

HENRY WIRZ

Major Henry Wirz, Confederate States Army (CSA), was born in Zurich, Switzerland in 1822. He was fluent in English, German and Dutch, and attended the University of Zurich and the medical colleges of Paris and Berlin. It is said he obtained an M.D. degree from those colleges and practiced medicine in Louisiana until the outbreak of the War Between the States. Andersonville: A Legacy of Shame...But Whose?, by Gary Waltrup, [obtained on-line, p. 4.]

Major Wirz immigrated to the United States in 1849 and married a widow with two daughters in Kentucky in 1854. In 1855, his wife delivered a child of his own, whom they named Cora. Major Wirz moved the family to Louisiana and enlisted in Company A, 4th Battalion, Louisiana Volunteers at the outbreak of war. Ibid.

At the battle of Seven Pines, in Virginia, Wirz, then a Sergeant, was severely wounded in his right arm by a minie ball, which rendered the arm nearly useless for the rest of his life. He was promoted to Captain for bravery on the field of battle, but his wound left him unfit for the rigors of active campaigning and he became an acting adjutant-general to General John H. Winder, CSA, who was in charge of prisoner of war (POW) camps. Ibid.

The wound, described more starkly by another source, "left him with a shattered right arm that he often wore in a sling, a withered left shoulder, and a lifetime of debilitating pain. Perhaps as a result, Wirz was gruff and prone to fits of angry cursing. ('Gott dam Yanks' was a favorite expletive.)" The Demon of Andersonville, by Carolyn Kleiner, Legal Affairs Magazine, September/October, 2002 [obtained on-line, p. 1]

Captain Wirz served at POW camps in Richmond, Virginia and Tuscaloosa, Alabama, before being assigned to Camp Sumter, located at Andersonville, Georgia. It was the name of the town which attached to this POW camp in popular memory. Shortly before the end of the war, Wirz was promoted to Major. Andersonville: A Legacy of Shame, p. 4.

II. ANDERSONVILLE

A) The Site

Although not in force at the time, of course, the 1949 Geneva Convention Relative to the Treatment of Prisoners of War, Article 19, notes that prisoners are to be evacuated to camps situated far enough from the combat zone to be out of danger. Article 22 states that prisoners should be interned only in premises located on land affording hygiene and healthfulness. Article 26 specifically mentions the availability of good drinking water.

By 1864 the war was going badly for the Confederacy. Union General Grant, knowing he had superior resources, and with the will to use them, which was apparently lacking in his predecessors, began a relentless drive toward Richmond, Virginia, the capital of the Confederacy. This produced a constant flow of prisoners to POW camps on both sides,

and "[t]he result was more POWs than either side could handle. Many captured Union soldiers were kept in and around Richmond, but as the front lines edged south and [POW camps] started to overflow, the Confederate government planned a new facility in ... Andersonville." The Demon of Andersonville, p 1.

In 1876, Dr. R. Randolph Stevenson, who had been the Chief Surgeon at Andersonville printed a report he wrote from Camp Sumter, Andersonville, Georgia on September 23, 1864, in which he stated, "I have also carefully examined the waters within the stockade and hospital, and find them to be of remarkable purity." Andersonville, The Southern Perspective, Edited by J.H. Segars, Pelican Publishing Co., 2001, p. 17. The Doctor further concluded that there was "no recognizable source of disease in the waters and soil of Andersonville." Ibid., p. 18.

Dr. Stevenson recorded that the site was chosen for "various humane considerations" but that it was built to accommodate only ten thousand prisoners. Ibid. He concluded, "if it had not been that the fortunes of war crowded the prisoners to this post, producing the direful effects of an unforeseen pestilence, a better selection could not have been made in this part of the South for the health and comfort of the captives." Ibid. p. 19.

A Union POW, Lieutenant (Lt.) James Madison Page (then Sergeant Page, commissioned an officer after his release from Andersonville), wrote, "[m]y occupation before I enlisted was that of surveyor ... [and] [t]he selection of the site was an excellent one." The True Story of Andersonville Prison, by James Madison Page, Crown Rights Book Company, Georgia, 2000, [originally printed by Neale Publishing Co., New York, 1908], pps. 62-63.

