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The Execution of Private Robert Gay

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To Clay county belongs the disgrace of staging the first execution in the west for desertion during the Civil war. The county, however, furnished the victim only; the disgrace belongs to the military authorities who executed him.

Private Robert Gay, of Company D, Seventy First Indiana regiment, was shot to death at Burnside barracks, Camp Morton, Indianapolis, March 27, 1863. He was charged with desertion and with being a spy. The latter charge was never proven, nor was any attempt made to prove it. Incriminating evidence of desertion was found in an oath of allegiance to the Southern Confederacy which he had concealed by sewing in the bottom fold of his trousers. He acknowledged the genuineness of his signature, after discovery, and confessed to desertion in his farewell speech at execution. He added, however, in his brief address, that he did not realize the heinous nature of his crime at its commission.

But for this self-contributed evidence, he would never have been executed.

Desertion is commonly and universally punishable by death. Examples of such punishment were deemed necessary at this emergency in the Civil war. No error was committed in the order, or in its execution. It was regarded at the time as an act of loyalty to uphold and even praise the military for his execution.

Gay's execution, however, was unnecessary, and blame attaches to all concerned in it, especially to those most directly responsible. "There are

those who thirst for my blood; but I forgive them too." These were among his last words.

Some conclusions are derivable from the facts in the case:

1. 1. The government did not keep faith with Gay in the terms of his enlistment.
2. 2. Capt. D. A. Conover, who was mainly responsible for the execution, sought promotion for the performance of extraordinary service growing out of the execution.
3. 3. Gay was selected as an example because he had no family, and no influential relatives or friends, who might appeal to President Lincoln for pardon.
4. 4. The execution was hurried through five days after the order was given, and every precaution was taken to keep all information of the coming event from President Lincoln, who, because of his leniency, and because of an order of amnesty granted to all deserters at about that time, would undoubtedly have pardoned Gay.

The Seventy First regiment was organized at Camp Dick Thompson at Terre Haute in July, 1862. Melville D. Topping was made Lieutenant Colonel, succeeded soon after by James Biddle; William Conklin, major; with William W. Carter as his immediate successor; Daniel A. Conover, captain Co. D; E. A. Thompson, 1st lieutenant; Thomas Cullen, 2nd lieutenant; Thomas M. Robertson, orderly sergeant, afterward captain. The regiment was mustered into the service of the government, August 18, 1862.

Gay enlisted as a private in Co. D in August of that year. He was then teaching school at Bellaire, a small village two miles south of Bowling Green, the county seat of Clay county. He was in poor health and unfit for military duty. He had studied medicine and wanted to be a doctor. He enlisted on condition that he should be appointed a steward in the Hospital. This was never done. Captain T. M. Robertson wrote me in 1907:

He (Gay) was physically unfit for the rough life of a soldier. He had done but little, if any, manual labor for a long time, and his muscles were soft and flabby, and he was short-winded. In a march over the hills and down the ravines of Kentucky, he became nearly exhausted, and I carried his gun for a while to relieve him of a part of his burden, for his knapsack and gun were too heavy for him. After a little rest, he went into the battle of Richmond, Ky., with us, and was taken prisoner. Our regiment was paroled and allowed to return home, but Gay remained in Richmond, and was a helper in the hospitals, waiting on the sick and wounded.

Gay was sick from exhaustion, or wounds, and owed his life to treatments received in the hospital from the Confederacy. In order to secure treatment, medical if not surgical, he took the oath of allegiance to the Confederacy. This oath secured permission to return to his home, in Ohio. He did not accompany his regiment on their return home, but went a few days later in order to visit his mother in Gallia county Ohio.

Captain Conover was promoted to major shortly after Jay's execution, presumably for gallant and meritorious conduct in bringing an arch-traitor and spy to justice, and thus affording a much needed example to all other deserters and spies. Promotion came to others for this same reason. Captain Robertson continues:

There was some talk at the time that an example was needed to deter soldiers from deserting, and that Gay, having no family and no relatives in the country, was a fit subject for such an example.

There were other deserters whose crimes were as heinous as Gay's, but they had families, or relatives, or friends, who would have appealed to President Lincoln, and he would have pardoned them. In order to succeed with their promotion scheme, a friendless lad was selected and his execution hurried through lest the president should hear of it and interfere.

I hardly think his death was necessary; but, technically, in accordance with military law, it may be justified, especially as he admitted his guilt in the brief remarks he made just before his execution.

Captain Robertson thus wrote in the letter already quoted.

Gay sought to escape from the rough life of a soldier to which he was doomed. He was in poor health, and was a patient in the hospital where he helped. In order to secure medical treatment at the hands of the enemy, and to secure permission to return home, he took the oath of allegiance to their cause.

