will be to show that it was Dodd's great misfortune to become a pawn in a very deadly game of legal, political and military chess, played out between two Union generals, Frederick Steele and John Wynn Davidson.

Of course, the test of success for the legal defense would be simple: to save the client's life. This would require a clever,

¹ Carl H. Moneyhon, “David O. Dodd, ‘The Boy Martyr of Arkansas’: The Growth and Use of a Legend,” *The Arkansas Historical Quarterly*, (Autumn 2015).

² Phillip H. McMath, “History? Legend? Symbol?: The Story of David O. Dodd.” *Pulaski County Historical Review* (Winter 2013: Volume 61, Number 4). McMath “The Trial of David O. Dodd, A Political Pawn,” *Pulaski Count Historical Review*, (Winter 2016, Volume 64, Number 4).

energetic, even ruthless effort, totally unburden of any other consideration. The stakes were high indeed, and no advocate should play for them unless he was willing to set aside all other interests of any kind. In a word, this was no place for any conflict of interest or ambivalence, and, as shall be shown, a poor defense, compromised by some hidden agenda, or reluctance, was far worse than no defense at all.

In September of 1863 the Union army of some 12,000 troops, under the command of Major General Frederick Steele (1819-1868), marched from Helena and occupied Little Rock. Originally from Delhi, New York, General Steele was a West Point classmate and friend of U.S. Grant who described Steele as a “first-rate commander of troops in battle.”³ Graduated in 1843, he was commissioned a 2nd Lt. of Infantry and saw action in the Mexican War where he was twice brevetted for bravery. During the Civil War he was a distinguished veteran of the battles of Wilson’s Creek, Arkansas Post and Chickasaw Bluffs. Promoted to Major General in 1862, he served as a division commander under his mentor General William T. Sherman in the Vicksburg Campaign and also enjoyed a very close personal relationship with Army Chief of Staff General H.W. Halleck with whom he had served in pre-war California. As such, Steele was very much a member in good standing of the old army club with a stellar reputation as a gallant and very professional soldier. Moreover, his brother John was a New York congressman and both were cut from the same political cloth as conservative Democrats.⁴

Despite his excellent reputation and connections, Steele’s position in Arkansas both politically and militarily was always

³ Mark Christ, *Civil War Arkansas 1863*, (University of Oklahoma Press, 2011), 155.

⁴ Unpublished Biographical Material of Steele, Frederick Steele Papers, Special Collections, University of Arkansas Libraries, Fayetteville, Ark.

precarious. As a War Democrat, he was suspected by many Republicans of being less than enthusiastic about abolition and not sufficiently ruthless in prosecuting the war. This suspicion was reinforced in 1862 by his actions in Helena. His predecessor there, Major General Samuel Curtis (1817-1866), victor of Pea Ridge, had initiated a policy of granting freedom to runaway slaves and recruiting them into military service. However, when Steele replaced Curtis that year, Steele reversed this policy by returning “contrabands” to their owners, protecting the property of high ranking Confederates and halting the formation of black units.⁵ Soon Steele was being attacked in the Northern press by men such as Horace Greely, editor of the *New York Tribune*, who accused him of being “against Emancipation” and “sympathetic to the Confederacy.”⁶

Once in Little Rock, Steele easily occupied the village of some 4,000, but his position was nevertheless quite vulnerable. His supply lines relied upon the vagaries of the Arkansas River and a single railroad running from De Valls Bluff on the White River, always subject to interdiction by enemy cavalry dubbed “Railraiders.” Since the Confederate government had removed to Washington, Arkansas, with its army commanded by Major General Sterling Price, Steele found himself pressured not only by a lurking enemy but by political forces in the form of ardent Radical Unionists, both civilian and within his own army.

In fact, from the beginning of the Arkansas campaign a bitter rivalry had arisen between Steele and his cavalry officer, Brigadier John Wynn Davidson (1825-1881), commander of the 1st Cavalry Division, a West Point son of a West Pointer from Virginia, an Indian fighter, veteran of the Peninsula Campaign who refused a

⁵ Deposition, 12/26/1862, by Chaplain J.G. Foreman, 3rd Mo. Inf., Special Collections, University of Arkansas, Fayetteville. Benjamin Boulden, *So Long as Strangers are the Rulers, Gen. Frederick Steele and the Politics of Wartime Reconstruction in Ark*, Unpublished Master’s Thesis (1992), Steele Papers, Special Collections, University of Arkansas, Fayetteville, 7-9 and 35. Christ, *Civil War Arkansas*, 155.

⁶ Horace Greely, *The American Conflict*, (New York: O.D. Case &Co, 1865).

Confederate commission, he seemingly had something to prove, and was none too popular with his own men. One regimental historian of the 3rd Missouri Cavalry stated, “The boys cursed him continually.” Another wrote, “our men are very much put out with Gen. Davidson and some of them are trying to kill him, in which undertaking I hope they are successful.”⁷

Davidson apparently had a personality conflict with his more accommodating superior officer, and, as a Radical Unionist with ambitions for Steele’s job, he also manifested bitter disapproval of Steele’s conservative “conciliatory” policies, which he felt were little better than “fraternization” with the enemy. Clearly, Davidson decided Steele was hardly more than a curled up “Copperhead.” Mark Christ quotes one black soldier’s writing that the general “has too much Copper mixed in him to suit the most of the soldiers.”⁸ Christ points out “that Steele favored a soft policy toward the Confederacy was echoed by many and would follow the general throughout his time in command of Union troops in Arkansas.”⁹

“Copperhead” was of course a pejorative term invented by Republicans to liken Northern Peace Democrats to a den of poisonous snakes. Steele was too much of a good Union soldier to be purely Copper, but the line between War Democrats and the Copperhead/Peace Democrats was not always quite as clear as it seemed. While the former supported prosecuting the war and the latter did not, there was not a little sympathy and some lingering agreement between the two factions. On the other hand, War Democrat rivalry with the Radical Unionists, of which the Republican Party was the political expression, was often acrimonious and frequently more clearly defined.

For their part, the Copperhead/Peace Democrats disapproved of Lincoln’s suspension of the writ of habeas corpus and denial of freedom of the press, opposed the confiscation of Confederate

⁷ Christ, *Civil War Arkansas*, 147.

⁸ Ibid, 155.

