

COLLABORATOR OR RESISTER?

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On September 5, 2018, an anonymous editorial appeared in the New York Times. It was titled “I am Part of the Resistance Inside the Trump Administration.”

A week later, the New York Times published an editorial by Adam Rowe titled “Edwin Stanton was Part of the ‘Resistance’ – in 1860.” Rowe asserted that the role of secret internal resister within the White House was not making its first appearance in the Trump administration but had been pioneered by Stanton when he served as Attorney General in the last three months of the Buchanan administration. Rowe argues that, over the course of his service in the Lincoln and Johnson administrations, as well as in the Buchanan administration, he was the most relentless schemer in American political history, possessing an almost incredible ability to convince everyone – abolitionists, secessionists and many in between - that he was their faithful ally.

I suspect most of us with a passing interest in the Civil War period would remember Stanton for three reasons: first, he was Lincoln’s Secretary of War; second, for taking charge on the night of Lincoln’s assassination and for the tribute he is said to have uttered from Lincoln’s deathbed, “Now he belongs to the ages;” and third, for his removal from office by President Johnson, in violation of the Tenure of Office Act, leading to Johnson’s impeachment trial.

Mr. Rowe is certainly correct that Stanton was a schemer and quite adept at playing both sides down the middle, but he was also a man of incredible talent. In his public life, he tended to be insincere, devious and dedicated to self-preservation. Two of the three presidents he

served under noted his excessive use of flattery, and many subordinates and supplicants viewed him as a bully, but he was also an accomplished lawyer and politician with great energy, determination and organizational abilities.

Stanton was born in Steubenville, Ohio in 1814. His father was a physician and Stanton was the first of four children. As a child, he gravitated towards books, as he developed asthma around the age of 10, a malady he suffered from his entire life. His father passed away when he was 13, leaving the family destitute. Stanton borrowed money from Daniel Collier, executor of his father's estate, to attend Kenyon where he joined the Philomathesian Society and honed his debating skills. After his third term, the funds had dried up and Collier told him he could not continue in school but would have to work for a while. He arranged for Stanton to manage a bookstore in Columbus. While in Columbus, Stanton decided he wanted to become a lawyer. He also met the woman he would marry, Mary Lamson. He returned to Steubenville to study law and apprentice under Daniel Collier for two years, writing frequent letters to Mary who remained in Columbus.

In 1835 Stanton was admitted to the bar and moved to Cadiz, a neighboring town to Steubenville, to join a law practice with Chauncy Dewey. Stanton quickly took over the trial work, and his early success persuaded Mary that they should get married at the end of 1836.

Stanton practiced law in Ohio for a little over ten years. He also got his start in politics there, as an ardent Democrat. In 1837 he was elected Harrison County Prosecutor and he also joined the law practice of Benjamin Tappan, a former Federal and State Judge. Tappan, a Democrat, was elected a U.S. Senator in 1838 and Stanton served as his political eyes and ears in Ohio for the next few years. Aligning with the heirs to Andrew Jackson, Stanton was a delegate to the 1840

Democratic convention and that summer was very active all over the eastern part of the state speaking, and writing for the newspapers, endorsing Martin van Buren.

Tragedy struck the Stanton family in the 1840's. Their first child, Lucy, fell ill with scarlet fever and passed away in 1841, not long after her birth. In 1844, two years after their son, Edwin, was born, Mary developed bilious fever and passed away. Stanton was grief stricken, near madness, weeping uncontrollably, obsessing over her burial attire, and wailing for Mary to come back to him. He mourned for years and possibly for the rest of his life. About four years after her death, he told a friend that Mary was responsible for any good in him, while "whatever evil tendencies there may be, are less restrained since God took her from me."

As Stanton was supporting his son, sister and mother, it was necessary to get back to work. Work was his salvation as he often commented on his need to be perpetually occupied.

He found work defending Caleb McNulty, an Ohio state legislator, who had been appointed to the post of Clerk of the U.S. House of Representatives. Senator Tappan and other Ohio Democrats had recommended McNulty for the post and stood as surety for the faithful disposition of public funds passing through his office. McNulty was charged with misappropriating tens of thousands of dollars, and Stanton served as one of his defense lawyers. Stanton performed his duties masterfully, invoking pity among the jury, recounting how McNulty had grown up fatherless, and had accumulated political enemies as he met with success in the Ohio legislature. When Stanton invoked McNulty's loving relationship with his wife, McNulty burst into tears. The jury returned a verdict of "not guilty."

