CHAPTER III.

THE RECOMMENDATION TO MERCY.

The worst was still behind.

It was left to Time to disclose the astounding fact, that all the military machinery of the War Department, its Bureaus, its Court, its Judge-Advocates, its unconstitutional, anti-constitutional and extra-constitutional processes, would not have compassed the death of this helpless woman, had not the prosecutors, in the last extremity, called in the help of Fraud.

It has been narrated in the chronological order of events, how five members of the Military Commission were, in all probability, beguiled into the abdication of their own power of commutation and did, as matter of fact, sign a paper "praying" the President, "if he could find it consistent with his sense of duty to the country," to commute the death sentence of Mrs. Surratt; how that the paper may have been carried to the President by Judge Holt and have been present at the confidential interview when the death warrant was composed; and how that Judge Holt, in drafting the death warrant, went out of his way to so write it out, as in fact, if not by design, to withdraw from the eye of the President, as he signed it, this paper praying him to withhold his signature.

But it should be borne in mind that all this was shrouded in the deepest secrecy. That there had been any hesitation among the members of the Commission in fixing the sentence of Mrs. Surratt--any more than in the cases of Herold, Atzerodt and Payne--much more that it had been found necessary to resort to a petition to the President, was entirely unknown to the public at large. As to what had taken place in the sessions of the Court when the sentences were made up, every member thereof and the three Judge-Advocates were sworn to secrecy; and, outside these officers, the knowledge of the petition was confined to the Secretary of War (possibly the Attorney-General) and one or two subordinates in the War Department. The record of the findings and sentences, to which the petition was attached, was kept from the official reporters, and not a soul outside a close coterie in the War Department was allowed to set eyes on it.

In the recital of the death sentences in the order of the Adjutant-General directing their execution, the sentence of the woman differed in no respect from the three sentences of the men which preceded it. So far as the public eye could discover, there was not a gleam of mercy for the woman in the bosom of the Commission.

It is true, that even before the execution there were rumors that the Court had united in a recommendation to mercy, and it was stated in the newspapers of the 6th and 7th of July that five members of the Commission had signed such a recommendation and the whole Court concurred in it. It is also certain, that almost immediately after the execution the story sprang up that the President had never been allowed to see the recommendation which the Court had addressed to him.

But all these statements remained without corroboration from any authentic source, and could not stand before the indubitable facts of the sentence, its approval by the President, and its summary execution. The single indication that in all these reports the paper is miscalled "a recommendation to mercy" shows of itself that the real nature of the secret was well kept.

In November, 1865, there appeared a volume compiled by Benn Pitman styled "The Recorder to the Commission," claiming to be "An authentic record of the trial of the assassins of the late President," to which was prefixed a certificate "to its faithfulness and accuracy" by Colonel Burnett, who had been assigned by Judge Holt to superintend the compilation and "made responsible for its strict accuracy." This work, so authenticated, was on its face intended by its compiler to be a complete history "for future use and reference" of the proceedings of the Commission, from the order of the President convening it to the approval of the President of its findings and sentences. It had for frontispiece portraits of the conspirators and a map of portions of Maryland and Virginia showing the route of Booth, and for afterpiece a diagram of the stage of Ford's theatre and a diagram of the streets in its vicinity. Beside matter strictly of record, such as the testimony and the findings and sentences, it included the arguments of all the counsel, the approval of the President, the order changing the place of imprisonment from Albany to the Dry Tortugas, the proceedings under the writ of habeas corpus in the case of Mrs. Surratt; and (in the appendix) the opinion of Attorney-General Speed; army instructions in ten sections; a proclamation of President

Lincoln; a poisonous affidavit of Weichman, inclosed in a letter to Colonel Burnett; and an affidavit of Captain Dutton, who took Dr. Mudd to the Dry Tortugas, giving the confessions the Captain swears the Doctor made on the way, sent to General Holt in obedience to his request for such information. Nevertheless, amid all this wealth of illustration, there is not the faintest allusion to any such thing as a recommendation to mercy, in the volume. On the one hand, Pittman may not have seen the paper. His findings and sentences are obviously taken from the order of the Adjutant-General, and not from the original record, as he puts them in the same order, which is not the order of the record. But, if he never saw the paper, it must have been purposely kept from his knowledge, and thus from the knowledge of the public, by some person interested in its suppression. And Colonel Burnett, who had himself attached the paper "at the end" of the record, instead of certifying to the "faithfulness and accuracy" of a compilation omitting it, ought rather to have insisted that so important and interesting a document, about the existence of which so much talk had arisen, be at last given to the world.