⁹ Ibid, 272. Boulden, *So Long as Strangers are the Rulers*, 11-12.

property, urged draft resistance, deplored the expansion of Federal power at the expense of the states, and, while nominally for the Union, insisted upon a negotiated and immediate peace with the South. Also, if not offering downright resistance to abolition, they favored a more gradual, compensated emancipation. In a word, they considered Lincoln a tyrant and his actions against themselves and the seceded states to be unconstitutional. In their view, hotheaded Abolitionists had caused the war and Lincoln was their dictatorial, sectional instrument.

In contrast, the Radical Unionist/Republicans favored ruthless prosecution of the war to final victory, immediate abolition of slavery without compensation and confiscation of Rebel property. In their view, the hotheaded secessionists leaders who had caused the war should be hanged as traitors, while insisting that all suspension of civil liberty against them and their Copperhead allies was justified as a necessity for saving the Union and ending human bondage.¹⁰

In Steele and Davidson, it is clear that the Union army in Arkansas manifested the same fissures erupting throughout the national body politic that was not overtly Confederate. And once in Little Rock, the army soon found itself entangled in the political divisions of the state it was supposed to rule, pacify and reconstruct.

Towering over this scene is the titanic figure of Abraham Lincoln. On December 9th, 1863 he announced his “Proclamation of Amnesty and Reconstruction” or his “Ten Percent Plan,” which provided pardons and restoration of civil rights to all those who accepted the end of slavery and swore allegiance to the United States and provided further that when a number equal to 10% of the votes cast in 1860 had sworn their loyalty, they could organize a state government preparatory to reentering the Union.

William Fishback and his allies in the Arkansas Union movement, such as Isaac Murphy and Yonley, saw this 10% plan

¹⁰ Boulden, *So Long as Strangers are the Rulers*, 33-34.

as a great opportunity for the state politically and for themselves personally. They proposed that a convention be held by Unionists to reorganize state government, rewrite the constitution, abolish slavery and call an election in which “the people” (loyalists) would approve the new arrangement as well as elect the slate of new state officials. They, of course, would stand for office, presenting themselves as representatives of a new political power structure acceptable to all Union opinion everywhere. This convention was to convene in Little Rock from January 4th to the 23rd and produce what came to be popularly known as the “Fishback Constitution.”¹¹

William Meade Fishback (1831-1903), son of a prosperous Virginia farmer, attended the University of Virginia, taught school and read law in Richmond. He then moved to Springfield, Illinois, where he practiced, and also worked for Abraham Lincoln as surveyor of real property and as what now might be called a “case runner.” He clearly had ambitions to partner with Lincoln but Lincoln sent him to Arkansas for reasons that are unclear but ostensibly to recruit clients. However, the two remained friends and maintained a fairly steady correspondence.¹²

One cannot review the career of Fishback without gaining the impression that he was something of an opportunist. He was quite a slippery fellow, and Dr. Thomas DeBlack opined that Fishback was given to “political flip-flops.”¹³

As a delegate to the first secession convention in Arkansas Fishback voted against it; then in the second he voted for it. He joined the Confederate militia as a Lt. Colonel and fought for the Southern cause at the battle of Wilson’s Creek. However, he then

¹¹ Carl Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas*, (Baton Rouge: LSU Press, 1994), 159-162. Boulden, *So Long as Strangers are the Rulers*, 29-31.

¹² Phillip H. McMath, “History? Legend? Symbol?” 112-113. Boulden, *So Long as Strangers are the Rulers*, 13-15.

¹³ Thomas DeBlack, *With Fire and Sword*, (University of Arkansas Press, 2003), 106-107. After Reconstruction, as yet another example of his political harlotry Fishback flipped into a Democrat and was elected governor (1893-95), defeating W.G. Whipple, husband of Mary Dodge who had played her on part in the Dodd story.

surfaced in St. Louis, Missouri, and became active in Unionist politics as editor of a newspaper of that persuasion, *The St. Louis Democrat*. After the fall of Little Rock in September, he returned in October and declared himself to be a “Radical Unionist.” Involved in raising troops for the Union war effort, he did not serve in combat, but by December had become part of a group styled by historian Benjamin Boulden as the “The Radical Union Triumvirate” consisting of himself, Isaac Murphy and General John Wynn Davidson.¹⁴

Yonley (1825-?), another Virginian, studied law, came to Little Rock and in 1861 supported secession and enlisted in the Confederate army, but later converted to Unionism.¹⁵

Also in December, with the assistance of Yonley, Davidson, and Murphy, Fishback quickly formed a hard-core Unionist newspaper the *Unconditional Union* that was critical of “Copperheadism.” Basically the Radical Unionists considered that the Amnesty Oath was “too lenient” and should be restricted to original Unionists. They supported the Unionist convention, favored class warfare against the planters and a retributive policy against Rebels generally. Their man for Reconstruction Governor was Isaac Murphy.

Careful to avoid personal attacks on Steele, the *Unconditional Union* attacked his more “conciliatory” policies and went so far as to praise General Davidson’s combat record while ignoring Steele’s.

Not to be outdone, General Steele found his voice in a newspaper of his own, the *National Democrat*, and encouraged Dr. Cincinnatus V. Meador, its editor and chief organizer, who waged a newspaper war against the Radical Unionists, and through them, Davidson. They favored broad application of the Amnesty Oath to include former Confederates, were against the Unionist convention, and were opposed to a Reconstruction policy of

¹⁴ Boulden, *So Long as Strangers are the Rulers*, 11-12.

¹⁵ McMath, “History? Legend? Symbol?” 112. Chief Justice of Ark. Supreme Court, 1864-66, per the “Fishback Constitution.” *U.S. Civil War Soldiers*, 1861-1865.

“oppression and punishment” or what attempted to “create divisions where none should exist.” Their man for governor was, like Meador, an erstwhile Confederate turned Copperhead, A.C. Reynolds, a planter from Pine Bluff.¹⁶

Why would Steele tolerate this overt partisanship on the part of Davidson, a subordinate serving at his pleasure? Because removing him would not be easy and could very well result in his own demise. A dismissal would be an attack not only on Davidson, but also Davidson’s supporters, Fishback, Murphy, Yonley and their Northern Radical allies. This same concern may well have influenced Steele’s decision not to spare David O. Dodd’s life since it would add fuel to the charge that he was coddling the Rebels.

