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## The Indianapolis Treason Trials, the Elections of 1864, and the Power of the Partisan Press

Lewis J. Wertheim

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[**Editor's Note:** In 1987 Lewis J. Wertheim, a sophomore at Bloomington North High School, Bloomington, Indiana, researched and wrote the following essay while working on a Younger Scholars grant from the National Endowment for the Humanities. With the exception of editorial style changes, the article is presented essentially as it was submitted by the author.]

Abraham Lincoln led the United States through the most trying time in its history. The Civil War encompassed a significant internal struggle, testing the strength of the union of states, the power of the federal government versus its constituent state governments, and the validity of the United States Constitution. Because President Lincoln faced political situations for which there were sometimes no precedents, and because he felt that his primary duty was to preserve the Union, he was at times led to make hasty executive decisions and to place his own interpretation on the Constitution. State governors, taking their cue from Lincoln, sometimes followed his example and chose an expedient rather than a thoroughly and constitutionally proper course to achieve their aims. As a result, Lincoln and the national administration as well as several state administrations were involved in cases in which their particular interpretations of the Constitution were challenged. One such landmark case that ultimately involved both the state of Indiana and the federal government was *ex parte Milligan*.

To understand the Milligan case fully one must recognize the Civil War context in which it took place. It is too simple to envision the Civil War as a "War between the States," in which northerners were uniformly pitted against southerners and vice versa. The situation was far more complex. Northern sympathizers existed in the South, and Confederate sympathizers existed in the North.

In the Indiana and Ohio region, for example, a number of dissenting pro-Confederate groups formed. On the federal and state

levels Peace Democrats opposed Lincoln and his fellow Republicans. Particularly in the Midwest, however, one discrete minority sector of the Democratic opposition was comprised of radical dissident groups opposed to the war, abolition, the primacy of the federal over the state government, and the draft. Those anti-administration and pro-Confederate midwestern groups were dubbed Copperheads ("snakes in the grass") by Lincoln's Republican supporters, who viewed them as subversive and traitorous. Among these groups were the secret societies called the Knights of the Golden Circle and the American Knights. The latter eventually merged with another such group, the Sons of Liberty, which by 1864 allegedly existed to some degree in forty counties throughout the state of Indiana.<sup>1</sup>

The one person most clearly associated with the Copperheads was Clement L. Vallandigham of Ohio, the supreme commander of the Sons of Liberty and possibly the figure who inspired the well-known Edward Everett Hale story, "The Man Without a Country." Among the more outspoken and radical of Vallandigham's cohorts were leaders of the Hoosier chapters of the Sons of Liberty: Harrison H. Dodd, an Indianapolis printer; William H. Bowles, a physician and former Mexican War general from French Lick Springs; Horace Heffren, a Washington County politician; Andrew Humphreys of Greene County; and Lambdin P. Milligan, an attorney from Huntington, who also served as a "peace" candidate in the Indiana 1864 Democratic gubernatorial primary.

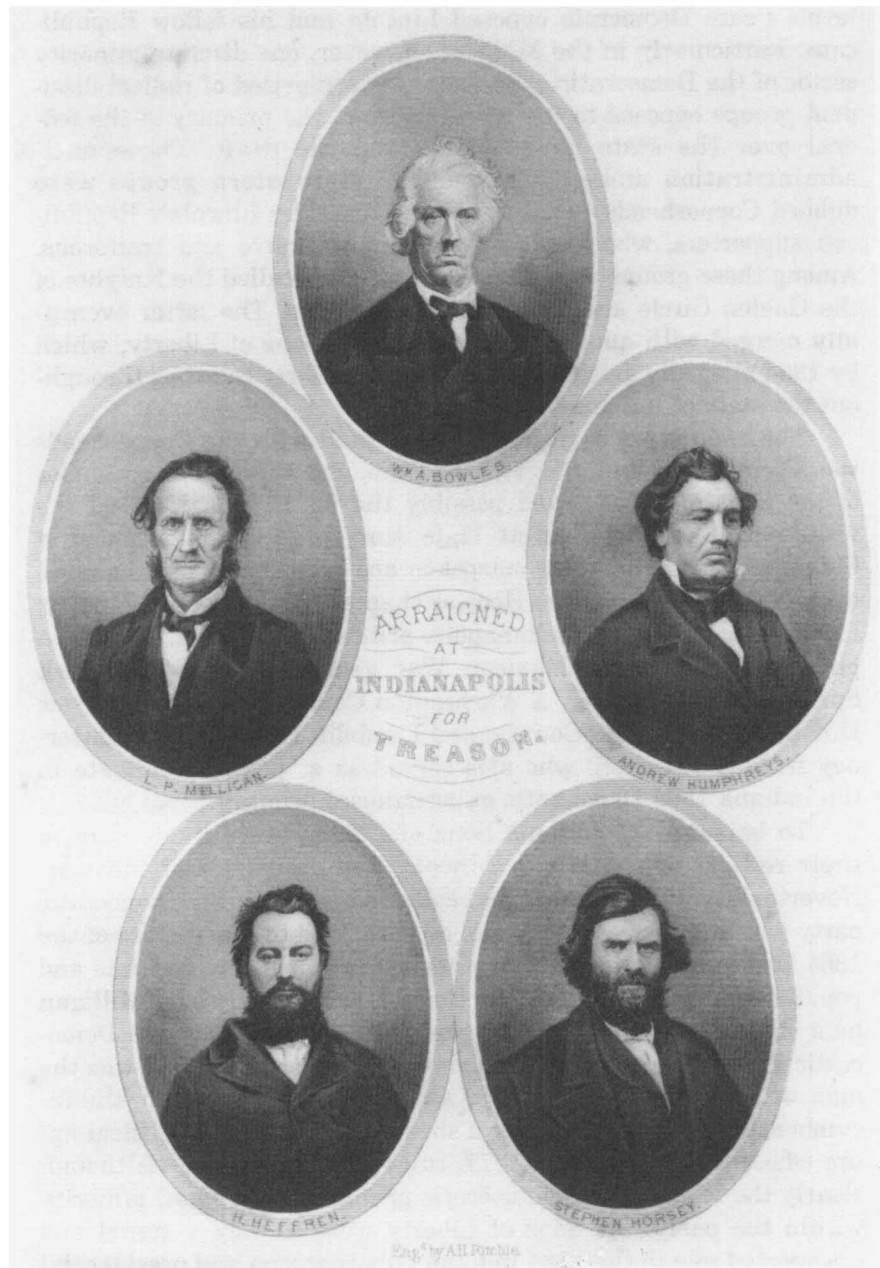
To be sure, the Indiana Sons of Liberty were likely firm in their radical opposition to Lincoln Republicans and the war. Nevertheless, their number and collective voice in the Democratic party was of minor consequence, as witnessed by the results of the 1864 Democratic gubernatorial primary, in which the moderate and popular candidate, Joseph E. McDonald, won handily over Milligan by a vote of 1,097 to 160, thus capturing 87 percent of the Democratic voters.<sup>2</sup> By winning the primary election McDonald was the man who was to run in October against Oliver P. Morton, the incumbent Republican governor, a shrewd, controversial political figure who, until his death in 1877, ruled Indiana politics.<sup>3</sup> Although clearly the losers in the Democratic primary and a small minority within the party, the Sons of Liberty were to play a signal and unexpected role in the 1864 Indiana gubernatorial and presidential elections, as well as in American constitutional history.

