Indiana Military Case, Carried to the Supreme Court 55 Years Ago, Cause of Holding Up Martial Law Edict in W.Va

Reluctancy of President Harding to declare a state of martial law in the West Virginia coal fields and the long series of deliberations held in Washington on the subject were due to the famous case of Lambdin P. Milligan of Huntington, Ind., decided by the Supreme Court of the United States April 3, 1866. This decision, which is considered one of the strongest statements of the rights of citizens against military domination ever pronounced, has been the leading case of its kind ever since.

In brief, the doctrine advanced is nothing more than this, that military tribunals can have no authority over civilian territory not actively occupied by enemy forces and where the local civil courts are functioning.

The Supreme Court decided unanimously that Milligan was not subject to military court-martial in Indiana, as the courts were functioning at the time of his trial. Four judges dissented from the majority line of reasoning, but all agreed as to the conclusion reached.

Without authority to try prisoners by court-martial the military authorities in West Virginia would be shorn of a great amount of their power and their effectiveness almost nullified. But until the local courts are made inactive by the promulgation of martial law and as long as they function military authorities are up against the stone wall of the Milligan decision as reported in Wallace 2, United States Supreme Court reports.

STORY OF CASE TWENTY YEARS AGO.

The story of the famous Milligan case and a reminiscent interview with Mr. Milligan, was written by Thad Butler, then editor of the Huntington Herald more than twenty years ago.

It is as follows:

"Lambdin P. Milligan was born near St. Clairsville, Belmont County, Ohio, March 24, 1812. He was reared on a farm in a sparsely settled community and his opportunities for education were indeed limited, but at the age of 19 he had received for the period a fairly good education. He taught school for a number of years and read law with Shannon Alexander of St. Clairsville, Ohio. In the class with him and one of his first antagonists in a law suit and afterwards to figure strongly in his own career, was Edward M. Stanton. He practiced law in Ohio until 1845, when he came to Huntington County and engaged in that profession. He lived on a farm for a while, but during such time he continued to practice in Huntington and Wabash Counties. From that time until 1860 he was recognized as a strong lawyer, comparing favorably with Colerick, Coombs, John U. Pettit, Daniel D. Pratt and John R. Coffroth, and was known throughout the State as a man of ability and learning as a lawyer. He was not remarkable as an advocate, but was, however, a clear, terse and forcible speaker. He was earnest, direct, logical, clear; endeavored always to convince and not merely to please. He was held in the highest esteem by the judges and fellow members of the bar, and was known purely as a lawyer.

"Little was said or known of him politically outside his own county until the eventful campaign of 1860. He then became distinguished as an ultra leader of the Breckenridge wing of the Indiana Democracy, and was strongly opposed to Stephen A. Douglas and, with this, began and prepared the way for the events rapidly following that made him known all over the world; and his life and strange experience will be a theme for the constitutional lawyer, the politician and the soldier for all time to come.

"As has been stated Mr. Milligan belonged to the ultra Breckenridge wing of the Democracy of the State of Indiana. He believed that there was no constitutional power to prevent sesession or to coerce the seceding States and from the beginning of the War of the Rebellion constantly opposed the Administration at Washington. He, however, attracted but little attention until early in the year 1864, when he became a candidate for Governor of the State of Indiana, but was defeated by Joseph G. McDonald in the convention held July 12, 1864.

"During the campaign, however, Mr. Milligan made a number of speeches in which he uttered sentiments that attracted the attention of the Government. He was charged with being a member of what was known as 'Knights of the Golden Circle' and on the 5th of October, 1864, was arrested at his home west of Huntington by order of Major General Hovey, military commandant of the district of Indiana, and placed in military prison at Indianapolis. On the 21st day of the same month he was placed on trial before a military commission comprised of the colonels of some eleven volunteer regiments, the president of the commission being Gen. Silas A. Colgrove, afterward a well-known circuit judge of eastern Indiana. In the 21st of October, 1864, he was brought before this military commission which had been detailed and convened by General Hovey, upon charges of conspiracy against the Government of the United States, giving aid and comfort to rebels against the authority of the United States; inciting insurrection, disloyal practices and violation of the laws of war. The specifications were, without giving them in great detail, that he had joined and aided at different times between October, 1863 and August, 1864, a secret society known as the Order of American Knights or Sons of Liberty, for the purpose of overthrowing the Government and the authority of the United States; that he held communication with the enemy; conspired to seize munitions of war stored in arsenals and to liberate prisoners of war, and resisted the draft, and all done at a period of war and armed rebellion against the authority of the United States at Indianapolis and other named places in Indiana, a State within military lines of the army of the United States and the theater of military operations which had been constantly threatened by the enemy with invasion.

ENTERS PLEA OF NOT GUILTY.

