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INDIANA TREASON TRIALS

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN HISTORY AT BUTLER UNIVERSITY

BY

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JUNE

NINETEEN HUNDRED THIRTY-ONE
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INDIANA TREASON TRIALS.

CHAPTER I

EARLY HISTORY OF TREASONABLE ORDERS.

The noble purposes, lofty ideals, and chivalric deeds of the knights of the days of Arthur are in striking contrast to the base principles, evil designs, and traitorous actions of that secret body of knights which flourished many centuries later in our own State of Indiana. The very spirit of these later knights was antagonistic to the constitution and government of their country. Their conspiracy to overthrow the government was planned at a time when our national existence was hanging in the balance, and when our national unity depended on the loyalty and strength of every man. Their story forms the darkest page of our state's history. To understand the treason trials in Indiana, it is necessary to know something of the beginnings of the secret societies, Knights of the Golden Circle and Sons of Liberty, in Indiana, and follow their history down to the period of their overthrow.

From the beginning of the war there had been some opposition in Indiana, and as the struggle dragged on and the fate of the Union continued to hang in the balance, the disloyal spirit grew bolder. Various sentiments were expressed by county meetings in regard to the prosecution of the war. In sections where the disloyal element predominated there were many forms
of violence committed. Terrell says in his Report on the War of Rebellion that "the disaffection in the North contributed certainly in a great degree, in all probability decisively, to produce the war; and contributed still more certainly and effectively to protract it." (1) Morton said that the hopes of the Confederates were built upon dissension in the North, and they were certain that a united sentiment at home would speedily end the war. (2) "The feelings of many of the people in Indiana were not unfriendly to the South nor to her 'peculiar institution.' The State was considered one of the 'outlying provinces of slavery.'" (3) The situation in Indiana during the Civil War was a most peculiar one. Although she was a loyal State, many disloyal schemes were planned by the treasonable secret societies within her borders. As a result, the State was kept in a constant turmoil by continual internal dissension.

The Order of the Knights of the Golden Circle was organized about 1855 by Charles O. Bickley, a native of Boone County, Indiana, living in the South. He ardently espoused the cause of slavery and endeavored to bring to a more perfect state of organization the "Southern Rights" clubs which existed in various parts of the slave states. (4) These several divisions of this society were called "castles," and there were subordinate "castles" and state "castles." As set forth in

(2) Foulke, Life of Morton, I, 243.
(3) Ibid. p. 35.
(4) Ibid. p. 376.
its constitution, the general plan embodied a Southern Confederacy made up of all slave-holding states, and also the conquest of Mexico and Cuba to establish a great Southern Empire founded on slavery. (1) In 1858 the Knights became more thoroughly organized, and new members were admitted only after a probation sufficient to determine whether they could be trusted. Additional degrees were established and the "castle" was divided into "outer and inner temples." (2)

Before the time when their conquest of Mexico could be realized, the country was plunged into civil war and the original purpose was lost sight of. The organization was now rapidly extended, but the order had to be extremely careful about establishing castles in the North. At the outbreak of the war, there were several centers of disaffection in Indiana where sentiments favorable to the South were freely spoken. Prominent among these were Orange and Washington counties in the southern part of the State. (3)

In May, 1862, the Grand Jury of the United States District Court at Indianapolis reported that there were about fifteen thousand members of the Knights of the Golden Circle, and that these members had bound themselves to resist the payment of Federal taxes and to prevent enlistments. It had been observed that in neighborhoods where the organization existed there had been a failure to furnish volunteers. (4)

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(3) "Copperhead Conspiracy in the Northwest", Indiana State Library Pamphlet File No. 1, pp. 3-31.
(4) Terrell, Report on War of Rebellion, I, 286; Dunn, Indiana and Indianaans, II, 648.
After the election of 1862, the Democratic majorities in both Houses of the General Assembly were bitterly hostile to Governor Morton. An unsuccessful attempt was made by the Republicans to institute an investigation of the secret societies in the legislature. Morton received information that many of the Knights were armed and had planned to seize the arsenal. The Governor received letters warning him of an assassination plot against himself. (1) The Knights were directly responsible for many of the uprisings due to the draft which occurred during 1862 and 1863. (2) They reached their culmination in May, 1863, at the battle of Pogue's Run. A Democratic mass meeting was held in Indianapolis May 20, 1863. The secret societies had determined to make this meeting the occasion of an armed demonstration and had ordered their members to bring concealed weapons. Governor Morton learned of their intention to seize the government arms, arsenal, and stores and prepared for such an emergency by having General Haskell ready with a small Federal force. There was a gathering of ten or twelve thousand persons, and about three thousand of these were armed, but they were not organized. The mass meeting was a complete failure; several of the important speakers did not arrive. Toward the end of the meeting several soldiers, contrary to orders, entered the crowds with bayonets fixed and rifles cocked. This caused a great deal of uproar and the commanding officer succeeded in stopping

(1) Foulks, Life of Morton, I, 322-323.
(2) "Copperhead Conspiracy in the Northwest," I.S.L.Pharm.File, No. 3, pp. 1-2;
"Treason in Indiana Exposed", Indiana and the War, V, No.2, p.3.
the soldiers. When the Indiana Central train left the station, a gun was placed in front of it upon the track. A small group of soldiers and a policeman demanded the surrender of all firearms by the passengers. Nearly two hundred weapons were given up. The Cincinnati train was also stopped, many revolvers taken, and a great many were thrown by their owners into Pogue's Run at the side of the track. (1)

It was largely due to the encouragement which the Knights of the Golden Circle offered that General Morgan invaded Indiana in July, 1863. However, he did not get the assistance that he expected. The Knights were silenced and the whole State was soon in arms to resist him. (2)

In the fall of 1863, the Knights of the Golden Circle reorganized under the name of "Order of American Knights." This reorganization and change of name was brought about by the disasters which had befallen the Knights during the summer. Due to the Grand Jury investigation, many important facts had been extracted from unwilling witnesses. A report of the Grand Jury investigation was published immediately following Morgan's raid, and everything was made public. This was a severe blow, and the leaders saw that a reorganization should take place at once or the whole order would be dissolved. (3)

The Knights of the Golden Circle accomplished little besides embarrassment of the government by aiding in the recruiting

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(1) Esarey, History of Indiana, II, 781-783.
(2) Terrell, Report on War of Rebellion, I, 296;
"Treason in Indiana Exposed," Indiana and the War, V, No. 8, p. 3.
(3) Terrell's Reports, I, 287;
"Treason Exposed", Indiana and the War, V, No. 9, p. 4.
of the South. However, it served as a stepping stone to the later associations, the first of which was known as the "Order of American Knights," while the last was known as the "Sons of Liberty." It was under this latter designation that the order reached its greatest numbers and caused the greatest harm. The members of the Knights of the Golden Circle were brought together in these later and more formidable organizations, and the "Golden Circle" ceased to exist in the fall of 1863. (1)

It was in August, 1863, when P. C. Wright, editor of the New York News, came into Indiana and began at Terre Haute the organization of the Order of American Knights. (2) Wright initiated the persons at the meeting and a Grand Council was appointed to meet in Indianapolis, in September, with representatives from other localities where the organization was started. (3) At this meeting in September, Harrison Dodd was elected Grand Commander, and William M. Harrison, Grand Secretary of the Order. A "military bill" for the government of the Order was prepared, and the State was divided into four districts, each under the command of a "major-general." These appointed "brigadiers," and the "brigadiers" appointed "colonels." (4)

There were three degrees, each one having a separate initiation. (5) The evident purposes of the order, as judged

(1) Aley, Story of Indiana, P. 256;
Moore, A Century of Indiana, P. 183;
Smith, History of the State of Indiana, p. 86.
(2) "Judge Advocate's Report", Indiana and the War, V, No. 10, p. 4.
(3) Ayer, The Great Treason Plot, p. 28;
"The Great Northern Conspiracy", I.S.I. Pam. File, No. 1, pp. 1-3;
Dunn, Indiana and Indianaans, II, 648.
(4) "Judge Advocate's Report," Indiana and the War, V, No. 10, pp. 4-6.
by its ritual, were political. The principles, based upon the doctrine of State's rights, included a denial of the constitutional right of the United States to coerce a State, mutual protection against Republican aggression on the individual, and a belief in the supremacy of the white race. (1)

One of the most important pass-words of the Order was "Nu-oh-lac," or the name of Calhoun spelled backwards. This was employed upon entering a temple of the first degree. (2) There were all kinds of insignia and paraphernalia which attracted the superstitious and uncultured mind. Their emblem was made from white walnuts, by sawing out small pieces and removing the kernels. These were worn on the coat lapel. Due to this distinctive badge, the members of the organization were commonly referred to as 'butternuts.' (3) In the back districts, men and women wore homespun clothes dyed with butternut juice, and in the towns many of them wore brooches made of the shell of a butternut to denote their Southern sympathy. (4)

This Order, like its predecessor, the Knights of the Golden Circle, encouraged desertions, harbored and protected

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(1) Ibid., pp. 188-219;
Dunn, Indiana and Indianaans, p. 649;
(2) "Treason Exposed," Indiana and the War, V, No. 5, p. 5.
(4) Levering, Historic Indiana, P. 307.
deserters, discouraged enlistments, resisted the draft, circulated publications in favor of the South, gave intelligence to the Confederates, and cooperated with the enemy in raids and invasions. It also contemplated the establishment of a Northwestern Confederacy. (1)

Prominent Democrats were asked to join the Order. Joseph E. Johnson and Thomas A. Hendricks were present at the first meeting in Indianapolis by invitation. Both of these men spoke against such an organization, saying that a secret society opposed to the Administration in time of war was almost certain to drift into something treasonable, and become a source of danger rather than a protection. They felt that it would be sure to be invaded by government spies, and that any statement made in the supposed secrecy of the meeting could be the basis of a treason charge against all of the members. After speaking, they left, and about half of the people followed them. (2)

At the State Council of the Order, held in Indianapolis in November, 1863, Dr. Athon, Secretary of State, Mr. Ristine, Auditor of State, Mr. J. J. Bingham, editor of the Indianapolis Sentinel, as well as Lambdin P. Milligan and William A. Bowles, both of whom figured in the later activities of the order, were present. There were delegations from some thirty counties. (3)

(2) Dunn, Indiana and Indianaans, II, 649.
(3) Esarey, History of Indiana, II, 780-781.
At a meeting held in February, 1864, Horace Heffren of Salem, Indiana, was elected Deputy Grand Commander. (1) It was at this meeting that Harrison H. Dodd, the Grand Commander addressed the Grand Council and set forth the principles for which the Order was working. Mr. Dodd said, "The Order is to restore to the people their fireside rights, when fanatical usurpers and would-be tyrants are swept away with the rubbish. Not another dollar, not another man for this nefarious war. The hour for daring deeds is not distant. Sons of Liberty, arise!" This address was subsequently printed in pamphlet form and circulated to the members of the Order in each county. (2)

(1) "Treason Exposed", Indiana and the War, V, No. 8, p. 4; "Judge Advocate's Report," Indiana and the War, V, No. 10, pp. 4-5.
CHAPTER II