Lt. Page continued, "[t]he place was healthful and salubrious and the water was good. The ground within the enclosure was not as has been described by an unfriendly chronicler, seemingly with malice aforethought, as 'wet, boggy, miry, and a swamp'. The description does not fit." Ibid. p. 64

Although not binding on the Confederacy, the Southern government would seem to have been in substantial compliance with the Federal "Lieber Code", at least before overcrowding and the fortunes of war took their toll. Article 75 of the Code states, "Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety, but they are to be subjected to no other *intentional* [emphasis mine] suffering." Instructions For the Government of Armies of the United States in the Field, prepared by Francis Lieber, promulgated as General Orders No. 100 by President Lincoln, 24 April, 1863, known hereafter simply as "The Lieber Code".

B) The Real Reasons For The Suffering

By the 1st of May, 1864, the prison was "full", that is to say, it housed as many POWs as it was built for: 10,000. Andersonville, The Southern Perspective, p. 22. But the United States government had ceased the policy of exchanging prisoners and more and more Union POWs were brought to Andersonville. By June of 1864, the prison

population was around 20,000 and by August, 1864 it reached about 33,000.
Andersonville: A Legacy of Shame, p. 2.

On March 18, 1864, General William Tecumseh Sherman took command of the Union forces in north Georgia. General William T. Sherman: Would the Georgia Campaigns of the First Commander of the Modern Era Comply with Current Law of War Standards?, by Major Thomas G. Robisch, [obtained on-line at p. 1] Sherman's immediate objective was the city of Atlanta. From the time Sherman took command, until the Confederate army abandoned the city on September 1, 1864, Sherman relentlessly drove from north Georgia to Atlanta.

Atlanta was a vital railroad hub, a fact not lost on Sherman. In fact, Sherman had such an appreciation of the logistics of war and the importance of railroads that he paid special attention to destroying what he could not use. Ibid. But the destruction was not confined to north Georgia and Atlanta. Sherman "sent detachments of his cavalry to destroy track, rolling stock, and the various railroad facilities ... One such raid ... struck the line which ran from Atlanta through Macon to Savannah. Ibid. p. 3. The results of all this hard fighting, and the destruction of key railroads was a continuous flow of POWs and the loss of the ability to obtain needed supplies at Andersonville.

To make matters worse, Sherman ordered the forced evacuation of the entire civilian population of Atlanta in September, 1864. Ibid. p. 5. This meant that already strained logistical lines would be taxed still farther in an effort to feed the dispossessed civilians. Not only were the civilians of the South made to suffer but the Union POWs as well; the South could not provide to POWs what it did not have. Food became scarce and medicine had been considered "contraband" by the Union throughout the war; it was confiscated or destroyed wherever it was found.

By modern standards, a strong case could be made that Sherman was a war criminal. The Fourth Geneva Convention of 1949 imposed the obligation on all parties to allow free passage of medical and hospital stores – not their destruction as contraband. Under the 1977 Additional Protocols to the Geneva Convention, Article 69 imposes a duty to provide relief supplies to the population of an adversary, and Article 70 requires a belligerent to treat offers of relief of a humanitarian and impartial character as a duty. Crimes of War, Edited by Roy Gutman and David Rieff, W.W. Norton & Co., New York, 1999, p. 179.

In addition, the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949, prohibits the employment of means which cause unnecessary suffering by civilians. General William T. Sherman, p. 6. Although the writer doubts that General Sherman cared for much at all other than winning the war, it is possible that the "Lieber Code" was ambiguous enough that Sherman felt it justified his actions.

In all probability, Francis Lieber, who had sons on both sides of the War Between the States, could not have even imagined the kind of total war waged by Sherman when Lieber wrote his Code:

Article 15 states: "Military necessity ... allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army."

Article 17 states: "War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed *or unarmed* [emphasis mine], so that it leads to the speedier subjection of the enemy."

