Discipline and Justice in the Continental Army

Records about Revolutionary War Courts-Martial

In December 1782, during the final winter of the Revolutionary War, as the Continental Army encamped at Newburgh, New York, a group of soldiers from the Light Company, First Massachusetts Regiment, apparently decided to indulge in a crime spree. Although the motives remain unknown—whether fueled by the boredom of winter camp or a chronic deficiency of supplies and pay that would fester a few months later into an open conspiracy to topple the Confederation Congress—the group, including Joseph Cowell, David Shea, Thomas Jinks, Robert Brayton, Nathan Curtiss, Abraham Cook, Samuel Woods, Noah Goodridge, and Lt. Col. James Abram, decided to vandalize the property of a local farmer named Jonas Williams. On several occasions between December 10 and Christmas Eve, they raided the farm's livestock, killing one cow and stealing numerous fowl, including eleven geese.[1]

Such wantonly destructive and illegal behavior was soon met with swift military justice. The soldiers were brought before a military court-martial at Newburgh on January 28, 1783. Col. M. Jenkins presided over the proceedings as President of the Court. After hearing the evidence (which was not described in the trial summary), the court decided that the "part of the charge against the prisoners, reflecting the cow and fowls, is not supported," but that the men were "each of them guilty of the other part of the charge against them [pilfering the geese]," and were thus "in breach of article 5th, section 18th of the Rules and Articles of War."[2]

As punishment, the court ordered Abram, Cowell, and Shea to receive 100 lashes, and "each of the other prisoners 75 lashes on their naked backs." In addition, all prisoners suffered equal stoppages in pay until the sum of fifteen dollars was collected, "to be paid to Mr. Jonas Williams to make good his loss and damages."[3]

The dispensation of military justice is perhaps one of the murkier aspects of the Revolutionary War. With the exception of some high-profile events—including the military trials of Generals Philip Schuyler, Charles Lee, Anthony Wayne, and Benedict

John P. Deeben *is a military reference archivist with the National Archives and Records Administration in Washington, D.C. He frequently writes and lectures about Old Army records from the Revolutionary War to the beginning of the 20th century.*

Arnold—much less is generally known about the punishment and discipline of ordinary soldiers in the Continental Army. Compounding the obscurity is the unfortunate fact that Revolutionary War court-martial case files for rank and file soldiers do not exist. If such files ever existed, they are generally presumed to have been lost in the devastating fire at the War Department on November 8, 1800, that consumed many other wartime military records. And yet, as one historian maintains, a "relatively large number of courts-martial were necessary during the Revolution."[4]

Fortunately, it is still possible to piece together details about Revolutionary War courts-martial from other records available at the National Archives and Records Administration (NARA). The Newburgh case above is one example. An alternate search strategy utilizing other military records and Congressional correspondence can bring to light specific disciplinary actions against Continental Army soldiers, despite the absence of original court proceedings.

Numbered Orderly Books

Information about courts-martial may be found in NARA's War Department Collection of Revolutionary War Records (Record Group 93). The primary source to consult is the surviving orderly books that have been reproduced in National Archives Microfilm Publication M853, *Numbered Record Books Concerning Military Operations and Service, Pay and Settlement of Accounts, and Supplies in the War Department Collection of Revolutionary War Records.*

The microfilmed records are available at the National Archives Building in Washington, D.C., and online at Fold3.com and Familysearch.org. Publication M853 is browsable on both sites, but not searchable by name.

Orderly books—so called because they were typically maintained by an orderly sergeant—exist for many Continental Line regiments and other military commands. They usually contain copies of orders issued by the unit's headquarters, as well as any relevant orders emanating from higher commands. The books also frequently record instructions relating to troop movements and announcements of the officers of the day, special details, appointments, promotions, reprimands—and courts-martial and their verdicts.[5]

The Rules and Articles of War adopted by the Continental Congress on September 20, 1776, authorized the use of general, brigade, and garrison (or detachment) courts-martial to judge and punish military offenders. The type of court employed depended on the administrative circumstances in the field, severity of the offense, and rank of the accused. A typical general court-martial consisted of thirteen members, one of whom was designated president of the court. Individual courts set their own legal procedures for oaths and witness testimony. Most importantly, once a trial concluded and a judgment was reached, a summary of the proceedings and the decision of the court were recorded in the unit's orderly book for public inspection. These summaries quite often remain the only existing evidence of military crimes and punishments.[6]

Opposite page: Charles Willson Peale, detail of *Walter Stewart (1756–1796)*, 1781. Gift of Robert L. McNeil, Jr., B.S. 1936S. *Inset:* Edwin Austin Abbey, *Study for a figure in "Valley Forge" mural at the state capitol building in Harrisburg, Pennsylvania,* 1909. Both images courtesy of Yale University Art Gallery.

