

0. FREDERICK AIKEN and the TRIAL of MARY SURRETT -
Story Preface

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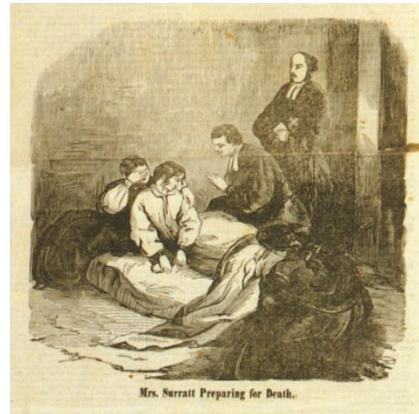
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The *National Police Gazette's* issue of July 15, 1865 ran this illustration. It purports to show "Mrs. Surratt Preparing for Death." We cannot be sure whether this drawing depicts an actual scene, in the prison cell, or whether it is an artist's interpretation. Among other visitors, such as her daughter Anna, Mrs. Surratt would have seen her spiritual advisors Father Wiget and Father Walter. Online via the Library of Congress.

Mary Surratt hired a well-respected lawyer to defend her before the military commission. Reverdy Johnson - also a U.S. Senator from Maryland - was seriously opposed to trying the defendants before a group of Union generals. Although he gave a long and impassioned plea against the process, on Mary's behalf, it was of no use.

The head judge - Major General David Hunter - was a close friend (and pall bearer) of President Lincoln. He had no interest in hearing arguments that President Johnson's order - requiring military justice in the Surratt matter - was wrong. And ... he had no problem with the dual roles of Joseph Holt (as chief prosecutor and impartial legal advisor to the tribunal) - at least, not initially.

After making his jurisdictional plea, Reverdy Johnson turned Mary Surratt's defense over to Frederick Aiken, a young lawyer with little (or no) courtroom experience. Having served as a Union officer, during the previous four years, Aiken was hardly the best person to defend Surratt.

Despite his lack of courtroom expertise, Aiken also believed the use of a military commission to try his client was highly prejudicial. He was assisted, in Surratt's defense, by John W. Clappitt.

During the trial, all eight prisoners were incarcerated at the Old Arsenal Penitentiary. (Mary Surratt was moved there, after originally being at the Old Capitol Prison). While in their cells, four of them - Atzerodt, Herold, Powell and Spangler - were shackled (to balls and chains) while their hands were held in place (by an inflexible iron bar).

All of the prisoners - except for Mary Surratt and Dr. Mudd - were forced to wear canvas hoods covering their head and face. Only midway through the trial was that order - issued by Edwin Stanton - set aside.

Of all the witnesses against the defendants, the two former prisoners who made a deal - Louis Weichmann and John Lloyd - were the most damaging against Mary Surratt. Weichmann said that Booth, the assassin, frequently talked privately with Mary, at her boardinghouse. The last time he saw Mrs. Surratt confer with Booth was the afternoon of the shooting.

Weichmann testified that he drove Mrs. Surratt to Surrattsville twice during the last week of the President's life, including just a few hours before the assassination (after he saw her with Booth). Why was she there?

Some witnesses said Mary had financial business to transact at Surrattsville, and letters along those lines seemed to back-up that claim. But John Lloyd - Mary's tenant - said she had another reason to visit Surrattsville on April 14th.

As Lloyd told the tribunal, Mrs. Surratt advised him that someone would call for "the shooting irons" - which were hidden in the house/tavern/inn he was renting from her - during the late evening of April 14. And ... she said ... when those persons came for the guns, Lloyd needed to turn over the small package Mary had given Lloyd that afternoon. The package, which Lloyd said he'd unwrapped after Mary left, contained a set of binoculars.

Fred Aiken did the best he could to discredit Lloyd. Many witnesses testified he was very drunk before Mary

Surratt arrived at her property that afternoon. Further, the way he told the story was itself unclear, raising the likelihood of reasonable doubt. But this was not a civilian trial, where reasonable doubt plays a key role. This was a military tribunal where evidence is assessed differently.

Arguing for his client, Aiken summarized the **prosecution's three points against Surratt** [and reminded the tribunal of his defense to each]:

- **Mary Surratt knew John Wilkes Booth** - [Many people knew him, but they weren't on trial, and the prosecutors had presented no proof that Mary knew about Booth's plot to kill Lincoln];
- **Mary didn't recognize Lewis Powell when he came to her home while the soldiers were there** - [It was dark in the hallway and Mary was known to have failing eyesight]; and
- **Mary's trip to Surrattsville on the day of the assassination was to help Booth** - [She had financial business to transact].

