

could better develop a more certain and predictable pattern of conduct required of banks than now exists. It seems that this approach at least deserves a fair test. If experience proves it to be unworkable, and confusion still prevails, then in the interest of achieving certainty and consistency, it may perhaps be desirable to restore strict liability.

One final lesson may be deduced from this study of the proposed Code as it relates to stop payment rights: Legislation which attempts to regulate commercial practices infrequently achieves with a high degree of satisfaction its announced purposes of providing certainty, simplicity, and a proper balance between individual rights and commercial expediency.

The difficulties inherent in ascertaining the impact of the various suggested controls for complicated commercial operations makes legislation at best a calculated guess as to what is most desirable. There will inevitably appear compelling arguments for a different approach or for a readjustment of duties and liabilities. This predicament must be tolerated until legislative methods are devised which will allow for more definite comprehension of exactly what consequences will follow from the alternative proposals. Perhaps, a closer approximation of legislative methods with those of the natural and social sciences will uncover the data necessary to achieve this end.⁴⁷ Then legislation in this area can be based on even more certain grounds than the ". . . time and thought from a great many people well informed in both the business and the legal sides of the [commercial] fields. . . ."⁴⁸

SAMUEL E. PERKINS: A JUDGE IN POLITICS*

Remembered today for his long tenure on the Indiana Supreme Court and for his competence as a legal craftsman, Samuel Elliot Perkins was in his own lifetime famous—indeed notorious—for entirely different reasons.¹ During the Civil War years, although a member of the

47. For example, future efforts to draft legislation for banking operations might benefit from more systematic study and analysis of actual banking practices. An intensive scanning of the varied practices used in the many banks, perhaps even time-motion studies of employee functions, would certainly give more accurate content to the vague phrase "administrative burden."

48. Goodrich, Foreword to the UNIFORM COMMERCIAL CODE VI (Text And Comments Edition, 1952).

* This paper was completed as part of the requirements in 3rd year Legal History by Hugh P. Husband, Jr. A.B. 1949, J.D. 1952, Indiana University.

1. Lawyer, newspaper editor, and devotee of the Democratic party, in 1843 Perkins at the age of 34 was appointed to the Supreme Court. In addition to his judicial duties, Perkins taught law at Northwestern Christian University in Indian-

Supreme Court, Perkins was an active and prominent figure in Democratic party politics. It is not surprising, then, that his wartime judicial opinions, dealing as they did with several controversial issues of the period, evoked extremes of praise and censure in an Indiana bitterly divided by the war.

From 1860 to 1865, Perkins' talents were of unique value to the Democratic party. Since the Court during most of this period was the only branch of state government controlled by the Democrats, he was the party's highest ranking elected official.² A learned, articulate speaker, he seems never to have felt constrained by his judicial position to refuse requests for political letters and addresses; frequently his non-judicial pronouncements became campaign documents. Nor can it be denied that on occasion Perkins, dominating his colleagues on the bench, made the Indiana Supreme Court an active and forceful exponent of the political philosophy of the Democratic Party. An account of his activities during this period is interesting in its own right as a facet of Indiana's legal and political history; it is also provocative to those concerned with the extent to which the role of the impartial judge is compatible with participation in partisan politics.

Throughout the country during 1860, the Democratic party divided over the same issues which were soon to cause the Civil War.³ In Indiana, the conflict terminated in a shift of party control to the supporters of Stephen A. Douglas, who stood for a "moderate" approach to the problems of slavery.⁴ Senator Jesse D. Bright, deposed by the Douglasites from his leadership of the state party, joined the Southern "extremists" backing John C. Breckenridge for the presidency.⁵ It was

apolis, and by 1860 he had written two legal textbooks. Thornton, *The Supreme Court of Indiana*, 4 THE GREEN BAG 207, 254 (1892). In 1860 Perkins was considered one of the twenty top political leaders in the Democratic party hierarchy in Indiana. Kettlebrough, *Indiana On the Eve of the Civil War*, 6 INDIANA HISTORICAL SOCIETY PUBLICATION 137, 141 (1919). Perkins' role in establishing a Natural Rights doctrine in Indiana is discussed in Paulsen, *Natural Rights—A Constitutional Doctrine in Indiana*, 25 IND. L.J. 124 (1950).