SONS OF LIBERTY

It was not long until the secrets of the Order of American Knights were exposed like those of its predecessor. This made necessary another reorganization, with new ritual, signs, and passwords. Thus the Sons of Liberty came into existence on February 22, 1864. While the Order of the Sons of Liberty was merely a continuation of the Order of the American Knights, the lessons and obligations were somewhat changed, and members of the old order were not admitted unless they were considered reliable. (1)

The approaching election made it easy to get members by representing the Order to be a political one. In this new Order, there were two organizations called the "Outer Temple" and the "Inner Temple" respectively. Everyone who joined the organization belonged to the "Outer Temple" including hundreds of those who joined believing that its sole purpose was to bring about Democratic victory at the polls. Many of these

(1) "Judge Advocate's Report," Indiana and the War, V, No. 10, p. 5; Ayer, The Great Treason Plot, pp. 30-31, p. 77; Dunn, Indiana and Indianaans, II, 651; Klaus, Ex parte Milligan, p. 22.
later joined the Union army. Only those who were tried and tested and known to have the "right" views could belong to the "Inner Temple," or share in its well guarded secrets. Through the "Inner Temple" or military branch of the Order, arms, equipment, and munitions were collected and men instructed for military service. (1)

In June, 1864, General Carrington, Commander of the District of Indiana, exposed the Order in a letter to Governor Morton. In compliance with a request of Morton, he compiled a partial outline of the nature of the work and the extent of the disloyal society which was operating in Indiana under the name of "Sons of Liberty." (2) General Carrington made the following report: "The Order is both civil and military. In its first relation it declares principles of ethics and politics for adoption and dissemination that are hostile to the government of the United States. In the latter relation, it assumes to organize armies for actual service in support of these principles, treating the United States Government as their enemy, and that of the rebellion as their friend. The Order is secret and is oath-bound." Mr. Carrington went on to say that the penalties of disobedience to the officers were severe and unlimited, including a death penalty for some offenses. (3) According to the Judge Advocate,

(1) "Judge Advocate's Report" Indiana and the War, V, No. 10, pp. 3-2; Smith, History of the State of Indiana, p. 26; Aley, Story of Indiana, p. 236.
(2) "Treason in Indiana Exposed," Indiana and the War, V, No. 5, pp. 1-18.
(3) Ibid, p. 3.
the oath to the Order was required to be held superior to any oath that might be administered to a member in a court of justice or elsewhere. (1) Once a person had become a member, there was no escape. He was bound by the fearful oath of initiation, threatened by the awful penalties imposed upon unfaithful members, and reduced to implicit obedience to his superiors. The members became mere helpless tools of the designing men who controlled the Order, and thus a power of formidable proportions was cunningly built up. (2)

Carrington has set forth a list of ten points which embody the principles of the Sons of Liberty. They are as follows:

"1. Absolute inherent State sovereignty.

2. The Union of the States as but voluntary and temporary and revocable at the will of any individual State, so far as concerns that state.

3. Denies to the general government the power to enforce its laws if it be the choice of the state to reject them.

4. Recognizes the existing rebellion as legitimate, legal and just.

5. Holds revolution against the present govern-

(1) "Judge Advocate's Report," Indiana and the War, V, No.10, p.7
ment as not only right but a duty.

6. Holds obligation to the Order as paramount to that due a single state or to the United States.

7. Declares its purpose to stop this war, treat with rebels, and make a treaty based upon the recognition of grades of civilization and race.

8. Declares a law of races one of Caucasian supremacy and African servitude.

9. Pledges a crusade in favor of all peoples attempting to establish new governments of their own choice as against existing rulers or authorities.

10. Accepts the creed of the rebellion, its logic, its plans and its principles, as the nominal theory of democracy and its own band of coherence and ultimate success. "(1)

At the time when the Sons of Liberty came into existence, the Grand Council declared that "the right to alter or abolish their government, whenever it fails to secure the blessings of liberty, is one of the inalienable rights of the people that can never be surrendered." (3)

The officers that were elected for 1864 were as follows: Clement L. Vallandingham, of Ohio, was the Supreme

(1) "Treason Exposed," Indiana and the War, V, No. 8, pp. 3-4.
(2) "Judge Advocate's Report," Indiana and the War, V, No. 10, p. 9.
Commander; Harrison H. Dodd, of Indianapolis, was the Grand Commander of Indiana; Horace Heffren, of Salem, was Deputy Grand Commander of Indiana; William M. Harrison, of Indianapolis, was Grand Secretary of Indiana. The four Major-Generals were William A. Bowles of French Lick, Lambdin P. Milligan of Huntington, J. C. Walker, State Agent of Indiana, living in the northwestern part of the State, and Andrew Humphreys of Green County. (1)

There was a close correspondence of design and feeling between the traitors in the North, and the rebels in the South. Various signals, signs, and passwords were employed between the two sections. It is a significant fact that a member from a Northern State was able to pass without risk through the South by the use of the signs of recognition which had been established throughout the order. (2)

The Order spread widely. It had an extensive membership in Ohio, Kentucky, Indiana, Illinois, and Missouri. New York, Pennsylvania, Delaware, and Maryland were represented. It was claimed by Vallandingham that in the summer of 1864, the membership in Indiana was not less than forty thousand. However, the figures given by Harrison, the Grand Secretary, were not nearly so large. In February, 1864, reports for seventeen counties showed five thousand members; in September, 1864 reports for forty-five counties showed eighteen thousand members. (3)

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(1) "Treason Exposed," Indiana and the War, V, No. 8, p. 4; "Judge Advocate's Report," Indiana and the War, V, No. 10, pp. 4-5.
(2) Ibid. p. 10.
(3) "Treason Exposed," Indiana and the War, V, No. 8, p. 4; "Judge Advocate's Report," Indiana and the War, V, No. 10, pp. 5-8; "Foulke, Life of Morton," I, 365.
Through schemes of the Order in Indiana, whole camps were imbued with a spirit of discontent and dissatisfaction with the service. Some estimate of the success of these efforts may be derived from the report of the Adjutant General of the State in January, 1863, in which he pointed out that the number of deserters and absentees that were returned to the Indianapolis Post alone during the month of December, 1862, was as high as 2,800 soldiers.(1)

Where arrests of deserters were effected, Union troops were openly fired upon. General Carrington notes especially such attacks that occurred in Morgan and Rush Counties. (2) In regard to this, the Judge Advocate’s Report states, "J. J. Bingham, editor of the Indianapolis Sentinel, and a member of the Order, sought to forward to the disloyal newspapers of the West, false and inflammatory reports in regard to the affair in Morgan County. The message indicated that cavalry had been sent to arrest all of the Democrats of the county, that they had committed gross outrages, and that several citizens had been shot. To climax the report he added that 'ten thousand soldiers can not hold the men arrested this night. Civil war and bloodshed are inevitable.' The assumptions in this dispatch were entirely false and may serve to illustrate the fact that a studious misrepresentation of the acts of the government and its officers is a part of the prescribed duty of the members of

(1) "Judge Advocate’s Report," Indiana and the War, V, No.10,p.10.
(2) "Treason Exposed," Indiana and the War, V, No. 8, p. 5.
the Order. Seven of the party in Morgan county who made the attack upon our troops were convicted of their offense in a state court and it was learned that the party was composed of the Knights of the Golden Circle. (1)

In 1862-1863, a number of enrolling officers were shot in Indiana and Illinois. In Blackford County, Indiana, an attack was made upon the Court House, and the books connected with the draft were destroyed. In Indiana, nearly two hundred people were indicted for conspiracy against the government and resisting the draft; about sixty of these were convicted. Where members of the Order were forced into the army by the draft, they were instructed, in case they were prevented from presently escaping and were obliged to go into the field, to use their arms against their fellow soldiers rather than the enemy, or if possible to desert to the enemy who would recognize them as friends by the signs of the Order. Whenever a member volunteered for the army, he was immediately expelled. (2)

It was reported by General Carrington that the full development of the Order was followed by a state of terrorism among the Union residents of portions of Brown, Morgan, Rush, Clay, Sullivan, Bartholomew, Hendricks and other counties. (3)

In some localities individuals were driven out, and in others

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(1) "Judge Advocate's Report," Indiana and the War, V, No. 10, p. 10.
(2) Ibid. pp. 10-11;
(3) "Treason Exposed," Indiana and the War, V, No. 8, p. 5.
their barns and grain were burned. Many persons under the
general insecurity of life and property sold their effects
at a sacrifice and removed to other places. At one time the
members of the Order openly threatened the lives of all
"abolitionists" in Brown county who refused to sign a peace
memorial which they had prepared and addressed to Congress. (1)

The efforts of the organization to procure arms
were most successful. As early as March, 1864, it was esti-
imated that there were six thousand muskets and sixty thousand
revolvers in the possession of the Order in the State of
Indiana alone, and this did not count private arms. Con-
siderable sums of money were subscribed by members for the
purchase of arms. At a single lodge meeting of two hundred
and fifty persons, a sum of four thousand dollars was sub-
scribed. These arms were sent from the East to Indianapolis
and then distributed to the various counties. The boxes in
which the arms were shipped were marked "pick-axes," "nails,"
hardware," and even "Sunday School Books." A cipher was
used to designate the kind and number of arms in the possession
of the different lodges. (2) If a member subscribed for the
Cincinnati Enquirer, it meant that he had a revolver; if for
the Chicago Times, he had a shot-gun; if for the Louisville
Democrat, he had a rifle. (3) General Carrington estimated

(2) Ibid., pp. 8-7.
that in February and March, 1864, nearly thirty thousand guns and revolvers entered the state. This estimate was based upon an actual inspection of the invoices. He adds that on the day the sale of arms was stopped by his order in Indianapolis, nearly one thousand additional revolvers had been contracted for. (1) After the introduction of arms into the Department of the North had been prohibited by general orders of March, a seizure was made by the government of a large quantity of revolvers and 135,000 rounds of ammunition which had been shipped from New York, to a firm in Indianapolis of which Harrison H. Dodd was a member. These and other arms about to be shipped to the same destination were claimed to be the private property of John C. Walker, State Agent of Indiana and one of the Major Generals of the Order, and were represented to have been purchased for a "few friends." (2) There is little doubt that Walker purchased these arms with the money of the State that had been placed in his possession for the repayment of the interest on the bonds of the State. (3) Among the devices of the Order was the so-called "Greek-Fire" which was so prepared that it would ignite after three or four hours, and nothing could put it out. (4)

At the last meeting of the Grand Council of the Sons of Liberty held at Indianapolis on June 14, 1864, there were forty-five counties organized with a military force variously

(1) "Treason Exposed," Indiana and the War, V, No. 8, p. 5.
(2) "Judge Advocate's Report," Indiana and the War, V, No. 10, pp. 8-7.
(3) Smith, History of the State of Indiana, II, 33.
(4) Stidger, Treason History, pp. 48-50.
estimated from fifteen to twenty thousand. (1) The military department of the Sons of Liberty was to be controlled by a secret "Committee of Thirteen," appointed by the Grand Commander, and known only to him. At the meeting on June 14, a plan of organization was reported, and it was recommended that the Order should equip as soon as possible. (2)