On the other hand, if Pitman knew of the paper, he certainly would not have voluntarily left it out of his book for the reason, he himself felt constrained afterwards to assign, that "it formed no part of the proceedings, was not mentioned in open session;" since he had given room to so much matter, not of record, solely for the purpose of adding interest and completeness to his work, and this critical document could add so much to the one and its absence detract so much from the other.

Moreover, in December, the report of the Judge-Advocate-General to the

Secretary of War appeared, in which the trial was reviewed, and to which the report to the President, dated July 5th, 1865, was appended. But in both the existence of the petition was ignored.

Whatever may have been the true inwardness of these significant omissions, their inevitable effect was to convince the mass of the people of the non-existence of a recommendation to mercy; and the petition of the five officers might have reposed in silence in the secret archives of the War Department, had it not been for the alienation of the President from the party which had elected him, his gradual gravitation towards his own section, and finally his revolt from the sway of Stanton. During this period, the rumors that the Court had recommended Mrs. Surratt to the clemency of the Executive and that the paper had never reached the Executive, coupled with stories that from the close of the trial to the hour of the execution the President had been kept under confinement and in a state of semi-stupefaction by a band of reckless partisans who were bound there should be no clemency, grew louder and louder. But they were never traceable to any reliable source. In fact, the coolness which had been for a long time growing between Andrew Johnson and Edwin M. Stanton did not break out into an open rupture until as late as the month of March, 1867. The other members of the Cabinet, which Johnson had inherited from Lincoln, who disagreed with Johnson on the question of Reconstruction, Harlan, Dennison and Speed, resigned, on account of that disagreement, in the summer of 1866; but Stanton stayed on. When the Tenure of Office bill was passed by the Congress in February, 1867, the Secretary of War was still so much in accord with the President as to unite with the other members of the reconstructed Cabinet in an emphatic

condemnation of the bill as unconstitutional, and to be asked by the President to draft his veto message.

But, on the passage of that Act over the veto, Stanton, thinking his tenure of office secure, at last threw off the double-faced mask he seems to have worn in every Cabinet to which he ever had the honor to belong. From that time he stood alone in the Cabinet, irreconcilable in his hostility to every move of his Chief, in open league with his Chief's active enemies, and determined to remain where he was not wanted and could only act as a hindrance and a spy. In this perilous state of affairs, a secret like that of the petition of the five officers burned towards disclosure. Yet, so far as is at present ascertainable, no authoritative affirmation of the existence of such a paper, on the one hand, and no authoritative denial that it had been presented to the President, on the other, had yet been made.

Upon such an arrangement of combustible material, the trial of John H. Surratt acted like a spark of fire.

On the second day (June 11th, 1867), during the impanelling of the jury, Mr. Pierrepont, the leading counsel for the United States, alluding to the rumors then flying about, took occasion to predict that the Government on that trial would set all these false stories at rest.

Among other things he said:

"It has likewise been circulated through all the public journals that

after the former convictions, when an effort was made to go to the President for pardon, men active here at the seat of government prevented any attempt being made or the President being even reached for the purpose of seeing whether he would not exercise clemency; whereas the truth, and the truth of the record which will be presented in this court, is that all this matter was brought before the President and presented to a full Cabinet meeting, where it was thoroughly discussed; and after such discussion, condemnation and execution received not only the sanction of the President but that of every member of his Cabinet."

The testimony in the case closed, however, and the summing up began, and there had been no attempt at a fulfillment of this prediction.

