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By

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CHAPTER I

Early Career
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In the year 1794, John W. Holt found Staunton, Virginia
a lonely place. His beloved Eleanor Stephens had moved
from Staunton to the frontier in Kentucky. Her father,
Richard Stephens, thought he could make his fortune there.
John was a lawyer by profession and he practiced diligently
until he, too, had enough money to go to Kentucky. In 1800
he followed Eleanor. He homesteaded a bit of ground in
Breckinridge County and then he set himself up as a lawyer
in Elizabethtown.¹

In 1805 John and Eleanor were married and they moved to
John's homestead immediately. Frail health kept John from
traveling the circuit as most successful lawyers had to do
in those days. He had to be content to live on the home-
stead, occasionally helping out his neighbors with his know-
ledge of the law. On January 6, 1807, Joseph, the first of
six children, was born. Four more boys, James, Richard,

¹Holt family tree, supplied to the writer in a personal
letter by Elsie Holt Hewitt, 2014 Grove Avenue, Richmond 20,
Virginia.

Thomas and Robert and a girl, Elizabeth, were to follow.²

Young Joseph turned out to be an intelligent boy but neither mentally nor physically exceptional. In an age where it was said children should be seen and not heard he got along well. He was normally quiet and unassuming although he liked an occasional argument. He learned early to express his thoughts in simple lucid terms.

As John Holt loved the law he determined that his sons should also love it. Of his five sons, Joseph was the only one who showed any interest in the law, the only one who showed any polemic ability. While not neglecting his other sons, John centered his legal ambitions upon his first born.³

Young Joseph attended the local schools until he was about fourteen. By that time he had absorbed all the education that the rough frontier school could give him. John Holt desired that his son have the advantages of a school located in a settled section and so from the local school Joseph went directly into college in the northern and more settled part of Kentucky. St. Joseph's College in Bardstown first claimed the young man's attention but after two years he transferred to Centre College in Danville. At these schools he received a thorough classical and mathema-

²Ibid.; Mary Bernard Allen, Joseph Holt, Judge Advocate General (1862-1875). A Study in the Treatment of Political Prisoners by the United States Government During the Civil War (an unpublished doctoral dissertation, University of Chicago, 1927), Chapter 1.

³Allen, Joseph Holt, 17.

tical education. Young Holt also learned how to act in polite society as well as learning his lessons from books.⁴

Guided to some extent by his father's wishes and partly by his own love of debate Joseph decided to become a lawyer. To learn the profession he had to study the law in the office of a practicing attorney. He made arrangements to study under Robert Wickliffe in the latter's Lexington office. He stayed with Wickliffe about one year and then he struck out on his own. He first hung out his shingle in Elizabethtown. He was a bright, well educated youth and his father's friends helped him all they could. Soon Holt discovered that he was an excellent prosecutor but a poor defense attorney. In 1830, after two years of practice, Ben Hardin, a celebrated Kentucky lawyer, took him into partnership and they formed the firm of Hardin and Holt. Hardin had been attracted by the ambitious young man's gift of prosecution. Just prior to the formation of the partnership Hardin went to hear Holt in a case. As Hardin came out of the courtroom a lounge asked him what was going on inside. Hardin laughed and replied that Holt was astride the rainbow, butting his head against the stars and soon there would be a hanging in the town.⁵

⁴L. D. Ingersoll, A History of The War Department of The United States (Washington, 1879), 520.

⁵Allen, Joseph Holt, 46-8; Lucius P. Little, Ben Hardin: His Times and Contemporaries (Louisville, 1887), 486.

The Democratic leaders around Elizabethtown soon discovered that young Holt was a good speaker who had an interest in politics. They found he could always be counted upon to give a good speech for the party. As a result he often spoke from Democratic platforms. His political speech-making was very similar to his courtroom delivery. His was not a sparkling delivery and at this time he could not draw people by the artistry of his word arrangement but he was always able to marshal a great many facts to substantiate his point. The general tenor of his speeches was sarcasm rather than witticism. It was the driving force of his apparent sincerity in everything he said that put his points across to his audience.

He soon found that there was not enough legal work in Elizabethtown for him to make much money. His politics did not bring in a revenue. In 1832 he moved to the larger city of Louisville. In order to establish himself in the city he took a job as assistant editor of the Louisville Advertiser, a daily paper published by Shadrack Penn.⁶ Both as a lawyer and as a newspaperman Holt could see the advantages of good political connections. Amos Kendall, Andrew Jackson's postmaster general, was a power both in Kentucky politics and in national politics. As postmaster general he cleaned up corruption in Jackson's administration and as

⁶Henry S. Foote, Casket of Reminiscences (Washington, 1874), 94.

a member of the kitchen cabinet he took a leading part in Jackson's war on the bank. Early in his career Kendall had been a newspaper editor. Holt's writing in the Louisville Advertiser impressed him and Kendall took Holt as his political protege. Kendall gave the quiet, ambitious youth an insight into the political world of the day and indoctrinated him with the principles of the Democratic party.⁷

When, in 1833, he received the appointment as commonwealth attorney for the Louisville district of the Jefferson circuit, Holt was able to quit the newspaper business. After this time he was able to support himself exclusively from his practice of law. For two years he held the job as commonwealth attorney and then the governor declined to reappoint him. In a very courtesously worded statement the governor said that although Holt had done a good job as attorney his powers as a prosecutor were such that when he exerted them against an ordinary citizen charged with crime an acquittal was an impossibility. Therefore, the governor had to replace him.⁸

Since first he started his own law practice Holt had been active in politics but he had never acquired more than a local recognition. During his stay in Louisville he learned to speak with an easy eloquence which quickly aided his career. In 1835, under Kendall's auspices, Holt became

⁷ Foote, Casket, 95.

⁸ Henry S. Foote, Bench and Bar of the South and Southwest (St. Louis, 1876), 39.

a delegate to the national Democratic convention. While there he made his first nationally known political speech. In an eloquent emotional appeal he vindicated Richard M. Johnson, a candidate for the vice-presidential nomination, from imputations cast upon him by the Virginia delegation. The Virginians had hoped to defeat Johnson and have their own candidate nominated. Ultimately Johnson gained the nomination and Holt's speech became widely acknowledged as the deciding factor.⁹

After the convention Holt was restless. Since he had lost his job as a commonwealth attorney he had not been making as much money as desired. It was at this time that President Jackson asked him to go to the annual examination of cadets at West Point. Having no desire to return to Louisville he accepted the offer. While on the trip to the east he heard much about the many opportunities for a lawyer to make a fortune in Mississippi. A plantation economy was growing up in Mississippi and there was an abundance of land litigation. Since the land difficulties usually involved large tracts of land the successful lawyer who could win cases could often receive fees running into the thousands of dollars. Many young ambitious eastern lawyers were moving to Mississippi to make their fortunes and Joseph Holt decided to join them.¹⁰

⁹ Foote, Bench and Bar, 36; James Daniel Lynch, The Bench and Bar of Mississippi (New York, 1881), 247.

¹⁰ Ingersoll, A History of the War Department, 520.

Thus it was, in 1835, he joined the Mississippi bar. He first moved to Port Gibson but after a short stay moved to the more prosperous city of Vicksburg. The Mississippians, mainly Democratic, had read Holt's speech in behalf of Johnson so he had little trouble in starting a law practice.¹¹

In order to establish his reputation in Mississippi as an able lawyer he took many cases with a popular interest. The first such case that he took was the case of Herring which he prosecuted in the court in Vicksburg. The regular prosecutor was sick and public opinion would not let the case wait on his health. Herring was a rich old drunkard who was apt to do anything under the influence of alcohol. He was charged with killing his own son. It was public knowledge that the boy had been getting too free with his father's colored mistress and on the night of the shooting they were heard arguing about her. A shot was heard and the neighbors arrived immediately to find the son bleeding to death. Herring claimed a stranger had fired the shot and fled, but the murder gun was found under his pillow. Herring had made enough money out of the slave trade to hire the finest lawyers and jury that money could buy. Holt had a dying old woman carried into the court room who said she lived next door to the Herrings. The night of the shooting she had gotten out of bed for the first time in years. Immediately

¹¹ Foote, Bench and Bar, 37-8; Lynch, The Bench and Bar, 248.

after the shot and just before the arrival of the neighbors, she heard the youth cry, "Oh father! You have shot me!"¹² Holt gave a long oration on this testimony comparing Herring to all the villains of ancient times. This won the case for Holt.

Holt also got called into the flat boat war of 1838. During the winters it was the custom of the flatboat men to tie up at the city docks. From the docks they carried on an active trade with the city in competition with the regular city merchants. The merchants disliked this competition heartily and since they were taxpayers and the flatboat men were not the merchants forced the city council to put a tax on the boats each month but this did the merchants no good. The boats paid the new assessment without question. Then the council raised the tax to fifty dollars a day. Angered, the flatboatmen armed themselves with rifles, shotguns, and heavy hickory bludgeons. They built a breastwork of cotton and mounted a cannon on it. The mayor of the city, at the head of the two companies of militia with muskets and fixed bayonets came down to collect the tax. After exchanging insults both sides retired and the courts were allowed to settle the question. The flatboat men called in Holt who won the case. Unlike most of the cases he took to build his reputation Holt made money from this one. In the first

¹² Foote, Bench and Bar, 41-3.

two hours of an all day solicitation campaign the flatboatmen raised two thousand dollars to pay their counsel and court costs.¹³

By taking such cases of public interest, by demonstrating a diligence in his profession and by his evidence of a constant legal ability, Holt maintained a good reputation. In the court room he appeared calm and mild; his somewhat pale sallow face seemed to have a perpetual expression of sadness. His voice was very soft and touching except when he appeared to be under strong emotion. In his cases he always advanced from point to point and built up a strong chain of evidence to fascinate his jury. He was well read and often referred to the legal actions of ancient times to gain his point. Although he never used stage gestures, he always kept a careful eye on the jury to see what effect his words were having on them.¹⁴

The biggest of the land cases in which Holt made his money was the case of Vick & Rappeleye v. the Mayor & Aldermen of Vicksburg. This was the celebrated case in which the heirs of Newit Vick, the founder of Vicksburg, claimed the land along the river front that Vick had allowed the public to use since the founding of the city. In this, as in many other important suits, Holt's opponent was Sergeant S.

¹³Horace Smith Fulkerson, Random Recollections of Early Days in Mississippi (Vicksburg, 1885), 98-9.

¹⁴ Foote, Bench and Bar, 39.

Prentiss. Holt won the case in the local court but Prentiss appealed and won before the Supreme Court of Mississippi. The case carried to the Supreme Court of the United States and Holt won for the city of Vicksburg.¹⁵

While in Mississippi Holt was definitely in favor of slave holding. His success induced his brother, Robert, to come to Mississippi and become a slave holding plantation owner. In 1840 Holt's favor for slave holding caused him to become the council for the Ross heirs. Issac Ross had willed his slaves to the American Colonization Society to be sent to Africa and freed. His daughter, Mrs. Margaret Reed had willed hers to Reverend Z. Butler and Dr. B. Duncan in trust, for the same purpose. The heirs sought to break these wills as being contrary to the public policy. Holt, in his argument said that it was illegal for an owner to send his slaves out of the state to a country, there to remain free. This case he lost to Sergeant Prentiss.¹⁶

During the time he was in Mississippi he married Mary Harrison and they lived a very quiet and happy life together. Holt seldom went anywhere except on business. He mixed very little socially, so he was not well liked personally. He was too brusque and reserved and he gave people the idea he thought himself superior. He was universally avoided by the leaders of society and politics. Just as universally his

¹⁵Lynch, The Bench and Bar, 248-9.

¹⁶Joseph D. Shields, The Life and Times of Seargent Smith Prentiss (Philadelphia, 1883), 313.

legal ability was recognized after his first few cases. His success at the bar and his quiet respectable home life made Holt, in the eyes of the people, a man of virtue. It was this public standing that gave the aloof, taciturn Holt what little position he had in politics. When a deadlock arose in the state legislature over the appointment of a United States senator, the only person the Democrats felt they dared to unite on and still retain their popular majority, was Joseph Holt. After much discussion the legislature unofficially sent a man to ask Holt if he would accept the position. They were not willing to risk a public refusal by asking him officially. Holt did refuse. His law practice was much too lucrative to leave to save the political fortunes of a group of men who did not like him.¹⁷

Shortly after this his health began to fail. Both he and his wife, Mary, contracted tuberculosis and were very ill. Mary died from the disease. In the seven years since coming to Mississippi Holt had made enough money so that he could retire. In 1842, with his wife dead, himself sick, and his future financially secure, he decided to return to Louisville to regain his health. He was in what should have been the prime of life, just thirty-five years old, and yet he had to spend the next few years of his life in virtual seclusion. He lived very quietly making but few public

¹⁷Allen, Joseph Holt, 49-50.

appearances.¹⁸

During his convalescence he met and married Margaret Wickliffe. She was the daughter of Charles A. "Duke" Wickliffe, a prominent Democrat and then Governor of Kentucky. The Duke's son, Robert, soon became governor of Louisiana and his son-in-law was Senator Yulee of Florida. To help out these relatives Holt made a few campaign speeches. The few speeches that he did make showed that he had lost none of his fervent eloquence during his seclusion. The speeches were on the prosaic issues of the day and were largely made up of classical allusions and vivid denunciation of the opposition. Holt did not deviate from the Democratic line.¹⁹

In 1848 and 1849 he toured Europe, stopping for some little time in each of the European capitals, studying the habits and customs of the people. From this time on he referred to the history of these countries as though he had seen it all. In his later speeches he referred to the chains on the political prisoners, to the sufferings of the serfs, to the cruel sports of the nobles, all as though he had seen them and not as though he had merely read of them in the libraries of the various European capitals. He frequently compared American freedoms to the suffering in Europe.²⁰

¹⁸Ingersoll, A History of the War Department, 520.

¹⁹Allen, Joseph Holt, 50.

²⁰ Foote, Bench and Bar, 44; Joseph Holt, Speech at Irving Hall, New York: September 3, 1861 (New York, 1861), 1-8.

After a few short months at home he made another trip to Europe. Most of his time on this trip was spent on the eastern end of the Mediterranean. He explored the northern part of Egypt and ascended the Nile as far as the first cataract. From Egypt he crossed the great desert by way of Sinai and Petrea to Jerusalem. From Jerusalem he went to Damascus and then to Constantinople and up into Greece. There he visited all of the Battlegrounds as far north as Thermopylae. Much time was spent among the ruins in Athens. In 1851 he returned home to Louisville.²¹

While on these trips he was much impressed with the sad lot of the common man in Europe. He was happy to hear of each of the many revolutions there, many of which occurred while he was in Europe or shortly after he returned. He did all he could to help these revolts succeed. In 1852, when Louis Kossuth, the Hungarian aristocrat turned revolutionist, came to this country, Holt welcomed him into Louisville with a very flowery speech. He told how Kossuth wanted to aid the common man. This was not the whole story, Kossuth also wanted to help Kossuth, but it made a good speech for public consumption.²²

In 1852, once again feeling physically fit, Holt decided to reenter politics. He had been inactive long enough and

²¹ Foote, Casket, 98.

²² National Cyclopedia of American Biography (New York, 1898), I, 354.

now he wanted to make his mark. His wife's relatives were in high political offices and he wanted to gain recognition from the public. He wished to be thought of as a leader, a man of the world. The Democratic presidential candidate of that year was Franklin Pierce of New Hampshire. A friendly smile and a blameless political record were his qualifications for the presidency.²³ In the campaign Holt spoke for Pierce. Since there was not too much in the record to talk about on Pierce, Holt concentrated his efforts on denouncing the elevation of military power he foresaw if Winfield Scott, the Whig candidate, were elected. The Democrats won an overwhelming victory in the election. Scott carried only four states. The Democrats really carried the election on their statement that they regarded the Compromise of 1850 to be a final settlement of the slavery question.²⁴ Holt, in his speeches during the campaign, had occasionally brought up the question of slavery as though it had not been settled for good. This irritated Pierce's campaign managers. When it came time to pass out the fruits of victory Holt's contribution to success was ignored. From Pierce's election Holt fully expected to receive a foreign mission, preferably in France, but he was doomed to disappointment.²⁵

²³James Ford Rhodes, History of the United States (New York, 1893-1912), I, 250-2.