Examples of Stanton's duplicity began to surface with his entry into the political arena. At the January 1846 state Democratic convention, he praised Congressman Brinkerhoff on his recent speech opposing the annexation of Texas, but when the convention chose another candidate for Brinkerhoff's seat, he promptly aligned himself with Senator William Allen, a proponent of the annexation of Texas and Brinkerhoff's political opposite. At about the same time, he developed a friendship with Salmon P. Chase who was trying to bring Democrats in to the anti-slavery Liberty Party. Stanton was thoroughly convincing to Chase that he was ripe for conversion yet reluctant to declare openly the views that he had expressed in private to Chase.

Despite these traits, Stanton's legal practice, as well as his reputation, was growing, and in 1847 he relocated to Pittsburgh where he felt the opportunities to make a living were greater. In his nine years in Pittsburgh, he took on several prominent cases, including the Wheeling Bridge case and the McCormick reaper patent infringement case, both of which went to the Supreme Court. Stanton first met Lincoln on the McCormick case, and neither man developed a good impression of the other. Originally scheduled to be heard in Chicago, the case was moved to Cincinnati where Stanton as lead counsel made a decision not to seek Lincoln's participation.

In 1856 Stanton married Ellen Hutchison, sixteen years his junior and a member of a prominent Pittsburgh family. The couple soon thereafter moved to Washington, D.C., perhaps because Stanton had several pending cases before the Supreme Court, or perhaps because he saw an opportunity to ingratiate himself with the Buchanan administration. Jeremiah Black, who was Buchanan's pick for Attorney General, had previously served on the Pennsylvania Supreme Court, where Stanton had often appeared.

Black appointed Stanton to represent the administration in the Limantour land claim case in California, a case that kept him away from home for almost two years, much to the dismay of his new wife. Joseph Limantour, a French merchant, claimed ownership of a stretch of land encompassing the city of San Francisco, Point Tiburon and all the islands in the bay under a Mexican land grant. Stanton was able to prove fraud, ultimately winning this important case, and thereby enhancing his reputation with President Buchanan.

This became important in early 1859 when Congressman Dan Sickles murdered Philip Barton Key. Key was the son of Francis Scott Key and had been having an affair with Sickles' wife. Buchanan had become close to Sickles in the Franklin Pierce administration. Sickles had served as Secretary to the U.S. legation in London during Buchanan's service as Ambassador to the UK. Buchanan met with Stanton in the White House two days after the murder and speculation is that Buchanan asked him to help with Sickles' defense.

Stanton agreed to take on the case. While his legal theory was temporary insanity, the first instance of such a plea in a courtroom, his most forceful arguments centered around the sanctity of marriage and the right of a victim of adultery to protect himself. Stanton described Sickles as the heroic protector of his daughter and characterized Key's death as a cheap sacrifice toward that end. While hard to believe in this day and age, Stanton prevailed with a predominantly working-class jury that was swayed by his argument.

Immediately prior to Lincoln's election, and just prior to assuming the Attorney General post in the lame duck Buchanan administration, Stanton continued to act as if he was everyone's ally. Contrary to later claims of lifelong aversion to slavery, in the 1860 Presidential election Stanton had been a quiet supporter of Buchanan's Vice President, John

Breckinridge, the candidate of the slaveholding South. This was consistent with Stanton's support of the LeCompton Constitution before Stanton became Attorney General. It was voted down by voters in the Kansas territory but would have protected slaveholding in the state. Not surprisingly, a few years prior, Stanton had written a letter to Senator Stephen Douglas complimenting his speech on the Senate floor denouncing the LeCompton Constitution.

When several members of Buchanan's cabinet resigned over his handling of the secession of South Carolina and several other states after Lincoln's election, Stanton was well positioned to seize an opportunity. Jeremiah Black was appointed Secretary of State to replace the resigning Lewis Cass, and Stanton was appointed Attorney General in his place.