2. Although all of the members of the Court were Democrats, Perkins was their senior in service. Thornton, *supra* note 1, at 229.

3. The question whether federal protection should be extended to slavery in the territories resulted in the final split. SIMMS, A DECADE OF SECTIONAL CONTROVERSY 203 (1942).

4. On the crucial issue of the relation of the federal government to slavery in the territories, Douglas believed that Congress should not intervene; Breckenridge asserted that the federal government must protect slavery in the territories; Lincoln denied the authority of Congress or a territorial legislature to legalize slavery in the territories. RANDALL, THE CIVIL WAR AND RECONSTRUCTION 174-180 (1937).

5. NICHOLS, THE DISRUPTION OF AMERICAN DEMOCRACY 314, 337 (1948). In Indiana, Bright and the supporters of Breckenridge backed the regular Democratic state ticket. Old Line Guard, September 1, 1860.

only near the end of the campaign of that year that Perkins, faced with the choice of following the regular party or its former leader, publicly declared his support of Douglas.⁶ In a speech of allegiance at Richmond in September,⁷ he bitterly attacked the Republicans and the Southern Democrats as groups who had put their sectional interest above the Constitution and the Union. Dramatically forecasting the consequences of Douglas' defeat, he predicted a civil war, with the south "conquered, crushed, and with few tears shed for her by her old Democratic friends of the North, whom she has betrayed and deserted."⁸

There followed a two-year-long succession of unsigned political letters⁹ and articles written by Perkins for the *Daily State Sentinel*, the leading Democratic paper in the state.¹⁰ During July and August of 1861, Perkins wrote a series of historical articles discussing the differences which had arisen between Northern and Southern states since the adoption of the Constitution.¹¹ In the final article, he summed up his conception of all Democrats' duty to their country: To support the war to recover the Southern States, whose secession could not be justified even by the great provocation they had suffered.¹²

6. Earlier in the year at the state party nominating convention, Perkins had been the unsuccessful nominee of the Bright faction for the post of permanent chairman of the convention. His acceptance of the nomination, however, was not interpreted as an indorsement of Bright's views. The *Daily State Sentinel*, January 12, 1860. (Hereafter referred to as the *Sentinel*.)

7. The *Sentinel*, September 26, 1860.

8. In predicting a civil war, Perkins foresaw the future with greater accuracy than a large part of the Republican party, who were then urging that the South be allowed to leave the Union in peace. See The *Indianapolis Daily Journal*, November 13, 19, 28, 1860. (Hereafter referred to as the *Journal*.) Although this speech was ignored by the Republican controlled *Journal*, the newspaper supporting Breckenridge attacked it at length. *Old Line Guard*, September 29, 1860.

9. The only contribution which Perkins signed during this period was a letter criticizing the General Assembly's excessive response to President Lincoln's call for troops. Perkins, believing that the state had nothing to fear from the Confederate forces, considered the Legislature's action a waste of the state's money. Realizing the unpopularity of his views, as contrasted with the prevalent war fever, he stated that he had affixed his signature in order to absolve others of any possible responsibility for them. The *Sentinel*, April 29, 1861.

10. History formed the basis for nearly every lecture, article, and letter that Perkins produced. A large majority of the articles and letters written during this period, along with his Richmond speech, and his opinion in a habeas corpus case, were included in a forty-eight page pamphlet entitled "Fugitive Pieces on the Sectional War" which was published sometime during 1862.

11. The *Sentinel*, July 11, 12, 15, 17, 1862. Shortly after the publication of these articles the *Journal* asserted that Judge Perkins was rumored to be writing the strongest and ablest of the "... articles assailing the government and sympathizing with the Rebels..." which appeared in the *Sentinel*. The *Journal*, August 7, 1862. The *Sentinel*, however, emphatically denied the truth of the story. The *Sentinel*, August 8, 1862.