²⁴Ibid., I, 277.

²⁵Allen, Joseph Holt, 50f.; Foote, Casket, 99.

CHAPTER II

In Buchanan's Administration

Joseph Holt never developed an interest in state politics except as it affected the national scene. His only state campaigning was done for his relatives. Thus, 1856 was the next year in which Holt participated actively in politics. He wholeheartedly endorsed James Buchanan for the presidency. Due to his active participation in the campaign he received a large share of the credit when Kentucky, for the first time in years, voted Democratic in a presidential election.

In April 1857, confidently expecting a national office as his political reward, Holt moved his permanent residence to Washington, D.C.¹ He never returned to Kentucky again except on business. In September, Buchanan made him commissioner of patents. As commissioner Holt had to check on all new inventions to see that they really were new. He had to collect and publish statistics and all other information on

¹Mary Bernard Allen, Joseph Holt, Judge Advocate General, (1862-1875). A Study in the Treatment of Political Prisoners By the United States Government During the Civil War (unpublished doctoral dissertation, University of Chicago, 1927), 52.

agriculture. As a part of his job collecting agricultural information, he worked with the Smithsonian Institute collecting meteorological data from thousands of observers all over the country. He also had charge of the patent office display rooms in which models of every patented invention were shown. In 1857 the office issued 2,910 patents, 35 per cent more than Great Britain, the next largest granter of patents.² In 1858 Holt issued 3,695 patents. On February 5, 1859 copy-wrights matters were transferred from the department of state to the department of the interior and Holt took over these matters. At this time, he was also delegated to check all new and original designs.³

In March 1859, Aaron V. Brown, Buchanan's postmaster general, died.⁴ The post office, then as now, with all of its patronage, was a powerful political force. Brown had been too much the politician, not enough the administrator, and as a consequence, the department was deeply in debt. Because of the huge deficit Buchanan needed someone in the department who could refuse persistent supplicants. The Tennessee senators pushed G. W. Jones, but his announced belief that the United States had no constitutional right to carry the mail, eliminated him.⁵ Buchanan favored Lawrence O. Branch, the representative from North Carolina, and sent

²The Story of the American Patent System, 1790-1940 (U.S. Department of Commerce, Washington, 1940), 8-10.

³Ibid., 11.

⁴New York Times, March 9, 1859.

⁵Ibid., March 8, 1859.

him a wire of inquiry. The appointment had to be turned in quickly for the Senate was about to adjourn and would not delay for the appointment. Branch took too long to answer the wire or he might have had the job.⁶ Buchanan needed someone who was available for a quick answer and acceptable to the Senate. He brought up the matter of the appointment in a cabinet session saying,

"I want a man...who has no heart. It will take a strong resolute man, with none of the milk of human kindness in his veins, to do the work."

Secretary Thompson answered him at once, "I have just the man...Joe Holt."⁷

Thompson, with the aid of Senator Yulee, continued to urge Holt for the postmaster-generalship. They pointed out his successful law practice in Kentucky and in Mississippi. For Holt's political experience, his campaigning for Buchanan and his efficient work as commissioner of patents were brought in to bear. As commissioner he had worked actively to help put through bills in Congress which would aid and encourage young inventors and artists. Also, at various times he had helped the administration solve some very ticklish problems such as those which had arisen regarding the plan for the retire-

⁶New York Times, March 9, 11, 1859; New York Herald, March 8, 1859.

⁷Philadelphia Press, March 4, 1884 quoted in Philip Gerald Auchampaugh, James Buchanan and His Cabinet on the Eve of Secession (Lancaster, Pa., 1926), 80.

ment of naval officers. On the day of Brown's funeral Buchanan appointed Holt postmaster general. Thus, paradoxically enough, he received his first major appointment because of the work of men with whom he later broke and denounced at every opportunity.⁸

It was unfortunate for the Democratic party that Holt was a good bureaucrat but a poor politician. He had no idea of how to use his office either for his own or for his party's political advantage. With his efforts to run the office efficiently he irritated the backbone of the Democratic party, the local postmasters. He started many investigations of the corruption in his department and to the horror of the party he actually sought to follow them up. He caused the dismissal of such prominent party men as Westcott of Philadelphia, Fowler of New York, and Cooke of Chicago.⁹ Westcott was a personal friend and appointee of President Buchanan but Holt had him removed for mismanaging his office. Holt's New York investigation showed that Fowler had embezzled \$120,947.67. Fowler gave a bad bond and left the country.¹⁰ The case of Issac Cooke was more flagrant than either of the others but since he embarrassed Senator

⁸Roy Franklin Nichols, The Disruption of American Democracy (New York, 1948), 244; New York Times, March 10, 1860.

⁹Auchampaugh, James Buchanan and his Cabinet, 81.

¹⁰New York Times, December 6, 1860.

Stephen A. Douglas of Illinois, an administration foe, he was allowed to remain in office a while longer than the others. Buchanan thought that Cooke had been framed by Douglas and sustained him but when even registered mail was pilfered Cooke had to resign.¹¹ Holt's investigations made every postmaster wonder if he would be next. This was hardly a good atmosphere in which to breed party harmony.

The years before the Civil War were not generally favored by good postal legislation. Southern postmasters usually had the power to condemn whatever they deemed unfit for circulation. Such condemned material, usually abolitionist writings, was often publicly burned. Holt cheerfully acquiesced in this.¹² He even supported the right of the Virginia attorney general to bar newspapers containing abolitionist articles from the state. These were probably the only acts Holt made as postmaster general which pleased the South. In his drive for economy he cut off a number of the interior postal routes in the south and particularly he tried to cut off much of the steamer mail service on the Mississippi. Georgians complained about the infrequency of mail to the interior and South Carolinians snorted over Holt's attempts to eliminate the state's favorite steamer

¹¹John Basset Moore, editor, The Works of James Buchanan (Philadelphia, 1910), X, 329.

¹²George Washington Julian, Political Recollections 1840-1872 (Chicago, 1884), 173.

which ran from Charleston to Havana via Key West. It was only Senator Hammond's persistence on the floor of Congress that saved the line.¹³

All during his time as postmaster-general, Holt advocated making the department self sustaining. He felt that postage rates should be high enough so that the mails would be carried for the postage alone, without any additional compensation. Cornelius Vanderbilt, the largest carrier of the mails, thought the idea ridiculous. Eventually he agreed to carry the mails for the postage but only upon Holt's promise to urge Congress to raise the rates.¹⁴ This, Congress refused to do. In fact, the thirty-fifth Congress made no postal appropriation at all. The local postmasters were the key men in the Democratic party and the Republicans, by preventing the appropriation, hoped to cripple the postmasters and force a special session. The Republican victories in the 1858 election meant they could organize the new House if it were called into special session before all of the southern and Pacific states, normally Democratic, had time to hold their elections. Thus, the Republicans hoped to force the Democrats to let them run the House rather than leave the postmasters without funds. Buchanan, however, refused to take a chance on a special session so Holt had to manage his office without an appropriation.¹⁵

¹³Nichols, The Disruption, 237-8.

¹⁴New York Times, December 10, 1860.

¹⁵Nichols, The Disruption, 243.

First, he decided that the local postmasters would not have to make their first quarterly returns until after Congress met in December. Second, the department would give its contactors special certificates showing that the government owed them money. These certificates, acceptances they were called, could then be discounted at the banks which could hold them until Congress met. Then, with the regular session of Congress and the appropriation all would be well within the Democratic party ranks.¹⁶

All through his tenure in the post office Holt did his best to economize. In his postal report of 1860 he claimed to have saved the country \$1,729,869. He said he would have saved more but Congress had been too intent upon helping its members politically by marking the postal appropriation to benefit certain localities. He complained again about the Charleston-Havana steamer which cost the government \$40,000 in subsidies for which it received \$500 in revenue. He felt that if Congress wanted to aid its friends it should do so through the general treasury and not through the post office.¹⁷

His report did not mention the high political cost of his economy. Administrative quarrels and the rival claims of steamship, railroad, and overland mail contractors had rendered the post office useless for partisan politics.

¹⁶Nichols, The Disruption, 244-6; Thus, Holt became one of the first of the cabinet officers to issue the type of acceptance for which Secretary Floyd was later called a swindler.

¹⁷New York Daily Tribune, December 5, 1860.

His policies had generally upset the South and had raised its ire against the federal system. His silent and ungracious manner had given offense to all of those with whom he transacted business. He never made any kind of explanation to palliate his policies.¹⁸

In 1860 the Democratic party split over the slavery question. Stephen A. Douglas was the only real candidate the Democrats had but he stood for popular sovereignty. The South had gone along with popular sovereignty in 1852 when they expected to get Kansas as a slave state, but Kansas in 1860 was in the hands of free men. The southerners, at the Democratic convention in Charleston, demanded that the party take the stand that slavery was right. This demand the Douglasites would not admit and the convention broke up without a candidate.¹⁹

A second meeting was held, this time at Baltimore, with fresh delegates and Douglas became the official nominee of the Democratic party with a platform calling for popular sovereignty. The southerners then held a convention of their own and nominated John C. Breckinridge of Kentucky on a platform of slavery extension and the annexation of Cuba. The Democrats were further divided when John Bell of Tennessee ran as a compromise candidate from the border states.²⁰

¹⁸Moore, The Works of James Buchanan, X, 94.

¹⁹Emerson David Fite, The Presidential Campaign of 1860 (New York, 1911), 106-7.

²⁰Ibid., 108-12, 131.

The Republican party in 1860 was definitely a sectional party. It put the north against the south and made this its political issue. To the southerners it appeared as the backer of the policies of John Brown. Southerners felt that if the Republican candidate, Abraham Lincoln of Illinois, should win, slavery was doomed. The political appointees of the Republicans would form a new, anti-slavery party in the south which would arm the slaves to revolt.²¹

In November of 1860 the Buchanan cabinet contained three northern men: General Cass of Michigan, secretary of state; Governor Toucey of Connecticut, secretary of the navy; and Jeremiah Black of Pennsylvania, the attorney general. There were four southern members: Howell Cobb of Georgia, secretary of the treasury; John Floyd of Virginia, secretary of war; Jacob Thompson of Mississippi, secretary of the interior; and Joseph Holt, postmaster general.²²

When Abraham Lincoln won the election Governor Toucey felt that the victory was illusionary. Four years of Republican power would ruin the party and then the old Democracy, purified and strengthened would return to power. He thought the south, except possibly South Carolina, was not in earnest about seceding. The rest of the cabinet felt secession was inevitable. Cobb said the south would leave the Union in

²¹ Samuel Wylie Crawford, The Genesis of the Civil War (New York, 1887), 20; Nichols, The Disruption, 288.

²² Crawford, The Genesis, 21.

defense of its honor and interest, and would be out entirely by March 4. Floyd thought secession unnecessary and unwise but inevitable. Black felt the Republican victory was only temporary but the north had done much to justify the South's secession. The majority of the cabinet agreed with Cass when he said that he did not think resistance to secession would succeed but that there would be a long and bloody civil war.²³

In early December Holt spoke of the growing feeling that he had that the north would allow the south to leave the Union quietly. There would be no civil war for the North wanted peace at any price. On December 3, Buchanan sent his message to Congress. In this message he spoke of secession. He recognized the right of revolution but denied that right of secession and claimed it to be the national duty to defend the public property and to collect the public revenue. As a result of this message Howell Cobb resigned. He thought he could be of more use in Georgia.²⁴

By the middle of December Holt felt that the secession movement had passed its crisis and was beyond the reach of human control. South Carolina already had a convention preparing for secession. The situation was very tense in Charleston and Fort Sumter might be attacked any day. Although

²³Crawford, The Genesis, 22-4.

²⁴Ibid., 36-7; New York Times, December 4, 1860.

Holt hated the northern abolitionists his love for his country made him want to see it remain a whole. He, together with Cass and Black, urged Buchanan to send reenforcement to Charleston so that South Carolina could not take over the forts there. He feared that sending arms would be taken as an act of hostility and might unite the south in favor of secession. Floyd did favor replacing supplies and men, however, whether South Carolina liked it or not but even this was not done. Cass felt reenforcing Charleston was essential and he resigned when Buchanan refused. Judge Black took over as secretary of state and Edwin Stanton came into the cabinet as attorney general.²⁵ Holt could see that South Carolina would be out of the Union by Christmas and he feared the other slave states would soon follow. The border states might remain a little longer but upon finding the North unwilling to tolerate slavery would soon join the southern confederacy. Holt felt that the North was forcing the South out of the Union by its passage of personal liberty bills for he felt that they legalized the theft of southern property. Slave agitation, he claimed, made personal safety impossible for the whites in the south.²⁶ Holt's family and background made him see clearly the secessionists' point of view on these subjects. His brother,

²⁵Crawford, The Genesis, 28-30, 43-4.

²⁶New York Tribune, December 10, 1860.

Robert, wrote him from Yazoo urging him to keep faith with the South. All of his relations were secessionists. His Wickliffe-Yulee relations were among the southern leaders. Up until the middle of December Holt's speeches and writings show that he was against coercion of the south.

Between the middle of December and first of the new year he changed his mind.²⁷ He decided the moral justification of the South was not enough. He had never been interested in state affairs and now his service to the Union in high office helped influence him to remain in the Union. In the later part of 1860 his wife died, leaving him lonely and melancholy. He could summon up no enthusiasm for the new southern cause. In his recent position as postmaster general, he had had many bitter quarrels with the Southerners over the mail service. He knew that the southern leaders would not forget this and if he did join the rebel cause he would have little to do. These influences plus a felt need for public recognition, made him stay with the Union. Once he had decided to cast his lot with the North, his attachment to the Union became stronger and stronger. He had the zeal of a convert and the fury of the scorned. He developed an inflexible belief in the righteousness of the federal cause.²⁸

²⁷Allen, Joseph Holt, 61-2; Nicholas, The Disruption, 379.

²⁸Nichols, The Disruption, 375-9.

The Union should be held together at all costs. He changed his word from coercion to subjugation. Coercion, he said, meant forcing a member of the body politic against its legitimate right. If it were transcending its legitimate rights and encroaching upon the federal property rights, compelling it to stop was not coercion, or if it were, it was not a wicked policy. So now, Holt declaimed, the North should not subjugate the South.²⁹ During this time, while he was changing his position, secession, instead of being a strong threat, had become a fact. On December 20, at one-thirty in the afternoon, the South Carolina convention passed its ordinance of secession. The Southerners were taking over the federal postoffices and were threatening forts and arsenals. Holt flatly stated that the federal government should keep its defensive position at such places as Fort Sumer, against all attacks. The South Carolina convention appointed a commission to Washington to solve the questions that arose over its secession ordinance.³⁰

After the 1860 election, Buchanan's cabinet was in a poor governing position. It was thoroughly in sympathy with the southern demands, but it had been repudiated at the polls. Although in sympathy with the southern views the cabinet believed wholeheartedly in the Union. It accepted

²⁹Edward McPherson, The Political History of the United States of American during the Great Rebellion (Washington, 1865), 32-3.

