

JOSEPH HOLT: SAVIOR OF THE UNION

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John David Healy

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ABSTRACT

Joseph Holt:
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John David Healy

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This dissertation reviews the life and work of a little-known Civil War figure, Joseph Holt of Kentucky. Holt held two positions in President James Buchanan's cabinet. First, he was Postmaster General appointed to reform a service which had serious problems with corruption and logistics. Next, he became Secretary of War because he was one of the few loyalists left in Buchanan's cabinet. His actions in that post influenced the events in the opening conflict of the Civil War—the firing on Fort Sumter.

Holt was also a fine orator and was able to sway the Democratic Convention to name Richard Johnson as Van Buren's running mate. Despite this, Holt remains what Elizabeth Leonard called "Lincoln's Forgotten Ally." When Lincoln took office, the new president received aid from Holt in keeping Kentucky, a crucial border state, largely in the Union column. Later, Lincoln named him Judge Advocate General, a position which placed him in charge of a vast machine of military discipline. It also got him embroiled in some highly political cases, such as that of Clement Vallandigham.

When Lincoln was shot as part of a conspiracy to kill not only Lincoln but also Vice President Andrew Johnson and Secretary of State William Seward, Holt became chief police officer, prosecutor and assistant to the defense all at once. While several conspirators were found guilty, the convictions of likely co-conspirator John Surratt and

Confederate President Jefferson Davis eluded him. Holt's career continued despite his being involved in the Tenure in Office controversy, and he did not resign until after President Ulysses S. Grant took office. When Holt died in 1894, the *New York Times* noted that he was one of the last living links with the Civil War leadership.

This dissertation provides a synthesis of numerous primary and the few secondary sources pertaining to Holt, putting forth a unique portrait of what might be termed a reluctant Unionist: a man from the border states with slaves himself but with a desire to stay with the Union. America today is different in several ways from what it might have looked like without Joseph Holt.

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And Peter Maris can get his book back.

Chapter 1

INTRODUCTION

Overview and Methodology

Joseph Holt is, according to a recent biographer, “Lincoln’s Forgotten Ally.” Lincoln’s Team of Rivals have not been forgotten and Seward, Stanton, and Chase have received their own biographies, but Holt’s influence is infrequently explored.¹ Holt was often with Lincoln, who gave him full confidence after Holt helped to save Kentucky from falling into Confederate control. As Lincoln mused, “I may have God on my side, but I must have Kentucky.”²

Let us not forget either that Holt had been Secretary of War for a few short weeks under President James Buchanan. The days in office do not match his influence at that critical moment when South Carolina sought to strangle the United States Army in Charleston Harbor. Holt had a long federal career: almost 20 years from his first position as Commissioner of Patents until his resignation as Judge Advocate General (the first of 34 such soldiers) in the Grant Administration.³

Holt’s important role in Civil War-era politics was largely unexplored until 2011. Then, three serious studies followed in quick order. This paper hopes by melding all these sources to provide a truly comprehensive view of Holt’s life. For with Holt, it is easy to

¹ Elizabeth Leonard, *Lincoln’s Forgotten Ally: Judge Advocate General Joseph Holt of Kentucky* (Chapel Hill: University of North Carolina Press, 2011).

² Qtd. in Justice John D. Minton (speech at Joseph Holt Community Day, Hardinsburg, KY, Sept. 28, 2012).

³ Frederick Borch (speech at Joseph Holt Community Day, Hardinsburg, KY, Sept. 28, 2012).

get bogged down in the 105 containers (really large scrapbooks) of Holt's papers left in the Manuscript Division of the Library of Congress. Also, the National Archives house reel after reel of microfilm concerning the actual courts-martial during his tenure. Some of Holt's most notable speeches have recently been created in a digital format. The three books on Joseph Holt include two rather long-winded volumes and a third written basically as a guide to the Holt Mansion reconstruction work now taking place in Kentucky. I have synthesized these sources and hopefully have provided my own portrait of what might be termed a reluctant Unionist: a man from the border states with slaves himself but with a desire to stay with the Union.⁴

The work will also point the way to the need for further research. What was Holt's dynamic in the give and take of Kentucky politics?⁵ And what clue does Holt provide to the role of federalist philosophy outside the "true believer" areas of New England, the Western Reserve, and upper New York State? Finally, Holt's life is another clue in perhaps one of the greatest obsessions by the general public concerning American history—why was President Abraham Lincoln shot?

Holt's Life: An Overview

Holt was born on January 6, 1807 in Breckenridge County, Kentucky. Holt was told early on by his family, particularly his uncle, that he was "destined to move in circles of great influence."⁶ When he entered college, it hurt his pride that the Catholic head of

⁴ Take, by contrast, the example of Confederate leader Robert E. Lee, who went with his native Virginia.

⁵ Elizabeth Leonard has promised to provide that information. Leonard, *Lincoln's Forgotten Ally*.

⁶ Holt Papers, Container 5, Library of Congress, Washington, D.C.

St. Joseph's College did not recognize his ability and accused him of plagiarism because his work was so good; as a consequence, Holt left the school.⁷ He made a lot of money practicing law in the first half of his life, not that he needed it because his grandfather had owned a huge piece of prime land that stretched from Hardinsburg ten or fifteen miles back to the Ohio River. It was beautiful land with good soil underlain by limestone of such fine quality that the deposits in nearby Indiana would supply the material for many of Washington, D.C.'s greatest monuments.⁸

After his wife died of tuberculosis, Holt had what today would be termed a mid-life crisis. He left the practice of law (he claimed forever, although there is some indication he did take a few cases later in life). Holt took the grand tour twice, going from London to Mount Sinai and back through Berlin. He did this just as Europe was recovering from the Revolution of 1848.⁹ Col. Frederic L. Borch, the Regimental Historian and Archivist at the Judge Advocate General School in Charlottesville, VA,¹⁰ suggests that what he observed would later be the basis of his strong Unionism. Holt saw France, Austria-Hungary and Italy (among other places) torn apart by the rising up of the lower and middle classes demanding representation in their capitals. He also saw the physical splintering of empires. Holt made few comments on this situation, but perhaps it explains Holt's view of secession as so heinous an act, not because of slavery but because

⁷ Leonard, *Lincoln's Forgotten Ally*, 9-12.

⁸ "Indiana Limestone Institute of America," 2015, accessed Mar. 18, 2015, <http://iljai.com/>.

⁹ Leonard, *Lincoln's Forgotten Ally*, 58-61.

¹⁰ Borch.

of disunion. Holt, after all, had a few slaves, and while he was concerned about their welfare, he never saw a need as, for example, Jefferson did to make a verbal protest against the institution.¹¹ When Holt finally settled down again, he became one of the finest spokesmen for the Unionist cause.

Holt had already developed a reputation as an orator. He appeared at the Baltimore Democratic convention in 1835 that selected Martin Van Buren as its standard bearer. There were no microphones in that day, nor were megaphones in frequent use, but his voice filled the Fourth Presbyterian Church with the praises of Richard Johnson of Kentucky as Van Buren's running mate.¹² Van Buren wanted Johnson, but a faction in the Virginia delegation opposed his choice, as he had a black slave as a mistress. Holt took the lectern. It was the type of speech to be typical of Holt, "If at this moment you transport yourself to the Far West, you would find upon one of her green and sunny fields a person who had sprung from the fields, who was still one of them, and his heart in all its recollections, its hope and its sympathies was blended with the fortunes of the toiling millions When this nation was agonizing and bleeding at every pore, when war had desolated with fire and sword your northern frontier He rallied around him the chivalry of his state and dashed with his volunteers to the scene of hostilities resolved to perish or retrieve the national honor."¹³ Thus did Holt describe Johnson's role in the War of 1812. Holt's speech closed in a manner that seems cliché, but it might be a fit model

¹¹ Leonard, *Lincoln's Forgotten Ally*, 195-96.

¹² Susan B. Dyer, *Lincoln's Advocate: The Life of Judge Joseph Holt* (Morley, MO: Aeolian Press, 2009), 64.

¹³ Holt Papers, Container 5.

for the later ones. Intoned Holt, “There is a voice from the great valley of the west, the north, the south calling for this war worn soldier—such sir is Richard M. Johnson of Kentucky.”¹⁴ He finally noted that the Democratic Party should “attach itself to the hopes of the people.”¹⁵ The Convention thereupon nominated Johnson for the vice-presidential post and the nominee went on to fill the position after Van Buren was elected. Holt’s performance foreshadowed William Jennings Bryan’s renowned Cross of Gold speech some 50 years later and whose speech-making style seems to have been fashioned in some sense after Joseph Holt’s—long, powerful, poetic, and sermon-like.. Holt’s tomb in Hardinsburg lists his accomplishments—at the top is orator.¹⁶

In fact in 1882, Representative (and Presidential candidate) James G. Blaine would give a speech before the House on the passing of President James A. Garfield. Blaine noted that Garfield had worked as one of Holt’s subordinates. And as a sidelight, he noted, “one who brought to that service the ripest learning, the most fervid eloquence, the most varied attainments, who labored with modesty and shunned applause, who in the day of triumph sat reserved and silent and grateful—as Francis Deak in the hour of Hungary’s deliverance—was Joseph Holt.”¹⁷ Garfield went on to note that Holt had an “honorable retirement [with] the respect and veneration of all who love the Union of the States.”¹⁸ But, of course, such influence brings enemies.

¹⁴ Holt Papers, Container 5.

¹⁵ Holt Papers, Container 5.

¹⁶ Minton, Holt Community Day.

¹⁷ Hazeltine Mayo Williamson, *Orations from Homer to William McKinley*, vol. 21 (New York: P.P. Collier & Son, 1902), 9155.

¹⁸ Williamson, 9155.

Between the first and second trips to Europe and related areas, Holt got remarried. He built his house, which remains standing and is on the national list of landmarks of historic places. Pride made him accept President Buchanan's offer to serve as head of the Patent Office. Not really very qualified for the office, Holt managed to do a fine job. As *Scientific American* remarked at the time: "Mr. Holt, upon assuming the duties of his office, expressed the determination to administer the Patent Office in liberal spirit in which it is evident they were designed to be applied."¹⁹ Holt's next step was to the Post Office, a cabinet agency usually awarded to a political protégé, such as Andrew Jackson's Amos Kendall and Lincoln's Montgomery Blair. Holt saw it more as a technocratic position, and he spent time fiddling with Post Office routes and schedules.²⁰ He hoped, it seems, to keep the Union together by effective communication. In this he somewhat succeeded—even at the height of the Civil War, the mail still moved between North and South.²¹ Despite the usually keen interest of philatelists in all matters related to stamps, there is little available on this period of his life.

Then came the defining moment of his career. After and the defection the Secretary of War to the Southern cause, Holt became War Secretary just as the South was waiting to secede. By that point Buchanan was a lame duck, but a War Secretary was needed badly. And while Buchanan clearly wanted to keep his own hand in events, he

¹⁹ *Scientific American*, Mar. 20, 1857.

²⁰ Joseph Holt, *Report of the Postmaster General* (Washington, D.C., 1860). A manuscript copy is available at the library of the American Philatelic Society in Bellefonte, Pennsylvania.

²¹ Holt, *Report of the Postmaster General*.

needed someone loyal to the Union to literally hold the fort. Holt was the most convenient and loyal person to fill the bill.²²

Holt and Buchanan agreed that the fort needed to be held. Holt would have provided supplies through the Confederate lines to relieve the distress of the several men holding it.²³ Buchanan would have none of that, thinking that it would surely create a hostile response to Buchanan's attempts to persuade the South to remain in the Union.²⁴ It would appear the President largely expected to save the Union by serving afternoon tea at the White House with such Confederate emissaries as the aging John Tyler. Holt kept matters under control from the first threat in Charleston Harbor in December of 1860 until the fort was relieved right after Lincoln was inaugurated. In the last few days, it was Holt as holdover Secretary of War who maintained the troops confined to Sumter, not the Secretary-designate Simon Cameron. And for this he gets almost no credit in accounts of the era. But the *Charleston Mercury* knew his importance. It wrote after Holt stepped down that he "did not deserve the honor of an assassination."²⁵ But if he ever returned to the South, "he would never return to the North."²⁶

When Cameron finally arrived in Washington, on March 6, Holt left town.²⁷ Holt realized that Kentucky would be an early battleground. As stated earlier, Lincoln said that

²² Leonard, *Lincoln's Forgotten Ally*, 228-30.

²³ W.A. Swanberg, *First Blood: The Story of Fort Sumter* (New York: Charles Scribner's Sons, 1957), 119.

²⁴ Swanberg, 119.

²⁵ "Be Just," *Charleston Mercury* as reprinted in *San Francisco Bulletin*, Mar. 22, 1861.

²⁶ "Be Just," *Charleston Mercury* as reprinted in *San Francisco Bulletin*, Mar. 22, 1861.

²⁷ Leonard, *Lincoln's Forgotten Ally*, 126.

he had to have Kentucky, and a major battle loomed early in the war for control of the state. Holt then gave one his most famous speeches early in the War: the famous “Fallacy of Neutrality” oration.²⁸

Kentucky had an unusual position historically. The extreme western counties of Virginia early broke away from the state and formed Kentucky: one of the first new states after the original 13. Far from making it thankful to the federal government, in 1798 it passed the Kentucky Resolves which argued that a state could nullify an act of Congress. But Jefferson looked so reverently to the West that Kentucky soon calmed down and became, through its illustrious senator, Henry Clay, a supporter of federally-sponsored internal improvements.²⁹ Although it had sown the seeds of nullification, it did not support South Carolina in the Nullification Crisis of 1831-32. But Kentuckians in the antebellum period considered themselves Southerners, and there were a quarter of a million slaves in the state, including a few held by Joseph Holt.³⁰ In 1859, with Clay’s Whigs long ago finished as a party, Kentucky elected a Democrat and a Holt politically ally—Beriah Magoffin—Governor.³¹ In the subsequent Presidential race, Holt backed first John C. Bell and then John C. Breckinridge of his home state as nominee on the

²⁸ Joseph Holt, “The Fallacy of Neutrality,” *New York Times*, Jul. 18, 1861, accessed Mar. 25, 2015, <http://www.nytimes.com/1861/07/18/news/fallacy-neutrality-noble-speech-hon-joseph-holt-kentucky-urged-her-duty.html>.

²⁹ Robert Remini, *Henry Clay: Statesman for the Union* (New York: W.W. Norton & Company, 1991).

³⁰ Leonard, *Lincoln’s Forgotten Ally*, 49-52.

³¹ Leonard, *Lincoln’s Forgotten Ally*, 79.

Democratic ticket.³² Lincoln did miserably in Kentucky.³³ Another Holt confidant, Robert Breckinridge, then stepped forth. An uncle of the candidate, a lawyer and minister, Breckinridge believed in the nation and the Union and the dire effects of Catholicism.³⁴ During a special session of the Legislature looming in February 1861, Breckinridge came forth arguing that while the preservation of slavery was an important economic issue, it would be folly to let that one issue control the State's future with the Union.³⁵ After the Sumter firing a couple of months later, Magoffin refused to aid the Union by supplying troops "against our sister Southern States."³⁶ By this point it was becoming a personal matter. In a letter written to Holt in Washington, his aunt Mary warned him the State was on the brink of secession. She even warned him that the Knights of the Golden Circle planned to kill Union leaders, presumably including Joseph himself.³⁷

On May 28, Lincoln established the military department of Kentucky. He apparently thought Robert Anderson, the hero of Sumter, would rally the State, but Anderson was too tired from the Charleston ordeal to be the strong force Lincoln needed.³⁸ By that point, Lincoln and Joshua Speed, later Lincoln's attorney general, were

³² Breckinridge remains honored in Kentucky. It is hard to find a town without a street or hotel named after him.

³³ "Kentucky's Abraham Lincoln," Kentucky Legislature, accessed Mar. 18, 2015, <http://www.lrc.ky.gov/record/moments09RS/moments.htm>.

³⁴ Leonard, *Lincoln's Forgotten Ally*, 144-45.

³⁵ Leonard, *Lincoln's Forgotten Ally*, 137.

³⁶ Leonard, *Lincoln's Forgotten Ally*, 148-49.

³⁷ Leonard, *Lincoln's Forgotten Ally*, 140.

³⁸ Leonard, *Lincoln's Forgotten Ally*, 142.

implored Holt to rally the Union forces in his native State.³⁹ On May 31, Holt wrote a long letter designed for general circulation. He made 30,000 copies arguing that neutrality in this case was an untenable position. In a homely analogy, the former War Secretary argued that standing aside while rebellion raged was like standing by while one's own house burned down. Unionists carried the special election for federal positions held in June, 1861 and finally on July 1, Holt met Seward.⁴⁰ The conversation was not recorded, but Holt left Washington, D.C., later this day for his beloved Kentucky.

May 13 found Holt giving a speech on the fallacy of neutrality at the Masonic Temple in Louisville. Neutrality was but a "snake in the grass of indifference."⁴¹ Lincoln could "stare traitors in the face." He blamed Southern slaveholders for all the trouble. In vague prescience of the Kennedy inaugural speech 100 years later, Holt argued, "ask yourselves are you willing it shall be recorded in history that Kentucky stood by in the greatness of her strength and lifted not a hand to stay the catastrophe."⁴² Holt later spoke to Union forces raised in Kentucky and otherwise toured the state.⁴³ In August, he went east. The *Post* described Holt, speaking in Boston, as an "unselfish patriot," and *Harpers Weekly* noted that Holt was a "true patriot" for standing by his country at a time when patriotism was dangerous.⁴⁴

³⁹ Leonard, *Lincoln's Forgotten Ally*, 152.

⁴⁰ Holt, "The Fallacy of Neutrality," 3.

⁴¹ Leonard, *Lincoln's Forgotten Ally*, 147.

⁴² Leonard, *Lincoln's Forgotten Ally*, 147.

⁴³ Holt, "The Fallacy of Neutrality."

⁴⁴ Leonard, *Lincoln's Forgotten Ally*, 149.

But in September, matters took a depressing turn, courtesy of John C. Fremont, the Union general in Missouri. After the Union lost the battle of Wilson’s Creek, Fremont declared state-wide martial law and ordered the freeing of all slaves in the area.⁴⁵ He did this on authority of a recent Federal act allowing the seizure—not freeing—of slaves. Before anyone could act, Lincoln himself countermanded the order.⁴⁶ Holt (in a preview of his later job) personally served the order on Fremont.⁴⁷ It also helped that a young Union officer soon had his first victory at Paducah, Kentucky. His name was Ulysses S. Grant. Neutrality was no longer tenable for the state of Kentucky. A grateful Lincoln talked with Holt at the White House and Holt may have been offered the post of Secretary of War.⁴⁸ It was the end of Holt’s “retirement.”

What Holt did acquire after that White House chat was membership on two commissions investigating claims against the Government in the West—one specifically directed toward providing reparations to those injured by Fremont. When the commission’s work was done, the *New York Times* noted the immense savings to the government, which were attributed largely to Holt’s influence.⁴⁹ For its part, the Union Pacific company held vast claims in the West under the railway land grant act, and it rewarded Holt by naming a county in Nebraska after Holt.⁵⁰ The Library of Congress

⁴⁵ Leonard, *Lincoln’s Forgotten Ally*, 150-52.

⁴⁶ Leonard, *Lincoln’s Forgotten Ally*, 150-52.

⁴⁷ Leonard, *Lincoln’s Forgotten Ally*, 152. It is not clear on what authority Holt did this.

⁴⁸ Leonard, *Lincoln’s Forgotten Ally*, 155-56.

⁴⁹ “News of the Day, the Rebellion,” *New York Times*, Oct. 27, 1861.

⁵⁰ Holt County (at the northeast corner of Nebraska) is the second largest in the state, but the website makes no reference to the origin of the county’s name.

issued a very ornate certificate to Holt.⁵¹ This work kept him going into the first part of 1862, and he was often out of Washington, as Shiloh and New Orleans fell to the Union blue.⁵²

Horatio Gates was George Washington's adjutant-general. It was his job to promulgate Army rules and see that they were enforced.⁵³ A similar position must have existed ever after, but it was never a formal position. In July, 1862, someone decided that the United States Army, which had grown from 16,000 professional soldiers to over a million men, most with no prior military experience, deserved a full-time enforcement officer. The new "advocate-general" would oversee an office of designated subordinate advocates, essentially the military version of the Attorney General's office.⁵⁴ One of its duties would be adjusting claims against the military; most military law decisions to this day are not about military insubordination but rather they are about damage claims.⁵⁵ The law creating the position was passed on July 17 and also enabled the President to confiscate slaves from their owners as part of the war effort. Holt became Advocate General around September 1.

Holt quickly fell into a routine. The President as commander-in-chief was the last venue for an appeal of the judgment of a court martial. While many were for minor

⁵¹ Holt Papers, Container 117.

⁵² Holt Papers, Container 50.

⁵³ "History of the Adjutant Generals Corps," US Army, accessed Mar. 18, 2015, <https://www.hrc.army.mil/TAGD/HistoryoftheAdjutantGeneralsCorps>.

⁵⁴ Joshua F. Kastenber, *Law in War, War as Law: Brigadier General Joseph Holt and the Judge Advocate General's Department in the Civil War and Early Reconstruction, 1861-1865* (Durham, NC: Carolina Academic Press, 2011), 43-74.

⁵⁵ See any volume of opinions of the Four Courts of Military Appeals.

offenses like drunkenness, desertion could carry the death penalty and there were plenty of deserters. Holt (and presumably his staff) would analyze the cases, digest them for the President, and make a recommendation. Holt would then travel on many mornings to the White House, where he would review the decisions with the President. This is one Holt role which has been given some study, and Carl Sandburg is convinced that Holt was usually the hard liner, with Lincoln inclined to let the scared private who deserted to tend his farm off the hook. Frankly, the records in the Holt papers do not indicate it, but if my estimate is accurate, Holt must have spent more time with the President than any non-cabinet officer or military figure, including Grant. If one book is accurate, Holt and Lincoln agreed 90 percent of the time.⁵⁶ Leonard speculates that the usually magnanimous Holt took the hard line out of revenge for the firing and near-starvation of Fort Sumter, while Sandburg believes that Lincoln empathized with the raw teenager suddenly recruited to die for his country.⁵⁷

Holt soon would have a more politically sensitive issue to deal with. Lincoln had received the authority to emancipate slaves and was looking for the opportunity to use it. As is well recorded, Lincoln exercised that power after Lee's retreat after Antietam. Holt's job was no longer limited to the military—he now had charge of implementing a law against Confederate civilians. Reaction in Kentucky was immediate and personal. Holt's former father-in-law Charles Wycliffe represented a Kentucky district in

⁵⁶ Carl Sandburg, *Abraham Lincoln: The War Years* (New York: Harcourt, Brace & Co., 1939).

⁵⁷ Leonard, *Lincoln's Forgotten Ally*, 162; Sandburg.

Congress. He stated that he would do anything to preserve the Union, but freeing the slaves was an act against the very Constitution the Union was trying to uphold.⁵⁸

Holt never got into the details of military strategy. But in late 1862, he was impatient with Federal inaction on a number of fronts. Leonard believes (without citing any evidence) that Holt was urging Lincoln to fire George McClellan, which Lincoln finally did with the enthusiastic support of such people as Holt's Unionist friend T. S. Bell.⁵⁹

Then there was James Speed, another long-time Holt friend and future Attorney General. Speed thought the Federal army had become lax and it was time to tighten things up, and General Don Carlos Buell's conduct at Perryville became the perfect target.⁶⁰ Perryville would become the last important battle waged within the borders of Kentucky. Its importance is often underestimated, despite the nearly 8,000 casualties.⁶¹ The battleground is in near-pristine condition in the wooded hills of Kentucky, not far from where Holt had once had a law office. Under one of them rested the head of Don Carlos Buell as the battle raged late on a summer's day. As the sun began to sink in the west, Union General Halleck, with the strong support of Stanton, gave Buell orders to proceed against the enemy, including James Longstreet. Buell replied that it was too late in the day to chase after the opposing forces and went back to sleep.⁶² Holt's opinion,

⁵⁸ Holt Papers.

⁵⁹ Leonard, *Lincoln's Forgotten Ally*, 163.

⁶⁰ Kastenberg, 77.

⁶¹ Battlefield Walking Tour Pamphlet, *Kentucky State Parks: Perrysville Battlefield*.

⁶² Kastenberg, 77-78.

published in full in the official records of the War of the Great Rebellion, charges Buell with laziness but exonerates him of insubordination charges since there was no higher officer on the field of battle, and Buell thus had power to follow or ignore the order as he deemed necessary as the highest officer on the spot.⁶³ It is an irony that Holt thus overruled the decision of the local court martial which had been nearer the field of battle at the time.⁶⁴

But if Holt inherited the Buell case, the FitzJohn Porter matter was conceived in his own shop. Porter was a general and a member of the West Point class of 1845. He had been attached to the Army of the Potomac under McClellan for more than a year but he stood accused of disobeying the orders of General Pope when he was transferred to the Army of Virginia.⁶⁵ Specifically, Porter was charged with disobeying orders at the second battle of Manassas, and Porter's act of disobedience was seen as open criticism of Pope.⁶⁶ At the trial, Holt was both prosecutor and court reporter and David Hunter, his newly-appointed assistant, served as the judge of the court. The lopsided justice (lopsided because Holt played multiple roles, and for other reasons) was closely followed in the papers.⁶⁷ Templeton Strong described the evidence against his old friend Porter as "crushing," and he called Porter's crimes equal to those of "Benedict Arnold."⁶⁸ By

⁶³ Kastenberg, 100.

⁶⁴ Robert R. Scott, ed., *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (Washington, Government Printing Office, 1887).

⁶⁵ Kastenberg, 80.

⁶⁶ Kastenberg, 83.

⁶⁷ Leonard, *Lincoln's Forgotten Ally*.

⁶⁸ Kastenberg, 170.

contrast, the McClellan camp saw the proceeding as an indirect attack on McClellan (who had been relieved by Pope shortly before the battle.)⁶⁹ Porter's attorney was Reverdy Johnson, who would later defend Mary Surratt.⁷⁰ After losing Porter's case to Holt, Reverdy Johnson turned to the court of opinion, claiming that the result had been unjust and the result of a plot by Lincoln and his friends.⁷¹

Holt replied through Andrew White who wrote to the papers as Holt's surrogate. White claimed the amazing thing was not that Porter was convicted, but that "his life was spared."⁷² This echoed the judgment of Union General George Meade.⁷³ This is because Porter's insubordination had taken place on the field of battle. Holt's friend T.S. Bell, in a letter to Holt, reminded the Advocate General that President Andrew Johnson had praised Holt's even-handedness during the court martial. Holt had been criticized by others, and he might have bristled under this criticism, but any observer of the Washington scene would merely say, "welcome to Washington."

Holt settled into his job during the remainder of Lincoln's first term. There were many cases to review. The decisions are in many rolls of microfilm in the National Archives, essentially untouched by historians, save for the work of Kastenberg, who examined a number of the cases. Holt certainly could be magnanimous when he wanted to be. One soldier came from a family of three brothers. Both of his brothers were lost in

⁶⁹ Kastenberg, 84.

⁷⁰ Kastenberg, 84,

⁷¹ Kastenberg, 89.

⁷² Kastenberg, 92.

⁷³ Kastenberg, 92.

the service, and when the soldier's father took sick, the son asked for a pass home. When it was denied, he left anyway. Convicted of desertion, he had been sentenced to an extra year of military service, but Holt simply allowed him to leave the army.⁷⁴

One aspect of the military jurisdiction over civilians got Holt embroiled in the legal effect of the Emancipation Proclamation. West Bogan, for example, was convicted of murder after slaying his former owner. Holt downgraded the murder charge, noting that Bogan's owner was cruel and had himself threatened to kill his slave for leaving the premises without permission.⁷⁵ In August of 1863, Holt wrote a position paper on the right of the Federal government to use former slaves "for the suppression of the rebellion."⁷⁶

In the position paper, Leonard argued that first, the Government had a constitutional right to use seized property as it saw fit. But then he took a more humane position. One that was frequently mentioned in the September 2013 Holt symposium—that the ex-slaves had already served as "effective soldiers" and there was no reason the Union should not employ all of the resources it had available.⁷⁷ Holt took the position that after the war was over, blacks should enjoy all the benefits enjoyed by citizens—a position that, according to Leonard, infuriated those who saw Holt aiding Lincoln's plot

⁷⁴ Kastenberg, 174.

⁷⁵ Leonard, *Lincoln's Forgotten Ally*, 176-77.

⁷⁶ Leonard, *Lincoln's Forgotten Ally*, 179

⁷⁷ Leonard, *Lincoln's Forgotten Ally*, 179-80.

for a racially equalitarian state.⁷⁸ Holt, it should be noted, later aided Grant in enacting measures to strengthen the legal position of freed blacks.⁷⁹

Holt also looked to the future when Francis Lieber asked him (through Union General Henry Halleck) to enforce a code of military conduct he had drafted. The code was the first formulation of the principle that even following military orders can lead one to be sentenced for “crimes against humanity.”⁸⁰ Lieber and Holt were angry about the Confederate murder of black Union soldiers. Lincoln subsequently issued General Order 252, requiring the killing of a white Confederate soldier for every black soldier killed (vengefully) in the line of duty. As Lieber put it, “the utter recklessness of our enemies in every respect—in truth, honor, oath, law, duty, language is, I think, their most prominent feature in this war. They dare to do things which no civilized people [have done in 20 years].”⁸¹ As the months of war moved on, Holt became more and more involved in matters bordering on the political. The first example was the matter of Clement Vallandigham, a rabble-rousing congressman from Ohio who sought to end the war immediately. In what was perhaps his most famous case until the assassination of Lincoln, Holt and local military authorities pursued Vallandigham to trial and then all the way to the United States Supreme Court, which would affirm his conviction.⁸² Lincoln

⁷⁸ Leonard, *Lincoln's Forgotten Ally*, 271.

⁷⁹ Leonard, *Lincoln's Forgotten Ally*, 291.

⁸⁰ Kastenberg, 241.

⁸¹ Holt Papers, Container 31.

⁸² Frank Klement, *The Limits of Dissent: Clement L. Vallandigham and the Civil War* (New York: Fordham, 1998), 258-94.

eventually decided not to make a martyr of Vallandigham and exiled him to Canada (from which he subsequently escaped.) In the textbooks, Lincoln takes most of the blame, as it was the beginning of Democrats calling him a dictator. But the impetus came in many ways from others, including Holt.⁸³

In the summer of 1864, Holt became head of the Army Bureau of Military Justice with the rank and pay of Brigadier General. He immediately headed to St. Louis, as he had wind of trouble brewing from local copperheads in the swing state of Missouri. While traveling through his native state on the way, he discovered that local Unionists were under siege from underground movements such as the Knights of the Golden Circle. Frank Klement claims that these groups were innocent fraternity groups, of which there were a plethora in mid-century United States.⁸⁴ By contrast, Holt wrote a strong report linking the groups to McClellan. Urged by Stanton to publish the results, he did so on the eve of the November 1864 election.⁸⁵ In the same month as the election, Holt began work on Lambdin Milligan, another copperhead politician. Milligan had urged in mid-1863 that the North let the Southern states go, and was also active in a group called the American Knights.⁸⁶ Even more alarming to Holt must have been the news that the Knights were planning to use Louisville as a staging area for back door attacks on Federal forces. Milligan was prosecuted by a Holt-arranged court martial.⁸⁷ The case

⁸³ Klement, *The Limits of Dissent*, 61-210.

⁸⁴ Klement, *The Limits of Dissent*.

⁸⁵ Klement, *The Limits of Dissent*, 78.

⁸⁶ Klement, *The Limits of Dissent*, 32.

⁸⁷ Klement, *The Limits of Dissent*, 32.

slowly wound its way to the Supreme Court, and by the time the justices made their decision, the war had ended. The Court, rejecting its own precedent in *Vallandigham*, ruled that Milligan had been illegally tried and sentenced to hanging.⁸⁸ Leonard suggests Holt was not happy prosecuting Milligan but saw the need to prevent rebellion against the Constitution as a requirement to save it.⁸⁹ Perhaps here is an example of Holt holding on subconsciously to his 1848 view of Europe. He had seen European chaos destroy constitutionalism and did not wish to bring similar disorder to his own country.

The same month Lincoln was re-elected, he called Holt to the White House and (it is speculated) offered Holt the post of Attorney General to replace Bates.⁹⁰ Holt refused, claiming he did not have broad enough legal experience. Holt recommended James Speed, the brother of Holt's friend and frequent correspondent Joshua Speed.⁹¹

It was at this point that Holt's Confederate-leaning friends began to abandon ship. Holt's brother Robert was on hostile but speaking terms with Joseph. He noted the devastation of the South and claimed that seventy percent of the able-bodied men of middle age had perished.⁹² Robert wrote to Holt's other brother Thomas that Joseph could have intervened on their behalf, but Joseph did not move to help his family.⁹³ He did get an offer from one of his female friends to spend Good Friday, 1865, with her in

⁸⁸ Leonard, *Lincoln's Forgotten Ally*, 188.

⁸⁹ Leonard, *Lincoln's Forgotten Ally*, 167-88.

⁹⁰ Leonard, *Lincoln's Forgotten Ally*, 189. A small card asking Holt to come to the White House is preserved in the Holt Papers.

⁹¹ Leonard, *Lincoln's Forgotten Ally*, 280.

⁹² Holt Papers, Container 45.

⁹³ Leonard, *Lincoln's Forgotten Ally*, 198.

Frederick, Maryland, but Holt turned her down as he had a prior commitment to speak in Charleston.⁹⁴ Thus Holt was many miles away on the day his supervisor was fatally shot.

The Advocate General himself was not at Appomatox, although it would seem appropriate that someone from his office be present at Lee's last days, but the surrender was a hasty affair. He soon slipped into a steamboat and left for Charleston.

But his arrival at the place where it started must have been like some scene from the newsreels of Europe in May 1945. The telegraph service was initially out. The natives cringed in their houses, hiding from the federal troops. The enemy came in force, launching a torchlight victory party led by the once-humiliated Robert Andrews.⁹⁵ Somehow the *Mercury's* reporters were there and they recorded a strong speech by Holt on April 13, the day Holt had turned down as a dinner date.⁹⁶ Holt was as oblivious of what was happening hundreds of miles north as Portia was of Great Caesar's death. Holt wasted no time in Charleston. There was much to do. Johnston was still in the field in North Carolina and the war did not end the need to clear up all the courts-martial of a four-year-long war. That night by telegram, Holt learned that Lincoln had been killed.⁹⁷ He arrived at Washington Naval Yard and sat in immediately on the questioning of one of the conspirators who had just been captured. Holt was in an odd position for those first few moments, as the matter was a DC homicide matter—nothing military. At some point the order came down from Stanton—one of the few clear direct orders he gave Holt—to

⁹⁴ Dyer, 215.

⁹⁵ Leonard, *Lincoln's Forgotten Ally*, 47-48.

⁹⁶ *Charleston Mercury*, Apr. 15, 1865.

⁹⁷ Dyer, 216.

make the prosecution of the assassins a military matter since the Confederacy still had a tenuous existence as long as Johnston was on the field.⁹⁸ While there is a lot of gnashing of teeth in contemporary literature about this choice, the conspirators concept depended on Lincoln's death somehow affecting favorably Southern military pursuits.⁹⁹ Holt set his team in motion. He clung to the theory that Confederates in Montreal and other Canadian points had been a conduit for orders from the hierarchy in Richmond to Booth and his accomplices.

Holt was an extremely efficient lawyer. He hardly had any comprehensive theory of law and political theory, but as a voice to the masses there were few with a better heart. His problem was that the mild paranoia he had developed as long ago as his time at St. Joseph's College sometimes made him susceptible to thinking of plots and conspiracies. Remember his attack on what Frank Klement termed the dark lantern societies¹⁰⁰ and the tendency in his speeches to make devils of the opposition. This made him susceptible to con artists. And there was no finer con artist than Louis Weichman. Maybe Jefferson Davis, President of the Confederacy, really did personally seek Lincoln's death; the truth will never be known. But in the meantime, there was the more obvious matter than interrogating and trying those who were aiders and abettors of Booth and had already been tracked down.

⁹⁸ Kastenber, 359.

⁹⁹ Leonard, *Lincoln's Forgotten Ally*, 359; Elizabeth Leonard, *Lincoln's Avengers: Justice, Revenge, and Reunion after the Civil War* (New York: W.W. Norton, 2004), 72.

¹⁰⁰ Frank Klement, *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War* (Baton Rouge: Louisiana State University Press, 1984).

But Holt was a very busy man. He assigned his best people to the assassins, but there were other matters to be handled in the office.¹⁰¹ And Stanton was in a rush to have the matter resolved, as he had little patience with spending years digging for every fact and then hanging a bunch of old men and women.¹⁰² The country wanted immediate action, and Stanton may have suspected that President Johnson's rage against the Southern aristocracy would be short lived. So he prodded Holt to act, a politically wise course of conduct. The ease with which Jefferson Davis and later John Surratt would escape a noose illustrates how fragile was the communal rage. Lincoln was charismatic, unique; once he was out of sight, his loss would be out of mind. There were no mass media to keep reconsidering events in television specials years later, as would happen with John F. Kennedy. There would be presidential slayings later in the century where presidents died at evil hands. But who remembers Garfield's assassin? And who can name the "crazed anarchist" who made Teddy Roosevelt occupant of the White House?¹⁰³

In fact, Lincoln's end was so traumatic that it may have changed America for the rest of its history. There was really only one political assassination of equal importance. It would come at Sarajevo in 1914, and it would be the distant fruit of the revolution Holt so feared—the Revolution of 1848.¹⁰⁴

¹⁰¹ Kastenberg, 359.

¹⁰² Kastenberg, 359.

¹⁰³ Kastenberg, 359.

¹⁰⁴ See Joachim Remak, *The First World War: Causes, Conduct, Consequences* (New York: Wiley, 1971).

Investigators were overwhelmed with leads immediately after the killing. Police quickly concluded that Booth had killed Lincoln with his own hand. Among the false leads was a forged letter from Davis, indicating the payment to Booth of an assassination fee.¹⁰⁵ At a meeting on April 24, Stanton and Holt decided to pursue the theory that the assassination had been ordered by Confederates in Richmond acting through Canadian intermediaries.¹⁰⁶ Booth was found and fatally shot 2 days later, silencing the person who would have been the best source of the truth.¹⁰⁷ Later, Holt was asked by the new President who may have been involved. Holt replied with an enemies list. Included on this list was Jefferson Davis, whom Holt especially disliked since he left the Senate the same day as Holt's intensely disliked in-law Sen. Yule of Florida.¹⁰⁸ He also named two old Buchanan cabinet traitors: Floyd and Thompson.¹⁰⁹ He also turned on Clement Clay, formerly the Senator from Alabama, who once had been a frequent correspondent with Holt. He also turned on George Sanders, who had once worked beside him for the Democratic Party in Kentucky.¹¹⁰ If this list shows a measure of personal paranoia, it is possible to forgive Holt under the extreme circumstances. For good measure, Holt added

¹⁰⁵ Kastenber, 361.

¹⁰⁶ Kastenber, 361.

¹⁰⁷ Kastenber, 361.

¹⁰⁸ Kastenber, 361.

¹⁰⁹ Thompson was known to have spent a time since December 1864 in Canada acting as a Confederate agent.

