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Battle Cry

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President's Message:

Congratulations to Ken Kitchen and Vivian Miller for being the first to contact me after reading last month's president's message. Ken was the first overall and Vivian was the first among people in attendance at February's meeting. My purpose with that was to encourage everyone to read the Battle Cry. It is the primary mode available to communicate with the membership at large - please stay tuned.

Speaking of the last meeting, George Templeton Strong sure was an interesting chap - his diary gives us quite a window into Civil War events. Thanks so much to Jim Middleton for familiarizing us with this outstanding citizen and his important story. I'm starting to understand what a "mover and shaker" might be?? That can be either Middleton or Strong!

I will feel much more comfortable as the president of the SCWRT when I get to know more of you! At least being able to associate names with faces would be a good start. My plan for the next few evening meetings is to hang out in the meeting room for the 20-30 minutes leading up to the gavel to greet everyone as they arrive. When you see me there, please come up and speak; particularly, if we haven't met or have only briefly visited. I also invite you to hang out a few minutes after the meeting to get better acquainted.

Your Board of Directors has given the green light to hiring a SCWRT web master. The fee is quite modest and gives us the means to have a current message in front of the on-line public. My belief is that in this era our roundtable must have a website to be relevant. I encourage you to check it out at www.sacramentocwrt.com Our new webmaster is Kim Knighton—she has first concentrated on deleting outdated material which will be followed by any restructuring the board believes should be done. She will then do monthly maintenance to keep us up to date—you should always be able to get information regarding the next meeting by checking the web site. The web site will serve many other purposes as we progress.

I sense that we have nice momentum heading into the new year. Let's do our best to keep it going by coming to the evening meetings, by bringing your friends along, and by signing up as docents for the May 18th portion of the Gibson Ranch re-enactment.

As you read this Battle Cry, Joan Beitzel is busy shaping her talk for Wednesday night, March 14th, 7:00 PM at the Plaza Hofbrau! She will discuss the Confederate's Chimborazo hospital in Richmond. Bring your neighbor! I'll be out of town and VP Dennis Kohlmann will be wielding the gavel.

Coming Programs 2007		
Month	Speaker	Topic
March 14 th	Joan Beitzel	Chimborazo Hospital
April 11 th	Bob Hanley	Evolutionary Role of Railroads in the American CW
May 9 th	Phil Avila	Wade Hampton, Confederate Cavalry General
June 13 th	Walt Bittle	Civil War Trivia

Treasurer's Report:

The cash balance following the February 14, 2007 meeting was \$1,646.70.

Thanks to members and guests, the raffle brought in \$81.00.

George W. Foxworth, Treasurer

MINUTES

SACRAMENTO CIVIL WAR ROUND TABLE

FEBRUARY 14, 2007

HOF BRAU RESTAURANT, WATT AVE, SACRAMENTO

Attendance-31

Members-26

Paul Ruud, President
Dennis Kohlmann, Vice-President
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Edie Keister, Secretary
Bob Baskerville
Ken Berna
Roy Bishop
Brad Friedman
Bob Hanley
Pam Hubbard

Chuck Hubbard
Shelley Jones
Victor Le
Cressie Mendes
Phil Mendes
Jim Middleton
Vivian Miller
Betty Mitchell
Maurice Mitchell
Ron Perisho

Brad Schall
Drew Van Winkle
Bob Williams
Silver Williams
Maxine Wollen
John Lasso
Guest-5
Cybele Randy Becket
Terry Bowen
Shannon Lee
Horst Penning
Mark Penning

- Meeting started at 7:03. President Ruud welcomed members and guests. Vivian Miller won the prize from the President for being the first to respond to his request from the Battle Cry. Bob Williams ran off copies of the Cover of Harbers Weekly, February 16, 1861, with a lovely Valentine's Day theme. Thanks Bob! A volunteer sheet was passed for sign ups for Gibson Ranch re-enactment, May 18th.
President Ruud requested board members to stay after to discuss web site.
- Member Jim Middleton presented George Templeton Strong, lawyer and treasurer of the U.S. Sanitation Commission, and diarist of 40 years. Jim shared slides and many fascinating entries from Templeton's diary, and answered questions. Thanks Jim for your contribution.
- Raffle was held. Meeting adjourned at 8:35

Welcome new member Silver Williams!

