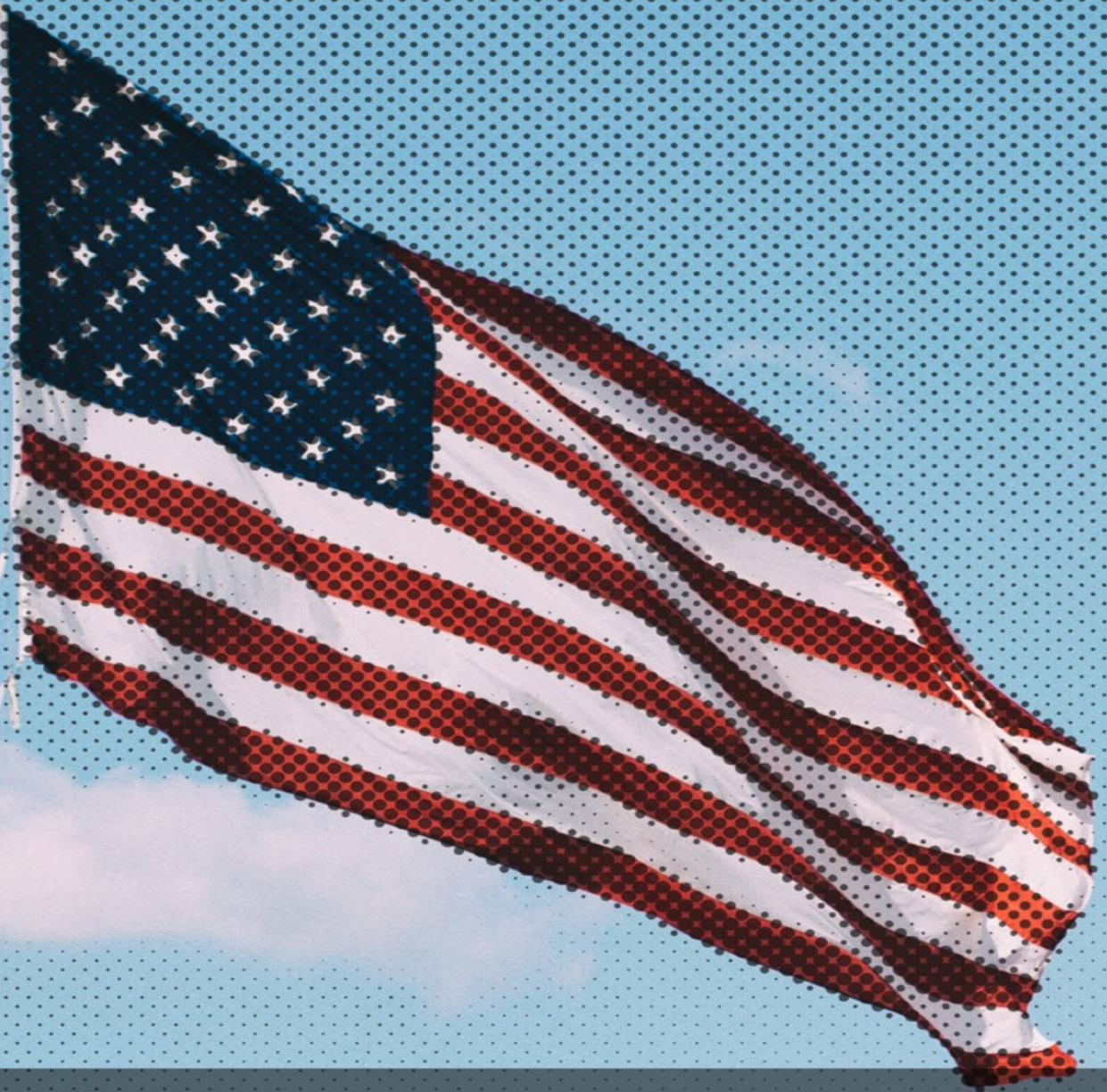


Benn Pitman



*The Assassination
of President Lincoln
and the Trial
of the Conspirators*

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The Assassination of President Lincoln and the Trial of the Conspirators

General Ewing's Closing Statement to Court



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May it please the Court: If it be determined to take jurisdiction here, it then becomes a question vitally important to some of these parties - a question of life and death - whether you will punish only offenses created and declared by law, or whether you will make and declare the past acts of the accused to be crimes, which acts the law never heretofore declared criminal: attach to them the penalty of death, or such penalty as may seem meet to you; adapt the evidence to the crime and the crime to the evidence, and thus convict and punish. This, I greatly fear may be the purpose, especially since the Judge Advocate said, in reply to my inquiries, that he would expect to convict "under the common law of war." This is a term unknown to our language—a quiddity—wholly undefined and incapable of definition. It is, in short, just what the Judge Advocate chooses to make of it. It may create a fictitious crime, and attach to it arbitrary and extreme punishment-and who shall gainsay it? The laws of war-namely, our Articles of War-and the habitual practice and mode of proceeding under them, are familiar to us all; but I know nothing, and never heard or read of a common law of war, as a code or system under which military courts or commissions in this country can take and exercise

jurisdiction not given them by express legal enactment or constitutional grant. But I still hope the law is to govern, and if it do, I feel that my clients are still safe.

I will now proceed to show you, that on the part of one of my clients - Dr. Mudd - no crime known to the law, and for which it is pretended to prosecute, can possibly have been committed. Though not distinctly informed as to the offense for which the Judge Advocate claims conviction, I am safe in saying, that the testimony does not point to treason, and if he is being tried for treason, the proceedings for that crime are widely departed from. The prosecution appears to have been instituted and conducted under the proclamation of the Secretary of War, of April 20, 1866. This makes it a crime, punishable with death, to harbor or screen Booth, Atzerodt, or Herold, or to aid or assist them to escape. It makes it a crime to do a particular act, and punishes that crime with death. I suppose we must take this proclamation as law. Perhaps it is part of what the Judge Advocate means when he speaks of the "common law of war." If this be so, my clients are still safe, if we be allowed to construe it as laws are construed by courts of justice. But I will show, first, that Dr. Mudd is not, and cannot possibly be, guilty of any offense known to the law.

1. Not of treason. The overt act attempted to be alleged is the murder of the President. The proof is conclusive, that at the time the tragedy was enacted Dr. Mudd was at his residence in the country, thirty miles from the place of the crime. Those who committed it are shown to have acted for themselves, not as the instruments of Dr. Mudd. He, therefore cannot be charged, according to law and upon the