MARY Surratt & Dr. Samuel Mudd: Innocent Victims or Guilty Conspirators?

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I. THE CAST OF CHARACTERS

A. Mary Elizabeth Surratt, pious Washington boardinghouse keeper who "kept the nest where the plot was hatched." Her ties to earliest Washington settlers.

B. Dr. Samuel A. Mudd, kindly country physician from the "lower neck" of Maryland and ardent keeper of his Hippocratic oath. Slave owner, "retired" physician by 1865.

C. John Wilkes Booth, dashing actor and oil well investor, scion of the most prominent family in the 19th Century American theater.

D. President Abraham Lincoln, whose plan to give the vote to former slaves who served in the Union Army may have doomed him.

E. David E. Herold, small game hunter who helped Booth get away.

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G. Lewis Thornton Powell. Was this giant the lumbering oaf that was presented to the public or did he hide a deeper (and quite significant) secret? What was the significance of his earlier service with John S. Mosby and how did that play into the plotting against the President?

H. John Harrison Surratt, Jr., Rebel courier and blockade runner. What exactly was his role in the anti-Lincoln plotting? Was he really in Canada the night of the murder or was he hiding in Washington? Why didn't he come out of hiding to save his mother's life?

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IX. SUGGESTED READINGS


E. Kate Clifford Larson, The Assassin’s Accomplice, Mary Surratt and the Plot to Kill Abraham Lincoln, Basic Books, 2008.

On April 11, 1865, two days after General Lee’s surrender, Abraham Lincoln gave a speech from a window in the White House to a crowd assembled on the grounds:

We meet this evening, not in sorrow, but in gladness of heart. The evacuation of Petersburg and Richmond, and the surrender of the principal insurgent army, give hope of a righteous and speedy peace whose joyous expression cannot be restrained. In the midst of this, however, He from Whom all blessings flow, must not be forgotten...no part of the honor...is mine. To General Grant, his skilful officers, and brave men, all belongs...it is also unsatisfactory to some that the elective franchise is not given to the colored man. I would myself prefer that it were not conferred on the very intelligent, and on those who serve our cause as soldiers.¹

John Wilkes Booth was in the audience that night with David Herold, a friend who was to become one of Booth’s conspirators. Booth railed against Lincoln: “That means n***** citizenship...now, by God, I’ll put him through.” Moments later, Booth met Lewis Powell, another soon-to-be conspirator, in Lafayette Square telling him: “That is the last speech [Lincoln] will ever give.”²

When John Wilkes Booth went to Ford’s Theatre on April 14, 1865, he was motivated by anger, racism, and his own messianic-narcissistic belief he was doing the right thing in murdering Abraham Lincoln.

Why was he angry? The South had just surrendered days earlier and the War was over. His original plan to kidnap Lincoln had to be scuttled.³

Perhaps some of his anger can be traced to his Maryland heritage.

Booth grew up in Baltimore, and although Maryland remained in the Union, the state was alive with Confederate sentiment and agents.⁴ It was in Maryland that began one of the first controversies of the Civil War involving civil liberties.

¹ James Swanson, Manhunt: The Twelve Day Chase for Lincoln’s Killer (2006), pp. 5-6.

² Id. at 6.

³ Id. at 24-26.

⁴ Id. at 87-88.
As Union troops attempted to pass through Maryland, they were met with mobs of Confederate sympathizers. As a result, on April 27, 1861, Lincoln sent a letter to General Winfield Scott, authorizing the suspension of the *writ of habeas corpus*:

To the Commanding General of the Army of the United States:

You are engaged in repressing an insurrection against the laws of the United States. If at any point on or in the vicinity of the military [railroad] line, which is now used between the City of Philadelphia and the City of Washington [DC], via Perryville, Annapolis City, and Annapolis Junction, you find resistance which renders it necessary to suspend the writ of Habeas Corpus for the public safety, you, personally or through the office in command at the point where the resistance occurs, are authorized to suspend that writ.

