

Garden State CLE presents:

**When Hitler Invaded America –**  
**The Secret Trial of the Nazi**  
**Saboteurs**



**Lesson Plan**

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## **I. Table of Related Cases –**

**Ex parte Milligan, 71 US 2 (1866)**

**Ex parte Quirin, 317 US 1 (1942)**

**Rasul v. Bush, 542 US 466 (2004)**

**Hamdi v. Rumsfeld, 542 US 507 (2004)**

**Hamdan v. Rumsfeld, 548 US 557 (2006)**

**Boumediene v. Bush, 553 US 723 (2008)**

# I. Introduction

Public Opinion that made the trial possible

## a. Pre-war - General Policy of Isolationism

**Advanced on the East Coast by German  
Bund Organizations**



[The post World War I belief in isolationism was *not* shared by the President]

## **b. Generalized Fear of Impending War**

**(The Martian factor)**

### **1.) 1939 – 1941 German Conquest of Europe.**



**German Invade Polish Border Crossing September 1, 1939**

## **2. Rapid Defeats & Occupations of France, Holland, Belgium, Norway, Greece, Denmark, Luxembourg, North Africa and all of European USSR**



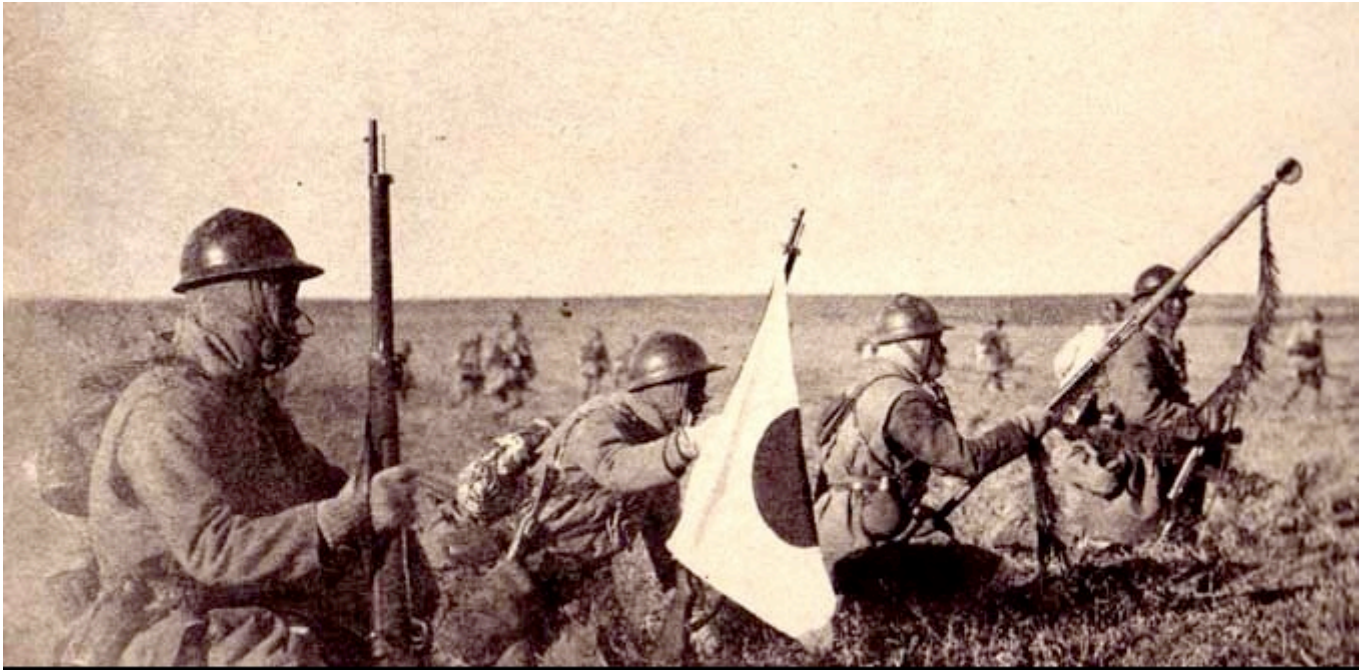
**Germans enter Paris – June 1940**

### **3. U-boat Action in the North Atlantic, often involving American Naval Forces, especially after December 7<sup>th</sup>.**



