

Lincoln Suspends *Habeas Corpus*

Overview

Students will gain insights into the importance of the writ of *habeas corpus* by investigating with a lawyer or judge its suspension by President Lincoln. Students will examine and analyze primary sources from the 1861 court case, *Ex parte Merryman*, then argue and justify positions during discussion with a legal professional.

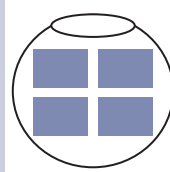
Preparation:

1. The *Merryman* case concerned one of President Lincoln's most controversial decisions: his suspension of *habeas corpus* during the Civil War. Download the summary of "Ex parte Merryman and Debates in Civil Liberties During the Civil War" case unit, by Bruce Ragsdale from the ABA Law Day website, www.lawday.org. Facilitate discussion of what is meant by the term "*habeas corpus*," if needed. [*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.]
2. **Teachers:** Contact a lawyer or judge with knowledge of *habeas* cases in your community to lead this Law Day lesson with your students. If you need assistance making these connections, contact your local or state bar associations.
3. Make copies of the documents from the case unit for all students:
 - *Ex parte Merryman*, opinion of Chief Justice Roger Taney (excerpts);
 - Abraham Lincoln to Erastus Corning and others, June 12, 1863 (excerpts);
 - Constitutional and statutory authorities; and
 - Lincoln as Don Quixote.

Procedure

1. 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. Distribute copies of the four documents for students to read, or assign them as readings prior to the judge's or lawyer's visit.

2. Students will explore the question: "Was President Lincoln justified in suspending the writ of *habeas corpus*?" The class should 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. Students should consider the following questions about each document: (a) What information does this document provide? (b) What argument does it make? (c) How does it support your position?
3. Each small group will appoint a spokesperson to report back to the whole class, using the documents to support their positions.
4. The lawyer or judge should facilitate a "fishbowl" discussion. During the discussion set-up, the lawyer or judge should answer questions from the students about *habeas corpus* or the documents they read.



Fishbowl Discussions

Set up: Assemble four chairs "inside" the fishbowl, then surround with remaining chairs.

Discussion: One spokesperson from each group will sit across from the other in two of the inside chairs. Remaining students should fill in seats around the outside of the fishbowl. The facilitator will pose the discussion question, and spokespersons will respond to the question by stating their positions and supporting it with their documents. As the conversation proceeds, any student from the outside circle may take the empty seats next to their classmates to present additional evidence from the documents in support of or in opposition to the respective arguments. (After students present their position to the group, they should return to the outside circle to allow other students to participate.) Continue the discussion with subsequent speakers supporting or opposing arguments with documentary evidence until all evidence has been presented and all students have had opportunities to participate. Debrief the discussion with students.

5. Debrief this activity: What was the strongest argument and why? What documents were used to support the argument? Why did Lincoln's suspension of the writ of *habeas corpus* generate such controversy? What was at stake? Why is the writ of *habeas corpus* considered such an important privilege of constitutional government?

This activity was adapted from curriculum developed by Charlotte Anderson during the 2007 Famous Trials Summer Teacher Institute, sponsored by the Federal Judicial Center and the American Bar Association Division for Public Education. Original outline developed by R. Laquey.