The most important project of the Sons of Liberty was a conspiracy for an uprising throughout Ohio, Indiana, Illinois, and Missouri. Arsenals were to be seized at Indianapolis, Columbus, Springfield, Louisville, and Frankfort. Prisoners were to be released at Rock Island, Campe Morton, Douglas and Chase. The Order was to join the Southern forces at Louisville and invade Kentucky. The state governments of Indiana and Illinois were to be overthrown, organizing a Northwestern Confederacy. Secretary of State Atchoo was to be installed as Governor of Indiana. These purposes were not known to all of the members of the Order, for they were confided only to those who took part in the military organization. The desire for the Northwestern Confederacy was by no means universal even on the part of the leaders themselves. (3)

In the spring of 1864, the outlook for the South was dark and discouraging. Vicksburg had fallen. The states west of the Mississippi had been severed from the main body of

(1) Esarey, History of Indiana, II, 786.
(2) Ayer, The Great Treason Plot, P. 99; Stidger, Treason History, pp. 72-73.
(3) "Judge Advocate's Report," Indiana and the War, V, No. 10, pp. 13-14; Stidger, Treason History, pp. 87-92; Foulke, Life of Morton, Y, 401-403.
the Confederacy, and Tennessee had been abandoned. Lee had
recoiled from Gettysburg, the armies of Grant were closing
around Richmond, and the resources of the South were becoming
exhausted. The only hope seemed to be an uprising in the
North. This would release the Confederate prisoners, turn
back the Federal forces for a protection of their own territory,
and recruit the armies of the Confederacy in the border states.
The disaffection in the North was well known to the authorities
at Richmond, and the time seemed ripe for an insurrection (1)
Vallandingham represented to Captain Thomas Hines, a Confed­
erate soldier in the direct service of Jefferson Davis, that
the Order was three hundred thousand strong. The members,
he said, desired that the war should cease, that the Federal
army should be withdrawn from the South, and that measures should
be adopted to bring about an early peace. (2)

July 20, 1864, was the day first fixed for the up­
rising in Indiana and Illinois. The state officers were to
be overthrown, and provisional governments organized. Councils
of the Sons of Liberty were held at various places to prepare
for this movement. (3)

As the day for the uprising drew near, the leaders
found that they were far from ready, and they decided, after a
conference with the various state leaders, that the uprising

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(1) Foulke, Life of Morton, I, 400.
(2) Ibid. p. 401.
(3) Esarey, History of Indiana, II, 772.
should be set for August 16. (1) In Indiana, Dodd was to give his orders to the Major-Generals of the several districts. These were to send runners into the counties, and the counties were to notify the townships. The forces in southern Indiana were to meet near New Albany under Bowles; those in Illinois at Rock Island, Springfield, and Chicago, from which places they were to march to St. Louis; those in central Indiana were to be concentrated at Indianapolis. The capture of the State capitol was left to Dodd. He proposed to call a political meeting at a place east of Camp Morton to which the members were to come in wagons, with weapons concealed under the straw. Some one was to propose a drill without arms in order to affect some semblance of a military organization. Upon a given signal, the "soldiers" were to obtain arms and rush on Camp Morton, seize it, and release the Confederate prisoners. The fences and buildings were to be fired, and in the resulting confusion the released prisoners would join in the uprising and help overcome the Federal soldiers. A detail was then to be sent to seize Governor Morton and the Arsenal. The railroad to Jeffersonville was to be captured and the released prisoners were to be sent to New Albany and Louisville. If Governor Morton could not be captured, he was to be otherwise "taken care of," and a committee of ten was selected to make way with him. (2)

(1) Castleman, Active Service, P. 47.
Stiger, Treason History, pp. 106-112; Klaus, Ex parte Willigan, p. 32.
Dodd communicated these plans to his friends early in August. J. J. Bingham, chairman of the Democratic State Committee, was asked by Dodd to call a mass meeting at Indianapolis on the Sixteenth of the month. Such a plan would be an excuse for a sufficient number of people in the City upon that day to cover up the real intentions of the leaders. However, Bingham refused to comply with Dodd's request because some revelations of the conspiracy had been published and he felt that the enterprise was dangerous. (1)

In August, Joseph E. McDonald, former Attorney General and Morton's opponent in 1864, and Michael O. Kerr, a Democratic Congressman (afterward Speaker of the House of Representatives) became aware of the object of the Order, and hastened to Indianapolis from New Albany. They were both very much alarmed and said that their section of the State was preparing for a revolution. A meeting of the prominent Democrats was held in McDonald's office. Kerr said that it was his intention to stop this scheme, and declared his purpose of giving information to the government unless the whole thing was abandoned at once. Walker and Dodd contended long, but finally they promised to abandon the enterprise if Kerr would not divulge the information that he possessed to the authorities. This was quite unnecessary, for the authorities already knew all about it. Morton and Carrington had long

been upon the trail of the societies, and they had established an elaborate and effective detective system. So complete was the system of espionage that Morton and Carrington knew the most important plans of the Order before they were communicated to the members who were to carry them out. (1)

Dodd and Walker, although they agreed to relinquish their plans for the uprising, had no intention at all of giving up the project. They meant only to concede a short postponement. On August 11th, some Confederate soldiers were at the Bates House in Indianapolis on their way to Chicago to take charge of the prisoners who were to be released by an uprising in that City. Walker had a conference with these officers which he reported to Bingham. (2) On the 13th of August, The Democratic State Committee, of which Bingham was chairman, published an address to the people of the State of Indiana. In this, the party declared that "in times of public peril like the present, and in view of what are believed to be well founded apprehensions of attempts on the part of those in authority to interfere by military power with the freedom of elections, patriotism and prudence alike demand that the constitutional right of the people to keep and bear arms, as a necessary means of defense to a free state, should not be violated or abandoned." It was urged "that the people in all counties, townships, and election precincts

(1) Ayer, The Great Treason Plot, pp. 86-87; Esarey, History of Indiana, p. 769; Stidger, Treason History, pp. 120-131, 130-131.
(2) Castleman, Active Service, pp. 145-146.
"cooperate in open military organization for the preservation of the peace and the maintenance of constitutional liberty." (1) It was said that the address was a compromise between the leaders of the Sons of Liberty and those who opposed the uprising, and that the intention of the conspirators was to bring on the insurrection at another time and place. The Confederate Commissioners in Canada were informed that the uprising would take place at Chicago on August 29, when the Democratic National Convention was to meet in that city. (2)

At the same time that the "Sunday School Books" were found in Dodd's office, namely, August 20, other valuable information was also found. This included the great seal of the Sons of Liberty, the official list of members, several hundred copies of the ritual, and Dodd's private correspondence. Among the correspondence were some compromising letters from Walker, Vallandingham, Wright, and Jesse D. Bright, a former United States Senator who had been expelled because of treasonable actions. The facts concerning this capture, together with the correspondence found were published. There was great excitement at the discovery. (3)

Earlier in August, before the capture of the "Sunday

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(1) "Treason Rampant in Indiana" (An address by the Democratic State Central Committee), Indiana and the War, V, No. 9, p. 4.
(2) Stidger, Treason History, p. 138; Klaus, Ex Parts Willigan, p. 32.
(3) Treason Exposed," Indiana and the War, V, No. 8, p. 12; Dunn, Indiana and Indianaans, II, 660.
School Books" in Dodd's office, General Carrington went to Terre Haute and seized a large number of papers including copies of the ritual of the Order of American Knights in the office of Daniel Voorhees, a member of Congress. Letters which disclosed considerable correspondence between him and the leaders of the Sons of Liberty were also seized. One of the letters concerned the purchase of twenty thousand rifles to be forwarded West, and was addressed to ex-Senator Wall of New Jersey. These were all published in the Indianapolis Journal and also in a campaign pamphlet. Voorhees immediately wrote to Carrington, denying any knowledge of the rituals and explaining everything that had any savor of impropriety in the letters and papers. There was considerable correspondence between Voorhees and Carrington in which the latter explained his reasons for believing that the rituals and papers belonged to Voorhees. Voorhees answered, and by way of complaint, charged Carrington with invading his private papers. To Carrington's last letter, Voorhees did not send any reply. (1)

There was also much excitement over this discovery and public indignation finally resulted in a mass meeting on the Circle in Indianapolis on August 22, 1864. Speeches were made, and rigorous resolutions were passed, denouncing the conspirators. (2)
Before proceeding to the actual treason trials, it is well to know something of the relations existing between the Sons of Liberty and the Democratic party.

In the address published by the Democratic State Committee in August, 1864, it was stated that the immediate purposes of the Sons of Liberty and the Democratic party in Indiana were identical. (1) The Order of the Sons of Liberty was contained within the Democratic party, and though the organization may have been independent, it is quite evident that the two groups were working in harmony with each other. In fact, the Democratic party evidently regarded the Sons of Liberty as a useful instrument to effect its purposes. (2)

The party did not approve of the violent means contemplated by the Order in August, and it was the party that procured the postponement of the outbreak. Such an outbreak at Chicago on the eve of the convention would have been a political blunder of the worst description. If the party triumphed at the polls, it was master of the situation, and the Sons of Liberty would become superfluous. If on the other hand, Abraham Lincoln should be re-elected by the people, then the Order would become an instrument of inestimable value in the dark schemes entertained by the managers of the Chicago Convention. (3)

Two passages in the Chicago platform show the intimate sympathy and correlation between the Sons of Liberty and the

(1) "Treason Rampant in Indiana," Indiana and the War, V, No. 9, p. 4.
(2) "The Great Northern Conspiracy," I.S.L. Pham, File, No. 1, p. 11.
(3) Ibid. p. 11.
Democratic party. The first of these arraigns the administration for its "interference with and denial of the right of the people to bear arms," which, it threatens, will prevent the "perpetuation of a government deriving its just powers from the consent of the governed." This refers directly to the measures adopted by the government to prevent the arming of the Order, and the presentation of such a complaint by the Democratic party shows how little necessity there was felt for concealing the connection and sympathy between the two organizations. (1)

The other passage is the third resolution in the Democratic platform which, after complaining of military interference with elections as "a shameful violation of the Constitution," threatens that the "repetition of such acts at the coming election will be held as revolutionary and resisted with all the means and power under our control." Due to the close connection between the Democratic party and the Order, there was not much activity in August, but the Order was promised full swing in November in case a Democratic victory did not render the functions superfluous. (2)

Vallandigham, the Supreme Commander, was author of the platform and the chief manager of the convention. (3) The identity of policy and action is curiously shown by the fact that the recommendation by the convention of a "cessation of

(1) "The Great Northern Conspiracy," I.S.L. Pham. No. 1, p. 11;
"Record of the Disloyal Union," Indiana and the War, V, No. 18, p. 7.
(2) Ibid., p. 7;
(3) Ibid. p. 12.
hostilities with a view to an ultimate convention of all States," is borrowed almost literally from a series of resolutions adopted by the Grand Council of the Order in Indiana in February, 1864. (1)

The fifth resolution, passed by the Grand Council of the Sons of Liberty, reads "that whatever the theory of the powers of the Federal Government to coerce a State to remain in the Union may be, war as a means of restoring the Union is a delusion, involving a fearful waste of human life, hopeless bankruptcy and the speedy downfall of the Republic. Therefore, we recommend a cessation of hostilities upon existing facts and a convention of the sovereign states to adjust the terms of a peace with a view to the restoration of the Union, entire if possible, if not, so much and such parts as the affinities of interests and civilization may attract." (2)

The proceedings of this meeting were found in the safe of Dodd.