**[Many u-boat attacks occurred off the New Jersey coast due to well-illuminated shore lines]**

## 4. Japanese Militarism in China beginning in 1937



*Japanese infantry in Manchuria*

## **5. Preparing for War**

**Lend-Lease Program**

**Switch to Military Production**

**Live Radio Reports of London Blitz**

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**September 16, 1940 – First Peacetime  
Military Draft in US History**



# **Selective Service System – First Random Drawing**

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**c. December 7, 1941 – Pearl Harbor**



**Attack last for 2 hours and 20 minutes**

**2400 American killed**

**Pacific Fleet Destroyed**

**1.) December 8, 1941**

**President seeks Declaration of War**

**President Roosevelt Addresses  
Congress December 8, 1941  
[Note the President is standing]**

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**Final Vote for War against Japan in  
Congress:**

**82 – 0 in Senate**

**388 – 1 in House of Representatives**

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**2.) Reaction of American People  
Immediately following Attack on  
Pearl Harbor:**

**Fearful, Angry, Resolute and United**



**But in early 1942, despite the propaganda,  
the public sensed the war was not going  
well.**



**WE BEAT 'EM BEFORE..**



**WE'LL BEAT 'EM  
AGAIN!**

**SOMEONE**



**TALKED!**

© 1994



**WANTED!**



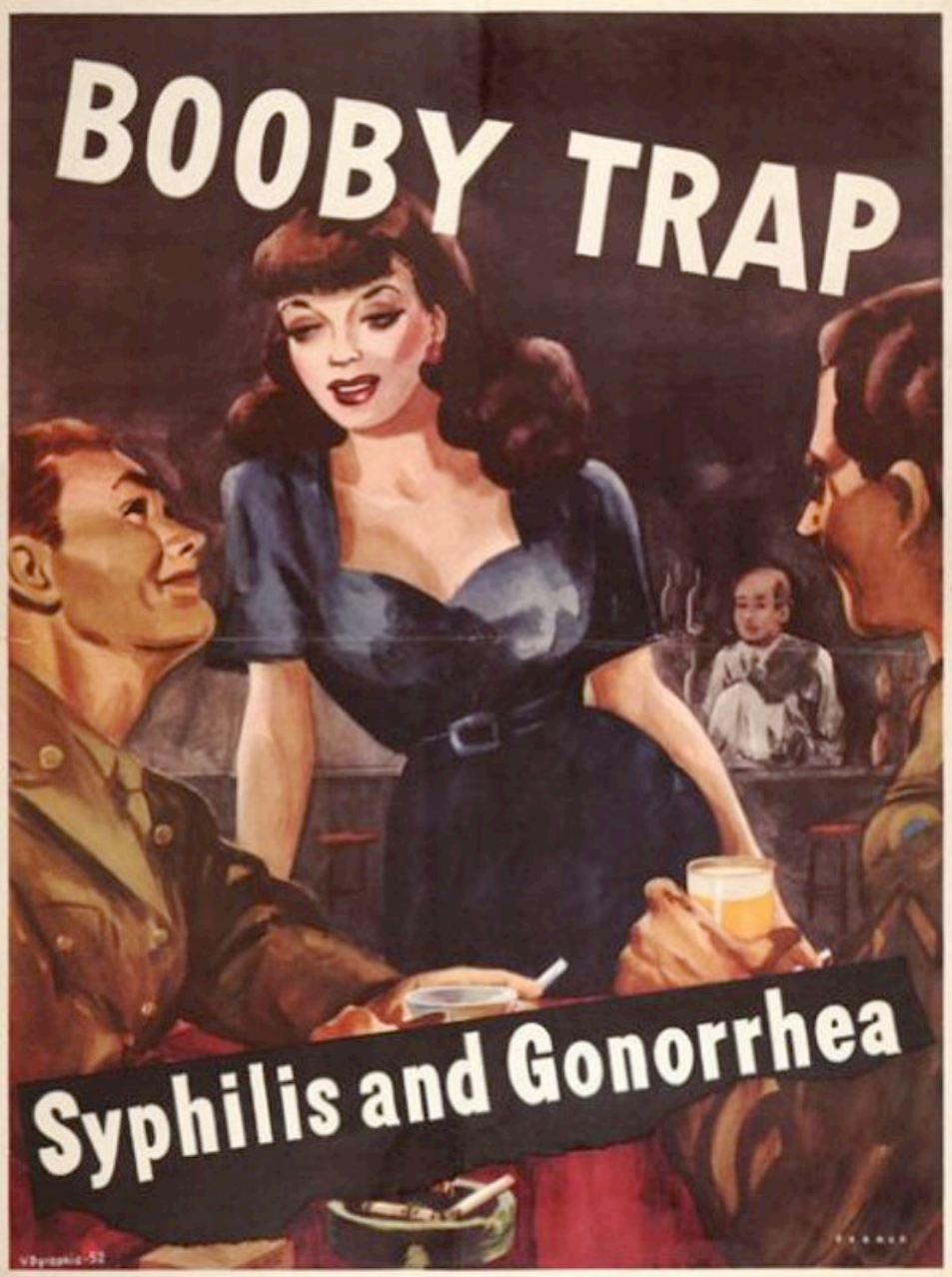
**FOR MURDER**

*Her careless talk costs lives*

***I GAVE A MAN!***



**Will you give at least 10%  
of your pay in War Bonds?**



