

OUTLINE FOR LAW WEEK FOR HIGH SCHOOLS - February 23-27, 2009

DOCUMENTATION

Teacher Materials:

- Three page Outline for Law Week
- *Ex parte Merryman* and Debates on Civil Liberties During the Civil War

Attorneys/Judges Materials:

- Three page Outline for Law Week
- *Ex parte Merryman* and Debates on Civil Liberties During the Civil War (To Read the Case in Full, See, *Ex parte Merryman*, April Term,. 1861 - Case No. 9,487, Taney, 246, 9 Am Law Reg 524,17 F.Cas. 144, 24 Law Rep. 78, No. 9487)
- Document entitled “Historical Documents” (Excerpts)

INTRODUCTION

This year, the American Bar Association commemorates the 200th anniversary of Abraham Lincoln’s birth (1809-1865) with Law Day 2009: A legacy of Liberty - Celebrating Lincoln’s Bicentennial. We honor one of our nations’ greatest leaders whose dedication to the founding principles of this country successfully brought the United States through its greatest crisis.

As we celebrate Law Week 2009 in Sonoma County, the Sonoma County Bar Association, in association with the Sonoma County Office of Education, pays tribute to President Abraham Lincoln. Students will gain insights into the importance of the writ of *habeas corpus* and its suspension during the Civil War by President Lincoln through this presentation by attorneys and/or judges. Students will hear about the 1861 court case, *Ex parte Merryman*, and discuss arguments for and against its suspension. Students will explore the question: “Was President Lincoln justified in suspending the writ of *habeas corpus*?”

FACTS ABOUT LINCOLN AS A LAWYER

Lincoln practiced law for 23 years before becoming President in 1861. He appeared in at least 62 cases between 1839 and 1846 and produced an enviable record of success. For example, a suit brought on behalf of a client who broke a leg because of an unpaved street set precedent in municipal law, and a case regarding a railroad bridge set precedent in transportation law.

A few quotes exemplify his philosophy regarding law and politics.

- I have never had a feeling, politically, that did not spring from the Declaration of Independence.
- The best way to get a bad law repealed is to enforce it strictly.
- If you are resolutely determined to make a lawyer of yourself, the thing is more than half done already.
- Discourage litigation. Persuade your neighbor to compromise whenever you canAs a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough.
- Resolve to be honest at all events; and, if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer.
- For Lincoln, the question of slavery and the sanctity of the Union were two sides of the same coin. He opposed slavery as inherently wrong and he could see that it was tearing the nation apart. In a June 1858 speech, Lincoln said, “A house divided against itself cannot stand.”

HABEAS CORPUS

Lincoln was modest about his accomplishments, once saying, “I claim not to have controlled events, but confess plainly that events have controlled me.” This presentation examines one of Lincoln’s controversial decisions: his suspension of habeas corpus during the Civil War.

Habeas Corpus or “you have the body” in Latin, refers to the body of law that governs all arrests and court proceedings, protects an individual’s right to know charges against him/her, and allows detainees to ask courts if their detention is lawful.

PROCEDURE/INSTRUCTION: Teachers

1. Teachers will be assigned 2 legal professionals (i.e. 2 attorneys or 1 attorney and 1 Superior Court Judge). The legal professionals have been directed to contact teachers prior to presentation; however, teachers may initiate contact, if they have not had a timely contact.
2. Teachers should review presentation materials identified above with students prior to presentation to help facilitate a meaningful discussion.

PROCEDURE/INSTRUCTION: Attorneys/Judges

1. Each attorney/judge will be assigned a classroom at a specific high school. The majority of the classes will be Seniors. The attorney/judge should directly contact

- the teacher prior to the presentation for additional instructions (i.e location, specific time etc.)
2. Attorney/judges should read the materials provided prior to the presentation.
 3. Attorney/judges will have approximately 1 hour to make presentation and to facilitate discussions.
 4. The lawyer or judge should offer an introduction to habeas corpus, Lincoln's suspension orders, and the *Merryman* case. Students should understand that habeas is the safeguard of American jurisprudence and why its suspension was significant.
 5. Attorneys/judges should spend some time discussing the legal profession and their careers.

SUGGESTIONS FOR CLASSROOM INTERACTION (The presenters should feel free to make the presentation in any manner they deem appropriate after discussion with the Teachers. The following is provided as guidance.)

- The class may be divided into small groups, with one half of the small groups arguing in support of the suspension and the other half arguing in opposition.
- The attorneys/judges may want to have a “mock” debate between themselves discussing the pros and cons of suspension of habeas corpus.
- This issue has direct significance to the current issues surrounding the detainees at Guantanamo Bay, Cuba. You may want to facilitate a discussion on the comparisons between the two.

SUGGESTED TOPICS/QUESTIONS:

1. Why did Lincoln's suspension of the writ of habeas corpus generate such controversy? What was at stake?
2. Was it necessary? Is it ever necessary, and if so, when?
3. How did the context of the Civil War impact Lincoln's decision?
4. How should any war impact a decision to suspend any constitutional right? (i.e. internment camps during WWII)
5. Why is the writ of habeas corpus considered such an important privilege of constitutional government?