Within days of Stanton's arrival in the cabinet, there was much discussion in cabinet meetings about whether Major Robert Anderson should withdraw from Fort Sumter. Details of these cabinet meetings made their way into the newspapers and portrayed Buchanan as crumbling before secessionist demands, but for the unwavering courage of the new Attorney General. The proceedings were leaked by Stanton to the administration's political enemies, using as an intermediary William Seward. Stanton, in an all too familiar way, had resorted to duplicity for personal advantage. He knew Seward was going to be the leader of Lincoln's cabinet, and he was already angling for a post, or at least further work, in the Lincoln administration.

When the South Carolina Commissioners demanded a complete withdrawal of Anderson's small force, not just from Fort Sumter, but from all of Charleston, Buchanan's initial draft response offered too much legitimacy to the Commissioners and sounded too timid about the federal property in Charleston, much of which had been seized by

South Carolina forces. Black and Stanton both worked on Buchanan's response. It is highly likely that Black's changes to the draft were the ones incorporated in the final version, but Stanton took credit over the years for stiffening Buchanan's spine. He also wrote to a prominent Pittsburgh citizen claiming he was the author of the response, a violation of cabinet confidentiality that would become habitual with him.

Lincoln's inauguration put Stanton out of a job. As a Democrat, he was unlikely to receive legal work from the Lincoln administration as he had from Buchanan. Nevertheless, he continued to seek favors and employment from cabinet members. He managed to become close to the War Department, following up on the California land cases. Secretary of War Simon Cameron hired him to handle a case to determine whether volunteers would have to serve three months, as called for in Lincoln's initial proclamation, or three years. Stanton persuaded the judge to side with his case, arguing that if the petitioner were discharged, the whole regiment, and then the whole army, would have to be discharged.

During this period, Stanton harbored hostile feelings towards Lincoln, and in his private letters he was quite critical of the way in which Lincoln was handling the first few months of the war. He wrote frequently to former President Buchanan, often criticizing Lincoln, but when Buchanan, concerned about his place in history, asked Stanton to devote his energies to his "defense and justification," Stanton would not take up the pen.

Lincoln, no doubt, had heard about Stanton's criticisms, and also remembered Stanton's snub during the McCormick reaper patent case six years earlier. But, in January 1862 when he decided to replace

the corrupt and incompetent Cameron as Secretary of War, he turned to Stanton.

Why did he do so? Probably a variety of reasons: First, by appointing a leading Democrat, Lincoln made it clear that it was a Union war, not a Republican fight; second, while Lincoln didn't know Stanton well, cabinet members Seward and Chase did and thought highly of him; and finally, Lincoln was certainly aware of Stanton's reputation for energy, efficiency, and determination.

Stanton didn't take much time to live up to his reputation. He managed the process of recruiting, training, arming, feeding and moving the troops. General Halleck praised him by saying, "No armies in the world, while on campaign, have been more promptly or better supplied than ours." Stanton created new rail and telegraph bureaus, working with the owners of these companies, rather than nationalizing the industries, eventually becoming a master in using them to assemble and apply military force. He moved the Washington hub of the telegraph lines to the War Department offices, which served as the central command post for Lincoln and Stanton. Lincoln spent more time with Stanton than any other cabinet member, as he frequently would go to Stanton's office to hear the latest updates on the war and send telegrams directly to generals in the field.

Perhaps the best example of how Stanton used the rails and telegraphs was his movement of troops to engage and persevere in the Battle of Chattanooga in November 1863. It came on the heels of the disastrous defeat of the Union Army of the Cumberland at the Battle of Chickamauga in September of that year.

When it looked like the Confederate Army was going to overrun the 30,000 troops that had retreated to Chattanooga, Stanton called a midnight meeting with Lincoln and others, at which he proposed to

transfer 20,000 troops in a week from Northern Virginia to Southern Tennessee. Lincoln joked that it would take a week to transfer the troops from Northern Virginia into Washington. But Stanton's persistence carried the day. He spent the next few nights in his telegraph office, sending and receiving messages. The operation was incredibly complex, involving six different railroad companies, several rail widths, two crossings of the Ohio River, which was not bridged at the relevant points, and imperfect telegraph service. Five days into the operation, Treasury Secretary Chase, delighted with the progress of the troops who had already reached the Ohio River, stated, "If this whole movement is carried out to the end as well as it has been thus far, it will be an achievement in the transportation of troops unprecedented, I think, in history." This comment was prophetic as the troops did reach Chattanooga in a week and not only saved the city but enabled Grant's army to advance from there.