On Thursday afternoon, August 1st, Mr. Merrick, the junior counsel for the prisoner, then nearing the close of his address, twitted the prosecution with this breach of its promise in these words:

"Where is your record? Why didn't you bring it in? Did you find at the end of the record a recommendation to mercy in the case of Mrs. Surratt that the President never saw? You had the record here in Court.

"Mr. Bradley: And offered it once and withdrew it?

"Mr. Merrick: Yes, sir; offered it and then withdrew it.

> "Did you find anything at the close of it that you did not like? Why didn't you put that record in evidence, and let us have it here?"

Stung by the necessity of making some answer to this defiant challenge, Mr. Pierrepont on the moment sent for the record. And in response to the summons, Judge-Advocate Holt, who naturally must have followed the prosecution and trial with the most absorbing anxiety, on that very afternoon brought the record "with his own hand," "with his own voice" told its history, in the presence of "three gentlemen," to Mr. Pierrepont, and then left the papers with him.

On the succeeding day, August 2nd, Mr. Bradley, the senior counsel of the prisoner, renewed the attack:

> "It was boastfully said in the opening of this case that they would vindicate the conduct of the law officers of the Government engaged in the conspiracy trials. They would produce Booth's diary; they would show that the judgment of the court was submitted to the Cabinet and fully approved; that no recommendation for mercy for Mrs. Surratt--that no petition for pardon to the Government--had been withheld from the President. Is it so?"

The next morning, Saturday, August 3d, Mr. Pierrepont began his address to the jury. Having kept possession of the record since Thursday afternoon, and having been made acquainted with its history by Judge-Advocate Holt in such an impressive manner, he, thus, in his exordium, at last, redeemed the promise of the prosecution:

"The counsel certainly knew when they were talking about that tribunal" (i. e. the Military Commission), "and when they were thus denouncing it, that President Johnson * * * ordered it with his own hand, that President Johnson * * * signed the warrant that directed the execution, that President Johnson * * * when that record was presented to him, laid it before his Cabinet, and that every single member voted to confirm the sentence, and that the President with his own hand wrote his confirmation of it, and with his own hand signed the warrant. I hold in my hand the original record, and no other man as it appears from that paper ordered it. No other one touched this paper, and when it was suggested by some of the members of the Commission that in consequence of the age and the sex of Mrs. Surratt, it might possibly be well to change her sentence to imprisonment for life, he signed the warrant for her death with the paper right before his eyes--and there it is (handing the paper to Mr. Merrick). My friend can read it for himself."

This is the first appearance in public of the precious record. On Wednesday, July 5th, 1865, Andrew Johnson put his name to the death-warrant written on its back by Judge Holt. And, now, two years after, emerging from its hiding-place, it is flung upon a table in a court-room by the counsel for the United States.

Even now it seems to be destined to a most unsatisfactory publication. For the counsel of the prisoner decline to look at it, because (as Mr. Merrick subsequently explained), "he mistrusted whatever came from the

Judge-Advocate-General's office;" because it "had been carefully withheld until all opportunity had passed for taking evidence in relation to it;" and because the official report of the trial contained no recommendation of mercy. The mysterious roll of paper, consequently, lies there unopened, until Judge Holt comes to reclaim it that same afternoon; and that officer is careful, when receiving it back, to repeat over again, before other witnesses, the same history of the document, he had told before to the counsel for the prosecution, and which that counsel had just retold to the jury.

But that had been said and done which must blow away the atmosphere of unwholesome secrecy which had so long enveloped this addendum to the record. The explicit declaration of the counsel for the United States, made in a crowded court-room on so celebrated a trial, with the "identical paper" in his hand, that the President had laid the record before his Cabinet and "every single member voted to confirm the sentence," and that the President had signed the death-warrant with the "suggestion" of commutation "right before his eyes," was immediately published far and wide, and must have been read on Sunday, the 4th, or at latest on Monday, the 5th, by the President himself. And the President was certainly astounded. By a most singular providence, Judge Holt himself, in a letter written to himself, at his request, by his chief clerk, and published by him in 1873 for another purpose, has furnished independent proof that the President was now for the first time startled into sending for the record.

