

**PROCEEDINGS OF A MILITARY COMMISSION,
Convened at Washington, D.C., by virtue of the following Orders:**

EXECUTIVE CHAMBER, }
Washington City, May 1, 1865. }

WHEREAS, the Attorney-General of the United States hath given his opinion:

That the persons implicated in the murder of the late President, Abraham Lincoln, and the attempted assassination of the Honorable William H. Seward, Secretary of State, and in an alleged conspiracy to assassinate other officers of the Federal Government at Washington City, and their aiders and abettors, are subject to the jurisdiction of, and lawfully triable before, a Military Commission;

It is ordered: 1st. That the Assistant Adjutant-General detail nine competent military officers to serve as a Commission for the trial of said parties, and that the Judge Advocate General proceed to prefer charges against said parties for their alleged offenses, and bring them to trial before said Military Commission; that said trial or trials be conducted by the said Judge Advocate General, and as recorder thereof, in person, aided by each Assistant and Special Judge Advocates as he may designate; and that said trials be conducted with all diligence consistent with the ends of justice: the said Commission to sit without regard to hours.

2d. That Brevet Major-General Hartranft be assigned to duty as Special Provost Marshal General, for the purpose of said trial, and attendance upon said Commission, and the execution of its mandates.

3d. That the said Commission establish such order or rules of proceeding as may avoid unnecessary delay, and conduce to the ends of public justice.

[Signed] ANDREW JOHNSON.

WAR DEPARTMENT, ADJ'T GENERAL'S OFFICE, }
Washington, May 6, 1865. }

Special Orders, No. 211.

EXTRACT.

* * * * *

4. A Military Commission is hereby appointed to meet at Washington, District of Columbia, on Monday, the 8th day of May, 1865, at 9 o'clock A. M., or as soon thereafter as practicable, for the trial of David E. Herold, George A. Atzerodt, Lewis Payne, Michael O'Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt, Samuel A. Mudd, and such other prisoners as may be brought before it, implicated in the murder of the late President, Abraham Lincoln, and the attempted assassination of the Honorable William H. Seward, Secretary of State, and in an alleged conspiracy to

assassinate other officers of the Federal Government at Washington City, and their aiders and abettors.

DETAIL FOR THE COURT.

Major-General David Hunter, U.S. Volunteers.
 Major-General Lewis Wallace, U.S. Volunteers.
 Brevet Major-General August V. Kautz, U.S. Volunteers.
 Brigadier-General Albion P. Howe, U.S. Volunteers.
 Brigadier-General Robert S. Foster, U.S. Volunteers.
 Brevet Brigadier-General Cyrus B. Comstock, U.S. Volunteers.
 Brigadier-General T. M. Harris, U.S. Volunteers.
 Brevet Colonel Horace Porter, Aid-de-Camp.
 Lieutenant-Colonel David R. Clendenin, Eighth Illinois Cavalry.
 Brigadier-General Joseph Holt, Judge Advocate U.S. Army, is appointed the Judge Advocate and Recorder of the Commission, to be aided by such Assistant or Special Judge Advocates as he may designate.

The Commission will sit without regard to hours.

By order of the President of the United States.

[Signed] W. A. NICHOLS.
 Assistant Adjutant-General.

COURT-ROOM, WASHINGTON, D.C., }
 May 9, 1865, 10 o'clock A. M. }

The Commission met pursuant to the foregoing Orders.

All the members present; also the Judge Advocate General.

The Hon. John A. Bingham, and Brevet Colonel H. L. Burnett, Judge Advocate, were then introduced by the Judge Advocate General as Assistant or Special Judge Advocates.

The accused, David E. Herold, George A. Atzerodt, Samuel Arnold, Lewis Payne, Michael O'Laughlin, Edward Spangler, Mary E. Surratt, and Samuel A. Mudd, were then brought into court, and being asked whether they desired to employ counsel, replied that they did.

To afford the accused opportunity to secure counsel, the Commission adjourned to meet on Wednesday, May 10, at 10 o'clock A. M.

COURT-ROOM, WASHINGTON, D.C. }
 May 10, 1865, 10 o'clock A. M. }

The Commission met pursuant to adjournment.