The opposition is never silent, and ignoring Davidson, Meador opened fire on Yonley, calling him a “chuckle-headed fool,” and “an ultra on the Negro,” while tagging Fishback as “Fishy.”¹⁷

Tensions were ever rising when on Christmas Eve some 2,000 people attended a Little Rock Copperhead convention. General Steele sent his Chief of Staff, Colonel Francis Manter, to address them sympathetically. Not to be outdone, Fishback also appeared and spoke. After he finished, many walked out in protest. Clearly, while officially silent themselves, the generals were shouting at each other through surrogates.¹⁸

Meanwhile, the situation in the Union army relating to Steele’s “conciliatory” policies had reached a crisis. One Confederate Major Rapsley had, under a white flag of truce, ridden into town only to be wined-and-dined by Steele and then permitted to leave without being in any way inconvenienced, much less detained. Too, the issuing of reimbursement vouchers to Rebels or their sympathizers for property lost to Union foraging parties was especially galling. Particularly scandalous was one provided to

¹⁶ Moneyhon, *Impact of the Civil War*, 160-164. Boulden, *So Long as Strangers are the Rulers*, 19-22.

¹⁷ Boulden, *So Long as Strangers are the Rulers*, 42-43.

¹⁸ *Ibid*, 26-27.

Confederate Cavalry General James Fagan's wife. Davidson's cavalry, for whom scrounging feed for their horses was a constant necessity, complained that they had to ride at least 30 miles out of Little Rock to find forage beyond protected Confederate homesteads.¹⁹

Perhaps worst of all was the "middleman" trade that was permitted to develop between merchants and Southern sympathizers. Steele's Provost, Lt. Col. J.L. Chandler, whose job was to issue passes and vouchers, had in the opinion of many created "a supply depot for the middlemen doing business with the Confederacy."

Thus we see not only an intense political conflict between Davidson and Steele, but a bitter psychological one as well. One was an ambitious, gung ho, fairly young, very hard-case, martinet cavalry officer, who wished to pursue ruthlessly a war that he fervently believed in to final, glorious victory. But he found himself saddled with a fraternizing, rather sedentary superior whose youthful ambition had finally found its middle-aged level as a major general and who apparently wished to do nothing more than sit out the war with as little botheration to himself and his command as possible. One civilian described the Commander of the Department of Arkansas, ensconced as he was in the rather grand Ashley Mansion, as follows: "General Steele at Little Rock lives quite like an Eastern prince with his harem, wines, dogs, horses, equipages, and everything in great style."²⁰

It was into this maelstrom, this battle between two generals asserting their own particular clashing personalities, ambitions and vanities, but also their two very different visions of war and Reconstruction for Arkansas, that young David O. Dodd found himself arrested, tried, and hanged as a Rebel spy on January 8th, during the Unionist convention.

¹⁹ Boulden, *So Long as Strangers are the Rulers*, 38-39.

²⁰ Moneyhon, *Impact of the Civil War*, 165-166.

Soon after Dodd's death, at the end of January, Steele, with the help of his friend General Halleck, fired Davidson, who tried to save himself by appealing to Halleck to let him come and explain things to Lincoln but Halleck refused. In February Davidson sent a letter to the president along with one from Provisional Governor Murphy expressing their complaints about Steele. Murphy stated, "Any action against him [Davidson] will be against the Union element here." Lincoln then threatened to send another general to investigate and the Unionists retreated.²¹

Davidson had lost. Yet when he arrived in St. Louis he fired off a heavy barrage of complaints to the Radical Republican Senator Ben Butler's Committee on the Conduct of the War outlining in detail Steele's conciliatory policies. He said "a good Union man was not welcome in General Steele's headquarters," adding, "It was a matter of common remark in the army that a better provost for the rebels than Lt. Col. Chandler couldn't be found in Price's army."²²

Let us return now to the pawn in this chess match between our two generals: David O. Dodd. He was born November 10, 1846 in Lavaca County, Texas, son of Andrew Marion Dodd, a rather restless, itinerate tradesman, and Lydia Echols Owen. David had an older sister Senhora and a younger one, Lenora. In 1858 the family moved near to Benton, Arkansas, where they had hailed from originally. In 1861 they moved to Little Rock where Andrew had a sister-in-law, Mrs. Susan A. Dodd. The girls attended school

²¹ Moneyhon, *The Impact of the Civil War*, 163. Steele said Davidson was a "discordant element" and would "intrigue against me."

²² Boulden, *As Long as Strangers are the Rulers*, 36.

while David, or “Davie” as he was known affectionately, attended St. John’s Masonic Academy. He was popular and rejoiced in some success with the young ladies, but he apparently contracted malaria and had to relinquish school for work in a telegraph office. It was here that he learned Morse code.

Andrew, meantime, a modest man of modest means and education took up his trade as an army “sutler.” (Sutlers were peripatetic peddlers that followed the armies selling sundries to soldiers.) Andrew, accompanied by David, attached himself to a Confederate regiment in Mississippi, but David, after traveling gypsy-like in Mississippi for some time, returned to Little Rock rejoining his mother and sisters, until Andrew could meet them. Then, early in November of 1863, David found work with Meyer & Lopez, sutlers to a pair of Union units, the 1st Missouri Cavalry, and the 10th Illinois Cavalry, both of the 1st Union Cavalry Division, commanded by Davidson. Afterwards, David joined Philips & Brothers, sutlers to the 43rd Illinois Infantry.

At last, in early December, Andrew arrived, gathered his family and took them to Camden in South Arkansas. While not a particularly political family, it is clear from their correspondence they were Southern sympathizers.²³ According to one source, Andrew sneaked past Federal outposts and “arranged through friends and relatives to have a wagon waiting for the family beyond Union lines south of Little Rock, and on December 1st, 1863, under cover of darkness, the father and mother, son and daughter traveled cross-country toward Benton.”²⁴ If true, such a surreptitious departure would probably not have gone unnoticed.

Like all armies, Steele’s was busy sustaining itself and, encouraged by his “conciliatory policies,” the little town soon prospered into a large supply depot. Local businesses quickly developed a “middleman” trade between the two sides that Davidson found so abhorrent and Andrew Dodd so alluring.

²³ McMath, “History? Legend? Symbol?” 109-111.

²⁴ Jerry Russell, “Ark. Boy Hero of the Confederacy,” 11/11/03, Confederate Historical Institute.