Here is what Chief Clerk Wright says:

"On the 5th day of August, 1867, Mr. Stanton, the Secretary of War, sent for me, and in the presence of General Grant asked me who was in charge of the Bureau in your absence. I informed him Colonel Winthrop. He requested I should send him over to him, which I did. The Colonel returned and asked me for the findings and sentence of the conspiracy trial, telling me he had to take it to the President. On taking the portion of the record referred to from the bundle, I found, from the frequent handling of it, several of the last leaves had torn loose from the ribbon fastening, and to secure them I put the eyelet in one corner of it."

The Judge-Advocate-General, though in court on Saturday getting back the record and retelling its history, was absent, it would appear, from his office on Monday, or was considered absent by Stanton, who it also appears was still Secretary of War and in communication with Johnson. It was thought best to employ a deputy to carry the papers to the President. Holt, probably, had no stomach for another "confidential interview," with the identical record in his hand.

Let Andrew Johnson himself tell what followed. The statement is from his published reply to Holt in 1873, and was made with no reference to, and apparently with no recollection of, the foregoing incidents of the John H. Surratt trial:

"Having heard that the petition had been attached to the record, I sent for the papers on the 5th day of August, 1867, with a view of examining, for the first time, the recommendation in the case of Mrs.

Surratt.

"A careful scrutiny convinced me that it was not with the record when submitted for my approval, and that I had neither before seen nor read it."

It may have been only a coincidence, but on this very day, Monday, August 5th, 1867, and necessarily after the sending for the record, because that was done through the Secretary of War, the following interesting missive was dispatched by the President to that member of his Cabinet:

"Sir: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted."

Stanton immediately replied:

"Public considerations of a high character constrain me not to resign before the next meeting of Congress."

And, on the 12th, he was suspended from office.

But Andrew Johnson was not the only interested personage who read the explicit declaration of Mr. Pierrepont. The statement that every member of the Cabinet voted to confirm the sentence of Mrs. Surratt, with the record, including, of course, the recommendation, before them, must have been read also by William H. Seward, Edwin M. Stanton, Hugh McCulloch, and Gideon Welles, the members of that "full Cabinet" who still remained in

office. They surely knew the truth of the statement, if it was true, or its falsity, if it was false. If it was true, is it not perfectly inconceivable that the President, conscious that these four of his confidential advisers had seen the record and voted to deny the petition, would have dared to enact the comedy of sending for the record, and then brazenly assert that the petition had not been attached to it when before him, and that he had neither seen nor read it?

And if he had been guilty of so foolhardy a course of action, now was the time for the Judge-Advocate to fortify the declaration which he had inspired Mr. Pierrepont to make, by appealing to these members of the Cabinet to confront their shameless chief with their united testimony, and forever silence the "atrocious accusation."

From his course of proceeding at a later day, it is not probable that he made any such attempt. At all events, he got no help from Seward, from McCulloch or from Welles. Nay, he got no help to sustain his history of the record, even from Stanton. If help came from that quarter at all, it was to shield him from the awakened wrath of the hood-winked Executive, by drawing the fire upon the head of his department.

But what the Judge-Advocate-General did do, in view of the crisis, is sufficiently apparent. He took immediate measures to retract all that portion of Mr. Pierrepont's declaration of Saturday, which expressed or implied any knowledge on the part of the Cabinet of the disputed paper.

The counsel for the United States had continued his speech to the jury all

day Monday, apparently unconscious of the tempestuous effect of his statement of Saturday, and of the predicament in which it had involved his informant. In the evening, he must have had a "confidential interview" with Judge Holt. For, on rising to resume his speech on Tuesday morning, the 6th of August, from no apparent logical cause arising from the course of his argument, he saw fit to recur to the now absent record, and to interpolate the following perfectly insulated and seemingly superfluous piece of information:

> "You will recollect, gentlemen, when a call was made several days ago by Mr. Merrick * * asking that we should produce the record of the Conspiracy Trial, that I brought the original record here and handed it to counsel. I then stated that as a part of that record was a suggestion made by a part of the Court that tried the conspirators, that, if the President thought it consistent with his public duty, they would suggest, in consideration of the sex and age of one of those condemned, that a change might be made in her sentence to imprisonment for life. I stated that I had been informed that when that record was before the President, and when he signed the warrant of execution, that recommendation was then before him. I want no misunderstanding about that, and I do not intend there shall be any. That is a part of the original record which I here produced in Court. It is in the hand-writing of one of the members of that Court, to wit, General Ekin. The original of that is now in his possession and in the hand-writing of Hon. John A. Bingham. When the counsel called for that record, I sent the afternoon of that day to the Judge-Advocate-General, in whose possession these records are. He

> brought it to me with his own hand, and told me with his own voice, in the presence of three other gentlemen, that that identical paper, then a part of the record, was before the President when he signed the warrant of execution, and that he had a conversation with the President at that time on the subject. That is my authority. Subsequently to this, having presented it here, the Judge-Advocate-General called to receive it back, and reiterated in the presence of other gentlemen the same thing. That is my knowledge and that is my authority."

Here we have, then, the final statement of his side of the case, made by Judge Holt, through the mouth of counsel, revised and corrected under the stress of the occurrences at the White House and the negatory attitude of the members of the Cabinet present on the spot. Stripped of the allegation that the record was laid before the Cabinet and voted upon by every member of the Cabinet, its affirmations, carefully confined to "the confidential interview" between the President and the Judge-Advocate, go no farther than that "the identical paper" was "before the President," when he signed the death warrant, and they had a conversation "on the subject."

"He wants no misunderstanding" and does "not intend there shall be any." The counsel in great detail relates how he came by his facts. "That is my knowledge and that is my authority." Of course it is open to everybody to believe, if he choose, that the talk of the Cabinet meeting and of the unanimous vote of its members against the petition, was a mere rhetorical exaggeration of a simple narrative of Holt relating the incidents of an

interview between the President and himself, struck off by Judge Pierrepont in the full fervor of his eloquence; but, nevertheless, it remains true that the Judge-Advocate, until the catastrophe befell, was satisfied it should stand, rhetoric and all; because he "reiterated the same thing" on Saturday, after the counsel had concluded his statement, and on Monday the counsel continued his address all day without being advised of the necessity for any retraction.

Be this as it may, there is now, at the last, no appeal by the Judge-Advocate to the members of the Cabinet, all of whom were living, as witnesses to the President's knowledge of the petition of mercy. He abandons hope of corroboration from members of the Cabinet, and he takes his stand upon the single categorical affirmation, that the "identical paper" formed part of the record when the record was before the President in 1865.

And, singular as it may appear, this is the very thing that the President does not categorically deny; he only infers the contrary from the appearance of the record in 1867.

The single categorical negation of the President is that he neither saw nor read the recommendation. And, singular as it may appear, this the Judge-Advocate does not categorically affirm; he leaves it to be inferred from his averment of the presence of the paper and a conversation on the subject.

In short, the statements of the two disputants are not contradictory. Both

may be true. And, when we recollect the feeble state of health of the President at the time of the "confidential interview" and his mood of mind towards the distasteful task forced upon him in a season of nervous debility; when we recollect the mode and manner the Judge-Advocate adopted of writing out the death warrant; it will seem extremely probable that both statements are true. The President made no "careful scrutiny" of the record in 1865, or he would not have needed to do so in 1867. The Judge-Advocate, inspired by his master, would not be too officious in pointing out to the listless and uninquiring Executive the superfluous little paper. He might do his whole duty, by conversing on the subject of the commutation of the sentence of the one woman condemned, and, then, by so placing the roll of papers for the President's signature to the death warrant as to bring the modest "suggestion" of the five officers "right before his eyes," though upside down. If the sick President did not carefully scrutinize the papers, was that the Judge-Advocate's fault? Nay, in writing out the death warrant in the inspired way he did, this zealous patriot may have felt even a pious glow, in thus lending himself as an instrument to ward off a frustration of Divine justice. Alas! one may easily lose one's self in endeavoring to trace out the abnormal vagaries of the "truly loyal" mind, at that period of hysterical patriotism.

