

Handout D: Case Briefing Sheet

Document/Event	Does this support my case? Why or why not?
Article I, Section 8 and 9	These sections of the Constitution could support Milligan's case because the power to provide for the common defense, and the limit on power to suspend writs of <i>habeas corpus</i> , appear in Article I with the powers of Congress and not the President. These sections could also support the government's case, as Congress did suspend <i>habeas corpus</i> in 1863. Additionally, the Constitution permits suspensions of <i>habeas corpus</i> in cases of rebellion.
Article II, Section 2	This section could support the government's case, as the nation is at war and the President is Commander in Chief. This section could also support Milligan's case because Milligan is not a member of the military and therefore the President has no power to try him in a military court.
Article II, Section 3	This section could support the government's case because the President has a duty to enforce the laws, and in his view the civil police force and justice system are incapable of effectively keeping order. This section could also support Milligan's case because the President's duty to enforce the laws includes ensuring that the Constitution's due process protections are enforced.
The Sixth Amendment	This amendment could support the government's case because the situation is not a criminal prosecution. This amendment could also support Milligan's case because he is a private citizen and should have all the protections for accused persons guaranteed by the Sixth Amendment.
Other information: e.g. history, precedent	Students may suggest the traditional privilege of <i>habeas corpus</i> ; the ongoing Civil War, the legal precedent of <i>ex parte Merryman</i> ; and others, most of which could be used to support either side.