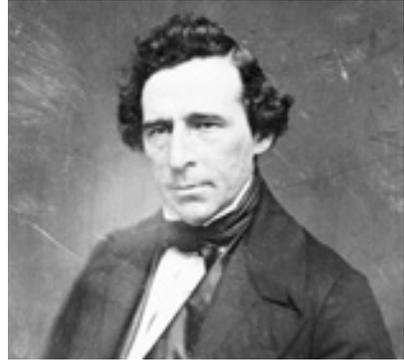


Federal-Local Collaboration in Law Enforcement During the Civil War

Wyatt Evans

In late November 1862, New York City's Metropolitan Police commissioners conducted public hearings over the month-long detention of Mrs. Isabella Brinsmade. Held without charge in a precinct station house, Mrs. Brinsmade's forced residence shone a spotlight on the errors in judgment that marred the Union government's campaign against disloyal behavior in the northern states. In the end, she was completely exonerated, and the local and federal officials involved in detaining her were criticized for their actions. Her story numbered among the many dozens more held up by critics at the time and historians since as proof of the government's troubled management of domestic security in the loyal states. But understanding the dynamics at work in "The Case of Mrs. Brinsmade," as newspapers called it, also reveals a great deal about the evolution of local and federal collaboration in law enforcement during the Civil War.¹



Metropolitan Police Superintendent John A. Kennedy conducted investigations and executed arrests to support the Union government's domestic security efforts.

A native of New Orleans, the 20-year-old matron traveled to New York City in late August at the urging of her wealthy merchant father. Given her high spirits and tendency to speak her mind, and with her husband away serving the Confederate cause, Brinsmade's father concluded she would be better off in New York rather than remaining in Union-occupied New Orleans. When she disembarked in New York, the provost marshal for New Orleans (who happened to be aboard the same vessel), told the patrolmen at the dock he suspected she was a spy. They passed

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¹ Primary sources for the Brinsmade story include the major New York newspapers at the time and government records, including the Turner-Baker Papers.

this information up the chain of command to Superintendent John A. Kennedy, who assigned a detective to watch her movements. Thomas Bowles, the detective, tailed Brinsmade for the next three weeks as she took rooms at a fashionable boarding house, visited friends in Brooklyn, and traveled to Washington, DC, to stay with an uncle. He overheard her disparage the Union cause and spent long hours shadowing her rendezvous with male admirers. Once in the capital, Bowles followed his instructions and made daily reports to Col. Lafayette Baker, the War Department's special provost marshal. Baker ordered him to bring Brinsmade in for questioning. Finding no evidence to hold her as a spy, he recommended that she be taken back to New York City and then sent to New Orleans.

Once back in New York, Bowles was at a loss as to what to do with his charge. He had no written orders from Baker or instructions from Kennedy. After consulting with fellow officers, he put Brinsmade up at the precinct house on 47th Street while he booked her passage back to New Orleans. This was not completely without reason, as New York's police station houses provided temporary lodging for many people, especially over the winter months. A generation later, reformer Jacob Riis featured the 47th Street's living quarters in his photographic essay on the city's homeless.² Brinsmade's case was obviously different—she was neither indigent nor a voluntary resident. To cap matters, after searching several days without success for a ship's captain willing to take her aboard to New Orleans, Bowles abandoned the case. He visited her every week for a while and then went to Washington to serve on Baker's force. When word of her incarceration finally became public at the end of October, it unleashed a storm among the city's Democratic opposition and press. After a flurry of telegrams between officials in New York and Washington, Brinsmade was released unharmed on the eve of New York's midterm elections in early November.

The hearings took up the accusations that Superintendent Kennedy was responsible for her illegal detention. The testimony over the course of two days makes for interesting and occasionally humorous reading. The charming Mrs. Brinsmade, who took the witness stand dressed in a black silk dress with a blue veil, made quite a hit with the audience in recounting her interview with Baker. Bowles for his part was uncertain as to whose authority he acted upon: "What was done I understood was because Mr. Kennedy was Provost-Marshal, and was acting in that capacity; I certainly thought I was acting as an Assistant Provost-

² Jacob Riis: *Revealing "How the Other Half Lives,"* Library of Congress Exhibition: <https://www.loc.gov/exhibits/jacob-riis/reporter.html> (accessed Aug. 14, 2019).

Marshal, though I did not lose my right and duty as a policeman.”³ This was a major point of the hearings: Did Kennedy act in his capacity as head of the Metropolitan Police, or was he wearing his other hat, that of an appointed federal officer to the War Department? If the former, then why had Kennedy assisted in detaining the young woman for committing a vaguely defined federal crime? And why had he allowed the use of local police personnel and facilities to carry out her detention? On the other hand, if Kennedy was acting in his federal capacity as a special provost marshal charged with arresting spies, deserters, and all those deemed disloyal, then the same question regarding personnel and facilities presented itself.⁴



As a special provost marshal and War Department detective, Col. Lafayette Baker had wide jurisdiction to pursue civilian offenders against the Union war effort. His relationships with local law enforcement officials were not always harmonious.

The government side gave inconclusive answers. Colonel Baker insisted his role toward Bowles was advisory only, and that he never ordered Brinsmade’s detention. Telegrams from the War Department confirmed his position that the government “had no official knowledge of it.” Baker played a bigger role than he let on, and divulged that Secretary of War Edwin Stanton admonished him “*that Mr. Kennedy went entirely out of his jurisdiction in making the arrest, and that I had done wrong in having anything to do with it in any shape or form.*”⁵ But the evidence never proved Baker ordered her arrest, and the fact remained that Bowles came to him, not the other way around. Special Provost Marshal General Simeon Draper, a wealthy merchant appointed to his government post after Brinsmade’s detention began, learned of her incarceration at the end of October. He immediately communicated with Kennedy and the War Department to establish who ordered her detention.

³ “The Case of Mrs. Brinsmade,” *New York Times*, Nov. 25, 1862, 2. Proquest.