### **3.) Secret Reaction of American Politicians and War-planners in the weeks immediately following Attack on Pearl Harbor:**

i.) Long struggle - No sense of confidence that the war could be easily won;

ii.) Completely unprepared to fight a global war on an industrial scale (although experiences of the Civil War and WWI provided a basis for rapid expansion to wartime needs.);

iii.) Early strategic experiences in the War:

A.) Pearl Harbor (December 7, 1941)

B.) Wake Island Surrenders (December 23, 1941)

C.) Singapore Surrenders (February 15, 1942)

D.) Battle of the Coral Sea (Tactical Loss) (May 4-8, 1942)

E.) Surrender of Philippine Islands (May 6, 1942)

#### 4.) TWO Notable Exceptions:

Doolittle Raid (April 18, 1942)

Battle of Midway (June 4, 1942)



## II. The Plot

Code name: "Operation Pastorius"

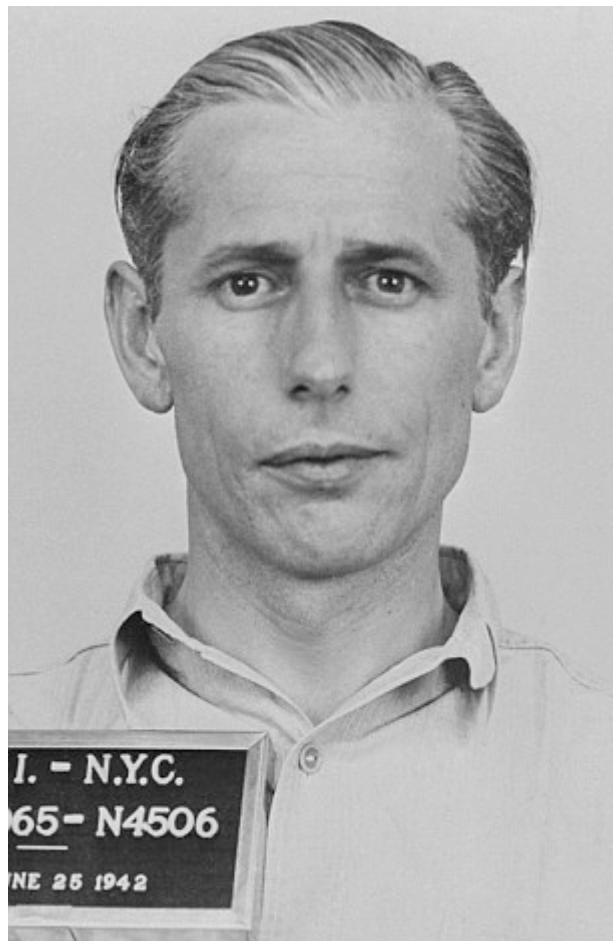
- a.) Strategic Goal from Hitler – Counteract America’s Industrial Power;**
- b.) With war declared, no further diplomatic need to prevent sabotage in USA;**
- c.) The plot was not hatched by the professional spies at the *Abwehr*, but rather by political operatives there;**
- d.) Recruits were to be German-Americans who had come back to the Fatherland prior to the outbreak of war. Many were former Bund members who spoke good English and had an intimate knowledge of American ways. No particular talent for spying required or sought. Only minimal training provided over a few weeks.**
- e.) Inserted into America via submarine at two east coast locations;**