Meanwhile, Andrew, safely in Camden, concocted a scheme to profit from the flourishing “middleman” trade. He decided to send David back to Little Rock to solicit capital and negotiate the purchase of tobacco for storage and sale. David needed a transit pass through Confederate lines and another from Steele’s provost, Chandler, upon his return. The Confederate General, Major General Fagan, gave David a pass, but according to Steele, extracted a promise from David to supply him with information about Union forces in Little Rock.²⁵

So, on Christmas Eve, 1863, David O. Dodd, the future “Boy Martyr of the Confederacy,” quietly entered Little Rock riding a mule. He evinced no interest in the Copperhead Convention, or in politics at all, but instead stayed at his Aunt Susan’s house, socialized and went about his father’s business. He also delivered his sisters letters to their friend, seventeen-year-old Minerva Cogburn,²⁶ and, apparently with the help of the pretty sixteen-year-old Mary Dodge, the daughter of a former mayor, Dr. R.L. Dodge, a physician originally from Vermont, Dodd, acquired information about the Union Army which he encrypted in his Morse code book.²⁷

Completing his business, on the 28th or 29th Dodd left Little Rock on his mule for Camden. Initially, he passed through the lines of the 1st Missouri Cavalry where a picket stopped him and took away his pass. Later he was stopped a second time, and without a pass, was arrested and sent to a post where an officer

²⁵ Letter of 1/8/1864 from Steele to Ladies, ser. 1A, box 1, Frederick Steele Papers, Stanford University, Palo Alto, CA. McMath, “History? Legend? Symbol?”110.

²⁶ Letter of 12/25/1863 of Minerva Cogburn, Dodd Papers, Proceeding of Military Tribunal, 10.

²⁷ Durand Whipple, son of Mary Dodge, to Dallas T. Herndon, letter of 9/23/1915, Dodd Papers, Ark. History Commission. Whipple indicated this information became known to Steele who sent his mother, described by Whipple as an “ardent little rebel,” and Dr. Dodge back to Vermont. This was confirmed to this writer per e-mail 9/24/14 from Winnie Whipple, great-grand child of Mary Dodge Whipple. She refers to it as “Mary’s exile.” (See Attachment A.)

examined his code book, then sent him to another post where he was searched.

Found were the following: a derringer pistol, a birth certificate verifying he was 17 signed by his father, some Confederate money, two letters to his sisters from a friend, locks of a girl's hair, his Confederate pass, some US dollars, some Confederate postage stamps, and the notebook of Morse code, deciphered sufficiently to arrest him. Based on this evidence, he was kept overnight at the Ten Mile House. The next day, Dec. 30th, a Captain Baird delivered Dodd, along with the items found, directly to General Davidson personally.²⁸

Davidson had a telegrapher, Captain Clowry, translate the code revealing details of guns and units of Steele's army.²⁹

THE FIRST DAY December 31, 1863

On the very next day, Dodd was arraigned before the Military Tribunal, consisting of six officers with Brigadier Gen. John M. Thayer as President.

General John Wynn Davidson signed the charge that was read by the Judge Advocate, Captain B.F. Rice. (Judge Advocate is the prosecutor.)

Charge: Being a spy.

He "...did there secretly possess himself of information regarding the number, the kind, and position of the troops of said Army of the United States, their commanders, and other military information valuable to the enemy now at war with the United States, and having thus obtained said information did obtain a pass from the Provost Marshal General's office, and endeavor to reach the lines of the enemy – therewith; when he was arrested at the cavalry outposts of said Army – and did otherwise lurk, and act as a spy of the Rebels now in arms against the United States..."

²⁸ Proceedings of the Military Tribunal, Dodd Papers, Ark. History Commission, 7.

²⁹ Ibid, 7-8.

J.W. Davidson
Brig. General
U.S. Volunteers

The items listed were: Memorandum code book, Confederate pass, a pocket book, Federal and Confederate money, the pistol, “two letters from Rebels of this City to parties outside our lines.”

The only witnesses listed were “Captain R.C. Clowry, Asst. Q.M., USA, Captain John Baird, 1st Mo. Cavalry,” and “Vedettes of the 1st Missouri Cavalry.”

Dodd, without counsel, pled “Not Guilty.” Then the court was adjourned to the next day.³⁰

COMMENT

Dodd was sent directly to Davidson and not to the Provost Marshal who normally would have been the proper party, and Steele, not Davidson, as “convening authority,” should have signed the charge. No reason is given why Steele did not authorize the arraignment and charge. Was Davidson concerned if Dodd were sent to Steele’s headquarters, he might be released?

Also, the alacrity is remarkable. And how could the government investigate and organize its case so quickly? How could the defense?

Note on the exhibit list, the birth certificate establishing his age as 17 – a minor, was omitted. Why?

THE SECOND DAY January 1, 1864.

³⁰ Ibid, 1-2.

“The case of David O. Dodd resumed. The prisoner requested that he be allowed counsel which was accorded him, and T.D.W. Yonley and William M. Fishback appeared as his counsel.”

The prisoner then offered to take the oath of allegiance, prescribed by the President of the United States, in his Proclamation accompanying his late message to Congress, and accept the Amnesty therein offered, and thereupon tendered the following plea.

At this point the signed oath of allegiance was read aloud and tendered to the court. It had been administered and sworn to that morning by Dodd to Lt. Col. Chandler, as Provost.

It was objected to by the Judge Advocate that “the crime with which the prisoner is charged with does not come within the purview of said proclamation.”

There was no response or argument from defense counsel opposing the Judge Advocate’s rather paltry objection.

The Court then adjourned to consider it and then returned and ruled, “it was not a defense to the charge.”

Whereupon the Court adjourned till the next day.³¹

COMMENT

How and why were Fishback and Yonley chosen? It would seem that Davidson arranged this. From here forward, the center of gravity is with Davidson, through his allies, Fishback and Yonley, rather than Steele, their antagonist. But given their involvement in the convention beginning in three days, how could they accept such a task? Fishback was considered a “prime mover” of the new constitution, and Yonley a delegate, so how could the time be found, or, indeed, the inclination, to defend a capital case?

Moreover, how could an acquittal of a traitor possibly endear them to Davidson, Murphy or other Radical Unionists? As

³¹ Ibid, 3-4.

Southerners, and erstwhile Confederates, would they not be anxious to prove their loyalty?