¹¹⁰ Leonard, *Lincoln's Forgotten Ally*, 205.

one of the organizations he had been pursuing since the previous fall—The American Knights.¹¹¹

Another aspect of the decisions Holt was facing was whether to try these people as civilians or military offenders against the laws of war. Holt and Attorney General Speed urged Johnson to give the defendants a military trial.¹¹² Johnson accepted that advice and ordered a military trial before judges approved by Stanton and Johnson on May 9.¹¹³ This was really only a few days before what would become the opening trial date. On May 10, Davis and Clay were arrested.¹¹⁴ Rather than delay the trial, Holt proceeded against only those already arrested and trial ready. To shore up the testimony against Mary Surratt, Holt employed Louis Weichmann, a war department clerk and boarder at Surratt's boardinghouse.¹¹⁵ Sanford Conover (also known as Dunham) looked like a solid witness, but he turned out to be a liar and in the end tarnished Holt's reputation, both in the Johnson administration and later in what brief consideration passed for historical judgment on the Advocate General.

The trial went on for six weeks, with Holt calling two witnesses who overheard conversation about the assassination while in Montreal.¹¹⁶ But ultimately Holt had no time (and maybe no evidence) to produce anything but hearsay, so the whole

¹¹¹ Kastenberg, 361.

¹¹² Kastenberg, 362.

¹¹³ Kastenberg, 363.

¹¹⁴ Leonard, *Lincoln's Forgotten Ally*, 208.

¹¹⁵ Leonard, *Lincoln's Forgotten Ally*, 208.

¹¹⁶ Kastenberg, 358.

exploration—conducted in open trial—distracted from the firm evidence against all the conspirators (save Mary Surratt).¹¹⁷

Holt was, in reality, the chief prosecutor at the trial, but he filled the role of assembling a defense team for the defendants.¹¹⁸ Given no investigative help, there was little they could do but rely on punching holes in Government testimony.¹¹⁹ Holt must have sensed that his weakest case was against Mary Surratt, for he asked the well-respected Reverdy Johnson to defend her.¹²⁰ If he had kept his focus, Johnson might have shown how weak the case was against Surratt, but he turned the case over to some inexperienced assistants and so she met her doom with the other defendants while her arguably more culpable son served for a time with the Papal Guard.¹²¹

After the military court pronounced the sentences, Holt visited Johnson as he would have visited Lincoln to give the commander in chief an opportunity to review a military judgment.¹²² Johnson agreed with the sentences, and the conspirators were promptly hung.¹²³ The trial has been examined at least as much as any in history. Throughout the course of the trial, Holt made numerous legal and tactical mistakes. But

¹¹⁷ Kastenberg, 367.

¹¹⁸ Kastenberg, 370.

¹¹⁹ Leonard, *Lincoln's Forgotten Ally*, 217-18.

¹²⁰ Leonard, *Lincoln's Forgotten Ally*, 219.

¹²¹ Leonard, *Lincoln's Forgotten Ally*, 219. A dramatized version of Surratt's plight is in the one-star movie *The Conspirator*, directed by Robert Redford, 2010.

¹²² Leonard, *Lincoln's Forgotten Ally*, 218.

¹²³ Leonard, *Lincoln's Avengers*, 129.

Stanton's and Johnson's rush to judgment colored all of Holt's efforts. In retrospect, Johnson used the executions as a way of giving emotional closure against the South. Johnson used the fact that the North, and especially the Radical Republicans, were temporarily at peace over Lincoln's death to put forth his own very lenient plan for Reconstruction.

While Holt was concerned with the conspirators, there were two cases waiting for further coverage—the Andersonville Prison problem and Pickett's handling of some Union troops deserve special examination, and there were still many other cases worthy of adjudication.

Andersonville was the most infamous of the Confederate prisons. While prisoners of war on both sides went through hell as a result of inadequate food and sanitation, what distinguished Andersonville from other places was a ruthless warden and a deliberate ignorance of sanitation procedures. For example, Heinrich Wirz, the warden, once had a prisoner shot in cold blood for stepping with one foot on a boundary line and was accused of twelve murders he personally committed.¹²⁴ Sanitation in the period was problematic. Holt was an ex officio member of the United States Sanitary Commission, led by Clara Barton.¹²⁵ It had been known since at least the Napoleonic wars that confining men to close quarters could spread infection.¹²⁶ What was not known was the vector of the spread of disease. Doctors spoke in terms of miasma, a kind of gas floating through the

¹²⁴ Leonard, *Lincoln's Avengers*, 158-60.

¹²⁵ Holt Papers, Container 50.

¹²⁶ Stephen Talty, *The Illustrious Dead: The Terrifying Story of How Typhus Killed Napoleon's Greatest Army* (NY: Crown, 2009).

air. In reality, in Napoleon's day it was largely the body louse spreading typhus.¹²⁷ It was known that there was a relationship between crowding and illness, and Wirz totally disregarded this by lumping soldiers together indiscriminately.¹²⁸ Holt, through his assistant Norton P. Chipman, followed Lieber's rules, called this a crime against humanity, as thirteen thousand prisoners had died at Andersonville.¹²⁹ Arrested in May, Wirz was tried in August.¹³⁰ But then, Holt was in a mood to retaliate, as Johnson had spent most of the summer giving back to slaveholders what they had lost during the War. Correspondents wrote Holt that Johnson had emboldened the former Confederates to talk disunion again.¹³¹

At the trial, Holt produced 130 witnesses who testified to a military tribunal led by General Lew Wallace.¹³² "Language," declared Holt, "fails even an attempt to denounce even in faint terms the diabolical combination for the destruction and death by cruel and fiendishly ingenious processes, of helpless prisoners of war who might fall into their hands, which this record shows was plotted and deliberately entered upon . . . by the rebel authorities and their brutal underlings at Andersonville Prison. Criminal history presents no parallel to this monstrous conspiracy."¹³³ Holt again insisted on an overall

¹²⁷ Andrew Roberts (author of *Napoleon*), interview by Charlie Rose, *Charlie Rose Show*, PBS, Dec. 5, 2014. Also, see Talty.

¹²⁸ Kastenberg, 258.

¹²⁹ Kastenberg, 258.

¹³⁰ Kastenberg, 259.

¹³¹ Scott, 2.8: 775-81.

¹³² Kastenberg, 258.

¹³³ Leonard, *Lincoln's Forgotten Ally*, 226.

strategy of tying Wirz to a concerted campaign by the South to murder and torture Unionists.¹³⁴ Despite Johnson's recent Southern sympathies, Johnson approved Wirz' execution and it was carried out at the same place at which the Lincoln conspirators died.¹³⁵

During the post-assassination period, Holt filed and recorded some 16,000 courts martial records from the recent war.¹³⁶ And then there was the irrepressible George Pickett. Pickett survived the ignominy of Gettysburg in large part because his young wife was a charmer. Whatever forces Pickett had at his command were destroyed at the Confederate disaster at Saylor's Creek in early April 1865.¹³⁷ Lee, about to surrender, formally relieved Pickett of command, and Pickett went off to a tavern while Lee went to meet Grant.¹³⁸ Pickett regarded himself as protected by that strange bond that existed between men who had once served the same flag—the most notable case being Chamberlain's friendship with Armistead.¹³⁹ On the other hand, Pickett had never formally resigned from the Union Army, which left him open, technically, to desertion charges—something some in the Army would not forget.¹⁴⁰ In any event, Pickett went back to his wife, Sally, and his home in Richmond. Pickett picked up Sally and moved in

¹³⁴ Kastenber, 256.

¹³⁵ Kastenber, 260.

¹³⁶ Gerard A. Patterson, *Justice or Atrocity: General George E. Pickett and the Kinston, N. C. Hangings* (Gettysburg, PA: Thomas Publications, 1999), 10-30.

¹³⁷ Patterson, 10-30.

¹³⁸ Patterson 135.

¹³⁹ Patterson, 130.

¹⁴⁰ Patterson, 130.

with his father-in-law near Norfolk. A family relative approached a very preoccupied Grant about amnesty for Pickett, but Grant informed the relative that Pickett was in some hot water over Union soldiers Pickett had executed. Pickett had hung the men in Kinston, NC on the claim that they were confederate deserters, despite the fact that they were wearing Union army uniforms when captured.¹⁴¹ Clearly, as the Union saw it, under the general understanding that applied during the war, they should have been treated as prisoners of war, an issue about which Holt was adamant. Pickett's request for amnesty reached Stanton's desk and (apparently without Stanton talking to Holt) was summarily denied on the basis of the executions.¹⁴² Soon word reached that loose cannon Union Army General Ben Butler, now a respectable member of the Massachusetts delegation in the House of Representatives, and Butler made a speech demonizing Pickett.¹⁴³ McClellan remarked that Butler wanted to try Pickett by a military commission "organized to convict."¹⁴⁴ If so, he would have about the same chances as the Union boys he had hung. Pickett saw the writing on the wall and fled town without even telling his staunchest ally—Sally. Eventually they reunited in Montreal.¹⁴⁵

In October, Stanton on his own motion set up a board of inquiry of four officers.¹⁴⁶ One was a quartermaster and another was General Thomas Ruger.¹⁴⁷ By that

¹⁴¹ It was true that they had been serving in the Confederate army earlier in the conflict.

¹⁴² Patterson, 1-10; Kastenber, 262.

¹⁴³ Patterson, 98.

¹⁴⁴ Patterson, 99.

¹⁴⁵ Patterson, 130.

¹⁴⁶ Patterson, 98.

¹⁴⁷ Kastenber, 263.

time, the Kinston incident had been well-reported in the press and the Army had conducted some initial investigative work. The Board convened in New Bern, NC and heard from the widows of the hanged men. They noted that the group had been conscripted when Confederate forces came to the house and carried off their husbands. The executed men's Confederate commander testified that the men had been told they would only see service in the locality.¹⁴⁸ The board found as a fact that Pickett (at the time the commander of Eastern North Carolina) and the Confederate Board of Inquiry had killed the men.¹⁴⁹

The matter wound its way to Holt's desk. Holt wrote his "office . . . finds in the evidence submitted to it no grounds upon which personal charges could be established and sustained against the guilty person."¹⁵⁰ Legally, this was an accurate decision, but it was written in ignorance that Pickett had already penned a letter to his opposite Union number admitting that he had had the men executed in February 1864.¹⁵¹ When Holt found out, he told Stanton that he "would recommend the arrest and trial of Pickett." But what the Advocate General did not know was that Pickett was no longer in the country.¹⁵²

So a new board of inquiry was convened in January 1866. The board established that the men had been forced to serve outside the locality, which was a violation of their

¹⁴⁸ Patterson, 111.

¹⁴⁹ Patterson, 111.

¹⁵⁰ Patterson, 110.

¹⁵¹ Patterson, 114.

¹⁵² Patterson, 110.

enforced enlistment as partisans.¹⁵³ A lawyer turned quartermaster in Confederate service testified that Pickett had ordered the executions and the lawyer had seen them carried out.¹⁵⁴ While the Board was making its findings, the United States House of Representatives issued a call for a report from Holt concerning the incident. The Board found that Pickett had issued an order to hang the men, but it also found that it could not determine who actually carried out the order.¹⁵⁵

In March 1866, Grant took matters into his own hands. He had agreed with Lee at Appomattox that Confederate officers should not be molested unless they violated local law after the surrender. Any prior conduct would not subject the Confederates to punishment.¹⁵⁶ This cut directly against Holt's views on the law of war, and even made the Andersonville prosecutions problematic.¹⁵⁷ But this quibbling probably did not mean any real difference, for Grant was also part of this powerful Army bond and so he issued a pass to Pickett, allowing him back into the United States and even allowing this individual to roam at large. Grant did not wait for any board of inquiry report; he penned a letter to Johnson urging Pickett's amnesty.¹⁵⁸ Gerard Patterson, the foremost examiner of the incident, notes that the whole situation arose because Grant failed to extract from the helpless Lee a proviso that violations of the law of war would not be excused.¹⁵⁹ The

¹⁵³ The board ruled this issue outside its authority.

¹⁵⁴ Patterson, 117.

¹⁵⁵ Kastenberg, 263.

¹⁵⁶ Kastenberg, 264.

¹⁵⁷ Kastenberg, 263.

¹⁵⁸ Kastenberg, 264.

¹⁵⁹ Patterson, 130.

executed men's Union commanding officer fumed when he found out. Grant's conduct had showed "the highest functionaries of this country are stooping from their lofty position of vindication authority to the degrading condition of compounding with treason and taking from the basest of crimes its legitimate sting."¹⁶⁰ Holt's reaction to the whole episode is not recorded; presumably he did not want to tangle with the great war hero, and by that time he had his own issues with the Johnson administration. Pickett went on to a comfortable existence. His victims' families are not known to have gotten anything of value after the war. Sally died an old lady in the 1930s, while Pickett's son, a mere baby in 1866, was accepted to West Point and served in the Spanish-American War. Holt's attempt to enforce the fledgling concept of the laws of war was crushed by military friendship.

These trials may well have been the zenith of Holt's influence, for he soon got caught up in the political whirlwinds of the period. The story of Johnson's fight with the Radical Republicans and their representative in the cabinet, Edwin Stanton, is well known. What has not been much noticed by historians is the fact that Holt was the man behind Stanton, and therefore the next in the line of fire. Holt was a general but had also the character of a civil servant. If Johnson were to remove Stanton, where would Holt be? Holt escaped removal under Johnson's authority, although Gideon Welles noted that Johnson had lost confidence in Holt.¹⁶¹ Johnson seems to have blamed Holt for not

¹⁶⁰ Patterson, 129.

¹⁶¹ At nearly the same time, Stanton was assuring Holt that the administration was comfortable with Holt's work. Gideon Welles, *The Diary of Gideon Welles*, vol. 2 (Boston: Houghton Mifflin, 1911), 423.

revealing to him the purported request to commute Mary Surratt's sentence. He also blamed Holt for relying too much on Weichmann's perjured testimony at the trial of the conspirators, and listened with favor to Jacob Thompson's character assassination of Holt to which Holt replied with a broadside. Holt survived the "Bermuda triangle" between Stanton, the Radicals, and Johnson, but he never had the same influence. And he did not escape this incident without being hauled before Congress to explain why he advanced Conover as a serious and reliable witness to the Lincoln conspiracy.¹⁶² Of course, some of that was inevitable. With the war over, he was the legal officer of a small army now, not the huge armies that fought at Gettysburg and Lookout Mountain. But even during the height of Radical Reconstruction, Holt remained little more than a guy with a desk in Washington.

Holt began to feel ill and took a vacation for the first time in a long time. Grant took over the White House, and Holt eventually resigned.¹⁶³ Most of his family never forgave him for backing the Union. His former father-in-law tried to obliterate the name of Holt from his daughter's tombstone.¹⁶⁴ Most significant of all was that Holt gave few speeches and stayed in Washington, not spending much time at his home in Hardinsburg. He did have a cousin in Washington who was his companion in his last days, and he needed help for Holt was going blind and in need of care.¹⁶⁵ When he died, the *New York*

¹⁶² Kastenber, 380.

¹⁶³ Holt Papers.

¹⁶⁴ Dyer, 229-31.

¹⁶⁵ Leonard, *Lincoln's Forgotten Ally*, 315.

Times noted the death of one of the last living links with the Civil War.¹⁶⁶ The Gilded Age was in full swing, and the prosperous Northerners just wanted to forgive and forget. In the process, history forgot Joseph Holt.

The Holt Bibliography

The first serious academic biography of Holt was recently released by Elizabeth Leonard in 2011. She contends that “no member of Abraham Lincoln’s administration is more neglected” than his judge advocate.¹⁶⁷

Susan Dyer’s *Lincoln’s Advocate* (2009) tells a great deal about Holt’s family life including details that Leonard misses. Written by the curator of Holt’s house, it reveals much about Kentucky politics, but not in a very analytical way. Dyer obviously has examined the papers at the Library of Congress and read carefully the extant Holt diary located there, something to which Leonard didn’t give much attention.¹⁶⁸ However, there is a big defect: Dyer’s work (published by what seems a vanity press) contains no footnotes, no bibliography, and almost no reference to sources. This would not be fatal to Dyer’s credibility were she not so anxious to go on flights of prose that sound more like a Harlequin Romance novel than a serious scholarly work. For instance, she spends two pages describing in detail the conversation between Mary and Holt on their wedding night. The penultimate sentence of the 251-page work is: “Joseph Holt’s spirit can rest only when the world knows he did make the world a better place and lived life to the

¹⁶⁶ “Major General Holt, Twice Cabinet Member, Dead,” *New York Times*, Aug. 2, 1894.

¹⁶⁷ Leonard, *Lincoln’s Forgotten Ally*, 1.

¹⁶⁸ Dyer.

fullest.”¹⁶⁹ I used Dyer’s work with care, but it is a good portrait of Holt’s personal life. It’s the work of a fan, not a scholar. The book is not about the Civil War, nor Francis Lieber, nor Milligan. His months in the Patent Office are not given one sentence. The best political analysis of the work concerns the 1844 convention. Also, one question unanswered by both Leonard and Dyer is how this man really made all of his money.

Two of the recent books on Holt consider him a “forgotten ally” or ask “Who is Joseph Holt?” Joshua Kastenberg starts from a contrary position. He writes in his introduction, “To be sure, Holt has been written about in hundreds of books, law articles, and newspaper columns.”¹⁷⁰ The problem is that they are in the modern era in a wealth of disparate places, from the archives of the Judge Advocate General’s office, the Library of Congress, to the *New York Times*. Kastenberg, a former Army lawyer, has done a monumental job in assembling all this information in his book. But the book is a treatise on the law of war, specifically as it applied to the Civil War. There are whole chapters only tenuously related to Holt’s role in defining the laws of war. But like so many legal treatises, it is written in something of a political vacuum. While he discusses the 1864 report on Secret Societies in detail, it is a lifeless discussion, written abstractly without reference to the political climate. And although Kastenberg gives a very brief biography of Holt, his book does not seek to tie down his work at the War Department with his personal life or even connect very well with his law practice prior to joining Buchanan’s cabinet. Kastenberg, to his credit, has taken many a musty volume and distilled it in

¹⁶⁹ Dyer, 250.

¹⁷⁰ Kastenberg, 5.

meticulous fashion. His work on Holt's associates, for example, goes into territory no other discussion of Holt has explored. But Kastenbergs work is technical, more on the man's work than on the man. A plethora of books have been written within the last few years about Lincoln's immediate cabinet—*A Team of Rivals*¹⁷¹ and *Lincoln's Boys*,¹⁷² for example, but none mentions Holt in more than the most passing reference.

¹⁷¹ Doris Kearns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (NY: Simon & Schuster, 2012).

¹⁷² Joshua Zeitz, *Lincoln's Boys: John Hay, John Nicolay, and the War for Lincoln's Image* (New York: Penguin Books, 2014).

Chapter 2

MATURING IN KENTUCKY

Holt's early career is probably a typical example of that of a Jacksonian-era lawyer on the rise, at least until he gave an attention-grabbing nominating speech for Van Buren's future Vice President. He began with advantages, made a lot of money practicing law, and then became an important political figure, behind only Henry Clay in his native Kentucky and with a national reputation.

Joseph Holt was a significant figure in antebellum and Reconstruction history. Originally Postmaster General and Patent Office Commissioner, he took over at the Department of War during the Buchanan administration's crisis at Fort Sumter. When Lincoln became President, Holt became Lincoln's statesman in Kentucky. While it was probably arms more than words that kept Kentucky in the Union, Holt's fire breathing speeches against disloyalty to the Union earned Lincoln's trust. Holt became Lincoln's Adjutant General (and may have turned down an offer to become Attorney General or Supreme Court Justice).¹⁷³ As Adjutant General he became the chief legal officer for military affairs for the North. He fought for the rights of Union prisoners, prosecuted numerous military trials, and ultimately became the North's avenger. He also managed a far-flung legal establishment which presided over thousands of military hearings. He lost ground during Reconstruction and retired from service as a rather broken old man with no family. Holt's name may never be listed with that of Ulysses Grant or William Sherman,

¹⁷³ Leonard, *Lincoln's Forgotten Ally*.

but in his day his influence was great. Yet, as Elizabeth Leonard states, “no member of Abraham Lincoln’s administration is more neglected.”¹⁷⁴

Joseph Holt was born on January 6, 1807 in Breckinridge County, Kentucky, the oldest of six children. John, his father, was a lawyer and a commonwealth attorney (as his son would become). His mother was Eleanor, née Stephens. Holt had family connections including two maternal uncles who had been members of the Kentucky legislature. Holt’s maternal grandfather, Richard Stephens, had fought in the Revolution with the troops from Virginia. He was rewarded with a grant of many thousands of acres of land along the Ohio in what is now Kentucky, and by 1795 the land under family control had grown to 150 square miles—twice the size of the current District of Columbia.¹⁷⁵ The land stretched from Louisville west to what became known as Stephensport, Kentucky. John Holt’s family hailed from Birmingham, England and there was some dispute concerning property in that country even in Joseph’s adulthood.¹⁷⁶ Joseph Holt’s paternal grandfather had also fought in the Revolution and presumably received some land.¹⁷⁷

Holt’s parents, Eleanor and John, settled on a 500-acre plot known as Holt’s Bottom, and there Eleanor bore Richard, Joseph’s older brother, in 1806, our subject in 1807, James in 1810, Thomas in 1812, Robert (to whom Joseph was closest, at least until the Civil War) in 1815 and Elizabeth in 1816. Amazingly for that time, all grew to

¹⁷⁴ Leonard, *Lincoln’s Forgotten Ally*, 1.

¹⁷⁵ Dyer, 21.

¹⁷⁶ Holt Papers, Container 45.

¹⁷⁷ Dyer, 24.

adulthood, and Eleanor lived to quite an old age.¹⁷⁸ Little is known of Holt's first 16 years or so, except that he was raised on a typical mid-sized Kentucky farm of the period. It had eight slaves and Leonard speculates that he might have been raised by a black wet nurse.¹⁷⁹

In 1826 Holt enrolled in St Joseph's College and his letters reveal \$164 spent on boarding, and other money went for a Latin Dictionary and a logic and rhetoric book.¹⁸⁰ The future lawyer would later need a little of the Latin and the orator certainly used the rhetoric. Revealing the classical bias of the education of the time, Holt was exhorted by his relatives, however, to exercise not only the mind but also the body.¹⁸¹ Holt seems to have gotten his exercise by riding horseback.¹⁸² St. Joseph's was a Catholic college that admitted students of all faiths as long as they paid the fees. Holt's family showed no qualms about sending him to a Catholic school.¹⁸³

During Holt's sophomore year, he transferred to Center College in Danville, Kentucky after having a dispute with St. Joseph's Dean, a Catholic priest. In short, the Dean accused Holt of plagiarism, as the quality of his class essay was too good to be true. Holt denied the charges furiously, claiming he had been defamed by priests in black.¹⁸⁴

¹⁷⁸ Leonard, *Lincoln's Forgotten Ally*, 3.

¹⁷⁹ Leonard, *Lincoln's Forgotten Ally*, 239.

¹⁸⁰ Holt Papers, Container 1.

¹⁸¹ John Holt to Joseph, Holt Papers, Container 1.

¹⁸² Leonard, *Lincoln's Forgotten Ally*, 16; Holt Papers, Container 1.

¹⁸³ Leonard, *Lincoln's Forgotten Ally*, 9.

¹⁸⁴ Leonard, *Lincoln's Forgotten Ally*, 7.

Leonard claims that the dispute shaped Holt's self-protective character,¹⁸⁵ and explains why Holt later was so quick to publish denials of every old "calumny" his enemies could dig up. However, Holt continued to support St. Joseph's into his adulthood. His two years at Centre College passed less eventfully.¹⁸⁶

In 1825, he moved to Lexington and read law with Charles Wycliff, who would later become his in-law.¹⁸⁷ By 1828 he was engaged in law practice, actively taking depositions in preparing for civil cases.¹⁸⁸

Holt's interest was not limited to the immediate concerns of his Kentucky practice. He opened an office in Elizabethtown and partnered with Ben Hardin.¹⁸⁹ Hardin was a bit of an unusual choice, for he was a close follower of the great Kentucky Whig Henry Clay, whereas Holt's family clearly were Democrats.¹⁹⁰ However, the connection with the well-known Hardin was certainly invaluable to Holt. Holt continued to follow the broader picture outside Kentucky, becoming aware of occurrences in Europe and followed the news of the Revolutions of 1830.¹⁹¹ In 1831 he represented a Revolutionary

¹⁸⁵ Leonard, *Lincoln's Forgotten Ally*, 7.

¹⁸⁶ Centre College is still active and, in fact, was the site of the 2012 Vice-Presidential debate. I cannot ascertain if Holt actually graduated.

¹⁸⁷ Leonard, *Lincoln's Forgotten Ally*, 16.

¹⁸⁸ Holt Papers, Container 1.

¹⁸⁹ Lucius L. Little, *Ben Hardin: His Times and Contemporaries* (Louisville: Louisville Courier Journal, 1887), 10. The *Dictionary of American Biography's* Joseph Holt entry indicates that he was just helping Hardin on a per case basis.

¹⁹⁰ Little, 10.

¹⁹¹ The Revolutions of 18 years later may have been a turning point in Holt's political thinking on Unionism.

War veteran seeking a pension.¹⁹² In 1832 he received a letter from a relative who stated that that the United States Senate was almost in disarray—an early sign of the long road to secession and War. Of course, the letter is referring to the nullification crisis.¹⁹³

Another friend wrote to him that Henry Clay and John C. Calhoun hated Van Buren and each other. Holt feared for the Union, noting that “the South is about in arms.”¹⁹⁴ Early on, Holt was exposed to the threat to the Union, and his acquaintances and mentors did not take this lightly.

Holt, as a Kentucky Democrat, would seem not to have much in common with the Whig compromisers. One of the things that obviously held Holt’s political career back in the early years was the strength of the Whig party in Kentucky, led by Henry Clay. Clay and Holt had almost no direct correspondence, but in later years they developed an apparently warm relationship on the personal level. Holt gave Clay gifts, and the Democrat would speak at Clay’s funeral and would in a certain way take over his agenda of national unification after Clay passed on.¹⁹⁵

In 1832, Holt moved to Louisville to practice law.¹⁹⁶ The motive is uncertain—Holt had a way of running around Kentucky and other places in the lower South rootless but always managing to make money. Somehow, Holt never seems to have had a true

¹⁹² Holt Papers, Container 2.

¹⁹³ Holt Papers, Container 3, Item 775.

¹⁹⁴ Holt Papers, Container 2.

¹⁹⁵ His second wife’s relative became Clay’s executor.

¹⁹⁶ Holt Papers, Container 2.

home and perhaps he clung to the Union as a way of giving himself at least some place to which he could have firm loyalties.

The choice of the big city was not very good from a physical health point of view—Louisville was subject during that period to cholera.¹⁹⁷ The nullification crisis was in full swing, and the local congressman asked Holt to pen some words for him complaining that Clay and Calhoun were goring each other to death, leaving control to an aging but astute Andrew Jackson.¹⁹⁸ By 1833 Holt was drafting speeches for John Crittenden of Kentucky, who was running for the Senate.¹⁹⁹

In the meantime, he pursued a lucrative practice in what would be today termed commercial law. Before the development of the banking system, individual banks issued paper certificates of debt, backed by deposits on hand in their bank. The more unscrupulous (or poorly run or unlucky) banks would refuse to make good on their promise to pay at a certain time. Holt engaged in recovering for the creditors and he made a lot of money at it.²⁰⁰

Holt's family life and living situation were soon to change. On August 10, 1834 his brother Richard died in Mississippi of some kind of contagious disease.²⁰¹ Richard had studied medicine and was probably practicing it at the time.²⁰² Holt's friend were

¹⁹⁷ Leonard, *Lincoln's Forgotten Ally*, 31.

¹⁹⁸ Holt Papers, Container 3.

¹⁹⁹ Holt Papers, Container 3.

²⁰⁰ Holt Papers, Containers 3 and 4.

²⁰¹ Holt Papers, Container 4.

²⁰² Holt Papers, Container 4.

worried about the size of the public debt, which was certainly puny in comparison with the Federal debt today. Holt, for his part, was now acting as an assistant editor of a Louisville newspaper, the *Advertiser*, but he never showed any further interest in journalism, per se. He took on for 2 years the job as Commonwealth Attorney, a position he would ultimately be forced out of. In 1835, he moved into what became known as the Holt Mansion.²⁰³

²⁰³ “Joseph Holt,” *Dictionary of American Biography* (New York: Charles Scribner’s Sons, 1936); Leonard, *Lincoln’s Forgotten Ally*, 32. Most of the 1834 debt was left over from the Revolution. Christopher Chantrill, “US National Debt and Deficit History,” accessed Mar. 16, 2015, http://www.usgovernmentpending.com/debt_deficit_history.

Chapter 3

HOLT'S POLITICAL LIFE

A turning point in Holt's career was his participation in the Baltimore Democratic National Convention, held at a church in that city a year early because Andrew Jackson wanted to be sure Martin Van Buren would succeed him.²⁰⁴ The Convention dutifully chose Van Buren of New York as the Presidential candidate. Holt's nominating speech for Richard Johnson would electrify the convention and helped to get Johnson placed in the Vice-Presidential spot on the ticket. He reportedly was reluctant to address the convention, but he nevertheless took the podium and gave the greatest speech of his young life.²⁰⁵ Said Holt, "If, Mr. President, if at this moment you transport yourself to the far West, you would find upon one of her green and sunny fields a person who had who had sprung from the people, was still one of them, and his heart in all his recollection its hope and its sympathies was blended with the fortunes of the toiling millions. When this nation was agonizing and bleeding at every pore [ie. The War of 1812] . . .he rallied about him the chivalry of his state and dashed with his gallant volunteers to the scene of hostilities resolved to perish or retrieve the national honor. . . . There is a voice from the great valley of the West, from the North, and the South calling for this war worn soldier, such, sir is Richard Johnson of Tennessee."²⁰⁶ Another theme could be lifted from practically any campaign speech: "We must think of the future, making Americans

²⁰⁴ Dyer, 82.

²⁰⁵ Holt Papers, Container 4.

²⁰⁶ Dyer, 83.

stronger. Sacrifices will begin with honest works for the Democratic party, attaching its policies to the hope of the people.”²⁰⁷ Here Holt speaks the language of politicians ever since—the emphasis on the future of America, but the need for hard work and sacrifice if the American polity is to succeed.

Johnson offered Holt a political position, but Holt replied that he had no taste for political office. Johnson instead suggested to Holt the post as supervisor at West Point overseeing the exams, a post Holt accepted.²⁰⁸ The Point would graduate Jesse Armistead, P.T. Beauregard, Braxton Bragg, Jubal Early, Joseph Hooker, Irvin McDowell, George Meade and George Thomas in 1835.²⁰⁹ Holt’s relationship with such a distinguished group of officers on both sides of the later Civil War may explain his insistence on humane treatment of prisoners of war fighting on both sides of the conflict.

Holt also developed ties to the academic community as a speaker. A young supporter of the University of Miami in Ohio, founded in 1809, he spoke there in 1835.²¹⁰ That year he returned to St. Joseph’s College for a speaking engagement, and it was there that his uncle, David Holt, introduced him to Washington Irving, then working on his book *Astoria*. It was a tale of fur-trading beyond the Rocky Mountains in the days of the *Coureurs des Bois*.²¹¹ He was invited to dine with Jackson and Van Buren in 1835.²¹²

²⁰⁷ Dyer, 86.

²⁰⁸ Holt Papers, Container 7.

²⁰⁹ Leonard, *Lincoln’s Forgotten Ally*, 43.

²¹⁰ Holt Papers, Container 5.

²¹¹ “Washington Irving,” The Literature Network, 2015, accessed Mar.16, 2015, <http://www.online-literature.com/irving/>.

²¹² Holt Papers, Container 5.

But Holt seemed to be tiring of Kentucky. He was looking to Mississippi to be his next home. He got a letter of introduction in which he was described as a “lawyer distinguished for his eloquence and legal attainments.”²¹³ But, as he related many years later, he never again tried to make money as an attorney, although his own papers at the Library of Congress seem to indicate otherwise.²¹⁴ A Holt Day speaker contended that he made his money off of the problems of selling boats that had travelled downstream to eventually be scrapped in New Orleans. But I cannot find any support for this statement.²¹⁵ He later explained that he had already made enough to live on and was content.²¹⁶ He was introduced to a Robert J. Walker of Michigan in December of 1835; Walker was later Polk’s Secretary of State and became deeply involved in Bleeding Kansas. He also became a filibuster in Nicaragua.²¹⁷ Letters were being sent to Holt’s new office at Port Oxford, Mississippi.²¹⁸

Holt’s life soon took another turn. In December 1836, he began to court Mary Harrison. Harrison lived in Bardstown and Holt at the time was very busy in Mississippi, so their only contact for over a year was through slow correspondence by mail. Mary’s father, a well-known surgeon, already knew Holt and described the young lawyer as “a

²¹³ Holt Papers, Container 5.

²¹⁴ See collection of letters in Holt Papers, Container 8.

²¹⁵ Holt Papers, Container 8.

²¹⁶ Holt Diary, housed in Holt Papers.

²¹⁷ James P. Shenton, *Robert John Walker: A Politician from Jackson to Lincoln* (NY: Columbia University Press, 1961).

²¹⁸ Holt Papers, Container 6.

good catch.”²¹⁹ Finally, Holt decided to take a break from the law and traveled back to Kentucky. The plan was made for an eventual wedding in Bardston, Kentucky; the wedding would take place on April 24, 1839.²²⁰ In 1837, Holt was sufficiently involved in a commercial and occasionally criminal practice that he took out membership in the law library in Jackson.²²¹ On September 11, 1838, Holt’s father, John, died, leaving Joseph as the undoubted head of the Holt family and clearly the person to whom everyone in the family looked for assistance.²²²

It was at this point that Holt became personally involved with the slave system. Holt had been raised around slaves, but he held none of his own until he moved to Mississippi.²²³ His brother Thomas in Kentucky needed help around the farm and asked Holt to purchase an adult male and a teenaged boy to help him. Thomas promised to eventually repay Joseph. Joseph thereupon went out and purchased in Mississippi thirteen slaves.²²⁴ The lawyer was then faced with a legal problem: Kentucky as of 1833 did not permit the importation of slaves from another state. So Joseph and Thomas found a solution worthy of a contemporary tax lawyer. They agreed that they were partners in the Kentucky farm, and that Holt’s responsibility as partner was to provide hands for the farm. Holt, in turn, would be paid in tobacco (a complication that escapes me if Holt were

²¹⁹ Dyer, 88.

²²⁰ Leonard, *Lincoln’s Forgotten Ally*, 48.

²²¹ Holt Papers, Container 6, item 735.

²²² Leonard, *Lincoln’s Forgotten Ally*, 38.

²²³ Leonard, *Lincoln’s Forgotten Ally*, 50.

²²⁴ Leonard, *Lincoln’s Forgotten Ally*, 49-52.

really a partner in the farm).²²⁵ In any event, Joseph was thus able to send his slaves to Thomas even though the transaction was on its face illegal. Joseph apparently had no qualms about doing so and this may explain why the family would not be so kind to Joseph later when he sided with the Union during the War.²²⁶

On April 24, 1839, Holt married Mary Harrison.²²⁷ Immediately after, Holt and his new wife left for a honeymoon at White Sulfur Springs, now in West Virginia, and then already famous as an attraction for wealthy Southerners seeking to escape the heat of Tidewater Virginia.²²⁸ Upon their return, Mary, a Kentucky girl, craved home and stayed in Bardstown (now the Bourbon Capitol of the World) while her husband went back to Mississippi.²²⁹ In Mississippi, brother Robert was nearby. Mary complained bitterly of the separation—it had mostly been marriage by mail with and occasional visit to Vicksburg by Mary and a trip to Cuba where both enjoyed themselves.²³⁰ In 1842, Holt finally gave in and he moved to Louisville, settling at 574 Walnut Street in what is now the downtown area.²³¹ Trips to other cities in the Lower South followed the Cuba trip. That same year, Holt's mother's house burned down, and his letters show that his brothers could not agree on how to repair it.²³² Holt now had created and abandoned two

²²⁵ Leonard, *Lincoln's Forgotten Ally*, 49.

²²⁶ Leonard, *Lincoln's Forgotten Ally*, 49.

²²⁷ Dyer claims there is an extant painting of the event. Dyer, 111.

²²⁸ Holt Papers, Container 6.

²²⁹ Dyer, 111.

²³⁰ Dyer, 111.

²³¹ Leonard, *Lincoln's Forgotten Ally*, 51.

²³² Holt Papers, Container 8.

law practices, but was so well known that it did not seem to detract from his earning ability. He had become a national figure. For example, shortly after the Baltimore convention in 1844 one farmer in far-away Allegany County, New York, wrote to tell him he had named his son “Joseph Holt Fox” as there already were several Richard Johnsons and Andrew Jacksons.²³³ In December of that year, Holt sought Savannah for the winter.²³⁴

An 1845 assessment list of that Walnut Street home lists seven slaves (surprising to read, as he makes almost no mention of them in his correspondence or any speech), three horses, and three gold watches.²³⁵ In April he decided to sell a slave mother and child, but insisted they remain together.²³⁶ When Joseph was a young man, his mother and father took in a slave named Rose who had been on a flatboat with dozens of slaves headed south to the dreadful (for a slave) Land of Cotton. The male slaves organized a revolt, overpowered the white crew of four, and landed on the south bank of the Ohio near Stephensport.²³⁷ Rose was pregnant and not able to fight but she ran 8 miles from the boat. One of the Stephens’ slaves found Rose, and Eleanor Stephens took her in. Rose claimed she was carrying her former master’s child, and that she had been sold to avoid embarrassment.²³⁸ Rose was especially grateful not to be sold to a point in the lower

²³³ Dyer, 84.

²³⁴ Holt Papers, Container 10.

²³⁵ Holt Papers, Container 11, item 1419.

²³⁶ Holt Papers, Container 11, item 1419.

²³⁷ Dyer, 56.

²³⁸ Dyer, 56.

South as in her words, “The overseers only cared about cotton picking.” This could be an example of the kind of half fictional story Dyer likes to tell. Holt in later years would see that his slaves were treated with care, and he was protective of their relationships with their families, but was certainly not about to call for abolition. However, he had some sympathy (at least on this subject) and at the height of the Civil War eventually issued direct attacks against the institution of slavery.²³⁹

The summer of 1845 passed quietly with Holt during this period taking on the same kind of practice as Abraham Lincoln, traveling around Kentucky trying cases at each county seat.²⁴⁰ In January 1846 he was back in New Orleans. Mary was sickly (probably with tuberculosis) and tried to restore her health by leaving the Louisville area, spending time with Holt in the New Orleans and the Charleston area, but on May 16 1846, Mary died.²⁴¹ Her father, the physician, was on his own deathbed, and although he had recognized the disease, he could do little except ask an assistant to stay in the house with Mary—something Mary did not like. Her father himself passed away in 1845, and Mary would be buried by his side.²⁴² Interestingly in nearby Mammoth Cave a physician experimented with keeping patients in the cave in the hope the constant temperature and pure air would rid patients of the disease. Of course, it didn’t work.²⁴³

²³⁹ Dyer, 56-58.

²⁴⁰ Holt Papers, Container 11.

²⁴¹ Dyer, 131.

²⁴² Dyer, 131.

²⁴³ “Kentucky Mammoth Cave Long on History,” Feb. 27, 2004, accessed Oct. 8, 2006, www.cnn.com.

