

1954

Book Review: *The Case of Mrs. Surratt*

James A. Lake

University of Nebraska College of Law

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

James A. Lake, *Book Review: The Case of Mrs. Surratt*, 34 Neb. L. Rev. 157 (1954)

Available at: <https://digitalcommons.unl.edu/nlr/vol34/iss1/20>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

The Case of Mrs. Surratt, Guy W. Moore. Norman, Oklahoma: University of Oklahoma Press, 1954. Pp. xi, 142.

On July 7, 1865 the lives of three men and a frail and almost unconscious woman, were deliberately ended by the hangman's noose operating from a hastily built quadruple scaffold near the north wall of what is now Fort Lesley McNair in the nation's capital, Washington, D.C.. Thus ended the life of the Maryland widow who was accused, convicted and condemned for having a part in the assassination of Abraham Lincoln. Her death did not end the case, and this book is the last of a long procession dedicated either to the task of justifying the conviction and punishment, or to the mission of denouncing the trial as a travesty upon justice. It is safe to say it will not be the last to deal with the subject.

The book's purpose is to determine the question of whether Mary E. Surratt was "guilty or innocent." For the lawyer the question might have been better put in terms of whether the evidence demonstrated her guilt beyond a reasonable doubt. Whatever test is chosen, preponderance or beyond a reasonable doubt, the author's conclusion is unqualified. To Guy Moore Mrs. Surratt was "... as innocent of any part in the assassination ... as anything can be which is not subject to absolute proof."¹ Whether such a conclusion will strike a favorable note in those who read the book will not be answered one way or the other with unanimity. Basically no new facts are presented, although there are some inferences supplied by the author which have not been suggested before. From most attorneys any expression of approval or condemnation of the case would have to await a more complete first hand review of the evidence in the case. It could not be expected that the author in one hundred eighteen pages of print would find space to include verbatim accounts of the testimony.

This book should cause a law-trained person to pause and consider the legal machinery which heard the evidence in the case, rendered the verdict and caused the execution to take place. In many respects a trial which created such unfavorable comment as did this one, does harm by creating popular doubts about the fairness of the administration of justice under man-made rules. An exploration of the popular attitudes toward the administration of criminal justice and the reasons behind these public beliefs are far more important in the long run than a re-

¹ Moore, *The Case of Mrs. Surratt* 102 (1954).

examination of individual cases long after time has passed for doing anything about the errors committed in their adjudication. Historical research, such as this book, are invaluable for the lessons they contain. By examining the story of our legal past we can plan and chart the course for the future with more assurance that the same mistake will not be made twice. What was the procedure and machinery employed in this trial?

Mary E. Surratt was tried by a military commission of nine military men. It adopted some of its own rules of procedure. It adopted a rule which closed the proceedings to the press, although there was such a great outcry of anguish from the New York and Washington newspapers that this order was rescinded. Some testimony was still received in secret however. The commission overruled the argument that it had no jurisdiction since the civil courts were open. There is some evidence that counsel was not allowed to consult privately with the accused. It is gratifying to note that the defendants were granted the right to counsel. The accused were notified of the charges against them only a short time before the trial opened. Mary Surratt was not permitted to testify in her own behalf. And during the course of the trial much time was spent proving that the assassination plot was instigated by the confederate leaders—a side issue which served only to confuse issues and make an impartial administration of justice difficult.

On July 6, 1865 at five o'clock in the afternoon counsel for Mrs. Surratt learned of her fate. By then the execution was scheduled for July 7th. Counsel for the woman obtained a writ of habeas corpus from a federal judge at two in the morning, which was served upon the commander in charge of the prison two hours later. At ten o'clock the same morning President Johnson suspended the writ in the case and two hours later the order suspending the writ was delivered to the judge issuing the writ. No review of the finding of the commission was ever had. In fact there is good reason to suppose that a commission recommendation to President Johnson that he commute Mrs. Surratt's sentence to life was never delivered to him for action. The execution was carried out as scheduled.

Since 1865 there have been some signposts of progress. *Ex Parte Miligan* removed military commissions from the administration of civilian criminal justice in important areas.² The right

²⁴ Wall. 2 (U.S. 1866). It is interesting to note that John Surratt, Mary Surratt's Son, was tried in June of 1867 for his part in the con-

to counsel is firmly rooted and growing, and it includes the right to have adequate time and conditions for the preparation of a defense.³ And more adequate provisions have been enacted for the review of cases properly heard by military authorities.⁴ Defendants in criminal prosecutions are now competent witnesses in their own behalf should they desire to take the stand.

As we look behind us at the case of Mary E. Surratt we are apt to view it as a relic of a by-gone day—something better forgotten. It has present day significance in that it shows with graphic clearness the road of progress that has been traveled since it transpired. It demonstrates that progress has been made in the struggle to mete out justice to offenders while at the same time safeguarding the basic rights of those accused of wrongdoing. Much still remains which may be granted persons charged with the criminal acts without damage to the right of the public to be safe in their lives and homes, but the Surratt case history shows that we have not been standing still during the past eighty-nine years. It would be too much of a simplification to suggest that the trial of this woman alone was responsible for the progress made. Progress is generally the aftermath of an accumulation of events which all point to the necessity of action. The case of Mary Surratt was only one of these events, but it was no less important than any single one of the others.

James A. Lake⁵

spiracy. He was tried before the regular civil courts. Much of the evidence against him consisted of the same testimony as that produced against his mother. The case was dropped by the government after the jury could not agree and John Surratt went free.

³ See, e.g., Fellman, *The Constitutional Right to Counsel in Federal Courts*, 30 *Neb. L. Rev.* 559 (1951).

⁴ See the *Uniform Code of Military Justice*, 64 *Stat.* 108 (1950), 50 *U.S.C.* §§ 551-741 (1953).

⁵ Associate Professor of Law, University of Nebraska.

THE ANSWER TO YOUR TAX QUESTIONS
INCOME—ESTATE—GIFT—EXCESS PROFIT—RENEGOTIATION

TAX COURT DIGEST

13 volumes

KEPT TO DATE

Your Secretary will love it,—not a looseleaf service.

FOR THE ATTORNEY, ACCOUNTANT and TRUST OFFICER

Think of the thousands of decisions made and questions answered in the Tax Court,—so few in the U. S. Circuit Court of Appeals, fewer in the U. S. Supreme Court. The Tax Court decisions are digested in the Tax Court Digest. All appealed decisions from the Tax Court are noted—affirmed or reversed, by the higher courts.

If you have a case in point, the volume containing the Table of Cases cites the other cases on the particular subject.

The set is self-indexing by title, major sub-head with minor subdivisions on the title. Last Volume Number 13 will be ready for delivery in November.

BE A REAL TAX EXPERT THE SURE AND EASY WAY!

Pre-publication price

\$225.00

J. B. STEELE

116 N.W. Second Street, No. 204

Oklahoma City, Okla.

THE BOBBS-MERRILL COMPANY INC.

INDIANAPOLIS . INDIANA

Publishers

ESTABLISHED 1838