



Lincoln Lore

January, 1987

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GRANT AND CIVIL LIBERTIES SOME CLUES FROM HIS EARLY SERVICE IN MISSOURI (Continued)

4. CONFISCATION OF PRIVATE PROPERTY. By October 1861 General Grant was commanding the District of Southeast Missouri, with headquarters at Cairo, Illinois. On the first day of that month he reported this incident to his superiors in St. Louis:

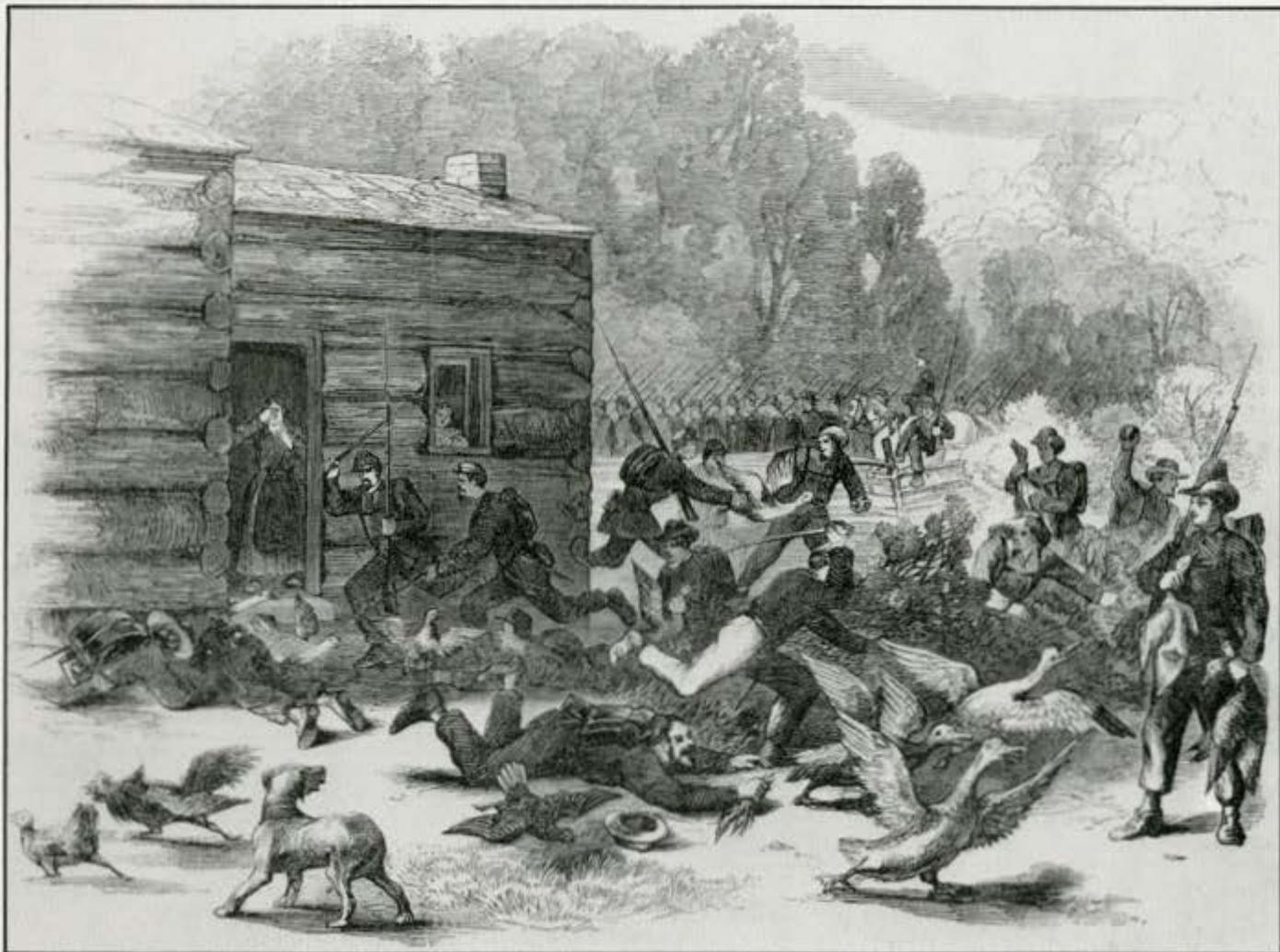
Day before yesterday I sent a force to Charleston to bring back goods that had been landed at that place. Accompanying is an inventory of the goods seized. I have my serious doubts whether there is any law authorizing this seizure, but feel no doubt about the propriety of breaking up the trade

