Sir:

My attention ~~having~~ has been called by your Excellency, to an appendix to your Annual Message, in relation to the pardon of the ~~st~~ convicts Thom and Lineberry, in which a statement is made implying at least, improper conduct upon my part as Judge of the Superior Court of the 7th Judicial District, at the time of their conviction —

Your Excellency is aware of an unfortunate misunderstanding which at one time existed between us, arising in part out of this very matter, which in the view I ~~was~~ took of our relations prevented my offering any explanation of my conduct in the premises — This having been now removed I desire to give you an explanation of ~~my conduct in the premises.~~ the same

Early in my official term, my attention

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to the question involved in this case, to wit, the right of a defendant who has pleaded guilty to a ~~the~~ criminal charge, and to have investigated it as carefully as it was able— My conviction then was, and it has since had no reason to change it, that the authority of a judge to allow the plea of guilty when one entered to be withdrawn was very doubtful. ~~If he had~~ and that if he had such power its exercise was dependent solely upon his discretion — To

Whether the former proposition be correct or not I am satisfied that the latter will be not controverted by any. It is not a right of the defendant, nor can one to whom it is denied complain that he is debarred from a fair trial by the refusal —

If, however, even this position be ~~correct~~ erroneous, the defendants still had a sufficient remedy by an appeal to the Supreme Court who would have reversed any decision, if erroneous —

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and given the defendant a new trial—

The question then arises whether it was an improper use of the discretion vested in me. If it be a matter of discretion, it is of course not to be supposed that such liberty to withdraw will be granted as a matter of course — what then should influence a judge's discretion in granting or refusing ~~such request~~ it.

I take it there are but two considerations which should influence a judge to grant such request — to wit:

1st The consideration of public justice, as when the offence is such that the circumstances as such as not peremptorily demand the punishment of the offender — if actually guilty. In such case it might be sound discretion to allow the defendant to withdraw to take advantage of an accident by which he might be acquitted, as for instance the absence of the States witnesses —

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2 – Where there was reasonable doubt in the mind of the judge of the actual guilt of the ~~prisoner~~ defendant. – I say actual guilt, because I believe, that whatever his power, no judge acting in the interests of public justice, would properly exercise his discretion, if he permitted a defendant, of whose guilt there was no doubt in his mind, charged with an offence, requiring punishment, either by its enormity or the frequency of its ~~commission~~ perpetration to withdraw his plea of guilty, for the purpose of taking advantage of any such accident –

It remains then to consider whether my action in this case was in accordance with these principle which should govern the exercise of a sound discretion –

The circumstances of the case are these – The parties – Thomas ~~and~~ Sinebury – were brought before me as a committing Magistrate, and

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upon the trial after being duly cautioned specifically admitted the charges against them which they had also admitted previously to others also — & with — assault and Battery while going disguised —
So that I was fully informed of their actual guilt outside of the plea entered in the case.
Again, the crime, as your Excellency is aware was at that time and both before and for a short time afterwards fearfully prevalent especially in that portion of the State — It was a part of that great moral epidemic, whose ravages awakened such terror with many and have left such sincere sorrow and regret ~~with~~ ~~all~~ in the hearts of all. At that time it was an undecided question when or where or how this great terror would end. The minds of good men — of men who now look back with shuddering horror upon the memories of those times were then so influenced that many joined in and others encouraged the most fearful atrocities. To look back upon it is a sad and sickening page which every honest and patriotic heart

would now make haste to forget - Then it was a great and awful problem with which no mind was able to grapple successfully, — a cloud hanging over the future and shrouding it in impervious gloom. —

I felt therefore that it was a crime which public justice and peace demanded imperatively that persons actually guilty of the offence should receive the penalty of the law - Of this as before stated, I was left in no kind of doubt -.

