

The Trial of John H. Surratt

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Perhaps history will never record a more singular spectacle than the trial of John H. Surratt for participation in the conspiracy to murder Abraham Lincoln. A beardless boy, but recently passed his majority, without experience and without a career—fresh from the halls of college—charged with conspiring with one of the greatest actors of modern times to remove one of the colossal figures of the nineteenth century from the world's stage; nor was the trial of Surratt one whit less dramatic because it was perforce removed by a span of two years from the tragedy. Indeed, these intervening years had but stimulated the interest, aided by events which seemed to weave around the ill-fated youth the web of guilt. His mother, in response to the swift verdict of a military commission that had been still more swiftly called into being, had already paid the extreme penalty of the law. Surratt himself, escaping into Canada, was shielded for several months by a Catholic priest, notwithstanding the public press of the continent announced that an almost fabulous sum was offered for the surrender of him who thus fled to the Church for protection. Then came his clandestine departure from Canada, the anxious months of wandering in disguises and under assumed names in many foreign countries; the sleepless efforts of this country to apprehend him; his final service in the ranks of the Papal Zouaves in the guise of a private soldier; his betrayal in this far-off retreat by a friend of his early years and a guest in his boyhood home; his prompt surrender to this government by Cardinal Antonelli, Secretary of the Papal States, who, horrified at the enormity of the crime with which he was charged, ordered his arrest without even waiting for a formal demand; his escape from his guards by leaping down some Tarpeian precipice in the Eternal City; his precipitate departure by way of Naples and Malta to Alexandria in Egypt, where he was again arrested through the efforts of the United States Consul, whereupon he was manacled and brought home in a United

States ship of war to stand trial—three continents having proven powerless to shield him from his pursuers.

Still there were some who dared to think that this hunted man, who manufactured evidence against himself by flight and disguise, was innocent, and that his mother's greatest offense consisted in the fact that she, in a desire to support her fatherless children, kept a boarding house in Washington, where John Wilkes Booth and his co-conspirators hatched their damnable conspiracy against Lincoln and his Cabinet.

To the play "The American Cousin" must belong the melancholy distinction of being the last in this world upon which the great War President fixed his eyes. Booth was not one of the actors in this play on the night of the assassination, but it is one of the many strange facts connected with this tragedy that less than a month before Booth and his company were at the same theatre in "The Apostate," in which the former took the leading part, "Piscaria." On that fateful night, Friday, April 14, 1865, the presidential party consisted of Henry R. Rathbone, Brevet-Lieutenant Colonel and Miss Harris—a stepson and daughter respectively of Senator Harris, of New York—the President and Mrs. Lincoln. General Grant had been invited by the President to accompany him, and it was Booth's purpose to kill them both; so that the former was only saved from the assassin's bullet by a telegram received that very day, summoning him to Philadelphia on urgent business. As the party entered a little late, the actors stopped playing, and the audience arose amid vociferous cheering, while the band played "Hail to the Chief." This spontaneous demonstration of a country's love was not sufficient to lift the gloom in which it is now known the President was enshrouded—for some shadowy warning of the coming doom had approached his mysterious spirit but a few nights before. The President had called together his Cabinet, and we are told that he was in good spirits because Appomattox and the fall of Richmond were but recent events, but he expressed anxiety to hear from General Sherman. Upon being reassured by General Grant, who was present, that the news from General Sherman would be all right, he remarked that he thought some great disaster was coming upon the country, and informed his Cabinet that the same dream had come

to him in the darkness of the nights that had preceded the battles of Bull Run, Stone River and Chancellorsville. The President added, "This same dream came to me last night in my sleep, and I feel that some great calamity is to befall the Nation, in which I am to be personally affected." In a few hours afterwards he did not hear from Sherman, but the dream came true and led his great spirit to the God who gave it.

Eye witnesses who testified at the trial tell us that the President sat tranquil in his box; and well he might, for on the very day of his assassination, according to General Grant, Mr. Lincoln was with his Cabinet devising means of leniency and adopting methods calculated to bring about lasting peace between the two sections. As further illustrating the President's attitude towards the vanquished, it may be well to pause momentarily in this narrative, leaving the pathetic face of the President intent upon the play, long enough to quote language that he himself uttered but a short time before: "Fondly do we hope and fervently do we pray that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled up by the bondsman's 250 years of unrequited toil should be sunk, and until every drop of blood drawn with the sword, as was said 3,000 years ago, so still it must be said, 'the judgments of the Lord are true and righteous altogether.' With malice toward none, with charity to all, and with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to care for him who shall have borne the battle and for his widow and orphan; to do all that which may cherish a just and lasting peace among ourselves and with all nations."