**f.) Their mission was to stage sabotage attacks on American economic targets: Hydro-electric plants at Niagara Falls; Aluminum plants in Ill, Tn and NY Locks on the Ohio River near Louisville; Horseshoe Curve, near Altoona; Railroad's repair shops at Altoona; Cryolite plant in Philadelphia; Hell Gate Bridge in New York; Pennsylvania Station in Newark, New Jersey.**

**g.) Eleven recruits trained at sabotage school at Quenz Lake camp beginning in April 1942.**

**h.) The recruits all spoke passable English, although had several thick accents. Most had worked menial jobs in the United States (cook, painter, and chauffeur) and ranged in age from early twenties to mid-forties.**

### III. The Saboteurs



**George Dasch – Leader of Group 1 - 39  
years old – spent 20-years in USA, with jobs  
such as waiter and salesman.**



**Edward Kerling (aka Eddie Kelly) – Leader  
of Group 2 - Lived in USA for 11 years –  
the most-committed Nazi among the  
saboteurs and early party member.**



**Herbert Haupt – Youngest recruit (22 years old) and the most “*Americanized.*” Lived in Chicago from age 5 and spoke English better than German. Became naturalized US citizen in 1930.**



**Werner Thiel – Limited knowledge of English – Legally immigrated to US in 1927 – Travelled to Cincinnati after landing in Jacksonville using the name William Thomas.**



**Peter Burger – 36 years old - Spent six years in United States – Spoke English with a thick accent. Received honorable discharge from Michigan National Guard and became a naturalized US citizen. He**

**was a committed Nazi who had spent 17 months in Gestapo prisons.**



**Richard Quirin – Born 1908 – Moved to US in 1927 and lived in New York – left in 1939 - Demonstrated considerable enthusiasm for the mission -**



**Heinrich Heinck – Born 1907 – Entered US illegally in 1926 – Worked as a machinist or tool and die maker - Returned to Germany in 1939.**



**Hermann Otto Neubauer – Born 1910 –  
Initially went to US in 1931 and returned to  
Germany in 1940. Joined Bund while in US  
– Wounded on Russian Front and recruited  
into Operation Pastorius.**

## **Part IV.**

### **Invasion**



**Group I – (4 men led by Dasch) were transported across the Atlantic by submarine U-202**

**Arrived at Amagansett on June 13, 1942**

**They rowed ashore in a dinghy while wearing *Kriegsmarine* fatigues and cap with swastika insignias. [This demonstrates**

**concern with and knowledge of the Common Law of War]**

**They quickly buried explosives and other sabotage gear in the sand and changed into civilian clothing.**

**Within minutes of their landing, they were accosted by a patrolling coastguard scout, John Cullen. Rather than take him prisoner (as per their orders) or simply kill him, they attempted to bribe him and released him.**



