Lambdin P. Milligan was a civilian, a resident of Indiana, and violently opposed the Civil War. In 1864, he was arrested by the order of General Hovey, the commander of the military district of Indiana. Milligan was part of a plot to free Confederate war prisoners and overthrow three state governments.

Even though state courts were still functioning and even though Lambdin P. Milligan was a civilian, he was tried in a military court, found guilty, and sentenced to death. The sentence was approved by President Andrew Johnson.

Nine days before the hanging, Milligan petitioned the United States Circuit Court for a writ of habeas corpus.

"Habeas corpus is an order requiring that a prisoner be brought before a court at a stated time and place to decide on the legality of his or her detention."

Milligan claimed that the proceedings of his conviction were unconstitutional and that he was denied the right of a trial by jury. As a citizen of Indiana, who was not in the military, Milligan claimed he should not have been tried in a military court. He appealed his case to the United States Supreme Court.
• The Constitution gives Congress the power to declare war... to raise armies to fight the war.

• In order to carry on a war, the federal government often assumes powers that would be illegal in times of peace.

• When the federal government expands its power in time of war, the Supreme Court most often does not declare its acts unconstitutional.

• It is understood that the federal government's power will expand in times of war in order to successfully wage war.

• For example, President Abraham Lincoln took many actions that would have been unconstitutional in peacetime.

> Article I, Section 9, Paragraph 2
"...privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

> "No graver question was ever considered by this Court, nor one which more nearly concerns the rights of the whole people; for it is the birthright of every American citizen when charged with a crime to be punished according to law..."

> From The Constitution

It looks like Lamb P. Milligan is going to the gallows pole!

Student

For the first time, the Supreme Court faced a decision involving the right of the president to suspend the writ of habeas corpus and to substitute the authority of a military court for that of a civilian court,
Justice David Davis declared that Congress had not granted to the nation's military courts the power to try civilians, and indeed could not do so, especially so long as civilian courts were still operating.

"One of the plainest constitutional privileges was, therefore, infringed when Milligan was tried by a court not ordained and established by Congress... Such action destroys every guarantee of the Constitution, and effectively renders the military independent of and superior to the civil power."

Yes, in a great crisis... there should be a power somewhere of suspending the writ of habeas corpus... but in this case, such power was to be exercised by the judiciary. And yes, there may be circumstances in which the courts might be closed and civil authority overthrown, thus making government by martial law necessary. Even then, military rule should be strictly limited to the place where the crisis occurred and last only for the duration of the crisis. Quite simply, military rule cannot be imposed while civil authority still operates.

So, what does this mean for me?

Milligan's death sentence had been commuted to life imprisonment by President Johnson in June 1865. After being released as part or as a result of the Supreme Court decision, Milligan sued General Hovey for unlawful imprisonment and won, but the damages awarded were nominal.
1. State three facts about Lambdin P. Milligan.

2. State three facts about General Hovey.

3. Why was Lambdin P. Milligan arrested?

4. What was the sentence given Milligan by the military court?

5. Why did Milligan appeal his case?

6. What was the Supreme Court's decision in the case?

7. What position did the Supreme Court take concerning the use of military or martial law?

8. If General Hovey's decision to try Milligan in a military court was so clearly unconstitutional, why do you think he did not bring Milligan before a civil court?

9. Describe a situation in which military rule would take precedence over civilian authority according to the Court's ruling.

10. Why do you think the privilege of the writ of habeas corpus is an important part of the Constitution?
The Dissenting Opinion

"Chief Justice Salmon P. Chase, writing for the four members of the Court who dissented, held that Congress could extend military authority in Indiana under its war powers without diminishing Bill of Rights protections. It was up to Congress, not the courts, to make this decision."

II - For the four justices who dissented, who was responsible for deciding whether military courts could try civilians?

12 - Your Decision – [in the space below, write your opinion on the case]