

PART I.

THE MURDER.

CHAPTER I.

THE OPENING OF THE COURT.

On the ninth day of May the Commission met but only to adjourn that the prisoners might employ counsel. On the same day, two of its members, General Cyrus B. Comstock and Colonel Horace Porter--names to be noted for what may have been a heroic refusal--were relieved from the duty of sitting upon the Commission, and two other officers substituted in their stead.

So that Tuesday, May 10th, 1865--twenty-six days after the assassination, a period much too short for the intense excitement and wild desire for vengeance to subside--may properly be designated as the first session of the Court. On the early morning of that day--before daylight--Jefferson Davis had been captured, and was immediately conducted, not to Washington to stand trial for his alleged complicity in the assassination, but to Fort Monroe. On the next day Clement C. Clay, also, surrendered himself to

the United States authorities, and was sent, not to Washington to meet the awful charge formulated against him, but to the same military fortress.

The room in which the Commission met was in the northeast corner of the third story of the Old Penitentiary; a building standing in the U. S. Arsenal Grounds at the junction of the Potomac with the Eastern Branch, in a room on the ground floor of which the body of Booth had been secretly buried. Its windows were guarded by iron gratings, and it communicated with that part of the prison where the accused were now confined, by a door in the western wall. The male prisoners had been removed some days before from the Monitors to the Penitentiary, where Mrs. Surratt was already incarcerated, and each of them, including the lady, was now immured in a solitary cell under the surveillance of a special guard.

Around a table near the eastern side of this room sat, resplendent in full uniform, the members of the Court. At the head as President was Major-General David Hunter--a stern, white-headed soldier, sixty-three years old; a fierce radical; the first officer to organize the slaves into battalions of war; the warm personal friend of Lincoln, at the head of whose corpse he had grimly sat as it rested from place to place on the triumphal progress to its burial, and from whose open grave he had hurried, in no very judicial humor to say the least, to take his seat among the Judges of the accused assassins. On his right sat Major-General Lew Wallace, a lawyer by profession; afterwards the President of the Court-Martial which tried and hung Henry Wirz; but now, by a sardonic freak of destiny, known to all the world as the tender teller of "Ben Hur, a Tale of the Christ." To the right of General Wallace sat Brevet

Brigadier-General James A. Ekin and Brevet Colonel Charles A. Tompkins; about whom the only thing remarkable is that they had stepped into the places of the two relieved officers, Colonel Tompkins being the only regular army officer on the Board. On the left of General Hunter sat, first, Brevet Major-General August V. Kautz, a native of Germany; next, Brigadier-General Robert S. Foster, who may or may not have been the "Colonel Foster" alluded to in the testimony of Lloyd quoted above, as threatening the witness and as afterwards being seen by him on the Commission--the presence of an officer, previously engaged by the Government in collecting testimony against the accused, as one of the judges to try him not being considered a violation of Military Justice. Next sat Brigadier-General Thomas Mealey Harris, a West Virginian, and the author of a book entitled "Calvinism Vindicated;" next, Brigadier-General Albion P. Howe, and last, Lieutenant-Colonel David R. Clendenin.

Not one of these nine men could have withstood the challenge which the common law mercifully puts into the hands of the most abandoned culprit. They had come together with one determined and unchangeable purpose--to avenge the foul murder of their beloved Commander-in-Chief. They dreamt not of acquittal. They were, necessarily, from the very nature of their task, organized to convict.

The accused were asked, it is true, whether they had any objections to any member of the Court. But this was the emptiest of forms, as bias is no cause of challenge in military procedure, and peremptory challenges are unknown.

Moreover, it was nothing but a cruel mockery to offer to that trembling group of prisoners an opportunity, which, if any one of them had the temerity to embrace, could only have resulted in barbing with the sting of personal insult the hostile predisposition of the judges.

At the foot of the table around which the Court sat--the table standing parallel with the north side of the room--there was another, around which were gathered the three prosecuting officers, who, according to military procedure, were also members of the Commission.

First, was Brigadier-General Joseph Holt, the Judge-Advocate of the U. S. Army, and the Recorder of the Commission. During his past military career he had distinguished himself on many a bloody court-martial.

