

# Resources for Public Speaking: The Judiciary During the Civil War

## Topic at a Glance

**Introduction.** Though it covered a relatively brief period in the nation's history, the U.S. Civil War (1861–1865) led to several major institutional transformations for the courts, including multiple circuit reorganizations and the replacement of the District of Columbia's highest court. The courts also decided several major cases during and immediately after the war dealing with major issues raised by the conflict.

**Circuit Reorganization.** Because of a longstanding practice of appointing one justice from each circuit, the arrangement of circuits became an increasingly fraught issue as sectional tensions over slavery grew in the years preceding the Civil War. As a result, several states remained outside of the circuit system long after their admission to the Union. By the dawn of the Civil War, moreover, slave states comprised a majority of the circuits but a minority of the population. Congress made multiple radical changes to the circuit system during and immediately after the war. By 1866, Congress had established a nine-circuit system that diminished the influence of Southern states. The Circuit Reorganization Act of 1866 also reduced the Supreme Court to seven seats by stipulating that seats could not be filled as vacancies arose until the number of justices reached seven. However, the Court's membership only fell as low as eight before this aspect of the law was repealed in 1869.

**Martial Law.** President Abraham Lincoln argued that the judicial system was not well suited to resolving questions of disloyalty, and he relied on military forces to undertake the arrest, detention and, in many instances, the trial and punishment of Confederate sympathizers. In *Ex parte Merryman* (1861), however, Chief Justice Roger Taney held (either while presiding over the Circuit Court for the District of Maryland or in chambers in his capacity as chief justice) that only Congress had the power to suspend habeas corpus (as the Suspension Clause was located in Article I of the Constitution) and that the executive branch had usurped judicial power by presuming to detain prisoners without a civilian trial. The Lincoln administration initially paid little heed to the decision, though Merryman was eventually turned over to civilian authorities. In 1862, Lincoln empowered military authorities to try "all rebels and insurgents, their aiders and abettors, . . . and all persons discouraging volunteer enlistments[,] resisting militia drafts, or guilty of any disloyal practice." In 1863, Congress passed legislation ratifying Lincoln's actions but requiring the secretaries of state and war to notify federal trial courts of military detentions made in jurisdictions where habeas corpus had been suspended.

**The Supreme Court of the District of Columbia.** In the early days of the war, Judge William Merrick of the U.S. Circuit Court for the District of Columbia became the source of repeated criticism for rulings that were perceived to be antagonistic to the war effort (such as orders to release underage soldiers). In 1861, Judge Merrick was briefly placed under military guard and unable to attend court. In 1863, Congress abolished the court, removing Merrick and the other two judges from their positions. (This practice was consistent with the prevailing interpretation of the Good Behavior Clause of Article III at that time.) Congress replaced the circuit court with the

Supreme Court of the District of Columbia, which was staffed by four justices, who held Article III status.

**Blockades and the Law of War.** Throughout much of the war, the Union imposed a naval blockade on many Southern ports. This blockade was dubious under the laws of war, which typically allowed blockades only in conflicts between recognized sovereign states. In *The Prize Cases* (1863), the Supreme Court's 5-4 majority held that a de facto state of war existed between the Union and the Confederacy and that, as such, the government could avail itself of the legal trappings of a belligerent state without conceding the same status to the South.

**The Court of Claims.** Created in 1855, the Court of Claims heard suits for monetary damages against the United States. Congress had previously heard these claims, but this system produced lengthy delays. In 1863, Congress passed the Court of Claims Act, which added two new judgeships to the court and made an appropriation to satisfy the court's judgments. These judgments were to be transferred to the treasury secretary, who would then "estimate for" payment. The Act also allowed for appeals to the Supreme Court. In *Gordon v. United States* (1865), however, the Court indicated that it could not take claims appeals because these cases were not properly deemed final judicial decisions, as they relied on Treasury action after the court rendered an opinion. After the Supreme Court's decision, Congress amended the statute to make the Court of Claims' judgments final, and the Supreme Court adopted rules permitting appeals. Even so, the court's status as an Article III tribunal remained the subject of debate and confusion until 1962.

**Trial by Military Commission.** Although more than 4,000 civilians were tried by military commission during the Civil War, the Supreme Court did not have an opportunity to determine the validity of this practice until the year after the war ended. In *Ex parte Milligan* (1866), the Court ruled unconstitutional military trials in jurisdictions where civilian courts were in operation (the case originated in Indiana). Such trials, the Court's majority reasoned, improperly presumed to arrogate to military authorities the judicial power granted to the federal courts by Article III, section 1.