12. This article appears in the pamphlet "Fugitive Pieces on the Sectional War," but this reprint is considerably longer than the original which appeared in the *Sentinel*.

Later in August, in a letter to the editor, he related the events of the fateful interim between Lincoln's election and inauguration, and accused the Republicans of having no real interest in a peaceful settlement with the South. This charge he based upon that party's refusal to consider constitutional amendments and a discussion of the means by which they could still be adopted.¹³ In his next letter, Perkins moved from criticism of the Republicans' failure to prevent war to an attack on the administration, which he assailed for incompetence, corruption, an improvident spending policy, and a Nero-like indifference to the fate of the people.¹⁴

In the spring of 1862, Republicans viewed the coming fall election with confidence. The war news was excellent,¹⁵ and in Indiana the Republican purportedly non-partisan Union party, had attracted many Democrats to its colors.¹⁶ When the new party's leaders issued a call for a June convention,¹⁷ Perkins, who had remained a loyal Democrat, replied with a scornful, unsigned letter to the *Sentinel*.¹⁸ To him, the Union label was but a convenient disguise assumed by the Abolitionists. "The convention," therefore, "... must of consequence have a fraudulent purpose ... [*i.e.*] to keep Abolitionists in power, sectional men in office." Replying to the Unionist's innuendoes of Democratic disloyalty to the nation, he emphasized his party's desire for a complete Northern military victory, but stated that it did not want the defeated Southern states to be "robbed of their rights."¹⁹ Successive Northern military reversals and domestic discontent proved the Indiana Republicans' optimism to have been unjustified; when the votes were counted, the Democrats had triumphed.²⁰

In the portion which is added to the pamphlet, Perkins suggested that the Democratic party should work for peace by giving "just guarantees to the South, by amendments to the Constitution ..." and that "... such terms of peace be at once offered to the South."

13. The *Sentinel*, August 22, 1861.

14. The *Sentinel*, January 3, 1863.

15. The Northern armies were massing strength in the east, while Grant was successful in campaigns on the Cumberland and Tennessee Rivers. RANDALL, *THE CIVIL WAR AND RECONSTRUCTION* 278-281 (1937).

16. 1 STAMPP, *INDIANA POLITICS DURING THE CIVIL WAR* 95 (1949).

17. The *Journal*, April 30, 1862.

18. The *Sentinel*, May 7, 1862. Perkins was revealed to be the author of this letter in a *Sentinel* editorial of January 21, 1863.

19. Perkins continued that he was willing to go into "... a union with all men, with Republicans even ..." on a platform which would assure the South "... that their slaves shouldn't be taken from them, that their property shouldn't be confiscated. ..." The *Sentinel*, May 7, 1862.

20. 1 STAMPP, *op. cit. supra* note 16, at 152-157. The Democrats won all the state offices except the governorship (the term did not expire until 1864), and a majority in both houses of the General Assembly. *Indiana State Sentinel*, October 20, 1862 (weekly). Shortly after the election, one of Perkins' typical unsigned letters appeared in the *Sentinel*. Although it was devoted to "Political History," Perkins'

The invigorated party, believing itself exonerated at the polls, began 1863 with high hopes and new plans for the future. Judge Perkins, in his first political speech since 1860, accurately reflected the Democrats' attitude toward a war in which victory in battle seemed always to belong to the South.²¹ His solution was to resolve differences through compromise, ". . . stop the war . . . compel the Abolitionists to do what they ought to have done . . . do justice, offer guarantees; satisfy the South that she will be left alone by the Abolitionists forever. . . ."²² More extreme was Perkins' statement, reflecting his increasing fear that civil liberties were in jeopardy, that ". . . if to bring back the South, the liberties of all must be overthrown, and a general tyranny established; if the alternative is presented to me, and I am compelled to elect between two republics and one depotism, I am for two republics."²³

