

(Duke) (Shauff of Honolulu)
Duncan v. Kahanamoku 327 US 304 (1946)

On Dec. 7, 1941, the Governor of Hawaii declared "martial law" and suspended the writ of habeas corpus. President approved on Dec. 9. Military tribunals were set up. Civil courts lost all jurisdiction. Later they could handle certain non-jury matters "as agents of the Military Governor." By 1944, juries were again used, but not for "violations of military orders." Duncan, a civilian shipfitter working at the Navy Yard, was in a fight with two armed Marine sentries at the yard. He was tried before a military court and sentenced to six months in prison. In a related case from 1942, one White -- a stock broker -- was convicted of embezzlement by a military tribunal and given a four-year sentence.

District Court granted writs of habeas corpus and found that the courts "had always been able to function but for the military orders closing them." District Judge thus ordered petitioners released. Ct. App. reversed. 146 F.2d 576.

Court focused on sec 67 of the Organic Act which does to some extent authorize suspension of the writ (& martial law) by the Governor pending discussion with the President.

Justice Black's majority opinion reviews history & determines that Congress's use of the term "martial law" in the Organic Act was not meant to permit the "supplanting of courts by military tribunals."

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Black's majority decision does not reach the Constitutional issues.

Justice Murphy wrote a strong concurring opinion arguing that the US Constitution forbids this type of martial law.

Burton (joined by Frankfurter) dissented, arguing that martial law (& military courts) are permitted in "the theater of actual military operations."

[Jackson did not participate] 6-2

Section 67, Organic Act:

"... the governor... may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part of thereof, under martial law until communication can be had with the President and his decision thereon made known."

Did the court implicitly rule that the President alone cannot suspend the writ of habeas corpus?

That only Congress can authorize such an act?

It would seem so.