Despite being an energetic and efficient War Secretary, Stanton's duplicitous, tyrannical and vindictive nature manifested itself as soon as he was sworn in. In his first month in office he had General Charles Stone, as well as a New York Herald, Washington correspondent, Malcolm Ives, arrested on flimsy grounds. Ives, who was the recipient of many Stanton leaks, was arrested for barging in to a closed-door meeting Stanton was having with a group of Congressmen. He was held in prison for over three months. In the case of General Stone, who had served with distinction in the Mexican-American War, Stanton had heard hearsay reports about him being in communication with rebel generals and kept him in solitary confinement for six months without a court martial before Congress finally forced Stanton to release him.

Throughout the war, an important part of Stanton's internal security strategy continued to be this use of arbitrary detentions. Stanton arrested hundreds of civilians during the war, ranging from rebel spies

to deserters to innocent editors. Anyone giving aid and comfort to the enemy was vulnerable. A code was established authorizing not only courts-martial to try soldiers but military commissions to try enemies and civilians. Despite harsh criticisms by the Democrats, Lincoln generally deferred to Stanton on such matters. Together, Stanton and Lincoln were trying to save the Nation, but there's no doubt that Stanton's actions demonstrated a certain indifference to the rights of others.

No account of Stanton's life given at the Literary Club can be complete without telling of his tempestuous relationship with George McClellan, a Literary Club member for a brief period before the Civil War broke out. McClellan had been appointed Commander of the Army of the Potomac in July 1861 after the defeat at the first Battle of Bull Run.

McClellan and Stanton met soon after McClellan arrived in the Capitol, and Stanton became an informal advisor to McClellan. They initially had a mutual admiration society. McClellan took Stanton as a fellow Conservative Democrat who shared his dislike of the President. When Stanton became Secretary of War, McClellan fully expected his appointment would be helpful to him. Stanton affirmed this view with great enthusiasm, proclaiming, "I believe the life of the Republic depends on McClellan."

On November 1, 1861 McClellan was appointed general-in-chief of all the Union armies. He fell ill at the end of the year, delaying the planning for the Peninsula campaign. In his sickroom, he was visited by Stanton, ever the opportunist. Stanton, who would become Secretary of War several days later, in his efforts to win McClellan's confidence, warned him that the Radicals were counting on his death, "already dividing among themselves your military goods and chattels."

Stanton shifted from being a friend of McClellan to a critic when he became Secretary of War. During this period, he exaggerated his private professions of antislavery sentiment into a fantasy of lifelong abolitionist sentiment, and later that year, he was on both sides of the issue of arming black slaves and forming black regiments, an issue which McClellan firmly opposed.

McClellan was hardly a man of action when it came to warfare, perhaps best known for grossly overestimating the size of the Rebel forces he would encounter in various battles. In March, less than three months after Stanton's appointment, Lincoln and Stanton agreed that McClellan should have his responsibilities as general-in-chief reduced to being one of three commanders of the armies in the eastern theater. Lincoln signed the order as Stanton declined to do so, with the excuse that he had had a dispute with McClellan's friends and feared that it would be thought to emanate from personal feelings. Several months later, while arguing with Lincoln that McClellan should be removed from all commands, Stanton continued to sweet talk McClellan, writing him that "no man had ever a truer friend."

Following the 1862 midterm elections that resulted in significant gains for the aptly named "Peace Democrats" who favored a compromise that would tolerate slavery, Lincoln removed McClellan from command. He had seen enough of McClellan's inaction. Unfortunately, Lincoln chose Ambrose Burnside to replace him and witnessed Burnside leading his army to defeat the following month at Fredericksburg.

After the defeat at Fredericksburg, the Radical Republicans called for a reconstruction of the Cabinet, after initially focusing on removing Seward as Secretary of State. At least one cabinet member believed that Stanton had instigated this movement against Seward to turn attention away from the War Department and the recent

Fredericksburg defeat. When Lincoln refused to accept the resignations of Secretaries Seward, Welles and Chase, Stanton told Senator Fessenden he wouldn't give up his seat without a fight while giving Lincoln the impression that he would also offer his resignation. While the cabinet crisis passed with Lincoln keeping his cabinet intact, the diaries of various cabinet members are replete with stories of Stanton's duplicitous behavior during the crisis.