Marylander John Merryman ran afoul of the authorities and was arrested by the army on May 25, 1861. He petitioned for a writ of habeas corpus, and it was issued by Chief Justice Roger Taney the next day. Chief Justice Taney ordered the prisoner to be produced to him the following morning, but the order was ignored. Taney then issued a contempt order against the commander of the fort where Merryman was incarcerated, but the marshal was unable to enter the fort to serve the order. In the resulting opinion, *Ex parte Merryman*, Chief Justice Taney railed against the result. Although he acknowledged that Congress had the power to suspend the writ, the executive did not. Also, the one detained was not subject to military jurisdiction, but civil jurisdiction:

And even if the privilege of the writ of *habeas corpus* was suspended by act of Congress, and a party not subject to the rules and articles of war was afterwards arrested and imprisoned by regular judicial process, he could not be detained in prison or brought to trial before a military tribunal.

Reasoned Taney:

With such provisions in the Constitution, expressed in language too clear to be misunderstood by any one, I can see no ground whatever for supposing that the President, in any emergency or in any state of things, can authorized the suspension of the privilege of the writ of habeas corpus, or arrest a citizen, except in aid of the judicial power. He certainly does not faithfully execute the laws if he takes upon himself legislative power by suspending the *writ of*

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5 17 F.Cas. 144 (CCD Md. 1861).

6 *Id.*
**habeas corpus** - and the judicial power also, by arresting and imprisoning a person without due process of law.\(^7\)

In September 1862, Lincoln issued a proclamation suspending the writ throughout the country, and Congress retroactively authorized this action in 1863.\(^8\)

The issue arose again after the war was over. The Court acknowledged that the writ could be suspended by Congress, but citizens detained upon suspension of the writ were not thereafter subject to military justice:

Unquestionably, there is then an exigency which demands that the government, if it should see fit in the exercise of a proper discretion to make arrests, should not be required to produce the persons arrested in answer to a writ of habeas corpus. The Constitution goes no further. It does not say after a writ of habeas corpus is denied a citizen, that he shall be tried otherwise than by the course of the common law; if it had intended this result, it was easy by the use of direct words to have accomplished it.\(^9\)

**Milligan** came too late for Mary Surratt. Mary Surratt was convicted by a military tribunal as one of the Lincoln assassination conspirators. She was sentenced to death. She petitioned for a writ of **habeas corpus** on the grounds that the military tribunal had no jurisdiction over her, a civilian. Although a judge did issue the writ, President Andrew Johnson then suspended it. Surratt hung the next day.\(^{10}\)

\(^7\) *Id.*

\(^8\) *Habeas Corpus Act*, ch. 80, 12 Stat.755 (1863).

\(^9\) *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 125-126 (1866).

\(^{10}\) Swanson, p. 364.
HDQRS. DETACHMENT SIXTEENTH NEW YORK CAVALRY,
Washington, D.C., April 29, 1865.

Lieut. Col. J. H. TAYLOR,

COLONEL: I have the honor to report that on Monday, April 24, 1865, I received the following order:

HDQRS. DEPARTMENT OF WASHINGTON, TWENTY-SECOND
ARMY CORPS,
April 24, 1865.

COMMANDING OFFICER DETACHMENT SIXTEENTH NEW YORK CAVALRY:

SIR: The major-general commanding directs that you detail twenty-five men, well mounted, to be commanded by a reliable and discreet commissioned officer, to report at once to Col. L. C. Baker, Special Agent, War Department, 217 Pennsylvania Avenue, opposite Willard's Hotel. Report your action.

Very respectfully, your obedient servant,

A. R. SEWALL,
Lieutenant and Acting Assistant Adjutant-General.
HEADQUARTERS DETACHMENT SIXTEENTH NEW YORK CAVALRY,
Washington, D.C., April 24, 1865.

Lieut. E. P. DOHERTY,
Sixteenth New York Cavalry:

SIR: You are hereby detailed for the duty specified in the preceding order, and will report immediately to Col. L. C. Baker for instructions.

J. SCHNEIDER,
Captain, Sixteenth New York Cavalry,
Commanding Detachment

In pursuance to the foregoing orders I reported to Colonel Baker, at the time and place specified, and received the following information and instructions. He informed me that he had reliable information that the assassin Booth and his accomplice were somewhere between the Potomac and Rappahannock Rivers. He gave me several photographs of Booth and introduced me to Mr. Conger and Mr. Baker, and said they would accompany me. He directed me to scour the section of the country indicated thoroughly, to make my own disposition of the men in my command, to forage upon the country, giving receipts for what was taken from loyal parties, and to land at or near Belle Plain at all hazards, to swim my horses ashore if I could not and otherwise, and return when I thought proper. I embarked upon the steamer John S. Ide, at Sixth-street wharf, this vessel having been plated at my disposal by the following order:

ASSISTANT QUARtermASTER'S OFFICE,
RIVER TRANSPORTATION,
Sixth-Street Wharf, Washington, D.C., April 24, 1865.