In all southern prisons, federal soldiers, despairing of recovery, and with apparently no chance of exchange, took the oath of allegiance to the confederacy, as it meant home and life to them. Hundreds of such cases occurred. Perhaps not one of these, besides Gay, was ever prosecuted for desertion. It was understood why they deserted. They returned to their homes; and, being unfit for military duty, they lived peaceably the civil life. Gay's case was identically the same.

An order granting amnesty to all deserters who would return by April 30 was issued by the war department at Washington at about the time of Gay's execution. This shows the ruling military sentiment then—a sentiment that offset the supposed demand that an example was needed to deter soldiers from deserting. Gay's pardon would have been generally approved by the military, as well as by citizens.

Gay was a native of Marietta, Ohio, and was twenty-seven years old. His father was an Irish nobleman, who, for political reasons, was an exile in this country. He died at the beginning of the war, or a year sooner. His widowed mother was delicate; and, at the time of his execution, an invalid. She was living in Gallia county, Ohio, then and for a short time afterward. In order to visit her, he did not return with his regiment when it was paroled, but went to Ohio at Camp Chase later.

Charles Matthews, writing from Ohio some time ago, says he knew Gay during his residence in his home state before the war. He says Gay learned the tanner's trade under his father at Vinton, in Gallia county, in 1856.

He is described by those who knew him best as a fine-looking man, nearly if not quite six feet high, of slender build, dark complected, with dark hair and blue eyes, with strong, well-marked features and a magnificent head. His clear, open countenance, as revealed in a portrait which I possess, shows inability to do any dishonorable act, much less the crime with which he is charged, where the magnitude of the crime was apparent to him. A contemporary account says:

He elicited much sympathy, partly the effect of intelligence, of his persistent denial of a guilty purpose and of a general lack of understanding of the heinousness of the offense. He had been a school teacher and was certainly a man of good intelligence and more than average acquirements. He might have been taken for a military preacher in addressing his comrades as he made his last, or farewell, address.

Captain Robertson, who knew him intimately for three years, said:

He was clean of speech, sober, never indulging in strong drink, grave and intelligent in appearance; he was never robust, but of a delicate constitution that wholly unfitted him for a rough soldier life.

It is charged that on or about September 5, 1862, Gay called on the Confederate provo marshal at Richmond, Kentucky, and asked if he could join the rebel army, or take the oath of allegiance to the Confederacy. He said that he was a Southern man in principle and did not want to fight in the Union army. Two federal surgeons, who were detained to treat wounded Union soldiers, and who knew Gay, were present and heard him make these statements. The rebel officer warned him of the danger of such an act, but he insisted on taking the oath. After taking the oath, he said he wanted to join the rebel army, and was given a pass. He soon afterward went to Camp

Chase, Ohio; thence in a few days to Bowling Green, Indiana. He then reported to Captain Con-over at Camp Dick Thompson at Terre Haute and got a sick furlough for fifteen or twenty days.

If Gay planned to desert, and especially if he knew the danger of such a step, he would not have openly done so in the presence of two federal officers whose testimony could have brought swift punishment to him. According to Captain Robertson, Gay's confession, not the testimony of these officers, or any one else, proved his guilt. The names of these officers do not anywhere appear in the prosecution.

Major W. W. Carter, writing in 1888, gave an account of Gay at this stage which is thus summarized: His furlough expired the latter part of October, 1862. About this time, Provo Marshal E. A. Thompson got a letter from Cincinnati narrating the circumstances that occurred in the Confederate office at Richmond, Kentucky, as above narrated, and asking if there was a Robert Gay who was a member of Co. D., Seventy-First Regiment, Indiana volunteers. Colonel Thompson called me to his office and showed me the letter. I don't recall the name signed to the letter, but it was that of one of the surgeons who heard Gay make the statements and take the oath. He saw and recognized him at Camp Chase.

Gay was then at Bowling Green, Indiana. Colonel Thompson gave me an order to arrest him and bring him to Camp Dick Thompson. I detailed Phil Elkin and N. M. Cromwell to go with me to Bowling Green. We found him in the store of Oliver H. P. Ash. I called him to one side and placed him under arrest, not telling him until later that he was arrested for desertion. We took him to Andrew Neimire's tailor shop.

He requested me to let him accompany the guards to James Kendall's where he had made his home to get some clothing and papers. I refused; but told him to write an order and we would bring them to him. He was guarded that night in the shop by two Co. D boys. Some time in the night he was

observed sewing buttons on his clothes and pretending to mend his pants. He was seen to sew a paper in the hem of a pants leg. We said nothing to him about it, but kept watch that he did not take it out.