⁴ Kennedy wrote a letter to the *New York Times* the week before the hearings vindicating his actions. He also corresponded with Judge Advocate L.C. Turner in the War Department on the matter, closing his letter, “So much for having anything to do with a bad character.” The character is not named, but it may well have been Baker, whom Kennedy characterized in his letter to the *Times* as “a person of whom I have never heard anything good.” See *Case files of Turner-Baker Investigations* (National Archives Microfilm Publication M797), Roll 49, Folder 1741, Records of the Adjutant General’s Office, Record Group (RG) 94, <https://www.fold3.com/image/257068314>.

⁵ “The Case of Mrs. Brinsmade,” *New York Times*, Nov. 25, 1862, 2. Proquest. Italics in original.

When each side pointed the finger at the other, he ordered her release. As for procedures for arresting and holding federal prisoners, Draper affirmed that local prisons and jails were often used for this purpose, based upon formal orders for commitment. The orders ordinarily came from the War Department, not the local superintendent of police. Only in clear cases of disloyalty or flight risk by the prisoner were verbal orders resorted to.⁶

When pressed by Kennedy's counsel, Draper admitted that on an earlier occasion he had verbally ordered the superintendent to commit a federal prisoner, despite having no judicial authority to do so. The point the counsel wished to make was that Kennedy and his officers acted according to custom, and though the commissioners might find fault with the "system," they should not arraign an individual for following established practices. The same went for holding federal prisoners in local jails. With passage of the federal Fugitive Slave Law in 1850, some states, including Massachusetts, passed statutes forbidding their magistrates to execute warrants on behalf of the federal law. They also forbade the use of local facilities to house federal prisoners. New York never took this step: "The uniform practice of this State . . . , has been to allow the jails to be used as prisons for the confinement of prisoners charged with offences against the federal authorities."⁷

In the end, Kennedy was restored to duty but not without criticism. Newly elected Democratic Governor Horatio Seymour voiced his displeasure with the Republican police commissioners and launched an inquiry soon after his inauguration. Brinsmade's case, along with others, came to epitomize the civil liberties violations that occurred as Lincoln's government clamped down on dissent. Even the pro-Union *Knickerbocker* literary journal lamented Brinsmade's ordeal, "that young and beautiful and helpless woman, who fell like a fly into the meshes of the spider Kennedy."⁸ Her story appears in the earliest compilation of these violations, John A. Marshall's 1869 *American Bastille* [*sic*].⁹ Much more recently, historian William A. Blair considers the affair in light of the Union government's efforts to forge a coherent internal security system; Isabella Brinsmade's plight obviously demonstrated the system could err in practice. Blair believes the incident revealed how local opinion and political leaders opposed to the Lincoln government's

⁶ "The Case of Mrs. Brinsmade," *New York Herald*, Nov. 26, 1862, 8. Library of Congress, *Chronicle America* Digitized Historic Newspaper Collection (hereinafter LOC-CA);

⁷ *Ibid.*

⁸ "Tyranny and Torture in New York," *Knickerbocker*, 60, No. 6 (Dec. 1861): 572.

⁹ John A. Marshall, *American Bastille: A History of the Illegal Arrests and Imprisonment of American Citizens During the Late Civil War* (Philadelphia: Thomas W. Hartley, 1869).

arrests and detentions could oppose them, forcing the administration to capitulate in some instances. Further, it revealed the complexity of the government's organizational methods whereby local officials like Kennedy could serve two masters. While he might be empowered by federal authority, local powers expected that Kennedy would follow civil procedures.¹⁰ More generally, the Brinsmade affair supports historian Mark E. Neely, Jr.'s, argument that War Department orders over the summer and fall of 1862 authorizing local officers to make arrests for desertion, spying, obstructing enlistment, and general disloyalty created a system that was inept, often uncaring, and showed the Lincoln administration at its worst. Bowles's misadventures perfectly illustrated Neely's humorous quip that the failure to monitor local officials led to "Dogberrys unleashed across the land," a reference to the bumbling constable in Shakespeare's *Much Ado About Nothing*.¹¹

But the focus on singular cases, often involving civil liberties violations, obscures a simple fact. Over the course of the war, there were hundreds of instances when federal and local officials collaborated in pursuing crimes against the northern war effort. These crimes included matters of state such as treason, spying, desertion, and resisting the draft, as well as more tangible offenses, including counterfeiting, contraband, and travel across the lines. Because Civil War scholars have for so long dwelt upon the issues of arbitrary arrests, disloyalty, civil liberties violations, and the larger political questions these issues pose, the nature of federal-local collaboration has gone neglected.¹² And yet it deserves more attention, to begin with, because in the antebellum period there was nothing natural or pre-ordained to its occurring. While federal and local officials worked together in administering land sales, customs regulations, Indian affairs, the postal system, and other areas

¹⁰ William A. Blair, *With Malice Towards Some: Treason and Loyalty in the Civil War Era* (Chapel Hill: University of North Carolina Press, 2014). Kindle location 2527–2578, Ch. 4, "The Provost Marshal Confusion."

¹¹ Mark E. Neely, Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties*. (Oxford University Press, 1991): 53–54. For more on the local contexts including New York City politics, see this writer's post for the Gotham Center blog, "The Case of Mrs. Brinsmade and Civil War New York," July 19, 2018, <https://www.gothamcenter.org/blog/the-case-of-mrs-brinsmade-and-civil-war-new-york>.