CAPTAIN OF STEAMER JOHN S. IDE:

SIR: Having received on board twenty-five men and horses, proceed down the river, subject to the orders of the officer in charge; having performed the duties required of you, return to this city and report to me.

Respectfully,

E. S. ALLEN,
Captain and Assistant Quartermaster

I then proceeded down the river to Belle Plain, and having landed my force I issued the following order to the captain commanding the vessel:
HEADQUARTERS DETACHMENT
SIXTEENTH NEW YORK CAVALRY,
Off Belle Plain, Va., April 24, 1865.

Capt. H. WILSON,
Commanding Steamer John S. Ide:

CAPTAIN: You will please moor off, after landing my command, to a place of safe anchorage, not to exceed one mile from this place, and there await further orders. Should you not receive a dispatch from me before the 26th instant at 6 p.m. return to Washington. Should you see any of the enemy's force report the fact to the gunboat. Forage will remain on board your boat.

E. P. DOHERTY,
First Lieutenant, Sixteenth New York Cavalry,
Commanding Detachment

I then proceeded in the direction of Fredericksburg, and after advancing about three miles I turned southwest and struck the Rappahannock River about twelve miles above Port Conway, 6 a.m. There I met two fishermen, who informed me of a member of surgeons living in the vicinity, and having previously learned the fact that Booth was crippled I deemed it proper to visit the different surgeons and search their premises, making such inquiries and examinations as were thought necessary; this being accomplished, and, finding no traces of the assassin or his accomplice, Mr. Conger requested me to furnish him four men and a corporal, which I did, and he moved down the Rappahannock, following its course. I then marched with the remainder of my command, making a detour of some fifteen miles by the way of King George Court-House, forming a junction with Mr. Conger at Conway's Ferry at 2 p.m.