Left: C. F. Blauvelt, *Treason of Arnold; Arnold persuades Andre to conceal the papers in his boot*, ca. 1874. Library of Congress, loc.gov/item/2010651755.

In Camp at Valley Forge, from Joel Dorman Steele and Esther Baker Steele, *A Brief History of the United States* (1900), 126. Library of Congress.

Microfilm publication M853 contains approximately seventy orderly books numbered 12–76 and 193–197, reproduced on rolls 2–11. At least sixty-six of those volumes include courts-martial announcements. The orderly books are generally arranged chronologically by date and, with a few exceptions, numerically by volume number. Collectively, they cover the entirety of the Revolutionary War, from June 23, 1775, to September 27, 1783.

Many of the volumes were composed at general headquarters locations, including George Washington's headquarters at Cambridge (volumes 12, 15, 196) and Boston, Massachusetts (volume 195); General Henry Heath's headquarters at Boston (volume 16); Adjutant General Alexander Scammell's headquarters at Middlebrook (volume 28) and Morristown, New Jersey (volumes 33, 35–37); and Continental Army headquarters at Newburgh, New York (volumes 60–64, 66, 70–75).

The collection also includes several regimental orderly books for Col. Ezra Wood's Massachusetts Regiment (volume 197); the Second Pennsylvania and Second New Jersey (volume 13); and the First Connecticut (volumes 39–43). Several volumes cover Valley Forge Camp (volumes 20–25) from January 1 to August 21, 1778.[7]

The courts-martial summaries document all manner of military infractions. In addition to the petty larceny and vandalism perpetrated by the wayward members of the First Massachusetts Light Company, soldiers were tried for a variety of other minor and serious offenses. Disobeying orders, public drunkenness, and sleeping while on post or guard duty constituted some of the more common misdemeanors, while severe charges often included conduct unbecoming a gentleman, assault and battery, fraud or embezzlement, espionage, and inciting mutiny. One enterprising officer, a Lt. Col. Badlam of the Eighth Massachusetts Regiment, was tried at West Point for neglect of duty and "unofficer like conduct" for habitually mustering into the Massachusetts Line "persons precluded by the laws of the state and others unfit to perform the duty of soldiers in the field." The alleged misfits included several British and French deserters, three undersized boys, a mentally deficient individual, and "a negro lame in the ankle."[8]

The most common violations comprised various forms of desertion. These infractions ranged from soldiers simply absenting themselves from their post or going missing from their camp or unit for an extended period of time (presumably to escape the chronically poor living conditions of Army life), to outright attempts to flee the Continental Army and defect to the enemy. When Sgt. Eliphalet Gray of the Fifth Connecticut Regiment deserted on February 10, 1779, he not only attempted to join the British but brought a stolen horse from the Light Dragoons into enemy lines.[9] Some cases involved soldiers deserting and rejoining different regiments, often under assumed names, to collect multiple enlistment bounties.[10] Phineas Bill, a recruit in the Connecticut Line, was tried and punished for such an offense after he deserted and attempted to join a Massachusetts regiment under the alias John Hand.[11] In all, the orderly books documented some 503 cases of desertion among the Continentals, representing almost 36 percent of the 1,404 courts-martial cases recorded.