Holt's mind turned back to his health, and he returned to Savannah in the winter.²⁴⁴ It was now pretty clear that Holt had quit trying to stay in Louisville to run a law practice in favor of trying to keep himself healthy by moving away for the winter.

The slaves posed a problem for him. Holt had slaves, and did not at first accept Lincoln's position on slavery when Lincoln was running for President. His politics possibly could be compared to those of Stephen A. Douglas, who chose to ignore the issue of slavery as much as possible, while stressing the need for the Union; this is not a surprise, since he was a Democrat.²⁴⁵ On the other hand, Susan Dyer without citing any source claims that while still studying the law he said, "While we tolerate slavery we are only feeding and nourishing our own destroyer, like the hen on serpent's eggs....[the slave] must be an enemy of the government which suffers him to be appropriated and it is just to conclude that slaves of the United States are enemies to our government."²⁴⁶ So the appeal was not to humanity for the slave, but fear that slavery might be a threat to the Union.²⁴⁷ Holt was a man of the West, seeking to expand. There he differed in shading from Lincoln, who wanted Union but looked somewhat inwardly to building up the existing parts of the country, free of the menace of slavery.²⁴⁸ Slavery was not quite a burning issue in Kentucky. It was accepted but many considered it a nuisance. The following example will illustrate the kind of problems it caused. For example, Holt

²⁴⁴ Holt Papers, Container 11.

²⁴⁵ Robert W. Johannsen, *Stephen A. Douglas* (New York: Oxford University Press, 1973).

²⁴⁶ Dyer, 64.

²⁴⁷ Dyer, 64.

²⁴⁸ Dyer, 64.

frequently corresponded with the Wickliffe family. A recent seminar at the American Southern Historical Society Annual Meeting pointed out that Robert Wickliffe's wife had inherited slaves from her first marriage. She wanted to manumit them, but to do so had to marry Robert Wickliffe (in whom she presumably had other interests). A femme sole could not alienate her slaves. Upon marriage, they became joint property and Robert was then able to free his wife's former slaves. Robert, it should be noted, was personally a strong supporter of slavery and a racist.²⁴⁹ Wickliffe had been President John Tyler's Postmaster General, quite ironic given Holt's appointment to the same position several years later.²⁵⁰

1845 passed without political incident; January of 1846 found Holt back in New Orleans. In 1845, he had briefly accompanied his brother, also a lawyer, to Yazoo, Mississippi to set up a law practice. But then Holt's wife died in Mississippi that year and Holt soon moved back, while his brother stayed in Mississippi for a number of years.²⁵¹

By 1848, the Mexican-American War was in full tilt. With so much going on in his personal life, Holt said little about the Mexican War. Holt was not particularly taking an active part in politics, and one acquaintance warned him that it would be folly to oppose the Mexican War, as such famous figures as Henry Thoreau and Kentucky's great leader Henry Clay were doing at that time.²⁵² One would suspect the Unionist Holt was

²⁴⁹ Leonard, *Lincoln's Forgotten Ally*, 64.

²⁵⁰ Leonard, *Lincoln's Forgotten Ally*, 64.

²⁵¹ Holt Papers, Container 13.

²⁵² Amy S. Greenberg, *A Wicked War: Polk, Clay, Lincoln, and the 1846 U.S. Invasion of Mexico* (New York: Alfred A. Knopf, 2012).

not likely to have opposed the Mexican War, but he kept a low profile. Perhaps because of his illness, and with Mary now gone, he decided to do the grand tour of Europe. He was in London, Newcastle, Paris and Rome, crossed the Mediterranean and contracted for a camel ride from Cairo to Mt. Sinai.²⁵³ The beautifully engraved contract in two colors, red and black, and written in Arabic script rests at the Library of Congress.²⁵⁴ Holt was a man whose oratory often seemed more like that of a minister than that of a lawyer. Perhaps he drew inspiration in that regard while in the same spot where Moses is traditionally believed to have received the Ten Commandments.²⁵⁵

Holt returned to the United States in October of 1849.²⁵⁶ His net wealth increased by \$15,000 while he was gone, which matches Holt's later story that he was able to live on his savings after he left his brother's Yazoo law practice.²⁵⁷ He met Henry Clay, then in the struggle over the compromise of 1850 (it would pass in September) and gave him a present.²⁵⁸ Whether there was a political message there or not is not certain, but the men were certainly by this time on friendly personal terms. Perhaps the echoes of Clay's fight for the Missouri and later the 1850 Compromise and Webster's "Liberty and Union" speech would echo in Holt's head years later.²⁵⁹

²⁵³ Holt Papers, Container 13; Leonard, *Lincoln's Forgotten Ally*, 51.

²⁵⁴ Holt Papers, Container 13.

²⁵⁵ Holt Papers, Container 13; Leonard, *Lincoln's Forgotten Ally*, 61.

²⁵⁶ Leonard, *Lincoln's Forgotten Ally*, 61.

²⁵⁷ Holt Diary, housed in Holt Papers.

²⁵⁸ Holt Diary, housed in Holt Papers.

²⁵⁹ Leonard, *Lincoln's Forgotten Ally*, 61.

When back in Kentucky he fell in love with Margaret Wycliffe, whom he met on a stagecoach ride. She had led the life of a Southern aristocrat's spoiled daughter, buying clothes in Louisville that were supposedly fresh off the steamboat from Paris.²⁶⁰ The Wycliffes were an old Kentucky family, and her father was a staunch member of the slaveocracy and a former Governor of Kentucky. They lived in Wickland, a gift from her uncle, a famous surgeon named Dr. Walter Brashear.²⁶¹ Brashear had a considerable reputation as he had amputated the hip joint on a teen-aged Bardstown slave, the first known successful operation of its kind.²⁶² Brashear later decided he really wanted to make money as a planter, moved to Louisiana, and eventually sat in the United States Senate from that state.²⁶³

While Holt was courting Margaret, the famous singer Jenny Lind came to Louisville. Holt asked her (and probably paid her) to sing at his house and he invited Margaret.²⁶⁴ Then Holt mailed Margaret a letter asking her if she wanted to marry.²⁶⁵ Margaret's diary still exists, and she first asked herself in the diary if she was ready for a change in her life.²⁶⁶ On March 1, 1850,²⁶⁷ she wrote back, "I find more with each day

²⁶⁰ Dyer claims they were copies of clothes Louis Napoleon's Empress Eugenie wore, but if so they came before she was married to Napoleon III. Napoleon III married Eugenie at Notre Dame Cathedral on January 30, 1853. Dyer, 134.

²⁶¹ Dyer, 134.

²⁶² "Bardstown Slaves," University of Kentucky Libraries, 2015, accessed Mar. 26, 2015, http://nkaa.uky.edu/record.php?note_id=1899.

²⁶³ "Bardstown Slaves."

²⁶⁴ Dyer, 143.

²⁶⁵ Dyer, 143.

²⁶⁶ Dyer, 173.

²⁶⁷ Dyer, 169.

that I cannot stay content at Wickland, the home I so love, without you.”²⁶⁸ Holt responded that he would leave his own summer home at Stephensport to be with her at Wickland. A wedding followed on or just before April 2, 1850.²⁶⁹ The ceremony was performed by a Presbyterian minister, with the music for the wedding including Mendelssohn’s Wedding March and the new and suddenly popular Bridal March from Wagner’s *Lohngrein*.²⁷⁰ After a brief visit with some of Holt’s kin, the couple were on the *American Eagle* in New York, headed to England.²⁷¹

For Holt, the European trip would be largely a reprise of the prior European trip. In his diary left at the Library, he describes July 6, 1850 as the happiest day of his life as he set out for Cambridge, England.²⁷² On September 24 he viewed da Vinci’s *Last Supper* and the couple spent most of October in Rome. November 23 found Holt at Mt. Vesuvius; on Christmas Day they were in Egypt.²⁷³

While overseas he met Francis Lieber, who would become a long-term ally. In fact, Holt would choose Lieber to run the Federal Prisoner of War Camp at Fort Delaware during the Civil War.²⁷⁴ Holt was back in Louisville by August of 1852.²⁷⁵ He would

²⁶⁸ Dyer, 175.

²⁶⁹ Dyer, 175.

²⁷⁰ Dyer, 175.

²⁷¹ Dyer, 175.

²⁷² Holt Papers, Container 14.

²⁷³ Dyer, 180.

²⁷⁴ Leonard, *Lincoln’s Forgotten Ally*, 181; Holt Papers, Container 14.

²⁷⁵ Holt Papers, Container 14.

never again leave the United States (as far as can be determined), and the trips were perhaps an antidote to his otherwise insular life, which stretched from the Mississippi to the Potomac with an occasional stop in New York during the Civil War.

Holt had returned to the United States at a time during which the political scene, especially in Kentucky, was in a state of flux; widely viewed as a rising political star, Holt was presented with opportunities for political advancement upon his return. For instance, Robert Johnson, Richard Johnson's nephew, urged him to run for Congress.²⁷⁶ In the fall of 1852, he urges Holt to run for Congress because "many Whigs will support you." Leonard claims that even the Presidency was suggested.²⁷⁷ Of course, the head of the ticket that year would actually be Franklin Pierce. The Whig Party at that point especially in Kentucky was in disarray, its great leader Clay having passed on. But Holt chose not to seek a Congressional position.²⁷⁸

The next few months were quiet. He spent time in Washington and in Cape May, New Jersey, but Holt continued to remain in the public and political eye. John Livingston wanted to do his portrait. He had a \$700 life insurance policy issued on one of his slaves, with Holt himself named as the beneficiary, calling the slave his "boat hand."²⁷⁹ He still was making his money from collecting on commercial paper held by Kentucky banks.²⁸⁰ He was told that Winfield Scott's wing of the Whig party would want him to run,

²⁷⁶ Leonard, *Lincoln's Forgotten Ally*, 70; Holt Papers, Container 14.

²⁷⁷ Leonard, *Lincoln's Forgotten Ally*, 71.

²⁷⁸ Holt Papers, Container 14.

²⁷⁹ Holt Papers, Container 15.

²⁸⁰ Holt Papers, Container 15.

presumably for Congress. Someone offered to write his biography, and someone asked him to contribute to a monument for the recently-departed Henry Clay.²⁸¹

One might wonder whether Holt's religious leanings influenced his view of slavery. As we continue through Holt's history at the Library of Congress, we see that Holt's family was Methodist.²⁸² The *Dictionary of American Biography*, which is usually careful to mention the religion of its subjects, makes no mention of Holt's religion.²⁸³ He built a chapel for his mother near her grave and he seems rarely to have gone to church. He was clearly friends with the Roman Catholic Bishop of Louisville and gave money to parochial schools, but he also subscribed to the periodical *Presbyterian of the West*.²⁸⁴ About this time he was accused of aiding a runaway slave.²⁸⁵ As will be seen during his tenure as Postmaster General, his view seemed to be that he would not interfere with the state's views on slavery, but he would be kind to slaves as individuals. And Holt resumed his political speeches, for he was becoming the voice of the Democratic Party in an area comprised roughly of Kentucky, Tennessee and Missouri, getting asked to speak at various lodges and meeting halls in that general area.²⁸⁶

²⁸¹ Holt Papers, Container 15.

²⁸² Holt Diary, housed in Holt Papers.

²⁸³ "Joseph Holt," *Dictionary of American Biography*.

²⁸⁴ Holt Papers, Container 16.

²⁸⁵ Holt Papers, Container 15.

²⁸⁶ Holt Papers, Container 15.

In May of 1853 Kentucky Governor Bowell invited Holt to join the Board of Visitors of Western Military Institute, then located at Georgetown, Kentucky.²⁸⁷ James G. Blaine had taught there in 1850-51, and Bushrod Johnson, later a Confederate General, became the Headmaster.²⁸⁸ This position did not keep Holt at home. He spent time in Washington and arrived in Cape May, New Jersey during the summer—Holt’s only real contact with New Jersey so far as I am aware, other than the fact that he lived on New Jersey Avenue in the District of Columbia during his many years of serving the Federal government.²⁸⁹ Later that month he received word of John Brown’s attack on Harpers Ferry, and he was invited to the White House.²⁹⁰

In 1856, with the White House up for grabs, a Democratic friend named W.M. Corry asked Edwin Stanton to run for President.²⁹¹ Stanton declined and Corry immediately asked Holt if he would subject himself to a draft, asking for some copies of old speeches so he could circulate them among the delegates.²⁹² Holt refused to cooperate and James Buchanan of Pennsylvania was forthwith nominated.²⁹³ Corry complained of

²⁸⁷ It later moved to Nashville, and the building there is part of Vanderbilt University. “History of Vanderbilt,” Vanderbilt University, accessed June 9, 2014, www.vanderbilt.edu.

²⁸⁸ May 14, 1853, Holt Papers, Container 15.

²⁸⁹ Holt Papers, Container 16.

²⁹⁰ Holt Papers, Container 16.

²⁹¹ Holt Papers, Container 16.

²⁹² Holt Papers, Container 16.

²⁹³ Holt Papers, Container 16.

Buchanan, “he is a gentleman and a statesman but he is old and weak... what hands he may fall into I don’t know.”²⁹⁴

With the country torn on the eve of the 1856 election, Holt was asked to speak to the Democratic conventions in Kentucky, Indiana, and Ohio.²⁹⁵ On October 11, he was in Keokuk, Iowa writing that the Know Nothings are “bully and cutthroat.”²⁹⁶ Of course the head of the Know Nothing ticket that year was former President Millard Fillmore.²⁹⁷ Holt was displaying his own prejudices here—his pro-Catholic personal life and his leadership in the opposition party. Hailed as “one of the great orators of our time,” he returned to vote in Elizabethtown.²⁹⁸ Holt seemed unconcerned at the prospect of the nation splitting in two along North and South lines, for he bought land in both Minnesota and Florida.²⁹⁹ Holt represented the Northern-looking aspects of Kentucky and its citizens. Louisville, the seventh-largest city in the country at the time, led that image. With the seventh-largest population in the United States at the time, Kentucky was urban looking and less concerned with agrarian interests than other parts of the South. On the other hand, it had

²⁹⁴ Leonard, *Lincoln’s Forgotten Ally*, 78.

²⁹⁵ Holt Papers, Container 16.

²⁹⁶ Holt Papers, Container 16.

²⁹⁷ Leonard, *Lincoln’s Forgotten Ally*, 64.

²⁹⁸ Holt Papers, Container 17.

²⁹⁹ January 7, 1856, Holt Papers, Container 16.

225,000 slaves, ranking it well above a number of states of the “Old South.”³⁰⁰ Holt’s aunt was a Unionist, but she wrote her nephew that she had to keep this to herself.³⁰¹

³⁰⁰ “Census 1850: Louisville,” accessed Jun. 14, 2014, www.censusrecords.com/content/1850/Kentucky.

³⁰¹ Holt Papers, Container 17, item 2301.

Chapter 4

THE WASHINGTON CAREER MAN

If one were reviewing résumés for a major governmental position, how could one resist Joseph Holt's? He moved to Washington at the specific behest of President Buchanan. He moved from Patent Commissioner to Postmaster General to War Secretary: more responsibility from one level to another—something personnel people look for. True, he took a kind of demotion as a mere assistant to the Secretary of War, so he had technically fallen back in status when he became Advocate-General, but the duties of both offices had expanded enormously after the War began. (Also, he may have turned down higher posts.) One gets the sense that Holt did not plan this, path. Added to the résumé is the fact that Holt's decisions have a high level of importance: he renewed Goodyear's rubber patent, made the decision to remove corrupt postmasters in a day when a corrupt postmaster was a political asset, and served as the point man when a federal fort on American soil was fired on in anger for the first time since the War of 1812.³⁰² And his last job was as the holder of perhaps the most active legal position up to that time ever created in the Federal government. He needed to maintain order in the midst of a vast civil war, and his staff lawyers oversaw hundreds of trials and hearings.³⁰³ There was little complaint about his services, except for some grumbling about the way

³⁰² Leonard, *Lincoln's Forgotten Ally*.

³⁰³ Kastenber, 2.

he handled the Lincoln trial, but this was well after the trial had ended. And that case was perhaps the most important criminal trial in American history.

Patent Commissioner

After Buchanan's election, Buchanan's niece Harriet Lane invited him to dine with the President at the White House. Holt's life would never be the same after that night.³⁰⁴

What induced Holt to leave Kentucky for life in the disorganized city of Washington is unclear, for the streets were largely mud and the permanent population only about 6,000 people.³⁰⁵ But the Democrat from Lancaster invited him there through a letter from his niece and de facto First Lady, Harriet Lane, and he apparently offered Holt the post of Patent Commissioner in October 1837.³⁰⁶ This appointment is an example of why the Buchanan administration is near the bottom of the list of Presidencies. Holt had never shown any interest in invention or scientific learning. He was a fine speaker, but had never had any judicial office—even in the 1850s. The post would be what political scientists call “quasi-judicial.”³⁰⁷ He had to rule on the issue of whether an idea was an “improvement in the art” and thus eligible for protection. Holt accepted the post, without any apparent background, requiring an engineer or scientist. He was urged by George

³⁰⁴ Holt Papers, Container 17, Item 2324.

³⁰⁵ “1850 Census.”

³⁰⁶ Holt Papers, Container 17.

³⁰⁷ “Quasi-judicial,” *Merriam-Webster Dictionary*.

Seavey, who wrote a text on patents, to take the job because of its importance.³⁰⁸ Holt also had no apparent reason to choose to move to Washington. He had often sought the lower South for its climate, but Washington was no better than Kentucky, and in fact, in the summer had humidity probably unparalleled in any world capitol. Nevertheless, *Scientific American* welcomed Holt to his new post.³⁰⁹ In the words of that publication:

The Commissioner is the chief of the Patent Office, and all its duties are regulated by him. Commissioner Holt, upon assuming the duties of the office, expressed the determination to administer the Patent Office in that liberal spirit in which it is evident that they were designed to be applied; and he has thus far carried out his duties with much success. In a number of decisions which, as a whole, are everywhere admired for their beautiful diction and sound reasoning; he has given expression for rules and principles for the government of the examining corps...the younger members of the corps have evinced a ready understanding and a prompt concurrence with these expectations, and they endeavor, in all cases, to govern their official actions by them.

But we are sorry to observe that some of the older Examiners, while they do not rebel openly against Commissioner Holt, are, to say the least, very backward, we think, in adopting his rules of action. They profess to follow his instructions; but, sometimes, as compared with the younger members, they are curiously inept in the practical application of these instructions.³¹⁰

The article then went on to note that there was an appeal process, but that it did not adequately control the aberrations of the older examiners. However, in what would appear to be a last-minute note just as the issue was going to press, *Scientific American* continued:

Since the above was written, we learn that Commissioner Holt has appointed a Board of Appeals, to assist him in hearing and reviewing rejected applications. The Board is composed of three Chief Examiners . . . all men of ability and

³⁰⁸ Holt Papers, Container 18. Seavey may have feared the job falling into the hands of a total incompetent.

³⁰⁹ Editorial, *Scientific American* 6, Jan. 20, 1857, 1.

³¹⁰ Editorial, *Scientific American*, March 14, 1859.

experience. The establishment of the board is a movement of great importance, and will form the subject of special remark in our next number.³¹¹

If this is correct, Holt may have been a pioneer in the field of Administrative Law, for it outlines the basis of how federal agencies operate to this day.³¹² It is not clear if this structure was common in the 1850s, but one doubts it, given the small size of the federal government in the period. But the idea was that individual examiners would make decisions for the agency, and they would be reviewed by an internal appeal board. This board would presumably weed out the obvious mistakes before an applicant would have to go to federal court to get adequate legal relief.³¹³

It is unfortunate that there are few published records of Holt's term. Published decisions of the Office in regular form did not exist until after the Civil War.³¹⁴ Holt was constantly being asked to supply a copy of his decision, which puzzled the writer until he tried to find public versions of Holt's decisions and realized that they were in fact not available to the public.³¹⁵ There was no Federal Register or federal document depository in the 1850s.³¹⁶

³¹¹ Editorial, *Scientific American*, March 14, 1859.

³¹² Walter Gellhorn, *Administrative Law, Cases, and Comments* (NY: Foundation Press, 1966).

³¹³ In the case of the Patent Office, there is a special Federal court which now reviews appeals from that agency.

³¹⁴ Regular publication of Patent Office decisions began in 1876.

³¹⁵ July 15, 1858, Holt Papers, Container 18.

³¹⁶ "A Brief History Commemorating the 70th Anniversary of the Publication of the First Issue of the Federal Register," National Archives and Records Administration, 2006, accessed February 13, 2014, <http://www.archives.gov/federal-register/the-federal-register/history.pdf>.

Holt's most famous act was to renew Charles Goodyear's patent for rubber. This was quite farsighted, for the uses of the substance were not readily apparent, and Goodyear was quite a laughingstock for trying to do something with it.³¹⁷ The extension for a stated number of years was not based on technical grounds but on the grounds that Goodyear, after having been the object of ridicule, continued to be, according to Holt, impoverished, aged and infirm.³¹⁸ But he also denied Cyrus McCormick a new patent for an improvement on his reaping machine, which is credited with revolutionizing American grain agriculture.³¹⁹ Holt acquired a reputation for being able to make hard-nosed decisions. Government was conducted in that era more on a face-to-face personal knowledge basis than it is today with the vast modern array of rules, regulations and oversight.

Postmaster General

During his time in the Patent Office, Holt became known for his decisiveness. \ He must have denied a few widows future income, for when Buchanan was looking for someone to reform the Post Office, Interior Secretary Jacob Thompson (who didn't like Holt personally or politically) suggested none other than Joseph Holt, a man he avowed,

³¹⁷ Charles Slack, *Noble Obsession: Charles Goodyear, Thomas Hancock, and the Race to Unlock the Greatest Industrial Secret of the 19th Century* (New York: Hyperion, 2003).

³¹⁸ Joseph Holt, *Extension of the Goodyear Patent: Decision of the Commissioner* (Washington, D.C.), accessed Jun. 16, 2014, http://books.google.com/books/about/Extension_of_the_Goodyear_Patent.html?id=ZJ5AAAAAcAAJ. To show how hard it is to find some of the source material on Holt, this copy was obtained from the Bavarian State Library courtesy of Mad King Ludwig.

³¹⁹ *Opinion of the Hon. Joseph Holt, Commissioner of Patents, given January 28, 1859 in the matter of the application of Cyrus H. McCormick for an extension of his patent of January 31, 1845 for an improvement in reaping machines. Extension refused* (Washington, D.C.: George S. Gideon, 1859).

“who had none of the milk of human kindness in his veins.”³²⁰ Buchanan actually was groping toward civil service reform—he needed to get rid of the deadwood at several large post offices and was faced rather suddenly with an opening for Postmaster General as Aaron Brown, a longtime friend of the President since they had served together during Polk’s term as President, died suddenly.³²¹ The Postmaster, with the notable exception of Benjamin Franklin, had usually been an individual who had a political background (for example Jackson’s Postmaster General Amos Kendall),³²² and usually ran the department more to get jobs for the President’s political favorites than to improve the efficiency of the Post Office.³²³ To make matters worse, Brown himself had been the focus of investigation prior to his death.³²⁴ Holt wrote on December 3, 1858 that he had succeeded to the post on the death the proceeding March not only of Postmaster General Brown, but also of the third Assistant Postmaster General, leaving him with a lack of assistance.³²⁵ Moreover, Congress (doubtless involved with the Panic of 1857 and Bleeding Kansas) failed to find the time to make an appropriation to the Post Office, so that Postmasters were providing service out of their own pockets, expecting eventual federal

³²⁰ Philip Gerald Auchampaugh, *James Buchanan and His Cabinet on the Eve of Secession* (Boston: J.S. Canner, 1965), 81; *Opinion of the Hon. Joseph Holt, in the matter of the application of Cyrus H. McCormick*.

³²¹ Buchanan had been Polk’s Secretary of State and Brown the Governor of Tennessee who sent so many to help during the Mexican War that the State got the nickname “volunteer state.”

³²² Donald B. Cole, *A Jackson Man: Amos Kendall and the Rise of American Democracy* (Baton Rouge: Louisiana University Press, 2004).

³²³ Cole.

³²⁴ Holt Diary, housed in Holt Papers, Container 115.

³²⁵ Holt Papers, Container 20.

reimbursement (no wonder some chose to resort to graft).³²⁶ Interestingly, Holt's wife Margaret's father had been President Tyler's Postmaster General and was, at that point at least, a frequent rooster for his son-in-law, who had to keep in touch with Margaret by long distances. Margaret was getting sicker by the day from tuberculosis and was living all over the South in the hope of ridding herself of the disease.³²⁷

Several of the Postmasters General in the middle of the century had come from Tennessee in the hope of keeping that state in the "right" column. Brown had successfully run for Governor of the state in 1845, but had failed reelection.³²⁸ Brown had attended the Nashville Convention in 1850, which urged Southerners to support the Compromise of 1850.³²⁹

One of Holt's first acts was to refuse a job to a friend of Senator Yule—his own in-law through his recent marriage to Margaret.³³⁰ He also told postmasters to hold back on the distribution of abolitionist materials. Anti-slavery historians have criticized him for this, but Holt was trying to keep the government stable.³³¹ In a letter written to another postmaster and published when the *New York Herald* somehow learned of it, Holt explained that the anti-slavery pamphlets mailed in slaveholding Virginia "may impinge

³²⁶ It did not help that Buchanan chose not to have a special session to address the federal budget, a matter Holt felt free to criticize.

³²⁷ Leonard, *Lincoln's Forgotten Ally*, 73-77, 106.

³²⁸ Gov. Aaron Venable Brown Papers, State of Tennessee, accessed Apr. 23, 2015, <http://tn.gov/tsla/history/govpapers/findingaids/gp14.pdf>.

³²⁹ Leonard, *Lincoln's Forgotten Ally*, 106.

³³⁰ Holt Papers, Container 20.

³³¹ Avery Craven, *The Coming of the Civil War* (Chicago: University of Chicago Press, 1960).

on the right of self-preservation which belongs to every government and people.”³³² This includes, Leonard presumes, the Commonwealth of Virginia, where the pamphlets were being mailed. The local postmaster must “under the responsibilities resting on you as an officer and a citizen determine whether the books, pamphlets, newspapers &c received by you for distribution are of the incendiary character described.”³³³ Then the postmaster had the duty to refuse to deliver them and to dispose of them according to Virginia law. Their citizens “have the same right to extinguish fire-brands thus impiously hurled in the midst of their homes and altars, that a man has to pluck the burning fuse from a bomb shell that is about to explode at his feet.”³³⁴ Shortly after penning these words, Holt left first for his Kentucky residence and then to be by his wife’s side in South Carolina.³³⁵

In his *Report of the Postmaster General*, Holt discussed the expenses and revenues of the office. Turning to the matter of distributing the mails, Holt noted the problem with mail going to California and other Western points: that the expense of transportation was vastly greater than that of mail going along the Seaboard.³³⁶ However, he was a staunch supporter of certain routes. He sparred with Jacob Thompson and Secretary of War John B. Floyd over routes running west from what is now the plains area of Colorado to the East.³³⁷ Holt noted the route was expensive to run, but he

³³² Leonard, *Lincoln’s Forgotten Ally*, 95.

³³³ Leonard, *Lincoln’s Forgotten Ally*, 111.

³³⁴ Leonard, *Lincoln’s Forgotten Ally*, 103.

³³⁵ Leonard, *Lincoln’s Forgotten Ally*, 103.

³³⁶ Holt, *Report of the Postmaster General*.

³³⁷ Holt, *Report of the Postmaster General*, 10, 23.

nonetheless ordered service on the route speeded up from 20 to 15 days and asked that soldiers from a fort 60 miles away be detailed to protect it from Arapahoes and Cheyennes, Kiowas and Comanches, and any other tribes that might come within the area.³³⁸

Holt did not believe that it was fair to charge the average postal user for the cost of mail going to the West, but suggested instead a federal subsidy.³³⁹ Holt noted that the problem became worse as California had become more and more populated.³⁴⁰ Holt also complained that the railroads were receiving a subsidy far beyond the actual cost of carrying the mail. He noted that this was true even when the mail was merely shipped as common freight.³⁴¹ The United States paid much more attention to its railroads than the Canadians did in arguably much more difficult circumstances. Holt urged revision of these payments, which dated from 1836 at the dawn of the railroad era.³⁴²

The report further noted that New York Central magnate Cornelius Vanderbilt had undertaken for rail passage of mail moving between California and New Orleans and New York.³⁴³ The report is a little unclear, but it appears that this mail had been moving through Panama on what must have been a crude rail route. Vanderbilt was to transfer the mail to Nicaragua as soon as possible—and thus was born the beginning of the Panama

³³⁸ Holt, *Report of the Postmaster General*, 30.

³³⁹ Holt, *Report of the Postmaster General*, 31.

³⁴⁰ Holt, *Report of the Postmaster General*, 32.

³⁴¹ Holt, *Report of the Postmaster General*, 59.

³⁴² Holt, *Report of the Postmaster General*, 35.

³⁴³ Holt, *Report of the Postmaster General*, 40.

Canal route controversy that lasted for 50 years.³⁴⁴

Among his accomplishments, sites for post offices in New York and Philadelphia had been acquired, but the facilities had not been built.³⁴⁵ Holt stressed the need for an overland mail route, which had been opened, and although it was slow and expensive to operate, Holt felt it essential lest the maritime mail be interrupted by war.³⁴⁶ He opposed continuation of a San Antonio-San Diego mail route, which was very expensive and ran through wilderness, since Texans had already gotten mail through New Orleans.³⁴⁷ That, of course, was not a secure land route, but Holt believed the expense was just too great. He spent a lot of time worrying about this route.³⁴⁸

Holt noted that the Post Office was conceived as a government entity, but that it was supposed to be self-supporting.³⁴⁹ He made a number of “retrenchments,” mostly in route cuts and extra pay for postmasters. Holt also argued that the government should not be allowed the franking privilege. This constituted, in his view, a tax on the users of the system who paid, and he cited abuses in the system.³⁵⁰ Aside from criminal misuse, the franking privilege was also employed by some members of Congress to push abolitionist agendas, so Holt was indirectly striking at the use of mails by the abolitionists, who are

³⁴⁴ Holt, *Report of the Postmaster General*, 59.

³⁴⁵ Holt, *Report of the Postmaster General*, 35.

³⁴⁶ Holt, *Report of the Postmaster General*, 40.

³⁴⁷ Holt, *Report of the Postmaster General*, 41.

³⁴⁸ Holt Papers, Container 16.

³⁴⁹ This concept was revived with the Nixon Administration’s institution of the U.S. Postal Service. Holt, *Report of the Postmaster General*, 130.

³⁵⁰ Holt Papers, Container 11.

not mentioned in his report.³⁵¹ Holt took a final shot at some routes, which were used more for large parcel delivery than mail routes. He urged that they be stopped again so that the regular mail users would not be overburdened.

Holt felt particularly moved to overhaul the mail routes in Pennsylvania and New Jersey. A route proposal circulated also in December of 1858 that proposed a myriad of new routes, including one described as “2034—From Morristown by Hanover and Hanover Neck, to Livingston, 8 miles and back, three times a week. Leave Morristown Tuesday, Thursday and Saturday at 2 p.m. arrive Livingston by 5 p.m. Leave Livingston Tuesday, Thursday, and Saturday by 5 and one-half p.m. and arrive at Morristown by eight and one-half p.m.” Of course, “No pay will be made for trips not performed.”³⁵² Contractors had to be given “certificates of sufficiency” by a postmaster or a judge of a court.³⁵³

Included as an appendix to the report is a discussion of the trial of William D. Phillips who tried to counterfeit the signature of Senator Stephen Douglas in order to avoid payment of postage.³⁵⁴ The Washington postmaster testified that Phillips admitted to placing a letter in the mail at his post office. Phillips audaciously stated to him that he placed Douglas’ name on the letter as an affirmation of Douglas’ respect for Phillips’ character. Phillips was using the letter in order to solicit business as a government claims

³⁵¹ Holt Papers, Container 16.

³⁵² Holt, *Report of the Postmaster General*, 130.

³⁵³ Holt, *Report of the Postmaster General*, 130.

³⁵⁴ Holt, *Report of the Postmaster General*, 50.

agent.³⁵⁵ Douglas testified that while he knew Phillips and would have let him use his name as a reference, he told Phillips after the Senator learned of the use of his name that he did not use his own franking privilege on private business and he certainly would not permit Phillips to do so.³⁵⁶ Another witness testified that he had tried to settle the matter with Holt for five hundred dollars, but Holt insisted on prosecution. Still another witness testified to Phillips' admitting to the use of Douglas' signature. To the surprise of the prosecuting attorney, the jury returned a verdict of not guilty. The prosecutor asked the jury why they failed to convict, and they replied with technical precision that there had been no showing of use of the frank to avoid payment of postage, an element of the crime of misuse of the frank.³⁵⁷ Also, said franking privilege was used so loosely that they did not see why Phillips should be singled out. This example of leniency by a jury may have been in the back of Holt's mind when he later insisted on a military trial for the Lincoln conspirators.³⁵⁸

In a further attempt to stem the tide of corruption, he also helped the department spread the use of postage stamps to prove that mail had been paid for instead of each postmaster in every post office signing (or "franking) the mail as proof the postage had been paid. Franking itself was a path for corruption.

³⁵⁵ Holt, *Report of the Postmaster General*, 50.

³⁵⁶ Apparently some members of Congress were loose about letting people use their name rather than pay postage. Holt, *Report of the Postmaster General*.

³⁵⁷ Holt, *Report of the Postmaster General*.

³⁵⁸ Holt, *Report of the Postmaster General*.

Holt had been appointed to weed out corruption. It seems that the postmasters in all the major cities were corrupt. He removed the postmaster in Philadelphia after a shortfall was noticed between the cash on hand and receipts. He had done this himself by ordering clerks to sign blank receipts—he then had the clerks fired for incompetence.³⁵⁹ In 1859, Holt, with Buchanan’s blessing, removed this fake from office. Holt, in his usual florid language, sums up the case of Wescott’s malfeasance: “This is a growing evil for the repression of which too much solicitude cannot be felt or too much solicitude cannot be exercised.”³⁶⁰ Holt noted that Wescott had defended himself on the grounds that the clerks produced fraudulent receipts. But, argued Holt, the clerks were “too dependent” on the Philadelphia postmaster to resist him, and were now “too conscious to permit themselves to be used as instruments for his vindication.” Margaret, of course, showed her loyalty as a wife and congratulated him.³⁶¹

By December of 1859, some in the Administration were writing Holt that “the crisis is at hand and a sectional crisis looms.”³⁶² The crisis took its toll on Holt’s body—he was constantly asking for nostrums like liver pills from his home pharmacist.³⁶³ But he also functioned like a lesser Benjamin Franklin—one day he was introduced to Lord Russell who at that point was British Foreign Minister. On another day he met Joseph Henry, the first Secretary of the Smithsonian Institution. As a former patent

³⁵⁹ Dyer, 184.

³⁶⁰ Dyer, 185.

³⁶¹ Dyer, 186.

³⁶² Holt Papers, Container 20.

³⁶³ Holt Papers, Container 21.

Commissioner, it is likely that he knew Henry from his days at the Patent office. In March of 1860, his wife turned fatally ill—she had been ailing since the prior June³⁶⁴—and Buchanan excused him from Post Office duties. When he returned, much attention was paid to new postal routes—mostly beyond the Mississippi, e.g. to Albuquerque and Santa Fe. Holt was acting as if he expected the Union to continue and had the vision to see the southwest would get the postal services it needed.³⁶⁵ The executives of railroads were frequent Holt correspondents. For instance, President Garrett of the Baltimore and Ohio railroad wrote Holt a letter thanking him for using the line. It was written on the official stationery of the B&O’s new Royal Blue service.³⁶⁶

According to Leonard, Holt sat at his office in Washington rather than attending the 1858 Democratic National Convention in Baltimore.³⁶⁷ That convention led to “the Disruption of the American Democracy,” as Roy Frank Nichols called it.³⁶⁸ The Democratic Party no longer held together. It’s odd that Holt, with so political an office, did not attend. He might have helped persuade the Southern faction that it was playing with fire—for the Party and for the nation. Leonard merely says he was busy being Postmaster, and I can find no evidence to refute that, but still he was only about 40 miles away when his party split asunder.³⁶⁹ Another reason may have been his wife Margaret’s

³⁶⁴ Holt Papers, Container 21.

³⁶⁵ Holt, *Report of the Postmaster General 1860*.

³⁶⁶ Dyer, 184.

³⁶⁷ Leonard, *Lincoln’s Forgotten Ally*, 110.

³⁶⁸ Roy Frank Nichols, *The Disruption of the American Democracy* (New York: Penguin Books, 1957).

³⁶⁹ Nichols.

deteriorating health. She moved to a sanitarium in Florida, then back to Frederick, Maryland, where she died around August 7, 1860.³⁷⁰ She would be Holt's last love, except the Union.

While Holt sat in the Post Office Building, secession simmered in South Carolina. Charleston, the financial and cultural epicenter at least of the lower South, was defended by four forts. Two of these were no longer of any use whatever. Fort Moultrie was technically in the harbor but silt had created a land bridge to the shore. Fort Sumter, built during the War of 1812, took lonely vigil in the actual harbor.³⁷¹ The government had alternatively tried to build it up and then abandoned it again.³⁷² Just after Lincoln had been elected, Sumter was empty and Moultrie was defended by two decimated companies.³⁷³ The American army was a small force mostly of veterans of the Mexican campaign in the end of 1860.³⁷⁴ Moultrie was commanded by a 70-year-old colonel; Sumter by the now well-known Abner Doubleday, a Mexican War veteran.³⁷⁵ Officers sought out duty at Charleston, as it was known as a quiet area with lots of nice parties on a Saturday night and a neighborhood without fear of any Indian raids.³⁷⁶ Buchanan had spent some money to repair these forts, but the problem was that the guns were aimed

³⁷⁰ Leonard, *Lincoln's Forgotten Ally*, 193.

³⁷¹ Swanberg, 6.

³⁷² Swanberg, 7.

³⁷³ Swanberg, 10.

³⁷⁴ Swanberg, 30.

³⁷⁵ Swanberg, 36.

³⁷⁶ Swanberg, 4.

towards the harbor, on guard against foreign invaders. No thought had been given to a raid from nearby land.³⁷⁷

In assessing Holt's later role in the handling of the situation in the harbor, it is well to note that Holt had spent most of his life in an implicit battle with Calhoun's nullification theory. To Holt the Union was everything; every State had joined the Union freely with the knowledge that Union meant forever.³⁷⁸ John Calhoun, the spokesman for States' Rights, saw the Union as an instrument of State interests. That attitude had persisted throughout from the Nullification Crisis of 1833 through the election of Lincoln, and with Lincoln's election, Charleston saw its way of life endangered.³⁷⁹

Buchanan's Secretary of War in November of 1860 was John Floyd, a Virginian with no particular love of the Union or of Postmaster General Holt.³⁸⁰ On the eve of possible conflict, South Carolina had requested that the government sell it some muskets. The muskets were obsolete, but could still damage. Floyd obliged by letting South Carolina buy 10,000 muskets at a mere \$2.00 apiece.³⁸¹ Captain Gardner was starting to see the need for reinforcements of his little band at Fort Sumter, but Floyd turned him down.³⁸² Gardner then left town in favor of Fitz-John Porter, who later would become the celebrated target of a court martial trial reviewed by Joseph Holt.³⁸³ Porter was soon

³⁷⁷ Swanberg, 10.