The play was well advanced and the hour of ten was near, when John Wilkes Booth, armed with pistol and knife, passed rapidly from the door of Ford's old theatre and entered the President's box. One cruel shot was fired, and this entered the President's head, rendering him immediately unconscious, from which condition he did not recover at any time prior to his death. The sentiment expressed in that hour of death by Secretary Stanton, who stood at his bedside—"And now he belongs to the ages"—has become the verdict of all mankind. Upon hearing the shot, Major Rathbone was the first to rush

forward and grapple with Booth, who, in the attempt to stab him with the knife, inflicted instead a deep flesh wound in his arm. At this juncture something happened almost Providential, which made the early apprehension of Booth certain. The President's box had been draped with an American flag, and it was in the graceful folds of this national emblem that Booth's foot was caught as he leaped to the stage, causing him to fall and break his leg. But for this circumstance the known daring and intrepidity of the man would, in all probability, have enabled him to elude his pursuers altogether; and, notwithstanding this serious accident, his iron determination enabled him to reach his horse in the rear of the theatre, by means of which he escaped to Maryland and Virginia, with what tragic consequences to himself—being shot down like a hunted animal in a barn, where he had taken refuge—the limits of this paper do not permit us to pursue. The remorse that lashed his conscience during these last days may well be gathered from his dying declaration: "Tell my mother I died for my country and did what I believed to be best. Poor hunted man. Can God forgive me? Perhaps He can, but man can not."

Such is the tragedy briefly told. It is not surprising that official Washington believed that a huge conspiracy was on foot to subvert the very foundations of the Government. The passion of the hour was intensified by the activity of the White House which branded innocent but highly placed personages with treasonable conduct. The hysteria reached its climax when President Johnson issued a proclamation on May 2, 1865, which contained the astounding preamble:

"Whereas it appears from evidence in the Bureau of Military Justice that the atrocious murder of the late President, Abraham Lincoln, and the attempted assassination of the Hon. William H. Seward, Secretary of State, were incited, concerted, and procured by and between Jefferson Davis, late of Richmond, Va., and Jacob Thompson, Clement C. Clay, Beverly Tucker, George N. Saunders, William C. Cleary, and other rebels and traitors against the Government of the United States harbored in Canada."

The evidence upon which this accusation was made against persons of unblemished reputations, some of whom had occupied high positions in the Federal Government, was carefully withheld from the public by the Bureau of Military Justice,

thereby depriving the accused of the opportunity of exposing the falsity of the testimony by which the President was deceived into issuing his proclamation. The evidence consisted in the testimony of three witnesses and that it was untrustworthy is now universally accepted. That the Government placed no reliance upon it, may be inferred from the fact that Mr. Davis and Mr. Clay were prisoners in its power at the time, and were not even brought to trial. Moreover, those who assert that Mr. Davis and his associates were parties to this crime will have considerable difficulty in overcoming the conclusions reached by Nicolay and Hay in their "Life of Lincoln" (1890), wherein the assertion is made that such complicity was not proven. If further proof of the attitude of the South toward this crime were needed, one might refer to the fact that thirteen thousand Confederate prisoners at Point Lookout met together and passed resolutions of sympathy for the President's family, and expressed in no uncertain language their abhorrence of the deed. Leading counsel for the Government in the trial of Surratt expressed his entire willingness to try the prisoner before a "jury of rebel prisoners," feeling confident that their verdict would be that of guilty.

So intense, however, was the desire to punish some one, that the late General William H. Payne, than whom no knightlier soul drew his sword for the Confederacy, was with difficulty rescued from the fury of the mob by his old friend, General Hancock, because one of the conspirators had deliberately chosen his family name in order, it is believed, that color might be given to the story that prominent Southern leaders were back of the conspiracy. If occupying a high position in the councils of the South was sufficient reason for a proclamation clothed with all the authority of presidential sanction charging Mr. Davis and others with being assassins, and if one whose only offense consisted in the identity of name with the Payne who made the dastardly attempt upon the life of Secretary Seward was a fit subject for temporary incarceration and humiliation, with how much greater reason might suspicion be lodged against one who was known to be intimate with and an admirer of the arch conspirator of them all?

