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Letter Written by Judge David McDonald to President Andrew Johnson

David McDonald
Indiana University School of Law

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INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Indianapolis, May 10, 1865.

To the President,

Sir - We learn that under a conviction by a Military Commission convened in this city last Autumn, that William A. Boker, Lambert P. Milligan, and Stephen Hovey are to be executed here on the 19th instant.

We beg leave to present you a few suggestions touching our opinion of the wisdom and policy of the course adopted in this matter.

We do not call in question the guilt of these men. And we are satisfied that their trial had a most salutary effect on the public mind by developing and defeating a most dangerous and wicked conspiracy against our government. But as the object of that trial has been fully attained, and as the whole aspect of things has since so entirely changed, we respectfully suggest that it may well be doubted whether it would be a safe and wise policy now to execute the sentence.

The Court which pronounced the sentence is a new tribunal unknown to the common law. There is no denying the fact that many learned lawyers doubt its jurisdiction over citizens unconnected with the military, as these men were. We express no opinion on this question.

It is due, however, to ourselves to say that we have given it sufficient consideration to be satisfied that it is not clear of difficulty. No citizen, yet tried by a military tribunal has, as we believe, been executed. Would it not be ^{wiser} to defer the execution of these men until the Supreme Court of the United States have passed on the question of the jurisdiction of the Court that tried them.

If these men are executed now, and the Federal Judiciary should hereafter deny the jurisdiction under which they were tried, the Government would be justly chargeable with lawless oppression.

We understand that the parties convicted intend to institute proceedings by which the question of jurisdiction can be tested in the Supreme Court of the United States, if the execution be delayed long enough for a hearing there. We would most respectfully, but earnestly, urge the wisdom and justice of giving them time to be heard before that tribunal. In this case, we can not see how a few months delay can be prejudicial to the cause of public justice. But we can very well see that if these men are executed now, and if hereafter the authority of the Military tribunal, on whose sentence the execution is had, should be judicially denied, a stain on the national character would be the consequence.

This, too, is a mode of conviction so unusual and extraordinary among our people, that, no doubt, many of our good citizens would deem it harsh and revolting; whereas if it had been in the usual course of criminal justice in our civil courts, we do not doubt that the people would very generally acquiesce. And the same would be true if the execution were delayed till the Supreme ^{court} has adjudged that the sentence ought to be executed.

We beg leave, also, most respectfully to state that, aside from the legal question which we press most earnestly, we doubt the policy of the proposed execution. * The opposition party in Indiana is compact and strong. These men, if executed now, would be, by this party, held as martyrs and heroes; and thus the party, instead of being weakened and disorganized by the execution, would be embittered, strengthened, and consolidated by it. *

We earnestly pray for the success of your administration, and for the restoration of the authority of the Government. And actuated by a sincere desire that no error may be committed on the part of the United States which might hereafter be regretted, we have felt it our duty, as your friends, as judicial officers, and as citizens, in all good faith and good will to lay the foregoing suggestions before you.

* We fear its effect upon the public mind of Indiana will be as follows: By many, these men will be again deemed as political martyrs. Every thing now, in this State, is quiet & peaceable.

*

Copy of letter to
President Johnson
May 11, 1863

This must have been
written by Judge McDevitt.
1st copy
2^d copy

Alvord