It was also resolved by the convention "that the convention shall not be dissolved by the adjournment at the close of its business, but shall remain as organized, subject to be called together at any time and place that the Executive National Committee shall designate." The purpose of such a resolution lay in the fact that both the party and the Order...

could be ready for any emergency that might arise. (1)

A special meeting of the Supreme Council was scheduled to be held at Chicago on July 1st, or just prior to the day then fixed for the convention of the Democratic party. The convention was postponed until August 28th and accordingly the special meeting of the Supreme Council was also postponed to August 27th.

A leading member of the convention, in the course of a speech, alluded approvingly to the session of the Sons of Liberty at Chicago at the same time as that of an organization in harmony with the sentiments and projects of the convention. (2)

In a pamphlet on the "Disloyal Democracy," there were numerous letters and newspaper clippings stating that the Democrats wanted peace, sympathized with the South, and hated Lincoln as a traitor. (3)

Governor Morton in a speech before the mass meeting on August 22d, pointed out the composition of theDemocratic State Ticket of 1864. Five were members of the Sons of Liberty. This was one-half of the whole ticket. Public opinion ran so high against the Sons of Liberty, that the candidates upon the State ticket, who belonged to the Order, saw that something must be done. They published in the Indianapolis Sentinel a

(2) "Judge Advocate's Report," Ind. and the War, V, No. 10, p. 5; "Treason Exposed," Ind. and the War, V, No. 9, p. 12.
(3) "The Record of the Disloyal Democracy," Ind. and the War, V, No. 18, p. 7.
notice in which they said that they never had been members of any society of a treasonable or disloyal character, and that they had not knowledge of the purchase or shipment of any arms or ammunition into the State. (1)

Dodd after his return from Chicago published in the *Sentinel*, a notice declaring that the conspiracies charged upon the Sons of Liberty had no existence, and asking the people to suspend judgment and not to be imposed upon by unfounded rumors and the machinations of malicious tricksters. "I shall shrink from no mob," he said, "and flee from no arbitrary arrest." (2)

About this time the secret "Committee of Thirteen" appointed by Dodd, of which Walker was the leading member, issued an address which the *Sentinel* refused to publish. The communication was in Walker's handwriting and was afterward printed and circulated in pamphlet form. Before it finally appeared, Dodd had been arrested and Walker had left for a safer place than Indianapolis. The publication sought to explain and justify the purposes of the Sons of Liberty. A large number of copies were seized while in transit to prominent Democrats of the State. (3)

The evident intent of the article was to incite insurrection and rebellion in Indiana and bring civil war in our midst for the purpose of aiding the Southern Confederacy. It

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(2) Ibid. p. 414.
(3) "Treason Rampant in Indiana," (Address of the Committee of Thirteen), *Ind. and the War*, V, No. 9, p. 1.
is maintained in the article that "secret political associations are not only unnecessary, but frequently injurious to the cause they are designed to promote. Where the press is untrammelled and free speech a living principle, and a free ballot a remedy for temporary evil, no apology can be offered for secret political organizations. But since the advent into power of the misnamed Republican party, in this country, the ruling features of a Republican government have disappeared from the administration of public affairs. Restrictions have been placed upon the press and upon free speech, and the ballot-box, in many places, has become little less than a machine by which usurpation has given the form of legality to its continuance. The property and liberty of the citizen, in States where the civil law should be supreme, have been subject to the caprices of men in authority; large portions of the followers of those who trample upon the liberties of the people have been organized into secret societies and armed, it is feared, for the purpose of perpetuating by force the power of usurpation and tyranny.

"In consequence of this state of affairs, organizations of the people necessarily secret were formed without concert, in counties isolated from each other, for defensive purposes. The idea was finally conceived of connecting and harmonising these associations for the purpose of increasing their efficiency; and out of this idea and with this beginning sprang the order of the Sons of Liberty.

"The principles of the Sons of Liberty are those contained in the Virginia and Kentucky Resolutions of 1798,
resolutions drafted by Jefferson and approved by Madison, containing principles which distinguishes the Democratic party, at the beginning of this century, from the Federal party. (1) The objects of the association are the diffusion of these principles which lie at the foundation of the Federal Union and the restoration of civil liberty to the country, and the defense of the people against the exercise of arbitrary and unlawful authority. The late publication of the principles of the Order, by its enemies, brought thousands of men into it who before stood aloof. At a meeting of the Grand Council at Chicago, all the formula of initiation, except the administration of the oath of the second degree, which simply pledges the members together on the principles and for the purposes enunciated, were dispensed with. It is believed that the publication of the principles and the simplifications of the work of the organization will very greatly increase its members and add to its efficiency. The presiding officer of any Temple is authorized and requested to organize new ones in adjoining counties and precincts.

"The sensational charge that the Order of the Sons of Liberty is engaged in a conspiracy against the government, with a view to the establishment of a Northwestern Confederacy is 'absolutely and wickedly false.' Whatever may be the views and wishes of individuals, the object charged is not comprised

(1) Castleman, Active Service, p. 145.
in the purpose of the organization. The establishment of a Northwestern Confederacy would be the effect rather than the object of an uprising people. Increased tariff, demanded by the increased debt of the government, increases the wealth of New England at the expense of the West.

"Arm and organize as rapidly as possible, openly if you can, secretly if you must. Desperate cowards are to be dealt with and a timid policy will only invite the perpetration of further outrages." (1)

Following this there is a protest on the "arbitrary arrests" of Harrison and Dodd by military authorities. "If Messrs. Dodd and Harrison have committed an offense against the laws of the land, and on information lodged with the proper authorities to that effect, warrants shall issue for their arrest and they shall be duly indicted, tried by a civil court, convicted and punished, no one will complain. It is a melancholy fact disclosed by the trial of Mr. Vallandigham that a court martial can be converted into a purely political machine." This is followed by a scathing denunciation of the management of the Federal government. (2) The entire article is the essence of the motto of the order as introduced by Vallandigham, "resistance to tyrants is obedience to God." (3)

In reply to this document and the address of the

(1) "Treason Rampant in Indiana", (Address of the Committee of Thirteen,) Indiana and the War, V, No. 9, pp. 1-5.
(2) Ibid. pp. 5-8
Democratic State Committee, Governor Morton declared that "the assumption that those in authority in this state will interfere by military power with the freedom of elections, is absolutely and wickedly false. So far as my administration is concerned, I can safely defy the authors of this document to point to a single instance in which I have failed to exercise the executive power for the protection of persons and property, and social and civil rights without regard to persons or politics." (1)

The first real knowledge of the treasonable proposal for August 16th, came to the authorities through General Rosecrans, from Missouri. He obtained a pretty full exposure of the plot and communicated it first to General Carrington, who sent a request to Captain Stephen El Jones, Provost Marshall of Kentucky for a reliable Kentuckian to watch Dr. William A. Bowles of French Lick, who was expecting to go to Kentucky to organize lodges of the Sons of Liberty. At that time, Felix J. Stidger was in Louisville seeking employment with the secret service department and through the recommendation of a friend in the employ of Jones, was sent for, to engage in this work. Stidger was a remarkable natural detective. He succeeded in establishing such intimate relations with Bowles, Bullitt, a prominent Judge of Kentucky and an active member of the Order of Kentucky. Thus, he was in a most favorable position for obtaining information of the plans

(1) "Treason Rampant in Indiana," Ind. and the War, V, No.9, pp.4-5.
of the Order and warning the government of their intentions. He served as the principal witness in the trials. (1)

On September 3, 1864, a few days after the opening of the Chicago convention, Harrison H. Dodd was arrested by soldiers under the command of General Carrington and was imprisoned in Indianapolis. (2) The others that were arrested and imprisoned in the early part of October were William A. Bowles, Lambdin P. Milligan, Stephen Horsey, Andrew Humphreys, Horace Heffren and J. J. Bingham. (3)

According to Foulke in his Life of Morton, General Carrington was in favor of trying them in one of the Federal Courts, but Secretary of War Stanton and Governor Morton determined that more drastic measures were required. (4) So it was determined to resort to a military commission. Accordingly, on September 17, 1864, General Alvin P. Hovey, military commander over Indiana, instituted a military tribunal for the trial of Dodd. (5)

(1) "Judge Advocate's Report," Ind. and the War, V, No. 10, p.15; Dunn, Indiana and Indians, II, 653 -655.
(2) Ayer, The Great Treason Plot, p. 83; Smith, History of the State of Indiana II, 89; "Treason Rampant in Indiana", Indiana and the War, V, No. 9, p.6.
(3) Ayer, The Great Treason Plot, pp. 43-44; Klaus, Ex parte Milligan, p. 33.
(4) Foulke, Life of Morton, I, 412.
CHAPTER III

TREASON TRIALS BEFORE THE MILITARY COMMISSION.

The trial began on September 23d, with Judge Advocate Henry J. Burnett presiding. When the order convening the Commission was read to Dodd, he expressed himself as satisfied with the members of the Commission. The accused introduced as his counsel J. W. Gordon and M. M. Pay. (1) Through his counsel, Dodd entered protest against the jurisdiction of the Commission to try his case, and on September 33d presented arguments for the purpose of sustaining such protest. The counsel based their arguments on amendments to the Constitution of the United States, Article Five, which provides that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger." The defendant maintained that he was a citizen not connected with the army and not subject to military authority. (2)

(1) Pitman, Treason Trials, p. 9.
(2) Pitman, Treason Trials, pp. 10-12.
Judge Advocate Burnett supported the jurisdiction of the tribunal by the President's Proclamation of September, 1862. The following provisions are included in the Proclamation of September, 1862:

"First. That during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aids and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting military drafts, or guilty of any disloyal practice, affording aid and comfort to the rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishments by court-martial or military commission." (1)

In September, 1863, the President again suspended the writ of habeas corpus, reciting the constitutional provision and the Act of Congress of March, 1863, which will be referred to later. The persons affected now included those arrested "for resisting a draft, or for any other offense against the military or naval service." (2)

There were many conflicting opinions as to the power of the President to suspend the writ of habeas corpus, institute military arrests and trial by military commission. Lincoln declared that they were not unconstitutional; the enemy had pervaded everywhere; the means used to break the Union

(1) Ibid. p. 12.
(2) Klaus, Ex parte Milligan, p. 8.
power were such that the civil courts could not deal with their suppression. He said suspension of habeas corpus and military arrests were merely means to prevent future trouble. (1)

The Judge Advocate maintained that none of the proclamations of the President subsequent to the one of 1862, had purported to modify the latter. Burnett found that the declaration of martial law was proper under the President's powers as commander-in-chief of the armies. Indiana was in the theater of war and subject to the regulations of the commander-in-chief; this was plain from the fact that the nation was engaged in a civil war. "Due process of law," he continued, "had application only to time of peace." Therefore the Judge Advocate overruled the plea of the defendant concerning the jurisdiction of the Military Commission and announced that the Commission would proceed to the trial of the accused. (2)

The prisoner, Harrison H. Dodd, was placed on trial on five charges, to all of which he pleaded "not guilty." The charges preferred against him were as follows:

1. Conspiracy against the Government.
2. Affording aid and comfort to rebels against authority of the United States.
3. Inciting insurrection.