Present, all the members named in the foregoing Order; also present the Judge Advocate General, and Assistant Judge Advocates Bingham and Burnett.

The Judge Advocate General then read the following Special Order:

WAR DEPARTMENT, ADJ'T GENERAL'S OFFICE, }
Washington, May 9, 1865. }

Special Orders, No. 216.

EXTRACT.

* * * * *

91. Brevet Brigadier-General Cyrus B. Comstock, U. S. Volunteers, and Brevet Colonel Horace Porter, Aid-de-Camp, are hereby relieved from duty as members of the Military Commission, appointed in Special Orders No. 211, paragraph 4, dated "War Department, Adjutant-General's Office, Washington, May 6, 1865," and Brevet Brigadier-General James A. Ekin, U. S. Volunteers, and Brevet Colonel C. H. Tompkins, U. S. Army, are detailed in their places respectively.

The Commission will be composed as follows:

- Major-General David Hunter, U.S. Volunteers.
- Major-General Lewis Wallace, U.S. Volunteers.
- Brevet Major-General August V. Kautz, U.S. Volunteers.
- Brigadier-General Albion P. Howe, U.S. Volunteers.
- Brigadier-General Robert S. Foster, U. S. Volunteers.
- Brevet Brigadier-General James A. Ekin, U.S. Volunteers.
- Brigadier-General T. M. Harris, U.S. Volunteers.
- Brevet Colonel C. H. Tomkins, U. S. Army.
- Lieutenant-Colonel David R. Clendenin, Eighth Illinois Cavalry.
- Brigadier-General Joseph Holt, Judge Advocate and Recorder.

By order of the President of the United States.

[Signed] E. D. TOWNSEND.
Assistant Adjutant-General.

All the members named in the foregoing order being present, the Commission proceeded to the trial of David E. Herold, George A. Atzerodt, Lewis Payne, Michael O'Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt, and Samuel A. Mudd, who were brought into court, and having heard the foregoing orders, the accused were asked if they had any objection to any member named therein, to which all severally replied they had none.

The members of the Commission were then duly sworn by the Judge Advocate General, in the presence of the accused.

The Judge Advocate General, and Assistant Judge Advocates, Hon. John A. Bingham and Brevet Colonel H. L. Burnett, were then duly sworn by the President of the Commission, in the presence of the accused.

Benn Pitman, R. Sutton, D. F. Murphy, R. R. Hitt, J. J. Murphy, and Edward V. Murphy, were duly sworn by the Judge Advocate General, in the presence of the accused, as reporters to the Commission.

The accused were then severally arraigned on the following Charge and Specification:

**CHARGE AND SPECIFICATION
AGAINST
DAVID E. HEROLD, GEORGE A. ATZERODT, LEWIS PAYNE,
MICHAEL O'LAUGHLIN, EDWARD SPANGLER,
SAMUEL ARNOLD, MARY E. SURRETT,
AND
SAMUEL A. MUDD**

CHARGE.—For maliciously, unlawfully, and traitorously, and in aid of the existing armed rebellion against the United States of America, on or before the 6th day of March, A. D. 1865, and on divers other days between that day and the 15th day of April, A. D. 1865, combining, confederating, and conspiring together with one John H. Surratt, John Wilkes Booth, Jefferson Davis, George N. Sanders, Beverly Tucker, Jacob Thompson, William C. Cleary, Clement C. Clay, George Harper, George Young, and others unknown, to kill and murder, within the Military Department of Washington, and within the fortified and intrenched lines thereof, Abraham Lincoln, late, and at the time of said combining, confederating, and conspiring, President of the United States of America, and Commander-in-Chief of the Army and Navy thereof; Andrew Johnson, now Vice-President of the United States aforesaid; William H. Seward, Secretary of State of the United States aforesaid; and Ulysses S. Grant, Lieutenant-General of the Army of the United States aforesaid, then in command of the Armies of the United States, under the direction of the said Abraham Lincoln; and in pursuance of in prosecuting said malicious, unlawful and traitorous conspiracy aforesaid, and in aid of the said rebellion, afterward, to wit, on the 14th day of April, A. D. 1865, within the Military Department of Washington, aforesaid, and within the fortified and intrenched lines of said Military Department, together with said John Wilkes Booth and John H. Surratt, maliciously, unlawfully, and traitorously murdering the said Abraham Lincoln, then President of the