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<sup>1</sup> See Robert H. Abzug, "The Copperheads: Historical Approaches to Civil War Dissent in the Midwest," *Indiana Magazine of History*, LXVI (March, 1970), 40-55.

<sup>2</sup> Emma Lou Thornbrough, *Indiana in the Civil War Era, 1850-1880* (Indianapolis, 1965), 211-12; Kenneth M. Stampp, *Indiana Politics during the Civil War* (*Indiana Historical Collections*, Vol. XXXI; Indianapolis, 1949), 233.

<sup>3</sup> Thornbrough, *Indiana in the Civil War Era*, 225-26.



Reproduced from Benn Pitman, ed., *The Trials for Treason at Indianapolis, Disclosing the Plans for Establishing a North-Western Confederacy* (Cincinnati, 1865), frontispiece.

The Milligan case effectively began on September 3, 1864, when General Alvin P. Hovey, the chief military officer in Indianapolis, arrested Dodd for alleged treason and scheduled his trial for less than three weeks later, on the 22nd of that month. Shortly after the Dodd trial had begun, on October 5–7, the military also arrested for treason Milligan, Bowles, Humphreys, Heffren, and Stephen Horsey as well as Joseph J. Bingham, the state chairman of the Democratic party and editor of the *Sentinel*, the Democratic newspaper in Indianapolis. Their trial began very quickly, two weeks later on October 21. During his trial Dodd escaped from prison and fled to Canada, a fact that seemed to indicate his guilt and a fact that did much to prejudice the court and public opinion in the other conspiracy trial involving Bingham, Milligan, and the other arrested and accused Sons of Liberty. The treason trials were carried on during the months of October and November, 1864, in the military court, which eventually, as expected, found the conspirators guilty of treason and sentenced them to hang on May 19, 1865, the following year.

After their sentence was handed down, Milligan and the other convicted men were sent to a military prison in Columbus, Ohio, to await their execution. The condemned men did not, however, accept their fate passively. Milligan, a lawyer by profession, was convinced that he and his comrades had been unfairly denied a trial by jury and that, in fact, the whole proceeding was unconstitutional because they had been arrested and tried by military courts instead of the civil courts.

The fact that Governor Morton could have had alleged traitors arrested by the military and that he could have suspended the writ of *habeas corpus* in this case is a constitutional issue that plagued the Lincoln presidency. It was a problem that was not fully addressed until the Supreme Court decision on Milligan's case issued shortly after Lincoln's death.

Morton's decision to use the military to arrest and try Milligan and his comrades reflected the precedent Lincoln had set in his suspension of the *habeas corpus* writ in other arrests, including that of Vallandigham in 1863. At that time, when Vallandigham's fellow Democrats complained about the unconstitutionality of Vallandigham's arrest, Lincoln wrote a reply explaining his reasons for these unusual arrests. Samuel Klaus, who has written a major study of *ex parte Milligan*, summarizes: "Military arrests and trial by military commission were not unconstitutional, Lincoln declared. The enemy had pervaded everywhere. The means used to break the Union power were such that the civil courts could not deal with their suppression."<sup>4</sup> As Allan Nevins, the distinguished

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<sup>4</sup> Alan T. Nolan, "Ex Parte Milligan: A Curb of Executive and Military Power," in *We the People: Indiana and the United States Constitution* (Indianapolis, 1987), 27-33; Samuel Klaus, ed., *The Milligan Case* (New York, 1929), 25.

Civil War historian, sees it, "It was true . . . that Lincoln's duty was to think first and foremost of the nation's safety, now desperately imperiled, and that he could well wonder, as he remarked, whether posterity would not censure him for arresting too few men rather than too many."<sup>5</sup>

Perhaps the suspension of *habeas corpus* during the Lincoln administration is most fully presented by Sydney G. Fisher, a political scientist writing in an early volume of the *Political Science Quarterly* only a couple of decades after the Lincoln presidency:

It was absolute and arbitrary and, if unauthorized, its exercise was a tremendous violation of the constitution. Whether it was justifiable and necessary was another matter. If it was unconstitutional and yet necessary in order to save the Union, it shows that the constitution is defective in not allowing the government the proper means of protecting itself. That Lincoln used this power with discretion and forbearance there is no doubt. . . . But, nevertheless, injustice was sometimes done. His subordinates had not always their master's nature . . . they sometimes arrested without excuse, and were sometimes brutally severe in the arrest. Such things are perhaps inevitable when a great rebellion is to be subdued; but we must regret that they happened in America.<sup>6</sup>

When Milligan was imprisoned, he hired legal counsel to argue that his constitutional rights had been violated by the government. First of all, the Constitution does not clearly give the president, the governor, or any other executive officer the right to suspend *habeas corpus*. Second, and more important, the government cannot implement martial law in areas that are not in rebellion, where battles are not being waged, and where the civil courts have not been overthrown.<sup>7</sup> A record of the case reads:

Milligan insists that said military commission had no jurisdiction to try him upon the charges preferred, or upon any charges whatever; because he was a citizen of the United States and the State of Indiana and had not been, since the commencement of the late rebellion, a resident of any of the States whose citizens were arrayed against the Government, and that the right of trial by jury was guaranteed to him by the Constitution of the United States.<sup>8</sup>

After Milligan had been imprisoned, some of his friends in Indiana convinced Joseph E. McDonald, the very man who had opposed and defeated Milligan in the Indiana Democratic gubernatorial primary race, to go to Washington and speak with President Lincoln about these questionable arrests. From a later

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<sup>5</sup> Allan Nevins, *The War for the Union: Vol. II, War Becomes Revolution* (New York, 1960), 455.

<sup>6</sup> Sydney G. Fisher, "The Suspension of Habeas Corpus during the War of the Rebellion," *Political Science Quarterly*, III (September, 1888), 457-58.

<sup>7</sup> Darwin Kelley, ed., "Lambdin P. Milligan's Appeal for State's Rights and Constitutional Liberty during the Civil War," *Indiana Magazine of History*, LXVI (September, 1970), 267.

