



HEROIC FIGURE OR TRAITOR?

knocked bleeding to the floor of his own courtroom by federal officers, Judge Richard Carmichael's arrest in Easton helped build sympathy for the South

Story by DICKSON PRESTON

Illustration by JOSEPH C. OVERSTREET

AT 1 P.M. Tuesday, May 27, 1862, the thump of boots rang through the hall of the Talbot County Courthouse in Easton.

In the courtroom, Judge Richard Bennett Carmichael of the Seventh Maryland Circuit Court was conducting a trial. A witness was on the stand. Except for the jury and attorneys, the room was almost empty. Most of the spectators and some officials, including Sheriff William L. Wrightson, were out to dinner.

The door was pushed open and two armed men entered, Deputy Provost Marshal James S. McPhail and Special Officer John L. Bishop. They represented the military authority of Maj. Gen. John A. Dix, federal commander at Baltimore. They approached the bench.

What happened is still a matter of dispute after more than 110 years. Even the eyewitnesses disagreed, depending on whether their sympathies were Union or the Confederate. Later writers, mostly Southern partisans, gave a one-sided view.

Of the facts, however, there can be no doubt. Deputy Marshal McPhail informed Judge Carmichael that he was under arrest. The judge questioned (or denied) the marshal's authority. There was shouting. Officer Bishop, on orders from Marshal McPhail, attempted to

take the judge into custody. A scuffle ensued.

"The judge," according to the *Easton Gazette* of May 31, "was several times struck over the head, and several other persons, who were near, were severely injured."

After Judge Carmichael's wounds were dressed, he and three other men who had also been arrested were taken aboard the steamer *Balloon* to Baltimore, where they were locked up at Fort McHenry.

Judge Carmichael later was removed to Fort Lafayette, and then to Fort Delaware. On December 4, 1862, he was unconditionally released.

The arrest of Judge Carmichael was one of the most dramatic events of the Civil War in Maryland, except for battles themselves.

Southern sympathizers seized upon it as an example of federal "brutality" in keeping Maryland within the Union. Exaggerated accounts spread throughout the state, and Judge Carmichael became a hero and a martyr to those who favored the rebel cause. Even those who opposed secession were revolted by the spectacle of a judge beaten in his own court. The affair was pivotal in turning

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Maryland public opinion against the North.

After the war, pro-Southern writers kept the incident alive by constant reference and by convenient editing of the facts. Judge Carmichael, solely on the basis of his ordeal at the hands of federal officers, became the top political figure in the state. He was chosen unanimously as president of the 1867 Constitutional Convention which restored conservative government. On his death in 1884 *The Sun* editorialized . . . "An overwhelming majority of the voters of Maryland would have been glad to bestow upon him the highest office in their gift, and would have doubtless done so, but for his own unwillingness to incur the labors of public office in the enfeebled state of health."

NOR did his usefulness to the "lost cause" end with his death. Every major historian of the Eastern Shore has since used the Judge Carmichael affair to exemplify federal treatment of Maryland as a "conquered province" and written of the judge himself almost as a saint.

J. Thomas Scharf set the tone in his "History of Maryland" (1879). He denounced the event as an "outrage" and wrote of the "spectacle of an upright, honored and venerable judge beaten, wounded, and dragged bleeding from the bench for upholding the Constitution which he had sworn to maintain . . ." Mathew Page Andrews (1929) and others followed Scharf's lead.

But were they right in doing so? Was Judge Carmichael in fact the heroic figure he was made to appear? Or was he, as General Dix and his advisers thought, a traitor?

The question is worth re-examining today, not to refight the Civil War, but to point up a weakness in any approach to the past. The weakness is that history as we read it is less a record of past events than a reflection of the prejudices and preconceptions of the historian who writes it.

Mr. Scharf, for instance, was certainly a monumental collector of facts. But he was also an unreconstructed rebel who had spent four years fighting for the Confederacy, had been wounded three times, and had himself been a federal prisoner. In writing of Judge Carmichael, he admitted he had a sense of "indignation too hot for the calmness of impartial history."

On the central question of the affair—why General Dix ordered Judge Carmichael arrested in the first place—Mr. Scharf, Mr. Andrews and the other historians all were virtually silent. If they knew the background, they chose to ignore it. Their purposes were best served by picturing Judge Carmichael as an heroic defender of the Constitution against the lawless "ruffians" of the federal government.

To federal officials who were fighting to preserve the Union, however, Judge Carmichael was no Constitutional hero. He had been behaving like a traitor, openly and defiantly, for nearly two years, operating his court as an island of the Confederacy in the sea of Unionist Maryland.