**John Cullen**

**Cullen quickly summoned help and return to the area, but the saboteurs had vanished. U-202 had become stuck on a sandbar 200 yards offshore.**

**Coastguard personnel recovered 4 buried crates and a sea bag within the next hour, each of which contained sabotage equipment.**

**The saboteurs made their way to the local train station and took the 7:59 am train into the city. They possessed \$90,000 in cash.**

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**Group 2 – (4 men led by Kerling) were transported across the Atlantic by submarine U-584**

**Arrived at Ponte Vedra (near Jacksonville) on June 18, 1942**

**Saboteurs wore bathing suits during the ride from sub to the shore and a *Kriegsmarine* cap with Nazi swastika. (Again, note the Common Law of War).**

**They buried their sabotage gear on the beach and remained on the beach all morning, swimming and relaxing like vacationers. At 11:00 am, they changed into civilian clothing and took a local bus to Jacksonville.**

**Saboteurs separated and went off to visit families, girlfriends, to party and generally**

**spend the money they had been given on clothing and fine food.**

**Part V.**

# The Investigation



**Took over the investigation from the Coast Guard immediately**

**Investigation went cold following recovery of New York crates**

**Dasch called the FBI the day after his arrival in New York but was rebuffed. He then travelled to Washington and arranged (after several attempts by telephone) to give a statement to FBI.**

**(FBI searched his room in Washington Hotel during his interview without a warrant)**

**FBI kept news of the landings secret out of political considerations.**

**Based on Dasch's cooperation, FBI was able to track down the others within a matter of a few days,**

**FBI quickly extracted confessions from the remaining saboteurs**

**On the evening of June 27<sup>th</sup>, FBI Director J. Edgar Hoover travelled to New York and held a Saturday night press conference where he announced the arrest of the 8 saboteurs. He personally took all the credit for the investigation without revealing the cooperation of Dasch, and to a lesser extent, Burger.**

**Hoover leaked additional details, many of them false to gossip-columnist Walter Winchell for use on his radio broadcast.**

# VI. The Trial



NAZI SABOTEUR TRIAL, WASHINGTON, D.C.

**Fifth & Sixth Amendments provide for:**

**Due Process, including  
Indictment  
Public trial  
Trial by Impartial Jury  
Trial where offense took place  
Counsel for Defense  
Appeal**

**President Roosevelt had personal in WWI in fighting German spies and saboteurs. He detested the enemy and was a committed warrior. Unlike Hitler, he delegated most of the military duties to professionals.**

**President Roosevelt drafted a memorandum to the Attorney General:**

**The two American citizens are guilty of high treason. They are to be tried by court martial. They have no defense. They are guilty and “the death penalty is almost obligatory.”**

**The other six who are Germans arrived in German Naval uniforms. They were apprehended in civilian clothes. They are to be tried by court martial as was Major Andre in 1780.**

**Analysis by the attorney-general was as follows:**

**Difficult to prove attempted sabotage in a civilian court  
They never went back to collect their equipment  
Never took any steps to blow up anything  
Expected result in federal district court would be maximum of two-years in prison and \$10k fine for conspiracy to commit a crime against the United States.”**

**Under military law, they could be charged with violating the Common Law of War by crossing the front lines in civilian clothes with hostile intent, an offense that carries the death penalty.**

**Attorney General decided to personally prosecute the case in anticipation of a petition for a writ of *habeas corpus* to the Supreme Court.**

**On July 2nd, Attorney General recommended to the President that there be a trial by military commission, based upon “its greater flexibility, its traditional use in cases of this character and its clear power to impose the death penalty. A court martial is subject to the Articles of War while a military commission is *ad hoc* and the President could draw up his own rules of procedure.**

**The military commission’s rules of evidence admitted any evidence that would have probative value to a reasonable man. The tribunal’s verdict and sentence would be transmitted directly to the president for action, rather than being subject to the established review procedures under the Articles of War. President also ordered that the defendant’s be barred from access to civilian courts. (Despite the holding in *Ex Parte Milligan*, 71 US 2 (1866)).**