"Mr. Milligan appeared before this commission in person and by John R. Coffroth, his attorney. For his plea he said he was not guilty and he presented a special plea to the commission that such commission had no jurisdiction to try him nor to sentence him for the reason that he was not a resident of one of the rebellious States, nor a prisoner of war nor a soldier, but a citizen of Indiana who was never in military or naval service, but was, while at his home, arrested by the military power of the United States and imprisoned. He also asked for a separate trial. This motion was overruled. His plea as to jurisdiction of the court was presented in a strong argument. This also was overruled, two of the members of the commission only voting that they had no jurisdiction. He was therefore put on trial with W. A. Bowles Andrew Humphreys, Horace Hefron, and Stephen Horsey. The trial lasted until the early days of December, resulting in the conviction and sentence to death of Colonel Milligan, together with Bowles and Horsey. Hefron having turned State's evidence and Humphreys receiving a lighter sentence. They were sentenced to be hanged on the 19th day of May 1865.

"President Lincoln was importuned to commute the sentence, but before action was taken he was assassinated. Then the counsel for Colonel Milligan filed a petition for a writ of habeas corpus addressed to the United States Circuit Court for the release of the defendant, and presented it to Judge Davis and Judge Drummond. Judge Davis was in favor of issuing the writ, but Judge Drummond dissented. The grounds of the petition were the same as set up at the trial at Indianapolis, and were that the military commission had no jurisdiction to try a citizen of Indiana. A division of the judges having occurred, the question was certified from the Circuit to the Supreme Court of the United States, and the Supreme Court was asked to pass upon the following points:

PUT QUESTION TO SUPREME COURT.

"1. On the facts stated in petition and exhibits, ought a writ of haveas corpus be issued according to prayer of said petitioner?

"2. On the facts stated in petition and exhibits, ought the said Milligan be discharged from custody as in said petition prayed?

"3. Whether upon the facts stated in petition and exhibits the military commission has jurisdiction legally to try and sentence said Milligan in manner and form as in said petition and exhibits is stated?

"This placed the question before the Supreme Court of the United States. For the petitioner appeared J. E. McDonald, J. S. Black, James A. Garfield and David Dudley Field. For the United States appeared Speed, the Attorney General, H. M. Stanberry and Benjamin F. Butler.

"But the day fixed for the final tragedy was fast approaching May 19, 1865. There was no time, it was now manifest to obtain a decision of the Supreme Court before the execution. It was a fearful moment for prisoner. He wrote to his family to prepare for the worst. He selected his pallbearers and made all necessary arrangements for his funeral. His gallows was built by rebel prisoners at Indianapolis.

"At this time, however, his counsel, his wife, and many prominent citizens of Indiana of both parties, among the Republicans Oliver P. Morton, then Governor, and Hon. John U. Pettit of Wabash, strongly recommended a commutation of the death sentence. His wife, who had been a school mate of Edwin M. Stanton, went to Washington and saw Stanton in person. President Johnson was importuned by Governor Morton, by John U. Pettit and many prominent persons throughout the Nation, to commute the sentence to imprisonment for life. The day before the day fixed for the execution, the commutation was received from Washington and Mr. Milligan was sent to the prison at Columbus, Ohio.

"Afterwards, in March, 1866, the case was presented to the Supreme Court of the United States and decided on April 3 of that year. Able agruments were made for the petitioner, perhaps the most eloquent being that of James A. Garfield. The opinion was rendered by Judge David Davis. The decision sustained Mr. Milligan's petition on all the points as heretofore set out, and he was discharged from custody, having been imprisoned something like eighteen months. The decision of the Supreme Court was unanimous as to his discharge, but Chief Justice Chase, Justice Wayne, Justice Swayne and Justice Miller dissented on some of the reasoning of the principal opinion. The case is fully reported in Fourth Wallace, pages 2 to 142. The opinion cannot be set out here, as it is too voluminous, but it is said in this opinion that—'no graver question was ever considered by this court, nor one which more nearly concerned the rights of the whoe people.' The whloe opinion with dissenting view by some of the judges may be considered a most interesting chapter in American history.

FRED RETURNS TO HUNTINGTON.

"Mr. Milligan returned to his home in Huntington in April, 1866. He was afterward indicted in the Federal Court at Indianapolis, May, 1866, by the grand jury, on the same charge on which he had been tried by the military commission, but was allowed to go on bail. The case was not pressed and was afterward dismissed. In the spring of 1868 he brought suit against the members of the military commission and others for damages for his imprisonment. The case was tried in May, 1871. Thomas A. Heudricks was his leading counsel and Gen. Benjamin Harrison the leading attorney for the defense. The trial was a long one, the defense setting up on mitigation of damages that Mr. Milligan was in fact guilty of the charges upon which the commission tried him. Under this plea all the evidence was again introduced, and the jury found a verdict for Mr. Milligan in the sum of $5.