April 25, 1865 – Up to this time we had found no trace of the assassin or his accomplice. I then stopped to feed. It was thought by the detectives that we would not find any traces of the assassins. After feeding, however, I determined to push across the ferry; Mr. Conger, one of the detectives, remained at the house. Mr. Baker, the other detective, accompanied me to the ferry, where I met a negro, who informed me that men answering the description crossed the day before, and that one of them had been into Mr. Roland's house. Mr. Baker, and myself proceeded to the house of Mr. Roland, and there, after exhibiting the photographs, we concluded that we were on their track. I dispatched three men in a small boat to bring over a scow, which was on other side of the Rappahannock River; I also dispatched one man to inform Mr. Conger that we had track of the assassins, and to come down immediately. Mr. Rollins, at the ferry, informed me that two men were brought there from Mathias Point by a negro, to whom they had paid $15, and wanted to engage him, Rollins, to take them to Orange Court-House; that he refused to go so far, but they engaged him
to take them to Bowling Green for $10; that these men showed great anxiety to get across the river, and wished him (Mr. Rollins) to use his small boat, and they would pay him extra; that Herold told him that they were brothers, and that Booth was wounded at Petersburg; that he refused his small boat for the reason he was using it putting out his fishing net; that, at about this time, three Confederate soldiers came up and shook hands with one of them. Herold then came to the house and apologized for not taking the horse and wagon, and said he had met an old schoolmate, and that they were going to ride in "twain." Mrs. Rollins said the three soldiers were Capt. Willie Jett, Lieutenants Ruggles and Bainbridge; that Captain Jett was courting a young lady by the name of Goldman, whose father kept a hotel at Bowling Green. In the meantime the horses and men were being ferried across as rapidly as possible. At 6 p.m. my whole command was across, and I moved on toward Bowling Green. On the road, absent three miles from Port Royal, I met a negro on horseback; not, wishing to lose time I rode ahead of the column and directed the negro to turn back and ride beside myself. I learned from him that the party that we were in quest of had all returned except Capt. Willie Jett (rebel). Proceeding along we arrived at a house seven miles from Bowling Green. I learned here that some of Mosby's men had been along the day before and taken three horses from three Yankee soldiers. Messrs. Conger and Baker entered the house and were informed that the party who had passed there the previous day had all returned except Captain Jett. The house of Mrs. Clark, some four miles distant, was spoken of as a place where some of the party might be. I determined, however, to push on to Bowling Green and secure the said Captain Jett. Arriving within about half a mile of the town I dismounted ten men, who were ordered to accompany Mr. Baker into the town. Mr. Conger, Rollins (the guide), and myself rode ahead and surrounded the house; the dismounted men shortly afterward arrived and surrounded the house and outhouses; this was about 12 o'clock midnight. We knocked about fifteen minutes at each door without receiving and reply; at length a negro appeared on the street who showed the way to the negro house in rear, and on entering I asked a negro where Willie was, meaning Captain Jett; he replied that he was in bed. Conger inquired where the room was. In a few moments Mrs. Goldman opened the door, and we asked for her son; she showed us up stairs, and we found Jett and her son in bed, partly undressed. We took Jett down stairs and informed him our business, telling him that if he did not forthwith inform us where the men were he should suffer; that no parley would be taken. He requested that two of the party withdraw and leave him with one, and he would make a full statement of what he knew of the assassin's whereabouts. This was granted. Mr. Baker and myself had scarcely left the room when he told Mr. Conger that he would show us the place. On learning this I took him in my own charge. His horse was got out, he was mounted, and we went back to the house of Mr. Garrett, about twelve miles from Bowling Green. I ordered my command to surround the house, and, as a precautionary measure, sent six men in rear of the barn and outbuildings. While I was placing my men around the buildings the detectives knocked at the door, which was opened by the elder Mr. Garrett, who was much excited; he said the men who had been there went to the woods the previous
evening. While engaged in conversation the son of Mr. Garrett came in, advising the father to tell where they were. I seized this man by the collar, and pulled him out of the door and down the steps, put my revolver to his head and told him to tell me at once where the two assassins were; he replied, "in the barn." I said "show me the barn." We started on the run for the barn, I holding him by the collar, calling on my men to follow me and surround more closely the building I should indicate. In the meantime another of the Garrett sons appeared, who was seized by one of the detectives and ordered to get a candle. He immediately procured a candle. On arriving at the barn I left the Garrett I had in charge with some of my men, and posted my men around the barn. This accomplished, I returned to the front of the barn, and found Garrett coming out of the barn; it appears that he had been sent in there during my absence to summon Booth to surrender. This I disapproved, as there were soldiers enough there to perform such duty. Booth, however, refused to surrender. The detectives were in favor of firing the barn, which I opposed, declaring my intention to wait until daylight and I would send my men through the four different doors and overpower the assassin, but after consultation the project of burning the building was abandoned for the time being. In the meantime considerable conversation took place concerning the surrender of Booth between Mr. Baker, myself, and the assassin. Sergt. Boston Corbett, Company L, Sixteenth New York Cavalry asked permission to enter the barn alone, which I refused. Booth all this time was very defiant and refused to surrender. At one time he said if we would draw up in line fifty paces off he would come out, adding that he was lame and had only one leg. This, however, I refused. Booth up to this time had denied there was anyone in the barn besides himself. Considerable conversation now took place between myself, Booth, and the detectives. We threatened to burn the barn if he did not surrender; at one time gave him ten minutes to make up his mind. Finally, Booth said, "Oh; Captain, there is a man here who wants to surrender awful bad:" I answered, and I think Mr. Baker did at the same time, "Hand out your arms." Herold replied, "I have none." Baker said, "We know exactly what you have got." Booth replied, "I own all the arms, and intend to use them on you gentlemen." After some little parley I said, "Let him out." Some one objected. I ordered Garrett, the younger son, who had the key, to unlock the barn, which he did. I partially opened the door, and told Herold to put out his hand, which he did. I then told him to put [out] his other hand. I took hold of both his wrists and pulled him out of the barn. Almost simultaneous with my taking Herold out of the barn the hay in the rear of the barn was ignited by Mr. Conger, and the barn fired. Sergt. Boston Corbett, Company L, Sixteenth New York Cavalry, shot the assassin Booth, wounding him in the neck. I entered the barn as soon as the shot was fired, dragging Herold with me, and found that Booth had fallen on his back. Messrs. Conger and Baker, with some of my men, entered the barn and took hold of Booth. I proceeded with Herold to find a rope to secure him, there being no irons for that purpose. The assassin Booth lived about two hours. In the meantime a doctor was procured, who remained with Booth till he died. I procured a wagon, sewed up the body in a blanket myself, and placed it in the wagon. I then proceeded to Port Royal, where we arrived at 9 a.m. April 26, 1865, and crossed the river in a
scow. While crossing my command Mr. Baker, without authority, moved off with the body of the assassin, taking with him the two men who had been previously detailed as a guard to the body, also one of the prisoners (Captain Jett, rebel). I was some time crossing my command, and experienced some difficulty in bringing Herold and the two Garretts along, having only one horse to mount the three; thus delay was occasioned. After proceeding some distance I procured an additional horse. Fearing some accident might happen to the body of the assassin and the prisoner Jett, whom Mr. Baker had taken with him. I dispatched an orderly to tell Mr. Baker to halt. The orderly rode over four miles at full speed, when, overtaking Mr. Baker, he told him to halt until the column came up. This Mr. Baker, however, did not do, but continued on missing me and the road. I arrived at Belle Plain at 6 p.m., and found the corpse had not yet arrived. I felt great anxiety, and was about to apply to Major Bosworth, Sixteenth New York Cavalry, who was at Belle Plain with his command, for a detachment of men to go in search of the body, when Mr. Baker arrived. I immediately asked him where the prisoner, Captain Jett, was. He replied, "he did not know; he had escaped." After a short delay the body of the assassin Booth was placed on board the steamer John S. Ide, and we proceeded to Washington, where I delivered over the body of Booth, Herold, and the two Garretts to Col. L. C. Baker, at 3 a.m. the 27th day of April, 1865.