In spite of Stanton's scheming, Stanton and Lincoln had a unique relationship. They were the classic case of complementary personalities producing great results. Lincoln was always ready to listen, always ready to tell a story; Stanton was always impatient, often rude. Stanton was secretive; Lincoln was an open book. Stanton had a head greater than his heart; Lincoln had a heart greater than his head. Starting in the summer of 1862 they kept adjoining cottages at the Soldiers' Home, just outside of Washington, and they shared the experience of the death of a son, when Willie Lincoln and James Stanton both died in the same year.

There was much pressure on Lincoln to remove Stanton from office, starting only weeks after he was appointed Secretary of War. Lincoln never considered it because he knew and valued Stanton's work. Stanton's initial disdain for Lincoln turned to admiration. After Lincoln's death, his secretary John Hay wrote in a letter to Stanton, "Not everyone knows, as I do, how close you stood to our lost leader, how he loved you and trusted you, and how vain were all efforts to shake that trust and confidence, not lightly given and never withdrawn." And interestingly, Lincoln was the only one of the three Presidents that Stanton served that was not known to comment on his excessive use of flattery.

After Lincoln's assassination, Stanton stayed on as President Andrew Johnson's Secretary of War. While many hoped that President Johnson, a Southerner but an adamant Unionist, would help heal the country and eradicate the lingering effects of slavery, he chose a different path. He issued proclamations granting Southerners amnesty at the rate of 100 per day and insisted that black suffrage was a matter for states to decide. He vetoed the Civil Rights bill and campaigned against the Fourteenth Amendment, which gave citizenship to former slaves as well as providing equal protection under the laws to all citizens. He later opposed the Reconstruction Acts of 1867 creating five military districts to oversee newly created state governments. Congress passed all of these laws over Johnson's veto.

Stanton's opposition to Johnson started to surface when Congress met in December 1865. In Johnson's first message to Congress, he argued that indefinite military rule of the South would divide the country into conquerors and conquered. Stanton was opposed to Johnson's views, secretly aligning himself with the Radicals who were launching their own attack on Johnson's Reconstruction policies.

In the summer of 1866, as election season increased the political pressures to reveal allegiances, there were several resignations in Johnson's cabinet. They were prompted by his attempted revival of the National Union coalition to support his reconstruction policies.

The logical question to ask is why Stanton did not join the Attorney General, Postmaster General, and Interior Secretary in resigning from the cabinet since he was also clearly opposed to the President's Reconstruction policies.

One reason is that Stanton most certainly viewed himself as a critical check on Johnson. Beyond that, his motives were likely selfish. He probably was not eager to resume the practice of law, especially since

many of his most noteworthy cases had emanated from his cultivation of the Buchanan administration. In addition, he faced two legal actions for false imprisonment, and as long as he was in the cabinet, he had the option of hiring counsel at War Department expense. Finally, he preserved his salary and the power and influence that went along with the office.

The New Orleans massacre in July 1866 exacerbated the Johnson Stanton relationship. The massacre occurred when the radicals reconvened the Louisiana Constitutional Convention, hoping to expand suffrage to black men. The meeting was deemed illegal by Louisiana's Attorney General and Lieutenant Governor, as well as a local judge. Accordingly, the Mayor planned to arrest the attendees. Brigadier General Baird was concerned about confrontation and warned Stanton by telegram, pleading for instructions. Stanton neither answered the telegram nor did he inform Johnson. The Attorney General and Lieutenant Governor had separately contacted Johnson, but without knowing of the concern expressed in Baird's telegram, Johnson told them the military should not interfere with civil courts, but should sustain them. Approximately 50 people, almost all black men, were killed. Stanton told Senator Sumner that Johnson was the "author" of the eruption. The riot cost Johnson politically and contributed to the Republicans gaining 77% of the seats in Congress in the 1866 election.

The first call for Johnson's impeachment came early in 1867 and went nowhere. Like today, the debate concerned the question of whether impeachment should be defined narrowly, as an infraction of the law, or broadly, as abuse of power. Johnson subsequently resolved this question when he fired Stanton without the Senate's consent which violated the Tenure of Office Act.