³⁰Crawford, The Genesis, 52.

the states rights dogma where it denied the right of secession. When the question came up in cabinet of what to do about secession, Attorney General Jeremiah Black developed the negative doctrine of self defense. He thought the president had the right to take any measures that might seem necessary to protect public property they were about to seize, but this was the policy Buchanan favored and the one he announced in his December message to Congress. Holt did not believe in this doctrine and he did his best to have Buchanan reinforce Fort Sumter during 1860 when the crisis had not yet been reached. He felt that secession was a conspiracy forced upon unwilling people by unscrupulous leaders.³¹

In order to prevent the South from seceding, Buchanan proposed to his cabinet that he call a constitutional convention. This convention would allow the South to put its demands into the basic law and thus avoid breaking up the Union. The nature of the government would be changed but the conflict of the sections might be removed. Holt voted against this. If the convention should fail, then the South would be united in its demands and have a definite secession program. This would be fatal to the Union. Secretaries Black and Stanton also held this view, and all three

³¹Allen, Joseph Holt, 54-5.

said they would resign if a convention were called. Secretary Floyd favored this plan and continued to stress it until the outbreak of the war.³²

By December of 1860, Secretary of War, Floyd, found himself in a peculiar position. If he did the routine work of his office he would be inevitably aiding the southern cause. The long established policy of the war department had been to send each of the states its quota of arms at least one year in advance. Floyd's southern sympathies were known, so that when he followed this practice, the North branded him a traitor to the Union. Congress appropriated money to build forts in the south and when Floyd did his work and continued work on these forts, he was called a rebel.³³ Actually, although he defended the right of secession, he warned the South against it. His views were fairly common at the time. The Union was voluntary in origin and could only be perpetuated by the voluntary assent of its members. He knew that the North would never let the South go out of the Union peacefully, but he felt that if the South would act together, bloodshed could be avoided and the Union speedily reconstructed along southern lines. "The mouth cannot be

³² John George Nicolay and John Hay, Abraham Lincoln (New York, 1890), II, 362.

³³ New York Times, December 29, 1850; the Philadelphia Inquirer, December 25, 1860; Buchanan wrote to Mr. Capan, November 21, 1861 that the South got less than its arms quota in 1860. Three states, Louisiana, Mississippi, and Kentucky did not get any arms. Quoted in Moore, The Works of James Buchanan, XI, 252.

without the belly, nor the belly without the mouth."³⁴

The South expected to get aid from England as soon as she formed a confederacy. She thought that the English need of cotton would force her to support the South. Floyd knew that once the South had seceded she would need aid from abroad to maintain her independence, but he warned against expecting aid from England. England, he said, already had enough cotton so that it would need no imports for a long time. Rather than aid either side he felt the European nations, and particularly England, would wait until both the North and the South exhausted themselves in civil conflict and then they would subjugate the sections.³⁵

Considering the state of public opinion, Floyd's following of the traditional policies of the war department was rash. He should have realized that the nearness of civil war would change tradition. He was too emphatic in his southern sympathies to be a cabinet officer in the north. When Buchanan asked for Floyd's resignation it was hot, however, because of his southern leanings. In the course of administering his office he had, without authority, signed acceptance for Russell, Majors, and Waddell. Floyd signed between three and four million dollars worth of these acceptances which showed the amount of money the government would owe the firm

³⁴New York Times, December 6, 1860.

³⁵Ibid., December 6, 1860.

when it had discharged all the government contracts it held. Being short of money, Russell got Godard Bailey, Floyd's nephew and a clerk in the interior department, to exchange \$870,000 worth of these acceptances which were worthless on the open market, for negotiable Indian bonds of which Bailey had charge. When the inevitable checkup came in December, Russell and Bailey were exposed. Although Floyd did not personally profit from this fraud he had been connected with too many other frauds to be believed at this time of public excitement.³⁶

Buchanan could no longer keep Floyd in his cabinet. On December 23 Mr. Breckinridge, a relative, went to call on Floyd and informed Floyd his resignation would be accepted.³⁷ While Floyd was preparing his office so he could resign, the South Carolina commissioners arrived in Washington. Buchanan promised to meet with them informally. He would not grant them formal recognition but he promised to send their credentials to Congress along with a paper that they should prepare after talking to him. It looked as though some definite solution might be made.³⁸ Then, on the night of December 26, Major Anderson, in charge of the forts in

³⁶New York Times, December 25, 1860; New York Tribune, December 26, 1860. Republican newspapers referred to Buchanan's administration as the age of fraud. This made Holt's work look good.

³⁷Moore, The Works of James Buchanan, XI, 252. Thoms

³⁸Crawford, The Genesis, 143. Thoms

Charleston Harbor, moved his small force from Fort Moultrie to the more easily defended position in the nearby Fort Sumter. The South Carolina commissioners protested loudly. They claimed that the move was an act of aggression since it strengthened the federal government in the Charleston Harbor. They claimed that no such move should have been made until they had had a chance to negotiate for the forts and they called on Buchanan to send Anderson back to Fort Moultrie.³⁹ They also approached Secretary Floyd with this demand. Buchanan did not like Anderson's move. He thought that Anderson had been safe enough in Fort Moultrie. He had hoped that with the coming of the commissioners, the tense situation in Charleston Harbor would be eased by whatever course of action Congress saw fit to take. He feared that any conflict over Fort Sumter would cause the other southern states to rally round South Carolina and that the measures of compromise then before the Senate committee of thirteen, would be suspended or defeated. It was Buchanan's purpose to limit the secession to South Carolina if he could and with that in mind drafted a reply to the commissioners demand to remove Anderson. When the reply was read before the cabinet, Holt, Black and Stanton objected. They said it seemed to make concessions to South Carolina which put the Union in a bad light. Holt went so far as to urge reenforcements be sent at once to Major Anderson in Charleston. Thompson, Thomas and Floyd claimed the note did not concede enough to South

³⁹Crawford, The Genesis, 40-1.

Carolina. Floyd recommended that the troops in Charleston be withdrawn at once. He claimed there was no danger to the federal forces there but Anderson's move looked like one of aggression and the administration had agreed to make no such move.⁴⁰

Holt, Black and Stanton at once put extreme pressure on Buchanan. The other members of the cabinet were southerners and it was evident they would soon resign. The three told Buchanan they would resign at once if he conceded anything to the South Carolinians. They would have left Buchanan without any advisors, so he changed his note. It was decided that temporarily, Anderson would be allowed to remain at Fort Sumter.⁴¹ While this discussion was going on, South Carolina forces moved into Fort Moultrie and Castle Pinckney, so that Anderson had to stay in Fort Sumter. There was no place else for him to go without leaving South Carolina. This action made it possible for Floyd to resign his office on principle. "I can no longer hold it under my convictions of patriotism...subjected as I am to a violation of solemn pledges."⁴²

⁴⁰Crawford, The Genesis, 145-9.

⁴¹George C. Gorham, Life and Public Services of Edwin M. Stanton (Cambridge, 1899), 157; The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington, 1901), series 1, 1, 129- subsequently cited as Official Records.

⁴²New York Times, January 1, 1861.

Buchanan turned to Joseph Holt to take over the war department. By this time Holt was known as a strong Union man. He became secretary of war ad interim until a military man, perhaps General Dix, could be prevailed upon to assume the heavy task. Holt agreed to take the office but only on the condition that reinforcements would be immediately sent to Fort Sumter. On the same day as his appointment, he called on General Scott, the army head, and together they planned a relief expedition to consist of three hundred drilled men with three months' supplies. These reinforcements were to be shipped aboard the warship, Brooklyn. On this same day, January 1, 1861, the South Carolina Commissioners wired home, "Holt...appointed Secretary of War. We believe reinforcements are on their way. Prevent their entrance...."⁴³ This warning was premature, but it was soon to be fulfilled. On the second, the orders for the Brooklyn were rescinded. Holt and Scott had decided that the ship was too large to get into the Charleston Harbor and a smaller commercial vessel might have a better chance. Therefore, they hired the Star of the West, a commercial steamer commanded by Captain John McGowan. On January 5 the ship left its wharf in New York loaded with a three months' supply of subsistence. It was cleared for Havana and New Orleans. Near Staten Island she stopped and took aboard four officers and 200 men who had been waiting on a steam tug. At nine

⁴³Official Records, series 1, I, 125; Nicolay and Hay, Abraham Lincoln, III, 90ff.

that evening the Star of the West cleared the bar and sailed for Charleston. It was on the fifth that word reached the war department that the South Carolinians had set up a battery on Morriss' Island which would probably destroy any unarmed vessel that tried to enter the Charleston Harbor. Word also came that Major Anderson felt secure in his position, so orders were sent to stop the sailing but they were too late.⁴⁴

In order to prevent South Carolina from coming into conflict with the United States, Secretary Thompson carried on a voluminous correspondence with Judge A. B. Longstreet in Charleston keeping the Judge posted on the actions of the federal government. On the fifth in answer to a direct inquiry, he wrote that no troops had been sent, nor did he think any would be sent until Fort Sumter was attacked. On the eighth Thompson read in the Washington Constitution that the Star of the West had sailed. He immediately wired south but the south was already warned. Several senators wired south on the seventh, the first of these messages received in Charleston came from L. G. Washington. It said, "Government troops were sent out Saturday night...Mr. Thompson has been deceived...."⁴⁵

This started a long and acrimonious fight between Holt and Secretary Thompson. Thompson felt trifled with, if not

⁴⁴Crawford, The Genesis, 176; New York Times, January 7, 1861; Nicolay and Hay, Abraham Lincoln, III, 96.

⁴⁵Crawford, The Genesis, 178-180.

deceived, and claimed he had had to wire south about the coming of reenforcements. Honor, truth and justice required him to answer Longstreet while still a cabinet member even if it defeated the landing of reenforcements. Holt believed that warning the South Carolinians was treachery to the Union.⁴⁶

At one-thirty in the morning of the ninth, the Star of the West reached Charleston. It had to wait until six-twenty in the morning to cross the Charleston bar and during this period of waiting it was sighted. When it tried to enter the harbor it was fired upon, first from Morris Island and then from Fort Moultrie. All the messages sent south had been to the South Carolinians and no one had told Major Anderson about the Star of the West so the guns from Fort Sumter were silent. When he did not get any aid, Captain McGowan turned his ship around and took it back to New York. Nothing was done about the firing on the ship. South Carolina was allowed to make this act of war with impunity.⁴⁷

During January, Anderson sent many messages north disclaiming any need for assistance. He reported that he could hold Fort Sumter as long as he was required to do so without any aid. His personal messenger, Lieutenant Talbot, verbally painted the same splendid picture of conditions in Charleston. General Scott heard but he did not believe these

⁴⁶ Auchampaugh, James Buchanan, 82.

⁴⁷ Alexander Howard Meneely, The War Department, 1861: A Study in Mobilization and Administration (New York, 1928), 57-9.

reports. Since he had come to the conclusion that the defenses of Charleston had become too strong for aid to reach Anderson he counseled Holt against sending reinforcements. On the twenty-second Holt wrote to the South Carolina commissioners that no reinforcements were being planned for Fort Sumter since Anderson seemed to feel secure. If, however, any aid was deemed necessary, he would make every effort to get it to the fort.⁴⁸

With the southern states rapidly going out of the Union Holt soon saw that Washington would make as fine a capital for the South as it would for the North. Moreover, if both Maryland and Virginia should secede, the Union seat of government might fail. To prevent this he appointed Captain Charles Stone, a man recommended by Scott, to make arrangements at once to defend Washington. Stone brought in all the troops in the vicinity of Washington and sent for several companies to come down from West Point.⁴⁹

The southerners and the secessionist newspapers at once complained about the bringing in of the troops into the free capital. In defense of this action Holt said that the secession had so far been distinguished by a boldness and a completeness of success. He had read many articles in southern newspapers which showed that the southerners wanted Washington

⁴⁸McPherson, The Political History, 32-3.

⁴⁹New York Times, January 3, 1861.

for their own capitol. He pointed out that high southern officials had frequently stated that if they did not hold the reins of government, then Abraham Lincoln would never be inaugurated in Washington. Holt said that the federal government had ignored the warning of Harper's Ferry and also the Charleston situation until it was too late. He was not going to do the same thing in regard to Washington. The southern newspapers countered that Holt was helping General Scott set up a military dictatorship and this means for assuring a peaceful inauguration for Lincoln would provide a good Mexican inauguration and it would probably have the same results.⁵⁰

With the short time left to Buchanan's administration it is possible that Holt could have acted as secretary ad interim until March 4 but Buchanan wanted a permanent secretary of war. Early in January the position had been offered to General Dix but he refused. Dix preferred to become the secretary of the treasury. The position was then offered to General Scott but he was happy where he was. As head of the army and the nation's great military hero he had almost as much power as though he were secretary of war and there was no chance of his having to resign to civilian life. The Lincoln inauguration was too close. So finally, Buchanan

⁵⁰ New York Times, January 3, 1861; McPherson, The Political History, 81-2; The Constitution, January 26, 1861; Official Records, series 1, LI: 1, 435.

turned to Holt to remain as permanent secretary and his name was sent into the Senate.⁵¹

The South was not happy over the nomination and the executive session which considered it was violent and acrimonious. Some of the members were so loud in their execrations of the executive that they were heard all the way out in the lobbies through the closed doors. The southern Senators, Slidell, Mason and Wigfall led the opposition while Senators Bigler, Douglas and Johnson, all Union men, worked for Holt. Slidell left no stone unturned to secure the defeat of the nomination. He tried to have the appointment referred to the Committee on Military Affairs where it could be buried, but this motion was defeated by a vote of 34-13. The southerners claimed that Holt was a coercionist and that they were afraid the administration was going over to the coercionists. Holt's friends said that he was not a coercionist. They maintained it was his earnest desire to prevent bloodshed, but to maintain the laws by every peaceful means. Holt's nomination was approved because he received solid Republican support and more important still, it had been delayed until many of the southern senators had withdrawn. On January 18, after four hours of stormy session he was accepted 38-13. He took the oath of office five days later.⁵²

⁵¹Meneely, The War Department, 53.

⁵²New York Times, January 18, 1861; The World: New York, January 18, 1861; The South was solidly against Holt. The thirteen who voted against him were: Bayard, Benjamin, Bragg, Clinghan, Green, Hemphill, Hunter, Iverson, Lane, Mason, Polk, Slidell, and Wigfall.

The eyes of the nation continued to be focused on Fort Sumter. It was the likely place for war to break out if war there was to be. Many plans were sent to the war department on how to relieve the fort but the only one that Holt seriously thought about was a plan by G. V. Fox, a former naval officer. Fox wanted to put three small men of war at the entrance of Charleston Harbor to prevent a naval attack and then send reinforcements in to Fort Sumter in small launches pulled by three steam tugs. On February 8 the day Jefferson Davis was made president of the southern confederacy by the Montgomery convention, Holt laid this plan before President Buchanan. Arrangements and preparations were started but the plan never got out of the planning stage.⁵³

In the month remaining before Lincoln's inauguration Holt defensively employed the United States troops. He sent a company of men to Harper's Ferry to protect the federal property there against a mob attack. He sent troops to protect the well stocked federal arsenal at St. Louis. He sent succor to the threatened Fort Taylor at Key West. A company was sent to hold the ungarrisoned Fort Jefferson at Tortugas Island. Fort McHenry at Baltimore was reinforced. Fort Delaware was also reinforced and defensive preparations were begun at Fort Monroe.⁵⁴

⁵³New York Times, September 11, 1865.

⁵⁴Meneely, The War Department, 54-5.

To a considerable extent Holt became the spokesman for Buchanan in the last weeks of his administration. There was much conflict with the southern leaders over the federal property rights and Holt's legal knowledge and his insight gave his contentions great force. His sincerity and literary skill gave his communications a freshness and determination.⁵⁵

Holt did little as secretary of war to build up the power of the army. He made no changes in the department personnel. He still did not think that there would be armed conflict. The South would go out of the Union but only to get a political advantage. He did not think the southern states meant to stay out of the Union and form their own confederacy. However, he did not intend to give the South any United States equipment for he was well aware that some spark might set off a war. His policy was not to give out any plots or plans of arsenals or forts, nor reports of their armament and supplies to any of the secessionist congressmen. He sent no advance quotas of arms to disloyal governors and he cancelled all quotas Floyd had authorized but had not been filled. He carried out all of the military precautions urged by the conservative General Scott. In view of the public excitement he thought that these measures were necessary. But he did not encourage the northern militarists either for he was against the northern voluntary forces. When a bill

⁵⁵Meneely, The War Department, 55-6.

came up before Congress which would have provided for the raising of local home guards Holt advised against it. He felt the force on hand was sufficient for local defense and the protection of public property.⁵⁶

During the first three weeks of January, Holt ran both the War Department and the Post Office Department. Peculiarly enough, the postoffices in the seceding states said that the ordinances of secession had made provision for this and that they considered themselves accountable to the federal government in Washington for the faithful discharge of their duties. When Anderson was getting his mail infrequently, seemingly on the whim of Governor Pickens of South Carolina, Holt wrote south and said that all mail would be stopped if the mail did not get through regularly to Fort Sumter. This threat worked for the federal mail subsidy was too important to South Carolina's treasury. Without it there might not be any mail in the state at all.⁵⁷

After Holt was made secretary of war, the South complained more bitterly about his postal policies. When he removed a southern postmaster for mismanagement of his office, it was said, "Mr. Holt visits with his petty vengeance any man who remains faithful to the South."⁵⁸ The southerners

⁵⁶Official Records, series 3, II 55; New York Times, December 23, 1860; Nicolay and Hay, Abraham Lincoln, III, 128; Meneely, The War Department, 55; Nicholas, The Disruption, 482.