¹² *The Fate of Liberty*, cited above, stands as the definitive work on arrests and civil liberties violations in the Civil War North. Neely's epilogue discusses the scholarly coverage of these topics noting that it has been both unsatisfying and meager. Since his work's publication the situation has improved. In addition to the works cited in this paper, see James G. Randall, *Constitutional Problems Under Lincoln* (New York: D. Appleton, 1926); Harold Hyman, *Era of the Oath: Northern Loyalty Tests during the Civil War and Reconstruction* (Philadelphia: University of Pennsylvania Press, 1954); Frank L. Klement, *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War* (Baton Rouge: Louisiana State University Press, 1984); Klement, *The Limits of Dissent: Clement L. Vallandigham and the Civil War* (New York: Fordham University Press, 1999); Jennifer L. Weber, *Copperheads: The Rise and Fall of Lincoln's Opponents in the North* (New York: Oxford University Press, 2006).

of joint governmental interest, the record in law enforcement was spottier. When it came to matters involving large political questions like the Fugitive Slave Law of 1850, or involving popular discontent, local and state officials often failed to cooperate in arresting offenders of federal law. Western Pennsylvania's sheriffs and constables did not support Alexander Hamilton's revenue agents during the Whiskey Rebellion of 1794, even when some were tarred and feathered and had their property burned. During Fries' Rebellion (1799) in southeastern Pennsylvania, county officials turned a blind eye when local residents obstructed the sheriffs' auctions for nonpayment of federal taxes. Along the border with Canada four decades later, military officers and the federal district attorneys found state and local officials uncooperative in preventing the passage of arms and American volunteers into Canada to support the Patriot Rebellion of 1838.¹³

Developments within local law enforcement in the two decades preceding the Civil War provide a second reason why the study of federal-local collaboration deserves more attention than it has so far received. The appearance of full-time uniformed urban police and detective forces in the decade before the war shaped the collaboration that followed and arguably made it possible. Although rudimentary by today's policing standards, these urban forces provided a level of expertise, organization, and presence on the ground that was unmatched at the time. Indeed, the Civil War provides an example in the history of federal-local collaboration in law enforcement when the shoe was on the other foot: local forces provided the expertise and professional standards in handling criminal matters. Despite the efforts of individual special agents with the War Department, like Baker and his better-known contemporary Alan Pinkerton, the federal government lacked the organization and statutory power to deal effectively with civil criminal offenses related to the war.

The Statutory Limitations to Federal Law Enforcement

Throughout the 19th century, the federal government had limited jurisdiction in criminal matters. The lines were clearly drawn in the Constitution, in post-Revolutionary War statutes, and in the historical experience between localities and the federal government. The enumerated powers clause and 10th Amendment made clear that federal jurisdiction encompassed only offenses such as treason and counterfeiting spelled out in the Constitution, or subsequently enacted

¹³ Terry Bouton, "No wonder the times were troublesome': The Origins of Fries Rebellion, 1783–1799," *Pennsylvania History: A Journal of Mid-Atlantic Studies* 67, No. 1 (Winter 2000): 21–42; Samuel Watson, "United States Army Officers Fight the 'Patriot War': Responses to Filibustering on the Canadian Border, 1837–1839," *Journal of the Early Republic* 18, No. 3 (Autumn, 1998): 506–8.

in legislation. The Federal Crimes Act of 1790 increased the number of federal criminal offenses but all within the territorial or jurisdictional purview of the federal state. The act defined three categories of criminal offenses: capital crimes committed on federal property; piracy, mutiny, hijacking and assault on the high seas and interstate waterways; and crimes against the integrity of government, including forgery, the destruction of records, bribery, perjury, and assault upon federal officers.¹⁴ As for the basis for inviting the collaboration of local officers in enforcing federal writ, Section 33 of the Judiciary Act of 1789 empowered state and local officials to arrest and imprison persons for offenses against the laws of the United States.

Another limitation involved the common law, rooted in each state's colonial experience and relied upon in state legal proceedings until the late 19th century. Common law crimes were not statutory offenses spelled out in legislative acts. They were based on communal traditions and legal precedents. Murder, counterfeiting and arson were all common law crimes, so evidently plain in their transgression that they required no statute for the state or locality to exercise its powers of arrest and prosecution.¹⁵ Would the same apply to common law crimes committed against the authority of the United States? The Supreme Court ruled no in 1812 and again in 1816, holding there was no federal common law of crime. Hence federal courts could only hear cases for constitutionally enumerated or statutorily defined offenses.¹⁶

These limitations continued through the Civil War. When the conflict began, the Union government faced a two-pronged statutory infirmity. First, there was a lack

¹⁴ "An Act for the Punishment of Certain Crimes against the United States," Ch. 9, *Statutes at Large*, 1st Cong., 2nd sess., April 30, 1790: 112–19.

¹⁵ Lawrence M. Friedman, *A History of American Law*, 3rd ed. (New York: Simon & Schuster, 2005): 215–16, 435.

¹⁶ On circuit in 1798, Justice Samuel Chase ruled in *U.S. v. Worrall*, that common law crimes were not prosecutable in federal courts because the United States had no common law. The states did because each state's common law was organic to it; the federal state did not because it was synthetic—the collection of individual states. In 1812, the Supreme Court upheld the circuit decision in *U.S. v. Hudson and Goodwin*, a criminal libel case (criminal libel being a common law offense). Speaking for a bare majority, Justice William Johnson based his ruling on the enumerated powers clause, and since the Constitution had not expressly given the federal judiciary power to rule in common law, Congress had to enact a statute defining the crime before it could come under the jurisdiction of a federal court. The ruling was revisited four years later in *U.S. v. Coolidge* to the dissent of several justices, but as the U.S. attorney general declined to argue the ruling, Johnson let it stand. For a good survey of early developments bearing on a federal common law and the political contexts, see Robert von Moschzisker, "The Common Law and Our Federal Jurisprudence," *University of Pennsylvania Law Review* 74, No. 2 (Dec. 1925): 109–30. Available online at https://scholarship.law.upenn.edu/penn_law_review/vol74/iss2/11/.

of criminal statutes, plain and simple; second, many of the behaviors Lincoln's government needed to contain were criminal only by virtue of their new political nature. Purchasing guns and ammunition to send to southern states was no crime before the war. But once the South seceded and made clear its military intentions, shipping arms to the seceded states assumed a very different cast. Similarly, relatively unhindered communications by letter, published matter, and telegraph were supported (in the first two instances) by the federal government through its largest department, the Post Office. When secession agents started using the postal and telegraph networks to convey intelligence and orders for war materiel, then certain communications became political crimes.