Second, designated by General Holt as First Assistant or Special Judge-Advocate, was Hon. John A. Bingham, of Ohio--long a Representative in Congress, then for a short interval a Military Judge-Advocate, now a Representative in Congress again, and to become in the strange vicissitudes of the near future, one of the managers of the impeachment of President Johnson, whom he now cannot praise too highly. He was one of those fierce and fiery western criminal lawyers, gifted with that sort of vociferous oratory which tells upon jurors and on the stump, by nature and training able to see but one side to a case and consequently merciless to his victims. His special function was to cross-examine and brow-beat the witnesses for the defense, a branch of his profession in which he was proudly proficient, and, above all, by pathetic appeals to their patriotism and loyalty, and by measureless denunciations of the murder of

their Commander-in-Chief and of the Rebellion, to keep up at a white heat the already burning passions of the officers composing the tribunal. Next to him came Colonel Henry L. Burnett; brought from Indiana where he had won recent laurels in conducting the trial of Milligan for treason before a Military Commission--laurels, alas! soon to be blasted by the decision of the U. S. Supreme Court pronouncing that and all other Military Commissions for the trial of citizens in places where the civil courts are open illegal, and setting free the man this zealous public servant had been instrumental in condemning to death.

In the centre of the room was a witness-stand facing the Court. To the left of the witness-stand a table for the official reporters. Along the western side and directly opposite the Court was a platform about a foot high and four feet broad, with a strong railing in front of it. This was the prisoners' dock. The platform was divided near the left hand or southern corner by the doorway which led to the cells. In front of the southern end of the dock and behind the witness-stand was the table of the prisoners' counsel.

At the appointed hour the door in the western side opens and an impressive and mournful procession appears. Six soldiers armed to the teeth are interspersed among seven male prisoners and one woman.

First walks Samuel Arnold, the young Baltimorean, who is to sit at the extreme right (i. e., of the spectators), followed close by his armed guard; next, Dr. Samuel T. Mudd and a soldier; next, Edward Spangler and a soldier; next, Michael O'Laughlin, another Baltimorean, and his soldier;

next, George B. Atzerodt and a soldier; next, Lewis Payne, a tall gladiator, though only twenty years old, and his soldier; and then David E. Herold, looking like an insignificant boy, who is to sit next the door. As they enter, their fetters clanking at every step, they turn to their left and take seats on the platform in the order named, the six soldiers being sandwiched here and there between two of the men.

Each of these prisoners, during the entire trial, was loaded down with irons made as massive and uncomfortable as possible. Their wrists were bound with the heaviest hand-cuffs, connected by bars of iron ten inches long (with the exception of Dr. Mudd, whose hand-cuffs were connected by a chain), so that they could not join their hands. Their legs were weighed down by shackles joined by chains made short enough to hamper their walk. In addition to these fetters, common to all, Payne and Atzerodt had, attached by chains to their legs, huge iron balls, which their guards had to lift and carry after them whenever they entered or left the Court room.

Last, there emerges from the dungeon-like darkness of the doorway the single female prisoner, Mary E. Surratt. She, alone, turns to her right and, consequently, when she is seated has the left hand corner of the platform to herself. But she is separated from her companions in misery by more than the narrow passage-way that divides the dock; for she is a lady of fair social position, of unblemished character and of exemplary piety, and, besides, she is a mother, a widow, and, in that room amongst all those soldiers, lawyers, guards, judges and prisoners, the sole representative of her sex. Her womanhood is her peculiar weakness, yet still her only shield.

Is she too ironed?

The unanimous testimony of eye-witnesses published at the time of the trial is, that, though not hand-cuffed, she was bound with iron "anklets" on her feet. And this detail, thus universally proclaimed in the Northern Press and by loyal writers, was mentioned not as conveying the slightest hint of reprobation, but as constituting, like the case of the male prisoners, a part of the appropriate treatment by the military of a person suffering under such a charge. And, moreover, no contemporaneous denial of this widespread circumstance was anywhere made, either by Provost-Marshal, Counsel, Judge-Advocate or member of the Court. It passed unchallenged into history, like many another deed of shame, over which it is a wonder that any man could glory, but which characterized that period of frenzy.