⁵⁷The Evening Post: New York, January 5, 1861; Daily Wisconsin, January 21, 1861.

⁵⁸The Constitution, January 26, 1861.

felt that Holt was false to his section, false to the very people whose misplaced confidence had placed him in his position. He was treacherous. On January 18, 1861, Holt formally resigned as postmaster-general and Horatio King succeeded him.

The final break between Holt and the southerners came over the appointment of Colonel Beauregard as commandant of West Point. Beauregard was the brother-in-law of Senator Slidell and Slidell had managed to secure Beauregard's promotion over five or six other officers. Holt annuled this move and put Colonel Delafield in command of the academy. When Holt got Buchanan to agree to this move, the South gave up hope that they would receive any aid from the administration. They felt that it had now gone completely over to the coercionists.⁵⁹

After this incident Beauregard left the Union army and went down to Charleston to take charge of the South Carolinians batteries there. Montgomery Blair later accused Holt of muzzling the guns at Fort Sumter so that Beauregard could build batteries bearing on the fort. He maintained that Holt had actually made an armistic with the rebels to keep the peace. Holt said he never made an armistice with the rebel secretary nor did he believe that any such agreement ever existed. He claimed that the batteries

⁵⁹New York Daily Tribune, January 29, 1861; Auchampaugh, James Buchanan, 81-2.

around Fort Sumter were not fired upon because the president shrunk from the dread responsibility of inaugurating civil war. The firing upon, instead of from Fort Sumter, he believed would serve to arouse, instruct and unite the nation.⁶⁰

The position of Fort Sumter was dangerous to the success of South Carolina's secession. She could not allow the fort to remain in what she now considered foreign hands. That would be an insult to her sovereignty and yet if she tried to take the fort by force, that would be an act of war. Until she could be certain of wide southern support South Carolina knew that she could not start a war against the Union without being easily crushed. However, she tried to assert her sovereign right of eminent domain. She felt that she should be able to avoid war by buying the fort. Colonel Hayne was sent north to negotiate. When Buchanan referred the matter to Holt he wrote at once to Colonel Hayne that South Carolina had given to the United States sovereign rights to Fort Sumter under the Constitution and so had no right of eminent domain. Furthermore, the president had no constitutional right to either sell or cede public land so it was useless to negotiate.⁶¹ To insure the safety of the fort, Holt pushed the plans for the Fox relief scheme.

Holt's work in the war department was thus, on the whole, passive in nature. He did his best to maintain the status

⁶⁰New York Times, September 16, 1865.

⁶¹Moore, The Works of James Buchanan, II, 138-141.

quo so much desired by President Buchanan. Up until the morning of Lincoln's inauguration, he thought he had kept everything secure, even Fort Sumter. Then he got Major Anderson's message saying that Charleston Harbor could not be entered nor Fort Sumter held with less than twenty thousand good and well disciplined men. In his regular reports Anderson had never even hinted at the need for such a force. On December 30, after he had moved to Fort Sumter he wrote, "We can command this harbor as long as our government wishes to keep it." January 6 he wrote, "My position will...enable me to hold this fort against any force." On January 16 Holt instructed Anderson to report frequently and if he needed any aid "a prompt and vigorous effort will be made."⁶² Anderson had reported frequently since then and in all of his reports he had disclaimed all need for aid until the morning of Lincoln's inauguration. A fine report for Holt to explain to the new administration. Lincoln chose for his secretary of war Simon Cameron. This was the result of politics. Cameron was not prepared to take over the war department at once, he had business in Pennsylvania, so Holt remained in office for the first ten days of Lincoln's administration.

⁶²Quotes taken from Holt's report to Lincoln, March 5, 1861, given verbatim in Moore, The Works of James Buchanan, XII, 191-193.

CHAPTER III

Army Commissioner

Once Lincoln was inaugurated and Cameron had come to take over the war department, Holt was without occupation. He had been a Douglas Democrat but he soon earnestly supported the new Republican administration. He wrote many letters to the various leaders around the country and spoke often from the lecture platform. In these letters and addresses he denounced the right of secession, saying that it had no foundation in jurisprudence, logic, or in political history. In 1814, he said, the Richmond Enquirer had denounced secession and it still was not right just because the South now wanted to secede. Holt spoke out against the policy of neutrality which Kentucky favored. He claimed a state could not remain neutral; it either had to secede or fight for the Union. Speaking in Kentucky he said that the war was to be "a war on crime and criminals." It was absurd to think that the North intended to subjugate the South. "The army will go South...if it does...as friends and protectors." The

south is determined to break up the Union."¹

In the summer of 1861 Holt worked untiringly in Kentucky to gain support for the Union. He spoke in many small meetings, at a huge meeting in Louisville, and also to the soldiers at Camp Jo Holt on the fallacy of neutrality. In these speeches he supported President Lincoln as a man "heroically struggling to baffle the machinations...of most wicked men."²

During 1861, Holt appeared to the public as a conservative. He was never offended by the rantings of such radicals as Benjamin Wade, Lyman Trumbull and Zacharian Chandler who freely unleashed their scorn upon the Southerners and rebels, but Holt was afraid that if he spoke too loudly against the South he would alienate many of the hard pressed Union men in the border states. He believed at this time that a confiscation bill was a necessity but he saw with quick dismay the danger to Kentucky Unionism in General Fremont's proclamation of emancipation in Missouri, an emancipation done as confiscation. The border states were too close to the rebels to be pressed in such a manner by the

¹Joseph Holt, The fallacy of Neutrality (New York, 1861), 28; The War of The Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington, 1901), series 2, VI, 31 - subsequent citation Official Records

²Holt, The Fallacy of Neutrality, 6; Frank Moore, editor, The Rebellion Record: A Diary of American Events with Documents, Narratives, Illustrative Incidents, Poetry, Etc. (New York, 1864), II, 297-8, 450-1.

Union. Their sympathies might change and become dominantly rebel. Holt felt that the South should be conciliated if possible, but he believed in weeding out disloyalty with firmness wherever it interfered with the North's prosecution of the war. To ensure this weeding out process, he thought it perfectly all right for Lincoln to suspend the writ of habeas corpus.³ He did not feel, as so many others did, that Lincoln had no right to do this.

Not only did Holt speak widely in Kentucky, but he also went North to stir up enthusiasm for the war. He made regular speeches in New York and in Boston during the summer months. He also spoke from the platform whenever his train made a stop.⁴ His speech at Irving Hall in New York City may be considered typical of these addresses. It started with a brief account of conditions in Kentucky. The traitors, he said were trying to get Kentucky to leave the Union but to no avail. Kentucky abhorred secessionists "as Rome abhorred Catiline, as American people abhor the memory of Judas Iscariot." If the secessionists were to strike through Kentucky, the Unionists there would carry "bullets as well as ballots in their pockets." He said that in his tour of the north, he had noticed that while the people did not discuss

³Mary Bernard Allen, Joseph Holt, Judge Advocate General (1862-1865). A Study in the Treatment of Political Prisoners by the United States Government During the Civil War (unpublished doctoral dissertation, University of Chicago, 1927), 74-5, 80-1.

⁴Ibid., 76.

the causes of the war nor the doctrine of secession, they were calmly determined to sustain the Union and deliver the South from the leadership of the band of conspirators who had created a military despotism there. Success of the rebellion would be fatal to the repose and freedom of the country. Americans are champions "at once of the right and the capacity of man for self government." This was not to be "a war of aggression, or conquest, or spoliation, or passion, but in every light...it is a war of duty." It was apparent to Holt that there was disloyalty present in the Union; "This evil has assumed...startling proportions" and "its suppression...a paramount duty on the part of the administration." The country needed strong measures to cope with spies and traitors, so, he said the rebel clamor against the suspension of the writ of habeas corpus should bother no one. Laws have been established to continue the government, not to aid its enemies.

The North was fighting for many things besides prosperity, among them honor, manhood, loyalty, national fame, the respect and homage of the world; for a future, a country. To spare blood and treasure the North should move promptly and mightily. The whole physical force of the loyal states should be precipitated upon the South. This, Holt felt, would be a measure of wisdom, economy and humanity. However, he said in closing, the federal government should not be criticized for its prosecution of the war. "We can't see the

whole field of action. Be patient and forbearing. Trust the president you elected. He needs all the support that he can get."⁵ The administration was happy to have Holt traveling around whipping up the proper war spirit in the people.

When it soon became evident that Cameron would not stay long as Lincoln's secretary of war, Holt was urged for the position. As early as August 1861, Senator Trumbull wrote that Cameron's displacement by Holt would be equal to gaining a northern victory and that the appointment would send government bonds up five per cent in the market. In November, Lincoln mentioned to R. W. Bush that Holt was to be desired for the war department. In December Lincoln mentioned the same thing to his attorney-general. However, when Cameron left the war department it was Edwin Stanton who took his place. The Radical members of Congress desired Stanton as did some of the cabinet members, so Holt was set aside. Lincoln did say that it was his determination to give Holt an office in his administration as soon as a good vacancy appeared.⁶

⁵The quotations in the foregoing two paragraphs all come from Joseph Holt, Speech at Irving Hall, New York: September 3, 1861 (New York, 1861), 1-8; New York Daily Tribune, September 4, 1861.

⁶Alexander Howard Meneely, The War Department, 1861: A Study in Mobilization and Administration (New York, 1928), 232, 365; Frank Abail Flower, Edwin McMasters Stanton, (New York, 1905), 116-7.

While waiting for a good vacancy to appear, Lincoln appointed Holt to a commission to investigate the war contract claims against the Department of the West. Holt's associates on the commission were David Davis and Hugh Campbell. The claims against the department were for sales to it and for services rendered. The commission checked such items as labor, materials, service, subsistence, transportation, arms and supplies. Most of the claims were far in excess. For example, the railroads had been making large profits out of the government and the commission substantially cut them down. A circular had been sent out telling the maximum price the government would pay and the railroads had considered this circular as a contract of what the government should pay. The rate thus established was eighty per cent in excess of what the regular customers were paying. The commission pared down all excess profits they found.⁷

When the Holt, Davis, Campbell commission was finished Holt was appointed to a second commission with Robert Dale Owen. The Owen Holt commission examined ordinance and ordinance stores. They examined 104 cases involving demands for \$50,000,000 and they finally agreed to pay out \$33,000,000. They reported that they found prices were high, goods were ordered in excess and that there was a

⁷Official Records, series 1, I, 749, 928; series 1, VIII, 385.

general lack of system. In particular, they berated the foreign arms bought by this country. Many of these arms could not be fired because of their poor construction or because of their great age. Often, too, the arms were of an off-size in which it was very difficult to obtain ammunition. The commission said that the inspection in Europe was a hopeless proposition and that we should forget about getting arms in Europe unless an adequate inspection system was set up. Such a system would mean an inspection in this country before the arms were paid for. This would give the Europeans less chance to bribe American inspectors or change the arms to be shipped after an honest examination had taken place. Holt, while working on this commission laid down an idea which has been theoretically followed ever since. The government should take bids on contracts instead of private offers.⁸

⁸Official Records, series 3, I, 927; series 3, II, 188ff.

CHAPTER IV

Lincoln's Judge Advocate General

The South Carolinians started the Civil War on April 12, 1861 with the firing upon Fort Sumter. April 15 Lincoln recognized the insurrection by calling for union volunteers. At the time, Congress was not in session and not until July did Congress, with its right to make war, have a thing to say about the civil struggle. Lincoln broadly interpreted his powers and soon had the North on a war footing. When northern troops had trouble in Baltimore, Lincoln suspended the writ of habeas corpus and thus was able to keep men in jail without charge. He even authorized some of his army commanders to do the same.¹

As soon as Congress met, Lincoln had trouble over the extent of his war powers. In particular, Congress challenged his treatment of political prisoners. Lincoln's suspension of the writ of habeas corpus and the arrests of those citizens who were suspected of disloyalty. Lincoln believed for an

¹James Garfield Randall, The Civil War and Reconstruction (Boston, 1937), 242; Horace White, The Life of Lyman Trumbull (Boston, 1913), 190.

indefinite term if necessary to exercise some summary methods to restrain treason as long as the Union armies did not win any victories. He needed some way to defend his forces against desertion and draft obstruction but, of course, he said, when the emergency disappeared so would the remedy. Since a dictatorship seemed necessary in time of war he preferred a presidential to a Congressional dictatorship for he felt it involved less risk to the Constitution.

Congress said the civil courts should handle the question of disloyalty but Lincoln did not trust the courts. They were too close to the people and might be influenced by the wishes of the local people rather than by the needs of the Union.² This was particularly true in the border states where most of the political arrests occurred.

To forward his policy of maintaining executive leadership in judicial matters Lincoln appointed Joseph Holt, a War Democrat, as Judge Advocate General. He felt Judge Holt would be able to find the legal cloak to cover his control of political prisoners. Here Lincoln had a man who was regarded as sternly, even rigidly honest. Holt's sincerity in his belief that everything should be subordinated to the national success must have been comforting to Lincoln. He appeared ready to forget his own career in his work for his country.

²Mary Bernard Allen, Joseph Holt, Judge Advocate General (1862-1875). A Study in the Treatment of Political Prisoners by the United States Government During the Civil War (unpublished doctoral dissertation, University of Chicago, 1927), 86-88.

On September 3, 1862 Holt succeeded Judge Lee as Judge Advocate General.³ His rank was that of a colonel in the cavalry with all the rights and pay that went with that rank. His duties were to receive, revise, and record the proceedings of all courts-martial, courts of inquiry, and military commissions. Holt worked with the military commission to build up the executive control of political prisoners. The military commission had not been recognized as a tribunal under Lee although it was founded on military law. Where Lee had depreciated its use to set aside the legal limitations upon the jurisdiction of the court martial, Holt set to work at once to develop the jurisdiction of the commission so that persons and offenses not subject to military law could be tried by a military body. The military was thus able to keep in jail a good many people that the civil courts would have released.

Four days after his appointment, in reviewing a case, Holt upheld the use of military commissions where Lee had denied them. He approved them, as a matter of principle because of the length of their existence in the service and their adaptability to its wants and needs. He said nothing in his report about martial law although he based his decision upon it. The case of Sely Lewis was under review. Lewis was charged with smuggling goods through the lines and with the violation of the fifty-seventh article of war which pro-

³The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies (Washington, 1901), series 3, 1, 509 - subsequently cited as Official Records.

hibited correspondence with the enemy. Holt said these were disloyal practices and so triable by military commission.⁴ Disloyal practices was indeed a very vague term, so broad that all crimes in war time might be brought under its caption. Holt more closely defined them as military offenses that did not belong exclusively to any other jurisdiction. This still gave him wide leeway.

General Halleck, in running the Department of the West, changed the statement of military law so it covered not only offenses by military personnel but military offenses committed by anyone. He did this to bring under military law the guerillas and small bands of rebel sympathizers who were slowing up the work of his command. Over all people connected with his own army Halleck had exclusive and unquestioned jurisdiction but his claim that the military authority was over others, notably civilians and military personnel of the rebel army, was questionable. These people came under other jurisdictions and so conflict might arise.⁵ Such was the problem Holt had to resolve. His success in so doing is measured by his ability to obtain a wider acceptance of the idea of a military offense and his ability to secure control of it for the military even where other jurisdictions existed.

⁴Allen, Joseph Holt, 89-92.