<sup>8</sup> Edward McPherson, *The Political History of the United States of America, during the Great Rebellion* (2nd ed., Washington, D.C., 1865), 209.

account by McDonald, Lincoln implied to him that Milligan and the rest of the imprisoned Copperheads were only in jail for safe-keeping until the conclusion of the war. Afterward they would be released. And in January, 1865, the surrender of the South seemed close at hand.<sup>9</sup>

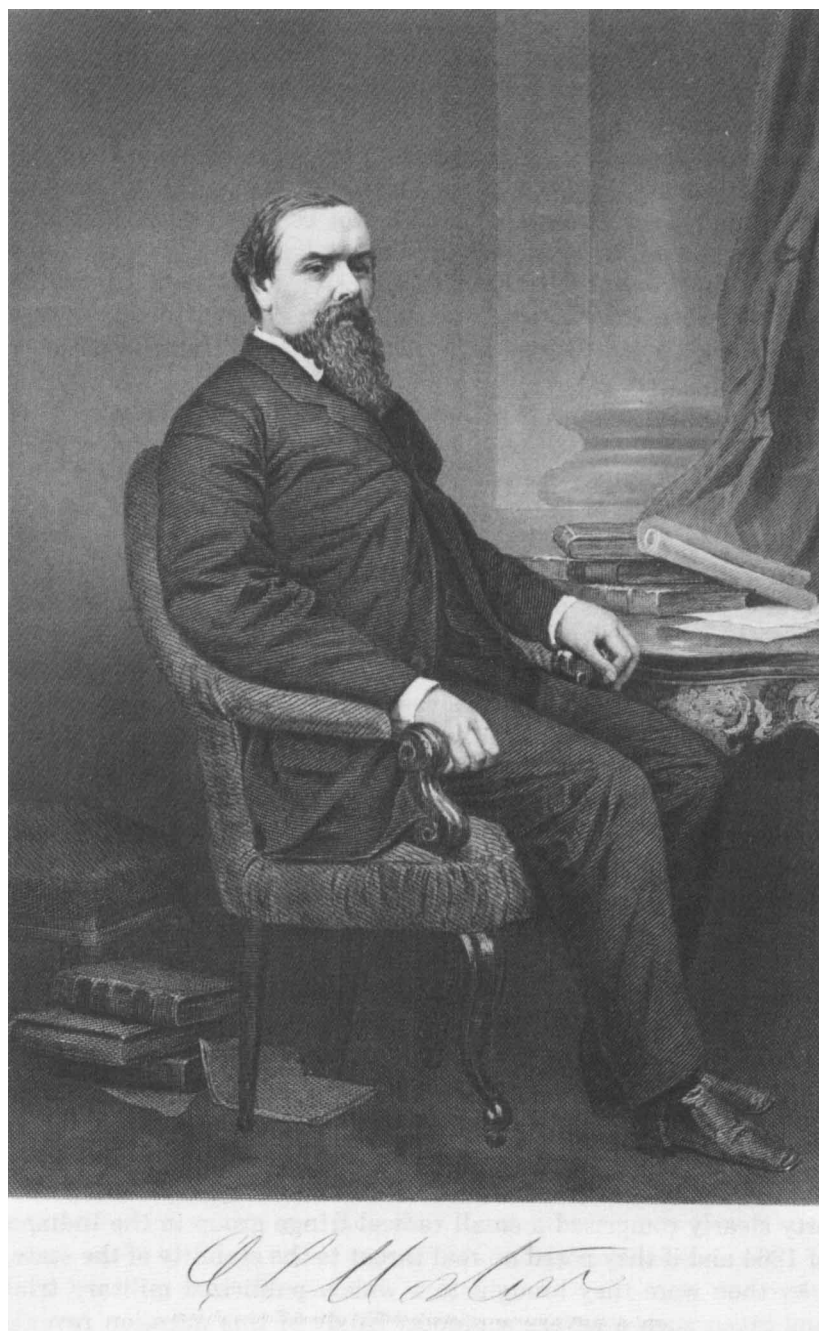
Indeed, less than three months after McDonald's visit to the capital, General Robert E. Lee surrendered to Ulysses S. Grant at Appomattox Courthouse. Had Lincoln not been assassinated shortly after the war's end, Milligan would likely have been set free. However, Andrew Johnson stepped into the White House not knowing of Lincoln's intentions and planning to go ahead with the executions as scheduled. It was at that point that Milligan decided to take legal action.

On May 10, 1865, the prisoners filed suit in the circuit court of Indianapolis to appeal the violation of their constitutional rights. The case eventually went to the United States Supreme Court. The state government in Indiana and then the federal government under Johnson did not back down but continued to believe that Milligan was guilty as charged and deserving of the death penalty. Certainly there was no doubt about Milligan's behavior. He was unquestionably and self-admittedly involved in anti-Union activities during the war. He and his legal counsel, however, pursued the constitutional aspect of his case. Regardless of his guilt Milligan was a citizen of Indiana, a state not in rebellion or in a war zone and a state in which the civil courts were in full operation. He maintained, therefore, that he should not have been tried by a military court and that, consequently, his trial had violated his constitutional rights and had not given him the benefit of the constitutional guarantee of writ of *habeas corpus*. After much deliberation, the Supreme Court, on April 3, 1866, voted in Milligan's favor; and Milligan and his cohorts were set free. The decision was a monumental one in terms of constitutional interpretation of the writ of *habeas corpus* and the rights of an executive officer in times of war or national crisis.

The dimensions of the Milligan case in terms of United States constitutional history are well known and have been explored by many historians. But there is another aspect of the case that has not been so well documented. If, as stated earlier, the Sons of Liberty clearly comprised a small radical fringe group in the Indiana of 1864 and if they posed no real threat to the stability of the state, why then were they brought to a widely publicized military trial and given such a severe sentence? Study of this question reveals the bitter political warfare in the state of Indiana and the willingness of embattled Republicans to magnify the activities of a small

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<sup>9</sup> Klaus, *Milligan Case*, 38-39.



Courtesy Indiana Historical Society, Indianapolis.

minority of extremists and to use those men as pawns in the game of politics. Particularly important in the political context of the Milligan case is the enormous power of an intensely partisan press.

When former Indiana Attorney General Joseph McDonald won the Indiana Democratic primary election and became the party's candidate for governor, he found himself placed in the midst of a difficult race against the powerful Republican incumbent, Oliver P. Morton. McDonald was an acute and astute critic of Morton's policies. Both men were accomplished speakers and, during the months before the state election on October 11, 1864, frequently debated one another throughout the state. McDonald and his fellow Democrats argued that "the Lincoln administration was a failure and that peace and reunion could come only through a Democratic victory."<sup>10</sup> More specifically, McDonald recognized and publicized the weaknesses in the Morton administration. Among other things Morton seemed to have mishandled state funds. More important, the Union army did not seem to be faring well during the spring of 1864, and Morton had, consequently, succumbed to pressures from Washington to draft increasing numbers of Hoosiers.

As one historian points out, Morton had promised the citizens of Indiana in February, 1864, that Washington's request for 200,000 men would be the last.<sup>11</sup> But he then offered the federal government an additional 20,000 short-term men in April. The farmers of Indiana, who might have been willing to serve in the Union army during the winter months, were loath to do so during the spring planting season. With Hoosiers feeling the cold pinch of the draft for a war that registered many battlefield casualties, Lincoln's demand in July for still another 25,000 Indiana conscripts to be drafted in September was a blow to Morton and to his campaign. Moreover, so many men serving in the army and away from the polls on election day must have given Morton and the Republicans much cause for concern.

During the summer of 1864 Morton and McDonald seemed evenly matched. McDonald could comfortably exploit the weak spots in Morton's record as governor. What Morton and his fellow Republicans needed, therefore, was an issue to use against McDonald and the Democrats. This they found in the Sons of Liberty and in their alleged subversive activities as exposed in a report on Copperhead activities in Indiana, prepared and issued by General Henry B. Carrington.