(1) Ibid. p. 25.
(2) Pitman, Treason Trials, pp. 12-16.
4. Disloyal practices.
5. Violating laws of war. (1)

The first to be introduced as a witness for the government was Felix C. Stidger. Dodd was thunderstruck when he found that the principal witness against him was a man with whom he had been in close contact, and he now learned, for the first time, that Stidger was a government detective. (2)

Stidger occupied the witness stand for two days. He examined the roll of members of the Order for the purpose of pointing out those whom he recognized and singled out the names of W. M. Harrison, H. H. Dodd and Joseph Ristine. Mr. Dodd confided the whole program of the uprising planned for August to Stidger. Stidger also revealed that the avowed purpose of the Order as told to him by Dodd was to oppose the government in every possible way, by force of arms, if necessary, and to cooperate with the rebel forces. It was resolved at a council meeting, Stidger said, that Coffin, a government detective, was to be murdered and the murder was left to Dodd to perform. However, Stidger warned Coffin and he escaped. The witness testified that he was present at a meeting in Louisville when the preparation known as "Greek Fire" was shown and explained by its inventor to Dr. Bowles. He also saw some shells which were to be used for the destruction of government

(1) Pitman, Treason Trials, pp. 17-19
(2) Stidger, Treason History, p. 158; Pitman, Treason Trials, p. 19.
property. Stidger closed his testimony after revealing portions of the ritual and stating that he was to receive no reward for the testimony given before the Commission. (1)

George E. Pugh of Cincinnati, Ohio, was the next witness for the government. His only testimony was in regard to the identification of letters written by Vallandigham to various members of the Order. (2)

Joseph Kirkpatrick, a dealer in firearms, was called as a government witness. He testified that he sold two hundred and ninety revolvers and thirty-five thousand rounds of ammunition to a man named Harris. These were to be sent to J. J. Parsons in Indianapolis. He said that he had since seen these same firearms at the Arsenal near Indianapolis. (3)

William Clayton, an Illinois farmer, Wesley Tranter, a miller from Shoals Station, Indiana, and Elliot Robertson, a farmer from Randolph County, Indiana, gave testimony regarding the military features of the Order. They said that they had been supplied with firearms and that they had taken part in some drilling. Mr. Tranter said that the organization had been represented to him as a political one, but he later became alarmed and revealed the purposes of the Order to Captain Henley of the United States War Department, although

(2) Ibid. p. 32.
(3) Ibid. p. 32.
he knew the penalty for such an act was death. Mr. Robertson informed the Commission that he understood the purpose of the organization was to oppose the draft and arbitrary arrests. Mr. Clayton, in his testimony, said that he had been told that forty thousand armed men could be depended upon in case of an uprising. The arms were to be paid for by assessing each member a certain amount. He also said that he understood there was to be an invasion of Indiana, Ohio, and Illinois during the summer of 1864. (1)

During the course of the trial, Dodd obtained permission, on his word of honor that he would not escape, to occupy a room on the third floor of the Federal Post-Office building, where it was more comfortable than in the Guard House of the Soldier's Home at Indianapolis. Before the trial was completed Dodd escaped and thereby brought to an abrupt end his own trial.

A few minutes before four on the morning of October 7th, he escaped through the window opening on Pennsylvania Street, by means of a rope attached to an iron rod, which was held fast between his bed and the iron window shutter. The street lamps were darkened and he slipped off unseen. There was no guard on the outside of the building and the attempt was not detected until he had escaped. He remained hidden for some time in Indianapolis and finally made his way

to Canada. (1)

Dodd's escape took place shortly before the October elections. Foulke says that the escape aided the success of the Republicans by the ridicule which it brought on the Democrats. (2) It was charged by some Democrats that Morton had aided in the escape and that he had arranged it with Dodd for political purposes. Dodd was indignant at such a statement and denied it publicly in the Cincinnati Enquirer. (3)

After the escape, the counsel for the accused submitted to the Commission an affidavit in which they declared that they did not prompt, suggest, or intimate to Dodd or any friend of Dodd, his escape from prison. (4) In an address to the Commission, September 7th, the Judge Advocate suggested that the Commission adjourn until such time as they thought best. He stated that according to decisions of the Supreme Court of Indiana and of Ohio, the court might receive the verdict of the jury and give sentence, if a person of his own fault was not present to receive the verdict of the jury and the sentence of the court. "If for any reason the accused abandons his cause, and fails to rebut the evidence produced on the part of the government, he waives his right of address. The court then proceeds to close the doors to deliberate on

(1) Ibid. p. 50; Klaus, Ex parte Milligan, p. 34; Ayer, The Great Treason Plot, p. 66.
(2) Foulke, Life of Morton, i, 420.
(3) Ayer, The Great Treason Plot, p. 67; Klaus, Ex parte Milligan, p. 54.
(4) Pitman, Treason Trials, p. 50.
the finding and sentence." The Commission after deliberation adjourned to meet, October 13, 1864. (1)

When the Commission next met, the Judge Advocate said that he did not propose to introduce new testimony in the absence of the accused, but simply to submit the case to the Commission upon the evidence already introduced, and upon this evidence to ask the Commission to proceed to its finding and sentence. He added that the reason for such a course was stronger in a military trial than in a civil trial because in the former the accused is never present when the court proceeds to their finding and sentence. (2)

Mr. Gordon, counsel for the accused, asked that the court not proceed to final sentence. However, he asked that if they did proceed, they would do so by the same stages indicated by the Supreme Court decisions mentioned by the Judge Advocate, allowing the evidence to be adduced in behalf of the defense and the case closed just as it would have been, had the accused remained present. He said that if the case was submitted to the Commission upon the evidence already before them and should that evidence turn out, in their opinion, not to be sufficient to sustain the charge against the accused, the government by this course, would lose forever the opportunity of bringing him to condign punishment, even should he be really guilty of the offenses. If the case was

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(1) Ibid. p. 51
(2) Pitzan, Treason Trials, pp. 51-53.
submitted upon the evidence at hand and the constitutional provision should be held to apply to the case, Dodd would not be allowed to be put in jeopardy again for any one of these offenses. (1)

In reply, the Judge Advocate said that the Commission could grant to the counsel for the accused, as a matter of courtesy, and not as a matter of right, the privilege of putting in their views on the evidence before the Commission. (2)

In the case presented by the counsel, Mr. Gordon based his argument on the question of the jurisdiction of the Military Commission. He concluded his remarks by saying that martial law did not then exist in Indiana and had never so existed because it was not competent for the President to declare or proclaim it. He added that if martial law ever had been proclaimed, the proclamation had been rescinded by Act of Congress, 1863, with the full approval of the President.

Mr. Gordon also said, "As the existence of martial law is conceded to be necessary to the jurisdiction of this court, we conclude, therefore, that this court has no jurisdiction of the defendant upon the charges now pending against him."

Mr. Ray continued the case of the counsel from this point. In his argument he dealt with the liability of the defendant to be tried before any court for some of the offenses

(1) Pitman, Treason Trials, pp. 53-54.
(2) Ibid. p. 54.
alleged against him and the nature and sufficiency of the evidence adduced against him to support the charges. (1)

Before submitting the case to the Commission, the Judge Advocate made some closing remarks concerning the jurisdiction of the court and the existence of martial law in Indiana. He stated his belief that martial law was necessary in Indiana due to the existence of an armed organization which was ready at any time to resist the government and aid the South. In regard to the escaped prisoner, Burnett said, "If nothing is confessed against him, nothing certainly can be said for him by his act of escape. The case is now submitted to this Commission on the evidence before it; and I am content to leave it in your hands after simply quoting the opening remarks of the counsel who last addressed you: 'In approaching the evidence in the case, we are almost subdued and awed into silence by considering the perilous precipice upon which society, especially in the Northwest, so recently hung, if the testimony, in the plentitude of its details, or even in its general scope, is to be believed.' Respecting that testimony, this Commission is abundantly able to judge." (2) Dodd was subsequently found guilty of the charges against him and was sentenced to death. (3) The Commission rendered the following sentence: "To be hanged by the neck until he be dead, at such time and place as the Commanding General of this District

(1) Pitman, Treason Trials, pp. 55-57.
(2) Ibid. pp. 57-71.
(3) Klaus, Ex parte Milligan, p. 34.
shall designate; two-thirds of the members of this Commission concurring therein." (1)

Bowles, Milligan, Horsey, Humphreys and Heffren were brought to trial jointly on October 21st before members of the Military Commission. (2) J. J. Bingham had previously been released from arrest, for the authorities believed they could make better use of him as a witness than as a defendant. (3) The charges preferred against the five men were the same as the charges against Dodd, to which they pleaded "not guilty." (4)

Before proceeding with the trials a short sketch of the men on trial would no doubt be fitting.

Bowles, then a man in his eighties, was one of the wealthiest men in Indiana. He was a physician and a large landowner at French Lick Springs where he kept a watering place. It was generally understood, and the evidence sustains the understanding, that he was among the leaders if not the very leader, of the Indiana Sons of Liberty. He had been chiefly instrumental in organizing the Order in the State. His Southern sympathies were well known. His wife was from New Orleans and when he first came to Indiana with her he brought with him a retinue of slaves which he was forced to send back to the South. (5) In the war with Mexico, he had commanded the Second Indiana regiment and had given orders for the regi-

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(1) Stidger, Treason History, p. 58.
(2) Pitman, Treason Trials, p. 73.
(3) Klaus, Ex parte Milligan, p. 34.
(4) Pitman, Treason Trials, pp. 74-77.
(5) Klaus, Ex parte Milligan, p. 34.
ment to retreat at the battle of Buena Vista, an act which brought disgrace on the State and humiliated the regiment. Mr. Rhodes, an acquaintance of Bowles, said of him, "He was one of the finest looking men I ever saw. He was six feet, two inches tall, well proportioned with a dignified deportment and a massive head crowned with snow white hair. He possessed a strong voice with strong conversational powers."(1)

Lambdin P. Milligan was a prominent lawyer in his home town of Huntington, Indiana. Largely self-educated, he had been a teacher before he decided to study law. He graduated from Kenyon College, Gambier, Ohio, at the top of his class which included strangely enough, Edwin M. Stanton. In the race for the Democratic nomination for governor in 1864, he had run second to McDonald who received the nomination. He was determined that the trial proceedings were illegal and unconstitutional and that he could be tried only in a civil court. (2)

Horace Heffren was also a lawyer and, in addition, a prominent figure in the Democratic party. He was from Salem, Indiana, and was a member of the State legislature for four years. At the beginning of the war, though he opposed it, he was a supporter of Morton and raised a company of volunteers. He became ill, returned home and was identified with the Copperheads, after his Southern sympathies began to take hold.

(2) Klaus, Ex parte Milligan, p. 35.
of him. Heffren was the cause of the most dramatic moment in the trial, he was suddenly called as a witness for the government. For the price of the Judge Advocate's promise of immunity, he turned against his four co-defendants. Heffren had sought an interview with General Hovey because, to use his own words, "he wanted to get out of the scrape." (1)

Andrew Humphreys, of Green County, appears to have been a small town politician with a popular following. (2)

Compared to the others, Stephen Horsey seems to have been a humble sort of person, but the evidence is strong that his position in the Order was an important one. He was a farmer living a few miles from Shoals, Indiana. His son served as a volunteer in the Union forces. (3)

The evidence at the trial clearly brought out what had already been reported to the government and what had already been published.