I reported with Gay to Colonel Thompson, who ordered me to take him to Indianapolis to Gen. H. B. Carrington. I telegraphed ahead and turned him over to the general after dark. We left him with a guard in the outer office. In the private office, I told about the paper. Gay denied having any. He was told to put his foot upon a chair. The general took his knife and ripped the stitches. The paper that he found read substantially:

"I, Robert Gay, do solemnly swear that I will bear true faith and allegiance to the Confederate states of America, and that I will to the best of my ability support its constitution and laws, so help me God. Signed, Robert Gay.

Subscribed and sworn to before me, Post Commandant, at Richmond, Ky.,
Signed Post Commandant."

Major Carter failed to remember the date or the post commandant's name.

Gay was taken to the general guard house in Indianapolis where he was kept till his trial by court martial. After the trial and sentence, he was removed to the Marion county jail, where he was kept till executed.

The official orders and documents in the case were as follows:

GENERAL ORDER No. 23.

Headquarters Dept. of the Ohio, Cincinnati, March 21, 1863.

At the general court martial which convened at Indianapolis, Ind., on the 27th day of Dec., '62, pursuant to Special Order N. 147, of Dec. 5, 1862, from headquarters, and of which Brevet Brig.-Gen. Henry Van Rennselear, Inspector General United States army, is president, was arraigned and tried Private Robert Gay of Co. D, Seventy-first regiment, Indiana volunteers.

Specification In this: That Private Robert Gay, Co. D (Capt. Daniel A. Conover), Seventy-first regiment, Indiana volunteers, duly enlisted and mustered into the service of the United States, did on or about the 5th day of September, 1862, desert his company, his regiment and the service of the United States, and did take the oath of allegiance to serve the enemy, to-wit: the confederate states, so called, and to serve them faithfully against all their enemies and opposers whomsoever. All this at or near Richmond, Ky., on the 5th day of September, 1862. To which charge and specifications the prisoner pleaded guilty.

The court finds the prisoner guilty as charged, and does therefore sentence him, Private Robert Gay, Co. D, Seventy-first regiment, Indiana volunteers, to be shot to death at such time and place as shall be fixed by the major general commanding department of Ohio, two thirds of the members of the court concurring therein. This case, which was referred for action of the president of the United States having been returned for final action under act of congress passed at its recent session, authorizing the punishment awarded to those found guilty of being spies, or deserters, etc., to be carried into effect upon the approval of the commanding general in the field, the finding and sentence are approved, and the sentence that Private Robert Gay of Co. D, Seventy-first regiment, Indiana volunteers, be shot to death, will be carried into execution on Friday, the 27th day of March, instant, under the directions of the officer in command of the post at Indianapolis, Ind.

By command of Maj. Gen. Wright.

Headquarters District of Indiana, March 27th, 1863.

This order will be executed at 3 o'clock this day.

Henry B. Carrington, General Commanding.

Headquarters 71st Regiment, Ind. volunteers, Burnside Barracks, March 27, 1863.

The above order was duly executed at this camp, at 3 o'clock p. m., this day by shooting to death the above named Robert Gay.

James Biddle, Col. 71st Regt., Ind. Vols.

Gay was taken from jail at 2:30 o'clock and conveyed in a closed carriage to the ground. On the way out he retained his composure completely, conversed freely about his conduct and life, and seemed quite cheerful, according to the account of an eye witness.

This composure he retained throughout, and it formed a striking feature of the terrible scene.

When taken out of the carriage he walked to the place of execution. As he stood before the file of men who were to kill him, he showed no signs of trepidation. Indeed, so perfectly steady were his attitude and step, and so unruffled his features that several spectators did not know he was the doomed man until the sergeant major began tying his hands. His dying speech was uttered without any tremulousness of tone, and without any of that incoherence which the most intelligent men often exhibit under such circumstances. His voice was clear and distinct, the words unusually well-chosen, and his sentences well-constructed. His ideas never became confused. If it was not wonderful self-control, it was insensibility to death, equally wonderful in such a man. So perfect was his selfmastery, or indifference, that it was not till he sat down on his coffin that we could realize that was about to die. His calmness seemed to dissipate the sense of peril entirely, and it required an effort, after looking at his steady eye, pale, unmoved face, and unchanged attitude, to bring back the appalling fact which the loaded guns and solemn crowd so forcibly declared, that death was in the very act of snatching the man from earth. Even when he sat down on his coffin, and the sergeant major was blindfolding him, he calmly

drew his knees up so as to set his feet against the side of his coffin and steadied himself on his terrible seat, as if he was fixing himself to have his picture taken. He heard the clicking of the gun-cocks of the firing party preparatory to their fearful duty; but even then, though not a second lay between him and eternity, his audible prayer was uttered without a groan, or tremor, in voice or limb. The history of the world can not show a more remarkable case of self-control and composure.