The ardent temperament of Booth well qualified him for the perilous undertaking. He was one of those who had aided in the capture of John Brown, and his engagements in Southern States had enlisted his sympathy for the South almost to the point of a dethronement of his reason. Other circumstances caused suspicion to be directed against Surratt, consisting in his frequent communications, both private and confidential, with the other conspirators, and his avowed malice toward the Government in general, and Abraham Lincoln in particular. Surratt had known Booth for nearly a year, and the influence exerted by the latter over him was strange and powerful. Contemporaries tell us that the great actor exerted an unconscious but not the less potent and wonderful spell over those with whom he came in contact. To his manly accomplishments were added in a striking degree the marvelous gifts that made him illustrious in his profession, which, even in that day, netted him the magnificent sum of twenty thousand dollars a year. Withal, he possessed the manners and education of a gentleman. A welcomed frequenter of the drawing rooms in the Capital City, his control over men was known to have been exceeded only by the weird fascination he exerted over the other sex.

Surratt's complicity was further strengthened by the conceded fact that he was a member of the conspiracy to abduct the President. From the standpoint of one who desired to advance the Southern cause, such a plan was not altogether illogical, for the North, in order to weaken the Confederacy, had refused to exchange prisoners, and it was thought by Booth and his associates long before the assassination was ever dreamed of that if Mr. Lincoln could be kidnapped and taken South, such an exchange could be readily brought about, to the tremendous advantage of the Southern States. The South, having no resources whereby to furnish all the necessaries of life to its own soldiers, to say nothing of those who were prisoners of war, offered to surrender up to the North from ten to twenty thousand prisoners, provided only the United States would furnish transportation facilities from Savannah. It is sufficient to say that this whole scheme of kidnapping was abandoned, and that Surratt, on the day of the assassination, at least by the great preponderance of evidence produced at the trial, was several

hundred miles from Washington, not far from the Canadian border.

To the trial attached extraordinary interest, not only because of the eminence of the victim, the youth and romantic wanderings of the prisoner, but because from his conviction must necessarily follow a sort of justification of the verdict of the Military Commission, which had in a most summary manner already sent four of the alleged conspirators to the gallows and consigned others to a life sentence in the penitentiary. The prominence that the tragic fate of Mrs. Surratt was given in the trial of her son may be gathered by the following language of Mr. R. T. Merrick, one of the leading counsel for the defense, in his address to the jury:

"The District Attorney would break the ceremonies of the tomb by demanding your verdict against Mrs. Surratt. In God's name, isn't it enough to try the living? Will you play the gnome and bring her from the cold, cold earth and hang her corpse? Bring her in, but there is no occasion for doing so; she is here already. We have felt our blood run cold as the rustling of the garments from the grave swept by us. Her spirit moves about and the Judge Advocate-General may shudder before her because she is with him by day and night; and he may say:

'Avaunt! and quit my sight! Let the earth hide thee!
Thy bones are marrowless; thy blood is cold.'

But the cold blood and the marrowless bones are still beside him, and her whisperings are presaging that great judgment day when all men shall stand equal before the throne of God, and when Mrs. Surratt is called to testify against Joseph Holt, what will he in vindication say?"

Surratt enjoyed the enviable distinction of being the first one charged with this bloody crime to be tried by a jury, and there was a natural desire to thus vindicate in this regular manner the findings of the Commission, upon the righteousness of whose conclusions so much suspicion had been cast. Those who defended the Commission asserted that a fair trial in the Criminal Courts of the District of Columbia was impossible, on account of the many Southern sympathizers who resided there. Indeed, so strong was this feeling that prominent men advocated that the seat of Government be changed from Washington to some point west of the Alleghenies. It was further urged that the Commission was ordered by President Johnson, who