now carried on. I respectfully refer this matter to the general commanding the Western Department for instructions.

Grant's actions were officially approved three days later.

5. CREATING A FREE-FIRE ZONE. Still in Cairo early in 1862, General Grant learned that four Union pickets had been shot on the morning of January 11.

If this is so [he told Brigadier General Eleazer A. Paine commanding at Bird's Point, Missouri], and appearances indicate that the assassins were citizens, not regularly organized in the rebel Army, the whole country should be



*From the Louis A. Warren
Lincoln Library and Museum*

FIGURE 1. Union troops foraging in Missouri. Were receipts given?

cleaned out, for six miles around, and word given that all citizens making their appearance within those limits are liable to be shot. To execute this, patrols should be sent out, in all directions, and bring into camp at Bird's Point all citizens, together with their Subsistence, and require them to remain, under pain of death and destruction of their property until properly relieved.

Let no harm befall these people, if they quietly submit but bring them in, and place them in camp below the breastworks and have them properly guarded.

The intention is not to make political prisoners of these people, but to cut off a dangerous class of spies.

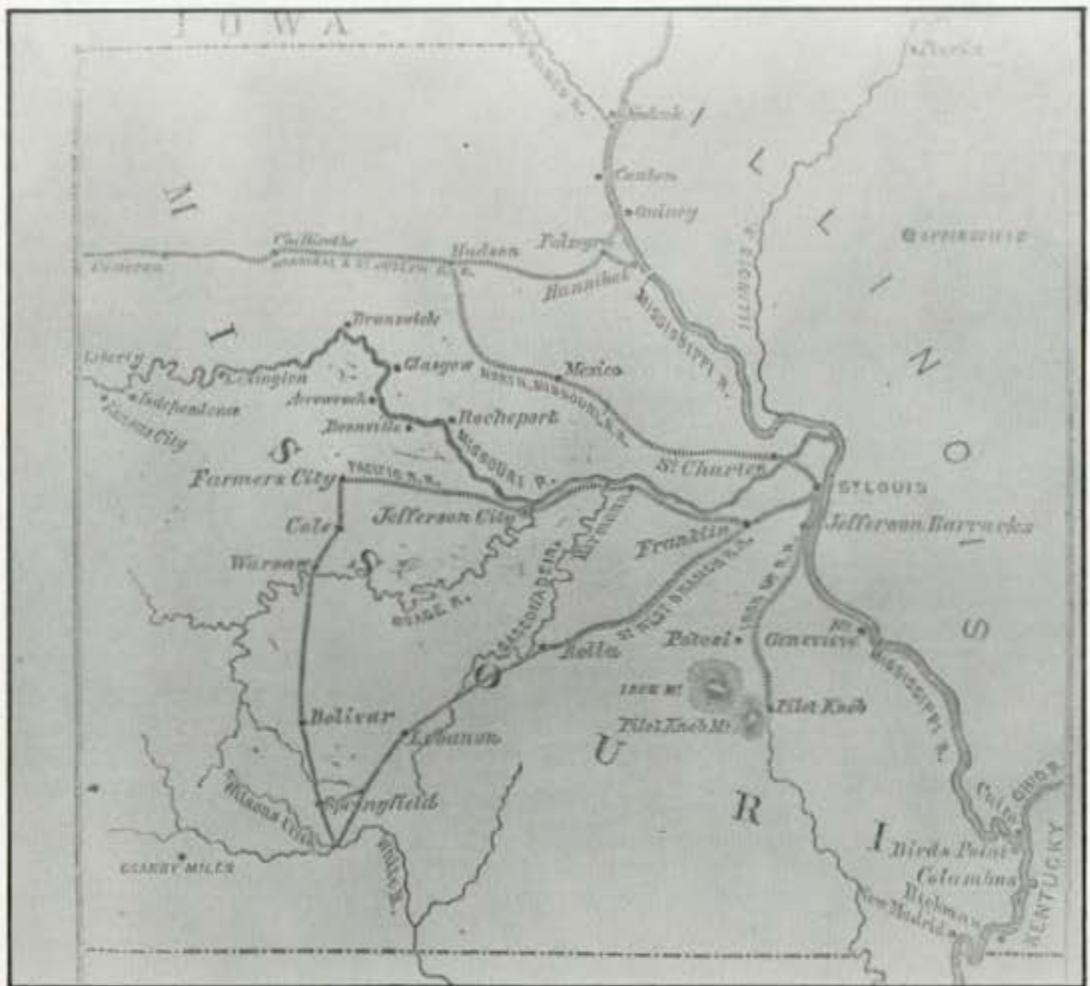
This applies to all classes and conditions, Age and Sex. If, however, Woman and Children, prefer other protection than we can afford them, they may be allowed to retire, beyond the limits indicated, not to return until authorized.