The alliance of Davidson, Fishback and Yonley as part of their ongoing struggle with Steele, had not only formed a opposition newspaper and the writing of a Radical Unionist constitution, but now was embarked on the a trial of a spy involved in the despised middleman trade.

By not responding to the Judge Advocate's objection to the oath, the defense revealed that it would be most accommodating to the prosecution. In leaving it un-rebutted, they conceded the point without a fight.

WHAT COULD THE DEFENSE DO ON THE SECOND DAY?

Counsel should have made several pre-trial or *In Limine* (threshold) motions orally and in writing. These would relate to continuance, jurisdiction, mootness, discovery and judicial notice.³²

MOTION IN LIMINE #1, CONTINUANCE.

The defense should move for a continuance (delay), citing lack of preparation time. The accelerated trial was unnecessary and unfair. Any delay would be beneficial. It would enhance trial preparation, but would also increase public pressure on Steele and provide time to contact Lincoln whose policy proscribed the execution of minors. Correspondence between Lincoln and Steele was ongoing, and Fishback, given his friendship with Lincoln, should have established contact.

Even a denial would be of benefit -- it would lay the thematic foundation that Dodd was being rushed to the gallows. Focus

³² "Judicial Notice," The act whereby a court will, of its own motion, without evidence, recognize the truth of certain facts, see the U.S. Supreme Court case of *Ohio Life v. Debolt*, 16 Howard 435 (1853).

would be on more than the Tribunal -- an eye on the public, an eye on Steele, and both eyes on Lincoln, had to be the strategy.

Why wasn't the motion made? There was a clear conflict of interest. Fishback and Yonley had to dispose of this case as fast as possible since they had other political fish to fry at the convention.

MOTION IN LIMINE # 2, LACK OF JURISDICTION

Since martial law was in force, tribunals were considered appropriate. (Tribunals should not to be confused with courts-martial, which apply only to the military itself.) Things were confused, so General H.W. Halleck, once Chief of Staff, attempted to impose order upon this legal muddle. The result was the issuance of General Order 100, effective April 24, 1863, which applied to martial law.³³

Section 1, subsection 4 states:

Martial law is simply military authority exercised in accordance with the laws and usages of war. *Military oppression* is not martial law; it is the abuse of power which that law confers. As martial law is executed by military force, *it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor and humanity* – virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.³⁴ (Emphasis added.)

The defense should ask the Court to take judicial notice of G.O. 100 and argue hanging Dodd would violate Lincoln's policy against executing minors and would amount to "military oppression."

³³ Edward Steers, JR, *The Trial*, The University of Kentucky Press (2003), XCVII-C. Fishback and Yonley knew of G.O. 100 because they refer to it in Dodd's statement. Proceedings of the Military Tribunal, Dodd Papers, Ark. History Commission, 20.

³⁴ Steers, *The Trial*, 410-419.

Additionally they should challenge the tribunal's jurisdiction as unconstitutional, invoking Articles 5 and 6 of the Bill of Rights. This eventually proved effective in the case of *Ex Parte Milligan*.³⁵

Further, when the Judge Advocate objected to the Oath of Allegiance stating the crime "does not come within the purview of said proclamation," defense should have asserted that the crime was very much "within the purview of the proclamation," and thereby created a question of first impression that the Tribunal was not competent to decide. The spirit of the Oath and its political intention was unique to the president's policy of Reconstruction and reconciliation. As such, the question could only be resolved by Federal courts, the Attorney General or Judge Advocate, and not by *ad hoc* tribunals -- i.e. the Oath, was tantamount to a pardon conferring immunity.

That the Oath was considered in adjournment shows the seriousness with which it was viewed. Had a vigorous argument been on its behalf, Dodd may have lost but won a delay – sustained pressure may well create a sentiment for some solution short of a hanging. But no continuance was requested, jurisdiction challenged, or a defense offered of the Oath – everything was relinquished and nothing gained.

Assuming everything was overruled, losing motions are not without value. Often they lead to the losing party finally winning something. "Losing motions bark till the court throws out a bone," as the saying goes.

So Dodd's lawyers surrendered without a fight. Fishback and Yonley like their Radical Unionist allies, Davidson and Murphy, had no interest in compromising tribunal jurisdiction, expanding the Oath's purview, or overlapping the trial with the convention. On the contrary, the former was an important weapon in their retributive war against traitors and their political enemies, and the

³⁵ *Ex Parte Milligan*, 71 U.S. (4 Wall) 2, (1866). Milligan's counsel was James Garfield, the future president. See also the U.S. Supreme Court case of *Webster v. Reid*, 11 Howard 445 (1850), stating that the lack of jurisdiction renders a court "powerless."

Oath was already in their view “too lenient.”³⁶ Former Rebels would never vote for them – restricting the Oath was a way of restricting the franchise to their own “loyal” supporters. This suggests, at least in part, their readiness to assume the Dodd “defense” and their quiescence in the course of it. In a word, the Dodd trial was a political duel aimed at Steele.

MOTION IN LIMINE # 3, MOOTNESS

Defense should note the prosecution neglected to list Dodd’s birth certificate establishing his minority.

“This is to certify that David O. Dodd was born in November, 1846 and that he has no connection with the army.”

A.M. Dodd

The birth certificate should be defendant’s exhibit #1.

Section V, Sub-Section 88, of Order 100, states: “The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.”³⁷

Punishment is “hanging by the neck” and no other. There is no lesser punishment provided. President Lincoln had specifically stated no minor under the age of eighteen shall be executed.

In an order from the War Department of Washington, D.C., of October 8th, 1863:

To Major-General Meade, Army of the Potomac:

I am appealed to in behalf of August Bittersdorf, at Mitchell’s Station, Va., to be shot tomorrow as a deserter. I am unwilling for any boy under eighteen to be shot, and his father affirms that he is yet sixteen. Please answer. His regiment or company not give me (sic).

³⁶ Moneyhon, *The Impact of the Civil War*, 164.

³⁷ Steers, *The Trial*, 416.

Signed: A. Lincoln.³⁸

Counsel should have moved for dismissal, since, even if Dodd were found guilty, he cannot be hanged because of his minority, and therefore, since no lesser punishment is provided other than hanging under G.O. 100, the prosecution is thereby rendered moot.