As early as May, 1860, months before Abraham Lincoln's election, the judge had declared his own private war on the anti-slavery forces. He had told the Talbot county grand jury that abolitionist propaganda was "incendiary" and "evil" and that it was their duty to stamp it out. He charged them to take steps to halt circulation in the county of the two most widely read abolitionist newspapers, the Methodist Church's *Christian Advocate* and Horace Greeley's *New York Tribune*.

The jurors dutifully ordered that the two papers "not be delivered to their subscribers," according to a memorandum written by James Dixon, a Quaker and leading Talbot county citizen. Constables carried the orders to all postmasters, demanding also in the name of the grand jury the names of all persons receiving them.

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"But the result," Mr. Dixon wrote, "was very different from what was expected. The people considered it an infringement of their rights and a stepping aside from the legitimate path of the jury, to give orders to federal officials. Much indignation was excited."

Easton Postmaster Charles Robinson, appearing before the grand jury, said that he would not obey the orders, "that he was an officer of the general [federal] government and was not answerable, as an officer, to the state courts—that he did not know, and would not know, and could not know, the contents of papers received at his office, and did not refuse to deliver any matter that came to his office properly directed and paid for."

The grand jury finally reported back to Judge Carmichael that it was impossible to enforce his instructions, whereupon he gave up the attempt.

IT should be noted that the same man who was to go down in history as a "defender of the Constitution against lawless federalism" was himself ignoring the Constitution — specifically the First Amendment, which forbids "abridging the freedom of speech, or of the press."

After Lincoln's election, Judge Carmichael quickly emerged as a leading advocate of Maryland secession. He was chairman of the Resolutions Committee of the Southern Rights Convention which met in Baltimore. February 18, 1861—just 10 days after the Confederacy was formed — and under his guidance the convention unanimously adopted resolutions recommending that if a disruption could not be avoided, Maryland should cast her lot with Virginia and the South.

When this did not happen, the judge swung to the view that the North should stop the war and let the South depart in peace.

Judge Carmichael soon found a better target for his interpretation of the law than even Greeley's *New York Tribune*. This time it was the federal military establishment itself.

Just before the elections of November, 1861, pro-Union forces in Talbot county held a meeting at the village of Chapel,

with Henry H. Goldsborough as principal speaker. Hecklers arrived and started shouting what Mr. Goldsborough and others described as "offensive re-



Judge Richard Carmichael

marks." The meeting broke up in a free-for-all.

The Unionists complained to the commander of federal troops which had been stationed in Talbot county to preserve order (and to prevent the "disloyal" from voting). The federals arrested three men on charges of interfering with the election process.

Then Judge Carmichael stepped in with his famous — and explosive — charge. He told the November grand juries of both Talbot and Queen Annes counties that federal military forces had no right to arrest civilians or to suspend the right of habeas corpus, except on actual fields of military operation. According to his interpretation the arrests made by the troops in the Chapel incident were in themselves crimes.

This time he relied on the same first 10 amendments to the Constitution which he had ignored a year before.

He read them in full to the jurymen and called them "the Ten Commandments; forever forbidding any and all the powers of the government to infringe the rights of citizens."

Under his direction, the Talbot grand jury proceeded to indict, not the hecklers who had broken up the meeting, but the federal officers who had arrested them for doing it. Mr. Goldsborough, whose right of free speech had been interfered with, also was indicted for aiding and abetting the arrests.

This was an act of defiance which federal authorities could not ignore. Judge Carmichael was asserting that the state's civil powers were superior to those of the United States government — which was precisely the issue on which the entire war was being fought. If a local judge on the Eastern Shore of Maryland could have federal soldiers arrested for carrying out orders, the Union claim of federal authority over the states was meaningless.

THE judge soon laid himself open to another charge. With his penchant for selecting which legal principles to defend and which to ignore, he failed to mention at the next Talbot grand jury session the provisions of a new state law aimed at combating secessionist activity in Maryland.

This so-called "Treason Bill" provided the death penalty for anyone convicted of waging war against the state or giving aid and comfort to its enemies. Lesser penalties were provided for a long list of pro-South acts such as belonging to secret secession societies, displaying rebel flags or encouraging minors to go south.

It was approved by the Legislature in March, 1862, and took effect April 1. But more than a month later, claiming that he had not yet received an official copy, the judge declined to charge the May grand jury on its provisions. In the past, as the *Gazette* was quick to point out, he had made certain the grand jury knew the provisions of any new legislation.

Thus the stage was set for the confrontation in the Talbot County Courthouse.

On Friday, May 23, General Dix sent orders to Deputy Marshal McPhail to arrest Judge Carmichael and Talbot State's Attorney I. C. W. Powell on charges of treason. On Saturday, Mr. McPhail went to Easton by steamer, taking with him four special officers and also four members of the 2nd Delaware Regiment who had been indicted under Judge Carmichael's instructions but had not yet been served with papers.