⁵Stephen Vincent Benet, A Treatise on Military Law and the Courts-Martial (New York, 1866), 207.

At first, the military offense had been defined as resistance to or obstruction of the draft. Holt was careful to avoid any question of the conflict of jurisdiction. He kept martial law supplementary to civil or municipal law if he could. Wherever there existed a statute providing legal jurisdiction he respected it as long as he was certain the action taken under it would be similar to the action he desired. When martial law held sway by virtue of executive order or proclamation, Holt was very careful in his use of authority. He was well aware of the value of giving in on many small cases so that he could reach his desired ends on the large cases. On December 9, 1862 he advised the discharge of a prisoner in respect for the "spirit, if not the precise terms of the General Order." By review and revision Holt managed to unify the legal procedure throughout the various military departments. He created precedent for the local judges to follow and he designated the desirable policies.⁶

The definition of martial law he gradually shaped until the military commission could try all prisoners arrested upon definite charges. That is, those who had committed real acts of hostility or had attempted to commit such acts. They included civilians who were snipers, bush-whackers, bridge burners, etc. Others arrested on suspicion of disloyalty remained in prison without any trial but eventually

⁶Official Records, series 3, IV, 1216.

would be examined and released upon taking an oath to support the Union. The political prisoners usually came in the latter group and concerning them, Congress opposed the power of the president.⁷

Prior to July 1861, when Congress assembled, Lincoln gave General Scott written authority to suspend the writ of habeas corpus at any point on the line of movement of troops between Philadelphia and Washington. Without any other authority Secretary of State Seward began to issue orders for the arrest and imprisonment of persons suspected of disloyal acts in all parts of the country. Thus began the program of arbitrary arrests which lasted throughout the war.⁸

Appeals to the civil courts was one of the many methods used to embarrass and weaken the government. They began with applications to Chief Justice Taney, sitting on circuit court, for discharge of one Merriman and other bridge burners of Baltimore. These men had been summarily seized for preventing the advance of Union troops to Washington. Taney issued a writ of habeas corpus and caused it to be served to General Cadwalader, commander of the department which was holding Merriman. Cadwalader declined the writ stating that the president had suspended the writ in such cases. Taney

⁷James Garfield Randall, Constitutional Problems Under Lincoln (New York, 1926), 176.

⁸Randall, The Civil War, 392-3.

vigorously denied the right of the president to suspend the writ and said only Congress had that power. But Cadwalader had the superior force so the writ remained suspended. Governor Hicks of Maryland later told the Senate that such summary arrests kept Maryland in the Union.⁹

With the meeting of Congress in July Senator Wilson, the chairman of the committee on Military affairs, introduced a joint resolution declaring the acts of Lincoln, in regard to the secession, as legal and valid to the same intent and with the same effect as if they had been issued under the previous express authority and direction of Congress. The resolution officially started the controversy over who had the power to suspend the writ of habeas corpus, congress or the president. Wilson's resolution failed to pass for the majority in the Senate felt it would be conceding to the president the authority of suspending the writ. An amendment added to a military bill declared the president's acts stood approved and legalized which was understood to be a makeshift arrangement.¹⁰

On December 12, Senator Trumbull brought in a resolution, which called for Seward to inform the Senate about all people arrested by him or his department and under what law they were held. Trumbull said this was necessary to legalize

⁹New York Times, March 13, 1861; Horace White, The Life of Lyman Trumbull (Boston, 1913), 195-6.

¹⁰George Clark Sellery, Lincoln's Suspension of Habeas Corpus as Viewed by Congress (Madison, 1907), 225-6.

the proceedings. He felt the arbitrary arrests were causing division and dissension among the loyal people of the North and laws must be passed to authorize such arrests. By a vote of 25-17 Trumbull's resolution went back to the Judiciary committee which received six months to find out who had the right to suspend the writ of habeas corpus.¹¹

The House then came up with its own bill on the writ. On July 8, 1862 John Bingham presented a bill which directed the secretaries of war and state to report the names of all political prisoners, these prisoners to be released if not indicted by a grand jury during the first term of court after their arrest. This bill also authorized the president to suspend the writ where necessary for the public safety until the Congress met. The bill was a practical solution. If the president could suspend the writ without Congress it would not hurt him, and if Congress had the right to suspend the writ then the bill would make the president's acts legal. This bill did not get through the Senate.¹²

In February 1862 Lincoln transferred the power over arbitrary arrests from the state department to the war department. There a special bureau was set up to handle them. A commission, consisting of Edwards Pierrepont and John A. Dix, was appointee to examine individual cases and on its recommendation many prisoners won releases. Even so, in the

¹¹White, Lyman Trumbull, 191-2, 194.

¹²Ibid., 196.

1862 elections the Democrats gained. The Republican leaders were alarmed and they blamed the arbitrary arrests.¹³

Senator Trumbull brought in another bill, which was a substitute for Bingham's bill in the House. This bill put no limit on the executive until the next meeting of Congress. The act left the suspension of the writ of habeas corpus to the discretion of the president during the continuance of the rebellion. However, political prisoners were not to be held indefinitely without knowing the charges against them. It also provided that lists of all political prisoners in the loyal states must be furnished within twenty days to the civil courts. Then, if the grand jury did not indict them during the next term of court the prisoners must be released upon taking an oath of allegiance to the United States, and, if the local judge required, they must give bond for good behavior. The opposition to this bill came mostly from the Democrats. Senator Powell of Kentucky said the power to suspend the writ was lodged with Congress and could not be delegated. He also complained there was no definition of political offenses. Senator Carlile of Virginia maintained that the writ should not be suspended where the court was open. On February 23, 1863 the bill passed. On March 3, it passed the House.¹⁴

¹³Randall, Civil War, 393.

¹⁴Sellery, Lincoln's Suspension, 255-263.

Besides the specific suspensions of the writ of habeas corpus on September 24, 1862 Lincoln proclaimed martial law throughout the nation as to persons discouraging enlistments of resisting the Conscription Act. He suspended the writ for these people. The Habeas Corpus Act of 1863 did not mention what was to happen to these previous suspensions so Holt did not know if the act applied only to the future and annuled previous suspensions. If he turned in regular lists of political prisoners and they could be released almost at once the whole purpose of political arrests would be lost. Holt decided to gently ignore the whole thing. When, at the end of twenty days he was supposed to send in a list of untried prisoners he did not have it ready. The act called for such a list at frequent intervals but Holt only got around to making out one list. Political arrests he handled in the same fashion as he had before the act. The prisoners were held without charge until their actions could not hurt the administration and then released.

Two others acts affected Holt's conduct of political arrests. The Civil War separated families and business relations but most families and businesses attempted to maintain contact between the northern and southern members. Congress passed a law providing civil penalties for corresponding with the enemy. This law put the enforcement of the fifty-seventh article of war, to which it was comparable, in the hands of the civil courts when a civilian was the defendant. Holt had been using the military commission to

enforce this rule on civilians and had been able to make many military arrests.¹⁵ The second act which Congress passed detrimental to the power of the judge advocate was the conscription act. This act made it legal, in a civil court, to resist or obstruct the draft, or prevent a draft officer from doing his duty. The act made illegal any attempt to convince a man to resist the draft or, if he was once enlisted, to convince him to desert. This took another class of prisoners away from Holt, an easy class in which to make political arrests.¹⁶ These acts, like the habeas corpus act, Holt ignored as much as possible. In continuing his military trials in his accustomed manner he was very careful to avoid any direct conflict with the new laws. He did not want any of his decisions questioned until he could build up a series of precedents.

Holt, in expanding his power, gained jurisdiction by using, to a large extent, the laws of war rather than the articles of war. By thus using the unwritten common law he had a definite advantage. Anyone could read and know the meaning of the articles of war but as judge advocate general, Holt could make his own interpretation of the laws of war to suit the circumstances and reach the decisions he desired.¹⁷

¹⁵Allen, Joseph Holt, 102.

¹⁶Randall, The Civil War, 410-12.

¹⁷Benet, Military Law, 13.

On April 24, 1863, Holt's liberal interpretations of the laws were slightly curtailed. The Adjutant General published Francis Lieber's compilation of the laws of war. The blow was not as great as it might have been for prior to the book's release Lieber frequently consulted Holt who suggested changes.¹⁸ Nevertheless, by these three acts and by the compilation Holt became more definitely limited in his sphere of action. Holt was equal to the situation. He decided to make many concessions to the civil courts but always with the reservation for the automatic application of martial law where the civil courts could not function. Since he was the one to decide when the civil courts did not function he often resorted to this reservation when he felt he was not going to get the action he deemed proper in the case. On September 15, 1863, Lincoln renewed his proclamation suspending the writ of habeas corpus and reiterated the offenses he had previously listed. Thus, martial law might function anywhere.¹⁹

In his actions Holt gradually came around to the Radicals. The strong Union sentiment he developed in the last months of Buchanan's administration increased by his dealing with what he considered the treasonable elements in the north. Officially he pursued a moderate course in inter-

¹⁸The compilation was released as general orders 100, Official Records, series 2, V, 671-82; Frank Burt Freidel, Francis Lieber, Nineteenth-Century Liberal (Baton Rouge, 1947), 331-341.

¹⁹Benet, Military Law, 14.

preting national policies, adapting to the Radical measures as the administration took them up. Early in 1862 he gained favor with the Radicals as a friend of Stanton's who advocated that if those who were in front did not go forward the public safety would demand they be assigned positions in the rear. He advised an immediate, bold and aggressive move upon the enemy, following up every blow struck. This condemning of McCellan by a war Democrat the Radicals definitely approved. In January of 1863, when Holt pushed through the conviction of General Fitz John Porter, a foe of the Radicals, he went higher in their estimation.²⁰

In 1860 Holt had been a bitter foe of the abolitionists but his ideas changed with his growing hatred of all things Southern. By July 17, 1862, when the second confiscating act was passed, Holt was strong in his approval. This act was, in the main, a treason act, but it said anyone engaged in rebellion or who committed treason should have all of his slaves forever freed as soon as the slaves come within the control of the Washington government. This act had no definite instruction on how the slaves should be recognized as being free. When the question was referred to Holt, he said military protection should be given to the slaves set free and they should be given certificates to prove their status. Many of the negroes did not know what

²⁰Allen, Joseph Holt, 99; Official Records, series 1, XII, 507.

to do once freed and they became camp pests. Holt felt it was all right to exclude these negroes from the camps but they could not be sent away if it were probable their masters would recapture them.²¹

Holt felt all negroes could be, and by right ought to be, enlisted in the army. While the states recognized negroes as property, the federal government recognized them as persons, for so they were referred to in the Constitution and thus were they represented in Congress. Obviously the government could enlist slaves as persons. And, if the slaves were recognized as property, they could be enlisted, for the government was authorized to seize and apply to public use private property. All persons, if able, should bear arms to defend their country and likewise it was the duty of the government to employ those persons whenever the public safety demanded it. In its act of July 17, Holt said, the Congress had stated this. It read in part, "The President be, and he is hereby, authorized to receive into the service of the United States...persons of African descent."²² Note that there is no distinction drawn between slaves and free negroes.

²¹Official Records, series 3, III, 525; series 2, VI, 209; series 2, V,, 456-7.

²²Ibid., series 3, III, 695-6.

²³Ibid., series 2, V, 409-10; series 2, VI, 41.

The executive department referred many questions to Holt as to what the official policy should be toward the Confederacy. He expressed such official opinions as: Confederate currency and bonds are worthless and should be destroyed at every opportunity. Confederate sympathizers should be arrested and sent through the lines for expressing their views. Fugitive slaves are captives of war and thus free. The federal government and not the state should control all prisoners of war.²³

Holt was willing enough to put the war on a legal basis in so far as the exchange of prisoners was concerned but he would brook no interference with his court martial. He said, "This government is in no degree responsible to rebels in arms for action of its military courts...it would utterly degrade itself by recognizing any such responsibility...the demand made by the rebel authorities for information in reference to the proceedings...is deemed impertinent."²⁴ After all, this was a war on criminals, not a war between governments.

In the latter part of the war the South eagerly sought to exchange prisoners. Their man power was running out. General Jones in Charleston threatened to put 600 Union

²³Official Records, series 2, V, 561, 603, 515, 561, 611, 162, 510, 54.

²⁴Ibid., series 2, V, 609-10; series 2, VI, 31.

officers under fire if the North would not exchange.²⁵ The North had no desire to exchange. By sending the South prisoners the South would be allowed to continue its resistance. To protect the soldiers the South had captured Lincoln issued a proclamation of retaliation. Put out on August 3, 1863, it said that every government must protect its citizens. Therefore, for every Union soldier killed against the laws of war a rebel would be executed. To protect the colored troops the proclamation read that for every Union soldier enslaved or sold, a rebel should be put to hard labor on public works until the Union soldier was released and treated as a prisoner of war. Holt had advocated retaliation, for inadequate as it was, it was the only redress within reach for Southern crimes.²⁶

Holt gave another special opinion in the problem of newspaper correspondence. During the early part of the war people put ads in the northern papers under the personal column addressed to persons in the south, with the request that the southern papers copy the ads. In this way they sent messages across the lines and by the same means they were able to receive messages. Holt said these ads were a violation of the laws of war and an evasion of the legislation that had been

²⁵New York Times, August 23, 1864.

²⁶Ibid., August 3, 1863; Official Records, series 2, VI, 461.

set up by Congress. Since the messages were not inspected, since they were often in code and since sometimes they treated a class of subjects prohibited, they must stop. The messages gave aid and comfort to the enemy. Holt notified the papers that if they did not stop the practice he would bring them to trial under laws of war.²⁷

These opinions were only a small part of his work and his chief work with the military commission and the political prisoners continued. By the end of 1864 he had won a wide acceptance of his work. The great personal rights of the Constitution were no longer considered absolute and unconditional. It was recognized that they might be constitutionally abridged as by the suspension of the writ of habeas corpus. It was felt that since Congress could make war then during a war the laws of war became a part of the Constitution.²⁸ Holt had managed to get military tribunals accepted in remote regions which were not menaced by the war. The United States marshalls and the local magistrates received authority to imprison all persons who discouraged enlistments or engaged in disloyal practices. Such prisoners were immediately reported to the Judge Advocate General so the prisoners could be tried by a military commission. When the marshalls and magistrates gained this Holt had accomplished

²⁷Official Records, series 3, IV, 1064ff.

²⁸New York Times, December 15, 1864.

a twofold extension of military justice: the offenses were beyond the military code and the trials were often far from the battlefield.²⁹ Holt did not abuse this power and generally used the commissions to punish offences coming broadly under the military code when committed by civilians in the border states who were hostile to the Union. For example, the presence of Union arms in Missouri drove many of the inhabitants into the rebel forces. Of those who did not join the rebels, but favored them, many became saboteurs. These civilians, when captured, were tried for such crimes as bridge burning spying and sniping. The penalties meted out were severe but no one could be put to death without the president's approval. The military commission proved to be indispensable for the punishment of those crimes where the civil courts had ceased to function or in cases in which the local criminal court had no jurisdiction. This is the probable reason why the people accepted commissions. Because they were unencumbered by technicalities and their processes were executed by the army these commissions became very powerful.³⁰

Holt figured out a new method of getting military control in areas unaffected by the war, and where the civil courts were operating when he had Washington declared a fort.

²⁹Congressional Globe, 37 Congress, 3 session, p. 1215.

³⁰Randall, Constitutional Problems, 174-5.

He also used this principle when he extended the military jurisdiction to cover the Indiana treason trials. By this act he made the military jurisdiction concurrent in practice with the civil courts and all he had to do was announce the fact. This he did late in the war when he caused the secretary of war to uphold a decision that in cases of killing an officer in the act of obstructing an enrollment, contrary to the act of February 24, 1864, a military commission had concurrent jurisdiction with the civil courts.³¹

Holt, in all cases, was now definitely against clemency for the South. He wanted a complete Union victory. This was probably because of the nature of his position. He clearly saw the triumph of the Republic and the ensuing glory of the Union so this may have added to his feelings against clemency by this time. He was far in the Radical camp.

