

Speech by Dr. Albert Winkler, Andersonville, Georgia Nov 10<sup>th</sup> 2019

**Doctor Winkler considers Capt Wirz's greatest achievement was his refusal to spare his own life from execution if he would have implicated Jefferson Davis in some kind of conspiracy to harm Federal prisoners of war. Wirz was clearly a martyr to the cause of the Confederacy.**

Let's welcome Doctor Albert Winkler.

The trial of Henry Wirz was done by a prejudiced court. The trial of Henry Wirz was started by a commission of 9 senior Army officers who were chosen at Washington, D.C. Colonel Martin P. Chipman was the prosecuting attorney or Judge Advocate for the proceedings. Many people of the commission had personal grievances against the Confederacy. Eight of them had served in battle during the 'Civil War'. Three of these men had been wounded in that conflict and one had lost his right leg in battle. One had also lost his son in battle to the Confederacy. The men in the military tribunal had vested personal and professional interests in finding Wirz guilty in a spirit of revenge, self-promotion and to vindicate Federal policies. Only three of the commission had any legal training and only one General Wallace, the famous author of Ben Hur, had served on a military commission before, Wallace was the president of the Federal commission and he hated the defendant before the trial began. He had described Wirz as having an "evil demeanor like a depraved animal". "He had eyes large and very restless, a peculiar transparency reminding you of a cat's excited by the scent of prey in the manner he is nervous and fully alarmed". "His complexion is ashen, bloodless, almost blue". "Altogether his duty was to kill Union prisoners". The US Constitution states the trial of all crimes shall be by jury. Such trial shall be held in the state where the said crimes had been committed, meaning that the proceeding had to be by a jury trial and had to take place in Georgia. The 5<sup>th</sup> Amendment adds that the trial capital or infamous crime is illegal unless an impeachment for

presentment to the grand jury. No such jury met. The trial against Wirz begins. The specification of the charges were a long list of supposed crimes stating that Wirz had conspired with Confederate officials to kill Union prisoners by subjecting them to torture great suffering and by confining them in unhealthy and unwholesome quarters, by compelling the use of impure water and furnishing insufficient unwholesome food. As a result, many of them, whose names are unknown, sickened and died, by which he the said Henry Wirz, well knew and intended. The specifications include a number of other claims including that the guards had followed orders “maliciously and needlessly given by said words that said prisoner guard did fire upon and kill a large number of said prisoners whose names are unknown to it the number of about three hundred. This total was severely exaggerated. The Confederate General Winder recorded the name of unit and cause of death for 12,367 Union soldiers who died at Andersonville and only two (2) were listed as dying after they had been shot by the guard. The indictment included 13 specifications of murder in violation of the laws and customs of war which Wirz was personally responsible. These charges were based on questionable and unreliable evidence. Some of the supposed crimes took place when Wirz was away from the prison and one crime involved a violent assault which the ailing Wirz was physically incapable of administering. Louis Schade and O.S. Baker served as defense for the accused. The two lawyers instituted a series of pleas that the trial was on insecure grounds and that the defendant should go free. The court also had no legal jurisdiction over the defendant because of the surrender of Confederate General Joseph E. Johnston to Union general Sherman had specified that all men under Johnston’s command, including troops in Georgia, will be permitted to return to their homes, not to be disturbed by the United States authorities. Technically, a pardon had been granted to all these men, including Wirz. Additionally, Wirz is not and never has been in the land or naval forces of the United States and no US military court had jurisdiction over him. Also, the Civil War was over, so a ‘state of war’ could not be used as an excuse to place military courts over civilians. As a common citizen the defendant had the right to a civilian

trial by jury, comprised of his peers, rather than by a military tribunal, which could skirt the normal procedures of jurisprudence, including the rights of the defendant. The court rejected all these pleas.

### Unreliable testimony.

At the trial of Henry Wirz, the prosecution, headed by Norton P. Chipman, used the vast financial and legal resources of the Philadelphia government the case. As judge advocate, Chipman had much power over the corporate proceedings and how evidence could be presented. And he controlled who was summoned as witnesses for both the prosecution and for the defense. This meant that Chipman can release and refuse to let the defense subpoena important ex-Confederates who could testify. This gave the prosecution an unfair advantage of the proceeding, but he could also inhibit the lawyers from making an adequate defense. The inability to summon witnesses decisively hindered the defendant's performance during the tribunal proceedings. A total of 143 persons gave statements at the trial, 109 for the prosecution, but only 18 for the defense. Approximately 16 others called for the prosecution and later called for the defense or the reverse. Clearly the huge volume of testimony presented against Wirz was meant to give the impression that the case against him was overwhelming, as though the trial could be decided by the weight of attestation alone, while obscuring the question of his accuracy. From the outset, the military tribunal favored the prosecution. When the counsel for the defense, Baker, objected to some aspect of the trial or to the nature of the proceedings, the court overruled him the vast majority of times. While Chipman's objections were almost always sustained. The government paid the travelling, lodging and the expenses for witnesses as well as the handsome sum of \$3 dollars per day. This was a considerable amount of money during the time period and could easily persuade many to say something damaging against the former Commandant in order to earn their pay. Many of the witnesses for the prosecution were unreliable including Thomas Allcock. This Union soldier testified that he saw Wirz shoot a man dead with the slightest provocation. But when he was asked