Republican criticism of Perkins' speech was immediate. The partisan *Indianapolis Journal* accused him of falsifying history in order to justify the rebellion. Quoting remarks Perkins was alleged to have uttered in private conversation—remarks contrary to the tone of his address—the *Journal* charged that they "show the spirit in which a Democratic movement for a new secession is carried on. Its advocates spit on their past professions, defy fact, and outrage common sense, all in the determination to make the war odious, the government feeble, and the rebellion successful." Pointing to other evidences of Democratic disloyalty, the paper resolved that "if we are not to be forced out of the Union . . . we must be ready to act."²⁴ The *Sentinel* countered with an editorial printing excerpts from a number of Perkins' earlier speeches and letters, intending to demonstrate that his position had remained consistent on the issues dividing the nation.²⁵ He had never before, in fact, indicated that

remarks testified to this distaste for the Republican practice of equating criticism with disloyalty. With deceptive mildness he stated "lastly, one item of future melancholy interest, I desire to ask the friends in the state to ascertain numbers and names of those arrested for disloyal practices so we can keep it for another day." *Indiana State Sentinel*, October 20, 1862. Perkins was revealed to be the author of this letter in a *Sentinel* editorial of January 21, 1863.

21. The Union forces had recently failed to reduce Vicksburg, the Mississippi was still closed, and the Union army had just suffered a disastrous defeat at Fredericksburg. See RANDALL, *op. cit. supra* note 15, at 312-316.

22. Perkins felt that no final plan in regard to the South should be adopted until the compromise was offered. If it were refused "then will be time to adopt a proper course of action toward her. . . ." *The Sentinel*, January 16, 1863.

23. The speech apparently met with Democratic approval for it was republished and offered to the public by the *Sentinel*. *The Sentinel*, January 21, 1863.

24. The *Journal*, on the basis of this speech and Perkins' alleged use of intemperate language in a habeas corpus case, note 55, *infra*, implied that he was assisting the "Northwestern conspiracy", a largely fictional plan to separate Indiana and other mid-western states from the North. *The Journal*, January 17, 1863.

25. The excerpts included his Richmond speech of September 1860, his letters of May and October 1862, and an article purportedly written in April of 1861. The

any consideration was to him so important as that of preserving the nation.

Mounting antagonism between the two political parties reached its zenith at the legislative session of 1863, where Republican obstructionism and Democratic partisanship turned the General Assembly into a parliamentary free-for-all.²⁶ Near the end of the session, a number of Republicans bolted from the lower house, leaving it without the required two-thirds quorum, thus preventing the enactment of further legislation.²⁷ Among the bills whose passage was thus frustrated was one authorizing the payment of interest on the state debt. Arguing that the interest could not be paid without a legislative appropriation and that failure to pay would impair the state's credit, the Democrats immediately demanded that Republican Governor Oliver P. Morton reconvene the Assembly.²⁸ Morton, realizing the possible consequences of another session of the Assembly under Democratic control, refused to make the call on the ground that no appropriation was necessary.²⁹ The Democrats countered with a test case which was quickly arranged in order to obtain a ruling from the Supreme Court.³⁰ That tribunal, receiving the case after a series of questionable legal maneuvers on the trial court level,³¹ upheld the Democrats position.³² Perkins, writing the opinion, held that the Constitution required a legislative appropriation and that the special session provision could be invoked to meet the emergency. In buttressing his decision, he recited the traditional safeguards employed to defend against precipitate executive action and warned against the usurpation that would result from the exercise of doubtful powers by state officials.³³

Sentinel also attempted to explain away Perkins' personal remarks by stating that "he has said . . . 'both to Democrats and Abolitionists if the latter were determined not to live in the Union with slavery existing in the South, and to make war on it till it was abolished,' he hoped, 'they could finish it in this, so that we could know when we could have peace, as the country couldn't survive two wars for the abolition of slavery.'" *The Sentinel*, January 21, 1863.

26. 1 STAMPP, INDIANA POLITICS DURING THE CIVIL WAR 166-179 (1949).

27. *The Sentinel*, February 28; March 2, 1863.

28. *The Sentinel*, April 8, 1863.