United States and Commander-in-Chief of the Army and Navies of the United States, as aforesaid; and maliciously, unlawfully, and traitorously assaulting, with intent to kill and murder, the said William H. Seward, then Secretary of State of the United States, as aforesaid; and lying in wait with intent maliciously, unlawfully, and traitorously to kill and murder the said Andrew Johnson, then being Vice-President of the United States; and the said Ulysses S. Grant, then being Lieutenant-General, and in command of the Armies of the United States, as aforesaid.

SPECIFICATION.—In this: that they, the said David E. Herold, Edward Spangler, Lewis Payne, Michael O’Laughlin, Samuel Arnold, Mary E. Surratt, George A. Atzerodt, and Samuel A. Mudd, together with the said John H. Surratt and John Wilkes Booth, incited and encouraged thereunto by Jefferson Davis, George N. Sanders, Beverly Tucker, Jacob Thompson, William C. Cleary, Clement C. Clay, George Harper, George Young, and others unknown, citizens of the United States aforesaid, and who were then engaged in armed rebellion against the United States of America, within the limits thereof, did, in aid of said rebellion, on or before the 6th day of March, A. D. 1865, and on divers other days and times between that day and the 15th day of April, A. D. 1865, combine, confederate, and conspire together, at Washington City, within the Military Department of Washington, and within the intrenched fortifications and military lines of the United States, there being, unlawfully, maliciously, and traitorously to kill and murder Abraham Lincoln, then President of the United States aforesaid, and Commander-in-Chief of the Army and Navy thereof; and unlawfully, maliciously, and traitorously to kill and murder Andrew Johnson, now Vice-President of the said United States, upon whom, on the death of said Abraham Lincoln, after the fourth day of March, A. D. 1865, the office of President of the said United States, and Commander-in-Chief of the Army and Navy thereof, would devolve; and to unlawfully, maliciously, and traitorously kill and murder Ulysses S. Grant, then Lieutenant-General, and, under the direction of the said Abraham Lincoln, in command of the Armies of the United States, aforesaid; and unlawfully, maliciously, and traitorously kill and murder William H. Seward, then Secretary of the United States aforesaid, whose duty it was, by law, upon the death of said President and Vice-President of the United States aforesaid, to cause an election to

be held for electors of President of the United States: the conspirators aforesaid designing and intending, by the killing and murder of the said Abraham Lincoln, Andrew Johnson, Ulysses S. Grant, and William H. Seward, as aforesaid to deprive the Army and Navy of the said United States of a constitutional Commander-in-Chief; and to deprive the Armies of the United States of their lawful commander; and to prevent a lawful election of President and Vice-President of the United States aforesaid; and by the means aforesaid to aid and comfort the insurgents engaged in armed rebellion against the said United States, as aforesaid, and thereby to aid in the subversion and overthrow of the Constitution and laws of said United States.

And being so combined, confederated, and conspiring together in the prosecution of said unlawful and traitorous conspiracy, on the night of the 14th day of April, A. D. 1865, at the hour of about 10 'o'clock and 15 minutes P. M., at Ford's Theater, on Tenth Street, in the City of Washington, and within the military department and military lines aforesaid, John Wilkes Booth, one of the conspirators aforesaid, in pursuance of said unlawful and traitorous conspiracy, did, then and there, unlawfully, maliciously, and traitorously, and with intent to kill and murder the said Abraham Lincoln, discharge a pistol then held in the hands of him, the said Booth, the same being then loaded with powder and a leaden ball, against and upon the left and posterior side of the head of said Abraham Lincoln; and did thereby, then and there, inflict upon him, the said Abraham Lincoln, then President of the said United States, and Commander-in-Chief of the Army and Navy thereof, a mortal wound, whereof, afterward, to-wit, on the 15th day of April, A. D. 1865, at Washington City aforesaid, the said Abraham Lincoln died; and thereby, then and there, and in pursuance of said conspiracy, the said defendants, and the said John Wilkes Booth and John H. Surratt did unlawfully, traitorously, and maliciously, and with the intent to aid the rebellion, as aforesaid, kill and murder the said Abraham Lincoln, President of the United States, as aforesaid.