"Military necessity has been rejected as a defense for war crimes or other acts forbidden by the laws of war", General William T. Sherman, p.7, and most of the 12,912 Union POWs who died at Andersonville, died between August, 1864 through December, 1864, when the effects of Sherman's "total war" were taking effect. Andersonville: A Legacy of Shame, p. 2.

C) Confederate Difficulties at Andersonville

Dr. Stevenson wrote, "[t]he greatest difficulty was experienced in procuring medicines and antiscorbutics [treatment for scurvy]. These were made contraband of war by an order of the Federal Government, and the most rigid discipline failed to make the prisoners pay that attention to cleanliness which was absolutely necessary." Andersonville: The Southern Perspective, p. 27.

The Confederate guards on duty were similarly affected with gangrene and scurvy as the POWs. Captain Wirz developed gangrene in his old wound, General Winder had gangrene of the face as did Colonel Gibbs. Ibid. Dr. Stevenson wrote, "[t]he Confederate graveyard at Andersonville will fully prove that the mortality rate among the guards was almost as great in proportion to the number of men as among the Federals." Ibid.

The war dragged on, the South was only months away from defeat, Confederate resources and supplies continued to dwindle, and Andersonville became increasingly ill-equipped to care for its POWs. The Demon of Andersonville, p. 2. Prisoner mortality soared. As early as July 25, 1864, General Winder advised his government in Richmond of the growing problems at Andersonville and recommended dispersing the POWs to other places.

Due to chaotic wartime communications and destruction of railroads on a massive scale, this was not completed until the end of September, 1864. Andersonville: The Southern Perspective, p. 23. [Writer's note: based on the mortality figures, Dr. Stevenson must be off by a month. The Doctor stated that only 5,000 prisoners were left at Andersonville by the end of September. The records show that 4,590 deaths occurred that month. The following month, however, the number drops to 492. Most likely then, the transfer was completed by the end of October, not September. Ibid. p. 29.]

The facts would seem to indicate that the South did all it could in the face of a war it was losing to care for the POWs. The Union policy of terminating prisoner exchanges, and declaring medicine to be contraband, combined with Sherman's devastation of Georgia, made proper care of the POWs impossible. Nevertheless, over 12,000 died, and the survivors, suffering from dysentery and scurvy were, in countless instances, living skeletons. When the war finally ended, and those prisoners were released, the North was outraged.

III. THE END OF THE WAR

For all practical purposes, the War Between the States ended with the surrender of the South's two greatest armies, the Army of Northern Virginia, commanded by General Robert E. Lee, and the Army of Tennessee, commanded by General Joseph E. Johnston. Both Generals surrendered in April, 1865.

By the following month, the President of the Confederacy, Jefferson Davis, and all high officials of his government who had not fled the country, were under arrest. Whether it was, as the South contended, a war between two sovereign nations, or as the North contended, a rebellion against the *de jure* government, was a moot point. It was over.

Unfortunately for the South, the most conciliatory man in Washington, President Lincoln, had been assassinated. Lincoln, with great foresight, had instructed Generals Grant and Sherman to offer liberal terms to Generals Lee and Johnston if they would surrender. Lincoln sought to heal the wounds that ripped the nation apart. It seems likely that Lincoln would have adopted a very humane and conciliatory policy towards the post-war South.

With Lincoln dead, however, and the North enraged over his assassination, over four long and bloody years of war, and inflamed by stories and pictures of the prisoners of Andersonville, many of the conquerors sought revenge. There were many in the North who wanted to hang Jefferson Davis, Robert E. Lee, and others, for treason.

Mr. Davis was, in fact, imprisoned for two years without trial. For a portion of this time he was kept in chains. By today's standards, Mr. Davis would have grounds to appeal to the international community under the terms of the 3rd and 4th Geneva Conventions. Among other rights granted by those conventions are the right to be informed "early on" of what he was accused of and to be tried without undue delay.

Or, arguendo, the laws of the United States should have applied and Mr. Davis should have been granted a "speedy trial" as guaranteed by the 6th Amendment. But a trial would surely have led to a conviction of the capital offense of treason, and the mood of the North was for a death sentence.