³⁷⁸ Cf. Holt, "The Fallacy of Neutrality."

³⁷⁹ Swanberg, 15.

³⁸⁰ Swanberg, 30.

³⁸¹ Swanberg, 30.

³⁸² Swanberg, 29.

³⁸³ Swanberg, 21-22.

given a colleague in the form of Robert Anderson, lionized in later Union lore as the man who had held Fort Sumter—the Northern version of the Alamo.³⁸⁴ Anderson requested reinforcements, but instead General Buell would arrive on December 7, 1860 with instructions not to molest the South Carolina natives.³⁸⁵ Reinforcing Sumter was denied, as it was thought it might be seen as a provocation to the fire-eating locals. This apparently was Buchanan's personal decision, for it was his theme throughout the secession crisis—do not upset the Southern rebels. By this time, the men in blue were no longer getting invited to dances, and local provisioners were routinely denying requests for supplies.³⁸⁶ A correspondent wrote Holt, “we are in the midst of a revolution which is continuing with unprecedented rapidity.”³⁸⁷

After Lincoln's victory in November 1860, Buchanan watched as the South began to pull out of the Union. Even before the election, General-in-Chief Winfield Scott urged Buchanan to be prepared to meet an insurrection and be ready to defend federal facilities in the South. There were few troops on site at the moment, but there were 16,000 troops in the West watching the Indians, and these men could be brought into position.³⁸⁸ Buchanan did nothing, however, and on December 20, shortly after the Electoral College made Lincoln's victory absolute, South Carolina declared itself an independent nation.³⁸⁹

³⁸⁴ Swanberg, 33-39.

³⁸⁵ Swanberg, 49.

³⁸⁶ Swanberg, 101.

³⁸⁷ Holt Papers, Container 50.

³⁸⁸ Swanberg, 26.

³⁸⁹ James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford, 1988), 234.

On the other hand, a New Orleans correspondent noted, “we can accomplish nothing by coercion.”³⁹⁰ In January, Captain Anderson notified Holt that he was leaving for Sumter. Holt, by then leaving for the War Department, was praised for using the Post Office to try to keep the West in the Union.³⁹¹ But the arsenal in Georgia had to surrender, and Holt looked on all this hopelessly.³⁹² We have no record that he had any plan to keep the South in the Union, and while he was given plaudits as a tactician in the Sumter affair, ultimately he deserves some of the responsibility for the early success of the South. He was the man in charge of the Army and he did not adequately respond. Although he had a plethora of excuses and good reasons, he did fail in his mission. He did not question Buchanan’s orders to respond to the South in a limited way, and he left key decisions to Anderson who was left with only ambiguous orders. It is very possible that fact preyed on his mind when he was handed responsibility for the Assassination probe.

Buchanan clearly had the attitude in all this of an elderly man suffering from delusions. Buchanan took time to write a letter to Holt about a relative at West Point and expressed that he believed that a little tea party would solve the issues dividing the country.³⁹³ Clay was able to pull surprises with his compromises, but Buchanan was not

³⁹⁰ Holt Papers, Container 50.

³⁹¹ “Joseph Holt Suggested for Lincoln’s Department of War,” *New York Times*, Jan. 25, 1861.

³⁹² “The Seizure of Government Property in Georgia,” *New York Times*, Jan. 3, 1861,

³⁹³ Holt Papers, Container 50.

in Clay's league. Buchanan wrote a farewell letter to Holt on March 11, 1861.³⁹⁴ The next day Lincoln sent word that he wanted to talk to Holt. One surmises that he was offered the position of Attorney General, but it seems he never wanted it because he never got it. It is well documented that Holt later turned Lincoln down in 1864 after Attorney General Edward Bates resigned.³⁹⁵ Leonard reasons that he did not feel able to handle the broad range of legal issues that would be before the Attorney General's Office, even in peacetime.³⁹⁶ It is difficult to imagine Holt feeling more confident in 1861 than later on during the war.

Buchanan had thought nothing a few months before of entering Paraguay. He had assembled the largest armada in American history to support a "scientific" expedition, but the old gentleman hesitated to act against a state of the federal union.³⁹⁷ If Buchanan carried a big stick in foreign policy, he had only a broken twig for the rebels. He made it clear that he was opposed to secession and noted in lawyerly fashion that Lincoln had failed to execute a single command yet—so he wondered why Southerners were so perturbed.³⁹⁸ Jean Baker speculates that Buchanan made no response to Sumter in the hope that this would mollify the South and bring it to the negotiating table.³⁹⁹ He took the

³⁹⁴ Holt Papers, Container 51. He would continue to write Holt until the former President died in 1863. In fact, his health must have failed him right after he left the White House, for Harriet Lane wrote Holt in May that her uncle was ill. Holt Papers, Container 52.

³⁹⁵ Leonard, *Lincoln's Forgotten Ally*, 189.

³⁹⁶ Leonard, *Lincoln's Forgotten Ally*, 343.

³⁹⁷ Gene Allen Smith and Larry Bartlett, "A Most Unprovoked, Unwarrantable, and Dastardly Attack: James Buchanan, Paraguay, and the *Water Witch* Incident of 1855," *The Northern Mariner* XIX, no. 3 (July 2009): 269-70.

³⁹⁸ Jean Baker, *James Buchanan* (New York: Times Books, 2004), 50.

³⁹⁹ Baker, 50.

position that he could do nothing to prevent a state from leaving the union and could not put down an insurrection in the absence of a request from a local official.⁴⁰⁰ For two months, Northern newspapers suggested that Buchanan follow in the footsteps of Andrew Jackson in the nullification crisis and begin to strengthen the Charleston facilities, but John Floyd, Secretary of War, chose to do nothing.⁴⁰¹ In December, Scott pointed out that the situation in Charleston Harbor was perilous. Troops were stationed in Fort Moultrie actually on the soil of the city, but that site could not be well defended from land attack. Fort Sumter was a brick pentagon fortress located on an island in the harbor and could be more easily defended. There were, however, no troops there at the moment, as it was being repaired.⁴⁰²

Then the cabinet defections began. Howell Cobb of Georgia left the post of Treasury Secretary eventually to become head of the interim Confederate congress.⁴⁰³ This was a bad sign, as Cobb had been, like Holt, a Unionist Democrat.⁴⁰⁴ The ill Secretary of State Lewis Cass then left in disgust at Buchanan's failure to act against South Carolina.⁴⁰⁵ Interior Secretary Jacob Thompson, who claimed to have gotten Holt his position as Postmaster General, then left to become a Confederate agent.⁴⁰⁶

⁴⁰⁰ But South Carolina was soon without one standing federal officer.

⁴⁰¹ Swanberg, 51.

⁴⁰² Swanberg, 10.

⁴⁰³ Leonard, *Lincoln's Forgotten Ally*, 170.

⁴⁰⁴ Leonard, *Lincoln's Forgotten Ally*, 170.

⁴⁰⁵ Leonard, *Lincoln's Forgotten Ally*, 170.

⁴⁰⁶ Buchanan incredibly paid his travel expenses.

Floyd had been embezzling funds with help from Thompson.⁴⁰⁷ Fearful of Virginia's reaction to the impeachment of its native son, Buchanan was happy to accept Floyd's resignation. He resigned but continued to offer advice at cabinet meetings.⁴⁰⁸ Holt, whose cleaning up of the Post Office was considered exemplary, was installed in the post, just in time to be at the forefront of the South Carolina explosion.⁴⁰⁹

On December 25, 1860, the commander of the forces in Charleston Harbor, Robert Anderson, moved his troops from the mainland to Fort Sumter.⁴¹⁰ Buchanan had agreed with Southern commissioners in Washington to discuss peace and that he would not fortify Sumter, as South Carolina had agreed not to attack Anderson.⁴¹¹ They saw Anderson's action as a violation of the agreement, and Thompson, still in town, suggested that Buchanan sell the fort to South Carolina, which had claimed Sumter under eminent domain.⁴¹² It is a little bit vague just when Holt assumed the office of War Secretary, but Attorney General Black was moved to Secretary of State on December 17. Black and Holt joined Edwin Stanton to form the reliable Union contingent in the cabinet.⁴¹³ As Baker recounts it, Buchanan was forced to change his position into that of supporting the Union position at Sumter. When the Southern commissioners complained,

⁴⁰⁷ Auchampaugh, 90-93.

⁴⁰⁸ Leonard, *Lincoln's Forgotten Ally*, 112.

⁴⁰⁹ Leonard, *Lincoln's Forgotten Ally*, 124-25.

⁴¹⁰ Swanberg, 94-101.

⁴¹¹ Swanberg, 82.

⁴¹² Swanberg, 94.

⁴¹³ Holt's Postmaster General position went unfilled until Lincoln assumed office. It appears that Holt continued to make decisions for that office for the next couple of months.

Buchanan became angry and thenceforth acted with resolution to protect Federal property.⁴¹⁴

One should note that Buchanan had supported the rotation of federal officials in office not out of any desire for a turnover in parties but because he thought that insisting that offices be vacated after four years would insure that the Democrats would hold onto the office for eight. The fate of the particular Democrat supporter was not of any particular concern to him. When Brown died, the name of the New York City Postmaster, an ally of Mayor Fernando Wood, was placed forward, but Buchanan, fortunately, did not take the bait as that gentleman eventually fled to Mexico to escape arrest for malfeasance.⁴¹⁵

War Secretary

On December 29, Floyd officially left the War department. There was, however, an interregnum of about two weeks prior when Holt was really running the Department.⁴¹⁶ South Carolinians had already been tipped off, probably by Floyd. Telegraphed State Senator Laws, “Holt succeeds Floyd. It means war. Cut off supplies from Anderson and take Sumter.”⁴¹⁷ Holt claims in his diary that he was formally appointed as interim Secretary of War on New Year’s Day, 1861. The Senate, acting at the urging of Slidell, inquired if Buchanan was planning to make Holt the permanent

⁴¹⁴ Baker, 80.

⁴¹⁵ Baker, 92.

⁴¹⁶ Leonard, *Lincoln’s Forgotten Ally*, 118.

⁴¹⁷ Swanberg, 105.

appointee. Slidell argued that the Senate might not consent to Holt's selection.⁴¹⁸ Holt, for his part, did not believe a formal appointment was legally required.⁴¹⁹

On January 5, 1861 a supply ship, *Star of the West*, left to supply Anderson but was turned back a couple of days later under Confederate fire, and was ordered not to retaliate.⁴²⁰ Holt, for his part, congratulated Anderson for holding firm, describing him as admirable for his humanity, patriotism and military ability.⁴²¹

As incoming War Secretary, Holt would seek out the advice of General Winfield Scott, the Army's commanding general. Scott advised holding the Charleston area. Although relations were near war, the postal routes still were open (Holt had tried to the last second to keep his old department running smoothly) and on January 5 he received a letter from Anderson, who was awaiting supplies.⁴²² At the same time, Holt ordered the fortifications around Washington City beefed up—Floyd had refused to protect the capital.⁴²³ Fortunately for the Union, the fortifications were not needed until General Jubal Early's raid by Confederate troops in 1864 had the town in a panic.⁴²⁴

Holt would prove to have a less than sure hand during the next several weeks, but at least he kept the Army functioning in Charleston Harbor. He told Anderson not to try

⁴¹⁸ Holt Papers, Container 50.

⁴¹⁹ Holt Diary, housed in Holt Papers.

⁴²⁰ Swanberg, 129.

⁴²¹ B.A. Botkin, *A Civil War Treasury of Tales, Legends, and Folklore* (New York: Random House, 1960), 37.

⁴²² Swanberg, 123-24.

⁴²³ Leonard, *Lincoln's Forgotten Ally*, 124.

⁴²⁴ Leonard, *Lincoln's Forgotten Ally*, 126.

to occupy Fort Sumter and he even tried to intercept the *Star of the West*, which had been dispatched to relieve Anderson's contingent. On January 9, shore batteries took a shot on the *Star*—this is usually listed as the first release of fire of the rebellion.⁴²⁵

The resolution to inquire of the President whether he were planning to make a formally appoint Holt was carried 35-17.⁴²⁶ Buchanan replied on January 16, arguing that the act of February 5, 1795 granted the President the power to make 6-month provisional appointments and that on January 1 he had appointed Holt in furtherance of that Act.⁴²⁷ Buchanan followed with a list of all such appointments since 1829. Holt in his diary claims that he told Buchanan that he was willing to seek formal appointment, and on January 17 Buchanan formally sent Holt's name to the Senate as the full-fledged Secretary of War.⁴²⁸ The next day, the matter was submitted to the Senate, which consented to Holt's nomination by a 38-13 vote along sectional lines with the perhaps ironic affirmative southern vote by Sen. Johnson of Tennessee, who would later, as Vice-President, come close to removing Holt from public office.⁴²⁹ Later allies like Fessenden and Seward voted in his favor—so did Johnson of Tennessee. Mason and Slidell were among those who opposed. Yule, who either had left or was about to leave the Senate, did not vote.⁴³⁰ At the same time, Buchanan took for himself the position of *de facto*

⁴²⁵ *Civil War Trust*, 2014, accessed Jun. 14, 2014, <http://www.civilwar.org/>.

⁴²⁶ Holt Diary, housed in Holt Papers.

⁴²⁷ Holt Diary, housed in Holt Papers.

⁴²⁸ Holt Diary, housed in Holt Papers.

⁴²⁹ Leonard, *Lincoln's Forgotten Ally*, 344-47.

⁴³⁰ Dyer, 190.

Secretary of State. Lewis Cass was ailing and Buchanan hoped he could take over Paraguay via the supposed scientific mission.⁴³¹

With this confirmation, Holt now became a central figure in the growing North-South conflict. Holt claims that he immediately resigned as Postmaster General, but he appears to have continued for some time as de facto Postmaster, as no one was available to fill the position for a few weeks.⁴³²

Holt had already attracted the attention of Cortlandt Parker, a self-professed Republican. He wrote Lincoln that Holt should be appointed Secretary of War: “He is a Southerner—a true man—a Union man—energetic—acquainted with his special duties—and his being a member of the Democratic party will make measures on your part necessarily liked to be deemed coercive palpable to others than Republicans. . . . The danger is imminent that yours may be a divided rule.”⁴³³

Later in January, Holt was again feuding with the South Carolina legislature. It had urged that the federal government return to South Carolina its property—i.e. Sumter. Holt replied, “Sumter is not for sale.”⁴³⁴ However, despite all this pro-Union prose, Holt still refused to take the ultimate steps against the South. On January 16, 1861, he told Anderson that no attempt would be made to relieve him, even though the contingent in Charleston Harbor was bordering on starvation. Holt stated that the Administration

⁴³¹ Smith and Bartlett.

⁴³² Holt Diary, housed in Holt Papers.

⁴³³ Abraham Lincoln, “Sumner Is Not for Sale,” Papers, Library of Congress, Feb. 4. 1861, accessed Mar. 11, 2015, <http://memory.loc.gov/ammem/alhtml/malhome.html>.

⁴³⁴ Leonard, *Lincoln's Forgotten Ally*, 171.

wanted no bloodshed. Holt did leave the opening that he would relieve Anderson “if requested.”⁴³⁵ On the February 11, Holt instructed Anderson to only act defensively as the President held out hope for results from the Confederate peace commissioners, who were then in town. On February 21, Lincoln told the New Jersey Legislature that he might have to put his foot down about the fort.⁴³⁶ W. A. Swanberg, a historian of the firing on Sumter, believes that Holt left Anderson, a mere field commander, in the position of deciding when to start a war.⁴³⁷ But this was consistent with Holt’s later thinking (for example in the Fitz-John Porter case) that great weight should be given to the discretion of field commanders. Also, Holt knew that Anderson would soon lose contact with Washington. Holt was desperate for time to at least try to prepare his army for battle.⁴³⁸

In the meantime, Holt took a page from every military strongman that ever lived. On February 21, 1861, he called for a mass march by the Army in Washington to commemorate the birthday of George Washington, the first President and father of his country. Former President John Tyler, in town as part of the Confederate peace commission, wrote the White House that this was “a provocation.”⁴³⁹ Buchanan first ordered Holt to stop but Congressman, soon General, Daniel Sickles got so angry that he

⁴³⁵ Leonard, *Lincoln’s Forgotten Ally*, 141-43.

⁴³⁶ Abraham Lincoln, “Address to the New Jersey State Senate: February 21, 1861,” accessed May 16, 2014, <http://www.abrahamlincolnonline.org/lincoln/speeches/trenton1.htm>.

⁴³⁷ Swanberg, 177, 203-08.

⁴³⁸ Swanberg, 177, 203-08.

⁴³⁹ Swanberg, 201.

went directly to the White House. (Sickles had originated the idea in the first place and had placed a resolution before the House for the parade.) Buchanan then allowed the parade to continue—he didn't want to disappoint the crowd that had already gathered.⁴⁴⁰ A few days later, Abraham Lincoln arrived secretly in town. He had no actual authority as yet, but did seek to get things in order for his inauguration, by then only a couple of weeks away.⁴⁴¹

Holt was becoming the target of Southern hatred. The *Charleston Mercury* provides an excellent example under a Washington dateline of February 23, 1861:

Joseph Holt, who is more cordially and justly hated and despised than any man in the cabinet has refused to receive a box sent to him from South Carolina. The box, when opened at the ADAMS [sic] express company office, was found to contain beautiful flowers. No one dared to disturb these flowers for fear of an explosion of some subtle poison. HOLT does not deserve the honor of an assassination [how ironic]. But he is a marked man. If he ever ventures within the confines of South Carolina he will never return to practice coercion again. The breed of such traitors cannot be perpetuated among us.⁴⁴²

By mid-February 1861, Anderson and Doubleday sent off a note to Washington arguing that they would need help to defend the fort, but did not get to the city before the day of the inauguration.⁴⁴³ Buchanan by then was thinking only of getting out of town, but Holt was still technically the Secretary of War (Simon Cameron was not yet in the city).⁴⁴⁴ So Holt, supposedly shocked that the fort was so precarious, went to see Lincoln

⁴⁴⁰ Leonard, *Lincoln's Forgotten Ally*, 127.

⁴⁴¹ Leonard, *Lincoln's Forgotten Ally*, 128.

⁴⁴² Editorial, *Charleston Mercury*, Feb. 23, 1861.

⁴⁴³ Swanberg, 203.

⁴⁴⁴ Swanberg, 219.

the very next day.⁴⁴⁵ Lincoln turned to Scott for advice, and the old warrior told the new President that the Fort's position was untenable. Joseph Totten, the chief engineer of the Army, and later founder of the American Academy of Sciences, confirmed this.⁴⁴⁶ On February 16, Holt gave a party for the Southern commissioners who were still in town. He loved to give dinner parties, so this was nothing new, but it angered the *Charleston Mercury* that they would sup with a traitor.⁴⁴⁷ An unstable truce took Buchanan to the end of his misery on March 4, when he accompanied Lincoln to the Capitol. He wrote a touching farewell note to Holt, thanking him for his loyalty.⁴⁴⁸

On March 10, Holt left Washington, leaving the situation in the hands of Simon Cameron and anyone else who was there. On April 14, 1861, the Fort surrendered.⁴⁴⁹ Four years later, almost to the day, Holt and Anderson would return to Charleston on what was surely one of the most memorable single days in American history.⁴⁵⁰

The experience of serving as Secretary of War was life changing for Holt. Nominally, his short tenure as Secretary of War was the highest rank he would ever hold. Holt's military experience had been limited to overseeing a military academy years before. But Buchanan was stuck for available talent, and Winfield Scott certainly knew how to run the Army. More to the point, it turned Holt from a capable guy from

⁴⁴⁵ Swanberg, 223.

⁴⁴⁶ Swanberg, 238.

⁴⁴⁷ Holt Papers, Container 27.

⁴⁴⁸ Holt Papers, Container 28.

⁴⁴⁹ Swanberg, 326.

⁴⁵⁰ Editorial, *Charleston Mercury*, Apr. 15, 1861.

Kentucky into a staunch leader of the Union. He was a slaveholder, but the sight of the federal government under siege from one of its states set Holt ablaze.⁴⁵¹

Holt claims in his diary that he thereupon resigned as Postmaster General and that Horatio King would be named as his successor.⁴⁵² King served from February 17 until Lincoln appointed Montgomery Blair a few weeks later.⁴⁵³ Holt, it appears from records that exist from that era, remained the author of many of the final reports of the Postmaster General for the year 1860.⁴⁵⁴ For his part, King wrote in some ways the best description we have of Holt as a person: “though sometimes revealing what might be regarded as rather a stern exterior, [he] is far from cold when the ice is broken, and has a keen relish for genuine wit and fun.”⁴⁵⁵

Holt also turned his attention to rebels in the ranks elsewhere. He relieved General P.T. Beauregard as commander of West Point.⁴⁵⁶ Beauregard held that spot for only a week, but he had made it plain that he would join his friend Slidell in leaving the Union if hostilities were to break out. Slidell questioned whether Holt had been acting on Buchanan’s explicit authority and the Kentuckian replied, “We have heard the crack of the overseers’ whip over our heads long enough.”⁴⁵⁷ It was one of the few times Holt

⁴⁵¹ Swanberg, 222-24.

⁴⁵² Dyer, 190.

⁴⁵³ James Grant Wilson and John Fiske, eds., *Appleton’s Cyclopaedia of American Biography* (New York: D. Appleton and Company, 1891).

⁴⁵⁴ Holt, *Report of the Postmaster General*.

⁴⁵⁵ Horation King, *Turning on the Light: A Dispassionate Survey of President Buchanan’s Administration from 1860 to Its Close* (Philadelphia: J.B. Lippincott Company, 1895).

⁴⁵⁶ *Civil War Trust*.

⁴⁵⁷ Swanberg, 167.

really spoke out about the institution of slavery. But Beauregard was an Army figure, seeking to leave the Army to protect his position as a slaveholder. Holt, who hated corruption, may have seen this as corrupt. Buchanan also wrote a letter to Slidell, backing up his Secretary of War.⁴⁵⁸

Holt had taken over as Secretary of War when the nation was in a difficult position, in a situation that undermined his own country. In retrospect, it appears that Holt waffled, but a good portion of his flip-flopping was because Buchanan believed that his personal summit diplomacy would solve the crisis. Holt's brief tenure as Secretary of War was nominally the height of his career, for he would never again be the chief of a whole department. While it was too brief to evaluate meaningfully, Holt had crossed whatever line there had ever been in his heart between being a Southern slaveholder and a border state Union man. He also apparently decided that high office was not for him. Watching the South try to destroy the Union set him ablaze. He didn't stay around to see if he could land a job with the new Administration; instead, he headed for home.⁴⁵⁹

But there is room for criticism of Holt's role. He was Secretary of War and although his President was no help, Holt reacted with no plan. He at the least could have tried to move some of those troops out West into the South, but he failed to take this administrative step. He was not set to manage a crisis, but he would do better with another national crisis when Lincoln was shot.

⁴⁵⁸ Swanberg, 166-67.

⁴⁵⁹ Leonard, *Lincoln's Forgotten Ally*.

It seems the March 5, 1861 meeting was Lincoln's first personal contact with Holt. It must have left Lincoln with a favorable impression, and Lincoln would later turn to him for assistance—but on the rather narrow issue of damage claims. He would leave office the next day as Simon Cameron finally came in from Pennsylvania.⁴⁶⁰

Holt was now incurring the wrath of his own family. As the war approached, his brother Robert, with whom he had practiced law in Mississippi, urged Holt not to abandon the South. Lincoln, in his view, had “issued a declaration to free the Slaves of the South,” he wrote Joseph.⁴⁶¹ Supporting him would “strike a cold dagger in the bosoms” of his Southern friends. He went on to complain that “poison and knives” had been issued to slaves to aid in their insurrection against their masters.⁴⁶²

Buchanan later wrote that he didn't particularly like the way Holt ran the department because he refused jobs without explanation or a “palliative” word.⁴⁶³ Of course, as noted, Buchanan was too polite, and this led him to lose control of his cabinet.

As can be seen through reading through Holt's materials at the time, except for an occasional warning of impending doom, the attitude of Holt and the administration seemed to be like that of children playing on train tracks while the express loomed in the distance. Holt was working on remaking postal routes from Texas into the rest of the country and replying to the myriads of letters from people seeking postmasterships as if

⁴⁶⁰ Holt Papers, Container 147.

⁴⁶¹ Holt Papers, Container 18.

⁴⁶² Holt Papers, Container 18.

⁴⁶³ Auchampaugh, 281.

nothing were about to happen.⁴⁶⁴ He was working on Texas at the urging of the United States Attorney in that state,⁴⁶⁵ and the *New York Times* noted that the Post Office was prepared to cancel its existing contracts, in some cases.⁴⁶⁶

In his personal life, he found a dividend of over a thousand dollars from the Bank of Kentucky, and in the meantime, the Roman Catholic bishop of Louisville tried to find a post office job for a friend in Georgetown, KY.⁴⁶⁷ Upon his wife's death, Holt received a letter from someone consoling him with Scripture "I go to prepare a place for you."⁴⁶⁸ It must have had an effect; Holt turned into a sad man out only to save and avenge the Union after Margaret's death. No more joyrides in Egypt. Holt became emotionally isolated in Washington. Holt was a bit of a puritan anyway, and after her death he became a kind of monk for the Union.⁴⁶⁹ Like Stanton, after the inauguration Holt returned to private life. But his voice did as much as the Union army to keep Kentucky in the Union. And he would return to South Carolina on April 13, 1865.

Holt's successor as Secretary of War, Simon Cameron, was installed on March 5, 1861—it wasn't deemed necessary to hold up political appointees in those days. Some sources indicate that Holt hung on for a while in Washington, but he returned to Kentucky for a rest. He had already played some role as an advisor to Lincoln, for he

⁴⁶⁴ Holt Papers, Container 51.

⁴⁶⁵ Holt Papers, Container 20.

⁴⁶⁶ Holt Papers, Container 20.

⁴⁶⁷ Holt, *Report of the Postmaster General*.

⁴⁶⁸ Holt Papers, Container 51.

⁴⁶⁹ Artist Herbert Rosenberg remarked to me that Holt always looked angry in his photos.

notified him on March 9 that the shipment of munitions to the seceding states could not be prevented.⁴⁷⁰

⁴⁷⁰ Lincoln Papers, March 9, 1861.

Chapter 5

LINCOLN'S ALLY

Holt took a bit of a vacation for several months as the war unfolded, but by mid-July, Holt was back on the stump. He appeared at the Masonic Temple in Louisville on July 13 or 15 before what the *Louisville Journal* reported was a wild ovation.⁴⁷¹ The correspondent noted that Holt had had the “patriotism to resist the iniquitous influences brought to bear upon him during the late Administration (i.e. Buchanan’s).”⁴⁷²

After being greeted by a local judge and friend, Henry Pisle, Holt opened by noting that the Governor of Kentucky had declared the state neutral in the Civil War.⁴⁷³ Holt then compared it to Virginia and Tennessee, which, according to Holt, had experienced a closing of their court system; a repudiation of the debt; and the desertion of the schools.⁴⁷⁴ In these states, he continued, “the hand of infuriated passion and crime is waving, with the vulture’s scream for blood, and the sword of civil war.”⁴⁷⁵

But Holt stated that he wanted to concentrate on his desire “for this union without conditions, one and indivisible, now and forever.”⁴⁷⁶ He would stand for no neutrality

⁴⁷¹ Holt Papers, Container 27.

⁴⁷² Holt Papers, Container 27.

⁴⁷³ This would seem an untenable position. The state lacked many major manufacturing resources to repel either side or to support itself as a kind of Switzerland of North America. Nor did its borders seem defensible except from the south.

⁴⁷⁴ Holt, “The Fallacy of Neutrality.”

⁴⁷⁵ Holt, “The Fallacy of Neutrality.”

⁴⁷⁶ Holt, “The Fallacy of Neutrality.”

between “that glorious flag which now floats over us and the ingrates and traitors who would trample it in the dust.”⁴⁷⁷ Holt said he would accommodate “the safety of Southern institutions,” but only after the traitors laid down arms. They could, urged Holt, have adopted the more loyal approach of seeking constitutional amendments, but, instead, had chosen to take up arms.⁴⁷⁸

Holt, structuring his speech as the oratorical version of a sonata, then returned to his opening theme of Kentucky neutrality. Holt said the state legislature doubtless acted out of patriotism and conservatism, but, he could not regard it but as false and potentially fatal.⁴⁷⁹ First, Kentucky must legally remove itself from the Union in order to be neutral; then, neutrality becomes a snake in the grass, and one must inevitably feel the pang of its fangs. And had Kentucky not loyalty to its sister states?⁴⁸⁰ Holt cried, “It is her house that is on fire, has she no interest in extinguishing it?” But Kentucky’s loyal sons were coming to her defense, and he hoped, “it may be written in history that the blood of its life was not found upon the skirts of Kentucky.”⁴⁸¹ This may have been Holt’s finest speech,⁴⁸² and it has been dubbed the “Fallacy of Neutrality” speech. In a pamphlet he wrote at about the same time, he warned that Kentucky should think of its own interest. The Union could protect the state and its citizens, but siding with the South might make it

⁴⁷⁷ Holt, “The Fallacy of Neutrality.”

⁴⁷⁸ Holt, “The Fallacy of Neutrality.”

⁴⁷⁹ Holt, “The Fallacy of Neutrality.”

⁴⁸⁰ Holt, “The Fallacy of Neutrality.”

⁴⁸¹ Holt, “The Fallacy of Neutrality.”

⁴⁸² The *New York Times* thought it was. Holt Papers, Container 27.

susceptible to numerous border raids, especially because the state did not have any difficult borders.⁴⁸³

Exactly a month later, he joined the Union League and gave a speech in which he called the Confederate Kentucky Brigade “treasonable.”⁴⁸⁴ The next day, he rallied the Kentucky Unionist troops.⁴⁸⁵ In August, Holt began a swing of the Northern cities. It is not clear just how the idea for this trip arose, but Holt’s speeches clearly had come to the attention of Unionists everywhere. He left to visit Niagara Falls and, later, he stopped in Oswego, where 500 greeted this son of the South, probably little known in the rural North.⁴⁸⁶

At this point, Holt was becoming Lincoln’s point man in the South. He wrote to Lincoln, noting that the situation in Kentucky was “critical.”⁴⁸⁷ Although Kentucky voted by “overwhelming” popular vote to stay in the Union, it needed a “prompt and decided” move to support the Union in that state. He noted that the state troops were raw while rebel leader Magoffin had a well-drilled guard.⁴⁸⁸ Lorenzo Thomas likewise would complain to Lincoln later in the fall that there was a want of preparation by Union troops guarding Kentucky.⁴⁸⁹ Also, the *New York Sun* welcomed Holt to that city, but

⁴⁸³ Dyer, 213.

⁴⁸⁴ Holt Papers, Container 29.

⁴⁸⁵ “Kentucky and the Union.”

⁴⁸⁶ Oswego was at the time the 55th largest city in the country with a population of almost 17,000. “Population of the 100 Largest Urban Places: 1860,” Jun. 15, 1998, accessed Apr. 16, 2014, www.census.gov/population/www/documentation/twps0027/tab09.txt.

⁴⁸⁷ Lincoln Papers, Sept. 2, 1861.

⁴⁸⁸ Lincoln Papers, Sept. 2, 1861.

⁴⁸⁹ Scott, 1.3: 540-48.

complained that Lincoln (for all the posturing about Kentucky) was letting the state slip from the Union grasp.⁴⁹⁰ Even after the Union victory at Perryville, Kentucky, on October 8, 1862, this would remain an issue.⁴⁹¹ In September of 1864, a correspondent wrote Holt that Kentucky was still a shaky situation.⁴⁹²

Thomas followed up on his prior complaint with a letter to the President, complaining that John C. Fremont's proclamation of August 30, 1861 alarmed Kentuckians because Fremont called for the forced manumission of Missouri slaves.⁴⁹³

It was at this point that Holt's star shone again. Early in October, Camp Holt became Kentucky's main Union staging area.⁴⁹⁴ On October 28, Holt reached the height of celebrity. He was serenaded in Boston by the populace and greeted by Edward Everett, himself a great orator and unsuccessful vice presidential candidate in the recent election on the Constitutional Unionist ticket—which at that moment probably described Holt's own position.⁴⁹⁵ Everett termed Holt "brave and resolute" and applauded the manner in which he showed himself one of the few "faithful found among the faithless few" in the

⁴⁹⁰ Holt Papers, Container 30.

⁴⁹¹ See also Robert Cameron, "The Road to Perryville: The Kentucky Campaign of 1812," accessed Mar. 16, 2015, <http://www.battleofperryville.com/road.html>.

⁴⁹² Holt Papers, Container 45.

⁴⁹³ Holt Papers, Container 45, Sept. 12, 1861.

⁴⁹⁴ Holt Papers, Container 30.

⁴⁹⁵ "Knights of the Golden Circle," *New York Times*, Aug. 29, 1861.

last Administration.⁴⁹⁶ He continued, “the clarion voice with which you struck terror to the enemies of the Constitution had thrilled the heart of the citizens of Boston.”⁴⁹⁷

Holt first spoke of the city of Boston as a cradle of “human rights.”⁴⁹⁸ The true patriot, he believed, venerated the soil of Bunker Hill. Holt then turned to the military crisis of the day, “the thought of dismembering this Union, which had been the source of all our strength and all our joys as a nation can be entertained by no true man.”⁴⁹⁹ Holt used an analogy to compare the Union to the child brought before King Solomon. The true mother would rather see the child given to another than see it cut in two—so was the situation with the Union. The man willing to see the Union severed in two could not be the loyal member of its government.⁵⁰⁰

The next day Holt moved on to New York, where he made a couple of speeches. He spoke in Irving Hall at the invitation of the Chamber of Commerce. The *Times* noted that Holt was not particularly fit to be either Commissioner of Patents or Secretary of War but that he had risen to the circumstances.⁵⁰¹ Since retiring, the *Times* noted, Holt had concentrated on arousing patriotism in his native state of Kentucky. The paper also called Holt “a brilliant orator.”⁵⁰²

⁴⁹⁶ “Knights of the Golden Circle.”

⁴⁹⁷ “Knights of the Golden Circle.”

⁴⁹⁸ “Knights of the Golden Circle.”

⁴⁹⁹ “Knights of the Golden Circle.”

⁵⁰⁰ “Mr. Holt in Boston from Boston Courier,” *New York Times*, Aug. 29, 1861.

⁵⁰¹ “Arsenals in the City,” *New York Times*, Aug. 30, 1861.

⁵⁰² “Reception of Hon. Joseph Holt,” *New York Times*, Sept. 4, 1861.

After his Irving Hall introduction, Holt began, “It is a source of boundless rejoicing that the freemen of Kentucky are still permitted to call the freemen of New York fellow-citizens. We stand before the world as sisters,” he continued.⁵⁰³ Holt branded the leaders of the rebellion guilty of the death of those on the battlefield sent to defend it.⁵⁰⁴ The President was duly and constitutionally elected—the South should have no complaint that it lost at the polls. The appeal made to the sword was “corrupt.”⁵⁰⁵

The Democratic *New York Herald* took a different view. It said that Holt should “shoulder a musket” (he might have if he had been younger). It also said that sophisticated New York did not need a “stump speaker.”⁵⁰⁶ On the other hand, Robert J. Walker, Polk’s Treasury Secretary, praised the speech.⁵⁰⁷ While in the city, Holt renewed his acquaintance with his old European friend Albin Francis Schoepf, soon to head up a Union prison camp under Holt’s general supervision.⁵⁰⁸

Toward the fall of 1861, Holt assumed a lower public profile, as he was in Washington acting as chairman of a special court of claims.⁵⁰⁹ He was one of a number of judges, including Hugh Campbell who later became a close friend.⁵¹⁰ The court handled

⁵⁰³ “Reception of Hon. Joseph Holt.”

⁵⁰⁴ “Reception of Hon. Joseph Holt.”

⁵⁰⁵ “Reception of Hon. Joseph Holt.”

⁵⁰⁶ “Herald Denounces Speech,” *New York Times*, Sept. 3, 1861.

⁵⁰⁷ “Holbrooke’s United States Mail ‘Oratory of Mr. Holt,’” *New York Times*, Sept. 15, 1861.

⁵⁰⁸ Leonard, *Lincoln’s Forgotten Ally*, 154.

⁵⁰⁹ Holt Papers, Container 32.

⁵¹⁰ Holt Papers, Container 32.

all claims against the Military Department of the West.⁵¹¹ These were so numerous and sometimes so complicated that the Court met twice a day for months—sometimes at the homes of Commission members.⁵¹² The *Times* noted that total claims were for nearly \$10 million, with the largest claims for transportation of troops, loans to John C. Fremont, and payments for heavy contractors.⁵¹³ The Union Pacific Railroad was one of the largest claimants—as noted, it later rewarded Holt by naming a whole county in Nebraska after him. To this day, it is the third largest county in size in Nebraska and still bears his name.⁵¹⁴

Holt stayed in Washington in the dark days of January through June 1862. On July 17, 1862, Congress created the role of the Bureau of Military Justice to be headed by a Judge Advocate. Lincoln named Holt after consulting Attorney General Bates, and Holt would assume the post on September 13, 1862.⁵¹⁵ He did this after Hugh Campbell urged Holt not to take a cabinet post because “we now find ourselves fighting for emancipation and confiscation.” Lincoln, he wrote, is “honest, but taking [a] wrong course.”⁵¹⁶ Holt adopted a position new to the law, especially the law that was supposed to govern relationships between warring states. Military law at that point was mostly

⁵¹¹ Lincoln Papers, Oct. 29, 1861.

⁵¹² “How the Government Is Disenfranchised,” *New York Times*, Jul. 11, 1862.

⁵¹³ “News of the Day, The Rebellion,” *New York Times*, Oct. 27, 1861.

⁵¹⁴ *Holt County Government Online*, accessed Nov. 12, 2012, www.co.holt.ne.us. I have attempted to contact the local historical society, but my queries have not been answered.

⁵¹⁵ “General News from Washington,” *New York Times*, Sept. 5, 1862.

⁵¹⁶ Holt Papers, Container 34.

about maintaining professionalism.⁵¹⁷ A similar role had been played by some Army officers since the days of Washington. In fact, John Fitzgerald Lee, a relative of Robert E. Lee, had briefly held the post before Holt. In a letter to Holt, Lincoln praised Holt for keeping Kentucky in the Union.⁵¹⁸

In October of 1862, Holt wrote a particularly important letter. The Kentuckian's speeches tended to be somewhat superficial. He lacked the really fine education and depth of mind to create a coherent political philosophy like that of John C. Calhoun or Thomas Jefferson. What he could do was make a speech that moved the heart. But he wrote a letter to his friend New York Collector of the Customs Hiram Barney. It was not published until November of the same year (around the time of the Emancipation Proclamation) when the *New York Times* reprinted it. Holt had regarded the letter as too rough for release, but eventually relented.⁵¹⁹ Holt began by noting that a good speech could accomplish much good—

I must be frank, however, and say that to me that what is at the moment needed is not words, however glowing, but heroic deeds. . . . At the expiration of 18 months from the commencement of the rebellion, we find it more defiant and determined and more successful in its insinuations and spoliations, that at any moment since the struggle began.⁵²⁰

He continued:

The soldiers have been panting for a sight at the enemy . . . an immediate, bold and aggressive moment upon the enemy following up every blow struck and one gathering the fruits of any victory gained—is what is required for our deliverance. War—certainly one like this in self defense—is clearly constitutional, but if such

⁵¹⁷ Kastenberg, 3.