Eight years after, during the bitter controversy between Andrew Johnson and Joseph Holt over the recommendation of mercy to Mrs. Surratt, General Hartranft, the former Special Provost-Marshal in charge of the prisoners, first broke silence and, coming to the aid of the sorely-trying Ex-Judge-Advocate, sent him a vehement categorical denial that Mrs. Surratt was ever manacled at any time, or that there was ever a thought of manacling her in any one's mind. Now, what force should be given to such a denial by so distinguished an officer, so long delayed and in the face of such universal contemporaneous affirmation?

No one knows how close and exclusive the charge of the prisoners by the special Provost-Marshal was, nor how liable to interruption, interference

and supersession by the omnipotent Bureau of Military Justice, or by the maddened Secretary of War and his obsequious henchmen.

At the time the naked assertion was made, to heap indignities upon the head of the only woman in the whole country whom the soldiery took for granted was the one female fiend who helped to shed the blood of the martyred President, was so consonant with the angry feeling, in military circles, that an officer, having only a general superintendence over the custody and treatment of what was called "a band of fiends," would be very likely to overlook such a small matter as that the she-assassin was not exempted, in one detail, from the contumelies and cruelties it was thought patriotic to pile upon her co-conspirators. The only wonder ought to be that they relieved her from the hand-cuffs. They appear to have discriminated in the case of Dr. Mudd also, substituting a chain for an inflexible bar so that he for one could move his hands. There may have been some unmentioned physical reasons for both of these alleviations, but we may rest assured that neither sex, in the one case, nor profession in the other, was among them.

General Hartranft (or any other General) never denied, or thought it necessary to deny, that the seven male prisoners sat through the seven weeks of the trial, loaded, nay tortured, with irons. And there is no doubt that this unspeakable outrage, if thought of at all at the trial by the soldiery--high or low--so far from being thought of as a matter of reprobation, was a subject of grim merriment or stern congratulation.

Eight years, however, passed away--eight years, in which a fund of

indignation at such brutality, above all to a woman, had been silently accumulating, until at length to a soldier, whose beclouding passions of the moment had in the meantime cooled down, its weight made every loop-hole of escape an entrance for the very breath of life.

The entire atmosphere had changed, and denials became the order of the day. Memory is a most convenient faculty; and to forget what the lapse of years has at last stamped with infamy is easy, when the event passed at the time as a mere matter of course. Leaving these tardy repudiators of an iniquity, the responsibility for which in the day of its first publication they tacitly assumed with the utmost complacency, to settle the question with posterity;--we insist that the preference is open to writers upon the events of the year 1865 to rely upon the unprejudiced and unchallenged statements of eye-witnesses; and, therefore, we do here reaffirm that Mary E. Surratt walked into the court-room, and sat during her trial, with shackles upon her limbs.

At this late day it is a most natural supposition that these nine stalwart military heroes, sitting comfortably around their table, arrayed in their bright uniforms, with their own arms and their own legs unfettered, must have felt at least a faint flush of mingled pity, shame and indignation, as they looked across that room at that ironed row of human beings.

Culprits arraigned before them, guarded by armed soldiery, without arms themselves--why, in the name of justice, drag them into Court and force them to sit through a long trial, bound with iron, hand and foot? Was it to forestall a last possible effort of reckless and suicidal despair?

These brave warriors could not have feared the naked arm of Payne, nor have indulged the childish apprehension that seven unarmed men and one unarmed woman might overpower six armed soldiers and nine gallant officers, and effect their escape from the third story of a prison guarded on all sides with bayonets and watched by detective police! And yet, so far as appears, no single member of the Court, to whom such a desecration of our common humanity was a daily sight for weeks, thought it deserving of notice, much less of protest.