presented the records of its findings to his Cabinet, and that every member of the Cabinet voted to confirm the findings. It is a fact that when it was suggested by some member of the Commission, in consequence of the age and sex of Mrs. Surratt, it might be well to change the sentence to imprisonment for life, the President persisted in signing the warrant for her execution. So strong was the feeling that a reprieve would be granted that the commanding general of the army had horsemen stationed at every square on the way from the White House to the arsenal, in the vain hope that at the last moment the President might change his mind, whereupon the glad message was to be conveyed to the scaffold with the swiftness of the wind. On the other hand, it was urged by those who favored a regular jury trial for all these alleged conspirators that the imputation of disloyalty against the District of Columbia could not be sustained. When it was feared that Lincoln could not be safely inaugurated, it was the people of the District, aided by a small band of regulars under General Scott, who made his first inauguration possible; and the very first to respond to the call made by President Lincoln for men were the Union Volunteers of the District of Columbia, and these were the first men to invade the enemy's territory. It was further pointed out by those who charged that the findings of this Commission were little short of judicial murder, that the Courts of the District of Columbia were not under the control of the Confederacy, and that it was at no time impossible to have within the District a fair and impartial trial; finally, that no usage of war could sanction a Military Commission in that District, loyal as it was to the authority of the Government, for any offense whatever committed by a citizen in civil life, as was the case with Mrs. Surratt, who was in no wise connected with the military service.

This latter contention was supported by the Supreme Court of the United States in holding unconstitutional a Military Commission organized under similar conditions in Indiana, in the well-known case of Milligan. That case invoked the constitutional provision that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury." In view of this latter decision, the anxiety of those conducting the prosecution of Surratt might be better imagined than stated.

An examination into the evidence against Mrs. Surratt leaves no sort of doubt as to her innocence. In his dying breath, Louis Payne, whose attack on Secretary Seward had nothing to relieve it from the full measure of atrocity, declared this poor woman ignorant of the whole horrible affair. The chief witness against her at the proceedings before the Commission was Louis J. Weichmann, a man who added to the infamy of being a *particeps criminis* in the crime of assassination, the betrayal of his associations by turning State's evidence. An inmate of the Surratt home on H Street, having been introduced to the motherly woman who presided there by her son, being treated as a member of the family, and as such nursed to life by the very woman he afterwards betrayed, his subsequent conduct has caused him to sink into infamy too complete for rescue. He made a statement a short time after his testimony against Mrs. Surratt that such testimony was a tissue of lies, and was exacted from him by the threat that if he did not swear to it he would be indicted for conspiracy along with the rest of them.

Surratt was fortunate in the lawyers who represented him at the trial, but his good fortune in this respect seems to be due wholly to the untiring devotion of a sister, upon whom, unaided and alone, rested the crushing responsibility not only of vindicating the memory of a mother who now occupied a felon's grave, but of saving from a similar fate the brother and companion of her youth. Mr. Richard T. Merrick, of the Washington Bar, quoted from above, had taken a conspicuous part with other lawyers of national reputation in the famous Hayes-Tilden controversy. Another of counsel was Mr. Joseph Bradley, who had, during a career of forty years at the Bar, won laurels enough to retire without embarking in a case the defense of which was at once so arduous and unpopular. He was called, however, from a practical retirement by the knowledge that the family was without means to compensate him and by the pathetic appeals of this sister. Much bitterness was unfortunately engendered during the progress of the trial between himself and the judge who presided, and Mr. Bradley, thinking that the latter had offered him an insult, threatened to chastise him. This personal altercation led to a challenge from Mr. Bradley to Judge Fisher, delivered to the latter but a few minutes after the close of the

trial, but, fortunately, the duel was never fought. The challenge, however, under the laws of the District of Columbia, exposed the sender to the punishment of five years in the penitentiary with hard labor. The incident resulted in Mr. Bradley's disbarment from the Courts in which he had for nearly half a century distinguished himself, and it was not until 1871—four years after the trial—that he was restored to his former status at the District of Columbia Bar by action of the Supreme Court of the United States, to which his case had been appealed. Even then he was disbarred from practising in the Criminal Court.

It would far transcend the limits of this paper to make any detailed examination of the evidence which embraced the testimony of more than three hundred witnesses, and it is perhaps sufficient to say that two points were developed in this testimony which show beyond all reasonable doubt that Surratt was innocent. It has already been stated that Surratt was a member of the conspiracy to kidnap the President. Two days before the assassination he was in Canada, where he received word that the plan of abduction had been abandoned a month before. In Montreal he received a letter calling him to Washington. En route, while at Elmira, New York—four hundred miles away—he received news of the assassination. That Surratt was not even made acquainted with the new plan of his fellow conspirators in the abduction appeared from the testimony of the Government witnesses themselves. When this conspiracy was formed there was still a lingering hope that the Confederacy would be established; hence the scheme to effect an exchange of prisoners. But soon after the conspiracy was hatched, Richmond fell and Lee surrendered, the former taking place on the fourth and the latter event on the ninth of April. When Booth saw that all hope for the Confederacy had gone, his mind seemed to have been inflamed by the reflection that what he had loved and supported was destroyed; and, believing and desiring that he might do something great in his profession, like unto Brutus, that would immortalize his name, he conceived the plan of killing the President, but only, it is evident, after all other plans had failed. His diary should set forever at rest any possible doubt as to the guilt of Surratt. This diary is dated April 14,

