

Handout C: Milligan and the Constitution

Directions: Read the scenario below. Even though Congress authorized the President to suspend *habeas corpus* with the passage of the *Habeas Corpus Act* in 1863, did the President have the power to hold Mr. Milligan and try him in a military court? Use the documents below, along with information from **Handouts A** and **B**, to prepare an argument for or against the President.

It is 1866. Mr. Milligan has been charged with conspiracy against the United States government; affording aid and comfort to rebels against authority of the U.S.; inciting insurrection; disloyal practices; and violation of the laws of war.

Mr. Milligan is a private citizen living in Indiana. He is not connected with military service, and had not been a resident of any of the states in the rebellion or a prisoner of war. He was not participating in hostile activities against the U.S. when he was captured.

Mr. Milligan has petitioned the Supreme Court for a writ of *habeas corpus*.

Sections of the United States Constitution (1787)

Article I, Section 8. The Congress shall have power to ... provide for the common defense and general welfare of the United States...

Article I, Section 9. ...The 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.

Article II, Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states...

Article II, Section 3. [The President] shall take care that the laws be faithfully executed...

Amendment VI (1791). In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.