Distinguishing political from ordinary crimes and legislating to address the first group presents a challenge for democratic societies, and the Civil War experience is informative in this respect. At the war's beginning there was talk of prosecution for treason, a crime defined in the Constitution. But treason carries a high bar for conviction—two eyewitnesses or confession in open court—and was seldom pursued. Congress attempted a remedy with the Conspiracy Act of July 1861, but the act's broad language and reliance on the accused person's intentions as a measure of guilt (similar to the present-day statutory definition for domestic terrorism) also limited its application.¹⁷ In the end, statutes increasing federal criminal jurisdiction to address offenses against the Union and its war effort remained limited. Over the course of six congressional sessions and four years of conflict, legislation included the conspiracy act, two confiscation acts, acts addressing corresponding with rebels and frauds upon the government, and sections in Treasury bills relating to counterfeiting. None but the Treasury bills detailed methods for enforcement (or provided appropriations), and the confiscation acts applied mainly to activities in the rebellious states. There were two early enactments bearing on the organization of federal enforcement that increased the attorney general's power to pursue federal matters. The federal

¹⁷ The tentative (April 26, 2019) release of Coast Guard Lt. Christopher Hasson from detention pending trial provides an example of the difficulty. Prosecutors describe Hasson as a "domestic terrorist" but formally entered only weapons and drug charges. The problem is twofold. First, although 18 U.S. Code § 2331 defines domestic terrorism, there is currently no federal statute making domestic terrorism a crime. Second, even with a statute, Hasson's weapons cache and internet searches would not satisfy the current definition, which stipulates violent acts or acts dangerous to human life that "appear to be intended" to coerce a civilian population or its government. The *mens rea* (intent) component is highly controverted in domestic cases, whereas for international terrorism affiliation with a terrorist organization serves to prove intent. See Mary B. McCord, "It's Time for Congress to Make Domestic Terrorism a Federal Crime," Lawfare Blog, Dec. 5, 2018, <https://www.lawfareblog.com/its-time-congress-make-domestic-terrorism-federal-crime>.

marshals were granted the powers of sheriffs and deputies in executing the laws of the United States. Their supervision and that of the district attorneys moved from the Department of the Interior to the attorney general, presaging postwar creation of an independent cabinet-level Department of Justice.¹⁸

This limited expansion of federal criminal jurisdiction partially explains why the Lincoln administration chose to militarize enforcement at a fairly early date. Lincoln's February 1862 order transferring matters involving "extraordinary arrests" to the War Department from the State Department was the first step in moving enforcement of domestic federal offenses to the military realm. Secretary of War Edwin Stanton's general orders in the summer and fall of 1862, along with Lincoln's declaration of martial law in late September, marked the next step. These orders enjoined local law enforcement to assist in the arrest of deserters, spies, and all those seeking to discourage enlistment. They were the first formal demands upon local officials since the fifth section of the 1850 Fugitive Slave Law empowered federal commissioners to deputize local "suitable persons" and commanded "all good citizens . . . to aid and assist in the prompt and efficient execution of this law." Late September also saw the appointment by the War Department of special provost marshals, including local officials like Kennedy, who now wore two hats. The "specials" operated outside the regular army chain of command with their duties limited to capturing deserters and arresting citizens suspected of disloyal acts. The final step came the following March with creation of the Provost Marshal General's bureau in the War Department. It created a regular military organization—albeit staffed with many local appointees—charged with administering military enrollment, capturing deserters, and implementing the mandate "to detect, seize, and confine spies of the enemy."¹⁹

¹⁸ "An Act to provide for the Suppression of Rebellion against and Resistance to the Laws of the United States . . . &," Ch. 25, *Statutes at Large*, 37th Cong., 1st sess., July 29, 1861: 281–82. See Section 7; "An Act concerning the Attorney-General and the Attorneys and Marshals of the several Districts," Ch. 37, *Statutes at Large*, 37th Cong., 1st sess., Aug. 2, 1861: 285–86. Library of Congress, *Century of Lawmaking* (hereinafter LOC-CL). In response to a query during hearings for the second bill, Representative John Bingham clarified: "The chief object of the bill, . . . is to transfer to the Attorney General of the United States all control over the district courts and their assistants which is now vested . . . in the Secretary of the Interior." *Congressional Globe*, 37th Cong., 1st sess., July 31, 1861: 366. Bingham denied that it elevated the attorney general into a separate department of government. The only objection came from the Treasury, where Secretary Salmon P. Chase feared that the new powers granted the attorney general would interfere with those of the Treasury's solicitor general. An amendment was passed to clarify this point.

¹⁹ "An Act for enrolling and calling out the national Forces, and for other Purposes," Ch. 75, *Statutes at Large*, 37th Cong., 3rd sess., Mar. 3, 1863: 731–37. See Sections 5 through 7 for the organization and duties of the provost marshals and their bureau. LOC-CL.

Local Assistance to Federal Efforts

Isabella Brinsmade, it turns out, walked into a legal system developing all around her. Increasing arrests for alleged disloyal behavior provided fuel for political opponents of the war. Her case also came at the chronological transition between a system of federal-local collaboration based on voluntarism and the formal military organization that followed. The voluntary system began early on, when local officials like Kennedy took the lead in prosecuting the Union's enemies. Their efforts in thwarting secessionist activities on northern soil predated the war's opening shots by several months. When the Deep South states seceded over the winter of 1860–61, Confederate agents located in the North worked diligently to further the secession cause. They gathered intelligence and purchased ships, weapons, uniforms, percussion caps, black powder, and other war material from the North's numerous manufacturing and commercial concerns. They were seconded by disloyal department heads, including Secretary of War John Floyd and Secretary of the Interior Jacob Thompson, both of whom violated their constitutional oaths to promote the southern cause. The first reports in northern newspapers appeared shortly after the new year. The *Philadelphia Inquirer* announced that "Washington is crowded with patentees of rifled cannon, breech loading rifles, revolving pistols, bombs, projectiles, etc., etc., which they are ready to sell to Uncle Sam or Uncle Sambo, as they find bidders." Samuel Colt received special attention, as his patented revolver was advanced for the time and he exhibited no qualms about filling orders for either side in the looming conflict. In January 1861, his Hartford, Connecticut, factory was reportedly turning out 300 pistols a day and 500 revolving rifles a month. The Sharp's Rifle factory in the same city had orders for 10,000 rifles to be completed within a year.²⁰