29. *The Journal*, May 4, 1863. The controversy was hotly debated by the opposing newspapers. *The Sentinel*, May 5, 6, 11, 14, 16, 18, 19, 1863; *The Journal*, May 5, 12, 15, 18, 1863.

30. The State Treasurer Brett, although a Democrat, was reluctant to take a stand against paying the debt. The Democrats in order to secure his co-operation arranged the test case. 1 FOULKE, LIFE OF OLIVER P. MORTON 257 (1899).

31. These tactics resulted in two opinions, with contrary holdings, being certified to the Supreme Court. *The Journal*, May 18, 1863; *The Sentinel*, May 19, 1863.

32. Judge Hanna and Judge Perkins wrote the opinions in the two cases. *The Journal* in discussing the opinions, dismissed Hanna's decision as "too slight and feeble to deserve notice," while the Perkins' opinion was regarded as ". . . more adroit and able . . ." though ". . . affected by that desire for cheap erudition. . . ." *The Journal*, June 8, 1863.

33. *Ristine v. The Board of Commissioners*, 20 Ind. 328 (1863). The two opinions were printed in the *Sentinel*, June 8, 1863.

The inevitable editorial battle which surrounded the opinion was focused on the debatable legal question of whether formal legislative action was required. As was to be expected, the *Journal* declared that Perkins and his Democratic colleagues had been motivated solely by partisan considerations,³⁴ while the *Sentinel* praised the decision as a blow struck for the cause of constitutional liberty.³⁵ Governor Morton, persisting in his refusal to call the Assembly, found other methods of paying the interest; the subsequent acrimonious controversy concerning those methods diverted public interest from the judicial decision.³⁶

Returning to the speaker's stump at Anderson, Indiana, Perkins delivered a July 4th address, which indicated that his attitude toward the war had changed considerably since his "two republics" speech.³⁷ Perhaps because of the hopeful military developments since the beginning of the year,³⁸ the idea of a negotiated peace was discarded; he observed that while at an earlier time the Union could have been saved "by consenting to just guarantees, by the instrumentalities of peace and justice . . . that time has gone by." Moreover, Perkins had not yet decided what measures he would support in order to preserve the Union.³⁹ By November, however, his views had crystallized, and he was afforded an opportunity to expound them. A group of Democratic party leaders, hearing rumors that he would not seek renomination, requested that he clarify his position. In a reply that was printed in the *Sentinel*, Perkins expressed his convictions.⁴⁰ He stated clearly that restoration of the Union overrode all other considerations, including the "wretched civil policy" of the administration. In advocating the full prosecution of the war as the "only instrument that we're permitted . . . to accomplish that object of saving the Union," he called for the "conquest of the South . . . which we have got to do . . . and we have got to do it under the head of this radical administration."⁴¹ In closing, he entrusted his political fate to the party, asserting that although he was not seeking the office and had not intended to run, he would serve if chosen.

34. The *Journal*, June 6, 9, 12, 16, 1863.

35. The *Sentinel*, June 6, 8, 10, 1863.

36. 1 Foulke, *op. cit. supra* note 30, at 183; 1 Stamp, *op. cit. supra* note 26, at 259-272.

37. The *Sentinel*, July 6, 1863.

38. RANDALL, *THE CIVIL WAR AND RECONSTRUCTION* 512-531 (1937).

39. In addition, he fatalistically predicted a South ". . . so united in rebellion as to present the alternative of constant war or the extermination, not only of the men in arms, but of all the white men, women and children. . . ." The *Sentinel*, July 6, 1863.