Pleading with the Military Commission to save his client's life, Aiken said:

Let not this first State tribunal in our country's history, which involves a woman's name, be blazoned before the world with the harsh tints of intolerance, which permits injustice.

Urging that Lincoln himself would plead with the tribunal for the life of Mary Surratt, Aiken did the job he set out to do. He convinced a majority of the voting members that his client should not die. But that was not the end of the process.

The Commission's rules required that six of the nine voting members had to agree on the verdict and the sentence. The first vote, in the Surratt case, was five to four to either acquit or to save her life if she were found guilty. That was not what Joseph Holt and Edwin Stanton were expecting.

Holt - after consulting with Stanton - suggested a compromise to the tribunal members. If the commission voted for the death penalty, they could immediately thereafter petition President Johnson for clemency. Stanton would make sure the President responded favorably.

Taking Holt at his word, the Commission agreed on Surratt's guilt and death sentence. Then, five members of the commission - Hunter, Kautz, Foster, Ekin and Tompkins - signed a clemency request. It was not acted on.

Mary Surratt's fate, as it turned out, was never in the Commission's hands.

As a last-minute effort, Aiken filed a *Writ of Habeas Corpus* which he presented to Judge Andrew Wylie. When it was granted, he thought his client might actually have a chance in a civilian court ... until President Johnson set aside the Writ with this order:

I ... do hereby declare that the writ of habeas corpus has been ... suspended in such cases as this, and I do hereby especially suspend this writ, and direct that you proceed to execute the order heretofore given upon the judgment of the Military Commission ...

Anna Surratt tried to see the President, to beg him to spare her mother's life, but she, too, was turned away. The people in charge of the federal government would not be dissuaded from their course of action.

Mary Surratt would hang - with three other defendants - on July 7, 1865.

See [Alignments to State and Common Core standards for this story online at:](http://www.awesomestories.com/asset/AcademicAlignment/FREDERICK-AIKEN-and-the-TRIAL-of-MARY-SURRATT-Conspirator-Mary-Surratt)

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See [Learning Tasks for this story online at:](http://www.awesomestories.com/asset/AcademicActivities/FREDERICK-AIKEN-and-the-TRIAL-of-MARY-SURRATT-Conspirator-Mary-Surratt)

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Media Stream



David Hunter - Head Judge, Conspiracy Trial

Image online, courtesy Library of Congress.

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Reverdy Johnson - Lawyer for Mary Surratt

Image online, Maryland State Archives.

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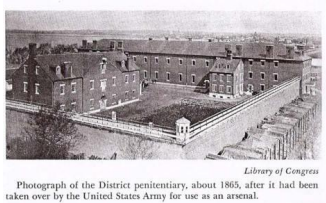
<http://www.awesomestories.com/asset/view/Reverdy-Johnson-Lawyer-for-Mary-Surratt>



Old Capitol Prison

Photo of Old Capitol Prison, online courtesy U.S. National Archives.

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Old Arsenal Penitentiary

Image of the Old Arsenal Penitentiary Yard, online courtesy Library of Congress.

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Members of the Military Commission - Surratt Trial

Photo online, courtesy Library of Congress.

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Canvas Hood - Lincoln Conspiracy Defendants

Image, and quoted passage, online courtesy Smithsonian Institute's National Museum of American History.

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August Kautz - Requested Clemency for Mary Surratt

Photo of General Kautz, by Mathew Brady, online courtesy Library of Congress.

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Robert S. Foster - Requested Clemency for Mary Surratt

Photo of General Foster, online courtesy Library of Congress.

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James Adams Ekin - Requested Clemency for Mary Surratt

Photo of James A. Eiken online, courtesy Library of Congress.

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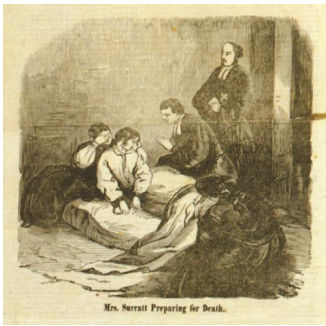


Charles H. Tompkins - Requested Clemency for Mary Surratt

Photo of Charles Henry Tompkins, online courtesy Library of Congress.

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