Except for one judicial proclamation, efforts to interdict this trade came entirely from local officials and citizens' groups. The federal government lay inert, paralyzed by a lame-duck president and disloyal officials, and lacking any statutory basis with which to stop the flow of arms. On January 14, 1861, a federal judge for the Southern District of New York instructed a grand jury that supplying material of war to South Carolina or any other seceded state constituted high treason and was punishable by death. Knowledge of or concealing treason was itself a crime—misprision of treason.²¹ While laudable, his pronouncement was little more than judicial saber rattling. The grand jury questioned Superintendent Kennedy and the superintendent of the Adams Express company on whether they were aware of any shipments.²² They were not. However, Kennedy shortly

²⁰ "Death-Dealing Inventions," *Philadelphia Inquirer*, Jan. 19, 1861, 4; "General News Summary," *New Hampshire Sentinel*, Feb. 7, 1861, 3; "The National Crisis," *Baltimore Sun*, Feb. 9, 1861, 1. Readex-AHN.

²¹ "Important Charge of Judge Smalley on the Rebellious Movement at the South," *New York Herald*, Jan. 15, 1861, 1, <https://chroniclingamerica.loc.gov/lccn/sn83030313/1861-01-15/ed-1/seq-1/>. LOC-CA.

²² "Misprision of Treason," *New York Herald*, Jan. 19, 1861, 4. <https://chroniclingamerica.loc.gov/lccn/sn83030313/1861-01-19/ed-1/seq-4/>. LOC-CA.

afterwards seized a cargo of arms intended for Georgia, refusing to release it even when threatened with a lawsuit. New York Governor Edwin Morgan sustained his action with what may have been a common law remedy: he could not release weapons that might be used to undermine the government.

As late as April 4, one month after Lincoln's inauguration and a week before the attack on Fort Sumter, arms manufacture for southern customers continued. On the day of the bombardment, the *New York Post* reported that



In this 1862 daguerreotype, a Confederate soldier holds a northern-manufactured Sharp's rifle and Colt police model pistol.

Hartford manufacturers were hurrying their orders for southern customers.²³ On April 16, New York City's Republican Union Committee declared at a public meeting that Colt's factory was "running night and day" and that Adams Express had just shipped multiple cases of Colt pistols to Richmond. They called upon "the proper authorities" to immediately cease "this practice so preposterous as well as suicidal to the government."²⁴ But with the Baltimore riots starting two days later and the cutting of railroad and telegraph lines north, Abraham Lincoln's fledgling administration had its hands full securing the capital and restoring communications with the northern states. As a result, fully two weeks into the war the single federal order bearing on domestic enforcement was a Treasury Department circular issued the day after Lincoln's April 19 proclamation blockading southern ports. It covered the other side of the equation by preventing goods destined for the South from exiting the North. Whether intentional or not, it made good use of the Constitution's Commerce Clause (which granted the federal government power to regulate interstate commerce) by extending the range of inspections and seizures from vessels lying in ports to railroad cars "and other vehicles

²³ "Arms for the South," *Philadelphia Inquirer*, Apr. 4, 1861, 1; "The City and the War What Was Done Yesterday and How it Was Done," *Philadelphia Inquirer*, Apr. 16, 1861, 8. Readex-AHN; "More Treason," *Evening Star*, Apr. 12, 1861, 2. <https://chroniclingamerica.loc.gov/lccn/sn83045462/1861-04-12/ed-1/seq-2/>. LOC-CA.

²⁴ "Meeting of the Republican Central Committee," *New York Herald*, Apr. 17, 1861, 1. Readex-AHN.

which may fall under suspicion.”²⁵ The next day, the New York Customs House (a federal office under the Treasury) ordered the careful searching of all outgoing vessels for southbound cargoes. New York police seized 2,000 gray uniforms with red piping “packed in cases and ready for shipping” from a clothier on Cortlandt Street. On April 21, Philadelphia police seized contraband goods destined for Jackson, Mississippi, that included lead sheets to make bullets. Detectives also discovered packages of arms consigned to the South. In Pittsburgh a Committee of Public Safety seized contraband goods intended for southern destinations and prevented further shipments. And at the end of the month, police in Hoboken, New Jersey, and New York City boarded sloops loaded with powder and munitions bound for rebel ports.²⁶

In addition to these unilateral actions taken to protect Union interests, local officials opened regular correspondence with federal department heads, federal marshals, and the district attorneys in major cities regarding specific threats and actions. Given New York City’s prominence as a port of entry, Kennedy and Police Commissioner James Bowen (who later chaired the Brinsmade hearings) communicated with Secretary of State William Seward regarding the arrivals and departures of suspicious parties. The day after Fort Sumter, Kennedy contacted Seward regarding “one Sanders or Sanderson, who was one of the Lopez men in the attack on Cuba” (an ill-fated filibustering expedition in 1851), now in close communication with traitors including a Dr. McHaffee in Washington. Prominent New York politician Thurlow Weed informed Seward in late April that he had asked Bowen to take charge of the telegraph lines, which Bowen did, interrupting “eleven heavy orders for rifles, revolvers, etc., from Richmond, Nashville, Memphis, Louisville, and St. Louis.” And at the end of the month, Bowen contacted Seward to say that he was told detectives were needed in Washington: “If I hear from you to that effect they will be sent. Otherwise not.”²⁷

Mid-May saw the first joint operation between federal and local forces. At 3 p.m. on Monday, May 20, 1861, U.S. marshals and police simultaneously raided telegraph

²⁵ “Contraband Goods and Their Seizure Notice from the Secretary of the Treasury,” *Philadelphia Inquirer*, May 9, 1861, 4. Readex-AHN.