General Paine moved swiftly, bringing in perhaps a hundred citizens. He found Grant's orders too indefinite on a related point, however, and asked whether he could quarter the civilians in tents. After asking explicitly for instructions on that rather minor point, General Paine then went on to announce his own decision on a far more important point, "I think I shall find out who shot the pickets and when I do I shall shoot the guilty parties on very short notice."

Grant granted Paine permission to use tents. Then he added a significant point of his own, in clear but diplomatic language, "If you have reason to believe, that the parties guilty of shooting our pickets are discovered, inform me, and I will order a Court of Commission, that will act without delay." Grant wanted nothing to do with summary justice. He would see to it that civilians, even those accused of murdering pickets in the night, would be tried by military commission.

Military commissions, of course, have certainly come in for their fair share of criticism for falling far short of adequate justice as agencies for dealing with civilians. It is true, too, that they were little more than courts martial set up to try civilians. But they at least marked a substantial advance over any summary justice administered while martial law was in force. By the time of Grant's order in the Bird's Point case, Fremont had been replaced by General Henry W. Halleck, a figure for whom Civil War historians have been able to find few kind words. But Halleck was an expert on international law, the most knowledgeable among the few who could profess expertise on the subject, and his order of January 1, 1862, establishing the jurisdiction of military commissions in Missouri is definitely worthy of study:

... In carrying on war in a portion of country occupied or threatened to be attacked by an enemy, whether within or without the territory of the United States, crimes and military offenses are frequently committed which are not triable by courts-martial and which are not within the jurisdiction of any existing civil court. ... They must



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FIGURE 2. Map of the early war in Missouri.

therefore be taken cognizance of by the military power, but except in cases of extreme urgency a military commander should not himself attempt to decide upon the guilt or innocence of individuals. On the contrary it is the usage and custom of war among all civilized nations to refer such cases to a duly constituted military tribunal composed of reliable officers, who acting under the solemnity of an oath and the responsibility always attached to a court of record will examine witnesses, determine the guilt or innocence of parties accused and fix the punishment. ...