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<sup>10</sup> Stampp, *Indiana Politics during the Civil War*, 238.

<sup>11</sup> Lorna Lutes Sylvester, "Oliver P. Morton and Hoosier Politics during the Civil War" (Ph.D. dissertation, Department of History, Indiana University, 1968), 243-44. See also Kenneth M. Stampp, "The Milligan Case and the Election of 1864 in Indiana," *Mississippi Valley Historical Review*, XXXI (June, 1944), 42.



The military commander of the District of Indiana, Carrington was hardly politically impartial. He was a staunch Republican and a not surprisingly strong supporter of Governor Morton, who had, in fact, saved Carrington's career when the general had been threatened with loss of his command for charges of drunkenness and neglect of duty.<sup>12</sup> Perhaps because of his own political zeal and perhaps, as one historian believes, because of his debt to Morton, Carrington undertook a covert operation to infiltrate and expose the Sons of Liberty in Indiana.<sup>13</sup> To do this, he employed a number of seemingly unqualified detectives, chief among them Felix G. Stidger, who became the key witness in the Milligan *et al.* treason trial. Stidger had no credentials as an undercover detective, for, according to his own testimony, he had spent two or three years "in the dry goods business" and before then had been "a carpenter, and served in the army."<sup>14</sup>

On the basis of information provided by Stidger, who, as a part of his undercover duty, became a member of the Sons of Liberty under the alias of J. J. Grundy,<sup>15</sup> and on the basis of rumor and hearsay probably colored by his own political biases, Carrington, on June 28, 1864, produced and presented to Governor Morton what came to be known as "The Carrington Report," which painted a picture of a secret Indiana Copperhead society with some 30,000 members in the state plotting to overthrow the state government and abet the Confederacy so that the rebels could move across the Ohio and penetrate into Union territory in Indiana.<sup>16</sup> In his report Carrington not only exposed the Sons of Liberty and their plans but also published the secret rites and rituals of their meetings and inductions. In the view of historian Frank L. Klement, "Most of Carrington's contentions . . . had no basis in fact, making the whole little more than political propaganda."<sup>17</sup> Surely Carrington's report was not completely fabricated and likely contained much truth about a lunatic fringe political group. To what extent political propaganda was Carrington's aim is not clear. What is clear, how-

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<sup>12</sup> Frank L. Klement, *The Copperheads in the Middle West* (Chicago, 1960), 187.

<sup>13</sup> *Ibid.*, 187-89.

<sup>14</sup> Benn Pitman, ed., *The Trials for Treason at Indianapolis, Disclosing the Plans for Establishing a North-Western Confederacy* (Cincinnati, 1865), 106; Klaus, *Milligan Case*, 301. These volumes both contain the verbatim record of the conspiracy trials. The original records are part of the Records of the Judge Advocate General's Office, General Courts' Martial, 1812-1939, Record Group NN2716 (National Archives, Washington, D.C.). Direct references to the trials will be cited herein from Pitman.

<sup>15</sup> Pitman, *Trials for Treason*, 107-108.

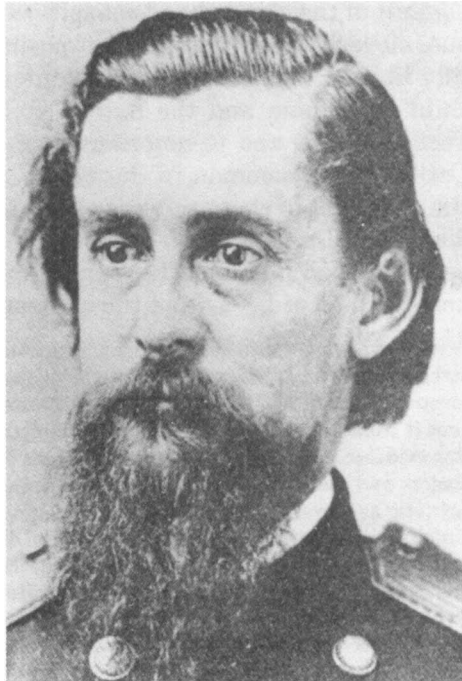
<sup>16</sup> Klement, *Copperheads in the Middle West*, 189-90; Frank L. Klement, *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War* (Baton Rouge, 1984), 131-33.

<sup>17</sup> Klement, *Dark Lanterns*, 132.



*June 1864. Felix L. Stidger*  
UNITED STATES GOVERNMENT SECRET SERVICE AGENT.  
Grand Secretary of State Order of Sons of Liberty,  
STATE OF KENTUCKY, 1864.

FELIX G. STIDGER



COLONEL HENRY B. CARRINGTON

Reproduced from Frank L. Klement, *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War* (Baton Rouge, 1984), [116], [124].

ever, is the political and propagandistic use that was made of the report by the Republican press and by the Republican politicians.

Logically, the exposure of a secret society with its rituals and plans would essentially terminate the effectiveness and life of such a group. Rather than seeing "The Carrington Report" as a way to bring about an end to the Sons of Liberty, Morton and the Republican newspapers saw in the report a new issue around which to center Morton's troubled gubernatorial campaign. Within a short time after Carrington's report was published, Morton's campaign speeches and the Indianapolis Republican newspapers, the Indianapolis *Daily Gazette* and the Indianapolis *Daily Journal*, relentlessly hammered away at the Copperhead subversive threat, both nationally and in Indiana, and at the fact that the Copperheads were all affiliated with the Democratic party. Although it was never stated that Morton's opponent, McDonald, was himself a Copperhead, it was clearly implied that his supporters were subversives and traitors who would come into power if McDonald were elected.

A first line of attack in the Republican newspapers was to applaud the patriotism of Carrington and Morton and then to paint a portrait of the Copperhead conspiracy as a complex, highly dangerous, cleverly constructed group posing a significant threat to the life, liberty, and pursuit of happiness of every man, woman, and child in Indiana and the nation. References and parallels to the Tories of 1776 and to notorious traitors like Benedict Arnold and Catiline were common in the newspapers' lead articles. Typical of the journalistic rhetoric were the inflammatory articles of the Indianapolis *Daily Gazette*. On August 1, for example, that newspaper published part of "The Carrington Report," and, in an article headlined "S of L," said of the contents of the report:

It is shown that the members of this order [Sons of Liberty] place the rules and oaths of the Order above the obligations of the laws of the land, is inimical to the constitution and the Union, and propose to levy war upon the Government to prevent it from performing all of its proper functions and duties. To fly in the face of this evidence, and try to appease the popular indignation by the assertion that the leaders and members of this treasonable organization are as honest, capable and patriotic as Governor Morton, Gen. Carrington or others who are battling for the Union, is labor thrown away. . . . We have no doubt that A. H. Stephens, John Bell, and many others among the traitors of the land, were once sincere and devoted citizens of the United States, and never meditated becoming abettors in the hellish work of treason. Yet they are none the less traitors now—none the less deserving of the nation's scorn and contempt. Benedict Arnold was once a true soldier and citizen; but when he turned traitor, and the evidence was made public, the fact of his former loyalty did not set it aside. . . . A generous public may tolerate their presence so long as the public safety is not jeopardized thereby; but they must be vigilantly watched and debarred from all positions of trust or confidence.<sup>18</sup>

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<sup>18</sup> Indianapolis *Daily Gazette*, August 1, 1864.