The command consisted of twenty-six enlisted men of the Sixteenth New York Cavalry, and myself, the two gentlemen, Messrs. Conger and Baker, sent by Colonel Baker, making a total in all of twenty-nine men.

I would say that great credit is due to all concerned for the fortitude and eagerness they displayed in pursuing and arresting the murderers. For nearly sixty hours hardly an eye was closed or a horse dismounted until the errand was accomplished.

I would call the attention of the commanding general to the efficiency of Sergt. Boston Corbett, Company I, Sixteenth New York Cavalry, who was untiring in his efforts to bring the murderers to justice. His soldierly qualifications have been tested before this occasion, and, in my judgment, are second to none in the service. Mr. Rollins, at Port Conway, is also worthy of notice for his willingness to impart all the information he possessed.

In conclusion I beg to state that it has afforded my command and myself inexpressible pleasure to be the humble instruments of capturing the foul assassins who caused the death of our beloved President and plunged the nation in mourning.

All of which is respectfully submitted.

EDWARD P. DOHERTY,
First Lieut., Sixteenth New York Cavalry, Comdg. Detachment.
U.S. v. Surratt, 27 Fed. Cas 1367 (1865)

Mary Surratt owned a tavern/boarding house in southern Maryland that was frequented by John Wilkes Booth and other individuals implicated in the plot to assassinate President Abraham Lincoln and other officials in his administration. She was tried before a military tribunal in 1865 for conspiracy to assassinate the President and sentenced to be hanged. At the last minute, her lawyers obtained a writ of habeas corpus from Judge Andrew Wylie who sat on the court now known as the U.S. District Court for the District of Columbia. A writ of habeas corpus allows individuals to challenge the legality of their confinement in court.

Surratt argued that, as a civilian, she should have been tried before a civilian court, as opposed to a military court. In reaction to court's orders, President Andrew Johnson suspended the writ of habeas corpus. The Constitution permits the writ to be suspended under certain circumstances, e.g., during time of war. However, there is debate over who has the legitimate authority to do so, the Congress or the President. The Court deferred to the actions of the President, and Mary Surratt, along with three other conspirators, was hanged on July 7, 1865.
WASHINGTON, D. C., JULY 7, 1865.