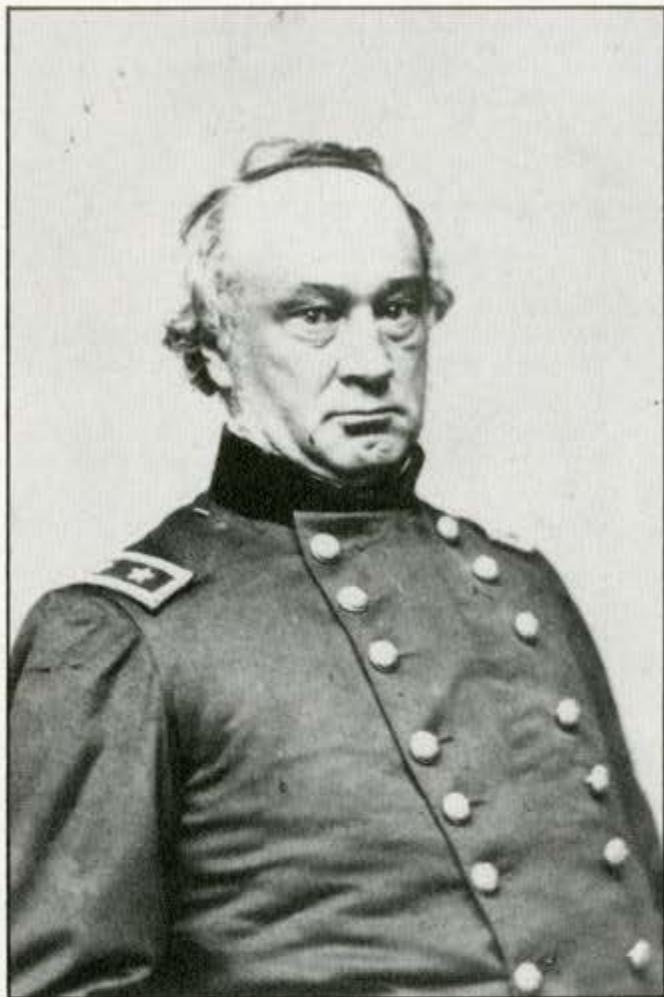
... Military commissions can be ordered only by the General-in-Chief of the Army or by the commanding officer of the department, and the proceedings must be sent to headquarters for revision.

... They will be composed of not less than three members, one of whom will act as judge-advocate and recorder where no officer is designated for that duty. A larger number will be detailed where the public service will permit.

... All the proceedings will be recorded and signed by the President and judge-advocate and recorder as in the case of courts-martial. ...

Civil offenses cognizable by civil courts whenever ... loyal courts exist will not be tried by a military commission. It should therefore be stated in every application for a commission whether or not there is any loyal civil court to which the civil offenses charged can be referred for trial. It must be observed, however, that offenses which in time of peace are civil offenses become in time of war military offenses and are to be tried by a military tribunal even in places where civil tribunals exist.

... No case which by the Rules and Articles of War is triable by a court-martial will be tried by a military commission. Charges therefore preferred against prisoners before a military commission should be "violation of the laws



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FIGURE 3. Henry W. Halleck.

of war," and never "violations of the Rules and Articles of War."

What General Paine had resolved to do with suspects apprehended in the case of the four murdered pickets was against the law, and Grant knew it and would not allow it to occur.

Nevertheless, the legal context of Grant's original order in the Bird's Point pickets case needs further explanation. General Halleck was the sort of brainy warrior who worried about legalities, and when he took over the command from Frémont, he searched but could not find authority for his predecessor's declarations of martial law. By the time of the incident in question here, Halleck had brought about President Lincoln's suspension of the privilege of the writ of habeas corpus in Missouri. To this, Halleck had added his own declarations of martial law. On December 26, 1861, about two weeks before Grant's order to Paine, Halleck's Assistant Adjutant-General issued this peculiarly worded order:

... In virtue of authority conferred by the President of the United States martial law heretofore declared in this city will be enforced. In virtue of the same authority martial law is hereby declared and will be enforced in and about all railroads in this State.