40. The *Sentinel*, November 10, 1863.

41. Perkins' attitude toward promoting the war through the present administration is best exemplified in his own words: "Why, if I were on board a ship manned

If the reaction of the *Sentinel* can be taken as an accurate reflection, the Democrats received Perkins' latest pronouncement with surprise and resentment. The paper first disassociated the party from any responsibility for, or agreement with, his statement. Then, allowing for a possible misinterpretation on its part, it inquired if he proposed "to approve or acquiesce in the monstrous usurpations and corruptions of the party in power?" If this was what Perkins had intended, his letter "stultifies his past record."⁴² The editorial concluded by reassuring its readers that "the Democratic party has occupied no such equivocal position as that." Whatever tension this exchange created between Perkins and his own party was soon ended by a combination of events in the early months of 1863. First, though least important, was the *Sentinel's* publication of a law-school lecture which Perkins had delivered in March of 1860 on the Fugitive Slave Law.⁴³ The lecture was predominantly devoted to a thorough account of the constitutional and statutory provisions concerning fugitive slaves, but in concluding, he became more polemicist than professor, and excoriated the North's "righteous violations of the Constitution" which justified the South's departure from the Union.⁴⁴

More significant than the revelation of this four year old fugitive slave pronouncement were two new ones, delivered from the bench. The first was expressed in *Griffin v. Wilcox*,⁴⁵ which involved the proclamation of martial law in Indianapolis. Prior to 1864, the Indiana Supreme Court had been concerned only with certain limited aspects of the executive-citizen relationship in time of war. In the *Griffin* case, however, Judge Perkins found an opportunity to examine the problem in greater detail.⁴⁶ Writing for the majority, he insisted that martial law could be declared under the presidential war powers, only where and when the

by pirates and it was about to sink, I would aid them in keeping her afloat and running her into harbor." The *Sentinel*, November 10, 1863.

42. The *Sentinel*, November 13, 1863.

43. The *Sentinel*, January 26, 1864. The *Sentinel* stated that the lecture had been presented to them by a "member of the School." Although the lecture was very long, it was printed verbatim in the paper. Considering its length and the four year interval between its presentation and its publication, an inference is raised that Perkins was actively aware of the *Sentinel's* plans to carry it, if he did not offer it himself. The lecture was published later in the year as a campaign document. The *Sentinel*, October 14, 1864.

44. He analogized the South's position to that of an ill-treated wife deserting her husband. The *Sentinel*, January 26, 1864.

45. 21 Ind. 370 (1864). The opinion was printed in the *Sentinel*, February 1, 1864, and it was later published in pamphlet form as a campaign document for the 1864 election. The *Sentinel*, October 14, 1864.

46. Griffin was arrested for violating a military order prohibiting the sale of spirituous liquors to enlisted men. In this suit against the arresting officer, he was seeking damages for false imprisonment. The lower court, interpreting the Congressional Immunity Act of March 3, 1863, dismissed the case, holding that the Act was a bar to the suit. *Griffin v. Wilcox*, 21 Ind. 370 (1864).

civil power of the United States was suspended by force. Taking judicial notice that there had been no forcible resistance to the civil power by the people of Indianapolis, he held that the government was unwarranted in invoking martial law. After disposing of the legal problem presented, Perkins directed his attention to less relevant matters. He discussed the applicability of the federal suspension of the writ of habeas corpus to the state courts, the South's purpose in withdrawing from the Union, the restrictions on civil liberties in the South, and the distinctions between martial, military, and civil law.⁴⁷

Reaction flared immediately, as the *Journal* attacked the "brilliantly copper-plated sentiments" with a vituperativeness unusual even in its columns.⁴⁸ Perkins was accused of once again reversing his political views in language certainly harsher than any ever applied by the press to a judge of the Indiana Supreme Court: "After wriggling . . . back and forth the snake has at last got back to treason again."⁴⁹ Most of the rational criticism was directed at his dictum concerning the South's purpose in seceding, and at his expansion of an insignificant case, susceptible of decision on a narrow ground, into an unnecessary disquisition on presidential powers.⁵⁰ The *Sentinel*, in its many replies, conveniently ignored the second of these charges; to rebut the first, it quoted Republican editorials in late 1860 which by implication agreed with Perkins' contentions.⁵¹ In continuing the assault, the *Journal* picked up the lecture on the Fugitive Slave Law and by quoting and misquoting, found it was "an exhortation for the South to secede . . . a justification for all that the Rebels have ever done."⁵² So far as the *Journal* was concerned, Perkins had returned to his membership in Indiana's "disloyal Democracy."