The “hellish” or Satanic character of the alleged traitors is implicitly contrasted to the heavenly and godly character of Morton and Carrington.

The Indianapolis *Daily Journal*, the city’s other Republican newspaper, resorted to similar rhetoric. On July 30 it published the Carrington report preceded by thirteen dramatic headlines including:

**Treason in Indiana**  
**Exposé of the Sons of Liberty.**  
**Treasonable Nature of the Order**  
**It Is Both Civil and Military**  
**Northern and Southern Traitors Work Together**

On the same day, the paper’s article commenting on the report began with the headline “The Serpent’s Den Unearthed.” The *Journal* then went on to say that the newspaper had been warning Hoosiers all along about the serpent-like Sons of Liberty and then suggested that that organization was the active element in the Democratic party:

We have heretofore warned the people of Indiana that there existed within this State a secret, oath-bound political organization, connected with informing the active part of the Democratic party, and that the object and purpose of this order were hostile to the Constitution and Government of the United States, and in active sympathy with the rebel chiefs and rebel armies. . . . Notwithstanding the fact that these warnings have been repeated, and that belief was general that there was a secret order which gave shape and tone to the utterances of the Democratic party, as in mockery of Democracy it styles itself, few will be prepared for the exposé of treason and villainy that we lay before our readers this morning.<sup>19</sup>

The operations of a relatively small group of extremists thus were transferred to the Democratic party as a whole.

Very quickly, such rhetoric developed and expanded, so that there could be no neutral stand on the Copperheads. The *Journal* editors wrote:

Your only security is to unite with your Union neighbors against this monstrous usurpation—its creatures have secured themselves places on your State ticket: its candidates for Congress imprudently demand your suffrages on the pleas of Democracy, and for other offices its members swarm in every neighborhood. If you desire anarchy at home, and to have the scenes now transpiring in Kentucky transferred to Indiana, you should vote for those men.<sup>20</sup>

Similarly, the *Gazette* argued that anyone who did not vociferously denounce the Copperheads and see them as a national threat was placed in the position of either being one of them or a fellow traveler. A *Gazette* article entitled “The Copperhead Conspiracy,” stated:

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<sup>19</sup> Indianapolis *Daily Journal*, July 30, 1864.

<sup>20</sup> *Ibid.*

there is now in existence and in secret operation all over the Northwest if not the entire North, a deep determined and damnable conspiracy against the National Government and the Union cause, and that this conspiracy is in direct connection and combination with the present Southern Rebellion to overthrow the Federal Government and destroy the union of our fathers!

Men will of course pretend to laugh at and ridicule the idea of any such conspiracy or any such organization; but the men who do this, mark us well, are *interested parties*, and men who know vastly more about the matter than they would dare to tell . . . the men who now try to laugh this thing down, or attempt to discredit the existence of any such organization, by making light of, ridiculing, doubting, or even denying it, are *themselves members of the order, and know all about it!* You can safely count on that, and by that sign you may know them.<sup>21</sup>

The line between the Good and the Evil was unmistakable.

Once the Copperhead conspiracy became a moral conflict in which there was only one position to be taken, then the newspaper could take its second line of attack in which moral and political positions became the same and in which the Democrats became the conspirators and fellow travelers. The *Gazette* article just quoted eventually concluded:

That the Democratic party as a party, and in its entirety, is engaged in this conspiracy with the rebellion, we do not say; for such a thing would be almost too dreadful for belief. But that a treasonable organization of the kind alleged exists there can be no doubt; and that it exists within the present Democratic party, being composed mainly of members of that political organization, is also beyond doubt. It is attached, politically, to the machinery of the Democratic party, embraces a formidable number—doubtless a large majority of its supporters, is contrived and engineered by some of the most powerful leaders of that party, and is intending to use the party as an instrument,—to operate by it and through it, and to control it for the accomplishment of its infamous and treasonable ends. It is now insidiously leading the party in a course which, if not soon arrested, must inevitably give the party wholly into its hands and the hands of traitors and enemies of the country. It is this fact which constitutes the dangerousness of the conspiracy.<sup>22</sup>

Purposely disregarding the small vote for Milligan in the Democratic primary and the obvious small voice of the Copperheads in the Democratic party, the Indianapolis *Gazette* implied that although not all Democrats were in the devil's power, most of them were. The Democratic party and its candidates suddenly became not the loyal opposition but a force that sought to destroy the American way of life and deliver the country into the hands of both the South and Satan.

On August 20 the Republican drive to cast the Democrats as traitors and Satan's progeny took a new turn. On that day General Carrington and his men broke into the printing office of Harrison H. Dodd, the alleged leader of the Sons of Liberty in Indiana who was at the time in Chicago. At Dodd's office they seized several

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<sup>21</sup> Indianapolis *Daily Gazette*, August 13, 1864.

<sup>22</sup> *Ibid.*

boxes that were labeled Sunday School books but that contained arms and ammunition. Immediately, and in inflammatory terms, the newspapers put forth the idea that the arms undoubtedly were to be used not merely by the Sons of Liberty but, by extension, by all Indiana Democrats for the purpose of sedition and civil unrest throughout the state:

This we take it is the beginning of the programme as laid down in the "Address to the Democracy of Indiana" by the State Central Committee, issued a few days since. It is the "Peace" men preparing for war! the "Democracy" arming themselves for resisting the draft, and for compelling the authorities to let them have a "fair election!" In short, it is the Copperhead Democracy preparing for revolution and civil war! That is just what it means, what it is intended for and what, if not at once stopped, it will lead to, as sure as the sun rises and sets. Civil war—not in Kentucky or Missouri, but here at home, in Indiana.<sup>23</sup>

The article importantly went on to suggest that the way to stop an alleged military threat by the dastardly Democrats was through the use of the Union and, by implication, the Republican and morally pure military. As before, it is implied that only those who are themselves traitors will not support such a suggestion:

What think our people of this transaction? Arms by the case and by the hundreds smuggled into our midst under the guise of School Books, and by the men who are threatening resistance to the lawful authorities of the country! Are not the loyal people of this community nearly ready to agree with us that there must be a remedy sought for this threatening danger, and that that remedy is *Martial Law*?<sup>24</sup>

The idea that citizens should allow the situation to be resolved through military force and action rather than through standard civil means was extremely significant here, because the issue of martial law and loyalty became central to the conflict that ensued.

While the two Indianapolis Republican newspapers used the Carrington report and the subsequent arms seizure at Dodd's office to discredit all Democrats, the one Indianapolis Democratic newspaper, the *Daily Sentinel*, and its editor, Joseph J. Bingham, pointed out what they saw as the ulterior political motives behind the Carrington report and as constitutional dangers posed by the Dodd affair. Replying to the Carrington report, the *Sentinel* asked the rhetorical question of its rival newspaper, "Will the Journal deny that the exposure of the Sons of Liberty by General CARRINGTON was prepared by direction of Governor Morton, and that the last named individual ordered its publication over the advice and judgment of the former?"<sup>25</sup>

After the military entered Dodd's office without a warrant and found the boxes of arms stored there, the *Sentinel* argued on

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<sup>23</sup> *Ibid.*, August 22, 1864.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Indianapolis Daily State Sentinel*, August 13, 1864.