Martial law no longer ruled Missouri officially, and in fact never did where ordinary civil courts functioned in a reasonable manner. Declarations of martial law in the state seem always to have contained disclaimers, like the one in Halleck's declaration of December 26, 1861, exempting cases in areas where "loyal civil courts" functioned.

Bird's Point was across the Mississippi River from Cairo, Illinois. Cairo was the terminus of the Illinois Central Rail Road. The Mobile and Ohio Rail Road ran from Mississippi through Tennessee to Columbus, Kentucky. Whether Bird's Point was "in" a railroad and whether areas for six miles around Bird's Point could be considered being "about" a railroad are not known.

Some of these incidents are mentioned in Bruce Catton's able and readable biography of Ulysses S. Grant. Remarkably, they are not mentioned in William McFeely's rather hostile biography of the Union commander. An attempt is made in this article to show them in a framework embracing the full legal context of the actions. What to make of the actions in judging Grant, the Civil War, and Lincoln remains a question in need of a well-considered historical answer.

JOHN Y. SIMON TO DELIVER TENTH MCMURTRY LECTURE

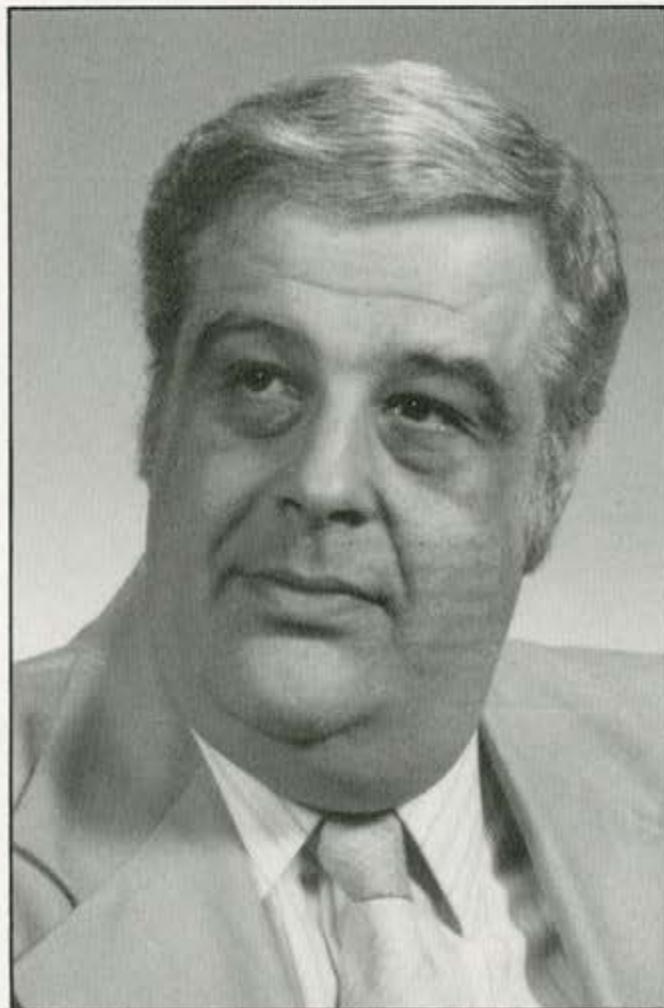
The distinguished historian and dean of documentary editors, John Y. Simon, will present the tenth annual R. Gerald McMurtry Lecture, on Thursday, May 21, 1987, at 8:00 p.m. in the Zebulon Pike Room of the Grand Wayne Center in Fort Wayne, Indiana. His subject will be: "House Divided: Lincoln and His Father."

Professor Simon, best known as the editor of the *Papers of Ulysses S. Grant*, teaches history at Southern Illinois University. A graduate of Swarthmore College, he earned his M.A. and Ph.D. degrees at Harvard University.

Himself the author of four dozen articles, Professor Simon has also provided his fellow scholars with the reliable and definitive edition of Grant's papers. Unlike other papers project, the Grant enterprise has moved at remarkable speed; Professor Simon has "guided" Grant through the Civil War, in fourteen thick volumes, in twenty years.