²⁶ “Exciting Scenes in the City,” *New York Herald*, April 19, 1861, 3; “Important from Philadelphia April 21,” *New York Herald*, April 22, 1861, 8; *Hartford Daily Courant*, April 23, 1861, 3; “The War Feeling in the Common Council Unqualified Support to the President Important Communication from the Mayor,” *New York Herald*, April 23, 1861, 8; “Seizure of Large Quantity of Powder,” *Trenton State Gazette*, April 30, 1861, 3. Readex-AHN.

²⁷ Kennedy to Seward, Apr. 13, 1861; Thurlow Weed to Seward, Apr. 21, 1861; Bowen to Seward, Apr. 30, 1861, Papers of William Henry Seward, Microfilm 18,535, Roll 63. Library of Congress, Manuscript Division. Hereinafter “Seward Papers,” followed by roll number. See also the regular correspondence between Seward and Bowen in *Domestic Letters of the Department of State, 1784–1906*, (National Archives Microfilm Publication M40) Roll 52, General Records of the Department of State, RG 59, National Archives at College Park, Maryland (NACP).

offices in New York, major points in New Jersey, and Philadelphia. They seized copies of all telegrams sent and received from southern states over the past year. Secretary of War Simon Cameron ordered the operation with the cooperation of the district attorneys. In New York City, the number of messages totaled 200,000–300,000, a volume so large that the marshal left them in the rooms of the telegraph offices under the guard of deputies.²⁸ These seizures were part of the federal targeting of correspondence and communications between the Confederate government and agents abroad or living in the northern states. Along with stopping arms shipments south, this became a first priority in the government's war against the enemy in its midst. Superintendent Kennedy provided essential information and executed arrests upon the request of federal authorities. How he developed his intelligence was rarely detailed, but it often appears that Confederate emissaries—including former U.S. consuls and ambassadors—discussed their sympathies with fellow travelers aboard trans-Atlantic steamships and hung on to incriminating correspondence instead of committing the contents to memory. Kennedy's informants worked the docks and the customs tenders, where incoming vessels cleared before arrival.

In June he wrote to Secretary of State William Seward regarding letters found on a Dr. Holland. While the letters did not incriminate the doctor, they disclosed the correspondence between a London financier and Jefferson Davis on the matter of Mississippi's debt repudiation and the problems this posed for subsequent Confederate bond sales in Europe.²⁹ Over the course of 1861, federal-local correspondence assumed a definite shape: local officials and the State Department shared intelligence on known or suspected disloyal persons traveling to and from the northern states. The State Department requested the arrest and detention of persons it suspected of acting for the southern cause, including, in a few cases, former consular officers. Local officials acted as counter-intelligence agents for the government, intercepting the mail and interviewing persons of interest. All of this was accomplished without formal orders.

After contraband and communications, the transit of persons assumed priority. The Civil War was the first time when the federal government required citizens to

²⁸ E. Delafield Smith (U.S. Dist. Atty. NY Southern Dist.) to Simon Cameron, May 20, 1861: 6; E. Delafield Smith to Robert Murray, May 20, 1861: 7; A.Q. Keasbey (U.S. Dist. Atty NJ) to Cameron, May 20, 1861: 7; Geo. A. Coffey (U.S. Dist. Atty. PA Eastern Dist.) to Cameron, May 20, 1861: 7; Edward Bates to Cameron, May 22, 1861: 8; Smith to Cameron, May 25, 1861: 8. *Official Records of the War of the Rebellion* (OR), Series 2, Vol. 2.

²⁹ Kennedy to Seward, May 17 and 18, 1861: 3–4. OR, Series 2, Vol. 2.

carry passports when traveling outside or entering the United States.³⁰ The system hastily established in August applied to seaborne travelers only and neglected the northern land border with Canada. This created a funnel for southern agents traveling to and from Europe and forced Seward to appoint “confidential agents” to watch the main northern crossing points.³¹ Another problem was jurisdictional: specifically, colliding authorities in checking passengers boarding steamships. Superintendent Kennedy found his force caught between the State Department’s request to check passports and the resistance of the Treasury’s customs agents to his officers boarding vessels. “I apprehended, at the time I saw . . . , the regulations in regard to passports,” Kennedy wrote Seward several months after the fact, “that should I attempt to enforce them without some direct orders from one of the Departments, it might lead to some unpleasantness with the Officers of the Revenue Department.”³² And it did, as he further related.

Another set of problems involved the manpower needed to issue and check passports and Seward’s vacillations in applying the regulation. To Philadelphia’s chief of police, he emphasized that all persons “embarking for foreign ports, and especially for Europe, will provide themselves with passports from this Department.” For aliens, the passports needed to be countersigned by the secretary of state, “excepting only, the poorer class of emigrants, whom you can easily distinguish.” But writing to his agent in Portland, Maine, he softened his tone. The passport regulation was “precautionary merely and intended to thwart the designs of enemies of this Government,” and should be carried out “with as little annoyance as possible to honest persons upon their own affairs.”³³ Seward’s

³⁰ The Civil War was the first time in U.S. history when passports were required for travel outside the United States and its territories. Before the Civil War, passports were issued by governors of states as well as the federal government for internal travel purposes. Free northern blacks, for instance, traveling to the South, relied on passports to protect their freedom. Slaves traveling within the South without their owners also carried papers. The 1834 Trade and Intercourse Act required foreigners traveling in Indian country to procure passports. My thanks to the anonymous reader for pointing this out. For a fuller history, see Craig Robertson, *The Passport in America: The History of a Document* (Oxford University Press, 2010).

³¹ “Travelers Must Obtain Passports,” *New York Herald*, Aug. 19, 1861, 1. <https://chroniclingamerica.loc.gov/lccn/sn83030313/1861-08-19/ed-1/seq-1/>; “The Passport System on the Canadian Border,” *New York Herald*, Aug. 22, 1861, 4. <https://chroniclingamerica.loc.gov/lccn/sn83030313/1861-08-22/ed-1/seq-4/>. LOC-CA; Seward to William Pitt Fessenden (Portland, ME), Zachariah Chandler (Detroit, MI), Thurlow Weed (Rouse’s Point, NY), and Hollis White (Niagara Falls, NY), Aug. 24, 1861: 46–47. Seward to William H. Barse (Detroit, MI) Sep. 2, 1861: 52, OR, Series 2, Vol. 2; See also, Secret Letters Sent, 4/12/1861–2/14/1863, ARC Identifier 837217. Vol. 1: 41–43, 52, 60, 78, 412, 416. RG 59, NACP.