Before the controversy over the *Griffin* case had subsided, a somewhat similar problem was presented to Judge Perkins; this one con-

47. In supporting many of his contentions in the case, Perkins liberally referred to history, the common law, and to the Natural Law. *Griffin v. Wilcox*, *supra* note 46, at 379. He also utilized Greek and Latin phrases, a practice which the *Journal* sarcastically attacked as an affection. The *Journal* accused Perkins of culling the phrases from the dictionary and saving them for future reference. The *Journal*, February 8, 1864.

48. The *Journal*, February 2, 3, 4, 5, 8, 11, 1864. Also see the *Cincinnati Commercial*, February 2, 1864.

49. This attack was similar to that on his speech of January 1863, which charged that he had changed his political allegiances four times since the middle of 1862. The *Journal*, February 2, 4, 1864.

50. RANDALL, *CONSTITUTIONAL PROBLEMS UNDER LINCOLN* 207 (1951).

51. The *Sentinel*, February 4, 5, 6, 9; March 18, 1864.

52. The *Journal* emphasized the fact that the lecture had been made in the classroom, and asked its readers to ". . . note how the class . . . is taken advantage of to make a partisan speech. Neither professor's gown nor the Judges' ermine restrain this malignant leaking of gall on partisan opponents." The *Journal*, February 8, 1864.

cerned the writ of habeas corpus. During the early part of the war, the writ had been frequently utilized to question the validity of military imprisonment or of conscription into the service.⁵³ As a judge of the Supreme Court, Perkins had often issued the writ, held the required hearing, and ordered the necessary remedial action.⁵⁴ None of these cases had produced noticeable public reaction until the early months of 1863, when he had been criticized for using extremely intemperate language at a hearing.⁵⁵ Later that year another small flurry of adverse comment had arisen from his alleged use of unfair tactics during a hearing.⁵⁶ Then a presidential proclamation in September of 1863 had suspended the writ insofar as it could be applied to military control and custody over certain classes of citizens.⁵⁷ Perkins had consistently complied with this order,⁵⁸ but in March 1864, he issued a writ in obvious contravention of the proclamation. Noting the action, the Assistant Provost Marshall General for the area wrote Perkins asking if he desired to append an explanation of the case to his report to Washington. The resulting correspondence between them was soon published, and the matter became a cause celebre.⁶⁰

Censure of Perkins' action was based upon his sudden refusal to comply with the proclamation after months of having done so, and upon his unsatisfactory explanation for his departure in the case. As expected, the *Journal* found partisan motivation, for his was "a political tribunal, led by an uneasy gyrating demagogue who switches to please the copperheads."⁶¹ In defending Perkins, the *Sentinel* answered the last accusation with no more than a statement that he was not a candidate for re-election.⁶² Replying to the first criticism, the paper could justify

53. Habeas corpus cases noted in the news columns of the *Sentinel*, August 9, 1861; November 11, 1862.

54. Perkins, in a letter to the *Sentinel* stated that he had "tried some three or four hundred" such cases since the beginning of the war. The *Sentinel*, July 27, 1863.

55. The *Sentinel* portrayed Perkins as ". . . filled with wrath, determined to have the prisoner and Captain Newman brought into court or make the streets of Indianapolis run with the blood of those who would attempt resistance to his authority." The *Sentinel*, January 15, 1863.

56. Judge Perkins, receiving a return which stated that the soldier was not in custody, dismissed the case. Later the Judge discovered the petitioner in the court room and after an *ex parte* hearing discharged him. Perkins justified his action by asserting that the officer could have applied for a re-hearing. The *Journal*, July 24, 1863. Also see, The *Journal*, July 25, 30; August 1, 1863; The *Sentinel*, July 27, 31; August 2, 1863, for the ensuing debate.