⁵¹⁸ Kastenberg, 13.

⁵¹⁹ Holt, “The Fallacy of Neutrality.”

⁵²⁰ Holt, “The Fallacy of Neutrality.”

a war has constraints, it has also its rights and duties: prominent among them is the right and duty of weakening the army by all possible means, and this abridging the sanguinary conflict.⁵²¹

There are two obvious themes here. The first is a close parallel to that Lincoln propounded later in the War and that written by Holt before he had any significant place in his administration: that is of the war as a continuing struggle for victory by deeds, not propaganda. It reflects Lincoln's dissatisfaction with McClellan's slow response to the Confederate threat.⁵²² It reflects Holt's later move to just barely manage to forgive Fitz John Porter's failure to follow up on a chance to defeat the enemy.⁵²³ The second theme is the purpose of the War as a war for Union, a point Holt stresses. The slavery issue holds no essential place, and is not mentioned anywhere in the address.⁵²⁴

With respect with the first point, Holt, in stating "what is at the moment needed is not words, however glowing, but heroic deeds,"⁵²⁵ presages Lincoln's words later at Gettysburg: "The World will little note nor long remember what we say here, but it can never forget what they did here." The second point is an emphasis on the Union. This reflects the point of view of a recent volume by Gary Gallagher. The writer's thesis is "the loyal American citizenry fought a war for Union that also killed slavery."⁵²⁶ The goal of killing slavery was incidental for many who found the goal of reunion

⁵²¹ Holt, "The Fallacy of Neutrality."

⁵²² Leonard, *Lincoln's Forgotten Ally*, 163.

⁵²³ Gary Gallagher, *The Union War* (Cambridge, MA: Harvard University Press, 2011), 1.

⁵²⁴ Holt, "The Fallacy of Neutrality."

⁵²⁵ Holt, "The Fallacy of Neutrality."

⁵²⁶ Gallagher, 1.

“paramount.”⁵²⁷ For Gallagher, the Unionist cause first blossomed fully in Daniel Webster’s famous 1850 quote, “Liberty and Union, now and forever, one and inseparable.”⁵²⁸ Gallagher notes that while abolitionists disliked the speech most Northerners thought it echoed their own position.⁵²⁹ To most Americans, the Union summed up their national experience. The American union was a way of life, unlike the divided Europe, which was then struggling in the aftermath of the 1848 conflagrations and with the Crimean conflict in view.⁵³⁰ It was this sense of Union that Lincoln summed up in his 1861 First Inaugural Address, “the mystic chords of Union stretching from every battlefield and patriot grave.”⁵³¹

Gallagher emphasizes that the issue of Union was more important than the issue of abolitionism, in the view of many (but by no means all) Lincoln supporters. Gallagher notes that at the 1864 Baltimore Republican Convention Kentucky’s Robert Breckinridge, a Holt correspondent, stated of Lincoln from the podium, “I will not follow you one foot” as the Republican candidate, but as the Unionist Party, “I will follow you to the ends of the earth.”⁵³² He notes that although loyal New Jersey still had a number of slaves, the 14th New Jersey regimental historian would write, “The Union can never be broken.”⁵³³

⁵²⁷ Gallagher, 1.

⁵²⁸ Gallagher, 45-46.

⁵²⁹ Gallagher, 45-46.

⁵³⁰ Gallagher, 2.

⁵³¹ Gallagher, 40.

⁵³² Gallagher, 52-53.

⁵³³ Gallagher, 67.

Gallagher argues that academic historians have over-emphasized slavery because they see the military struggle as secondary to economic and cultural issues. But to the soldier, he argues, “the war was about Union. Union soldiers were an ad hoc group of people, recruited to serve one purpose and that purpose is Union.”⁵³⁴

As one regimental commander put it after Appomattox, “the Union is intact—your job is ended. Return to your homes.”⁵³⁵ After the War, Grant would become the symbol of Union, despite his ineptitude in domestic policy. Holt would stay to serve Grant, partially out of a desire to keep working but also because Grant had saved the Union.⁵³⁶

Holt had almost no sooner gotten his commission as Judge Advocate when he was confronted with the military commission investigating the retreat from Maryland Heights outside Harpers Ferry.⁵³⁷ Stonewall Jackson forced the surrender of 15,000 Federal troops on September 15, 1862, and it was barely two weeks later that Stanton ordered Holt to inquire into the disaster, which would become the largest Federal surrender of the War.⁵³⁸

After 200 pages of testimony (now in the records of the War of the Great

⁵³⁴ Gallagher, 6. McPherson notes that for about 28 percent of soldiers, slavery was the paramount issue, and for many others, it was a secondary issue. So, while the Union was the primary motivator for most soldiers, slavery was a significant issue to the troops.

⁵³⁵ Gallagher, 147.

⁵³⁶ Gallagher, 6.

⁵³⁷ Leonard, *Lincoln’s Forgotten Ally*, 111.

⁵³⁸ “1862 Battle of Harpers Ferry,” National Park Service, accessed Aug. 1, 2014, <http://www.nps.gov/hafe/learn/historyculture/1862-battle-of-harpers-ferry.htm>.

Rebellion), David Hunter, President of the Commission, concluded first that McClellan was slow to implement the order of tracking down the Confederate force invading what would become West Virginia and Maryland. He “marched only on average six miles per day” when pursuing the enemy. He “could, and should” have relieved Harpers Ferry from the enemy.⁵³⁹

However, since McClellan did not show up, the individual commanders at Harpers Ferry were also derelict. “The garrison [at Harpers Ferry] should have been satisfied that help, however long delayed, would come at last and that a loss of a thousand men would be have made a ‘small loss’ in the overall scheme of things and might have saved 2,000 at Antietam.”⁵⁴⁰ Additionally, Hunter notes that the force would have tied up a large part of Lee’s army, which instead was allowed to continue to march to face the main Union body at Antietam.⁵⁴¹ Much of the blame was put on Union Colonel Ford, who “should not have been placed on Maryland Heights,” but after the report was published, Ford managed to persuade Stanton that the surrender was not his fault and he returned to command.⁵⁴² This incident became Holt’s first challenge, and he asked the questions as the Prosecuting Attorney.⁵⁴³ The Commission’s conclusion appears cogent, but political influence with Stanton determined ultimately who got punished. Note that

⁵³⁹ Scott, 1.19.1: 555.

⁵⁴⁰ The official tally of the Union deceased at Antietam was 2,108.

⁵⁴¹ Scott, 1.19.1: 560.

⁵⁴² Scott, 1.19.1: 798.

⁵⁴³ Scott, 1.19.1: 760-70.

this is just the first salvo in what would become a huge rivalry between Holt and George McClellan.⁵⁴⁴

Holt early on was also asked to report on one of the iconic incidents of the war—what Walt Disney would come to call “The Great Locomotive Chase,” titled officially the Raid on the Confederate Line of Communications between Chattanooga, Tennessee and Marietta, Georgia April 7-12, 1862.⁵⁴⁵ Stanton asked for a report on the incident the following March.⁵⁴⁶

In the report, Holt finds that James J. Andrews, a Union Secret Agent from Kentucky, boarded with 22 others in Chattanooga and took the train overnight to Marietta.⁵⁴⁷ The next morning they took the return ride and while stopped at a water tower, they stole the locomotive and ran with it toward Chattanooga. Holt noted that they did what they could to damage the right of way, but they unexpectedly ran into three trains going the other way, slowing them down enough for the Confederates to catch up with them. Andrews and the others then abandoned the train and ran into the woods.⁵⁴⁸ Andrews and seven others were soon executed as spies (since all of the raiders were in civilian uniform at the time). The report notes that a young private was subjected to 100 lashes in an attempt to get him to reveal the names of his comrades.⁵⁴⁹ Six of the raiders

⁵⁴⁴ Scott, “Harper’s Ferry,” 1.22: 630.

⁵⁴⁵ Scott, “Harper’s Ferry,” 1.22: 630.

⁵⁴⁶ Kastenber, 233.

⁵⁴⁷ Russell Bonds, *Stealing the General: The Great Locomotive Chase and the First Medal of Honor* (Chicago: Westholme, 2009), 10.

⁵⁴⁸ Bonds, 25.

⁵⁴⁹ Scott, 1.22: 632.

did escape but were “thrown into a Negro Jail” (Holt’s words) and then taken to Castle Thunder Prison near Richmond where, Holt wrote, “they shivered through the winter, without fire, thinly clad, and with but two blankets to cover the party.” Holt called the imprisonment “a demotic crime.”⁵⁵⁰

Holt noted that had the raid been a success, it would have reversed the fortune of the Rebellion in the area, and indeed it had some of the markings of Sherman’s March two years later.⁵⁵¹ The report is Holt at his best: speaking out for fair treatment of Union personnel and not exaggerating the extent of Confederate involvement.⁵⁵²

As the ultimate authority on military justice and punishment, Holt presided over many disputes as to the proper discipline of soldiers (and even once in a while, of civilians).⁵⁵³ The most controversial probably were those involving Fitz John Porter and Don Carlos Buell. Buell’s had perhaps the greater overall significance, while the facts in Porter’s case are more jumbled.

On October 8, 1862, Confederate General Braxton Bragg decided to move from Tupelo, Mississippi for an attack on Perryville, Kentucky in an attempt to push through Kentucky and turn it into a state truly under Confederate control.⁵⁵⁴ Bragg was told by Leonardis Polk that battle would be “vigorous.”⁵⁵⁵ At about nine o’clock in the morning,

⁵⁵⁰ Kastenberg, 233. Interestingly, Carlos Buell called the report “extravagant,” something Holt may have kept in mind when he later prosecuted Buell for misconduct at Perryville, Kentucky. Kastenberg, 233.

⁵⁵¹ Bonds.

⁵⁵² Bonds.

⁵⁵³ Kastenberg, 275.

⁵⁵⁴ Kastenberg, 97.

⁵⁵⁵ Scott, 1,16,1: 1094.

Bragg heard that Buell's entire army was descending on Perryville and decided to look for himself. To his surprise, Buell was in fact descending upon Perryville.⁵⁵⁶ Bragg returned to his headquarters just as Buell had decided to hold back from forward movement.⁵⁵⁷ It was about eleven o'clock in the morning. A Union volunteer unit soon wound up in a considerable fight with Bragg's troops, but Buell refused reinforcements.⁵⁵⁸ Phillip Sheridan accused him of not appreciating what was going on. By the end of the day, when fighting broke off, Buell had never engaged fully Bragg's troops.⁵⁵⁹ The Confederates probably got the better of the fighting, but Bragg could not hold his position—he moved on toward East Tennessee. Buell pressed Bragg (not very aggressively) as far as London, Kentucky and then went back to the Nashville-Louisville line.⁵⁶⁰ Buell's lackadaisical actions had threatened not only Kentucky but the entire civilian population of Cincinnati, as well, since they left the city exposed to the Confederate army.⁵⁶¹ When Lincoln heard of this, he ordered Buell replaced by General William Rosencrans.⁵⁶² He further ordered the establishment of a special one-time military commission which was to report to Holt. Among others on the Commission were General Lewis Wallace, who would later sit on the court martial of the assassination

⁵⁵⁶ Scott, 1.16.1: 1094.

⁵⁵⁷ Scott, 1.16: 17.

⁵⁵⁸ Kastenber, 97.

⁵⁵⁹ Scott, 1.16: 884.

⁵⁶⁰ Scott, 1.16: 17.

⁵⁶¹ Scott, 1.16: 17.

⁵⁶² Kastenber, 97.

conspirators.⁵⁶³

A formal court of inquiry met on December 1, 1862 in Cincinnati. Holt was present and in fact led the examination of the government's star witness, Colonel Lytle, who was attached to Rosencrans' command. Lytle, however, proved to know little about the overall battle situation, and, for example, could not say where Buell's headquarters were relative to his own position. Taken prisoner by Bragg's forces around noon at Perryville, he was later paroled.⁵⁶⁴ Holt tried to find out what Lytle knew about Bragg's retreat after the battle, but Lytle stuck by the terms of his parole, which forbade him from discussing anything he learned while behind Confederate lines. Buell was later permitted to cross-examine the witness (which he did personally), and succeeded in showing that Lytle did not have much concept of the overall size of the battle or the forces.⁵⁶⁵ Holt then called a Colonel in the Ohio Volunteer Infantry who, likewise, could produce little personal knowledge of the battle and, in fact, the witness noted that he personally broke off pursuit of Bragg because he "hadn't been home in awhile."⁵⁶⁶

The matter had political implications, as well. Then-Governor of Tennessee Andrew Johnson testified by a deposition that Buell had told him that he regarded Nashville as of no military significance, and that it should have been evacuated three months before.⁵⁶⁷ The prospect of leaving Tennessee's capitol to the enemy obviously did

⁵⁶³ Scott, 1.16: 1022-1032 contains Buell's report.

⁵⁶⁴ Scott, 1.16: 67-75.

⁵⁶⁵ Scott, 1.16: 472-85.

⁵⁶⁶ Scott, 1.16: 1083.

⁵⁶⁷ Scott, 1.16: 697.

not sit well with Johnson.⁵⁶⁸ Another sore point was the discovery of an unopened telegram from Halleck to Buell from early September telling Buell, “March where you want but engage Bragg.”⁵⁶⁹ The report noted that Buell did try to reinforce General George Thomas on October 8, but the aide de camp was unable to locate Thomas until after the battle.⁵⁷⁰ A final complaint about Buell was that he failed to head off Bragg on his way out of the state, especially as Bragg allegedly had only one possible escape route.⁵⁷¹

Buell was allowed to make a very lengthy written reply. With respect to his failure to pursue Bragg, he noted that he was 300 miles from a railhead, and although he had been told to shorten his lines, he had no way of doing so.⁵⁷² He denied having told Governor Johnson that he would leave Nashville unfortified, but had always indicated that he would leave a garrison of protect the city.⁵⁷³ He then went to meticulously reply to the original charges, which took up ten pages in the volumes of the War of the Rebellion.⁵⁷⁴

On May 23, 1863, Holt referred the entire report to the Secretary of War without any personal recommendation. A year later, Buell claimed from Baltimore that he never

⁵⁶⁸ Scott, 1.16: 697-98

⁵⁶⁹ Scott, 1.16: 734

⁵⁷⁰ Scott, 1.16: 8.

⁵⁷¹ Scott, 1.16: 8.

⁵⁷² Scott, 1.16: 66-67.

⁵⁷³ Scott, 1.16: 66-67.

⁵⁷⁴ Scott, 1.16: 10-20

did hear what determination the Commission had made. On June 1, 1864, Buell resigned from the Army and returned to civilian life in Kentucky.⁵⁷⁵

Buell was exonerated of charges, but he was the loser in a series of command changes. After the incident, Buell never had command of a fighting unit again. James McPherson claimed that Perryville was a key battle of the Civil War, as it insured that Kentucky remained in the Union. And, he claimed, without Kentucky the Union would have been lost.⁵⁷⁶ This is probably a good argument strategically and politically, but it underplays the fact that Kentucky was but a small part of the Northern economic war machine, and in the long run it was the steel mills of Pennsylvania and the rifle factories of Connecticut that, along with the Union soldiers, would win the war.

As for Holt, he proved quite ineffective in this case. He produced two witnesses, one of whom couldn't talk under terms of his parole and another who not only did not know much but also did not evince a fighting spirit sufficient to pursue Bragg. Unfortunately, this would become Holt's trademark as a Judge Advocate—a man with a keen sense of threat to the Union cause, but unable to back it up with evidence. He would follow this pattern with respect to both the Dark Lantern societies and the supposed vast Canadian-Confederate conspiracy. Since 150 years of historical digging have failed to produce much to support either contention, we can reasonably conclude not that Holt was an incompetent tactician but that the evidence was not available for Holt to prove a conspiracy. As for Buell, his superiors seemed happy simply to get him out of the way.

⁵⁷⁵ Kastenber, 105.

⁵⁷⁶ James McPherson, *Trial by War: Abraham Lincoln as Commander-in-Chief* (New York: Penguin Press, 2008), 135-136.

Over the years, Holt took in a stable of competent associates in the Judge Advocate's office. Some were experienced military men and some were more involved prior to the War in legal matters, while a few had political connections.

John C. Henshaw had been court-martialed himself at one point for refusing to enforce the Fugitive Slave Act.⁵⁷⁷ He petitioned Lincoln for reinstatement, claiming then Secretary of War Jefferson Davis was behind it, but Lincoln only gave him status as a volunteer, not a career officer.⁵⁷⁸

Edward Platt was a West Point graduate. One of the few Union stalwarts at Bull Run, he fought in the Peninsular Campaign. He was technically the Judge Advocate for the Army of the Potomac acting at Meade's order.⁵⁷⁹

John Mendenhall was a West Point graduate with no legal training but he eventually served the Army from Bleeding Kansas into late Reconstruction.⁵⁸⁰ James McElroy studied law after graduating from the Military Academy. Formally he was the legal advisor to the Department of Missouri where he fought both Quantrill's Raiders and the Native Americans, and also fought in Bleeding Kansas against the Seminoles.⁵⁸¹

Holt named William Dunn his chief assistant. Originally a math professor at Hanover College, Dunn left after a tornado leveled the campus. Elected to Congress in

⁵⁷⁷ Kastenberg, 118.

⁵⁷⁸ Kastenberg, 118-22.

⁵⁷⁹ Kastenberg, 123.

⁵⁸⁰ Kastenberg, 123-24.

⁵⁸¹ Kastenberg, 124.

1858, he lost his seat in 1862.⁵⁸² He presided over the trial of Quantrill's Raiders and refused to court-martial civilians and succeeded Holt in 1875.⁵⁸³

Jonathan Bingham was without doubt Holt's most brilliant understudy. Author of the Due Process Clause of the Fourteenth Amendment, he was a follower of the Radical Republican Ohio Congressman Joshua Giddings.⁵⁸⁴ Holt admired Bingham's work in the Porter court-martial trial.⁵⁸⁵

Levi Turner was a Republican stalwart in New York. A friend of John Fennimore Cooper (whom Holt knew) and Seward, he was in the audience when Seward gave his famous higher law speech.⁵⁸⁶ He specialized in going to the prisoner of war camps and sorting out the loyal and the disloyal.⁵⁸⁷

John Knox was probably Holt's first appointment on September 27, 1862. He was a descendant of the very first Judge Advocate in George Washington's army and later served on the Pennsylvania Supreme Court with Jeremiah Black, the loyal attorney general in Buchanan's cabinet.⁵⁸⁸

There were also a host of ad hoc field advocate-generals. Some of them had legal training, but many were laymen and they did a poor job, according to Kastenber.⁵⁸⁹ One

⁵⁸² Kastenber, 124.

⁵⁸³ Kastenber, 125.

⁵⁸⁴ Kastenber, 130.

⁵⁸⁵ Kastenber, 130.

⁵⁸⁶ Kastenber, 131.

⁵⁸⁷ Kastenber, 131.

⁵⁸⁸ Kastenber, 137.

⁵⁸⁹ Kastenber, 290.

of these ad hoc people was Rutherford B. Hayes. He hated court-martial duty, but did not seek to reform it when he later had the power to do so as Commander-in-Chief.⁵⁹⁰

During his time in office, Holt himself made a few personal contributions.

Kastenberg claims Holt was the actual drafter of three pieces of legislation that became law:

1. An 1863 bill allowing civilians to be tried for interfering with the draft.
2. An 1864 law increasing the penalty for desertion from 2 years to death. It also permitted military trials for civilian conspirators, later used with great effect in the trial of the Assassins. Lincoln had to review each death sentence with Holt.⁵⁹¹ I believe this law is the basis for many of the accusations that Holt was a harsh and cruel prosecutor. Commanders complained that the execution of a sentence for severe crimes could take a year.⁵⁹²
3. An 1865 law that stripped deserters of their citizenship. This law was ruled cruel and unusual punishment under the Eighth Amendment in 1958.⁵⁹³

Holt and the Lieber Code of Military Justice

In many ways the most important contribution Holt made was his part in publishing a uniform code of military justice—the beginning of the definition of war

⁵⁹⁰ Kastenberg, 226.

⁵⁹¹ Stanton legally could, too, but it seems Lincoln wanted the job himself.

⁵⁹² Kastenberg, 319.

⁵⁹³ Kastenberg, 319.

crimes and martial “crimes against humanity.” While the concept goes back to Hugo Grotius (1583-1645), the founder of the field of international law, Kastenberg claims that this aspect of his work was widely ignored. And the term “crimes against humanity” did not exist before the Civil War era.⁵⁹⁴ From here, one can draw a line from the Andersonville trials, through the civilian atrocities of World War II, through the Holocaust, through Mai Lai to the American charges against Saddam Hussein.⁵⁹⁵

How much Holt directly participated in drafting the code is hard to tell. The Code was actually drawn by Francis Lieber, a Unionist from South Carolina.⁵⁹⁶ An academic, Lieber may have been the last of the Encyclopedists, the intellectual descendants of Diderot and the Age of Reason.⁵⁹⁷ Born in Germany in 1798, he fought at Waterloo and later studied in Berlin.⁵⁹⁸ He left his native land to participate in that most Romantic of rebellions: the Greek Revolution of 1821. In Greece, he met not only Lord Byron but also von Humbolt and E.T.A. Hoffman.⁵⁹⁹ He came to the United States and spent most of his life here as the first general editor of the *Encyclopedia Americana*, and presented the first set to Alexis DeTocqueville.⁶⁰⁰ Where Holt might have met Lieber remains unclear, but

⁵⁹⁴ Kastenberg, 237.

⁵⁹⁵ A recent summation of the origin and effect of the Civil War Code is John Fabian Witt, *Lincoln's Code: The Laws of War in American History* (New York: Simon and Schuster, 2013). It credits Holt with “putting boots on the ground” in support of the laws of civilized warfare. Witt, 207.

⁵⁹⁶ Kastenberg, 39-40.

⁵⁹⁷ Witt, 175-77.

⁵⁹⁸ Kastenberg, 39-40.

⁵⁹⁹ Kastenberg, 39-40.

⁶⁰⁰ Kastenberg, 39-40.

he certainly became one of Holt's most active correspondents, judging by the letters left in Holt's papers at the Library of Congress.⁶⁰¹ Incidentally, Union Chief of Staff Halleck had wanted Lieber (instead of Holt) for the post of Advocate General.⁶⁰² Since Lieber was known as a prison reformer, at some point either Lincoln himself or Holt asked Lieber to write up a Code of War Conduct, which was revised by a board of officers over which General Ethan Allen Hitchcock presided.⁶⁰³ It was issued as General Order 100 on April 24, 1863 and published many years later in the Official Records of the War of the Great Rebellion.⁶⁰⁴ Lieber went on to become the official archivist of the captured Confederate records, and after Lincoln's slaying, he turned over papers to Stanton which supposedly showed official Confederate involvement in the assassination plot.⁶⁰⁵

Interestingly and perhaps the source of his compassion for the "other side," his oldest son, Oscar, fought for the South.⁶⁰⁶ Though Lieber campaigned for Lincoln in 1860, Oscar went south to fight for the Confederacy and was killed in action at the battle of Williamsburg.⁶⁰⁷ His other two sons fought for the Union.⁶⁰⁸

In 1862, Lieber was approached by Henry Halleck to be the advisor on the legal

⁶⁰¹ Kastenberg, 39-40.

⁶⁰² Kastenberg, 27.

⁶⁰³ Kastenberg, 27.

⁶⁰⁴ Kastenberg, 241-43.

⁶⁰⁵ Witt, 319.

⁶⁰⁶ Witt, 183.

⁶⁰⁷ Kastenberg, 39.

⁶⁰⁸ Kastenberg, 39-40.

status of pro-Confederate guerillas.⁶⁰⁹ Lieber offered his views in a 16-page essay that Halleck immediately distributed to his officers. He contended that irregular forces should not be lumped together, and that the lack of a uniform was not decisive. He cited Froissart's Chronicles and Wellington's experiences in the Peninsular War against the French to distinguish between "the freebooter, the marauder, the brigand, the partisan ,the free-corps, the spy, the rebel, the conspirator, the robber and especially the highway robber, and the rising en masse, or the 'arming of peasants.'"⁶¹⁰ Robbers and their ilk were common criminals, and were to be treated as such, while spies or any who concealed their true belligerent role were liable to execution.⁶¹¹ But, Lieber went on:

I believe it can be said that the most recent publicists and writers on International law agree that the rising of the people to repel invasion entitles them to the full benefits of the law of war, and that the invader can not well inquire into the origin of the armed masses opposing him, that is to say, he will be obliged to treat the captured citizens as prisoners of war, so long as they oppose him in respectable numbers, and have risen in the yet Invaded or unconquered portions of the hostile country. Their acting in separate bodies does not necessarily give them a different character. Some entire wars have been carried on by separate bands or capitaineries, such as in the recent war of independence of Greece.⁶¹²

Lieber carefully distinguished between guerrillas and self-constituted, unpaid bands of armed men who belong to no organized army, or who take up arms and lay them down at intervals, or who carry on petty warfare by means of raids, extortion, or massacre.⁶¹³ In 1863, Lieber was called on to write the code of conduct issued by

⁶⁰⁹ Kastenberg, 240.

⁶¹⁰ Kastenberg, 226.

⁶¹¹ Kastenberg, 226.

⁶¹² Scott, 1.12.

⁶¹³ Scott, 1.12.

President Lincoln as General Order 100. His work in the code of conduct included the following passages:

As martial law is executed by military force, it is incumbent on those who administer it to be strictly guided by the principles of justice, honor and humanity— virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed (Article 4);

and

Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another, and to God (Article 15).⁶¹⁴

Among other points, Lieber wrote in Article 3: “Martial law in a hostile country consists in the suspension by the occupying military authority of the criminal and civil law...and the substitution of military force for the same...as far as military necessity requires.”⁶¹⁵

However, “to save a country is paramount to all other considerations”—surely a dangerous concept. The law of war disclaims all cruelty. Bad faith is enjoined in Article 11, and Article 13 describes a “common law of war” which supplements any statute.⁶¹⁶ Article 15 exhorts: “men who take up arms against one another do not cease to be moral beings responsible to one another and to God.”⁶¹⁷ Article 16 explains: “Military necessity does not admit of cruelty--that is the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort

⁶¹⁴ Scott, 1.12.

⁶¹⁵ Scott, 1.12.

⁶¹⁶ Scott, 1.12.

⁶¹⁷ Scott, 1.12.

confessions.”⁶¹⁸ However, starvation of the unarmed is acceptable to speed the end of the conflict.⁶¹⁹ According to Article 29: “The inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant,” given a vigorous pursuit of the demands of war. Article 29 must have been William T. Sherman’s favorite—“the more vigorously wars are pursued the better it is for humanity. Sharp wars are brief.”⁶²⁰

The code goes on to lay down special rules for the protection of property and concerning slaves, as well as rules governing how malfeasant soldiers should be handled. Slaves are freed upon taking over enemy territory.⁶²¹ American soldiers committing the common law violations of rape, burglary, arson, fraud and assault are to be tried under either the applicable criminal law or military law and will be given the harsher sentence under either one.⁶²² Article 68 provides that “unnecessary or revengeful destruction of life is not lawful.” The Code went on to provide elaborate regulations concerning the treatment of prisoners, their exchange and parole. All of this would come to the forefront later in the War.⁶²³

⁶¹⁸ Scott, 1.12.

⁶¹⁹ Scott, 1.12.

⁶²⁰ Scott, 1.12.

⁶²¹ Scott, 1.12.

⁶²² Death sentences were not permitted in this situation. The Code provided that all death sentences be reviewed by the American President, and Lincoln often sat down with Holt to review such sentences.

⁶²³ Scott, 2.1.

Lieber's Code certainly agrees with Lincoln's "with malice toward none, with charity for all, with firmness in the right" sentiments he would proclaim in March of 1865; Holt's philosophy comes through in the Union forever aspect of the Code. Of course, there is a huge tension in the document between letting armies pursue war and the protection of non-combatants.⁶²⁴ Even Hitler could claim that the ruthless suppression of some the citizens of other countries was a corollary of his need to protect troops from interference from the local non-combatants. Nevertheless, Kastenberg argues that Lieber's Code is the first step in limiting the ravages of war.⁶²⁵

Holt did not waste time in putting these rules into effect. In 1864, five Ohio cavalry soldiers were confined to the Dry Tortugas for 10 years for shooting civilians.⁶²⁶

Kastenberg notes that Holt was caught in a dilemma by seeking to enforce a "chivalric" code of conduct in modern warfare. But Holt's leading legal scholar, William Winthrop, held to the view that the war required enforcing the code "not only to maintain the Army's discipline, but also for achieving an end to the conflict."⁶²⁷

Holt did not always agree with orders to, so to speak, soften the war. In February of 1862 (before Holt was in office) Union General John Pope issued a general order to the troops serving under him in Missouri prohibiting plunder of civilian property. Holt called this a "disgrace to the service" but for some unstated reason thought it went too

⁶²⁴ Kastenberg, 237-48.

⁶²⁵ Kastenberg, 237-48

⁶²⁶ Kastenberg, 229.

⁶²⁷ Kastenberg, 231.

far.⁶²⁸ The Great Locomotive Chase was another example of Holt supporting destruction of civilian property.⁶²⁹

Even Sherman adopted the Code. Sherman believed the War should be won by destroying the South's ability to wage war. While Sherman told his soldiers that they should "appropriate freely and without limit" horses, wagons, and such from "wealthy plantations," his Order 120 made clear that civilians should not be molested.⁶³⁰ However, he did allow them to forage for food locally and since he had no supply lines from Tennessee or other Northern points to speak of, the campaign left a swath of desolation.⁶³¹ Nevertheless, many soldiers were court-martialed for violating Sherman's orders.⁶³²

Holt as Advocate General

On April 24, 1863, Holt officially became Advocate General.⁶³³ He gained notoriety through his handling of the Vallandigham incident, but Holt's name will probably always be associated with two possible miscarriages of justice. He will always be accused of framing Mary Surratt (to be discussed in Chapter 6), and he will always be accused of being unfair to Fitz John Porter, as well.

⁶²⁸ Kastenber, 231.

⁶²⁹ Kastenber, 233.

⁶³⁰ Kastenber 248.

⁶³¹ Kastenber, 248.

⁶³² Kastenber, 248.

⁶³³ Holt Papers, Container 38.

Porter's problem was failing to attack Longstreet at second Bull Run. There is no argument that this was clearly the order; the factual issue in the court martial was whether it was feasible to attack.⁶³⁴ The court martial led by Holt took up 1,200 pages of the official report of the War of the Great Rebellion (series I vol. XIX including the supplement).⁶³⁵ The reader can get a good sense of Holt and of the proceeding if one reads near the very end of the report.⁶³⁶

Holt noted that MacDowell came forward at about noon on the day in question and instructed Porter to proceed. Porter did not answer directly but noted that there was nowhere he could go except into Longstreet's column and that he was prepared to move forward. Porter moved Griffith's brigade forward all of 600 yards when it met a copse of trees. Porter gave up, writing MacDowell: "I have found it impossible to communicate by crossing the roads to Groveton. Had you not better send your train back?"⁶³⁷

Holt interpreted this as a message that he was withdrawing, although the letter does not say directly.⁶³⁸ Holt argued that Porter's purpose in withdrawing was certainly made manifest by mid-afternoon, when his forces were found resting near Bethlehem Church with their rifles stacked.⁶³⁹ Holt noted that it was possible that Porter was moving

⁶³⁴ Kastenber, 80.

⁶³⁵ Scott, 1.9.

⁶³⁶ For another copy of the report, see archive.org/details/proceedingsofgen00port, originally published as *Proceedings of the General Court Martial Major General Fitz John Porter* (Washington, D.C., 1862).

⁶³⁷ Kastenber, 87.

⁶³⁸ Scott, 1.9: 123.

⁶³⁹ Scott, 1.9: 123.

retrograde to enter the town of Bull Run, but no attack was actually being planned; in any event, in the afternoon Porter got a further order from MacDowell to “push forward into action at once on the enemy’s right flank [and rear].”⁶⁴⁰ Porter claimed that this came too late in the day to implement the order, and there was considerable dispute about exactly when Porter got the order which had been dated from headquarters at four-thirty p.m.⁶⁴¹

Holt concluded that Porter had “at least two hours of daylight to make an attack.”⁶⁴² Holt noted that five officers stated that the order was not received until sundown, but Holt (who was at this point reviewing the decision of the court martial) stated that the law permitted the court martial members to disregard this testimony if they so chose. However, even if received at sundown, Porter could still have proceeded against Longstreet in the twilight, who doubtless would have been surprised and an easy target.⁶⁴³

Holt further noted that the aide who delivered the afternoon order to Porter stated that Porter had received the note while lying down under a tree, and did nothing except put his hand on his head after reading it. Holt made a vintage attack in the report.

The accused had for between five and six hours been listening to the sounds of the battle immediately to his right. Its dust and smoke were before his eyes and the reverberation of the artillery were in his ears. He must have known the exhaustion and carnage consequently upon this prolonged conflict. He had command of some 13,000 fresh and well-appointed troops who had marched but a few miles and had not fought at all that day. Should not the order to charge have electrified him as a soldier? [But instead] the messenger who bore it turned away leaving the accused

⁶⁴⁰ Scott, 1.9: 123.

⁶⁴¹ Scott, 1.9: 200.

⁶⁴² Scott, 1.9: 123.

⁶⁴³ Scott, 1.9: 123.

still—lying on the ground.⁶⁴⁴

Holt then went on to summarize what were days and days of testimony to establish that Porter was not up against a vastly superior force. He then unearthed the fact that Moreau routed Ney at Maltenboet with a smaller army than Porter had available to him.⁶⁴⁵ This would seem to confirm the old adage that the generals always refight the last war and not the one actually at hand since Holt made frequent reference to the last widespread conflict—the Napoleonic Wars.⁶⁴⁶ Still, Holt wrote, “We cannot but realize that [Porter’s problems] shrink away and are scarcely to be named beside those obstacles of darkness, and tempest, and snow, and morass, and Alpine precipices and frowning batteries which the warriors of other times and lands have unhesitatingly confronted and bravely overcome.”⁶⁴⁷ Holt claimed that Porter defended himself essentially on two bases: first, that he had always been a good commander and second, that General Pope approved of his conduct later.⁶⁴⁸

But, argued Holt, this was not a criminal case in which the character of the accused is at issue. The final paragraph of Holt’s report to Lincoln concludes:

The offenses for which the pleading and testimony arraign the accused are the very gravest that a soldier can possibly commit, being neither more nor less than the violation of the orders of his commanding general. In the midst of momentous and perilous military movements, and the shameful abandonment of a struggling

⁶⁴⁴ Scott, 1.9: 1150.

⁶⁴⁵ The battle usually called Hohenlinden may have been a snide reference. Reverdy Johnson, Porter’s counsel, had argued the case in point on Napoleon’s dictum that a battlefield commander need only obey the command of another officer on the spot. Kastenberg, 88.

⁶⁴⁶ For example, see Scott, 1.12. Holt resorted to comparisons between the Civil War and the Napoleonic Wars on a number of occasions.

⁶⁴⁷ Scott, 1.2: 1160.

⁶⁴⁸ Kastenberg, 88.

army, which it was his solemn duty to support, in the very presence of the enemy, and under the very sound of his artillery.⁶⁴⁹

Holt noted that some of the specifications against Porter were dropped, but as a whole, the Commission “Must also have felt that the honor of the profession of arms and the most enduring interest of our common Government and country imperatively demanded that there should be no acquittal when that proof had been made.”⁶⁵⁰

Lincoln, in 1863, was not in a mood to support officers who had not followed up on advantage in the field, whether at Sharpsburg or anywhere else. Porter, after review by Lincoln, was dismissed from military and civilian government service.⁶⁵¹ A later commission under President Rutherford B. Hayes was less politically minded. It overturned the original judgment, but it was too late for Porter’s career.⁶⁵² Holt once again played Lincoln’s attack dog, leading the charge on an officer when Lincoln’s personal action against the commander might have caused animus.⁶⁵³

Holt’s position as Judge Advocate did not automatically assume that Holt would be some kind of national security officer, to use modern phrasing. But he found himself from time to time in the position of receiving reports from spies, and also oversaw military arrests.⁶⁵⁴ Stanton was sufficiently concerned about Colonel John Sanderson’s

⁶⁴⁹ *Proceedings for the Trial of Major General Fitz John Porter of the United States Volunteers* (Washington: Daily Chronicle Press, 1863), 30-31, accessed Apr. 23, 2015, <https://archive.org/details/reviewbyjudgeadv00unit>.

⁶⁵⁰ *Proceedings for the Trial of Major General Fitz John Porter*, 31.

⁶⁵¹ Kastenberg, 89.

⁶⁵² Kastenberg, 89.

⁶⁵³ Kastenberg, 89. For a general discussion of Buell at Perryville, see James McPherson, *The Battle Cry of Freedom: The Civil War Era* (New York: Oxford, 1988), 519-22.

⁶⁵⁴ Holt Papers, Container 44.

arrests that he sent him to St. Louis in July of 1864 to investigate them. Apparently no one took any action about Sanderson.⁶⁵⁵

At the Republican Convention in 1864, Leonard Swett of Illinois (a frequent correspondent with Holt) put forth Holt's name for Vice-President. Lincoln was asked if he was touting Holt for the post, but Lincoln replied that he would not interfere with the convention choice for Vice-President or the platform. Of course, Andrew Johnson, the loyalist from Tennessee, was nominated. Holt would once again serve as Lincoln's flag waver, especially in the border states, giving speeches and trying to dampen army-civilian clashes, particularly on property damage.⁶⁵⁶

In 1864, just before the election under an official date of October 8, he produced a report on secret societies and their support for the Confederacy.⁶⁵⁷ I have found no evidence that Holt was a member of the Masonic fellowship or any other the other organizations that were popular at the time. Holt appeared to have Roman Catholic leanings, which might have influenced his attitude toward secret societies in general and especially toward the Masons; Holt appeared to be generally suspicious of such organizations. Interestingly, Lincoln himself never joined the Masons or a similar organization.⁶⁵⁸ I am aware of no announced position by Lincoln, but again he stayed

⁶⁵⁵ Klement, *Dark Lanterns*.

⁶⁵⁶ Kastenber, 318.

⁶⁵⁷ *United States Army Judge Advocate General Report on "The Order of American Knights" alias "The Sons of Liberty," a Western Conspiracy in Aid of the Southern Rebellion* (Washington: Chronicle Print, 1864).

⁶⁵⁸ "Freemason Information Magazine," accessed Mar. 27, 2015, www.freemasoninformation.com.

clear of such organizations. Edwin Stanton likewise stayed clear of such organizations, and it was Stanton who asked Holt to report on the possible disloyalty of members of these organizations.⁶⁵⁹ Of course, Holt and Stanton knew each other well from serving together during the short-lived last days of the Buchanan administration, applauding Buchanan's efforts to resist Southern encroachment on Federal property, something several members of his cabinet refused to do.⁶⁶⁰

Before he was even officially appointed to his post in late summer of 1862, Holt cheered the attack on the Knights of the Golden Circle, thought to be a group of Confederate sympathizers.⁶⁶¹ He also branded Vallandigham as a traitor.⁶⁶² Richard Yates and Oliver P. Morton were governors of Illinois and Indiana, respectively, and were particularly concerned about Copperhead activity in the form of secret organizations.⁶⁶³ They had reason to be, since the southern portions of both states had long had Southern sympathy.⁶⁶⁴ Long after the War, the area remained a hotbed of Ku Klux Klan activity, and it is even said that the Election of 2004 was critically influenced by an influx of Southern fundamentalists into Southern Indiana and Ohio, leaning those States to the

⁶⁵⁹ Klement, *Dark Lanterns*, 137.

