

## The D.C. Judge Who Bedeviled President Lincoln

(The following is adapted from the Jeffrey Brandon Morris history of the courts of the District of Columbia Circuit, "Calmly to Poise the Scales of Justice," pages 35-8. The book is available from the Historical Society.)

In the midst of the Civil War, one D.C. judge so irritated Abraham Lincoln that the President ordered his salary withheld and armed soldiers were sent to his home. As if that wasn't enough, the court on which the judge sat, the principal court that had served the District since the inception of its judicial system, was abolished -- primarily to get rid of the judge.

The judge was Circuit Court judge William Matthew Merrick, the pivotal figure in the Court's handling of petitions for habeas corpus seeking the discharge of soldiers who had enlisted while minors without parental consent. Merrick's decisions often went against the interests of the army and the Lincoln administration, incurring their ire and that of Republicans in Congress. His actions raised clear, if unfair, doubts about his loyalty to the Union, all the more because he was a Marylander and a Democrat.

The most controversial of Merrick's decisions involved Jeremiah Lyons, a teenage Pennsylvania soldier whose discharge by way of habeas corpus was sought by his father in 1861. Merrick ordered the discharge. Although military counsel and the U.S. Attorney argued that under military orders a soldier could not be discharged on the ground of minority, Merrick read the provision to mean only that the army could not *on its own* discharge a soldier for that reason. "At all times, and particularly in times of war," said Merrick, "the civil order should be preserved and made superior to the military."

Merrick issued the writ in a similar case a little more than two weeks later, this time to General Andrew Porter, the army's Provost Marshal for the cities of Washington and Georgetown. On the following day, Secretary of State William Seward -- next to Lincoln the most powerful man in the administration -- ordered Porter to establish a strict military guard presence at Merrick's residence, although not to confine him. On instructions from the President, Seward also directed the Comptroller of the Treasury to withhold Merrick's salary until further notice.

Outraged at finding an armed sentinel at his door, Merrick refused to attend court. The remaining judges, James Dunlop and James Morsell, ordered Porter to show cause why he should not be held in contempt for obstructing the habeas corpus process. The U.S. Attorney responded that the President had suspended the writ of habeas corpus with regard to soldiers in the District of Columbia and had ordered him not to deliver the order to Porter.

Four days later, on October 30, 1861, the court reluctantly concluded that there were practical and constitutional limits on its ability to enforce its process against the President and closed the case. Chief Judge Dunlop called this a case "without a parallel in the judicial history of the United States." In a separate opinion, Judge Morsell protested that "the supremacy of the civil authority over the military cannot be denied," and that the Court "ought to be respected by everyone as the guardian of the personal liberty of the citizen." The sentinel was withdrawn.

from Merrick's house two and a half weeks later. Merrick rejoined his brethren and received his salary on time.

However, the incident was not forgotten. Just over six months later, Congress abolished the courts of the District of Columbia and created a new four-judge tribunal, the Supreme Court of the District of Columbia, to replace the Circuit Court on which Merrick and his colleagues served. There is little doubt that the bill's supporters were concerned not about the efficiency of the courts of the District of Columbia but about the loyalty of its judges. The drafter of the legislation, Senator Ira Harris of New York, argued that Congress had the power under the Constitution to abolish any federal court except the U.S. Supreme Court, but did not directly come to grips with the question whether Congress had the power under the Constitution to terminate the life tenure of judges by abolishing courts.

President Lincoln immediately signed the law. In place of Merrick, Morsell and Dunlop, the President chose two Republican members of Congress, a former Republican congressman, and a local attorney who, it was said, was the only man in Alexandria to have voted for Lincoln in 1860.

Morsell returned to Maryland to practice law and engage in politics. He served one term as a Democratic member of the U.S. House of Representatives and, when the Democrats won the White House with the election of President Grover Cleveland in 1884, Merrick was appointed a year later to the Supreme Court of the District of Columbia – the successor of the very court on which he had once sat. He served a little more than three years until his death in early 1889.