And in further prosecution of the unlawful and traitorous conspiracy aforesaid, and of the murderous and traitorous intent of said conspiracy, the said Edward Spangler, on said 14th day of April, A. D. 1865, at about the same hour of that day, as aforesaid, within said military department and the military lines aforesaid, did aid and assist the said John Wilkes Booth to obtain entrance to the box in said theater, in which said Abraham

Lincoln was sitting at the time he was assaulted and shot, as aforesaid, by John Wilkes Booth; and also did, then and there, aid said Booth in barring and obstructing the door of the box of said theater, so as to hinder and prevent any assistance to or rescue of the said Abraham Lincoln against the murderous assault of the said John Wilkes Booth; and did aid and abet him in making his escape after the said Abraham Lincoln had been murdered in manner aforesaid.

And in further prosecution of said unlawful, murderous and traitorous conspiracy, and in pursuance thereof, and with the intent as aforesaid, the said David E. Herold did, on the night of the 14th of April, A. D. 1865, within the military department and military lines aforesaid, aid, abet, and assist the said John Wilkes Booth in the killing and murder of the said Abraham Lincoln, and did, then and there, aid and abet and assist him, the said John Wilkes Booth, in attempting to escape through the military lines aforesaid, and did accompany and assist the said John Wilkes Booth in attempting to conceal himself and escape from justice, after killing and murdering said Abraham Lincoln as aforesaid.

And in further prosecution of said unlawful and traitorous conspiracy, and of the intent thereof, as aforesaid, the said Lewis Payne did, on the same night of the 14th day of April, A. D. 1865, about the same hour of 10 o'clock and 15 minutes P. M., at the City of Washington, and within the military department and the military lines aforesaid, unlawfully and maliciously make an assault upon the said William H. Seward, Secretary of State, as aforesaid, in the dwelling-house and bed-chamber of him, the said William H. Seward, and the said Payne did, then and there, with a large knife held in his hand, unlawfully, traitorously, and in pursuance of said conspiracy, strike, stab, cut, and attempt to kill and murder the said William H. Seward, and did thereby, then and there, with intent aforesaid, with said knife, inflict upon the face and throat of the said William H. Seward divers grievous wounds. And the said Lewis Payne, in further prosecution of said conspiracy, at the same time and place last aforesaid, did attempt, with the knife aforesaid, and a pistol held in his hand, to kill and murder Frederick W. Seward, Augustus H. Seward, Emrick W. Hansell, and George F. Robinson, who were then striving to protect and rescue the said William H. Seward from murder by the said Lewis Payne, and did, then and there, with said knife and pistol held in his hands, inflict upon the head of said Frederick W. Seward, and upon the persons of said Augustus H. Seward,

Emrick W. Hansell, and George F. Robinson, divers grievous and dangerous wounds, with intent, then and there, to kill and murder the said Frederick W. Seward, Augustus H. Seward, Emrick W. Hansell, and George F. Robinson.

And in further prosecution of said conspiracy and its traitorous and murderous designs, the said George A. Atzerodt did, on the night of the 14th of April, A. D. 1865, an about the same hour of the night aforesaid, within the military department and the military lines aforesaid, lie in wait for Andrew Johnson, then Vice-President of the United States aforesaid, with the intent unlawfully and maliciously to kill and murder him, the said Andrew Johnson.

And in the further prosecution of the conspiracy aforesaid, and of its murderous and treasonable purposes aforesaid, on the nights of the 13th and 14th of April, A. D. 1865, at Washington City, and within the military department and military lines aforesaid, the said Michael O'Laughlin did, then and there, lie in wait for Ulysses S. Grant, then Lieutenant-General and Commander of the Armies of the United States, as aforesaid, with intent, then and there, to kill and murder the said Ulysses S. Grant.