There is but one explanation of this moral insensibility, and that applies with the same force to the case of the woman as to those of the men. It is, that the accused were already doomed. For them no humiliation could be thought too deep, no indignity too vile, no hardship too severe, because their guilt was predetermined to be clear. And the members of the Military Commission, as they looked across the room at that sorry sight, saw nothing incongruous with justice, or even with the most chivalrous decorum, that the traitorous murderers of their beloved Commander-in-Chief should wear the shackles which were the proper precursors of the death of ignominy, they were resolved the outlaws should not escape.

We, civilians, must ever humbly bear in mind that the rule of the common law, that every person accused of crime is presumed to be innocent until his guilt is established beyond a reasonable doubt--a rule the benignity of which is often sneered at by soldiers as giving occasion for lawyers' tricks and quibbles, and as an impediment to swift justice, is reversed in military courts, where every person accused of crime is presumed to be

guilty until he himself prove his innocence.

After the prisoners had been seated, and the members of the Commission, the Judge-Advocates and the official reporters sworn in, the accused were severally arraigned. There was but one Charge against the whole eight. Carefully formulated by the three Judge-Advocates upon the lines of the theory adopted by the Secretary of War, and which Gen. Baker and the Bureau of Military Justice had been moving heaven and earth to establish, it was so contrived as to allege a crime of such unprecedented, far-reaching and profound heinousness as to be an adequate cause of such an unprecedented and profound calamity.

The eight prisoners were jointly and severally charged with nothing less than having, in aid of the Rebellion, "traitorously" conspired, "together with one John H. Surratt, John Wilkes Booth, Jefferson Davis, George N. Sanders, Beverley Tucker, Jacob Thompson, William C. Cleary, Clement C. Clay, George Harper, George Young and others unknown, to kill and murder" "Abraham Lincoln, late President of the United States and Commander-in-Chief of the Army and Navy thereof, Andrew Johnson, then Vice-President, Wm. H. Seward, Secretary of State, and Ulysses S. Grant, Lieutenant-General;" and of having, in pursuance of such "traitorous conspiracy," "together with John Wilkes Booth and John H. Surratt" "traitorously" murdered Abraham Lincoln, "traitorously" assaulted with intent to kill, William H. Seward, and lain in wait "traitorously" to murder Andrew Johnson and Ulysses S. Grant.

On this elastic comprehensive Charge, in which treason and murder are

vaguely commingled, every one of the men, and Mary E. Surratt, were arraigned, plead not guilty, and were put upon trial. There is no doubt, by the way, that the Secretary of War would have been included as one of the contemplated victims, had not Edwin M. Stanton borne so prominent a part in the prosecution; and it was for this reason, and not because of any change in the evidence, that General Grant stood alone, as the mark of O'Laughlin.

To this single Charge there was, also, but a single Specification. This document alleged that the design of all these traitorous conspirators was, to deprive the Army and Navy of their Commander-in-Chief and the armies of their Commander; to prevent a lawful election of President and Vice-President; and by such means to aid and comfort the Rebellion and overthrow the Constitution and laws.

It then alleged the killing of Abraham Lincoln by Booth in the prosecution of the conspiracy, and charged the murder to be the act of the prisoners, as well as of Booth and John H. Surratt. It then alleged that Spangler, in furtherance of the conspiracy, aided Booth in obtaining entrance to the box of the theatre, in barring the door of the theatre box, and in effecting his escape. Then, that Herold, in furtherance of the conspiracy, aided and abetted Booth in the murder, and in effecting his escape. Then, that Payne, in like furtherance, made the murderous assault on Seward and also on his two sons and two attendants. Then, that Atzerodt, in like furtherance, at the same hour of the night, lay in wait for Andrew Johnson with intent to kill him. Then, that Michael O'Laughlin, in like furtherance, on the nights of the 13th and 14th of April, lay in wait for