³² Kennedy to Seward, Feb. 25, 1862, Seward Papers, Roll 68. Underline in original.

³³ Seward to Chief of Police, Philadelphia, Nov. 12, 1861; Seward to E.L.O. Adams, Nov. 14, 1861, Secret Letters Sent, Vol. 1: 402, 425. RG 59, NACP.

attempts to differentiate between social classes and intentions left him open to the persuasion of influential parties, some of whom chafed at the inconveniences the passport system imposed. When he broached the possibility of treating passengers differently, Kennedy remonstrated that “unless one uniform rule is applied to persons going as passengers aboard the same ship, it will be very difficult, if not impossible, to enforce any restraint on the remainder.” The superintendent reached his limit when the owners of a California steamship line contacted Seward and attempted to have procedures modified. Their clerk suggested Kennedy provide him with blank signed passes to be issued at the line’s office. He further proposed a three-way split on any fees collected, which Kennedy flatly refused.³⁴

The final element of local assistance to federal efforts entailed investigations into criminal matters that crossed over to political crimes by virtue of their war-related nature. In June 1861, the aptly named Benjamin Franklin, chief of detectives for Philadelphia, collaborated with Lafayette Baker, then working as a special agent for the State Department, in a sting operation aimed at contrabandists procuring musket percussion caps in Baltimore and Philadelphia.³⁵ In late 1863, Franklin undertook a lengthy examination at the government’s request into the doings of the *Barque-A-One*, a sailing vessel that he and port officials later seized after it took on barrels of gunpowder at the DuPont wharf in Delaware. Franklin noted in his deposition that he was “employed by the request of the government authorities, or at least requested to ascertain what evidence there was” to warrant action against the vessel. At the same time, the War Department requested his aid in collaboration with the U.S. marshal for New York City, to locate and seize banknote plates and other materiel supposedly destined for Richmond via Nassau in the Bahamas. They were intended to either print Confederate currency or counterfeit U.S. Treasury notes. Then as now, banknote manufacturing was a very specialized and controlled process. Based on their knowledge of local artisans and contacts with the banknote companies, Franklin and two of his detectives tracked down the toolmakers capable of filling the order and intercepted the job before it shipped.³⁶

³⁴ Kennedy to Seward, Dec. 5 and Dec. 11, 1861. Seward Papers, Roll 67.

³⁵ Lafayette Baker, *History of the United States Secret Service* (Philadelphia, 1867): 71–84. Baltimore was the one major city on the northern East Coast, where local police officials did not cooperate with the federal government, at least not initially, owing to the high level of southern sentiment and the actions of the city’s mayor and police marshal following the riot on April 19, 1861.

³⁶ Depositions of Harriet Lane and Benjamin Franklin, Jan. 28–30, 1864; War Department to Benjamin Franklin, itemized payment voucher with affidavits and descriptions for services rendered, July 1864. Seward Papers, Roll 69.

In spring 1863, Superintendent Kennedy ran an undercover operation against a pro-secessionist secret society operating in New York City, complete with initiation to the “Sublime Degree.” Initiates answered a series of questions, including “Have you been imprisoned by order of the present Administration?” and “Will you aid and assist any friend of the Confederate Government (whom you shall know to be such) on any mission he or they may be called to perform?” In his report to the War Department, Kennedy concluded that the club had mischievous intentions but had so far limited its activities to talk and attracting new members. The recent arrest of antiwar Ohio Congressman Clement Vallandigham for making incendiary speeches had knocked the wind out of the movement’s sails, and attendance at meetings was slim. Kennedy’s report included a request for \$50 in reimbursement, spent by his undercover operative Ellithorp to pay dues and initiation fees to the society’s different degrees.³⁷ Franklin also requested payment for services rendered, including his time and that of his detectives, and for miscellaneous expenses. Local cooperation with federal officials in prosecuting the war’s enemies reasonably came at a price. Their compensation accorded with the justice system of the time, when law officers received fees for executing warrants, arrests, jail keep, transportation, and miscellaneous costs incurred in the performance of their duties.

The Crucial Role of Urban Police Forces

Contraband seizures, counterintelligence and tips on suspected persons, investigations into counterfeiting and contraband, monitoring passenger departures and arrivals, collaborating on raids and seizures, and executing arrests: these tasks fairly summarize the local police contribution to the government’s domestic security efforts during the Civil War. Their contributions were most noticeable in the war’s first year, when a combination of statutory limitations, unpreparedness, insufficient manpower, and confusing lines of command handicapped the federal effort in this domain. By late 1862, as the War Department assumed fuller responsibility for maintaining security in the northern states, the local contribution lessened in some areas, but continued in others. The greater military presence and increasing arrests impacted the joint effort in one other way, as Brinsmade’s incarceration and the subsequent hearings demonstrated. As William Blair has pointed out, local officials found themselves caught between the competing claims of their local jurisdictions and those of the federal government.³⁸ The inefficiencies and errors in judgment that marred federal-local collaboration might in different circumstances have been overlooked. But the war’s increasing polarization of northern public opinion, and

³⁷ Kennedy to Judge Advocate L.C. Turner, May 26, 1863, Seward Papers, Roll 69.

³⁸ Blair, *With Malice Towards Some*, Kindle location 2565.



Police battle rioters during the New York City draft riots of 1863.

the vocal opposition to arrests and civil liberties violations, put officials in the spotlight. Public opinion and politicians, especially those opposed to the Lincoln administration and the war, demanded a different kind of accountability than did Washington. Kennedy's fault lay in assuming rough agreement between local and national interests and believing that whatever problems of procedure might arise—including Brinsmade's embarrassing incarceration—could be smoothed away by the larger consensus over the war's purpose. The New York City draft riots in July 1863 would bring the clash between national policy and local sentiment to a violent climax; in addition to the horrific murders and mutilations of black New Yorkers, rioters beat Kennedy almost to death and rendered him permanently lame.