⁶⁶⁰ Klement, *Dark Lanterns*, 10.

⁶⁶¹ Klement, *Dark Lanterns*, 55.

⁶⁶² Much more will be said about that situation later.

⁶⁶³ Klement, *Dark Lanterns*, 138.

⁶⁶⁴ Indiana University Department of History, "A Closer Look at Indiana's Klan," *Indiana Magazine of History*, accessed Apr. 23, 2015, http://www.iub.edu/~imaghist/for_teachers/mdrnprd/lstmp/Klan.html.

Republican column.⁶⁶⁵ In any event, by early August of 1864, Holt was ready to produce a formal written attack against these “Copperhead democracy” groups.⁶⁶⁶

Holt promptly sought to meet Stanton’s challenge. Stanton assigned Union agent Lafayette Baker to investigate on Holt’s behalf.⁶⁶⁷ Holt followed with letters to two informants, just as the Democratic Party was at that moment meeting in Chicago, eventually to name George McClellan as Lincoln’s rival. As Klement tells it, Baker wasn’t able to come up with anything but generalities. He had no documents or anything else, except a couple of newspaper notices.⁶⁶⁸

In a foreshadowing of Joseph McCarthy, Baker supplied Holt with a list of 41 names of persons supposedly belonging to the Sons of Liberty.⁶⁶⁹ Klement argued that the omission of names like Vallandigham and Milligan showed how Baker was fabricating this list. Nor did Baker mention Phineas Wright, the head of the already dissolved American Knights, who was then being held without charge in a federal prison.⁶⁷⁰ Another omission was George Bickley, Vallandigham’s understudy as head of the Golden Circle and who was also being held without a federal charge in prison.⁶⁷¹ The entire premise Klement’s book is that Lincoln was unfair to the “dark lantern” political

⁶⁶⁵ Mark Miller, “None Dare Call It Stolen,” *Harper’s Magazine*, Aug. 2005; Klement, *Dark Lanterns*, 169.

⁶⁶⁶ Holt Papers, Container 44.

⁶⁶⁷ Klement, *Dark Lanterns*, 139.

⁶⁶⁸ Klement, *Dark Lanterns*, 100.

⁶⁶⁹ Klement, *Dark Lanterns*, 167.

⁶⁷⁰ Klement, *Dark Lanterns*, 100.

⁶⁷¹ Klement, *Dark Lanterns*, 100.

societies, but another view of this list would be that Baker simply saw no reason to mention names of the obvious candidates.⁶⁷²

Holt had also appointed Colonel Henry Carrington and Colonel John Sanderson to report to him. The former had exposed the Sons of Liberty while Sanderson had exposed the American Knights.⁶⁷³ Carrington was a long time replying because he actually had found some “evidence.” He produced a 23-page report, but much of it was an apologia for his command of Indiana, and it included a request for \$5,000 as recompense for the payment to other informants.⁶⁷⁴ He also used the occasion to justify his arrest of an Illinois judge under his military power.⁶⁷⁵ Carrington also explained the ritual of the American Knights, a group obviously following or maybe more accurately parodying the Masons. He claimed that his detective had actually infiltrated one of the sessions of the grand council held in Indianapolis. Carrington claimed that the Sons of Liberty had planned a national uprising on August 15, 1864, but that local action had prevented the rebellion.⁶⁷⁶

With this material, Holt prepared a report on the “treasonable” societies. Klement claimed the Judge Advocate was very loose even with now-known facts.⁶⁷⁷ For example, Holt claimed that Vallandigham had founded the Order of the American Knights after a

⁶⁷² Klement, *Dark Lanterns*, 100.

⁶⁷³ Klement, *Dark Lanterns*, 29-31.

⁶⁷⁴ Klement, *Dark Lanterns*, 114.

⁶⁷⁵ Klement, *Dark Lanterns*, 114.

⁶⁷⁶ Leonard, *Lincoln's Forgotten Ally*, 300.

⁶⁷⁷ Leonard, *Lincoln's Forgotten Ally*, 143.

meeting with Confederate president Jefferson Davis in Richmond, Virginia.

Unfortunately, the rebel congressman had never been in Richmond or met with Davis during the Rebellion.⁶⁷⁸ He claimed that Union spy Mary Ann Pittman had seen the names of McClellan, Vallandigham, and Davis all on an “official” list of the Order of American Knights.⁶⁷⁹

Now remember that this report was released on the eve of the election in which Lincoln’s chief opponent was General George McClellan. But McClellan’s supporters in New York called the “Minutemen” were merely members of the Knights, Holt’s report continued.⁶⁸⁰ Holt reported that the Knights were organized with local “temples,” a state council and finally a national headquarters.⁶⁸¹

The order comprises within itself a large army of well-armed men, constantly drilled and exercised soldiers, and that this army is ready at any time for such forcible resistance to our military authorities and such active cooperation with the public enemy as it may be called upon to engage in by its commanders. It will be perceived that the titles of the latter are not assumed for a mere purpose of display, but that they are chiefs on an actual and formidable force of conspirators against the life of the Government.⁶⁸²

Holt continued, “The McClellan minute Guard . . . is organized upon a military basis similar to the organization proper.”⁶⁸³ Each company was under the command of the commander in chief. The last head of the order was the editor of the *New York News*,

⁶⁷⁸ Klement, *The Limits of Dissent*, 242.

⁶⁷⁹ Klement, *The Limits of Dissent*, 293.

⁶⁸⁰ Scott, 2.7: 952.

⁶⁸¹ Scott, 2.7: 953.

⁶⁸² Scott, 2.7: 950.

⁶⁸³ Scott, 2.7: 950.

who was then under arrest in Fort Lafayette.⁶⁸⁴ Holt contended that his successor was none other than Clement Vallandigham.⁶⁸⁵ Holt warned that those not already arrested were “under constant military surveillance.”⁶⁸⁶ Holt noted that the “order” (at this point and others—he merges the Minute Guard with the national Order of the Golden Chain without bothering to sort out which was which) had its most recent meeting “just prior” to the Democratic convention in Chicago, which of course, nominated Lincoln’s adversary.⁶⁸⁷

He then estimated that there were 500,000 members in the Northern states, mostly Illinois, Indiana and Ohio and copperhead New York.⁶⁸⁸ He suspected many more members in the South. Holt’s theory was that the members sought to assist the South to remove the Old Northwest from the Union, but it was uncertain whether they intended to amalgamate with the South or remain a separate enterprise.⁶⁸⁹ His sole source for this figure is again Mary Pittman, who supposedly had told this to a Union intelligence officer following her capture by Sanderson on June 2, 1864.⁶⁹⁰ Pittman had agreed to give the Union evidence, and most of her interview was directed to the capture of General Nathan Bedford Forrest, who was allowed to escape because Sanderson feared a trap.⁶⁹¹

⁶⁸⁴ Scott, 2.7: 950.

⁶⁸⁵ Scott, 2.7: 950.

⁶⁸⁶ Scott, 2.7: 950.

⁶⁸⁷ Scott, 2.7: 934.

⁶⁸⁸ Scott, 2.7: 934.

⁶⁸⁹ Scott, 2.7: 942.

⁶⁹⁰ Scott, 2.7: 939.

⁶⁹¹ Sanderson, as Provost Marshall for Missouri, would have reported directly to Holt.

Holt's report then continued with some real documentary evidence—the ritual books of the societies.⁶⁹² He passed on the story that the password of the Knights was Nu-oh-lac, which is Calhoun spelled backward.⁶⁹³ Holt did use it as the jumping off point to his conclusions. Speaking of John C. Calhoun, Holt wrote, “the thorns which now pierce and tear us are of the tree he planted,” referring no doubt to nullification and other pet Calhoun theories.⁶⁹⁴ Calhoun was a man who “baffled with his lust for power, with gnashing teeth turned upon the Government that had lifted him to his highest honors.”⁶⁹⁵

Holt listed ten objects of the Knights. This is his actual list:

- Aiding deserters
- Discouraging enlistments and resisting the draft
- Circulation of disloyal and treasonable publications
- Communicating with and giving intelligence to the enemy
- Assisting the enemy in recruiting within Union lines
- Furnishing the rebels with arms, ammunition, etc.
- Co-operating with the enemy in raids and invasions
- Destruction of Government property
- Destruction of private property of those loyal to the Union
- Assassination and murder.⁶⁹⁶

No wonder Holt was ready to believe that there had been a plot when Lincoln was shot.

Holt justifies each of these conclusions with a paragraph, usually with vague reference to Grand Jury testimony.⁶⁹⁷ Since Grand Jury proceedings were secret, it is difficult to

⁶⁹² Scott, 2.7: 938-41.

⁶⁹³ Scott, 2.7: 939.

⁶⁹⁴ Scott, 2.7: 939.

⁶⁹⁵ Scott, 2.7: 939.

⁶⁹⁶ Scott, 2.7: 942-50.

⁶⁹⁷ Scott, 2.7: 942-50.

dispute the “facts” Holt presented.⁶⁹⁸

In conclusion, he thanked Union spy and femme fatale Mary Pitman for her help. Holt went on to condemn the South.⁶⁹⁹ He expressed that for fifty years, they had controlled the government and protected slavery. The minute the slaveholders lost an election, they turned traitor. Slavery, like treason, Holt asserted, required the force of arms to effect its power. Treason and slavery were thus inseparable.⁷⁰⁰ This is the first time Holt openly lashed out at slavery. He had been a Union man and a slave owner, but his anger provoked by Southern resistance brought his blood to boil. The best line should be left to the Judge Advocate: “Judea produced but one Judas Iscariot, and Rome but one Catiline; and yet, as events have proved, there has arisen in our land an entire brood of such traitors, all animated by the same parricidal spirit, and all struggling with the same relentless malignity for the dismemberment of the Union.”⁷⁰¹

Stanton wasted no time releasing Holt’s report to the press. Horace Greeley wrote an editorial against the local Minute Guard.⁷⁰² A Congressional committee ordered 10,000 copies distributed through the Union League.⁷⁰³ Democratic newspapers called Holt many names, such as “a modern Titus Oates” and “a man willing to commit any

⁶⁹⁸ “Federal Grand Jury,” University of Dayton, 2003, accessed Mar. 27, 2015, <http://campus.udayton.edu/~grandjur/faq/faq7.htm>.

⁶⁹⁹ Scott, 2.7: 144.

⁷⁰⁰ Scott, 2.7: 953.

⁷⁰¹ Scott, 2.7: 950.

⁷⁰² Klement, *Dark Lanterns*, 146.

⁷⁰³ Klement, *Dark Lanterns*, 146.

folly to suit his employers.”⁷⁰⁴ It was suggested that Holt was looking for a Supreme Court appointment, but there is no evidence in his papers that he wanted that position or even was suited for it. Then again, he really wasn’t suited by experience to be Judge Advocate.

Manton Marble was the editor of the radically anti-Lincoln *New York World*; he was also particularly concerned about Holt’s attempt to undermine the Minutemen: “Judge Holt has rendered himself a laughingstock to the country by allowing his name to give currency to a long partisan rigmarole intended to affect the election it which it is charged that 500,000 Democrats are enrolled in a society to aid the rebellion and form a northwestern confederacy.”⁷⁰⁵ Marble went on to contend (with questionable mathematics) that if there really were 500,000 Democrats aiding the Confederacy, then Lincoln must be a minority leader.⁷⁰⁶ But on the contrary, Democrats “have had to bear their share of the blood, expense and suffering of the war” and deserved better treatment than Holt’s rampage.⁷⁰⁷ For his part, freshman Representative (and later President) James A. Garfield commended Holt for his discussion of the “northern conspiracy of traitors.”⁷⁰⁸

The effect of the Holt report was dampened by the fact that Indiana and

⁷⁰⁴ Klement, *Dark Lanterns*.

⁷⁰⁵ Klement, *Dark Lanterns*, 147.

⁷⁰⁶ Klement, *Dark Lanterns*, 147.

⁷⁰⁷ Klement, *The Limits of Dissent*, 141.

⁷⁰⁸ Holt Papers, Container 45.

Pennsylvania had already cast their Presidential votes by the time the report came out.⁷⁰⁹ James McPherson, in *The Battle Cry of Freedom: The Civil War Era*, notes that the report mainly affected soldiers in uniform, causing them to turn even further against the Democrats.⁷¹⁰ Of course, the single most significant aid to Lincoln in winning the election was the defeat of the Southern forces around Atlanta.⁷¹¹

In assessing Holt, it is difficult sometimes to tell where Holt's authority ended and Stanton's or a President's began, but there is little doubt that the report on the secret societies is an indication of Holt's personal philosophy. Stanton urged him to submit a report, and Holt certainly worked hard at producing a long report out of very little evidence—but such is sometimes the job of a good lawyer. Let us not forget that Holt's generation would think of treason perhaps more in terms of Benedict Arnold or Guy Fawkes. In modern times, Joseph McCarthy so misused the concept that politicians rarely use it against each other. Holt used it at a time when the word could be taken more seriously, particularly in view of the ongoing rebellion.⁷¹² Likewise, Kastenberg has noted that Klement wrote during the McCarthy era and this likely influenced Klement's thinking on Holt's approach to "treason," as McCarthy had often misused that term.⁷¹³

Mixed in with the secret societies issue was the handling of Congressman

⁷⁰⁹ McPherson, *Battle Cry of Freedom*, 782.

⁷¹⁰ McPherson, *Battle Cry of Freedom*, 782-83.

⁷¹¹ Kastenberg, 348.

⁷¹² I must cite a remark I heard at the American Historical Convention in Philadelphia in 2007. A speaker whose name I cannot summon up remarked, "We used to not fear treason in our own midst, but after 9-11 we are more sympathetic with Holt's view of the damage of an internal threat." *Archives*, accessed 2014, archives/historians.org.

⁷¹³ Kastenberg, 332.

Clement Vallandigham, who had often voiced his displeasure with Lincoln's war against the insurgent states.⁷¹⁴ Most of his mistreatment was at the hands of Colonel John P. Sanderson, one of the investigators in the secret societies reports. Sanderson was in charge of the western portion of the old Northwest for the Army and not directly under Holt's control.⁷¹⁵ Holt would not get involved directly until the matter of his arrest reached the Supreme Court. Vallandigham had sought habeas corpus or release from jail on unlawful charges, including the fact that a military court was trying a civilian. Holt wrote the government brief for the Supreme Court.⁷¹⁶

Vallandigham was a Democratic congressman representing Hamilton and Dayton, Ohio.⁷¹⁷ Although he was a prominent critic of the Lincoln Administration, who had denounced the "wicked and cruel war by which King Lincoln was blocking civil rights," he was safe in Washington.⁷¹⁸ But when he returned to his home district, he found himself within the jurisdiction of one Colonel Henry Carrington, who thought Vallandigham was at the center of a plot against the Union.⁷¹⁹ In fact, Carrington asked Lincoln's permission to arrest Vallandigham, but got no answer.⁷²⁰ In the meantime, Carrington had issued an edict forbidding the citizens within his jurisdiction from bearing

⁷¹⁴ Klement, *The Limits of Dissent*, 61-72.

⁷¹⁵ Klement, *The Limits of Dissent*, 278.

⁷¹⁶ See *Ex Parte Vallandigham* 68 U.S. 243 (1863).

⁷¹⁷ Klement, *The Limits of Dissent*, 17.

⁷¹⁸ Leonard, *Lincoln's Forgotten Ally*, 182.

⁷¹⁹ Klement, *The Limits of Dissent*, 278.

⁷²⁰ Klement, *The Limits of Dissent*, 145-46.

arms. Vallandigham replied that he would never let the administration “trample upon the rights of the people.”⁷²¹ When Democratic newspapers joined in the protest, they were destroyed by pro-Union mobs. Carrington wrote Lincoln that either Vallandigham or Confederate general John Hunt Morgan was capable of raising an army of 200,000 against the Union.⁷²²

Vallandigham finally made a speech reminding Carrington of the Second Amendment, and the “right of the people to bear arms”—in reality, a matter of much legal mystery.⁷²³ In April, 1863 Vallandigham’s efforts bore fruit as the Democratic Party swept into office in local elections in and near Vallandigham’s home territory.⁷²⁴ Elsewhere in the country, Lincoln fared much better than he had in the 1862 elections, and Lincoln’s victory made Vallandigham’s isolation that more stark.⁷²⁵ Meantime, Ambrose Burnside took charge of the region for the Army. Probably still hurting from the loss of Fredericksburg, on April 13, 1863 he issued a general order noting that “the habit of declaring sympathy for the enemy” would no longer be tolerated, and that persons making such statements would be subject to arrest and then to military procedures.⁷²⁶ There is no record that Burnside consulted with anyone before issuing this order.⁷²⁷

⁷²¹ Klement, *The Limits of Dissent*, 149.

⁷²² Klement, *The Limits of Dissent*, 155.

⁷²³ Klement, *The Limits of Dissent*, 150.

⁷²⁴ Klement, *The Limits of Dissent*, 147.

⁷²⁵ Klement, *The Limits of Dissent*, 147.

⁷²⁶ Klement, *The Limits of Dissent*, 149.

⁷²⁷ Klement, *The Limits of Dissent*, 138-54.

Vallandigham was then seeking to run for Governor of Ohio without much sympathy even from Democratic politicians who were trying to distance themselves from disloyalty charges.⁷²⁸ Vallandigham grew impatient with the leaders, and according to his biographer Frank Klement, the politician then decided that the only way to get into the Statehouse was to get arrested.⁷²⁹ He made a public statement before a large crowd boasting of the right to assemble and speak freely and challenging the validity of any military action against the exercise of free speech.⁷³⁰ Vallandigham also wrote a letter to Franklin Pierce, comparing himself to Roman patriots.⁷³¹

Vallandigham had made it known that he would appear in Mt Vernon, Ohio on May 1, 1863.⁷³² Burnside decided he would wait for him.⁷³³ The day came and the rural populace emptied into the town of Mt. Vernon. Vallandigham got up and waved the American flag: a flag of 34 states, torn asunder by Republican policies. He again invoked the right of free speech and declared that no military power could stop him from speaking.⁷³⁴ Burnside's agents had been in the crowd. When Burnside was informed of Vallandigham's tirade, he decided to arrest him, which he did at the Congressman's

⁷²⁸ Klement, *The Limits of Dissent*, 304-06.

⁷²⁹ Klement, *The Limits of Dissent*, 138-54.

⁷³⁰ Another Union commander had seconded Burnside's action so there were now two military edicts against giving comfort to the Confederacy. Klement, *The Limits of Dissent*, 258.

⁷³¹ Klement, *The Limits of Dissent*, 146.

⁷³² Klement, *The Limits of Dissent*, 146.

⁷³³ Klement, *The Limits of Dissent*, 146.

⁷³⁴ Klement, *The Limits of Dissent*, 146.

home on May 4.⁷³⁵

The arrest was attended with much commotion, and Vallandigham even fired warning shots in the hope of getting the Dayton police to intervene on his behalf.⁷³⁶ Word soon spread via the telegraph to awaiting newspaper editors, but if Vallandigham thought he was going to get massive national attention, he was wrong.⁷³⁷ On the same day, the Union lost the Battle of Chancellorsville, and that got the bold headlines on the morning of May 6.⁷³⁸

For his part, Burnside turned to setting up the court-martial of a civilian and a congressman. Burnside's only precedent was John Fremont's arrest and trial of a newspaper editor earlier in the war.⁷³⁹ Fremont's decision was approved by Simon Cameron's War Department—before Holt had any official connection to it.⁷⁴⁰ He was tried on May 6 before General Robert Potter.⁷⁴¹ Klement claims that the military commission charged with trying him included one officer accused of “keeping a disreputable house” and the Judge Advocate who presented the military's evidence was soon after arrested for sexual assault.⁷⁴² Vallandigham sought to get the Copperhead mayor of New York,

⁷³⁵ Klement, *The Limits of Dissent*, 156.

⁷³⁶ Klement, *The Limits of Dissent*, 156.

⁷³⁷ Klement, *The Limits of Dissent*, 156.

⁷³⁸ Klement, *The Limits of Dissent*, 162-63.

⁷³⁹ Klement, *The Limits of Dissent*, 164.

⁷⁴⁰ Kastenber, 297.

⁷⁴¹ Klement, *The Limits of Dissent*, 165.

⁷⁴² Kastenber, 297.

Fernando Wood, via telegraph for political support and asked for a continuance from the commission.⁷⁴³ This was denied and Vallandigham refused counsel; Klement claims he did this to destroy any appearance of regularity in the proceedings.⁷⁴⁴ Within a couple of weeks of the proceeding, Vallandigham sought a writ of habeas corpus from the local federal district court. Judge Humphrey Leavitt denied the writ, essentially on the grounds that treason was too horrendous a crime to allow the writ.⁷⁴⁵ The purpose of habeas corpus, a right granted in the Fifth Amendment to the Constitution, is to grant a person held by federal authorities the right to have a court review the basis of his detention.⁷⁴⁶ In modern times, it has come to be a second appeal after the initial appeal has been exhausted, but it was more frequently used in the past as a way of getting a case heard when the government refused to try a defendant.⁷⁴⁷ After Leavitt's decision, Vallandigham sought review in the United States Supreme Court. Pursuant to Court rules, he had first to ask for the Court to accept the matter as "an important matter"—or in the phrase used in the Court rules, "on certiorari."⁷⁴⁸ It was then that Holt got involved because he was the principal Department of War lawyer on military matters.

Holt knew that there were precedents for persons accused of treason getting

⁷⁴³ Kastenber, 166.

⁷⁴⁴ Kastenber, 166.

⁷⁴⁵ Kastenber, 171.

⁷⁴⁶ "Habeas Corpus," Cornell University Law School: Legal Information Institute, accessed Mar. 16, 2015, https://www.law.cornell.edu/wex/habeas_corpus.

⁷⁴⁷ "Habeas Corpus."

⁷⁴⁸ Klement, *The Limits of Dissent*, 258-59.

Supreme Court review (e.g. *Ex Parte Merryman*), but he wisely took a different tack.⁷⁴⁹ Holt argued that the Supreme Court was a court established under Article III of the Constitution to hear cases coming from courts established by Congress under that Article (with certain exceptions for State court decisions).⁷⁵⁰ But the President had under his Article II authority as the Chief Executive and Commander in Chief established military courts.⁷⁵¹ Thus, the Supreme Court lacked jurisdiction over the subject matter of the case, which concerned an infraction of military rules—an Executive matter.⁷⁵² Holt continued that the Supreme Court was not given the right to issue writs in all cases—what the English had called prerogative writs, but had to act only within the confines of the judicial authority of Article III, and the Court accepted this argument.⁷⁵³ It thus refused on jurisdictional grounds to issue the writ. Vallandigham eventually was deported to Canada and tried to run for governor in exile from Hamilton, Ontario.⁷⁵⁴ Years later, the charge would be made that the Confederates had fed money not only to Vallandigham but also to the Anti-Lincoln *New York Daily News*.⁷⁵⁵

Holt's role in this was as a lawyer hired to make a lawyerly argument to uphold the War Department's stance in this matter. There is nothing to indicate that he had been

⁷⁴⁹ 17 F. Cas. 144 (C.C.D. Maryland, 1861).

⁷⁵⁰ *Ex Parte Vallandigham*, 65 U.S. (1, Wall. 245-254) 1984.

⁷⁵¹ Klement, *The Limits of Dissent*, 244.

⁷⁵² Klement, *The Limits of Dissent*, 244.

⁷⁵³ Klement, *The Limits of Dissent*, 248.

⁷⁵⁴ *Ex Parte Vallandigham*.

⁷⁵⁵ Kastenber, 342.

involved in the decision to arrest Vallandigham, although one is sure he was pleased to see him detained. After all, was not Vallandigham the head of many Copperhead organizations seeking to disrupt the Union? Holt was not a brilliant legal thinker, but his approach to the subject was good enough to give the Supreme Court something on which to base its decision. It would reverse itself after Appomattox in *Ex Parte Milligan* (concerning another copperhead politician), but by then the Confederate threat was ended and it was easy for the Court to take up the position of champion of civil liberties.⁷⁵⁶

Holt's position was derided in the legal community until the attacks on September 11, 2001. The Bush Administration argued that the detention of prisoners was not reviewable by civilian courts because they were being held as belligerents during a time of war.⁷⁵⁷ This thesis probably would have shocked even Holt, who consistently argued that prisoners of war had rights.⁷⁵⁸ Also, the Civil War involved mostly competing armies. It had a beginning at Sumter and would presumably have an ending. But the period of suspension of habeas corpus in a terror attack situation was very ambiguous. The Vallandigham incident was perhaps Holt's most influential hour as a legal craftsman, although his work with prisoners of war was a greater legacy to humanity.

Finally, the Vallandigham incident is often cited as an example of "Dictator Lincoln."⁷⁵⁹ While, of course, Lincoln was captain of the ship, the truth is that he had

⁷⁵⁶ 71 US (4Wall.) 2 (1866).

⁷⁵⁷ *Boumediene v. Bush* (Slip opinion) decided Jun. 12, 2008, which followed *Ex Parte Milligan* but ignored the Vallandigham decision.

⁷⁵⁸ See discussion on the Lieber Code.

⁷⁵⁹ See Klement, *The Limits of Dissent*, 190.

little hand in the incident directly. It was the local commanders who made the decision to arrest Vallandigham, and Holt worked with the Supreme Court on the legalities.⁷⁶⁰

Lincoln's only direct involvement came on the punishment issue. It was Lincoln who issued the order to let Vallandigham take his place behind Confederate lines; Lincoln, Klement believed, wanted no Copperhead martyr on his hands.⁷⁶¹

Of course, Lincoln was re-elected in November of 1864. Holt spent most of his time busily involved with the minutiae of Courts Martial and other Army business, and particularly the condition of prisoners of war was on his mind.⁷⁶²

If there was a humanitarian side to this horrible war of brother against brother, it lay in the fact that both sides claimed to adhere to the international rules on prisoners of war. The Revolutionary War had been a gentlemen's war, at least for the officers. For instance, when Charles Lee was captured in New Jersey and a tavern, he was treated as the equal of the British officers and apparently had such a good time that his loyalty was questioned after his return to the Rebel side.⁷⁶³ In the War of 1812, lawyer Francis Scott Key went aboard a British ship to negotiate the release of American prisoners and received the inspiration to write the Star Spangled Banner.⁷⁶⁴ So proper treatment of prisoners of war was an American tradition, which Holt and his counterparts in the South

⁷⁶⁰ Klement, *The Limits of Dissent*, 245.

⁷⁶¹ Klement, *The Limits of Dissent*, 191.

⁷⁶² Holt Papers, Container 45.

⁷⁶³ British officer Andre was hung ostensibly because he was wearing civilian clothes, although one wonders if he would had gotten more lenient treatment if Arnold's treachery hadn't been involved.

⁷⁶⁴ "Star Spangled Banner," Smithsonian National Museum of American History, accessed Mar. 17, 2015, <http://amhistory.si.edu/starspangledbanner/>.

upheld. Early in the Civil War, Holt was able to keep fairly even exchanges because the South and North had fairly equal numbers of prisoners. While the Northern force was bigger, the Confederates often won, and thus garnered many prisoners.⁷⁶⁵

The last year or so of the war was the really grueling part. Northern prisoners starved at places like Andersonville—the South would claim that this happened because their Army had no rations for their own men.⁷⁶⁶ The North had the balance of prisoners and was at points reluctant to exchange, partly out of desire to make the South submit. In August 1863 prisoner of war exchange broke down over the issue of how to handle black prisoners, pursuant to a joint North-South agreement of the year before.⁷⁶⁷ The South regarded blacks, even if freed and even in uniform, as still slaves and criminals.

Confederal Secretary of War James Seddon ordered General Kirby Smith to execute all white officers in charge of black units on the field. Many black soldiers were also simply shot.⁷⁶⁸ Officially the War Department did not condone shooting Northern black slaves, but it looked the other way.⁷⁶⁹ Nathan Bedford Forrest was involved in the infamous Fort Pillow episode where many Northern blacks were summarily killed. In the summer of 1863, Lincoln and Stanton decided it would not exchange prisoners with the South because of the treatment of black soldiers.⁷⁷⁰ This left Northern white soldiers in the

⁷⁶⁵ Witt, 256-61.

⁷⁶⁶ Kastenbergh, 259.

⁷⁶⁷ Witt, 256.

⁷⁶⁸ Witt, 256.

⁷⁶⁹ Witt, 236.

⁷⁷⁰ Witt, 258.

South living in inhumane conditions, a situation even Walt Whitman protested.⁷⁷¹ Of course, as the war went on it became more and more an issue of strategic interest to refuse exchange, as the South was losing more and more troops and if exchanged, this group (maybe 40,000 strong) would return to the active Confederate forces. Still, Southern officials had insisted their soldiers would “die to the last ditch” rather than be exchanged for blacks.⁷⁷² It was not until the last weeks of the war that Grant relented and resumed exchanges.⁷⁷³

Holt’s correspondence does not indicate much about his own position on exchanges, but we can infer his position from his appointment of Schoepf as Superintendent of Fort Delaware.⁷⁷⁴ Schoepf and Holt kept in close contact. For example, in correspondence with Holt, the warden notes that while he had but 800 prisoners on April 22, 1863, the number had swelled to 8,426 on July 10 of that year, reflecting many prisoners from the Gettysburg campaign.⁷⁷⁵

In the meantime, the court martial work continued apace. At one point in 1863 Holt had 40 courts-martial, just for desertion.⁷⁷⁶ By December of 1864, Holt reported that he had 1,000 cases waiting for Lincoln’s resolution.⁷⁷⁷ There was also the occasional

⁷⁷¹ Witt, 259.

⁷⁷² Witt, 260-61.

⁷⁷³ Witt, 261.

⁷⁷⁴ Dale Fetzer and Bruce Mowday, *Unlikely Allies: Fort Delaware’s Prison Community in the Civil War* (Mechanicsburg, PA: Stackpole Press, 2000).

⁷⁷⁵ Holt papers, Container 38.

⁷⁷⁶ Holt papers, Container 40.

⁷⁷⁷ Holt Papers, Container 42.

complex legal question, such as the plea from John Clark, called to testify at a court-martial, who begged Holt to give him his own counsel if he testified as a witness—a right apparently not granted in military cases.⁷⁷⁸ Holt also was involved in enforcement of the draft.⁷⁷⁹ Another complaint of damaged property, originally directed to the White House, was sent back to Holt.⁷⁸⁰

Finally, the end came at Appomattox. Holt, who had been elevated to Major General on March 13, should have been there as the man who distributed orders, but there is no evidence he was.⁷⁸¹ Holt realized the tenuous condition of the Southern people, for his brother Robert wrote him from his home in Yazoo, Mississippi: “This war is coming to an end, but our crops need to be sown.”⁷⁸² In the South, the end of the war left many wandering and hungry, so that the end of the War might mean the beginning of starvation, with ex-slaves leaving the fields and so many able-bodied men dead.⁷⁸³

It is very difficult to sort out the exact dates because sources indicate that there was no telegraph service between Washington and Charleston at that particular point, but it seems that the minute Washington heard of Lee’s surrender, a large number of dignitaries decided to descend on Charleston.⁷⁸⁴ Leading the pack was Major Anderson,

⁷⁷⁸ Holt Papers, Container 46.

⁷⁷⁹ Holt Papers, Container 45.

⁷⁸⁰ Holt Papers, Container 45.

⁷⁸¹ In fact, the National Parks Service website for Appomattox denies that Holt was present. “The Surrender: Appomattox Court House,” National Park Service, Apr. 19, 2015, accessed Apr. 23, 2015, <http://www.nps.gov/apco/the-surrender.htm>.

⁷⁸³ Holt Papers, April 2, 1865.

⁷⁸⁴ Swanberg.

the commander of Sumter when the war began.⁷⁸⁵ But also present was Reverend Henry Ward Beecher and a large New York contingent, including Joseph Holt, that arrived on the steamship *Oceanus*.⁷⁸⁶ Lincoln was toasted, even as he was close to being assassinated in Washington, and there was a ball, which lasted into the morning of April 14, 1865.⁷⁸⁷ Holt addressed the crowd, during a torchlight ceremony, giving his thanksgiving for the salvation of the Union. He also thanked Abraham Lincoln “For the delicate and earnest craving of hearts which instructed him to order the flag” which had been lowered in shame four years before and would now be raised with “salutes and honor restoring to the nation.”⁷⁸⁸ He spoke of a future Union with “industry honored, labor protected, and the family upraised.”⁷⁸⁹

The *Times* reporter used the occasion to engage in editorializing. Writing of the speech, he said, “The central American value of free speech, which South Carolina has always ignored, if not disallowed, was gloriously vindicated.”⁷⁹⁰ His friend Frank Ballard later claimed that the speech should be published as it was “the kind of meat upon which the people need to feed at this moment.”⁷⁹¹ It was published on the front page of the *New York Times* on April 20, in the same issue as the news of the President’s shooting.⁷⁹²

⁷⁸⁵ Swanberg.

⁷⁸⁶ Swanberg.

⁷⁸⁷ Swanberg.

⁷⁸⁸ Holt Papers, April 2, 1865.

⁷⁸⁹ Holt Papers, April 2, 1865.

⁷⁹⁰ “Passengers Arrived,” *New York Times*, April 19, 1865.

⁷⁹¹ Leonard, *Lincoln’s Forgotten Ally*, 201.

⁷⁹² “Arrivals,” *New York Times*, Apr. 20, 1865.

Later in the day, Holt would accuse his old nemesis, “the Traitor Floyd,” of being the person who put the Union in the position of having to surrender Sumter.⁷⁹³

The *Times* dispatch ends without the slightest awareness that Lincoln was dead. At what point Holt learned of Lincoln’s death is uncertain; Dyer claims that he got a telegram the next day, but it is not in his papers at the Library of Congress.⁷⁹⁴ But he did not arrive in Washington until a few days after Lincoln died at the Peterson House. He presumably came by steamboat from Charleston.⁷⁹⁵ Holt then took charge as, after all, it was his job to prosecute persons who interfered with the Army, including the commander in chief. In the meantime, Holt was getting letters reminding him that a “great tragedy” had taken place.⁷⁹⁶ He also wrote a now difficult-to-find book called *Opinions of the Judge Advocate General*—a few of the decisions were reproduced in the volumes of the *War of the Rebellion*.

⁷⁹³ Leonard, *Lincoln’s Forgotten Ally*, 201.

⁷⁹⁴ Dyer, 93.

⁷⁹⁵ Dyer, 93. But the *New York Times* places him in New York on April 19.

⁷⁹⁶ Apr. 1865, Holt Papers.

Chapter 6

THE ASSASSINATION AND ITS AFTERMATH

Perhaps so public an event brought out Holt's innate flaws, but his fortunes began to change after the Assassination trials ended. He was hauled before a hostile congressional committee of his own party, which proceeded to attack his use of witnesses at the Lincoln trial.⁷⁹⁷ He nearly lost his trial due to Johnson's fury at Stanton and would have logically been the next head to roll were it not for the passing of the Tenure in Office Act.⁷⁹⁸ Finally, he retired.

Surely there are few subjects more discussed than the assassination of Abraham Lincoln. And in Elizabeth D. Leonard's *Lincoln's Avengers*, Holt at last gets his due in the story of this great American tragedy.⁷⁹⁹ To travel again over the familiar road of the assassination and trial of the remaining conspirators after Booth was killed on a farm in Virginia does not seem needed.⁸⁰⁰ But one should focus on two issues concerning the assassins and Holt.

First, just where WAS Holt during the assassination investigations? The investigation ran in all directions the minute Booth left the stage of Ford's Theater the night of April 14, 1865. No one really had full charge of anything. Had Holt been on the

⁷⁹⁷ Leonard, *Lincoln's Forgotten Ally*, 245-68.

⁷⁹⁸ Leonard, *Lincoln's Forgotten Ally*, 244.

⁷⁹⁹ Leonard, *Lincoln's Avengers*, 20.

⁸⁰⁰ James J. Swanson, *Manhunt: The 12-Day Chase for Lincoln's Killer* (New York: William Morrow Paperbacks, 2007).

spot, he would have arguably been the person in charge of the manhunt because he was, after all, the chief legal officer of the Army, and the Commander-in-Chief had just been shot. But he was celebrating in South Carolina, so it took Holt a while to get into place.⁸⁰¹

Somehow, Holt received word and left at once by steamboat. What proceeded is a tribute to the leadership of the country at that point. The country could have fallen apart, but Johnson took the reins of government despite the violent transfer of power (the first in the history of the country). Holt also continued to function efficiently. He arrived in New York on April 19.⁸⁰² When Holt finally got to Washington, he faced the usual requests for jobs and an occasional reference to the “terrible tragedy” that had just befallen the nation.⁸⁰³ He was present when Herold was taken into custody and at the time Booth was slain, and he oversaw the investigation which was not well directed.⁸⁰⁴ Bingham was Holt’s right-hand man at the moment. One gets the feeling in reviewing Holt’s reaction to events that he was not surprised about the assassination—had he not foreseen a terrible event in his discussion of the Dark Lantern movement?

Then there is the issue of to what extent Holt “rigged” the court martial of the assassins. Michael Kaufmann claims that Holt let Booth lure the Kentucky lawyer into wider claims against the Confederacy, taking the spotlight off the fact that Booth had largely engineered the deed himself.⁸⁰⁵ Andrew Johnson was later to imply that Holt had

⁸⁰¹ Dyer, 72.

⁸⁰² “Arrivals,” *New York Times*, Apr. 20, 1865.

⁸⁰³ Apr. 1865, Holt Papers.

⁸⁰⁴ Leonard, *Lincoln’s Avengers*, 33-34.

⁸⁰⁵ Michael Kauffman, *American Brutus*, 100.

tried to keep him from commuting Mary Surratt's death sentence.⁸⁰⁶ And a modern viewer has to wonder how much Holt could have proved about a Confederate impetus to the plot if Holt had available the kind of resources the Warren Commission had in the Kennedy assassination. But he lacked modern communication and had to rely on questionable individuals as his information source. Indeed, one can even wonder if Holt's failure to prove a wide conspiracy had some effect on the Warren Commission when it failed to make much of the rumors of Mafia involvement/Castro's involvement/CIA involvement in the Kennedy slaying.⁸⁰⁷

After Lincoln was shot, Booth managed to elude authorities until April 26.⁸⁰⁸ A key feature of the manhunt was the lack of coordination between branches of the federal (and District of Columbia) governments—the Metropolitan Police, the Provost Marshall's office of the Army and the Secret Service. The *Pittsburgh Gazette* claimed that the search had become dysfunctional with detectives trying to arrest other detectives searching for fugitives.⁸⁰⁹

It seems that official Washington was at first mostly concerned with handling its grief over the loss of the President, but the minute Lincoln's funeral train came to rest in Springfield, Stanton turned his attention to the legal situation and asked Holt as head of

⁸⁰⁶ Leonard, *Lincoln's Forgotten Ally*, 216-18.

⁸⁰⁷ I remember my professor John B. Robertson saying the day classes resumed after the day of mourning for Kennedy that if a lone Southern gunman had killed Lincoln, surely a lone gunman from the South could have killed Kennedy.