General Grant with like intent. Then, that Samuel Arnold, in prosecution of the conspiracy, "did, on or before the 6th day of March, 1865, and on divers other days and times between that day and the 15th day of April, 1865, combine, conspire with and counsel, abet, comfort and support" Booth, Payne, Atzerodt, O'Laughlin and their confederates. Then, "that, in prosecution of the conspiracy, Mary E. Surratt, on or before the 6th of March, 1865, and on divers other days and times between that day and the 20th of April, 1865, received, entertained, harbored and concealed, aided and assisted" Booth, Herold, Payne, John H. Surratt, O'Laughlin, Atzerodt, Arnold and their confederates, "with the knowledge of the murderous and traitorous conspiracy aforesaid, and with intent to aid, abet and assist them in the execution thereof, and in escaping from justice." And, lastly, that in prosecution of the conspiracy Samuel A. Mudd did from on or before the 6th day of March, to the 20th of April "advise, encourage, receive, entertain, harbor and conceal, aid and assist" Booth, Herold, Payne, John H. Surratt, O'Laughlin, Atzerodt, Mary E. Surratt, Arnold and their confederates, in its execution and their escape.

After the prisoners, who as yet had no counsel, had pleaded not guilty to the Charge and Specification, the Court adopted rules of proceeding--one of which was that the sessions of the Court should be secret, and no one but the sworn officers and the counsel for the prisoners, also sworn to secrecy, should be admitted, except by permit of the President of the Commission; and that only such portions of the testimony as the Judge-Advocate should designate should be made public.

On the next day (Thursday, May 11th), Mr. Thomas Ewing, Jr. and Mr.

Frederick Stone appeared as counsel for Dr. Mudd, and Mr. Frederick A. Aiken and Mr. John W. Clampitt for Mrs. Surratt; and on the succeeding day (12th), Mr. Frederick Stone appeared for Herold "at the earnest request of his widowed mother and estimable sisters;" General Ewing for Arnold (and on Monday, the 15th, for Spangler); Mr. Walter S. Cox for O'Laughlin, and Mr. William E. Doster for Payne and Atzerodt.

By the rules of the Commission no counsel could appear for the prisoners unless he took the "iron-clad oath" or filed evidence of having taken it. So supersensitive was the loyalty of the Court that it could not brook the presence of a "sympathizer with the South," even in such a confidential relation as counsel for accused conspirators in aid of the Rebellion.

The demeanor of the Court towards the counsel for the defense, reflecting as in a mirror the humor of the Judge-Advocates, was highly characteristic. Sometimes they were treated with haughty indifference, sometimes with ironical condescension, often with contumely, generally with contempt. Their objections were invariably overruled, unless acceded to by the Judge-Advocate. The Commission could not conceal its secret opinion that they were engaged in a disreputable and disloyal employment.

This statement must be somewhat qualified, however, so far as it relates to General Ewing. He was, or had been recently, of equal rank in the army of the Union with the members of the Court. He was a brother-in-law of General Sherman, and he had acquired a high reputation for gallantry and skill, as well as loyalty, during the war. That such a distinguished fellow-soldier should appear to defend the fiendish murderers of their

beloved Commander-in-Chief--outlaws they were detailed as a Court to hang--evidently perplexed and disconcerted these military Judges and tended in some degree to curb the over-bearing insolence of the Special Judge-Advocate. Thus, this able lawyer and gallant officer and noble man was enabled to be "the leading spirit of the defense;" and, as we shall see, he wrought the miracle of plucking from the deadly clutches of the Judge-Advocates the lives of every one of the men he defended. But this instance was a most notable exception. As a rule, even the silent presence of the counsel for the accused jarred upon the feelings of the Court, and their vocal interference provoked, at intervals, its outspoken animadversion. A trifling incident will serve to illustrate.

The witnesses, while giving their testimony, were required to face the Court, so that they necessarily turned their backs on the counsel for the prisoners who were placed some distance behind the witness-stand. These counsel were also forced to cross-examine the witnesses for the prosecution, and interrogate their own, without seeing their faces; and as often as a witness in instinctive obedience to the dictates of good manners would turn round to answer a question, the President of the Court would check him by a "sharp reprimand" and the stern admonition: "Face the Court!" The confusion of a witness, especially for the defense, when thundered at in this way by General Hunter, and the reiterated humiliation of counsel implied in the order, seem to have only called forth the wonder that witnesses "would persist in turning towards the prisoners' counsel!"

Clearly these lawyers were an unmeaning, an impeding, an offensive, though unavoidable, superfluity.