

# BACK STORY

## THE CONSPIRATOR, FROM A LEGAL PERSPECTIVE

FILM REVIEW BY MARK A. HINUEBER, ESQ.

As a 1L, I vividly recall standing, early in a criminal law class, to argue for a conviction in a simple assault and battery hypothetical. Pleased with my efforts, I sat down, only to have the professor, Judge George Leighton, a longtime Chicago civil rights and criminal defense attorney, motion me back to my feet.

“Good job, counsel,” he intoned. “Now argue just as strongly for the defendant’s acquittal.”

“But, your honor,” I objected. “I think he’s guilty based on these facts.”

The esteemed jurist smiled and then proceeded to use my 1L naiveté as a teaching moment on the duty of all lawyers to vigorously represent any person accused, in order to maintain the integrity of our system of fairness and justice. It was a lesson for life and one I was reminded of while watching “The Conspirator,” a new historical film directed by Robert Redford, which opens nationwide April 15.

The movie tells the story of Frederick Aiken, (James McAvoy) a former Union officer, pressed into the defense of Mary Surratt, (Robin Wright) in whose Washington boarding house John Wilkes Booth met with others, including Surratt’s son, John, before the assassination of President Lincoln.

The movie shows Aiken’s obvious discomfort when he is called upon by Senator Reverdy Johnson of Maryland (Tom Wilkinson) to defend Mrs. Surratt who is charged in the conspiracy to assassinate Lincoln. Aiken protests that she is likely guilty and that the northern public wants a conviction for the killing of the beloved president. But Senator Johnson urges him to the task.

Begrudgingly, Aiken accepts the duty of defending a person who the people of the north and the popular press of the day have already mentally convicted for her role in the plot to kill the president. His early visits to her jail cell bristle with the tension between a reluctant Aiken and his new client, who has already guessed what likely lies in store for her.

The lessons of the movie are still timely. A weary and frightened nation wants swift retribution after the death of the president and an end to threats against peace. Aiken is forced to defend Mrs. Surratt before a military tribunal, itself beholden to Secretary of War Edwin Stanton (Kevin Kline), who is intent on burying Mrs. Surratt, literally and figuratively. At

every turn, Aiken is frustrated by rulings from the military tribunal that weaken his case. He faces the prospect of defending his client without her, since she is not allowed to testify on her own behalf. The normal rules of civilian courts do not apply since President Johnson ruled that the assassination was committed during a time of war.

Aiken is confronted with a string of witnesses whose seemingly damning testimony is given more credibility than is warranted by the military court, despite his strong impeachment efforts. During his examination of Mrs. Surratt’s daughter, Anna, the tribunal stations uniformed soldiers in front of the accused, in order to prevent mother and daughter from seeing each other. The defendants are brought to court in hoods.

Over the course of his defense, Aiken seems to realize that the case against Mrs. Surratt is more about her son, John, and his flight from prosecution. Her guilt or innocence hangs in the balance. Aiken also watches his place in Washington society slowly fade, harmed by his vigorous

defense; yet he presses forward even in the face of losing the woman he loves. He presses on because he soon comes to realize that he is not defending one woman, who may well be guilty, he is defending the Constitution of the United States, in which he believes wholeheartedly.

The film is the first from The American Film Company, which hopes to give accurate portrayals of screen events in American history. Their first effort is to be applauded for shedding light on this little known episode in American legal history.

“The Conspirator” is not the average Friday night, multiplex movie. It requires a close attention to what our rule of law means. As one character quotes, *inter arma enim silent leges*: in times of war, the law falls silent. The lesson for all lawyers in the film is that the duty to zealously represent your client does not fade in the face of conflict, be it an external one of harsh public opinion or a struggle against one’s own inner voice as to the client’s guilt or innocence. ■



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