The punishments administered for courts-martial convictions varied considerably. The most common penalty was flogging, or the laying on of lashes or "stripes" across the defendant's bare back with a whip or "switch" (usually a hickory stick). The number of lashes often reflected the severity of the crime. Minor offenses such as being drunk and absent from roll call drew as few as twenty lashes, while desertion often earned 100 or more, with larger amounts sometimes parceled out in increments

over several days. The severest penalty of execution by hanging or firing squad was sometimes mitigated by extenuating factors. After Eliphalet Gray was condemned to death for desertion from the Fifth Connecticut Regiment, the sentence was commuted upon discovery that he was "subject to turns of Delirium, or Insanity of Mind."[12]

Perhaps the most creative punishment involved the public humiliation of Commissary Dunham Ford of Gen. Nathaniel Greene's Division. Upon his conviction for theft, Ford was ordered to be "mounted on a horse, back foremost, without a saddle, his coat turned wrong-side-out, his hands tied behind him, and be drummed out of the army (never more to return) by all the drums of the division to which he belongs, and that the above sentence be published in the newspapers."[13]

Papers of the Continental Congress

The second major source of information about Revolutionary War courts-martial resides in the voluminous records kept by the Second Continental Congress. Part of the Records of the Continental and Confederation Congresses and the Constitutional Convention (Record Group 360), they are reproduced in National Archives Microfilm Publication M247, *Papers of the Continental Congress, 1774–1789.* The microfilmed records have been digitized and are available online at Fold3.com. They are both browsable and searchable by name.

The Papers are organized by type of record, such as journals, committee reports, correspondence (letter books), memorials, and petitions. The Papers include 518 volumes organized into 196 different series designated as numbered "Items."[14] The records are indexed to the document level by a five-volume publication, *Index: Papers of the Continental Congress, 1774–1789* (Washington, D.C.: U.S. Government Printing Office, 1978), compiled by John P. Butler. Each citation in the index identifies the document's location in M247 by roll number, item number, volume, and page number. The index is available on FamilySearch.org.[15]

The index heading "Courts Martial" provides citations for 171 individual documents pertaining to various trial proceedings. (Separate headings also exist for "British," "Dutch," and "Naval" courts-martial.) As one example, a document listed as "Army. General Court Martial. Harlem Heights," dated September 21, 1776, contains the summary of a reexamination of the court-martial sentence of Ensign Matthew Macumber, who was convicted the previous day of plundering and mutiny. The court reconvened at the request of General Washington to reconsider the sentence against the defendant. After a new review of the evidence, with no additional statements from Macumber, the court upheld the defendant's guilt and reaffirmed his punishment of cashiering.[16] A further explanation of the court's actions, including the reason why the court declined to explain or justify their verdict (fear of potential reprisals from superiors who opposed the initial judgment), appeared in a subsequent letter dated October 7, 1776.[17]

A few well-known court-martial proceedings are available in the correspondence from military officers. Item 153, "Letters from Maj. Gen. Philip Schuyler, 1775–85" includes information about Schuyler's court-martial and subsequent acquittal, which stemmed from his loss of Fort Ticonderoga in July 1777. Items 157–162, "Letters from General Officers, 1775–89," contain the Congressional confirmation of the court-martial

Left to right: General [Charles] Lee, General [Israel] Putnam, and General [John] Sullivan, all by Robert Pollard. From James Murray, *An Impartial History of the War in America* (c. 1782). National Portrait Gallery, Smithsonian Institution.

conviction of Gen. Charles Lee over his poor conduct at the battle of Monmouth (Item 158), the court of inquiry on Maj. Gen. Israel Putnam's conduct concerning the loss of Forts Clinton and Montgomery in October 1777 (Item 159), and the court of inquiry on Maj. Gen. John Sullivan's defeat at Staten Island in August 1777 (Item 160). Item 162 includes the inquiry into perhaps the most famous court-martial of the war, that of Benedict Arnold, who requested the trial to clear his name of misconduct against civilian officials while stationed at Philadelphia.[18] Arnold's frustrating experience during that protracted legal process contributed directly to his subsequent decision to defect to the British.