57. The *Sentinel*, September 16, 1863.

58. The *Journal*, March 12, 15, 22, 1864.

59. The correspondence was published in The *Journal*, March 12, and in the *Sentinel*, March 19, 1864.

60. The *Journal*, *supra* note 58; The *Sentinel*, March 10, 14, 19, 23, 1864.

61. The *Journal*, March 12, 1864.

62. The *Sentinel*, March 14, 23, 1864.

his issuance of the writ only upon the authority of the *Griffin* case dictum where Perkins had said that the suspension of habeas corpus did not apply to the state courts unless the court first determined that the person in question was held by the legal authority of the United States.⁶³

Apparently unmoved by the fact that his political activity was subjecting his integrity as a judge to attack, Perkins continued to speak out as a Democrat. In May 1864, the Democratic Club of Lawrenceburg requested an expression of his views, and his letter of reply was prominently featured in the *Sentinel*.⁶⁴ Instead of giving his readers a political exhortation, he gloomily predicted a society stratified into two social classes. There would be "a small, partially taxed, moneyed aristocracy," while the vast majority of the people would have only ". . . the coarsest necessaries of life . . ." as they paid off the tremendous debt incurred by the war.⁶⁵ He concluded the letter by sarcastically attacking the folly of a war waged over an issue so insignificant as emancipation.⁶⁶

By the end of May, however, when he addressed a Wayne County Democratic meeting,⁶⁷ Perkins had discarded his pessimism. Beginning an otherwise routine political speech on a note of sensationalism, he asserted that he had "just learned that Governor Morton has the public treasury in his breeches pocket or in his illegal Bureau of Finance."⁶⁸ He contended that this was "the course of all usurpers . . . and the worst yet heard of." The *Journal*, incensed by these remarks, denied their accuracy, and in searching for the reason behind the attack, depicted "this diatribe . . . so destitute of truth" as an attempt to woo the Copperhead extremists in his party in order to insure his renomination.⁶⁹

63. *Griffin v. Wilcox*, 21 Ind. 370, 384 (1864).

64. *The Sentinel*, May 12, 1864.

65. Perkins opined that ". . . because of their suffering from oppressive taxation, the people may become dissatisfied so that a free ballot box may be considered unsafe." *The Sentinel*, May 12, 1864.

66. "In future years, as we gently submit our necks to the yoke of serfdom and slavery, bent down with the heavy load of taxation, be cheerful—let us drink deep of the cup of consolation in the glorious thought that we live in a land and age of meek Christianity and mild civilization—that we've witnessed the removal from our land of a great sin . . . that Jehovah has triumphed and the negroes are free." *The Sentinel*, May 12, 1864.

67. The speech reported in the paper was taken from an observers notes, and was not a verbatim account. *The Sentinel*, June 29, 1864.

68. That he had "just learned" of this is unlikely. *The Sentinel* of June 10, 1863, carried a story on Morton's placing the funds he used in his office safe. The Bureau of Finance had been organized in April of 1863. 1 STAMPP, INDIANA POLITICS DURING THE CIVIL WAR 181 (1949).

69. *The Journal*, June 30, 1864. Governor Morton, aroused by Perkins' remarks, countered with a speech at Centreville within the week. In addition he wrote an answering editorial in the *Journal*. 1 FOULKE, LIFE OF OLIVER P. MORTON 299 (1899).

At the July convention, Perkins and all his colleagues on the Supreme Court were renominated.⁷⁰ Probably unconcerned about his political future, and weary of the battles of four years, he made little effort to campaign.⁷¹ Aided by their reiterated clamor against "disloyal Democrats" and encouraged by news from the war fronts, the Republicans won a sweeping victory at the polls.⁷² Thus, Judge Perkins' long tenure on the Court was briefly terminated, concluding, perhaps, the most colorful period of his extraordinary career.⁷³

70. The Sentinel, July 13, 1864.

71. Perkins addressed the Democracy of Marion County on August 21. The Sentinel, August 22, 1864. This speech was not published.

72. The Sentinel, October 17, 1864.

73. On November 2, 1865, Perkins assumed the editorship of the *Indianapolis Daily Herald* (the successor of the *Sentinel*). In 1872 he resumed his judicial career by appointment to the Marion County Superior Court, where he remained until the election of 1876, when he was returned to the Supreme Court, a position which he retained until his death in 1879.