## EXPLANATION OF THE ILLUSTRATIONS.

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No. 1 is a seemingly harmless portmanteau. No. 2 exhibits its internal arrangement. An alarm-clock, with the bell removed, set to any given time, springs the lock of a gun, the hammer of which, striking and exploding a cap, placed upon a tube filled with powder, fires a train connected with a bottle of Greek fire. The explosion of these combustibles ignites the tow, saturated with turpentine, with which the remainder of the portmanteau is filled.

No. 3 is a conical shell, three and a half inches in diameter.

Nos. 4 and 5 exhibit the same unscrewed.

No. 7 is a case to contain powder, with a nipple for a cap at its upper end. No. 7 screws into 6, the space between the two being filled with Greek fire. Nos. 6 and 7 make an interior shell, fitting loosely in No. 3, and which, on striking any object, explodes the cap on the top of 7.

No. 8 is a spherical shell, or hand-grenade.

Nos. 9 and 10 exhibit the same unscrewed.

No. 11 is an interior shell, with nine nipples for caps, fitting loosely, so as to leave space for concussion. No. 11, also, is made to unscrew in the center, to hold No. 12, a small vial containing Greek fire—the space between the two being filled with powder. The dropping of this shell a quarter of a yard from the floor, invariably explodes one or more of the caps. The string attached to No. 8 enables a person to throw it a greater distance, as a sling, with less danger of explosion in his own hand.

No. 13 is a letter in secret cipher, sometimes employed by the Order of Sons of Liberty in their communication with each other, upon matters requiring secrecy.

“HEADQUARTERS, 10TH DISTRICT, }  
Grand Marshal's Office.”

“Dept. Marshal:

“We have 40 rifles and 100 pistols for your township. It is necessary that they are placed in the hands of our brothers immediately. Inform your company that the arms will be ready on Wednesday night.

“Yours,  
“A. A. D. C.  
“F—— W.”  
7

No. 11 is also, is made to unscrew in the center, to hold No. 12, a small vial containing Greek fire—the space between the two being filled with powder. The dropping of this shell a quarter of a yard from the floor, invariably explodes one or more of the caps. The string attached to No. 8 enables a person to throw it a greater distance, as a sling, with less danger of explosion in his own hand.

### PARAPHERNALIA AND CIPHER ATTRIBUTED TO THE ORDER OF THE SONS OF LIBERTY



August 22 that Dodd's constitutional right to bear arms was violated and that "the right to bear arms includes the right to purchase and sell arms." Furthermore, and more important, the paper went on to point out that, quoting the Constitution, "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable search or seizure shall not be violated." In the same angry article the *Sentinel* also raised the extremely significant question as to the propriety of the military's involvement in what should properly be a purely civil matter: "Indiana is not under martial law. The laws and the decrees of her civil courts can be enforced. No opposition or resistance has yet occurred to the civil authorities. The Constitution says 'the military should be kept in strict subordination to the civil power.'" It is then argued the seizure was carried out "for partisan purposes and for partisan effect." Finally, the article concludes that the use of martial law and the abrogation of civil rights puts the concept of democracy in jeopardy: "If the military are no longer to be kept in strict subordination to the civil power, then military despotism is upon us, and the people are no longer governed and protected by law, but are subject to the arbitrary caprices and will of a military commandant. Are the people prepared for this surrender of their political rights?" Clearly the Democratic newspaper tried to use the theoretical and abstract issues of constitutional protections to counter the Republican newspaper's appeal to the psychological fears and insecurities of its readers raised by the image of a satanic Democratic force seeking insurrection from within.

The strategy of striking fear of subversion and armed revolt in the hearts and minds of Hoosiers that was used by the Republican papers becomes precisely the strategy used by Governor Morton in his reelection campaign speeches directed against his opponent McDonald in particular and against the Democrats in general. Avoiding the Democratic charges of his corruption and misuse of government funds, Morton uses the Carrington report to deflect McDonald's criticisms of the Morton administration and to focus the election instead on the issue of the Sons of Liberty and the Copperheads and on the idea that although all Democrats are not card-carrying members of the Sons of Liberty, those that are not are nearly all fellow travelers. The Dodd affair, then, gave Morton a powerful club to swing at his Democratic opponents. His response to the seizure of arms at Dodd's office was that it was the proof of the general charges he has been making of Democratic subversion. In a speech following the Dodd seizure and quoted in the *Daily Gazette*, the governor proudly boasted, "What have you discovered now that I have not frequently warned you of for the past eighteen months? I have told the people of Indiana that arms have secretly been brought into the State."<sup>26</sup>

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<sup>26</sup> Indianapolis *Daily Gazette*, August 22, 1864.



**MILITARY COMMISSION FOR THE INDIANA  
TREASON TRIALS, OCTOBER, 1864**

**BREVET BRIGIDIER GENERAL  
SILAS COLGROVE**  
**COLONEL THOMAS J. LUCAS**  
**COLONEL THOMAS W. BENNETT**  
**COLONEL BENJAMIN SPOONER**  
**COLONEL RICHARD P. DEHART**  
**MAJOR HENRY L. BURNETT**  
**COLONEL AMBROSE A. STEVENS**  
**COLONEL WILLIAM E. MCLEAN**  
**COLONEL CHARLES D. MURRAY**  
**COLONEL REUBEN WILLIAMS**  
**COLONEL ANSEL D. WASS**  
**COLONEL ALBERT HEATH**

Courtesy Indiana Historical Society, Indianapolis.

In that same speech Morton cleverly directs attention away from Dodd as an individual and directs it toward the nameless but obviously Democratic powers which, Morton argues, Dodd serves:

but the men who invent the lies and put them in circulation are the guilty ones. Are more guilty than even Dodd. . . . He is not most to blame in this matter. But the men who have advised him and encouraged him. . . . Five of the candidates on the Democratic State ticket are members of the order. This society is the nucleus of treason in Indiana; but it does not contain all or the worst part of it.

Without naming names Morton let his audience name the names for themselves. And those names are all, he suggested, on the ballot as Democrats:

It is not necessary that I should enter on the individual task of naming these persons who are far worse than Dodd. You generally know who they are. What you want is to be on your guard; to be prepared to resist these men in a legal manner, and to vote them down in the coming election. . . . And I am glad to believe that the U.S. authorities have at last awakened to the true condition of affairs in Indiana, and that they will enforce the law and promptly arrest and punish all who can be convicted of plotting treason in our midst.

Morton not only implicated his opponents as Dodd's abettors and sympathizers but in his speech shrewdly set the stage for the arrests and treason trials that followed in the ensuing weeks.