MOTION IN LIMINE #4, DISCOVERY

Regulations Related to Passes And All Exculpatory Evidence

Dodd should request all Provost regulations concerning issuance of passes. A picket took Dodd's pass because "he did not need a pass anymore" and destroyed it. Dodd needs to establish whether or not this conformed to regulations.

Also, all exculpatory evidence such as notes or witness statements taken by or in the possession of his interrogators, etc. should be requested.

THE THIRD DAY
January 2, 1865

Witness #1, Pvt. Olderburg
Picket from Co. E. 1st Mo. Cav.

DIRECT EXAMINATION (Per Judge Advocate)

Asked "when and where and under what circumstances" he had ever seen the prisoner before, said it was on the 28th of December on picket duty "on the Hot Springs road about 8 miles

³⁸ Carl Sandburg, *Abraham Lincoln, The War Years, Vol. III*, (New York: Harcourt, 1939), 466.

from Little Rock.” Asked where he was going and he said he was going some 15 miles “in the country to see friends” and so picket said “he did not need a pass anymore” and took it and tore it up later.

“I tore up the pass on the post when I was relieved. I did not know he was arrested when I tore it up.”

NO CROSS-EXAMINATION

Witness #2, Sgt. Frederick Miehr
Co. B, 1st Mo. Cav.

DIRECT EXAMINATION (Per Judge Advocate)

Same question re “seeing” Dodd. Same answer, either the 28th or 29th. He was on the Benton Road, about 12 miles from Little Rock. His vedette had stopped him. The Sgt. went forward and questioned Dodd. He did not have a pass but said he had one and it was taken. Said he was going to see a man named Davis to get a horse. He then arrested him.

NO CROSS-EXAMINATION

Witness #3, 1st. Lt. C.F. Stopral
Acting Adjutant of 1st. Mo. Cav.

DIRECT EXAMINATION (Per Judge Advocate)

He said he was in his office when Dodd was brought to him on the evening of the 29th by one of the pickets. He asked him if he had a pass and he said he did not nor did he have any identification. He said he must have something and he “produced the memoranda book.” The Lt. examined it and it had some telegraphic writing that translated to be “the 3rd. Ohio Battery has

four guns. Brass. 11th Ohio Battery has six guns.” That he could not make out the rest and the other writing he did not read because he did not have time. He gave it to Captain Hanna, the commanding officer. He asked his name and he said he was David Dodd, seventeen and from Lavaca County, Texas.

CROSS-EXAMINATION (Per the Defense)

This is the only cross-examination question asked by the defense in the entire trial. It is not clear by whom.

“Are you sure that the prisoner said he lived in Lavaca, Texas or was born there?”

“I understood him to say that he lived there, but am not quite certain. I got the idea from his answer that that was his place of residence, but that he had been clerking here.”

REDIRECT (Per Judge Advocate)

This is the only redirect asked in the entire trial.

“Have you ever seen the prisoner before the time he was brought to your office, if so when, where and how often.”

“I can’t say that I have.”

Witness #4, Captain George Hanna
1st. Mo. Cav.

DIRECT EXAMINATION (Per Judge Advocate)

The Regimental Commander is asked the identical question as the other two witnesses about “seeing” Dodd. Replies he was brought to his HQ on the evening of the 29th after dark. A Lt. Stopral had the memoranda book taken from Dodd. Hanna examined it and said it looked “suspicious.” He asked Dodd’s name and if he had a pass. He said he did and could recognize the man who took it. An effort was made to find him but “the pickets

had been relieved” and the “man was not here but had come into camp.” That Dodd said “the pickets had taken up his pass in the morning.”

The other items listed were found. Dodd was kept overnight. Hanna instructed Captain Baird the next day to take him to Davidson or the Provost.

NO CROSS-EXAMINATION

Witness # 5, Captain John Baird
Co. B, 1st Mo. Cav.

DIRECT EXAMINATION (Per Judge Advocate)

Delivered Dodd to Davidson personally with the items. Davidson examined them, particularly the CSA pass, codebook and birth certificate.

NO CROSS-EXAMINATION

Witness # 6, Captain Robert C. Clowry
Asst. Q.M.

DIRECT EXAMINATION (Per Judge Advocate)

Interpreted the Morse code in the memoranda book. Saw it for the first time at Davidson’s HQ and Dodd was present. He read the following for the Court.

3rd Ohio Battery has 4 guns – brass. 11th Ohio Battery has 6 guns – brass. (1st page)

Three brigades of cavalry in a division. Three regiments in a brigade, brigade commanded by Davidson. Infantry: 1st Brigade has three regiments. 2nd Brigade has 3 regiments, one on detached service – 1 battery 4 pieces of Parrot guns. Brig. General Solomon commands a division, two brigades in a

division; three regiments in one brigade, two in the other. Two batteries in a division. (2nd page)

He was asked if he had any conversation with the prisoner and he replied.

“I asked the prisoner if he was an operator, and he said he was not but that he had been a messenger in Snow and Ketchum’s telegraph office and I understood him to say that he wrote the characters in this book himself.”

NO CROSS-EXAMINATION

At this point the Judge Advocate introduced the exhibits originally listed plus the birth certificate.³⁹

THE FOURTH DAY January 3, 1864

Witness # 6

1st Lt. George O. Sokalski
2nd. U.S. Cav., Acting Asst. Adjutant of General Steele

DIRECT EXAMINATION (Per Judge Advocate)

He gives an analysis of the organization and cannon of the Army in an effort to corroborate information found in Dodd’s memoranda book. However, without commenting, he correctly lists Davidson as the division commander. (Listing him as a brigade commander was in error.)⁴⁰

³⁹ Proceedings of the Military Tribunal, Dodd Papers, Ark. History Commission, 4-10.

⁴⁰ Ibid, 11-15.

NO CROSS-EXAMINATION

At this point the prosecution rested its case. There were no motions by the defense.

COMMENT

Despite multiple credibility and factual issues only one question was asked on cross-examination by the defense. Each witness had obviously been coached to deny knowing Dodd, only in “seeing” him. Their answers were evasive and should not have gone unchallenged. The defense should have developed that Dodd worked as the regimental sutler and would have been known by the government witnesses, plus his returning south with his family would have been known and resented. Moreover, the policy of vouchers, passes and middlemen was a point of great irritation, particularly to cavalry. Was the real reason Oldenburg tore up the pass was he did not think Dodd should have it at all?