"He resumed the practice of law at Huntington, and was engaged to some extent in stock raising. He again became, as he had been before the war, one of the leading lawyers in Northern Indiana. He became much interested in internal improvements, gravel roads, drains and was one of the promoters of the Chicago and Atlantic (now Erie) railroad. He was practically ruined financially by his troubles during the war, but before his death had become quite well fixed—owning a fine farm and considerable city property in Huntington.

"He continued to practice law actively until Oct. 27, 1897, or sixty-two years after he was admitted to the bar. On tha tday he arose in his place in the Huntington Circuit Court and, in an address specially remarkable for its eloquence, dignity, and simplicity, announced his withrdawal from the bar and practice, stating, among otner things, that he felt himself to be on the best of terms with the court and brethren of the bar, and equal to the task of trying cases, but for his infirmity of hearing and indeed, this seemed to be his only difficulty, as he had during the same term tried an important case with his old time ability.

"He was a man of giant size and marked intellect. He was absolutely without affectation, kind-hearted, simple, approachable, dignified and courteous. He had, however, upon ocasions, the power to exercise a blasting sarcasm. Whatever may be said by his political opponents of his career, all parties must admire his wonderful patience and unflinching courage when he was under the shadows of the gallows. Others charged with him ran off, turned State's evidence, hastened to explain and apologize, but he never wavered for a moment, and in this, like Brutus, he was the 'noblest Roman of them all.'

The reminiscent interview is as follows:

"Mr. Milligan seldom referred to his experience as a military prisoner during the war, and when he did talk on the subject there waa little trace of bitterness in his remarks. It is related that a mutual friend once introduced him to a stranger visiting in the city.

"Milligan did you say, sir?" said the visitor, as he shook his hand warmly. "Let me see, the name is familiar. By the way, Mr. Milligan, were you not a member of Congress once?"

"No, sir," was the reply, "I was in the State's prison!"

"In an interview given to the editor of the Herald some years ago, Mr. Milligan said of the commutation of his sentence and of his prison life:

OWED LIFE TO SECRETARY STANTON.

"From the date of my arrest to the time of my release covered a period of eighteen months. I owe the commutation of my sentence to Secretary of War Edwin M. Stanton, Governor Morton and Hon. John U. Pettit had interested themselves in an effort on my behalf, as well as Senator Hendricks and other leading Democrats, and the Hon. Joseph E. McDonald, who was my attorney, but despite their efforts I should probably have been hung, but for Stanton. Mr. Stanton and I were early friends. We were both admitted to the practice of law at the same bar, and he had been a frequent visitor at my house while I was still a resident of Ohio. A few days before the date set for my execution at Indianapolis, my wife visited Washington. A card from Judge McCulloch to Mr. Stanton obtained her an interview with the Secretary of War. She was very cleverly and courteously received, and although the interview was brief—Mr. Stanton being very much occupied by business—Mrs. Milligan left his presence with the full assurance that I should not be executed. Governor Morton was using his utmost endeavors to influence Johnson to commute my sentence, and had sent Hon. John U. Pettit of Wabash to intercede in my behalf. The morning before the day set for my execution, Mr. Petit had an interview with Johnson, but the President gave no sign of interference. He declared in language exceedingly discourteous, that 'Morton was not running this shebang,' and that his leniency already was bringing him into reproach. Mr. Petit was thoroughly disheartened. The President was about to attend a grand review of the Army, and Petit made one last appeal.

"Is there no hope?"

"I will not say that," said Johnson, "but we will see you again."

In the meantime, word was received in Indianapolis about 3 o'clock p. m. and before the review at Washington was over, from the War Department, ordering the commutation of the sentence. If President Johnson ever consented to the commutation it was after Secretary Stanton had issued the order and redeemed his promise to Mrs. Milligan.

FEARED INJURY TO UNION CAUSE.

"The interest of Governor Morton in my case is explained by the fact that but for his influence with the commission, the night of their final action, and his promise to its members that I never should be harmed, I would not have been convicted of the charge of treason. A majority of its members favored my acquittal. Governor Morton, General Hovey and other prominent men feared such a result. It had been alleged that my arrest was for political effect, and the commission were told that an acquittal would be an injury to the Union cause. My conviction, therefore, was demanded as a necessity, and Governor Morton personally pledged the members of the commission that I should not be heard. Alluding to Dr. Bowles, Horsey and myself, he said, we will shield them from harm, and they will be glad enough after a while to take the oath of allegiance and secure their release. Morton probably believed Lincoln would commute the sentence when it came to him. When a copy of the record was taken to Lincoln in December, 1864, by my attorneys, Joseph E. McDonald and Jonathan W. Gordon, Mr. Lincoln declared he could find nothing to justify the finding as against Horsey and myself, and promised these gentlemen, in the presence of General Singleton, that when official record reached him, he would disaffirm the finding, and set Horsey and myself at liberty. Dr. Bowles, he said, should be sent across the line to his southern friends until the close of the war. Judge Advocate Holt never presented the official record to Lincoln, and when after Lincoln's assassination, it was presented to Johnson, he promptly affirmed the finding without an examination. The earnest efforts of Governor Morton to induce President Johnson to commute the sentence were due to his promise to the members of the commission more than his sence of justice to me or his appreciation of the fact that my trial was an illegal one. Pettit's efforts were solely at the solicitation of Morton. He was neither influenced by personal friendship for me, nor expectation of personal gain. Petitt was speaker of the Indiana House, and ex-member of Congress and was selected by Morton as his ambassador to influence Johnson.

