

civil or military courts? The victim was not an ordinary citizen. He was the Commander-in-Chief of the Armies of the Union, which, at that time, numbered more than a million men. The crime was most extraordinary; the times were equally so. Every substantial consideration of justice and fairness and common sense demanded that the military arm of the Government should try the accused, and deal with them according to the facts.

That Mrs. Surratt had a fairer trial before a military court than she would have had before the civil tribunals at that time, is, to my mind, unquestionable. In the midst of the fearful excitement of that hour the place of greatest calm was military headquarters. The soldiers were the peace-officers of the times. They quelled mobs, they prevented lynchings. Such was the upturned condition of society that judicial calmness was more to be expected from trained and experienced officers of the army than from a civil magistrate and a jury.

In the opinion I gave as Attorney-General of the United States upon this question, this language is used:

"It is manifest, from what has been said, that military tribunals exist under and according to the laws and usages of war in the interest of justice and mercy. They are established to save human life and to prevent cruelty as far as possible."

The following language is also used:

"That the judgments of such tribunals may have been sometimes harsh, and sometimes even tyrannical, does not prove that they ought not to exist, nor does it prove that they are not constituted in the interest of justice and mercy. Considering the power that the laws of war give over secret participants in hostilities, such as banditti, guerrillas, spies, etc., the position of a commander would be miserable indeed if he could not call to his aid the judgments of such tribunals. He would become a mere butcher of men, without the power to ascertain justice, and there can be no mercy where there is no justice. War, in its mildest form, is horrible, but take away from the contending armies the ability and right to organize what is now known as the Bureau of Military Justice, they would become monstrous savages, unrestrained by any and all ideas of law and justice. Surely no lover of mankind, no one who respects law and order, no one who has the instincts of justice or who can be softened by mercy would, in time of war, take away from the commanders the right to organize military tribunals of justice; and especially such tribunals for the protection of persons charged or suspected of being secret foes and participants in hostilities."

That opinion set forth that armies have to deal not only with open, active enemies in the field, but also with secret enemies—spies, brigands, bushwhackers, assassins; that the military arm of the United States was put forth to deal with the assassins of the Presi-