The war had only just ended with the capitulation of the major fighting armies of the South. The capacity to transition to a guerilla war, which might have lasted indefinitely, had not escaped the notice of people in power in Washington. To hang Mr. Davis, or

other prominent former Confederates, would be to invite renewed hostilities. But if Mr. Davis et. al. could be thoroughly disgraced in the eyes of the South, it might be possible to try him/them without fear.

IV. THE ARREST OF MAJOR WIRZ

Photography, a relatively new invention, had made its mark on the War Between the States. For the first time, people on the home front, far removed from the fighting, could see the aftermath of battle. The dead, the suffering wounded, and those released from Andersonville. The press played Andersonville for all it was worth. Major Wirz, as commander of the interior of the stockade, was probably the most vilified man in the North. It helped that he was foreign-born and spoke English with a thick German accent.

Many northern publications reported inhuman conditions at Andersonville, including tales of Wirz's alleged cruelty. He was called a "bloodthirsty monster" and "the demon of Andersonville" among other things. Major Wirz was tried in the northern press and found guilty. All that remained was the formality of a trial. The Demon of Andersonville, p. 2.

On May 7, 1865, Major Wirz was arrested. He was held for two months without being told what he was charged with. He appealed for his release stating he had no control over the commissary and quartermaster departments and that he couldn't believe that he alone was to be held responsible for Andersonville.

He noted that Colonel Gibbs, who was in Command of Andersonville from October until March, 1865, had been released. The University of Notre Dame, Rare Books and Special Collections, Manuscripts from the American Civil War, Andersonville/Wirz Collection. [obtained on-line] Then he was transferred to the Old Capitol Prison at Washington, D.C.

V. THE TRIBUNAL

It is interesting to note that a military commission was appointed to try Major Wirz. Hostilities had ended. The North maintained throughout the war that there never was a *de jure* Confederate States of America. Therefore, Wirz ought to have been tried in a civilian court and afforded all the procedural and evidentiary safeguards thereto.

Arguendo, if he was not entitled to a civilian trial, it must be that he was a prisoner of war of a foreign belligerency, who had committed - not penal crimes - but war crimes as charged, and therefore while a soldier in the army of a foreign power – in this case, the Confederate States of America. If that be so, then the United States was an occupying power in a foreign nation and it had just fought a war of conquest.

The "Lieber Code", Article 13, states there are two kinds of military jurisdiction, statutory and that which is derived from the common law of war. Military offenses which do not come within the statute must be tried and punished under the common law of war.

If Wirz committed war crimes while an officer in the Confederate States Army, then he could be tried by military tribunal. But *de jure* armies are created by sovereign nations. If no such nation as the Confederate States of America existed, then there was no *de jure* Confederate States Army, only a well organized group of rebels. If the Confederate States Army did not exist, then Wirz stood accused, not of war crimes, but of crimes against the United States. Crimes such as murder, conspiracy to commit murder, and treason – all of which are penal crimes defined by statute. Criminals are tried in civilian courts.

However, if it was preordained that Wirz was to hang, it made sense that he should be tried by a military commission because "[t]he rules of the commission provided more room to maneuver and allowed for a broader range of admissible evidence" than in a civilian court. The Demon of Andersonville, p. 3. But most importantly, because the government hoped to tie in Jefferson Davis, and perhaps other prominent Confederates and discredit them in the eyes of the South. Only then could the Federal government try others, not for treason alone, if at all, but for horrible crimes against defenseless Union POWs. It was only after Davis et al, had been thoroughly stripped of honor that the government could risk hanging him/them without facing the prospects of a new uprising in the South.

Major Wirz was a low ranking officer, of foreign birth, who spoke English with a thick accent, and who had already been convicted in the press. He was what we would call today a "fall guy". His execution would produce only a murmur throughout the South and, once under sentence of death, perhaps he would implicate others in exchange for his life?

[Of course, by today's standards, even if a military tribunal was the appropriate judicial body, Article 106 of the 3rd Geneva Convention would have given Wirz access to the court system on appeal.]