Edie Keister
Secretary

**Brigadier General Joseph Holt,
The U. S. Judge Advocate General, 1862-75
And
Why Didn't the North Hang More Rebels?**

Joseph Holt was born in Breckenridge County, Kentucky in 1807 to a farming family of moderate income. At age 14, he was sent to the respected and expensive Centre College in Danville; and by 1825 was a law student in Lexington under Robert Wickliffe, one of Kentucky's most famous attorneys. In 1825, he opened his first law office in Elizabethtown, and became an active supporter of Andrew Jackson's Democratic Party; although at no time during his lengthy career did he ever aspire for elective office. Subsequently he relocated his practice to Port Gibson and Vicksburg MS. and back to Louisville, KY. He had become a formidable prosecuting attorney on the Louisville Circuit (while moonlighting as Assistant Editor for the *Louisville Advertiser*). It was said of Holt that he won his cases, "... not by humor, cleverness or glamour, but by the crushing weight of evidence he could bring to bear in his cases." In 1846, Holt and his wife both contracted tuberculosis. His wife did not recover. Holt went into semi-retirement, traveling extensively in Europe to study their political and legal institutions.

Returning to Louisville, Holt was active in his party's electoral successes of 1852 and 1856; and in 1857 accepted a political appointment as Commissioner of Patents in the Buchanan Administration. Holt's work ethics steadily increased his stature in Buchanan's eyes; and, when the avidly pro-Southern (and very corrupt) secretary of war, J. B. Floyd resigned 29 Dec. 60 and "went south", the old President gladly heeded the advice of his newly appointed attorney general, Edwin Stanton and appointed Joseph Holt as war secretary. While Holt was a "child of the south", his heart was with the Union. He and Stanton had been friends in the past and would remain so for the remainder of their lives.

Through close counsel with General Winfield Scott, Holt initiated immediate steps

to prevent further arms and military equipment from being shipped south which Floyd had initiated, and for the protection of southern located forts, arsenals and customhouses where possible. Of special concern was Charleston Harbor with Forts Moultrie and Sumter in particular. Additionally, he cast a stern eye over the Defenses of Washington, D.C. in the early months of 1861. He found them lacking. A few days before President-elect Lincoln was due to arrive in the city, Holt acting through General Scott brought into town a "well-appointed corps" of regular soldiers and held a special massive parade down Pennsylvania Avenue as a show of force. Lincoln arrived on 23 Feb. 61. Holt continued a firm grip on the War Department even for several days after the inauguration, for which the *New York Times* later reported, "The new administration owes to Joseph Holt's fidelity, sagacity and courage the fact that it was peacefully inaugurated, or, perhaps, inaugurated at all."

Simon Cameron replaced Joseph Holt as secretary of war, but rumors circulated that Lincoln would appoint Holt to another cabinet post or to the Supreme Court. That did not occur. However, Lincoln met with Holt early on and asked him to return to Kentucky and attempt to hold that state in the Union. Holt did so, working with another of his and Lincoln's close legal friends, Joshua Speed (whose brother James was later attorney general). They were not able to fully accomplish this, but did arrange for somewhat of a neutrality; however, the question was largely mooted when Grant captured Forts Henry and Donelson in Feb. 62. Cameron's days as war secretary were numbered, and Holt was again rumored for the secretary of war job; but Lincoln appointed Stanton (Lincoln's choice was probably dictated largely because Stanton was from Ohio/Pennsylvania, loyal union states). But Holt was appointed on 3 Sept. 62 to a then new position within the war department as Judge Advocate General (JAG); to become head of the subsequently formed Bureau of Military Justice (BMJ).