The author of several prize-winning works, Professor Simon is a shrewd historian, a lively writer, and a much-sought-after public speaker. He has been carefully examining the controversies surrounding Lincoln's relationship with his father for several years and will reveal his conclusions in the lecture.

Those interested in attending should call 219-427-3031.



From the Louis A. Warren
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FIGURE 4. John Y. Simon.

CIVIL WAR INSTITUTE AT GETTYSBURG COLLEGE, 1987

For information write to G. S. Boritt, Director, Civil War Institute, Box 435, Gettysburg College, Gettysburg, PA 17325. Telephone: 717-337-6555.

PROGRAM

Sunday, June 28

9:00 p.m. Reception, Lyceum, Pennsylvania Hall

Monday, June 29

Morning William C. Davis, "The First Battle at Bull Run"
 Afternoon James M. McPherson, Princeton University, "The Manassas Syndrome: A Study in Civil War Morale"
 Evening Peter Batty's "Civil War" - film

Tuesday, June 30

Morning and Afternoon Battlefield Tour led by Ed Bearss and including as guides Dennis Frye, Ed Raus and others
 Evening Peter Batty's "Civil War"

Wednesday, July 1

Morning Catherine Clinton, Harvard University, "Confederate Women"
 Afternoon Gettysburg Battlefield Tours: Ed Guy, Elwood Christ, Bill Frassanito, Col. Jacob Sheads
 Evening Peter Batty's "Civil War"

Thursday, July 2

Morning Free
 Afternoon Gala Opening at the Cyclorama of "The Confederate Image." Slide lecture by Mark E. Neely, Jr., Harold Holzer, and Gabor S. Boritt. Reception at the home of President Charles E. Glassick of Gettysburg College.
 Evening Peter Batty's "Civil War"

Friday, July 3

Morning Peter Batty discussing making his film for British television - tentative
 Afternoon Jean Baker, Goucher College, "Mary Todd Lincoln"
 Evening Peter Batty's "Civil War"
 Farewell Party

Saturday, July 4

Morning Students depart after breakfast

LECTURERS

PETER BATTY, prominent British filmmaker whose work includes six episodes of the famed *WORLD AT WAR* series.

EDWIN C. BEARSS, Chief Historian of the National Park Service, whose newest book is *Vicksburg Campaign* (1986).

WILLIAM C. DAVIS'S latest book is *Touched by Fire: A Photographic Portrait of the Civil War*, 2 vols. (1985-1986).

CATHERINE CLINTON teaches at Harvard and is the author of *The Plantation Mistress* (1982) and *The Other Civil War* (1984).

JEAN BAKER, Todd Professor at Goucher College, is author of *Mary Todd Lincoln: A Biography* (1987), a current alternate selection of the Book of the Month Club.

HAROLD HOLZER'S newest and co-authored book is *The Confederate Image: Prints of the Lost Cause* (1987).

MARK E. NEELY, JR.'S newest and co-authored book is *The Confederate Image: Prints of the Lost Cause* (1987).

DENNIS FRYE is a historian at the Harpers Ferry National Historical Park.

ED RAUS, is a historian at the Manassas National Military Park.

WILLIAM A. FRASSANITO, graduate of Gettysburg College, is author of *Gettysburg: A Journey in Time* (1975).

COL. JACOB SHEADS, graduate of Gettysburg College, is a renowned battlefield guide who has been affiliated with the Gettysburg National Military Park for 48 years.

JAMES M. MCPHERSON, Edwards Professor at Princeton is author of *Ordeal by Fire: The Civil War and Reconstruction* (1982).

ED GUY, a veteran, licensed guide at the Gettysburg National Military Park.

ELWOOD CHRIST, a veteran, licensed guide at the Gettysburg National Military Park.

GABOR S. BORITT, co-author of *The Confederate Image*, directs the Civil War Institute.