VI. THE TRIAL OF MAJOR WIRZ

"From the start, the event was a circus." The Demon of Andersonville, p 3. Major Wirz was charged with "conspiracy to destroy the health and lives of Union prisoners of war" *Ibid.*, and 13 separate specifications of murder allegedly committed by his own hands, "in violation of the laws and customs of war". *Ibid.*

Secretary of War Edward Stanton, arguably the man most responsible for the overcrowding of Southern POW camps by steadfastly refusing to reinstate prisoner exchange, personally read the charges aloud. Stanton "apparently hadn't looked at the indictment before he began [because] [h]e became enraged when he saw that the still-respected Lee and Davis had been named as co-conspirators." *Ibid.*

The court was immediately adjourned and when it was reconvened two days later, the names of Davis, Lee, and other Confederate cabinet members had been struck to be replaced by "others unknown". *Ibid.* The conquerors wanted to hang the lot of them, but

Stanton knew what that would mean: guerilla war throughout the South. The only safe man to hang was Wirz.

Initially, the law firm of Hughes, Denver & Peck represented Wirz. Denver wrote at the time that if friendly witnesses testified as expected, then Wirz "ought to be acquitted", but that he was "of the opinion that the intention is to hang him and that no stone will be left unturned to effect it." The University of Notre Dame, Rare Books and Special Collections, p. 2. The firm withdrew from the case on the first day of trial. Ibid. Louis Schade, a fellow Swiss countryman undertook the defense of Major Wirz.

Schade filed for dismissal of the charges on the grounds that a military tribunal had no jurisdiction, that the charges were vague as to time, place and manner of offense, and that as a Confederate officer Wirz was entitled to the terms agreed to between Generals Sherman and Johnston when Johnston surrendered. He was continuously overruled. Andersonville : A Legacy of Shame, Part II, p. 1.

All thirteen specifications of murder were more or less the same. On or about a certain date, Wirz did kill a POW *whose name is unknown* [emphasis Lt. Page's]. The True Story of Andersonville Prison, pps. 191-203. Lt. Page was incredulous. He wrote, "of the thousands of prisoners who were at Andersonville ... no one could be found who knew the name of this man!" Ibid. p. 192. Page continued, "[a]ll the particulars attending the shooting and death of the murdered man were minutely described upon oath at trial except his name!" Ibid. Page took the trouble to spell out, specification after specification, the exact wording of the charges, and all suffered from the same fatal defect: "whose name is unknown". Ibid. pps. 191-203.

Right on point, Lt. Page wrote, "I was at Andersonville, a prisoner, from February 27 to September 20, 1864, and while I was there I never heard nor never knew that Captain Henry Wirz was personally responsible for the death of a solitary prisoner, ***and I thought I knew about everything that occurred there*** [emphasis mine]. Ibid. p. 194. Page succinctly pointed out, "[y]ou can also imagine what a topic for discussion the murder of a prisoner by Wirz would produce." Ibid.

Three of the unknown prisoners were allegedly murdered by Wirz during the month of August when, in fact, he was away from the camp on sick leave. Ibid. p. 196. This statement is supported by the Confederate Surgeon, Dr. Stevenson. He wrote, "[i]n his trial, certain Federal witnesses swore to [Wirz's] killing certain prisoners in August, 1864, when he (Wirz) was actually absent on sick leave in Augusta, Ga., at the time." Andersonville: The Southern Perspective, p. 27.

The most damaging witness against Wirz was a former POW named Felix de la Baume. Page, who was at the trial expecting to testify on Wirz's behalf wrote, "[w]itness de la Baume held the surging crowd like an inspiration...He captured the court." The True Story of Andersonville Prison, p. 205. De la Baume claimed to be the grandnephew of the Marquis de Lafayette. He accused Wirz of the murder of two unnamed prisoners and

provided "hand drawn pictures" to illustrate his points. The Demon of Andersonville, p. 4.