When the Continental Army took the field against British forces in June 1775, Commander in Chief George Washington knew that tight discipline would be a key factor in holding the nascent force of fiercely independent-minded American soldiers together long enough to achieve victory. Good discipline required the strong enforcement of justice for breaches of military behavior, from minor infractions of conduct to major felonies and capital crimes. The Continental Army therefore employed a widespread system of military courts-martial throughout the course of the war. Even though the original case files from resulting court-martial proceedings no longer exist, other surviving records with summaries of such cases still provide a useful window into disciplinary actions taken against individual Continental soldiers. The stories of military justice are still there to find, so long as researchers know where to look. ◆

NOTES

1 Summary of court-martial proceedings of Lt. Col. James Abram et al., January 28, 1783; Orderly Book 71, Jan. 8–Feb. 11, 1783; Records of Military Operations and Service*; Numbered Record Books Concerning Military Operations and Service, Pay and Settlement of Accounts, and Supplies in the War Department Collection of Revolutionary War Records* (National Archives Microfilm Publication M853), roll 11; War Department Collection of Revolutionary War Records, Record Group (RG) 93; National Archives Building (NAB), Washington, DC.

2 Ibid.

3 Ibid.

4 Introductory remarks by Eugene A. Stratton, in James C. Neagles, *Summer Soldiers: A Survey & Index of Revolutionary War Courts-Martial* (Salt Lake City: Ancestry Inc., 1986), vii.

5 Mabel E. Deutrich, *Preliminary Inventory of the War Department Collection of Revolutionary War Records,* Preliminary Inventory 144 (Washington, D.C.: National Archives and Records Service, 1970), 9.

6 Neagles, *Summer Soldiers* [note 4], 5–6.

7 Ibid., 281–83. Two other sources in the numbered volumes in M853 contain information about court-martial cases: "Letters Sent by Brig. Gen. Edward Hand, Adjutant General of the Continental Army, Mar. 27, 1781–July 6, 1783" (volume 162) and an "Account and Memorandum Book of Capt. Thomas Mighill, Mar. 1775–May 1777" (volume 174). Both are reproduced on microfilm roll 17, along with other miscellaneous records of military operations and service. Hand's letters are more administrative, discussing aspects of specific cases, while Mighill's ledger contains a few trial summaries similar to those of the orderly books. An additional collection of 64 regimental orderly books is available in the Manuscript Division of the Library of Congress. For a complete description of available volumes, see Neagles, *Summer Soldiers* [note 4], 283–85.

8 Summary of court-martial of Lt. Col. Badham, 8th Massachusetts Regiment, August 1, 1782; Orderly Book 60, April 27–Aug. 9, 1782; M853 [note 1], roll 9.

9 Compiled Service Record for Sgt. Eliphalet Gray, 5th Connecticut Regiment; *Compiled Service Records of Soldiers Who Served in the American Army During the Revolutionary War* (National Archives Microfilm Publication M881), roll 264; RG 93; NAB. Summary of court-martial of Sgt. Eliphalet Gray, April 1779; Orderly Book 28, Dec. 22, 1778–June 26, 1779; M853 [note 1], roll 4.

10 Neagles, *Summer Soldiers* [note 4], 32–33.

11 Summary of court-martial of Phineas Bill, October 8, 1781; Orderly Book 55, Aug. 22–Oct. 17, 1781; M853 [note 1], roll 9.

12 Summary of court-martial of Eliphalet Gray, April 1779; Orderly Book 28, Dec. 22, 1778–June 26, 1779; M853 [note 1], roll 4.

13 Summary of court-martial of Dunham Ford, January 5, 1778; Orderly Book 20, January 1–31, 1778; M853 [note 1], roll 3.

14 Kenneth E. Harris, *Papers of the Continental Congress, 1774–1789*, Descriptive Pamphlet M247 (Washington, D.C.: National Archives and Records Service, 1971), 1–3.

15 See FamilySearch.org/search/catalog/36385.

16 Proceedings re: Matthew Macumber, September 21, 1776; Letters of John Hancock, and Miscellaneous Papers, 1774–85 (Item 58); *Papers of the Continental Congress, 1774–1789* (National Archives Microfilm Publication M247), roll 71; Records of the Continental and Confederation Congresses and the Constitutional Convention, RG 360; NAB.

17 Comfort Sage et al. to Congress, October 7, 1776; Volume 3: Sept. 19, 1776–Mar. 14, 1777; Letters from Gen. George Washington, Commander in Chief of the Army, 1775–1784 (Item 152); M247, roll 167; RG 360; NAB.

18 Harris [note 14], 44–49.