And in further prosecution of said conspiracy, the said Samuel Arnold did, within the military department and the military lines aforesaid, on or before the 6th day of March A. D. 1865, and on divers other days and times between that day and the 15th day of April, A. D. 1865, combine, conspire with, and aid, counsel, abet, comfort, and support, the said John Wilkes Booth, Lewis Payne, George A. Atzerodt, Michael O'Laughlin, and their confederates in said unlawful, murderous, and traitorous conspiracy, and in the execution thereof, as aforesaid.

And in further prosecution of said conspiracy, Mary E. Surratt did, at Washington City, and within the military department and military lines aforesaid, on or before the 6th day of March, A. D. 1865, and on divers other days and times between that day and the 20th day of April, A. D. 1865, receive, entertain, harbor, and conceal, aid and assist the said John Wilkes Booth, David E. Herold, Lewis Payne, John H. Surratt, Michael O'Laughlin, George A. Atzerodt, Samuel Arnold, and their confederates, with the knowledge of the murderous and traitorous conspiracy aforesaid, and with the intent to aid, abet, and assist them in execution thereof, and in escaping from justice after the murder of the said Abraham Lincoln, as aforesaid.

And in further prosecution of said conspiracy, the said Samuel A. Mudd did, at Washington City, and within the military department and military lines aforesaid, on or before the 6th day of March, A. D. 1865, and on divers other days and times between that day and the 20th day of April, A. D. 1865, advise, encourage, receive, entertain, harbor, and conceal, aid and assist the said John Wilkes Booth, David E. Herold, Lewis Payne, John H. Surratt, Michael O’Laughlin, George A. Atzerodt, Mary E. Surratt, and Samuel Arnold, and their confederates, with knowledge of the murderous and traitorous conspiracy aforesaid, and with the intent to aid, abet, and assist them in the execution thereof, and in escaping from justice after the murder of the said Abraham Lincoln, in pursuance of said conspiracy in manner aforesaid.

By order of the President of the United States.

J. HOLT,
Judge Advocate General.

Charge and Specification indorsed:

“Copy of the within Charge and Specification delivered to David E. Herold, George A. Atzerodt, Lewis Payne, Michael O’Laughlin, Samuel Arnold, Mary E. Surratt, and Samuel A. Mudd, on the 8th day of May, 1865.

[Signed] “J. F. HARTRANFT,
Brev. Maj.-Gen. And Spec. Prov. Mar. Gen.”

To the Specification, all the accused severally pleaded

“Not Guilty.”

To the Charge

“Not Guilty.”

The Commission then considered the rules and regulations by which its proceedings should be conducted, and after discussion adopted the following:

RULES OF PROCEEDING

ADOPTED BY THE MILITARY COMMISSION CONVENED
PURSUANT TO SPECIAL ORDERS NOS. 211 AND 216.

1. The Commission will hold its sessions in the following hours: Convene at 10 A. M., and sit until 1 P. M., and then take a recess of one hour. Resume business at 2 P. M.
2. The prisoners will be allowed counsel, who shall file evidence of having taken the oath prescribed by act of Congress, or shall take said oath before permitted to appear in the case.