De la Baume was given a "written commendation" for his "zealous testimony" and *before the trial was even over* he was appointed to a position in the Department of the Interior! De la Baume's true identity became known eleven days after Wirz was hung. A group of Federal soldiers who were born in Germany identified him as Felix Oeser, born in Saxony, Prussia. He lied to conceal that he was, in fact, a deserter from the 7th New York Volunteers. Oeser was summarily fired and disappeared. [obtained on-line p. 1] Lt. Page also mentions this deception.

The defense was thwarted on every turn. Wirz's list of requested witnesses produced only a few on the list. Even those who were there and ready to testify were sent home without giving testimony on his behalf. Colonel Chipman, of the prosecution, "interviewed all potential witnesses before they appeared, and was allowed to decide whether or not they could testify." The Demon of Andersonville, p 4. Key witnesses, including Lt. Page, Colonel Robert Ould, the Confederate commissioner of prisoner exchange, Father Whelan a priest who tended to the POWs and was in a position to know of Wirz's activities, all were sent home without testifying. Ibid.

On October 24, 1865, Major Henry Wirz was found guilty of the conspiracy charge, and of ten out of the thirteen murder specifications. Ibid. Not surprisingly, he was sentenced to death. He was hung at the Old Capitol Prison, the site of the present day U.S. Supreme Court. The fall from the scaffold did not break his neck, and he "twisted and choked to death, to buoyant hoots and hollers". Ibid.

Of Major Wirz it is said, "His last words were that he died innocent, and so he did." The True Story of Andersonville Prison, p. 238.

VII. DUE PROCESS DENIED

In violation of the Constitution of the United States, in effect then as now, in violation of the Due Process provisions of the 3rd and 4th Geneva conventions of 1949, in violation of "the rule of law and all of the principles we supposedly live under." The Demon of Andersonville, p. 1, Henry Wirz twisted and choked to death for crimes he did not commit. As published in the "Legal Affairs" magazine, "a majority of historians and legal experts agree on a critical point: Wirz was denied due process." Ibid.

VIII. THE REAL TARGET

That Major Wirz was a means to an end is demonstrated by the offer to commute his death sentence if he would implicate Jefferson Davis in the "conspiracy". Louis Schade, Wirz's attorney was told by Wirz that he, Wirz, had been approached the evening before by someone representing himself to be a high ranking cabinet official. This official told Wirz his sentence would be commuted if he would implicate Davis. Mr. Schade wrote of what Wirz told him: "Mr. Schade, you know that I have always told you that I do not

know anything about Jefferson Davis. He had no connection with me as to what was done at Andersonville. I would not become a traitor against him or anybody else, even to save my own life." The Failure to Make a Case Against President Davis, Southern Historical Society Papers, v.1., Richmond, Va., March, 1876. pps. 219-222 [obtained on-line]

Mr. Schade also wrote that the Reverend Father Boyle, Major Wirz's priest, told him (Mr. Schade) that a "high Cabinet officer" "wished to assure Wirz that if he would implicate Jefferson Davis with atrocities committed at Andersonville, his [Wirz's] sentence would be commuted." Ibid. p. 2.

Major R.B. Winder, also a former Confederate officer at Andersonville - who was in the cell opposite Wirz the night before Wirz's execution, wrote on November 16, 1875, that he saw several male individuals enter Wirz's cell. Major Winder was hoping and expecting that this meant a reprieve "for even at that time [he] was not prepared to believe that so foul a judicial murder would be perpetrated." Ibid. p. 2.

Major Winder wrote that he stood at his cell door which was immediately opposite Wirz's and watched the men come out again. Winder said Wirz then told him, "these men have just offered me my liberty if I will testify against Mr. Davis and criminate him with the charges against the Andersonville prison" Ibid. Wirz refused. Ibid. Interestingly, Major Winder, a key official at Andersonville, and the son of then recently deceased General Winder, commander of all POW camps in the Confederacy, was never tried for conspiracy or anything else. He was released.

The conquerors were never able to sufficiently vilify Davis, his cabinet, General Lee, or anyone they wished to hang – without risking guerilla war. After two years of imprisonment without trial, Jefferson Davis, the real target, was quietly released.