* * * * *

After these incidents on the Surratt trial, and at the White House, there could be no more mystery about the recommendation to mercy. It was historically certain that such a document, or rather a "suggestion," did in fact emanate from the Commission, and was at some time affixed to the

record. Left out of Pitman's official compilation, nevertheless it was there. The only question about it which could any longer agitate the people was, had it been suppressed? And this, unfortunately, was now narrowed down to a mere question of veracity between the President and his subordinate officer, as to what occurred at the Confidential Interview; and which, moreover, threatened to resolve itself into a maze of special pleading about the lack of attention, on the part of the Executive, and the duty of thorough explanation, on the part of the Judge-Advocate, in the delicate task of approving the judgment of a Military Commission.

Whether this unsatisfactory and ticklish state of the issue was the cause or not, nothing was done in consequence of these revelations of the Surratt trial. The President, indeed, plunged as he was in the struggle to get rid of Stanton, which finally led to his impeachment, and remembering his own remissness in not scrutinizing the papers before he signed the death-warrant, could have had but little inclination to provoke another conflict, on such precarious grounds, by attempting the removal of the incriminated subordinate of his rebellious Secretary. He kept possession of the record, however, long enough to subject it to a thorough inspection by himself and his advisers, for (as appears from the letter of the chief clerk already quoted) it was not returned to the Judge-Advocate-General's office until December, 1867.

The Judge-Advocate, on his part, remained likewise passive and displayed no eagerness for a vindication by a court of inquiry.

He pleads in 1873, as excuse for his non-action, that "it would have been

the very madness of folly" for him "to expose his reputation to the perils of a judicial proceeding in which his enemy and slanderer would play the quadruple role of organizer of the court, accuser, witness and final judge." Forgetting the "history" he had told Mr. Pierrepont, and then withdrawn, in 1867, he actually claims that he "was not aware that any member of Mr. Johnson's Cabinet knew of his having seen and considered the recommendation," and that he "was kept in profound ignorance of" "this important information" "through the instrumentality of Mr. Stanton"!

But, were it credible that the Judge-Advocate "supposed," as he says, "that this information was confined to" the President and himself, (not even his master, Stanton, knowing anything of the petition), even in that case the "perils" of an investigation, which he affects to dread, were all on the side of his adversary. The necessity for the President of the United States, himself, to come forward as the one sole witness to his own accusation--especially when the charge involved an admission of his own delinquency, and was to be met by the loud and defiant denial of his arraigned subordinate--was enough, of itself, to deter the Chief Magistrate of a great nation from descending into so humiliating a combat.

But, to lay no stress upon this consideration, it must be manifest to any one acquainted with the state of public feeling at the time, that the single, uncorroborated testimony of the maligned, distrusted Andrew Johnson, branded as a traitor by the triumphant republican party, on the eve of impeachment, a hostile army under his nominal command, Stanton harnessed on his back, unfriendly private secretaries pervading his apartments, and detectives in his bed-chamber; in support of such a

"disloyal" charge, disclosing, as it was sure to be asserted, a latent remorse for the righteous fate of the she-assassin; would have been hailed in all military circles with derision. The popular, the eminently loyal, the politically sound Judge-Advocate, backed by Stanton, Bingham and Burnett, by his Bureau and his Court, by General Grant and the Army, had certainly nothing to fear.

But, though this hero of so many courts-martial appears to have had no mind for a dose of his own favorite remedy, he began, in his characteristic secret way, to collect testimony corroborative of his version of the confidential interview. He writes no letter to a single Cabinet officer. But, immediately after the close of the John H. Surratt trial (August 24, 1867), he writes to General Ekin reminding him of an interview, soon after the execution, in which he (Holt) mentioned that the President had seen the petition; and he obtains from that officer the information he sought. In January, 1868, he quietly procures from two clerks in his office, letters testifying to the condition of the record when it arrived from the Commission, when the Judge-Advocate took it to carry to the President, and when he brought it back. It is needless to say that, though these clerks state that the page, on which the petition was written, and the page, on which the latter portion of the death-warrant was written, are "directly face to face to each other;" they do not notice that, when the death-warrant was signed, the page, on which the petition was written, must have been, either under the other pages of the record, or upside down.