to show where that happened on the plat map of the prison, he said: “I am almost blind. I can’t even see that piece of paper”. This is the man who ‘saw’ Wirz shoot a man. He indicated that he had little idea when the incident took place. “This occurred in February, I think February or in 1865, well of wait maybe June 1864”. This is a big difference in dates. “Or along there. I can’t say for certain what month it was”. The Union sergeant Boston Corbett gave big statements, “I very often heard before the musket, I knew by what was said that a man was shot, but I didn’t see it”. They could merely criticize such testimony and he objected to the witness stating anything which he did not see couldn’t be used. The witness explained that it was too dark to see, but I heard the whistle of the balls and know that they fired into the stockade without any provocation whatsoever. How he could know what he did not see was never explained and his statements were clearly exaggerations or simple fabrications. Thankfully the defense counsel again said he objected to the witness stating anything but what he knew himself. General Wallace’s president of the court for the defense counsel in his place, set the policy to allow hearsay evidence for the remainder of the trial. The witness may state what they heard among the prisoners at the time of the killings took place... what the prisoner said and what the sentinels said, on whose orders the fighting was done, etc. The court wants to hear it all. As the historian William Marvel has explained, the trial record runs heavy with some of the most absurd hearsay any American judge ever permitted to stand. And some of the witnesses appeared to have been coached or intimidated to slant their testimony. Baker stated that many witnesses who came for the defense had been manipulated or intimidated. The defense counsel wanted to call the attention of the court to the fact that many witnesses who have come, subpoenaed for us, have been examined on the part of the government and sometimes witnesses have complained that improper language has been used to them to draw out something for the prosecution. Baker, the defense counsel added, “Witnesses come here under very peculiar circumstances, many of them feel is necessary to say and do all they need to do to leave a favorable impression with the government officers, to show their friendship or good feeling to the

government”. According to the lawyer, some of the witnesses intended and feared that they might be liable for some kind of retaliation from the Federal government, often stating: “Why do you suppose I believe anything I’ve done to save my own”.

Witnesses for the prosecution included Confederate officers in the prison system. Lt. Colonel Alexander W. Persons commanded the 55<sup>th</sup> Georgia volunteers who served as guard at the prison. He outraged Witz and should have more than some responsibility, maybe more responsibility for the conditions at Andersonville than even the Captain. But Lt. Colonel Persons had clearly been offered a deal for his testimony. He would not face prosecution if he accused Wirz. The Federal government gave some of the witnesses rewards for giving proper testimony. Jacob D. Brown stating that he seen Wirz shoot and kill two prisoners just for leaving a line of men. A few weeks later Brown was rewarded for his good work with an appointment to the Department of the Interior. But Brown was a charlatan. He claimed that he was born in France and he was the grand nephew of Marquis de Lafayette. But his career as an employee of the Federal government ended in a few weeks after he was recognized, not as Jacob D. Brown but as someone else. He wasn’t German and not a Frenchman and he deserted from the Union Army.

Benjamin D. Dykes was employed as a railroad agent in Andersonville and he said that there were sufficient for the men in captivity and there was a good many vegetables raised nearby, but the prisoners were not allowed to purchase anything, even if they had funds to do so. Yet Dykes gave his testimony in fear that the Federal government could charge him for crimes committed during the war, if he did not cooperate sufficiently. His testimony was acceptable and he received a full pardon from the War Department. Colonel Chipman did his best to keep the defense counsel from presenting evidence which would besmirch the reputation of any government official. When Baker stated that a petition from the Union at Anderson requesting a prisoner exchange had been brought to the President of the United States and to the Secretary of War. They both ignored the request. Chipman immediately objected vehemently: “The