As the JAG Holt oversaw the War Department's policy regarding legal affairs within the military, as well as its policy regarding civilian political prisoners --- the latter soon to be extended by Lincoln's 24 Sept. 62 proclamation suspending the writ of habeas corpus; thus for the first time requiring military tribunals for "all rebels and insurgents, their aiders and abettors within the U.S., and all persons discouraging voluntary enlistments, resisting military drafts, or guilty of any disloyal practice, affording comfort to Rebels against the authority of the U.S."

In his capacity as JAG Holt was also charged with guaranteeing that the administration of military law in courts of inquiry and courts-martial for military personnel, and military commissions for civilians was uniform and just and for determining precisely what sorts of offenses Lincoln's suspension of habeas corpus encompassed. Over the months and years, ahead Holt applied himself as he had always done vigorously to his tasks, both transforming legal theory into policy and in overseeing particular cases directly. He based his approach on two fundamentals, both of which later became highly controversial. First, he insisted that so-called military offenses aimed at impairing the validity of military service or its success in the field could be committed by civilians as well as by soldiers. Second, that in wartime, crimes that otherwise fell under civil jurisdiction could also, at the discretion of the JAG's office, come under the purview of the military court system.

By far the largest portion of Judge Holt's time and that of the BMJ during the Civil War years was occupied by trials internal to the military. It is roughly estimated that these may have aggregated more than 30,000 cases. The "highest profile" of them was perhaps the court-martial of Major General Fitz-John Porter, charged with dereliction of duty and failure to obey orders during the Second Battle of Bull Run. Porter, a strong supporter of McClelland was tried on charges of disobedience and disloyalty to his new commanding general John

Pope, who was a McClelland foe. Porter was found guilty, the verdict was upheld by Judge Holt upon review, and Porter was discharged from the army, subsequently exonerated and reinstated 24 years later.

Prior to the trial of the Lincoln assassination conspirators the "high profile" military commission trials of civilians were those of Clement Vallandigham and Lambdin Milligan, both notorious anti-war activists and anti-Lincoln crusaders. Vallandigham was sentenced to jail for the duration of the war, later changed to banishment. He appealed, but the Supreme Court upheld the conviction. Milligan had formed secret anti-government organizations, mainly the Knights of the Golden Circle to encourage soldiers to desert, to protect deserters, and to free rebel prisoners, among other things. He was tried and convicted for treason with a death sentence, but the sentence was not carried out.

Judge Holt personally presided over the trial of the eight Lincoln assassination conspirators. His assistant Judge Advocates were Col. Henry Burnett and Mr. John Bingham. The nine members of the commission were MG David Hunter, Lew Wallace and August Kautz; BG Alvin Howe, Robert Foster, Thomas Harris, and James Elkin; Col. David Clendenin and Charles Tompkins. The eight defendants were Samuel Arnold, George Atzerodt, David Herold, Samuel Mudd, Michael O'Laughlen, Lewis Powell, Edman Spangler, and Mary Surratt. (Mary's son John was also a prime suspect, but had not yet been captured. A later civil trial resulted in a hung jury and he was never retried.) Holt and other members of the BMJ were convinced that the conspiracy went well beyond Edwin Booth and the above eight defendants; and that it involved the highest echelon of the rebel government, including the arch rebel, Jefferson Davis himself.

The prosecutors thought good progress was being made in building a case against Davis and others in the front office of the confederacy when it was discovered that their chief witness, one Charles Dunham alias

Sanford Conover, was a perpetual liar. Others substantiated some of the charges made by Dunham, but the “grand conspiracy” theory was hopelessly compromised. (I believe most historians today think Davis was totally unaware of Booth’s plans to murder Lincoln, but that some feel he *was* aware of the earlier kidnap plans. In fact, it is said Davis had cautioned the perpetrators of that plan not to harm or mistreat Lincoln in any way, and to be particularly careful about accidents.)