In the summer of 1864 Judge Holt went down into Kentucky and Missouri to report on conditions there. In Kentucky he interviewed the prominent civil and military leaders and found that Kentucky was in a deplorable state. In December of 1863 Lincoln had issued an amnesty proclamation for the South. The proclamation was adopted to wean the people from the desperation which which the rebel leaders had sought to plunge them by telling them that yielding to the

³¹Allen, Joseph Holt, 130.

North would be yielding to perpetual vassalage. Its chief value, therefore, was moral. It was not planned to start a counter revolution in the South, but it was calculated to predispose the southerners to peace when our armies took over. The proclamation said that any one who took the oath of allegiance to the Union and swore never to oppose it again would not be prosecuted. The rebels also had to take an oath to support the emancipation proclamation. Of course, this amnesty did not include the southern leaders.³² In Kentucky, the people did not consider any oath administered by the federal government as binding so they took the oath so they could visit home and arm and equip themselves. Since the South, in 1864, was feeling the pinch of the blockade of her ports, the southerners thought the amnesty oath a wonderful way to get the equipment they lacked. Holt reported he thought the proclamation should be suspended in Kentucky and that "any violating the oath should be visited with the heaviest chastisement known to the law...when convicted the execution of their sentences should be swift and unhesitating."³³ He found many who took the oath were later captured while fighting in the rebel army with the written oath still in their possession. The amnesty proclamation in Kentucky

³²New York Times, December 30, 1863.

³³Official Records, series 2, VII, 144-5.

allowed an accumulation of treasonable elements with which the government could not cope. Bands ranging in size from four to twenty scourged the countryside and the people were too frightened to protect themselves. They feared for their lives if they resisted any demands made upon them by the well mounted, well armed guerillas. General Burbridge, in command in Kentucky, estimated that nine tenths of the guerrillas had taken the amnesty oath. Holt suggested that the government get indemnity from the rebel sympathizers for guerrilla acts.³⁴

In Missouri, Holt found the guerrillas bands were even more active than they had been in Kentucky. The army was attempting to put them down, and to this effect, had issued a notice that no captives were to be taken alive. In Missouri Holt first caught the rather general excitement over secret societies.³⁵ These societies went under many names, the most popular were the Sons of Liberty and the Order of American Knights. It was believed that the Sons of Liberty had over forty thousand members in Missouri and over five thousand in St. Louis alone. In St. Louis, Holt learned that Clement Vallandigham was the northern leader of the Sons of Liberty and Sterling Price was its head in the south. When Holt

³⁴Official Records, series 1, XXXIX: 2, 212-15.

³⁵Ibid., series 3, IV, 577ff.

returned to Washington he received word that General Hovey in Indiana had possession of the ritual and signs of the Star Organizations, the successor to the Sons of Liberty there. Horace Hefferson, the deputy grand commander for Indiana, had turned state's evidence. According to Hefferson the organization was military. A committee of thirteen had been appointed to prepare a northern insurrection, to kill Governor Morton of Indiana, to overturn the Indiana state government and to form the whole north west into a new confederacy. He claimed over \$500,000 had been sent to Canada to buy arms.³⁶

On a national basis the secret societies were supposed to embarrass the government in its conduct of the war. They supported a war policy in the east and a peace policy in the west. The plan was to divide the east and west to aid the south. The orders were supposed to stand for absolute inherent state sovereignty, the idea that the union of the states was voluntary and temporary so that the federal government could not enforce its laws, and that the existing rebellion was legal and just. They were alleged to believe that the revolution against the Union government was not only right, but it was a duty, for the Union had ignored the law of races. This law said there should be a caucasian supremacy and an African servitude. Holt evidently believed all

³⁶New York Times, November 8, 1864.

of the stories he heard about these secret societies for he worked very hard to get evidence against them. Actually there was little danger. These societies were largely groups of voters who preferred the Democratic party to the Republican administration. Most of the cries against them came from men like Governor Morton of Indiana who was afraid that his Democratic rival for the governorship might win.³⁷

The high point for Holt's military commissions during the war came when the Supreme Court refused to review the case of Clement C. Vallandigham. This case arose due to General Order No. 38 of General Burnside, commanding in the department of the Ohio. This order, issued April 19, 1863, said that all persons committing acts for the enemy's benefit would be executed as spies and traitors. Burnside would no longer tolerate the habit of declaring sympathy for the enemy, recruiting for the rebel army, giving minute information to the enemy, or aiding and abetting active rebels. Vallandigham was seeking the Democratic nomination for governor of Ohio. Just two weeks after Burnside issued his order, Vallandigham made an anti-war speech at Mt. Vernon, Ohio. Burnside had him arrested and tried before a military commission. Vallandigham protested the legality of the commission since Ohio was removed from the battlefield and the local courts were in operation. However, he was found

³⁷Official Records, series 1, XXXIX:3, 638-9; New York Times, July 29, August 2, 1864; Randall, The Civil War, 389-91.

guilty and sentenced to close confinement at Fort Warren during the continuance of the war. Vallandigham then applied to Judge Leavitt of the United States Circuit Court at Cincinnati for a writ of habeas corpus. This action brought up the question of judicial review for a military commission. Judge Leavitt refused to issue the writ after conferring with General Burnside, and the case was carried to the Supreme Court on a motion for certiorari. Vallandigham's attorney said the military commission's jurisdiction did not extend to a civilian and the charge was unknown to civil law; Burnside had no right to extend the jurisdiction of the commission. Therefore, to stop such excesses, the Supreme Court had the power to issue a writ of certiorari. However, Holt had laid well his precedents and the Supreme Court refused to review the case. It said its appellate jurisdiction was derived from the judiciary act of 1789 and the military commission was not a court within the meaning of that act. In effect the Court was saying that in time of emergency we needed to use the commission to maintain order and the Court was not going to cripple its use. Lincoln realized that keeping Vallandigham in close confinement would make a martyr out of him for the Democrats and yet he had to be punished. To resolve this problem Lincoln commuted the sentence to banishment beyond the lines of the Rebels. The South did not want Vallandigham for they realized he was strictly for the north, just not for the Republicans. He was treated well in

the south, for they said he was a generous enemy and deserved such treatment, but they soon had him on a blockade runner with his ultimate destination Canada. After spending a few months in Canada and conducting a campaign for the governorship of Ohio from there, Vallandigham was allowed to come back to Ohio, a beaten politician.³⁸

The military commission continued to have all the power that Holt desired for it until after the war was over. Then its power was successfully challenged in the Milligan case. This case was similar to the Vallandigham case in that the jurisdiction of the military commission was questionable. On October 5, 1864, General Hovey, commanding at Indianapolis had Milligan arrested, and soon convicted of a conspiracy to release some rebel prisoners and take them into Kentucky and Missouri. There they would join with the rebel forces in an attack upon the United States. Milligan and his associates were shown to be members of such disloyal secret societies as the Order of American Knights and the Sons of Liberty. Milligan was sentenced to be hung. Immediately he asked the United States Circuit Court for a writ of habeas corpus. On a division of opinion the case went to the Supreme Court. By the time it reached the Supreme Court the

³⁸ New York Times, June 23, 1863; White, Lyman Trumbull, 204-5; Official Records, series 2, V, 573ff.; New York Times, May 13, June 8, 1863.

war was over. In December of 1866 the Court said that martial law can not arise from a threatened invasion, the invasion must be real, such that the courts are closed and the civil administration deposed. Therefore, Milligan's trial and conviction by a military commission was illegal.³⁹

Holt definitely built up the work of the office of judge advocate. In the fourteen months between September 1, 1862 and November 1, 1863, his office handled 17,357 records of trials, it reported on 2,318 cases as to their regularity of proceeding, and made 172 other reports on questions referred to it and yet the office could not handle all the work it should. Holt was the typical bureaucrat, always trying to expand his authority. Since his office had remained at the same strength since the beginning of the war, Holt felt he should get a little relief from the pressure. He asked his chief, Secretary of War Stanton, to have a bureau set up rather than an office. Stanton brought the matter up at a cabinet meeting.⁴⁰ As a result October of 1864 saw the new Bureau of Military Justice created. The bureau had essentially the same work to do as the old office of judge advocate but the personnel increased. Holt rose to a brigadier general and received an aide, William M. Dunn, with the rank of colonel. Dunn handled the work from the departments of Ohio,

³⁹Randall, Constitutional Problems, 179-183.

⁴⁰Official Records, series 3, III, 988.

Tennessee, Cumberland, Missouri, Arkansas, and Kansas from an office set up in Louisville. He had to send the completed records to Washington, however, and he could make no reports without the consent of Holt. Under this new arrangement the bureau handled more than twice as many cases. The number of records jumped in the next sixteen months to 33,896. The reports on regularity of trial rose to 9,340.⁴¹

Holt's actions in building up the military commissions and his active participation in political arrests brought him to the notice of the politicians. His policies and actions were almost in complete accord with the Radical members of the Republican party. In 1864 it was evident that Lincoln would run again for the presidency and that he would probably win. Good politics seemed to indicate that a War Democrat was required to be his running mate. The politicians also thought a border state man would be an asset. Holt had these qualifications, plus a good record of working for the Union under both Buchanan and Lincoln. His personality repelled the politicians. He was too taciturn, too severe, too unbending. He had few people working to get him the nomination. On the other hand, Andrew Johnson had essentially the same set of qualifications but he had many friends working for his nomination. When Lincoln apparently cut the throat of his vice president,

⁴¹Official Records, series 3, IV, 448ff., 500, 1216.

Hannibal Hamlin, by not supporting him for renomination, Johnson became the vice presidential nominee.⁴²

In November 1864 Edward Bates resigned as attorney general. While Lincoln was puzzling over who to appoint in his place one of his secretaries asked him why he did not appoint Holt. Lincoln thought it an excellent suggestion. He said he had planned to put Holt on the Supreme Bench, if a vacancy should occur in any southern district, but a place in the cabinet would do nicely until such a vacancy occurred. Holt declined. He said he had been too long retired from active service at the bar to prepare cases for presentation before the Supreme Court. Holt's friend, James Speed, received the appointment.⁴³

On Sunday, April 9, 1865, General U. S. Grant and General Robert E. Lee met at Appomattox Courthouse. When they parted Lee had surrendered the main confederate forces and the civil war was practically over.⁴⁴

To celebrate the Union triumph it was decided to have a big ceremony at the re-raising of the Union flag over Fort Sumter. Secretary Stanton was supposed to go to Charleston for the big occasion but he refused. He sent Holt instead.

⁴²George Fort Milton, The Age of Hate, Andrew Johnson and the Radicals (New York, 1930), 45.

⁴³John George Nicolay and John Hay, Abraham Lincoln (New York, 1890), IX, 346f.; New York Times, December 3, 1864.

⁴⁴Randall, The Civil War, 679.

On April 15 Holt spoke at a big banquet at the Charleston Hotel. He reviewed the whole war starting with what he called the treachery of Floyd under Buchanan. He paid tribute to Secretary Stanton for his running of the war department and spoke of the northern peace commissioners: Grant, Sherman and Sheridan. He warned that the next years would not be easy ones. Victories bring perils to the victors and vanquished alike. He did foresee a regenerated nation, a new south with industry honored, labor protected, families made inviolate, and the rights of the humble secure.⁴⁵

Called Lincoln, too, was before his people as a war president was evident. The South had no more to offer. Sherman remained in the field.

But the great morning Lincoln did not feel so well. During the night he had become a patient of the illness which had tormented him a long time since the war began. In a strange and terrible way he had reached a point where he could not stand any more. The war had done its work to him and the fall of Fort Sumter, before the battle of Bull Run had again broken the spirit of the Union. All God's power, Lincoln would do for the Union, but there else could the Union suffer a defeat. He would do his best.

⁴⁵ New York Times, April 20, 1865.

CHAPTER V

The Aftermath of Lincoln's Assassination

On Thursday, April 13, 1865, Washington was a gay city. Everywhere people could be seen celebrating Lee's surrender. With the war almost over, a general feeling of gaiety prevailed. Lincoln, too, was happy. His success as a war president was evident. The South was on its knees. Only Sherman remained in the field.

But the next morning Lincoln did not feel so well. During the night he had dreamed a fateful dream, a dream which had forboded many a Union loss since the war began. In a strange indescribable ship he had rushed ever more rapidly toward a dark and undefined shore. Just when a crash appeared eminent he awoke. This same dream had come to him before the fall of Fort Sumter, before the battle of Bull Run and again before the fight at Murfreesborough.¹ All Good Friday, Lincoln worried about Sherman, for where else could the Union suffer a loss. Sherman had the only

¹Joseph H. Barrett, Abraham Lincoln and His Presidency (Cincinnati, 1904), 355-6.

major force in the field. At his cabinet meeting of that day Lincoln asked for news of Sherman and then described his strange dream with its portent of failure and loss. Since no news arrived Lincoln fretted away the day but in the evening he put away his cares and set out to enjoy the farce, Our American Cousin, then playing at Ford's Theatre. He had no real desire to attend but he felt duty bound. Both he and General Grant had promised attendance and since Grant had gone to New York on business Lincoln felt the obligation strongly. He did not want the public to be disappointed in its hour of triumph.²

Little did he realize there was to be a Union loss that night. Shortly after ten-thirty that evening, John Wilkes Booth, one of the leading American actors, stepped into the presidential box, fired a ball into the president's head before Lincoln could move, threatened the president's companions with a knife, and leaped out onto the stage. In making the leap Booth caught one of his spurs on the bunting on the front of the box and so fell heavily on the stage. He arose at once shouting, "Sic semper tyrannis" and limped rapidly from the theatre. A horse was held in readiness just outside the stage door and Booth was away before the stunned audience became fully aware of what had taken place.³

²Izola Forrester, This One Mad Act (Boston, 1937), 244.

³Ibid., 245; David Miller Dewitt, The Assassination of Abraham Lincoln and Its Expiation (New York, 1909), 48.

Lincoln still sat in his chair but the life blood oozed rapidly from his head. He was quickly carried across the street to a poor lodging house and laid out on one of the beds in a narrow back room. The bed was not long enough for the dying president and he had to lie diagonally upon it. Lincoln never regained consciousness after the assassin's bullet found its mark but he held on to life until shortly before seven-thirty the following morning.⁴ Once dead, Lincoln had many friends, confidants and advisors he would not recognized the day before. Those who had scorned him, mocked him, disobeyed him and fought him throughout his presidency now appeared in public as though they had been his particular confidants, the men he had depended upon for advice and guidance.

But Lincoln was not the only casualty of that dark and gloomy night. Lewis Payne, a young brute of a man, entered the home of Secretary of State Seward, forced his way to the secretary's bedside by freely using his knife on the servants and family, and stabbed the sick and helpless Seward several times in the neck. Payne was not as thorough as Booth had been though. When Payne and David Herrold, the young lad who had held his horse, rode away, Seward still clung to life and alive he was to remain for many years.⁵

⁴Barrett, Abraham Lincoln, 362.

⁵Dewitt, The Assassination, 50-1.

There were two more victims contemplated for that night but both of them escaped completely. George Atzerodt planned to kill vice-president Andrew Johnson at Johnson's hotel, the Kirkwood House, but Atzerodt was a weak and scared young man who didn't get closer to Johnson that night than having him pointed out in the hotel bar.⁶ The other victim was to have been General U. S. Grant but his sudden trip to New York removed him from the assassins plans. Had all four of these men been killed the country would have been left in a state of turmoil without its top executives or its ranking military leaders.⁷

April 15 was a cheerless day. A cold gloomy rain started at dawn and continued throughout the day. Edwin M. Stanton, secretary of war, had assumed the executive leadership of the country immediately following the assassination. He sent out the military in pursuit of the assassins. He set the wheels of the Bureau of Justice rolling and Holt got his own private army of detectives at work at bringing in evidence against the assassins.⁸ Any evidence and any assassins, for as yet no one knew for sure who the assassins were.

⁶Dewitt, The Assassination, 52-3.

⁷Barrett, Abraham Lincoln, 359.

⁸Benjamin Perley Poore, The Conspiracy Trial (Boston, 1865-6), 3-4.