proposition of the counsel is to prove in this unheard way, a fact which can scarcely be believed of a man whose name and fame as so unstained and unimpeachable and that of President Lincoln". "This court must not allow slander of that kind against the memory of such a great and good man as President Lincoln". Lincoln could not be criticized in any manner whatsoever and knew Wallace soon sustained this objection. The testimony against Wirz tended to be vague, only a couple of instances with evidence specific enough to include the name of the victim. Almost in every case, the name of the victim was unknown. However, George W. Brega said he saw Wirz shoot a man named William Stewart, a private belonging to the 9<sup>th</sup> Minnesota Infantry, with the least provocation. But there was no entry in any record at the prison that Stewart ever existed. Furthermore, when the prisoner examined Wirz's revolvers and found that neither of them was operable. They could not be fired...a weakened defense. Wirz's defense counsel wanted to call high Confederate officers and politicians including General Lee, James Seddon - Secretary of War, Stephen Mallory - Secretary of the Navy, Samuel Morse - Surgeon General, Robert Gold - Commissioner for prisoner exchange, and others. The attorney wanted one of these men to verify the fact that the South had too few resources in food and transportation to feed their people properly and they could not supply the prisoners of war. Mainly that Wirz was not responsible for the meager rations at Andersonville. But the court ruled that the Confederate officials were guilty of treason. Of course they hadn't been tried. And 'guilty of treason', as criminal they could not be testify. Baker had seen that he was unable to call the desired witnesses, closed the case for the defense. In his statement Wirz gave the court a solemn affirmation of innocence. The defense stated that he never personally killed anyone he objected strenuously that there was a conspiracy to kill Union prisoners. "I am not conscious of there being one particle of testimony in the entire record that is going to establish the charge or even getting even a faint color to the probability of its existence". He added, "There's not a shadow of testimony by which it can be proven that the deaths at Andersonville can be proven that it was the fruit of a conspiracy". His statement in his own

defense was for reasonable, passionate and logical and it fell on deaf ears. Colonel Chipman presented his summation to the prosecution. Over two days he made nebulous statements, such as: “Many things are proper in the time of peace, which in time of war become high crimes”. This included such questionable infractions as: a ‘timid loyalty’ or ‘yielding to doubtful and hasty clamor’, as though it was necessary to find the defendant guilty as a matter of patriotism. Clearly in an appeal, to play on the fears of a new uprising, Chipman argued: “The war is not over. Though the muskets of treason have been stacked, the armies of the rebellion dissolved, but by far the largest portion of Southerners are sullen, silent, vengeful and ready to seize every opportunity to divide the loyal sentiment of the country and with the spirit, unbroken and defiant”. “Would this day raise the standard of rebellion, if they dared to hope for success”? There is a powerful motivator and Chipman stated that constant vigilance was required, so Wirz had to be found guilty, as matter of national defense. Incredibly, Colonel Chipman spread his summation to accuse the leaders of the Confederacy, even though they were not on trial. But, he said they were guilty of a large number of crimes, from the treatment of captives, to the use of guerrilla warfare, to sabotage, spreading infections, to execution of prisoners of war, the use of landmines against soldiers and many other highly questionable assertions. The logic of these accusations was that since the Confederate leaders were responsible for the war, then they were directly responsible for everything that happened in it, either by Union or Confederate soldiers. Also, the rebel leaders knew of conditions at Andersonville and since they did not solve these problems, then they had to be responsible for them.

### The verdict.

Before stating their finding on Wirz, the Commission stated the guilt of many Confederate officials. Meaning that finding these men culpable was the first and perhaps the most important aspect of the trial. “That Henry Wirz did combine, confederate and conspire with them the said Jefferson Davis, James A. Seddon, Howell Cobb, Howell Cobb, John H.

Winder, Richard B. Winder, Isaiah H. White, W. S. Winder, W. Shelby Reed, R. R. Stevenson, S. P. Moore,---Kerr, James Duncan, Wesley W. Turner, Benjamin Harris, and others whose names are unknown.”

It was a very broad net almost excluding nobody at all.