To the Hon. Andrew Wylie, one of the Justices of the Supreme Court in the District of Columbia:

The petition of Mary E. Surratt, by her counsel F. A. Aiken and John W. Clampitt, most respectfully represents unto your Honor, that on or about the 17th day of April, A. D. 1865, your petitioner was arrested by the military authorities of the United States, under the charge of complicity with the murder of Abraham Lincoln, late President of the United States, and has ever since that time been and is now confined on said charge, under and by virtue of the said military power of the United States, and is in the special custody of Major-General W. S. Hancock, commanding Middle Military Division; that since her said arrest your petitioner has been tried, against her solemn protest, by a Military Commission, unlawfully and without warrant, convened by the Secretary of War, as will appear from paragraph 9, Special Orders, No. 211, dated War Department, Adjutant-General's Office, Washington, May the 6th, 1865, and by said Commission, notwithstanding her formal plea to the jurisdiction of the said Commission, is now unlawfully and unjustifiably detained in custody and sentenced to be hanged on to-morrow, July 7th, 1865, between the hours of 10 A. M. and 2 P. M.; your petitioner shows unto your Honor that at the time and of the commission of the said offense she was a private citizen of the United States, and in no manner connected with the military authority of same, and that said offense was committed within the District of Columbia, said District of Columbia being at the time within the lines of the armies of the United States, and not enemy's territory, or under the control of a military commander for the trial of civil causes. But, on the contrary, your petitioner alleges that the said crime was an offense simply against the peace of the United States, properly and solely cognizable under the Constitution and laws of the United States, by the Criminal Court of this district, and which said court was and is now open for the trial of such crimes and offenses. Wherefore, inasmuch as the said crime was only an offense against the peace of the United States, and not an act of war; inasmuch as your petitioner was a private citizen of the same, and not subject to military jurisdiction, or in any wise amenable to military law; inasmuch as said District was the peaceable territory of the United States, and that all crimes committed within such territory are, under the Constitution and laws of the United States, to be tried only before its criminal tribunals, with the right of public trial by jury; inasmuch as said Commission was a Military Commission, organized and governed by the laws of military court-martial, and unlawfully convened without warrant or authority, and when she had not the right of public trial by jury as guaranteed to her by the Constitution and laws of the United States, that, therefore, her detention and
sentence are so without warrant against positive law and unjustifiable: wherefore she prays your Honor to grant unto her the United States' most gracious writ of habeas corpus, commanding the said Major-General W. S. Hancock to produce before your Honor the body of your said petitioner, with the cause and day of her said detention, to abide, etc., and she will ever pray.

MARY E. SURRATT.

By FREDERICK A. AIKEN, JOHN W. CLAMPITT.

Indorsed.— Let the writ issue as prayed, returnable before the Criminal Court of the District of Columbia, now sitting, at the hour of 10 o'clock A. M., this 7th day of July, 1865.

ANDREW WYLIE,
A Justice of the Supreme Court of the District of Columbia.

JULY 7TH, 1865.

At half-past 11 o'clock on the morning of the 7th of July, Major-General Hancock, accompanied by Attorney-General Speed, appeared before Judge Wylie in obedience to the writ, and made the following return:

Headquarters Middle Military Division, Washington, D. C., July 7, 1865.

To Hon. Andrew Wylie, Justice of the Supreme Court of the District of Columbia:

I hereby acknowledge the service of the writ hereto attached and return the same, and respectfully say that the body of Mary E. Surratt is in my possession, under and by virtue of an order of Andrew Johnson, President of the United States and Commander-in-chief of the Army and Navy, for the purposes in said order expressed, a copy of which is hereto attached and made part of this return; and that I do not produce said body by reason of the order of the President of the United States, indorsed upon said writ, to which reference is hereby respectfully made, dated July 7th, 1865.

W. S. HANCOCK,
THE PRESIDENT'S INDOREMENT.

EXECUTIVE OFFICE, JULY 7, 1865, 10 A. M.

To Major-General W. S. Hancock, Commander, etc.:

I, Andrew Johnson, President of the United States, do hereby declare that the writ of habeas corpus has been heretofore suspended in such cases as this, and direct that you proceed to execute the order heretofore given upon the judgment of the Military Commission, and you will give this order in return to the writ.

ANDREW JOHNSON, President.

The Court ruled that it yielded to the suspension of the writ of habeas corpus by the President of the United States.

The sentences were duly carried into execution.