⁸⁰⁸ Leonard, *Lincoln's Forgotten Ally*, 244.

⁸⁰⁹ Kauffman, 120.

the Bureau of Military Justice to take charge of the investigation.⁸¹⁰ President Johnson would at once order a military trial on April 20. Boston Corbett and the New York Infantry caught up with Booth and Herold scarcely a week later, and Booth died on the spot; Herold was brought to Washington in a steamship and interviewed not by Holt but in his presence.⁸¹¹

Seemingly a conspiracy of some eight individuals (and maybe more, for even the owner of Ford's theater was held for a time) would be enough, but Holt was always looking for the grand scheme. By May 2, he and some of his staff had drafted a complaint implicating no less than Jefferson Davis in the plot to kill Lincoln, despite the lack of any direct evidence.⁸¹² He insisted that Davis had plotted through Canadian authorities to have Lincoln killed and relegated Booth to the part of a mere pawn in the scheme. It would appear that Holt spent the next few days in a frenzy of imagination.⁸¹³ One of his specifications in the criminal complaint was that Booth had traitorously tried to provoke a constitutional crisis by attempting to kill the three people in immediate line of succession to the Presidency—the sitting President, the vice-President, and the Secretary of War, at that time in line under statute to succeed Johnson.⁸¹⁴ He also was in personal danger—at one point during the trial he was told not to walk home alone at night.⁸¹⁵

⁸¹⁰ Holt had wished to accompany the funeral train, but Stanton would not let him, and another officer was sent in his place. Kauffman, 201

⁸¹¹ Kauffman, 329.

⁸¹² Holt Papers, Container 92.

⁸¹³ Leonard, *Lincoln's Avengers*, 77-82.

⁸¹⁴ Holt Papers, Container 92.

⁸¹⁵ Holt papers, Container 47.

The first day of proceedings was May 9, but the taking of testimony would take some time to begin. Holt appeared in uniform, although Leonard claims he only held civilian rank.⁸¹⁶ The other members of the tribunal were members of the Army, including Holt's long-time aide for this type of proceeding, David Hunt.⁸¹⁷ Also present was General Lew Wallace, who perhaps spent downtime thinking of the plot to his novel *Ben Hur*. Few of the defendants had counsel that first day and under the peculiar rules of the military tribunal it became Holt's job to locate defense counsel despite the fact he was Chief Prosecutor.⁸¹⁸ It wasn't a pleasant job, but Holt managed to get fairly competent counsel, including Reverdy Johnson for Ms. Surratt.⁸¹⁹ Interestingly, Reverdy Johnson had been a key foe of Holt in the Vallandigham situation.⁸²⁰ Meantime, while Holt was trying to run a presidential assassination investigation, he continued to receive letters for jobs and letters from his friends back home in or around Kentucky.⁸²¹

Holt made an early decision to close the trial to journalists. This brought on the

⁸¹⁶ I believe this an error.

⁸¹⁷ Douglas Linder, "The Trial of the Lincoln Assassination Conspirators," *Famous American Trials*, 2002, accessed Mar. 17, 2015, <http://law2.umkc.edu/faculty/projects/ftrials/lincolnconspiracy/lincolnconspiracy.html>.

⁸¹⁸ Leonard, *Lincoln's Forgotten Ally*, 221.

⁸¹⁹ Leonard, *Lincoln's Forgotten Ally*, 233.

⁸²⁰ Leonard, *Lincoln's Forgotten Ally*, 170-71.

⁸²¹ Of the 110 containers of Holt Papers at the Library of Congress, perhaps 75 percent of the documents concern requests by private individuals for jobs. Holt, as noted, had been Postmaster General, and the selection of postmasters in the numerous offices throughout the country was perhaps his biggest administrative chore and a highly political one, given the absence of any kind of civil service requirement. One could almost reconstruct Holt's biography through the letters of job seekers. While he was Advocate General he received many requests for assistance in job searches, usually prefaced by the statement "you are known for your generosity."

wrath of the *New York Times*.⁸²² The *Times* claimed Holt was afraid of tipping off potential defendants who had not yet been arrested. In any event, Holt soon reversed this policy and opened up the trial to reporters on May 13.⁸²³

Holt's role at trial would be considered very strange to modern observers. He helped line up counsel for the defense. He expressed his opinion at various times for both sides, sometimes, for example, helping Fred Aikens, the inexperienced attorney who represented Mary Surratt as did John Clappitt who had also just joined the bar.⁸²⁴ All the lawyers representing defendants were civilians; none appear to have had any experience in military defense.⁸²⁵ According to Michael Kauffman, none seemed to be aware of Holt's recent publication *Digest of the Opinions of the Judge Advocate General*, and Kauffman claims that Holt didn't inform the defense so his own rulings wouldn't be used toward his own prosecution.⁸²⁶ Statements made by defendants were not introduced in their entirety, but only that portion contrary to their interest. This made statements made by Surratt, Azerodt and Herold look much worse than the statements would have looked in their original context.⁸²⁷ Holt also withheld Booth's mutilated diary.⁸²⁸ Further, Holt

⁸²² Leonard, *Lincoln's Forgotten Ally*, 208.

⁸²³ Leonard, *Lincoln's Forgotten Ally*, 208.

⁸²⁴ Leonard, *Lincoln's Forgotten Ally*, 209. While Reverdy Johnson was originally named Mary's "lead" attorney, he soon left the daily defense work to the much less experienced Aikens and Clappitt. Johnson did contribute a motion (which was denied) questioning the jurisdiction of a military tribunal over a civilian (Mary Surratt).

⁸²⁵ See Kastenberg, 363.

⁸²⁶ Kauffman, 200.

⁸²⁷ Kauffman, 353-37.

⁸²⁸ Leonard, *Lincoln's Forgotten Ally*, 367. After the trial, there was a congressional inquiry into the conduct of the assassination trial. Holt was asked how it got mutilated [Holt testified he didn't know.] He also testified that he didn't introduce it at trial as it was not directly relevant to the conspiracy.

twisted Dr. Samuel Mudd's testimony by admitting Mudd's admission that he knew Booth was the man who came to him with a broken leg, but then ruling that the defense could not bring up that Mudd reported Booth to the authorities after he left.⁸²⁹ The latter statement, Holt ruled, was outside the scope of the criminal conduct and so a mere self-interested hearsay statement.⁸³⁰

Kauffman also points out that defense attorneys lacked access to the government police files, which might have contained evidence that would be damaging to the government's case.⁸³¹ But it would be 1949 before the United States Supreme Court would rule that defense attorneys were entitled to routine access to government files, even concerning their client's own statements.⁸³²

The most outrageous testimony concerned the argument that Canadian citizens had a part in the conspiracy. When the notes of this part of the trial were revealed in Canada on June 2, 1865, the Canadian press called it "cooked to order" and were able to prove the so-called Canadian sympathizer was actually a Copperhead from New Jersey who had rented a room in Montreal.⁸³³

A final defect was the mental examination of Lewis Powell. His original mental

According to Leonard, the defense probably know about the diary, but did not want to use it either. Leonard, *Lincoln's Forgotten Ally*, 367

⁸²⁹ Kauffman, 310.

⁸³⁰ Kauffman, 310.

⁸³¹ The complete file is available on the Surratt House Museum website: <http://www.surrattmuseum.org/surratt-society>.

⁸³² *Hickman v. Taylor*, 250 U.S. 1, 1949.

⁸³³ *The Conspirator*.

examiner bolted at the end of the trial because his wife died.⁸³⁴ Although poor Powell was unable to give his mother's maiden name, the doctors who finally did examine him concluded that he was merely very stupid, not unable to tell right from wrong.⁸³⁵ That was the undisputed legal test for insanity at the time: the famous McNaughton rule.⁸³⁶

Pursuant to military law, none of the defendants could introduce testimony, save in rebuttal to a statement made against them, which severely handicapped them in producing their own case.⁸³⁷ Mary Surratt reportedly said that had she been able to testify, she could have cleared her name.⁸³⁸ Surratt was first placed in cell 153, two by eight with only a straw pallet. A bucket was her only place to sit, but eventually Stanton let her have a chair and a large room.⁸³⁹ Her lawyer believed that she was on death's doorstep anyway; her hanging just expedited matters.⁸⁴⁰

Notice also the flow of the trial. Holt had wanted to try Jefferson Davis with the other defendants. The rules of the game were so loose that Holt probably could have gotten away with calling him to stand trial even in the middle of the trial (as Davis was captured during the early days of testimony), but he never came to trial because as the

⁸³⁴ Kauffman, 315.

⁸³⁵ "Trial of the Assassins: The Testimony All In At Last," *New York Times*, June 15, 1865.

⁸³⁶ Betty J. Ownsbey, *Alias "Paine": Lewis Thornton Powell, the Mystery Man of the Lincoln Conspiracy* (Jefferson, North Carolina: McFarland and Co., 2005), 129-34.

⁸³⁷ Kastenber, 365.

⁸³⁸ Maybe just a self-serving statement. In my years in legal practice, I have rarely met a defendant who did not plead guilty who didn't think he could clear himself, no matter how bad the evidence. Bill O'Reilly, however, claims this proves a conspiracy to silence the defendants. Bill O'Reilly, *Killing Lincoln* (New York: Henry Holt and Company, 2011).

⁸³⁹ Dyer, 13-15.

⁸⁴⁰ Dyer, 13-15.

testimony wore on, the case for Davis as an active conspirator grew weaker and weaker. But the evidence against the men (and woman) in the dock became stronger and stronger as the simultaneous timing of the attacks spoke for themselves.

The summations, according to Kaufmann, were marked by personal attacks on the defense attorneys' loyalty to their clients, surely something no modern court would have permitted.⁸⁴¹ Eventually, all of the conspirators were found guilty. The issue that would follow Holt forever was whether Mary Surratt should have been given a reprieve.⁸⁴²

Of course there was also the issue of the propriety of a military trial instead of a civilian. As noted, Holt had stated that the killing took place while a technical state of war still existed with the Confederacy. The *Times*, for its part, stated that "it was the nature of the crime, and not the dress of the criminal" that established the need for a military tribunal of civilians in civilian clothes.

The Surratt Incident

Sealed verdicts were issued on June 30 and needed immediate Presidential review, but Johnson was ill and so he did not see the papers until July 5.⁸⁴³ Johnson went over all the files with Holt, but the controversy is mainly with respect to Mary Surratt. The Commission issued the very first capital sentence the federal government had ever

⁸⁴¹ Kauffman, 212.

⁸⁴² See the writings of the Surratt Society (available on the Surratt House Museum website) and the film *The Conspirator*.

⁸⁴³ Leonard, *Lincoln's Forgotten Ally*, 216.

issued against a woman.⁸⁴⁴ David Hunter, of the military court, claimed that some of the members of the Commission had made a plea that the President commute her sentence on the theory that the law required execution but the Chief Executive had the discretion to not implement it.⁸⁴⁵ Holt claimed later that when he took the papers to Johnson, the plea for commutation from some of the Commission's members was clearly there for him to see. Years later, Johnson claimed that he never saw such a plea.⁸⁴⁶ Jacob Thompson made it part of his continuing vendetta against Holt, and so twenty years later, in the mid-1880s, Holt wrote a paper to defend himself against the charge that he had concealed the request for leniency.⁸⁴⁷ It seems to me that the salient thing here is that Johnson never claimed "I did not see the petition and I would have granted it had I seen it." There is no sign that Johnson ever intended to go easy on Mary Surratt: even on the morning of the execution, Surratt's family was at the White House, and Johnson simply ignored them.⁸⁴⁸ For his part, it is perhaps significant that Holt, when discussing the Rules of War with Lieber, had clung to the position that female enemies should be handled more gently than male.⁸⁴⁹ And the *Philadelphia Inquirer* called concern about executing Surratt

⁸⁴⁴ "Death Penalty Focus: Working for Alternatives to the Death Penalty," accessed Jun. 11, 2012, www.deathpenalty.org/homepage. The only other woman ever federally sentenced to death was Ethel Rosenberg, supposedly for revealing the secrets of the A-Bomb.

⁸⁴⁵ Kastenber, 363-64.

⁸⁴⁶ Leonard, *Lincoln's Forgotten Ally*, 217.

⁸⁴⁷ Joseph Holt, *Vindication of Joseph Holt Judge Advocate General of the United States Army* (Washington, DC: Chronicle, 1873).

⁸⁴⁸ Leonard, *Lincoln's Forgotten Ally*, 217.

⁸⁴⁹ Leonard, *Lincoln's Forgotten Ally*, 216.

“mawkish.”⁸⁵⁰ Anna Surratt, her daughter, made a last-ditch effort to rescue her mother and got into the Executive Mansion, but was barred by some political figures who kept her from reaching the President’s office. Johnson’s own daughter passed her by and made no attempt to aid her.⁸⁵¹ Johnson was in no mood to go easy on anyone connected with the assassination. He later said that Mary “hatched the brood of vipers that killed the President.”⁸⁵² Now, 150 years and thousands of pages of argument later, it is still clear that most of the conspirators were guilty as charged. Spangler maybe did not deserve six years for holding Booth’s horse, Dr. Mudd’s role in taking care of his patient will always be disputed, and Surratt’s guilt remains debated to this day.⁸⁵³ It can be argued that Surratt had merely provided a space where the conspirators met, but she also provided a package to Lewis Powell, which was probably a set of field glasses and she could not explain why Powell suddenly showed up at her boarding house just after the killing and just as she was being interrogated about the assassination.⁸⁵⁴ Her son was far more deeply involved.

Interestingly, Johnson, soon after the execution of the conspirators, ordered the prison building destroyed and a building erected on the graves of the executed. Two of the men who had blocked Anna Surratt’s passage to Johnson’s office later committed

⁸⁵⁰ Leonard, *Lincoln’s Forgotten Ally*, 217.

⁸⁵¹ Dyer, 222

⁸⁵² Kate Clifford Larson, *The Assassin’s Accomplice: Mary Surratt and the Plot to Kill Abraham Lincoln* (New York: Basic Books, 2008), 110.

⁸⁵³ See Surratt House Museum website.

⁸⁵⁴ Leonard, *Lincoln’s Forgotten Ally*, 211-12.

suicide.⁸⁵⁵ There is understandably no answer to these mysteries in Holt's papers. Louis Weichmann, a key witness at the trial, complained that Surratt's body was still warm when questions came to be raised about the role of Holt, Weichmann and others who had been involved in her allegedly unjust death.⁸⁵⁶ The principal accusation was perjury by someone on behalf of the Government (i.e. Holt) and Holt's withholding of the petition for Surratt's clemency. By contrast, Leonard argues that Holt actually was sympathetic to Anna. He had promised a delegation that came to see him at his home on July 6 that he would take their pleas for mercy to Johnson, and that he did so. Years later, his enemies would attack Holt, claiming that he had been soft on a conspirator.⁸⁵⁷

As for Holt after the execution, the matter was in some ways just another trial. While Holt's prosecution of the Lincoln assassins was surely his legacy, it was only one of a number of matters Holt was juggling at the same time. He had other cases on his mind, as well as a mountain of reviews of more routine courts-martial. Holt's bigger problem was that his new President did not see eye to eye with his immediate supervisor, Stanton. The unfolding of that story would take the rest of Holt's professional life.

Prisoners of War

While Holt continued to look for someone to testify against Jefferson Davis, he discovered the problems at Andersonville Prison. Surely he had had some knowledge of the situation there from during the war because there were prisoner exchanges and

⁸⁵⁵ Dyer, 224.

⁸⁵⁶ Dyer, 220.

⁸⁵⁷ Dyer, 295-96.

escapes that were well publicized, but after the war Holt's eyes fell on Heinrich Wirz, a Swiss native who had lived in the South and practiced medicine, although he had no formal education in that subject.⁸⁵⁸ Wirz lost the use of his arm at the battle of Seven Pines and wound up touring Europe perhaps as a fact finder until his 1864 return to the South, at which time the Confederate officials promptly placed him in charge of Andersonville Prison.⁸⁵⁹ While conditions in Union prisons were lacking (a condition of which Holt was well aware as a member of the Sanitary Commission), James McPherson contends that a prisoner in the South was nearly thirty percent more likely to die than a Northern prisoner.⁸⁶⁰ So during lulls in June and July of 1865 in the testimony in the assassination trial, Holt would conceivably work to prosecute Wirz.⁸⁶¹ Of course, most of the testimony was supplied by former Union soldiers; for example, one William Ball claimed that he was deprived of all personal possessions except a shirt and two pairs of pants.⁸⁶² Andersonville was not Fort Delaware, the Union compound which had its little shops and was even briefly a contemporary tourist attraction.⁸⁶³ Andersonville was a horrid place: while 60 to 100 prisoners died daily of natural causes, Ball testified that another eight or so would be summarily shot for crossing the boundary of the inmate

⁸⁵⁸ Susan Banfield, *The Andersonville Prison Civil War Crimes Trial: A Headline Court Case* (Berkeley Heights, NJ: Enslow, 2000), 5.

⁸⁵⁹ Banfield, 10.

⁸⁶⁰ McPherson, *Battle Cry of Freedom*, 796-97.

⁸⁶¹ Leonard, *Lincoln's Forgotten Ally*, 226-27.

⁸⁶² Banfield, 24.

⁸⁶³ Fetzer and Mowday.

area, even if only by a few inches.⁸⁶⁴

The inmates tried to petition Wirz about conditions, but the commander replied that he “did not give a damn if the prisoners had water” and told them that death was good enough for them.⁸⁶⁵ A few weeks after the conspirators were hanged, Holt turned his full attention to Wirz. Wirz was charged with murder (by his own hand) and violation of “the customs of war,” meaning the rules governing prisoners of war existing between nations, rules both sides paid lip service to even though at least in Union eyes this war was not between nations.⁸⁶⁶ Lew Wallace was placed in charge of the military tribunal, and Holt delegated the actual prosecution work to someone else.⁸⁶⁷ But 150 witnesses later, Wirz was found guilty of both murder and violation of the customs of war, and Jefferson Davis was formally named as a co-conspirator.⁸⁶⁸ Wirz claimed that he had asked his superiors for more food, but this plea fell on deaf ears possibly twice—on the Confederate superiors and on the military jury.⁸⁶⁹ In his summary to Johnson which he wrote after the convictions, Holt railed, “Criminal history presents no parallel to this monstrous conspiracy.”⁸⁷⁰ He even termed the events a “crime against humanity”—a term first used to describe slavery in the 1860 Republican platform, although it did not

⁸⁶⁴ Banfield, 31.

⁸⁶⁵ Banfield, 60.

⁸⁶⁶ It was claimed that Wirz had personally shot and killed several prisoners.

⁸⁶⁷ Kastenberg, 258.

⁸⁶⁸ Kastenberg, 258.

⁸⁶⁹ Banfield, 60-66.

⁸⁷⁰ Banfield, 60-66. See also John D. Lawson, ed., *American State Trials*, Vol. VIII, (1918), 873.

receive currency until around the First World War.⁸⁷¹ Holt often stood up strongly for the wrong cause, but in this case he stood up strongly for the right cause. The Civil War was not the gentleman's war the Revolution supposedly was. Captured soldiers endured suffering, often without military justification or good reason. For example, Southern physicians knew well that keeping masses of men in close quarters created disease.⁸⁷² Southern doctors continued to let men die, and when President Johnson got the findings he wasted no time in ordering Wirz' hanging, which occurred on November 10, 1865.⁸⁷³

All of this is in contrast to Holt's treatment of Southern prisoners. At Fort Delaware, off the New Jersey coast, Holt had appointed his old friend Schoepf to run things. Holt had met the other man when on his grand tour of Europe. When Schoepf came to the Union side, Holt put him to work running Fort Delaware. As Fetzer and Mowday describe it, Fort Delaware turned into a real community with the Confederate prisoners trading skills to make things easier on themselves, and the prisoners got nearly the same rations as the wardens.⁸⁷⁴ There still were many deaths, mostly due to the fact that low-lying Fort Delaware was really an island.⁸⁷⁵ It was even open to visitors for a

⁸⁷¹ "Republican National Platform, 1860," Central Pacific Railroad Photographic History Museum, 2003, accessed Mar. 28, 2015, http://cpr.org/Museum/Ephemera/Republican_Platform_1860.html.

⁸⁷² They blamed miasma, not bacteria, because Robert Koch's work was not yet known in the United States. The knowledge of "miasma" had been around since the Napoleonic Wars, and the frightful conditions of the 1812 retreat from Moscow have been blamed on lice-bearing typhus spreading easily in close conditions.

⁸⁷³ Kastenberg, 136.

⁸⁷⁴ Fetzer and Mowday, 84-120.

⁸⁷⁵ Fetzer and Mowday, 84-120.

time, and Fort Delaware, like Andersonville, remains a tourist attraction to this day.⁸⁷⁶ It is said that no one should write of Andersonville without talking of Camp Douglas, where thousands of Confederates died of deliberate exposure and starvation. Many of the bodies were dumped on the shores of Lake Michigan, and records of the dead were accidentally—or perhaps deliberately—lost.⁸⁷⁷ There is no evidence that Holt was directly involved with Camp Douglas.⁸⁷⁸ Responsibility for that place rests in part on Illinois Governor Richard Yates, who ordered the camp established.⁸⁷⁹

Still another case worthy of short note was that of Edward Andrews of South Carolina, who had been convicted of senselessly murdering a black man.⁸⁸⁰ Holt, a former slaveholder, argued that it “must be punished as harshly as possible [for] the protection of the Negro from tyranny at the hands of his former master.” Were he to decide otherwise, it would have rendered the recent “war for freedom . . . only misery, and a servitude worse than slavery, to that oppressed and unhappy race.”⁸⁸¹ If Holt had once seen the war only as about retention of the Union, he clearly had changed his mind by war’s end—not unlike Lincoln had done.

⁸⁷⁶ Fetzer and Mowday, 120.

⁸⁷⁷ Dennis Kelly, *A History of Camp Douglas, Illinois, Union Prison, 1861-1865* (United States Department of the Interior National Park Service, Southeast Region, 1989), 1, accessed Jun. 12, 2014, <http://www.nps.gov/search/?affiliate=nps&query=camp+douglas>.

⁸⁷⁸ Kelly, 1.

⁸⁷⁹ Kelly, 1.

⁸⁸⁰ Leonard, *Lincoln’s Forgotten Ally*, 230.

⁸⁸¹ Leonard, *Lincoln’s Forgotten Ally*, 230.

Still another controversy arose after Reconstruction began. Thomas C. A. Dexter was a special agent for the Treasury in July of 1865.⁸⁸² He allegedly combined with Thomas Carver to defraud the Federal government.⁸⁸³ Carver, a convicted con artist turned witness, had sworn an affidavit implicating Dexter but initially refused to testify on self-incrimination grounds.⁸⁸⁴ However, Colonel Brooke, the trial Judge Advocate, took him aside and assured him that no statement would be used against him. Other alleged co-conspirators also refused to testify on the same grounds.⁸⁸⁵ The focus of Dexter's trial was on 57 bales of cotton that had been set aside from a larger amount because Carver was not sure who was the real owner of the cotton.⁸⁸⁶ (The rest had been given to the Government, as it belonged to the defunct Confederacy.)⁸⁸⁷ Dexter released another 800 bales to a claimant, and some other bales went through Dexter to E. D. Montague.⁸⁸⁸

Major General Woods, Holt's main assistant during the War in portions of the West, upheld the decision of the trial advocate general and ordered Dexter confined to the brig at Nashville, Tennessee.⁸⁸⁹ None other than General Benjamin Butler appealed the

⁸⁸² Joseph Holt, *Report of Major General Holt, Judge Advocate General in the case of Thomas C. A. Dexter* (New York: Wm. D. Bryant & Co., 1867), 10.

⁸⁸³ Holt, *Report of Major General Holt*, 10.

⁸⁸⁴ Holt, *Report of Major General Holt*, 10.

⁸⁸⁵ Holt, *Report of Major General Holt*, 10.

⁸⁸⁶ Holt, *Report of Major General Holt*, 7.

⁸⁸⁷ Holt, *Report of Major General Holt*, 12.

⁸⁸⁸ Holt, *Report of Major General Holt*, 17.

⁸⁸⁹ Holt, *Report of Major General Holt*.

matter to the Judge Advocate.⁸⁹⁰ Holt recommended to the Secretary of War and the President that Dexter be released. Holt noted that the testimony included the statements “Dexter discharged his full duty ‘with a just sense of his duty as a public officer towards the citizens during my connection with the office.’”⁸⁹¹ Likewise, “Cotton arriving [at Mobile] was held by Mr. Dexter until claimants asserted or proved their title to the same of portions of it, thus securing the Government cotton that was from time to time being shipped.”⁸⁹² Holt wrote that “the testimony of the last witness, which is separately exhibited with the record, so clearly exonerates Mr. Dexter of personal action in the matters alleged, that attention is respectfully invited thereto.”⁸⁹³ Holt noted that Wood had stated in his judgment, “I contend that this charge (fraud) has been fully sustained; that while Mr. Dexter is not positively and personally identified with the actual handling of this cotton or its proceeds, yet from his official position, his known action in this matter, he must most assuredly know, or have known from first to last what became of the cotton [which was sent to private parties].”⁸⁹⁴ Holt replied that “the conviction of a party charged with crime because he may possibly be guilty, is a most reprehensible reversal of the rule that gives to a prisoner the benefit of any doubt which may exist of his criminality.”⁸⁹⁵

⁸⁹⁰ Butler was well known for his harsh treatment of the populace of New Orleans. McPherson; Holt, *Report of Major General Holt*.

⁸⁹¹ Holt, *Report of Major General Holt*, 20.

⁸⁹² Holt, *Report of Major General Holt*, 21.

⁸⁹³ Holt, *Report of Major General Holt*, 21.

⁸⁹⁴ Joseph Holt, *Case of Thomas C.A. Dexter, Report of Major General Holt Judge Advocate General to the President* (New York: Wm. D. Bryant & Co., 1867). 22.

⁸⁹⁵ Holt, *Case of Thomas C.A. Dexter*, 23.

Holt could only make a recommendation to Johnson. By April of 1866, when the matter reached the White House, relations between the President and Holt had become somewhat frosty. Nevertheless, Johnson upheld Holt's release of Dexter.⁸⁹⁶ The report on Dexter is one of the few individual courts martial that can still be found.⁸⁹⁷

Holt and the Johnson Administration

A few days after the Wirz hanging, Holt sent his official report of his activities as Judge Advocate to Congress. The details of the work of his administration might never be fully explored at the National Archives, for Holt mentions that the Bureau of Military Justice reviewed 16,591 courts martial records and issued more than 6,000 special reports.⁸⁹⁸ They are all on microfilm at the National Archives and have seen very little research. Of course a few are in the Records of the War of the Rebellion, and that has been the basis of most of the research here. Holt's biggest unfinished problem was Jefferson Davis, still awaiting trial, and also Mary Surratt's son, John, Jr. Davis had been indicted by a federal grand jury on charges of treason, but somehow the indictment had been lost, so Holt (or some other official) needed to bring it up to date as Davis by now (November 1865) had been held for months without formal charges.⁸⁹⁹ Holt, however, regarded this as legal in the case of a prisoner accused of war crimes.⁹⁰⁰ Somewhat

⁸⁹⁶ Holt, *Case of Thomas C.A. Dexter*, 23.

⁸⁹⁷ Holt, *Case of Thomas C.A. Dexter*, 23.

⁸⁹⁸ Leonard, *Lincoln's Forgotten Ally*, 227.

⁸⁹⁹ Leonard, *Lincoln's Forgotten Ally*, 269.

⁹⁰⁰ Leonard, *Lincoln's Forgotten Ally*, 248.

obsessed by the matter, as late as January 1866, Holt was telling Stanton that he could prove Davis part of a conspiracy.⁹⁰¹

At the same time, Holt had distractions. We can see the extent of Holt's celebrity when we observe that he was asked to lay the cornerstone for Gettysburg cemetery.⁹⁰² He was involved in setting up the provisional governments of the Southern states, and Jay Cooke's son asked Holt for an autograph (a frequent request).⁹⁰³ Louis Weichman, star witness in the assassination story and Holt's chief detective in the case, kept pestering Holt for a job.⁹⁰⁴ He did not want a job in Washington, as the Surratts' friends would hound him and his family was from Philadelphia, so Holt finally found him a job at the customs house in the City of Brotherly Love, a job he would hold off and on for the next 20 years or so due to Holt's influence.⁹⁰⁵

There was also a conflict with Montgomery Blair, with Kentucky roots, a former member of the Buchanan cabinet and also Lincoln's Postmaster General. Blair decided to question Holt's loyalty during the Sumter situation, claiming that Seward, Stanton and Holt had banded together to undermine Buchanan's attempts to keep the fort open.⁹⁰⁶ While there were those who felt Holt ruled with a heavy hand, this was the first serious

⁹⁰¹ Holt Papers, Container 92.

⁹⁰² Holt Papers, Container 48.

⁹⁰³ Holt Papers, Container 48.

⁹⁰⁴ Holt was constantly being pestered for jobs. It was, in fact, one of his purposes to run the patronage machine, which Lincoln hoped would get him re-elected.

⁹⁰⁵ Leonard, *Lincoln's Forgotten Ally*, 228.

⁹⁰⁶ Leonard, *Lincoln's Forgotten Ally*, 225.

attack on Holt's personal credibility, and he had to draft a long reply, which appeared in the *New York Times* on September 16, 1865.⁹⁰⁷ Henry Burnett, who had worked with Holt on the Dark Lantern matters, thought Blair had done this on behalf of Andrew Johnson.⁹⁰⁸

At this point, Holt and Stanton suddenly called off the attempt to pursue John Surratt, Jr., and by implication the trial of Jefferson Davis. John Surratt had been found in Liverpool by United States Vice Counsel Henry Wilding.⁹⁰⁹ What Holt did not know was that Surratt had spent most of the summer of 1865 in Canada and had barely escaped Louis Weichman, who had traveled to Montreal to look for him.⁹¹⁰

According to Leonard's analysis in *Lincoln's Avengers: Justice, Revenge, and Reunion after the Civil War*, Holt and Stanton decided it was most important that they watch their backs, as Johnson appeared to regard them as surplus in his administration.⁹¹¹ While it does fit the sudden abandonment of Surratt, there is no evidence that Holt and Stanton worked together in this decision.⁹¹² Then again, it might be naive to expect a paper trail of memos between a boss and his top aide about so sensitive a matter.

⁹⁰⁷ Joseph Holt, "Political History.; Judge Holt's Reply to the Calumnies of Montgomery Blair. The Relief of Fort Sumter Letters from General Scott, Preston King, and Others Judge Holt's Loyalty," *New York Times*, Sept. 13, 1865.

⁹⁰⁸ Leonard, *Lincoln's Forgotten Ally*, 264.

⁹⁰⁹ Wilding had worked in Liverpool to track evidence concerning the Alabama and related claims concerning Confederate raiders. This matter was another side issue for Holt.

⁹¹⁰ There is a long and interesting side issue concerning how much John Surratt knew about his mother's situation and whether his mother might have been saved if John had come forward during the trial.

⁹¹¹ Leonard, *Lincoln's Avengers*, 193-229.

⁹¹² Leonard, *Lincoln's Avengers*, 193-229.

A Resurgence of the Surratt Incident

In late 1866, Holt considered resigning; but one prize had eluded Holt: Mary Surratt's son, the supposed boon companion of John Wilkes Booth.⁹¹³ According to Leonard, Holt had placed Surratt on the back burner. He was known to be in Europe and, in fact, after leaving Liverpool, had been a Papal Zouave until he was discovered and thrown out of the service.⁹¹⁴ Suddenly, on November 7, 1866, Surratt was arrested by Cardinal Antonelli, but he soon broke away and finally appeared later that month in Alexandria, Egypt, where he was again surrounded and captured.⁹¹⁵ Word quickly spread to the United States, and the radicals in Congress fantasized that Johnson would prove somehow involved—conveniently ignoring that Johnson had himself been a target of the conspirators. Johnson, for his part, was sufficiently concerned about being framed that he instructed that no one was to have unauthorized contact with Surratt when he returned.⁹¹⁶

On February 18, 1867, after a two-month long steamship trip directly from Alexandria, the famous prisoner arrived at the Washington Naval Yard.⁹¹⁷ He was immediately given a criminal arrest warrant—there would be no military tribunal for John, Jr., and Holt would have to sit mostly on the sidelines.⁹¹⁸ Things took an even darker turn

⁹¹³ Leonard, *Lincoln's Forgotten Ally*, 222.

⁹¹⁴ Leonard, *Lincoln's Avengers*, 187-90.

⁹¹⁵ Leonard, *Lincoln's Forgotten Ally*, 264-65.

⁹¹⁶ "Giacomo Antonelli," Wikipedia, retrieved Oct. 1, 2012, http://en.wikipedia.org/wiki/Giacomo_Antonelli. Cardinal Antonelli had studied canon and civil law and opposed the Revolutions of 1848 and the Italian Reunification. He held the post of Papal Secretary of State and was acting as such when he expelled Surratt.

⁹¹⁷ "Giacomo Antonelli."

⁹¹⁸ "Giacomo Antonelli."

for Holt when Chief Justice Salmon Chase granted a writ of habeas corpus to Jefferson Davis the next month.⁹¹⁹ Davis could no longer be held without formal charge. He sailed off to Richmond; checked in with the federal district court, which instructed him to return on a date the court would note; and promptly fled to Canada.⁹²⁰

That left John Surratt, Jr., all alone to face whatever Union animosity might still be left. On June 10, 1867, he entered a criminal court in the District of Columbia—Holt stayed behind in his office.⁹²¹ Surratt had been broadly indicted on the theory that he had been part of the plot from the beginning and assisted at every stage up to Booth's last movement into the Presidential box.⁹²² The judge, George Fisher, was a friend of Stanton and (says Leonard without any supporting evidence), "surely a friend of Holt's as well."⁹²³ The prosecution's key tactical mistake was to try to place Surratt physically in Washington on April 14, actively helping Booth. This was not necessary under the indictment, but somehow the prosecutors thought they needed to prove this, anyway.⁹²⁴ When the defense's turn came, it was able to prove that Surratt was in Elmira, NY (probably spying on the prisoner of war camp) on April 14, and the train service was such that it was impossible for Surratt to also be in Washington that day.⁹²⁵ After a rousing

⁹¹⁹ Leonard, *Lincoln's Avengers*, 247-48.

⁹²⁰ Leonard, *Lincoln's Avengers*, 247-48.

⁹²¹ Leonard, *Lincoln's Forgotten Ally*, 270-75.

⁹²² Leonard, *Lincoln's Forgotten Ally*, 270-75.

⁹²³ Leonard, *Lincoln's Forgotten Ally*, 270.

⁹²⁴ A conspirator needs merely to have done acts in furtherance of the illegal enterprise but need not be present when the crime is committed.

⁹²⁵ Leonard, *Lincoln's Forgotten Ally*, 250.

pro-prosecution charge by the Judge, the jury deliberated for three days and ultimately declared itself hopelessly deadlocked.⁹²⁶ Surratt was temporarily off the hook. He could have been retried, but he never was, and he lived out his days lecturing and trying to explain why he left his mother to take all the fury immediately after the assassination.⁹²⁷ Holt, for his part, went on the first formal leave of absence he had ever taken.⁹²⁸

The Pickett Matter

Still another example of a matter that came under Holt's jurisdiction concerned none other than George E. Pickett, of Gettysburg fame. It seems that some mentally-disturbed people from the North Carolina pinewoods had joined a Confederate unit, but later ran away and joined the Union Army. In 1864, when some of Pickett's officers discovered the men, they were tried as Confederate deserters and were executed summarily as traitors despite being in Union uniform.⁹²⁹ The matter was sent to the attention of Grant, but he took no action.⁹³⁰ Finally, in 1865, when the Union Army got firm control of the area, a military Commission of Inquiry was set up. It suggested that Pickett and others directly involved in the matter be arrested and punished "for violation of the rules of war."⁹³¹ The case landed on Holt's desk.

⁹²⁶ Leonard, *Lincoln's Forgotten Ally*, 250.

⁹²⁷ Leonard, *Lincoln's Avengers*, 287.

⁹²⁸ Holt Papers, Container 70.

⁹²⁹ Patterson, 30-65.

⁹³⁰ Patterson, 139.

⁹³¹ Patterson, 110.

Holt wrote Stanton that the evidence was equivocal that they had ever joined the Confederate Army, but even if they had, “submission to that service was itself a crime from which it was their bounden duty, as men and patriots, to flee at the first opportunity,” which they did.⁹³² Having fled to the side of the United States, they were protected as forces of that country but instead they received “cruelty rarely equaled by savages.”⁹³³ However, Holt then made a 180 degree turn, finding no basis “upon which personal charges could be established and sustained against the guilty parties.”⁹³⁴ Holt therefore ordered further investigation, which did establish that Pickett had personally ordered the execution. Holt then ordered Pickett arrested.⁹³⁵ What Holt did not know was that Pickett had fled the area, and his young wife was already in Canada.⁹³⁶ Holt’s subordinate, Captain Doherty, told Holt that such a trial was needed so that the poor whites of the South would not feel abandoned by the federal government, which was acting to protect them in this matter.⁹³⁷

Pickett was tried in absentia, and even governor Zebulon Vance testified that the young men had been abused by the Confederates, and he had protested at the way some Carolinians were being treated in the Southern Army.⁹³⁸ The Court of Inquiry concluded

⁹³² Patterson, 111.

⁹³³ Patterson, 112.

⁹³⁴ Patterson, 112.

⁹³⁵ Patterson, 113.

⁹³⁶ Patterson, 115.

⁹³⁷ Patterson, 115.

⁹³⁸ Patterson, 117.

that the men had been wrongfully executed, but it could not be proved who did it, although the evidence shows that Pickett had sat on the court martial proceeding that condemned the men and that the execution occurred at his insistence.⁹³⁹ Later, his old friend Grant would see he could move about undisturbed. Grant cited the terms of Lee's surrender that officers would not be disturbed after the ceasefire.⁹⁴⁰ Pickett eventually moved to Canada and avoided being tried.⁹⁴¹ He had already lost whatever public dignity he had (whether or not it was really his fault) as the result of "Pickett's charge" at Gettysburg and Five Forks.⁹⁴²

Reconstruction

During the summer of 1865, it was becoming more and more obvious that there would be a fallout between Holt's superior, Edwin Stanton, and the new President. Johnson was fast losing the rhetoric of a man on a mission to reform the South and instead had started to issue 100 pardons a day for persons not covered by the general pardon he gave.⁹⁴³ On November 23, Holt particularly complained to Stanton about attempts of a Johnson associate to grant parole pardons to Ex-Senator Yulee of Florida who had been active in seizing federal property, had been the former President of the

⁹³⁹ Patterson, 119.

⁹⁴⁰ Patterson, 126-29.

⁹⁴¹ Patterson, 130.

⁹⁴² John C. Waugh, *The Class of 1846: From West Point to Appomattox: Stonewall Jackson, George McClellan and Their Brothers* (New York: Warner Books, 1994), 507.

⁹⁴³ Leonard, *Lincoln's Forgotten Ally*, 285-88.