ATE WITH COLORED MEN IN PRISON.

"After my sentence had been commuted I was taken to Columbus for confinement. For the purpose of annoying me, I suppose, I was assigned a place at a table where all my associates were colored men. This was, no doubt, regarded as a joke, but it did not disturb me in the least. Whenever there were distinguished visitors at the prison, Dr. Bowles and myself were invariably paraded before them for their gratification. The first quarters given me were exceedingly unhealthy, and I fell sick and was sent to the hospital. I was transferred to the 'idle house,' but on account of my physical condition the officers could not 'sell me'—that is dispose of my services to prison labor contractors—and the directors ordered that I should be assigned to the position of hospital doctor. I knew nothing of medicine, but had been confounded with a Dr. Milligan, at one time a member of the Indiana Legislature, and my denial was not believed. I had some knowledge of chemistry, and as the duties were largely clerical, got along satisfactorily. The directors were kind enough to tell me that as I had a life sentence to serve even if my medical knowledge was limited, they preferred to have me in the place rather than a prisoner who might possibly soon leave the prison!

"I recollect my first case. A young man was brought in one evening, suffering with the toothache. In vain I protested that I had never drawn teeth, and had no experience. The guard threatened severe punishment if I didn't pull the teeth, but at last I fished out an old pair of turnkeys and proceeded to business. I pulled two teeth instead of one, but fortunately the aching tooth was one of them. I afterward became quite expert as a dentist and have often pulled from ten to twenty teeth a day.

"The deputy warden of the prison was a brutal wreteh, but my position saved me from his petty persecutions. The directors saw proper to consult me in several instances affecting the prison management, and I had the satisfaction of knowing that I stopped considerable official stealing which had been going on in the hospital. Among the officers was a whisky thief, quinine thief, and a morphine fiend; and at last, one of the wardens robbed the hospital of a fine new mattress and a considerable quantity of bedding. I learned that the thief was properly punished, but as I was soon after released, do not know whether the reform was permanent.

"I had no doubt of my release when the Supreme Court should hear the case. Although Judge David Davis did not promulgate the opinion of the court until the spring of 1866, Chief Justice Field himself has informed me that the court had agreed as to what the opinion should be in November of the previous year. The last six months of my imprisonment were for the glory of Judge Davis that he might have ample time to prepare the opinion of the court which, by the way, was a very able and exhaustive paper, covering fully 100 pages.

GOVERNOR COX ORDERED RELEASE.

"When the Supreme Court announced its decision declaring the illegality of the trial by the military commission Warden Prentis did not release me until Judge Pugh, of Columbus, issued a writ of habeas corpus. Even then, he did not consent to do so until advised by Governor Cox that he must obey the writ. An effort was made to prolong my imprisonment but Judge Pugh refused to grant a delay 'one day, one hour or one minute,' and ordered my immediate release. It was not until I was a free man that President Johnson granted a pardon.

"My arrest and incarceration was a heavy drain on me financially. In round numbers I am safe in saying it cost me $8,000. Besides this, my friends raised a considerable sum of money, well up in the hundreds, if not thousands, for my defense. Several of my neighbors here in Huntington contributed liberally. I could name a half dozen who gave at least $50 each. I never knew the full amount or the names of the donors or the manner in which it was expended. Hon. Jerry Black, famous attorney, and General Garfield were voluntary counsel before the Supreme Court in my behalf, and seither, to my knowledge, received a cent for their services."

POSTAL RECEIPTS SHOW INCREASE

Figures Indicate Business on Upgrade.

Postoffice receipts for the month of August showed an increase of $10,398.03 over those of August, 1920, according to figures given out by Postmaster Robert E. Springsteen today. Total receipts for the month amounted to $234,473.01.

The fact that receipts for permits for third and fourth-class matter showed an increase of almost 100 per cent is taken as a indication that business conditions are improving.

"A large percentage of these permits are used for sending out advertising matter," Mr. Springsteen said, "and it looks very much as if business concerns are beginning to send out advertisements in increasing quantities."