By April 17 Michael O'Laughlin had been caught in Baltimore and S. B. Arnold apprehended in Fortress Monroe. Also, it had been determined that Dr. Mudd had set the broken leg of John Wilkes Booth and so Mudd was brought in. Lewis Payne was captured at the home of Mrs. Mary Surratt and they were both brought in. Edward Spangler, the hapless stage man at Ford's Theatre, had been held from the start. On April 20, the drunken George Atzerodt was found in western Maryland. These prisoners were put upon the monitor, Saugas, then anchored in the Potomac. They were chained with double irons and a heavy guard was mounted over them. On April 26 Booth was cornered and killed. On the same day David Herrold was captured and so all those suspected of being immediately involved in the assassination plot were in federal hands except John Surratt, the son of Mary Surratt, and the supposed second in command in the Booth plot.⁹

On May 10 President Andrew Johnson signed the order for the trial of the assassins. The government decided to try them before a military commission. It based this decision on the common law of war. These people had assassinated the commander-in-chief of the United States military forces during a civil war and in a fortified city held by a garrison.¹⁰ There were other more pertinent reasons for using a military

⁹George Fort Milton, The Age of Hate, Andrew Johnson and the Radicals (New York, 1930), 194-5.

¹⁰New York Times, May 13, 1865.

commission. This crisis demanded a tribunal that did not have to worry about the criminal procedure as laid down in the Constitution. A tribunal was needed which would have no pedantic adherence to the rules of evidence. And the government could not afford to lose such a case so there had to be a tribunal in which there could be no doubt of a conviction. In short, a court was necessary which would submit completely to the guidance of the prosecuting officers and the prosecution must be desirous of full conviction.¹¹

Johnson's order provided for such a court. It ordered the assistant adjutant general to detail nine competent military officers as a commission to try the assassins and said that Judge Advocate General Holt should proceed at once to bring charges. Holt was ordered not only to bring them to trial and supervise, as he did in the case of all courts martial and military commission, but he was told to conduct the trial and record it in person.¹² There could be no slip ups on government justice. To aid Holt, two men were brought to Washington, John A. Bingham of Ohio, a vindictive, brow-beating lawyer, and Colonel Henry L. Burnett, the "hero" of the Milligan case.¹³

Major General David Hunter, the same Hunter who had sat at the head of Lincoln's coffin as it proceeded from place

¹¹Dewitt, The Assassination, 100, 143.

¹²New York Times, May 10, 1865.

¹³Milton, Age of Hate, 199.

to place on the funeral train and who had publicly expressed his desire to hang the assassins presided over the impartial military commission which was appointed. His colleagues were Generals Lewis Wallace, August V. Kautz, Alvion P. Howe, Robert S. Foster, James A. Ekin and T. M. Harris. Also on the commission were Colonels C. H. Tompkins and David R. Clendenin. Clendenin came from the eighth Illinois cavalry and Tompkins was a regular army man. The others came from the Volunteers. Brigadier General Joseph Holt, although the judge advocate and recorder for the trial, was also considered a member of the commission.¹⁴

Many men did not think highly of having a military commission for the trial of the assassins for the war was over and the civil courts were functioning well in Washington. Former attorney general Bates thought the use of commissions was an outrage to civil liberty. He said it obviously bolstered a weak case, Henry Winter Davis claimed the use of a military commission showed that the people about to be tried were innocent. He felt that if it were necessary to convict them by using a commission it confessed the legal innocence of the accused. There were even some in the cabinet who protested the use of a military commission in such a case. Both Secretary Wells and Secretary McCulloch preferred civil trial.¹⁵

¹⁴New York Times, May 11, 1863.

¹⁵Milton, Age of Hate, 197.

The military commission, however, was at the peak of its power. Holt had very carefully built it up through his years as judge advocate general until its jurisdiction appeared broad and widely acquiesced in. As a precedent he could point back to the Vallandigham case which had been conducted by a military commission in a zone removed from the war and where the civil courts functioned properly. Furthermore, that case had been refused for review by the United States Supreme Court which seemed to show its jurisdiction in such a case was proper. Also, Holt could point to the Milligan case which had been settled by military commission. Although the Milligan case had not yet reached a final settlement, it was pending on the Supreme Court docket, it was pretty generally thought in Washington that the Court would treat Milligan as it had Vallandigham, and refuse reviewal, thus upholding the right of the military commission to jurisdiction.¹⁶

Holt pushed for a military commission for the trial of the assassins. Holt and his chief, Secretary of War Stanton, were very close and Holt talked Stanton into fighting for a commission. As Holt had been gathering material for the trial he became convinced that the assassination of Lincoln was the result of a large conspiracy.¹⁷ At the time

¹⁶See above, pages 73 to 75.

¹⁷New York Times, May 13, 1865.

of Lincoln 's death Holt was suffering under the spell of one of the worst possible cases of war psychosis. Under the influence of Stanton he had become one of the most rabid of the Radicals. And now he was even in advance of Stanton as a Radical. Holt firmly believed that Jefferson Davis and his agents were guilty of willfully starving Union prisoners. He took no cognizance of the short rations all over the South nor of the fact that the Union prisoners were not, on the whole, suffering any more than the Confederate soldiers in the field. Holt was certain that Davis had caused to be prepared large quantities of clothing, had had them infected with yellow fever or small pox in the north. Another of the yarns that Holt accepted as whole cloth was the one that said Davis had prepared agents to place strychnine and prussic acid into the New York city water reservoir. This they were to do when Davis gave the signal. Holt blamed this great southern conspiracy of setting fires in New York and planning to burn the whole city down.¹⁸

With such a mass of hysterical beliefs Holt never doubted when he heard tales of a gigantic conspiracy for mass assassination of all Union leaders. This conspiracy allegedly was to kill off every leader from the president and his cabinet down to the leaders in Congress, from General of

¹⁸Dewitt, The assassination, 93-4.

the Armies Grant down through the general staff. Holt convinced Stanton of the existence of such a conspiracy and together they convinced President Johnson. This was the main reason that Johnson signed his name to an order for a military commission. He felt with a military commission they could try the whole conspiracy and not have to stay as close to the matter of convicting the accused as they would have had to in a civil court.

During the time before the trial Holt had his men out looking for evidence. Much of the evidence he wanted came to him in the form of stories told by people who thought they might get a little fame from being connected with such a trial. Some of these people actually had information; the rest wished they had. Other people came forward who had heard of the conspiracy and wished to implicate southern leaders. Many of these were former prisoners of war who wanted to testify about what they thought their jailers had been planning all the time. Much of this was in the nature of revenge. A third group who came forward with information were those who saw a chance to make money out of the trial. They brought in all kinds of false information about plans and conspiracies among the southern people during the war. Surrounded by detectives and alarmists who daily tried to sell him sensational wares Holt quickly developed a mania.¹⁹

¹⁹Dewitt, The Assassination, 167.

He wanted to punish the whole south for the assassination of Lincoln but since that was impossible he was determined that not a single one of the accused actually on trial should escape the hangman's noose. Soon, all reports that came to Holt were received with a facile credulity and a lucrative welcome. Expert purveyors of fantastic conspiracy plots were in Washington and they offered their plots for sale on the open market. The best of these salesmen was Sanford Conover, a man later proved to be a perjurer.²⁰

The prisoners were brought in from the Potomac and housed in the old Penitentiary Building adjoining the arsenal grounds in Washington. To do away with the necessity of transporting the accused from their prison to a courtroom the trial was held in this building. This decision was also made because of the desire to keep the trial as secret as possible. At first, it was determined to have the trial in complete secrecy but this rule had to be altered because of the pressure of the press and the public. Had the trial continued under secrecy as planned all of the testimony would have been written out in full and given to Judge Advocate Holt. He would have then edited and designated what could be published. This would have been done to prevent people mentioned during the trial from trying to escape. But the public pressure was too great and a few trusty and reliable

²⁰New York Times, June 6, 1865; The Chronicle, August 19, 1867.

persons were permitted to attend. All through the trial there were regular stenographic reports made to be published.²¹

Each of the accused assassins had the right to chose his own council. Mrs. Surratt had the best council with Reverdy Johnson and William Kirby representing her. Herrold chose Fred Stone, Joseph Bradley and J. M. Carlile. Lewis Payne chose Mason Campbell and Robert J. Brent represented Dr. Mudd. These men were all able lawyers, mostly from the surrounding states. Reverdy Johnson of Maryland stood out, not only because of his Congressional experience but because he had won recognition as one of the finest constitutional lawyers of the time. The other prisoners had no council.²²

On ^May 15th the charge was read in the small dark courtroom that the commission used in the Penitentiary Building. This charge mentioned the larger conspiracy of assassination which Holt believed in. In listing the accused, not only the assassins present in courtroom were mentioned, but also John H. Surratt and John Wilkes Booth. Among the leaders of the Southern Confederacy that were mentioned in the charge was Jefferson Davis, George Sanders, Beverly Tucker, Jacob Thompson, C. C. Clay, William Cleary, George Harper, and George Young. The other southern leaders were grouped to-

²¹Milton, Age of Hate, 198; New York Times, May 10, 1865.

²²New York Times, May 10, 1865.

gether as those who also conspired to kill Lincoln.²³ Thus, the commission tried all of the south, not just the assassins present. None of the southern leaders were ever brought in on the conspiracy charge. C. C. Clay and Jefferson Davis were caught on the day that the trial opened but were not brought before the commission.²⁴ This broad charge was brought in to inflame the public and make a conviction more certain.

Actually there were two plots in which Lincoln played the central figure and the prosecution deliberately confused them. At first the plan had been to merely kidnap the president and take him south. This plan was of long standing. As early as January of 1864 Booth and two of his former schoolmates, Arnold and O'Laughlin, together with an actor named Chester, planned to kidnap the president from Ford's Theatre but the night the plot was to mature it was stormy so Lincoln did not go to the theatre. When this plan fell through Booth tried a second time with another group of men. On March 16, 1865 Lincoln agreed to appear at a benefit performance of Still Waters Run Deep. Booth had seven men waiting to drag Lincoln from his coach but the president had been too busy to go. Still a third time Booth planned to abduct the president. This time he conspired with John Surratt, his mother, and two or three others.²⁵ Then, on

²³New York Times, May 16, 1865; The charge is given verbatim.

²⁴Dewitt, The Assassination, 101.

²⁵Milton, Age of Hate, 191-2, 202.

the morning of the fourteenth of April, Booth learned quite by accident that Lincoln was to be at Ford's Theatre that evening. Booth realized that capturing the president now would be of little good to the South so he determined to kill Lincoln. In the assassination plot which matured so quickly he invited Payne, Herrold, and Atzerodt. His former conspirators in abduction knew nothing of the plan to kill. But Holt in his prosecution of the case treated all of the accused alike, as if they had all planned to assassinate the president.²⁶ In this way he was able to convict Mrs. Surratt and Dr. Mudd, Arnold, O'Laughlin and Spangler.

On the whole, Holt's part in the trial was not a conspicuous one. He remained in the background as much as possible but it was always evident that he was the directive genius of the whole. Never was his touch more evident than when the witnesses talked in generalities of the brutalities of the South, of the horrors of the Southern prison camps. Under Holt's guidance the witnesses told a story that would make the South seem a den of iniquity and any story told about a general conspiracy to assassinate plausible. Little time was spent in proving the guilt of the prisoners. They were often ignored by the prosecution which lambasted the whole south.²⁷

²⁶Dewitt, The Assassination, 94-6.

²⁷Mary Bernard Allen, Joseph Holt, Judge Advocate General (1862-1875). A Study in the Treatment of Political Prisoners (unpublished doctoral dissertation, University of Chicago, 1927), 142-3; Ben Pitman, Trial of the Conspirators, (New York, 1865), all of it.

To be even more certain of conviction than he already was with his prejudiced commission. Holt exercised his prerogative as judge-advocate to have the defense sum up first. This put him in the favorable position of knowing just what arguments he would have to answer before he spoke. Reverdy Johnson replied first for the defense. His argument was an elaborate denial of the jurisdiction of the commission in toto. Mainly he said it was against the fifth amendment. The other defense lawyers adopted this same tactic although some of them also asked for acquittal on the grounds of the evidence.²⁸

The prosecution pointed out the precedents for the jurisdiction of the military commission, mainly the Vallandigham and the Milligan cases. It also went into a long tirade about the brutal southerners and the vast conspiracy to assassinate the Union leaders. At the time of the trial the prosecution was well aware that there was no vast conspiracy, for they had the diary of John Wilkes Booth, including the entries from the last ten days of his life, during which time he was hunted as Lincoln's murderer. These entries showed conclusively that the conspiracy to kill Lincoln matured quickly and was definitely separate from the abduction plot. This diary also showed that the Surratts, Arnold,

²⁸New York Times, June 7, 20, 1865.

and O'Laughlin had no part in the assassination, nor did Dr. Mudd have any idea of what Booth had done when he set Booth's broken leg.²⁹

After the summations had been presented the commission and the three judge advocates retired to private chambers to decide the sentences for each of the accused. Two-thirds of the members of the commission had to vote favorably for the death sentence to be invoked. It was easy enough to decide on the death penalty for Herrold, Atzerodt and Payne. Their observed actions and admissions about the night of April 14 made them guilty but the commission ran into a stalemate about Mrs. Surratt. At the end of the first days deliberations five out of the nine commission members voted against the death penalty for her. This was not only because of her sex but also because of the lack of proof that she had known about the assassination plot. The trial had only shown that she knew of the plan to abduct the president. That the death penalty was even considered was a triumph for Holt's policy of deliberately confusing the two plots. When the commission had voted five to four against the death penalty Holt quickly suggested that those members of the commission who desired a milder punishment petition President Johnson to commute the sentence once passed. Personally, Holt favored the death penalty for he said the

²⁹Milton, Age of Hate, 202.

women of the south were greater traitors than the men. The women had kept the men in the field and an example should be made of Mrs. Surratt so that women would not flaunt the law and claim immunity because of their sex. Holt's assistant, John Bingham, also urged death for he said that soldiers should not show tenderness because of age or sex. Only Andrew Johnson should do it. After this line of argument a revote was made and the commission stood five to four in favor of the death penalty. This time Holt came up with the statement that if Mrs. Surratt were sentenced to be hung her son, John, might come out of hiding and thus they would get another one of the actual assassins. Certainly President Johnson wouldn't let a woman die. This time the commission voted six to three to hang Mrs. Surratt. Judge Advocate Bingham then drew up a petition for clemency which Generals Ekins, Hunter, Kautz, Foster and Colonel Tompkins signed. Had all five of these men voted as they obviously felt Mrs. Surratt would have had clemency by their own hands. They had no reason to petition Andrew Johnson when they had the power in themselves. The commission easily disposed of the rest of the prisoners. Dr. Mudd, Samuel Arnold, and Michael O'Laughlin each were imprisoned for life. Edward Spangler received six years at hard labor in the Albany Penitentiary. The grounds for their convictions were slim indeed. It was a credit to Holt's ingenuity, if not to his

honesty, that they were convicted at all.³⁰

Holt made the report to the president in person. Johnson being sick at the time Holt was the only man allowed to see him so there were no witnesses to their meeting. As was the custom in cases tried by military commission and which called for the death penalty Holt took with him on his visit only a brief abstract of the case. This abstract the two men discussed for over two hours during which time they had no interruptions. General Mussey, one of Johnson's secretaries saw to it that they were not disturbed. At the end of that time Johnson signed the verdict of the commission including the death warrant of Mrs. Surratt. Neither Johnson nor Holt mentioned the clemency petition for over two years after this meeting. Holt left the White House and went directly to the war department with all the papers.³¹ The prisoners heard the verdict the morning after Johnson signed the order. The next day, July 8, Payne, Herrold, Atzerodt, and Mrs. Surratt were to hang. This was certainly indecent haste. Upon announcement of the verdict, President Johnson was immediately besieged to commute the sentence of Mrs. Surratt and to give a longer period to the other prisoners to prepare for death. Mrs. Surratt's daughter, two Catholic priests and Mrs. Surratt's attorneys urged that the sentence and the findings be set aside upon the ground that new and

³¹Milton, Age of Hate, 206-9.