"Among the Sons of Liberty were persons of varying attitudes. The majority, apparently had no particular intention of fighting against the North or for the South. In the largest part, they were low-class Copperheads. Some joined for the pageantry, and for the ritual. Others joined simply as Democrats, possibly earnest in a desire to protect the ballot-box. Others wished to express opposition to Negro emancipation. Others joined for the thrill of joining a secret
society. In short, they were the Copperheads, the ancestors of that Southern and Middlewestern population which, being of primitive intelligence, is still attracted to mummery. It was, therefore, clear that the military scheme of the few leaders was necessarily kept secret from most of the Order and the plan for actual aid to the South disclosed to only a few persons."

(1)

In his Report, Judge Advocate Holt classified the principal witnesses in several distinct groups. Besides government detectives and spies and those who turned state's evidence and became witnesses for the prosecution, there were rebel officers or soldiers who voluntarily or involuntarily made disclosures to the military authorities, citizen prisoners who became acquainted with fellow prisoners who were leading members, and deserters from the Union army who had been persuaded to desert by members of the Order. The testimony of these witnesses proved to be most enlightening. (2)

The accused introduced the following as their counsels: William A. Bowles secured the services of M. M. Ray and J.W. Gordon; Andrew Humphreys had as his counsel M. M. Ray, E. A. Davis, Cyrus L. Dunham, and J. W. Gordon; John R. Coffroth acted as counsel for Lambdin P. Milligan; Stephen Horsey introduced John Baker and C. L. Dunham as his counsel; counsel for Horace Heffren was the same as that for Andrew Humphreys. (3)

(1) Ibid. p. 36.
(2) "Judge, Advocate's Report," Ind. and the War, V, No.10, pp.15-16.
(3) Pitman, Treason Trials, p. 74.
At the opening of the trial, J. W. Gordon, counsel for the accused William A. Bowles, Horace Heffren and Andrew Humphreys moved for a separate trial in their behalf. Lambdin P. Milligan and Stephen Horsey also moved for a separate trial. Their reasons for desiring a separate trial were based on the contention that they each had interests that would not be served by trying them together; that they would each have separate witnesses and would pursue a different line of defense since each had his own character to defend. Milligan asked for a separate trial because of personal illness. (1)

The Judge Advocate replied to these applications by stating that the offenses charged against the defendants were joint and the proof against one was proof against all. He also considered the matter of the expense of the trial to the government and the fact that the services of the men composing the Commission were needed in the army rather than in consuming unnecessary time by protraction of the trials. (2)

After due deliberation, the Judge Advocate announced that the Commission had concluded separate trials were unnecessary. (3)

William M. Harrison was the first witness introduced for the government. He was the Grand Secretary of the Order and had been arrested with the others, but had been released because he was a salaried man and working altogether under the

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(1) Ibid. pp. 77-78.
(2) Pitman, Treason Trials, pp. 79-79.
(3) Ibid. p. 80.
directions and orders of Dodd. (1)

Mr. Harrison testified that a military bill had been drafted in 1863. This bill provided for the division of the State into four military districts. A regiment was to consist of nine companies of infantry, one company of rifles and one section of artillery. He stated that the Order had a membership of eighteen thousand. The witness gave an exposition of the signs, grips, passwords and colloquies of the Order. Dodd had also revealed to him the plan for an uprising. (2)

Weasly Tranter, who testified at Dodd's trial, was then called as a witness. He said that he was initiated by Stephen Horsey. Tranter also revealed the plan for assassinating Governor Morton. (3)

Stephen Teney, of Daviess County, testified for the government. He joined the Order at the solicitation of Mr. Horsey who represented it to be a Democratic political club.(4)

Joseph J. Bingham was the next witness called to the stand. In his testimony he said that he withdrew from the Order early in February because he thought no good would come of it. However, he was kept as a confidant of the leaders and was told many of the secrets of the organization. Dodd asked him to call a Democratic mass meeting on August 18 in order to allay any suspicions. In this way, great numbers of

(1) Stidger, Sasson History, p. 280.
(2) Pitman, Treason History, pp. 80-83.
(4) Ibid. pp. 86-87.
the Sons of Liberty could gather at Indianapolis for an uprising. Bingham refused to do this. (1)

Felix O. Stidger, in his testimony, identified the defendants as being men he had seen at various meetings of the Order, but he was not quite certain of the relation of Andrew Humphreys to the Order. Stidger said that he had been told that Humphreys was one of the "Major-Generals." The important parts of his testimony were those already given in the case of Dodd. (2)

Horace Heffren, who had turned State's evidence, testified that since he had been brought to the stand as a witness for the prosecution, he had not stayed home for a night as threats had been made by the Order to hang him. He said that the "Committee of Thirteen" was emblematic of the thirteen original states and that this committee belonged exclusively to the Grand Council of the Order. His testimony brought nothing new to light. (3)

One of the witnesses testified that he had been asked by Mr. Horsey to secure ammunition for the Order. (4)

Dr. James E. Wilson said that at a meeting at Bowles' home he learned that a ten per cent commission on the value of Government property would be paid to anyone destroying such property. A flag was to be displayed by the members in case of an invasion by the rebel guerrillas. (5)

(1) Pitman, Treason Trials, pp. 93-96.
(2) Ibid. pp. 103-118.
(3) Ibid. pp. 123-140.
(4) Pitman, Treason Trials, p. 141.
(5) Ibid. pp. 143-145.
Elisha Cowgill, of Greencastle, who was Provost Marshall of the Seventh District, testified that on June 4, 1863, he saw Humphreys at the head of about four hundred armed men. Some of them swore that they would kill any man who attempted to enroll Cass township. The enrolling officer, Fletcher Freeman was killed while in discharge of his duty. (1)

W. S. Bush, reporter of the Cincinnati Gazette, was called as a witness and gave evidence concerning a very disloyal speech made by L. P. Milligan at a convention in Ft. Wayne, August 13, 1864. Mr. Milligan said in the speech that he was in favor of stopping hostilities and allowing the South the terms she asked—"to be let alone." (2)

Several witnesses called by the accused testified as to the good moral character of Mr. Humphreys and regarded him as a law abiding citizen. They said that he had not understood the treasonable character of the Order until he had become connected with it, and then he had reconsidered the matter and practically withdrew from it. He was made a "Major-General" without his knowledge, and when he was notified he failed to accept. Stidger, however, testified that Bowles told him later that Humphreys had consented to take command of the "forces in the rear." (3)

Testimony on the part of witnesses for the accused was given in regard to the good moral character of Horsey and

(1) Ibid. pp. 141-142.
(2) Ibid. pp. 150-156.
(3) Pitman, Treason Trials, pp. 156-165.
Milligan. (1) Samuel Chandler, deputy clerk of the United States Circuit Court, was a witness for the accused and stated that the court had been exercising jurisdiction and holding its regular sessions. D. Garland Rose, United States Marshall for the Indianapolis District, testified for the accused that there had been no obstructions to the serving of processes in the past year. (2)

It was revealed that the headquarters of the Grand Council of the Sons of Liberty was in Indianapolis in the building near Meridian Street occupied by the Dodd Printing Company. It was once the Capitol Hotel, and the east end is now occupied by Craig's candy company. Meetings were held in the fourth floor of the building. (3)

On November 4, 1864, a single sheet was issued from an unknown source bearing the testimony of Horace Maffran followed by an editorial comment. A portion of the editorial comment is as follows: "The Military Commission now engaged in trying the chiefs of the rebel Order in the State, is laying bare the dimensions of the conspiracy against the General and State governments, which has astounded those of our citizens who had been lulled into a feeling of security by the persistent denials of the Sentinel and other Copperhead Journals, who said that no such Order existed and that the charge was a mere partisan trick to injure the Democratic party.

(2) Ibid. p. 186.
"The testimony given by Mr. Bingham was astounding, and had he not have been a prominent Democrat, his party organs would have denounced his statements as falsehoods; but as it is, they are silent.

"Heffren testified that none but Democrats belonged to the Order, and that none other would have been admitted." (1)

On December 1, 1864, the Judge Advocate announced that since the accused and the government had not more witnesses to introduce, the testimony was closed. The Commission then adjourned until December 6. (2)

Jonathan W. Gordon, counsel for Bowles and Humphreys, made an elaborate argument on the jurisdiction of a military commission. He maintained that there were rights that belonged to the guilty as well as to the guiltless, and that among them was that of fair constitutional and legal trial. He declared that the Commission could not entertain jurisdiction on this case because such a jurisdiction would be at war with the principles of constitutional liberty as derived by us from Great Britain, and embodied in the Federal Constitution. "Such jurisdiction," he maintained, "would nullify the acts of Congress as well as the Constitution; such jurisdiction would set a miserable precedent." He said that the Commission in sustaining the jurisdiction would have to take the responsibility for setting a precedent for the abolition of our liberties. In

(1) Pitman, Treason Trials, p. 184.
(2) Ibid. pp. 185-223.
closing, Mr. Gordon asked that the Commission perform its duty according to the Constitution and laws. (1)

M. M. Ray, counsel for the defense, discussed the facts in behalf of Bowles and Humphreys. He dismissed the question of the jurisdiction of the court by saying that the Judge Advocate had rested jurisdiction on the President's Proclamation of 1862 alone. According to that Proclamation, only two offenses may be tried by a military commission, namely, inciting insurrection, and giving aid and comfort to rebels. Mr. Ray then considered at length the charges and testimony in their relation to Bowles and Humphreys. For Humphreys, he made a strong case, denying complicity in any military or insurrectionary schemes, claiming that the Order itself was not a conspiracy. Mr. Ray characterized Humphreys as a man "impulsive in his nature, free in his thoughts, sincere in his attachments, firm in his convictions, imbued with hereditary jealousy of arbitrary power, but faithful to the highest obligations of citizenship." That Mr. Humphreys was free from fault is more than I shall urge, but this court is not clothed with the power to punish the social or political faults of men." He continued by saying that it was a significant fact that the government could not bring one of Humphrey's neighbors, not even a personal enemy to swear against him. Mr. Ray maintained that Humphrey's appointment as "Major-General"

was rejected by him. (1)

In regard to Bowles, Mr. Ray said, "It would not
be an impossible or improbable thing for a man like Colonel
Bowles to follow a great way, blindly, the artful leaders
in such a scheme, without comprehending or suspecting its
bearing, because all was being done in the name of the Order,
whose legitimate objects he knew were lawful. Bowles was
looking at one object and his betayers at another." Mr.
Ray thought there was much testimony given at the trial which
was not evidence, for the reason that it did not support any
issue, that it was mere political scandal. In closing his
argument, Mr. Ray pointed out that Humphreys had life, liberty,
and happiness all staked on the issue and a family whose
happiness was involved in his own. In regard to Bowles, he
noted particularly the age of the man, his identification
with the past legislative and military history of the State.
Mr. Ray felt that the time would soon come when nothing would
remain of Bowles but his memory. He asked that his memory
not be "blackened by the stigma of conviction." (2)

John R. Coffroth presented the only argument in de-
fense of Milligan. He stated that the main purpose of Mr.
Milligan was to defend his good name. He presented the
principles of the Order and attempted to show that they were
the same principles on which the government was established.