Didn't the regulations require passes be turned in and accounted for? Oldenburg made the astonishing admission that “I did not know he was arrested when I tore it up.” He should be pressed on this on cross. Where was he and when he did learn of it? And how did he learn of it?

Miehr should be asked if he arrested everyone without a pass. Wasn't that the only reason he arrested Dodd? Couldn't he have found Oldenburg if he had really wished to?

Stopral appears to be lying. It is unbelievable that Dodd would not mention he had a pass but it was taken. Nor would he offer the incriminating memoranda book as identification when he had the birth certificate. Nor is believable that Stopral did not examine the memoranda book because he “did not have time.” Then he blunders into saying Dodd told him he was from Lavaca, Texas

when he was not. How would he have known he was a clerk? Stopral probably knew Dodd previously. Defense counsel awakened from their torpor to ask the only cross-examination question of the entire trial. Note counsel refers to his own client as “the prisoner” and thus depersonalizes him. He should refer to him as “David.” The Judge Advocate tried to rehabilitate Stopral with the only redirect question ever asked. This tips off the prosecution’s concern that the troopers knew Dodd before and were hostile to him.

Hanna is evasive by not quite answering about first “seeing” Dodd saying “he was brought to my headquarters.” He is trying to avoid lying. He was vulnerable about Dodd being his regiment’s sutler, the policies concerning vouchers and the resentments about middlemen, foraging, and the cavalry’s frustrations about Steele’s policies.

As the commanding officer he could have easily found the first picket and verified the pass being torn up. Would he then have released Dodd? If not, why bother to look for Oldenburg? If yes, what was “suspicious” enough to hold him? Why did he give Captain Baird the option of going to the Provost or Davidson? Wasn’t the Provost the proper investigation authority?

Baird omits saying he was given the option by Hanna to take Dodd to the Provost. Why? What was the policy in such matters?

Clowry should have been asked if there was any evidence of “positions” of guns for units. There was not. That the information found on Dodd is generally known and valueless. That listing Davidson as brigade and not division commander was in error.

Questioning of Sokalski would develop the inaccuracy and uselessness of Dodd’s information and that it was generally available.⁴¹

⁴¹ Moneyhon, *The Boy Martyr of Arkansas*, 206-207 and Appendix A, establishes clearly the uselessness of the information.

MOTION TO DISMISS

At the close of the government's case, the defense should have moved for dismissal -- there is no proof that Dodd had knowledge of the incriminating evidence in the codebook. The fact that he had possession of it did not prove he knew of its contents. The best the prosecution could do was Captain Clowry who said, "I understood him to say that he wrote the characters in this book himself." This is tentative and ambiguous. What "characters?" The book was full of "characters," harmless, erroneous and of general knowledge and of no use to the enemy. Likewise there is no evidence, despite the charge, that Dodd did "lurk" or mention any "position of troops."

Moreover, the matter was investigated by officers under the supervision of Davidson and if Dodd had made any such admissions they surely would have been called as witnesses. Why weren't they?

COMMENT

The case should have been dismissed. The government did not sustain its burden of proof.

DEFENDANT'S CASE

DIRECT OF MR. BASS (Per the Defense)

He established that he had known Dodd for some 5 or 6 years and they clerked together for Meyer & Lopez, sutlers for the 1st Mo. Cav. and the 10th Ill. in November from the 4th to the 16th and then David went to work for a Mr. Philips who was sutler for the

4th Illinois till about the 1st of December till “his father came and took his family off and he went with him.” That he made no effort to conceal himself when he returned on or about the 23rd or 24th and was of “good reputation”⁴²

NO CROSS-EXAMINATION

COMMENT

Bass established his working with the 1st Mo. Cav. as a sutler but could have developed it further by establishing the details related to the soldiers trading with M&L who might have known Dodd in that context. Perhaps he could even identify certain soldiers who were witnesses as customers who knew Dodd. (So, why are they lying or evasive about knowing him?)

Also, perhaps he could have established that Andrew’s coming and taking the family south was generally known and resented.

The defense then called a series of witnesses who knew Dodd. They did no more than say he was of good character and that he went about Andrew’s business during the December visit. Save one, they were not cross-examined and did little good and no harm. A Mr. Blanks, a local businessman, was called to establish the business aspect of the December visit.

Interestingly, however, the Court asks its first question of the trial inquiring if Dodd actually got a pass from the Provost. Blanks replied, “He told me he had one.”⁴³

Why would the Court be in doubt? If so, why did it not call Lt. Col. Chandler to establish that fact and the regulations related to the issuing and accounting for passes? Also, shouldn’t Dodd have been sent to the Provost instead of Davidson for the purpose of being charged?

⁴² Proceedings of the Military Tribunal, Dodd Papers, Ark. History Commission, 16-22.

⁴³ Ibid, 14.

The next day was the opening day of the Unionist constitutional convention and both Fishback and Yonley must have been anxious to conclude the trial, assuming they were even present. Indeed, it is not clear from the record whether one or both were there at anytime in the trial. They are mentioned as present on January 1, and no other. All other references are “By defense.”

THE FIFTH DAY

January 4, 1864

COMMENT

The defense should have rested and renewed all its motions to dismiss. Dodd should have remained silent. The defense should never prove what the prosecution cannot, but that is precisely what it did. Dodd did not testify, but Fishback and Yonley composed and extracted a written statement (erroneously styled as “Argument”) that effectively put the noose around their client’s neck. It not only provided the essential proof that was lacking in the prosecution’s case, but it even went out of its way to reinforce the credibility of the adverse witnesses. All of this was done under a perfunctory plea for mercy.

Here are a few key points.

It is also in evidence that I remained here but a few days, that during that time I came into possession of contraband intelligence which I essayed to convey to the enemy.

The statement goes on to plead his youth and allege that he was under the influence of others, but reasserts the damning admission in doing so.

I was furnished that intelligence by persons older and longer here, and that my mission of business was being used by these other persons as a

fitting opportunity and myself a fitting instrument, for furnishing the enemy with such intelligence that my very youth and inexperience rendered available to purposes that these men dare not undertake themselves.⁴⁴

These two statements are extremely damaging! Fishback and Yonley proved what the prosecution could not. There is no evidence that he “essayed to convey” or intended to furnish it to the enemy. Also, implicit is the admission he knew what it was.

As if this is not bad enough, Fishback and Yonley then have Dodd vouch for the credibility of the prosecution’s witnesses.