“And they maliciously, traitorously, and in violation of the laws of war, to impair and injure the health and to destroy the lives, .... the number of 45,000 soldiers in military service of the United States of America held as prisoners at Andersonville.” The eminent ‘Civil War’ historian, James McPherson, has argued to, if any historians would now contend that the Confederacy deliberately mistreated prisoners. Rather, they would concur with contemporary opinions, held by Northerners as well as Southerners, that deficiency of resources and deterioration of the Southern economy were mainly responsible for the suffering of Union prisoners. The South could not feed their own soldiers or civilians, how could they possibly feed any prisoners. The tribunal then found Wirz guilty of 10 or the 13 specifications against him and the court do here sentence Wirz to be hanged by the neck until he be dead, at such time and place as the President of the United States may direct. Recent researchers and historians have been almost unanimous in condemning the proceeding and the verdict. Robert Scott Davis has affirmed his trial (Wirz’s trial) failed to produce and credible account of his acting with personal cruelty or evidence in his role in any kind of conspiracy. The trial was only a formality for a defendant facing the gallows at the hands of a prejudiced court. William Marvel stated that: “Wirz was a dead man from the start”. Ovid Fitch wrote that the trial was a “legal lynching” of Wirz. Charles W. Sanders claimed that the entire proceedings was a sham, and a poorly executed sham at that. The lawyer, Glen W. LaForce , agreed that the trial of Henry Wirz was worse than a mistake, worse even than a miscarriage of justice. The trial of Wirz was a national disgrace. Vengeance, not justice, had been served. A martyr for the South, no doubt Wirz considered himself to be innocent of all crimes and convinced his closest associates of the fact. There were two persons who Wirz would dare not mislead: his defense counsel, who needed all relevant facts to prepare for a proper defense and the Catholic priest to whom he

confessed his sins. As Wirz stated at the beginning of the trial, “my conscience is clear”. I never dealt cruelly with a prisoner under my charge. If they suffer from want of shelter, clothing and necessities, I could not help it, having no control over those things. Wirz’s attorney, maintained his entire life, that the guard was innocent, “protesting up to the last moment his innocence of the monstrous crimes with which he was charged. He received my word that having failed to save him from the felon’s doom, I would, as long as I lived do everything in my power to clear his memory. I did that more readily as I was already perfectly convinced that he suffered wrongfully. The Catholic priest Father F.E. Boyle was Wirz’s confessor and he heard the condemned man’s confessions for weeks before his execution. Wirz would never dare lie to his priest, because that would place his soul in jeopardy. While Church law forbade Father Boyle to ever divulge the content of Wirz’s admissions, the priest gave a summation that of what the condemned man had said, “I know that he was indeed innocent of all the cruel charges which his life was sworn away and I was edified by the Christian spirit in which he submitted to his persecutors”. The night before the execution, government agents came to see Wirz in jail. One of them spoke with Father Boyle first. “I know that on the evening before the execution of Major Wirz, a man visited him on the part of the cabinet officer, informing me that Major Wirz would be pardoned if we would implicate Jefferson Davis in the cruelties at Andersonville”. “These agents came to the captive the same night and offered him a pardon to implicate Jefferson Davis in the crimes at Andersonville”. Wirz rejected this cheap blight with contempt. “These men had just offered me my liberty if I will testify against Mr. Davis and incriminate him with the charges against Andersonville prison”. “I told them that I could not do this, as I neither knew Mr. Davis personally, officially or socially”. “But if they expected, with an offer of my miserable life, to purchase me with treason and treachery to the South, they had undervalued me”. The rest has taken the place of execution, a long list of accusations are read to him as he stood on the scaffold. When asked of he has any last words, Wirz replied, “No sir, only that I am innocent and will die like a man”. “My

hopes being to the future”. “I go before my God, my Almighty God and he will judge between you and me”.

The soldiers mocked him as he died. The men detained to watch the execution chanting, “hang him”.

Andersonville, remember Andersonville.

Wirz fell as the trap door was released, but the rope failed to break his neck and writhed in agony for 20 minutes before he strangled to death. At least Federal revenge ended at that point. The sacrifice of Henry Wirz was not just for the honor of the Confederacy and refusing to implicate innocent people, such as Jefferson Davis in a plot, but his sacrifice also satiated the Union desire for more blood and there were no more executions.

Thank you very much.

The plaque near the Wirz monument at Andersonville reads as follows:

**Captain Henry Wirz, under the immediate command of Brigadier-General John H. Winder C.S.A., absent on sick leave, August 1864, commanded the inner prison at Camp Sumter, April 12, 1864 to May 7, 1865.**

**To the best of his ability he tried to obtain food and medicine for Federal prisoners and permitted some to go to Washington in a futile attempt to get prisoners exchanged. He was tried for failure to provide food and medicines for Federals imprisoned here, though the guards ate the same food and mortality was as high among Confederate guards as among prisoners. Of him, Eliza Frances Andrews, Georgia writer, said, “Had he been an angel from heaven, he could not have changed the pitiful fate of privation and hunger unless he had possessed the power to repeat the miracle of loaves and fishes”. Refusing to implicate others he gave his life for the South, November 10<sup>th</sup>, 1865.**

**Video Link: <https://www.youtube.com/watch?v=NEowk1M58Gg>**