Throughout the weekend, rumors bubbled as word of the federal officials' presence spread. Most felt that they had come to arrest Judge Carmichael. He apparently welcomed the opportunity to become a martyr; instead of going home to Queen Annes county, he spent the weekend in an Easton hotel.

There was also talk of resistance. William H. Nabb, a professional slave trader and in the words of one contemporary a "deperate and violent" man, proclaimed to all who would listen that a hundred armed men would rise to rescue the judge if the federals laid hands on him.

This was idle bluster, and most Talbot countians knew it, but Marshal McPhail did not. Fearing violence, he asked General Dix for armed reinforcements, and settled down to wait for them.

On Monday, Sheriff Wrightson served writs on the four Delaware men notifying them of their indictments. This made the federal legal case stemming from Judge Carmichael's grand jury charge complete. Then on Tuesday morning, word came that the Balloon had arrived at Miles River wharf, 4 miles from Easton, with 100 to 125 Federal troops aboard.

Marshal McPhail proceeded to the Courthouse.

As to what happened inside, the only source still is what was reported by the two Easton newspapers, the pro-Union *Gazette* and the pro-Confederacy *Star*. They differed widely, though both relied on eyewitnesses who were themselves attorneys, court officials and jury members who presumably knew a lot about giving evidence.

According to the *Gazette*, when Marshal McPhail told Judge Carmichael

he was under arrest "by authority of the United States government," the Judge replied, "I deny your authority."

According to the *Star*, the judge merely demanded to see Mr. McPhail's authority, and ordered McPhail to take off his hat, "which he did instantly." (The *Gazette* said he merely tipped his hat "politely as if making a salutation and then replaced it on his head.")

There were other disagreements — whether Officer Bishop was "swearing and boisterous," as the *Star* charged; whether shots were fired (the *Gazette* said they were only caps); whether court crier Will H. Sheppard was choked into silence when he ran to the window to call for the sheriff.

The greatest discrepancy was over who started the melee when Officer Bishop went forward to arrest the judge. Some said Judge Carmichael kicked and struck at him, whereupon the officer retaliated by hitting the judge on the head with his pistol butt. The *Star* scoffed that this was "impossible." There was no room between the desk and the window behind it for the judge to do any kicking, the *Star* insisted.

But all sides agreed on what happened next. Other federal officers rushed to Mr. Bishop's aid. They too used their pistol butts, and Judge Carmichael

was knocked bleeding and semi-conscious to the floor.

Several of those present rushed up to prevent the judge from being killed. They also were slugged on the theory, the officers said later, that anyone who tried to help the judge must be his "partisan friend." Ironically, most of them were "good Union men" — including the jury foreman, John L. Hopkins, and John Bozman Kerr, a prominent Talbot county political leader and one of the most important Union supporters in the state.

OUT on the street, Mr. Nabb, the slave trader, heard what had happened. He rushed to the Courthouse steps. There a federal guard recognized him, fired his pistol, and then clubbed Mr. Nabb with it, knocking him down. Some said he continued to beat Mr. Nabb after he fell. At any rate, the slave trader was taken into custody.

Meanwhile, State's Attorney Powell had submitted quietly to arrest. Alexis A. Pascault, was also arrested, apparently for shouting insults at the federal forces.

About 2.30 P.M., two companies of troops from the Balloon arrived and occupied the Courthouse green. No armed rescuers appeared. The wounded, including Judge Carmichael, were treated by Dr. Edward Jenkins. Late in the afternoon, the troops escorted the prisoners back to Miles River ferry, then to Fort McHenry.

In its next issue, the *Star* called the incident "one of those terrible days . . . which will afford a theme for the historian centuries hence . . . a tragedy to surpass in atrocity the most infamous deeds recorded in history."

Even the *Gazette* had no excuse for the action of Officer Bishop, which it admitted was "unnecessarily violent."

It blamed the affair on secessionist propaganda, "the spirit of treason which for the last 12 months has swayed a great mass of our people as if they were under the influence of some demonical spell."

In retrospect, it seems clear there is something to be said for both points of view.

Judge Carmichael certainly was *not* the great defender of Constitutional government which Mr. Scharf and others have made of him. He twisted the law to his own purposes and used it, as the *Gazette* said, to aid the Confederacy.

Still, he was a man of courage who met the greatest issues of his day head on. From the Union point of view, he may have deserved arrest (although federal leaders, probably wisely, decided not to press their case). But he certainly did not deserve to be beaten bloodily to the floor in his own courtroom. □