As is well known, all of the above defendants were found guilty. Atzerodt, Herold, Powell, and Surratt were hanged. Arnold, Mudd, and O’Laughlen were sentenced to life in prison; and, Spangler to seven years. Those jailed were later pardoned, and Mary Surratt’s execution alarmed many.

Next in line of the military commission trials was that of Heinrich Wirtz, a Swiss native who settled in Louisiana in 1849. He joined the confederate army and was badly wounded at the Battle of Fair Oaks in 1862. Because he was multi-lingual, Wirtz was assigned by Jefferson Davis as a special envoy in Europe. Returning in early 1864, he was placed in command of the rebel’s new prison camp for union soldiers at Andersonville. The sad history of Andersonville, where 13,000 died in one year, is well known. Wirtz was found guilty of various charges including murder and, on 10 Nov. 65 was executed. Wirtz’s main line of defense during the trial was that he was following orders. The person giving those orders was his boss, BG John Winder Provost Marshal of the CSA, who was in charge of all southern prisons. It is generally believed that if Winder had been brought to trial he would have received the death penalty and Wirtz would have escaped with a life sentence. And who was Winder’s boss? You guessed it. But Winder broke this rebel chain of command when he unaccommodatingly died of natural causes on 8 Feb. 65.

In late November 1865, Judge Holt summarized activities of the BMJ since the end of the War in a report to Secretary Stanton. He noted that the bureau had received, reviewed

and filed some 16,600 records of courts-martial and military commissions, and had prepared over 6,100 special reports on questions and opinions referred to his office. He highlighted the bureau’s most important activities, praised its staff, and recommended that Congress extend its life for at least one more year. (Lincoln had originally created the BMJ primarily for service during the War.) He then presented some of his personal views as to the “peculiar characteristics” of the finding of the military commissions and of their value.

Holt believed that the commission trials had proven “unequivocally not only the guilt of those who stood trial in the courtroom, but also - in absentia – the complicity of the “chiefs of the rebellion” in the crimes of the accused”. Continuing, he wrote that the commissions “had demonstrated that the convicted were in fact the hirelings and accomplices of the cabal of traitors of whom Jefferson Davis was the acknowledged chief.” And further, “Davis and his cabal were revealed to be in fact, as well as in law, equally with the accused, responsible for the detestable deeds that were adduced in evidence.”

Holt concluded his report with a statement as to the merits of military commissions during periods of war “for ...bringing to justice a large class of malefactors in the service or interest of the enemy who otherwise would have altogether escaped punishment”. He said that commissions are “unencumbered by the technicalities and inevitable embarrassments attending to the administration of justice before civil tribunals...by making use of the government itself for the execution of its processes and the enforcement of its orders”... and they can “investigate crimes with a freer hand than is possible in civil trials, ...that such latitude enhances the ability to uncover such things as elements of conspiracy, ... and that no other form of trial could produce results in a more timely and efficient manner”. (Efficient to be sure, but what about civil rights guarantees?) Understandably, his report was controversial to some people even then.

So Why Didn't the Union Hang More Rebels? The short answer, according to Pennsylvania State University History Professor William Blair, is that not enough northerners believed that treason had occurred as then defined, and/or that it could be proven in civil court.

The War had resulted in 625,000 total deaths, millions of wounded, atrocities committed, prisoners mistreated, and vast expenditures of capital, properties destroyed and economies ruined, plus the assassination of a well-liked president. Immediately after the end of the War, there was a thirst for vengeance. The time seemed ripe for executions, and some modern historians now believe that a Nuremberg-style trial may have been in the offing. However, over a short period of time attitudes changed, hatreds dissipated and there was a very rapid cooling off period. The shift was drastic, not 180 degrees, but perhaps 135, all occurring in a period of only about 12 months. People were tired of killings and just wanted the problems to go away.