In assessing the significance of these local efforts on behalf of the northern war effort, one development stands out above all others. The appearance of full-time uniformed police forces in major cities the decade before the war made possible the local contribution to the federal enforcement effort. Following a decade or more of factional struggles and resistance to uniforms as antidemocratic and badges of servitude, the North's major cities adopted them in relatively quick succession. New York did so in 1853, Philadelphia and Jersey City in 1856, Baltimore in 1857, Chicago in 1858, Boston and Cincinnati in 1859, and Newark in 1860. Others followed during the war years. Historian Eric Monkkonen believed the uniforms symbolized "the changed system of social control represented by the new police, asserting publicly and unequivocally the difference between the old and the new." The uniform represented the break from older communal forms of policing led

by constables and sheriffs, who were part-time and drawn from the population they served. This older model was more tolerant of public disorder but also much less efficient in policing crime. More importantly, in Monkkonen's estimation, the uniform served (and continues to serve) as a statement of power: "when in the nineteenth century a city took the step of uniforming its police, it clearly stated its power to control its inhabitants."³⁹

During the same period, a rise in property crimes in urban areas led to the establishment of detective forces under the control of the municipal police. Boston established the first detective force in 1846; New York did so in 1857, followed by Philadelphia in 1859 and Chicago in 1861. Detectives had a mixed reputation in 19th-century America, and as private "thief-takers" were sometimes in cahoots with the criminals they were paid to catch!⁴⁰ On the one hand, the American public was already displaying its fascination with the detective character in literature through the works of Edgar Allan Poe and Charles Dickens, and the memoirs of Eugene Vidocq. On the other, detective practices that included eavesdropping, surveillance, and adopting disguises were viewed as patently undemocratic, and associated with the police states of Europe. As the war progressed in the North, opposition newspapers occasionally spoke out against "the odious detective system." On the eve of the 1864 election, Charles Mason, a Peace Democrat who graduated first above Robert E. Lee at West Point, urged voters to reject Lincoln because, in part, his government had filled the country "with spies, informers, and detectives, who are constantly on the watch to allure the unsuspecting" into committing acts against the government for which they can be arrested. "This system, once so hateful to every American heart, has been borrowed from Continental Europe and is in full vogue among us."⁴¹ These attitudes were most often directed against federal agents and those working on their behalf. But uniformed police and detectives first appeared in the North's cities, and it is worth considering to what extent their presence in the years before the war prepared the northern public for the Union government's enforcement presence. Critics of the northern war effort have long disparaged the growth of federal authority in civil life as tyrannical and unconstitutional. Whether one agrees with this judgment or not, the interesting question is to

³⁹ Eric H. Monkkonen, *Police in Urban America, 1860–1920* (Cambridge University Press, 1981): 53. See Appendix A for a fuller list of uniform adoption dates in the United States.

⁴⁰ David R. Johnson, *Policing the Urban Underworld: The Impact of Crime on the Development of the American Police, 1800–1887* (Philadelphia: Temple University Press, 1979): 59–65.

⁴¹ Charles Mason, "To the Friends of Republican Liberty," *Washington Constitutional Unionist*, Oct. 31, 1864, 1. Readex-AHN.

what extent the appearance of uniformed and detective forces at the local level facilitated the growth of federal power.

At a functional level, these local urban forces also possessed a level of professional expertise, administrative procedures, and knowledge on the ground that the federal government simply did not have. When the Civil War came, these urban forces were ready to act. In the initial months of conflict they carried the torch as Lincoln's administration struggled to master multiple challenges at the seat of government. William Seward, upon whom many of the responsibilities related to domestic security devolved, never established a sufficient organization within the State Department to handle these matters. Instead, he relied upon the cooperation of local officials and multijointed and often tangled lines of command with other federal departments, including War, the Treasury, and the office of the attorney general. To understand why Lincoln and his cabinet did not develop a more coherent set of policies to handle domestic matters requires appreciating the political and legislative limitations preventing passage of comprehensive legislation. It also requires appreciating their vision of government and the absolute identity between party and bureaucracy this vision entailed. Authority did not flow along strictly organizational lines, which explains why Seward could command federal marshals to take actions, with no objection from their appointed superior, Attorney General Edward Bates. But this looser system of authority based on political associations and personal contacts also facilitated the voluntary cooperation of local law enforcement.

The role of urban police and detective forces during the Civil War also provides an opportunity to rethink the traditional narrative of the rise of the federal law enforcement establishment in the late 19th and early 20th centuries. This narrative naturally emphasizes the growing power of the nation state. Legal historians consider increased federal criminal jurisdiction to be the product of both civil rights violations against black Americans in the southern states during Reconstruction and the increased purview for federal jurisdiction through Section 1 of the 14th Amendment (although this would not be realized until the 20th century). While the first permanent organizational manifestation of this establishment might be considered the Secret Service bureau, established in 1865, or the Department of Justice, created in 1870, the more accepted starting point has been the creation of the federal Bureau of Investigation in 1908. Federal criminal statutes increased as well, many addressing interstate crime and resting constitutionally on the commerce clause. This narrative, especially the later FBI portion of it, often stresses the professionalism and expertise of federal officers over their local counterparts. The

invidious comparison to local forces during the period of Prohibition is the stuff of popular lore and film. But the Civil War experience paints a different picture. It shows a time when local law enforcement served the national interest when the federal government struggled to do so. While the history of the modern United States rightly shows the role of the federal government in protecting the interests of the state and citizens through its law enforcement branches, the contributions of local forces should not be omitted.

Picture credits: Superintendent John A. Kennedy, Confederate soldier, New York City draft riots, courtesy Library of Congress; Col. Lafayette Baker, National Archives, NARA 111-B-1116

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