**President’s goals were to deal with the accused as swiftly and efficiently as possible while sending a message to the Nazis, deterring future landings.**

**The president selected the defense attorney (Col. Kenneth C. Royall) who was ordered to represent all of the saboteurs at the trial except Dasch. Under the Manual for Courts-Martial, Royall’s ethical obligation was to “guard the interests of the accused by all honorable and legitimate means known to law.” However, he had been forbidden by**

**presidential/military order from seeking relief in the civilian courts. Royall twice sought a reversal of this order from the president by letter, each of which was ignored.**

**Trial began on July 8<sup>th</sup> on the fifth floor of the Justice Department Building. The windows and door were boarded to keep the proceedings entirely secret. No members of the public permitted. The only civilians attending were Hoover and Assistant FBI Director Clyde Tolson.**

**Defense objections to the constitutionality of the commission were rejected with the prosecution taking the position that the defendants had no civil rights.**

**Press information provided by daily communiqué from the Office of War Management so as to avoid revealing government methods and practices as well as weaknesses.**

**Government's case was based upon the confessions and physical evidence seized at the landing sites.**

**Defense cases based upon the following:**

**I wanted to come back to USA because Germany sucks**

**I was just following orders**

**I was faking**

**I just wanted to come back to America to be with my family**

**I intended to expose the entire operation from the beginning**

**I took steps to sabotage the mission from the beginning**

**I never intended to do any act of sabotage**

**I cooperated with FBI**

**Note the defense attorney conflict – by drawing attention to the efforts of one defendant to destroy the mission, he brought unwanted attention to the lack of effort by others to stop the plot.**

**Petition for argument on a writ of habeas corpus granted by the Supreme Court and set for a hearing on July 29<sup>th</sup>. Nine hours of argument occurred over two days.**

**Closing arguments took place before the commission on July 31<sup>st</sup>, interrupted by the Supreme Court's decision.**

**Ex parte Quirin, 317 US 1 (1942)**  
**[Order of July 31, 1942]**

**The Court has fully considered the questions raised in these cases and thoroughly argued at the bar, and has reached its conclusion upon them. It now announces its decision and enters its judgment in each case, in advance of the preparation of a full opinion which necessarily will require a considerable period of time for its preparation and which, when prepared, will be filed with the Clerk.**

**The Court holds:**

**(1) That the charges preferred against petitioners on which they are being tried by military commission appointed by the order of the President of July 2, 1942, allege an offense or offenses which the President is authorized to order tried before a military commission.**

**(2) That the military commission was lawfully constituted.**

**(3) That petitioners are held in lawful custody, for trial before the military commission, and have not shown cause for being discharged by writ of habeas corpus.**

**The motions for leave to file petitions for writs of habeas corpus are denied.**

**The orders of the District Court are affirmed. The mandates are directed to issue forthwith.**

**Ex parte Quirin, 317 US 1 (1942)**  
**[Decision of October 29, 1942]**

**By universal agreement and practice the law of war draws a distinction between the armed forces and the peaceful populations of belligerent nations and also between those who are lawful and unlawful combatants. Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but in addition they are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful. The spy who secretly and without uniform passes the military lines of a belligerent in time of war, seeking to gather military information and communicate it to the enemy, or an enemy combatant who without uniform comes secretly through the lines for the purpose of waging war by destruction of life or property, are familiar examples of belligerents who are generally deemed not to be entitled to the status of prisoners of war, but to be offenders against the law of war subject to trial and punishment by military tribunals.**

**Nor are petitioners any the less belligerents if, as they argue, they have not actually committed or attempted to commit any act of depredation or entered the theatre or zone of active military operations. The argument leaves out of account the nature of the offense which the Government charges and which the Act of Congress, by incorporating the law of war, punishes. It is that each petitioner, in circumstances which gave him the status of an enemy belligerent, passed our military and naval lines and defenses or went behind those lines, in civilian dress and with hostile purpose. The offense was complete when with that purpose they entered-or, having so entered, they remained upon-our territory in time of war without uniform or other appropriate means of identification. For that reason, even when committed by a citizen, the offense is distinct from the crime of treason defined in Article III, s 3 of the Constitution, since the absence of uniform essential to one is irrelevant to the other.**