3. The examination of witnesses shall be conducted on the part of the Government by one Judge Advocate, and by counsel on the part of the prisoners.
 4. The testimony shall be taken in shorthand by reporters, who shall first take an oath to record the evidence faithfully and truly, and not to communicate the same, or any part thereof, or any proceedings on the trial, except by authority of the presiding officer.
 5. A copy of the evidence taken each day shall be furnished the Judge Advocate General, and one copy to the counsel of the prisoners.
 6. No reporters but the official reporters shall be admitted into the court-room. But the Judge Advocate will furnish daily, in his discretion, to the agent of the Associated Press, a copy of such testimony and proceedings as may be published, pending the trial, without injury to the public and the ends of justice. All other publication of the evidence and proceedings is forbidden, and will be dealt with as contempt of Court, on the part of all persons concerning in making or procuring such publication.*
 7. For the security of the prisoners and witnesses, and to preserve order and decorum in the trial and proceedings, the presiding officer will furnish a pass to counsel, witnesses, officers, and such persons as may be allowed to pass the guard, and be present at the trial. No person will be allowed to pass the guard without such pass, which, for greater precaution, will be countersigned by the Special Provost Marshal in attendance upon the Court.
 8. The argument of any motion will, unless otherwise ordered by the Court, be limited to five minutes by one Judge Advocate, and counsel on behalf of the prisoners. Objections to testimony will be noted on the record, and decided upon argument, limited as above, on motions. When testimony is closed, the case will be immediately summed up by one Judge Advocate, at the discretion of the Judge Advocate General, and be followed or opened, if the Judge Advocate General elects, by counsel for the prisoners, and the argument shall be closed by one Judge Advocate.
 9. The argument being closed, the Court will immediately proceed duly to deliberate and make its determination.
 10. The Provost Marshal will have the prisoners in attendance during the trial, and be responsible for their security. Counsel may have access to them in the presence, but not in hearing, of a guard.
 11. The counsel for the prisoners will immediately furnish the Judge Advocate General with a list of the witnesses required for defense, whose attendance will be procured in the usual manner.
- To allow further time for the accused to secure and communicate with counsel, the Commission adjourned to meet on Thursday, May 11th, at 10 o'clock A. M.
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* The testimony of Richard Montgomery, Sanford Conover, and James B. Merritt was, for prudential reasons, taken in secret session. At the opening of the session, on May 13th, the Judge Advocate announced that the testimony hereafter to be introduced might be given to the public without impropriety or embarrassment to the Government, and that the President of the Commission would grant permits for admission to reporters and others to an extent not to interfere with the proceedings of the Commission.

COURT-ROOM, WASHINGTON, D. C. }
 May 11, 1865, 10 o'clock A. M. }

The Commission met pursuant to adjournment.

All the members present; also the Judge Advocate, the Assistant Judge Advocate, and all the accused.

The record of the preceding session was read and approved.

The accused, SAMUEL A. MUDD, applied for permission to introduce Frederick Stone, Esq., and Thomas Ewing, jr., Esq., as his counsel.

The accused, MARY E. SURRATT, applied for permission to introduce Frederick Aiken, Esq., and John W. Clampitt, Esq., as her counsel, which applications were granted; and the aforesaid counsel, having first taken, in open Court, the oath prescribed by act of Congress, approved July 2, 1862, accordingly appeared.

To allow further time for the accused to secure the attendance of counsel, the Commission adjourned, to meet on Friday, May 12th, at 10 o'clock A. M.

COURT-ROOM, WASHINGTON, D. C. }
 May 12, 1865, 10 o'clock A. M. }

The Commission met pursuant to adjournment.

All the members present; also the Judge Advocate, the Assistant Judge Advocate, the accused, and Messrs. Ewing, Stone, Aiken, and Clampitt, counsel for the accused.

The proceedings were read and approved.

The accused, DAVID E. HEROLD, applied for permission to introduce Frederick Stone, Esq., as his counsel.

The accused, SAMUEL ARNOLD, applied for permission to introduce Thomas Ewing, jr., Esq., as his counsel; which applications were granted, and the aforesaid counsel accordingly appeared.

The accused, GEORGE A. ATZERODT, applied for permission to introduce William E. Doster, Esq., as his counsel.

The accused, MICHAEL O'LAUGHLIN, applied for permission to introduce Walter S. Cox, Esq., as his counsel.

The accused, LEWIS PAYNE, applied for permission to introduce William E. Doster, Esq., as his counsel.

The accused, EDWARD SPANGLER, applied for permission to introduce Thomas Ewing, jr., Esq., as his counsel; which applications were granted, and Messrs. Doster and Cox, having first taken, in open Court, the oath prescribed by act of Congress, approved July 2, 1862, accordingly appeared.

The accused, MARY E. SURRATT, applied for permission to introduce the Hon. Reverdy Johnson as additional counsel for her,

A member of the Commission (General T. M. Harris) objected to the admission of Mr. Johnson as counsel before the Commission, on the ground that he did not recognize the moral obligation of an oath designed as a test of loyalty, or to enforce the obligation of loyalty to the Government of the United States, referring to a printed letter, dated Baltimore, October 7, 1864, upon "the constitutionality, legal and binding effect and bearing of the oath prescribed by the late Convention of our State,

to be taken by the voters of the State as the condition and qualification of the right to vote upon the New Constitution.”