(1) Ibid, pp. 235-236.
and administered. He asked the Judge Advocate if the entire membership of the Order was not responsible for the "insane raving and actions of Dodd and Co.," and therefore traitors? If so, he wondered why they had not been arrested and brought before a military tribunal, put through the forms of trial and hanged. He maintained that Milligan in public speeches stated only his views on political questions which may have denounced policies of the administration, but were in no way treasonable. Mr. Coffroth, in closing his argument stated that he personally had no sympathy with the extreme political views of Milligan, but he did not believe that Mr. Milligan either in act or heart was a traitor. (1)

Following the speech of Mr. Coffroth, Judge Advocate Burnett replied to the arguments presented by the counsel. Burnett reiterated his belief in the jurisdiction of the court and the fact that war itself suspended and held in abeyance the rights of the people. The Judge Advocate reviewed the testimony which he believed was the most convincing as it related to each of the defendants. Mr. Burnett said that although he pitied Mr. Bowles, he felt that the evidence presented was ample proof of his guilt.

In pointing out the complicity of Milligan with the Order, the Judge Advocate said that the evidence of Milligan's friends, the witnesses he himself introduced on the stand, were harmonious upon the one fact that Mr. Milligan was a bitter

(1) Pitman, Treason Trials, pp. 238-248.
partisan, a later of the Administration and a leader of the radical peace wing of the Democratic party. "His intelligence and ability gave him a powerful influence for evil, and he used that power to the utmost."

The Judge Advocate felt in the case of Humphreys that he did not join the Order for the purpose of using it to bring about a revolution, but was interested in it for political reasons. His motives were perhaps less criminal than the others, but the absence of highest treasonable intent could only be considered in mitigation of the sentence. Burnett insisted that no personal considerations should weigh with the court in making up findings and sentence.

In the address submitted by Mr. Horsey, the argument rested on the poverty and humbleness of the accused. To this statement, the Judge Advocate replied that no man is so poor or so humble that he cannot be a traitor, but if a person does sink to such depths, justice should be meted out to him.

In concluding his address, the Judge Advocate charged the court to consider whether the evidence submitted supported the charges. He stated that if the evidence failed to support the charges the court should be proud to acquit them. On the other hand, if the proof did sustain the charges and if the men were found guilty, Mr. Burnett charged the court to do their duty to their country and the generations to come. (1)

The commission found the defendants guilty. Bowles, Milligan, and Horsey were condemned to death and Humphreys to

(1) Pitman, Treason Trials, pp. 249-283.
life imprisonment. Humphreys' sentence was changed by General Hovey, Commanding General of the District of Indiana. General Hovey gave as his reason for changing the sentence, the fact that the evidence did not show that Humphreys took any active part or committed any overt acts which were calculated to incite an insurrection or aid the conspiracy. The change was made upon the condition that Humphreys confine himself within the limits of Wright and Stockton townships of Green County during the existence of war. (1)

Joseph McDonald, formerly Attorney General of Indiana and a leader of the Democratic party, and Senator Thomas A. Hendricks went to Washington to confer with Lincoln and act as chief counsel for Milligan and the other prisoners. McDonald wrote to Lincoln's biographer that Lincoln said to him, "You may go home, Mr. McDonald, and I will send for you when the papers get back; but I apprehend and hope that there will be such a jubilee over yonder," he added, pointing to the hills of Virginia just across the river, "we shall none of us want any more killing done." (2)

Before Lincoln had taken any action, he was assassinated and Andrew Johnson became president with the determination of "making treason odious." (3)

On May 1, 1865, General Hovey received this order from Washington, "You will have the prisoners Bowles, Milligan

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(1) Klaus, Ex parte Milligan, p. 38.
(2) Klaus, Ex parte Milligan, p. 38.
(3) Ibid. p. 38.
and Horsey at once placed in irons. You will increase the guard over them and take every precaution to prevent escape or rescue."

In accordance with General Court Martial No. 314, issued May 2, 1865, each of the three prisoners "will be hanged by the neck until he be dead, on Friday, the 19th of May, 1865, between the hours of 12 M. and 3 P. M., on the parade grounds between Camp Morton and Burnside Barracks, near the City of Indianapolis, Indiana." (1)

The announcement of the order of execution aroused great excitement, for never before had a sentence of death upon a civilian by a military commission sitting when the regular courts were open, been executed. Loyal people in Indiana were questioning why there had not been a civil trial. (2)

Attempts were being made to secure commutation from the President. Pressure was brought to bear on Morton. Of what followed, Foulke, in his Life of Morton, says, "Meanwhile Judge David Davis visited Indianapolis and had a long and earnest talk with Governor Morton. The judge thought it was clear that the commission had been illegal since the courts of Indiana had been open and martial law had not been declared. Morton had hitherto taken no part in the effort to save the lives of the prisoners, but now he determined that

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(1) Ibid. p. 39;
(2) Stidger, Treason History, p. 184.
(3) Klaus, Experts Milligan, p. 40;
Dunn, Indiana and Indiana, p. 65.
he would not have the blood of the men on his hands if they
had been unlawfully convicted. President Johnson had noti-
fied him that an application for pardon had been made and
Morton at once wrote Johnson advising him to commute the
sentences to imprisonment. He sent several communications
to this effect, one by General Mansfield, another by the wife
of Milligan. Finally John U. Pettit, the Speaker of the
House of Representatives, was dispatched to Washington by
the Governor for the purpose of preventing these executions. "(1)
All efforts seemed to be of no avail. It is said that Johnson
was then fearful of the Radical Republicans.

Gradually came the change of attitude which, when it
became complete, made the Radicals frantic. (2) On May 16th
Johnson telegraphing to Hovey commuted the sentence of Horsey
to life imprisonment and resented the sentence of Bowles and
Milligan to June 1. (3)

Bowles and Milligan were prepared for death. Milligan
had prepared a speech to be delivered from the gallows. Bowles
had written his wife that there was no hope. (4)

Day by day, Johnson was growing more and more lenient
to the South. On the 29th of May he issued a proclamation of
amnesty and prescribed a mode of reconstruction. The records
of the War Department disclose that on May 30th, the following
message was sent, dated 6:30 P.M. and marked "cipher and

(1) Foulke, Life of Morton, I, 428.
(2) Smith, History of the State of Indiana, II, 91;
"Life of Milligan," Indianapolis Press, December 21, 1869, p. 5.
(3) Stidger, Treason History, p. 164;
Klaus, Ex parte Milligan, p. 41.
(4) Klaus, Ex parte Milligan, p. 41.
strictly confidential:"

"Major-General Hovey, Indianapolis: The President orders that the sentence of death heretofore passed against Horsey, Bowles and Milligan be commuted to imprisonment of each at hard labor in the penitentiary during his life. The penitentiary at Columbus, Ohio, is designated as the place of imprisonment."

On June 3, 1885, the President's order was executed.(1)

(1) Ibid. p. 41.
CHAPTER IV

SUPREME COURT PROCEEDINGS

On May 10, 1863, counsel for the three prisoners had filed in the United States Circuit Court in Indianapolis petitions for habeas corpus. The prisoners asked that at all events they should be "turned over to the proper civil tribunal for inquiry and punishment according to law, or for discharge from custody altogether." (1)

The case was heard in the early part of June. John Hanna, the United States District Attorney, appeared for the government, having received from Washington the official arguments in support of the "war powers" of the government. The argument of the United States District Attorney was permitted by stipulation with counsel for the petitioners. Sitting then were Judge David Davis, as the Supreme Court justice assigned to the circuit, and Judge David McDonald, the district judge. Judge Davis' views were well known as being in favor of issuing the writ. The court divided in opinion and questions were certified to the United States Supreme Court. (2)

Jurisdiction under Congressional Act of 1863 was

(1) Klaus, Ex parte Milligan, p. 40.
(2) Ibid. pp. 41-43.
complete. This Act enacted, "That during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States."

Section two of the Act directs that "as soon as might be practicable the Secretary of War furnish to the Federal District and Circuit Courts a list of names of all persons, citizens of states in which the administration of the law has continued unimpaired in the said Federal Courts who might then or in the future be held prisoners, otherwise than prisoners of war."

Two other provisions follow: The first is that which makes "any order of the President, or under his authority, made at any time during the existence of the present rebellion" a defense in all courts to any action or prosecution, civil or criminal, pending, or to be commenced, for any search, seizure, arrest or imprisonment, made, done or committed under and by virtue of such order, or under color of any law of Congress."

The second provision is that which directs removal to the Federal courts of all actions brought in state courts "against any officer, civil or military, or against any other person for any arrest or imprisonment made, or other trespasses or wrongs done or committed, at any time during the present rebellion, by virtue or under the color of any authority
"authority derived, from or exercised by or under the President of the United States or any act of Congress." (1)

In September, 1863, the President again suspended the writ of habeas corpus, reciting the constitutional provision of the act of Congress. The persons affected now included those arrested "for resisting the draft, or for any other offence against the military or naval service." (2)

A Grand Jury had met since the imprisonment of the petitioners and had made no presentment of their names. However, on June 8, 1865, an indictment charging conspiracy was filed against a number of leaders of the Sons of Liberty, and among them were the petitioners, Bowles and Milligan. (3)

Attorney General Speed, Henry Stanberry of Ohio, who was soon to become Attorney General, and General Benjamin F. Butler were retained for the government. The latter was an ardent military man and had not hesitated to employ military commissions.

For the petitioners, illustrious counsel were engaged. In the first place, David Dudley Field, a leader of the New York bar, volunteered his services. His name was signed as counsel for Bowles according to Supreme Court record. Jeremiah S. Black, leader of the bar of the Supreme Court, was secured to appear for Milligan and Bowles. Black had James A. Garfield, a Congressman from Ohio, admitted to the

(1) Klaus, Ex parte Milligan, pp. 2-3.
(2) Ibid. p. 9.
(3) Ibid. p. 42.
bar of the Supreme Court and engaged him as counsel. Garfield had spoken in Congress against military commissions and Black felt he would be a fine balance to General Butler. (1)

Many friends of the petitioners tried to persuade them to withdraw their petitions, and Bowles finally yielded and ordered his counsel to withdraw his petition, but they disregarded his instructions. However, Milligan refused to agree to a withdrawal of his petition. (2)

The argument was heard in the March term of the Supreme Court, 1866. The questions submitted from the Circuit Court to the Supreme Court were as follows:

1. On the facts stated in said petition, ought a writ of habeas corpus be issued according to the prayer of the petition?

2. On the facts stated in said petition, ought the said Lambdin P. Milligan be discharged from custody, as in said petition prayed?