Confederate Senate, and had also been the former Confederate Secretary of the Navy.⁹⁴⁴ Holt stated that it would be national suicide not to bring these men to trial (preferably before a Holt-led tribunal, one can assume).⁹⁴⁵ Another sign of the new order was that Sarah, Dr. Mudd's wife, had abandoned her sobbing pleas to Holt to release her husband from the Dry Tortuga.⁹⁴⁶ Instead, she was sending the same letter directly to Johnson.⁹⁴⁷

According to Leonard, by the end of 1865, Holt found himself in an awkward triangle with Stanton and the Radical Republicans. The triangle was trying to repel the influence of Johnson. Leonard admitted that there was no actual evidence of any Holt complicity, and called it a "tacit agreement," which is surely the weakest part of the whole argument.⁹⁴⁸ For it leads one to accept the next argument—that Holt became part of a conspiracy with Stanton to resist being fired by Johnson, leading, in turn, to the President's impeachment charge.⁹⁴⁹ But in late 1865, the immediate issue was what to do with Jefferson Davis, still imprisoned in Richmond without charges. Attorney General Speed described the evidence for a military trial against Davis, notably arguing that such a trial was necessary, as much of the South was still in a state of rebellion. But to Holt's disappointment, Speed recommended a trial "in the district in which the crime occurred"—the usual civil standard and, as Holt pointed out, an absurdity given it was unlikely any

⁹⁴⁴ Leonard, *Lincoln's Forgotten Ally*, 268. Bear in mind that Yulee was Holt's in-law.

⁹⁴⁵ Leonard, *Lincoln's Avengers*, 199.

⁹⁴⁶ Leonard, *Lincoln's Forgotten Ally*, 233; Holt Papers, Containers 57 and 58.

⁹⁴⁷ Leonard, *Lincoln's Forgotten Ally*, 233.

⁹⁴⁸ Leonard, *Lincoln's Forgotten Ally*, 228-29, 248-61.

⁹⁴⁹ Cf. Leonard, *Lincoln's Forgotten Ally*, 228-29, 248-61.

Southern jury would actually convict Davis.⁹⁵⁰

Several other trials were still hanging fire on April 2, 1866 when President Johnson, apparently without consulting anyone, declared the Civil War over (except in Texas, which remained in a state of rebellion).⁹⁵¹ This arguably nullified all attempts to bring prisoners before military tribunals. Holt wrote to Stanton on behalf of Major General Charles Woods for instructions.⁹⁵² Stanton (on his own authority) wrote back that this should not “invalidate current proceedings,” but if the local military commander thought expedient, such cases should be “transferred to the civil authorities or discharged.”⁹⁵³ Johnson wrote Navy Secretary Gideon Welles that he no longer trusted Holt, finding him to be “very bloody”—but was that not, to some extent, a result of Holt’s position with an armed force, not the civilian police?⁹⁵⁴ Johnson, however, did not express this directly to Holt. Further undermining the Advocate General was the loss in the Milligan case before the Supreme Court. Holt had once again written the brief defending military trials, but this time the United States Supreme Court rejected the conviction of Lambdin Milligan, casting doubts on Holt’s plans for further military trials.⁹⁵⁵ The legal basis for continuing military trials under Holt’s supervision thus looked very shaky. In February, Holt had also been set back by Johnson when he released

⁹⁵⁰ Leonard, *Lincoln’s Forgotten Ally*, 224.

⁹⁵¹ Leonard, *Lincoln’s Forgotten Ally*, 244.

⁹⁵² Leonard, *Lincoln’s Forgotten Ally*, 279.

⁹⁵³ Leonard, *Lincoln’s Forgotten Ally*, 279.

⁹⁵⁴ Leonard, *Lincoln’s Forgotten Ally*, 236.

⁹⁵⁵ *Ex Parte Milligan* 71 US (4Wall.) 2 (1866); Kastenberg, 374-78.

Raphael Semmes, who had been instrumental in getting the English to build Confederate raiders, such as the Alabama, in violation of international war. Holt was driven straight into the arms of the Congressional Committee on Reconstruction.⁹⁵⁶

April 13 and 14 of 1866 found the Committee inquiring into the events of exactly a year previous. Holt testified that he believed there had been sufficient evidence to convict Davis, Clay and other leaders.⁹⁵⁷ Asked at one point if Johnson's recent declaration of peace should have any effect on the trial, Holt replied in a saucy non sequitur that he believed that Stanton, not the President, was his boss.⁹⁵⁸ However, when the Committee dug into matters for themselves, Francis Lieber, Holt's old sidekick, testified that they could only come up with general expressions by Davis of an interest in assassination.⁹⁵⁹ Sanford Conover, a key witness at the original conspiracy trial, turned out to have another "real" name (as Dunham), and he soon fled town.⁹⁶⁰ Conover claimed to have heard Confederate officials on orders from Davis discussing the demise of Abraham Lincoln. Several of Conover's friends, who had been ready to testify against Davis, also proved unreliable.⁹⁶¹ Toward the end of July, Conover was interviewed in parts unknown by the Democratic *New York Tribune*. He told the paper that Holt had hired him not to ferret out genuine evidence, but to perpetrate a miscarriage of justice by

⁹⁵⁶ Leonard, *Lincoln's Forgotten Ally*, 213.

⁹⁵⁷ Leonard, *Lincoln's Forgotten Ally*, 258.

⁹⁵⁸ Leonard, *Lincoln's Forgotten Ally*, 255.

⁹⁵⁹ Leonard, *Lincoln's Forgotten Ally*, 255.

⁹⁶⁰ Leonard, *Lincoln's Forgotten Ally*, 245-247.

⁹⁶¹ Leonard, *Lincoln's Forgotten Ally*, 245-247.

creating a credible (but false) story linking Davis directly to the Lincoln murder.⁹⁶²

James Fowle, a former member of the Confederate Secret Service, testified that John Surratt, Jr. was certainly involved in Confederate spying. But, he continued, Confederate leadership would never have agreed to Lincoln's murder and would have arrested Surratt had they known of such a plan.⁹⁶³ Nor was Louis Weichman, the star of the conspiracy trial, of much help in the Davis matter. Holt was called back to the stand on June 18 and asked to explain why he relied so heavily on Conover. He replied, "There was nothing in the previous history of Sandford Conover . . . to excite any distrust either in his integrity, in his truthfulness, or in the sincerity with which he had made his propositions to the Government."⁹⁶⁴

Leonard argues that this moment, nevertheless, was the turning point for Holt's reputation.⁹⁶⁵ Up to now, it had been spotless; but after this interview, it would be obvious that Holt had sometimes been careless in picking his sources in an attempt to establish the truth. One familiar with court proceedings would have to argue that it is not unusual for prosecutors to pick unsavory witnesses because they often are the only ones available to testify. In any event, by July 9, the Senate was considering a bill to abolish the Bureau of Military Justice, although Holt had 5,000 cases to review from the war and its aftermath.⁹⁶⁶ Later that month, George Boutwell released the Judiciary Committee

⁹⁶² Holt Papers, Container 53.

⁹⁶³ Leonard, *Lincoln's Avengers*, 218.

⁹⁶⁴ Leonard, *Lincoln's Avengers*, 255-58.

⁹⁶⁵ Leonard, *Lincoln's Forgotten Ally*, 230.

⁹⁶⁶ Leonard, *Lincoln's Forgotten Ally*, 251.

report stating that evidence introduced before the Commission (which it did not make publically available) showed “probable cause” to believe Davis had been personally involved in the Lincoln plot.⁹⁶⁷

Further undermining Holt’s standing, Welles wrote in his diary, “Holt was severe and unrelenting and I am further compelled to think that . . . he has strange weaknesses. He is credulous and often the dupe of his own imaginings. Believes men guilty on shadowy suspicions and is ready to condemn them without trial.”⁹⁶⁸ Likewise, New Jersey Representative Andrew Rogers filed his own minority report to Boutwell’s report in which he described the trial of the Lincoln conspirators as a “mock trial” and accused Holt of assisting in Conover’s perjury.⁹⁶⁹ Worst of all he had tried to influence the very Committee by suggesting an interpretation of the evidence rather than just presenting it.⁹⁷⁰ Even Holt’s Confederate-leaning brother Robert suggested that perjury was a “sign of the times” but that Holt should protect his personal honor.⁹⁷¹

Still, in November of 1866 Stanton was able to write Holt a letter stating that the President was “entirely satisfied” with Holt’s performance.⁹⁷² Welles claimed in his diary that Johnson had considered a public inquiry into Holt’s conduct, but was afraid of a

⁹⁶⁷ Leonard, *Lincoln’s Forgotten Ally*, 251. Boutwell had been Lincoln’s Director of Internal Revenue and would later be asleep at the switch himself as Grant’s Secretary of the Treasury during the gold crisis and the Credit Mobilier.

⁹⁶⁸ Gideon Welles, *Diary of Gideon Welles*, (Boston: Houghton Mifflin, 1911), Vol. 2, 423.

⁹⁶⁹ Leonard, *Lincoln’s Forgotten Ally*, 252-57.

⁹⁷⁰ Leonard, *Lincoln’s Forgotten Ally*, 252.

⁹⁷¹ Holt Papers, Container 53.

⁹⁷² Leonard, *Lincoln’s Forgotten Ally*, 266.

decision in Holt's favor so he dropped the matter.⁹⁷³ But in February 1867, Conover was arrested and tried by a court for perjury before the Judiciary Committee. He was sentenced to 10 years in prison. Clearly, Holt's reputation was tarnished somewhat, and in this case the fault squarely stood on Holt's shoulders as he personally had relied so much on Conover over the years—not Stanton, not someone else. Holt would, however, have had one last chance if he could have gotten a hold of John Surratt, Jr., but we saw what happened to that hope.

The Tenure in Office Act

While Holt was following the Surratt trial, his more personal problem was his relation to President Johnson. Holt was Lincoln's friend and had never had to get directly involved in the political currents around him. He could call himself a professional specialist, and indeed he was a hybrid: a man often wearing civilian clothes holding military rank. But this was falling apart with Johnson.

The chasm that was developing appeared in Johnson's pre-election tour for the congressional election of 1866. On tour, someone asked Johnson why he had not hung Jefferson Davis, to which the President replied that maybe Radical Republican Congressman Thad Stevens of Pennsylvania ought to hang, too.⁹⁷⁴ Gideon Welles managed to convince the President that he had too many disloyal officers in the cabinet and while Johnson had been anxious to wrap himself in the glow of the martyred

⁹⁷³ Welles, Vol. 2, 171.

⁹⁷⁴ Leonard, *Lincoln's Forgotten Ally*, 280.

President by keeping his assistants in place, Johnson was beginning to see them as political weights. A clearing out of Republican politicians followed—even assassination witness Louis Weichmann’s customhouse sinecure was in doubt.⁹⁷⁵ In the latter part of 1866, Johnson got several old Lincoln cabinet members to resign including the Interior Secretary and the Attorney General.⁹⁷⁶ Stanton was not asked to quit, nor did he offer. Johnson did not bother Holt; however, as Holt was Stanton’s appointee, it was clear that Holt was also a target, although, again, how close the two really were is unknown. Johnson also tried to downplay the role of the military in the reconstructed South, immediately affecting Grant’s influence, but also cutting into Holt’s authority.⁹⁷⁷

In early 1867 the lame duck last session of the 39th Congress threw down the gauntlet. Its Judiciary Committee had once again investigated Holt’s conduct in the Lincoln assassination matter, re-interviewing witnesses.⁹⁷⁸ According to Leonard, the goal of the committee was also to determine if Johnson was selling out the former slaves and those who had fought in the great Conflict.⁹⁷⁹ In the Reconstruction Act, the South was cut up into military districts under military control. Since this had essentially been Stanton’s proposal to Lincoln in April 1865, Leonard concludes that Stanton was behind the measure and probably Holt was, as well, although my own reading of the sources

⁹⁷⁵ Leonard, *Lincoln’s Avengers*, 262-63.

⁹⁷⁶ Leonard, *Lincoln’s Avengers*, 232.

⁹⁷⁷ Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988).

⁹⁷⁸ Leonard, *Lincoln’s Forgotten Ally*, 255.

⁹⁷⁹ Leonard, *Lincoln’s Forgotten Ally*, 264.

does not indicate that Holt had any direct say in the Congressional fight, and indeed was taking a low profile with Congress as the Conover affair was smoldering at this time.⁹⁸⁰ However, one feels certain he was delighted with a chance to play a role in running the South; he presumably would be the officer to see that the orders of the martial regime had been properly followed. Holt's friend Jesse Kinchloe told Holt that in Kentucky "loyalty had become a crime and treason a virtue."⁹⁸¹

To protect Stanton, on the same day of March 2, 1867, the radical Congress created the Tenure in Office Act, forbidding the President to fire an executive officer once Congress had appointed him.⁹⁸² That solidified Holt's position, as well. But Johnson had come to see Stanton as the big enemy he needed to get rid of. And Welles wrote him of Holt and the Secretary of War, "It would be proper to remove the two together."⁹⁸³

The new Congress went into immediate session on March 4, 1867 to keep an eye on the President. While awaiting resolution of the impeachment issue, Congress again paraded Holt before the Judiciary Committee on the second anniversary of the assassination and proceeded to question him about Booth's diary—why it was not introduced as evidence and why several pages were missing.⁹⁸⁴ The Committee wondered if the diary might not have tended to show that Booth initially sought merely to kidnap the president. Holt replied that he did not regard the diary as particularly relevant and that

⁹⁸⁰ Leonard, *Lincoln's Forgotten Ally*, 266.

⁹⁸¹ Holt Papers, Container, 53.

⁹⁸² Holt Papers, Container, 53; Leonard, *Lincoln's Forgotten Ally*, 266.

⁹⁸³ Welles, Vol. 3, 163.

⁹⁸⁴ Leonard, *Lincoln's Forgotten Ally*, 243.

he received it with the pages missing (although he does not appear to have been particularly interested in why it had missing pages).⁹⁸⁵ Despite all this, the defense in the John Surratt trial would try to make much of the missing diary, trying to convince the jury that it would provide exculpatory evidence.⁹⁸⁶ All of this fed into the media frenzy over the possible trial of Jefferson Davis. In fact, shortly after Holt testified, Judge Underwood released Davis on bail to await a trial that never happened.⁹⁸⁷ To add to Holt's distress, his brother Robert died in Mississippi.⁹⁸⁸

Impeachment

While Holt went to Saratoga Springs to relieve a rather vague ailment, Johnson was plotting to get rid of Holt and Stanton. According to Leonard, the reason Johnson wanted to be rid of Stanton was obvious—he opposed Johnson's reconstruction plans in virtually every detail and had the Army and Congress to back him. Stanton wanted the South divided and run by the military.⁹⁸⁹

As for Holt, Johnson would hold against him the perjury of Conover and also claim that he had withheld the military's courts' plea of mercy for Mary Surratt (not that he needed a plea to commute her sentence, if that was what he really wanted).⁹⁹⁰

⁹⁸⁵ Leonard, *Lincoln's Forgotten Ally*, 243.

⁹⁸⁶ Leonard, *Lincoln's Forgotten Ally*, 243.

⁹⁸⁷ Leonard, *Lincoln's Forgotten Ally*, 269.

⁹⁸⁸ Holt Papers, Container 59.

⁹⁸⁹ Leonard, *Lincoln's Forgotten Ally*, 247.

⁹⁹⁰ Leonard, *Lincoln's Forgotten Ally*, 247.

Conover, in the meantime, had been claiming that he and Holt had a falling out, and that Holt had framed him to get him out of the way. Johnson had attempted to let the newspapers know of this scandal, but it backfired because Holt had a remarkable reputation with newspaper editors who used the story to make Holt look like the victim.⁹⁹¹ As for the plea, Johnson's claim that he hadn't seen the Surratt clemency petition just didn't carry much weight because many people were desperate to get his attention concerning Mary Surratt's execution up to the very day of the hanging and he firmly ignored them. So Johnson ended up looking mean-spirited.⁹⁹²

Nevertheless, in the summer of 1867, Johnson officially suspended Secretary of War Stanton. But suspending Stanton left Grant as the next man in charge of the military, and Grant was becoming convinced that Johnson was a friend of the white Southerner more than of the Union soldier. As Grant wrote, "black male suffrage was a necessity because of the foolhardiness of the President."⁹⁹³ Without a vote, the black person was defenseless against the Old Establishment of Southern politicians. Nevertheless, Grant was named interim Secretary of War.⁹⁹⁴ Grant was obviously not a close follower of Johnson, but the issue was how firm he would be in holding up to the President. One of Holt's friends wrote him, "if he fails all is lost," as Congress was not in session.⁹⁹⁵

On August 13, New York newspapers claimed that Johnson was ready to dismiss

⁹⁹¹ Leonard, *Lincoln's Forgotten Ally*, 247.

⁹⁹² Leonard, *Lincoln's Avengers*, 297-300.

⁹⁹³ Leonard, *Lincoln's Avengers*, 274.

⁹⁹⁴ Leonard, *Lincoln's Forgotten Ally*, 277.

⁹⁹⁵ Leonard, *Lincoln's Forgotten Ally*, 277.

Holt, whom Grant had told to return to Washington, proving there was no rest for a weary General Holt.⁹⁹⁶ Nothing occurred, however; but Democratic victories north of the Mason-Dixon line in the local 1867 elections convinced the Radical Republicans that if they were going to do something about Johnson, they must do it soon.⁹⁹⁷ Congress would return to business in December, and the Judiciary Committee began business early with an eye to impeaching Johnson—if they could find viable charges that rose to an impeachable offense.⁹⁹⁸ Johnson had suspended Stanton, then reversed himself. Stanton went back into his old office, but on February 21, 1868, Johnson again fired Stanton and put General Alonzo Thomas in charge.⁹⁹⁹ Stanton this time locked himself in his office and refused to get out.¹⁰⁰⁰ Leonard guesses that Holt had a part in that decision.¹⁰⁰¹ Within a week, the House had sent impeachment charges to the Senate, and Johnson's trial began.¹⁰⁰² Holt kept a low profile for 11 weeks, but when Johnson was not removed by the Senate, Stanton resigned on May 26, 1868 and was replaced by General John Schoefield, who had been military governor of Virginia and supposedly at least somewhat favorable to military control of the South.¹⁰⁰³ Still, Johnson took no formal

⁹⁹⁶ Leonard, *Lincoln's Forgotten Ally*, 277.

⁹⁹⁷ Leonard, *Lincoln's Forgotten Ally*, 280.

⁹⁹⁸ Leonard, *Lincoln's Forgotten Ally*, 280.

⁹⁹⁹ Leonard, *Lincoln's Forgotten Ally*, 280.

¹⁰⁰⁰ Leonard, *Lincoln's Avengers*, 279.

¹⁰⁰¹ Leonard, *Lincoln's Avengers*, 280.

¹⁰⁰² Leonard, *Lincoln's Forgotten Ally*, 281.

¹⁰⁰³ Holt's friend T.H. Duval had written Holt that control of the rebels in Texas was impossible without military control. Leonard, *Lincoln's Forgotten Ally*, 284.

action against Holt, who would witness Frank Blair, the brother of his old enemy Montgomery Blair, named Democratic Vice-Presidential candidate.¹⁰⁰⁴ At the same time, Holt lost most of his staff assistants.¹⁰⁰⁵ Holt, nevertheless, continued to fight for soldiers' rights, urging that the military keep its prisons so that young soldiers would not be subject to hardened felons in civil prisons.¹⁰⁰⁶ The Republicans, of course, nominated Grant, and Holt hung on by a thread, possibly hoping for better treatment under a new administration.

With Grant in office, both Holt and Stanton were secure. Stanton died on Christmas Eve, 1869, after being nominated to the Supreme Court.¹⁰⁰⁷ Davis escaped any form of punishment and wandered the world before settling in Mississippi, a Confederate until the end. Surratt would make money on the lecture circuit, insisting that Weichman had framed his mother, but in a way that left one wondering if she really had known about the plot.¹⁰⁰⁸ Surratt for himself admitted a role as a spy, but denied that he was involved with Booth's Good Friday plan.¹⁰⁰⁹

Holt stayed on as Judge Advocate, more for the purpose of clearing his name than because he served any real administrative function. Grant had briefly considered him for Secretary of Treasury—an act which might have saved his administration from the huge

¹⁰⁰⁴ Leonard, *Lincoln's Forgotten Ally*, 282.

¹⁰⁰⁵ Leonard, *Lincoln's Forgotten Ally*, 289.

¹⁰⁰⁶ Leonard, *Lincoln's Forgotten Ally*, 290.

¹⁰⁰⁷ Leonard, *Lincoln's Forgotten Ally*, 294.

¹⁰⁰⁸ Leonard, *Lincoln's Avengers*, 296.

¹⁰⁰⁹ Leonard, *Lincoln's Avengers*, 296.

scandals to follow.¹⁰¹⁰ By the time of Hayes' "election" in 1876, there were only a few hundred troops in the south and Holt's chief academic interest seemed to be in the health of the troops.¹⁰¹¹ He continued to moonlight as a member of the United States Sanitary Commission, a position he had held since the days he supervised prisoners of war.¹⁰¹² Holt had a long public feud with Johnson, who was claiming that Holt tried to suppress the plea for leniency for Mary Surratt.¹⁰¹³ Holt's *Vindication of Joseph Holt* is the Judge Advocate's most well-known literary work. In it he replies to Johnson's criticism by his own testimony and that of Jonathan Bingham, his old subordinate.¹⁰¹⁴ Holt's own unpublished biography says he resigned in December of 1875 "at his own request."¹⁰¹⁵

Decline and Fall

Holt was to leave behind a compelling legacy to his family, his country, and his Kentucky community. His family (many of whom despised him for supporting the North) fought over his will. His grave proclaimed him "Orator and Statesman" but his country in

¹⁰¹⁰ Leonard, *Lincoln's Forgotten Ally*, 288.

¹⁰¹¹ Leonard, *Lincoln's Forgotten Ally*, 288. The JAG Army website indicates that the office now considers itself a human resources organization.

¹⁰¹² Holt Papers, Container 60.

¹⁰¹³ But Johnson never said that he would have spared her. There is extant a supposed conversation on May 30 between Johnson and a Mr. McElwee, in which Johnson denies he ever received any appeal and asserts that he did not interfere with Mary Surratt's execution as "it would have meant my death and a riot that probably would have ended in war." "Johnson's Last Words on Mary Surratt," National Park Service, accessed Mar. 28, 2015, <http://www.nps.gov/anjo/learn/historyculture/mary-surratt.htm>. This, despite the fact that Kastenbergl claims that on the day of execution, there were sentries posted from the White House to the place of execution in southeast Washington, D.C., just waiting for her pardon.

¹⁰¹⁴ Holt, *Vindication of Joseph Holt*.

¹⁰¹⁵ Holt Papers, Container 72.

its written histories of the epic era would give him little except a footnote in its chronicles. His house was left in disrepair, but, like his reputation, some seek to rehabilitate it. For he truly was a dedicated administrator for Lincoln and had some role in shaping war policies.

Holt had led an active social life, often getting invitations to parties. He refused many writing offers, including a request to write for *Battles and Leaders of the Civil War*.¹⁰¹⁶ The *Dictionary of American Biography* claims he died blind, but no other source makes that claim.¹⁰¹⁷ He fell in his home and, like many an elderly person to this day, the fall caused him to sink fast. He died on August 1, 1894. *The New York Times* editorialized the next day, “The death of Joseph Holt severs one more of the ties that link [us] to the Civil War . . . when public sentiment was unformed and unaroused . . . the eloquent and stirring voice of this sincere and devoted Unionist rang through the land.”¹⁰¹⁸ Holt is buried at the family plot near Elizabethtown, Kentucky near a chapel on family property that Holt built in memory of his mother.¹⁰¹⁹ It lies under a pine tree and bears the script, “Joseph Holt born January 6, 1807, died August 1, 1894. Orator and Statesman. Held successively these offices: Commissioner of Patents, Postmaster General, Secretary of War, Judge Advocate General during the Civil War.”¹⁰²⁰

Holt had lived near a relative during the later period of his life. Otherwise, he had

¹⁰¹⁶ Holt Papers, Container 80.

¹⁰¹⁷ *Dictionary of American Biography*.

¹⁰¹⁸ Editorial, *New York Times*, Aug. 2, 1894.

¹⁰¹⁹ Dyer, 20.

¹⁰²⁰ Dyer, 355.

no communication with the family. He did not get along with his family after the Civil War, except he maintained his relationship with his mother, who did write him immediately after hostilities ended.¹⁰²¹ In that letter, she mourned Lincoln's death as he appeared "kindly" although influenced by bad advice.¹⁰²² One wonders if the bad advice included that of her son.

After Holt died, two of his nephews appeared looking for a will, but none was found. He had received in his last illness frequent visits from Lizzie, Mary's cousin who he had been his dependent ever since he married Mary.¹⁰²³ Holt had wanted his body draped in a flag, and Lizzie had found it among his possessions.¹⁰²⁴ In any event, the nephews petitioned the District of Columbia orphan's court to appoint them administrators of the estate.¹⁰²⁵ They had distributed a small portion of the assets when a will suddenly appeared at the Will Registry in the District. It was clear that an attempt had been made to burn the will which bore the signatures of U.S. Grant, and General and Mrs. William T. Sherman who signed as witnesses.¹⁰²⁶ The result was a will contest that created a newspaper sensation. Two of Holt's relatives testified that they did not believe the purported will because it was neither in Holt's handwriting nor written with his grace of style.¹⁰²⁷ A newspaper correspondent and Horatio King, Holt's successor as

¹⁰²¹ Leonard, *Lincoln's Forgotten Ally*, 239.

¹⁰²² Leonard, *Lincoln's Forgotten Ally*, 239.

¹⁰²³ Dyer, 232.

¹⁰²⁴ Dyer, 234.

¹⁰²⁵ Dyer, 235.

¹⁰²⁶ Leonard, *Lincoln's Forgotten Ally*, 319.

¹⁰²⁷ Dyer, 240.

Postmaster General and long-term friend, both testified that they disbelieved the will.¹⁰²⁸ There was a lot of back and forth about the fact that Holt had fallen out with some of his family members, but the Court ruled that the issue was the relationship as of the date of the 1873 will.¹⁰²⁹ Finally, the case was submitted to a jury, pursuant to District custom. The jury decided that the will was not genuine. The United States Supreme Court, acting as the appellate court for the District, reversed the matter. That would have necessitated a second trial, but none took place. The parties settled on terms that were never publically disclosed.¹⁰³⁰

Holt's Kentucky house had remained in the family until 1960, when it became vacant. A roadside sign and a listing on the National Register of Historic Places kept this physical remnant of Holt's memory alive. In 1997 Susan Dyer, a local Kentucky writer, sought to have the place restored, and eventually the County took it over. It is the only standing house from that early period. Although it was basically sound, the local congressman secured a Federal grant (apparently a dreaded earmark) to further stabilize the structure. It is a site on the newly-created Lincoln Heritage Trail.¹⁰³¹

Holt, like Lincoln, had two sides. One side stood up for the Union under the greatest opposition. It stood up for the prisoner of war and would seem to have been a

¹⁰²⁸ Dyer, 239.

¹⁰²⁹ Dyer, 248.

¹⁰³⁰ Dyer, 249.

¹⁰³¹ "Judge Joseph Holt House in rural Breckinridge County to host Community Day Saturday, August 15," Kentucky Heritage Council, accessed Nov. 24, 2012, <http://www.heritage.ky.gov/news/holthouse.htm>.

pretty fair judge of the average court martial of the average soldier. This side may have coined the term “crime against humanity” years before it became a term of art in jurisprudence. Then there was the other side. He was the implacable enemy of the Dark Lantern societies and Vallandigham and Milligan, two sitting members of Congress. This was the side that proposed the precedent of denying habeas corpus in the face of an internal insurrection—an idea that would still be around in the Second Bush administration. This was the side that was narrow-minded and always ready for a fight.

Holt left to the Library of Congress it seems every scrap of paper he ever owned. But most of it is incoming correspondence, so we don’t have much measure of how often he would write to Stanton and say, “this is going too far.” Still, his love of the Union and his desire to help his friends with jobs and advice rings genuine. A few pieces of correspondence can be found in the Lincoln Papers, now digitalized by the Library of Congress.¹⁰³²

The only full-length assessment we have of Holt is Elizabeth Leonard’s, but she often attributes every move of Stanton to Holt’s influence, and vice versa. A bureaucrat holds a job at the pleasure of his boss, and Holt tried hard to please his. Perhaps the reason Holt is so little discussed in works on this period is that the men of the time believed that Holt was basically a man with little heart out mainly for his boss’ approval. But if that is true (and one doubts it), it makes certainly Stanton and perhaps Lincoln look a little bit less perfect than the world seems to think they were.

¹⁰³² Lincoln Papers.

Holt House

Recently, efforts have been made to preserve the house in which Holt lived in Breckinridge County. It became part of the Lincoln Bicentennial celebration. Situated along the Ohio River, it at one time had a large house, a chapel, a school, a store, servant quarters, and a barn and other outbuildings. It now faces Kentucky Route 144. The actual house was heated by six coal-burning furnaces and had three large rooms on the first floor and three bedrooms on the second floor. The lower rooms had 14-foot ceilings and the bedrooms had 12-foot ceilings. The overall design was Italianate villa. The walls were 14 inches thick.¹⁰³³ The house has been vacant since the 1960s, but David Morgan, a noted historical preservationist based in Washington, DC, has backed preservation of Holt's old home.¹⁰³⁴ Funds for the project were tied to Kentucky's participation in the Abraham Lincoln Bicentennial.¹⁰³⁵ A day in late September has been set aside as a day for special ceremonies at the house. I attended on September 28, 2013, and while many good speakers from the military and the local court system were present, there were apparently no academic leaders present, and the total crowd probably did not exceed 100 people.

¹⁰³³ "Judge Joseph Holt House."

¹⁰³⁵ "Judge Joseph Holt House."

Chapter 7

CONCLUSION

There is much debate about how much difference any one individual can make in the world, but it seems hard to argue with the claim that America today is different in several ways from what it might have looked like without Joseph Holt.

First, he handled with some skill the prosecution of the Lincoln assassins. Unlike the plethora of theories about the Kennedy assassination, few would dispute that Booth and the conspirators who were sentenced in 1865 actually killed Lincoln and tried to kill Seward and Johnson. It is true that Holt failed to prove a wider conspiracy, but he was acting under a rush to execute and satisfy the Union's blood lust. It did not help that the evidence of a wider conspiracy, if it ever existed, was mostly in a somewhat hostile foreign country. Holt tried to be fair, even getting one of the best lawyers in the country to represent Mary Surratt. It was not his fault that most of the work was put on an inexperienced associate. Nor does it appear credible that Holt failed to inform Johnson that some of the judges in the trial had wanted clemency for Surratt—a clemency based on her gender, not on the somewhat flimsy evidence of her guilt.

After the prosecution, the country spent its venom. It had no taste to hang Jefferson Davis, and the jury failed to agree on a verdict in the trial of the younger Surratt (probably an injustice, considering what happened to his less culpable mother). It is true that Holt did not want the conspiracy investigation to end with such a whimper, but it is a testament to Holt's ability that he was able to bring some closure to a wounded nation. The United States quickly moved on after Lincoln's death. The country might have been

torn again by a renewal of the hostilities or a vindictive occupation of the South that would have led to bloodshed long term.

Holt's next great achievement was his brief but important tenure as Secretary of War. Buchanan turned to Holt after others had, in effect, committed treason or were derelict in their duty. He then confined Holt in a way that the new War Secretary was not able to bring the full military might of the United States against the secessionists of South Carolina. Holt (and Andrews) escaped without loss of life, and the crucial few days given to the Union provided Lincoln with time to strengthen it for the battle against the Confederacy that would begin in earnest in the summer. With Buchanan's support, Holt was able to keep the South's hands off of an important federal facility and protect it from demands that it be turned over to South Carolina. Even before Lincoln's inauguration, Holt had established a legal principle: federal facilities were under the control of the federal government, not entities of state governments.¹⁰³⁶

"I may have God on my side, but I must have Kentucky," declared the newly-elected president.¹⁰³⁷ Holt was supposedly in early retirement, but he was the man with a silver tongue at a time when a stirring speech meant more than giving a good 30-second sound bite for the evening news. In his "Fallacy of Neutrality" speech, Holt rallied the federal forces in Kentucky while persuading those on the fence that being on the fence was not a tenable position to take.¹⁰³⁸ Like most of Holt's speeches, it did not have the profound political theory of a Madison or a Wilson. Yet, Holt was often compared to the

¹⁰³⁶ Leonard, *Lincoln's Forgotten Ally*, 399.

¹⁰³⁷ McPherson, 284.

¹⁰³⁸ Leonard, *Lincoln's Forgotten Ally*, 138-52.

preachers of his day—sure of his premise and ready to appeal to the emotional. The object was not to bring the listener to an intellectual conclusion, but rather to persuade by the flowing of the words and a statement of a theme time after time. Although ranked as a general, Holt did not take the reins of a horse and fight the foe. It is a bit strange that Holt never tried to raise a regiment of the Union Army because he surely had enough of his own power and influence to have done so, but he apparently knew that he was more effective as an orator than as a field commander.¹⁰³⁹ He was not responsible for the Union victory at Perryville, but he ensured that the Union army would not be met with the hostility it met in the Deep South. He also had the connections with Kentucky leaders that enabled him to help keep them on the Union side.

Holt also was the midwife for changes in the laws of war. He insisted on humane treatment of prisoners of war and set his close associate to write a law of nations to govern war conduct—a code that is basically followed to this day. More unfortunate was his legacy of military trials for what were essentially civilian crimes (i.e. the assassination) and his use of surveillance and innuendo against civilians in the name of protecting the public from war terror. And one of his key associates became one of the moving forces behind the greatest change in the American Constitution since the days of the Founding Fathers—Bingham’s authoring of the 14th amendment. He was also one of the few men of his day to see the parallel between what was happening in the Civil War and what had happened in 1848 in Europe (while America was preoccupied with its own Mexican War). Holt saw the damage resulting from the fracturing of a political state into

¹⁰³⁹ Holt listed “orator” as his first skill on his tombstone.

small pieces (as happened in Austria-Hungary) or the damage from middle-class revolt that only strengthened monarchy (as in the Second Empire in France).

So also was Holt perhaps the first real American government bureaucrat. While most departments were tiny before the Civil War, Holt honed his administrative skills with the Patent Office and later the Post Office. But nothing could have prepared him for the job of administrating thousands of courts-martial, and with that the position of ultimate legal officer for the entire Union Army. Never before had a civilian administered so large an assemblage. And he administered this over an area that extended throughout the country because no state or territory was without the presence of Union forces by war's end. In many ways his greatest achievement was assuring evenness of punishment for all the varied breaches of military discipline.

Part of the reason Holt has been underestimated by history is that he never held a political post, as such. He was a catalyst for others. As noted, he helped move Kentucky into the Union column. He was responsible in large measure for the nomination of Vice President Richard Johnson, but never served in Congress himself. He was a good lawyer, but when he had made a lot of money, he quit. Holt left no descendants to advocate for keeping alive the legacy of his contributions.

Holt has suffered also at the hands of historians. He left a large number of papers behind at the Library of Congress, but they are hard to decipher, mostly in handwriting, and they have not been touched by editors or researchers of his correspondence.

Likewise, the history of his state was practically solely left in the hands of Thomas D.

Clark. There were few other book-length contributions specifically to Kentucky history.¹⁰⁴⁰

Lastly, he left little physical legacy. His house fell into the hands of others and ultimately became a ruin. Holt's house he built for Mary remains standing in Kentucky. There is a small out building for the slaves and a very well-kept burial area. A chapel to his mother's memory lasted until 1958. The house was in the hands of the Holt family for many years until it was sold to a private party. When the building became difficult to keep up, it was sold to a local committee, acting for the local court system, which seems to have control of a lot of things that would be considered county functions in New Jersey. The committee had received some money, but extensive repairs remain necessary. There is an occasional public function at the house, and the September 2013 meeting was the closest thing to a symposium on Holt's life and work that has thus far been held.

The Holt-Stanton conspiracy theory still intrigues what one might call the amateur historian. My local throw-away newspaper ran a piece on the assassination, and concluded that it was a "conspiracy between bankers, Southerners and Confederate sympathizers in Canada."¹⁰⁴¹ Of course, that is what Holt would have liked to prove but never did, and it seems incautious to put this before the public as the total truth about the assassination.

¹⁰⁴⁰ The local historians with whom I spoke at Holt Day stated that they were working on it, doing such basic work as recording burial sites.

¹⁰⁴¹ See Hoag Levins, "The Gang That Killed Abraham Lincoln: A Kidnap Conspiracy That Turned Into Murder," Camden County, NJ Civil War Connections, 2009, accessed Apr. 2, 2015, <http://historiccamdencounty.com/ccnews142.shtml>; also, Canadian Press, "Was Plot To Assassinate Abraham Lincoln Born During John Wilkes Booth's Mysterious Trip To Montreal?," *National Post*, Oct. 13, 2014, accessed Apr. 2, 2015, <http://news.nationalpost.com/news/canada/was-plot-to-assassinate-abraham-lincoln-born-during-john-wilkes-booths-mysterious-trip-to-montreal>.

Holt also recently finally made it to a movie on the Civil War – one with James McPherson listed as first historical consultant, *The Conspirator*.¹⁰⁴² The film depicts Holt as the relentless prosecutor of Mary Surratt (or maybe it was John Surratt—he would take either). While this is largely the truth, there is enough evidence on the other end – e.g. Holt’s attempt to get counsel for Mary at the trial (and eventually getting Reverdy Johnson who should have handled it better), and his attempts to find witnesses named by the defense. Nevertheless, diligent followers of the cinema will remember Holt from this movie and it would appear little else.

West Point and the Postal Service never paid him tribute, even though he was involved in their control for periods of time. He has no direct relatives to honor his memory and defend his image. His cousins and in-laws largely turned upon him when he sided with the Union. After the war, when he was still fresh in the memory of his allies, no one saw fit to write a biography of him. And he outlived many of his age mates who might have written eulogies after his death. One question is why Holt, who was very sensitive about his image, never saw fit to write a full-scale autobiography. It would have been no doubt an invaluable contribution to our understanding of the period.

Holt had a sentimental, soft side he usually reserved for his female correspondents. The Victorians were in love with poetry, and Holt was no exception, so it is appropriate to close with this piece of poetry which he preserved in his effects late in his life. He first read it about the time he was studying for the bar exam, for there are

¹⁰⁴² *The Conspirator*.

legal notes with it, but it probably stayed in his mind because it resonated with his short love affairs with two wives who died young.¹⁰⁴³ It is entitled “Summer’s Gone”:

Oft hand in hand entwining
 Oft side by side reclining
 We’ve watched in its crimson shining
 The crimson glow—
 Dimly the sun now burneth
 Only for me alone.
 Spring after spring returneth
 Thou art gone—
 Summer’s gone

Still the blue stream gusheth
 But who shall bring our meetings
 Back again?
 What shall reveal thy greetings
 Loved in vain?
 Summer’s gone.

¹⁰⁴³ Holt Papers, Container 115.

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VITA

Full name: John David Healy
Place and date of birth: Paterson, New Jersey. October 2, 1945
Parents' names: John F. Healy and Charlotte (Harlor) Healy

Educational Institutions:

<u>School</u>	<u>Place</u>	<u>Degree</u>	<u>Date</u>
Secondary:			
Passaic Valley High School	Little Falls, NJ	HS Diploma	1963
Collegiate:			
Rutgers, Newark College of Arts and Sciences	Newark, NJ	Bachelor of Arts	1967
Graduate:			
Rutgers School of Law	Newark, NJ	Juris Doctor	1970
American University	Washington, D.C.	Master of Arts	1976
Drew University	Madison, NJ	Doctor of Letters	2015