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## Documents Online

**Title:** Letter from Roger B. Taney to Samuel Nelson

**Date:** May 8, 1864

**Location:** I-SpahrB-1965-13

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125  
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Washington May 8<sup>th</sup> 1864

My Dear Sir

I think you told me in our last interview, that you were accustomed to hear appeals at your office - upon briefs or oral arguments, & transmit your decision to the place of holding the Court? - Is the Circuit Court kept open from day to day for that purpose? - And how, and of what day is it entered on the record?

I trouble you with these questions, because I doubt whether I shall be able to go to Baltimore. I have not been outside of my house since I last saw you - although I am every day in my office, & do not find that business

fatigues me, or injures my health  
- But from the old injury in my  
hip I cannot walk five minutes  
without feeling that my strength  
is growing weak - and I feel very  
much disposed to follow your  
example I require the Box to  
come to me -

I have made up my mind  
to continue the indictments for  
treason whether I go to Baltimore  
or not. - The official orders  
issued by the military authori-  
ties almost every day - and the  
arrest of citizens, who do not  
belong to the army or militia  
in service - without assign-  
ing any cause - show that Maryland  
is under martial law  
I that the civil authority is utterly  
paralyzed - It is not in the power  
of the Court under such circum-  
stances, to give a party a fair

and impartial trial - or to  
protection if he should be found  
not guilty by the Jury - For he could  
hardly have a fair and impartial  
trial, when the witnesses & counsel  
& jurors would all feel that if  
they said any thing displeasing  
to the military authority, they  
might be imprisoned on an  
hour afterwards in fact Mr. Perry  
& the court would have no power  
to protect them - And if the party  
should be acquitted, he might  
immediately even in the sight  
of the court be arrested & im-  
prisoned by the military without  
giving any reason for it - and  
the court could not protect him  
nor punish the offenders - I  
will not place the judicial power  
in this humiliating position -  
nor consent this to degrade and  
degrade it - and if the District

Attorney presses the procees-  
tions I shall refuse to take  
them up I shall order the case  
to be continued. And shall  
in a written opinion place  
my decision upon the grounds  
above stated. - What do you  
think of it?

Very truly & respectfully

yours

R. B. Taney

Mr. Justice Nelson

of the Sup. Ct. U. S.

Coopers Tower

New York

[Letter to Samuel Nelson]

Washington, May 8<sup>th</sup>, 1864

My Dear Sir,

I think you told me in our last interview, that you were accustomed to hear appeals at your office upon briefs or oral arguments, & transmit your decision to the place of holding the court. Is the Circuit Court kept open from day to day for that purpose? And how, and on what day is it entered on the record?

I trouble you with these questions, because I doubt whether I shall be able to go to Baltimore. I have not been outside of my house since I last saw you – although I am every day in my office, & do not find that business

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fatigues me, or injures my health. But from the old injury in my hip I cannot walk five minutes without feeling that my strength is giving way – and I feel very much disposed to follow your example and require the Bar to come to me.

I have made up my mind to continue the indictments for treason whether I go to Baltimore or not. The official orders issued by the military authorities almost every day, and the arrest of citizens, who do not belong to the army or militia in service without assigning any cause show that Maryland is under martial law and that the civil authority is entirely powerless. It is not in the power of the Court under such circumstances, to give a party a fair

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and impartial trial, or to protect him if he should be found not guilty by the jury. For he could hardly have a fair and impartial trial, when the witnesses and counsel and jurors would all feel that if they said anything displeasing to the military authority, they might be imprisoned in an hour afterward in Fort McHenry, and the Court would have no power to protect them. And if the party should be acquitted he might immediately, even in the sight of the Court, be arrested and imprisoned by the military without giving any reason for it, and the Court could not protect him nor punish the offenders. I will not place the judicial power in this humiliating position, nor consent thus to degrade and disgrace it. And if the District

[page 4]

Attorney presses the prosecutions I shall refuse to take them up and shall order the cases to be continued and shall in a written opinion place my decision upon the grounds above stated. What do you think of it?

Very truly and respectfully yours  
R. B. Taney

Mr. Justice Nelson  
of the Sup. Ct. U.S.  
Cooperstown  
New York