3. Whether, upon the facts stated in said petition, the military commission mentioned therein had jurisdiction legally to try and sentence said Milligan in manner and form as in said petition is stated." (3)

McDonald opened the case and stated the facts and the preliminary proceedings. With him on the brief appeared Addison L. Roache, former Chief Justice of the Indiana Supreme Court, and John R. Coffroth, Milligan's personal friend and

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(1) Klaus, Ex parte Milligan, pp. 42-43.
(2) Ibid. p. 43.
(3) Ibid. P. 83.
counsel. For the government, Henry Stanberry opened, restricting himself to jurisdictional questions only. Then in order came Garfield, Black and Field. Butler closed the argument for the government on the merits of the case. (1)

Mr. Stanberry in discussing the question concerning the jurisdiction of the Military Commission said that if the Supreme Court answered such a question in the negative, its answer would be a final decision. He also said that since the case at hand was an ex parte application for a writ of habeas corpus made to a court, the division of opinion which then occurred was in effect a decision of the case. The case was ended when the court declined to issue the writ. "All the rules of this court as to the rights and duties of parties in cases before this court, exclude the idea of an ex parte case under the head of appellate jurisdiction." (3)

Mr. Speed and Mr. Butler discussed the merits of the question concerning the jurisdiction of the military commission. They based their opinions on the President's Proclamation of 1862. They declared that the President as commander-in-chief possessed the power of suspending the right of habeas corpus; the Act of Congress, 1863, was merely to ratify the Proclamation. They maintained that the offenses of the petitioners were those enumerated in the Proclamation and in regard to him the writ of habeas corpus was suspended. They held that the

(1) Klaus, Ex Parte Millikan, p. 43.
(2) Ibid, pp. 84-86.
petitioner was as much a prisoner of war as if he had been taken in action with arms in his hands. Mr. Butler and Mr. Speed declared that the petitioner did not complain that he had been kept in ignorance of the charges against him, or that the investigation of those charges had been unduly delayed. They concluded by stating that "if the military tribunal had no jurisdiction, the petitioner may be held as prisoner of war on the charge of aiding with arms the enemies of the United States, and held, under the authority of the United States, until the war terminates, then to be handed over by the military to the civil authorities, to be tried for his crimes under the acts of Congress and before the court which he has selected." (1)  

James A. Garfield, attorney for the petitioners, opened his address by saying that the questions before the court were relative to constitutional law and did not involve either the guilt or the innocence of the petitioners. Garfield declared that there was no necessity for an establishment of a military tribunal. He cited a legislative act of July, 1861, which provided that "persons charged with the crime of conspiracy against the government be tried in the District and Circuit Courts of the United States." Imprisonment of ten years and a fine were provided by an act of July, 1862, for those who were charged with affording aid and comfort to the rebels. Charges of inciting insurrection, disloyal

(1) Klaus, Ex parte Milligan, pp. 88-92.
practices, and violation of the laws of warfare all to be taken care of in civil courts as provided by Congressional legislation. Mr. Garfield concluded by saying that Congress undertook to provide for all the necessities which the rebellion imposed upon the nation; that it provided for every crime imputed to the petitioners, and pointed out expressly a mode of punishment and, therefore, the military commission had no jurisdiction. (1)

Mr. Black in his address dwelt on the evils of military commissions. He cited many historical instances in which persons were tried and arbitrarily sentenced by military tribunals which later regretted their action. He felt that trial by military tribunals was exercised in cases where the Judge Advocate held a grudge against certain persons. It was maintained by Mr. Black that the trial was a violation of law and no necessity could have been more than a mere excuse for those who committed it. (2)

Mr. Field, counsel for the petitioner, in his turn questioned the power of the President as commander-in-chief. He believed that the authority of the President to command an army did not carry the authority to arrest and try. He, too, cited historical events which related to martial law and their proof that martial law was inadequate for the trial of citizens. He declared that the Military Commission had no jurisdiction to try and sentence the petitioners in the manner and

(2) Klaus, Ex parte Milligan, pp. 88-92.
form presented by the petitioners. He believed a writ of habeas corpus should be issued and the petitioners should be discharged. (1)

Mr. Butler, in replying for the United States said that the court must decide what law was applicable to a theater of military operations, within the lines of an army, in a state which had been and constantly was threatened with invasion. He admitted that there was a dearth of precedents bearing on the question because the facts themselves were unprecedented. Mr. Butler closed the argument of the government by saying that he did not desire to exalt martial law above civil law, but asked that "martial law prevail when law was silent, when justice was overthrown, when the government must rely for all it has of power, authority, and dignity on its armed force." He asked that "martial law prevail, so that the civil lay may again live, to the end that this may be a government of laws and not of men." (2)

On April 3, 1883, at the last day of the term, Chief Justice Chase announced the order of the court. By a majority, the Supreme Court held that the writ of habeas corpus ought to be issued, Willigan should be discharged and the military commission had no jurisdiction to try and sentence the petitioner. (3)

(2) Klaus, Ex parte Willigan, pp. 209-263.
(3) Ibid, p. 234.
At the next session of the court, Mr. Justice Davis delivered the opinion of the court, in which he stated that "this court had judicial knowledge that in Indiana the Federal authority was always unopposed and its courts always open to hear criminal accusations and redress grievances; and no usage of war could sanction a military trial there for any offense whatever of a citizen in civil life, in no wise connected with the military service. Congress could grant no such power; and to the honor of our national legislature be it said, it has never been provoked by the state of the country even to attempt its exercise. One of the plainest constitutional provisions was therefore, infringed when Milligan was tried by a court not ordained and established by Congress and not composed of judges appointed during good behaviour. It will be borne in mind that this is not a question of the power to proclaim martial law, when war exists in a community, and the courts and civil authorities are overthrown. Nor is it a question what rule a military commander, at the head of his army, can impose on states in rebellion to cripple their resources and quell the insurrection. If armies were collected in Indiana they were to be employed in another locality where the laws were obstructed and the national authority disputed. On her soil there was no hostile foot; if once invaded that invasion was at an end and with it all pretext for martial law. Martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closed the courts and deposed the civil adminis-
"tation. It is difficult to see how the safety of the country required martial law in Indiana. If any of her citizens were plotting treason, the power of arrest could secure them until the government was prepared for their trial. It was as easy to protect witnesses before a civil as a military tribunal; and as there could be no wish to convict, except on sufficient legal evidence, surely an ordained and established civil court was better able to judge of this than a military tribunal composed of gentlemen not trained to the profession of the law." (1)

As a result of the Supreme Court decision, Bowles, Milligan and Horsey were set free by order of the President on April 10, 1866, after an imprisonment of nearly eighteen months. (2)

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(1) Klaus, Ex parte Milligan, pp. 225-250.
(2) Ibid, p. 44.
CHAPTER V

SUBSEQUENT COURT ACTION

The cases of the petitioners to the Circuit Court in Indianapolis which had certified questions to the Supreme Court and to which the supreme Court made answers were never finished. It was not so far as the Circuit Court at Indianapolis was concerned. The court had no jurisdiction to issue habeas corpus in reference to prisoners in Ohio, for the limits of jurisdiction were the limits of the district of Indiana. (1)

It is recorded that when Milligan came back to Huntington, Indiana, he received such an ovation as had never been accorded to any of its citizens. But the end had not yet come. The Supreme Court had merely held that the Military Commission had no power to try these men. It had not held that the accused were not guilty of justifiable crimes. Indeed, their petitions for habeas corpus had asked in terms that they be delivered over to the civil authorities. The indictments which had been found against the petitioners, Bowles and Milligan, and against Dodd, Humphreys and the other leaders of the Sons of Liberty were still alive. Milligan, upon his

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(1) Klaus, Ex parte Milligan, p. 44.
return home, was arrested and held to answer the indictment. With John R. Coffroth as surety, he was released on recognizance. (1)

"The truth was that no indictment had been found against the petitioners under the Act of 1863 because no one ever paid any attention to that statute. After habeas corpus had been sought by the petitioners and it seemed not unlikely that they would be released, indictments were asked from the next grand jury and were found. The indictments were kept alive while the petitioners were still in Columbus, Ohio penitentiary. The cases, however, were never pressed. The minutes of the appearance dockets of the Federal District Court at Indianapolis show that in January and May, 1867, the cases were dismissed." (2)

However, both Milligan and Humphreys brought actions for false imprisonment against the military authorities. The case of Milligan versus Hovey was brought in March, 1868, and was tried in May, 1871, before Judge Drummond in the Federal Circuit Court of Indiana. The defendants, in addition to Hovey, were members of the Military Commission which had tried Milligan. On both sides, there was distinguished counsel. Thomas A. Hendricks led for Milligan, and Benjamin Harrison for the defendants. Judge Drummond charged the jury that owing to the two year statute of limitations the defendants would

(1) Ibid. pp. 45-45.
(2) Klaus, Ex parte Milligan, p. 45.
not be liable for any act prior to March 13, 1863, but that they would be liable for any imprisonment subsequent to that time, which was the result of the previous trial and conviction. The jury evidently had little sympathy with Milligan, yet recognized that the law required that some damages must be given. They accordingly made the amount as low as possible and brought in a verdict for five dollars. (1)

Humphreys's action was brought in February, 1866, even before the Supreme Court had decided the Milligan case. On the motion of the defendants, an order of removal was made by the State court, in which the action was brought to the Federal Court, according to the Act of 1863. (2) The subsequent history of the case is not known, but it is probable that it was discontinued on the theory that the Act of 1863 would be effective to grant full immunity to the defendants. (3)

With the verdict in the Milligan case, the history of the treasonable organizations in Indiana and the trials of their leaders comes to an end.

(1) Ibid. p. 45; Foulke, Life of Morton, I, 431.
(2) "Samuel McCormick et al vs. Andrew Humphreys," Indiana and the War, V, No. 6, pp. 1-20.
(3) Klaus, Ex parte Milligan, p. 45.
CHAPTER VI

LATER LIFE OF THE CONSPIRATORS.

The men who were tried before the military commission retired to private life after their release from imprisonment.

William Bowles died at his residence in French Lick, Indiana in March, 1873. (1)

After Milligan disposed of his litigation, he settled down to the study of law and became one of the best attorneys in his part of the State. His great hobby in after years was horses. Before his death in December, 1899, Milligan's name was on a Republican indorsed ticket as candidate for Representative from Wells and Huntington counties. (2)

In 1893, Horsey came to Indianapolis and was employed in the Parry Road-Cart Works. He said that he was still a "Son of Liberty." (3)

Dodd after his escape went to Canada and later returned to Wisconsin. In 1872, he became a Republican and for several terms held the office of Mayor of Fond-du-lac. He was also agent for the American Express Company for thirty-seven years.

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(1) "William A. Bowles," Indianapolis Journal, April 12, 1873, p. 4.
years. He was prominent as a member of the Order of Elks and served as Exalted Ruler for several years. He died in June, 1906. (1)

Mr. Foulke says that "it was fortunate that there was at this time at the head of affairs in Indiana, a man whose resources were equal to every emergency, whose autocratic will supplied everything that was lacking in a disloyal legislature and a partisan judiciary; a man who could hold as a plaything in his hands a conspiracy that aimed at his own life and could even coerce it into his service. No one can read the history of the secret organizations in Indiana and not feel that, widespread as they were, there was not an instance in which they were not securely within the grasp of the 'War Governor'." (2)

With the newspaper notice of the death of Dodd in 1906, references and knowledge of the treasonable order of the Sons of Liberty seems to have ended.

(1) "Death of Dodd," Indianapolis News, June 7, 1906, p. 3.
(2) Foulke, Life of Morton, 1, 373-4.