Whether the Carrington report and the Dodd affair were fortunate opportunities for Morton and the Republican papers or whether Morton orchestrated the events remains unclear. With Carrington's subservience to Morton, however, and with the almost perfect timing of events, it might appear that more than mere serendipity was at work. Everything seemed to go according to schedule for the Indianapolis Republican newspapers and for Governor Morton's reelection campaign: first the accusations against the Copperheads, then the dramatic exposé in the Carrington report, then a more concentrated attack on the Sons of Liberty as dangerous subversives, and finally the supposed proof of sedition in the Dodd break-in and seizure. The only missing piece was the arrest, exposure, and trial of the Indiana Copperhead culprits themselves. That followed shortly.

Realizing that arousing fear of the Copperheads and of armed rebels operating secretly in Indiana was an issue that was pushing his financial mismanagement into the background and might well clinch the gubernatorial campaign in his favor, Morton must surely have been eager to arrest Dodd and the other leaders of the Sons of Liberty. He must, however, also have known that if they were arrested by civil authorities, it could take months before a trial date was set. He therefore hoped to have the military, through General Carrington, perform the arrests and trials. As Kenneth M. Stamp points out, "Carrington, however, was not ready to go that far, and he had his first serious disagreement with the bolder Morton. The General denied that he had authority to make the arrests

and doubted the legality of military trials when the regular courts were open."<sup>27</sup> Following his confrontation with Carrington, Morton had Carrington replaced as commander of the Indiana District and had a politically sympathetic General Alvin P. Hovey appointed on August 25.<sup>28</sup> For Morton time was of the essence, and he was more interested in making arrests and beginning a trial than he was in the problem of whether the military or the civil authorities should conduct them. After all, Lincoln had already set a precedent for an executive's taking matters out of civil hands and placing them into his own or the military's for the purpose of expediency. Of such action, the Merryman case and the arrest of Clement Vallandigham were just two examples.<sup>29</sup>

While Dodd's office was entered and the arms there were seized, Dodd himself was attending the Democratic convention in Chicago. When he returned to Indianapolis, he was arrested on September 3 by the military and placed in a military prison to await trial.<sup>30</sup> As before, the Democratic newspaper, the *Sentinel*, objected to the fact that Dodd's constitutional rights had been violated. On September 5, two days after Dodd's arrest, the *Sentinel* argued:

We are not the apologist of Mr. DODD. If he has violated the laws of the land, let him be arraigned, tried, and, if guilty, punished as those laws proscribe, and all good citizens will say "so let it be." Indiana is not in a state of insurrection or rebellion. No attempt has been made to interrupt the enforcement of the civil laws of the State. Every mandate of the civil authorities has been respected and obeyed. If Mr. DODD has been guilty of violating the laws of the State or the Federal government, upon sufficient affidavit and warrant, he could have been arrested by a judiciary officer duly empowered. What apology, then, for his arbitrary arrest by the military authorities? Is the mandate of a military commandant in a State loyal to the Government to be regarded as superior and as overriding its Constitution and its laws?<sup>31</sup>

Although cogent, such an argument based on theoretical ideas of constitutional rights had little effect especially when the Republican papers appealed directly to the fears of their readership. While the *Sentinel* spoke in generalities, the Republican papers directed their fury toward Dodd and other named parties and directed their praise toward Morton. Furthermore, just at this juncture, on August 28, Morton's brother-in-law and secretary, William R. Holloway, took over the editorship of the Indianapolis *Daily Journal*.<sup>32</sup>

<sup>27</sup> Stampp, *Indiana Politics during the Civil War*, 246. See also Sylvester, "Oliver P. Morton," 275.

<sup>28</sup> Stampp, *Indiana Politics during the Civil War*, 247; Stampp, "The Milligan Case," 51-52; Sylvester, "Oliver P. Morton," 275-76; Nolan, "Ex Parte Milligan," 37; Klement, *Dark Lanterns*, 171-72.

<sup>29</sup> Fisher, "Suspension of Habeas Corpus," 455-56; Klaus, *Milligan Case*, 25-26; Nolan, "Ex Parte Milligan," 31-33.

<sup>30</sup> Klement, *Dark Lanterns*, 172.

<sup>31</sup> Indianapolis *Daily State Sentinel*, September 5, 1864.

<sup>32</sup> Stampp, "The Milligan Case," 54.

That meant that the attack on Dodd and his fellow Copperheads as well as praise of Morton as the man who stood against them would continue to be placed before Hoosier readers on a daily basis.

The trial of Dodd began on September 22, less than three weeks before the gubernatorial election on October 11. The central importance of the trial to the forthcoming election of a governor in October as well of a president in November is made unmistakably clear in a front page article of the *Journal* on September 14, one week before the Dodd trial. The article, entitled "The Great Criminal Case," was an account of a mock trial of "The People of the United States *versus* The Copperhead Democracy" as tried by the "Supreme Court of the Ballot-box—October and November terms, 1864."<sup>33</sup> Not only did the article imply that the *Journal's* readers will vote because of their angry feelings toward the criminal Copperheads but, in calling the Copperheads "The Copperhead Democracy," the voters would see that the Copperheads and the Democrats are one and the same. The proceedings of the Dodd trial itself were timed well for the election, and it seems no accident that the publication of those proceedings began in the *Republican Gazette* on October 4, one week before the election.

Adding fuel to an already hot fire, General Hovey arrested the other chief Sons of Liberty figures—Milligan, Horsey, Bowles, Hefren, and Humphreys. Importantly, on October 5 arrested as well was Bingham, the editor of the *Sentinel*. Although Bingham was later exculpated, his arrest essentially quashed the one opposition newspaper and its objections to the proceedings against the Sons of Liberty and quashed as well the force of the *Sentinel's* accusations of violation of constitutional rights. With Bingham behind bars, the voice of the editor of the Democratic newspaper was also silenced during the final week of the election campaign. In the October 7 issue of the *Journal* in a front page article entitled "The Bingham Appeal," which justified Bingham's arrest and tossed aside the questions of violations of constitutional rights, a letter "To the People of Indiana" written by Bingham from his prison cell appears. In his letter Bingham, concerned now about his own personal situation, earnestly continued the arguments he had made about Dodd in earlier weeks about the unconstitutionality of military arrests. The *Journal* ironically juxtaposed to Bingham's appeal a sharply worded article about Dodd's guilt followed by a sarcastic blurb that read:

We understand that Grand Commander Dodd and Mr. Bingham, the Chairman of the Little Mackerel State Central Committee, are confined in the same room in the Government building. They Will now have plenty of time to cogitate over the un-

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<sup>33</sup> Indianapolis *Daily Journal*, September 14, 1864.

certainty of human affairs, "usurpation of the Government," "Lincoln's bastiles," "arbitrary arrest," &c., &c.<sup>34</sup>

The visual juxtaposition of Bingham's emotional plea and the newspaper's smug blurb clearly illustrated the position of the Democratic and Republican parties shortly before the state election.