Preparations for the execution were admirably made, both by Gen. Carrington and Col. Biddle. To the latter was entrusted the duty of performing the execution. The former made all the preceding arrangements. In order to avoid the presence of a large crowd of spectators, who would at the last press upon and disturb the soldiers, and to avoid the possibility of an attempt at rescue, of which a good many confident hints had been thrown out the day before by the Knights of the Golden Circle, the general gave out as a secret, which he knew would be revealed quite as extensively as if it had been published in the papers, that the execution would take place at 5 o'clock, p. m. And to deceive those who might watch his movements he kept a squad of cavalry at his headquarters and his horse ready saddled, as about to start, during the afternoon until after the execution. When the time arrived for the execution, he quietly sent an escort for the prisoner, on a back street, and did not go to the execution himself.

Every movement was executed according to arrangements and passed off quietly. Col. Biddle, of the Seventy First, deserves high praise for his judicious management.

The place of execution was the open field lying between Burnside Barracks and Camp Morton. Here the Seventy-First was drawn up in a hollow square, with the open side to the east. Into this square a number of gentlemen whom Col. Biddle had invited were admitted. They had a full view of the whole scene.

The Sixty-Third regiment then came up with drums beating and marched past the carriage containing the prisoner, who leaned his head partly out of the window to watch them as they formed on the south side of the square. The cavalry were placed on the outside of the Sixty-Third, and the artillery on the west and north sides. Thus a compact mass of soldiers of all arms was formed, leaving a little vacant square in the middle, with the fearfully suggestive opening at the east side. The coffin of plain black walnut, with a flat lid, was brought out and laid in the open end of the square some distance up toward the center. An officer stepped off slowly a space of twenty-five or thirty feet from the coffin to fix the line to be occupied by the firing party, of twenty soldiers, two from each company, who now marched in and formed on two ranks on this line. The spectators inside this square moved over to the left of the line. The soldiers, impassive as statues, changed not a feature or a muscle, but all seemed to be impressed with the solemn duty in hand. Four men walked in at the open space, and stood in front of the coffin. The one on the right carried a small cord and a band of black cloth. This was the sergeant major of the regiment, whose duty it was to bind and blindfold the prisoner, next to him was the prisoner, so unmoved and calm that everybody was asking, "Which is the prisoner?" Next to the prisoner stood the chaplain of the regiment, Mr. Griffith. On the left was a friend of the prisoner. Thus stood the man who was to die, and the men who were to kill him.

The firing party did not know whose gun contained a bullet. Ten guns were loaded with bullets and ten with blank cartridges; then they were mixed up in a confused heap and handed out. The men who loaded the guns could not tell the loaded and unloaded apart. Thus each man was furnished with a reasonable probability that he had no part in the bloodshed.

Adj. Brown, of the Seventy-First regiment, then stepped forward and in a clear and distinct voice read the order of execution. The reading occupied about two minutes.

Col. Biddle then stepped from the right of the firing party and said:

"Gay, if you have anything to say, you can say it now."

The prisoner, without changing his attitude, with his soldier cap in his hand, and held just as he had pulled it off when the reading of the order began, with his plain uniform coat buttoned over his breast, and his well-worn blue pantaloons tucked inside his boots, without a quiver in his voice, or a twitch of a muscle of the face, said:

"Fellow soldiers, I am about to die for the crime of desertion. I have done wrong. I know I have done wrong; but I did it unthoughtedly. I can call God to witness, before whom I must appear in a few minutes, that I did not mean to commit a crime, if ever a man tells the truth it is when he is about to die; and I tell the truth when I say that I meant no wrong. When I took the oath of allegiance, I intended only to get home, so that I might stay; for I did not feel able for service. My health was bad. It has always been poor. I am in better health today than I have ever been in my life. I meant to stay at home and not join the enemy. I never intended to desert my country. But what I did was wrong, and I confess it. I never realized the fate that awaited me till my sentence was read to me. Then I felt that I must die. I cannot tell you how I have striven with the spirit since that sentence was read to me. I feel that I am about to die a sinner. Take warning from me and prepare for death while there is yet time. Later to obtain that religion that is more precious than anything else on earth. Try to reconcile yourselves to God and live as your duty requires. I suppose my death is needed as an example. If it will serve my country and warn you, I will die cheerfully. I forgive all my enemies and every body on earth. I have no malice against any living being. I forgive those who are to fire at me. There are some who thirst for my blood, but I forgive them too. To you who will fire at me, I would say, take your aim well. Fire at the breast; (laying his hand on his heart) that is the place. Hold on the spot firmly. I want to die quickly. Don't let me suffer. Again, I will say, I forgive everybody, and ask them to forgive me."