The witnesses I believe have intended to speak the truth with regard to the isolated facts of which they severally testified and they so far succeeded according to my recollection that I have nothing to complain of at their hands or anything material to correct, unless, indeed I could with that Captain Hanna had recollected better that he professes to have done in that part of his testimony which my citizenship at Lavaca, Texas.⁴⁵

He goes on to excuse Hanna by admitting he told him “I was born in Lavaca, Texas but living in Little Rock.”

Since defense counsel had no better wish than to enhance the credibility of the prosecution’s witnesses, this may explain, in part at least, their aversion to undermining it by cross-examination.

Indeed, one must wonder if either Fishback or Yonley was present when Hanna or Stopral testified, because Hanna never mentioned Lavaca, Texas. It was Stopral who did that.

Defense counsel did not ask to argue the case, so there was none by either side. The prosecution had no need and the defense no desire. The damaging statement saved them the trouble.

The Tribunal adjourned to consider its “solemn and momentous” verdict and returned a guilty verdict of 4-2. It is not said who dissented.

⁴⁴ Ibid, 21.

⁴⁵ Ibid, 17.

“The court, do therefore sentence the prisoner, David O. Dodd, that he be hanged by the neck until he is dead, at such time and place as the commanding General shall direct.”

It is customary to ask counsel if they have any objection to the form of the verdict. Counsel for the defense should object and reassert that the case is governed by General Order 100 that states as follows in Section 1, subsection 12.

Whenever feasible, martial law is carried out in cases of individual offenders by military courts; *but sentences of death shall be executed only with the approval of the Chief Executive*, provided the urgency of the case does not require a speedier execution, and then only with the approval of the chief commander.⁴⁶ (Emphasis Added)

Since there has been no proof of “urgency” on the part of the prosecution, David O. Dodd could not be executed without the approval of President Lincoln.

POST TRIAL

A post trial petition to vacate the sentence reasserting, among other things, the abovementioned General Order 100 mandating approval by the Chief Executive, should have been filed with General Steele, copies to the Judge Advocate General and President Lincoln. Of course, Fishback and Yonley did nothing of the kind.⁴⁷

It is abundantly clear from General Steele’s letter of January 8th “To the Ladies” he was deeply conflicted by the Dodd case and was looking for a way out. And he might very well have delayed

⁴⁶ Steers, *The Trial*, 411.

⁴⁷ Habeas Act of 1863 suspended habeas corpus for acts of rebellion. Also, Federal Courts were not open and operating in the E. District of Ark., F.M. Ross, *U.S. District Courts And Judges of Ark. 1836-1960* (2016), University of Arkansas Press, 63-70.

the execution had counsel called to his attention GO 100 coupled with notification to Lincoln and Advocate General. But the only post trial petitions were from the Little Rock Ladies.

In his letter Steele to them he states:

My sympathies have been so excited in behalf of this young man that I would not see a delegation of ladies, but I might be induced to shift responsibility which properly belongs to me.⁴⁸

He continues:

His youth and inexperience pled strongly in his favor as an individual, but as the object of punishment is not revenge but to deter others from committing similar acts it was necessary to make an example of a person *whom our sympathies tell us, was almost guiltless.* (Emphasis added)

Of course, the distraught Ladies were under no obligation, but Fishback and Yonley most certainly were.

Indeed, the execution of David O. Dodd without the approval of Lincoln was manifestly illegal. In fact, as Mark Neely explains in his analysis of Civil War judicial proceedings, the review by the president was supposed to be “automatic.”

Neely states:

Department commander, Judge Advocate general and general-in-chief could all be overruled by President Lincoln – if he reviewed the case. *Death sentences were automatically referred to him,* but the corollary to that

⁴⁸ (See Attachment B.) Frederick Steele Papers, Special Collection and Archives, Stanford University, Stanford, California.

rule was that other cases were not routinely referred to the president. (Emphasis Added)⁴⁹

Running parallel to the Dodd case was that of West Bogan, a freedman from Phillips County. On the morning of December 15, 1863, he murdered his ex-master, Monroe Bogan, with an axe. A Union general held him in a Helena jail until he could be brought before a military tribunal. It convened on February 1, 1864, and, after a three-day trial, he was found guilty and sentenced to hang. General Steele delayed the execution pending review by Lincoln via Judge Advocate Joseph Holt. In a letter to Lincoln of May 10th, 1864, Holt recommended clemency. The president agreed and on July 8th, 1864, Lincoln responded formally stating “sentence disapproved” and ordered West Brogan freed.⁵⁰

Why was David O. Dodd not afforded the same remedy of review as Bogan? Dodd was in January and Brogan in February of 1864. Wasn't it because the latter's counsel (or somebody) called to Steele's attention G.O. 100 and Dodd's did not? Can there be any doubt had he known of it, Steele would have availed himself of it?

Moreover, Fishback's personal relationship with Lincoln might well have proven decisive. Direct appeals to Lincoln were common and often quite effective. It's impossible to believe that Lincoln, notorious for compassion and his policy of reconciliation, would have executed a minor in possession of useless information.

So why was this not done? The answer is the same as why so much else remained undone – because the Fishback and Yonley simply did not wish to.

⁴⁹ Neely, page 164.

⁵⁰ Neely, pages 166&167, and the Encyclopedia of Arkansas History and Culture, West Bogan, (Trial of).

CONCLUSION

Fishback and Yonley undertook the awesome responsibility of defending a capital case in which they had a clear conflict of interest. Other than the feeble effort of offering the Oath of Allegiance, they made no motions, interposed no objections, asked only one question on cross-examination, made no record, undertook no argument, concocted a statement that was tantamount to an admission of guilt, made no effort at post-trial relief with General Steele or with President Lincoln. It's clear that the object of the trial was to defend their own political interests, to attack General Steele's conciliatory policies, and to embarrass him into hanging a popular and brave boy, who if he contrived to save, would only be further proof of his sympathy with traitors and Rebels.

Moreover, the hanging was clearly illegal and violated Lincoln's policy concerning the execution of minors and in clear violation of G. O. 100. To say that Fishback and Yonley were incompetent is too charitable.

On January 8th, 1865, David O. Dodd was choked off the back of a wagon in front of St. John's Masonic School where he had been a student. There is no record that Fishback, Yonley or Davidson was present. Perhaps they were at the convention.

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