That same day, October 7, Dodd escaped from jail with relative ease and fled to Canada. That gave Morton and the newspapers almost all they needed for victory. The October 8 issue of the *Journal* reported the escape of Dodd exclaiming: "His flight is an admission that he was unable to overthrow the evidence against him, and we are told, indeed, that he had not subpoenaed a single witness. Conscious of guilt, he saw safety in flight and thus confessed the crimes for which he was arraigned."<sup>35</sup> Finally, on the day before the election, the *Journal* ran an editorial, "To the Voters of Indiana," that pulled together all the elements of the Morton campaign in order to make a strong final appeal to the Hoosier voters. The editorial pleaded for a Republican vote because the Democrats had "Put Vallandigham in place of your President! They put Dodd in place of your Governor! . . . You have been threatened by a home enemy as bold and wicked as that of Jeff. Davis! That enemy meant civil war, to waste your homes, to rupture this Union, to bring the rebel armies into Indiana."<sup>36</sup> Two columns over, General Hovey, who probably should have remained neutral during the trials, wrote his own pleas "To the People of Indiana" in which he suggested that the Copperheads might try to win the election by physical force at the ballot box and that he, Hovey, was determined to see that that would not occur.

The *Gazette* likewise made the most of Dodd's escape with a letter "To the People of Indiana" from the very man who had set all the exposure of the Sons of Liberty in motion: General Carrington. In his statement Carrington spoke in the familiar language of the newspapers and of Morton's speeches suggesting that the ballot box was not a political contest between Republican and Democrat but a battlefield between North and South. "Citizens!" he warned, "every day shows that you were on the threshold of revolution! You can rebuke this treason. The traitors intended to bring war to your homes. Meet them at the ballot box while Grant and Sherman meet them in the field."<sup>37</sup> Certainly, with most of their leaders behind bars, the Copperheads would hardly be a threatening physical force on the day of the election. Their power was obviously almost extinct. But after all the strong rhetoric of the governor's speeches

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<sup>34</sup> *Ibid.*, October 7, 1864.

<sup>35</sup> *Ibid.*, October 8, 1864.

<sup>36</sup> *Ibid.*, October 10, 1864.

<sup>37</sup> *Indianapolis Daily Gazette*, October 8, 1864.

and of the Republican press, no one could have been surprised when Morton won handily over McDonald on October 11. Clearly the press and its extensive and almost daily coverage of the events concerning the Copperheads and the Sons of Liberty preceding the gubernatorial election played an enormous role in influencing Morton's reelection.

After the election the Republican newspapers continued their war of words against the Sons of Liberty because the national elections were still to come a month later, and President Lincoln was running for reelection. Fortunately for them, after the Dodd escape, the Republican newspapers had another treason trial on which to focus. Between October 5 and 7 Milligan and the other Sons of Liberty were arrested. On October 21 their trial began.

In October the *Gazette* ran a series that appeared in occasional installments on the career of General George McClellan, Lincoln's Democratic opponent. As expected, the portrait of McClellan was not a flattering one. When the trials of Milligan *et al.* got underway, coverage of the trial obscured the McClellan coverage. For the most part the newspapers provided verbatim accounts of the trial but sometimes with significant omissions. In the *Gazette*, for example, there were omissions that nearly always related to the examination or cross-examination of a defendant by his own lawyer. To use one instance, on November 3 the *Gazette* printed the testimony of Felix Stidger, the undercover agent Carrington had employed to infiltrate the Sons of Liberty. The *Gazette* accurately printed Stidger's testimony describing his dealings with the group. Comparing the *Gazette's* record with the complete record of the trial, however, one sees that parts of the cross-examination have been omitted, particularly where Stidger is shown by the defense lawyer's questions to be an *agent provocateur* specifically trying to persuade men to join the Sons of Liberty in order then to expose them to Carrington. Omitted from the *Gazette's* trial record is the defense attorney's asking:

Q. Then your private and ostensible purposes were different. Your private purpose was to commit as many as possible to the treasonable schemes of the order, and to keep the Government officials advised of it, and to bring them to justice at the proper time?<sup>38</sup>

The Republican newspapers' almost daily reminders of Copperhead treason provided by the pointedly expurgated trial record kept the idea of Democratic treason and the issues that had reelected Morton in the minds of Hoosier readers in the weeks and days before the national election.

In general, the newspapers used the rhetoric they had used in September against McDonald and now simply replaced his name

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<sup>38</sup> Pitman, *Trials for Treason*, 116.

with McClellan. One can see a good example of how the newspapers used the treason trial to advantage in the November 5 issue of the *Gazette*. On November 4 Horace Heffren, one of the indicted men, revealed in his testimony that the assassination of Governor Morton had at one time been under consideration. It is clear from the testimony that such a plan was largely talk. Nevertheless, on November 5 the *Gazette* preceded the trial record with headlines in various eye-catching typefaces that link the assassination and the projected treason to the Confederacy and to the Democrats:

**FULL EXPOSURE OF THE O.S.L.  
Deputy Grand Commander Heffren  
makes Clean Breast of it!  
THE OBJECTS OF THE ORDER!  
The Secret Committee of Ten!  
Morton to be Assassinated!  
WHERE THE MONEY CAME FROM  
The Rebels Foot the Bills!  
None but Democrats Admitted!<sup>39</sup>**

In that same issue of the paper appeared the following short article entitled "Something to Think of":

The men who proposed to assassinate Governor Morton, who got \$200,000 to expend in arms and ammunition to aid the rebels, and conspired to set the rebel prisoners free to pillage and murder nominated and support General McClellan. Is any man who loves the Union and the Constitution prepared to endorse them by voting for him. He was nominated by them and expected to be elected by their support, and every vote against McClellan is a rebuke of the would be assassins of Governor Morton.<sup>40</sup>

Clearly once again the Democratic candidate was made responsible for the activities of the Sons of Liberty, a group with which he obviously had no affiliation.

Although it is impossible to determine just how much the Republican newspapers influenced Indiana voters, the federal election in November, like the state election in October, was a Republican landslide.<sup>41</sup> Interestingly, as soon as the election was over, the coverage of the treason trials quickly left the front page, was reduced in length, received summary rather than verbatim coverage, and then disappeared. It is interesting, too, to note that half a year later, when he was secure in his office and when the condemned men faced execution, Morton himself wrote to Presi-

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<sup>39</sup> *Indianapolis Daily Gazette*, November 5, 1864.

<sup>40</sup> *Ibid.*

<sup>41</sup> Klement, *Dark Lanterns*, 182-83.



dent Andrew Johnson pleading for the sentences of the convicted traitors to be commuted.<sup>42</sup>

By examining the case of Milligan, Dodd, and the other alleged traitors, one can see a situation that tested the constitutional rights of citizens during wartime as well as the constitutional rights of an executive officer of the government to use the most expedient means to keep order during a period of crisis. For legal historians the Milligan case and the eventual judgment of the United States Supreme Court in favor of the defendants is a landmark decision. At the same time, however, it is possible to consider the treason trials in another light, for those trials show how the plans and schemes of a dissenting political fringe group with little power were used by the press and a shrewd politician to obscure significant issues and to shape a winning election campaign based on public fear; on the suggestion that an opponent condoned the activities of a potentially dangerous, armed radical fringe group; and on the suggestion that those voters who did not vote against the Democrats were themselves traitors. The Indiana treason trials provide more than legal history. They provide an important example of the power of a partisan press to influence politics and political events.

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<sup>42</sup> Stampp, "The Milligan Case," 57.