First of all, most people did not like military commissions for civilians when civil courts were available. Stanton and Seward, the latter opting somewhat more towards leniency, both agreed with Holt. Grant agreed as to their use for the rebel civilian leaders and guerrillas, such as Mosby and Quantrill, but he strongly disagreed with any thoughts to indict and try Lee, Johnston or other members of the confederate armies that had been paroled pursuant to his Appomattox formula; and he threatened to resign if that ever came about. Gideon Welles was adamantly opposed while Ben Butler strongly supported military commissions and volunteered to serve. Most other members of Congress were ambivalent, believing that whatever course to best assure convictions should be used. Many expressed the view that they only wished Davis had been shot while trying to escape.

But the legal community in general, including Attorneys General Bates and Speed, Chief Justice Chase and most Supreme Court members, was strongly opposed to military

commissions for the purpose at hand. The proponents of military commissions were definitely in the minority and their position became untenable, both because of public opinion and due to the landmark ruling of the Supreme Court in 1866, which overturned conviction in the 1864 Milligan trial held by a military commission in Indiana. The ruling was that commissions could have no jurisdiction in areas where civil courts were open and functioning.

In a parallel action, Attorney General Speed ruled that trials must be held in the State or District where the alleged crimes had occurred. This meant that any legal action against Jefferson Davis had to be before a civil court in Virginia; "encumbered by legal technicalities and inevitable embarrassments of the law", as Holt would say; and what would be the effect if the Arch Rebel were found Not Guilty? Perhaps the government would lose more than it gained if a conviction failed to come about. It only required one juror to abort a trial. Moreover, treason per se would be a tough charge to prove. Indeed, it was still constitutionally unclear if treason was a derivative of secession, notwithstanding four years of bloody argument. Civil trials are risky business (Brings to mind the O.J. Simpson case); and even if Davis were to be convicted and executed, he would undoubtedly become a martyr creating a range of other problems, perhaps even further armed combat. A decision to go slow and consider alternatives seemed advisable. Davis and his alleged co-conspirator, Clement Clay remained confined at Fort Monroe, but now occupied much more comfortable quarters, both physically and legally.

In the 1860's Supreme Court justices were assigned duty in the off-season as Circuit Court judges; and by coincidence, Salmon Chase's circuit was the State of Virginia. Chase decided to "drag his feet" in the scheduling of Davis' trial. Judge Holt, whose services were no longer needed in the Davis matter, was nevertheless attempting to rehabilitate his key witness Conover just in case, but without

success. Otherwise, he remained busy with purely military legal affairs. (In Feb. 67, Conover was tried, convicted and sentenced to 10 years for lying under oath, pardoned in Feb.69.) Several other actions were proposed during this interim. One suggestion by Congressman Thad Stevens was to back away from capital punishment altogether and to acquire properties of those indicted to redistribute to African Americans. This did not fly because it was well known that President Andrew Johnson did not like Negroes.

Johnson was in fact a deep seeded racist; as such his wartime loyalty to the Union and his early post war comments about punishing former rebels soon gave way to an attitude of combined forgiveness and amnesty to them, with resistance to any plan to ensure the social and political uplift of the recently freed black people. The main reason Chase was delaying the Davis trial was that he knew that if the civil court case was lost, and there was a good chance of that, he would be blamed; and if he won, Johnson would pardon Davis anyway, thus having the best of either political world.

On 9 July 68 the 14th amendment to the Constitution was ratified. Section 3 states: "No person shall ...hold elective office in the U.S...who shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof ..." That was exactly what Chase was looking for as a way out; since he could now reason that any further court action and penalty would place J. Davis in double jeopardy. (And *everyone* knows that to deny a politician the right to hold office is a punishment worse than death!) Last chapter was the formality of dismissing the case, *nolle prosequi*, (no prosecution) on 15 Feb. 69. The final last chapter occurred when Jimmie Carter restored the unrepentant rebel's citizenship in 1978.