The letter, published over the signature of the Hon. Reverdy Johnson, pending the adoption of the New Constitution of Maryland, contained the following passage:

“Because the Convention transcended its power, as I am satisfied it has, that is no reason why the people should submit. On the contrary, it should lead them to adopt the only course left to redress the wrong. The taking of the oath under such circumstances, argues no unwillingness to surrender their rights. It is indeed the only way in which they can protect them, and no moral injunction will be violated by such a course, because the exaction of the oath was beyond the authority of the Convention, and, as a law, is therefore void.”

MR. JOHNSON. The Convention called to frame a new Constitution for the State was called under the authority of an act of the Legislature of Maryland, and under that alone. By that legislation, their proceedings were to be submitted to the then legal voters of the State. The Convention thought that they were themselves authorized not only to impose as an authority to vote what was not imposed by the then existing Constitution and laws; and I said, in common with the whole bar of the State, (and with what the bar throughout the Union would have said if they had been consulted,) that to that extent they had usurped the authority under which alone they were authorized to meet, and that, so far, the proceeding was a nullity. They had prescribed this oath; and all that the opinion said, or was intended to say, was that to take the oath voluntarily was not a craven submission to usurped authority, but was necessary in order to enable the citizen to protect his rights under the then Constitution, and that there was no moral harm in taking an oath which the Convention had no authority to impose.

The objection being then withdrawn, Mr. Johnson accordingly appeared as counsel for Mrs. Mary E. Surratt.

The accused, David E. Herold, George A. Atzerodt, Lewis Payne, Michael O’Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt, and Samuel A. Mudd, severally, through their counsel, asked leave to withdraw for the time their plea of “*Not Guilty*,” heretofore filed, so that they may plead to the jurisdiction of the Commission.

The applications were granted.

The accused then severally offered a plea to the jurisdiction of the Commission as follows:

_____, one of the accused, for plea, says that this court has no jurisdiction in the proceeding against him, because he says he is not, and has not been, in the military service of the United States.

And, for further plea, the said _____ says that loyal civil courts, in which all the offenses charged are triable, exist, and are in full and free operation in all the places where the several offenses charged are alleged to have been committed.

And, for further plea, the said _____ says that the court has no jurisdiction in the matter of the alleged conspiracy, so far as it is charged to have been a conspiracy to murder Abraham Lincoln, late President of the United States, and

William H. Seward, Secretary of State, because he says alleged conspiracy, and all acts alleged to have been done in the formation and execution thereof, are in the charges and specifications alleged to have been committed in the City of Washington, in which city are loyal civil courts, in full operation, in which all said offenses charged are triable.

And the said _____, for further plea, says this Court has no jurisdiction in the matter of the crime of murdering Abraham Lincoln, late President of the United States, and William H. Seward, Secretary of State, because he says said crimes and acts done in execution thereof are in the charges and specifications alleged to have been committed in the City of Washington, in which city are loyal civil courts, in full operation, in which said crimes are triable.

Signed on behalf of the accused by counsel.

The Judge Advocate then presented the following replication:

Now come the United States, and for answer to the special plea by one of the defendants, _____, pleaded to the jurisdiction of the Commission in this case, say that this Commission has jurisdiction in the premises to try and determine the matters in the Charge and Specification alleged and set forth against the said defendant, _____.

J. HOLT,
Judge Advocate General.

The Court was then cleared for deliberation, and on being re-opened, the Judge Advocate announced that the pleas of the accused had been overruled by the Commission.

The accused then severally made application for severance as follows:

_____, one of the accused, asks that he be tried separate from those who are charged jointly with him, for the reason that he believes his defense will be greatly prejudiced by a joint trial.

Signed by counsel on behalf of the accused.

The Commission overruled the application for severance.

The accused then severally pleaded:

To the Specification

“Not Guilty.”

To the Charge

“Not Guilty.”