The Act was passed into law, over Johnson's veto, in March 1867. It was originally motivated by Johnson's removal of Republican officeholders who were not supportive of his policies, and it required the discharge of appointees to have the consent of the Senate. In cabinet discussions, Stanton was opposed to the legislation, arguing that no one would remain in office if he were not wanted. But when Johnson asked him to put his argument in writing, to use in his veto message, Stanton asked to be excused due to lack of time and rheumatism in his writing hand.

Subsequent to the passing of the Tenure of Office Act, Stanton became more emboldened. The War Department, while constitutionally under the President, was operating as a quasi-independent entity, and Stanton was openly rather than secretly sharing information with the Radicals.

By the summer of 1867, there was little doubt that Johnson wanted Stanton out of his cabinet. The final straw occurred when Johnson took offense to a remark made by the prosecutor during the civil trial of John Surratt for conspiracy in Lincoln's assassination. Surratt's mother, who owned the boardinghouse frequented by John Wilkes Booth, was said to have been condemned to death by Johnson in spite of a petition to save her life. Johnson believed Stanton to be the source of the comment.

With the Senate in recess, Johnson suspended Stanton from his office and appointed Ulysses Grant Interim Secretary of War in August 1867. As the Senate reconvened in January 1868, Johnson and the Military Affairs Committee both presented written arguments to the Senate concerning Stanton's reinstatement. Johnson's argument came out first, and Senator Howard of the Military Affairs Committee asked Stanton to comment on it. Rather than make comments, Stanton opted to write his own argument, large portions of which were likely

incorporated in the Committee report. The Senate voted 35 – 6 to reinstate Stanton in January 1868.

A month and a half later Johnson sent Lorenzo Thomas over to Stanton's office with a letter stating that Stanton was removed from office and that he should turn over all official papers to Thomas, who was now the interim Secretary of War. Three days later, the House voted to impeach Johnson.

Stanton resisted the interim appointment of Thomas by never leaving the War Department until the trial in the Senate ended in late May, failing by one vote to impeach Johnson. The trial was immediately followed by Stanton's resignation.

In December 1869 President Grant nominated Stanton to the Supreme Court. Stanton told Grant it was the only public office he had ever desired. The Senate confirmed him by a 46 – 11 vote. Editorial opinion on his appointment was mixed, with the New York Times commenting that his nomination and confirmation “combined (verb) to form a tribute alike graceful and well merited to honorable public services and conspicuous ability and worth,” while the New York World opined that “no man could be more out of place than such a hasty, violent, imperious zealot on the bench of the Supreme Court.” George Templeton Strong, who had often censured Stanton during the war, offered perhaps the most measured thoughts on Stanton's appointment when he said, “a great war minister is not necessarily able to become even a second – rate judge. Stanton has been a successful advocate, and has industry, pluck, and backbone enough for ten. But neither his mind, nor his temper seem in the least judicial. I approve the appointment, however. With all his faults, he has done the country good service.” By the time he was confirmed, Stanton's asthma and,

likely congestive heart failure, had rendered him quite ill and he passed away three days later, never having performed the duties of the office.

I'll close with another George Templeton Strong quote, written after Stanton died and taken from Templeton's diary, which I believe best sums up the man. "These three, Lincoln, Stanton, and Grant did more than any other three men to save the country. Good and evil were strangely blended in the character of this great War Minister. He was honest, patriotic, able, indefatigable, warm-hearted, unselfish, incorruptible, arbitrary, capricious, tyrannical, vindictive, hateful and cruel. Robespierre had certain traits in common with Stanton. I mean no disrespect to Stanton, who was infinitely bigger and better than that miserable Frenchman – but their several failings were not unlike."

Sources:

Stanton – Lincoln's War Secretary, Walter Stahr, Simon & Schuster 2017

Lincoln's Autocrat – The Life of Edwin Stanton, William Marvel, University of North Carolina Press, 2015

Team of Rivals, Doris Kearns Goodwin, Simon & Schuster Paperbacks, 2005

Lincoln's Lieutenants, The High Command of the Army of the Potomac, Stephen W. Sears, Houghton Mifflin Harcourt, 2017