Mr. Griffith at the close of his remarks, prayed fervently and with far deeper feeling than the man he prayed for showed—all his strength was required evidently to bear his fearful ordeal. At the close of the prayer, Mr. Griffith and the other gentleman shook hands with him and bade him farewell.

The sergeant major then stepped up and tied his hands, which he voluntarily placed behind him. He stood silent for a moment and then said:

"If I could only be spared, I would enter the service of my country and do my duty as well as any one in my regiment, or as well as I am able."

By this time his hands were tied and he glanced round at the ranks and up at the sun, as if to take a last look at earthly things. The sergeant major then led him to his coffin and seated him on it, with his face to the firing party and his back to the east. He sat a second, drew his feet towards him, and settled himself back on the coffin as if to brace himself against the terrible shock that was to come so soon. The sergeant major then tied the black cloth over his eyes, and stepped rapidly off to the right and front, out of the range of the guns. The prisoner, being left alone for the first time, said:

"Oh, that I could see my death!"

These words were uttered in a tone of deep sadness, which those who heard will never forget.

A whisper from Lieut. Sherfey to the firing party brought all the guns to readiness. The clicking of the guns was heard distinctly all around. The prisoner heard it, too, but he only showed his consciousness of it by a movement of his lips in prayer. The prayer became audible, but not intelligible as the guns were lowered to take aim. Then the awful crash of the guns came.

At the explosion he fell straight back over his coffin without a sound or struggle. His feet, which rested on the coffin, were motionless. He had obtained his wish. His comrades had done their duty well.

The surgeon ran to him.

"Is he dead?" asked Col. Biddle.

"He is dying; he will be dead in a few moments," said the surgeon.

He gasped spasmodically for a few seconds and was dead.

He was lifted into his coffin, his bandage taken off his eyes, his hands untied and his little blue cap put on his head.

There were eight shot holes in his coat, seven of them in his breast, any one of which would have killed him. One bullet struck him in the heart.

There was not a drop of blood visible. The bullet holes were clean cut. Under the body was a puddle of blood on the ground, for the balls had gone through him, and the blood ran out below. One bullet hit him in the throat, and another grazed his shoulder. All of the ten balls struck him.

The sergeant of the firing party, with his carbine in reserve, stood by the body, ready to shoot him in the head, if it had been necessary to end his misery; but to his relief, the fatal work had been well done. The coffin was put into the undertaker's wagon, the troops were dismissed, and the most impressive and dreadful scene ever witnessed in Indianapolis, and the first and only military execution in the West, was over.

In a letter written next day in Burnside barracks to my father, Dillon Wayne Bridges, Jr., by Captain Robertson, he said:

It was the first execution I ever witnessed, and I earnestly hope it may be the last. It always awakened a feeling of sympathy in me to see a dumb animal thus summarily and terribly put to death; and my feelings yesterday,

as Gay stood so near the line that divides time from eternity, in better health than I ever knew him to enjoy during my acquaintance of three years with him, were altogether beyond my powers of description.

Gay asked the privilege of being shot without having his hands tied behind him; also that he might stand up. These requests were denied. It fell upon Lieutenant Sherfey to command the firing squad, and upon John H. Doyl and William Slack to belong to the squad.

Desertion, not of prisoners in order to secure life, as in the case of Gay, but of parties who had grown tired of military service, or who were influenced by Copperheads, or Knights of the Golden Circle, were common. In Indiana alone two thousand desertions occurred in December, 1862. Not one of these deserters was ever executed for his crime, which was without excuse and more heinous than Gay's.

Gay was at fault. He could have been paroled with his regiment and could have gone home. He wanted to escape from military life, for which he was not fitted constitutionally; but he took a wrong method of escape.

His mistake, however, did not justify the military in selecting him, as one of thousands more guilty than he was, just because he had no family dependent on him, or relatives, or friends to appeal to President Lincoln for pardon. He should have been selected for execution, if at all, because the magnitude of his crime differed from that of other deserters. It did not, unless it was less criminal, because it resulted from an effort to secure life, where thousands of other desertions even in Indiana were wanton, and wholly without excuse.

His execution, therefore, was a guaranty of immunity to deserters who had families because of these ties.