Again, these men were colored. From the spirit which attended this great outburst of anomalous crime, and the relations which my own political affiliations - were supposed to ~~go~~ impose upon me, and which were not infrequently attributed to me by prejudiced or malicious persons - rendered it peculiarly incumbent upon me to act in such manner that there might be no room for attributing to me ~~—~~ any partiality in the discharge of my duty toward those who might be

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and who, I have since learned, were of the same political faith with myself — that I might not seem to ~~seem in any~~ ~~[illegible]~~ extend to one a privilege I had frequently denied to others.

I may say here, that this motion had several times before that been denied to ~~me~~ other defendants by me. I mentioned one can at least at the time of refusing this — I will also say that the plea of Guilty had been duly entered and not a mere submission —

There is, however, another view to be taken of this matter, which from the tone of your Excellency's message undoubtedly affected your statement of the matter — viz: That the Solicitor had agreed not to pray judgment if the defendants should plead guilty — Perhaps under ordinary circumstances this ~~consideration~~ view should have more force than in this case — My own hostility and aversion to all of those arrangements, compromises and agreements between the prosecution and defence, in criminal actions, which smack so much of the idea of giving and taking

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of the duties and rule of public justice
is a matter of universal notoriety in
the District where I have the honor to preside
I have frequently announced from the bench
that I would not recognize any agreement
made with the Solicitor on account of
that officer having acceded thereto - As I
then remarked, the Solicitor was not author-
ized to publish out the judgments of the court.
The defendants were represented both in the court
and as I understand in the negotiations with
the Solicitor, by able counsel who well knew
this fact - Indeed they admitted their knowledge
of it at the time only insisting that I should
make an exception in their favor by reason
of the penalty attached to the crime -
I would say too in behalf of the Solicitor that
he distinctly denied at that time any arrange-
ment or agreement except that he would
not pray
~~suspend~~ the judgment if that course met
the approbation of the Court -
In this view it bore the complexion to me of
an attempt to ~~bring~~ use the alleged agreement with
the Solicitor - & be that robust it might

have been, — as a lever to induce the court to mercy — or indulgence — to see if the court would not for once relax its opposition to such arrangements — and, failing in that — to take advantage of a possible accident to acquit confessed guilty felons —

After this was refused the Solicitor seeming to ~~be~~ be loth to pass judgment I did inform that officer that if he declined to do so I would direct some one else to represent the State — I will also add that I should assuredly have punished him for contempt had he done so —

This may or may not have been a just exercise of my discretion, if I had any, in refusing to allow the plea to be withdrawn. Candid minds will place themselves in my position before they decide that fact — but I must respectfully insist that in my view it does not justify your Excellency's implication that they were "refused a fair trial", or prevented from securing it

by my action —

At the time of passing sentence I stated my regret that the minimum sentence was so severe — five years in the Penitentiary — and believing it a severer punishment than was demanded either by considerations of public safety or the enormity of the offence. At the same time I assured the counsel of the defendants that after some fixed period — I think one year — I would cheerfully do all in my power to secure their pardon and release — which promise as your Excellency is well aware I strictly and faithfully fulfilled —

I insist therefore that the language of your Excellency does me injustice owing as I fully believe to circumstances which prevented ~~their~~ my view of the facts from coming to your knowledge —

I have, Your Excellency, few grounds for self gratulation or pride - I had however cherished with peculiar pleasure the idea that, having entered upon the duties of my responsible office under circumstances of the utmost difficulty — difficulty ~~~~ only those who can retrace in their own memories. — the past five years in our state, can appreciate, — I had been able to administer its functions as to leave little grounds for serious reason from just minds — and had by ~~~~ a faithful upright and impartial course been able in a great degree to change hostility to friendliness ~~~~ and prejudice and distrust into respect and confidence — Of this I had received I had received, numerous and marked and testimonials ~~~~ from Your Excellency's conduct and words —

Your Excellency can judge ~~~~ there from

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how sincere and bitter was my re-
gret on learning the harsh implica-
tion contained in your message—
~~If it would~~

Draft of letter
intended to have
been sent to Gov
Tod Caldwell
but never sent