In this same month, the resolution of the Senate refusing to concur in the

suspension of Stanton was adopted (January 13th, 1868). General Grant, the Secretary of War ad interim, in violation of his promise to the President, as alleged by the latter, thereupon surrendered the office to the favorite War-Minister, who thus forced himself back among the confidential advisers of the President.

On the 21st of February, the President, with one last desperate stroke, removed him from office; and on the 24th, Andrew Johnson was impeached for this "high crime."

In the midst of his troubles, the President finds time to pardon Dr. Mudd (Feb. 8th), who soon returns to his family and friends.

The impeachment trial ends May 26th, the President escaping conviction by but one vote; and Stanton at last lets go his hold on the War office.

In December, 1868, the Judge-Advocate is privately seeking testimony from the Rev. J. George Butler, of Washington, the minister who attended Atzerodt in his last moments, whose letter of the 15th is most satisfactory on Johnson's belief in the guilt of Mrs. Surratt, but most unsatisfactory in regard to the petition of mercy.

On the 1st of March, 1869, among the last acts of his stormy administration, the President undid, as far as he could then undo, the work of the Military Commission by setting Arnold and Spangler free; O'Laughlin having died from the effects of the climate. Had the five officers of the Military Commission been permitted to exercise their power

of mitigating the sentence of Mrs. Surratt, as they did in the cases of these men, or had the Executive granted their prayer for clemency; the President might have signalized the close of his term by a still more memorable pardon, and the mother, rescued from death by mercy, would have joined the son, rescued from death by justice.

During the four years of the first administration of President Grant, while Andrew Johnson was fighting his way back to his old place, among the people of Tennessee, the story of the suppressed recommendation ever and anon circulated anew with unquenchable vitality. The reappearance of Mudd, Spangler and Arnold, as free men; the "doubtful" death of Stanton, "with such maimed rites" of burial, as might "betoken

> The corse, they follow, did with desperate hand
> Fordo its own life;"

every incident connected in any way with the tragedy of the woman's trial and death, and every prominent event in the career of the men who had surrounded the illstarred successor of the murdered Lincoln in the awful hour of his accession, revived the irrepressible question; and the friends of Mrs. Surratt's memory, and the friends of Johnson, alike, each by their own separate methods, on every such opportunity, appealed and re-appealed to the public, asserting again and again the suppression of the plea for mercy, propagating what General Holt brands as "the atrocious accusation," or, as he elsewhere characterizes their actions, "for long years wantonly and wickedly assailing" the ex-Judge-Advocate. And yet, during all these years, the baited hero is silent. He lies low. As far as appears, he makes

no further efforts to secure testimony. His friend and old associate, Bingham, is by his side, yet he makes no appeal to him. He keeps close by him the letters he has already secured to substantiate his own version of the confidential interview. But he seeks for no Cabinet testimony. His stern master in the War Department, after the acquittal of the President, lays down his sceptre, and then, though the deadliest enemy of Johnson, is allowed to die in silence. Seward lives on and is asked to give no help. The ex-Judge-Advocate still lies low.

At length came the appointed time.

William H. Seward died on the 12th day of October, 1872.

On the 11th day of February, 1873, Gen. Holt makes his appeal for testimony from the officers of Johnson's first Cabinet, by letter to John A. Bingham, requesting him to furnish his recollections of the late Stanton and the late Seward. On March 30th, 1873, he writes to James Speed, Ex-Attorney-General, inclosing a copy of Bingham's reply. On May 21st, 1873, he writes to James Harlan, Ex-Secretary of the Interior, inclosing a copy of Bingham's reply. In July, 1873, he writes to General Mussey, once Johnson's private secretary; and, in August, armed with the answers of these correspondents and with the letters he had gathered in 1867 and 1868, and unprovoked by any revivification of the old charge, he rushes into the columns of the Washington Chronicle with his formidable "Vindication."