Judge Joseph Holt was brevetted Major General for faithful, meritorious and distinguished service. He continued in office until 1 Dec.75, and died 1 Aug. 94, age 87. It is interesting to note that one of those who praised Holt the most in later years was one of those

who had done the most to have prevented him from bringing Jefferson Davis to trial. He was Lincoln's former AG James Speed.

References:

- "Lincoln's Avengers" by E. D. Leonard, 2004
- "Why Didn't the North Hang Some Rebels" by William Blair, 2004
- "His Name is Still Mudd" by E. J. Steers, 1997
- "No Treason in Civil War" Cooper Union Paper by Gerrit Smith, 1865

Bob Williams: 2-24-07



Brigadier General Joseph Holt
The U. S. Judge Advocate General



An Excursion with the Diplomatic Corps

The members of the Diplomatic Corps were frequently asked by their governments as to whether the war so long protracted, was not beginning to exhaust the energies of the combatants.

The Secretary of State had often told them that they could learn little of the true state of the country by spending their summer vacations at Newport, Cape May, Saratoga, and other places of fashionable resort, and had often advised them to leave the seaboard and the great cities, and visit the rural regions of the interior. He saw how difficult it was for them to realize that the country was not becoming exhausted, or that the causes which led to the draft riots in New York City, July 1863] might not be at work in every town.

When he invited them to accompany him on a visit to his home, in Central New York [State], "the heart of the North," several of them signified that they would go with willingness and pleasure.

Some of the diplomatic gentlemen started with him in a special car from Washington, others joined the party at New York [City]. Its number varied at different stages of the journey, but Lord Lyons, the British Minister; M. Mercier, the French Minister; Senor Tassara, the Spanish Minister; Commander Bertinatti, the Italian Envoy; Mr. Schleiden, the Minister from the Hanseatic Cities; Mr. Stoeckl, the diplomatic representative of Russia; Count Piper, the Swedish Minister; and Mr. Molina, the Central American representative, continued through nearly the whole journey.

They visited New York [State] and its vicinity; they went up the Hudson [River], then through the Valley of the Mohawk, then over the hills into Otsego County. They saw Albany, Schenectady, and Little Falls, visited Sharon Springs and Trenton Falls; they spent a night at Cooperstown and sailed on Otsego Lake. They went to Utica, Rome, and Syracuse. They stopped at Auburn, visited Seneca Falls and Geneva, traversed Cayuga and Seneca Lakes, saw the mills and factories of Rochester, and the harbour at Buffalo swarming with like craft, and having its [grain] elevators in full operation.

Hospitalities were showered upon them, more than they could accept. Serenades greeted them in the evening, with kindly invitations for the morrow. But every day's ride was a volume of instruction. Hundred of factories with whirring wheels, thousands of acres of golden harvest fields, miles of railway trains laden with freight, busy fleets on rivers, lakes, and canals, all showed a period of unexampled commercial activity and prosperity.

Then the [American] flag flying everywhere, the drum heard everywhere, the recruiting offices open and busy; the churches the hospitals, the commissions, and the benevolent associations, all labouring for the soldiers' care and comfort; all attested the resources of an Empire, and the self-reliant patriotism of a great Republic.

One of the ministers, writing to his government, said, "The resources of the Northern States, instead of being exhausted, seem practically inexhaustible."

A photograph of the party on the rocks at Trenton Falls hangs in my library and another at Auburn [New York State]. [See Harper's line drawing based on photo]

Reminiscences of A War-Time Statesman and Diplomat, 1830-1915.

By Frederick W. Seward,
Assistant Secretary of state during the Administrations of Lincoln, Johnson and Hayes
and son of the Secretary of State, William H. Seward.
Submitted by Terry Bowen