15—Friday the Idea—and is as follows: "Until today nothing was ever thought of sacrificing to our country's wrongs. For six months we have worked to capture, but our cause being almost lost, something decisive and great must be done * * * I care not what becomes of me. I have no desire to outlive my country." What motive could Booth have in telling a lie upon this subject, that could in no manner benefit him or another? The circumstances all showed that until that day he had not thought of the crime of assassination.

The feeling adverted to above, engendered during the progress of the trial between the Court and counsel for the defense, may be further inferred from the following language of the Court in its final charge to the jury:

"Much stress has also been laid by the counsel for the defense upon the fact which they assert, that during the progress of this trial more than one hundred and fifty exceptions have been taken to the ruling of the Court, concerning the admissibility of evidence. If they have found themselves under the necessity of calculating the number of these exceptions, and parading them before you, with a view of having you to render a verdict according to irrelevant evidence not before you rather than according to the legal evidence which you have heard, I have no disposition to criticize their taste, but I leave them to present their case in their own way. At the same time, I feel it my duty to remark to you that if counsel will be so bold as to present propositions to the Court which every tyro in the profession ought to know are untenable, it does not necessarily follow that the judge must always be so weak as to sustain them. It has heretofore been supposed that exceptions to the ruling of a judge at *nisi prius* were intended to be passed in review before the appellate tribunal. I have never before known them to be neatly calculated and presented to the jury by way of argument."

Too much can not be said by way of commendation of the brilliant manner in which this case was conducted, both for the prosecution and the defense. Mr. Merrick's address to the jury was a model of impassioned eloquence, and concluded in the following language:

"Gentlemen of the jury, I invoke for the prisoner not your mercy, but your most deliberate judgment. There has been blood enough in this case. No man can measure with larger dimensions than myself the enormity of the crime which was committed in the murder of Abraham Lincoln. Already four have been hung,

and others suffer punishment, some for a term of years, and some for life. I repeat, there has been blood enough. Think, gentlemen, of what disasters have fallen upon this young man. Three years ago, within the limits of this city, there was a quiet wedding. Around the hearth was gathered a happy band. A mother blessed it with a mother's love. Her gentle daughter, budding into womanhood, gave to the scene the sweet hues of her devoted smile. Beside her sat a brother, just bursting into the promise of a man. Think, gentlemen, what has transpired since that night. The bright fire is quenched and gone, the hearth is desolate, the mother sleeps in a nameless, felon's grave, the daughter drags out a weary life with a broken heart, and the son is before you pleading for his life. But, gentlemen, as I have said, duty performed must be with you forever. If he is guilty convict him; if he is innocent acquit him. May the Eternal God so guide your judgments and enlighten your convictions that the remembrance of this day and the day of your verdict may hereafter and forever be a sweet and pleasant recollection."

It is well known that this trial resulted on August 10, 1867, in a failure of the jury to agree, whereupon Surratt was remanded to jail, bail having been at first refused, but he was subsequently released and again indicted, this time for murder. The case was, however, finally dismissed at the instance of the Government. Not content with this double failure to punish the only person charged with this crime to be tried before a civil tribunal by a jury of his peers, at the instance of the United States, Surratt was the third time indicted for the crime of engaging in rebellion, but these proceedings also proved abortive and Surratt was again discharged and was not thereafter molested. Perhaps it occurred to those engaged in this last prosecution against Surratt that when once the Government fully embarked upon the prosecution of all those engaged in rebellion there would be such a volume of business in the Criminal Courts of the Country that there would be no opportunity for the trial of those charged with any other offense. Perhaps also the magnanimous spirit displayed by General Grant in brusquely stating that he would resign his commission if Jefferson Davis were tried for treason did much to insure amnesty to those participating in the Secession movement.