³¹Ibid., 205-6; New York Times, July 7, 8, 1865.

important evidence had been discovered. The five sisters of Herrold also went to see the president but Andrew Johnson refused to see anyone. He was sick with one of his attacks of stone or gravel which caused excruciating pain, and he told his secretary, General Mussey, to keep out all callers who desired clemency, but to refer them to General Holt. The petitioners went to Holt who received them courteously and promised to present the subject to the president. Apparently the matter ended there for neither Holt nor Johnson took action to aid the prisoners.³²

The petitioners reached the Honorable Andrew Wylie, a justice of the Supreme Court of the District of Columbia, and he issued a writ of habeas corpus to prevent the execution. This did no good for Johnson had suspended the writ for the prisoners. At one-twenty-five in the afternoon of July 8, 1865, Payne, Herrold, Atzerodt, and Mrs. Surratt hung for the assassination of Abraham Lincoln. Their bodies were suspended for ten minutes and then cut down and buried in graves already prepared in the yard of the penitentiary.

After the trial Holt's credit with the Radicals soared. With the conviction of Henry Wirz, the ill starred keeper of the Confederate prison at Andersonville Holt's Radical stock stretched its limits. Wirz was brought to trial in August, charged with violating the laws of war. Specifically

³²New York Times, July 7, 1865.

he was charged with mistreating the prisoners under his jurisdiction by willfully and maliciously contriving to ruin their health and destroy their lives. The prosecution claimed he had prisoners confined in unwholesome quarters which were inadequate for their number and that he willfully neglected to furnish shelter even during the winter months. He was accused of starving the prisoners and letting the dead bodies rot in the prison. Allegedly he shot prisoners for trivial offenses and, if they escaped, let the bloodhounds tear them apart.³⁴

After one false start the Wirz trial began before a commission headed by General Lew Wallace. Colonel N. P. Chipman was the judge advocate. The trial was a farce. True, conditions at the prison had not been good and the prisoners had been mistreated or at least not treated as well as they thought they should have been, but it was not proved that Wirz was to blame. There was much to be said for Wirz claim that he acted on the orders of his superior, General Winder. At one time in the trial the defense attorneys, Louis Schade, a German lawyer from Washington, and a Mr. Baker disparted at even getting their evidence before the commission and left the case. They returned only because of the evident helplessness of the friendless prisoners. One hundred and sixty former prisoners of Andersonville came

³⁴New York Times, August 15, 1865.

before the commission to testify on the condition within the prison. On October 20, Wirz made a personal plea in his own behalf. On the twenty-first Colonel Chipman summed up. On November 6 the findings of the commission were published as general orders. Wirz was condemned to death. Johnson approved the order and on November 10, Wirz hung in the yard of the Old Capitol Prison. His body was interred in the arsenal grounds in Washington close to those of the Lincoln assassins. He was the last man to suffer death as a result of the war psychosis of Joseph Holt and his military commissions.³⁵

Holt was not successful in convicting any southern leader of renown with his military commission. The keepers of other prisoners were not tried and even the other men connected with Andersonville could not be convicted. This was not because Holt did not try.

With the successful use of the military commission in the case of the assassins and in the case of Henry Wirz, Holt began to agitate for the trial of Jefferson Davis by commission. The action of the Supreme Court stopped this agitation. In December of 1866 the Court got around to hearing the appeal of the Milligan case. In giving a verdict on the appeal the Court reversed the action it had taken on the Vallandigham case. It said martial law could not arise

³⁵William Best Hesseltine, Civil War Prisons, A Study in War Psychology (Columbus, 1930), 237-45, 252, 254; New York Times, August 19, October 18, 21, November 8, 1865.

from a threatened invasion, that the invasion must be real and such that the civil courts must be closed and the civil administration deposed.³⁶ This decision took the props out from under Holt and his use of the military commission. From the time of the Milligan decision the Bureau of Military Justice ceased to be an influence in civilian affairs. It was relegated back to its very proper place of being concerned only with military affairs and military personnel.

Holt's commissions had never been popular anyway, they had just been tolerated as a necessary evil connected with the war. After the trial of the Lincoln assassins by military commission there was a widespread questioning of the evidence used to convict. Much had been made of the character of some of those testifying during the trial in defense of the accused and after the trial the question also came up about the integrity of some of the witnesses of the prosecution. In particular, Charles Dunham, alias Sanford Conover, who had testified about the great southern conspiracy of assassination and who, after the trial, had volunteered to Holt to get more positive information about it, was questionable. Conover had been conscripted into the southern army as a records clerk in Richmond. He had escaped to Canada and had become a correspondent for the New York Tribune. James B. Merritt, a physician on intimate terms with the rebels in

³⁶James Garfield Randall, Constitutional Problems Under Lincoln (New York, 1926), 179-183.

ular as had the others, and that the depositions had been done under the supervision of Conover. Campbell was brought back to Washington and both he and Conover confronted the House committee. Conover claimed that Campbell had probably been corrupted to say that his deposition was false and that if he, Conover, could go to New York he could prove it. The committee allowed Conover to go to New York under escort. He left his escort, however, and disappeared, and could not be found. Holt at once withdrew from the House committee all the depositions he had gotten through Conover. As soon as Conover was caught he was convicted of perjury and sent to the Albany prison for ten years.³⁸

As a result of Conover's conviction all sorts of charges flew about Holt's complicity. On September 11, 1866 Holt asked Stanton to procure a court of inquiry for him. He said the charges affected his official integrity and conduct. He was publicly being charged, as judge advocate of the military commission which tried the Lincoln assassins, with suborning testimony and securing the conviction of Mrs. Surratt against whom there was no evidence at all. It was being charged that he united with Sandford Conover in obtaining the depositions or at least he had knowledge of the fabricating of evidence. Stanton presented Holt's pleas for a court of inquiry to President Johnson but Johnson said that

³⁸New York Times, July 31, 1867; Official Records, series 2, VIII, 940.

no inquiry was needed. He remained entirely satisfied with the honesty and fidelity of Holt.³⁹

In the last part of October letters appeared in the New York Herald which implicated Holt with Conover. The lettered purported to be written by Conover but from his prison cell Conover claimed he did not write them. At this time Conover claimed that he only got the depositions to avenge himself. Jefferson Davis had had him put in Castle Thunder for six months and had insulted his wife.⁴⁰

In 1867, John Surratt was discovered in Italy, working as a legionnaire of the papacy. The United States Government did not rush to have him brought back for trial. It knew where he was for several months before bringing him back for trial and then it was only after it had become embarrassing to explain why the government did not more actively pursue him. After all, there had been much agitation for his discovery and arrest during the trial of the assassins and certainly he was as guilty as his mother and deserved to die as much as she. The government was not too happy to have John Surratt in its power. His trial would have to be before a regular jury in a civil court. In 1867, there would be no excuse to use a military commission. In fact, the Supreme Court had expressly found against the use of the com-

³⁹Official Records, series 2, VIII, 964.

⁴⁰Ibid., series 2, VIII, 973, 979.

mission in civilian trials.⁴¹ The government knew that in any honestly picked jury from Washington, D.C. there was bound to be two or three southern sympathizers so that young Surratt would go free. And even if it got a jury of all Union men it would still have to present a good case with adequate evidence. It could not wander off as it had in the previous assassination trial on a great conspiracy and the brutality of the southerners and win popular support. Public emotions had settled since the end of the war. And yet, the government could not afford to lose the court decision. That would seem to say that it had been wrong in condemning the other tried assassins with a military commission.

On June 11, 1867, the quiet, refined studious Surratt was put on trial. The prosecuting attorneys were E. C. Carrington and N. Wilson, ably assisted by E. Pierrepont and A. C. Riddle. The law firm of Bradley and Son together with Richard T. Merrick handled Surratt's defense. Judge Fisher sat on the bench of the criminal court in Washington.⁴² Surratt brought witnesses to show that he had been nowhere near Washington on the day of the assassination, that instead he had been in Canada and later in northern New York. The prosecution could not present any logical method of his getting to Washington in time for the assassination much

⁴¹In the Milligan case, page 75 above.

⁴²New York Times, June 11, 1867.

less get him in Washington on the morning to the fourteenth of April when one of their witnesses claimed to have shaved him. On August 10 the trial ended in a hung jury, eight to four in favor of the prisoner. A new trial was set for February 24, 1868, and in the mean time the prisoner was to be held in jail. The trial was not held on the scheduled date. On June 22 John Surratt was released on bail and three months later the indictment was nol. prosed.⁴³

Although the trial did not much harm John Surratt it proved disastrous to Holt. On August 3, 1867, while prosecuting Surratt, Pierrepont publicly mentioned the clemency petition for Mrs. Surratt. This aroused a storm of public interest and later in the trial Pierrepont referred to it again. He said he wanted no misunderstanding about it. The petition had been originally drawn up by John Bingham, but that General Ekin had copied it and that it was General Ekin's copy that had been presented to the president. The clemency petition had been signed by five members of the military commission who had sentenced Mrs. Surratt to death.⁴⁴

Johnson immediately stated that he had not seen the clemency petition at the time he and Holt had discussed Mrs. Surratt. He pointed out that the petition had not been printed in Pittman's History of the Conspiracy Trial which was supposed to contain every document pertaining to the

⁴³Dewitt, The Assassination, 218-9.

⁴⁴Ibid., 224, The New York Times, August 7, 1867.

trial and which had been endorsed by both Stanton and Holt as being correct. Thus, Stanton and Holt must have suppressed the petition for some reason of their own. Johnson also said that the record of the trial had been presented to the cabinet for consideration when the application was made for a writ of habeas corpus for Mrs. Surratt but that the clemency petition had not been attached. One of the cabinet officers did tell the newspapers that the petition had not been attached to the record when it was considered in cabinet but he would not allow the use of his name.⁴⁵ Johnson sent at once for the record of the assassination trial. Much was made of the position of the petition in the record of the trial. The first seventeen pages of the report are a synopsis of the trial and on the seventeenth page is Johnson's endorsement of the verdict. The plea for clemency is on page eighteen. Johnson said that when he saw the record in 1865 it had not been bound together at all. Holt claimed the petition had been bound to the rest of the record at the time by red tape put through eyelet holes out at the top of the sheets of foolscap. When it was pointed out that the holes in the clemency petition were different that the holes in the rest of the record Holt produced a clerk from the Bureau of Military Justice who said that when Stanton had sent for the record for Johnson on August 5, 1867, he had found the last

⁴⁵New York Times, August 8, 9, 1867; The Chronicle, August 13, 1867.

page torn loose from much handling and so he had put in new eyelets to hold the petition to the record.⁴⁶ Holt maintained that the record was so bound that Johnson could not possibly have missed the petition. Not only did Holt claim that Johnson had seen the petition but he claimed that when Johnson signed the record he said, "We must be protected against female assassins as well as male assassins."⁴⁷

In this controversy the scales were weighted in the favor of Johnson. He had the highest political office in the land with all of its patronage and influence. Whether he was truthful or not his adherents had to pretend to believe him. On the other hand, no one had to believe Holt. He had an uninfluential position as head of a small and rapidly declining bureau. The conflict hurt Holt's reputation, the only thing he had left from his governmental work, and from 1867 on, he tried to prove to an uninterested world that it was Johnson who lied about the petition.⁴⁸

Johnson had other things to worry about. He was fighting for his office against impeachment proceedings, the vast work or reconstruction had to be done, and he had little help from the politicians in running his administration. To Johnson, the controversy over the clemency petition was a minor matter. To Holt it was everything.

⁴⁶The Chronicle, August 6, 1867; Daily National Intelligencer, August 6, 1867; Dewitt, The Assassination, 225.

⁴⁷New York Times, August 10, 1867.

⁴⁸The Chronicle, August 19, 1867.

Outside of stating that he had not seen the petition Johnson made no move against Holt. It was widely thought that Holt would resign or that he would be suspended. He had cast reflections on Johnson and had been condemned. Holt was also tied up with the impeachment proceedings against the president. He had joined with Congressmen Ashley and Butler in petitioning for the pardon of the convicted perjurer, Sandford Conover. The administration forces felt that this was a move to get more perjured testimony from Conover which would implicate Johnson in the assassination of Lincoln. Holt claimed this was an act of humanity. On August 15, 1867, he had several depositions published in the New York Times. These depositions showed that the administration men had attempted to get perjured depositions showing that Holt had willfully suborned testimony for the conspiracy charge he made at the assassination trial.⁴⁹

After this publication the cabinet considered suspending Holt but they hesitated to give a public reason for such an act. It was then thought that he could be transferred without giving a reason but Johnson did nothing. He did not even communicate with Holt for six months after the controversy between them started. Johnson had many reasons for not persecuting Holt. Holt was not a political candidate nor was the

⁴⁹Daily National Intelligencer, August 14, 1867; New York Times, August 15, 1867.

office he held of influence or of extensive patronage so Holt did not have to be removed to make way for a favorite. Holt's political life up until then had been dignified and useful. He had done well in his cabinet posts and in aiding the war effort.⁵⁰

But Johnson had to make it clear that Holt was at fault about the petition even if he were not punished. Johnson was being viciously attacked for impeachment purposes and he could not afford to have one more charge against him. The South had not liked Holt's court martials during the war. The Democrats had not liked his political arrests. The Catholic Church had opposed the conviction of Mrs. Surratt. Johnson needed the support of these groups against the Republicans who were trying to impeach him. Holt had to be wrong.⁵¹

The public lost interest in the controversy over the petition when the impeachment proceedings against Johnson began. Holt continued to look for information that would support his position although the issue had no interest to anyone but himself. For some reason Edwin Stanton would not come to his friend's aid. On December 24, 1869 he died without once speaking to help Holt. Not only wouldn't Stanton speak but he asked others not to help Holt. General Ekin

⁵⁰New York Times, August 15, 1867; The Chronicle, August 19, 1867.

⁵¹Dewitt, The Assassination, 229.

helped Holt somewhat by affirming his call the day after the execution to determine the fate of the petition. It came to Holt's attention that Secretary Seward knew about the petition but Seward would not talk. He said Stanton had asked him to remain silent. After Seward's death in October 1872, Holt wrote to John Bingham asking for information on the petition. Bingham recalled that he spoke to both Stanton and Seward about the petition and they had told him that the petition had been presented to the president and his cabinet for consideration before the approval of the death sentence. The president and the cabinet had been a unit in denying the petition. Thus, Holt had the word of two men, already in the grave.⁵²

Holt next wrote to the rest of the cabinet for support. Secretaries McCulloch and Wells remained staunch to Johnson and Holt got nothing from them. Attorney General Speed and Secretary Harlan could give him no help. Harlan remembered an informal discussion among three or four of the cabinet members but said there was no record present at the time. Speed said he saw the petition attached to the record in the president's office but he did not know if Johnson had seen it. General R. D. Mussey, Johnson's personal secretary, was the only man who upheld Holt's position.⁵³ Since both Holt

⁵²Dewitt, The Assassination, 230-4.

⁵³Ibid., 235.

Johnson agreed that they had been uninterrupted while discussing the petition, that Holthead taken the record away with him, and since Holt did not know of the record ever leaving his office for a cabinet meeting after his talk with Johnson, it is doubtful if anyone could be found that could support either Holt or Johnson's position. It was improbable that Holt would suppress the petition without the knowledge of Stanton but Stanton would not talk.

On December 1, 1875, Holt retired from the Bureau of Military Justice.⁵⁴ This was at his own request as he was over the age limit. For the next twenty-four years he tried to prove to an uninterested public that Andrew Johnson was a liar. He wrote many vindications of his official actions for the newspapers and the historical journals.

Since he had no living relatives nearer than nieces and nephews he lived alone in his Washington home. He had but few callers. On August 1, 1894, he died as the result of a severe fall. He left an estate of about \$180,000, \$40,000 of which was in Washington real estate. Although a lawyer, he left no will so his relatives squabbled over the estate for many years.⁵⁵

⁵⁴New York Daily Tribune, August 2, 1894.

⁵⁵Vol. 180, U.S. Reports, p. 552, October term 1900.

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