**Presentment by a grand jury and trial by a jury of the vicinage where the crime was committed were at the time of the adoption of the Constitution familiar parts of the machinery for criminal trials in the civil courts. But they were procedures unknown to military tribunals, which are not courts in the sense of the Judiciary Article, Ex parte and which in the natural course of events are usually called upon to function under conditions precluding resort to such procedures. As this Court has often recognized, it was not the purpose or effect of s 2 of Article III, read in the light of the common law, to enlarge the then existing right to a jury trial. The object was to preserve unimpaired trial by jury in all those cases in which it had been recognized by the common law and in all cases of a like nature as they might arise in the future, but not to bring within the sweep of the guaranty those cases in which it was then well understood that a jury trial could not be demanded as of right. The Fifth and Sixth Amendments, while guaranteeing the continuance of certain incidents of trial by jury which Article III, s 2 had left unmentioned, did not enlarge the right to jury trial as it had been established by that Article.**

Petitioners, and especially petitioner Haupt, stress the pronouncement of this Court in the [Milligan case, 4 Wall. page 121, 18 L.Ed. 281](#), that the law of war ‘can never be applied to citizens in states which have upheld the authority of the government, and where the courts are open and their process unobstructed’. Elsewhere in its opinion, [4 Wall. at pages 118, 121, 122, and 131, 18 L.Ed. 281](#), the Court was at pains to point out that Milligan, a citizen twenty years resident in Indiana, who had never been a resident of any of the states in rebellion, was not an enemy belligerent either entitled to the status of a prisoner of war or subject to the penalties imposed upon unlawful belligerents. We construe the Court's statement as to the inapplicability of the law of war to Milligan's case as having particular reference to the facts before it. From them the Court concluded that Milligan, not being a part of or associated with the armed forces of the enemy, was a non-belligerent, not subject to the law of war save as-in circumstances found not there to be present and not involved here-martial law might be constitutionally established.

**The Court's opinion is inapplicable to the case presented by the present record.**

**We have no occasion now to define with meticulous care the ultimate boundaries of the jurisdiction of military tribunals to try persons according to the law of war. It is enough that petitioners here, upon the conceded facts, were plainly within those boundaries, and were held in good faith for trial by military commission, charged with being enemies who, with the purpose of destroying war materials and utilities, entered or after entry remained in our territory without uniform-an offense against the law of war. We hold only that those particular acts constitute an offense against the law of war which the Constitution authorizes to be tried by military commission.**

## **VII. The Verdict**



**Aug 3<sup>rd</sup> – Verdicts of guilty were transmitted from the commission to the president. It ordered death by electrocution six saboteurs with specific recommendations**

**for Burger (life imprisonment) and Dasch (30 years imprisonment). The only avenue of appeal for the defendants was directly to the disappointed president (who had hoped for a recommendation of death by hanging).**

**While the president considered the verdicts (for public consumption only), the military prepared for the first mass execution in Washington since the Lincoln conspirators were hanged in 1865 following a trial by military commission.**

**President ordered that the six condemned men be secretly electrocuted at the DC jail on August 8<sup>th</sup>. He also ordered that no trace of them remain – their clothing and personal effects were to be incinerated, no reports of their deaths were to be filed with public health authorities in Washington. After a few days in an army morgue, the bodies were secretly interred without headstones in a Potter's field in Washington.**

**Dasch and Burger both imprisoned in Atlanta Federal Penitentiary until 1948 when they were pardoned and deported to**

**Germany. Within weeks, both longed to return to the USA.**

## **VIII. Conclusion/Discussion**

## The Saboteurs' case in a post-September 11<sup>th</sup> America

